

# UNITED NATIONS CONFERENCE ON PRESCRIPTION (LIMITATION) IN THE INTERNATIONAL SALE OF GOODS

New York, 20 May-14 June 1974

## OFFICIAL RECORDS

*Documents of the Conference  
and  
Summary Records of the Plenary Meetings  
and of the Meetings  
of the Main Committees*



UNITED NATIONS

New York, 1975

## INTRODUCTORY NOTE

The *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods* contains the preliminary documents, the summary records of the plenary meetings and the meetings of the Main Committees, the Final Act and the Convention; it also contains a complete index of the documents relevant to the proceedings of the Conference.

\* \* \*

The symbols of the United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

\* \* \*

The summary records contained in this volume were originally circulated in mimeographed form as documents A/CONF.63/SR.1 to SR.10, A/CONF.63/C.1/SR.1 to SR.25 and A/CONF.63/C.2/SR.1 to SR.4. They include the corrections to the provisional summary records that were requested by the delegations and such editorial changes as were considered necessary.

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## GENERAL ASSEMBLY RESOLUTIONS CONVENING THE CONFERENCE

### 1. Resolution 2929 (XXVII). United Nations Conference on Prescription (Limitation) in the International Sale of Goods

*The General Assembly,*

Having considered chapter II of the report of the United Nations Commission on International Trade Law on the work of its fifth session,<sup>1</sup> which contains draft articles for a convention on prescription (limitation) in the international sale of goods,

Recalling its resolution 2205 (XXI) of 17 December 1966 by which it established the United Nations Commission on International Trade Law and defined the object and terms of reference of the Commission,

Noting that at its fourth and fifth sessions, held in 1971 and 1972, the United Nations Commission on International Trade Law, in the light of observations and comments submitted by Governments, considered and revised provisional draft articles on prescription (limitation) in the international sale of goods that had been prepared by the Commission's Working Group on Time-Limits and Limitations (Prescription) in the International Sale of Goods, and that the Commission, at its fifth session, approved the draft articles as set forth in paragraph 21 of its report,

Bearing in mind that the United Nations Commission on International Trade Law at its fifth session recommended that the General Assembly should convene an international conference of plenipotentiaries to conclude, on the basis of the draft articles adopted by the Commission,<sup>2</sup> a convention on prescription (limitation) in the international sale of goods,

Convinced that conflicts and divergencies among the existing national rules governing prescription (limitation) in the international sale of goods constitute obstacles to the development of world trade and that the harmonization and unification of such rules would promote the flow of world trade,

1. Expresses its appreciation to the United Nations Commission on International Trade Law for its valuable work on prescription in the international sale of goods;

2. Decides that an international conference of plenipotentiaries shall be convened in 1974, in New York or at any other suitable place for which the Secretary-General receives an invitation, to consider the question of prescription (limitation) in the international sale of goods and to embody the results of its work in an international convention and such other instruments as it may deem appropriate;

3. Further decides to consider at its twenty-eighth session any other matters requiring decision in connexion with the conference and to include in the provisional agenda of that session an item entitled "United Nations Conference on Prescription (Limitation) in the International Sale of Goods";

<sup>1</sup> Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17.

<sup>2</sup> Ibid., para. 20.

4. Refers to the conference the draft articles contained in chapter II of the report of the United Nations Commission on International Trade Law on the work of its fifth session, together with the commentary thereon and the analytical compilation of comments and proposals to be prepared by the Secretary-General pursuant to the decision of the Commission,<sup>3</sup> as the basis for consideration by the conference.

2091st plenary meeting  
28 November 1972

### 2. Resolution 3104 (XXVIII). United Nations Conference on Prescription (Limitation) in the International Sale of Goods

*The General Assembly,*

Recalling its resolution 2929 (XXVII) of 28 November 1972 by which it decided that an international conference of plenipotentiaries should be convened in 1974 to consider the question of prescription (limitation) in the international sale of goods and to embody the results of its work in an international convention and such other instruments as it may deem appropriate,

Recalling further that, in the foregoing resolution, it referred to the conference, as the basis for its consideration, the draft convention on prescription (limitation) in the international sale of goods as contained in chapter II of the report of the United Nations Commission on International Trade Law on the work of its fifth session,<sup>3</sup> together with the commentary thereon and such comments and proposals as may be submitted by Governments and interested international organizations,

Reaffirming the conviction, expressed in the foregoing resolution, that the harmonization and unification of national rules governing prescription (limitation) in the international sale of goods would contribute to the removal of obstacles to the development of world trade,

Requests the Secretary-General:

(a) To convene the United Nations Conference on Prescription (Limitation) in the International Sale of Goods at United Nations Headquarters, New York, from 20 May to 14 June 1974;

(b) To provide summary records of the proceedings of the plenary meetings of the Conference and of meetings of committees of the whole which the Conference may wish to establish;

(c) To invite, in full compliance with General Assembly resolution 2758 (XXVI) of 25 October 1971, States Members of the United Nations or members of specialized agencies or the International Atomic Energy Agency and States parties to the Statute of the International Court of Justice, as well as the following State to participate in the Conference: Democratic Republic of Viet-Nam;

<sup>3</sup> Ibid., paras. 21 and 22.

(d) To invite interested specialized agencies and international organizations, and the United Nations Council for Namibia to attend the Conference as observers;

(e) To draw the attention of the States and other participants, referred to in paragraphs (c) and (d) above, to the desirability of appointing as their representatives persons especially competent in the field to be considered;

(f) To place before the Conference all relevant documentation and recommendations relating to methods of work and procedure, and to arrange for adequate staff and facilities required for the Conference;

(g) To report on the results achieved by the Conference to the General Assembly at its twenty-ninth session.

*2197th plenary meeting  
12 December 1973*

## **OFFICERS OF THE CONFERENCE AND ITS COMMITTEES**

### **President of the Conference**

Mr. Jorge Barrera Graf (Mexico).

### **Vice-Presidents of the Conference**

The representatives of the following States: Algeria, Australia, Belgium, Brazil, Chile, Cyprus, Denmark, France, Germany (Federal Republic of), Ghana, Guyana, India, Japan, Kenya, Nigeria, Philippines, Poland, Singapore, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Zaire.

### **First Committee**

*Chairman:* Mr. Mohsen Chafik (Egypt).

*Vice-Chairmen:* Mr. Nehemias Gueiros (Brazil), Mr. L. H. Khoo (Singapore), Mr. Elias A. Krispis (Greece).

*Rapporteur:* Mr. Ludvik Kopač (Czechoslovakia).

### **Second Committee**

*Chairman:* Mr. György Kampis (Hungary).

*Vice-Chairmen:* Mr. T. I. Adesalu (Nigeria), Mr. G. C. Parks (Canada), Mr. G. S. Raju (India).

### **Drafting Committee**

*Chairman:* Mr. Anthony G. Guest (United Kingdom).

*Members:* Austria, Brazil, Czechoslovakia, France, India, Mexico, Nigeria, Norway, Philippines, Singapore, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Zaire.

### **Credentials Committee**

*Chairman:* Mr. José M. Zelaya (Nicaragua).

*Members:* Brazil, Ghana, Japan, Mongolia, Netherlands, Nicaragua, Union of Soviet Socialist Republics, United Republic of Tanzania and United States of America.

### **Secretariat of the Conference**

Mr. Blaine Sloan, Director of the General Legal Division, Office of Legal Affairs, (Representative of the Secretary-General of the United Nations).

Mr. Gurdon W. Wattles, Principal Officer, Office of the Legal Counsel, (Executive Secretary of the Conference; Secretary of the General Committee and of the Second Committee).

Mr. John O. Honnold, Chief, International Trade Law Branch, Office of Legal Affairs, (Secretary of the United Nations Commission on International Trade Law).

Mr. Willem Vis, Senior Legal Officer, International Trade Law Branch, (Assistant Secretary of the Conference; Secretary of the First Committee).

Mr. Kazuaki Sono, Special Consultant, International Trade Law Branch; Professor of Law, Hokkaido University, (Secretary of the Drafting Committee).

Mr. Philippe C. Gibrain, Chief, Treaty Section, (Secretary of the Credentials Committee).

Mr. John P. Dietz, Associate Legal Officer, International Trade Law Branch, (Assistant Secretary of the First Committee and of the Drafting Committee).

Mr. Alexander Borg-Olivier, Associate Legal Officer, General Legal Division, (Assistant Secretary of the Second Committee).

Mr. Antonius J. M. Zuijdewijk, Assistant Legal Officer, International Trade Law Branch.

## AGENDA\*

1. Opening of the Conference
2. Election of the President
3. Adoption of the agenda
4. Adoption of the rules of procedure
5. Election of Vice-Presidents of the Conference and of a Chairman of each of the Main Committees
6. Credentials of representatives to the Conference:  
    (a) Appointment of the Credentials Committee  
    (b) Report of the Credentials Committee
7. Appointment of members of the Drafting Committee
8. Organization of work
9. Consideration of the question of prescription (limitation) in the international sale of goods in accordance with General Assembly resolutions 2929 (XXVII) and 3104 (XXVIII)
10. Adoption of a convention and other instruments deemed appropriate, and of the Final Act of the Conference
11. Signature of the Final Act and of the convention and other instruments

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\* As adopted by the Conference at its 2nd plenary meeting.



## **RULES OF PROCEDURE\***

### **CHAPTER I**

#### **Representation and credentials**

##### *Composition of delegations*

###### **Rule 1**

The delegation of each State participating in the Conference shall consist of accredited representatives and such alternate representatives and advisers as may be required.

##### *Alternates or advisers*

###### **Rule 2**

An alternate representative or an adviser may act as a representative upon designation by the chairman of the delegation.

##### *Submission of credentials*

###### **Rule 3**

The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Executive Secretary of the Conference if possible not later than 24 hours after the opening of the Conference. Any later change in the composition of delegations shall also be submitted to the Executive Secretary. The credentials shall be issued either by the Head of State or Government, or by the Minister for Foreign Affairs.

##### *Credentials Committee*

###### **Rule 4**

A Credentials Committee shall be appointed at the beginning of the Conference. It shall consist of nine members, who shall be appointed by the Conference on the proposal of the President. The Committee shall elect a chairman. It shall examine the credentials of representatives and report to the Conference without delay.

##### *Provisional participation in the Conference*

###### **Rule 5**

Pending a decision of the Conference upon their credentials, representatives shall be entitled provisionally to participate in the Conference.

### **CHAPTER II**

#### **Officers**

##### *Elections*

###### **Rule 6**

The Conference shall elect a President and 22 Vice-Presidents and a Chairman of each of the two Main Committees provided for in rule 46. The Conference

\* As adopted by the Conference at its 2nd plenary meeting and circulated as document (A/CONF.63/8). The text is the same as the provisional rules of procedure (A/CONF.63/2 and Corr.1 and 2, except for some modifications adopted at the 2nd plenary meeting.

may also elect such other officers as it deems necessary for the performance of its functions.

##### *President*

###### **Rule 7**

The President shall preside at the plenary meetings of the Conference.

###### **Rule 8**

The President, in the exercise of his functions, remains under the authority of the Conference.

##### *Acting President*

###### **Rule 9**

If the President is absent from a meeting or any part thereof, he shall appoint one of the Vice-Presidents to take his place.

###### **Rule 10**

A Vice-President acting as President shall have the same powers and duties as the President.

##### *Replacement of the President*

###### **Rule 11**

If the President is unable to perform his functions, a new President shall be elected.

##### *The President shall not vote*

###### **Rule 12**

The President, or Vice-President acting as President, shall not vote in the Conference, but shall appoint another member of his delegation to vote in his place.

### **CHAPTER III**

#### **General Committee**

##### *Composition*

###### **Rule 13**

There shall be a General Committee of 25 members, which shall consist of the President and Vice-Presidents of the Conference and the Chairmen of the two Main Committees. The President of the Conference or, in his absence, one of the Vice-Presidents designated by him, shall serve as Chairman of the General Committee.

##### *Substitute members*

###### **Rule 14**

If any member of the General Committee is unable to attend a meeting of that Committee, he may designate a member of his delegation to sit and vote in his place.

##### *Functions*

###### **Rule 15**

The General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the co-ordination of its work.

## CHAPTER IV

## Secretariat

*Duties of the Secretary-General and the Secretariat**Rule 16*

1. The Secretary-General of the Conference shall be the Secretary-General of the United Nations. He, or his representative, shall act in that capacity in all meetings of the Conference and its committees.

2. The Secretary-General shall appoint an Executive Secretary of the Conference and shall provide and direct the staff required by the Conference and its committees.

3. The Secretariat shall receive, translate, reproduce and distribute documents, reports and resolutions of the Conference; interpret speeches made at the meetings; prepare and circulate records of the public meetings; have responsibility for the custody and preservation of the documents in the archives of the United Nations; and, generally, perform all other work which the Conference may require.

*Statements by the Secretariat**Rule 17*

The Secretary-General or any member of the staff designated for that purpose may at any time make either oral or written statements concerning any question under consideration.

## CHAPTER V

## Conduct of business

*Quorum**Rule 18*

The President may declare a meeting open and permit the debate to proceed when representatives of at least one third of the States participating in the Conference are present. The presence of representatives of a majority of such States shall be required for any decision to be taken.

*General powers of the President**Rule 19*

In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall declare the opening and closing of each plenary meeting of the Conference; direct the discussions at such meetings; accord the right to speak; put questions to the vote and announce decisions. He shall rule on points of order and, subject to these rules of procedure, have complete control of the proceedings and over the maintenance or order thereat. The President may propose to the Conference the time to be allotted to speakers, the limitation of the number of times each representative may speak on any question, the closure of the list of speakers or the closure of the debate. He may also propose the suspension or the adjournment of the meeting or the adjournment of the debate on the question under discussion.

*Speeches**Rule 20*

No person may address the Conference without having previously obtained the permission of the President. Subject to rules 21 and 22, the President shall call upon speakers in the order in which they signify

their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

*Precedence**Rule 21*

The Chairman or Rapporteur of a committee, or the representative of a sub-committee or working group, may be accorded precedence for the purpose of explaining the conclusion arrived at by his committee, sub-committee or working group.

*Points of order**Rule 22*

During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the President in accordance with the rules of procedure. A representative may appeal against the ruling of the President. The appeal shall be immediately put to the vote and the President's ruling shall stand unless the appeal is approved by a majority of the representatives present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

*Time-limit on speeches**Rule 23*

The Conference may limit the time to be allotted to each speaker and the number of times each representative may speak on any question. When a representative has spoken beyond his allotted time, the President shall call him to order without delay.

*Closing of list of speakers**Rule 24*

During the course of a debate the President may announce the list of speakers and, with the consent of the Conference, declare the list closed. He may, however, accord the right of reply to any representative if a speech delivered after he has declared the list closed makes this desirable.

*Adjournment of debate**Rule 25*

During the discussion of any matter, a representative may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The President may limit the time to be allowed to speakers under this rule.

*Closure of debate**Rule 26*

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the Conference is in favour of the closure, the President shall declare the closure of the debate. The President may limit the time to be allowed to speakers under this rule.

*Suspension or adjournment of the meeting***Rule 27**

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall be immediately put to the vote. The President may limit the time to be allowed to the speaker moving the suspension or adjournment.

*Order of procedural motions***Rule 28**

Subject to rule 22, the following motions shall have precedence in the following order over all the proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the question under discussion;
- (d) To close the debate on the question under discussion.

*Terms of reference***Rule 29**

1. The Conference shall consider the question of prescription (limitation) in the international sale of goods and embody the results of its work in an international convention and such other instruments as it may deem appropriate.

2. The basis for consideration by the Conference shall be the draft articles on prescription (limitation) in the international sale of goods as contained in chapter II of the report of the United Nations Commission on International Trade Law on the work of its fifth session,<sup>1</sup> together with the commentary thereupon<sup>2</sup> and the analytical compilation by the Secretary-General of comments and proposals by Governments and by interested international organizations.<sup>3</sup>

*Other proposals and amendments***Rule 30**

Other proposals and amendments thereto shall normally be introduced in writing and handed to the Executive Secretary of the Conference, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or motions as to procedure, even though these amendments and motions have not been circulated or have only been circulated the same day.

<sup>1</sup> A/CONF.63/4 reproduces the draft articles set forth in chapter II of the report of the United Nations Commission on International Trade Law on the work of its fifth session, *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717)*, para. 21. Draft articles 37 through 46 were not considered by the Commission and it was agreed that they should be submitted for consideration to the Conference; *ibid.*, para. 22. See also General Assembly resolution 2929 (XXVII), para. 4 and General Assembly resolution 3104 (XXVIII).

<sup>2</sup> A/CONF.63/5, reproducing the content of document A/CN.9/73.

<sup>3</sup> A/CONF.63/6.

*Decisions on competence***Rule 31**

Subject to rule 22, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

*Withdrawal of motions***Rule 32**

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any representative.

*Reconsideration of proposals***Rule 33**

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on the motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

**CHAPTER VI****Voting***Voting rights***Rule 34**

Each State represented at the Conference shall have one vote.

*Required majority***Rule 35**

1. Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting.

*Meaning of the expression "representatives present and voting"***Rule 36**

For the purpose of these rules, the expression "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

*Method of voting***Rule 37**

1. The Conference shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President.

2. When the Conference votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the Conference shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the States; nevertheless, the results of the voting shall be inserted in the record in the same manner as that of a roll-call vote.

#### *Conduct during voting*

##### *Rule 38*

After the President has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connexion with the actual conduct of the voting. The President may permit representatives to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The President may limit the time to be allowed for such explanations.

#### *Division of proposals and amendments*

##### *Rule 39*

A representative may move that parts of a proposal or an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. If the motion for division is carried, those parts of the proposal or amendment which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

#### *Voting on amendments*

##### *Rule 40*

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

#### *Voting on proposals*

##### *Rule 41*

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

#### *Elections*

##### *Rule 42*

All elections shall be held by secret ballot unless otherwise decided by the Conference.

##### *Rule 43*

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the representatives present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the preceding paragraph.

##### *Rule 44*

When two or more elective places are to be filled at one time under the same conditions, those candidates, in a number not exceeding the number of places to be filled, obtaining in the first ballot the largest number of votes and a majority of the votes of the representatives present and voting, shall be elected. If the number of candidates obtaining such majority is less than the number of places to be filled, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the largest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible person or delegation. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

#### *Equally divided votes*

##### *Rule 45*

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

### CHAPTER VII

#### Committees

##### *Main Committees*

##### *Rule 46*

1. The Conference shall establish two Main Committees (the "First Committee" and the "Second Committee"). All participants in the Conference may participate in the work of the Main Committees. The Conference shall determine the matters to be considered by each such Committee and may authorize the General Committee, upon the request of the Chairman of a Main Committee, to adjust the allocation of work between the Main Committees.

2. Each Main Committee may set up sub-committees or working groups.

##### *Drafting Committee*

##### *Rule 47*

1. The Conference shall appoint, on the proposal of the General Committee, a Drafting Committee,

which shall consist of not more than 15 members. In proposing the members of the Drafting Committee, the General Committee shall take into account the desirability that the Drafting Committee be composed of persons who are conversant with the technical aspects of the subject-matter under consideration by the Conference and shall also ensure that the languages of the Conference be adequately represented in this Committee.

2. The Drafting Committee shall, at the request of the Conference or of a Main Committee, prepare draft articles and shall co-ordinate the drafting of all texts. It shall report as appropriate either to the Conference or to a Main Committee.

#### *Officers*

##### *Rule 48*

Except in the cases of the Chairmen of the Main Committees, each committee, sub-committee and working group shall elect its own officers. Each Main Committee shall elect three Vice-Chairmen and a Rapporteur.

*Officers, conduct of business and voting in committees*

##### *Rule 49*

The rules contained in chapters II, V and VI above shall be applicable, *mutatis mutandis*, to the proceedings of committees, sub-committees and working groups, except that:

(a) Subject to rule 33, all decisions shall be taken by a majority of the representatives present and voting, and,

(b) The chairmen of the Drafting Committee, the Credentials Committee and the General Committee and the chairmen of sub-committees and working groups may exercise the right to vote.

### CHAPTER VIII

#### *Languages and records*

##### *Languages of the Conference*

##### *Rule 50*

Chinese, English, French, Russian and Spanish shall be the languages of the Conference.

#### *Interpretation from languages of the Conference*

##### *Rule 51*

Speeches made in any of the languages of the Conference shall be interpreted into the other languages.

#### *Interpretation from other languages*

##### *Rule 52*

Any representative may make a speech in a language other than a language of the Conference. In this case he shall himself provide for interpretation into one of the languages of the Conference and interpretation into the other such languages by the interpreters of the Secretariat may be based on the interpretation given in the first such language.

#### *Summary records*

##### *Rule 53*

1. Summary records of the plenary meetings of the Conference and of the meetings of the Main Committees shall be kept in the languages of the Conference. They shall be sent in provisional form as soon as possible to all representatives, who shall inform the Secretariat within five working days after the circulation of the summary record of any changes they wish to have made.

2. The Secretariat shall make sound recordings of meetings of the Conference and the Main Committees.

### CHAPTER IX

#### *Public and private meetings*

##### *Plenary meetings and meetings of committees*

##### *Rule 54*

The plenary meetings of the Conference and the meetings of the Main Committees shall be held in public unless the body concerned decides otherwise. As a general rule, meetings of the other Committees and of any sub-committee or working group shall be held in private.

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*'Part One*

**DOCUMENTS OF THE CONFERENCE**





## PROPOSALS, REPORTS AND OTHER DOCUMENTS

### A. REPORT OF THE CREDENTIALS COMMITTEE

*Document A/CONF.63/13*

[Original: French]

[11 June 1974]

1. At its 2nd plenary meeting held on 21 May 1974, the Conference, in accordance with rule 4 of its rules of procedure, appointed a Credentials Committee composed of the following States: Brazil, Ghana, Greece (later replaced by Netherlands), Japan, Mongolia, Nicaragua, Union of Soviet Socialist Republics, United Republic of Tanzania and United States of America.

2. On 10 June 1974, the Credentials Committee held a meeting attended by the representatives of Brazil, Japan, Mongolia, the Netherlands, Nicaragua, the Union of Soviet Socialist Republics, the United Republic of Tanzania and the United States of America. Mr. José Zelaya (Nicaragua) was unanimously elected Chairman.

3. The Committee had before it a memorandum by the Executive Secretary of the Conference stating that, as at 10 June 1974:

(a) Formal credentials in due form under rule 3 of the rules of procedure had been submitted to the Executive Secretary of the Conference by the representatives of the following 44 States: Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Colombia, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Guatemala, Guyana, Holy See, Hungary, India, Iraq, Ireland, Japan, Mexico, Mongolia, Netherlands, Nicaragua, Nigeria, Norway, Philippines, Poland, Qatar, Singapore, Spain, Switzerland, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia and Zaire;

(b) The lists of representatives of the following 19 States had been communicated to the Executive Secretary by notes verbales or letters from the Permanent Representatives or Permanent Missions concerned: Algeria, Barbados, Costa Rica, Cuba, Ecuador, Egypt, El Salvador, Greece, Indonesia, Iran, Kenya, Mali, Morocco, Pakistan, Sierra Leone, Sweden, Syrian Arab Republic, United Arab Emirates and United Republic of Cameroon;

(c) The credentials of the representatives of Chile, Colombia and the Republic of Viet-Nam had been communicated in the form of cables;

(d) The Governments of the following States had informed the Executive Secretary that they would attend the Conference as observers: Madagascar, Peru and Romania.

Furthermore, the Chairman stated that, after the memorandum had been prepared, the Executive Secretary

had received the formal credentials in due form of the representatives of the United Republic of Tanzania.

4. The Chairman proposed that exceptionally and subject to later validation the Committee should, in order to avoid having to hold a second meeting at the end of the Conference, accept in lieu of formal credentials in due form the communications mentioned in paragraph 3, subparagraphs (b) and (c), above.

5. The representative of the Union of Soviet Socialist Republics objected to the credentials of the representatives of the Saigon régime because, he stated, the Saigon authorities could not represent the whole of South Viet-Nam. As the Paris Agreements showed, there was also the Government of the Republic of South Viet-Nam. Moreover, he considered that it was completely out of order not to have invited the Provisional Revolutionary Government of the Republic of South Viet-Nam; that Government should participate in the Conference on an equal footing.

6. The representative of the United Republic of Tanzania said that his delegation did not recognize the so-called Republic of Viet-Nam, which was only a puppet régime. His delegation shared the view that the Provisional Revolutionary Government of the Republic of South Viet-Nam should also have been invited to participate in the Conference on an equal footing.

7. The representative of Mongolia stated that his delegation did not recognize the credentials of the representatives of the Saigon régime, because that régime could not represent all the people of South Viet-Nam. He too considered that the Provisional Revolutionary Government of the Republic of South Viet-Nam should have been invited to participate in the Conference.

8. The representative of the United States of America pointed out that the invitation addressed to the Republic of Viet-Nam was in conformity with the relevant provisions of General Assembly resolution 3104 (XXVIII), which mentioned States Members of the United Nations or members of specialized agencies and did not include the entity referred to by the representatives of the Union of Soviet Socialist Republics, Mongolia and the United Republic of Tanzania.

9. The Chairman proposed that the Committee should adopt the following resolution, on the understanding that the various views expressed during the Committee's debate would be included in the report submitted to the Conference:

*"The Credentials Committee,*

*"Having examined the credentials of the representatives of all States participating in the United Nations Conference on Prescription (Limitation) in the International Sale of Goods,*

"Recalling the various views expressed during the debate,

"Accepts the credentials of all the representatives participating in the Conference."

10. After a procedural discussion, the above draft resolution was adopted without objection.

11. The representatives of the Union of Soviet Socialist Republics, the United Republic of Tanzania and Mongolia stated that the adoption of the resolution in no way modified the position of their respective delegations.

12. This report is accordingly submitted to the plenary meeting of the Conference.

## B. TEXT OF THE DRAFT CONVENTION ON PRESCRIPTION (LIMITATION) IN THE INTERNATIONAL SALE OF GOODS PREPARED BY THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW\*

Document A/CONF.63/4

[Previously published in the report of the Commission on the work of its fifth session]\*\*

[Original: English]  
[4 April 1974]

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\* For identification of the relationship of draft articles to the provisions in the Convention on the Limitation Period in the International Sale of Goods. See Comparative table which appears in part III of this volume.

\*\* See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17*, para. 21.

**PART I. SUBSTANTIVE PROVISIONS****SPHERE OF APPLICATION***Article 1*

[Introductory provisions; definitions]\*

1. This Convention shall apply to the limitation of legal proceedings and to the prescription of the rights of the buyer and seller against each other relating to a contract of international sale of goods.

2. This Convention shall not affect a rule of the applicable law providing 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" and "seller", or "party", mean persons who buy or sell, or agree to buy or sell, goods, and the successors to and assigns of their rights or duties under the contract of sale;

(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 the 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, administrative and arbitral proceedings;

(f) "Person" includes corporation, company, association or entity, whether private or public;

(g) "Writing" includes telegram and telex.

*Article 2*

[Definition of a contract of international sale of goods]

[1. For the purposes of this Convention, a contract of sale of goods shall be considered international if, at the time of the conclusion of the contract, the seller and buyer have their places of business in different States.]

2. Where a party to the contract of sale has places of business in more than one State, his place of business for the purposes of paragraph (1) of this article and of article 3 shall be his principal place of business, unless another place of business has a closer 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.

3. Where a party does not have a place of business, reference shall be made to his habitual residence.

4. 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*

[Application of the Convention]

1. This Convention shall apply only when at the time of the conclusion of the contract, the seller and buyer have their places of business in different Contracting States.

\* Captions were not drafted at the session of the Commission; they are added for ease of reference and should not be considered as parts of the text of the draft.

2. Unless otherwise provided herein, this Convention shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

3. This Convention shall not apply when the parties have validly chosen the law of a non-Contracting State.

*Article 4*

[Exclusion of certain sales and types of goods]

This Convention shall not apply to sales:

(a) Of goods of a kind and in a quantity ordinarily bought by an individual for personal, family or household use, unless the fact that the goods are bought for a different use appears 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;

(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 or aircraft;

(f) Of electricity.

*Article 5*

[Exclusion of certain claims]

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*

[Mixed contracts]

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 within the meaning of this Convention, unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

*Article 7*

[Interpretation to promote uniformity]

In interpreting and applying the provisions of this Convention, regard shall be had to its international character and to the need to promote uniformity in its interpretation and application.

## THE DURATION AND COMMENCEMENT OF THE LIMITATION PERIOD

### Article 8

[Length of the limitation period]

Subject to the provisions of article 10, the limitation period shall be four years.

### Article 9

[Basic rule on commencement of the period]

1. Subject to the provisions of articles 10 and 11, the limitation period shall commence on the date on which the claim becomes due.

2. In respect of a claim based on fraud committed before or at the time of the conclusion of the contract, the claim shall, for the purpose of paragraph (1) of this article, be deemed to become due on the date on which the fraud was or reasonably could have been discovered.

3. In respect of a claim arising from a breach of the contract, the claim shall, for the purpose of paragraph (1) of this article, be deemed to become due on the date on which such breach occurs. Where one party is required, as a condition for the acquisition or exercise of such a claim, to give notice to the other party, the commencement of the limitation period shall not be postponed by reason of such requirement of notice.

### Article 10

[Claims based on non-conformity of the goods;  
express undertaking]

1. The limitation period in respect of a claim arising from a defect or lack of conformity which could be discovered when the goods are handed over to the buyer shall be two years from the date on which the goods are actually handed over to him.

2. The limitation period in respect of a claim arising from a defect or lack of conformity which could not be discovered when the goods are handed over to the buyer shall be two years from the date on which the defect or lack of conformity is or could reasonably be discovered, provided that the limitation period shall not extend beyond eight years from the date on which the goods are actually handed over to the buyer.

3. If the seller gives 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 discovers or ought to discover 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 11

[Termination before performance is due;  
instalment contracts]

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 per-

formance 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 12

[Judicial proceedings]

1. The limitation period shall cease to run when the creditor performs any act which, under the law of the jurisdiction where such act is performed, 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.

2. For the purposes of this article, 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. However, both the claim and counterclaim shall relate to a contract or contracts concluded in the course of the same transaction.

### Article 13

[Arbitral proceedings]

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 that agreement.

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.

3. The provisions of this article shall apply notwithstanding any term in the arbitration agreement to the effect that no right shall arise until an arbitration award has been made.

### Article 14

[Legal proceedings arising from death, bankruptcy  
or the like]

In any legal proceedings other than those mentioned in articles 12 and 13, including legal proceedings commenced upon the occurrence of:

- (a) The death or incapacity of the debtor,
- (b) The bankruptcy or insolvency of the debtor, or
- (c) The dissolution or liquidation of a corporation, company, association or entity,

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, unless the law governing the proceedings provides otherwise.

#### Article 15

[Proceedings not resulting in a decision on the merits of the claim]

1. Where a claim has been asserted in legal proceedings within the limitation period in accordance with articles 12, 13 or 14 but such legal proceedings have ended without a final 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, unless they have ended because the creditor has discontinued them or allowed them to lapse.

#### Article 16

[Proceedings in a different jurisdiction; extension where foreign judgement is not recognized]

[1. Where a creditor has asserted his claim in legal proceedings within the limitation period in accordance with articles 12, 13 or 14 and has obtained a decision binding on the merits of his claim in one State, and where, under the applicable law, he is not precluded by this decision from asserting his original claim in legal proceedings in another State, the limitation period in respect of this claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14, and the creditor shall, in any event, be entitled to an additional period of one year from the date of the decision.

2. If recognition or execution of a decision given in one State is refused in another State, the limitation period in respect of the creditor's original claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14, and the creditor shall, in any event be entitled to an additional period of one year from the date of the refusal.]

#### Article 17

[Joint debtors; recourse actions]

[1. Where legal proceedings have been commenced against one debtor within the limitation period prescribed by this Convention, the limitation period 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 by 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. In the circumstances mentioned in this article, the creditor or the buyer must institute legal proceedings against the party jointly or severally liable or against the seller, either within the limitation period otherwise provided by this Convention or within one year from the date on which the legal proceedings referred to in paragraphs (1) and (2) commenced, whichever is the later.]

#### Article 18

[Recommencement of the period by service of notice]

1. Where the creditor performs, in the State where the debtor has his place of business and before the expiration of the limitation period, any act, other than those acts prescribed in articles 12, 13 and 14, which under the law of that State has the effect of recommencing the original limitation period, a new limitation period of four years shall commence on the date prescribed by that law, provided that the limitation period shall not extend beyond the end of four years from the date on which the period would otherwise have expired in accordance with articles 8 to 11.

2. If the debtor has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply.

#### Article 19

[Acknowledgement by debtor]

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 20

[Extension where institution of legal proceedings prevented]

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. The limitation period shall in no event be extended beyond four years from the date on which the period would otherwise expire in accordance with articles 8 to 11.

### MODIFICATION OF THE LIMITATION PERIOD BY THE PARTIES

#### Article 21

[Modification by the parties]

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. In no event shall the period of limitation be extended beyond the end of four years from the date on which it would otherwise have expired in accordance with the provisions of this Convention.

3. The provisions of this article shall not affect the validity of a clause in the contract of sale whereby the acquisition or exercise of a claim is dependent upon the performance by one party of an act other than

the institution of judicial proceedings within a certain period of time, provided that such clause is valid under applicable law.

[LIMIT OF EXTENSION AND MODIFICATION  
OF THE LIMITATION PERIOD]

Article 22

[Over-all limitation for bringing legal proceedings]

[Notwithstanding the provisions of articles 12 to 21 of this Convention, no legal proceedings shall in any event be brought after the expiration of ten years from the date on which the limitation period commences to run under articles 9 and 11, or after the expiration of eight years from the date on which the limitation period commences to run under article 10.]

EFFECTS OF THE EXPIRATION OF THE LIMITATION  
PERIOD

Article 23

[Who can invoke limitation]

Expiration of the limitation period shall be taken into consideration in any legal proceedings only at the request of a party to such proceedings.

Article 24

[Effect of expiration of the period; set-off]

1. Subject to the provisions of article 23 and of paragraph (2) of this article, no claim which has become barred by reason of limitation shall be recognized or enforced in any legal proceedings.

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 a contract or contracts concluded in the course of the same transaction; or

(b) If the claims could have been set-off at any time before the date on which the limitation period expired.

Article 25

[Restitution of performance after prescription]

Where the debtor performs his obligation after the expiration of the limitation period, he shall not thereby be entitled to recover or in any way claim restitution of the performance thus made even if he did not know at the time of such performance that the limitation period had expired.

Article 26

[Interest on a debt]

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 27

[Basic rule]

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 calendar month of the limitation period.

2. The limitation period shall be calculated by reference to the calendar of the place where the legal proceedings are instituted.

Article 28

[Effect of holiday]

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 judicial proceedings as envisaged in article 12 or asserts a claim as envisaged in article 14, 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 29

[Acts or circumstances to be given international effect]

A Contracting State shall give effect to acts or circumstances referred to in articles 12, 13, 14, 15, 17 and 18 which take place 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 circumstance as soon as possible.

PART II: IMPLEMENTATION

Article 30

[Implementing legislation]

[Subject to the provisions of article 31, each Contracting State shall take such steps as may be necessary under its constitution or law to give the provisions of Part I of this Convention the force of law not later than the date of the entry into force of this Convention in respect of that State.]

Article 31

[Implementing process in a federal State]

[In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

(c) A federal State party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to

any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.].

### Article 32

[Non-applicability as to prior contracts]

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 in respect of that State.

## PART III: DECLARATIONS AND RESERVATIONS

### Article 33

[Declarations limiting the application of the Convention]

1. Two or more Contracting States may at any time declare that contracts of sale between a seller having a place of business in one of the States and buyer having a place of business in another of these States shall not be considered international within the meaning of article 2 of this Convention, because they apply the same or closely related legal rules which in the absence of such a declaration would be governed by this Convention.

2. If a party has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply.

### Article 34

[Reservation with respect to actions for annulment of the contract]

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 35

[Reservation with respect to who can invoke limitation]

Any State may declare, at the time of the deposit of its instrument of ratification or accession to this Convention, that it shall not be compelled to apply the provisions of article 23 of this Convention.

### Article 36

[Relationship with conventions containing limitation provisions in respect of international sale of goods]

1. This Convention shall not prevail over conventions already entered into or which may be entered into, and which contain provisions concerning limitation of legal proceedings or prescription of rights in respect of international sales, provided that the seller and buyer have their places of business in States parties to such a Convention.

2. If a party has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply.

\* \* \*

## FORMAL AND FINAL CLAUSES NOT CONSIDERED BY THE COMMISSION

The following articles were not considered by the Commission and it was agreed that they should be submitted for consideration to the proposed International Conference of Plenipotentiaries.

### Article 37

[Reservations]

No reservation other than those made in accordance with articles 33 to 35 shall be permitted.

### Article 38

[Declaration and withdrawal of reservations]

1. Declarations made under articles 33 to 35 of this Convention shall be addressed to the Secretary-General of the United Nations. They shall take effect [three months] after the date of their receipt by the Secretary-General or, if at the end of this period this Convention has not yet entered into force in respect of the State concerned, at the date of such entry into force.

2. Any State which has made a declaration under articles 33 to 35 of 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 [three months] after the date of the receipt of the notification by the Secretary-General. In the case of a declaration made under paragraph (1) of article 33 of this Convention, such withdrawal shall also render inoperative, as from the date when the withdrawal takes effect, any reciprocal declaration made by another State under that paragraph.

## PART IV: FINAL CLAUSES

### Article 39

[Signature]<sup>1</sup>

This Convention shall be open until [ ] for signature by [.....].

### Article 40

[Ratification]<sup>2</sup>

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### Article 41

[Accession]<sup>3</sup>

This Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 39. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### Article 42

[Entry into force]<sup>4</sup>

1. This Convention shall enter into force [six months] after the date of the deposit of the [.....] instrument of ratification or accession.

<sup>1</sup> Based on the Vienna Convention on the Law of Treaties (United Nations publication, Sales No. E.70.V.5), document A/CONF.39/27, art. 81.

<sup>2</sup> *Ibid.*, art. 82.

<sup>3</sup> *Ibid.*, art. 83.

<sup>4</sup> *Ibid.*, art. 84.



2. For each State ratifying or acceding to this Convention after the deposit of the [...] instrument of ratification or accession, this Convention shall enter into force [six months] after the date of the deposit of its instrument of ratification or accession.

#### Article 43

##### [Denunciation]<sup>5</sup>

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 [12 months] after receipt of the notification by the Secretary-General of the United Nations.

#### Article 44

##### [Declaration on territorial application]

##### Alternative A<sup>6</sup>

1. Any State may, at the time of the deposit of its instrument of ratification or accession or at any time thereafter, declare, by means of a notification addressed to the Secretary-General of the United Nations, that this Convention shall be applicable to all or any of the territories for whose international relations it is responsible. Such a declaration shall take effect [six months] after the date of receipt of the notification by the Secretary-General of the United Nations, or, if at the end of that period this Convention has not yet come into force, from the date of its entry into force.

2. Any Contracting State which has made a declaration pursuant to paragraph (1) of this article may, in accordance with article 43 denounce this Convention in respect of all or any of the territories concerned.

##### Alternative B<sup>7</sup>

This Convention shall apply to all non-metropolitan territories for the international relations of which any

<sup>5</sup> Based on article XII of the 1964 Hague Convention relating to a Uniform Law on the International Sale of Goods, herein cited as the "Hague Sales Convention".

<sup>6</sup> Based on article XIII of the Hague Sales Convention.

<sup>7</sup> Based on article 27 of the Convention on Psychotropic Substances, 1971.

Party is responsible except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such a case, the Party shall endeavour to secure the needed consent of the territory within the shortest period possible and, when the consent is obtained, the Party shall notify the Secretary-General. This Convention shall apply to the territory or territories named in such a notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

#### Article 45

##### [Notifications]<sup>8</sup>

The Secretary-General of the United Nations shall notify the Signatory and Acceding States of:

(a) The declarations and notifications made in accordance with article 38;

(b) The ratifications and accessions deposited in accordance with articles 40 and 41;

(c) The dates on which this Convention will come into force in accordance with article 42;

(d) The denunciations received in accordance with article 43;

(e) The notifications received in accordance with article 44.

#### Article 46

##### [Deposit of the original]

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.

IN WITNES WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at [place], [date].

<sup>8</sup> Based on article XV of the Hague Sales Convention.

### C. COMMENTARY ON THE DRAFT CONVENTION ON PRESCRIPTION (LIMITATION) IN THE INTERNATIONAL SALE OF GOODS

#### Document A/CONF.63/5

[Original: English]  
[16 April 1974]

[This commentary has been prepared by the Secretariat, in consultation with the Rapporteur of the Commission, in conformity with the request made by the United Nations Commission on International Trade Law in the report on the work of its fifth session.<sup>1</sup> This commentary is as printed in the *Yearbook of the United Nations Commission on International Trade Law*, Vol. III, 1972.<sup>2</sup> The text of the draft articles is also reproduced in document A/CONF.63/4.]

<sup>1</sup> Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717), para. 20.

<sup>2</sup> United Nations publication, Sales No. E.73.V.6, p. 115.

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## INTRODUCTION: OBJECTIVE OF THE CONVENTION

1. This Convention is concerned essentially with the period of time within which parties may bring legal proceedings to exercise their rights or claims relating to a contract of international sale of goods.

2. Divergencies in national rules governing the prescription of rights or limitation of claims create serious difficulties. Limitation periods under national laws vary widely. Some periods are short (e.g. six months, one year) in relation to the practical requirements of international transactions, in view of the time that may be required for negotiations and for the institution of legal proceedings in a foreign and possibly distant country. Other periods (which in some cases are as long as 30 years) are longer than are appropriate for transactions involving the international sale of goods, and fail to provide the essential protection that should be afforded by limitation rules.<sup>3</sup> This includes protection from the loss of evidence necessary for the fair adjudication of claims and protection from the uncertainty and possible threat to solvency and to business stability from delayed settlement of disputed claims.

3. National rules not only differ, but in many instances are difficult to apply to international sales transactions.<sup>4</sup> One difficulty arises from the fact that some national laws apply a single rule on limitations 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 further enhanced for international transactions, since merchants and lawyers will often be unfamiliar with the implication of the general concepts and with the techniques of interpretation used in a foreign legal system.

<sup>3</sup> Op. cit., p. 96 "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: report of the Secretary-General (A/CN.9/70/Add.2, sect. 14)" at paras. 6 and 16.

<sup>4</sup> For some illustrations of difficulties, see R. Kuratowski, *Limitation of Actions Founded on Contract and Prescription of Contractual Obligations in Private International Law, Estratto Paglivati del Terzo Congresso di Diritto Comparato*, vol. III—Paris IV, pp. 447-460; E. Harris, *Time Limits for Claims and Actions, in Unification of the Law Governing International Sale of Goods* (J. Honnold, ed. 1966), pp. 201-223. Also see H. Trammer, *Time Limits for Claims and Actions in International Trade*, *ibid.*, pp. 225-233.

4. Perhaps even more serious is the uncertainty as to which national law applies 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 law is applicable; other systems consider them as part of the "procedural" rules of the *forum*; still other systems follow a combination of the above approaches.<sup>5</sup>

5. The result is an area of grave doubt in international legal relationships. The confusion involves more than the choice of the manner of approaching and describing a legal relationship. An unexpected or severe application of a rule of limitation may prevent any redress for a just claim; a lax rule of limitation may fail to provide adequate protection against stale claims that may be false or unfounded. The problems are sufficiently serious to justify the preparation of uniform rules for claims arising from the international sale of goods.

6. In view of the widely varying concepts and approaches prevailing under national laws with respect to the prescription of rights and the limitation of claims, it has been considered advisable to provide uniform rules in a convention that are as concrete and complete as possible. A brief and general uniform law (such as a law merely specifying the length of the period of limitation) would do little in actual practice to achieve unification, since the divergent rules of national law would then be brought into play in "interpreting" such a brief and general provision. Since this Convention is confined to one type of transaction—the purchase and sale of goods—it is possible to state uniform rules for this type of transaction with a degree of concreteness and specificity that is not feasible in statutes that deal with many different types of transactions and claims. The loss of uniformity through the use of divergent rules and concepts of national law cannot be wholly avoided, but this Convention seeks to minimize this danger by facing the problems that are inherent in this field as specifically as feasible within the scope of a convention of manageable length. See also article 7, on rules for interpreting and applying this Convention.

<sup>5</sup> See para. 4 of commentary on art. 3.

## PART I: SUBSTANTIVE PROVISIONS

## SPHERE OF APPLICATION

## Article 1

## [Introductory provisions; definitions]\*

(1) This Convention shall apply to the limitation of legal proceedings and to the prescription of the rights of the buyer and seller against each other relating to a contract of international sale of goods.

(2) This Convention shall not affect a rule of the applicable law providing 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" and "seller", or "party", mean persons who buy or sell, or agree to buy or sell, goods, and the successors to and assigns of their rights or duties under the contract of sale;

(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 the 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, administrative and arbitral proceedings;

(f) "Person" includes corporation, company, association or entity, whether private or public;

(g) "Writing" includes telegram and telex.

## COMMENTARY

## I. Basic scope of the Convention, paragraph (1)

1. Under article 1 (1), this Convention applies both to the "limitations of legal proceedings" and to "the prescription of the rights" of the parties. These two forms of expression were employed since different legal systems employ varying terminology with respect to the effect of delay in bringing legal proceedings to exercise rights or claims. Consequently, it is important to make it clear that the rules of this Convention do not vary because of differing terminology of national law. This approach is vital in view of the international character of the Convention and its objective to promote uniformity in interpretation and application.

2. Specific aspects of the Convention's sphere of application will be discussed in relation to: (a) the parties governed by the Convention, and (b) the types of transactions and claims or rights that are subject to the limitation period.

## (a) The parties

3. Paragraph (1) of article 1 shows that this Convention is directed to the rights or claims arising from the relationship of the "buyer and seller". The terms, as defined in article 1 (3) (a), include the "successors to and assigns of their rights or duties under the contract of sale". The Convention would thus embrace the succession of right or duties by operation of law (as on death or bankruptcy) and the voluntary assignment by a party of his rights or duties under a sales contract. One important type of "successor" could be an insurer who becomes subrogated to rights under a sales contract. Succession could also result from the merger of companies or from corporate reorganization.

\* Captions were not drafted at the session of the Commission; they are added for ease of reference and should not be considered as parts of the text of the draft.

4. It will be noted that, under paragraph (3) (a), to become a "buyer" or "seller" a person must "buy or sell, or agree to buy or sell, goods". Thus a party who has only the right (or "option") to conclude a sales contract is not a "buyer" or "seller" unless and until the contract is concluded. Thus rights under the option agreement (as contrasted with rights under a contract that may result from the exercise of the option) are not governed by the Convention.

## (b) Transactions subject to the Convention; types of claims or rights

5. Under article 1 (1), this Convention applies to "a contract of international sale of goods". Whether a sale is "international" is governed by article 2. Certain exclusions from the scope of the Convention are provided in articles 4 through 6.

6. Paragraph 1 of article 1 provides that this Convention shall apply to rights or claims "relating to a contract" of international sale of goods; the Convention is not intended to apply to claims that arise independent of the contract such as claims based on tort or delict. The references in article 1 (1) to the "contract" and to the relationship between the "buyer and seller against each other" also exclude claims against a seller by a person who has purchased the goods from someone other than the seller. For example, where a manufacturer sells goods to a distributor who resells the goods to the second buyer, a claim by the second buyer against the manufacturer would not be governed by the Convention (see also para. 3, above). Nor does this Convention apply to rights or claims of the buyer or seller against a person who is neither a "buyer" nor "seller" and who guarantees the performance by the buyer or seller of an obligation under the contract of sale.<sup>6</sup>

7. The language "relating to a contract" contained in article 1 (1) is broad enough to include not only claims arising from breach of a sales contract but also claims relating to the termination or invalidity of such a contract.<sup>7</sup> For example, the buyer may have made an advance payment to the seller under a contract which the seller fails to perform because of impossibility, government regulation or similar supervening event. Whether this event will constitute an excuse for the seller's failure to perform may often be in dispute. Hence, the buyer may need to bring an action against the seller presenting, in the alternative, claims for breach and for restitution of the advance payment. Because of this connexion, in practice, between the two types of claims, both are governed by this Convention.

II. The Convention not applicable to "time-limits" (*déchéance*), paragraph (2)

8. Paragraph (2) of article 1 is designed, *inter alia*, to make clear that this Convention has no effect on certain rules of local law involving "time-limits" (*déchéance*); typical examples are requirements that one party give notice to the other party within limited periods of time describing defects in goods or stating that goods will not be accepted because of defects. These requirements of notice by one party to the other party are designed to permit the parties to take prompt action in adjusting current performance under a sales transaction—action such as making prompt tests to preserve evidence as to the quality of goods or taking control over and salvaging rejected goods.

9. The periods of time for such action are usually very brief, and often are stated in flexible terms. For example, article 39 (1) of the Uniform Law on the International Sale of Goods (ULIS), annexed to the Hague Convention of 1964, provides that "the buyer shall lose the right to rely on a lack

<sup>6</sup> For similar reasons, claims based upon a documentary letter of credit will not come within the scope of this Convention. The documentary letter of credit is an undertaking by banks independent of the underlying sales contract and is not the legal relationship of "the buyer and seller against each other".

<sup>7</sup> Opportunity for a reservation with respect to applicability of the Convention to actions for annulment of the contract is provided in article 34.

of conformity of the goods if he has not given the seller notice thereof promptly after he has discovered the lack of conformity or ought to have discovered it". Other articles of ULIS provide that a party may avoid the contract if he makes such a declaration to the other party, under varying circumstances, "within a reasonable time" (arts. 26, 30, 62 (1)) or "promptly" (arts. 32, 43, 62 (2), 66 (2), 67, 75). These brief, flexible periods for special types of parties' action "other than the institution of legal proceedings" are quite different from a general period of limitation. Consequently, paragraph (2) of article 1 states that this Convention shall not affect "a rule of the applicable law providing 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".<sup>8</sup>

10. Paragraph (2) of article 1 also preserves rules of applicable law providing "a particular time-limit" within which one party is required, as a condition for the acquisition or exercise of his claim, to "perform any act other than the institution of legal proceedings". Thus, this paragraph would preserve various types of national rules which, while variously expressed, are not comparable to the general period of limitation governed by this Convention.

### III. Definitions, paragraph (3)

11. "Person" is defined in article 1 (3) (f) to include "corporation, company, association or other entity, whether public or private". This definition is intended to show that this Convention is applicable without regard to the form of organization that engages in contracts of sale. "Public" entities often engage in commercial activities and it is important to make it clear that such activities are subject to this Convention in the same way as "private" entities. An entity need not be corporate. An "association" such as a partnership which can sue or be sued in its own name under national law, is an "entity" and a "person" for the purpose of this Convention. The terms used in article 1 (3) (f) are, of course, illustrative only and not exclusive of others.

12. Most of the other definitions of words contained in paragraph (3) of article 1 can best be considered in connexion with provisions that employ the word in question. For example, the definition of "legal proceedings" in paragraph (3) (e) can best be considered in connexion with article 14, and the definition of "breach of contract" in paragraph (3) (d) can best be considered in connexion with articles 9 (3) and 11 (2).

13. Certain other words used in this Convention (such as "rights" and "claims") are not defined, since their meaning can best be seen in the light of the context in which they are used and the objectives of this Convention. It is important to note that the construction of these words by reference to the varying conceptions of national law would be inconsistent with the international character of the Convention and its objective to promote uniformity in interpretation and application.<sup>9</sup>

### Article 2

#### [Definition of a contract of international sale]

[(1) For the purposes of this Convention, a contract of sale of goods shall be considered international if, at the time of the conclusion of the contract, the seller and buyer have their places of business in different States.]

(2) Where a party to the contract of sale has places of business in more than one State, his place of business for the purposes of paragraph (1) of this article and of article 3 shall be his principal place of business, unless another place of business has a closer relation-

<sup>8</sup> As to the effect of a contract clause establishing a time-limit, see art. 21 (3) and accompanying commentary, para. 5. Also see art. 9 (3).

<sup>9</sup> See art. 7 and accompanying commentary. Also see para. 2 of commentary on art. 30.

ship 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.

(3) Where a party does not have a place of business, reference shall be made to his habitual residence.

(4) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract shall be taken into consideration.

### COMMENTARY

1. This article deals with the degree of internationality which brings a sale of goods within the scope of this Convention.

#### I. The basic criterion, paragraph (1)

2. This paragraph lays down the basic criterion for the definition of a contract of international sale of goods. The paragraph provides that for a contract of sale to be considered international, the contract must satisfy the following three requirements: (a) at the time of the conclusion of the contract, the parties must have their places of business, and not simply centres of only formal significance, such as places of incorporation, (b) in different States (whether these are contracting or non-contracting States). In short, the parties' places of business should not be in the same State.

3. Various additional qualifications for the definition of a contract of international sale of goods were considered: these related to international carriage of goods, offer and acceptance, and place of delivery. They were rejected, however, because of the serious practical difficulties of clarity in relation to these terms. The simplicity and clarity of this single basic criterion (i.e., that the parties have their place of business in different States) contributes to certainty in solving the question whether a sale of goods is "international".

4. Under paragraph (1) of this article, the contract of sale of goods is considered international, even though at the time of the conclusion of the contract, one of the parties neither knew nor had reason to know that the other's place of business was in a different State. One example is where one of the parties was acting as agent for a foreign undisclosed principal. Two reasons led to the decision not to require knowledge that the other party's place of business was in a different State. The first is that inclusion of subjective elements in article 2 (1) would raise difficult problems of proof. The second is that knowledge by the parties that, at the time of the conclusion of the contract, they have their places of business in different States was not considered necessary for the application of rules of prescription. When parties enter into a contract of sale, they contemplate performance and not the prescription of their claims. While they may need to know, at the time of contracting, which law defines their mutual obligations concerning performance, at this time there is little practical interest in knowing which prescription rules would apply to their legal actions in case of breach or other non-performance.

5. Paragraph (1) of this article, however, was placed within square brackets so as to indicate that the scope of the Convention should be given further consideration. (Cf. art. 3 (1) and accompanying commentary, para. 2. Also cf. art. 36.)

#### II. Place of business, paragraph (2)

6. This paragraph deals with the situation where one of the parties to the contract has more than one place of business. For the purpose of characterizing a sale of goods as "international" no problem arises where all the places of business of one party (X) are situated in States other than the one where the other party (Y) has his place of business; whichever place is designated as the relevant place of business of X, the places of business of X and Y will be in different States. The problem arises only when one of X's places of business is situated in the same State as the place of business of Y. In such a case it becomes crucial to determine which of these different places of business is the relevant place of business within the meaning of paragraph (1) of this article.

7. Paragraph (2) lays down the criteria for determining the relevant place of business. This paragraph, as a general rule, points to the party's "principal place of business". Thus, where a party has his principal place of business in State A, and has branches in States B, C and D, that party's place of business for the purpose of this Convention is the place of business in State A.

8. Paragraph (2) of this article recognizes that in some cases a mere branch may have a closer relationship with the transaction than a principal place of business where such a branch is in the same State as the place of business of the other party, failure to take account of this fact would lead to excessive extension of the scope of this Convention. Therefore, paragraph (2) qualifies the general rule relating to the principal place of business, by the phrase "unless another place of business has a closer relationship to the contract and its performance". The phrase "the contract and its performance" refers to the transaction as a whole, including factors relating to the offer and the acceptance as well as the performance of the contract. In determining this closer relationship, this paragraph states that regard shall be given to "the circumstances known to or contemplated by the parties at the time of the conclusion of the contract". Factors that may not be known to one of the parties at the time of entering into the contract would include supervision over the making of the contract by another office or the foreign origin or final destination of the goods; when these factors are not known to or contemplated by the parties they are not to be taken into consideration.

### III. Habitual residence, paragraph (3)

9. This paragraph deals with the case where one of the parties does not have a place of business. Most international contracts are entered into by businessmen who have recognized places of business. Occasionally, however, a person who does not have a "place of business" may enter into a contract of sale of goods that is intended for commercial purposes, and not simply for "personal, family or household use" within the meaning of article 4 of this Convention. The present provision provides a means of dealing with this situation.

### IV. Civil or commercial character of the transaction, paragraph (4)

10. This paragraph deals with the classifications that some legal systems make in connexion with the applicability of different bodies of law. In order to avoid misinterpretations that might otherwise arise, the paragraph excludes reference to these classifications, whether they relate to the nationality of the parties, or to the "commercial or civil character of the parties or of the contract".

## Article 3

### [Application of the Convention; exclusion of the rules of private international law]

(1) This Convention shall apply only when, at the time of the conclusion of the contract, the seller and buyer have their places of business in different Contracting States.

(2) Unless otherwise provided herein, this Convention shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

(3) This Convention shall not apply when the parties have validly chosen the law of a non-Contracting State.

### COMMENTARY

1. Paragraphs (1) and (2) of this article deal with these questions: When must a Contracting State apply the rules of this Convention? What contacts between an international sales transaction and a Contracting State (choice of law rules) are required for the application of the Convention? Paragraph (3) deals with the freedom of the parties to exclude the application of the Convention.

### I. Application of the Convention, paragraph (1)

2. Paragraph (1) of this article provides that this Convention must be applied "only when, at the time of the conclusion of the contract, the seller and buyer have their place of business in different Contracting States". Thus, a Contracting State is not bound, by adhering to this Convention, to apply the rules of the Convention when one party has his place of business in a non-Contracting State. This restriction on the application of the Convention was considered necessary in view of the difficulty inherent in alternative tests for the application of the Convention. Consideration was given to the rule that the forum of a Contracting State should always apply the Convention to the international sale of goods; this was finally rejected because this would give excessive application to the Convention and might encourage forum shopping. General reference to the rules of private international law was found unsatisfactory because of the wide disparity among such rules. (Cf. art. 3 (2).)

### II. Exclusion of the rules of private international law, paragraph (2)

3. Paragraph (2) of this article provides that, subject to any contrary provisions in this Convention, the Convention must be applied without regard to "the law which would otherwise be applicable by virtue of the rules of private international law". This language is designed to emphasize the fact that the applicability of this Convention depends on the basic test established in article 3 (1) above rather than the general rules of private international law.

4. If the applicability of this Convention were linked to the rules of private international law, special difficulties would have been presented because of unusually divergent approaches to the characterization of prescription problems that are followed in different legal systems. For example, while most Civil Law systems characterize limitations problems as substantive questions and apply the proper law of the contract (*lex causae contractus*) (and in some cases, the "proper law of prescription"), most Common Law jurisdictions characterize limitations problems as questions of procedure and, on this ground, apply the rules of the forum (*lex fori*). In yet other Common Law jurisdictions, a combination of the two characterizations is possible.<sup>10</sup> The Convention's establishment of its own rule for applicability in article 3 (1), therefore, makes certainty as well as simplicity of the Convention.<sup>11</sup>

5. The opening phrase of the paragraph, "unless otherwise provided herein", is occasioned by specific provisions of the Convention which refer to the rules of private international law. One such instance is paragraph (1) of article 13 which provides, *inter alia*, that in the absence of a provision in the arbitration agreement, the manner for commencing arbitration shall be determined "by the law applicable to that agreement" i.e., the law which, under conflict of law rules, governs the arbitration agreement. Another example is paragraph (3) of article 21 which provides, *inter alia*, that the validity of a certain clause defined therein shall not be affected by the provisions in the other paragraphs "provided that such clause is valid under the applicable law".

<sup>10</sup> The rules of English conflict of laws on this question may be illustrated by the following examples. Proceedings are instituted in an English court. The English limitation period (which is classified as procedural) is six years:

- (i) The applicable law is that of France, where the limitation period is 30 years and treated as a matter of substantive law; the English court will hold the claim to be barred after six years;
- (ii) The applicable law is that of Greece, where the limitation period is five years and is treated as a matter of substantive law; the English court will have regard to the applicable law and hold that the right itself under the claim has already been prescribed after five years;
- (iii) The applicable law is that of the State of X, where the limitation period is five years and is treated as a matter of procedure; the English court will not have regard to the limitation rules of State X (since these are procedural) and will hold the claim barred after six years.

<sup>11</sup> But see art. 36 and accompanying commentary.

### III. *Effect of agreement by the parties, paragraph (3)*

6. Paragraph (3) of this article deals with the extent to which the parties are free to exclude the application of the Convention. The State has an interest in preventing state claims from crowding its courts and tribunals, and in reducing the presentation of false evidence. While the autonomy of the will of the parties is a cardinal principle in a régime of substantive rules on the international sale of goods, prescription rules may be considered to be of such a mandatory character as to justify restricting the freedom of choice of the parties. See, e.g., article 21. Thus, as the compromise accepted by all the members of the Commission, article 3 (3) sets forth the only situation in which the parties can, as a result of the exercise of their freedom of choice, exclude the application of the Convention; that situation is when the parties have "validly chosen the law of a non-Contracting State". For example, where parties to an international sale of goods have their place of business in different Contracting States, if the contract validly provides that the applicable law to the contract is the law of a State that has not adopted the Convention, the forum of a Contracting State would not apply the Convention. Whether the choice including its manner is "valid" is the question to be determined by the forum.

### Article 4

#### [Exclusion of certain sales and types of goods]

This Convention shall not apply to sales:

(a) Of goods of a kind and in a quantity ordinarily bought by an individual for personal, family or household use, unless the fact that the goods are bought for a different use appears 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;

(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 or aircraft;

(f) Of electricity.

#### COMMENTARY

##### I. *Exclusion of consumer sales, subparagraph (a)*

1. Subparagraph (a) of this article excludes consumer sales from the scope of this Convention. A consumer sale effected by a tourist in another country could conceivably be subject to the limitation rules of this Convention, but for the exclusion of such sales contained in subparagraph (a) of this article. In such transactions, however, the seller often does not know or cannot be aware of the fact that the other party has his place of business or habitual residence in another country. Such transactions are usually considered as domestic transactions and do not comprise a significant part of international trade. It is for this reason, among others, that this Convention excludes such sales from its scope of application.

2. Another reason for the exclusion of consumer sales from this Convention is that in a number of countries such sales are subject to various types of national laws that are designed to protect the consumer. To avoid any risk of impairing these rules, it is considered advisable that questions of limitations of actions or prescriptions of rights relating to such contracts should be excluded from this Convention.

3. The basic test used to categorize such sales is an objective one, namely, whether the goods are "of a kind and in a quantity ordinarily bought by an individual for personal, family, or household use". However, a sale of goods which is ordinarily bought for consumer purposes will not be excluded from the scope of the Convention when "the goods are bought for a different use". The test employed in determining whether the

goods are bought for a different purpose is again an objective one: this fact must appear "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;" the actual knowledge of the seller that the goods are bought for a different use is not important.

##### II. *Exclusion of sales by auction, subparagraph (b)*

4. Subparagraph (b) of this article excludes from the scope of this Convention sales by auction. Because sales by auction are often subject to special rules under the local law, it was concluded that they should remain in every aspect subject to the special rules of the local law. In addition, it was not considered proper that the length of the limitation period is affected by the location of the place of business of the successful bidder since at the opening of the auction the seller could not know which buyer would make the purchase.

##### III. *Exclusion of sales on execution or otherwise by authority of law, subparagraph (c)*

5. Subparagraph (c) of this article excludes sales on judicial or administrative execution or otherwise by authority of law, because such sales are usually governed by special rules in the State under whose authority the sale is made. Furthermore, such sales do not constitute a significant part of international trade and may safely be regarded as purely domestic operations.

##### IV. *Exclusion of sales of stocks, shares, investment securities, negotiable instruments or money, subparagraph (d)*

6. This subparagraph excludes sales of stocks, shares, investment securities, negotiable instruments and money. Such transactions present problems that are different from the usual international sale of goods and, in addition, in many countries, are subject to special mandatory rules. It was considered appropriate that prescription of claims relating to such sales should be outside the scope of this Convention.

##### V. *Exclusion of sales of ships, vessels or aircraft, subparagraph (e)*

7. This subparagraph excludes from the scope of the Convention sales of ships, vessels and aircraft which are also subject to special rules under national legal systems. This subparagraph does not require registration for ships, vessels or aircraft in order to exclude their sales from the scope of the Convention. The reason is to avoid problems that might arise in connexion with the definition of what amounts to "registration" under the Convention; various methods of registration are used by various legal systems. Furthermore, there could be uncertainty in deciding what law would govern registration, since the place of possible registration might not be known at the time of the sale.

##### VI. *Exclusion of sales of electricity, subparagraph (f)*

8. This subparagraph excludes sales of electricity from the scope of the Convention on the ground that international sales of electricity present problems that are different from those of the usual international sales.

### Article 5

#### [Exclusion of certain claims]

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.

#### COMMENTARY

1. Paragraph (a) excludes from the Convention claims based on the death or personal injury to any person. If such a claim is based on tort (or *delict*) and is not a claim "relating to a contract of international sale of goods", the claims would, of course, be excluded from this Convention by virtue of the provisions of article 1 (1).<sup>12</sup> But under some circumstances claims for liability for the death or personal injury of the buyer or other person might be based on the failure of the goods to comply with the contract; a claim by the buyer against the seller for pecuniary loss might be based on personal injuries to persons other than himself. While such claims based on bodily injuries, under some legal systems, may be regarded as contractual, in others the characterization is in doubt and in still others all such claims may be regarded as delictual. To avoid doubt and diversity if such claims are governed by this Convention, it was thought advisable to exclude all such claims; it would be also inappropriate to subject such claims to the same limitation period as would be applicable to the usual type of commercial claims.

2. Paragraph (b) excludes "nuclear damage caused by the goods sold". The effects of such damage may not appear until a long period after exposure to radioactive materials. In addition, special periods for the extinction of such actions are contained in the Vienna Convention on Civil Liability for Nuclear Damages of 21 May 1963.<sup>13</sup>

3. Paragraph (c) excludes claims based on "a lien, mortgage or other security interest in property". This exclusion is consistent with the basic provisions of article 1 (1) that this Convention applies to claims or rights "relating to a contract of international sale of goods". Moreover, liens, mortgages and other security interests involve rights *in rem* which traditionally have been governed by the *lex situs* and are enmeshed with a wide variety of rights affecting other creditors; attempts to expand the scope of the Convention to include such claims may impede the adoption of the Convention. It will be noted that article 5 (c) excludes rights based not only on lien and "mortgage" but also "other security interest in property". This latter phrase is sufficiently broad to exclude rights asserted by a seller for the recovery of property sold under a "conditional sale" or a similar arrangement designed to permit the seizure of property on default of payment. Of course, the expiration of the limitation period applicable to a right or claim based on a sales contract may have serious consequences with respect to the enforcement of a lien, mortgage or other interest securing that right or claim. However, for reasons given in connexion with article 24 (1) (para. 2 of commentary on art. 24), this Convention does not attempt to prescribe uniform rules with respect to such consequences, and leaves these questions to applicable national law. It may be expected that the tribunals of signatory States in solving these problems will give full effect to the basic policies of this Convention with respect to the enforcement of stale claims.

4. Under paragraph (d), claims based on "a judgement or award made in legal proceedings" are excluded even though the judgement or award results from a claim arising from an international sale. In actions to enforce a judgement it may be difficult to ascertain whether the underlying claim arose from an international sale of goods and satisfied the other requirements for the applicability of this Convention. In addition, the enforcement of a judgement or award involves local procedural rules (including rules concerning "merger" of the claim in the judgement) and thus would be difficult to subject to a uniform rule limited to the international sale of goods.

<sup>12</sup> See para. 6 of commentary on art. 1, *supra*.

<sup>13</sup> See art. VI (basic periods of 10 or 20 years, subject to certain adjustments); art. 1 (1) (k) (definition of "nuclear damage").

5. Paragraph (e) excludes claims based on "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". Such documents subject to direct enforcement or execution are given different names and rules in various jurisdictions (e.g. the *titre exécutoire*), but they have an independent legal effect that differentiates them from claims that require proof of the breach of the contract of sale. In addition, these documents present some of the problems of unification of enforcement of actions mentioned with respect to paragraph (d) (para. 4, above). (Paragraph (e) is also somewhat analogous to the exclusion under paragraph (f) of claims based on documents having a legal identity distinct from the sales contract; compare the discussion in para. 6, below.)

6. Paragraph (f) excludes claims based on "a bill of exchange, cheque or promissory note". This exclusion is significant for present purposes when such an instrument has been given (or accepted) in connexion with the obligation to pay the price for goods sold in an international transaction subject to this Convention. Such instruments are in many cases governed by international conventions or national laws that state special periods of limitation. In addition, such instruments are often circulated among third persons who have no connexion with or knowledge of the underlying sales transaction; moreover the obligation under the instrument may be distinct (or "abstracted") from sales transaction from which the instrument originated. In view of these facts, claims under the instruments described in paragraph (f) are excluded from this Convention. Contrast assignees of the rights under the sales contract (art. 1 (3) (a)).

#### Article 6

##### [Mixed contracts]

(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 within the meaning of this Convention, unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

#### COMMENTARY

1. This article deals with two different situations relating to mixed contracts.

##### I. Sale of goods and supply of labour or other services by the seller, paragraph (1)

2. This paragraph deals with contracts under which the seller undertakes to sell goods as well as to supply labour or other services. An example of such a contract is where the seller agrees to sell plant and machinery and undertakes to set up the plant as a going concern or to supervise its installation or setting up. In such cases, paragraph (1) provides that where the "preponderant part" of the obligation of the seller consists in the supply of labour or other services, the contract is not subject to the provisions of this Convention.

3. It is important to note that this paragraph does not attempt to determine whether obligations created by one instrument or transaction comprise essentially one or two contracts. Thus, the question whether the seller's obligations relating to the sale of goods and to the supply of labour or other services, can be treated as constituting two separate contracts (under what is sometimes known as the doctrine of "severability" of the contract), is to be decided by national courts in accordance with the applicable law.

##### II. Supply of materials by the buyer, paragraph (2)

4. The opening phrase of paragraph (2) of this article provides that the sale of goods to be manufactured by the



seller to the buyer's order is as much subject to the provisions of this Convention as the sale of ready-made goods.

5. The concluding phrase in this paragraph "unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production" is intended to exclude from the scope of this Convention contracts for the sale of goods to be manufactured or produced when the buyer undertakes to supply the seller (the manufacturer) of the goods with a substantial part of the raw materials from which the goods are to be manufactured or produced. Since such a contract is more akin to a contract of service or labour than to a contract of sale of goods, it is excluded from the scope of this Convention.

#### Article 7

##### [Interpretation to promote uniformity]

In interpreting and applying the provisions of this Convention, regard shall be had to its international character and to the need to promote uniformity in its interpretation and application.

#### COMMENTARY

1. National rules on prescription (limitation) are subject to sharp divergencies in approach and concept. Thus, it is especially important to avoid construction of the provisions of this Convention in terms of the varying concepts of national law. To this end, article 7 emphasizes the importance, in interpreting and applying the provisions of the Convention, of regard for the international character of the Convention and the need to promote uniformity. Illustrations of the application of this article may be found elsewhere in the commentary, e.g. in art. 1 at paras. 11-13; art. 13, foot-note 1.

#### THE DURATION AND COMMENCEMENT OF THE LIMITATION PERIOD

#### Article 8

##### [Length of the period]

Subject to the provisions of article 10, the limitation period shall be four years.

#### COMMENTARY

1. Establishing the length of the limitation period has required the reconciliation of various conflicting considerations. On the one hand, the limitation period must be adequate for investigation, negotiation for a settlement and making the arrangements necessary for bringing legal proceedings. In assessing the time required, consideration has been given to the special problems resulting from the distance that often separates the parties to an international sale and the complications resulting from differences in language and legal systems. On the other hand, the limitation period should not be so long as to fail to provide protection against the dangers of uncertainty and injustice that result from the passage of time without the restitution of disputed claims. These include the loss of evidence and the possible threat to business stability or solvency resulting from extended delays.

2. In the course of preparing the draft, it was generally considered that a limitation period within the range of three to five years would be appropriate. To help resolve the question of the length of the limitation period, and other relevant issues, a questionnaire was addressed to Governments and interested international organizations. The replies, reporting national rules and suggestions from each region, were analysed in a report of the Secretary-General.<sup>14</sup> Aided by these replies,

<sup>14</sup> See *Yearbook of the United Nations Commission on International Trade Law*, vol. III, 1972 (United Nations publication, Sales No. E.73.V.6) p. 96 "Analysis of replies to the questionnaire, and comments made by Governments, at the fourth session of the Commission on the length of the prescriptive periods and related matters: report of the Secretary-General (A/CN.9/70/Add.2, sect. 14)."

it was concluded that an appropriate limitation period is four years. In reaching this decision, account was taken of article 10 which provides a special shorter period of two years for claims arising from a defect or lack of conformity of the goods and other provisions in this Convention affecting the running of the limitation period. These include article 18 (a new period commences to run afresh when the creditor performs an act which has the effect of recommencing the original limitation period under a given jurisdiction), article 19 (a new period commences to run afresh when the debt is acknowledged by the debtor), articles 15, 16, 17 and 20 (rules extending the limitation period) and article 21 (modification of the period by the parties).

#### Article 9

##### [Basic rule on commencement of the period]

(1) Subject to the provisions of articles 10 and 11, the limitation period shall commence on the date on which the claim becomes due.

(2) In respect of a claim based on fraud committed before or at the time of the conclusion of the contract, the claim shall, for the purpose of paragraph (1) of this article, be deemed to become due on the date on which the fraud was or reasonably could have been discovered.

(3) In respect of a claim arising from a breach of the contract, the claim shall, for the purpose of paragraph (1) of this article, be deemed to become due on the date on which such breach occurs. Where one party is required, as a condition for the acquisition or exercise of such a claim, to give notice to the other party, the commencement of the limitation period shall not be postponed by reason of such requirement of notice.

#### COMMENTARY

##### I. Structure of the Convention: basic rule

1. Articles 9 to 11 govern the starting point in time of the limitation period with regard to all types of claims covered by this Convention. Article 9 provides the general rule as to the commencement of the period: the limitation period commences to run "on the date on which the claim becomes due". Article 10 provides special rules, including a shorter period of two years, for claims arising from a defect or other lack of conformity of the goods. Article 10 (3) also deals with the situation where the seller gives an express undertaking relating to the goods. Article 11 covers the situations where the contract has been terminated before performance is due.

2. As described above, article 9 (1) states the basic rule that the limitation period commences to run on the date when "the claim becomes due". Paragraphs (2) and (3) of this article provide specific rules as to when the claim should be regarded to have become "due" for the purpose of the application of the basic rule provided in article 9 (1); these situations are (a) where claims arise because of fraud committed in the process of the conclusion of the contract (para. (2)) and (b) where claims arise from breach of contract (para. (3)). The application of this basic rule to typical situations is explained below.<sup>15</sup>

##### II. Fraud during the formation process of the contract

3. Where fraud was committed while the contract was being negotiated or at the time of the conclusion of the contract, various claims may arise under the applicable law. The defrauded party may be entitled to damages resulting from the fraud; he may even be entitled to avoid the contract.<sup>16</sup> If the contract is avoided, the defrauded party may want to claim for the restitution of advance payments, if any. For all these

<sup>15</sup> Some representatives objected to article 9 because in their view the rules contained therein are inconsistent with each other.

<sup>16</sup> But see art. 34 and accompanying commentary.

claims, article 9 (2) provides the following test: the limitation period commences to run "on the date on which the fraud was or reasonably could have been discovered".<sup>17</sup>

### III. Breach of contract

4. With respect of a claim arising from breach of contract, article 9 (3) provides that the claim shall be deemed to have become due "on the date on which such breach occurs". The "breach of contract" is defined in article 1 (3) to mean "the failure of a party to perform the contract or any performance not in conformity with the contract". The application of this rule may be illustrated by the following examples:

*Example 9 A:* The sales contract required the seller to place goods at the buyer's disposition on 1 June 1972. The seller failed to supply or tender any goods in response to the contract on 1 June or on any subsequent date. The limitation period for any legal proceedings by the buyer (and the prescription of the buyer's rights) in respect of a breach of the contract of sale commences to run on the date on which the breach of contract occurred, i.e. in this example, 1 June, the date for performance required under the contract.

*Example 9 B:* The sales contract required the seller to place goods at the buyer's disposition on 1 June 1972. The seller failed to supply or tender any goods in response to the contract on 1 June. But a few weeks thereafter the buyer agreed for the extension of the time for delivery until 1 December 1972. On 1 December, the seller again failed to perform. If the above extension of the time for delivery was valid, the limitation period commences to run on the date of "breach" of the contract on 1 December 1972.

*Example 9 C:* The sales contract provided that the buyer may pay the price at the time of delivery of the goods and obtain a 2 per cent discount. The contract also provided that the buyer must, at the latest, pay in 60 days. The buyer did not pay on delivery of the goods. The limitation period does not commence to run until the end of the 60 day period because there was no "breach" of contract by the buyer until the time for his performance expired.

*Example 9 D:* The sales contract provided that the goods shall be shipped at a date in 1972 to be named by the buyer. The buyer might have requested shipment in January 1972 but he requested shipment on 30 December 1972. The seller does not perform. The limitation period with respect to this failure to perform did not commence until after 30 December, since, under the terms of the contract, there was no "breach" of contract until after the date specified by the buyer.

5. The second sentence of article 9 (3) is designed to clarify the point in time for the commencement of the limitation period where the applicable law requires one party to give a notice to the other party. The breach of contract has occurred prior to such a notification; consequently, to delay the commencement of the limitation period until the time of notification would be inconsistent with the approach adopted in the first sentence of article 9 (3). Moreover, the time of notification may depend on the diligence with which the buyer inspects the goods and gives the notification. Consequently, this paragraph makes it clear that the commencement of the period would not be determined by the time of giving notice.<sup>18</sup>

### IV. Other claims not arising out of breach

6. Some claims may arise without breach or fraud. One example is provided by claims for the restitution of advance payments where the performance of the agreed exchange is excused under the applicable law because of impossibility of performance, *force majeure*, and the like. For such claims, the

<sup>17</sup> It may be noted that article 9 (2) concerns only with the fraud committed "before or at the time of the conclusion of the contract;" the effect of fraud committed after the conclusion of the contract is governed by article 20 (see accompanying commentary, para. 1).

<sup>18</sup> This rule, of course, has no effect on rules of municipal law requiring notice. Also see art. 1 (2) and accompanying commentary, paras. 8 and 9; art. 21 (3) and accompanying commentary, para. 5.

basic rule provided in article 9 (1) will govern. Whether such claim exists and when the claim becomes due must, of course, be decided under the applicable rules of national law.

### Article 10

[Claims based on non-conformity of the goods; express undertaking]

(1) The limitation period in respect of a claim arising from a defect or lack of conformity which could be discovered when the goods are handed over to the buyer shall be two years from the date on which the goods are actually handed over to him.

(2) The limitation period in respect of a claim arising from a defect or lack of conformity which could not be discovered when the goods are handed over to the buyer, shall be two years from the date on which the defect or lack of conformity is or could reasonably be discovered, provided that the limitation period shall not extend beyond eight years from the date on which the goods are actually handed over to the buyer.

(3) If the seller gives 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 discovers or ought to discover the fact on which the claim is based, but not later than on the date of the expiration of the period of the undertaking.

### COMMENTARY

#### I. Claims by buyers relying on non-conformity of the goods

1. As noted earlier (para. 1 of commentary on art. 9) paragraphs (1) and (2) of article 10 provide special rules with reference to articles 8 and 9 with regard to buyer's "claim arising from a defect or lack of conformity" of the delivered goods. The phrase "a claim arising from a defect or lack of conformity" of the goods is sufficiently broad to include any respect in which the goods fail to comply with the requirements of the contract. These special rules are regarded as necessary because the basic test provided in article 9 may often be difficult to apply to concrete cases particularly where defects in goods could not be discovered until some time after the handing over of the goods and because of divergent rules under applicable laws concerning the time when such claims become "due". Paragraph (1) of article 10 deals with claims arising from non-conformity "which could be discovered when the goods are handed over to the buyer" and paragraph (2) deals with claims arising from non-conformity "which could not be discovered when the goods are handed over to the buyer".

2. The rule adopted by article 10 is that, until defects could reasonably be discovered, the limitation period should not start to run for these claims; otherwise, harsh results for buyers may result in some circumstances when defects are of such a nature as to prevent the discovery of the defects until long after the handing over of the goods to the buyer.<sup>19</sup> On the other hand, the Convention takes account of the needs of the seller of the goods by reducing the length of the limitation period to two years (cf. art. 8). This shortening of the period was thought important because, particularly in case of defects in goods, the seller would need to resolve the dispute while trustworthy evidence on the true condition of the goods are still available; the period of two years would be appropriate

<sup>19</sup> Discoverability of the defects must be tested in the light of the methods contemplated by the agreement of the parties or, in the absence of such agreement, by the law or usage of the place where the examination is to be effected.

for this purpose.<sup>20</sup> An over-all cut-off point against prolonging disputes due to late discovery of defects is also provided in article 10 (2) for claims based on defects which could not be discovered when the goods are handed over to the buyer. Regardless of the discovery of defects, "the limitation period shall not extend beyond eight years from the date on which the goods are actually handed over to the buyer".

3. The phrase "the goods are actually handed over to the buyer" points to the circumstances which constitute placing the goods under the buyer's "actual" control regardless of whether this occurs on the due place or date contemplated by the contract or otherwise.<sup>21</sup> Unless the goods have reached the stage where "actual" inspection of the goods by the buyers becomes possible, the goods cannot be regarded to have been "actually handed over to the buyer".

*Example 10 A:* Seller in Santiago agreed to ship goods to the buyer in Bombay: the terms of shipment were "F.O.B. Santiago". Pursuant to the contract, the seller loaded the goods on board a ship in Santiago on 1 June 1972. The goods reached Bombay on 1 August 1972, and on the same date the carrier notified the buyer that he could take possession of the goods. On 15 August the buyer took possession of the goods. Under these facts, the goods are "actually handed over" to the buyer on 15 August.

This result is not affected by the fact that under the terms of the contract the risk of loss during the ocean voyage rested on the buyer. Nor is this result affected by the fact that, under some legal systems, it might be concluded that "title" or "ownership" in the goods passed to the buyer when the goods were loaded on the ship in Santiago. Alternative forms of price quotation (F.O.B. seller's city; F.O.B. buyer's city; F.A.S.; C.I.F. and the like) have significance in relation to possible changes in freight rates and the manner of arranging for insurance, but they have no significance in relationship to the time when the goods were "actually" handed over to the buyer.<sup>22</sup>

## II. Express undertaking for a period of time

4. Paragraph (3) of article 10 provides an exception to the rules of paragraphs (1) and (2) of the article for cases where the seller has given the buyer an express undertaking (such as a warranty or guarantee) relating to the goods, which is stated to have effect for a certain period of time. The approach for the commencement of the period for claims arising from the undertaking is the same as the preceding paragraphs of the article: the limitation period commences "on the date on which the buyer discovers or ought to discover the fact on which the claim is based". But the over-all cut-off date provided in paragraph (2) of the article ("eight years from the date on which the goods are actually handed over to the

<sup>20</sup> It may be noted that the period for claims arising from defects commences to run from the date on which the defects could reasonably be discovered even if damages do not immediately ensue from such defects. However, the over-all fairness of the Convention needs to be considered in the light of the following factors: (a) exclusion from the Convention (art. 5 (a)) of claims based on "death of, or personal injury to, any person"; (b) confining the scope of this Convention to claims that arise in relation to a contract—thereby excluding claims based on tort or *delict* (see discussion in para. 6 of commentary on art. 1; (c) exclusion of consumer sales from the Convention (art. 4 (a)); (d) the special provisions (art. 10 (3)) for claims based on an express undertaking by the seller which is stated to have effect for a period of time.

<sup>21</sup> The term "delivery" was intentionally avoided because of the ambiguities in the legal concept. E.g. ULIS article 19 (1) provides: "delivery consists in the handing over of goods which conform with the contract".

<sup>22</sup> Of course, where the buyer takes effective physical control over the goods in the seller's city and thereafter ships the goods, then the goods would be regarded to have been actually handed over to the buyer. It may also be noted that goods may be handed over to the agents or assigns of the buyer. Cf. art. 1 (3) (a). For purpose of illustration, suppose the buyer in example 10 A, above, resells the goods to C during the transit of the goods and transfers the bills of lading to C. The goods are handed over to the "buyer" when C actually takes possession of the goods.

buyer") cannot be used where the undertaking is expressed in terms of a certain period of time. Thus, article 10 (3) provides that the limitation period shall in any event commence "not later than on the date of the expiration of the period of the undertaking".<sup>23</sup>

5. Article 10 (3) does not specify when the seller's "express undertaking" must be given. Under the working of this provision, the seller, after delivering the goods, might adjust certain components of the goods and in this connexion might give an express warranty which would be governed by this article.

## Article 11

[Termination before performance is due; instalment contracts]

(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.

## COMMENTARY

1. Both paragraphs (1) and (2) of article 11 deal with problems that arise when a party is entitled to terminate the contract in certain circumstances occurring before performance is due. Paragraph (1) establishes the basic general rule; paragraph (2) deals with the special problems that arise when a contract calls for the delivery of goods, or the payment for goods in instalments.

### I. Basic rule, paragraph (1)

2. The basic rule of paragraph (1) may be illustrated by the following:

*Example 11 A:* A contract of sale made on 1 June 1972 calls for the seller to deliver the goods on 1 December. On 1 July the seller (without excuse) notifies the buyer that he will not deliver the goods required by the contract. On 15 July the buyer declares to the seller that in view of the seller's repudiation the contract is terminated.

3. Under some legal systems, the notification on 1 July of refusal to perform in the future is regarded to be an anticipatory breach upon which an election to terminate and a legal action may be based. In some legal systems, circumstances such as bankruptcy or other events manifesting an inability to perform may also become grounds upon which one party may terminate the contract before the performance is due. In such circumstances, where one party who is entitled to declare the contract terminated "exercises this right," the limitation period runs from "the date on which the declaration is made to the other party". On the stated facts in the above example, this date is 15 July.

<sup>23</sup> One representative expressed a serious doubt as to whether paragraphs (2) and (3) of article 10 were fairly balanced.

4. It will be noted that under paragraph (1), the above result depends on a decision by the party to elect to declare the contract terminated. If, in the above instances, such an election (i.e., by the notification of termination made on 15 July) had not taken place, "the limitation period shall commence on the date on which performance is due"—1 December in the above example.<sup>24</sup>

5. In the interest of definiteness and uniformity the period will commence on the earlier date (15 July) only when a party positively "declares" the contract terminated. Thus, termination resulting from a rule of applicable law that in certain circumstances the contract shall be automatically terminated is not termination resulting from "declaration" by a party within the meaning of paragraph (1). It will also be noted that article 11 does not govern the situation, under some legal systems, whereby circumstances such as repudiation, bankruptcy and the like before performance is due entitles one party to declare the performance immediately due. However, the result may be similar, since an action based upon failure to perform at such accelerated date would be governed by article 9.

## II. Instalment contracts, paragraph (2)

6. For claims arising out of a breach of instalment contracts for the delivery of or payment for goods, article 11 (2) follows the same approach as article 9 (3). The limitation period "shall, in relation to each separate instalment, commence on the date on which the particular breach occurs". This rule will minimize difficulties which might be encountered by theoretical problems whether a particular instalment contract should be regarded as a set of several contracts or not. The application of article 11 (2) may be illustrated by the following example:

*Example 11 B:* A contract of sale made on 1 June 1972 required the seller to sell the buyer 4,000 cwt of sugar, with deliveries of 1,000 cwt on 1 July, 1 August, 1 September and 1 October. Each of the four instalments were delivered late. The buyer complained to the seller of these late deliveries but did not elect to terminate the contract although he was entitled to do so under the applicable law to the contract if he wished. Under these facts, separate periods of limitation would apply to the July, August, September and October deliveries.

7. However, when one party does terminate the contract, article 11 (2) provides that "the limitation period in respect of all relevant instalments" commences when such declaration was made. This rule may be illustrated as follows:

*Example 11 C:* The contract is the same as in 11 B above. The first instalment, delivered on 1 July, proved on examination to be so seriously defective that the buyer rightfully took two steps: he rejected the defective instalment and he notified the seller on 5 July that the contract was terminated as to future instalments.

8. For the purpose of paragraph (2), the relevant conduct by the buyer was the buyer's election to "declare the contract terminated" as to future instalments. Once termination is effected, a single period for claims arising from all relevant instalments (i.e. July, August, September and October instalments) commences on the date of the declaration that the contract is terminated—5 July in the above example. The term "all relevant instalments" embraces all instalments, whether previous or subsequent, covered by or affected by the termination of the contract.

## CESSATION AND EXTENSION OF THE LIMITATION PERIOD

### Article 12

#### [Judicial proceedings]

(1) The limitation period shall cease to run when the creditor performs any act which, under the law of

the jurisdiction where such act is performed, 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.

(2) For the purposes of this article, 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. However, both the claim and counterclaim shall relate to a contract or contracts concluded in the course of the same transaction.

#### COMMENTARY

1. As was noted earlier (introduction, para. 1), this Convention is essentially concerned with the time within which the parties to an international sale of goods may bring legal proceedings to exercise claims or rights. Article 8 states the length of the limitation period. Articles 23 to 26 state the effects of the expiration of the period; these include the rule (art. 24 (1)) that no claim for which the limitation period has expired "shall be recognized or enforced in any legal proceedings". To round out this structure, the present article 12 provides that the "limitation period shall cease to run" when the creditor commences judicial proceedings against the debtor for the purpose of obtaining satisfaction or recognition of his claim (provision for "legal" proceedings other than "judicial" proceedings—e.g. arbitration and various types of administrative proceedings—is made in articles 13 and 14). The net effect of these rules is substantially the same as providing that a proceeding for enforcement may only be brought before the limitation period has expired. However, the approach of this Convention, in stating that the limitation period shall "cease to run" when the proceeding is instituted, provides a basis for dealing with problems that arise when the proceeding fails to result in a decision on the merits or is otherwise abortive (see art. 15).

2. The central problem of article 12 is to define the stage which judicial proceedings must reach before the expiration of the limitation period. In different jurisdictions proceedings may be commenced in different ways. In some jurisdictions a claim may be filed or pleaded in court only after the plaintiff has taken certain preliminary steps (such as the service of a "summons" or "complaint"). In some jurisdictions, these preliminary steps may be taken out of court by the parties (or their attorney); nevertheless these steps are governed by the State's rules on procedure, and may be regarded as commencing a judicial proceeding for the purpose of satisfying the State's rules on prescription or limitation. In other States, this consequence occurs at various later stages in the proceeding.

3. For these reasons it was not feasible to refer specifically to the procedural steps that would meet the purposes of this article. Instead, paragraph (1) refers to the performance by the creditor of any act recognized "under the law of the jurisdiction where such act is performed" as commencing judicial proceedings against the debtor for the purpose of obtaining satisfaction or recognition of his claim.<sup>25</sup> Initiation by the creditor against the debtor of a criminal proceeding for criminal fraud would qualify under this article to stop the period only if, under the local law, this is also an institution of a proceeding "for the purpose of obtaining satisfaction or recognition of his claim".

4. Paragraph (1) also applies where the creditor adds a claim to a proceeding he has already instituted against the debtor.<sup>26</sup> The step in that proceeding that stops the running of the limitation period depends on when, under the law of the jurisdiction where the proceeding is brought, the creditor

<sup>24</sup> This Convention does not, of course, specify the time when a notification of termination must be given except that paragraph (1) of article 11 restricts the application of the rule to those instances where declaration to terminate the contract was made "before performance becomes due".

<sup>25</sup> One representative was of the view that the approach of article 12 (1) may make it difficult to ascertain the exact time when the limitation period ceased to run. Cf. art. 29.

<sup>26</sup> The permissibility of amendment of claims in a pending proceeding and its effect are the questions left to the law of the forum.

has performed an act "asserting his claim" in the pending proceeding.

5. Paragraph (2) of this article deals with the point in time when a counterclaim<sup>27</sup> is deemed to be instituted. Its provisions may be examined in terms of the following example:

*Example 12 A:* The seller commenced suit against the buyer on 1 March 1970. In this proceeding, the buyer interposed a counterclaim on 1 December 1970. The limitation period governing the buyer's counterclaim would, in normal course, have expired on 1 June 1970.

6. In the above example, the crucial question is whether the buyer's counterclaim shall be deemed to be instituted (a) on 1 March, the time when the seller's suit was commenced or (b) on 1 December 1970, when the buyer's counterclaim was in fact interposed in the pending action.

7. Under paragraph (2) of article 12, alternative (a) was chosen. This result is adopted to promote efficiency and economy in litigation by encouraging consolidation of actions rather than the hasty bringing of separate actions.

8. The above rule applies when the seller's claim and the buyer's counterclaim relate to the same contract or to contracts concluded in the course of the same transaction.<sup>28</sup> The same benefit is not given to the buyer when his claim against the seller arises from a different transaction than that which provided the basis for seller's claim against the buyer; in this event, the buyer must actually institute his counterclaim before the expiration of the limitation period. The act which is regarded as instituting this counterclaim is determined under the approach employed in article 12 (1), discussed at paragraphs 3 and 4, above.

### Article 13

#### [Arbitration]

(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 that agreement.

(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.

(3) The provisions of this article shall apply notwithstanding any term in the arbitration agreement to the effect that no right shall arise until an arbitration award has been made.

#### COMMENTARY

1. Article 13 applies to arbitration based on an agreement to submit to arbitration.<sup>29</sup> Article 12 relies on national law

<sup>27</sup> The meaning of "counterclaim" in paragraph (2) may be drawn from the reference in paragraph (1) to "judicial proceedings" employed for the purpose of obtaining satisfaction or recognition of a claim. Such a judicial proceeding by counterclaim can lead to affirmative recovery by the defendant against the plaintiff; the use of a claim "as a defence or for the purpose of set-off", after the limitation period for that claim has expired, is governed by article 24 (2). The question whether a counterclaim is acceptable procedure is, of course, left to the rules of the forum.

<sup>28</sup> For example, where the plaintiff brings a suit on the basis of a distributorship agreement, while the defendant counterclaims on an agreement to sell related to the distributorship agreement, these claims might be regarded as arising "in the course of the same transaction".

<sup>29</sup> Article 13 applies only where the parties "have agreed to submit to arbitration". Obligatory "arbitration" not based on an agreement would be characterized as "judicial proceedings" for the purpose of the Convention. See arts. 1, (3) (e), and 12. On construction of this Convention to promote uniformity, as contrasted with the application of local terminology, see art. 7 and accompanying commentary.

to define the point in the commencement of judicial proceedings when the limitation period shall cease to run. The same approach cannot be used in relation to arbitral proceedings under article 13 since in many jurisdictions the manner for commencing such proceedings is left to the agreement of the parties. Thus, article 13 (1) provides that any question as to what acts constitute the commencement of arbitral proceedings is to be answered under "the arbitration agreement or by the law applicable to that agreement".

2. If the agreement of the applicable law does not prescribe the manner of commencement of arbitral proceedings, under paragraph (2) the decisive point is 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"; if he has no such residence or place of business, the request may be delivered at his last-known residence or place of business. Under paragraph (2), the request must be "delivered" at the designated place. Thus, risks during transmission fall on the sender at the request, but the sender need not establish that the request came into the hands of the other party in view of the practical difficulties involved in proving receipt of the request by a designated person following delivery of the request at the specific place.

3. Paragraph (3) of this article deals with the effect of a term in the arbitration agreement that "no right shall arise until an arbitration award has been made". Under paragraph (3), such a contract term does not prevent the application of this article to the agreement; such a contract provision has no effect to suspend the running of the limitation period or to determine the act that stops the running of the period under this Convention. On the other hand, paragraph (3) does not take any position concerning the validity of such agreements under national law. (Cf. art. 21 (3) and accompanying commentary, paras. 5 and 6.)

### Article 14

#### [Legal proceedings arising from death, bankruptcy or the like]

In any legal proceedings other than those mentioned in articles 12 and 13, including legal proceedings commenced upon the occurrence of:

- (a) The death or incapacity of the debtor,
- (b) The bankruptcy or insolvency of the debtor, or
- (c) The dissolution or liquidation of a corporation, company, association or entity,

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, unless the law governing the proceedings provides otherwise.

#### COMMENTARY

1. Article 14 governs all the other legal proceedings than those mentioned in articles 12 and 13. Such proceedings will include *inter alia*, proceedings for the distribution of assets on death, bankruptcy or the dissolution or liquidation of a corporation as illustrated in (a) through (c) of article 14. It will be noted that these illustrations set forth in paragraphs (a) through (c) do not limit the scope of the article, which applies to "any legal proceedings other than those mentioned in articles 12 and 13". Thus, it would appear that receivership proceedings or the reorganization of a corporation could come within this article. These proceedings are often different from ordinary judicial or arbitral proceedings in that the proceedings may not be instituted by an individual creditor; instead, creditors may have an opportunity to file claims in existing proceedings. Consequently, article 14 provides that the limitation period ceases to run "when the creditor asserts his claim in such proceedings for the purpose of obtaining satisfaction or recognition of the claim". However, this rule is subjected to a proviso: "unless the law governing the proceedings provides otherwise". This

modification is considered necessary because creditors may often rely on the national rules governing those proceedings such as rules specifying the period during which claims may be filed. Unless such local rules are honoured, the creditors could be misled as to their rights.

2. As has been noted (para. 3 of commentary on art. 1), this Convention applies only to the prescription of rights or claims as between the parties to an international sale. In the types of proceedings illustrated in this article involving the distribution of assets (as in bankruptcy), prescription may affect the rights of third parties. The nature of such effect, if any, is not regulated by this Convention and is left to applicable national law.

### Article 15

[Proceedings not resulting in a decision on the merits of the claim]

(1) Where a claim has been asserted in legal proceedings within the limitation period in accordance with articles 12, 13 or 14 but such legal proceedings have ended without a final 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, unless they have ended because the creditor has discontinued them or allowed them to lapse.

#### COMMENTARY

1. Article 15 is addressed to problems that arise when legal proceedings in which a creditor asserts his claim ends without an adjudication on the merits of his claim. Under articles 12 (1), 13 (1) and 14, when a creditor asserts his claim in legal proceedings for the purpose of satisfying his claim, the limitation period "shall cease to run"; when a creditor asserts his claim in legal proceedings before the expiration of the limitation period, in the absence of further provision, the limitation period would never expire. Supplementary rules are consequently required when such a proceeding does not lead to an adjudication on the merits of the claim. Legal proceedings may end without a final decision binding on the merits of the claim for various reasons. A proceeding may be dismissed because it is brought in a tribunal without jurisdiction over the case or because of procedural defects preventing adjudication on the merits; a higher authority within the same jurisdiction may declare that the lower court lacked competency to handle the case; arbitration may be stayed or set aside by judicial authority within the same jurisdiction; moreover, a proceeding may not result in a decision binding on the merits of the claim because the creditor discontinues the proceeding or withdraws his claim. Article 15 covers these and other instances wherever "such legal proceedings have ended without a final decision binding on the merits of the claim". The rule is that "the limitation period shall be deemed to have continued to run"; cessation of the period, as provided under articles 12, 13 or 14, will be rendered inapplicable.

2. This article, however, takes account of the possibility that, a substantial period of time after the creditor commences a legal proceeding, the proceeding may be brought to an end without a final decision on the merits because of the lack of jurisdiction or procedural defect. If this occurs after the expiration of the limitation period, the creditor might have no opportunity thereafter to institute a new legal proceeding; if this is established shortly before the expiration of the period the creditor may have insufficient time to institute a new legal proceeding.<sup>30</sup> To meet these problems, article 15 (2) provides: "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."

3. The expansion of the limitation period, however, should not be left within the control of one of the parties and a creditor who voluntarily discontinues legal proceedings should not be given special treatment. Thus, article 15 (2) also provides that the extension will not be granted when proceedings have "ended because the creditor has discontinued them or allowed them to lapse".<sup>31</sup>

4. The application of this exception to the rule may be clarified by an example:

*Example 15 A:* A's claim against B arose and the limitation period commenced to run on 1 June 1970. A instituted legal proceedings against B on 1 June 1972. A discontinued the legal proceedings or withdrew his claim on 1 June 1973.

In such case, A has until 1 June 1974 to institute a second legal proceeding. (If A had discontinued his action subsequent to 1 June 1974, his claim would already have been barred and no further legal proceedings would be possible.)

5. The denial of the extension is intended to affect not only explicit discontinuance or withdrawal of the legal proceeding but also such a failure to pursue the proceeding that the plaintiff has "allowed" the proceedings "to lapse". Under this language, an extension may not be available when, because of failure to continue the proceedings, the proceedings are automatically terminated by virtue of the procedural rules of the forum. In general, the extension is not available when the proceedings came to an end because of the choice of the creditor not to pursue them.

### Article 16

[Proceedings in a different jurisdiction; extension where foreign judgement is not recognized]

[(1) Where a creditor has asserted his claim in legal proceedings within the limitation period in accordance with articles 12, 13 or 14 and has obtained a decision binding on the merits of his claim in one State, and where, under the applicable law, he is not precluded by this decision from asserting his original claim in legal proceedings in another State, the limitation period in respect of this claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14, and the creditor shall, in any event be entitled to an additional period of one year from the date of the decision.

(2) If recognition or execution of a decision given in one State is refused in another State, the limitation period in respect of the creditor's original claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14, and the creditor shall, in any event, be entitled to an additional period of one year from the date of the refusal.]

#### COMMENTARY

1. This article is concerned with the situations where the creditor has obtained a decision on the merits of his claim in one State and seeks to assert his original claim afresh in legal proceedings (paragraph (1)) or to enforce the decision (paragraph (2)) in another State. Difficult problems arise because of the limited recognition and enforcement which decision in one State is given in other States.

<sup>31</sup> A few members of the Commission were of the view that the extension under article 15 (2) should not be granted unless the creditor acted in good faith and had instituted the proceedings with due diligence. But others thought that the danger of the abuse of the extension granted under article 15 (2) would be mostly speculative because of high costs usually involved in such proceedings; further the danger of the abuse would be counterbalanced by the certainty of the rule which was attained by avoiding difficult problems of proof concerning "good faith".

<sup>30</sup> The question whether a second proceeding on the same claim is permissible procedure is, of course, left to the procedural law of the forum.



# I. Institution of a fresh legal proceeding in another State, paragraph (1)

2. When the refusal of recognition or execution of the decision in one State is expected in another State, the creditor will have to bring a legal proceeding in that State based on the original claim. The creditor may also find it easier to sue again on the original claim in lieu of involving himself in a complicated process of proving the validity of the first decision. The creditor who was rendered an unfavourable decision on the merits of his claim may also consider having his claim tried again in another State if he is not precluded from asserting his original claim afresh in legal proceedings in that State. Legal rules variously termed such as *res judicata*, "merger" of the claim in the judgement, or the like, may prevent the assertion of the original claim after the decision on the merits of the claim even if rendered in another State. While such legal rules may be clear within a single jurisdiction, their operation may be unclear on the international level.

3. Paragraph (1) of article 16 provides that where the creditor is not precluded from asserting his original claim afresh in legal proceedings in another State, "the limitation period in respect of this claim shall be deemed not to have ceased running by virtue of article 12, 13 or 14," and the creditor shall be entitled to an additional period of one year from the date of the original decision in the first State for the purpose of instituting a fresh legal proceeding in the second State.

4. As already explained, under articles 12 (1), 13 (1) and 14 of this Convention, when a creditor asserts his claim in legal proceedings, the limitation period "shall cease to run"; when a creditor asserts his claim in legal proceedings in one State before the expiration of the limitation period, in the absence of further provision, the limitation period would never expire even in other States. See article 29 and its accompanying commentary. Therefore, the phrase "shall be deemed not to have ceased running" was employed in article 16 (1) to provide a basis to bring the limitation period to an end. This provision also prescribes an additional period (i.e. one year from the date of the decision in the first State) within which the creditor must bring a new legal proceeding in the second State. The net effect of article 16 (1) is that the creditor is entitled to institute a new legal proceeding only within one year after the decision in the first State.

5. It will be noted that under article 16 (1) the State which rendered the original decision need not be a Contracting State.

# II. Extension where recognition or enforcement of foreign judgement is refused, paragraph (2)

6. Where the creditor has obtained a final decision on the merits of his claim in one State, but recognition or enforcement of such judgement or award is refused in another State, paragraph (2) of article 16 grants the creditor a period of "one year from the date of the refusal" to institute legal proceedings in the second State to contest the merits of his claim.<sup>32</sup> The rule of article 16 (2) applies to all cases where the recognition or enforcement of the final decision "is refused" in another State. The grounds for such refusal to recognize the final decision rendered in another jurisdiction may vary. One important ground is the lack of agreement between the States concerned calling for the recognition of judgements or awards.

<sup>32</sup> One representative objected to the allowance of one year "from the date of the refusal" because of the fear that this might unduly prolong the total period since "the date of the refusal" might be after a substantially long period after the original decision contradictory to the purpose of the prescription. In his view, at least a certain maximum cut-off point would be necessary if this rule is to be retained. But see article 22 and its accompanying commentary. Also see foot-note 33, *infra*. Another representative noted that an additional period of four years from the date of the original decision would be preferable but accepted the present formula in a spirit of compromise.

7. It will be noted that, as under article 16 (1), the State which rendered the original decision need not be a Contracting State for the application of the rule of article 16 (2).

8. Article 16 is placed in square brackets to indicate that the Commission could not reach consensus in approving the provisions.<sup>33</sup>

## Article 17

### [Joint debtors; recourse actions]

[(1) Where legal proceedings have been commenced against one debtor within the limitation period prescribed by this Convention, the limitation period 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 by this Convention shall cease to run in relation to the buyer's claim over or against the seller, if the buyer informs the seller in writing within that period that the proceedings have been commenced.

(3) In the circumstances mentioned in this article, the creditor or the buyer must institute legal proceedings against the party jointly or severally liable or against the seller, either within the limitation period otherwise provided by this Convention or within one year from the date on which the legal proceedings referred to in paragraphs (1) and (2) commenced, whichever is the later.]

## COMMENTARY

### I. Effect of the institution of legal proceedings against a joint debtor, paragraph (1)

1. The purpose of paragraph (1) of this article is to provide answers to questions that may arise in the following situation. Two persons (A and B) are jointly and severally responsible for performance of a sales transaction. The other party (P) commences a legal proceeding against A within the limitation period. What is the effect of the legal proceeding commenced by P against A on the limitation period applicable to P's claim against B?

2. Under some legal systems the institution of a legal proceeding against A also satisfies the limitation period applicable to P's claim against B. Under other legal systems institution of legal proceedings against A has no effect on the running of the limitation period with regard to B. Consequently, the stating of a uniform rule on this issue is desirable. The rule that the institution of legal proceedings against A has no effect on the running of the period against B involves certain practical difficulties. Such a rule makes it advisable for the creditor (P) to institute legal proceedings against both A and B within the limitation period—at least in cases where there is doubt concerning the financial ability of A to satisfy a judgement. Where A and B are in different jurisdictions it would not be feasible to institute a single proceeding against them both, and instituting separate proceedings in different jurisdictions, merely to prevent the running of the limitation period against the second debtor (B), involves expense that would be needless when A is able to satisfy the judgement.

3. Under article 17 (1), when legal proceedings are commenced against A the limitation period "shall cease to run" not only with respect to A but also with respect to B. It will

<sup>33</sup> Several representatives preferred deletion of article 16 (1); a few representatives also suggested deletion of article 16 (2). One representative thought that the following provision should be added at the beginning of article 16 (cf. art. 5 (d)):

"Where a decision on the merits has been made in legal proceedings, the limitation of any claim based on such a decision shall be governed by the law applicable to such limitation."

be noted that the rule of article 17 (1) is operative only when the creditor informs B in writing within the limitation period that the proceedings against A have been instituted. This written notice may give B the opportunity, if he chooses, to intervene in or participate in the proceedings against A.<sup>34</sup>

## II. Recourse actions, paragraph (2)

4. Paragraph (2) of this article deals with situations like the following: A sells goods to B who resells the goods to a subpurchaser C. C commences legal proceedings against B on the ground that the goods are defective. In such a case, recovery on C's claim against B may give rise to a recourse claim by B against A.

5. If C commences legal proceedings against B toward the end of the limitation period applicable to B's claim against A, B may not have enough time to prepare for the institution of legal proceedings against A; unless B is properly protected in such situations, B may be compelled to institute formal legal proceedings for the redress of the recourse claim against A, even though the necessity for such redress is speculative. Thus, article 17 (2) provides that when the subpurchaser C commences legal proceedings against B, the limitation period "shall cease to run" with respect to B's claim against A.<sup>35</sup>

6. It will be noted, however, that the limitation period applicable to B's claim against A "ceases to run" only if B "informs [A] in writing within that period that the proceedings have been commenced".<sup>36</sup> Hence, if C commenced a legal proceeding against B<sup>37</sup> after the expiration of the limitation period applicable to B's claim against A under this Convention, B will no longer be protected under article 17 (2).<sup>38</sup> This result is supported because the original seller should not be exposed indefinitely to claims arising from resale by the buyer after the expiration of the limitation period. Moreover, where such risk presented a problem, they could be covered by insurance.

## III. Time-limit for commencing legal proceedings against joint debtors or against the seller, paragraph (3)

7. The effect of paragraphs (1) and (2) of this article ("cease to run") is subject to the additional important restriction provided under paragraph (3): In order for the creditor or the buyer to be entitled to the protection under article 17 (1) or (2), he *must* institute legal proceedings against the joint debtor or against the seller, "either within the limitation period otherwise provided by this Convention or within one year from the date on which the legal proceedings referred to in paragraphs (1) and (2) commenced, whichever is the later". Thus, to take the example from paragraph 1, above, if P commences legal proceedings against A in the last year of the limitation period, P must institute legal proceedings against B within one year from the date of the commencement of his action against A; on the other hand, if P's action against

A was instituted before the last year of the limitation period, the protection provided under article 17 (1) and (2) will be of no importance since P's action against B is, in any event, subject to the same "limitation period otherwise provided by this Convention".<sup>39</sup>

8. The rules of article 17, particularly the rule contained in paragraphs (2) and (3) of the article, are products of compromises between sharply conflicting views. Questions remained as to the necessity for such provisions. For these reasons, the Commission decided to place this article in brackets.

## Article 18

[Recommencement of the period by service of notice]

(1) Where the creditor performs, in the State where the debtor has his place of business and before the expiration of the limitation period, any act, other than those acts prescribed in articles 12, 13 and 14, which under the law of that State has the effect of recommencing the original limitation period, a new limitation period of four years shall commence on the date prescribed by that law, provided that the limitation period shall not extend beyond the end of four years from the date on which the period would otherwise have expired in accordance with articles 8 to 11.

(2) If the debtor has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply.

## COMMENTARY

1. Under some legal systems certain acts by the debtor such as a demand for performance may satisfy the applicable rule on limitations and may have the effect of recommencing the limitation period which is provided under the local law, even though these acts are not linked to the institution of legal proceedings. Under some legal systems a letter or even a verbal demand may suffice. In other legal systems, the only way for a creditor to comply with the limitation period is by bringing legal proceedings. Article 18 is a compromise between these two approaches. To some extent, this article provides a concession for the continuation of the procedure to which parties in some legal systems have been accustomed. On the other hand, this article takes the view that the creditor should not be allowed to take advantage of a local procedure for satisfying the rule of limitation with which the debtor may not be familiar. Thus, article 18 is made applicable only when the creditor performs such act "in the State where the debtor has his place of business" before the expiration of the limitation period provided under this Convention.<sup>40</sup> It may be noted that article 18 is applicable only if the act performed by the creditor would (in the absence of this Convention) have "the effect of recommencing" the local limitation period. Thus, if the local rule only provides for an additional shorter period after such act rather than "recommencing the original limitation period", such local rule would not be honoured under article 18.<sup>41</sup>

<sup>39</sup> One representative suggested that the additional period of one year must be granted to the buyer even where subpurchasers instituted legal proceedings against the buyer within two years of the expiration of the limitation period under this Convention. The reason for this suggestion was that subpurchasers are likely to institute legal proceedings a substantial period after the original sales particularly where national laws provide longer limitation period for domestic sales transaction.

<sup>40</sup> A few representatives opposed article 18 because the article brings in an element not consistent with uniformity. According to one representative, at least article 18 should spell out what these acts were which were contemplated by this provision.

<sup>41</sup> If "the effect of recommencing the original limitation period" is given under the local law but is subject to certain conditions which have been fulfilled, it has been assumed that such conditions under the local law would not interfere with the application of article 18.

<sup>34</sup> One representative considered that a general provision concerning notices for the purpose of part I of this Convention was desirable. He proposed the following provision to be added after article 28:

"Article 28A. In the absence of any other provision to the contrary, any notice, request or writing to be served on any person pursuant to any provision in part I of this Convention shall be deemed to be served for the purposes of part I of this Convention when left at a place of business of that person or, if he has none, at his habitual residence or, if he has neither, at his last known place of business or residence."

<sup>35</sup> A few representatives considered that the introduction of subpurchaser's claims into the article was contradictory to the purpose of the Convention particularly with regard to the scope of the Convention.

<sup>36</sup> See foot-note 34, *supra*.

<sup>37</sup> In many cases the sale by B to C will be a domestic sale for which no limitation period is prescribed by this Convention.

<sup>38</sup> Recourse claims may often arise substantially later than the time of the original sale between A and B. In view of the length of the limitation period provided under this Convention for claims arising from a defect or lack of conformity of the goods, the protection afforded by article 17 (2) for recourse actions may be of limited utility.



2. The effect given to such act under article 16 is that "a new limitation period of four years" commences to run afresh from the date on which the local limitation period would otherwise have been recommenced in the absence of this Convention. The proviso to article 18 (1) places an over-all limit beyond which no extension of the limitation period would be given effect. It will be noted that this consequence is different from the institution of legal proceedings (arts. 12, 13 and 14); on the institution of legal proceedings the period will "cease to run" subject to the adjustments provided in articles 15 to 17.

3. Paragraph (2) of article 18 refers to the provisions of article 2 (2) and (3) of this Convention for instances where the debtor has places of business in more than one State or no place of business.

### Article 19

#### [Acknowledgement by debtor]

(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.

#### COMMENTARY

1. The basic purposes of prescription are to prevent the pressing of claims at such a late date that the evidence is unreliable, and to provide a degree of certainty in legal relationships. An extension of the limitation period when a debtor acknowledges his obligation to the creditor before the expiration of the original limitation period is consistent with the above purposes. Consequently, under paragraph (1) of this article, when such acknowledgement occurs, a limitation period of four years will begin to run afresh by reason of such acknowledgement.

2. This new limitation period may have significant impact on the debtor's rights; consequently, paragraph (1) requires that the acknowledgement must be in writing. A writing by a debtor confirming an earlier oral acknowledgement would become an "acknowledgement" within the meaning of this article when the written confirmation was made. The requirement of a "writing" is defined in article 1 (3) (g). Of course, the "acknowledgement" of the original debt may be somewhat similar to a transaction creating a new debt (sometimes called a "novation") which, under applicable law, may be independent of the original obligation—so that the original transaction need not be proved to justify recovery under the new obligation. Applicable law may not require this "novation" to be effected in writing; the rule of article 19 that an "acknowledgement" must be in writing is not intended to interfere with the rules of the applicable law on "novation".

3. Paragraph (2) deals with payment of interest and "partial performance of an obligation" when these acts imply an acknowledgement of the debt. In both cases, the new limitation period will commence to run afresh only with respect to the obligation acknowledged by such action. The partial payment of a debt is the most typical instance of partial performance, but the language of paragraph (2) is sufficiently broad to include other types of partial performance such as the partial repair by a seller of a defective machine. Of course, whether there is an acknowledgement under the circumstance and, if so, the extent of the obligation so acknowledged are questions calling for the determination of the relevant facts in the light of the basic standard set forth in this article.

### Article 20

#### [Extension where institution of legal proceedings prevented]

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. The limitation period shall in no event be extended beyond four years from the date on which the period would otherwise expire in accordance with articles 8 to 11.

#### COMMENTARY

1. This article provides for limited extension of the limitation period when circumstances not imputable to a creditor prevent him from instituting legal proceedings. This problem is often considered under the heading of "*force majeure*" or impossibility; however, this article does not employ these terms since they are used with different meanings in different legal systems. Instead, the basic test is whether the creditor "has been prevented" from taking appropriate action.<sup>42</sup> To avoid excessive liberality, no extension is permitted when any one of the following restrictions is applicable: (1) the preventing circumstances must be "beyond the control of the creditor"; (2) the creditor could neither have avoided nor overcome the occurrence of such circumstance. There are many types of preventing circumstances that are "beyond the control of the creditor" and which therefore might provide a basis for an extension. These might include: a state of war or the interruption of communication; the death or incapacity of the debtor where an administrator of the debtor's assets has not yet been appointed (cf. art. 14); the debtor's misstatement or concealment of his identity or address which prevents the creditor from instituting legal proceedings, fraud committed by the debtor after the conclusion of the contract such as concealment of defects in the goods.<sup>43</sup>

2. There is no reason to extend the limitation period when the circumstance preventing institution of legal proceedings ceased to exist a substantial period in advance of the end of the period. Nor is there reason to extend the period for a longer period than is needed to institute legal proceedings to obtain satisfaction or recognition of the claim. For these reasons, the limitation period is extended one year from the date on which the preventing circumstance is removed. Thus, if, at the time such preventing circumstance ceased to exist, the limitation period has expired or has less than one year to run, the creditor will be entitled to a period of one year from the date on which the preventing circumstance ceased to exist.

3. The last sentence of article 20 places an over-all limit beyond which no extension would be given under any circumstance.

#### MODIFICATION OF THE LIMITATION PERIOD BY THE PARTIES

### Article 21

#### [Modification by the parties]

(1) The limitation period cannot be modified or affected by any declaration or agreement between the

<sup>42</sup> Under articles 12, 13 and 14, it is provided that the limitation period shall "cease to run" when a creditor asserts his claim in legal proceedings. The present article, in referring to facts preventing the creditor "from causing the limitation period to cease to run", refers to the actions described under articles 12, 13 and 14.

<sup>43</sup> As to the effect of fraud committed before or at the time of the conclusion of the contract on the commencement of the limitation period, see art. 9 (2).

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. In no event shall the period of limitation be extended beyond the end of four years from the date on which it would otherwise have expired in accordance with the provisions of this Convention.

(3) The provisions of this article shall not affect the validity of a clause in the contract of sale whereby the acquisition or exercise of a claim is dependent upon the performance by one party of an act other than the institution of judicial proceedings within a certain period of time, provided that such clause is valid under the applicable law.

#### COMMENTARY

1. Paragraph (1) of article 21 declares a general rule that this Convention does not allow parties to modify the limitation period. Exceptions to this rule provided in paragraphs (2) and (3) are explained below.

##### I. Extension of the limitation period

2. Paragraph (2) permits the parties to extend the limitation period to the maximum of four years from the date when the limitation period would otherwise have expired according to the other provisions of this Convention. The extension can be accomplished by a unilateral declaration by the debtor; an effective declaration may, of course, be a part of an agreement by the parties. Extension of the limitation period can have important consequences for the rights of the parties. An oral extension could be claimed in doubtful circumstances or on the basis of fraudulent testimony. Therefore, only a declaration in writing can extend the period.

3. Under paragraph (2), declaration is effective only when it is made "during the running of the limitation period". This restriction in the Convention would deny effect to attempts to extend the period made at early stages of the transaction; e.g., at the time of contracting and thereafter until the claim becomes due or the breach occurs at which time the limitation period commences to run under articles 9 to 11. It was considered that without this restriction a party with stronger bargaining power might impose extensions at the time of contracting; in addition, a clause extending the limitation period might be a part of a form contract to which the other party might not give sufficient attention.

4. Allowance of extension after the commencement of the limitation period, on the other hand, may be useful to prevent the hasty institution of a legal proceeding close to the end of the period when the parties are still negotiating or are awaiting the outcome of similar proceedings in other fora.<sup>44</sup>

##### II. Notices to other party; arbitration

5. One of the purposes of paragraph (3) of article 21 is to make clear that this article has nothing to do with the validity of a contract clause concerning a time-limit by reason of which the acquisition or exercise of a claim is dependent

upon one party giving notice to the other party. A typical example would be modification of the length of period provided in the national law applicable to the contract of sales within which the buyer must give notice to the seller in order to preserve his rights when goods are defective. Article 21 (3) makes it clear that this Convention does not interfere with applicable rules which allow such contractual stipulations for notices.<sup>45</sup>

6. Paragraph (3) of article 21 is also relevant to clauses in the sales contract requiring that controversies under the contract be submitted to arbitration within a limited time. The paragraph refers to clauses in the sales contract "whereby the acquisition or exercise of a claim is dependent upon the performance by one party of an act other than the institution of judicial proceedings within a certain period of time". Attention is directed to the phrase "judicial proceedings". "Legal proceedings", as defined in article 1 (3) (e), "includes judicial, administrative and arbitral proceedings"; "judicial proceedings" is narrower in scope. As a result, the provisions of article 21 will not affect the validity of a clause in the contract of sale "whereby the acquisition or exercise of a claim" is dependent upon the act of one party submitting the controversy to arbitration within a certain period of time. This adjustment was considered advisable to accommodate contracts, often used in commodity markets, providing that any dispute must be submitted to arbitration within a short period—e.g. within six months. With respect to the possible abuse of such a provision, paragraph (3) concludes with the proviso that such clause must be valid under the applicable law. For example, the applicable law may give the court the power, because of hardship to a party, to extend the period which was provided for in the contract; this Convention does not interfere with the continued exercise of this power.

#### LIMIT OF EXTENSION AND MODIFICATION OF THE LIMITATION PERIOD

##### Article 22

[Over-all limitation for bringing legal proceedings]

[Notwithstanding the provisions of articles 12 to 21 of this Convention, no legal proceedings shall in any event be brought after the expiration of 10 years from the date on which the limitation period commences to run under article 9 and 11, or after the expiration of eight years from the date on which the limitation period commences to run under article 10.]

#### COMMENTARY

1. As already noted, this Convention contains provisions which permit the limitation period to be extended or modified in various situations (arts. 15 to 21). Some of those provisions specify overriding limits for such extensions of the period (e.g., arts. 18 and 20); these overriding limits are applicable only to the operation of specific provisions. Thus, it is possible that the period may be extended, in some cases, for such a substantially prolonged period that the institution of the legal proceedings towards the end of that extended period would be no longer compatible with the purpose of prescription. This article, therefore, sets forth an over-all cut-off point beyond which no legal proceedings may be instituted under any circumstance. Such cut-off point is "the expiration of 10 years from the date on which the limitation period commences to run under articles 9 and 11", or "the expiration of eight years from the date on which the limitation period commences to run under article 10".

2. This provision was proposed, at a late stage of the drafting, to take account of the inclusion of other provisions

<sup>44</sup> One representative, supported by a few others, proposed the following for article 21 (2):

"(2) The debtor may, at any time during the running of the limitation period by a declaration in writing to the creditor, extend the limitation period for a new period of time. Such a declaration shall in no event have effect beyond the end of four years, from the date of the declaration or from the date on which the period would otherwise expire, whichever is the later. The debtor may renew the effect of the declaration for a further period, provided however that the prescription period shall in no event by reason of declarations under this article be extended beyond eight years from the date on which the period would otherwise expire in accordance with this Convention."

<sup>45</sup> It may be noted that this Convention has no effect on rules of local law involving "time-limit" (*déchéance*) within which one party is required to give notice to the other party concerning defects in goods (e.g., ULIS, art. 39 (1)). See article 1 (2) and accompanying commentary paras. 8 and 9. One representative was of the view that the rule of article 21 (3) should be incorporated in article 1 (2).

extending the limitation period. Most representatives who spoke on the provision were in favour of the inclusion in principle of the present article. However, this provision is placed in square brackets because most representatives did not have time to evaluate the effect of the provision in the context of the Convention as a whole.

#### EFFECTS OF THE EXPIRATION OF THE LIMITATION PERIOD

##### Article 23

[Who can invoke limitation]

Expiration of the limitation period shall be taken into consideration in any legal proceedings only at the request of a party to such proceedings.

#### COMMENTARY

1. The principal question to which article 23 is addressed is the following: if a party to legal proceedings does not assert that the action is barred by expiration of the limitation period, may the tribunal raise this issue of its own motion (*suo officio*)? This Convention answers this question in the negative: expiration of the period shall be taken into consideration "only at the request of a party" to legal proceedings. One consideration supporting this result is that many of the facts relevant to the running of the period will be known only to the parties and ordinarily will not be apparent from the evidence presenting the substance of the claim; for instance, this may be true with respect to possible extensions of the limitation period (e.g., arts. 19 and 21). Under the traditions of some legal systems, if a judge must search for such facts, he may have to involve himself in the case as to depart from the judges' usual role of neutrality. Moreover, the question, although answered differently in different legal systems, is not of large practical importance; a party who may interpose this defence will rarely fail to do so. Indeed, this provision does not prohibit a tribunal from drawing attention to the lapse of time, and inquiring whether the party wishes this issue to be taken into consideration. (Whether such is proper judicial practice is, of course, a matter for the rules of the forum.) There may be also instances where a creditor does not wish to invoke prescription because of a special business relationship with the debtor while disagreeing on the substance of the pending dispute. Hence, this article provides that prescription of rights or limitation on legal proceedings due to the expiration of the limitation period may only be invoked if a party so requests.

2. However, it has been noted by several representatives in the Commission that prescription is a matter of public policy and that the matter should not be subjected to the parties' disposal. According to them the tribunal should take the expiration of the limitation period into account unless parties agreed to the modification of the period under article 21 of this Convention. Tribunals can obtain facts from parties without burdening themselves by collection of evidence; the question of who should have the burden of collecting evidence should not affect the issue of who should *invoke* prescription. This Convention in article 35 takes account of this view by permitting States to make reservation at the time of ratification or accession to this Convention "that it shall not be compelled to apply the provisions of article 23 of this Convention".

##### Article 24

[Effect of expiration of the period; set-off]

(1) Subject to the provisions of paragraph (2) of this article and of article 23, no claim which has become barred by reason of limitation shall be recognized or enforced in any legal proceedings.

(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 a contract or contracts concluded in the course of the same transaction; or

(b) If the claims could have been set-off at any time before the date on which the limitation period expired.

#### COMMENTARY

##### I. Effect of expiration of the period

1. Paragraph (1) of article 24 emphasizes this Convention's basic purpose to provide a limitation period within which the claims of the parties must be submitted to a tribunal. See article 1 (1). Once the limitation period expires, the claim can no longer be recognized or exercised in any legal proceedings.

2. It will be noted that paragraph (1) is concerned with the recognition or enforcement of claims "in any legal proceedings". This Convention does not attempt to solve all the questions, many of a theoretical nature, that might be raised with respect to the effect of the running of the limitation period. For example, if collateral of the debtor remains in the possession of the creditor after the expiration of the period of limitation, questions may arise as to the right of the creditor to continue in possession of the collateral or to liquidate the collateral through sale. These problems may arise in a wide variety of settings and the results may vary as a result of differences in the security arrangements and in the laws governing those arrangements. Consequently, these problems are to be left to the applicable rules apart from this Convention. It may be expected, however, that the tribunal of signatory States in solving these problems will give full effect to the basic policy of this Convention with respect to the enforcement of rights or claims barred by limitation. See also article 5 (c). As to the effect of voluntary performance of an obligation after the expiration of the limitation period, see article 25 and accompanying commentary.

##### II. Claim used as a defence or for the purpose of set-off

3. The rules of paragraph (2) can be illustrated by the following examples.

*Example 24 A:* An international sales contract required A to deliver specified goods to B on 1 June of each year from 1970 through 1975. B claimed that the goods delivered in 1970 were defective, B did not pay for the goods delivered in 1975, and A instituted legal proceedings in 1976 to recover the price.

On these facts B may set-off his claim against A based on defects of the goods delivered in 1970. Such set-off is permitted under paragraph (a) of article 24 (2), since both claims relate to the same transaction;<sup>46</sup> B's set-off is not barred even though the limitation period for his claim expired in 1974, prior to his assertion of the claim in the legal proceedings and also prior to the creation of the claim by A against B for the price of the goods delivered in 1975. It will also be noted that under article 24 (2), B may rely on this claim "for the purpose of set-off". Thus, if A's claim is \$1,000 and B's claim is \$2,000, B's claim may extinguish A's claim but it may not be used as a basis for affirmative recovery against A.<sup>47</sup>

*Example 24 B:* On 1 June 1970, A delivered goods to B based on a contract of international sale of goods; B claimed the goods were defective. On 1 June 1973, under a different contract, B delivered goods to A; A claimed these goods were defective and in 1975 instituted legal proceedings against B based on this claim.

<sup>46</sup> As to another example where claims arise from "a contract or contracts concluded in the course of the same transaction", see foot-note 28 in the commentary on art. 12.

<sup>47</sup> On legal proceedings calling for affirmative recovery by the defendant against the plaintiff, see art. 12 (2). See also para. 5 of the commentary on that article and its accompanying foot-note.

In these proceedings B may rely on his claim against A for the purpose of set-off even though B's claim arose in 1970—more than four years prior to the time when the claim was asserted in court. Under paragraph (b) of article 24 (2), the claims "could have been set-off" before the date when the limitation period on B's claim expired—i.e. between 1 June 1973 and 1 June 1974.

### Article 25

#### [Restitution of performance after prescription]

Where the debtor performs his obligation after the expiration of the limitation period, he shall not thereby be entitled to recover or in any way claim restitution of the performance thus made even if he did not know at the time of such performance that the limitation period had expired.

#### COMMENTARY

As has already been noted (para. 1 of commentary on art. 24), expiration of the limitation period precludes the exercise or recognition of the claims of the parties in legal proceedings (see art. 24 (1)). This is due to the basic purpose of prescription to prevent the pressing of claims at such a late date that the evidence is unreliable, and to provide a degree of certainty in legal relationships. These policies are not violated where the debtor voluntarily performs his obligation after the expiration of the limitation period. Article 25 accordingly provides that the debtor cannot claim restitution of the performance which he has voluntarily performed "even if he did not know at the time of such performance that the limitation period had expired". Of course, this provision deals only with the effectiveness of claims for restitution based on the contention that the performance could not have been required because the limitation period had run.

### Article 26

#### [Interest]

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.

#### COMMENTARY

To avoid divergent interpretations involving the theoretical question whether an obligation to pay interest is "independent" from the obligation to pay the principal debt, article 26 provides a uniform rule that "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 27

#### [Basic rule]

(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 calendar month of the limitation period.

(2) The limitation period shall be calculated by reference to the calendar of the place where the legal proceedings are instituted.

#### COMMENTARY

1. One traditional formula for the calculation of a limitation period is to exclude the first day of the period and include the last. The concepts of "inclusion" and "exclusion"

of days, however, can be misunderstood by those who are not familiar with the application of this rule. Therefore, for the sake of clarity, article 27 adopts a different formula to reach the same result. Under this article, where a limitation period begins on 1 June, the day when the period expires is the corresponding day of the later year, i.e., 1 June. The second sentence of article 27 (1) covers a situation which may occur in a leap year. That is, when the initial day is 29 February of a leap year, and the later year is not a leap year, the date on which the limitation period expires is "the last day of the last calendar month of the limitation period", i.e., 28 February of the later year.

2. Since different calendar systems are used in different States, paragraph (2) of article 27 provides that "the calendar of the place where the legal proceedings are instituted" must be used in calculating the period.

### Article 28

#### [Effect of holiday]

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 judicial proceedings as envisaged in article 12 or asserts a claim as envisaged in article 14, 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.

#### COMMENTARY

1. This article deals with the problem that arises when the limitation period ends on a day when the courts and other tribunals are closed so that it is not possible to take the steps to commence legal proceedings as prescribed in article 12 or 14. For this reason, the article makes special provisions "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 asserts his claim. In such cases, the limitation period is extended "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".

2. It is recognized that the curtailment of the total period that might result from a holiday is minor in relation to a period calculated in years. However, in many legal systems, an extension is provided and may be relied on by attorneys. In addition, attorneys in one country might not be in a position to anticipate holidays in another country. The limited extension set forth in this article will avoid such difficulties.

### INTERNATIONAL EFFECT

### Article 29

#### [Acts or circumstances to be given international effect]

A Contracting State shall give effect to acts or circumstances referred to in articles 12, 13, 14, 15, 17 and 18 which take place 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.

#### COMMENTARY

1. This article is concerned with a group of problems illustrated by the following situation. Buyer has a claim against Seller arising from an international sale of goods. The claim arose in 1970. In 1973 Buyer instituted a legal proceeding against Seller in State X. In 1975, while the proceeding in State X is still pending, Buyer instituted a legal

proceeding in State Y based on the same claim. (State Y has adopted the Convention.) Since Buyer's claim arose more than four years prior to the institution of the proceeding in State Y, that proceeding would be barred unless the limitation period "ceased to run" when the legal proceeding was commenced in State X.

2. Article 29 refers to the effect which Contracting States shall give to "acts or circumstances referred to in articles 12, 13, 14, 15, 17 and 18". Most of these articles deal with the point which various types of legal proceedings must reach in order to stop the running of the limitation period (arts. 12, 13 and 14; cf. arts. 17 and 18). Article 15, to which article 29 also refers, deals with the effect on the running of the period when the proceeding ends without a final decision on the merits of the claim to afford the creditor an opportunity to institute a further legal proceeding: in such cases the creditor is assured of a period of one year from the date on which the proceedings ended, unless the proceedings have ended because the creditor has discontinued the proceedings or allowed them to lapse. Thus, there is a close relationship between the provisions of the Convention that the limitation period "ceases to run" on the institution of legal proceedings (i.e., arts. 12 (1), 13 (1), and 14), and the rules of article 15 concerning the effect of proceedings not resulting in a decision on the merits of the claim.<sup>48</sup> To return to the above example, if the proceedings in State X ended on 1 February 1975 without a final decision on the merits of the claim for a reason other than the discontinuance or withdrawal of the proceeding, the limitation period "shall be deemed to have continued to run" but the period is extended to 1 February 1976. The above rules, however, do not take up the question of the effect of proceedings in one State (X) on the running of the period in a second State (Y)—the problem to which the present article is addressed.

3. Under article 29, if State X is a Contracting State these events in State X would be given "international" effect in State Y and an action brought in State Y until 1 February 1976 would not be barred by limitation.<sup>49</sup>

4. By the terms of article 29, a Contracting State (State Y) "shall give" the prescribed effect when the first action (in State X) is in a Contracting State. This language was not intended to forbid a Contracting State from giving comparable effect to acts occurring in non-Contracting States; but any such effect is not compelled by the Convention.

5. The analysis of the references in article 29 to articles 12, 13 and 14 and article 15 showed that article 29 is primarily addressed to problems of limitation that arise when an initial proceeding (e.g., in State X) ends without a final decision on the merits of the claim. When that proceeding (in State X) does lead to a decision on the merits of the claim, the international effect of that decision (in State Y) is specified in article 16. For example, when the decision on the merits in State X is not recognized in State Y, article 16 assures the creditor of a limited additional period to bring an action on the original claim in State Y.<sup>50</sup>

<sup>48</sup> This relationship is discussed more fully in the commentary on art. 15.

<sup>49</sup> If the buyer, after instituting the judicial proceeding in 1973 in State X, in 1974 discontinues the proceeding or withdraws his claim, under article 16 the result is somewhat different: in such cases, the limitation period "shall be deemed to have continued to run" and no extension is granted. As a result, the bringing of the action in State X becomes irrelevant with respect to the running of the period, and the action instituted in State Y would be barred by the four-year period established by this Convention. This foot-note does not discuss the situation that would result if the creditor discontinues the proceeding in State X subsequent to the bringing of the proceeding in State Y.

<sup>50</sup> When the decision in State X is recognized and is enforceable in State Y, any further proceeding in State Y would normally be based on the judgement rendered in State X. The period for bringing "claims based upon ... a judgement or award made in legal proceedings" is not governed by this Convention. See art. 5 (d) and accompanying commentary.

6. Article 29 also prescribes the international effect of the recommencement of the limitation period which, under article 18, may occur in some jurisdictions as a result of acts such as the service of a demand notice. Attention is also drawn to the rules of article 17 concerning recourse actions and the effect of the institution of legal proceedings against a joint debtor. If these provisions (now set in square brackets) should be adopted, under article 29 the effect given to the circumstances mentioned in article 17 should be also honoured by other Contracting States.

7. An important requirement for international effect under article 29 is that the creditor take "all reasonable steps to ensure that the debtor is informed of the relevant act or circumstances as soon as possible".<sup>51</sup> While in most cases commencement of a proceeding will require notification to the defendant-debtor, under some procedural systems, this may not be assured. Hence, this requirement was considered necessary.<sup>52</sup>

8. The limitation on the effect of acts in one State (State X) in a second State (State Y) applies only with respect to those articles listed in article 29; thus, article 29 is primarily concerned only with the international effect of the institution of legal proceedings. It may also be noted that the effectiveness of certain other acts does not depend on where they take place: e.g., acknowledgement of the debt (art. 19) and a declaration or agreement modifying the period (art. 21) have the effect prescribed in those articles without regard to the place where the acknowledgement, declaration or agreement occurs.

## PART II: IMPLEMENTATION

### Article 30

#### [Implementing legislation]

[Subject to the provisions of article 31, each Contracting State shall take such steps as may be necessary under its constitution or law to give the provisions of part I of this Convention the force of law not later than the date of the entry into force of this Convention in respect of that State.]

#### COMMENTARY

1. This article deals with the obligation of a Contracting State to take implementing steps that would give the provisions of part I of this Convention the force of law within the territorial jurisdiction of that State. The special problems that may be presented in a federal or non-unitary State are dealt with in article 31.

2. This article does not spell out the manner in which a Contracting State should give the provisions of part I "the force of law". It is left entirely to each Contracting State to take such steps "as may be necessary" under its constitutional rules. Thus, the ratification of or accession to this Convention by a State may be sufficient "under its constitution or law" to give the provisions of part I "the force of law" and no additional step would be required; in other States, implementing domestic legislation may be required to give such effect to the provisions of part I. Where such implementing process is required after ratification or accession, the Contracting State is bound to take such necessary steps "not

<sup>51</sup> See foot-note 34 to the commentary on art. 17.

<sup>52</sup> Two representatives opposed the rule of article 29 for the reason that it is not realistic to ask a State to recognize the effect of institution of legal proceedings in a far distant State whose procedural rules for the institution of the legal proceedings may often be difficult to ascertain (cf. art. 12 and accompanying commentary, paras. 2 and 3); moreover, under articles 15 and 29 the period would be extended even if a suit was brought in an incompetent court in another Contracting State. In their view, should article 29 be retained, Contracting States must be permitted to make a reservation limiting the effect in such States of legal proceedings in other States.

later than the date of the entry into force of this Convention in respect of that State"; that date is specified in article 42 of this Convention. It will be noted that under article 30, the Contracting State shall give to "the provisions of" part I the force of law; as a consequence, a Contracting State may not introduce changes that modify the intended meaning of those provisions: part I is not a "model law".

3. This provision is kept in square brackets because the Commission was of the view that the final drafting of this provision may require further attention by the international conference of plenipotentiaries.

#### Article 31

##### [Implementing process in a federal State]

[In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

(c) A federal State party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.]

#### COMMENTARY

Where a Contracting State to this Convention is a federal or non-unitary State, the federal authority may not have power to effect certain provisions of this Convention in its constituent States or provinces because those provisions may relate to the matters which are within the legislative jurisdiction of each of such constituent States or provinces. Consequently, rules supplementing article 30 may be needed for a Contracting State which is a federal State. Article 31 provides the process required for such a federal State in order to fulfil the obligation to implement the provisions of this Convention. This provision is kept in square brackets for the same reason as indicated for article 30.

#### Article 32

##### [Non-applicability as to prior contracts]

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 in respect of that State.

#### COMMENTARY

1. This article sets forth a definitive time as the starting point for the taking of effect of the provisions of this Convention with respect to contracts: a Contracting State is bound to apply the provisions of the Convention only to contracts that are concluded on or after the date of the entry into force of this Convention in respect of that State. This starting point was preferred to other dates (e.g., the date

the breach is committed or the date the claim arises) because it is more definitive and because it avoids difficult problems of retroactivity.

2. The date of the entry into force of this Convention in respect of each Contracting State is dealt with in article 42 of the Convention.

### PART III: DECLARATIONS AND RESERVATIONS

#### Article 33

##### [Declarations limiting the application of the Convention]

(1) Two or more Contracting States may at any time declare that contracts of sale between a seller having a place of business in one of the States and a buyer having a place of business in another of these States shall not be considered international within the meaning of article 2 of this Convention, because they apply the same or closely related legal rules which in the absence of such a declaration would be governed by this Convention.

(2) If a party has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply.

#### COMMENTARY

1. Some States, in the absence of this Convention, apply the same or closely related rules to sales. These States should be permitted, if they choose, to continue to apply their present rules to transaction involving such States, and at the same time adhere to the Convention. The present article makes this possible.

2. Paragraph (1) of this article enables any two or more Contracting States to make a joint declaration, at any time, to the effect that contracts of sale entered into by a seller having a place of business in one of these States and a buyer having a place of business in another of these States, "shall not be considered international within the meaning of article 2 of this Convention". Since, under paragraph (1) of article 1 of this Convention, the provisions of the Convention are applicable to contracts of international sale of goods as defined in article 2, the effect of the declaration under paragraph (1) of this article is to exclude such contracts from the scope of application of the Convention.

3. Paragraph (1) uses the term "place of business"; paragraph (2) provides a rule which is in line with the rules of article 2 of this Convention.

#### Article 34

##### [Reservation with respect to actions for annulment of the contract]

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.

#### COMMENTARY

In some legal systems where actions for annulment, as for incapacity, duress or fraud (*dol*), is required to establish nullity of the contract, the period of limitation for bringing such actions may be treated differently from the period governing the general limitation for the exercise of claims arising from the contract. For example, in such actions the point for the commencement and the length of the period may be different from those rules provided under this Convention (e.g., art. 9 (2)). This article permits a State to declare that it will not apply the provisions of this Convention to actions for annulment of the contract. Thus, the State which has made

a reservation under this article may continue to apply its local rules (including the rules of private international law) to the actions for annulment of contract.

### Article 35

[Reservation with respect to who can invoke limitation]

Any State may declare, at the time of the deposit of its instrument of ratification or accession to this Convention, that it shall not be compelled to apply the provisions of article 23 of this Convention.

#### COMMENTARY

This article permits a Contracting State to make reservation with regard to the application of the rule of article 23 which provides that prescription of rights or limitation of legal proceedings due to the expiration of the limitation may only be invoked by a party. The reason for the necessity to allow this reservation has already been explained in para. 2 of commentary on art. 23.

### Article 36

[Relationship with conventions containing limitation provisions in respect of international sale of goods]

(1) This Convention shall not prevail over conventions already entered into or which may be entered into, and which contain provisions concerning limitation of legal proceedings or prescriptions of rights in respect of international sales, provided that the seller and buyer have their places of business in States parties to such a convention.

(2) If a party has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply.

#### COMMENTARY

1. Paragraph (1) of this article provides that present and future conventions which contain provisions concerning limitation in respect of the international sale of goods shall, in case of conflict, prevail over this Convention.

2. Such situations could occur in those conventions that deal with international sales of a particular commodity, or a special group of commodities. In addition, it has been suggested that article 49 of the 1964 ULIS conflicts with some of the provisions of part I of this Convention. Article 36 permits such a conflicting provision to be applied in relations between the parties whose places of business are in States which ratified such a convention. The same could be true with respect to a conflicting provision in a convention concluded at the regional level such as the General Conditions of Delivery of Goods between Organizations of the Member Countries of the Council for Mutual Economic Assistance, 1968.<sup>54</sup>

3. The rule stated above is applicable only when the seller and buyer have their places of business in States parties to such a conflicting convention. Paragraph (2) of article 36 provides the rule for applying this provision where a party has places of business in more than one State or where he has no place of business.

### FORMAL AND FINAL CLAUSES NOT CONSIDERED BY THE COMMISSION

The following articles were not considered by the Commission and it was agreed that they should be

<sup>54</sup> The question has also been raised as to whether the 1955 Hague Convention on the Law Applicable to International Sale of Goods includes prescription within its scope.

submitted for consideration to the proposed International Conference of Plenipotentiaries.

### Article 37

No reservation other than those made in accordance with articles 33 to 35 shall be permitted.

### Article 38

1. Declarations made under articles 33 to 35 of this Convention shall be addressed to the Secretary-General of the United Nations. They shall take effect [three months] after the date of their receipt by the Secretary-General or, if at the end of this period this Convention has not yet entered into force in respect of the State concerned, at the date of such entry into force.

2. Any State which has made a declaration under articles 33 to 35 of 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 [three months] after the date of the receipt of the notification by the Secretary-General. In the case of a declaration made under paragraph (1) of article 33 of this Convention, such withdrawal shall also render inoperative, as from the date when the withdrawal takes effect, any reciprocal declaration made by another State under that paragraph.

## PART IV: FINAL CLAUSES

### Article 39

[Signature]<sup>54</sup>

This Convention will be open until [for signature by [.....]].

### Article 40

[Ratification]<sup>55</sup>

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

### Article 41

[Accession]<sup>56</sup>

This Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 39. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

### Article 42

[Entry into force]<sup>57</sup>

1. This Convention shall enter into force [six months] after the date of the deposit of the [.....] instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the [.....] instrument of ratification or accession, this Convention shall enter into force [six months] after the date of the deposit of its instrument of ratification or accession.

<sup>54</sup> Based on the Vienna Convention on the Law of Treaties (United States publication, Sales No. E.70.V.5), document A/CONF.39/27, art. 81.

<sup>55</sup> *Ibid.*, art. 82.

<sup>56</sup> *Ibid.*, art. 83.

<sup>57</sup> *Ibid.*, art. 84.



**Article 43**  
[Denunciation]<sup>58</sup>

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 [12 months] after receipt of the notification by the Secretary-General of the United Nations.

**Article 44**  
[Declaration on territorial application]

**Alternative A<sup>59</sup>**

1. Any State may, at the time of the deposit of its instrument of ratification or accession or at any time thereafter, declare, by means of a notification addressed to the Secretary-General of the United Nations, that this Convention shall be applicable to all or any of the territories for whose international relations it is responsible. Such a declaration shall take effect [six months] after the date of receipt of the notification by the Secretary-General of the United Nations, or, if at the end of that period this Convention has not yet come into force, from the date of its entry into force.

2. Any Contracting State which has made a declaration pursuant to paragraph (1) of this article may, in accordance with article 43 denounce this Convention in respect of all or any of the territories concerned.

**Alternative B<sup>60</sup>**

This Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible except where the previous consent of such a territory is required by the Constitution of

<sup>58</sup>Based on article XII of the 1964 Hague Convention relating to a Uniform Law on the International Sale of Goods, herein cited as the "Hague Sales Convention". See *Register of Texts of Conventions and other Instruments concerning International Trade Law* (United Nations publication, Sales No. E.71.V.3), p. 39).

<sup>59</sup>Based on article XIII of the Hague Sales Convention.

<sup>60</sup>Based on article 27 of the Convention on Psychotropic Substances, 1971, E/CONF.58/6 and Corr.1 and 2.

the Party or of the territory concerned, or required by custom. In such a case, the Party shall endeavour to secure the needed consent of the territory within the shortest period possible and, when the consent is obtained, the Party shall notify the Secretary-General. This Convention shall apply to the territory or territories named in such a notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

**Article 45**  
[Notification]<sup>61</sup>

The Secretary-General of the United Nations shall notify the Signatory and Acceding States of:

(a) The declarations and notifications made in accordance with article 38;

(b) The ratifications and accessions deposited in accordance with articles 40 and 41;

(c) The dates on which this Convention will come into force in accordance with article 42;

(d) The denunciations received in accordance with article 43;

(e) The notifications received in accordance with article 44.

**Article 46**  
[Deposit of the original]

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.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at [place], [date].

<sup>61</sup>Based on article XV of the Hague Sales Convention.

**D. ANALYTICAL COMPILATION OF COMMENTS AND PROPOSALS BY GOVERNMENTS AND INTERESTED INTERNATIONAL ORGANIZATIONS ON THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW DRAFT ARTICLES ON PRESCRIPTION (LIMITATION) IN THE INTERNATIONAL SALE OF GOODS: REPORT OF THE SECRETARY-GENERAL**

**Document A/CONF.63/6**

[Original: English]  
[11 March 1974]

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## Introduction

1. The United Nations Commission on International Trade Law (UNCITRAL), at its fifth session (1972), in connexion with its decision approving the text of a draft Convention on Prescription (Limitation) in the International Sale of Goods, requested the Secretary-General to prepare a commentary on the provisions of the draft Convention, and in addition:

“(b) To circulate the draft Convention, together with the commentary thereon, to Governments and to interested international organizations for comments and proposals;

(c) To prepare an analytical compilation of those comments and proposals and to submit this compilation to Governments and to interested international organizations;”

The above materials requested by the Commission were designed for use in the United Nations Conference on Prescription (Limitation) in the International Sale of Goods, which is to be convened at United Nations Headquarters from 20 May through 14 June 1974

<sup>1</sup> See *Official Records of the General Assembly Twenty-seventh Session, Supplement No. 17*, para. 20.

(General Assembly resolution 3104 (XXVIII), para. (a)).

2. The draft Convention and the commentary<sup>2</sup> were circulated in accordance with the Commission's request. At the time of the preparation of the present document, substantive comments and proposals on the draft Convention had been received from the following States: Austria, Belgium, Byelorussian SSR, Czechoslovakia, Denmark, Finland, German Democratic Republic, Germany, Federal Republic of, Israel, Japan, Khmer Republic, Kuwait, Mexico, Netherlands, New Zealand, Norway, Portugal, South Africa,<sup>3</sup> Sweden, Switzerland, Ukrainian SSR, United Kingdom, USSR.<sup>4</sup> The Asian-African Legal Consultative Com-

<sup>2</sup> See *Yearbook of the United Nations Commission on International Trade Law*, Volume III: 1972 (United Nations publication, Sales No. E.73.V.6), p. 115. This document will be referred to as “commentary”. The commentary is reproduced for the Conference under the symbol A/CONF./63/5.

<sup>3</sup> The Government of South Africa transmitted the opinion of the Association of Chambers of Commerce of South Africa. For ease of reference, the opinion will be hereinafter referred to as South Africa.

<sup>4</sup> The Government of USSR transmitted “Observations of Soviet experts”. For ease of reference, these will be hereinafter referred to as USSR.

mittee (AALCC) and the International Chamber of Commerce (ICC) have also submitted their observations on the draft Convention.

3. The present document presents an analytical compilation of the above comments and proposals. The full text of the proposals and comments will be reproduced in an addendum to this document (A/CONF. 63/6/Add.1). Comments and proposals which are received after the preparation of this document will be made available by way of addendum.

### I. General observations

4. A majority of comments welcome the UNCITRAL draft Convention and indicate that the draft provides a good and suitable basis for a convention on the subject. Most of the comments indicate that the rules on limitation in the field of the international sale of goods should be harmonized, some refer to difficulties in practice resulting from the present divergencies in national rules. A few comments, however, express the view that the draft provisions are too complex and some suggest that it would be preferable to have a convention on prescription dealing with a wider range of claims. However, one of these comments expressed the view that, taken as a whole, the draft represents a modern, rational, equitable and comprehensive solution of the problems arising in the field of the sale of goods.

5. The Netherlands expresses the view that the rules are more complicated than are appropriate for the comparatively simple subject of prescription (limitation) in the international sale of goods, and states that such rules might be harmful rather than beneficial to international trade. ICC expresses concern that the present Convention governs claims for payment of the price. According to ICC, it would be more appropriate to assimilate such claims with other claims for debts expressed in terms of money at the time of the conclusion of a contract, and that such claims should be excluded from the sphere of application of the Convention. The Netherlands and ICC also observe that there is a close affinity between the draft Convention and the Uniform Law on the International Sale of Goods annexed to the 1964 Hague Convention Relating to a Uniform Law on the International Sale of Goods (ULIS), which is presently being reviewed by the UNCITRAL, and question whether the time was mature for finalizing the draft convention. Japan suggests that the uniform rules on prescription should be combined with the uniform substantive rules governing the international sale of goods because of the close relationship of the rules on prescription to the substantive rules pertaining to the rights and obligations under the sales contract. In the alternative, Japan suggests that the convention on prescription may well take full account of both the civil and common law systems. Belgium, while indicating that the draft convention is acceptable on the whole, regrets that the draft does not distinguish between the causes of interruption and suspension of the limitation period.

6. AALCC<sup>5</sup> expresses general approval of the draft convention as a workable compromise, expresses its appreciation to UNCITRAL for its work to unify and

harmonize various national rules of prescription (limitation), and notes that the disharmony among such national rules is an obstacle to the development of international trade.

## II. Observations on specific articles

### PART I. SUBSTANTIVE PROVISIONS

#### SPHERE OF APPLICATION

##### *Article 1: Introductory provisions; definitions*

##### *Article 1 (1): Basic scope of the Convention*

7. Czechoslovakia is of the view that the phrase "the rights of the buyer and the seller against each other relating to a contract of international sale of goods" is not clear. The Commentary notes that the intent of article 1 (1) behind the language "relating to a contract" is not only to include claims arising from breach of a sales contract but also to include claims relating to the termination or invalidity of such a contract.<sup>6</sup> According to Czechoslovakia, doubts may arise whether it is possible to speak of a "contract" if it is invalid and considered legally as not existing. For this reason, Czechoslovakia proposes the following language: "rights of the buyer and seller against each other arising from a contract of international sale of goods, its breach, termination or invalidity". Japan is of the view that it is not necessarily clear from the language of article 1 (1) whether the right, the exercise of which is a prerequisite for restitution claims, is included within the scope of the Convention.<sup>7</sup>

8. AALCC points out that the words in article 1 (1) "the right of the buyer and seller against each other relating to a contract of international sale of goods" are of such wide application that they could be interpreted as including certain types of claims in tort or delict as between the buyer and the seller concerning the contract. The commentary notes that the legislative intent is to the contrary.<sup>8</sup> On the other hand, AALCC indicates that actions in tort or delict relating to a contract of international sale of goods could come within the sphere of the Convention without difficulty, since article 5 excludes from the Convention only those claims in delict or tort based upon personal injuries and certain other claims. Japan also indicates that it is not clear under article 1 (1) whether claims in tort are excluded.

9. Finland is of the view that the relation of the guarantor to the creditor and to the main debtor must be brought within the Convention's sphere of application because these relations are closely linked to the joint basic relationship between the parties of the sales contract. New Zealand also questioned the exclusion of claims based on guarantee.

10. Some of the comments related to the fact that under certain legal systems the subject of the draft Convention is regarded as a part of the substantive law while under others it is regarded as procedural. The Federal Republic of Germany notes that article 1 (1) states unequivocally that the rules of the Convention apply regardless of the way the subject is regarded under national law, but that that doubt might arise on

<sup>5</sup> The provisions of the UNCITRAL draft convention on prescription were examined by the AALCC Standing Subcommittee on International Sale of Goods, at the fourteenth session (1973) of the Committee.

<sup>6</sup> Cf. commentary, art. 1 at para. 7.

<sup>7</sup> Cf. art. 34; also see Czechoslovakia's comment on article 9 at para. 43, *infra*.

<sup>8</sup> Cf. commentary, art. 1 at para. 6.

this point under articles 23 and 24.<sup>9</sup> For this reason, it was suggested that the Convention should be clarified by an explicit provision that the Convention, throughout, (i.e. including the effect of limitation) leaves open the question whether limitation is regarded as procedural or substantive. The German Democratic Republic, on the basis of a summary of the effects of limitations under the draft convention, notes that the draft's concept of limitation is similar to that underlying the civil law rules of the German Democratic Republic, and is welcomed. However, it is suggested that, to avoid problems that might arise from different interpretations of the concepts "limitation" and "prescription" in article 1 (1)<sup>10</sup> the definitions in article 1 (3) should include a definition of prescription (limitation).<sup>11</sup>

*Article 1 (2): The Convention not applicable to "time-limits" (déchéance)*

11. The Commentary notes that article 1 (2) is intended to make clear that this Convention has no effect on certain rules of local law involving "time-limits" (*déchéance*) for giving notice to the other party or for performing any act other than the institution of legal proceedings. For example, where defective goods are delivered, the buyer may be permitted to repudiate the contract by giving a proper notice to the seller. This Convention is silent on the time-limit for giving such a notice, which would be governed by the law applicable to the contract. Czechoslovakia, however, is of the opinion that such time-limit for repudiation should not be excluded from the scope of the Convention.<sup>12</sup>

12. Mexico is of the view that article 1 (2) which places the question of "time-limits" (*déchéance*) outside the Convention, should be re-examined so as to avoid any inconsistency with other provisions of the draft convention, such as articles 9 (3), 21 (3) and 22. In particular, according to Mexico, the second sentence of article 9 (3) (which provides the running of the limitation period in respect of claims which are still dormant owing to the fact that the *conditio juris* on which their exercise depends has not been fulfilled) is not consistent with the rule of article 1 (2).

13. Article 1 (2) refers to exercise of a "claim" but does not refer to a "right". According to Israel, the language "claim or right" should be used throughout the Convention and particularly in articles 1 (2), 5, 9, 21 (3), and 24, because the Convention is concerned not only with the limitation of claims but also the prescription of rights in general. Alternatively, Israel also suggests the inclusion of a definition of

"claim" in article 1 (3). Mexico and Czechoslovakia also express the view that the word "claim" in article 1 (2) should be replaced by the word "right".

*Article 1 (3). Definitions*

14. United Kingdom suggests that article 1 (f) should be amended to read as follows: "'Person' includes any body of persons, corporate or unincorporate." AALCC also considers that there is uncertainty in the definition of "person", and suggests the following definition: "'Person' includes corporation, company, association, or entity, whether private or public, which can sue or be sued in its own name under its national law."<sup>13</sup>

*Article 2. Definition of a contract of international sale of goods*

15. Seven States (Belgium, Denmark, Finland, Germany (Federal Republic of), Netherlands, Sweden and United Kingdom) express concern that the definition of international sale of goods in the draft convention differs from that in the ULIS. Most of these States are of the view that the question of securing the same definition for both conventions should be given close consideration at the conference. According to Belgium, it is essential to ensure that the present convention can be adopted both by States which are already parties to ULIS and by those which have not approved ULIS. For this reason, Belgium believes that no definition of international sale should be given in the present convention.

16. Three of these States (Denmark, Federal Republic of Germany and United Kingdom) prefer that the definition contained in 1964 ULIS be adopted for the present convention. In addition, the Federal Republic of Germany suggests that as soon as the revised version of ULIS, which is presently being reviewed by UNCITRAL, becomes available in the final form, the definition in the present convention on prescription should be brought in line with that of the revised ULIS by way of a protocol.

17. Denmark and the Federal Republic of Germany are further of the opinion that, if the sphere of application of this Convention should be different from that of ULIS, the States that have ratified or acceded to 1964 ULIS should at least be enabled to declare that the ULIS rule on the sphere of application shall be applied also for the purpose of the present Convention.<sup>14</sup>

*Article 2 (1)*

18. Under article 2 (1) the knowledge, at the time of the conclusion of the contract, that the other party's place of business is in a different State is not necessary to consider a contract of sale of goods international.<sup>15</sup>

<sup>9</sup> The Federal Republic of Germany points out that the draft Convention, by its rules on the effect of the expiration of the limitation period (particularly arts. 23 and 24), does not state clearly whether those effects are strictly of a procedural nature or of a substantive-law nature.

<sup>10</sup> As to the reason why these forms of expression were employed, see commentary, art. 1 at para. 1. Also see para. 4 of introduction to commentary, art. 3 at para. 4.

<sup>11</sup> The German Democratic Republic proposes the following definition: "Limitation means a restriction of the creditor's right to enforce, in legal proceedings, a still valid claim, since such claim was not exercised during the limitation period and since the debtor obtains a right to reject such claim asserted against him."

<sup>12</sup> It may be noted in this connexion that the Convention does regulate, in any event, the limitation period for commencing legal proceedings based on claims arising from such repudiation, e.g., claim for restitution of payments following repudiation.

<sup>13</sup> Cf. commentary, art. 1 at para. 11.

<sup>14</sup> To achieve this, the Federal Republic of Germany suggests the restoration of a reservation as provided in article 33 (a) of the 1971 draft of the present Convention. That article provided: "Any State which has ratified the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964, or which has acceded to that Convention, may at any time declare: (a) that, by way of derogation from article 3, paragraph 1, of this Convention, it will apply the provisions of article 1, paragraph 1, of the Uniform Law annexed to the Convention of 1 July 1964." (A/CN.9/70) (*Yearbook of the United Nations Commission on International Trade Law*, Volume III: 1972 (United Nations publication, Sales No. E.73.V.6), p. 109).

<sup>15</sup> The legislative reason for this approach is stated in commentary, art. 2 at para. 4.

Netherlands considers that this may have undesirable consequences where the national law provides for a short limitation period or permits the stipulation to shorten the period; for example, after the expiration of such a short period the relevant documents may be disposed of by a party to a sales contract; thereafter the principal of the other party, located in a different State, may disclose his identity and may present claims which the first party had believed to be barred.

19. New Zealand points out a situation where a contract may become international under the present wording of article 2 (1) even though the initial buyer and seller had their places of business in the same State. According to New Zealand, this will occur when an assign, who becomes a party to the contract in due course, had his place of business in a different State at the time of the conclusion of the original contract; it is noted that the terms "buyer" and "seller" include "assigns" by virtue of article 1 (3) (a). New Zealand proposes that article 2 (1) be redrafted as follows: "For the purposes of this Convention, a contract of sale of goods shall be considered international if the persons who enter into the contract have their places of business in different States at the time of its conclusion."<sup>16</sup>

20. According to Belgium and Israel, the definition of international sale of goods under article 2 by reference only to places of business or residence of the parties in different States is too broad. Further, in the opinion of Israel, this Convention covers many cases which ought appropriately to be considered as domestic sales: by way of example, Israel describes a situation where a tourist makes purchases of goods in a host country without the seller knowing the status of the buyer as a tourist.<sup>17</sup> Israel proposes that, if the definition contained in ULIS is unacceptable, article 2 (1) could be made more flexible: the definition could adopt an "exclusion" approach.<sup>18</sup> ICC proposes that "a permanent organization of business for the manufacture or sale of goods or services" should be required for the application of the Convention.

21. Israel, Japan, and AALCC suggest that the provision of article 3 (1)), requiring that parties' places of business be in different contracting States, be brought in closer proximity to article 2 (1).

22. Czechoslovakia and the German Democratic Republic support article 2 (1) of the present draft. Czechoslovakia notes that the definition of international sale of goods in the draft convention conforms in substance to the definition of its International Trade Code and that no difficulties have arisen thereunder since the Code entered into force 10 years ago.

#### Article 2 (2) and (3)

23. Paragraph (2) of article 2 deals with the situation where one of the parties to the contract has more than one place of business. Paragraph (3) deals with the case where one of the parties does not have a place of business. Since these rules are necessary for the purpose of the application of both article 2 (1) and

article 3, article 2 (2) makes specific reference to these provisions. In addition, articles 18 (2), 33 (2) and 36 (2) make the provisions of articles 2 (2) and (3) applicable to the problems dealt with in each of those articles. It is pointed out by Israel that the manner in which the rules contained in article 2 (2) and (3) are treated throughout the Convention is not sufficiently clear. Israel suggests the following drafting change in article 2 (2) and (3): "(2) Where a party has places of business in more than one State, his place of business for the purposes of this Convention shall be . . ."; "(3) Where a party does not have a place of business, reference to his place of business in this Convention shall be deemed to be a reference to his habitual residence." In this connexion, Austria also suggests that article 3 should refer to the rule of article 2 (3).

24. South Africa is of the view that the "closer relationship" provision in article 2 (2) should be clarified. AALCC suggests that article 2 (2) can be simplified. Further, according to AALCC, the phrase "principal place of business" may be subject to differing interpretations. The applicable place of business under article 2 (2) appears to be that place of business which has the closest relationship to the contract. For these reasons, it is proposed by AALCC that article 2 (2) should be amended to read as follows: "Where a party to a contract of sale has places of business in more than one State, his place of business for the purposes of paragraph (1) of this article and of article 3 shall be that place of business 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." New Zealand objects to the inclusion of subjective standards in article 2 (2) and suggests that consideration be given to providing an objective test by using as a criterion the place of the premises or address used by the party in the course of the negotiations leading to the contract. ICC is also of the view that the closest relationship test could lead to undesirable uncertainties.

25. South Africa indicates that the use of the word "domicile" would perhaps be more appropriate than the phrase "habitual residence" in article 2 (3) because the meaning of "habitual" is not sufficiently clear.<sup>19</sup> Further, South Africa suggests that article 2 (3) should have the following proviso: "unless the parties have chosen a *domicilium citandi et executandi* in the contract." According to South Africa, this proviso is necessary because the parties should have the right to choose a place for service and execution.<sup>20</sup>

#### Article 2 (4)

26. Israel considers that article 2 (4) would more properly be placed after article 3 (2). United Kingdom considers that article 2 (4) should be formulated in the same terms as article 1 (3) of ULIS, and that an additional article should be inserted corresponding to article 7 of ULIS.

#### Article 3. Application of the Convention

27. Austria, Finland, Norway and Sweden are of the view that the scope of application as provided in article 3 (1) is too narrow. According to Finland and

<sup>16</sup> New Zealand points out the same problem with regard to article 3 (1).

<sup>17</sup> But cf. art. 4 (a).

<sup>18</sup> To this end, the following provision is suggested by Israel: "For the purposes of this Convention, a contract of sale of goods shall not be considered international, unless, at the time of conclusion of the contract, the seller and buyer have their places of business in different States."

<sup>19</sup> South Africa also questions the use of the phrase "habitual residence" in article 13 (2).

<sup>20</sup> It may be noted that such a *domicilium citandi et executandi* which the parties have chosen by way of agreement may be the place specified under the rule of article 2 (2).

Norway, the Convention should be made applicable irrespective of whether the seller and the buyer have their places of business in Contracting States. Sweden is of the opinion that, where a conflicts rule of a Contracting State dictates the application of the law of a Contracting State, it would be desirable to have the Convention applied to the contract irrespective of the location of the places of business of the parties. Finland and Norway also agree to this approach as an alternative solution.<sup>21</sup> AALCC also indicated that the possibility of a wider application of the Convention is desirable. It is the view of AALCC that, where the rules of the forum permit, it will not conflict with the purpose of the Convention to allow that forum to apply the Convention to govern a contract of international sale of goods even when one or both parties do not have their place or places of business in a Contracting State. Accordingly, AALCC proposes that the word "only" in article 3 (1) should be deleted. Austria proposes that either article 3 (1) be deleted or broadened to provide that the Convention shall apply where only one of the parties to the contract has his place of business in a Contracting State. Austria is further of the view that, should the present article 3 (1) be retained, it would be desirable to include a provision such as article 4 of 1964 ULIS which allows parties to choose the Convention in cases where it would not otherwise be applicable.<sup>22</sup>

28. United Kingdom approves the approach of article 3 (1) subject to its reservation with regard to the definition of international sale of goods.<sup>23</sup> Mexico, while approving the definition in article 2 (1), proposes that the requirement of international carriage be added to article 3 (1) for the application of this Convention as an addition to the requirement that the parties have their places of business in different Contracting States.

29. Article 3 (3) provides that the Convention shall not apply when the parties have validly chosen the law of a non-Contracting State: an attempt by the parties to make applicable the national law of a Contracting State is ineffective.<sup>24</sup> Eight States (Austria, Denmark, Finland, the Federal Republic of Germany, Israel, Japan, Sweden and the United Kingdom) question limiting the choice to the law of a non-Contracting State. Denmark considers that article 3 (3) should be modified to allow the parties to choose even the law of a Contracting State. Austria, Germany (Federal Republic of) and Israel advocate that the parties should have the same liberty to exclude the application of the Convention as is permitted under article 3 of ULIS without agreeing on the applicable law.<sup>25</sup> United Kingdom suggests that article 2 (2) and (3) be revised so

as to incorporate the text of articles 2, 3 and 4 of ULIS. New Zealand is of the view that the elimination of the complex rules of private international law affecting limitation or prescription, which vary to a great extent from one State to another, is by itself a desirable reform.

30. Netherlands proposes that the word "validly" in article 3 (3) be replaced by the words "by written and express agreement" because, in the opinion of Netherlands, it is desirable to have the parties' intent stated unambiguously. New Zealand is of the view that the word "validly" is susceptible of different interpretations and recommends that a clear test be provided for determining when a choice of law is valid.

#### *Article 4. Exclusion of certain sales and types of goods*

31. United Kingdom approves the exclusion of consumer sales from the scope of the Convention, but is of the view that article 4 should otherwise be revised to conform with article 5 of ULIS. Czechoslovakia is also of the view that article 4 should be re-examined. With regard to article 4 (a), a question has been raised by Japan: Does the Convention apply when a governmental department, university, a research institute or other public or private organizations makes an international purchase of goods for its daily use?<sup>26</sup>

32. With regard to article 4 (d) of the Spanish text which refers to "*valores mobiliarios, efectos de comercio y dinero*", Mexico is of the view that the phrase should be redrafted to read "*De valores mobiliarios o efectos de comercio y dinero*" because, according to Mexico, the expressions "*valores mobiliarios*" and "*efectos de comercio*" are synonymous.

#### *Article 5. Exclusion of certain claims*

33. Article 5 (a) excludes claims based on personal injuries from the application of this Convention. It may be noted that when such claims are based on tort (or *delict*) they would, in any event, be excluded from this Convention by virtue of the provisions of article 1 (1). An explicit provision to exclude all such claims based on personal injuries was considered necessary because under some (but not all) legal systems such claims may be regarded as contractual, and because it was thought inappropriate to subject such claims to the same limitation period as would be applicable to the usual types of commercial claims. Other damage caused by the goods sold (such as damage to other property) is not excluded by article 5 (a), so that such claims, when based on contract, would be governed by the Convention. However, article 5 (b) excludes all claims based on "nuclear damage caused by the goods sold"; and such claims excluded under article 5 (b) could be property damages caused by the goods sold.<sup>27</sup> Israel is of the view that the difference in treatment of property damages under article 5 (a) and (b) is not well-grounded. Israel suggests that article 5 (a) should also exclude damage to property other than the goods sold and that article 5 (b) should either be deleted or rephrased to refer to "nuclear damage caused to the goods sold". Denmark also proposes that claims based on damage to property other

<sup>21</sup> It may be noted that article 3 (1) provides the minimum obligation of a Contracting State; thus the Convention does not prohibit the application of the rules contained in this Convention to an international sales of goods in which one or both parties do not have their places of business in Contracting States. Also see para. 124 *infra.*, concerning Norway's proposal to permit a reservation with respect to the scope of application.

<sup>22</sup> Austria, however, is of the view that the last part of article 4 of ULIS, which safeguards the mandatory provisions of national law, should not be introduced.

<sup>23</sup> See para. 16, *supra*.

<sup>24</sup> The need to maintain such a mandatory character in prescription rules are stated in commentary, art. 3 at para. 6 and in paras. 2-6 of the introduction to the commentary.

<sup>25</sup> Thus, the Federal Republic of Germany proposes the following for article 3 (3): "This Convention shall not apply when the parties have validly chosen the law of non-Contracting State or otherwise agreed to exclude the application of the Convention."

<sup>26</sup> As to the legislative intent behind the exclusion of consumer sales, see commentary, art. 4 at paras. 1-3.

<sup>27</sup> As to the legislative intent behind article 5 (a) and (b), see commentary on art. 1 at para. 6 and art. 5 at paras. 1 and 2.

than the goods sold should be excluded from the Convention.<sup>28</sup>

34. On the other hand, Austria is of the view that the exclusion by article 5 (a) of claims based on personal injuries is unfortunate. According to Austria, where the applicable national law provides a shorter limitation period, article 5 (a) might lead to an absurd consequence that claims based on material damage resulting from the same event are subject to a longer limitation period.

35. Mexico points out that article 5 (e) may pose difficult problems for legal systems which follow the Iberian tradition. According to Mexico, invoices concerning sales of goods become documents capable of direct enforcement or execution under those legal systems once the invoices have been acknowledged by the buyer (further, under some legal systems such as those of Brazil and Argentina, "accepted" invoices acquire the status of credit instruments); hence, the exclusion from the Convention of claims arising from invoices for international sale of goods does not seem warranted. Mexico is of the view that article 5 (d) and (f) would assure the necessary exclusion intended by the drafter even without article 5 (e).

#### *Article 6. Mixed contracts*

36. The German Democratic Republic states that the exclusion by article 6 of complex contracts which are growing in international trade might diminish the positive effects sought by means of the unification of the law. Further, in the opinion of the German Democratic Republic, it is customary in the international trade for the buyer to supply a substantial part of the materials for manufacture from the produce of the buyer's country especially in case of contracts with parties from developing countries. Thus, the German Democratic Republic suggests the following in the place of article 6 (2): "Contracts for the supply of goods to be manufactured or produced, including industrial equipment and plant and associated work or services to be performed by the seller, shall be considered to be sales within the meaning of this Convention even if the buyer undertakes to supply a substantial part of the necessary materials."

37. Israel expresses doubt as to the rule contained in article 6 (1). Article 6 (2) excludes "contracts for the supply of goods to be manufactured or produced" where the buyer undertakes to supply a substantial part of the material necessary for such manufacture or production. Yet, according to Israel, in cases where the seller undertakes to supply the main part of the materials, article 6 (1) might be interpreted to exclude manufacture and sale of complex technological devices in which skill and special knowledge form the preponderant component. In the view of Israel, it is difficult to understand why manufacture and sales of such devices should be excluded from the Convention.<sup>29</sup>

<sup>28</sup> Denmark is of the view that the scope of the Convention should be seen in the light of the outcome of current or planned efforts to provide international rules on products liability but that, as the matters stand at present, the exclusion provided in article 5 (a) is appropriate subject to the above observation.

<sup>29</sup> It may be noted that the legislative intent of article 6 (1) was to exclude such contracts where the seller agrees to sell plant and machinery and undertakes to set up the plant as a going concern or to service its installation or setting up. The exclusion of a contract to manufacture and sell complex technological devices seems not to have been intended. See commentary on art. 6 at paras. 2 and 3.

38. Czechoslovakia proposes deletion of the language "a substantial part of the" from article 6 (2) for the reason that the term "substantial part" is too vague and susceptible of different interpretations.

39. United Kingdom suggests that article 6 (1) is otiose and that it should be left for the court to determine whether a particular contract is one for "labour or services" or one of sale of goods. United Kingdom further proposes that article 6 (2) be revised so as to conform with the text of article 6 of ULIS.

#### *Article 7. Interpretation to promote uniformity*

40. Czechoslovakia proposes the deletion of the words "to its international character" for the reason that it is superfluous. On the other hand, the German Democratic Republic proposes that all language after the words "international character" be deleted. Netherlands and Austria propose deletion of this article since, in their opinion, this provision has no substantive significance.

41. AALCC is of the view that a guiding principle should be stated for cases in regard to which no provision has been made in the Convention or can be inferred therefrom. AALCC suggests that where such a case occurs, the judge shall be under a duty to decide in accordance with principles of justice, equity and good conscience.

### THE DURATION AND COMMENCEMENT OF THE LIMITATION PERIOD

#### *Article 8. Length of the limitation period*

42. Austria indicated that the general limitation period of four years was unnecessarily long and that three years would be more appropriate. Five other States (Denmark, Finland, Norway, Sweden and United Kingdom) and ICC are of the view that only a single limitation period should be provided in the Convention. Their preferences as to the length of the period range from three to five years, but most of them indicated their willingness not to insist on a particular length as long as the single limitation period remains within that range.<sup>30</sup> New Zealand thought that the period of four years represented a reasonable compromise. Also see paragraph 48, *infra*.

#### *Article 9. Basic rule on commencement of the period*

43. Czechoslovakia is of the opinion that the Convention should clearly stipulate the starting point of the running of the limitation period with regard to the claim for restitution which may arise from the invalidity or repudiation of a contract, and notes that the date on which such claim becomes "due" under article 9 (1) is susceptible of differing interpretations. Thus, Czechoslovakia proposes the addition of the following phrase at the end of article 9 (1): "or on which the right could have been exercised".<sup>31</sup> Netherlands is also of the

<sup>30</sup> Finland and Denmark propose three years but can also accept four years; Sweden proposes four years but a three-year period is also acceptable; United Kingdom proposes a single period of five years but a minimum of three years is also acceptable; Norway proposes three years. ICC proposes five years but can accept four years as a compromise; no shorter period is acceptable to ICC unless the Convention be modified for a unilateral private act such as a notice in writing to the debtor to interrupt the running of the limitation period. See para. 59, *infra*.

<sup>31</sup> Cf. the proposal of Czechoslovakia concerning the time-limit for the exercise of right to repudiate the contract under art. 1 (2) at para. 11, *supra*.



view that it is not clear under the Convention when the limitation periods of such claims commence.<sup>32</sup> Czechoslovakia points out that, should the above proposal be accepted, article 9 (2) could be deleted because the situation covered thereunder will be covered by the proposed new wording of article 9 (1).

44. Israel is of the view that article 9 should make specific provisions not only for claims based on fraud but also for those claims based on mistake, misrepresentation, duress and the like. Thus, Israel proposes redrafting of article 9 (2) as follows: "For the purpose of paragraph (1) of this article, a claim (or right) becomes due: (a) if based on fraud, misrepresentation or mistake—on the date when they or either of them were discovered by the creditor; (b) if based on breach of contract—on the date when such breach occurred; and (c) if based on some other ground—on the date when the creditor could reasonably have exercised his claim (or right) against the debtor." It will be noted that the proposal also includes the rule contained in the first sentence of the present article 9 (3).

45. Norway points out that the claim under article 9 (2) has no provision concerning its over-all duration, and proposes a draft providing an over-all cut-off point of six years, together with other adjustments of the limitation period.<sup>33</sup>

46. Israel proposes that the rule contained in the second sentence of article 9 (3) should be made applicable throughout article 9.<sup>34</sup> Austria indicates that the second sentence of article 9 (3) should be similar to article 1 (2) and the language "or perform any act other than the institution of legal proceedings" should be inserted after the language "to give notice to the other party".<sup>35</sup>

*Article 10. Claims based on non-conformity of the goods; express undertaking*

47. Five States (Austria, Byelorussian SSR, the German Democratic Republic, Germany (Federal Republic of) and the Union of Soviet Socialist Republics) are of the view that the limitation period of two years provided under article 10 is unduly long. These States and Czechoslovakia indicate that the over-all cut-off period of eight years under article 10 (2) is particularly long. These States generally emphasize that, even shortly after the delivery of goods, it is often difficult to ascertain whether or not a certain defect had existed at the time of the handing over of the goods to the buyer and that it would usually be impossible after eight years to ascertain whether there was a defect or lack of conformity at the time of the handing over of the goods and whether such non-conformity could reasonably have been discoverable earlier by the buyer. Byelorussian SSR and USSR also point out that this period considerably exceeds the limitation periods established for similar claims in most legal systems and

in the existing international agreements<sup>36</sup> and stated that the period of eight years contradicts with the ever-accelerating commercial turnover in the international trade. Thus, the Federal Republic of Germany proposes the substitution of a limitation period of one year for the two-year period under article 10 (1) and of two years for the eight-year period under article 10 (2). In this connexion, Austria points out that if a longer period is desired, the parties can resort to an express undertaking of the kind referred to in article 10 (3).

48. Five States (Denmark, Finland, Norway, Sweden and United Kingdom) and ICC which have proposed the adoption of a single limitation period for all claims covered under the Convention (see para. 42, *supra*) suggest that the limitation period should commence to run from the time of handing over of goods even for claims based on latent defects and these five States propose the deletion of article 10 (2);<sup>37</sup> United Kingdom and ICC emphasize that no shorter period should be provided for claims arising from a defect or other non-conformity of goods. Further, according to Denmark, Norway, Sweden and ICC, article 10 (2) may not be of practical use because the substantive rules of most of the applicable laws which require notification of defects within a shorter period would bar, in any event, the assertion of claims after the expiration of that short period even for those claims based on latent defects. In this connexion, Denmark, Norway and ICC referred to article 39 of ULIS which provides a two-year period as an outside limit within which notice of defects must be given to preserve claims.<sup>38</sup> Norway, however, indicated that, should some special provision be still regarded desirable which would give an additional period for claims arising from a latent defect, such a provision might specify one year from the date on which the defect or lack of conformity is or could reasonably be discovered, with an over-all cut-off point of six years from the time of actual handing over.<sup>39</sup>

49. New Zealand suggests that the limitation period under article 10 (1) should commence to run either from the date of the handing over of the goods or from the date on which legal proceedings could have been brought, whichever is later. According to New Zealand, this modification is necessary because there would be cases where the institution of legal proceed-

<sup>36</sup> The Byelorussian SSR and the USSR refer to the Soviet law under which the limitation period in respect of claims arising from defects in the purchased goods expires not later than one year from the date on which the goods are handed over (arts. 247 and 249 of the RSFSR Civil Code and the corresponding articles of the Civil Codes of the other Union Republics). The USSR also refers to 1968 CMEA General Conditions of Delivery under which the period is 20 or 21 months from the date of delivery (arts. 72, 76, and 94).

<sup>37</sup> Denmark suggests the deletion of article 10 (1), too, and emphasizes the importance of finding a uniform solution on the question of the commencement of the period.

<sup>38</sup> It may be noted that at the fourth session of the UNCITRAL Working Group on the International Sale of Goods, which has been reviewing the 1964 ULIS, the question was raised whether article 39 of ULIS which provides for a cut-off period of two years from the time of the handing over of the goods was consistent with the policy established by UNCITRAL in article 10 (2) of the draft convention on prescription. After exchange of several views, the Working Group decided to defer action on this question pending final action on article 10 (2) of the draft convention on prescription by the United Nations Conference thereon. A/CN.9/75, paras. 66 to 70. Also see the comments of ICC.

<sup>39</sup> See new article 10 (1) and (3) as proposed by Norway in foot-note 45, *infra*.

<sup>32</sup> For example, a question may be raised (a) if the restitution claim becomes due when the party could first exercise his right of repudiation, (b) if the claim becomes due only at the time when the party in fact repudiates the contract, or (c) the date of (a) or (b) above, whichever is earlier.

<sup>33</sup> See new article 10 (2) and (3) as proposed by Norway in foot-note 45, *infra*.

<sup>34</sup> Cf. Norway's proposal in para. 59, *infra*.

<sup>35</sup> Also see Mexico's comment on arts. 1 (2) and 9 (2), at para. 12, *supra*.

ings would be premature prior to giving notice of the defects.<sup>40</sup>

50. The Byelorussian SSR, Czechoslovakia and the USSR are of the view that the language "the date on which the goods are actually handed over" to the buyer as used in article 10 may give rise to disputes and that this provision should be clarified.<sup>41</sup> Sweden discusses drawbacks of the handing-over test from the viewpoint of both the seller and buyer, and advocates that the limitation period for claims based on non-conformity of the goods should commence to run on the date when risk with respect to the goods passes from the seller to the buyer.<sup>42</sup> ICC is also of the view that the passing of the risk may be a more appropriate criterion as the starting point for the running of the limitation period. AALCC notes that the date on which the goods are actually handed over to the buyer may be difficult to apply in a case where the buyer refuses to accept the goods although the seller had placed the goods at the disposition of the buyer. Thus, AALCC proposed that the words "placed at the disposition of the buyer" should be substituted for the words "actually handed over to the buyer".

51. Further AALCC is of the view that the provisions of article 10 (1) and (2) could be amalgamated and simplified without changing their effect and suggests the following: "The limitation period in respect of a claim arising from a defect or lack of conformity shall be two years from the date on which the defect or lack of conformity is or could reasonably be discovered, whichever is the earlier, provided that the limitation period shall not exceed eight years from the date on which the goods are placed at the disposition of the buyer."

52. Where the seller has guaranteed the goods for a certain period of time, the over-all cut-off point provided in article 10 (2) (i.e., eight years from the actual handing over of the goods) is inapplicable. Thus, article 10 (3) provides that the limitation period shall in any event commence "not later than on the date of the expiration of the period of the undertaking". This would mean that, for goods in respect of which such guarantee is given, the formula for calculating the over-all cut-off point is the guarantee period plus two years. Thus, it would appear that the goods which are covered by the guarantee whose duration is at least for six years or more are afforded the same or more protection under the draft convention than those goods which are covered under article 10 (2). However, the length of a guarantee period is affected by a variety of factors and may indeed be only for a few months. Hence, the Byelorussian SSR, the Ukrainian SSR and the USSR point out that a strange situation may develop where the protection provided under article 10 (2) for goods not covered by any guarantee (which are often non-durable goods such as raw materials or food-stuffs) is greater than the protection under article 10 (3) for goods covered by a guarantee the duration of which is relatively short. In the opinion of these

States, this problem provides a further reason for reconsideration of the limitation period for claims arising from defects.<sup>43</sup> Belgium also questions the purpose of article 10 (2). Further, Belgium asks why the text of article 10 (3) did not make a specific reference to an undertaking in the form of a guarantee against defects or lack of conformity.

53. The United Kingdom also refers to the failure of article 10 (3) to distinguish between a guarantee for an extended period and one for a short period. Further, according to the United Kingdom, article 10 (3) does not reflect the normal business effect of a guarantee.

54. Israel proposes that article 10 (3) be simplified as follows: "The provisions of this Convention shall not affect any 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."

55. Denmark and Sweden propose, in addition to the deletion of article 10 (2), that article 10 (3) should simply provide that the limitation period shall be extended for a specified short period beyond the period for which the undertaking is effective.<sup>44</sup>

56. Norway proposes the restructuring of articles 9 and 10. According to Norway, article 9 should contain all the principal rules on the commencement of the limitation period, article 10 should provide special rules for claims based on a latent defect and fraud committed before or at the time of the conclusion of the contract, and article 10 A should contain the rule provided under the present article 10 (3).<sup>45</sup>

<sup>43</sup> In addition, the Byelorussian SSR and the USSR are of the view that, in order to avoid uncertainty, it would be expedient to state clearly the length of the period under article 10 (3) to be two years, should article 10 (3) be maintained.

<sup>44</sup> Sweden suggests that this period should be one year.

<sup>45</sup> The following are the provisions proposed by Norway. It will be noted that these provisions also incorporate the proposals of Norway as described in paragraphs 45 and 48, *supra*:

#### "Article 9

"(1) Subject to the provisions of article 10 [10 A] and 11, the limitation period shall commence on the date on which the claim becomes due.

"(2) For the purpose of this article a claim arising from a breach of the contract shall be deemed to become due on the date on which such breach occurs [but] a claim arising from a defect or other lack of conformity on the date on which the goods are actually handed over to the buyer. Where one party is required, as a condition for the acquisition or exercise of such a claim, to give notice to the other party, the commencement of the limitation period shall not be postponed by reason of such requirement of notice.

#### "Article 10

"[(1) In respect of a claim arising from a defect or other lack of conformity which could not be discovered when the goods are handed over to the buyer, the limitation period shall not expire before the expiration of one year from the date on which the defect or lack of conformity is or could reasonably be discovered.]

"(2) In respect of a claim based on fraud committed before or at the time of the conclusion of the contract, the limitation period shall not expire before the expiration of one year from the date on which the fraud is or could reasonably be discovered.

"(3) The limitation period shall not by reason of this article be extended beyond six years from the date on which the period commences to run under article 9.

#### "Article 10 A

"(Same as the present art. 10 (3)).

"Norway is of the opinion that if the suggested extension in case of latent defects in new article 10 (1) should not be adopted, the rule in new article 10 (2) concerning fraud could be provided in connexion with article 20."

<sup>40</sup> New Zealand considers a similar modification is necessary with regard to article 10 (2). Cf. art. 9 (3).

<sup>41</sup> By way of illustration, the following question has been presented by the USSR: Goods sold on F.O.B. terms, were shipped on board on 1 July, delivered to the port of destination on 1 August, discharged from vessel and placed in a customs warehouse on 15 August, and taken from the warehouse by the buyer on 30 September; when must the goods be deemed to have been "actually handed over" to the buyer?

<sup>42</sup> For detailed reasons against the handing-over test, see the comments of Sweden in document A/CONF.63/6/Add.1.



*Article 11. Termination before performance is due; instalment contracts*

57. The Commentary notes that article 11 (1) is not intended to govern the situation, under some legal systems, whereby circumstances such as repudiation, bankruptcy and the like make the contract automatically terminated before performance is due.<sup>46</sup> According to AALCC, however, the present wording may be construed as including such a case. Therefore, in order to make the intention of the rule clearer, AALCC proposes the following wording for article 11 (1): "If, in circumstances provided for by the law applicable to the contract, it is lawfully terminated by virtue of a declaration made by one party before the time for performance is due, 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 terminated by virtue of such a declaration before performance becomes due, the limitation period shall commence on the date on which performance is due."

58. Israel is of the view that paragraph (1) of this article should make it clear that the limitation period for a claim possessed by the party against whom the contract has been terminated (such as claims for restitution) also commences to run on the date on which the termination has been declared. To this end, Israel proposes that the second part of the first sentence of article 11 (1) be worded as follows: "the limitation period in respect of any claim (or right) based on the contract shall commence on the date when notice is given of the exercise of the right aforesaid". Israel is further of the view that the second sentence of article 11 (1) is superfluous because the rule is already contained in article 9.

59. The Commentary notes that article 11 applies only to the power to declare the contract "terminated" and thus does not govern the situation, under some legal systems, whereby circumstances such as repudiation, bankruptcy and the like before performance is due entitles one party to declare the performance immediately due.<sup>47</sup> Norway is of the view that the rule on the accelerated termination under article 11 should also be made applicable to cases where the party is entitled to accelerate the date at which performance becomes due.<sup>48</sup> Norway is also of the view that it must be made clear that the rule contained in the second sentence of article 9 (3) does not apply to situations covered by article 11.

60. Article 11 (2) provides that where a contract for the delivery of or payment for goods by instalments is declared terminated by a party who is entitled to do so under the law applicable to the contract, the limitation period in respect of "all relevant instalments" commences on the date of such declaration. Israel is of the view that the text of article 11 (2) does not

adequately provide a criterion for determining which instalment should be regarded as "relevant" and particularly whether a past instalment can be regarded as "relevant". Thus, Israel proposes that the word "future" be used either instead of the word "relevant" or in conjunction with it. Belgium proposes that article 11 (2) be deleted.

CESSATION AND EXTENSION OF THE LIMITATION PERIOD

*Article 12. Judicial proceedings*

61. Israel indicates that if the words "judicial proceedings" in article 11 (1) were replaced by the words "legal proceedings", article 12 could cover judicial, arbitral and administrative proceedings by virtue of article 1 (3) (e); articles 13 and 14 would then become unnecessary.<sup>49</sup> ICC is in favour of expanding the causes of interrupting the running of the limitation period to include a unilateral private and less formalistic act such as a notice in writing to the debtor. Cf. article 18. Belgium proposes that the words "as asserting" in article 12 (1) be replaced by the word "asserts" and points out the need to maintain conformity between the French and English texts. United Kingdom and Mexico indicate approval of article 12 (1).

62. Israel states that article 12 (2) is complicated and indicates that the relationship is not clear between article 12 (2) and article 24 (2) which deals with the party's reliance on his claim "as a defence or for the purpose of set-off". Israel is of the view that article 12 (2) should be deleted and that the question of counterclaim should be dealt with article 24 together with the rules on defence and set-off.

63. Norway proposes that the second sentence of article 12 (2) should be replaced by the following language: "provided that the claim and the counterclaim relate to the same contract or to contracts concluded in the course of the same transaction". Norway explains that, when the claims relate to the same contract, it should not be necessary to establish further conditions. United Kingdom is of the view that the second sentence of article 12 (2) should be deleted. Belgium suggests that the words "the act performed in relation to the claim against which the counterclaim is raised" be replaced by the words "the act which caused the limitation period to cease to run in accordance with paragraph 1".

64. AALCC is of the opinion that the Conference should give careful consideration to the relationship between article 12 (2) and other provisions, particularly those of article 10 with regard to claims arising from non-conformity of the goods. In this connexion, AALCC presents the following illustrative problems: (a) A, the seller, on 1 January 1974 hands over to B, the buyer, goods containing defects which can be discovered when the goods are handed over. B does not pay the price, nor does he bring proceedings against A in respect of the defects. On 1 December 1975 A brings an action for the price. B makes a counterclaim in this action on 1 January 1977. Is B's claim out of time by reason of article 10 (1) (because it is brought more than two years after the goods were handed over) or within time by reason of article 12 (2) (because it is deemed to have been asserted on 1 December 1975,

<sup>46</sup> Cf. Commentary, art. 11 at paragraph 5.

<sup>47</sup> *Ibid.*

<sup>48</sup> To this end, Norway proposes the following drafting for paragraph (1):

"If, in circumstances provided for by the law applicable to the contract, one party is entitled to declare the contract terminated or the performance due before the time for performance would otherwise be due, and he exercises ..."

It is also proposed by Norway that the sentence of paragraph (2) should read: "if, under the law applicable to the contract, one party is entitled to declare the contract terminated or the performance as due by reason of such breach, and he exercises ..."

<sup>49</sup> In this connexion, Israel also proposes that the definition of legal proceedings in article 1 (3) (e) be redrafted to include judicial, arbitral and administrative proceedings "whenever authorized by the applicable law".

within two years)? (b) A, the seller, sells and hands over goods to B, the buyer, on 1 January 1973. The goods contain defects which cannot be discovered when the goods are handed over. B does not pay the price, and A institutes proceedings for the price on 30 December 1976. B discovers the defects on 1 October 1977 and makes a counterclaim. Does B's counterclaim relate back to 30 December 1976 by reason of article 12 (2)? If it does, it will relate back to a point of time before the claim fell due; (c) A, the seller, sells and hands over goods to B, the buyer, on 1 January 1973. The goods contain defects which cannot be discovered at the time of handing over. B does not pay the price, and A institutes proceedings for the price on 30 December 1976. The proceedings are protracted and on 1 December 1980, B discovers the defects. He makes a counterclaim on 1 February 1981. Is the claim out of time by reason of the proviso of article 10 (2) (because more than eight years have elapsed from the date the goods were handed over) or within time by the operation of article 12 (2) (because it relates back to 30 December 1976)?

65. The Netherlands is of the opinion that articles 12 and 18 rule out the possibility that proceedings by a creditor's creditor ("third party attachment") will make the limitation period cease to run since these articles refer only to an act performed by "the creditor". According to Netherlands, the above case requires attention because, otherwise, the creditor's creditor would be unable to prevent his debtor from allowing the limitation period to expire.<sup>50</sup>

#### *Article 13. Arbitral proceedings*

66. Article 13 (1) and (2) deal with cases where the parties have agreed to arbitrate and specify the time when the limitation period ceases to run where a party commences arbitral proceedings. According to USSR, the provisions of article 13 (1) and (2) are adequate and article 13 (3) is superfluous.

67. Article 13 (1) provides that any question as to what acts constitute the commencement of arbitral proceedings is to be answered under "the arbitration agreement or by the law applicable to that agreement". According to the Netherlands it is sometimes difficult to ascertain the parties' actual intentions; therefore, it would be desirable to include rules defining the commencement of arbitral proceedings.<sup>51</sup>

68. The United Kingdom and Mexico indicated approval of article 13.

#### *Article 14. Legal proceedings arising from death, bankruptcy or the like*

69. Austria, the Netherlands and Mexico are of the view that article 14 (c) should be worded in such a way as to indicate that 14 (c), like 14 (a) and (b), applies only when the entities listed therein are the debtors. In addition, Mexico proposes that the cases where all the goods of the debtor are sequestered or assigned should also be mentioned in article 14 since such situations are similar to others dealt with in the article. Mexico notes that, even without mentioning such cases, they will be covered by article 14 since the enumeration is illustrative only, but states that a fuller enumeration would be helpful.

70. Japan raises questions concerning the scope of article 14, and asks whether a notice, by a contents-certified mail, requesting the performance of a debt stops the running of the period. In this connexion, Japan noted that article 1 (3) includes administrative proceedings in the definition of legal proceedings.<sup>52</sup>

71. The United Kingdom expressed approval of article 14.

#### *Article 15. Proceedings not resulting in a decision on the merits of the claim*

72. The Netherlands and New Zealand are of the view that the exception at the end of article 15 (2) dealing with voluntary discontinuance should be reconsidered because under this exception a creditor who discovers that the tribunal lacks jurisdiction cannot safely withdraw voluntarily from the proceedings. To solve this problem, New Zealand suggests that the running of the limitation period be suspended during the proceedings and the remaining part of the limitation period continue to run from the day on which these proceedings have ended without a final decision on the merits of the claim. Norway considers that the creditor should be entitled to the additional period when he discontinues the proceedings with the consent of the debtor. Accordingly, Norway proposes that article 15 (2) should conclude as follows: "unless the proceedings have ended because the creditor has discontinued them without the consent of the debtor or [intentionally] allowed them to lapse".<sup>53</sup>

73. Austria points out that the words "a final decision" in the French text of article 15 (1) should be rephrased as "a final decision on the merits of the claim" as in the English text. Belgium and Norway propose the deletion of the word "final" from article 15 (1). In the opinion of these States, there is no reason to require a "final" decision here since the rule of article 15 (1) should apply only when no decision binding on the merits of the claim has been rendered.

74. AALCC points out that it is not clear whether the period of one year referred to in article 15 (2) is to be classified as "the limitation period" so as to make applicable other provisions in the Convention which provide for the cessation, extension and calculation of "the limitation period". AALCC suggests that the intention of the draftsman was probably in the affirmative, and proposes that this should be clarified by describing this period as "an additional limitation period of one year".<sup>54</sup> Belgium suggests that the words "a period of one year" in article 15 (2) be replaced by the words "a further period of one year" and that the word "voluntarily" be added before the word "discontinued".

75. Japan expresses doubt as to the propriety of providing an additional period of one year. United Kingdom proposes the deletion of article 15 (2).

<sup>52</sup> The answer to this question may partly depend on the meaning to be given to the word "proceeding". Cf. art. 18. It may also be noted that the proceedings as illustrated in article 14 are not classified either judicial or arbitral because such classification may differ from State to State and because the classification would not serve any useful purpose. See commentary, art. 1 at paragraph 12. Also see art. 7 and its accompanying commentary.

<sup>53</sup> Norway also proposes that the language "at the time such legal proceedings ended" in article 15 (2) should read "at the time when such legal proceedings ended".

<sup>54</sup> AALCC proposes the same with regard to the additional period of one year provided in article 16 (1).

<sup>50</sup> Cf. art. 1 (3) (a) and (b).

<sup>51</sup> Cf. art. 13 (2).

*Article 16. Proceedings in a different jurisdiction; extension where foreign judgement is not recognized*

76. As has been noted above (paragraph 11), the Convention is essentially concerned with the time within which the parties to an international sale of goods may bring legal proceedings to exercise claims. As is explained more fully in the Commentary to article 16, under articles 12 (1), 13 (1) and 14, when a creditor asserts his claim in legal proceedings for the purpose of satisfying his claim, the limitation period "shall cease to run". Moreover, under article 29, the institution of legal proceedings in one Contracting State is given the same effect in another Contracting State for the purpose of stopping the running of the limitation period. Thus, when a creditor asserts his claim in legal proceedings in a contracting State before the expiration of the limitation period, in the absence of further provisions, the limitation period would never expire in other contracting States. (But see article 22, discussed below.)

77. This will be true even after the original legal proceedings have resulted in a judgement on the merits of the claim. Thus, article 16 provides a basis to bring the limitation period to an end for cases where the creditor seeks to assert his original claim in another Contracting State (a) after he has obtained a judgement on the merits of the claim in one contracting State (paragraph (1)) or (b) after recognition or execution of a judgement on the merits of the claim in one contracting State is refused in another State (paragraph (2)): article 16 stipulates that in such cases the limitation period in respect of the creditor's claim "shall be deemed not to have ceased running by virtue of articles 12, 13 or 14" and provides "an additional period of one year" from the date of the original decision (paragraph (1)) or from the date of the refusal of recognition or execution of the original decision (paragraph (2)) in order for the creditor to institute a new proceeding. It may be noted that article 22, if adopted, will set outer limits on the time for bringing legal proceedings. On the other hand, article 16 diminishes the possibility of unnecessary prolongation of the period allowed for instituting legal proceedings. The general objectives of article 16 seem to have been supported by the Byelorussian SSR, the Ukrainian SSR and the USSR. These States, however, are of the view that it must be made clear that article 16 applies only if the original legal proceeding has been brought in a Contracting State.<sup>57</sup> These States are further of the view that the reference to "an additional period of one year" creates uncertainty particularly when the original limitation has not expired. Thus, these States suggest that the pattern of article 15 (2) should be followed in the text of article 16.<sup>58</sup>

<sup>57</sup> It will be noted that article 29 gives international effect to acts referred to in articles 12, 13 and 14 only when such acts take place in another Contracting State. Thus, this requirement of the first State being a Contracting State is seemingly implied also in article 16 through its reference to articles 12, 13 and 14. However, it may still be arguable that the creditor is given a grace period of one year "in any event" particularly in case of paragraph (2) of article 16. Addition of the word "Contracting" to the texts of article 16 will certainly eliminate such disputes.

<sup>58</sup> The suggested change may be effected by adding at the end of paragraph (1) of article 16 the following: "if, at the time of such decision, the limitation period has expired or has less than one year to run"; and by adding at the end of paragraph (2) the following: "if, at the time of such refusal, the limitation period has expired or has less than one year to run". The words "in any event" would have to be deleted from both paragraphs.

78. Belgium, while not questioning the usefulness of article 16, indicated that it is difficult to accept its present form and wording because the structure of article 16 is incompatible with articles 12 and 29. According to Belgium, the Conference should review the wording of this provision in the light of whatever decisions are taken on articles 22 and 29.

79. The German Democratic Republic raises a question as to the wisdom of article 16 (1) because the provision might encourage the creditor to disregard an unfavourable decision on the merits of his claim rendered in one State and to institute a legal proceeding afresh in another State. Denmark also indicates that article 16 (1) provides the creditor too broad an opportunity to reassert his original claim; it is noted that, under the present wording of article 16 (1), the creditor can reassert his original claim in the second State even after his claim was dismissed on the merits in the first State.<sup>57</sup> In this connexion, Norway proposes that the reassertion of the original claim should be permitted only to the extent that the claim has been admitted by the decision of the first State. Norway is of the opinion that this requirement should also be imposed with regard to article 16 (2) where the party must have resort to the additional period.<sup>58</sup>

80. Austria proposes the deletion of article 16 (2) on the ground that it may improperly revive prescribed claims. Denmark suggests that if article 16 (2) is retained, two requirements must be added: (a) the recognition or execution of a decision given in one State must be sought in another State within the period prescribed by the law applicable, and (b) the period is extended only with regard to that jurisdiction where recognition or execution has been refused. Norway is also of the view that the above two requirements must be added and further suggests other modifications in a proposed redraft.<sup>59</sup>

<sup>57</sup> See commentary, art. 16 at paragraph 2, where such possibility and the question of legal rules such as *res judicata* or "merger" of the claim in the judgement are discussed. It may also be noted that the institution of a new proceeding under article 16 (1) is possible only if he is not precluded from asserting his original claim afresh under the law of the second State.

<sup>58</sup> See foot-note 59, below.

<sup>59</sup> Thus Norway proposes the following provisions for article 16:

*"Article 16*

"(1) Where a creditor has asserted his claim in legal proceedings within the limitation period in accordance with articles 12, 13 or 14 and has obtained a decision binding on the merits of his claim in one State, [and where, under the applicable law, he is not precluded by this decision from asserting his original claim in legal proceedings in another State], the limitation period in respect of this claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14, but the creditor shall, in any event, to the extent that this claim is admitted [recognized] by such decision, be entitled to an additional period of one year from the date of the decision, for the purpose of obtaining satisfaction or recognition of his claim in any such other State.

"[(2) If recognition or execution of a decision rendered on the merits in one State is sought in another State, within any time-limit prescribed by the law applicable, but recognition or execution is refused, the limitation period in respect of the creditor's original claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14, and the creditor shall, in any event, to the extent that such claim is admitted by the decision on the merits, be entitled to an additional period of one year from the date of the refusal for the purpose of obtaining satisfaction or recognition of his claim in such other State.]"

Paragraph (2) is placed within brackets because, according to Norway, that paragraph may not be necessary as an addition to paragraph (1).

81. Israel and South Africa are of the view that the requirement of one year within which a party must institute a new legal proceeding under article 16 is too strict. For this reason, Israel proposes the deletion of article 16. Czechoslovakia is also for the deletion of this article on the grounds that its provisions may bring about difficulties in practice.

82. United Kingdom indicated that no extension should be permitted in the instances provided under article 16 and proposes that the limitation period should be deemed to have continued to run. On the other hand, New Zealand indicated its support of the principle contained in article 16.

83. AALCC points out a discrepancy between articles 15 (1) and 16 (1): in article 16 (1) the word "final" is omitted before the language "decision binding on the merits of his claim". AALCC assumes this omission to be inadvertent, and indicates that there should be uniformity to avoid possible difficulties in applying these provisions.

#### *Article 17. Joint debtors; recourse actions*

84. The Byelorussian SSR, the Ukrainian SSR and the USSR are of the view that article 17, particularly its paragraph (2), should be deleted. In their opinion, dealing with subpurchasers' claims introduces an unnecessary complication into a Convention which is intended to regulate the relations between parties to the international sale of goods. Japan is of the view that article 17 requires further study. Austria, in objecting to article 17 (1), points out that the question whether the parties concerned are in fact jointly and severally liable may not be ascertained until after the law applicable to the obligations has been determined. The United Kingdom is also for the deletion of article 17 and states that the issues raised in this article should be left to national law. Czechoslovakia also proposes the deletion of article 17, and notes that this provision may bring about difficulties in practice.

85. On the other hand, Finland supports article 17 on the ground that it will reduce litigation. Mexico also supports the rules contained in article 17; and suggests that article 17 should be clarified so that its rules, particularly the requirement of notice, do not apply where the creditor included in the legal proceeding the party jointly and severally liable together with the debtor. Israel proposes that under article 17 (1) the limitation period should also cease to run against other joint debtors if the debtor against whom the legal proceedings have been commenced informs such joint debtors that the proceedings have been commenced. AALCC is of the view that, in order to make the intention of article 17 (1) clearer, the phrase "in respect of the claim asserted" should be inserted between the words "the limitation period" and "shall". Belgium points out the absence of a phrase meaning "whichever is the later" in article 17 (2) of the French text and suggests that the French text be brought in line with the English text to make the provisions clearer.

86. Norway emphasizes the importance of the adoption of article 17. According to Norway, in the absence of this provision the creditor would have to commence separate legal proceedings against each codebtor or each seller respectively before the expiration of the limitation period. This would compel the parties to institute unnecessary litigation at a stage which may be inconvenient for all parties. Article 17 (1) is applicable where there is more than one seller or buyer, either

originally at the time of the conclusion of the contract or at a later stage in case of succession (cf. art. 1 (3) (a)). Norway calls attention to the fact that article 17 (1) is not applicable to recourse actions between several codebtors, which are outside the scope of the Convention and governed by municipal law. With regard to article 17 (2), Norway states that this provision gives the buyer an important and necessary remedy against the seller in cases where a subpurchaser institutes proceedings at or near the end of the limitation period. Norway notes that the relations between the buyer and the subpurchaser may be outside the scope of the Convention, but not the relations (e.g. recourse actions) between the buyer and the original seller; consequently, the question of limitation relating to such recourse claims could not be left to municipal law. With regard to article 17 (3), which provides an extended limitation period for instituting separate and formal legal proceedings against a codebtor or the original seller, Norway prefers commencing that period on the date when the first proceedings ended because that date would be the time when the basis for an eventual separate claim has been established or clarified. But Norway indicates that the present formula in article 17 (3) may be accepted as a compromise. New Zealand, while supporting article 17 in principle, is of the view that this article requires further consideration, particularly with regard to article 17 (3).

#### *Article 18. Recommencement of the period by service of notice*

87. As is explained more fully in the Commentary, under article 18 (1) a new limitation period of four years commences to run if the creditor performs acts given specified legal effect under the law of the State where the debtor has his place of business. A conflict between this approach and article 10, which provides a shorter limitation period of two years for certain claims, has been pointed out by seven States (Byelorussian SSR, Czechoslovakia, Germany (Federal Republic of), Israel, Japan, Ukrainian SSR, and USSR) and by AALCC. To solve this problem, AALCC proposes that the language "a new limitation period of four years shall commence" in article 18 (1) be changed to the following: "a limitation period as provided in article 8 shall commence to run afresh"; the Federal Republic of Germany proposes the article should establish "a new limitation period of the initial length".<sup>60</sup>

88. Denmark and Sweden propose the deletion of article 18 on the ground that the reference to national law introduces an element of uncertainty and note that the Convention was designed to remove divergencies under national law. But the United Kingdom considers article 18 satisfactory. New Zealand is of the view that, in the interest of certainty, article 18 should clearly spell out the acts to which the article refers.

89. Austria and Norway state that it would perhaps not be necessary to require that the limitation period which recommences under the law of the State in question be equal to the original limitation period. Belgium proposes that the words in article 18 (1) "recommencing the original limitation period, a new limitation period of four years shall commence on" be replaced by the words "causing a new limitation period

<sup>60</sup> The same problem has been pointed out with regard to article 19 by six States (Byelorussian SSR, Czechoslovakia, Federal Republic of Germany, Israel, Ukrainian SSR and USSR).

to commence to run, such periods shall be four years from".

90. Norway is further of the view that the reference to articles 8 to 11 in article 18 should be reconsidered. Norway considers that article 18 should not refer to articles 9 (2) and 10 (2) and possibly not to article 11.

#### *Article 19. Acknowledgement by debtor*

91. Article 19 (1) is limited to an acknowledgement "in writing". The Federal Republic of Germany is of the opinion that any conduct by which the debtor unequivocally acknowledges his obligation, such as an express oral acknowledgement, should also recommence the limitation period. The Federal Republic of Germany is further of the view that the same effect should also be given where the debtor implicitly acknowledges his obligation—for example, by giving security or by requesting respite from payment (as well as by payment of interest or by partial performance). Denmark supports broadening the application of article 19 (2) to conduct other than payment of interest or partial performance of an obligation. The Netherlands is for giving the same effect to all tacit acknowledgements and indicates preference to use the same wording "expressly or by implication" as used in Rule No. 9 of the Draft European Rules on Extinctive Prescription in Civil and Commercial Matters drawn up by the Council of Europe. Israel is of the view that oral admissions in court should be treated to have the same effect as written acknowledgements. The United Kingdom approves article 19.

92. Israel proposed that the new period should also commence when the debtor acknowledges his obligation after the expiration of the limitation period.

93. Denmark is of the view that a new provision should be added granting the extension of the limitation period where the parties have entered into negotiations on the merits of the claim. According to Denmark, it would not be reasonable that a party should be compelled to resort to litigation to avoid the expiration of the limitation period as long as serious negotiations are going on between the parties. Denmark suggests reconsideration of the approach of an earlier draft of the Convention which permitted such extension during negotiations.<sup>61</sup>

<sup>61</sup> Article 14 of the 1970 draft prepared by the UNCITRAL Working Group on Prescription contained the following provision in brackets:

"[If the creditor and the debtor have entered into negotiations on the merits of the claim [without reserving the right to invoke limitation], and if the fact of such negotiations is evidenced in writing, the limitation period shall not expire before the end of one year from the date on which such negotiations have been broken off or otherwise come to an end, but at the latest one year from the date on which the period would otherwise have expired according to articles 6 to 9]."

[See *Yearbook of the United Nations Commission on International Trade Law*, vol. II: 1971 (United Nations publication. Sales No.: E.72.V.4), p. 87, document A/CN.9/59]. (Articles 6 and 9 cited above correspond to the present articles 8 to 11).

This provision was considered favourably by some because it encouraged negotiation without forcing parties to unnecessary proceedings towards the end of the limitation period. However, the Working Group at its third session in 1971 concluded that this rule should not be recommended for inclusion in the Convention because it employed several tests ("negotiations", "on the merits", "broken off or otherwise come to an end") that would be difficult to apply to concrete situations. In addition, the Working Group was of the view that other provisions, such as the rule on allowance of modification of the period by agreement, were available to avoid the hasty institution of legal proceedings.

#### *Article 20. Extension where institution of legal proceedings prevented*

94. The Netherlands proposes that the words "the debtor might be expected to know" be inserted between "circumstance" and "which" in the first clause of article 20, since the present provision makes it possible for the limitation period to be extended even when the debtor may be ignorant of the preventing circumstances.

95. Norway proposes that the words "beyond the control of the creditor" in the first sentence of article 20 be replaced by the words "not personal to the creditor". This change is suggested because, in the opinion of Norway, article 20 should not cover illness, death or other failure which is personal to the creditor even if such circumstance is beyond his control. Israel proposes that the rule of article 20 be extended so as to include specifically cases of infancy and incapacity.<sup>62</sup>

96. Norway proposes that the over-all limitation of the additional four years should be changed to 10 years. In the opinion of Norway, it is unreasonable and unacceptable to subject the extension to an over-all and final limit of four years when *force majeure* continuing after the expiration of that period still prevents the creditor from preserving his claim.<sup>63</sup> Norway also suggests that the references to articles 8 to 11 should be reconsidered and states that at least the reference to article 9 (2), which contains no over-all limit for the duration of the claim,<sup>64</sup> should be avoided.

97. Israel and ICC propose the deletion of the last sentence of article 20. The United Kingdom proposes the deletion of article 20. Portugal proposes the addition of the following as a second paragraph of article 20:

"(2) When the debtor has sent money orders (orders of payment), during the period fixed by contract and the respective funds have been exchanged in a credit institution of the State in which he maintains his place of business or of the State to which the goods are to be exported, but the corresponding transfer cannot be immediately effected because it has not been authorized by monetary authorities of the State in question, or because of any other reason independent of the will of the parties concerned, the period of limitation may only commence from the date in which the circumstances impeding such transfer have ceased to exist."

#### **MODIFICATION OF THE LIMITATION PERIOD BY THE PARTIES**

##### *Article 21. Modification by the parties*

98. The Federal Republic of Germany and Israel prefer that the parties be free to modify the period and propose the adoption of a rule similar to article 3 of ULIS.<sup>65</sup> The Federal Republic of Germany further proposes that at least the shortening of the limitation period should be permitted, particularly because there are cases such as mass-produced goods where a shorter period is more appropriate than the period provided in article 10 (2).

<sup>62</sup> As to the operation of article 20 and some illustration of preventing circumstances, see commentary, article 20, para. 1.

<sup>63</sup> Norway also indicated that article 20 should be without prejudice to emergency legislation under applicable law.

<sup>64</sup> But see Norway's proposal to amend the present rule contained in article 9 (2) at paragraph 45 and foot-note 45, *supra*.

<sup>65</sup> Cf. foot-note 24, *supra*.

99. Norway states that the phrase "during the running of the limitation period" in the first sentence of article 21 (2) is not satisfactory for cases where the period has ceased running, and suggests the use of the phrase "after the commencement of the limitation period."<sup>66</sup>

100. As to the duration of permissible extension, Norway considers it important that the effect of each declaration be strictly limited in time. At the same time, Norway is of the view that the parties should be allowed to renew the extension in cases where they find it necessary (e.g., during negotiations or while waiting the outcome of related litigation or the course of events); Norway states that, if an over-all limit for the extension is felt necessary at the Conference, this limit should be long enough to meet the needs of the parties (e.g., when the parties wish to wait for a final decision on a matter of legal principle in a pending law suit). To achieve these objectives, Norway proposes the following for article 21 (2):

"The debtor may at any time after the commencement of the limitation period extend the period by a declaration in writing to the creditor. Such declaration shall not have effect beyond the end of three years from the date on which the period would otherwise expire. The debtor may renew the declaration, provided however, that in no event shall the limitation period by reason of declarations under this article be extended beyond the end of ten years from the date on which it would otherwise expire in accordance with this Convention."

ICC also considers that it is important to allow parties to extend the period for the purpose of negotiations even beyond the presently prescribed over-all time-limit.

101. Norway further points out that the present draft of the Convention does not regulate the validity of a waiver of the defence of limitation (i.e., agreement not to invoke limitation as a defence in legal proceedings). Norway is of the view that the matter consequently will be governed by municipal law (cf. art. 23).

102. The Byelorussian SSR and the USSR question the justification for distinguishing arbitral and administrative proceedings from judicial proceedings with respect to the effects of modification to the limitation period by the parties under article 21 (3). The United Kingdom on the other hand considered article 21 satisfactory and attached great importance to the retention of article 21 (3) in the present form.

#### LIMIT OF EXTENSION AND MODIFICATION OF THE LIMITATION PERIOD

##### *Article 22. Over-all limitation for bringing legal proceedings*

103. The United Kingdom supports the view that there should be an over-all limitation period if it is decided to retain provisions such as articles 10, 15, 16, 17 and 20. New Zealand also indicates its support of the article. Mexico supports article 22, provided that article 1 (2) concerning "*déchéance*" is clarified in relation to articles 9 (3), 21 (3) and 22.<sup>67</sup> The German Democratic Republic is of the view that the length of the over-all limitation period should be determined taking account of the commercial problems arising

when parties have their places of business in different States. AALCC expresses the view that article 22 is desirable and should be retained in the Convention; in the absence of an over-all cut-off point, the period might be substantially prolonged to such an extent that the purpose of prescription is defeated.

104. The Federal Republic of Germany proposes that the clause "no legal proceedings shall in any event be brought" in article 22 of the English text should be replaced by the clause "all claims are barred by reason of limitation". This change, in the opinion of the Federal Republic of Germany, will not only conform to the French text and also would make it clear that the effect of the expiration of the period provided herein is not different from the effect provided in article 24 and in article 23.

105. Norway and ICC propose the deletion of article 22. Norway's proposals to amend articles 20 and 21 (paras. 96 and 100, *supra*) may be noted in this connexion.

#### EFFECTS OF THE EXPIRATION OF THE LIMITATION PERIOD

##### *Article 23. Who can invoke limitation*

106. Mexico and the United Kingdom express their approval of this article. Belgium proposes redrafting of this article as follows: "In the event of legal proceedings, prescription (of an action or of a claim) may be invoked as a defence only at the request of a party to such proceedings." Also see paragraphs 122 and 123, *infra*, concerning article 35.

##### *Article 24 (1). Effect of expiration of the period*

107. Mexico is of the view that article 24 (1) and article 23 are inconsistent. According to Mexico, the principle formulated in article 24 is tantamount to saying that a claim for which the limitation period has expired cannot be enforced by legal action; or that, in case of judicial proceeding, the judge himself would of his own motion enforce the limitation.<sup>68</sup> Belgium proposes that the word "enforced" in article 24 (1), which could suggest the enforcement of a judgement, be replaced by the word "exercised".

##### *Article 24 (2). Set-off*

108. Article 12 (1) defines the time when the limitation period ceases to run by the institution of a judicial proceeding before the expiration of the limitation period. Article 12 (2) deals with the point in time when a counterclaim is deemed to have been instituted with a view to promote efficiency and economy in litigation by encouraging consolidation of actions rather than the hasty bringing of separate actions. Thus, it is possible, under article 12 (2), that a claim that was time-barred may nevertheless be asserted in proceedings that had been commenced before the expiration of the limitation period. The Byelorussian SSR, the Ukrainian SSR and the USSR point out that the rule of article 12 (2) constitutes another exception to the general rule of article 24 (1) that a time-barred claim shall not be recognized nor enforced in any legal proceedings. In addition, these States advocate that the rules of articles 12 (2) and 24 (2) be consolidated.

<sup>66</sup> For the purpose underlying the quoted provision of article 21 (2), see commentary, art. 21 at para. 3.

<sup>67</sup> See para. 12, *supra*.

<sup>68</sup> The question presented by Mexico may appear to be whether the introductory proviso to article 24 (1) is sufficient to erase such a conflict.



109. According to these States, the scope of admissibility of the use of time-barred claims under article 24 (2) is too broad. They suggest that the requirement used in article 12 (2) (i.e., "shall relate to a contract or contracts concluded in the course of the same transaction") should be adopted as a criterion in case of assertion of a claim "as a defence or for the purpose of set-off".<sup>69</sup> Further, these States are of the opinion that it may be better to refer to "the same contract or several interconnected contracts" in lieu of "a contract or contracts concluded in the course of the same transaction". Israel also proposes that the rule of article 12 (2) combined with article 24 (2) and suggests that article 24 (2) should be redrafted so as to allow a set-off or counterclaim (whether in defence or otherwise) only when both claims relate to a contract concluded in the course of the same transaction. The United Kingdom proposes that the principle contained in article 24 (2) be assimilated to that contained in article 12 (2), subject to its comments on that article.<sup>70</sup> Norway proposes that article 24 (2) (a) should be redrafted as follows: "(a) If both claims relate to the same contract or to contracts concluded in the course of the same transaction".<sup>71</sup> Belgium prefers that the question of a set-off be dealt with separately from the general principle that the party whose action is prescribed may still, in exceptional cases, rely on his claim as a defence.

*Article 25. Restitution of performance after prescription*

110. Mexico and the United Kingdom expressed their approval of this article.

**CALCULATION OF THE PERIOD**

*Article 27. Basic rule*

111. It is the view of Israel that it would be simpler if limitation periods were universally calculated by reference to the Gregorian calendar and to provide that these periods expire, in all cases, on the eve of the day before the date which corresponds to the date on which the period commenced to run. Mexico and the United Kingdom indicated their approval of article 27.

*Article 28. Effect of holiday*

112. Article 28 deals with a technical question that arises when the last day of the limitation period falls on an official holiday or other *dies non juridicas*. This article is made applicable only to the commencement of legal proceedings other than arbitral proceedings. Arbitral proceedings were excluded from article 28 in view of the informality that is usual with respect to procedures for instituting arbitration. See article 13 (2). However, the Byelorussian SSR and the USSR are of the view that arbitral proceedings should not be excluded from article 28. According to them, making arbitral proceedings subject to article 28 would not create difficulties in the case of an *ad hoc* arbitration,

<sup>69</sup> As to the difference, under the present draft, between a counterclaim calling for affirmative recovery and the reliance on a claim "as a defence or for the purpose of set-off", see commentary, art. 24 at para. 3.

<sup>70</sup> See para. 63, *supra*. (The comment of the United Kingdom refers to article 10 (3) but probably this would mean article 12 (2).)

<sup>71</sup> As to the reason for this proposal, see para. 63, *supra*.

and would be most beneficial in the case of a permanent or institutional arbitration.<sup>72</sup>

113. Belgium proposes that the words "as envisaged in" in the text of article 28 be replaced by the words "in accordance with". Mexico and the United Kingdom indicated their approval of article 28.

**INTERNATIONAL EFFECT**

*Article 29. Acts or circumstances to be given international effect*

114. Japan doubts the adequacy of this provision. It is observed that at present there is no internationally established standard for legal proceedings, and that the kind of procedural steps required under article 29 is not clear. Austria is of the view that international effect should be given only for those acts which are capable of being recognized or executed in the States where such effect is sought.<sup>73</sup> New Zealand suggests that States be permitted to make a reservation limiting the effect in such States of legal proceedings in other States.

115. Denmark indicates that the relationship between article 29 and other provisions in the Convention is extremely complex, and proposes that the rules on international effects of acts or circumstances which stop the running of the limitation period should be embodied in a single article. Article 29 is acceptable to Mexico. The United Kingdom reserved its position on this provision.

**PART II. IMPLEMENTATION**

*Article 30. Implementing legislation*

116. Austria is of the view that this article is superfluous since the Convention contains in itself the uniform rules and that the rules are self-executory in nature. On the other hand, Mexico notes that, under its constitutional system, approval of an international convention by the Senate of the Republic gives the convention the force of law throughout the Republic, and expresses its approval of this article. AALCC indicates that article 30 should be carefully examined in the light of the various constitutional procedures in different States for implementing international conventions.<sup>74</sup> Belgium proposes that this article be deleted because it is susceptible of different interpretations.

*Article 31. Implementing process in a federal State*

117. Austria, a federal State, indicates that all the articles of the present Convention will come within the jurisdiction of the federal authority; consequently article 31 (c) should be amended so as not to impose on Austria the obligation laid down in article 31 (c). Norway considers that the drafting of article 31 should be improved.

*Article 32. Non-applicability as to prior contracts*

118. Mexico proposes the substitution of "and" for "or" in article 32 for the reason that each Contracting State would be obliged to apply the Convention to contracts concluded on the day of entry into force of

<sup>72</sup> As to the obligatory "arbitration" not based on an agreement, see foot-note 1 in the commentary on art. 13.

<sup>73</sup> As to the other details of the proposal and its relationship to article 18, see the text of the comment of Austria in document A/CONF.63/6/Add.1.

<sup>74</sup> As to the legislative intent of this provision, see commentary, art. 30 at para. 2.

the Convention "and", *a fortiori*, to contracts concluded after that date. To the United Kingdom, this article is satisfactory.

### PART III: DECLARATIONS AND RESERVATIONS

#### *Article 33. Declarations limiting the application of the Convention*

119. The United Kingdom and New Zealand are of the view that it is important that this article should be retained. Norway proposes that article 31 (2) and (3) of an earlier draft prepared in 1971 by the UNCITRAL Working Group on Prescription should be restored after paragraph (1).<sup>75</sup>

#### *Article 34. Reservation with respect to actions for annulment of the contract*

120. Israel is of the view that a provision should be added to this article to the effect that a Contracting State which made a declaration under this article shall not be entitled to expect other Contracting States to apply the Convention on this point.

121. Mexico stated approval of this provision. The United Kingdom indicated no objection to the inclusion of this article to the Convention.

#### *Article 35. Reservation with respect to who can invoke limitation*

122. Austria is of the view that it would be highly desirable to dispense with the reservation permitted under article 35 because the major consequence of the expiration of the limitation period should be unified.

123. Israel proposes a provision similar to that proposed with regard to article 34 (see para. 120, *supra*). Mexico states approval of article 35. The United Kingdom indicates no objection to the inclusion of this article to the Convention.

#### *Article 35 A. Declaration extending the scope of application*

124. Norway proposes the addition of a new article 35 A as follows: "A Contracting State may declare, at the time of the deposit of its instrument of ratification or accession to this Convention, that it will apply the provisions of the Convention regardless of whether the seller and buyer have their places of business on Contracting or non-Contracting States."

<sup>75</sup> These provisions appear in A/CN.9/70 mentioned in footnote 14, and read as follows:

"(2) Any Contracting State may at any time declare with reference to such State and one or more non-Contracting States that a contract of sale between a seller having a place of business in one of these States and a buyer having a place of business in another of these States shall not be considered international within the meaning of article 2 [and 3] of this Convention because they apply the same or closely related legal rules to sales which in the absence of such a declaration would be governed by this Convention.

"(3) If a State which is the object of a declaration made under paragraph 2 of this article subsequently ratified or accedes to this Convention, the declaration shall not remain in effect unless the ratifying or acceding State declares that it will accept it."

These two paragraphs have not been included in the present draft convention because it was thought that these rules were no longer necessary because of the rule contained in article 3 (1) which restricts the application of the Convention to parties having place of business in different Contracting States. But see the proposal of Norway at paragraph 124 *infra*.

#### *Article 36. Relationship with conventions containing limitation provisions in respect of international sale of goods*

125. It has been suggested that article 49 of ULIS is in conflict with some of the provisions of Part I of this Convention.<sup>76</sup> One comment is based on the fact that article 36, whereby the present Convention yields to conflicting provisions, another Convention is applicable only when "the seller and buyer have their places of business in States parties to such a convention." Consequently, under the rule of article 36 of this Convention, a State that is a party to the 1964 Hague Convention relating to ULIS would have to apply the present Convention in exclusion of article 49 of ULIS if the place of business of one of the parties to the sales contract is not located in a State which is a party to the Hague Convention. In this connexion, Israel, which adheres to the Hague Convention without any reservation, raises the following question: Under these conditions, may a party to the 1964 Hague Convention depart from its terms? According to Israel, this question is important in order to permit a more universal adhesion to the present Convention. Thus, Israel solicits the expression of views of other States as to the possible conflict between the two conventions.<sup>77</sup>

126. AALCC is of the view that the text contained in the proviso to article 36 (1) could be made more definite by specifying the time at which the seller and buyer must have their places of business in States parties to a different convention. AALCC presents the following example to illustrate the problem created by article 36 (1): A (the buyer) has his place of business in State X, and B (the seller) in State Y. At the time of the conclusion of the contract both States are parties to this Convention which therefore applies. However, only State X is a party to another convention which also partly deals with limitation. After the institution of legal proceedings, however, State Y has also acceded to the other Convention.

#### *Article 38. Reservations<sup>78</sup>*

127. Mexico agrees to the period of three months appearing between brackets in article 38.

### PART IV. FORMAL AND FINAL CLAUSES

#### *Articles 39 and 41. Signature and accession*

128. The German Democratic Republic believes that this Convention should be open for signature or accession by all States which implement in their policies the purposes and principles of the Charter of the United Nations.

#### *Article 42. Entry into force*

129. Mexico indicates approval of article 42, including the period of six months kept in brackets.

<sup>76</sup> See commentary, art. 36 at paragraph 2.

<sup>77</sup> Also see the text of the comments submitted by Israel in document A/CONF.63/6/Add.1.

<sup>78</sup> No comments or proposals were received with respect to article 37. The formal and final clauses set forth in articles 37 and following were not considered by the United Nations Commission on International Trade Law. At the 5th meeting the Commission agreed that these articles should be submitted for consideration to the Conference. (See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17, para. 22.*)



*Article 44. Declaration on territorial application*

130. The German Democratic Republic proposes the deletion of article 44 on the grounds that its provisions are not in conformity with the Charter of the United Nations and the Declaration on the Granting of

Independence of Colonial Countries and Peoples by the United Nations General Assembly on 14 December 1960.

131. The United Kingdom indicates preference for alternative rule A offered for the text of article 44.

**E. REPORT OF THE FIRST COMMITTEE***Document A/CONF.63/9 and Add. 1-8*

[Original: English]  
[10-12 June 1974]

**I. Introduction****A. SUBMISSION OF THE REPORT**

1. By its resolution 2929 (XXVII) of 28 November 1972, the General Assembly of the United Nations decided that an international conference of plenipotentiaries should be convened in 1974, to consider the question of prescription (limitation) in the international sale of goods, and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. Subsequently, by its resolution 3104 (XXVIII) of 12 December 1973, the General Assembly requested the Secretary-General to convene the United Nations Conference on Prescription (Limitation) in the International Sale of Goods at United Nations Headquarters, New York, from 20 May to 14 June 1974.

2. The United Nations Conference on Prescription (Limitation) in the International Sale of Goods opened on 20 May 1974 at United Nations Headquarters, New York. At its 2nd plenary meeting, on 21 May 1974, the Conference, in accordance with rule 46 of its rules of procedure (A/CONF.63/8), established two Main Committees (the "First Committee" and the "Second Committee"). Subject to review by the General Committee, the Conference at its 3rd plenary meeting entrusted the First Committee with the consideration of the following parts of the Draft Convention on Prescription (Limitation) in the International Sale of Goods prepared and approved by the United Nations Commission on International Trade Law (UNCITRAL) (A/CONF.63/4): Part I: substantive provisions (articles 1-29) and Part III: declarations and reservations (articles 33-38). At the 2nd meeting of the General Committee held on 5 June 1974, it was decided that consideration of articles 37 and 38 should be assigned to the Second Committee. The present document contains the report of the First Committee to the Conference on its consideration of the draft articles referred to it.

**B. ELECTION OF OFFICERS**

3. At its 2nd plenary meeting on 21 May 1974, the Conference unanimously elected Mr. Mohsen Chafik (Egypt) as Chairman of the First Committee. By acclamation on the same day, at the 1st meeting of the First Committee, Mr. Nehemias Guieros (Brazil) and Mr. E. Krispis (Greece) were elected Vice-Chairmen and Mr. Ludvik Kopác (Czechoslovakia) was elected Rapporteur of the First Committee. At its 3rd meeting on 22 May 1974, the First Committee unanimously elected Mr. Leang Huat Khoo (Singapore) Vice-Chairman of the First Committee.

**C. MEETINGS, ORGANIZATION OF WORK AND PLAN OF THIS REPORT****(i) Meetings**

4. The First Committee held 25 meetings, between 21 May and 6 June 1974.

**(ii) Organization of work**

5. The First Committee proceeded mainly by way of an article-by-article discussion of the draft articles before it and of the amendments to these draft articles submitted by representatives during the Conference. After initial consideration of an article and amendments by the First Committee, and subject to the decisions taken on these amendments, the article was referred to the Drafting Committee. In certain instances, the First Committee only voted upon the principle contained in a draft article or amendment, with the Drafting Committee being requested to formulate a precise text for any such principles that received approval in the First Committee.

6. At its 5th plenary meeting on 6 June 1974, the Conference decided that the Drafting Committee should report directly to the plenary Conference on the matters that had been referred to it by the First Committee.

**(iii) Plan of this report**

7. This report describes the work of the First Committee relating to each article before it, in accordance with the following scheme:

- (a) Text of UNCITRAL's draft article;
- (b) Texts of amendments, if any, with a brief indication of the manner in which they were dealt with;
- (c) Proceedings of the First Committee, subdivided as follows:
  - (i) Meetings
  - (ii) Consideration of the article.

**II. Consideration by the First Committee of the articles on prescription (limitation) in the international sale of goods****ARTICLE 1****A. UNCITRAL TEXT**

8. The text of the United Nations Commission on International Trade Law provided as follows:

**"Article 1**

"1. This Convention shall apply to the limitation of legal proceedings and to the prescription of the

rights of the buyer and seller against each other relating to a contract of international sale of goods.

"2. This Convention shall not affect a rule of the applicable law providing 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' and 'seller', or 'party', mean persons who buy or sell, or agree to buy or sell, goods, and the successors to and assigns of their rights or duties under the contract of sale;

"(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 the 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, administrative and arbitral proceedings;

"(f) 'Person' includes corporation, company, association or entity, whether private or public;

"(g) 'Writing' includes telegram and telex."

## B. AMENDMENTS

9. Amendments were submitted to article 1 by Czechoslovakia (A/CONF.63/C.1/L.5), Brazil (A/CONF.63/C.1/L.25), France (A/CONF.63/C.1/L.22 and L.34), Germany (Federal Republic of) (A/CONF.63/C.1/L.20), India (A/CONF.63/C.1/L.27), Kenya (A/CONF.63/C.1/L.26), the Netherlands (A/CONF.63/C.1/L.36), the Philippines (A/CONF.63/C.1/L.35), the United Kingdom (A/CONF.63/C.1/L.11) and the United States (A/CONF.63/C.1/L.14).

10. These amendments were to the following effect:

### Paragraph 1

(a) *Czechoslovakia* (A/CONF.63/C.1/L.5):

At the end of paragraph 1, after the words "each other", substitute the following: "arising from a contract of international sale of goods, its breach, termination or invalidity".

[Adopted in substance; see paragraph 13, below.]

(b) *United States* (A/CONF.63/C.1/L.14):

In paragraph 1, insert the word "movable" before "goods".

[Referred to the Drafting Committee; see paragraph 13, below.]

(c) *Federal Republic of Germany* (A/CONF.63/C.1/L.20):

Add the following second sentence:

"The question whether the limitation or prescription is regarded as a part of the substantive law or as procedural, is left to the rules of the applicable law."

[For action, see paragraph 14, below.]

(d) *Brazil* (A/CONF.63/C.1/L.25):

Instead of "to the prescription of the rights", paragraph (1) shall read: "to the extinction of the rights".

[Withdrawn; see paragraph 14, below.]

(e) *France* (A/CONF.63/C.1/L.34):

Replace the text of article 1 by the following:

"1. This Convention shall apply, in relations arising out of a contract of international sale of goods, to questions relating to the time-limits at the expiry of which:

"(a) The creditor may no longer assert his claims in a proceeding.

"(b) The debtor may oppose the implementation of a claim."

In this Convention "time-limits" means the time-limits specified above.

[Adopted in substance; see paragraph 14, below.]

(f) *Netherlands* (A/CONF.63/C.1/L.36):

Replace the text of article 1 by the following:

"1. This Convention shall apply where in relation to a contract of international sale of goods the possibility of instituting legal proceedings or a right of the buyer or seller against each other extinguishes by lapse of time."

[Withdrawn; see paragraph 14, below.]

### Paragraph 2

*United Kingdom* (A/CONF.63/C.1/L.11):

After the words "a rule of the applicable law", insert the words "or a term of the contract of sale".

[Withdrawn; see paragraph 12, below.]

### Paragraph 3

(a) *France* (A/CONF.63/C.1/L.22):

Add the following new paragraph (a):

"(a) 'Prescription' means any extinction of the rights, claims, or actions of the buyer and seller against each other;" (reletter the other subparagraphs.)

[Withdrawn; see paragraph 14, below.]

(b) *United States* (A/CONF.63/C.1/L.14):

Add the following to paragraph (e):

"other than proceedings commenced upon the occurrence of the death or incapacity of the debtor, the bankruptcy or insolvency of the debtor, or the dissolution or liquidation of a corporation, company, association or entity".

[Consideration postponed; see paragraph 13, below.]

(c) *Kenya* (A/CONF.63/C.1/L.26):

Paragraph (3) (f) should read:

"(f) 'Person' includes corporation, company, association or entity, whether private or public, which can sue or be sued in its own name under its national law."

[Adopted, with some modification; see paragraph 15, below.]

(d) *India* (A/CONF.63/C.1/L.27):

Paragraph (3) (f) should read:

"(f) 'Person' includes corporation, company, association, or entity, whether private or public, which can sue or be sued in its own name under its national law but does not include a government when the legal proceedings are taken by that government in its own territory."

[Rejected; see paragraph 15, below.]

(e) *Philippines* (A/CONF.63/C.1/L.35):

After paragraph 3 (f) insert the following new paragraph 3 (g), the existing paragraph 3 (g) becoming paragraph 3 (h):

"(g) 'Limitation of legal proceedings' and 'prescription of the rights' as used in paragraph 1 of this article both have the same meaning, to wit: loss of the right of action of the creditor due to his failure to institute legal proceedings within a prescribed period of time after the claim becomes due."

[Withdrawn; see paragraph 14, below.]

(f) *Singapore* (A/CONF.63/C.1/L.21):

Add the following definition after paragraph (g).

"(h) 'Year' means a year reckoned according to the Gregorian calendar."

[Adopted; see paragraph 13, below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

### (i) Meetings

11. The First Committee considered article 1 at its 1st, 2nd, 3rd, 4th and 6th meetings, on 21, 22, 23 and 24 May 1974.

### (ii) Consideration

12. At the 2nd meeting the amendment by the United Kingdom (A/CONF.63/C.1/L.11) was withdrawn.

13. At the 3rd meeting an oral amendment, introduced by Greece at the 1st meeting, was adopted. It replaced in article 1, paragraph 2, the words "shall not affect a rule of the applicable law providing" by "shall not apply to". The Committee referred the first part of the amendment by the United States (A/CONF.63/C.1/L.14) to the Drafting Committee. The First Committee decided to consider the second part of the United States amendment relating to article 1, paragraph 3 (e) (A/CONF.63/C.1/L.14) in connexion with article 14. The Committee adopted the amendment by Singapore (A/CONF.63/C.1/L.21). An oral amendment by the Netherlands to delete article 1, paragraph 3 (f) was rejected by a vote of 17 to 11. The First Committee adopted the substance of the amendment by Czechoslovakia (A/CONF.63/C.1/L.5).

14. At the 4th meeting the representatives of the Netherlands and Brazil withdrew their proposed amendments (A/CONF.63/C.1/L.36 and L.25, respectively). The amendment by France (A/CONF.63/C.1/L.34), which superseded an earlier amendment by France (A/CONF.63/C.1/L.22), was orally amended by France so as to add "between the buyer and the seller" after the words "in relations". The substance of the amendment by France (A/CONF.63/C.1/L.34), as amended, was adopted. The amendment by the Philippines (A/CONF.63/C.1/L.35) was withdrawn. As to the amendment by the Federal Republic of Germany (A/CONF.63/C.1/L.20) the Committee decided that, if there will be a preamble to the Convention, the substance of the amendment should appear therein.

15. At the 6th meeting the amendment by India (A/CONF.63/C.1/L.27) was rejected. The representative of Kenya deleted the final words: "under its national law" in his amendment (A/CONF.63/C.1/L.26). The Committee adopted the amendment as thus subamended, by a vote of 12 to 11, after deleting the words "in its own name" by a vote of 20 to 4.

## ARTICLE 2

### A. UNCITRAL TEXT

16. The text of the United Nations Commission on International Trade Law provided as follows:

### "Article 2

"[1. For the purposes of this Convention, a contract of sale of goods shall be considered international if, at the time of the conclusion of the contract, the seller and buyer have their places of business in different States.]

"2. Where a party to the contract of sale has places of business in more than one State, his place of business for the purposes of paragraph (1) of this article and of article 3 shall be his principal place of business, unless another place of business has a closer 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.

"3. Where a party does not have a place of business, reference shall be made to his habitual residence.

"4. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract shall be taken into consideration."

### B. AMENDMENTS

17. Amendments were submitted to article 2 by Australia (A/CONF.63/C.1/L.1), Belgium (A/CONF.63/C.1/L.151), France (A/CONF.63/C.1/L.38), India and Kenya (A/CONF.63/C.1/L.53), Norway (A/CONF.63/C.1/L.28), the Ukrainian SSR (A/CONF.63/C.1/L.24), the United Kingdom (A/CONF.63/C.1/L.12) and the United States (A/CONF.63/C.1/L.15).

18. These amendments were to the following effect:

#### *Article 2 as a whole*

(a) *Australia* (A/CONF.63/C.1/L.1): (part pertaining to article 2.)

The present article 2 should be replaced by the following;

#### *"Article 2*

"(1) This Convention shall apply when, at the time of the conclusion of the contract, the seller and buyer have their places of business in different States.

"(2) 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.

"(3) Where a party to the contract of sale has places of business in more than one State, his place of business for the purposes of paragraph (1) of this article shall be his principal place of business, unless another place of business has a closer 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.

"(4) Where a party does not have a place of business, reference shall be made to his habitual residence.

"(5) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract shall be taken into consideration."

[Withdrawn except for paragraph 2 which was adopted; see paragraph 21, below.]

(b) *United Kingdom* (A/CONF.63/C.1/L.12):

Delete this article.

[Rejected; see paragraph 20, below.]

(c) *Norway* (A/CONF.63/C.1/L.28):

Subamendment to the Australian amendment (A/CONF.63/C.1/L.1) pertaining to article 2.

Article 2, paragraph 1, should read as in the original text (A/CONF.63/4).

[Withdrawn; see paragraph 21, below.]

(d) *France* (A/CONF.63/C.1/L.38):

The present article 2, paragraph 1, should be replaced by the following text:

"1. All States parties to a Convention on the International Sale of Goods that may be concluded under the auspices of the United Nations, or to the Convention on the International Sale of Goods signed at The Hague on 1 July 1964, shall apply the provisions of such a Convention with regard to the definition of a contract of international sale of goods."

The present paragraph 2 should be replaced by the following text:

"2. For other States, a contract of sale of goods (continue with the text of the present paragraph as it stands)."

The present paragraph 2 should become paragraph 3.

The present paragraph 3 should become paragraph 4.

The present paragraph 4 should become paragraph 5.

[Referred to a working group; see paragraph 20, below.]

#### Paragraph 1

(a) *United States* (A/CONF.63/C.1/L.15):

In paragraph 1, remove the brackets, insert "only" before "if" and insert "contracting" before "States".

[Consideration deferred; see paragraph 21, below.]

(b) *Belgium* (A/CONF.63/C.1/L.151):

Paragraph 1 shall read:

"1. This Convention shall apply to international sale of goods when, at the time of the conclusion of the contract, the seller and the buyer have their places of business in different Contracting States."

[Referred to the plenary; see paragraph 22, below.]

#### Paragraph 2

(a) *India and Kenya* (A/CONF.63/C.1/L.53):

Paragraph 2 of article 2 shall read:

"2. Where a party to a contract of sale has places of business in more than one State, his place of business for the purposes of paragraph 1 of this article and of article 3 shall be that place of business 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."

[Adopted; see paragraph 21, below.]

#### Paragraph 4

(a) *Ukrainian SSR* (A/CONF.63/C.1/L.24):

Insert the following at the beginning of paragraph 4: "For the purposes of paragraphs 1 and 3 of this article,".

[Referred to the Drafting Committee; see paragraph 21, below.]

### C. PROCEEDINGS IN THE FIRST COMMITTEE

#### (i) Meetings

19. The First Committee considered article 2 at its 4th, 5th, 6th, 7th and 25th meetings, on 23 and 24 May 1974 and on 6 June 1974.

#### (ii) Consideration

20. At the 6th meeting the amendment by the United Kingdom (A/CONF.63/C.1/L.12) was rejected by a vote of 28 to 9. The amendment by France (A/CONF.63/C.1/L.38) was referred to an informal Working Group established to consider the relationship between this Convention and existing and future conventions containing definitions of the international sale of goods.

21. At the 7th meeting Brazil proposed an oral amendment to add at the end of article 2, paragraph 1, the words "and the goods are in the course of carriage or will be carried from the territory of one State to the territory of another." The oral amendment by Brazil, was rejected. The representative of Australia withdrew his amendment of article 2 (A/CONF.63/C.1/L.1), except the new paragraph 2 proposed therein. The Committee adopted this paragraph 2 by a vote of 17 to 7. The amendment by Norway (A/CONF.63/C.1/L.28) was withdrawn as far as it pertained to article 2. Consideration of the amendment by the United States (A/CONF.63/C.1/L.15) was deferred until the discussion of article 3. The amendment by India and Kenya (A/CONF.63/C.1/L.53) was adopted by a vote of 19 to 7. The amendment by the Ukrainian SSR (A/CONF.63/C.1/L.24) was referred to the Drafting Committee. An oral amendment by Greece, proposing deletion of paragraph 4 of article 2, was rejected by a vote of 15 to 13.

22. At its 25th meeting the Committee referred the amendment by Belgium (A/CONF.63/C.1/L.151) to the plenary meeting.

### ARTICLE 3

#### A. UNCITRAL TEXT

23. The text of the United Nations Commission on International Trade Law provided as follows:

#### "Article 3

"1. This Convention shall apply only when at the time of the conclusion of the contract, the seller and buyer have their places of business in different Contracting States.

"2. Unless otherwise provided herein, this Convention shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

"3. This Convention shall not apply when the parties have validly chosen the law of a non-Contracting State."

#### B. AMENDMENTS

24. Amendments were submitted to article 3 by Australia (A/CONF.63/C.1/L.1 and L.73), Austria (A/CONF.63/C.1/L.6 and L.7), Denmark (A/CONF.63/C.1/L.4), Germany (Federal Republic of) (A/CONF.63/C.1/L.39), Greece (A/CONF.63/C.1/

L.42), the Netherlands (A/CONF.63/C.1/L.43), Norway (A/CONF.63/C.1/L.2 and L.28) and the United States (A/CONF.63/C.1/L.16).

25. These amendments were to the following effect:

*Article 3 as a whole*

(a) *Australia* (A/CONF.63/C.1/L.1) (part pertaining to article 3):

The present article 3 should be replaced by the following:

*"Article 3"*

"(1) Unless otherwise provided herein, this Convention shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

"(2) This Convention shall not apply when the parties have by declaration in writing excluded its application."

[Withdrawn by implication; see paragraph 28, below.]

(b) *Norway* (A/CONF.63/C.1/L.2):

Article 3 shall read:

"(1) This Convention shall apply [only] where:

"(a) The seller and buyer, at the time of the conclusion of the contract, have their relevant places of business in different Contracting States;

(b) The rules of private international law lead to the application of the law of a Contracting State."

"[(2) This Convention shall not apply when the parties have validly chosen the law of a non-Contracting State.]"

[Rejected as amended; see paragraph 28, below.]

(c) *Norway* (A/CONF.63/C.1/L.28) [part pertaining to article 3:]

Subamendment to the Australian amendment (A/CONF.63/C.1/L.1)

Article 3 shall read:

"(1) This Convention shall also apply where it has been chosen as the law by the parties, to the extent that this does not affect the application of any mandatory provision of law which would have been applicable if the parties had not chosen this Convention.

"(2) This Convention shall not apply when the parties have [clearly] excluded its application.

"(3) Unless otherwise provided in this Convention, it shall apply irrespective of the law which would be applicable by virtue of the rules of private international law."

[Referred to working group; see paragraph 28, below.]

(d) *Greece* (A/CONF.63/C.1/L.42):

The whole article 3 shall read:

"This Convention shall apply only when the rules of private international law of the forum lead to the application of the law of a Contracting State."

[Referred to working group; see paragraph 28, below.]

(e) *Australia* (A/CONF.63/C.1/L.73), subamendment to the Norwegian amendment (A/CONF.63/C.1/L.2):

Article 3 as amended by Norway shall read:

"(1) This Convention shall apply [only] where:

"(a) The seller and buyer, at the time of the conclusion of the contract, have their relevant places of business in different Contracting States; or

"(b) The rules of private international law lead to the application of the law of a Contracting State to the contract of sale.

"(2) This Convention shall not apply . . ."

[Rejected; see paragraph 28, below.]

*Paragraph 1*

(a) *Austria* (A/CONF.63/C.1/L.6):

1. Delete paragraph 1.

2. Alternative proposal in the event of rejection of the above proposal:

"1. This Convention shall apply only when at the time of the conclusion of the contract, the seller or buyer has his place of business in a Contracting State or when the seller and buyer have stipulated that the Convention shall apply to their contract. Where a party does not have a place of business, reference shall be made to his habitual residence."

[Withdrawn in part and rejected in part; see paragraph 27, below.]

(b) *United States* (A/CONF.63/C.1/L.16) (part pertaining to paragraph 1):

Delete paragraph 1.

[Withdrawn; see paragraph 27, below.]

*Paragraph 3*

(a) *Denmark* (A/CONF.63/C.1/L.4):

Article 3, paragraph (3) shall read:

"(3) This Convention shall not apply when the parties have validly chosen the law of a particular (specific) State."

[Referred to working group; see paragraph 28, below.]

(b) *Austria* (A/CONF.63/C.1/L.7):

"3. This Convention shall not apply:

"(a) When its application has been excluded by a stipulation of the parties;

"(b) When the parties have agreed that limitation or prescription shall be governed by the law of a specific State;

"(c) When the parties have agreed that their contract shall be governed by the law of a specified State and the said law regards limitation or prescription as an institution of material law."

[Referred to working group; see paragraph 28, below.]

(c) *United States* (A/CONF.63/C.1/L.16) [part pertaining to paragraph 3]:

Substitute the following for the existing text:

"3. This Convention shall not apply when the parties have expressly chosen the law of a non-Contracting State and have expressly excluded the application of this Convention."

[Referred to working group; see paragraph 28, below.]

(d) *Germany (Federal Republic of)* (A/CONF.63/C.1/L.39):

Article 3, paragraph (3) shall read:

"(3) This Convention shall not apply when the parties have validly chosen the law of a non-Con-

tracting State or otherwise agreed to exclude the application of the Convention."

[Referred to working group; see paragraph 28, below.]

(e) *Netherlands* (A/CONF.63/C.1/L.43):

1. Replace the word "validly" by: "by written and express agreement".

2. Replace the words: "the law of a non-Contracting State" by: "not to apply this Convention".

[Referred to working group; see paragraph 28, below.]

## C. PROCEEDINGS OF THE FIRST COMMITTEE

### (i) *Meetings*

The Committee considered article 3 at its 7th and 8th meetings, on 24 and 28 May.

### (ii) *Consideration*

27. At the 7th meeting the representatives of Austria and the United States withdrew those parts of their amendments (A/CONF.63/C.1/L.6 and L.16), that called for deletion of paragraph 1 of article 3. The Committee decided to retain the word "Contracting" before "States" in article 3, paragraph 1, rejecting by a vote of 25 to 9 an oral amendment by Australia to delete the word "Contracting". The alternative text for paragraph 1 of article 3, proposed by Austria (A/CONF.63/C.1/L.6) was rejected by a vote of 25 to 4.

28. At the 8th meeting the amendment by Norway (A/CONF.63/C.1/L.2), as modified by the Australian subamendments (A/CONF.63/C.1/L.73), was rejected by 21 votes to 15. The representatives who had proposed amendments to paragraph 3 of article 3 formed an informal working group to which all the amendments pertaining to paragraph 3 of article 3 were referred. The amendment to paragraph 3 of article 3 proposed orally by that working group was adopted by 32 votes to none. It read as follows: "This Convention shall not apply when the parties have expressly excluded its application."

## ARTICLE 4

### A. UNCITRAL TEXT

29. The text of the United Nations Commission on International Trade Law provided as follows:

#### "Article 4

"This Convention shall not apply to sales:

"(a) Of goods of a kind and in a quantity ordinarily bought by an individual for personal, family or household use, unless the fact that the goods are bought for a different use appears 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;

"(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 or aircraft;

"(f) Of electricity."

## B. AMENDMENTS

30. Amendments were submitted to article 4 by Australia (A/CONF.63/C.1/L.52), Poland (A/CONF.63/C.1/L.30) and the USSR (A/CONF.63/C.1/L.29).

31. These amendments were to the following effect:

(a) *USSR* (A/CONF.63/C.1/L.29):

Delete subparagraphs (e) and (f).

(b) *Poland* (A/CONF.63/C.1/L.30):

Delete subparagraphs: (e) and (f).

(c) *Australia* (A/CONF.63/C.1/L.52):

Australia would prefer the total deletion of article 4 (a). If total deletion is not supported, Australia would suggest the following simplified text:

"(a) Of goods bought for personal, family or household use;"

Delete subparagraphs (b) and (e).

## C. PROCEEDINGS IN THE FIRST COMMITTEE

### (i) *Meetings*

32. The Committee considered article 4 at its 8th meeting, on 28 May 1974.

### (ii) *Consideration*

33. At the 8th meeting the proposal by Australia to delete subparagraph (a) of article 4 (A/CONF.63/C.1/L.52), was rejected by 35 votes to 3. The proposal by Australia to delete subparagraph (b) of article 4 (A/CONF.63/C.1/L.52) was rejected by 36 votes to 4. The deletion of subparagraph (e) of article 4, proposed by Australia, Poland and the USSR (A/CONF.63/C.1/L.52, L.30 and L.29), was rejected by 22 votes to 16. The deletion of subparagraph (f) of article 4 proposed by Poland and the USSR (A/CONF.63/C.1/L.30 and L.29) was rejected by 18 votes to 13. The simplified version of subparagraph (a) of article 4 proposed by Australia (A/CONF.63/C.1/L.52) was adopted by 35 votes to 7.

## ARTICLE 5

### A. UNCITRAL TEXT

34. The text of the United Nations Commission on International Trade Law provided as follows:

#### "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."

## B. AMENDMENTS

35. Amendments were submitted to article 5 by Austria (A/CONF.63/C.1/L.8) and Denmark (A/CONF.63/C.1/L.3).

36. These amendments were to the following effect:

(a) *Denmark* (A/CONF.63/C.1/L.3):

Article 5, subparagraph (b) shall read:

"(b) Damage to property other than the goods sold."

[Amended and rejected; see paragraph 38.]

(b) *Austria* (A/CONF.63/C.1/L.8):

"This Convention shall not apply to claims based upon:

"(a) (deleted)

"(b) (changed to (a))

"(c) (changed to (b))

"(d) (changed to (c))

"(e) (changed to (d))

"(f) (changed to (e))".

## C. PROCEEDINGS IN THE FIRST COMMITTEE

### (i) Meetings

37. The Committee considered article 5 at its 9th meeting, on 28 May 1974.

### (ii) Consideration

38. At its 9th meeting the Committee rejected the amendment by Austria (A/CONF.63/C.1/L.8) by 32 votes to 6. The representative of Denmark orally amended his amendment (A/CONF.63/C.1/L.3) to insert a new subparagraph: "(a *bis*) Damage to property other than the goods sold". The amendment, as modified, was rejected by 15 votes to 15. The representative of Mexico proposed an oral amendment to delete subparagraph (e) of article 5. That amendment was rejected by 27 votes to 2. Another oral amendment by Mexico to substitute a different text for subparagraph (e) of article 5 was rejected by 19 votes to 2. The text that Mexico had orally proposed for subparagraph (e) read as follows: "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, other than the invoice".

## ARTICLE 6

### A. UNCITRAL TEXT

39. The text of the United Nations Commission on International Trade Law provided as follows:

#### "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 within the meaning of this Convention, unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production."

### B. AMENDMENTS

40. Amendments to article 6 were submitted by Poland (A/CONF.63/C.1/L.31) and the United Kingdom (A/CONF.63/C.1/L.13).

41. These amendments were to the following effect:

(a) *United Kingdom* (A/CONF.63/C.1/L.13):\*

Delete article.

[Rejected; see paragraph 43 below.]

(b) *Poland* (A/CONF.63/C.1/L.31):

Article 6 shall read:

"1. This Convention shall apply to contracts providing besides delivery of goods performance of other obligations, unless such obligations constitute the decisive part of all obligations.

"2. This Convention shall apply to contracts where the party ordering goods and services is obliged to delivery of goods and to services which are complementary to deliveries and services of the other party."

[Rejected; see paragraph 43 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

### (i) Meetings

42. The Committee considered article 6 at its 9th meeting, on 28 May 1974.

### (ii) Consideration

43. At its 9th meeting the Committee rejected the deletion of article 6 proposed by the United Kingdom (A/CONF.63/C.1/L.13) by 34 votes to 5. The amendment by Poland (A/CONF.63/C.1/L.31) was rejected by 23 votes to 13. An oral amendment by Czechoslovakia would have modified paragraph 1 of article 6 to read as follows: "This Convention shall not apply to contracts in which the obligations of the seller consist in the supply of labour or other services", and would have deleted the word "substantial" in paragraph 2. The oral amendment by Czechoslovakia was rejected by a vote of 31 to 2.

## ARTICLE 7

### A. UNCITRAL TEXT

44. The text of the United Nations Commission on International Trade Law provided as follows:

#### "Article 7

"In interpreting and applying the provisions of this Convention, regard shall be had to its international character and to the need to promote uniformity in its interpretation and application."

### B. AMENDMENTS

45. Amendments to article 7 were submitted by Austria (A/CONF.63/C.1/L.9) and the Union of Soviet Socialist Republics (A/CONF.63/C.1/L.40).

46. The amendments were to the following effect:

(a) *Austria* (A/CONF.63/C.1/L.9):

Delete the article.

[Rejected; see paragraph 48 below.]

(b) *USSR* (A/CONF.63/C.1/L.40):

Delete the article.

[Rejected; see paragraph 48 below.]

\* By mistake, this amendment was also issued as A/CONF.63/C.1/L.55.

## C. PROCEEDINGS IN THE FIRST COMMITTEE

## (i) Meetings

47. The First Committee considered article 7 at its 10th meeting, on 29 May 1974.

## (ii) Consideration

48. At the 10th meeting the deletion of article 7 proposed by Austria (A/CONF.63/C.1/L.9) and the USSR (A/CONF.63/C.1/L.40) was rejected by 24 votes to 14. An oral amendment by several representatives to delete article 7 and to transfer its contents to the preamble was rejected by 21 votes to 15. Article 7 was referred to the Drafting Committee.

## ARTICLE 8

## A. UNCITRAL TEXT

49. The text of the United Nations Commission on International Trade Law provided as follows:

## "Article 8

"Subject to the provisions of article 10, the limitation period shall be four years."

## B. AMENDMENTS

50. Amendments were submitted to article 8 by Austria (A/CONF.63/C.1/L.10), Norway (A/CONF.63/C.1/L.56), the United Kingdom (A/CONF.63/C.1/L.54) and the United States (A/CONF.63/C.1/L.17).

51. The amendments were to the following effect:

(a) *Austria* (A/CONF.63/C.1/L.10):

The text shall read:

"The limitation period shall be three years."

[Withdrawn; see paragraph 53 below.]

(b) *United States* (A/CONF.63/C.1/L.17):

Put the words "Subject to the provisions of article 10" between brackets, commencing the rest of the text with a capital letter,

[Referred to the Drafting Committee; see paragraph 53 below.]

(c) *United Kingdom* (A/CONF.63/C.1/L.54):

Substitute the following for the existing text:

"The limitation period shall be five years."

[Rejected; see paragraph 53 below.]

(d) *Norway* (A/CONF.63/C.1/L.56):

The text shall read:

"The limitation period shall be three years."

[Withdrawn; see paragraph 53 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

## (i) Meetings

52. The First Committee considered article 8 at its 10th and 17th meetings on 29 May and 31 May 1974.

## (ii) Consideration

53. At the 10th meeting, Austria and Norway withdrew their amendments (A/CONF.63/C.1/L.10 and L.56, respectively). The amendments to article 8 were put to indicative votes. An oral amendment by Nigeria

to establish a limitation period of six years was rejected by 23 votes to 13. The amendment by the United Kingdom (A/CONF.63/C.1/L.54) was rejected by 20 votes to 17. The Committee expressed itself in favour of a limitation period of four years by 36 votes to 4. The amendment by the United States (A/CONF.63/C.1/L.17) was referred to the Drafting Committee.

54. At its 17th meeting, the Committee decided that the limitation period should be four years, and rejected limitation periods of three, five and six years. (There were 4 votes for a three-year period, 26 for a four-year period, 10 for a five-year period and 3 for a six-year period).

ARTICLE 9 (PARAGRAPHS 1 AND 3)<sup>1</sup>

## A. UNCITRAL TEXT

55. The text of the United Nations Commission on International Trade Law provided as follows:

## "Article 9

"1. Subject to the provisions of articles 10 and 11, the limitation period shall commence on the date on which the claim becomes due.

"...

"3. In respect of a claim arising from a breach of contract, the claim shall, for the purpose of paragraph (1) of this article, be deemed to become due on the date on which such breach occurs. Where one party is required, as a condition for the acquisition or exercise of such a claim, to give notice to the other party, the commencement of the limitation shall not be postponed by reason of such requirement of notice."

## B. AMENDMENTS

56. Amendments were submitted to article 9, paragraphs 1 and 3 by Austria (A/CONF.63/C.1/L.44), Hungary (A/CONF.63/C.1/L.71), Norway (A/CONF.63/C.1/L.60) and the United States (A/CONF.63/C.1/L.18).

57. The amendments were to the following effect:

(a) *United States* (A/CONF.63/C.1/L.18):

Substitute the following for the present text:

"1. The limitation period shall commence on the date on which the claim accrues.

"...

"3. The commencement of the limitation period shall not be postponed by a requirement that notice be given to the other party of the existence of a claim."

[Referred to the Drafting Committee; see paragraph 59 below.]

(b) *Austria* (A/CONF.63/C.1/L.44):

Substitute the following for the present paragraph 3:

"3. Where one party is required, as a condition for the acquisition or exercise of a claim, to give notice to the other party, the commencement of a limitation period shall not be postponed by reason of such requirement of notice."

[Referred to the Drafting Committee; see paragraph 60 below.]

<sup>1</sup> For art. 9, para. 2, see paras. 61-65 below.



(c) *Norway* (A/CONF.63/C.1/L.60):

Change paragraph 1 to the following and add a new paragraph 2:

"1. Subject to the provisions of articles 10 [10 A] and 11, the limitation period shall commence on the date on which the claim becomes due.

"2. For the purpose of this article a claim arising from a breach of the contract shall be deemed to become due on the date on which such breach occurs, but a claim arising from a defect or other lack of conformity on the date on which the goods are actually handed over to the buyer. Where one party is required, as a condition for the acquisition or exercise of such a claim, to give notice to the other party, the commencement of the limitation period shall not be postponed by reason of such a requirement of notice."

[Referred to the Drafting Committee; see paragraph 60 below.]

(d) *Hungary* (A/CONF.63/C.1/L.71):

In paragraph 3, replace "from a breach of the contract" by "from a failure of performance."

[Referred to the Drafting Committee; see paragraph 60 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

58. The First Committee considered paragraphs 1 and 3 of article 9 at its 10th and 11th meetings, on 29 May 1974.

(ii) *Consideration*

59. At its 10th meeting the Committee referred the amendment by the United States (A/CONF.63/C.1/L.18) to the Drafting Committee.

60. At the 11th meeting of the First Committee, Ghana orally introduced an amendment, proposing the following drafting for paragraphs (2) and (3):

"2. For the purposes of paragraph (1) of this article, a claim (or right) becomes due;

"(a) If based on fraud, misrepresentation or mistake, on the date when they or either of them were discovered by the creditor;

"(b) If based on breach of contract, on the date when such breach occurred;

"(c) If based on some other ground, on the date when the creditor could reasonably have exercised his claim (or right) against the debtor.

"3. Where one party is required, as a condition for the acquisition or exercise of such claim (or right), to give notice to the other party, the commencement of the limitation period shall not be postponed by reason of such requirement of notice."

Brazil orally proposed to add the following words at the end of paragraph 1 of article 9: "or on which the right could have been exercised." Following indicative votes favouring retention of the substance of paragraphs 1 and 3 of article 9, these paragraphs, together with all the proposed amendments, were referred to the Drafting Committee.

## ARTICLE 9 (PARAGRAPH 2)

## A. UNCITRAL TEXT

61. The text of the United Nations Commission on International Trade Law provided as follows:

## "Article 9

"2. In respect of a claim based on fraud committed before or at the time of the conclusion of the contract, the claim shall, for the purpose of paragraph (1) of this article, be deemed to become due on the date on which the fraud was or reasonably could have been discovered."

## B. AMENDMENTS

62. Amendments were submitted to article 9, paragraph 2, by Norway (A/CONF.63/C.1/L.61), Sweden (A/CONF.63/C.1/L.63), the United Kingdom (A/CONF.63/C.1/L.57) and the United States (A/CONF.63/C.1/L.18).

63. The amendments were to the following effect:

(a) *United States* (A/CONF.63/C.1/L.18) (part pertaining to paragraph 2 of article 9):

Substitute the following for the present text:

"2. In respect of a claim based on fraud committed before or at the time of the conclusion of the contract, the claim shall accrue on the date on which the fraud was or reasonably could have been discovered."

[The entire amendment, containing drafting changes for paragraphs 1, 2 and 3 of article 9, was referred to the Drafting Committee during the consideration of paragraphs 1 and 3 of article 9; see paragraph 59 above.]

(b) *United Kingdom* (A/CONF.63/C.1/L.57):

In article 9, paragraph 2, after the words "at the time of the conclusion of the contract," insert the words "or if the claim has been concealed by the fraud of the debtor,".

[Adopted; see paragraph 65 below.]

(c) *Norway* (A/CONF.63/C.1/L.61):<sup>2</sup>

"2. In respect of a claim based on fraud committed before or at the time of the conclusion of the contract, the limitation period shall not expire before the expiration of one year from the date of which the fraud is or could reasonably be discovered."

[Withdrawn; see paragraph 65 below.]

(d) *Sweden* (A/CONF.63/C.1/L.63):

At the beginning of the paragraph, after the word "fraud" insert the words "constituting a criminal offence".

[Withdrawn; see paragraph 65 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

64. The First Committee considered paragraph 2 of article 9 at its 13th meeting on 30 May 1974.

(ii) *Consideration*

65. At the 13th meeting, the amendments proposed by Norway (A/CONF.63/C.1/L.61) and Sweden (A/CONF.63/C.1/L.63) were withdrawn. The Committee decided by 27 votes to 4 that the Convention should contain a special provision on fraud. The amendment proposed by the United Kingdom (A/CONF.63/C.1/L.57) was adopted by 19 votes to 11. Paragraph 2 of article 9 was referred to the Drafting Committee.

<sup>2</sup> This amendment was introduced as para. 2 of an amendment to article 10.

## ARTICLE 10

## A. UNCITRAL TEXT

66. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 10*

"1. The limitation period in respect of a claim arising from a defect or lack of conformity which could be discovered when the goods are handed over to the buyer shall be two years from the date on which the goods are actually handed over to him.

"2. The limitation period in respect of a claim arising from a defect or lack of conformity which could not be discovered when the goods are handed over to the buyer shall be two years from the date on which the defect or lack of conformity is or could reasonably be discovered, provided that the limitation period shall not extend beyond eight years from the date on which the goods are actually handed over to the buyer.

"3. If the seller gives 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 discovers or ought to discover the fact on which the claim is based, but not later than on the date of the expiration of the period of the undertaking."

## B. AMENDMENTS

67. Amendments were submitted to article 10 by Australia (A/CONF.63/C.1/L.95), Austria (A/CONF.63/C.1/L.45), Denmark (A/CONF.63/C.1/L.33), Germany (Federal Republic of) (A/CONF.63/C.1/L.72), Hungary (A/CONF.63/C.1/L.75), Norway (A/CONF.63/C.1/L.61), Poland (A/CONF.63/C.1/L.32), Sweden (A/CONF.63/C.1/L.64, L.65 and L.66), the USSR (A/CONF.63/C.1/L.37), the United Kingdom (A/CONF.63/C.1/L.58), the United Kingdom and Norway (A/CONF.63/C.1/L.104) and the United States (A/CONF.63/C.1/L.19).

68. The amendments were to the following effect:

*Article 10 as a whole*

(a) *United States* (A/CONF.63/C.1/L.19):

Substitute the following for the present text of paragraphs 1 and 2.

"1. A claim arising from a defect or lack of conformity shall accrue when the defect or lack of conformity is or could reasonably be discovered. [The limitation period in respect of such a claim shall be two years.]"

[Referred to the Drafting Committee; see paragraph 70 below.]

(b) *Denmark* (A/CONF.63/C.1/L.33):

Article 10 shall read:

"1. The limitation in respect of a claim arising from a defect or lack of conformity shall be four (three) years from the date on which the goods are handed over to the buyer.

"2. If the seller gives 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, which is longer than three (two) years from the date on which the goods are handed over to the buyer, the limitation period, in respect of any claim arising from the undertaking, is extended to one year from the date of the expiration of the period of the undertaking."

[Referred to working group; see paragraph 70 below.]

(c) *Union of Soviet Socialist Republics* (A/CONF.63/C.1/L.37):

1. Consider the question of shortening the limitation period referred to in paragraph 2 of the article.

2. Consider the question of the possible clarification of the meaning of the words "are actually handed over", which appear in the article.

3. Insert the word "two-year" before the words "limitation period" appearing in the third line of paragraph 3.

[Referred to working group; see paragraph 70 below.]

(d) *United Kingdom* (A/CONF.63/C.1/L.58):

Delete the existing article 10, and substitute the following:

"If the seller gives an express undertaking relating to the goods, which is stated to have effect 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, provided that such notification is given within the period of the undertaking."

[Referred to working group; see paragraph 70, below.]

(e) *Norway* (A/CONF.63/C.1/L.61):

1. The amended article 10 shall read:

"[1. In respect of a claim arising from a defect or other lack of conformity which could not be discovered when the goods are handed over to the buyer, the limitation period shall not expire before the expiration of one year from the date on which the defect or lack of conformity is or could reasonably be discovered]

"2. In respect of a claim based on fraud committed before or at the time of the conclusion of the contract, the limitation period shall not expire before the expiration of one year from the date on which the fraud is or could reasonably be discovered<sup>8</sup>.

"3. The limitation period shall not by reason of this article be extended beyond six years from the date on which the period commences to run under article 9."

2. A new article 10 A will reproduce the text of paragraph 3 of the present article 10, as follows:

"If the seller gives 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 discovers or ought to discover the fact on which the claim is based, but not later than on the date of expiration of the period of the undertaking."

<sup>8</sup> Paragraph 2 was considered in connexion with paragraph 2 of article 9.

[Referred to working group; see paragraph 70, below.]

(f) *Sweden* (A/CONF.63/C.1/L.64):

Delete paragraphs 1 and 2 of the present article 10 and insert the following text, as it is undesirable to have different limitation periods for different types of claims:

"For the purpose of article 9, paragraph 1, a claim arising from a defect or lack of conformity shall be deemed to become due on the date on which the goods are actually handed over to the buyer (alternatively: on which the risk passes to the buyer)."

[Referred to working group, see paragraph 70 below.]

(g) *Sweden* (A/CONF.63/C.1/L.65):

In paragraphs 1 and 2 replace the words "on which the goods are actually handed over to him (the buyer)" by "on which the risk passes to the buyer".

[Referred to working group, see paragraph 70 below.]

(h) *Germany (Federal Republic of)* (A/CONF.63/C.1/L.72):

1. In paragraph 1, replace the words "two years" by "one year".

2. Paragraph 2 shall read:

"The limitation period in respect of a claim arising from a defect or lack of conformity which could not be discovered when the goods are handed over to the buyer shall be two years from the date on which the goods are actually handed over to him."

[Referred to working group, see paragraph 70 below.]

(i) *Hungary* (A/CONF.63/C.1/L.75):<sup>4</sup>

Delete the following articles 8 to 10 and insert the following:

#### "Article 8

"1. Subject to the provisions of article 9, the limitation period in respect of a claim arising from a breach of contract shall be four years. That period shall commence on the date on which such breach of the contract occurs.

"2. Where one party is required, as a condition for the acquisition or exercise of such a claim, to give notice to the other party, the commencement of the limitation period shall not be postponed by reason of such requirement of notice."

#### "Article 9

"1. The limitation period in respect of a claim arising from a defect or lack of conformity which could be discovered when the goods are handed over to the buyer shall be . . . (one) year from the date on which the goods are actually handed over to him.

"2. The limitation period in respect of a claim arising from a defect or lack of conformity which could not be discovered when the goods are handed over to the buyer shall be . . . (two) years from the date on which the defect or lack of conformity is or could reasonably be discovered."

#### "Article 10

"If the seller gives 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 discovers or ought to discover 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 10 bis

"In respect of a claim based on fraud committed before or at the time of the conclusion of the contract, the limitation period shall commence on the date under which the fraud was or reasonably could have been discovered."

[Referred to the Drafting Committee; see paragraph 70 below.]

(j) *Australia* (A/CONF.63/C.1/L.95); subamendment by *Sweden* (A/CONF.63/C.1/L.64):

Replace paragraphs 1 and 2 of article 10 by the following:

"For the purpose of article 9, paragraph 1, a claim arising from a defect or lack of conformity shall be deemed to become due on the date on which the defect is or could reasonably be discovered by the buyer."

[Referred to working group; see paragraph 70 below.]

#### Paragraph 1

*Poland* (A/CONF.63/C.1/L.32):

Add at the end of the paragraph the following: "or to a person authorized in the contract concluded by him."

[Referred to working group; see paragraph 70 below.]

#### Paragraph 2

*Austria* (A/CONF.63/C.1/L.45):

Delete this paragraph.

[Withdrawn; see paragraph 70 below.]

#### Paragraph 3

(a) *Sweden* (A/CONF.63/C.1/L.66):

1. The present wording of paragraph 3 gives rise to uncertainties. It is therefore proposed to delete the words "on the date on which the buyer discovers or ought to discover the fact on which the claim is based, but not later than." Thus, the last part of the paragraph shall read: "shall commence on the date of the expiration of the period of the undertaking."

2. If this proposal is not accepted the following alternative solution should be considered. Substitute for the words "shall commence on the date of the expiration of the period of the undertaking" the following text: "shall not expire before two years from the date of the expiration of the period of the undertaking."

[Referred to working group; see paragraph 70 below.]

(b) *United Kingdom and Norway* (A/CONF.63/C.1/L.104):

Paragraph 3 shall read:

"If the seller gives an express undertaking relating to the goods, which is stated to have effect for a

<sup>4</sup> Although this amendment proposed drafting changes in articles 8 and 9, as well as article 10, it was only considered by the First Committee in connexion with article 10.

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."

[Adopted; see paragraph 72 below.]

### C. PROCEEDINGS IN THE FIRST COMMITTEE

#### (i) Meetings

69. The First Committee considered article 10 at its 11th, 12th, 14th, 16th and 17th meetings, on 29, 30 and 31 May and 3 June 1974.

#### (ii) Consideration

70. At the 12th meeting the amendments by the United States (A/CONF.63/C.1/L.19) and Hungary (A/CONF.63/C.1/L.75) were referred to the Drafting Committee. Austria withdrew its amendment (A/CONF.63/C.1/L.45). The representative of Denmark amended his proposed amendment (A/CONF.63/C.1/L.33) by adding the words "or refused by him" at the end of paragraph 1. Nigeria orally proposed the substitution of "three" for "two" in the text of paragraphs 1 and 2 of article 10. A working group was established to formulate a text for article 10. By an indicative vote of 27 to 10, the Committee expressed its preference for a uniform period of limitation to govern all types of claims. All pending amendments to article 10 were referred to this working group.

71. At the 16th meeting the working group presented alternative texts for paragraphs 1 and 2 of article 10 (A/CONF.63/C.1/L.103):

#### "Alternative A"

"1. For the purposes of article 9, paragraph 1, a claim arising from a defect or lack of conformity shall be deemed to become due on the date on which the goods are actually handed over to the buyer or refused by him. Where the contract involves the carriage of goods, the handing over shall not be deemed to have taken place before the goods have arrived at the place of destination.

#### "Alternative B

"1. The limitation period in respect of a claim arising from a defect or lack of conformity which could be discovered when the goods are handed over to the buyer shall be two years from the date on which the goods are actually handed over to the buyer or refused by him.

"2. The limitation period in respect of a claim arising from a defect or lack of conformity which could not be discovered when the goods are handed over to the buyer shall be . . . years from the date on which the defect or lack of conformity is or could reasonably be discovered, provided that the limitation period shall not extend beyond . . . years from the date on which the goods are actually handed over to the buyer.

72. At the 17th meeting the Committee expressed itself in favour of a limitation period that starts running when the goods are handed over, by an indicative

vote of 22 to 15. By an indicative vote of 29 to 3, the Committee also favoured a uniform limitation period for both latent and patent defects and lack of conformity. The Committee decided that the limitation period should be four years. Alternative text A (contained in A/CONF.63/C.1/L.103) was thus adopted in substance and referred to the Drafting Committee. The Committee then voted on the amendment by the United Kingdom and Norway (A/CONF.63/C.1/L.104), relating to paragraph 3 of article 10. An oral subamendment proposed by Greece at the 16th meeting was rejected. It would have added the words "validly, in accordance with the law applicable to the contract of sale" immediately after the words "if the seller gives". The Committee adopted the amendment (A/CONF.63/C.1/L.104) by 23 votes to none. Article 10 was referred to the Drafting Committee.

## ARTICLE 11

### A. UNCITRAL TEXT

73. The text of the United Nations Commission on International Trade Law provided as follows:

#### "Article 11

"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."

### B. AMENDMENTS

74. Amendments were submitted to article 11 by Norway (A/CONF.63/C.1/L.62) and Sweden (A/CONF.63/C.1/L.67).

75. The amendments were to the following effect:

(a) *Norway* (A/CONF.63/C.1/L.62):

Paragraph (1) shall begin as follows:

"(1) If, in circumstances provided for by the law applicable to the contract, one party is entitled to declare the contract terminated or the performance due before the time for performance would otherwise be due, and exercises . . ."

In paragraph (2) the second full stop sentence shall begin as follows:

"If, under the law applicable to the contract, one party is entitled to declare the contract terminated or the performance as due by reason of such breach, and exercises . . ."

[Rejected; see paragraph 77 below.]

<sup>5</sup> The final wording and location of this article should be left to the Drafting Committee.

(b) *Sweden (A/CONF.63/C.1/L.67)*:

In order to simplify the Convention, delete this article.

[Rejected; see paragraph 77 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

76. The First Committee considered article 11 at its 13th meeting, on 30 May 1974.

(ii) *Consideration*

77. At its 13th meeting the Committee rejected by 31 votes to 4 the deletion of article 11, as proposed by Sweden (A/CONF.63/C.1/L.67). The amendment by Norway (A/CONF.63/C.1/L.62) was rejected by 18 votes to 6. Article 11 was referred to the Drafting Committee.

NEW ARTICLE 11 *bis*

## A. TEXT

78. The text proposed by Norway and the United States provided as follows: (A/CONF.63/C.1/L.41<sup>6</sup>):

<sup>6</sup>The proposal also contained corresponding drafting amendments relating to articles 12 through 20, as follows:

## "Article 12

"1. A claim is asserted in judicial proceedings when the creditor, for the purpose of obtaining satisfaction or recognition of his claim, performs any act which, under the law of the jurisdiction where such act is performed, is recognized as commencing judicial proceedings against the debtor or as asserting his claim in such proceedings already instituted against the debtor.

"2. For the purpose of this article, 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 the claim and the counterclaim relate to the same contract, or to contracts concluded in the course of the same transaction.

## "Article 13

"1. Where the parties have agreed to submit to arbitration, the claim is asserted when either party commences arbitral proceedings in the manner provided for in the arbitration agreement or by the law applicable to that agreement.

"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.

"3. The provisions of this article shall apply notwithstanding any term in the arbitration agreement to the effect that no right shall arise until an arbitration award has been made.

## "Article 14

"[Where the creditor, for the purpose of obtaining satisfaction or recognition of his claim, timely asserts his claim in any legal proceedings other than a judicial or arbitral proceeding, including legal proceedings commenced upon the occurrence of:

"(a) the death or incapacity of the debtor,

"(b) the bankruptcy or insolvency of the debtor, or

"(c) the dissolution or liquidation of a corporation, company, association or entity,

the claim shall not, by reason of limitation, be barred from being recognized in such a proceeding, unless the law governing the proceeding provides otherwise.]

## "Alternate

"[In any legal proceedings other than judicial or arbitral proceedings, including legal proceedings commenced upon the occurrence of:

"Article 11 *bis*

"1. A claim shall not be barred by reason of limitation if it is asserted in legal proceedings before the expiration of the limitation period.

"2. Where legal proceedings have ended without a decision binding on the merits of the claim, and the limitation period at that time 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 to obtain satisfaction or recognition of his claim, unless the creditor has discontinued the proceedings without the consent of the debtor or has intentionally allowed them to lapse."

"(a) the death or incapacity of the debtor,

"(b) the bankruptcy or insolvency of the debtor, or

"(c) the dissolution or liquidation of a corporation, company, association or entity,

the law governing such proceedings shall determine how and when a claim is asserted and whether such assertion shall prevent the claim from being barred by limitation.]

## "Article 15

"[Delete article 15]

## "Article 16

"1. Where a creditor has asserted his claim in legal proceedings within the limitation period [provided by this Convention] and has obtained a decision in his favour on the merits of his claim in one State, and where, under the applicable law, he is not precluded by this decision from asserting his original claim in legal proceedings in another State, and where the limitation period at that time has expired or has less than one year to run, the creditor shall, to the extent that his claim is recognized by such decision, be entitled to an additional period of one year from the date of the decision for the purpose of obtaining satisfaction or recognition of his claim in any such other State.

"2. If recognition or execution of a decision rendered on the merits in one State is sought in another State within any time-limit prescribed by the law applicable, but recognition or execution is refused, and where the limitation period at that time has expired or has less than one year to run, the creditor shall to the extent that such claim is recognized by the decision on the merits, be entitled to an additional period of one year from the date of the refusal, for the purpose of obtaining satisfaction or recognition of his claim in such other State.

## "Article 17

"1. Where legal proceedings have been commenced against one debtor within the limitation period provided by this Convention, the claim against any other party jointly and severally liable with the debtor shall not be barred by reason of limitation, 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 within the limitation period provided by this Convention, the buyer's claim over against the seller shall not be barred by reason of limitation, if the buyer informs the seller in writing within that period that the proceedings have been commenced.

"3. In the circumstances mentioned in this article, the creditor or the buyer must institute legal proceedings against the party jointly and severally liable or against the seller, either within the limitation period otherwise provided by this Convention or within one year from the date on which the legal proceedings referred to in paragraphs 1 and 2 commenced, whichever is the later.

## "Article 20

"Where, as a result of a circumstance which is beyond the control [not personal] of the creditor and which he could neither avoid nor overcome, the creditor has been prevented from asserting his claim in accordance with articles 12 to 18, 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. The limitation period shall in no event be extended beyond [four] [ten] years from the date on which the period would otherwise expire in accordance with articles [8 to 11]."

## B. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

79. The First Committee considered article 11 *bis* at its 13th meeting, on 30 May 1974.

(ii) *Consideration*

80. At its 13th meeting the Committee decided to defer consideration of the proposal by Norway and the United States (A/CONF.63/C.1/L.41) until problems of interpretation arose in connexion with articles 12 to 20.

## ARTICLE 12

## A. UNCITRAL TEXT

81. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 12*

"1. The limitation period shall cease to run when the creditor performs any act which, under the law of the jurisdiction where such act is performed, 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.

"2. For the purposes of this article, 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. However, both the claim and counterclaim shall relate to a contract or contracts concluded in the course of the same transaction."

## B. AMENDMENTS

82. Amendments to article 12 were submitted by the Netherlands (A/CONF.63/C.1/L.79), Norway (A/CONF.63/C.1/L.74), Sweden (A/CONF.63/C.1/L.68), Switzerland (A/CONF.63/C.1/L.89), and the USSR (A/CONF.63/C.1/L.59).

83. The amendments were to the following effect:

*Article 12 as a whole*(a) *USSR (A/CONF.63/C.1/L.59):*

1. Make the first phrase of paragraph 1 (which in the Russian and English texts does not correspond to the French text) more accurate by redrafting it to read:

"The limitation period shall cease to run when the creditor performs any act which, under the law of the country of the court where the proceedings are instituted, . . .".

2. Paragraph 2 should be deleted and made into a new article 14 *bis* which would begin with the words "For the purposes of articles 12, 13 and 14 . . .".

[Adopted; see paragraph 85 below.]

(b) *Netherlands (A/CONF.63/C.1/L.79):*

Add a new paragraph reading as follows:

"3. A third party attachment by the Creditor's creditor with respect to the debtor's property shall have the same effect as the acts mentioned in paragraph 1."

[Rejected; see paragraph 85 below.]

*Paragraph 1*

*Switzerland (A/CONF.63/C.1/L.89):*

In paragraph 1 of article 12, add after the word "judicial" the words "or similar".

[Rejected; see paragraph 85 below.]

*Paragraph 2*

(a) *Sweden (A/CONF.63/C.1/L.68):*

Delete paragraph 2 of this article.

[Rejected; see paragraph 85 below.]

(b) *Norway (A/CONF.63/C.1/L.74):*

Paragraph 2 of article 12 shall read:

"2. For the purposes of this article, 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 the claim and the counterclaim relate to the same contract, or to contracts concluded in the course of the same transaction."

[Sent to the Drafting Committee; see paragraph 85.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

84. The First Committee considered article 12 at its 13th and 14th meetings, on 30 and 31 May 1974.

(ii) *Consideration*

85. At the 14th meeting the amendment by Norway (A/CONF.63/C.1/L.74) was referred to the Drafting Committee. The amendment by Sweden (A/CONF.63/C.1/L.68) that would delete paragraph 2 of article 12 was rejected by 25 votes to 9. Paragraphs 1 and 2 of the amendment by the USSR (A/CONF.63/C.1/L.59) were voted upon separately. The amendment to paragraph 1 of article 12 was adopted by 32 votes to none. The amendment to paragraph 2 of article 12 was adopted by 24 votes to 5. The amendment by the Netherlands (A/CONF.63/C.1/L.79) was rejected by 13 votes to 7. The amendment proposed by Switzerland (A/CONF.63/C.1/L.89) was rejected by 32 votes to 3.

## ARTICLE 13

## A. UNCITRAL TEXT

86. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 13*

"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 that agreement.

"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.

"3. The provisions of this article shall apply notwithstanding any term in the arbitration agreement to the effect that no right shall arise until an arbitration award has been made."

## B. AMENDMENTS

87. An amendment was submitted to article 13 by the USSR (A/CONF.63/C.1/L.78).

88. The purpose of the amendment was to delete paragraph 3 of article 13.

[Rejected; see paragraph 91 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

## (i) Meetings

89. The First Committee considered article 13 at its 14th and 25th meetings, on 31 May and 6 June 1974.

## (ii) Consideration

90. At its 14th meeting the Committee established a working group to consider paragraph 3 of article 13 and the amendment by the USSR.

91. At the 25th meeting the representative of Ireland (speaking as Chairman of the Working Group) reported to the Committee. The deletion of paragraph 3 of article 13, proposed by the USSR (A/CONF.63/C.1/L.78) was rejected by 16 votes to 14. Article 13 was referred to the Drafting Committee.

## ARTICLE 14

## A. UNCITRAL TEXT

92. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 14*

"In any legal proceedings other than those mentioned in articles 12 and 13, including legal proceedings commenced upon the occurrence of:

"(a) The death or incapacity of the debtor,

"(b) The bankruptcy or insolvency of the debtor, or

"(c) The dissolution or liquidation of a corporation, company, association or entity, 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, unless the law governing the proceedings provides otherwise."

## B. AMENDMENTS

93. Amendments were submitted to article 14 by Austria (A/CONF.63/C.1/L.46), Mexico (A/CONF.63/C.1/L.86), the Netherlands (A/CONF.63/C.1/L.80) and the United States (A/CONF.63/C.1/L.94/Rev.1).

94. The amendments were to the following effect:

*Article 14 as a whole*

*United States* (A/CONF.63/C.1/L.94/Rev.1).

At the end of the article, add the following:

"The law governing such proceedings may provide a period for the filing of claims that is different from the period of limitation set forth in article 8 of this Convention."

[Sent to the Drafting Committee as modified; see paragraph 96 below.]

## Subparagraph (c)

(a) *Austria* (A/CONF.63/C.1/L.46):

Modify paragraph (c) as follows:

"(c) The dissolution or liquidation of a corporation, company, association, or entity when it is the debtor,"

[Adopted; see paragraph 96 below.]

(b) *Netherlands* (A/CONF.63/C.1/L.80):

Subparagraph (c) shall read:

"(c) If the debtor is a corporation, company, association or entity which can be sued, the dissolution or liquidation of that corporation, company, association or entity, . . ."

[Withdrawn; see paragraph 96 below.]

(c) *Mexico* (A/CONF.63/C.1/L.86) (part pertaining to subparagraph (c)):

"(c) The dissolution or liquidation of a debtor corporation, company, association or entity,"

[Sent to the Drafting Committee; see paragraph 96 below.]

## Subparagraph (d)

*Mexico* (A/CONF.63/C.1/L.86) (part pertaining to subparagraph (d)):

"(d) The attachment, sequestration or assignment of all the property of the debtor, the limitation period shall cease to run".

[Sent to the Drafting Committee; see paragraph 96 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

## (i) Meetings

95. The First Committee considered article 14 at its 15th meeting on 31 May 1974.

## (ii) Consideration

96. At the 15th meeting the representative of the United States orally amended the United States amendment (A/CONF.63/C.1/L.94/Rev.1) by adding the following words at the end of draft article 14 and before the text of A/CONF.63/C.1/L.94/Rev.1: "and provided that, in the legal proceedings commenced upon the occurrences specified in subparagraph (a), (b) or (c) of this article". The United States amendment, as orally amended, was referred to the Drafting Committee. The amendment by Mexico (A/CONF.63/C.1/L.86) was also referred to the Drafting Committee. The amendment by the Netherlands (A/CONF.63/C.1/L.80) was withdrawn. The amendment proposed by Austria (A/CONF.63/C.1/L.46) was adopted by 30 votes to none.

## ARTICLE 15

## A. UNCITRAL TEXT

97. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 15*

"1. Where a claim has been asserted in legal proceedings within the limitation period in accordance with articles 12, 13 or 14 but such legal proceedings have ended without a final 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, unless they have ended because the creditor has discontinued them or allowed them to lapse."

#### B. AMENDMENTS

98. Amendments were submitted to article 15 by Austria (A/CONF.63/C.1/L.47), the Netherlands (A/CONF.63/C.1/L.81), Norway (A/CONF.63/C.1/L.77) and Sweden (A/CONF.63/C.1/L.96).

99. The amendments were to the following effect:

##### *Article 15 as a whole*

(a) *Norway* (A/CONF.63/C.1/L.77):

Article 15 shall read:

"1. Where a claim has been asserted in legal proceedings within the limitation period in accordance with articles 12, 13 or 14, 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 when 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, unless the proceedings have ended because the creditor has discontinued them without the consent of the debtor or [intentionally] allowed them to lapse."

[Paragraph 1 adopted; see paragraph 101 below.]

(b) *Netherlands* (A/CONF.63/C.1/L.81):

Delete this article.

[Rejected; see paragraph 101 below.]

##### *Paragraph 1*

(a) *Austria* (A/CONF.63/C.1/L.47):

Not applicable to English. French drafting amendment.

[Sent to the Drafting Committee; see paragraph 101 below.]

##### *Paragraph 2*

(a) *Sweden* (A/CONF.63/C.1/L.96):

In paragraph 2 delete the words "unless they have ended because the creditor had discontinued them or allowed them to lapse".

[Adopted; see paragraph 101 below.]

#### C. PROCEEDINGS IN THE FIRST COMMITTEE

##### (i) *Meetings*

100. The First Committee considered article 15 at its 15th meeting, on 31 May 1974.

##### (ii) *Consideration*

101. At its 15th meeting the Committee referred the amendment by Austria (A/CONF.63/C.1/L.47) to the Drafting Committee. The deletion of article 15, proposed by the Netherlands (A/CONF.63/C.1/L.81) was rejected by 35 votes to 4. The amendment proposed by Sweden (A/CONF.63/C.1/L.96) was adopted by 18 votes to 8. The Committee adopted by 27 votes to none paragraph 1 of the amendment proposed by Norway (A/CONF.63/C.1/L.77).

#### ARTICLE 16

##### A. UNCITRAL TEXT

102. The text of the United Nations Commission on International Trade Law provided as follows:

##### *"Article 16*

"[1. Where a creditor has asserted his claim in legal proceedings within the limitation period in accordance with articles 12, 13 or 14 and has obtained a decision binding on the merits of his claim in one State, and where, under the applicable law, he is not precluded by this decision from asserting his original claim in legal proceedings in another State, the limitation period in respect of this claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14, and the creditor shall, in any event, be entitled to an additional period of one year from the date of the decision.

"2. If recognition or execution of a decision given in one State is refused in another State, the limitation period in respect of the creditor's original claim shall be deemed not to have ceased running by virtue of articles 12, 13, or 14, and the creditor shall, in any event, be entitled to an additional period of one year from the date of the refusal.]"

##### B. AMENDMENTS

103. Amendments were submitted to article 16 by Austria (A/CONF.63/C.1/L.48), Norway (A/CONF.63/C.1/L.90), Sweden (A/CONF.63/C.1/L.97), the USSR (A/CONF.63/C.1/L.85) and the United Kingdom (A/CONF.63/C.1/L.76).

104. The amendments were to the following effect:

##### *Article 16 as a whole*

(a) *United Kingdom* (A/CONF.63/C.1/L.76):

Delete this article.

[Rejected; see paragraph 106 below.]

(b) *USSR* (A/CONF.63/C.1/L.85):

If it is decided to retain the article in the Convention:

1. Replace the words "in one State" in paragraphs 1 and 2 by the words "in one Contracting State".

2. Add the words "if the limitation period has expired or has less than one year to run" at the end of paragraph 1 after "from the date of the decision" and at the end of paragraph 2 after "from the date of the refusal".

[Sent to the Drafting Committee; see paragraph 106 below.]

(c) *Norway* (A/CONF.63/C.1/L.90):

Article 16 shall read:

"1. Where a creditor has asserted his claim in legal proceedings within the limitation period in accordance with articles 12, 13 or 14 and has obtained a decision binding on the merits of his claim in one State, [and where, under the applicable law, he is not precluded by this decision from asserting his original claim in legal proceedings in another State], the limitation period in respect of this claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14, but the creditor shall, in any event, to the extent that this claim is admitted [recognized] by such decision, be entitled to an additional period of one year from the date of the



decision, for the purpose of obtaining satisfaction or recognition of his claim in any other such State.

"[2. If recognition or execution of a decision rendered on the merits in one State is sought in another State, within any time-limit prescribed by the law applicable, but recognition or execution is refused, the limitation period in respect of the creditor's original claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14, and the creditor shall, in any event, to the extent that such claim is admitted by the decision on the merits, be entitled to an additional period of one year from the date of the refusal, for the purpose of obtaining satisfaction or recognition of his claim in such other State.]"

[Rejected as amended; see paragraph 106 below.]

(d) *Sweden* (A/CONF.63/C.1/L.97):

In paragraph 1, and also in paragraph 2, delete the part of the phrase following the words "in another State" and substitute the following: "a new limitation period in respect of this claim shall commence on the date of the decision".

[Adopted as amended; see paragraph 106 below.]

#### Paragraph 2

*Austria* (A/CONF.63/C.1/L.48):

Paragraph 2 should be deleted.

[Rejected; see paragraph 106 below.]

### C. PROCEEDINGS IN THE FIRST COMMITTEE

#### (i) Meetings

105. The First Committee considered article 16 at its 15th and 16th meetings, on 31 May and 3 June 1974.

#### (ii) Consideration

106. At its 16th meeting the Committee rejected the deletion of article 16, proposed by the United Kingdom (A/CONF.63/C.1/L.76), by 19 votes to 16. The amendment by Austria (A/CONF.63/C.1/L.48) was rejected by 18 votes to 6. The amendment by Sweden (A/CONF.63/C.1/L.97) was withdrawn as to paragraph 1 and orally amended by the Swedish representative as to paragraph 2 as follows: "delete remainder of phrase after 'in another State' and substitute 'A new limitation period in respect of this claim shall commence on the date of the decision'." The amendment by Sweden, as amended, was adopted by a vote of 17 to 9. The amendment by Norway (A/CONF.63/C.1/L.90) was orally amended by the representative of Norway adding the words "in his favour" after the word "binding" in paragraph 1; the substance of the amendment by Norway, as orally amended, was rejected when the First Committee decided by a vote of 18 to 8 that paragraph 1 of article 16 should apply to all decisions, whether favourable or unfavourable to the creditor. The amendment by the USSR (A/CONF.63/C.1/L.85) was referred to the Drafting Committee.

### ARTICLE 17

#### A. UNCITRAL TEXT

107. The text of the United Nations Commission on International Trade Law provided as follows:

#### "Article 17

"[1. Where legal proceedings have been commenced against one debtor within the limitation period prescribed by this Convention, the limitation period 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 by 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. In the circumstances mentioned in this article, the creditor or the buyer must institute legal proceedings against the party jointly or severally liable or against the seller, either within the limitation period otherwise provided by this Convention or within one year from the date on which the legal proceedings referred to in paragraphs (1) and (2) commenced, whichever is the later.]

#### B. AMENDMENTS

108. Amendments were submitted to article 17 by Australia (A/CONF.63/C.1/L.121), Austria (A/CONF.63/C.1/L.49), Sweden (A/CONF.63/C.1/L.105) and the USSR (A/CONF.63/C.1/L.69).

109. The amendments were to the following effect:

(a) *Austria* (A/CONF.63/C.1/L.49):

This article should be deleted.

[Rejected; see paragraph 111 below.]

(b) *USSR* (A/CONF.63/C.1/L.69):

Delete the article or, in any case, paragraph 2 thereof.

[Rejected; see paragraph 111 below.]

(c) *Sweden* (A/CONF.63/C.1/L.105):

1. Delete this article.

2. If the article is retained, replace the word "commenced" in paragraph 3 by "ended".

[Paragraph 2 adopted; see paragraph 111 below.]

(d) *Australia* (A/CONF.63/C.1/L.121):

1. Paragraph 2 of article 17 shall read:

"2. Where legal proceedings have been commenced by a subpurchaser against the buyer or if the buyer receives notice of a claim by a subpurchaser which may result in legal proceedings, the limitation period prescribed by 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 the period that the proceedings have been commenced or that he has received notice of such claim."

2. Amend paragraph 3 of article 17 by replacing the word "commenced" by the word "ended".

[Paragraph 2 adopted; see paragraph 111 below.]

#### C. PROCEEDINGS IN THE FIRST COMMITTEE

#### (i) Meetings

110. The First Committee considered article 17 at its 16th and 17th meetings, on 3 June 1974.

(ii) *Consideration*

111. At its 17th meeting the Committee rejected, by 20 votes to 16, the deletion of article 17, proposed by Austria (A/CONF.63/C.1/L.49), the USSR (A/CONF.63/C.1/L.69) and Sweden (A/CONF.63/C.1/L.105, paragraph 1). By 21 votes to 13, the Committee rejected the deletion of paragraph 2 of article 17, the alternative proposal by the USSR (A/CONF.63/C.1/L.69). The Committee adopted the Second amendment proposed by Sweden (A/CONF.63/C.1/L.105) and Australia (A/CONF.63/C.1/L.121) by 17 votes to 7. The first paragraph of the amendment proposed by Australia (A/CONF.63/C.1/L.121) was rejected by a vote of 16 to 16.

## ARTICLE 18

## A. UNCITRAL TEXT

112. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 18*

"1. Where the creditor performs, in the State where the debtor has his place of business and before the expiration of the limitation period, any act, other than those acts prescribed in articles 12, 13 and 14, which under the law of that State has the effect of recommencing the original limitation period, a new limitation period of four years shall commence on the date prescribed by that law, provided that the limitation period shall not extend beyond the end of four years from the date on which the period would otherwise have expired in accordance with articles 8 to 11.

"2. If the debtor has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply."

## B. AMENDMENTS

113. Amendments were submitted to article 18 by Austria (A/CONF.63/C.1/L.50), Germany (Federal Republic of) (A/CONF.63/C.1/L.92), Hungary (A/CONF.63/C.1/L.88), the Netherlands (A/CONF.63/C.1/L.82), Norway (A/CONF.63/C.1/L.99), Sweden (A/CONF.63/C.1/L.106), Switzerland (A/CONF.63/C.1/L.93) and the USSR (A/CONF.63/C.1/L.108).

114. The amendments were to the following effect:

*Article 18 as a whole*

(a) *Netherlands* (A/CONF.63/C.1/L.82):

Add a new paragraph to article 18 as follows:

"3. A third party attachment by the creditor's creditor with respect to the debtor's property shall have the same effect as the acts mentioned in paragraph 1."

[Rejected; see paragraph 117 below.]

(b) *Hungary* (A/CONF.63/C.1/L.88):

Delete this article.

[Rejected; see paragraph 117 below.]

(c) *Norway* (A/CONF.63/C.1/L.99):

1. One might consider the possibility of extending the scope of article 18 to cover not only acts of interruption which have the effect of recommencing the original limitation period, but also acts which have the

effect of extending the period. Such additional period should not exceed one year from the date of such act.

2. The references to articles 8 to 11 should be reconsidered. In the present draft of the Commission, article 18 should not refer to article 9, paragraph 2, article 10, paragraph 2 and possibly not to article 11. If the above proposals regarding articles 8 to 11 are adopted, the reference in article 18 should be to articles 8, 9 and 10 A (and possibly 11).

[Rejected; see paragraph 117 below.]

(d) *Sweden* (A/CONF.63/C.1/L.106):

Delete this article.

[Rejected; see paragraph 117 below.]

(e) *USSR* (A/CONF.63/C.1/L.108):

1. In paragraph 1, replace the words "a new limitation period of four years" by "the original limitation period shall commence to run afresh".

2. At the end of paragraph 1, replace the words "in accordance with articles 8 to 11" by "in accordance with articles 9 to 11".

3. Delete paragraph 2 of article 18 in view of the fact that the provisions of paragraphs 2 and 3 of article 2 have been laid down "for the purposes of this Convention" as a whole.

[Withdrawn in part and sent to Drafting Committee in part; see paragraph 116 below.]

*Paragraph 1*

(a) *Austria* (A/CONF.63/C.1/L.50):

Replace the words "has the effect of recommencing the original limitation period" in the first sentence by "has the effect of recommencing a limitation period".

[Sent to Drafting Committee; see paragraph 116 below.]

(b) *Germany (Federal Republic of)* (A/CONF.63/C.1/L.92):

Replace the words "a new limitation period of four years" by the words "a new limitation period of the initial length".

[Withdrawn; see paragraph 116 below.]

(c) *Switzerland* (A/CONF.63/C.1/L.93):

In paragraph 1 of article 18, add the words "in the State where" the words "he or".

[Rejected; see paragraph 117 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

115. The First Committee considered article 18 at its 17th and 18th meetings, on 3 June 1974.

(ii) *Consideration*

116. At the 17th meeting the amendment by Austria (A/CONF.63/C.1/L.50) was referred to the Drafting Committee. The representative of the USSR withdrew paragraph 1 of his amendment (A/CONF.63/C.1/L.108); paragraphs 2 and 3 were referred to the Drafting Committee. The amendment by the Federal Republic of Germany (A/CONF.63/C.1/L.92) was withdrawn.

117. At the 18th meeting the Committee rejected by 13 votes to 11 the deletion of article 18, proposed by Hungary (A/CONF.63/C.1/L.88) and Sweden (A/CONF.63/C.1/L.106). The amendment by Norway (A/CONF.63/C.1/L.99) was rejected by 13 votes

to 4. The amendment by Switzerland (A/CONF.63/C.1/L.93) was rejected by a vote of 18 to 3. The amendment by the Netherlands (A/CONF.63/C.1/L.82) was rejected by 14 votes to 3. Article 18 was referred to the Drafting Committee.

## ARTICLE 19

### A. UNCITRAL TEXT

118. The text of the United Nations Commission on International Trade Law provided as follows:

#### *"Article 19*

"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."

### B. AMENDMENTS

119. Amendments were submitted to article 19 by Austria (A/CONF.63/C.1/L.51), Germany (Federal Republic of) (A/CONF.63/C.1/L.91), the Netherlands (A/CONF.63/C.1/L.83), Sweden (A/CONF.63/C.1/L.107), the USSR (A/CONF.63/C.1/L.109), and Yugoslavia (A/CONF.63/C.1/L.114).

120. The amendments were to the following effect:

#### *Article 19 as a whole*

*Germany (Federal Republic of)* (A/CONF.63/C.1/L.91):

Substitute the following single paragraph for the present two paragraphs:

"Where a debtor, before the expiration of the limitation period, acknowledges unequivocally, either expressly or by implication, his obligation to the creditor, a new limitation period of the initial length shall commence to run from the date of such acknowledgement."

[Rejected; see paragraph 122 below.]

#### *Paragraph 1*

(a) *Austria* (A/CONF.63/C.1/L.51):

Delete the words "in writing".

[Rejected; see paragraph 122 below.]

(b) *Netherlands* (A/CONF.63/C.1/L.83):

In paragraph 1, replace the words "acknowledges in writing" by "acknowledges expressly or by implication".

[Rejected; see paragraph 122 below.]

(c) *Sweden* (A/CONF.63/C.1/L.107, paragraph 1) (part pertaining to paragraph 1):

In paragraph 1, for the words "in writing" substitute "expressly or by implication".

[Rejected; see paragraph 122 below.]

(d) *USSR* (A/CONF.63/C.1/L.109):

In paragraph 1, change the words "a new limitation period of four years shall commence to run" to read:

"the original limitation period shall commence to run afresh".

[Withdrawn; see paragraph 122 below.]

#### *Paragraph 2*

(a) *Sweden* (A/CONF.63/C.1/L.107, paragraph 2) (part pertaining to paragraph 2):

Rephrase paragraph 2 as follows:

"Payment of interest or partial performance of an obligation by the debtor shall be considered as an acknowledgement under paragraph 1, unless the debtor declares that he does not acknowledge the debt."

[Rejected; see paragraph 122 below.]

(b) *Yugoslavia* (A/CONF.63/C.1/L.114):

Paragraph 2 of article 19 should read:

"2. Acknowledgement of the obligation made by the debtor implicitly, such as payment of interest, partial performance or giving securities, has 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."

[Rejected; see paragraph 122 below.]

### C. PROCEEDINGS IN THE FIRST COMMITTEE

#### (i) *Meetings*

121. The First Committee considered article 19 at its 18th meeting, on 3 June 1974.

#### (ii) *Consideration*

122. At the 18th meeting the amendment by the USSR (A/CONF.63/C.1/L.109) was withdrawn. The amendment by the Federal Republic of Germany (A/CONF.63/C.1/L.91) was rejected by 18 votes to 9. The amendment by Austria (A/CONF.63/C.1/L.51) was rejected by 18 votes to 7. The amendments proposed by the Netherlands (A/CONF.63/C.1/L.83) and Sweden (A/CONF.63/C.1/L.107, paragraph 1) were rejected by 16 votes to 9. The amendment by Sweden (A/CONF.63/C.1/L.107, paragraph 2) was rejected by 17 votes to 5. The amendment by Yugoslavia (A/CONF.63/C.1/L.114) was rejected by 9 votes to 9.

## ARTICLE 20

### A. UNCITRAL TEXT

123. The text of the United Nations Commission on International Trade Law provided as follows:

#### *"Article 20*

"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. The limitation period shall in no event be extended beyond four years from the date on which the period would otherwise expire in accordance with articles 8 to 11."

## B. AMENDMENTS

124. Amendments were submitted to article 20 by the Netherlands (A/CONF.63/C.1/L.84), Norway (A/CONF.63/C.1/L.100), the United Kingdom (A/CONF.63/C.1/L.102) and Singapore (A/CONF.63/C.1/L.124).

125. The amendments were to the following effect:

(a) *Netherlands* (A/CONF.63/C.1/L.84):

The beginning of the article shall read:

"Where as a result of a circumstance known to the debtor, which is beyond the control . . .".

[Rejected; see paragraph 127 below.]

(b) *Norway* (A/CONF.63/C.1/L.100):

1. In the first sentence replace the words "beyond the control of the creditor" by the words: "not personal to the creditor".

2. In the second sentence replace "four years" by "10 years". This provision should be without prejudice to emergency legislation under the applicable national law. Reference to article 9 should not include the present paragraph 2 of that article (where there is no fixed limit).

[Rejected; see paragraph 127 below.]

(c) *United Kingdom* (A/CONF.63/C.1/L.102):

Article 20 should read:

"Where, as the result of fraud by the debtor, the creditor has been induced to refrain from instituting legal proceedings, the limitation period shall be extended so as not to expire before the expiration of one year from the date on which the fraud was or reasonably could have been discovered."

[Rejected; see paragraph 127 below.]

(d) *Singapore* (A/CONF.63/C.1/L.124):

Delete article 20.

[Rejected; see paragraph 127 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

126. The First Committee considered article 20 at its 18th meeting, on 3 June 1974.

(ii) *Consideration*

127. At its 18th meeting the Committee rejected by 24 votes to 3 the deletion of article 20 proposed by Singapore (A/CONF.63/C.1/L.124). The amendment by the United Kingdom (A/CONF.63/C.1/L.102) was rejected by 26 votes to 2. The amendment proposed by the Netherlands (A/CONF.63/C.1/L.84) was rejected by 22 votes to 2. Paragraph 1 of the amendment by Norway (A/CONF.63/C.1/L.100) was rejected by 19 votes to 1; paragraph 2 of the same amendment was rejected by 13 votes to 10. Article 20 was referred to the Drafting Committee.

## ARTICLE 21

## A. UNCITRAL TEXT

128. The text of the United Nations Commission on International Trade Law provided as follows:

## "Article 21

"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. In no event shall the period of limitation be extended beyond the end of four years from the date on which it would otherwise have expired in accordance with the provisions of this Convention.

"3. The provisions of this article shall not affect the validity of a clause in the contract of sale whereby the acquisition or exercise of a claim is dependent upon the performance by one party of an act other than the institution of judicial proceedings within a certain period of time, provided that such clause is valid under the applicable law."

## B. AMENDMENTS

129. Amendments were submitted to article 21 by Bulgaria (A/CONF.63/C.1/L.98), Czechoslovakia (A/CONF.63/C.1/L.122), Germany (Federal Republic of) (A/CONF.63/C.1/L.123), Hungary (A/CONF.63/C.1/L.138), India (A/CONF.63/C.1/L.115), Norway (A/CONF.63/C.1/L.101), USSR (A/CONF.63/C.1/L.110), United Kingdom (A/CONF.63/C.1/L.87), and the United States (A/CONF.63/C.1/L.129).

130. The amendments were to the following effect:

*Article 21 as a whole*

*Bulgaria* (A/CONF.63/C.1/L.98):

Article 21 should read as follows:

"The parties can by written agreement modify the limitation period provided by this Convention, but the agreed period cannot be shorter than 2 or longer than 8 years."

[Rejected; see paragraph 133 below.]

*Paragraph 1*

(a) *India* (A/CONF.63/C.1/L.115, paragraph 1) (part pertaining to paragraph 1):

Delete the words "except in the cases provided for in paragraph 2 of this article".

[Rejected; see paragraph 133 below.]

(b) *Germany (Federal Republic of)* (A/CONF.63/C.1/L.123):

Substitute the following for the present text.

"1. The limitation period may be shortened by agreement between the parties."

[Rejected; see paragraph 133 below.]

(c) *United States* (A/CONF.63/C.1/L.129) (part pertaining to paragraph 1):

Insert "and 3" after 2.

[Rejected; see paragraph 133 below.]

*Paragraph 2*

(a) *Norway* (A/CONF.63/C.1/L.101):

Paragraph 2 shall read:

"The debtor may at any time after the commencement of the limitation period extend the period by a declaration in writing to the creditor. Such declaration shall not have effect beyond the end of three years from the date on which the period would otherwise expire. The debtor may renew the declaration."

ration, provided however, that in no event shall the limitation period by reason of declarations under this article be extended beyond the end of 10 years from the date on which it would otherwise expire in accordance with this Convention."

[Rejected as modified; see paragraph 133 below.]

(b) *India* (A/CONF.63/C.1/L.115, paragraph 2) (part pertaining to paragraph 2):

Delete paragraph 2.

[Rejected; see paragraph 133 below.]

(c) *Hungary* (A/CONF.63/C.1/L.138):

The end of the paragraph should read as follows: "in accordance with articles 8 to 11."

[Adopted; see paragraph 133 below.]

(d) *Austria* (A/CONF.63/C.1/L.139):

Article 21, paragraph 2, should read as follows:

"2. Where the creditor addresses a demand in writing to the debtor, the limitation period shall be extended for the length of time which elapses between the date on which the debtor received such demand and the date on which he rejects it in writing. Any subsequent demand relating to the same debt shall not have the aforementioned effect."

[Rejected; see paragraph 133 below.]

### Paragraph 3

(a) *United Kingdom* (A/CONF.63/C.1/L.87):

Delete the existing paragraph 3, and substitute the following:

"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 provided by this Convention, provided that such clause is valid under the law applicable to the contract of sale."

[Adopted; see paragraph 133 below.]

(b) *USSR* (A/CONF.63/C.1/L.110):

In paragraph 3, replace the words "institution of judicial proceedings" by "institution of legal proceedings" (within the meaning of the general definition given in article 1, paragraph 3 (e)).

[Withdrawn; see paragraph 132 below.]

(c) *Czechoslovakia* (A/CONF.63/C.1/L.122):

The paragraph shall read:

"3. The provision of this article shall not affect the validity of a clause in the contract of sale whereby the acquisition, continuation, or exercise of a claim is dependent upon performance by one party of an act other than the institution of legal proceedings within a certain period of time, provided that such a clause is valid under the applicable law."

[Rejected; see paragraph 133 below.]

(d) *United States* (A/CONF.63/C.1/L.129) (part pertaining to paragraph 3):

Substitute the following for paragraph 3:

"3. The provisions of this article shall not affect the validity of a clause in the contract of sale whereby the exercise of a claim is dependent upon the performance by one party of an act other than the institution of judicial proceedings within a certain period of time after the claim accrues, provided that such clause is valid under the applicable law."

[Rejected; see paragraph 133 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

### (i) Meetings

131. The First Committee considered article 21 at its 19th and 20th meetings, on 4 June 1974.

### (ii) Consideration

132. At the 19th meeting the amendment by the USSR (A/CONF.63/C.1/L.110) was withdrawn. The representative of the United States orally amended his amendment (A/CONF.63/C.1/L.129), replacing the word "exercise" by the word "existence", and the word "judicial" by the word "legal".

133. At the 20th meeting the amendment by India (A/CONF.63/C.1/L.115) was rejected by 26 votes to 14. The amendment proposed by the Federal Republic of Germany (A/CONF.63/C.1/L.123) was rejected by 26 votes to 4. The amendment proposed by Bulgaria (A/CONF.63/C.1/L.98) was rejected by 21 votes to 15. The representative of Norway orally amended his amendment (A/CONF.63/C.1/L.101), so that it read as follows:

"The debtor may at any time after the commencement of the limitation period extend the period by a declaration in writing to the creditor. Such declaration shall not have effect beyond the end of four years from the date on which the period would otherwise expire. The debtor may renew the declaration, subject to article 22."

The Norwegian amendment, as modified, was rejected by 23 votes to 12. The Committee adopted the amendment proposed by Hungary (A/CONF.63/C.1/L.138) by 20 votes to 6. The amendment proposed by Czechoslovakia (A/CONF.63/C.1/L.122) was rejected by 13 votes to 7. The Committee adopted the amendment proposed by the United Kingdom (A/CONF.63/C.1/L.87) by 15 votes to 12. Thereby the Committee rejected the amendment to paragraph 3 of article 21 proposed by the United States (A/CONF.63/C.1/L.129). The Committee rejected a motion under rule 33 to reconsider the United States amendment as an addition to paragraph 3 of article 21. The amendment by Austria (A/CONF.63/C.1/L.139) was rejected by 17 votes to 9.

## ARTICLE 22

### A. UNCITRAL TEXT

134. The text of the United Nations Commission on International Trade Law provided as follows:

#### "Article 22

"[Notwithstanding the provisions of articles 12 to 21 of this Convention, no legal proceedings shall in any event be brought after the expiration of ten years from the date on which the limitation period commences to run under articles 9 and 11, or after the expiration of eight years from the date on which the limitation period commences to run under article 10.]"

### B. AMENDMENTS

135. Amendments were submitted to article 22 by Colombia (A/CONF.63/C.1/L.145), Czechoslovakia (A/CONF.63/C.1/L.140), Czechoslovakia and the United States (A/CONF.63/C.1/L.147), Ireland (A/CONF.63/C.1/L.148), Norway (A/CONF.63/C.1/

L.130), and the United Kingdom (A/CONF.63/C.1/L.137).

136. The amendments were to the following effect:

(a) *Norway* (A/CONF.63/C.1/L.130):

*Principal proposal*

Delete this article.

*Subsidiary proposal*

Article 22 shall read:

"Notwithstanding the provisions of articles 12, 13, 14, [17] and 18 of this Convention, no legal proceedings shall in any event be brought after the expiration of ten years from the date on which the limitation period commences to run under articles 9, 10 and 11, except to the extent that the period has been extended in accordance with articles 15, paragraphs 2, 16, 19 and 20."

*Alternative for drafting purposes (subsidiary proposal):*

"Legal proceedings shall in no event be brought after the expiration of 10 years from the date on which the limitation period commences to run under articles 9, 10 and 11, except to the extent that the period has been extended in accordance with articles 15, paragraphs 2, 16, 19 and 20."

[Withdrawn; see paragraphs 138 and 139 below.]

(b) *United Kingdom* (A/CONF.63/C.1/L.137):

Replace the present text by the following:

"Notwithstanding any provision of this Convention, no legal proceedings shall in any event be brought after the expiration of 10 years from the date on which the limitation period commences to run under articles 9, 10 and 11."

[Withdrawn; see paragraph 139 below.]

(c) *Czechoslovakia* (A/CONF.63/C.1/L.140):

Article 22 shall read::

"Notwithstanding the provisions of articles 15, paragraph 2, to 21 of this Convention, the limitation period shall not extend beyond 10 years from the date on which it commences to run under articles 9 to 11 of this Convention."

[Withdrawn; see paragraph 138 below.]

(d) *Colombia* (A/CONF.63/C.1/L.145):

Replace the present text by the following:

"Notwithstanding the provisions of articles 12 to 21 of this Convention, in no case may legal proceedings be brought after the expiration of . . . years from the date of the conclusion of the contract."

[Withdrawn; see paragraph 139 below.]

(e) *Czechoslovakia and the United States* (A/CONF.63/C.1/L.147):

Article 22 shall read:

"Notwithstanding the provisions of this Convention, a limitation period shall not be extended or renewed beyond 10 years from the date on which it commenced to run under articles 9 to 11 of this Convention."

[Referred to working group; see paragraph 139 below.]

(f) *Ireland* (A/CONF.63/C.1/L.148):

In place of "articles 12 to 21" substitute "articles 12 to 19 and article 21".

[Withdrawn; see paragraph 139 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

### (i) Meetings

137. The First Committee considered article 22 at its 20th, 21st and 22nd meetings, on 4 and 5 June 1974.

### (ii) Consideration

138. At the 20th meeting the amendment by Norway (A/CONF.63/C.1/L.130) was withdrawn except for the "Alternative for drafting purposes (subsidiary proposal)" contained therein. The amendment by Czechoslovakia (A/CONF.63/C.1/L.140) was superseded by the amendment introduced jointly by Czechoslovakia and the United States (A/CONF.63/C.1/L.147).

139. At the 21st meeting the amendments by the United Kingdom (A/CONF.63/C.1/L.137), Ireland (A/CONF.63/C.1/L.148), and Colombia (A/CONF.63/C.1/L.145) were withdrawn. The representative of Norway withdrew the remaining part of his amendment (A/CONF.63/C.1/L.130) and proposed an oral sub-amendment to add the following words at the end of the amendment proposed by Czechoslovakia and the United States (A/CONF.63/C.1/L.147): "except to the extent that the period has been extended in accordance with articles 15 (paragraph 2), 16 or 19". A small working group was established to consider the amendment by Czechoslovakia and the United States (A/CONF.63/C.1/L.147) and the oral subamendment by Norway.

140. At the 22nd meeting the representative of the United States presented the following text for article 22 prepared by the working group established at the 21st meeting: "Notwithstanding the provisions of articles [15 (2)], [16], [17], [18], [19], [20] and [21] of this Convention, a limitation period shall in any event expire not later than 10 years from the date on which it commenced to run under articles 9 to 11 of this Convention." By 21 votes to 18 the Committee decided that no exceptions should be included in article 22.

The Committee adopted the substance of the text for article 22 proposed by the Working Group, by 22 votes to 3 and referred article 22 to the Drafting Committee.

## ARTICLE 22 *bis*

### A. TEXT

141. The text proposed by Czechoslovakia (A/CONF.63/C.1/L.141) provided as follows:

New article 22 *bis* shall read:

"After a final decision binding on the merits of the claim in the legal proceedings mentioned in articles 12, 13 or 14, the limitation period shall be governed by the applicable law."

## B. PROCEEDINGS IN THE FIRST COMMITTEE

### (i) Meetings

142. The Committee considered this article at its 21st meeting, on 5 June 1974.

### (ii) Consideration

143. At the 21st meeting the proposal for a new article 22 *bis* was withdrawn.

## ARTICLE 23

## A. UNCITRAL TEXT

144. The text of the United Nations Commission on International Trade Law provided as follows:

## "Article 23

"Expiration of the limitation period shall be taken into consideration in any legal proceedings only at the request of a party to such proceedings."

## B. AMENDMENTS

145. Amendments were submitted to article 23 by India (A/CONF.63/C.1/L.142), Pakistan (A/CONF.63/C.1/L.125) and the United States (A/CONF.63/C.1/L.131).

146. The amendments were to the following effect:

(a) *Pakistan* (A/CONF.63/C.1/L.125):

Article 23 shall read:

"Expiration of the limitation period shall be taken into consideration in any legal proceedings either at the request of a party to such proceedings or by the court *suo motu*, as prescribed under the law of the country of the court where the proceedings are instituted."

[Rejected; see paragraph 148 below.]

(b) *United States* (A/CONF.63/C.1/L.131):

Substitute the following for the present text:

"Expiration of the limitation period shall be taken into consideration in any legal proceedings only if invoked by a party to such proceedings."

[Sent to Drafting Committee; see paragraph 148 below.]

(c) *India* (A/CONF.63/C.1/L.142):

Delete article 23.

[Rejected; see paragraph 148 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

147. The First Committee considered article 23 at its 21st meeting, on 5 June 1974.

(ii) *Consideration*

148. At the 21st meeting the amendment by the United States (A/CONF.63/C.1/L.131) was referred to the Drafting Committee. The amendment by India (A/CONF.63/C.1/L.142), to delete article 23, was rejected by 26 votes to 3. The amendment by Pakistan (A/CONF.63/C.1/L.125) was rejected by 25 votes to 10.

## ARTICLE 24

## A. UNCITRAL TEXT

149. The text of the United Nations Commission on International Trade Law provided as follows:

## "Article 24

"1. Subject to the provisions of article 23 and of paragraph (2) of this article, no claim which has become barred by reason of limitation shall be recognized or enforced in any legal proceedings.

"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 a contract or contracts concluded in the course of the same transaction; or

"(b) If the claims could have been set-off at any time before the date on which the limitation period expired."

## B. AMENDMENTS

150. Amendments were submitted to article 24 by Norway (A/CONF.63/C.1/L.116), Singapore (A/CONF.63/C.1/L.127), the USSR (A/CONF.63/C.1/L.111) and the United States (A/CONF.63/C.1/L.132 and L.143).

151. The amendments were to the following effect:

*Paragraph 1*

(a) *United States* (A/CONF.63/C.1/L.132):

Insert the words "under this Convention" after "limitation".

Delete the words "recognized or".

[Withdrawn; see paragraph 153, below.]

(b) *United States* (A/CONF.63/C.1/L.143):

The paragraph shall read:

"1. Subject to the provisions of paragraph 2 of this article and of article 25, no claim shall be enforced in any legal proceedings if commenced subsequent to the expiration of the limitation period."

[Withdrawn; see paragraph 154 below.]

*Paragraph 2*

(a) *USSR* (A/CONF.63/C.1/L.111)

Between subparagraphs (a) and (b), replace the word "or" by "and".

[Rejected; see paragraph 154 below.]

(b) *Norway* (A/CONF.63/C.1/L.116):

Subparagraph (a) shall read:

"(a) If both claims relate to the same contract or to contracts concluded in the course of the same transaction;"

[Sent to the Drafting Committee; see paragraph 153 below.]

(c) *Singapore* (A/CONF.63/C.1/L.127):

Paragraph 2 shall read:

"2. Notwithstanding the expiration of the limitation period, a party may rely on a claim which would otherwise have become barred by reason of limitation, as a defence, counterclaim or set-off against any claim asserted by the other party provided that:

"(a) Both claims relate to the same contract or to different contracts concluded in the course of the same transaction; or

"(b) The claim could have been relied on as a defence, counterclaim or set-off before the expiration of the limitation period."

[Rejected; see paragraph 154 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

152. The First Committee considered article 24 at its 21st and 22nd meetings, on 5 June 1974.

(ii) *Consideration*

153. At its 21st meeting the Committee referred the amendments by Norway (A/CONF.63/C.1/L.116) to the Drafting Committee. The representative of the United States withdrew one of his proposed amendments (A/CONF.63/C.1/L.132).

154. At its 22nd meeting the Committee had before it the following draft text for article 24, paragraph 1, prepared by the working group established at its 21st meeting to consider article 22:

*"Article 24, paragraph 1*

"Subject to the provisions of paragraph 2 of this article and of articles [15, paragraph (2)], 23 and [25], no claim shall be recognized or enforced in any legal proceedings commenced either after the expiration of the limitation period or after the expiration of 10 years from the date of commencement of the limitation period under articles 9 to 11 of this Convention."

The amendment by the United States (A/CONF.63/C.1/L.143) was withdrawn. After voting, 19 to 3, to delete the reference therein to article 15, paragraph 2, the Committee adopted the substance of the text of article 24, paragraph 1, prepared by the working group, by a vote of 18 to 5. The Committee then decided to also delete the reference to article 25 in article 24, paragraph 1, and referred this paragraph to the Drafting Committee. The amendment by the USSR (A/CONF.63/C.1/L.111) was rejected by 18 votes to 12. The amendment by Singapore (A/CONF.63/C.1/L.127) was adopted by a vote of 14 to 11.

## ARTICLE 25

## A. UNCITRAL TEXT

155. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 25*

"Where the debtor performs his obligation after the expiration of the limitation period, he shall not thereby be entitled to recover or in any way claim restitution of the performance thus made even if he did not know at the time of such performance that the limitation period had expired."

## B. AMENDMENTS

156. The United States submitted the following amendment to article 25 (A/CONF.63/C.1/L.133):

Delete the words "thereby" and "recover or".

[Sent to the Drafting Committee; see paragraph 158 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meeting*

157. The First Committee considered article 25 at its 23rd meeting, on 5 June 1974.

(ii) *Consideration*

158. At its 23rd meeting the First Committee referred to the Drafting Committee the amendment by the United States (A/CONF.63/C.1/L.133).

## ARTICLE 26

## A. UNCITRAL TEXT

159. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 26*

"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."

## B. AMENDMENTS

160. No amendments were submitted to article 26.

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meeting*

161. The First Committee considered article 26 at its 23rd meeting, on 5 June 1974.

(ii) *Considerations*

162. The First Committee approved article 26 at its 23rd meeting.

## ARTICLE 27

## A. UNCITRAL TEXT

163. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 27*

"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 calendar month of the limitation period."

"2. The limitation period shall be calculated by reference to the calendar of the place where the legal proceedings are instituted."

## B. AMENDMENTS

164. Amendments were submitted to article 27 by Singapore (A/CONF.63/C.1/L.128) and Sweden (A/CONF.63/C.1/L.120).

165. The amendments were to the following effect:

(a) *Sweden* (A/CONF.63/C.1/L.120):

Delete this article.

[Withdrawn; see paragraph 167 below.]

(b) *Singapore* (A/CONF.63/C.1/L.128):

Paragraph 2 shall read:

"2. The limitation period shall be calculated by reference to the date of the place where the legal proceedings are instituted."

[Adopted; see paragraph 167 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

166. The First Committee considered article 27 at its 23rd meeting on 5 June 1974.



(ii) *Consideration*

167. At its 23rd meeting the Committee adopted by 27 votes to 1 the amendment by Singapore (A/CONF.63/C.1/L.128) to article 27, paragraph 2. The representative of Sweden withdrew his amendment (A/CONF.63/C.1/L.120).

## ARTICLE 28

## A. UNCITRAL TEXT

168. The text of the United Nations Commission on International Trade Law provided as follows:

## "Article 28

"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 judicial proceedings as envisaged in article 12 or asserts a claim as envisaged in article 14, 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."

## B. AMENDMENTS

169. Amendments were submitted to article 28 by Brazil (A/CONF.63/C.1/L.149), Sweden (A/CONF.63/C.1/L.119), and the USSR (A/CONF.63/C.1/L.112).

170. The amendments were to the following effect:  
(a) *Brazil* (A/CONF.63/C.1/L.149):

Change the words "or other *dies non juridicus*" to read: "or other non-business day".

[Withdrawn; see paragraph 172 below.]

(b) *Sweden* (A/CONF.63/C.1/L.119):

[Withdrawn; see paragraph 172 below.]

(c) *USSR* (A/CONF.63/C.1/L.112):

Change the expression "the creditor institutes judicial proceedings as envisaged in article 12 or asserts a claim as envisaged in article 14" to read: "the creditor institutes legal proceedings (as envisaged in articles 12, 13 or 14)".

[Adopted; see paragraph 172 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

171. The Committee considered article 28 at its 23rd meeting on 5 June 1974.

(ii) *Consideration*

172. At its 23rd meeting the Committee adopted the amendment of the USSR (A/CONF.63/C.1/L.112) by 32 votes to none. Preceding this vote, the representatives of Brazil and Sweden had each withdrawn their amendments (A/CONF.63/C.1/L.149 and L.119).

## ARTICLE 29

## A. UNCITRAL TEXT

173. The text of the United Nations Commission on International Trade Law provided as follows:

## "Article 29

"A Contracting State shall give effect to acts or circumstances referred to in articles 12, 13, 14, 15, 17 and 18 which take place 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 circumstance as soon as possible."

## B. AMENDMENTS

174. Amendments were submitted to article 29 by Austria (A/CONF.63/C.1/L.150), Norway (A/CONF.63/C.1/L.117), the United Kingdom (A/CONF.63/C.1/L.135), the USSR (A/CONF.63/C.1/L.113), and the United States (A/CONF.63/C.1/L.136).

175. The amendments were to the following effect:  
(a) *USSR* (A/CONF.63/C.1/L.113):

Change the beginning of the article to read as follows: "The acts and circumstances referred to in articles 12, 13, 14, 15, 17 and 18 which have taken place in one Contracting State shall have effect in another Contracting State . . .".

[Sent to Drafting Committee; see paragraph 177 below.]

(b) *Norway* (A/CONF.63/C.1/L.117):

In the phrase "another Contracting State" delete the word "Contracting".

[Rejected; see paragraph 177 below.]

(c) *United Kingdom* (A/CONF.63/C.1/L.135):

Delete this article, and substitute:

"1. Subject to paragraph 2 of this article, the acts and circumstances referred to in articles 12, 13, 14, 15, 17 and 18 which have taken place in one Contracting State shall have effect in another Contracting State.

"2. The assertion of a claim in legal proceedings in accordance with articles 12, 13, or 14 shall not cause the limitation period to cease to run in another Contracting State, unless (a) the legal proceedings are recognized as competent by that other Contracting State, and (b) the creditor has taken all reasonable steps to ensure that the debtor is informed of the assertion of the claim as soon as possible."

[Rejected; see paragraph 177 below.]

(d) *United States* (A/CONF.63/C.1/L.136):

Substitute the following for the present text:

"1. A Contracting State shall be required to give effect to acts or circumstances referred to in articles 12, 13, 14, 15, 17, and 18 only if they take place in another Contracting State and 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.

"2. A Contracting State shall be required to give effect to acts referred to in articles 19 and 21 (2) wherever they take place, provided that the creditor has taken all reasonable steps to ensure that the debtor is informed of the relevant act as soon as possible."

[Rejected as amended; see paragraph 178 below.]

(e) *Austria* (A/CONF.63/C.1/L.150):

Article 29 shall read:

"A Contracting State shall give effect to acts referred to in articles 12, 13, 14, 15, 17 and 18 which take place in another Contracting State:

"(a) When these acts take place in the State where the debtor has his place of business for the purposes of article 2;

"(b) When the purpose of these acts is to obtain a judicial or arbitral decision susceptible of recognition and, where appropriate, execution in the first Contracting State."

[Rejected as amended; see paragraph 177 below.]

## C. PROCEEDINGS IN THE FIRST COMMITTEE

### (i) Meetings

176. The First Committee considered article 29 at its 24th and 25th meetings, on 6 June 1974.

### (ii) Consideration

177. At its 24th meeting the Committee referred to the Drafting Committee the amendment by the USSR (A/CONF.63/C.1/L.113). The representative of Austria orally amended his proposed amendment (A/CONF.63/C.1/L.150) by inserting the conjunction "or" between subparagraphs (a) and (b) and replacing the words "in the first Contracting State" at the end of subparagraph (b) by the words "in the Contracting State in which they are to be given effect". By an indicative vote of 20 to 14, the Committee decided that there should be no limitations introduced which would have the effect of restricting the scope of article 29. This indicative vote meant that, by implication, the Committee was rejecting the amendment by the United Kingdom (A/CONF.63/C.1/L.135) and by Austria (A/CONF.63/C.1/L.150), as orally amended. By a vote of 17 to 17, the Committee rejected the amendment by Norway (A/CONF.63/C.1/L.117).

178. At the 25th meeting of the Committee, the representative of the United States orally amended his proposed amendment (A/CONF.63/C.1/L.136), to withdraw paragraph 1 of its amendment and to revise paragraph 2 to read as follows:

"A Contracting State shall be required to give effect to acts referred to in articles 19, 20 and 21 wherever they take place."

The amendment by the United States (A/CONF.63/C.1/L.136), as orally amended, was rejected by a vote of 13 to 10.

## NEW ARTICLE 29 *bis*

### A. TEXT

179. The text proposed by Belgium for a new article 29 *bis* provided as follows (A/CONF.63/C.1/L.146):

The new article 29 *bis* will read:

"The creditor who, having his residence on the territory of a Contracting State, institutes judicial proceedings against the debtor on the territory of another Contracting State, shall be exempt from the payment of the *cautio judicatum solvi* or any similar payment."

## B. PROCEEDINGS IN THE FIRST COMMITTEE

### (i) Meetings

180. The First Committee considered the proposed new article 29 *bis* at its 25th meeting, on 6 June 1974.

### (ii) Consideration

181. At its 25th meeting the Committee rejected, by 23 votes to 11, the new article 29 *bis* proposed by Belgium (A/CONF.63/C.1/L.146).

## ARTICLE 33

### A. UNCITRAL TEXT

182. The text of the United Nations Commission on International Trade Law provided as follows:

### "Article 33

"1. Two or more Contracting States may at any time declare that contracts of sale between a seller having a place of business in one of these States and buyer having a place of business in another of these States shall not be considered international within the meaning of article 2 of this Convention, because they apply the same or closely related legal rules which in the absence of such a declaration would be governed by this Convention.

"2. If a party has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply."

### B. AMENDMENTS

183. There were no amendments submitted to article 33.

## C. PROCEEDINGS IN THE FIRST COMMITTEE

### (i) Meetings

184. The First Committee considered article 33 at its 25th meeting, on 6 June 1974.

### (ii) Consideration

185. At its 25th meeting the First Committee approved article 33 and referred it to the Drafting Committee.

## NEW ARTICLE 33 *bis*

### A. TEXTS

186. The proposed texts for a new article 33 *bis* provided as follows:

(a) Proposal by Germany (Federal Republic of) (A/CONF.63/C.1/L.23):

After article 33, insert the following article 33 *bis*:

"1. Any State which has ratified or acceded to the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 or any future Convention on the same subject established under the auspices of the United Nations, may declare that, by way of derogation from articles 2 to 4 of the present Convention, it will apply the dispositions of the present Convention exclusively to rights arising from contracts which are governed by the above-mentioned Convention to which it is a contracting party.

"2. Declarations under paragraph 1 of this Article may be made by the States concerned at the time of deposit of their instruments of ratification or accession to the present Convention or at any time thereafter."

[Withdrawn; see paragraph 189 below.]

(b) Proposal by Belgium, France, Germany (Federal Republic of), Ireland, the Netherlands and the United Kingdom (A/CONF.63/C.1/L.144):

After article 33, insert the following article:

*"Article 33 bis*

"1. Any State may, at the time of the deposit of its instrument of ratification or accession, declare that it shall apply this Convention exclusively to contracts of international sale of goods as defined in the Convention relating to a Uniform Law on the International Sale of Goods signed at The Hague on 1 July 1964.

"2. Such declaration shall cease to be effective one year after a new Convention on the International Sale of Goods, concluded under the auspices of the United Nations, shall have entered into force in respect of 20 States."

[Rejected; see paragraph 189 below.]

**B. PROCEEDINGS IN THE FIRST COMMITTEE**

*(i) Meetings*

187. The First Committee considered proposed article 33 *bis*, contained in document A/CONF.63/C.1/L.23, at its 4th, 5th and 6th meetings, on 23 and 24 May 1974. The First Committee considered proposed article 33 *bis* contained in document A/CONF.63/C.1/L.144 at its 22nd and 23rd meetings, on 5 June 1974.

*(ii) Consideration*

188. At its 6th meeting the Committee established a Working Group to consider the relationship between the Convention on Prescription (Limitation) in the International Sale of Goods and existing and future conventions containing definitions of the international sale of goods. Proposed article 33 *bis* contained in document A/CONF.63/C.1/L.23, was referred to this working group.

189. At the 23rd meeting, proposed article 33 *bis*, contained in document A/CONF.63/C.1/L.144 (which had superseded A/CONF.63/C.1/L.23), was rejected by a vote of 19 to 14.

**ARTICLE 34**

**A. UNCITRAL TEXT**

190. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 34*

"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."

**B. AMENDMENTS**

191. There were no amendments submitted to article 34.

**C. PROCEEDINGS IN THE FIRST COMMITTEE**

*(i) Meetings*

192. The First Committee considered article 34 at its 25th meeting, on 6 June 1974.

*(ii) Consideration*

193. At its 25th meeting the First Committee approved article 34 and referred it to the Drafting Committee.

**ARTICLE 35**

**A. UNCITRAL TEXT**

194. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 35*

"Any State may declare, at the time of the deposit of its instrument of ratification or accession to this Convention, that it shall not be compelled to apply the provisions of article 23 of this Convention."

**B. AMENDMENTS**

195. An amendment was submitted to article 35 by Pakistan (A/CONF.63/C.1/L.126).

196. The amendment was to the following effect:

Delete this article

[Withdrawn; see paragraph 198 below.]

**C. PROCEEDINGS IN THE FIRST COMMITTEE**

*(i) Meetings*

197. The First Committee considered article 35, in conjunction with article 23, at its 21st meeting, on 5 June 1974.

*(ii) Consideration*

198. At the 21st meeting the amendment by Pakistan (A/CONF.63/C.1/L.126) was withdrawn upon the rejection of the amendment by Pakistan to article 23 (A/CONF.63/C.1/L.125).

**NEW ARTICLE 35 A**

**A. UNCITRAL TEXT**

199. The text for a new article 35 A, proposed by Norway (A/CONF.63/C.1/L.118) read as follows:

*"Article 35 A*

"A Contracting State may declare, at the time of the deposit of its instrument of ratification or accession to this Convention, that it will apply the provisions of the Convention regardless of whether the seller and buyer have their places of business in Contracting or non-Contracting States."

**B. PROCEEDINGS IN THE FIRST COMMITTEE**

*(i) Meetings*

200. The First Committee considered the proposed new article 35 A at its 25th meeting, on 6 June 1974.

*(ii) Consideration*

201. At the 25th meeting the representative of Norway withdrew his proposal for a new article 35 A (A/CONF.63/C.1/L.118).

## ARTICLE 36

## A. UNCITRAL TEXT

202. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 36*

"1. This Convention shall not prevail over conventions already entered into or which may be entered into, and which contain provisions concerning limitation of legal proceedings or prescription of rights in respect of international sales, provided that the seller and buyer have their places of business in States parties to such a Convention.

"2. If a party has places of business in more than one State, or if he has no place of business, the pro-

visions of paragraphs (2) and (3) of article 2 shall apply."

## B. AMENDMENTS

203. There were no amendments submitted to article 36.

## C. PROCEEDINGS IN THE FIRST COMMITTEE

(i) *Meetings*

204. The First Committee considered article 36 at its 25th meeting, on 6 June 1974.

(ii) *Consideration*

205. At its 25th meeting the First Committee approved article 36 and referred it to the Drafting Committee.

## ANNEX

Check list of documentation submitted during the Conference to the First Committee  
by States participating in the Conference

[In the chronological list which follows, the reference under the heading "Para." is to the paragraph or paragraphs of this report in which the text of the document may be found.]

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.63/C.1/L.1	Australia	2 and 3	18 and 25
A/CONF.63/C.1/L.2	Norway	3	25
A/CONF.63/C.1/L.3	Denmark	5	36
A/CONF.63/C.1/L.4	Denmark	3	25
A/CONF.63/C.1/L.5	Czechoslovakia	1	10
A/CONF.63/C.1/L.6	Austria	3	25
A/CONF.63/C.1/L.7	Austria	3	25
A/CONF.63/C.1/L.8	Austria	5	36
A/CONF.63/C.1/L.9	Austria	7	46
A/CONF.63/C.1/L.10	Austria	8	51
A/CONF.63/C.1/L.11	United Kingdom of Great Britain and Northern Ireland	1	10
A/CONF.63/C.1/L.12	United Kingdom of Great Britain and Northern Ireland	2	18
A/CONF.63/C.1/L.13	United Kingdom of Great Britain and Northern Ireland	6	41
A/CONF.63/C.1/L.14	United States of America	1	10
A/CONF.63/C.1/L.15	United States of America	2	18
A/CONF.63/C.1/L.16	United States of America	3	25
A/CONF.63/C.1/L.17	United States of America	8	51
A/CONF.63/C.1/L.18	United States of America	9	57 and 63
A/CONF.63/C.1/L.19	United States of America	10	68
A/CONF.63/C.1/L.20	Germany (Federal Republic of)	1	10
A/CONF.63/C.1/L.21	Singapore	1	10
A/CONF.63/C.1/L.22	France	1	10
A/CONF.63/C.1/L.23	Germany (Federal Republic of)	33 bis	186
A/CONF.63/C.1/L.24	Ukrainian Soviet Socialist Republic	2	18
A/CONF.63/C.1/L.25	Brazil	1	10
A/CONF.63/C.1/L.26	Kenya	1	10
A/CONF.63/C.1/L.27	India	1	10
A/CONF.63/C.1/L.28	Norway	2 and 3	18 and 25
A/CONF.63/C.1/L.29	Union of Soviet Socialist Republics	4	31
A/CONF.63/C.1/L.30	Poland	4	31
A/CONF.63/C.1/L.31	Poland	6	41
A/CONF.63/C.1/L.32	Poland	10	68
A/CONF.63/C.1/L.33	Denmark	10	68
A/CONF.63/C.1/L.34	France	1	10
A/CONF.63/C.1/L.35	Philippines	1	10
A/CONF.63/C.1/L.36	Netherlands	1	10
A/CONF.63/C.1/L.37	Union of Soviet Socialist Republics	10	68
A/CONF.63/C.1/L.38	France	2	18
A/CONF.63/C.1/L.39	Germany (Federal Republic of)	3	25
A/CONF.63/C.1/L.40	Union of Soviet Socialist Republics	7	46
A/CONF.63/C.1/L.41	Norway and United States of America	11 bis to 17 and 20	78
A/CONF.63/C.1/L.42	Greece	3	25
A/CONF.63/C.1/L.43	Netherlands	3	25
A/CONF.63/C.1/L.44	Austria	9	57
A/CONF.63/C.1/L.45	Austria	10	68
A/CONF.63/C.1/L.46	Austria	14	94
A/CONF.63/C.1/L.47	Austria	15	99

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.63/C.1/L.48	Austria	16	104
A/CONF.63/C.1/L.49	Austria	17	109
A/CONF.63/C.1/L.50	Austria	18	114
A/CONF.63/C.1/L.51	Austria	19	120
A/CONF.63/C.1/L.52	Australia	4	31
A/CONF.63/C.1/L.53	India and Kenya	2	18
A/CONF.63/C.1/L.54	United Kingdom of Great Britain and Northern Ireland	8	51
A/CONF.63/C.1/L.55*	United Kingdom of Great Britain and Northern Ireland	6	41
A/CONF.63/C.1/L.56	Norway	8	51
A/CONF.63/C.1/L.57	United Kingdom of Great Britain and Northern Ireland	9	63
A/CONF.63/C.1/L.58	United Kingdom of Great Britain and Northern Ireland	10	68
A/CONF.63/C.1/L.59	Union of Soviet Socialist Republics	12	83
A/CONF.63/C.1/L.60	Norway	9	57
A/CONF.63/C.1/L.61	Norway	10	68
A/CONF.63/C.1/L.62	Norway	11	75
A/CONF.63/C.1/L.63	Sweden	9	63
A/CONF.63/C.1/L.64	Sweden	10	68
A/CONF.63/C.1/L.65	Sweden	10	68
A/CONF.63/C.1/L.66	Sweden	10	68
A/CONF.63/C.1/L.67	Sweden	11	75
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A/CONF.63/C.1/L.85	Union of Soviet Socialist Republics	16	104
A/CONF.63/C.1/L.86	Mexico	14	94
A/CONF.63/C.1/L.87	United Kingdom of Great Britain and Northern Ireland	21	130
A/CONF.63/C.1/L.88	Hungary	18	114
A/CONF.63/C.1/L.89	Switzerland	12	83
A/CONF.63/C.1/L.90	Norway	16	104
A/CONF.63/C.1/L.91	Germany (Federal Republic of)	19	120
A/CONF.63/C.1/L.92	Germany (Federal Republic of)	18	114
A/CONF.63/C.1/L.93	Switzerland	18	114
A/CONF.63/C.1/L.94/ Rev.1	United States of America	14	94
A/CONF.63/C.1/L.95	Australia	10	68
A/CONF.63/C.1/L.96	Sweden	15	99
A/CONF.63/C.1/L.97	Sweden	16	104

\*This document is identical to document A/CONF.63/C.1/L.13.

\*\*This document was considered by the Second Committee.

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.63/C.1/L.98	Bulgaria	21	130
A/CONF.63/C.1/L.99	Norway	18	114
A/CONF.63/C.1/L.100	Norway	20	125
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A/CONF.63/C.1/L.106	Sweden	18	114
A/CONF.63/C.1/L.107	Sweden	19	120
A/CONF.63/C.1/L.108	Union of Soviet Socialist Republics	18	114
A/CONF.63/C.1/L.109	Union of Soviet Socialist Republics	19	120
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A/CONF.63/C.1/L.121	Australia	17	109
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A/CONF.63/C.1/L.136	United States of America	29	175
A/CONF.63/C.1/L.137	United Kingdom of Great Britain and Northern Ireland	22	136
A/CONF.63/C.1/L.138	Hungary	21	130
A/CONF.63/C.1/L.139	Austria	21	130
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A/CONF.63/C.1/L.142	India	23	146
A/CONF.63/C.1/L.143	United States of America	24	151
A/CONF.63/C.1/L.144	Belgium, France, Ireland, Germany (Federal Republic of), Netherlands, and United Kingdom of Great Britain and Northern Ireland	33 bis	186
A/CONF.63/C.1/L.145	Colombia	22	136
A/CONF.63/C.1/L.146	Belgium	29 bis	179

\*\*\*This document was reclassified as A/CONF.63/C.2/L.3 by document  
A/CONF.63/C.2/L.3/Corr.1.

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.63/C.1/L.147	Czechoslovakia and United States of America	22	136
A/CONF.63/C.1/L.148	Ireland	22	136
A/CONF.63/C.1/L.149	Brazil	28	
A/CONF.63/C.1/L.150	Austria	29	175
A/CONF.63/C.1/L.151	Belgium	2	18

## F. REPORT OF THE SECOND COMMITTEE

### Document A/CONF.63/12\*

[Original: English]  
[11 June 1974]

#### I. Introduction

##### A. SUBMISSION OF THE REPORT

1. By its resolution 2929 (XXVII) of 28 November 1972 the General Assembly decided that an international conference of plenipotentiaries should be convened in 1974 to consider the question of prescription (limitation) in the international sale of goods, and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. By its resolution 3104 (XXVIII) of 12 December 1973 the General Assembly decided that the conference should be convened at United Nations Headquarters, New York, from 20 May to 14 June 1974.

2. The United Nations Conference on Prescription (Limitation) in the International Sale of Goods opened on 20 May 1974 at United Nations Headquarters, New York. At its second plenary meeting on 21 May 1974 the Conference established two Main Committees, in accordance with rule 46 of its rules of procedure (A/CONF.63/8).

3. At its third plenary meeting the Conference considered item 8 of its agenda, "Organization of work". The Conference decided to adopt the methods of work and procedures suggested by the Secretary-General in document A/CONF.63/3, subject to a later review. Accordingly, the Second Committee was entrusted with the consideration of part II: implementation (articles 30-32) and part IV: final clauses (articles 39-46) of the draft convention prepared by the United Nations Commission on International Trade Law (UNCITRAL) (A/CONF.63/4).

4. At the second meeting of the General Committee held on 5 June 1974 it was decided that consideration of draft articles 37 and 38 should be assigned to the Second Committee.

5. The present document contains the report of the Second Committee to the Conference on its work relating to the draft articles referred to it.

##### B. ELECTION OF OFFICERS

6. At its second plenary meeting on 21 May 1974, the Conference unanimously elected Dr. György Kampis (Hungary) as Chairman of the Second Committee. At its first meeting on 28 May 1974 the Second Committee elected by acclamation Mr. G. C. Parks (Canada) as Vice-Chairman. At its second meeting on 29 May 1974, Mr. T. I. Adesalu (Nigeria) and Mr. G. S. Raju (India) were unanimously elected as Vice-Chairmen of the Second Committee.

\* Incorporating document A/CONF.63/12/Corr.1.

#### C. MEETINGS, ORGANIZATION OF WORK AND PLAN OF THE REPORT

##### (i) Meetings

7. The Second Committee held four meetings between 28 May and 7 June 1974.

##### (ii) Organization of work

8. The Second Committee proceeded mainly by way of article by article discussion of the draft articles before it and of the amendments, if any, submitted thereto. After initial consideration of an article and amendments by the Second Committee and subject to any decisions taken thereon the article was referred to the Drafting Committee. In certain instances the Second Committee only voted on the principle contained in a draft article or amendment and then referred it to the Drafting Committee for a formulation of a precise text for any such principle that was approved by the Second Committee.

9. At its fifth plenary meeting on 6 June 1974, the Conference decided that the Drafting Committee was to report directly to the plenary of the Conference on the matters that had been referred to it by both the First Committee and the Second Committee.

##### (iii) Plan of the report

10. This report describes the work of the Second Committee relating to each article before it, in accordance with the following scheme:

- (a) Text of UNCITRAL's draft article;
- (b) Texts of amendments, if any, with a brief indication of the manner in which they were dealt with;
- (c) Proceedings of the Second Committee subdivided as follows:
  - (i) Meetings
  - (ii) Consideration of the article.

#### II. Consideration by the Second Committee of the draft articles on Prescription (Limitation) in the International Sale of Goods

##### ARTICLE 30

##### A. UNCITRAL TEXT

11. The text of the United Nations Commission on International Trade Law provided as follows:

##### "Article 30

"[Subject to the provisions of article 31, each Contracting State shall take such steps as may be



necessary under its constitution or law to give the provisions of Part I of this Convention the force of law not later than the date of the entry into force of this Convention in respect of that State.]”

## B. PROCEEDINGS IN THE SECOND COMMITTEE

### (i) Meetings

12. The Second Committee considered article 30 at its 1st meeting on 28 May 1974.

### (ii) Consideration

13. At the same meeting the Second Committee approved without a vote a proposal by the representative of the USSR that article 30 be deleted.

## ARTICLE 31

### A. UNCITRAL TEXT

14. The text of the United Nations Commission on International Trade Law provided as follows:

#### “Article 31

“[In the case of a federal or non-unitary State, the following provisions shall apply:

“(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

“(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

“(c) A federal State party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.]”

### B. AMENDMENTS

15. Amendments were submitted to article 31 by Canada (A/CONF.63/C.2/L.1 and L.2) and Australia (A/CONF.63/C.2/L.4).

16. The amendments were to the following effect:

(a) *Canada* (A/CONF.63/C.2/L.1):

Submitted as a replacement for the present article 31:

#### “Article 31

“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 prescription and limitation in the international sale of goods 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 modify its declaration by submitting another declaration at any time.

“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.”

(b) *Canada* (A/CONF.63/C.2/L.2):

Article 31 shall read:

“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 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.”

(c) *Australia* (A/CONF.63/C.2/L.4); subamendment to Canadian amendment to article 31 contained in document A/CONF.63/C.2/L.2:

1. Paragraph 1 of article 31 should read:

“1. In the case of a contracting federal or non-unitary State, it may, at the time of signature, ratification or accession, declare that the Convention shall have effect only within one or more territorial units of the State, and may at any time thereafter declare that the Convention shall have effect within an additional territorial unit or units of that State.”

2. Paragraphs 2 and 3 of article 31 should remain as in document A/CONF.63/C.2/L.2.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

### (i) Meetings

17. The Second Committee considered article 31 at its 1st to 4th meetings on 28, 29 and 30 May and on 7 June 1974.

### (ii) Consideration

18. At the 4th meeting the Canadian amendment in document A/CONF.63/C.2/L.1 was withdrawn since it had been incorporated in a later amendment A/CONF.63/C.2/L.2. The Australian amendment (A/CONF.63/C.2/L.4) was also withdrawn.

19. At the same meeting, by 15 votes in favour, 11 against and 2 abstentions the Committee approved the amendment in A/CONF.63/C.2/L.2. The Second Committee referred the article as amended to the Drafting Committee with a request that the suggestions made orally by the representative of Japan be taken into account.

## ARTICLE 31 *bis*

### A. PROPOSED NEW ARTICLE

20. The United States submitted a proposal (A/CONF.63/C.2/L.3)<sup>1</sup> for the inclusion of a new article 31 *bis* to read as follows:

“Where in this Convention reference is made to the law of a State and that State has two or more territorial units in which different systems of law

<sup>1</sup> Originally issued as document A/CONF.63/C.1/L.134 and reclassified by document A/CONF.63/C.2/L.3/Corr.1.

apply in relation to that matter, such reference shall be construed to mean the law of the unit appropriate under the legal system of the State concerned."

## B. PROCEEDINGS OF THE SECOND COMMITTEE

### *Meetings, consideration and decision*

21. At its 4th meeting the Second Committee considered the United States proposal for the inclusion of a new article 31 *bis*. The Committee voted on the principle contained in the proposed text. The proposed new article was approved in principle by 10 votes in favour, 3 against and 11 abstentions.

22. During the course of the Committee's consideration of that proposal drafting changes were suggested by the representatives of France and Iraq. The former suggested that the word "appropriate" before the phrase "under the legal system of the State concerned" should be replaced by the word "indicated". The latter suggested the following wording for article 31 *bis*:

"Where in this Convention reference is made to the law of a State and that State has two or more territorial units in which different systems of law apply, such reference shall be construed to mean the law as determined by the legal system of the State concerned."

23. The Second Committee referred the article and the suggested drafting changes to the Drafting Committee.

## ARTICLE 32

### A. UNCITRAL TEXT

24. The text of the United Nations Commission on International Trade Law provided as follows:

#### *"Article 32*

"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 in respect of that State."

## B. PROCEEDINGS IN THE SECOND COMMITTEE

### *(i) Meetings*

25. The Second Committee considered article 31 at its 1st meeting on 28 May 1974.

### *(ii) Consideration*

26. The Second Committee approved without a vote article 32 subject to a revision of the text by the Drafting Committee.

## ARTICLE 37

### A. UNCITRAL TEXT

27. The text of the United Nations Commission on International Trade Law provided as follows:

#### *"Article 37*

"No reservation other than those made in accordance with articles 33 to 35 shall be permitted."

## B. PROCEEDINGS IN THE SECOND COMMITTEE

### *(i) Meetings*

28. The Second Committee considered article 37 at its 4th meeting on 7 June 1974.

### *(ii) Consideration*

29. The Committee took no decision on this article. It was decided that a final decision on the article would be left to the plenary of the Conference.

## ARTICLE 38

### A. UNCITRAL TEXT

30. The text of the United Nations Commission on International Trade Law provided as follows:

#### *"Article 38*

"1. Declarations made under articles 33 to 35 of this Convention shall be addressed to the Secretary-General of the United Nations. They shall take effect [three months] after the date of their receipt by the Secretary-General or, if at the end of this period this Convention has not yet entered into force in respect of the State concerned, at the date of such entry into force.

"2. Any State which has made a declaration under articles 33 to 35 of 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 [three months] after the receipt of the notification by the Secretary-General. In the case of a declaration made under paragraph (1) of article 33 of this Convention, such withdrawal shall also render inoperative, as from the date when the withdrawal takes effect, any reciprocal declaration made by another State under that paragraph."

### B. AMENDMENTS

31. An amendment was submitted to article 38 by the United Kingdom (A/CONF.63/C.1/L.70).

32. The amendment was to the following effect:

The two paragraphs of article 38 shall begin as follows:

"1. Declarations made under articles 31 A and 33 to 35 of this Convention shall be . . .

"2. Any State which has made a declaration under articles 31 A and 33 to 35 of this Convention may withdraw . . .".

## C. PROCEEDINGS IN THE SECOND COMMITTEE

### *(i) Meetings*

33. The Second Committee considered article 38 at its 4th meeting on 7 June 1974.

### *(ii) Consideration*

34. At the 4th meeting the United Kingdom amendment to A/CONF.63/C.1/L.70 was withdrawn. The Committee then discussed the text as proposed by UNCITRAL. The Committee approved changes suggested by the Executive Secretary of the Conference which would bring the article in conformity with articles 34 and 35. The representative of Japan proposed orally that the three-month period tentatively inserted in paragraphs 1 and 2 of the article should be deleted and replaced by a six-month period. The proposal was approved by 23 votes in favour, none against and 2 abstentions. The Committee approved in principle the following text for article 38:

"1. Declarations made under articles 33 to 35 of this Convention shall be addressed to the Secre-

tary-General of the United Nations. Declarations under article 33 shall take effect six months after the date of their receipt by the Secretary-General or, if at the end of this period this Convention has not yet entered into force in respect of the State concerned, at the date of such entry into force.

"2. Any State which has made a declaration under articles 33 to 35 of 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 six months after the date of the receipt of the notification by the Secretary-General. In the case of a declaration made under paragraph (1) of article 33 of this Convention, such withdrawal shall also render inoperative, as from the date when the withdrawal takes effect, any reciprocal declaration made by another State under that paragraph."

35. A drafting suggestion orally made by the representative of the United Kingdom read as follows:

"1. Declarations made under this Convention shall be addressed to the Secretary-General of the United Nations. Declarations made under article 34 or article 35 shall take effect simultaneously with the instrument of ratification or accession concerned. Other declarations shall take effect six months after the date of their receipt.

"2. Any State which has made a declaration under this Convention may withdraw it" . . . etc. (as in the UNCITRAL text).

36. The article and the drafting suggestion proposed by the representative of the United Kingdom were referred to the Drafting Committee.

## ARTICLE 39

### A. UNCITRAL TEXT

37. The text of the United Nations Commission on International Trade Law provided as follows:

#### "Article 39

#### "[Signature]

"This Convention shall be open until [ ]  
for signature by [ ].

### B. PROCEEDINGS IN THE SECOND COMMITTEE

#### (i) Meetings

38. The Second Committee considered article 39 at its 1st meeting on 28 May 1974.

#### (ii) Consideration

39. After a statement by the Executive Secretary of the Conference the Chairman proposed a text for article 39. The text, which was approved without a vote, read as follows:

"This Convention shall be open for signature by all States until 31 December 1975 at United Nations Headquarters in New York."

## ARTICLE 40

### A. UNCITRAL TEXT

40. The text of the United Nations Commission on International Trade Law provided as follows:

#### "Article 40

#### "[Ratification]

"This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations."

### B. PROCEEDINGS IN THE SECOND COMMITTEE

#### (i) Meetings

41. The Second Committee considered article 40 at its 1st meeting on 28 May 1974.

#### (ii) Consideration

42. The Committee approved without a vote the Chairman's proposal that article 40 be adopted as drafted.

## ARTICLE 41

### A. UNCITRAL TEXT

43. The text of the United Nations Conference on International Trade Law provided as follows:

#### "Article 41

#### "[Accession]

"This Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 3. The instruments of accession shall be deposited with the Secretary-General of the United Nations."

### B. PROCEEDINGS IN THE SECOND COMMITTEE

#### (i) Meetings

44. The Second Committee considered article 41 at its 1st meeting on 28 May 1974.

#### (ii) Consideration

45. After a statement by the Executive Secretary of the Conference the Chairman proposed a text for article 41. The text, which was approved without a vote, read as follows:

"This Convention shall remain open for accession by any State. The instrument of accession shall be deposited with the Secretary-General of the United Nations."

## ARTICLE 42

### A. UNCITRAL TEXT

46. The text of the United Nations Commission on International Trade Law provided as follows:

#### "Article 42

#### "[Entry into force]

"1. This Convention shall enter into force [six months] after the date of the deposit of the [ ] instrument of ratification or accession.

"2. For each State ratifying or acceding to this Convention after the deposit of the [ ] instrument of ratification or accession, this Convention shall enter into force [six months] after the date of the deposit of its instrument of ratification or accession."

## B. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

47. The Second Committee considered article 42 at its 1st meeting on 28 May 1974.

(ii) *Consideration*

48. The Committee unanimously approved the following text for article 42:

"1. This Convention shall enter into force 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 six months after the date of the deposit of its instrument of ratification or accession."

## ARTICLE 43

## A. UNCITRAL TEXT

49. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 43**"[Denunciation]*

"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 [12 months] after receipt of the notification by the Secretary-General of the United Nations."

## B. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

50. The Second Committee considered article 43 at its 1st meeting on 28 May 1974.

(ii) *Consideration*

51. The Committee approved without a vote the Chairman's proposal that the brackets in paragraph 2 be deleted and that article 43 be adopted as drafted.

## ARTICLE 44

## A. UNCITRAL TEXT

52. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 44**"[Declaration on territorial application]**"Alternative A*

"1. Any State may, at the time of the deposit of its instrument of ratification or accession or at any time thereafter, declare, by means of a notification addressed to the Secretary-General of the United Nations, that this Convention shall be applicable to all or any of the territories for whose international relations it is responsible. Such a declaration shall take effect [six months] after the date of receipt of the notification by the Secretary-General of the United Nations, or, if at the end of that period this Convention has not yet come into force, from the date of its entry into force.

"2. Any Contracting State which has made a declaration pursuant to paragraph (1) of this article may, in accordance with article 43 denounce this Convention in respect of all or any of the territories concerned.

*"Alternative B*

"This Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such a case, the Party shall endeavour to secure the needed consent of the territory within the shortest period possible and, when the consent is obtained, the Party shall notify the Secretary-General. This Convention shall apply to the territory or territories named in such a notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies."

## B. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

53. The Second Committee considered article 44 at its 1st meeting on 28 May 1974.

(ii) *Consideration*

54. The Committee voted on a motion by the representative of Australia to adjourn the debate on article 44. The result of the vote was 11 in favour, and 11 against; the motion was rejected. The Committee then proceeded to vote on a motion by the representative of the USSR that article 44 be deleted. The Committee decided to delete the article by 16 votes to 4, with 9 abstentions.

## ARTICLE 45

## A. UNCITRAL TEXT

55. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 45**"[Notifications]*

"The Secretary-General of the United Nations shall notify the Signatory and Acceding States of:

"(a) The declarations and notifications made in accordance with article 38;

"(b) The ratifications and accessions deposited in accordance with articles 40 and 41;

"(c) The dates on which this Convention will come into force in accordance with article 42;

"(d) The denunciations received in accordance with article 43;

"(e) The notifications received in accordance with article 44."

## B. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

56. The Second Committee considered article 45 at its 1st meeting on 28 May 1974.

*(ii) Consideration*

57. The Committee heard a statement by the Executive Secretary of the Conference. The Committee approved without a vote the Chairman's proposal that article 45 be deleted.

## ARTICLE 46

## A. UNCITRAL TEXT

58. The text of the United Nations Commission on International Trade Law provided as follows:

*"Article 46*

*"[Deposit of the original]*

*"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.*

*"IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention.*

*"DONE at [place], [date]."*

## B. PROCEEDINGS IN THE SECOND COMMITTEE

*(i) Meetings*

59. The Second Committee considered article 46 at its 2nd meeting on 29 May 1974.

*(ii) Consideration*

60. The Committee approved without voting a proposal by the Chairman that the article be adopted as drafted.

## ANNEX

Check list of documentation submitted during the Conference to the  
Second Committee by States participating in the Conference

[In the chronological list which follows, the reference under the heading "Para." is to the paragraph of this report in which the text of the document may be found.]

<i>Symbol</i>	<i>Sponsors</i>	<i>Article</i>	<i>Para.</i>
A/CONF.63/C.2/L.1	Canada	31	16
A/CONF.63/C.2/L.2	Canada	31	16
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\* Originally issued as document A/CONF.63/C.1/L.134 and reclassified by document A/CONF.63/C.2/L.3/Corr.1.

## G. DRAFT PROVISIONS APPROVED BY THE DRAFTING COMMITTEE

## Document A/CONF.63/7

Convention on the Limitation Period in the  
International Sale of Goods\*

## 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 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;

(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.

\* For identification of the relationship of the draft articles to the provisions in the Convention on the Limitation Period in the International Sale of Goods, see the comparative table that appears in part III of this volume.

## 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 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.

2. Unless this Convention provides otherwise, it shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

3. 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;

- (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 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 to the effect 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. [When the transaction to which the contract relates involves the carriage of goods from one State to another, the actual handing over of the

goods shall not be deemed to have taken place until the carrier, to whom the seller transmitted the goods for shipment, has actually handed them over to the buyer or to a subpurchaser.]

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 articles 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 a creditor has asserted his claim in legal proceedings within the limitation period in accordance with articles 13, 14, 15 or [16], which have resulted in a decision binding on the merits of his claim in one Contracting State, and where, under the applicable law, he is not precluded by this decision from asserting his original claim in legal proceedings in another Contracting State, a new limitation period in respect of this claim shall commence on the date of the decision.

2. If recognition or execution of a decision rendered on the merits in one Contracting State is refused in another Contracting State, the limitation period in respect of the creditor's original claim shall be deemed not to have ceased running by virtue of articles 13, 14, 15 or 16, but the creditor shall be entitled to a period of one year from the date of the refusal if the limitation period has expired or has less than one year to run.

*Article 19*

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. In the circumstances mentioned in this article, the creditor or the buyer must institute legal proceedings against the party jointly and severally liable or against the seller, either within the limitation period otherwise provided by this Convention or within one year from the date on which the legal proceedings referred to in paragraphs (1) and (2) of this article ended, whichever is the later.

*Article 20*

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, provided that the total duration of the limitation period thus extended shall not exceed eight years from the date on which it commenced to run in accordance with articles 9, 10, 11 and 12.

*Article 21*

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 22*

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. However, the total duration of the limitation period thus extended shall not exceed eight years from the date on which it commenced to run under articles 9, 10, 11 and 12.

#### MODIFICATION OF THE LIMITATION PERIOD BY THE PARTIES

*Article 23*

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. However, the total duration of the limitation period thus extended shall not exceed eight years from the date on which it commenced to run under articles 9, 10, 11 and 12.



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 24

Notwithstanding the provisions of this Convention, a limitation period shall in any event expire not later than 10 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 25

Expiration of the limitation period shall be taken into consideration in any legal proceedings only if invoked by a party to such proceedings.

##### Article 26

1. Subject to the provisions of paragraph (2) of this article and of article 25, 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, counterclaim or set-off against any claim asserted by the other party, provided that:

(a) Both claims relate to the same contract or to several contracts concluded in the course of the same transaction; or

(b) The claim could have been relied on as a defence, counterclaim or set-off before the expiration of the limitation period.]

##### Article 27

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 28

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 29

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 30

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 articles 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 31

The acts and circumstances referred to in articles 13, 14, 15, 16, 17, 19 and 20 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 32

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.

##### Article 33

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 34

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 35

Two or more Contracting States may at any time declare that contracts of sale between a seller having a place of business in one of these States and a buyer having a place of business in another of these States shall not be governed by this Convention, because they apply to the matters governed by this Convention the same or closely related legal rules.

*Article 36*

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 37*

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 25 of this Convention.

*Article 38*

This Convention shall not prevail over conventions already entered into or which may be entered into, and which contain provisions concerning the matters covered by this Convention, provided that the seller and buyer have their places of business in States parties to such a convention.

*Article 39*

[No reservation other than those made in accordance with articles 35, 36 and 37 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.

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 35 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 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 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 12 months after receipt of the notification by the Secretary-General of the United Nations.

...

*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.

## H. PROPOSALS AND AMENDMENTS SUBMITTED TO THE PLENARY CONFERENCE

Belgium, France, Germany (Federal Republic of), Ireland, Netherlands and United Kingdom of Great Britain and Northern Ireland: proposal for replacement for article 2, paragraph 1

*Document A/CONF.63/L.1*

[Original: French]  
[7 June 1974]

Article 2, paragraph 1, should read:

"1. This Convention shall apply to contracts of international sale of goods when, at the time of the conclusion of the contract, the seller and the buyer have their places of business in different Contracting States."

**Netherlands: amendment to article 2, paragraph 1****Document A/CONF.63/L.2**

[Original: English/French]  
[10 June 1974]

Paragraph 1 of article 2 shall read:

"1. For the purposes of this Convention, a contract of sale of goods shall be considered international if the contract has been entered into by parties whose places of business are in the territories of different States, in each of the following cases:

"(a) Where the contract involves the sale of goods which are at the time of the conclusion of the contract in the course of carriage or will be carried from the territory of one State to the territory of another;

"(b) Where the acts constituting the offer and the acceptance have been effected in the territories of different States;

"(c) Where delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance have been effected."

If this proposal is accepted, it would be desirable to insert somewhere in the Convention the following provisions:

"The provision of article 2, paragraph 1, of this Convention shall be replaced by the definition of a contract of international sale of goods in the Convention on the International Sale of Goods to be concluded under the auspices of the United Nations, one year after that Convention shall have entered into force in respect of . . . States."

**Belgium, France, Germany (Federal Republic of), Ireland and Netherlands:  
proposal for a new article 33 bis**

**Document A/CONF.63/L.3**

[Original: English]  
[10 June 1974]

"[1.] Any State may, at the time of the deposit of its instrument of ratification or accession, declare that it shall apply this Convention exclusively to contracts of international sale of goods as defined in the Convention relating to a Uniform Law on the International Sale of Goods signed at The Hague on 1 July 1964.

"[2. Such declaration shall cease to be effective one year after a new Convention on the International Sale of Goods, concluded under the auspices of the United Nations, shall have entered into force in respect of 20 States.]"

**Austria: amendment to article 4 (a)****Document A/CONF.63/L.4**

[Original: French]  
[10 June 1974]

1. Delete subparagraph (a).

2. Subsidiary proposal, if subparagraph (a) is not deleted:

"(a) Of goods of a kind and in a quantity ordinarily bought by an individual for personal, family or household use, unless the fact that the goods are bought for a different use appears 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;"

(Restoration of the text of the draft Convention.)

**Austria: amendment to article 8****Document A/CONF.63/L.5**

[Original: French]  
[10 June 1974]

Article 8 should read:

"The limitation period shall be four years. However, for claims based on a defect or other lack of conformity of the goods, the limitation period shall be two years."

**Austria: amendment to article 18*****Document A/CONF.63/L.6***

[Original: French]  
[10 June 1974]

Delete paragraph 2.

**Austria: amendment to article 19*****Document A/CONF.63/L.7***

[Original: French]  
[10 June 1974]

Delete the article.

**Austria: amendment to article 21, paragraph 1*****Document A/CONF.63/L.8***

[Original: French]  
[10 June 1974]

Delete, in paragraph 1, the words "in writing".

**Austria: amendment to article 26, paragraph 2*****Document A/CONF.63/L.9***

[Original: French]  
[10 June 1974]

For paragraph 2, the text of the draft Convention should be restored, namely:

"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 a contract or contracts concluded in the course of the same transaction; or

"(b) If the claims could have been set-off at any time before the date on which the limitation period expired."

**Austria: amendment to article 3*****Document A/CONF.63/L.10***

[Original: French]  
[10 June 1974]

Delete paragraph 1.

**Belgium, Germany (Federal Republic of): amendment to article 3,  
paragraph 3*****Document A/CONF.63/L.11***

[Original: English/French]  
[10 June 1974]

Add the following second sentence to paragraph 3:

"The parties are deemed to have expressly excluded this Convention when they have chosen the law of a non-Contracting State as applicable to their contract."

**Austria: amendment to article 11, paragraph 2****Document A/CONF.63/L.12**

[Original: French]  
[10 June 1974]

Restore, for paragraph 2, the text of the draft Convention:

"2. If the seller gives 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 discovers or ought to discover the fact on which the claim is based, but not later than on the date of the expiration of the period of the undertaking."

**Sweden: amendment to article 18****Document A/CONF.63/L.13**

[Original: English]  
[10 June 1974]

The text as adopted by the First Committee as a result of Swedish proposal (A/CONF.63/C.1/L.97) should be retained, i.e. the word "Contracting" before "State" should be deleted in paragraphs 1 and 2 in the Draft. From the text of the Working Group (A/CONF.63/4) as well as from the Commentary made by the Secretariat (A/CN.9/73, paragraph 5 under article 16), clearly follows that by inserting the word "Contracting", the Drafting Group has entered upon a matter of substance.

**Austria, Belgium, France, Germany (Federal Republic of), Netherlands  
and Sweden: proposal for a new article 18**

**Document A/CONF.63/L.14**

[Original: English/French]  
[10 June 1974]

"1. Where the parties, before the expiration of the limitation period, enter into negotiations and where at the time the negotiations ended the limitation period would have expired or have less than one year to run, the creditor shall be entitled to a period of one year from the date on which the negotiations ended.

"2. For the purposes of the preceding paragraph negotiations shall be deemed to have ended at the date when the debtor made his latest offer for settlement of the dispute or finally rejected the claim."

**Sweden: amendment to article 21****Document A/CONF.63/L.15**

[Original: English]  
[10 June 1974]

In paragraph 1, delete the words "in writing".

**Sweden: amendment to article 31****Document A/CONF.63/L.16**

[Original: English]  
[10 June 1974]

Add as a new paragraph 2.

"2. The same shall apply to acts which have taken place in a non-Contracting State provided that the debtor has agreed to legal proceedings in that State."

## Norway: amendments to articles 9, 10 and 11

*Document A/CONF.63/L.17*

[Original: English]  
[10 June 1974]

Article 9 shall read:

"1. Subject to the provisions of articles 10 and 11, the limitation period shall commence on the date on which the claim accrues. The commencement shall not be postponed by a requirement that a party be given a notice as described in article 1, paragraph 2. [The same shall apply to a provision in an arbitration agreement that no right shall arise until an arbitral award has been made.]

"2. A claim arising from a breach of contract accrues on the date on which such breach occurs.

"3. 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 the buyer or their tender is refused by him. [Where the contract involves carriage of the goods from one State to another, the decisive time shall be the date on which they have actually been handed over to the buyer or a subpurchaser at any place of destination indicated or accepted by the buyer.]

"4. 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 is or reasonably could be discovered."

New article 10 shall read as present article 11.

Make the consequential renumbering of the subsequent articles (i.e. back to the original numbers in the UNCITRAL draft).

## Norway: amendment to article 18, paragraphs 1 and 2

*Document A/CONF.63/L.18\**

[Original: English]  
[10 June 1974]

If article 18 is retained, the words "Contracting State" in paragraph 1 shall be substituted by: "Contracting or Non-Contracting State" and later on in the paragraph by "another State".

Paragraph 2 should read as follows:

"2. If recognition or execution of a decision rendered on the merits in one State is sought in another State within any time-limit prescribed by the law applicable, but recognition or execution is refused, the limitation period in respect of the creditor's original claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14. If the limitation period at the time of refusal has expired or has less than one year to run, the creditor shall be entitled to an additional period of one year from the date of the refusal, for the purpose of obtaining satisfaction or recognition of his claim in such other State."

[The original purpose of this article was to give the creditor the benefit of an additional period, in particular when the first proceedings have been instituted in a Non-Contracting State. That purpose has now been destroyed, and the provision seems with the present wording to constitute an unnecessary complication. Under the present system, it would be better to rely on articles 31, 24 and 26, paragraph 1, without the complication introduced by article 18.]

\* Incorporating document A/CONF.63/L.18/Corr.1.

## Norway: amendments to articles 20, 22 and 23

*Document A/CONF.63/L.19*

[Original: English]  
[10 June 1974]

*Article 20*

Delete the last sentence beginning with: "provided that".

*Article 22*

Delete the last sentence beginning with: "However, the total duration".

*Article 23*

Delete the last sentence beginning with: "However, the total duration".

Commentary: One should simplify the system by deleting the passages referred to *supra*, which seem to constitute unnecessary complications besides the over-all maximum 10 years period in articles 24 and 26, paragraph 1.

**Norway: amendment to article 26, paragraph 2*****Document A/CONF.63/L.20***

[Original: English]  
[10 June 1974]

In paragraph 2 delete the word "counterclaim" in the initial passage and in subparagraph (b). Compare article 16, with which the present paragraph 2 of article 26 is incompatible.

Paragraph 2 of article 26 should then read:

"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."

**Hungary: amendment to article 20*****Document A/CONF.63/L.21***

[Original: English]  
[11 June 1974]

Delete this article.

**Australia: amendment to article 11*****Document A/CONF.63/L.22***

[Original: English]  
[11 June 1974]

In the last phrase insert the word "otherwise" between the words "but" and "not" with the final clause reading: "but otherwise not later than on the date of the expiration of the period of the undertaking."

**United States of America: amendment to article 19, paragraph 3*****Document A/CONF.63/L.23\****

[Original: English]  
[11 June 1974]

Substitute the following for the present text of paragraph 3:

"3. Where the legal proceedings referred to in paragraphs 1 and 2 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 articles 13, 14, 15, or 16, 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."

\* Incorporating document A/CONF.63/L.23/Corr.1.

**Belgium: amendment to article 7*****Document A/CONF.63/L.24***

[Original: French]  
[11 June 1974]

Article 7 should read as follows:

"In the interpretation and application of the provisions of this Convention, regard shall be had, in view of its international character, to the need to promote uniformity."

**Singapore: amendment to article 10, paragraph 2*****Document A/CONF.63/L.25***

[Original: English]  
[11 June 1974]

Paragraph 2 of article 10 shall read:

"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 or a subpurchaser."

**France and Norway: amendment to article 24*****Document A/CONF.63/L.26***

[Original: English]  
[11 June 1974]

Article 24 shall read:

"Notwithstanding the provisions of articles 17 to 23 and 31 of this Convention, a limitation period shall in any event expire not later than 10 years from the date on which it commenced to run under articles 9 to 12 of this Convention."

**Norway: amendment to article 33*****Document A/CONF.63/L.27***

[Original: English]  
[11 June 1974]

Article 33 shall read:

"Where in this Convention reference is made to a State in which different systems of law apply, such reference shall be construed to mean the territorial unit concerned."

**United Kingdom of Great Britain and Northern Ireland proposal for a new article 38 bis*****Document A/CONF.63/L.28***

[Original: English]  
[11 June 1974]

"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."



**United States of America: amendment to article 26, paragraph 1*****Document A/CONF.63/L.29***

[Original: English]  
[12 June 1974]

The United States proposes the restoration of a provision adopted by the Committee. This is to be achieved by substituting the following for the present text of paragraph 1 of article 26:

"1. Subject to the provisions of paragraph 2 of this article and of article 25, no claim shall be recognized or enforced in legal proceedings commenced either after the expiration of the limitation period or after the expiration of 10 years from the date of commencement of the limitation period under articles 9, 10, 11 and 12."

# FINAL ACT OF THE UNITED NATIONS CONFERENCE ON PRESCRIPTION (LIMITATION) IN THE INTERNATIONAL SALE OF GOODS

(Document A/CONF.63/14)\*

1. The General Assembly of the United Nations, having considered chapter II of the report of the United Nations Commission on International Trade Law on the work of its fifth session in 1972, which contained a draft Convention on Prescription (Limitation) in the International Sale of Goods, decided, by its resolution 2929 (XXVII) of 28 November 1972,<sup>1</sup> that an international conference of plenipotentiaries should be convened in 1974 to consider the question of prescription (limitation) in the international sale of goods and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. Subsequently, the General Assembly, by its resolution 3104 (XXVIII) of 12 December 1973, requested the Secretary-General to convene the Conference at United Nations Headquarters, New York, from 20 May to 14 June 1974.

2. The United Nations Conference on Prescription (Limitation) in the International Sale of Goods was held at United Nations Headquarters, New York, from 20 May to 14 June 1974.

3. Sixty-six States were represented at the Conference, as follows: Algeria, Australia, Austria, Barbados, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Chile, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Ecuador, Egypt, El Salvador, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guatemala, Guyana, Holy See, Hungary, India, Indonesia, Iran, Iraq, Ireland, Japan, Kenya, Mali, Mexico, Mongolia, Morocco, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Poland, Qatar, Republic of Viet-Nam, Sierra Leone, Singapore, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United Republic of Tanzania, United States of America, Yugoslavia and Zaire.

4. Three States, Madagascar, Peru and Romania, sent observers to the Conference.

5. The General Assembly requested the Secretary-General to invite interested specialized agencies and international organizations, and the United Nations Council for Namibia, to attend the Conference as observers. The Council of Europe, the International Chamber of Commerce, the Hague Conference on Private International Law and the United Nations Council for Namibia sent observers.

6. The Conference elected Mr. Jorge Barrera Graf (Mexico) as President.

7. The Conference elected as Vice-Presidents the representatives of the following States: Algeria, Australia, Belgium, Brazil, Chile, Cyprus, Denmark, France, Germany (Federal Republic of), Ghana, Guyana, India, Japan, Kenya, Nigeria, Philippines, Poland, Singapore, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Zaire.

8. The following Committees were set up by the Conference:

## *General Committee*

*Chairman:* The President of the Conference

*Members:* The President and Vice-Presidents of the Conference, and the Chairmen of the First and Second Committees

## *First Committee*

*Chairman:* Mr. Mohsen Chafik (Egypt)

*Vice-Chairmen:* Mr. Nehemias Gueiros (Brazil), Mr. L. H. Khoo (Singapore), Mr. Elias A. Krispis (Greece)

*Rapporteur:* Mr. Ludvik Kopač (Czechoslovakia)

## *Second Committee*

*Chairman:* Mr. György Kampis (Hungary)

*Vice-Chairmen:* Mr. T. I. Adesalu (Nigeria), Mr. G. C. Parks (Canada), Mr. G. S. Raju (India)

## *Drafting Committee*

*Chairman:* Mr. Anthony G. Guest (United Kingdom)

*Members:* Austria, Brazil, Czechoslovakia, France, India, Mexico, Nigeria, Norway, the Philippines, Singapore, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America and Zaire

## *Credentials Committee*

*Chairman:* Mr. José M. Zelaya (Nicaragua)

*Members:* Brazil, Ghana, Japan, Mongolia, the Netherlands, Nicaragua, the Union of Soviet Socialist Republics, the United Republic of Tanzania and the United States of America

9. The Secretary-General of the United Nations was represented by Mr. Blaine Sloan, Director of the General Legal Division, Office of Legal Affairs of the United Nations, and in his absence by Mr. John O. Honnold, Chief, International Trade Law Branch. Mr. G. W. Wattles, Principal Officer, Office of the Legal Counsel, acted as Executive Secretary.

10. The General Assembly, by its resolutions 2929 (XXVII) and 3104 (XXVIII) convening the Con-

\* Incorporating document A/CONF.63/14/Corr.1.

<sup>1</sup> See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17*. (Reproduced in the present volume under the symbol A/CONF.63/4.)

ference, referred to the Conference as the basis for its consideration of prescription (limitation) in the international sale of goods, the draft Convention contained in chapter II of the report of the United Nations Commission on International Trade Law on the work of its fifth session, together with the commentary thereon (A/CONF.63/5) and the analytical compilation of comments and proposals by Governments and interested international organizations (A/CONF.63/6 and Add.1 and 2).

11. The Conference initially assigned parts I and III of the draft Convention to the First Committee, and parts II and IV to the Second Committee. Subsequently it reallocated articles 37 and 38 to the Second Committee. A working group composed of Belgium, Ghana, Mexico, Singapore and the Union of Soviet Socialist Republics was entrusted with the preparation of the preamble, the Final Act and the resolutions.

12. On the basis of the deliberations recorded in the records of the Conference (A/CONF.63/SR.1 to 10) and the records of the First Committee (A/CONF.63/C.1/SR.1 to 25), its report (A/CONF.63/9 and Add.1 to 8), the records of the Second Committee (A/CONF.63/C.2/SR.1 to 4) and its report (A/CONF.63/12), the Conference drew up the Convention on the Limitation Period in the International Sale of Goods.

13. That Convention was adopted by the Conference on 12 June 1974, and opened for signature on 14 June 1974 until 31 December 1975, in accordance with its provisions, at United Nations Headquarters in

New York. The Convention was also opened for accession in accordance with its provisions.

14. The Convention is deposited with the Secretary-General of the United Nations.

15. The Conference also adopted the following resolution, which is annexed to this Final Act: "Tribute to the United Nations Commission on International Trade Law".

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE at United Nations Headquarters, New York, this fourteenth of June, one thousand nine hundred and seventy-four, in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

#### ANNEX

##### Tribute to the United Nations Commission on International Trade Law

*The United Nations Conference on Prescription (Limitation) in the International Sale of Goods,*

*Having adopted the Convention on the Limitation Period in the International Sale of Goods on the basis of a draft convention prepared by the United Nations Commission on International Trade Law,*

*Resolves to express its deep gratitude to the United Nations Commission on International Trade Law for its outstanding contribution to the unification and harmonization of the law of the international sale of goods.*

# CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS

(Document A/CONF.63/15)

*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 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;

(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 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.

2. Unless this Convention provides otherwise, it shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

3. 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;

(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 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 cir-

cumstances 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 articles 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 claims 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 10 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 articles 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.

## 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

Two or more Contracting States may at any time declare that contracts of sale between a seller having a place of business in one of these States and a buyer having a place of business in another of these States shall not be governed by this Convention, because they apply to the matters governed by this Convention the same or closely related legal rules.

## 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 37

This Convention shall not prevail over conventions already entered into or which may be entered into, and which contain provisions concerning the matters covered by this Convention, provided that the seller and buyer have their places of business in States parties to such a convention.

## 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 12 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 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.

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 inopera-

tive, 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 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 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 12 months after receipt of the notification by the Secretary-General of the United Nations.

##### *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.





*Part Two*

**SUMMARY RECORDS**



## SUMMARY RECORDS OF THE PLENARY MEETINGS

### 1st plenary meeting

Monday, 20 May 1974, at 3.35 p.m.

*Acting President:* Mr. SLOAN  
(Director, General Legal Division, Office of Legal Affairs,  
representing the Secretary-General).

A/CONF.63/SR.1

#### AGENDA ITEM 1

##### Opening of the Conference

1. The ACTING PRESIDENT, speaking on behalf of the Secretary-General, declared open the United Nations Conference on Prescription (Limitation) in the International Sale of Goods and welcomed all representatives and observers who were present.

2. The Conference, convened in accordance with General Assembly resolutions 2929 (XXVII) and 3104 (XXVIII), was a landmark in the legal history of the United Nations, since it was the first Conference convened as the result of the work of the United Nations Commission on International Trade Law (UNCITRAL). Its success could provide an important impetus for further work on the unification of law in the field of international trade.

3. Uniform rules in other significant areas of international trade law were in an advanced stage of preparation by UNCITRAL. They included the basic substantive rules applicable to the international sale of goods; rules on the responsibility of ocean carriers for cargo under bills of lading; and uniform rules for bills of exchange and promissory notes used for international payments. Indeed, success at the current decisive and formative stage of United Nations activity in the unification of international trade law could provide encouragement and impetus for the work ahead and also could set a pattern for the future conferences in the field of private law relating to international trade which were now envisaged.

4. The draft Convention (A/CONF.63/4), the first completed by UNCITRAL, dealt with a narrow but particularly difficult and troublesome aspect of the legal relationships arising from the international sale of goods—the transaction that was basic to international trade. National rules governing the prescription of rights and the limitation of actions varied widely, as to both substance and approach. Surveys had disclosed limitation periods as short as six months and as long as 30 years. However, the extremely short periods were considered inappropriate for international transactions, in view of the time that might be required for international negotiation and for the institution of legal proceedings in a foreign and possibly distant country; the extremely long periods were also considered inappropriate, since they failed to provide essential protection from the loss or

staleness of evidence necessary for the fair adjudication of claims and from the uncertainty that might result from delayed settlement of disputed claims.

5. Equally troublesome was the uncertainty of national rules and the difficulty of applying such rules to international commercial relationships, especially since merchants and lawyers would often be unfamiliar with the implication of the general concepts and with the techniques of interpretation used in a foreign legal system. Perhaps even more serious was the uncertainty as to which national laws applied to an international sales transaction. Apart from the customary problems of choice of law, problems of prescription—or limitation—presented a special difficulty of characterization or qualification: some legal systems considered the rules in question “substantive” and therefore had to decide which law was applicable; other systems considered them part of the “procedural” rules of the *forum*; still other systems followed a combination of the two approaches.

6. Those were some of the considerations that had led UNCITRAL to include the topic in its priority programme of work, and to press the preparation of the draft Convention to an early conclusion. The formulation of uniform rules could make a significant contribution to the prevention of misunderstanding and dispute in international legal relationships, and to the further development of international trade.

7. UNCITRAL had now completed seven sessions, and observers had been greatly impressed by the high level of representation and the degree of expert knowledge and industry of its members. The working methods adopted by the Commission had included the delegation of initial drafting to representative cross-sections of the Commission, called working groups, and the draft Convention on Prescription was the outcome of three sessions of intensive effort by the Working Group on Time-Limits and Limitations (Prescription). Studies on various aspects of the problem had been prepared, analysed and circulated in advance of each session. The proceedings of the Working Group had benefited not only from the competence of its members but also from the active participation of observers for other States members of UNCITRAL and for international organizations with special expertise in that field. In September 1970, following the completion of a preliminary draft, a questionnaire had been circulated to Govern-

ments and to interested international organizations.<sup>1</sup> The questionnaire had transmitted the preliminary draft and had requested information and guidance with respect to the length of the period of prescription and related matters. It had also solicited general comments on whether the provisions of the preliminary draft were well adapted to the circumstances and needs applicable to the international sale of goods. An analysis of the numerous replies had been used by the Working Group in completing its final draft.

8. Before the fifth session of UNCITRAL, a draft Convention, completed by the Working Group on Time-Limits and Limitations (Prescriptions)<sup>2</sup> and a detailed commentary<sup>3</sup>—most of which had been devoted to an intensive review, article by article, of the draft Convention—had been circulated to members of UNCITRAL, and UNCITRAL had approved a revised text which had been embodied in its report to the General Assembly on the work of its fifth session (see A/CONF.63/4).

9. The deliberations in UNCITRAL had reflected a general sense of urgency for completion of the project, and had also illustrated the spirit of accommodation and compromise that had always characterized the Commission's work. All decisions on the draft Convention had been achieved by consensus; the members of the Commission representing various legal systems, had not pressed for the inclusion of the rules of law with which they were familiar, their paramount objective being to secure agreement on uniform rules that would replace the widely divergent approaches under national law.

10. In December 1972 the draft Convention, as approved by the Commission, and the accompanying com-

mentary, had been transmitted by the Secretary-General to Governments and interested international organizations, together with a request for comments and proposals. An analytical compilation of the comments and proposals received was set forth in document A/CONF.63/6 and Add.1 and 2, while document A/CONF.63/5 contained a commentary on the draft Convention.

11. On behalf of the Secretary-General, he wished the participants in the Conference every success in the important task of finalizing the Convention, and assured them that the Secretariat was ready to assist in every way possible. He understood that it was the general wish that the election of the President of the Conference should be deferred until consultations had been held among the various regional groups.

## AGENDA ITEM 8

### Organization of work

12. Mr. WATTLES (Executive Secretary of the Conference) drew attention to rule 3 of the provisional rules of procedure (A/CONF.63/2 and Corr.1 and 2), concerning the submission of credentials. He also emphasized that the Conference had a very heavy programme of work and that time was short. With regard to the draft Convention itself, he urged delegations to submit their amendments, if any, as soon as possible, particularly those relating to the opening articles. If Governments wished the texts of amendments they had already submitted, as reproduced in document A/CONF.63/6 and Add.1 and 2, to be discussed and voted on, they should inform the Secretariat so that the appropriate steps could be taken.

13. Since, during part of the Conference, meetings of more than one Committee would be held simultaneously, delegations should make the necessary arrangements to be adequately represented.

*The meeting rose at 4 p.m.*

<sup>1</sup> See *Yearbook of the United Nations Commission on International Trade Law*, vol. II: 1971 (United Nations publication, Sales No. E.72.V.4), p. 87, document A/CN.9/50, annexes I and III.

<sup>2</sup> *Ibid.*, vol. III: 1972 (United Nations publication, Sales No. E.73.V.6), p. 110, document A/CN.9/70, annex I.

<sup>3</sup> *Ibid.*, p. 115, document A/CN.9/73.

## 2nd plenary meeting

Tuesday, 21 May 1974, at 10.30 a.m.

*Acting President:* Mr. SLOAN  
(Director, General Legal Division).

*President:* Mr. BARRERA GRAF (Mexico).

## AGENDA ITEM 2

### Election of the President

1. Mr. GUEIROS (Brazil), speaking on behalf of the group of Latin American States, nominated Mr. Barrera Graf (Mexico) for the post of President of the Conference. Mr. Barrera Graf was a professor of commercial law in his country and a member of the Governing Council of the International Institute for the Unification of Private Law (UNIDROIT). He represented Mexico in the United Nations Commission on International Trade Law (UNCITRAL), serving as Chairman of the Commission at its fifth session and of its Working Group on the International Sale of

Goods. He was President of the Law Commission in Mexico, where he had never ceased to practise law. He therefore seemed to be perfectly qualified to preside over the Conference.

2. Mr. LEBEDEV (Union of Soviet Socialist Republics), Mr. SUMULONG (Philippines) and Mr. LOEWE (Austria) supported the nomination of Mr. Barrera Graf.

*Mr. Barrera Graf (Mexico) was elected President of the Conference by acclamation.*

3. The PRESIDENT thanked delegations for placing their confidence in him, as shown by his election as President, and gave assurances that he would do his

utmost to ensure the success of the Conference. The draft Convention on Prescription (Limitation) in the International Sale of Goods was the first result of the work of UNCITRAL, which was actively engaged in completing the texts of other international instruments. It was to be hoped that the achievements of the Conference would dispel any lingering doubts about the possibility of harmonizing and unifying international trade law, and would give fresh impetus to the work of UNCITRAL.

4. The draft Convention resulted from intensive work by the Commission in collaboration with all the Governments, which, as early as 1970, had received a preliminary draft on which they had been requested to submit their observations. Those observations had served as the basis for the work of the Working Group, which had prepared a new draft approved by the Commission in 1972. That draft had again been transmitted to Governments. The observations on the text were few, but were generally favourable. The draft Convention had been drawn up by a working group broadly representative of the various legal systems, thus making it possible to produce a set of flexible rules and compromise solutions which had, nevertheless, sometimes been difficult to attain.

5. He was convinced that the spirit of co-operation which had prevailed during the preparation of the draft would continue throughout the Conference.

### AGENDA ITEM 3

#### Adoption of the agenda

*The agenda (A/CONF.63/1) was adopted.*

### AGENDA ITEM 4

#### Adoption of the rules of procedure

6. Mr. GUEIROS (Brazil), referring to rule 35 of the provisional rules of procedure (A/CONF.63/2 and Corr.1 and 2) and to foot-note 4 relating thereto, stated his preference for a rule requiring a two-thirds majority for decisions on matters of substance, and proposed the adoption of the version of rule 35 contained in the foot-note. In support of his proposal, he pointed out that UNCITRAL adopted all its decisions by consensus in order to make sure that their provisions would receive a favourable response from the largest possible number of States.

7. Mr. NJENGA (Kenya) felt that the Conference should make every effort to ensure that the rules it adopted would meet with the approval of the largest possible number of countries. He therefore wholeheartedly endorsed the proposal made by the representative of Brazil.

8. Mr. LEBEDEV (Union of Soviet Socialist Republics) supported the Brazilian proposal that decisions of the Conference on all matters of substance should be taken by a two-thirds majority of the representatives present and voting. His delegation felt that such a voting procedure would provide a better means of subsequently ensuring wide support for the Convention among States.

9. Moreover, the USSR delegation felt that, in order to take into account the case contemplated in rule 33, it would perhaps be appropriate to make more specific the provisions of paragraph 2 of rule 35 contained in foot-note 4. It also proposed that the text of rule 48

should be amended by replacing the words "a Vice-Chairman" in the last line of that rule by "three Vice-Chairmen." That would make it possible, in view of the importance of the Convention, to ensure the representation of all geographical regions.

10. Mr. ROGNLIEN (Norway) also supported the Brazilian proposal, although his delegation hoped that, in order to facilitate the adoption of amendments, the rule in question would not apply in the committees. However, if rule 35 was amended along the lines indicated by the representative of Brazil, he would propose an amendment to rule 49, rewording the text in the following way:

"The rules contained in chapters II, V and VI above shall be applicable, *mutatis mutandis*, to the proceedings of committees, sub-committees and working groups, except that:

"(a) Subject to rule 33, all decisions shall be taken by a two-thirds majority of the representatives present and voting;

"(b) The Chairmen of the Drafting Committee, the Credentials Committee and the General Committee and the chairmen of sub-committees and working groups may exercise the right to vote."

11. The PRESIDENT said that, if he heard no objections, he would take it that the Conference adopted the version of rule 35 contained in foot-note 4 of document A/CONF.63/2 and Corr.1 and 2.

*It was so decided.*

12. Mr. MUSEUX (France) stressed that his delegation considered that the adoption of the new text of rule 35 should not constitute an obstacle to the approval by consensus of all the decisions of the Conference before they were put to the vote.

*Amendment to rule 48 of the rules of procedure proposed by the USSR delegation*

13. The PRESIDENT said that, if he heard no objections, he would take it that the Conference adopted the proposal of the USSR.

*It was so decided.*

*Amendment to rule 49 of the rules of procedure proposed by the Norwegian delegation*

14. Mr. GUEST (United Kingdom) endorsed the observation made by the representative of France, and supported the Norwegian proposal. His delegation considered it essential to do everything possible to ensure the broadest support for the decisions of the Conference.

15. The PRESIDENT said that, if he heard no objection, he would take it that the Conference wished to adopt the Norwegian proposal.

*It was so decided.*

### AGENDA ITEM 5

**Election of Vice-Presidents of the Conference and of a Chairman of each of the Main Committees**

*Election of the Chairman of the First Committee*

16. Mr. SAM (Ghana) nominated Mr. Chafik (Egypt) for the office of Chairman of the First Committee. Mr. Chafik was a professor of commercial and maritime law at the University of Cairo. He had chaired the Commission for the revision of the Egyptian codes of commerce and of maritime law. He had written the codes of commerce of many Arab countries and had

published several works and articles on that subject. He had represented Egypt at UNCITRAL from the start, and he had chaired the sixth session of that body and also its Working Groups on International Legislation on Shipping and on International Payments.

17. He hoped that the participants at the Conference would unanimously approve the nomination of Mr. Chafik as Chairman of the First Committee.

18. Mr. ROGNLIEN (Norway), Mr. GUEST (United Kingdom), Mr. AL-QAYSI (Iraq), Mr. GONDRA (Spain), Mr. GUEIROS (Brazil) and Mr. GOKHALE (India) supported the nomination of Mr. Chafik.

*Mr. Chafik (Egypt) was elected Chairman of the First Committee by acclamation.*

#### *Election of the Chairman of the Second Committee*

19. Mr. ANTONIEWICZ (Poland) speaking on behalf of the group of Eastern European countries, nominated Mr. Kampis (Hungary) for the office of Chairman of the Second Committee. Mr. Kampis, the head of the Legal Department of the Hungarian Government Administration, had participated in The Hague Diplomatic Conference on International Sales and was the author of several publications on private law.

20. Mr. HARTNELL (Australia) seconded the nomination of Mr. Kampis.

*Mr. (Kampis) Hungary was elected Chairman of the Second Committee by acclamation.*

21. The PRESIDENT suggested that the Conference should elect its 22 Vice-Presidents, in accordance with rule 6 of the rules of procedure.

22. The group of Asian countries had nominated Cyprus, India, Japan, the Philippines and Singapore; the group of African countries had nominated Algeria, Ghana, Kenya, Nigeria and Zaire; the group of Eastern European countries had nominated Poland and the Union of Soviet Socialist Republics; the group of Latin American countries had nominated Brazil, Chile and Guyana; and, finally, the group of Western European and other States had nominated Australia, Belgium,

Denmark, the Federal Republic of Germany, France, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

23. He said that, if he heard no objection, he would take it that the Conference wished to elect the representatives of those 22 countries as Vice-Presidents.

*It was so decided.*

24. Replying to a question put by Mr. LEBEDEV (Union of Soviet Socialist Republics), the PRESIDENT confirmed that all the countries mentioned were represented at the Conference.

### AGENDA ITEM 6

#### **Credentials of representatives to the Conference:**

##### **(a) Appointment of the Credentials Committee**

25. The PRESIDENT recalled that, in accordance with rule 4 of the rules of procedure, the Credentials Committee should consist of nine members appointed by the Conference on the proposal of the President. Following preliminary consultations, he proposed the following membership: Brazil, Ghana, Greece, Japan, Mongolia, Nicaragua, the Union of Soviet Socialist Republics, the United Republic of Tanzania and the United States of America.

26. If he heard no objection, he would take it that the Conference wished to elect those nine countries as members of the Credentials Committee.

*It was so decided.*

### AGENDA ITEM 7

#### **Appointment of members of the Drafting Committee**

27. The PRESIDENT suggested that the Conference should postpone the appointment of members of the Drafting Committee until the following meeting, as the consultations that were under way had not yet led to agreement.

*The meeting rose at 11.45 a.m.*

## 3rd plenary meeting

Tuesday, 21 May 1974, at 3.35 p.m.

*President: Mr. BARRERA GRAF (Mexico).*

A/CONF.63/SR.3

### AGENDA ITEM 5

#### **Election of Vice-Presidents of the Conference (concluded)**

1. Mr. LEBEDEV (Union of Soviet Socialist Republics) said it was quite intolerable that one of the Vice-Presidents of a Conference whose task was to make a contribution to the improvement of international law should be a representative of the Chilean military junta, which had villainously murdered the lawful President of Chile, Salvador Allende, had overthrown the constitutional Government and was spreading bloody terror and mass repression throughout the country. At its fifty-sixth session, the Economic and

Social Council had adopted a special resolution condemning the gross and massive violation of human rights by the Chilean junta, whose crimes had been strongly condemned by the whole world. If a vote had been taken on the nominations of individual officers of the Conference, his delegation would have voted against the election of the representative of the junta.

2. Mr. KIBIS (Byelorussian Soviet Socialist Republic) said his delegation found it extremely regrettable that one of the Vice-Presidents of the Conference was a representative of the Chilean military junta, which bore responsibility for the deaths of tens of thousands of persons, for the lawlessness prevailing in the country and for the continuing repression and cruel per-

secution of true patriots who had been fighting constantly for the freedom and independence of the Chilean people. If the nominations of officers had been put to the vote individually, his delegation would have voted against the election of the representative of the Chilean military junta.

3. Mr. OCHIRBAL (Mongolia) expressed full support for the comments made by the representatives of the USSR and the Byelorussian SSR. The election of the representative of the Chilean military junta as a Vice-President was not in accordance with the noble aims of the Conference. Public opinion throughout the world had condemned the acts committed by the junta, as had the Economic and Social Council at its fifty-sixth session. If the nominations of officers of the Conference had been put to the vote, his delegation would have voted against the election of the Chilean representative.

4. Mr. KAMPIS (Hungary) said that, had the question been put to a formal vote, his delegation would have voted against the inclusion of Chile in the General Committee.

5. Mrs. MELNIK (Ukrainian Soviet Socialist Republic) said her delegation regretted that a representative of the Chilean military junta had been elected a Vice-President of the Conference and a member of the General Committee. The acts committed by the junta were common knowledge and had been universally condemned. The election of a representative of the junta to a responsible post in the Conference was not in accordance with the purposes and spirit of the Conference.

6. Mr. ROSENSTOCK (United States of America) said his delegation wished to place on record its regret at what it hoped was a unique deviation from the relevant into baseless polemics which were completely out of place.

7. Mr. STALEV (Bulgaria) said that, had a formal vote been taken, his delegation would have voted against the election of a representative of the Chilean military junta as a Vice-President of the Conference.

8. Mr. KOPAC (Czechoslovakia) said that, for the reasons stated by previous speakers, his delegation was of the opinion that the choice of the Chilean representative as a Vice-President of the Conference was not a good one. If the question had been put to the vote, his delegation would have voted against the election of the Chilean representative.

9. Mr. ANTONIEWICZ (Poland) supported the view expressed by the representative of the USSR on the subject of the election of the Chilean representative as a Vice-President of the Conference.

#### AGENDA ITEM 7

##### Appointment of members of the Drafting Committee (*continued*)

10. The PRESIDENT said that the representatives of Austria, Brazil, Czechoslovakia, France, India, Kenya, Mexico, Nigeria, Norway, the Philippines, Singapore, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zaire had been nominated for membership of the Drafting Committee.

11. Mr. NJENGA (Kenya) said that, in view of the small size of his delegation and the fact that Kenya would be serving as a member of the General Committee, he would appreciate it if further consultations could be held for the purpose of nominating another representative from the African group.

12. The PRESIDENT said that, in view of the statement by the representative of Kenya, it would be necessary to find another candidate from the African group. In the meantime, if there were no further nominations, he would take it that the representatives of the other States he had mentioned were appointed members of the Drafting Committee.

*It was so decided.*

#### AGENDA ITEM 8

##### Organization of work

13. The PRESIDENT said the General Committee recommended that the Conference should approve provisionally the allocation of work suggested in document A/CONF.63/3, paragraph 7. If it appeared after 10 days or so that the First Committee would be unable to complete its consideration of articles 33 to 38 of the draft Convention, the General Committee would ask the Conference to consider allocating those articles to the Second Committee.

14. If there was no objection, he would take it that the Conference accepted the recommendation of the General Committee.

*It was so decided.*

*The meeting rose at 4 p.m.*

## 4th plenary meeting

Wednesday, 22 May 1974, at 12.40 p.m.

*President:* Mr. BARRERA GRAF (Mexico).

A/CONF.63/SR.4

#### AGENDA ITEM 7

##### Appointment of members of the Drafting Committee (*concluded*)

1. The PRESIDENT informed the Conference that the representative of the United Republic of Tanzania had been nominated to replace the representative of

Kenya who had withdrawn his candidacy for the Drafting Committee. If he heard no objection, he would take it that the Conference wished to appoint the representative of the United Republic of Tanzania to the Drafting Committee.

*It was so decided.*



## AGENDA ITEM 6

Credentials of representatives to the Conference  
(continued):(a) Appointment of the Credentials Committee  
(concluded)

2. The PRESIDENT informed the Conference that the delegation of Greece had asked to withdraw from the Credentials Committee and that the Netherlands delegation had been nominated to replace it. If he heard no objection, he would take it that the Conference decided to appoint the Netherlands a member of the Credentials Committee.

*It was so decided.*

## Other matters

3. Mr. WATTLES (Executive Secretary of the Conference) explained to delegations the procedures for the distribution of documents at United Nations Headquarters. All documents ready for distribution at the beginning of each day were sent to the missions of Member States; representatives were therefore asked to obtain them at their own missions. Documents issued in the course of the day were distributed to individual delegations at the beginning of meetings. Because of the limited staff available, the Secretariat was unable to distribute in the conference room documents which became available while meetings were in progress. Representatives were therefore asked to obtain them from the documents officer.

*The meeting rose at 12.45 p.m.*

## 5th plenary meeting

Thursday, 6 June 1974, at 5.30 p.m.

*President:* Mr. BARRERA GRAF (Mexico).

A/CONF.63/SR.5

## AGENDA ITEM 8

## Organization of work (concluded)

1. The PRESIDENT said the Conference must decide whether the report of the Drafting Committee should be transmitted directly to the plenary or should first be considered by the Main Committees.

2. Mr. HONNOLD (Chief, International Trade Law Branch) said that it was not yet possible to say exactly when the Drafting Committee could complete its work, but it might be possible to complete a provisional text by the evening of Monday, 10 June. The provisional text of seven of the articles considered by the First Committee and seven of the articles considered by the Second Committee would be issued very shortly; the other texts would be made available as soon as possible.

3. Direct transmission of the Drafting Committee's report to the plenary would cut out one step and could save time. On the other hand, initial approval of the report by the Main Committees might simplify discussions in the plenary and speed up its work. However, the second course would require very rapid action by the Committees and the plenary. If the report was transmitted initially to the Committees, some parts would be available on Monday, 10 June; it was hoped that the remaining parts of the report would be available by Tuesday evening.

4. Mr. GUEST (United Kingdom), speaking as Chairman of the Drafting Committee, said he wished it to be clearly understood that the texts that were being made available to representatives were tentative and provisional. The Drafting Committee reserved the right to amend them subsequently.

5. Mr. BURGUCHEV (Union of Soviet Socialist Republics) felt that, in view of the limited time available, it would be better to transmit the report directly to the plenary.

6. The PRESIDENT said his past experience in similar circumstances indicated that, if most of the work

was done in committee, the work of the plenary was made much easier.

7. Mr. MUSEUX (France) asked when the plenary would have to complete its work in order to allow time for the production and signature of the Final Act.

8. The PRESIDENT said that, if the report was transmitted to the Committees, the plenary might be able to complete its work on Thursday, 13 June, which would allow the signing of the Final Act to take place on Friday or Saturday. If the report was transmitted directly to the plenary, its work might take three or four days and would not be completed before Friday or Saturday.

9. Mr. GUEIROS (Brazil) pointed out that there were a number of interrelated articles in the draft Convention, and that numbering changes would be necessary. Consequently, the plenary would require the complete text. It would be better to forgo discussion in the Committees and to have the report transmitted directly to the plenary.

10. Mr. KAMPIS (Hungary), Mr. CHAFIK (Egypt) and Mr. BELINFANTE (Netherlands) supported the proposal that the report should be transmitted directly to the plenary.

11. Mr. MANZ (Switzerland) also supported the proposal. Many delegations consisted of a single representative, who would have to choose which of the two Main Committees to attend. In the plenary, each delegation would be able to consider the whole Convention.

12. Mr. MUSEUX (France) said that he too supported the proposal. He pointed out that the plenary meetings might involve serious discussion of some of the articles and would thus be more than a mere formality. He urged that every effort should be made to begin the substantive work in plenary meetings as soon as possible.

13. The PRESIDENT said there appeared to be a unanimous feeling that the report of the Drafting Com-

mittee should be transmitted directly to the plenary, which could probably begin its consideration of it on Tuesday, 11 June.

14. He suggested that a working group of five members should be established to consider the Final Act of the Conference, a possible preamble to the Convention, and a resolution to the effect that the future conference on the international sale of goods should be given a mandate to reconsider the definition of an international

sale. He suggested that the group consist of the representative of Belgium, Colombia, Ghana, Singapore and the USSR.

*It was so decided, on the understanding that if the representative of Colombia declined the appointment the representative of Mexico would represent the Latin American group.*

*The meeting rose at 6.05 p.m.*

## 6th plenary meeting

Tuesday, 11 June 1974, at 10.30 a.m.

President: Mr. BARRERA GRAF (Mexico).

A/CONF.63/SR.6

### AGENDA ITEM 9

**Consideration of the question of prescription (limitation) in the international sale of goods in accordance with General Assembly resolution 2929 (XXVII) and 3104 (XXVIII)**

CONSIDERATION OF DRAFT PROVISIONS APPROVED BY THE DRAFTING COMMITTEE (A/CONF.63/7, A/CONF.63/L.1, L.2)

1. The PRESIDENT said that, since the Conference had a long and difficult task before it, he would limit each speaker's statement to a maximum of three minutes.

2. Mr. GUEST (United Kingdom), speaking as Chairman of the Drafting Committee, introduced the draft provisions approved by the Drafting Committee (A/CONF.63/7) and drew special attention to a number of points on which the Conference would have to decide: article 16 and article 26, paragraph 2, which had been left in square brackets because, in the Drafting Committee's opinion, the First Committee had approved two inconsistent texts and the Conference would now have to decide which it preferred; article 10, in which some words had been left in square brackets to show that the Drafting Committee had been unable to agree on the need for those words; and article 24, concerning which the Secretariat's report stated that the text contained in document (A/CONF.63/7) had been approved by the First Committee, but a number of delegations said that it had not been so approved.

3. The Conference would also have to decide on the title of the Convention in the French version.

#### *Title of the draft Convention*

4. Mr. BELINFANTE (Netherlands) said that he did not believe it was desirable to delete the words "*objets mobiliers corporels*" from the French title and replace them with the word "*marchandises*"; for example, if a famous painting was purchased, it would be an "*objet mobilier corporel*" but not a "*marchandise*."

5. Mr. CHAFIK (Egypt) agreed with the Netherlands representative, since the draft convention should conform to the French version of the text of the Uniform Law on the International Sale of Goods (ULIS) an-

nexed to the 1964 Hague Convention,<sup>1</sup> which referred to "*objets mobiliers corporels*."

6. Mr. MUSEUX (France) disagreed with the preceding speakers because he believed that the Convention on prescription should be aimed at the public in general and merchants in particular, and many of them would not understand the meaning of the expression "*objets mobiliers corporels*."

7. The example of the sale of a famous painting was not a valid one, since a work of art purchased by someone for his personal use would not be covered by the Convention, whereas if it was purchased by a dealer in works of art for resale, it would undoubtedly be goods ("*marchandises*").

8. The third line of the French text of article 1 mentioned "*objets mobiliers corporels*", and the expression should be retained at that point.

9. The PRESIDENT put to the vote the proposal of the French delegation to delete the words "*objets mobiliers corporels*" from the French text of the draft Convention.

*The result of the vote was 18 in favour and 5 against, with 16 abstentions.*

*The proposal was adopted, having obtained the required two-thirds majority.*

#### *Article 1*

10. Mr. MUSEUX (France), bearing in mind the Conference's decision concerning the title of the draft Convention, suggested that in the French text the words "*ci-après désignés par le terme 'marchandises'*" should be inserted after the word "*corporels*" and that the word "*marchandises*" should be substituted throughout the Convention for the expression "*objets mobiliers corporels*."

11. Mr. KAMPIS (Hungary) asked why the text of article 1 mentioned claims arising from a contract of international sale of goods or relating to its breach, termination or invalidity. He did not understand what difference there would be between the two cases and believed that the disjunctive conjunction "or" was in-

<sup>1</sup> See United Nations, *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, vol. 1 (United Nations publication, Sales No. E.71.V.3), p. 39.

correctly used between the words "goods" and "relating."

12. Mr. GUEST (United Kingdom), speaking as Chairman of the Drafting Committee, said that the intention had been to include all possible claims.

13. Mr. OLIVENCIA (Spain) pointed out several errors of syntax in the Spanish text of article 1 and said that his delegation reserved the right to polish the wording of the First Committee's text at a later time.

14. Mr. MUKUNA (Zaire) said that although the French proposal was interesting, it was not really necessary.

15. Mr. ROGNLIEN (Norway) said that, although he had voted in favour of replacing the words "*objets mobiliers corporels*" with the word "*marchandises*" in the title of the Convention, he believed that the change should not be made in the text of article 1.

16. Mr. CHAFIK (Egypt) agreed with the representative of Zaire.

17. The PRESIDENT put to the vote the proposal of the representative of France to insert the expression "*ci-après désignés par le terme 'marchandises'*" in the French version of article 1, paragraph 1.

*The proposal was rejected by 8 votes to 7, with 22 abstentions.*

18. The PRESIDENT put to the vote the proposal to replace the words "*objets mobiliers corporels*" throughout the Convention with the word "*marchandises*".

*The result of the vote was 15 in favour and 8 against, with 14 abstentions.*

*The proposal was not adopted, having failed to obtain the two-thirds majority.*

19. The PRESIDENT said if there was no objection, he would take it that the Conference had decided to approve the text of article 1 in its entirety.

*It was so decided.*

### Article 2

20. The PRESIDENT suggested that the Conference should decide first on the Netherlands amendment (A/CONF.63/L.2), next on the proposal for replacement sponsored by six countries (A/CONF.63/L.1) and lastly on the text of article 2 approved by the Drafting Committee (A/CONF.63/7).

21. Mr. MUSEUX (France) said that the sponsors of the proposal contained in document A/CONF.63/L.1 considered it not an amendment to the text of article 2 but an independent proposal for replacement. Article 2 (a) defined the international character of a contract of sale of goods, whereas document A/CONF.63/L.1 did not contain any definition and therefore could not be considered an amendment to the present article 2.

22. Accordingly, he proposed, under the provisions of rule 41 of the rules of procedure, that the Conference should first vote on the text proposed by the Drafting Committee and then, if the proposed text was not approved by the necessary two-thirds majority, a vote should be taken on the proposal contained in document A/CONF.63/L.1.

23. The PRESIDENT said that, as he understood the matter, under rule 40 of the rules of procedure the Conference must first decide on documents A/CONF.63/L.1 and L.2 and then decide on the text proposed by the Drafting Committee.

24. Mr. LOEWE (Austria) asked what parts of article 2 would be replaced by the proposals contained in documents A/CONF.63/L.1 and L.2.

25. Mr. JENARD (Belgium) said that the text proposed in document A/CONF.63/L.1 would constitute a new text of article 2, paragraph 1, replacing subparagraph (a) contained in document A/CONF.63/7; it would be followed by a second paragraph beginning with the words "For the purposes of this Convention" and including the contents of subparagraphs (b), (c), (d) and (e) of the version approved by the Drafting Committee.

26. Mr. BELINFANTE (Netherlands) said that documents A/CONF.63/L.1 and L.2 had been prepared before the Drafting Committee amended the earlier version of article 2 and had evidently been drafted on the basis of that earlier text. Accordingly, if either of the proposals (A/CONF.63/L.1 and L.2) was approved, the Drafting Committee would have to adjust the wording of the new article 2.

27. The PRESIDENT, replying to a question by Mr. GUEIROS (Brazil), said that the Netherlands amendment (A/CONF.63/L.2) was intended to replace the text of article 2 (a) approved by the Drafting Committee.

28. Mr. BELINFANTE (Netherlands) proceeded to explain the amendment proposed by his delegation (A/CONF.63/L.2). The basic problem in article 2 was, as the representative of Ghana had said, that the definition had to be acceptable to all countries. The amendment proposed by the Netherlands would presuppose that the definition given in the first ULIS would be adopted for the present and be replaced with the definition in the new ULIS when the latter had entered into force in a specified number of States. Such a procedure would avoid a proliferation of definitions, and when a sufficient number of countries had ratified the new ULIS, the new definition would automatically enter into force.

29. Mr. KHOO (Singapore) said that the plenary Conference was following a two-thirds majority rule in votes on texts that had been approved by a simple majority in the Committee. He proposed that the rules of procedure should be amended to allow simple-majority approval of texts considered in plenary meeting.

30. Mr. MUSEUX (France) opposed the Singaporean proposal because he felt that the two-thirds procedure made it possible to reach a compromise solution and that, moreover, the two-thirds majority rule would have to be applied not only to amendments but also to the texts proposed by the Drafting Committee (A/CONF.63/7).

31. Mr. LOEWE (Austria) said that in his opinion there should be no change in the rules of procedure and that a United Nations convention ought to be approved by a two-thirds majority.

32. The PRESIDENT put the Singaporean proposal to the vote.

*The Singaporean proposal was rejected by 35 votes to 1, with 3 abstentions.*

33. Mr. SAM (Ghana) said that the purpose of the Convention was to facilitate and promote international trade, and it should be borne in mind, in connexion with what the representative of Spain had said, that what the Conference decided could not be altered. He was in favour of the amendment proposed by the Netherlands delegation since it tended towards the

aforesaid objective, and because it was preferable to abide by the ULIS definition, which had been ratified by the States most active in world trade, than to produce an independent definition. As for the requirement that a specified number of States should have ratified the Convention for the definition of the second ULIS to enter into force automatically, the figure of 10 States which had been suggested as a condition for the entry into force of the present Convention, might be contemplated, or perhaps six States, as stipulated in the first ULIS for that purpose.

34. Mr. HONNOLD (Chief, International Trade Law Branch) pointed out to members of the Conference the relation between the provisions of the Netherlands amendment (A/CONF.63/L.2) and article 1 of the 1964 ULIS. He also pointed out that in document A/CONF.63/L.2 the text of paragraph 4 of article 1 of ULIS, dealing with the place of offer and acceptance, did not appear.

35. Mr. MANZ (Switzerland) supported the Netherlands proposal which had the advantage of being clear. However, it should cover all the points included in the ULIS definition.

36. Mr. GUEIROS (Brazil) requested that a separate vote be taken on each of the two parts of the Netherlands proposal (A/CONF.63/L.2), in compliance with rule 39 of the Conference rules of procedure.

37. Mr. GOKHALE (India) moved that a separate vote be taken on each subparagraph of paragraph 1 of the Netherlands amendment.

38. Mr. ROGNLIEN (Norway) said that the Indian proposal raised a new question concerning the Netherlands amendment. The intention of that amendment was to retain the entire definition of ULIS. If that were not done, the amendment would lose its point.

39. Mr. BURGUCHEV (Union of Soviet Socialist Republics) supported the statement of the Norwegian representative.

40. Mr. AL-QAYSI (Iraq) agreed with the proposal of the representative of Brazil. The Indian proposal should be voted on, since it had raised objections.

41. The PRESIDENT put to the vote the Indian proposal that a separate vote be taken on each subparagraph of paragraph 1 of article 1 of document A/CONF.63/L.2.

*The proposal was rejected by 34 votes to 1, with 4 abstentions.*

42. The PRESIDENT put to the vote the first part of the text contained in document A/CONF.63/L.2 put forward by the Netherlands delegation.

*The text was rejected by 18 votes to 17, with 14 abstentions.*

43. The PRESIDENT invited the members of the Conference to vote on the amendment contained in document A/CONF.63/L.2.

44. Mr. JENARD (Belgium) thought that paragraph 1 of article 2 raised an awkward point, since the countries which had accepted the 1964 ULIS might find it difficult to accept a definition of sale different from the ULIS definition.

45. However, he shared the opinion expressed by the French delegation that it was impossible to vote on the text contained in document A/CONF.63/L.1 before voting on subparagraph (a) of article 2 of the draft Convention contained in document A/CONF.63/7.

46. Mr. LOEWE (Austria) said that he had voted in favour of the Netherlands amendment because States parties to the 1964 ULIS should do all they could to prevent difficulties from arising in the application of the Convention on Prescription (Limitation). Therefore, the six-Power proposal (A/CONF.63/L.1) could hardly be considered a compromise, since it eliminated an important feature of the draft Convention without replacing it with anything. He shared the President's opinion concerning the order in which the vote should be taken on proposal A/CONF.63/L.1 and on the text of article 2 approved by the Drafting Committee.

47. Mr. ROGNLIEN (Norway) maintained that, if proposal A/CONF.63/L.1 was approved, significant changes would be introduced into the present system of the future Convention. The definition of international sale would be subject to national criteria, the uniformity would be abandoned and the scope of the Convention might be limited considerably by the criteria prevailing or to be applied in some countries.

48. Mr. MUSEUX (France) emphasized that his country's proposal could in no way be considered an amendment to the text of article 2 and should be voted on subsequently, since it came under rule 41 of the rules of procedure.

49. Mr. AL-QAYSI (Iraq), disagreeing with the representative of France, argued that the French proposal did not come under the provisions of rule 41 of the rules of procedure.

50. Mr. GUEIROS (Brazil) was of the opinion that the text proposed in document A/CONF.63/L.1 did not differ significantly from subparagraph (a) of article 2 approved by the Drafting Committee; furthermore, adoption of the former would make it easier for countries already parties to ULIS and playing an important role in international trade to adhere also to the future Convention on Prescription (Limitation).

51. Mr. JENARD (Belgium) asked if, under rule 32 of the rules of procedure, the sponsors of proposal A/CONF.63/L.1 could withdraw it and propose it again after a vote had been taken on the text of article 2 contained in document A/CONF.63/7.

52. The PRESIDENT said that, provided subparagraph (a) of article 2 of document A/CONF.63/7 did not receive a two-thirds majority, there did not seem to be any provision in the rules of procedure of the Conference to prevent the course of action suggested by the representative of Belgium.

53. Mr. NJENGA (Kenya) thought that there was an appropriate time for proposing amendments and that it should be respected.

54. Mr. BURGUCHEV (Union of Soviet Socialist Republics) observed that the draft provisions approved by the Drafting Committee had been carefully studied by the Conference Committees and the Drafting Committee, and urged participants to bear in mind the possible consequences of a course of action such as that suggested by the Belgian representative.

55. Mr. AL-QAYSI (Iraq) said that, in compliance with rule 30 of the rules of procedure of the Conference and with the procedure followed in meetings of the General Assembly, a delegation could withdraw an amendment, but not propose it again during the same meeting. In the case of amendment A/CONF.63/L.1, the procedure to be followed was to vote on a proposal to allow the Belgian delegation to withdraw its amendment and propose it again at the same meeting.

56. The PRESIDENT said that, according to rules 30 and 32 of the rules of procedure of the Conference, the President could allow an amendment to be proposed a second time in the course of the same meeting; in any event, he considered amendment A/CONF.63/L.1 withdrawn. He would put to the vote the text of article 2 contained in document A/CONF.63/7 presented by the Drafting Committee.

57. After a procedural discussion in which Mr. MUSEUX (France), Mr. AL-QAYSI (Iraq), Mr. BURGUICHEV (Union of Soviet Socialist Republics) and Mr. STALEV (Bulgaria) took part, the PRESIDENT

put to the vote the proposal of the French delegation that article 2 of document A/CONF.63/7 be voted on paragraph by paragraph.

*The French proposal was rejected by 17 votes to 11, with 11 abstentions.*

58. The PRESIDENT put to the vote the whole of article 2 as contained in document A/CONF.63/7.

*The text of article 2 contained in document A/CONF.63/7 was adopted by 31 votes to 7, with 4 abstentions.*

*The meeting rose at 1 p.m.*

## 7th plenary meeting

Tuesday, 11 June 1974, at 3.25 p.m.

President: Mr. BARRERA GRAF (Mexico).

A/CONF.63/SR.7

### AGENDA ITEM 9

**Consideration of the question of prescription (limitation) in the international sale of goods in accordance with General Assembly resolutions 2929 (XXVII) and 3104 (XXVIII) (continued)**

CONSIDERATION OF DRAFT PROVISIONS APPROVED BY THE DRAFTING COMMITTEE (A/CONF.63/7, A/CONF.63/L.4, L.5, L.10, L.11, L.12, L.17, L.22, L.24, L.25) (continued)

#### Article 3

1. Mr. LOEWE (Austria), introducing the amendment contained in document A/CONF.63/L.10, recalled that a similar proposal for the deletion of article 3, paragraph 1, had been rejected in the First Committee, but said that he wished to take the last opportunity available to try to broaden the scope of the Convention. The Convention should not be restricted to commercial relations between parties normally resident in Contracting States; it should be applied by Contracting States to all international sales of goods.

*The Austrian amendment (A/CONF.63/L.10) was rejected by 25 votes to 6, with 5 abstentions.*

2. Mr. FRANTA (Federal Republic of Germany), introducing the amendment contained in document A/CONF.63/L.11 on behalf of the sponsors, said its purpose was to add a very important specific case in which the Convention would be deemed to have been expressly excluded. It frequently happened that the parties to a contract agreed on a national law to govern it. Such an agreement would have to stipulate the law applicable to the contract and, in the absence of the proposed amendment, would also have to expressly exclude the application of the Convention. Yet it would seem natural, if a specific law was chosen to govern the contract, that that law should also govern the limitation period. If the law chosen was not the law of a State party to the Convention, the Convention ought to be excluded.

3. Mr. CHAFIK (Egypt) said that the amendment contradicted the existing text of paragraph 3, which required a positive act to exclude the application of the

Convention. It would not be right to insert a provision that excluded the Convention without the performance of a specific act.

4. Mr. HJERNER (Sweden) supported the views expressed by the representative of the Federal Republic of Germany. Although he felt that the choice of the law of a non-contracting State automatically excluded the application of the Convention, it would be better to have that stated explicitly.

*The amendment contained in document A/CONF.63/L.11 was rejected by 17 votes to 9, with 11 abstentions.*

5. Mr. JENARD (Belgium) said the question that had been raised was a very important one. He wished to know whether or not, in the frequent cases where parties legally resident in Contracting States chose the law of a third country to govern the contract, the Convention was excluded; the answer to that question could affect his Government's attitude to the Convention.

6. The PRESIDENT said that that would presumably depend on the interpretation of article 3.

*Article 3 was adopted by 29 votes to 6, with 3 abstentions.*

#### Article 4

7. Mr. LOEWE (Austria) announced that he was withdrawing the first part of his delegation's amendment (A/CONF.63/L.4) but was maintaining the subsidiary proposal. He had not been present in the First Committee when the text of article 4 (a) had been amended in the interests of simplicity. His delegation had misgivings about the simplified text, because it would be very difficult to say whether goods had really been bought for personal, family or household use unless the buyer made an appropriate declaration. A seller would be unable to tell whether the goods were intended for the use of the buyer or for resale. It would be better to reinstate the original text, which had been prepared with great care.

8. Mr. ROGNLIEN (Norway) supported the Austrian proposal.

9. Mr. HARTNELL (Australia) opposed the amendment. It had been felt in the First Committee that the

original text was too complicated and required the application of too many tests. It was not clear how the original text would have helped a seller who was unaware of the final purpose for which the goods were bought.

*The Austrian amendment (A/CONF.63/L.4) was rejected by 13 votes to 6, with 18 abstentions.*

*Article 4 was adopted by 34 votes to 1, with 2 abstentions.*

#### Article 5

*Article 5 was adopted.*

#### Article 6

*Article 6 was adopted.*

#### Article 7

10. Mr. JENARD (Belgium) withdrew the amendment contained in document A/CONF.63/L.24.

*Article 7 was adopted.*

#### Article 8

11. Mr. LOEWE (Austria), introducing his delegation's amendment (A/CONF.63/L.5), said that the words "defect or other" in the second sentence should be deleted. He had welcomed the fact that, at an early stage in its work, the First Committee had agreed on a uniform limitation period, without any extension for lack of conformity. However, the four-year limitation period now proposed in case of a lack of conformity was not practical. Under Austrian law the period was six months, but he would not wish to press for so short a period in international legislation and had therefore proposed a limit of two years.

*The Austrian amendment (A/CONF.63/L.5) was rejected by 24 votes to 5, with 9 abstentions.*

12. Mr. BURGUCHEV (Union of Soviet Socialist Republics) speaking in explanation of vote, recalled that his delegation's proposal in the First Committee for a shorter limitation period in respect of claims based on a defect or other lack of conformity of the goods had been rejected. Nevertheless, in a spirit of co-operation, his delegation had abstained in the vote on the Austrian amendment.

*Article 8 was adopted by 31 votes to 2, with 5 abstentions.*

#### Article 9

13. Mr. ROGNLIEN (Norway), introducing his delegation's amendment (A/CONF.63/L.17), said that its purpose was to bring all the main provisions governing the commencement of the limitation period into a single article. The new article 9 he was proposing combined the provisions of articles 9 and 10 as approved by the Drafting Committee. Although he did not feel that the words appearing in square brackets in paragraph 1 of his amendment were really necessary, he would not press for their deletion, nor would he insist on the adoption of the wording of paragraph 3 of his amendment rather than that of article 10, paragraph 2, of the Drafting Committee's text.

14. Mr. GUEST (United Kingdom), Chairman of the Drafting Committee, noted that the words "to the effect" should have been deleted from the English text of article 9, paragraph 2 (b).

15. Mr. BÖKMARK (Sweden) supported the Norwegian amendment. His delegation saw great merit in

having all rules relating to the commencement of the limitation period included in a single article.

16. Mr. ROGNLIEN (Norway) suggested that, without taking a decision on the substance of his amendment, the Conference might vote on the principle of consolidating articles 9 and 10.

*The consolidation of articles 9 and 10 was rejected by 13 votes to 6, with 19 abstentions.*

*Article 9 was adopted by 32 votes to none, with 7 abstentions.*

#### Article 10

17. Mr. KHOO (Singapore), introducing his delegation's amendment to article 10, paragraph 2 (A/CONF.63/L.25), pointed out that the wording proposed was identical with that of the first sentence of the Drafting Committee's text, except for the addition of the words "or a subpurchaser". The amendment was intended to protect the rights of subpurchasers but not to postpone the limitation period indefinitely. The period would commence as soon as the goods were actually handed over to the first subpurchaser.

18. Mr. HARTNELL (Australia) pointed out that adoption of the Singaporean amendment would mean the deletion of the second sentence of article 10, paragraph 2. As his delegation attached great importance to that provision, it could not support the amendment.

19. He noted that the Drafting Committee itself had made some substantive changes in the text proposed by the Working Group of the First Committee (A/CONF.63/C.1/L.103). The Drafting Committee had added the concept of the seller's transmitting the goods to a carrier for shipment and had further upset the delicate compromise reached in the First Committee by placing the second sentence in square brackets.

20. Mr. LOEWE (Austria) said that the Singaporean amendment, as worded at present, was not acceptable to his delegation. The second sentence of paragraph 2, as approved by the Drafting Committee, also created difficulties; in particular, misunderstanding could arise in regard to the interpretation of the concept of "carriage of goods from one State to another".

21. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that, although his delegation had expressed some doubts in the Drafting Committee as to the desirability of the second sentence of paragraph 2, it was now prepared to agree to the removal of the brackets and the inclusion of that sentence in the text. Should the Conference prefer the Singaporean amendment to the Drafting Committee's text, his delegation could not support it unless the additional words "whichever is the earlier" were added at the end of the sentence. It might be simpler, however, to retain the text approved by the Drafting Committee.

22. Mr. ROGNLIEN (Norway) said that it might be questioned whether it was necessary to add the words "or a subpurchaser" in article 10, paragraph 2, since under article 1, paragraph 3 (a), the term "buyer" included successors to and assigns of the buyer's rights or obligations under the contract of sale. That question would depend on whether the subpurchaser under the law applicable could avail himself of the rights and obligations of the buyer in relation to the seller. Furthermore, in some circumstances the subpurchaser might perhaps, for the purposes of this provision, be regarded as an agent, etc. of the buyer. Accordingly, if there was a subpurchaser, in such circumstances as he had men-

tioned, the limitation period would commence on the date on which the goods were actually handed over to such subpurchaser. Nevertheless, his delegation was prepared to vote in favour of the Singaporean amendment, on the understanding that the Soviet oral sub-amendment, which simply made explicit what was implicit in the existing text, might be referred to the Drafting Committee.

23. With respect to the second sentence of paragraph 2, regarding the carriage of goods from one State to another, his delegation considered that the text approved by the Drafting Committee was an unnecessary complication. It was strange to distinguish between cases where the goods were handed over from the seller and cases where they were handed over from the carrier, without distinguishing between the places for the handing over, for example, the place of shipment and the place of destination. In that respect, he referred to the Norwegian proposal in document A/CONF.63/L.17. In short, his delegation was not prepared to accept the words in brackets.

24. Mr. BELINFANTE (Netherlands) agreed with the representative of Norway that, in accordance with the definition in article 1, a subpurchaser was also a buyer. The addition of the words "or a subpurchaser" in article 10 would therefore be superfluous and might give rise to confusion. Accordingly, his delegation could not support the Singaporean amendment.

25. Mr. GUEST (United Kingdom), speaking as Chairman of the Drafting Committee, said that the formulation of article 10, paragraph 2, had been one of the most difficult tasks entrusted to the Drafting Committee, which had tried to do its best in the short time available. A small working party had been set up specifically to deal with that paragraph, and a number of proposals had been put forward. Opinion had been divided on the desirability of a second sentence. Some had thought that the first sentence alone would be sufficient because it included the words "actually handed over." Others, however, had considered that a specific reference to the carriage of goods from one State to another was necessary and that it would be desirable to make provision for the case of a subpurchaser as well. The Drafting Committee had therefore presented the plenary with a choice between two alternatives—either the first sentence alone or the first and second sentences together.

26. Mr. GUEIROS (Brazil) confirmed that opinion had been divided in the Drafting Committee with regard to article 10, paragraph 2. Some delegations had thought it unnecessary to refer to a subpurchaser, inasmuch as the definition in article 1, paragraph 3 (a), made adequate provision for the rights of subpurchasers. His delegation shared that view and would find it difficult to accept the Singaporean representative's formulation, even with the Soviet subamendment. It was prepared to accept the first sentence of the text as approved by the Drafting Committee.

27. Mr. STALEV (Bulgaria) supported the text approved by the Drafting Committee, including the words in brackets. However, it would be best to delete the words "from one State to another," which might give rise to unnecessary complications.

28. Mr. FRANTA (Federal Republic of Germany) said that his delegation could not accept the Singaporean amendment. With regard to the sentence placed in brackets by the Drafting Committee, the wording was quite different from the original formulation in

document A/CONF.63/C.1/L.103, which his delegation found preferable.

29. Mr. NANOWSKI (Poland) said that his delegation could not accept the addition of the words "or a subpurchaser" to the first sentence of paragraph 2. As to the sentence in brackets in the Drafting Committee's text, his delegation felt that it would limit the autonomy of the parties to a contract and that it would be better to delete it.

30. Mr. BÖCKMARK (Sweden) felt that the sentence in brackets should be retained. During the discussion of article 10 in the First Committee, it had been agreed that, in order to take account of the problems of countries which were remote from the main arteries of international trade, the handing over of the goods should not be deemed to take place until they arrived at the port of destination. A stipulation to that effect was vital to the purpose of the article.

31. It was clear that the text of the sentence prepared by the Drafting Committee went beyond the decisions taken by the First Committee at its 17th meeting. In particular, the First Committee had not agreed that the transaction to which the contract related must involve the carriage of goods from one State to another. The words setting out that requirement should therefore be deleted. Those parts of document A/CONF.63/C.1/L.103 which had been approved in principle by the First Committee constituted the best basis for discussion of article 10. The text prepared by the Drafting Committee represented a considerable departure from that document and should be treated as a separate amendment to the original text of the article.

32. Mr. KHOO (Singapore) suggested that the Committee might first take a decision on whether it wished to retain the second sentence of paragraph 2 and then proceed to a vote on his delegation's amendment to the first sentence.

33. Mr. GOKHALE (India) supported that suggestion.

34. Mr. LOEWE (Austria) suggested that a small drafting group should be appointed to resolve the problems posed by the Singaporean amendment and by the sentence in brackets.

35. Mr. HARTNELL (Australia) suggested that a vote should be taken on the concept set forth in the second sentence, rather than the specific wording.

36. The PRESIDENT said that, if there was no objection, he would invite the Conference to vote first on the sentence of paragraph 2 enclosed in square brackets and then on the Singaporean amendment (A/CONF.63/L.25). Once those votes had been taken, the Conference could decide whether the text of article 10 should be referred to a small working group or to the Drafting Committee for drafting refinements; if so, the text of the article, as revised by the proposed working group or by the Drafting Committee, would come before the Conference in plenary meeting at a later stage, when delegations would be free to propose further amendments.

37. Mr. ROGNLIEN (Norway) asked whether the Conference was being invited to vote on the underlying concept of the sentence in brackets or on the text of the sentence as it stood; in the latter case, the wish of several delegations to introduce substantive amendments to the text would be ignored. He asked that it be compared with the Norwegian proposal in document A/CONF.63/L.17.



38. The PRESIDENT said that the vote would be taken on the sentence as it stood. The proposals for substantive changes had been introduced too late to be considered at the current meeting.

*The result of the vote on the second sentence of paragraph 2 was 22 votes in favour and 13 against, with 4 abstentions.*

39. The PRESIDENT ruled that, in accordance with rule 35 of the rules of procedure, the part of paragraph 2 contained in square brackets had not obtained the required two-thirds majority and was therefore rejected.

40. Mr. GUEST (United Kingdom) said that, although he had voted against the retention of the sentence, he questioned the President's ruling. The intention of the Drafting Committee had been to offer the Conference a choice between two alternatives, and for that reason the sentence had been placed between square brackets. It might not, therefore, be considered to be subject to the rule requiring a two-thirds majority.

41. Mr. BÖKMARK (Sweden) agreed with the representative of the United Kingdom. The two-thirds majority rule could be applied only to a proposal for the deletion of the sentence.

42. Mr. SMIT (United States of America) endorsed the remarks made by the representative of the United Kingdom.

43. The PRESIDENT observed that, far from having been faced with a choice between two texts, the Conference had been required to vote on whether or not it approved the sentence contained in square brackets.

44. Mr. BELINFANTE (Netherlands) agreed with the President's interpretation of the situation. The sentence in question did not reflect the proposals adopted by the First Committee at its 17th meeting, and should therefore be treated as a substantively new proposal subject to the rule requiring a two-thirds majority. After the Conference had voted on the Singaporean amendment, there would be nothing to prevent it from setting up a drafting group to prepare a text that reflected the views of the First Committee.

45. After a brief discussion in which Mr. ROGNLIEN (Norway), the PRESIDENT and Mr. BURGUCHEV (Union of Soviet Socialist Republics) participated, the PRESIDENT invited the Conference to vote on the Singaporean amendment to article 10, paragraph 2 (A/CONF.63/L.25).

*The Singaporean amendment was rejected by 26 votes to 5, with 6 abstentions.*

46. Mr. KAMPIS (Hungary) said he interpreted the result of the vote to mean that the Conference opposed the deletion of the second sentence of paragraph 2.

47. Mr. CHAFIK (Egypt) said it was his understanding that the Conference objected to the wording of the sentence in brackets prepared by the Drafting Committee but, at the same time, approved the underlying concept of that sentence as defined by the First Committee at its 17th meeting.

48. The PRESIDENT pointed out that the lack of a two-thirds majority in the vote on that sentence implied its deletion. However, the Conference had not yet had an opportunity to consider the proposals adopted by the First Committee concerning the content of paragraph 2. It only remained for the Conference to decide

whether it wished to set up a drafting group to prepare the text of a new sentence which would incorporate the views of the First Committee.

49. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation had voted in favour of retaining the sentence. However, since it had been rejected, there was no point in setting up a working group. Following the rejection of the Singaporean amendment, only the first sentence of the paragraph remained for consideration.

50. Mr. SMIT (United States of America) proposed that, pursuant to rule 33 of the rules of procedure, the Conference should take a vote on whether it wished to reconsider the sentence placed in square brackets by the Drafting Committee.

51. Mr. ROGNLIEN (Norway) said that the United States proposal was premature. Under the rules of procedure, the Conference should next vote on the text of paragraph 2 as it stood, following the rejection of the bracketed sentence and the Singaporean amendment. Rejection of the first sentence of the paragraph would indicate the need to reconsider the second sentence.

52. After a brief discussion in which the PRESIDENT, Mr. ROGNLIEN (Norway) and Mr. BURGUCHEV (Union of Soviet Socialist Republics) participated, the PRESIDENT invited the Conference to vote on paragraph 2 as it stood, following the rejection of the sentence in brackets and the Singaporean amendment.

*Paragraph 2 was adopted by 28 votes to 4, with 6 abstentions.*

53. Mr. GUEST (United Kingdom) apologized, on behalf of the Drafting Committee, for the procedural difficulties to which the wording of paragraph 2 had given rise. He would consult the other members of the Committee with a view to ensuring that future difficulties of that type were obviated.

54. Mr. HJERNER (Sweden), speaking in explanation of vote, said that his delegation had abstained because of the procedural difficulties that had arisen during the conduct of the voting.

55. The PRESIDENT invited the Conference to vote on article 10 as a whole.

*Article 10 was adopted by 28 votes to 3, with 7 abstentions.*

56. Mr. HARTNELL (Australia) said he had voted against the article, not because he opposed its provisions, but because the voting had been conducted unfairly, with the result that the clear wish of the First Committee that paragraph 2 should contain a definition of the point at which the actual handing over of goods should be deemed to have taken place had been overruled.

#### *Article 11*

57. Mr. HARTNELL (Australia), introducing his delegation's amendment to article 11 (A/CONF.63/L.22), said that its purpose was to clarify the agreement reached in the First Committee that the article should not contain a substantive rule requiring the buyer to notify the seller of a claim arising from an express undertaking. The amendment made it clear that, if such notice was not given, the limitation period should commence on the date of the expiration of the period of the undertaking.

58. Mr. ROGNLIEN (Norway) said that he could not support the Australian amendment, which carried the implication that the buyer could validly notify the



seller of his claim after the expiration of the period of the undertaking, whereas the purpose of the article was to ensure that the limitation period should commence on the date of the expiration of the period of the undertaking if notice was not given before that date. He preferred the text of the article prepared by the Drafting Committee.

59. Mr. LOEWE (Austria) drew attention to his delegation's amendment (A/CONF.63/L.12), which was

further removed in substance from the existing text than the Australian amendment and should accordingly receive prior consideration.

60. Mr. JENARD (Belgium) suggested that the vote on the Austrian amendment should be deferred until the next meeting.

*It was so decided.*

*The meeting rose at 6 p.m.*

## 8th plenary meeting

Wednesday, 12 June 1974, at 10.10 a.m.

President: Mr. BARRERA GRAF (Mexico).

A/CONF.63/SR.8

### AGENDA ITEM 9

**Consideration of the question of prescription (limitation) in the international sale of goods in accordance with General Assembly resolutions 2929 (XXVII) and 3104 (XXVIII) (continued)**

CONSIDERATION OF DRAFT PROVISIONS APPROVED BY THE DRAFTING COMMITTEE (A/CONF.63/7, A/CONF.63/L.6, L.12, L.13, L.18 and CORR.1, L.22) (continued)

#### *Article 11 (concluded)*

1. Mr. LOEWE (Austria) said that the purpose of his amendment (A/CONF.63/L.12) was to restore a provision that had appeared in the original draft Convention and had subsequently been deleted by the First Committee; that provision was intended to circumscribe the date on which the limitation period in respect of any claim arising from the undertaking could commence.

2. Mr. CHAFIK (Egypt) supported the Austrian amendment.

3. Mr. GUEIROS (Brazil) said that he could not accept the Austrian amendment because it contained the ambiguous phrase "the date on which the buyer discovers or ought to discover the fact on which the claim is based." The text of article 11 in document A/CONF.63/7 eliminated that ambiguity by indicating that the relevant date should be that on which the buyer notified the seller of the fact on which the claim was based.

4. The PRESIDENT called for a vote on the Austrian amendment (A/CONF.63/L.12).

*The amendment was rejected by 10 votes to 3, with 18 abstentions.*

5. Mr. HARTNELL (Australia) said that the purpose of his delegation's amendment (A/CONF.63/L.22) was to indicate explicitly that article 11 did not constitute a rule of substantive law.

6. The PRESIDENT called for a vote on the Australian amendment (A/CONF.63/L.22).

*The amendment was rejected by 17 votes to 2, with 12 abstentions.*

7. The PRESIDENT called for a vote on the text of article 11 as it appeared in document A/CONF.63/7.

*Article 11 was adopted by 25 votes to 1, with 6 abstentions.*

#### *Articles 12 to 15*

8. The PRESIDENT said that, if there was no objection, he would take it that the Conference adopted articles 12 to 15.

*It was so decided.*

#### *Article 16*

9. Mr. GUEST (United Kingdom) said that, in the draft provisions approved by the Drafting Committee, the text of article 16 appeared in square brackets because the First Committee had taken two mutually incompatible decisions with regard to the régime regulating the counterclaim by approving both article 16 and article 26, paragraph 2.

10. It was for the Conference to decide on one of the two régimes, and to that end he proposed that the rules of procedure should be suspended to allow the Conference, by a simple majority vote, to express a preference for the régime regulating the counterclaim contained in article 16 rather than the régime established by article 26, paragraph 2.

11. In that way, if there were some delegations which did not like either of the two régimes, they could simply express a preference without thereby committing themselves; those which preferred the régime contained in article 16 would vote in favour of the motion and those which preferred the régime provided by article 26 would vote against it.

12. Mr. ROGNLIEN (Norway) felt that the text of article 16 proposed by the Drafting Committee should be adopted and that in article 26, paragraph 2, the word "counterclaim" should be deleted and the necessary drafting changes made.

13. Mr. CHAFIK (Egypt) said that, in order to avoid any contradiction between article 16 and article 26, the word "counterclaim" must be deleted in the latter.

14. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he favoured the régime established by article 16.

15. Mr. LOEWE (Austria) felt that article 16 should be adopted, after which drafting changes would have to be made in article 26 so as to prevent any contradictions in the text of the Convention.

16. Mr. KHOO (Singapore) recalled that his delegation had earlier proposed that the question of counterclaims should be dealt with in article 24 of the original draft (now article 26) because it was not adequately covered by draft article 12 (now article 16). However, the changes which had been introduced subsequently by the Drafting Committee and which were reflected in the text of article 16 as currently drafted partly resolved his delegation's previous difficulties. He was therefore prepared to accept the view of the majority of the participants in the Conference with regard to the régime regulating the counterclaim.

17. Mr. FRANTA (Federal Republic of Germany) said that he shared the view of the Austrian delegation. The most correct procedure would be first to vote on article 16 and subsequently, when article 26 was considered, to vote on the Egyptian proposal for the deletion of the word "counterclaim" in paragraph 2 of that article. The representative of Austria was wrong in stating that no objection had been raised to article 16 at the time of its consideration in committee. His delegation had opposed the idea that prescription should have retroactive effect in the case of an act performed by way of counterclaim, and it intended to vote against article 16.

18. Mr. BÖKMARK (Sweden) pointed out that the adoption of article 16, as it appeared in document A/CONF.63/7, would be incompatible with the adoption of article 26, paragraph 2. He supported the proposal by Austria, Norway and Egypt that the word "counterclaim" in article 26 should be deleted.

19. Mr. HARTNELL (Australia) said that he was inclined to prefer article 26, paragraph 2, to article 16 because of the basic principles underlying the concept of counterclaims.

20. Mr. STALEV (Bulgaria) disagreed with the representative of Australia. Any reference to counterclaims in article 26, paragraph 2, was irrelevant, since that paragraph dealt solely with defences. Consequently, he was in favour of adopting article 16 and deleting the word "counterclaim" in article 26, paragraph 2.

21. The PRESIDENT called for a vote on article 16, as it appeared in document A/CONF.63/7, and said that the views expressed on article 26, paragraph 2, would be taken into account when that article was considered.

*Article 16 was adopted by 31 votes to 4, with 1 abstention.*

#### Article 17

22. The PRESIDENT said that the reference to article 16 in article 17, paragraph 1, had been placed in square brackets because, at the time when article 17 had been drafted, it had not been known whether article 16 would be adopted or not. The brackets should now be deleted and, if there was no objection, he would take it that article 17 was adopted with that change, and that the brackets would also be deleted in other articles containing a reference to article 16.

*It was so decided.*

#### Article 18

23. Mr. LOEWE (Austria), introducing his amendment to article 18 (A/CONF.63/L.6), said that in his country there was no formal system of recognition of decisions rendered by a foreign court. His delegation could not, therefore, accept that provision and felt that it would be best to allow the procedural law of each country to apply in such cases.

24. Mr. ROGNLIEN (Norway), introducing his delegation's amendment to article 18, paragraphs 1 and 2 (A/CONF.63/L.18 and Corr.1), said that the purpose of the proposed extension of paragraph 1 to "Contracting or Non-Contracting State" was to eliminate a restriction that would ultimately operate to the detriment of the creditor. The original purpose of the article should be preserved, which was to give the creditor the benefit of a short additional period, in particular where the first proceedings had been instituted in a Non-Contracting State and the resulting judgement could not be recognized in a State where it was sought to be relied upon. The cases where the first proceedings had been instituted in a Contracting State would be covered by article 31 (*cf.* article 24).

25. The amendment to paragraph 2 was designed to make it quite clear that what was sought was recognition or execution of the decision within any time-limit prescribed by the law applicable, and also that the additional period of one year from the date of refusal was for the purpose of obtaining satisfaction or recognition of the claim in the other State refusing execution.

26. If the Conference decided to vote on the deletion of the article without first voting on the amendments proposed by his delegation, he would be compelled to vote against the article as a whole.

27. Mr. LOEWE (Austria) withdrew his amendment, but requested separate votes on paragraphs 1 and 2 of the article.

28. Mr. MUKUNA (Zaire) asked whether there was not a contradiction between article 18 and the provisions of article 5 (d) and (e).

29. Mr. HONNOLD (Chief, International Trade Law Branch) explained that both paragraph 1 and paragraph 2 of article 18 referred to the original claim, whereas article 5 referred to claims based upon judgements or awards.

30. Mr. BÖKMARK (Sweden), introducing his delegation's amendment (A/CONF.63/L.13), said that it was based on a fundamental objective of the Convention, namely, that disputes should be settled within a reasonable period but parties should not be obliged to have recourse to the courts before they had had time to negotiate an agreement.

31. It should be pointed out that the First Committee had adopted the text of article 18 as proposed by his delegation and that, subsequently, the Drafting Committee had inserted the word "Contracting" before the word "State", which was unquestionably a substantive change. His delegation accordingly proposed that the text of the article as adopted by the First Committee should be retained and that any other proposals, including that of the Drafting Committee, should be considered to be amendments and should require a two-thirds majority for adoption.

32. Mr. GUEST (United Kingdom), speaking as Chairman of the Drafting Committee, said that at its 16th meeting, on 3 June, the First Committee had referred to the Drafting Committee the Soviet amendment in document A/CONF.63/C.1/L.85, which related to that question, and on that basis the Drafting Committee had decided to insert the word "Contracting".

33. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he believed that, if the Swedish proposal was adopted the intended purpose of the Con-

vention would be lost. He did not see how the Convention could be implemented if the word "Contracting" was deleted, especially since any obligation arising from the Convention could not be imposed on a non-contracting State.

34. Mr. JENARD (Belgium) pointed out the delicate interrelationship between the various articles of the Convention and, in particular, article 3, paragraph 1, which laid down that the Convention should apply only 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 were in Contracting States.

35. Mr. BELINFANTE (Netherlands) agreed with the representative of the USSR that obligations arising from the Convention could not be imposed on a non-contracting State. In his view, the word "Contracting" should be deleted the first time it appeared in each paragraph and be retained the second time.

36. Mr. SMIT (United States of America) supported the Swedish proposal, which he found useful, and agreed with the suggestion made by the representative of the Netherlands. However, he pointed out that by definition the Convention applied only to Contracting States, so that even if the word "Contracting" did not appear the second time in each paragraph it would in any case be implied.

37. Mr. BÖKMARK (Sweden) expressed his full agreement with the comments made by the representative of the United States. Replying to the representative of the USSR, he said that, while it was true that obligations could not be imposed on non-contracting States under the Convention, such was not the purpose of his proposal.

38. Mr. FRANTA (Federal Republic of Germany) felt that what the Swedish delegation was proposing in its amendment (A/CONF.63/L.13) would broaden the scope of the article too much.

39. Mr. STALEV (Bulgaria) said that, in his view, the Swedish delegation's proposal should be combined with the Soviet representative's suggestion, as had been done by the representative of the Netherlands.

40. Mr. ROGNLIEN (Norway), referring to the relationship between articles 5 and 18 mentioned by the representative of Zaire, observed that article 18 related to cases where the creditor had to fall back on his original claim within a jurisdiction where the judgement was not recognized and therefore not covered by article 5 (d). Article 18 was necessary because in some countries the judgements of foreign courts were recognized only if there were formal bilateral or multilateral agreements. The article took care of the situation where legal proceedings had resulted in a decision on the merits of the case in a foreign State, while article 17 took care of the situation where the proceedings had ended without such decision. The system would be incomplete if only one of those situations were covered and the creditor consequently would have the benefit of the additional period in only one of them.

41. He agreed that it was only necessary to delete the word "Contracting" the first time it appeared in paragraph 1 and the first time it appeared in paragraph 2 of article 18.

42. Mr. HJERNER (Sweden), referring to the comment by the representative of the Federal Republic of Germany, pointed out that article 18 was only applicable to decisions on the merits, and that other cases were covered by article 31.

43. The PRESIDENT announced that he would put to the vote the Swedish proposal (A/CONF.63/L.13) which, since it dealt with a matter of substance, would require a two-thirds majority for adoption.

44. Mr. HJERNER (Sweden) said he did not agree with the President that his delegation's proposal would require a two-thirds majority for adoption. The Drafting Committee had inserted in article 18 the word "Contracting", which had not appeared in the text adopted by the First Committee. It was therefore the text recommended by the Drafting Committee that must obtain a two-thirds majority.

45. Mr. BURGUCHEV (Union of Soviet Socialist Republics) disagreed with the representative of Sweden, and said that the Drafting Committee had not deviated from the decision adopted by the First Committee.

46. Mr. BÖKMARK (Sweden) said his delegation agreed that the word "Contracting" should be deleted only the first time it appeared in paragraph 1 and the first time it appeared in paragraph 2 of article 18, and requested that in both cases a separate vote should be taken on the word "Contracting".

47. Mr. AL-QAYSI (Iraq) said that, since Sweden had withdrawn its original proposal, only the Netherlands proposal should now be put to the vote.

48. Mr. LOEWE (Austria) said that the basis of discussion was a text adopted by the Drafting Committee. It had been established that the Drafting Committee had not exceeded its authority, and he did not think that any provision could be changed except by a two-thirds majority.

49. Mr. SLOAN (Director, General Legal Division) pointed out that the question of separate votes on parts of a proposal was governed by rule 39 of the rules of procedure of the Conference.

50. Mr. FRANTA (Federal Republic of Germany) said he did not believe that rule 39 applied in the case of the Swedish proposal. If it did, a vote would first have to be taken on the objection by Austria to the proposal for division.

*The meeting was suspended at 12.35 p.m. and resumed at 12.45 p.m.*

51. The PRESIDENT said that, in accordance with rule 39 of the rules of procedure, he would put to the vote the Swedish motion for separate votes on the word "Contracting" the first time it appeared in paragraphs 1 and 2 of article 18, as submitted by the Drafting Committee in document A/CONF.63/7.

52. If the motion was adopted by a simple majority, separate votes would be taken on the word "Contracting", as indicated.

*The motion for division was adopted by 22 votes to 14.*

53. The PRESIDENT put to the vote the retention of the word "Contracting" the first time it appeared in paragraph 1 of article 18.

*The retention of the word "Contracting" was rejected by 21 votes to 10, with 9 abstentions.*

54. Mr. ROGNLIEN (Norway) pointed out that his delegation's amendment to paragraph 2 (A/CONF.63/L.18 and Corr.1) should be put to the vote before a vote was taken on the retention of the word "Contracting" the first time it appeared in that paragraph.

55. The PRESIDENT put to the vote the Norwegian amendment (A/CONF.63/L.18 and Corr.1).

*The amendment was rejected by 7 votes to 2, with 31 abstentions.*

56. The PRESIDENT put to the vote the retention of the word "Contracting" the first time it appeared in the text of paragraph 2 of article 18.

*The retention of the word "Contracting" was rejected by 22 votes to 10, with 9 abstentions.*

57. The PRESIDENT pointed out that, as a result of the Conference's decision to delete the word "Contracting" in both cases, it would be necessary to change the wording of article 18. The changes would consist in replacing the words "another Contracting State" by a "Contracting State" in paragraphs 1 and 2.

58. Mr. BELINFANTE (Netherlands) said that the representative of Austria, when withdrawing his amendment, had requested separate votes on paragraphs 1 and 2. No one had objected to that request, and he therefore believed that that was the procedure which should be followed.

59. The PRESIDENT suggested that the two paragraphs of article 18 contained in document A/CONF.

63/7, with the relevant drafting changes, should be put to the vote.

#### Paragraph 1

*The result of the vote was 23 in favour and 14 against.*

*Paragraph 1 was not adopted, having failed to obtain the required two-thirds majority.*

#### Paragraph 2

*The result of the vote was 19 in favour and 14 against, with 2 abstentions.*

*Paragraph 2 was not adopted, having failed to obtain the required two-third majority.*

*Article 18 was not adopted, the two paragraphs of the article (A/CONF.63/7) having failed to obtain the required two-thirds majority.*

*The meeting rose at 1.15 p.m.*

## 9th plenary meeting

Wednesday, 12 June 1974, at 3.05 p.m.

President: Mr. BARRERA GRAF (Mexico).

A/CONF.63/SR.9

### AGENDA ITEM 9

**Consideration of the question of prescription (limitation) in the international sale of goods in accordance with General Assembly resolutions 2929 (XXVII) and 3104 (XXVIII) (continued)**

CONSIDERATION OF DRAFT PROVISIONS APPROVED BY THE DRAFTING COMMITTEE (A/CONF.63/7, A/CONF.63/L.7, L.8, L.9, L.15, L.16, L.19, L.20, L.21, L.23/Corr.1, L.26, L.27) (continued)

1. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he was authorized by his delegation to state that persistence by the Secretariat in the tactics it had employed at the preceding meeting might lead to undesirable results for the work of the Conference and prevent the adoption of the Convention by a number of States.

TEXT PROPOSED FOR THE NEW ARTICLE 18  
(A/CONF.63/L.14)

2. Mr. HJERNER (Sweden), introducing the proposed new article sponsored by six delegations (A/CONF.63/L.14), noted that the purpose of the Convention was to provide a régime whereby the parties to a contract of international sale could settle any disputes that might arise from the contract within a reasonable time. Some delegations felt that, in order to prevent the bringing of actions in haste, the Convention should stipulate that the creditor would not be required to institute proceedings to enforce a claim for as long as negotiations between himself and the debtor continued. A similar proposal had been discussed in the First Committee but had come under criticism on the ground that it was difficult to determine when negotiations between the creditor and the debtor actually ended. That problem was taken care of by paragraph 2 of the proposed new article.

3. The PRESIDENT invited the Conference to vote on the proposed new article 18 (A/CONF.63/L.14).

*The result of the vote was 13 votes in favour and 11 against, with 10 abstentions.*

*The proposed article was not adopted, having failed to obtain the required two-thirds majority.*

#### Article 19

4. Mr. LOEWE (Austria) withdrew his delegation's proposal for the deletion of article 19 (A/CONF.63/L.7).

5. Mr. SMIT (United States of America), introducing his delegation's amendment to article 19, paragraph 3 (A/CONF.63/L.23/Corr.1), noted that the text of the paragraph prepared by the Drafting Committee was inconsistent with the provisions of articles 17 and 18, in so far as it stipulated that the creditor must institute legal proceedings either within the limitation period otherwise provided by the Convention or within one year from the date on which the legal proceedings referred to in article 19, paragraphs 1 and 2, ended. That was not the same as providing for a one-year extension of the limitation period to which the provisions of articles 20, 21 and 22 would be applicable. His delegation's amendment was designed to eliminate that dichotomy.

6. He drew attention to a typographical error in the third line of the amendment, where the phrase "jointly or severally liable" should read "jointly and severally liable".

7. Mr. ROGNLIEN (Norway) said that there was no difference of purpose between the wording of paragraph 3 as it stood and the United States amendment. The amendment had the advantage, however, of being clearer and better drafted and was therefore acceptable to his delegation.

8. Mr. GUEIROS (Brazil) expressed whole-hearted support for the United States amendment.

*The United States amendment (A/CONF.63/L.23/Corr.1) was adopted by 21 votes to none, with 13 abstentions.*

*Article 19 as a whole, as amended, was adopted by 26 votes to 3, with 5 abstentions.*

#### Article 20

9. Mr. KAMPIS (Hungary), introducing his delegation's proposal for the deletion of article 20 (A/CONF.63/L.21), recalled that in the First Committee it had been argued that the article as currently worded ran counter to the purpose of the Convention, which was to provide a set of uniform rules on prescription.

10. Mr. JENARD (Belgium) felt that article 20 should be retained. If it was deleted, the creditor would be placed in a difficult position because of the fact that the limitation period could be interrupted only by the institution of arbitral or other legal proceedings. Arbitration was often a long and difficult process, and a rule requiring the creditor to institute legal proceedings would give rise to inequities, since the cost of such proceedings varied widely from country to country.

11. Mr. KOPAC (Czechoslovakia) supported the Hungarian amendment. Acceptance of the article as it stood would lead to inequities, since the debtor would always be subject to the municipal law of his country while the creditor would in many cases be made subject to a law different from his national law.

12. Mr. MUSEUX (France) endorsed the remarks by the representative of Belgium.

13. Mr. LOEWE (Austria) said that the system provided by article 20 did not exist under Austrian law. However, he sympathized with the position of those States which wished to maintain local rules providing for the interruption of the limitation period by other means than the institution of legal proceedings. Simplification and unification of the provisions of the Convention, which all delegations clearly desired, should not be pushed beyond practical limits. The retention of article 20 would make it easier for some States to ratify the Convention without prejudicing the position of others which did not wish to take advantage of the provisions of that article.

14. Mr. BURGUCHEV (Union of Soviet Socialist Republics) supported the Hungarian amendment; article 20 as currently drafted ran counter to the expressed wish of the Conference to simplify the provisions of the Convention.

*The Hungarian amendment (A/CONF.63/L.21) was rejected by 16 votes to 9, with 9 abstentions.*

15. Mr. ROGNLIEN (Norway), introducing his delegation's amendment to article 20, contained in document A/CONF.63/L.19, said that its purpose was to simplify the provisions of the Convention relating to the maximum duration of the limitation period. Article 24 provided for a cut-off period of 10 years from the date on which the limitation period began to run under articles 9 to 12. Article 20, on the other hand, provided for an over-all period of eight years from the same date. That was an unnecessary complication and could lead to uncertainty with regard to the application of the Convention. For the sake of consistency, therefore, he proposed the deletion of the last part of the article, beginning with the words "provided that".

16. Mr. GUEIROS (Brazil) supported the Norwegian amendment, which would serve to harmonize the provisions relating to the over-all cut-off period.

17. Mr. MUSEUX (France) moved the adjournment of the debate on the question under discussion, in accordance with rule 25 of the rules of procedure, to enable the Conference to complete its consideration of articles 24 and 26 before voting on the Norwegian amendment to article 20.

18. Mr. SMIT (United States of America) and Mr. ROGNLIEN (Norway) supported the motion.

19. Mr. GUEST (United Kingdom) said that he sympathized with the motion but felt that the Conference should proceed with its consideration of articles 20 to 23 and revert to the Norwegian amendment in the context of its consideration of article 24.

*The motion was adopted by 29 votes to none, with 9 abstentions.*

#### Article 24

20. Mr. GUEST (United Kingdom), speaking as Chairman of the Drafting Committee, said that the wording of article 24 had caused some difficulty to the members of the Committee, who had been divided in their interpretation of the decision taken by the First Committee with regard to the content of the article. However, he felt that there was no difference of substance between the existing text and the amendment proposed by France and Norway (A/CONF.63/L.26).

21. Mr. MUSEUX (France) said that the amendment was intended to restore the wording of the substance of the text for article 24 that had been adopted by the First Committee. He recalled that, as a result of difficulties that had arisen during its consideration of article 22 and article 24, paragraph 1, (article 24 and article 26, paragraph 1, of the draft provisions in document A/CONF.63/7), the First Committee had appointed a small working group to draw up texts for those articles, which were closely linked. The texts submitted by the group had been considered by the Committee at its 22nd meeting. During the debate on the articles, the question had arisen whether the over-all limit of 10 years should be applied in all circumstances or should be subject to certain exceptions. A majority of members had agreed on the general principle that the cut-off period should not apply to the circumstances referred to in articles 12, 13 and 14 (articles 13, 14 and 15 of the present text). Accordingly, it had been felt necessary to enumerate those articles to which the cut-off could validly apply. The text of article 24 prepared by the Drafting Committee lacked such an enumeration and could be interpreted as providing that the cut-off period of 10 years should apply even to cases where the limitation period had ceased to run as a result of the restitution of legal proceedings, which was absurd.

22. The only new element added by the amendment, on which the Conference might wish to take a separate vote, was the inclusion of article 31 in the enumeration.

23. He pointed out that the text for article 26, paragraph 1, submitted by the Drafting Committee in document A/CONF.63/7 did not fully reflect the substance of the text for article 24, paragraph 1, that had been adopted by the First Committee at its 22nd meeting.

24. Mr. ROGNLIEN (Norway) said he wished to make it quite clear that under the amendment article 24 would still cover all the articles which might apply,

with the exception of articles 13 to 16. The express reference to article 31 had been included to meet the objections of the representative of the United States, who had feared that, if the limitation period did not expire before the end of a legal action, a new action might be started. That problem would hardly arise, however, because of the rules of *lis pendens* and because article 24 would apply notwithstanding article 17. The United States amendment to article 26 (A/CONF.63/L.29) also covered that point, and he would support it. It was clear that there was no extension to another forum.

25. Mr. KOPAC (Czechoslovakia) said that the problem must be solved in conjunction with article 26. If article 24 referred only to the articles mentioned in document A/CONF.63/L.26, it would be necessary to adopt the United States amendment to article 26; otherwise the cases mentioned in the latter amendment would not be covered and there would be an unlimited prescription period for new legal proceedings following an initial action. The simplest approach, however, was to provide in article 24 for a general cut-off point 10 years after the commencement of the limitation period. Article 26, paragraph 1, met the misgivings expressed by the representative of France, because proceedings would have to be brought before the limitation period expired.

26. Mr. LOEWE (Austria) observed that the whole problem was highly artificial. Once the limitation period had come to an end, there was no longer any question of expiration; the proposal by France and Norway would lead to unnecessary complications, and readers of the Convention would not understand it. He preferred the text submitted by the Drafting Committee.

27. Mr. SMIT (United States of America) said that the working group established by the First Committee had spent a long time in preparing its submission. The representative of France had not wanted any reference to articles 13 to 15 because he had been concerned that, if proceedings were commenced before the end of the limitation period, a party might invoke limitation at the end of the 10-year period. In the United States system, once proceedings had begun there was no limitation. Although he felt that the provision concerning the over-all cut-off point appeared at the wrong place in the Convention, he was prepared to accept the compromise that had been reached. Although the final decision of the Drafting Committee had produced the text in document A/CONF.63/7, he had been under the impression that the Committee had in fact approved the French text. As far as his delegation was concerned, the essential point was that no action could be brought after 10 years from the commencement of the limitation period. Provided that was the case, article 24 was not necessary. If it was retained, there would be no need for the amendment to article 26. He did, however, recognize that the representative of France had felt there was some ambiguity where the limitation period expired during litigation. As the representative of Czechoslovakia had correctly pointed out, it was irrelevant to deal with the consequences of proceedings commenced after the expiration of the limitation period, although it would be possible for a judge to overlook article 26, paragraph 1, and to rule that there was no claim because the limitation period had expired. Provided that the United States amendment to article 26 was adopted, he would support the

amendment to article 24 (A/CONF.63/L.26) with the reference to article 31 deleted.

28. Mr. MUSEUX (France) proposed that articles 24 and 26 should be voted on together.

29. Mr. GOKHALE (India) felt that the inclusion in the amendment to article 24 of a reference to article 31, which did not deal with the limitation period, would lead to difficulties.

30. Mr. OLIVENCIA (Spain) said that the Spanish text of article 24 as it appeared in document A/CONF.63/7 was quite different from that approved by the Drafting Committee. Although he had been able to ignore a number of other minor discrepancies, the difference in the case of article 24 amounted to a substantive one. He requested that arrangements should be made to have the Spanish text brought into line with the other language versions.

31. Mr. STALEV (Bulgaria) said there was no essential difference between the wording approved by the Drafting Committee and the amendment submitted by France and Norway, which simply made the text more complicated. He could see no reason why a judge would accept the argument that a limitation period could expire during litigation by virtue of article 24, when it was clear that the period ceased to run once legal proceedings were instituted.

*The amendment (A/CONF.63/L.26) was rejected by 14 votes to 5, with 19 abstentions.*

*Article 24 was adopted by 33 votes to 4, with 4 abstentions.*

32. Mr. SMIT (United States of America) announced that he was withdrawing his delegation's amendment to article 26.

#### *Article 20 (concluded)*

33. Mr. ROGNLIEN (Norway) withdrew his delegation's amendment to article 20, contained in document A/CONF.63/L.19, and requested a separate vote on the last part of the article, beginning with the words "provided that".

34. Mr. BURGUCHEV (Union of Soviet Socialist Republics) supported the request for a separate vote.

*The last part of article 20, beginning with the words "provided that", was rejected by 28 votes to 1, with 9 abstentions.*

*Article 20, as amended, was adopted by 33 votes to 3, with 1 abstention.*

#### *Article 21*

35. The PRESIDENT pointed out that the amendments to article 21 proposed by Austria (A/CONF.63/L.8) and Sweden (A/CONF.63/L.15) were identical.

*The amendments were rejected by 26 votes to 9, with 3 abstentions.*

*Article 21 was adopted by 36 votes to none, with 2 abstentions.*

36. Mr. HONNOLD (Chief, International Trade Law Branch) announced that he had consulted the Chairman of the Drafting Committee and the representatives of Mexico and Spain in connexion with the request by the representative of Spain that arrangements should be made to align the Spanish and other language texts. Any requests for alignment should be addressed to the representative of Mexico.



*Articles 22 and 23*

37. Mr. ROGNLIEN (Norway) said that the amendments to articles 22 and 23 contained in document A/CONF.63/L.19 were based on the same considerations as the amendment to article 20 in the same document, which had already been discussed. If the 10-year period provided by article 24 was relied on, the provision for an eight-year period in articles 22 and 23 would be an unnecessary duplication.

*The Norwegian amendment to article 22 was adopted by 35 votes to 1, with 2 abstentions.*

*Article 22, as amended, was adopted by 36 votes to 1, with 2 abstentions.*

*The Norwegian amendment to article 23 was adopted by 32 votes to 1, with 3 abstentions.*

*Article 23, as amended, was adopted by 33 votes to 3, with 2 abstentions.*

*Article 25*

*Article 25 was adopted.*

*Article 26*

38. Mr. ROGNLIEN (Norway) said that the effect of the Austrian amendment to article 26, paragraph 2 (A/CONF.63/L.9) was the same as that of his own delegation's amendment (A/CONF.63/L.20). The reference to counterclaims in article 26 was incompatible with the provisions of article 16 and should be deleted. The resulting text would be the original UNCITRAL text, with certain minor drafting changes which his delegation had felt were useful and which should be retained. The use of the words "provided that in the latter case this may only be done" ensured that the exception applied only to claims for set-off, and that any other defence would be available without qualification.

39. Mr. LOEWE (Austria) withdrew his amendment in favour of the Norwegian proposal. The purpose of the amendment had been to correct an error made in the First Committee when an amendment proposed by Singapore had been adopted. The latter amendment had been submitted with the best of intentions, but it was incompatible with article 16.

40. Mr. GOKHALE (India) said it was not clear why there was no reference to defence in the subparagraphs of the proposed paragraph 2 of article 26. He wished to know whether a claim could be relied on as a defence.

41. Mr. ROGNLIEN (Norway) said that the word "defence" had not appeared in the subparagraphs in the original UNCITRAL text, because the subparagraphs applied only to set-off and not to other defence. The use of a claim as such a defence must be permitted without any exceptions.

*The Norwegian amendment (A/CONF.63/L.20) was adopted by 27 votes to none, with 7 abstentions.*

*Article 26, as amended, was adopted by 33 votes to none, with 4 abstentions.*

42. Mr. KAMPIS (Hungary), speaking in explanation of vote, said that he had abstained in the two votes that had just been taken because he did not see why there should be a reference to the use of a claim as a defence in article 26, paragraph 2, if the rest of the paragraph dealt solely with the question of set-off.

*Articles 27, 28 and 29*

*Articles 27, 28 and 29 were adopted.*

*Article 30*

43. Mr. ROGNLIEN (Norway) said he regretted that the Drafting Committee had not seen fit to include in article 30 a reference to article 16, as well as to articles 13, 14 and 15. In the absence of such a reference, some unjustified doubt might be raised as to whether an act by way of counterclaim that should be performed at the latest on a *dies non juridicus* would have the benefit of the brief extension laid down in article 30.

44. Mr. LOEWE (Austria) said that the question was not important, since article 16 mentioned articles 13, 14 and 15, which were referred to in article 30.

*Article 30 was adopted.*

*Article 31*

45. Mr. HJERNER (Sweden) introducing his delegation's amendment to article 31 (A/CONF.63/L.16), said that, as there had been some support in the First Committee for the extension of the provisions of article 31 to non-contracting States in the circumstances mentioned in the amendment, he had decided to present the proposal in plenary meeting. There was no risk of the provision's being abused, since it contained the proviso that the debtor must have agreed to legal proceedings in the non-contracting State.

46. Mr. LOEWE (Austria) said that the Swedish amendment was not very clear. Furthermore, the scope of the French and the English texts were not exactly the same. He suggested that the representative of Sweden might wish to redraft his amendment so as to clarify its meaning.

47. Mr. OLIVENCIA (Spain) supported the amendment, which would solve a problem that he had raised in the First Committee. The present draft of article 31 restricted the scope of the international effect of the Convention. If it was to have effect only in respect of acts performed in Contracting States, it would rule out the possibility of, for instance, arbitral proceedings under article 14 in a third State, even if the parties in the two Contracting States had agreed to them. That would considerably reduce the likelihood of many States ratifying the Convention. Although he agreed with the representative of Austria that the amendment might be more clearly worded, he felt that the intention was clear and he could vote for it as it stood.

48. Mr. NYGH (Australia) said that he could support the Swedish amendment making possible a desirable, although slight, extension of the scope of article 31, which would depend on the consent of the parties. As to the difference between the English and the French texts, some way must be found to make it clear in the French version that the expression "legal proceedings" was intended to include arbitral proceedings. Article 31 was very important and indeed was vital to the success of the Convention. If Contracting States were not free to take account of acts relating to a claim which were performed in a non-contracting State, that would not be conducive to uniformity or to widespread ratification of the Convention.

49. Mr. SMIT (United States of America) said that he was opposed to the Swedish amendment. The present text of article 31 struck a very careful balance between conflicting points of view, and it should stand.

The arguments advanced by the representative of Sweden had already been put forward in the First Committee, where they had not commanded wide support. Furthermore, if the proposed new paragraph was added, it would apply to proceedings under articles 17, 19 and 20 and would mean that the limitation period would cease to run if the parties agreed to legal proceedings in the third State in the circumstances mentioned in those articles.

*The result of the vote was 14 in favour and 13 against, with 9 abstentions.*

*The amendment by Sweden (A/CONF.63/L.16) was not adopted, having failed to obtain the required two-thirds majority.*

50. Mr. ROGNLIEN (Norway) proposed a drafting change in article 31.

*The Norwegian amendment was adopted.*

*Article 31, as amended, was adopted by 28 votes to 4, with 2 abstentions.*

51. Mr. KHOO (Singapore) said that he had abstained from voting on article 31 in the belief that the vote was being taken on the Norwegian amendment. He wished to place on record that he had intended to vote in favour of article 31, as amended.

### Article 32

52. Mr. NYGH (Australia) recalled that in the Second Committee, Australia had voted against the inclusion of article 32 because it was felt to be inappropriate in the present Convention. The Australian Government had since given the matter further consideration, bearing in mind the wish of a majority in the Second Committee that a clause of that nature should be included in the Convention. Australia would prefer that a federal clause of that kind should not be included because it appeared to be wider than was really necessary to enable States—such as Canada, for instance—which had a practical problem, owing to the separation of powers between various territorial units, to implement the Convention in their territories. However, Australia recognized that some States did have a real problem in securing the full co-operation of all the territorial units which had legislative competence in the matter, and that without a clause of that kind those States would be unable to participate in the Convention even in a limited manner.

53. With that in mind, Australia would like to support the inclusion of article 32 in the Convention. It would like to indicate, however, that it regarded the clause as being inappropriately drafted and not to be taken as a model for future conventions. His delegation would like to place on record its view that, for future conventions, the precise formulation of the article in question should be the subject of future consideration.

54. Finally, Australia would also wish to place on record that it did not interpret article 32 as being applicable to Australia, and Australia would not feel itself bound to make any declaration whatsoever.

55. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation would like some time to reconsider article 32 in the light of the Australian representative's statement. He therefore proposed that consideration of the article should be adjourned to the next meeting.

56. Mr. TRUDEL (Canada) said that, as no amendment to article 32 had been submitted, there was no

reason why the Conference should not vote on it immediately. He was astonished at the Australian representative's statement, which was apparently intended to hedge the application of article 32 round with a string of restrictions.

57. Mr. NYGH (Australia) said that the representative of Canada had misinterpreted his statement. Australia was not attempting to place any restrictions on the application of article 32; it merely wished to ensure that it would not be regarded as a precedent for future conventions.

58. Mr. MUSEUX (France) agreed with the representative of Canada that there was no need for further debate on article 32. It did not concern France, and no State was obliged to take cognizance of that article unless it wished to. He therefore opposed the motion for adjournment of the debate on it.

59. The PRESIDENT said that, under rule 25 of the rules of procedure, as two speakers had already opposed the Soviet representative's motion for adjournment of the debate on article 32, he could now give the floor only to two representatives wishing to speak in favour of the motion.

60. Mr. NANOWSKI (Poland) supported the motion.

61. Mr. BELINFANTE (Netherlands) also supported the motion. Time was needed to discuss the new draft of article 32; for instance, he would like some clarification of what was meant by the phrase "different systems of law" in paragraph 1.

*The motion for adjournment of the debate on article 32 was adopted by 16 votes to 14, with 9 abstentions.*

### Article 33

62. Mr. WATTLES (Executive Secretary of the Conference) pointed out an error in the French text of amendment A/CONF.63/L.27, which was submitted by Norway and not by the United States.

63. Mr. ROGNLIEN (Norway) said that, since the accession of federal States to the Convention was contemplated, it was desirable to spell out not only the system of law to be applied, but also which territorial units were to be regarded as Contracting States in relation to articles 3 and 31. It should be made sure that the balance of reciprocity between unitary and federal States under the Convention was retained. In submitting its amendment, his delegation had merely wished to make it clear that only the territorial units to which the Convention was extended were to be regarded as Contracting States.

64. Mr. GUEST (United Kingdom) observed that article 33 was not concerned with territorial units and the systems of law applicable therein. It was meant to ensure that, in a federal State, the federal law would be the applicable law.

65. Mr. NYGH (Australia) said that his delegation had been concerned about the wording of article 33, but its doubts had been resolved by the text submitted by the Drafting Committee. He opposed the Norwegian amendment, which would be confusing. In Australia, for instance, the component states had their own law but Australia as a unit was a single Contracting State. Article 33 was useful, in that a choice-of-law clause might be of help to some States in applying the Convention, but the Norwegian amendment would merely introduce a disastrous ambiguity.

66. Mr. BELINFANTE (Netherlands) said that the words "the particular legal system concerned" were



not clear to him, and the Norwegian amendment did nothing to improve matters, since the expression "different systems of law" was no more precise. He could not, therefore, vote for either the text as it stood or the amendment. The best solution might be to delete the article entirely.

67. Mr. HJERNER (Sweden) agreed that it was difficult to attach any precise meaning to the words "the particular legal system concerned" and that it might be wiser to delete the article, which was not strictly necessary, since the question was already dealt

with in article 32. He did not understand the meaning of the Norwegian amendment and could not vote for it in any event.

68. Mr. JENARD (Belgium) and Mr. GOKHALE (India) said that they could not vote for the amendment, since its meaning was not clear to them.

*The Norwegian amendment (A/CONF.63/L.27) was rejected by 21 votes to 1, with 13 abstentions.*

*Article 33 was adopted by 15 votes to 6, with 12 abstentions.*

*The meeting rose at 6.05 p.m.*

## 10th plenary meeting

Wednesday, 12 June 1974, at 8.10 p.m.

President: Mr. BARRERA GRAF (Mexico).

A/CONF.63/SR.10

### AGENDA ITEM 9

**Consideration of the question of prescription (limitation) in the international sale of goods in accordance with General Assembly resolutions 2929 (XXVII) and 3104 (XXVIII) (concluded)**

CONSIDERATION OF DRAFT PROVISIONS APPROVED BY THE DRAFTING COMMITTEE (A/CONF.63/7, A/CONF.63/L.10, L.11) (concluded) AND OF NEW ARTICLES 33 *bis* AND 38 *bis* (A/CONF.63/L.3, L.28)

#### *Article 32 (concluded)*

1. Mr. KOPAC (Czechoslovakia) said that although the Conference had adopted other articles without a vote because there had been a consensus on them, reservations and hesitation had been expressed concerning article 32 in both the Second Committee and the plenary. Delegations expressing such sentiments had included that of Australia, for whom the article was none the less very important. Accordingly, he proposed that a vote should be taken on the article.

2. Mr. TRUDEL (Canada) said that article 32 was of vital importance for Canada and other non-unitary States. Efforts had been made since the start of the Conference to find the text most acceptable to delegations which were directly concerned and those which were not. The present version of that article should meet that requirement, since it had precedents both in a similar text adopted at the Washington diplomatic conference in October 1973 and in some Hague Conventions. The amendments to the original text (A/CONF.63/4) were minor and had been made for purposes of clarification: hence the reference to the constitution of a Contracting State in the first paragraph and the stipulation in the third paragraph that a non-unitary State not making the declaration permitted under the article should be treated like all other States.

3. The present text was the result of three weeks' negotiations; as with other articles which had been adopted by the main committees and to which no further amendment had been submitted, it should be adopted by the plenary without a vote. The article

was not concerned with the question of prescription proper but with that of ensuring uniformity in the practice of international law. The sole result of its rejection would be to prevent most of the federal and many other States from participating in the effort to achieve that praiseworthy goal.

4. Mr. JEMIYO (Nigeria) said that his delegation maintained its support for the article and also approved the Canadian proposal that it should be adopted without a vote.

5. The PRESIDENT said that a vote was necessary, as opposition had been expressed to the article.

*Article 32 was adopted by 23 votes to 10, with 1 abstention.*

#### *Article 33 bis*

6. Mr. FRANTA (Federal Republic of Germany) said that the importance which the sponsors of the proposed article 33 *bis* (A/CONF.63/L.3) attached to the possibility of applying the definition of the international sale of goods contained in the Uniform Law on the International Sale of Goods (ULIS) annexed to the 1964 Hague Convention<sup>1</sup> was well known. Paragraph 2 of the proposed new article had been added as a compromise, in order to limit the validity of a declaration of reservation. However, in view of the doubts expressed concerning that proposal in the First Committee, its sponsors had placed it in square brackets and were prepared not to press for its inclusion in the final article. It might be advisable to take a separate vote on each paragraph of the proposed new article.

7. Mr. GUEIROS (Brazil) said that the subject dealt with in the proposed new article was of great importance. In his view, it would be more appropriate to discuss it under part III of the draft Convention, at the same time as the proposed new article 38 *bis* (A/CONF.63/L.28). He asked the sponsors of the proposed article 33 *bis* to withdraw its paragraph 2 in order to facilitate that discussion.

8. The PRESIDENT said that, if he heard no objection, he would take it that the Conference agreed

<sup>1</sup> See United Nations, *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, vol. I (United Nations publication, Sales No. E.71.V.3), p. 39.

to postpone discussion of the proposed article 33 *bis* until it took up the proposed article 38 *bis*.

*It was so decided.*

#### Articles 34 to 38

9. The PRESIDENT said that, if he heard no objection, he would take it that the Conference adopted articles 34 to 38 without a vote, since no amendments had been submitted to them.

*It was so decided.*

#### Articles 33 *bis* and 38 *bis*

10. Mr. GUEST (United Kingdom) said that as he felt there was some inconsistency in his delegation's being a sponsor of both the articles under discussion, he would like the United Kingdom to be removed from the list of sponsors of the proposed article 33 *bis*.

11. Introducing the United Kingdom proposal for a new article 38 *bis* (A/CONF.63/L.28), he said it represented an opportunity to heal the deep divisions which had arisen owing to the fact that the existence of earlier conventions on the international sale of goods would make it difficult for some States to ratify the new Convention. Paragraph 1 of the proposal contained no specific reference to the 1964 ULIS, since it had become apparent from his consultations with other delegations that that would be unacceptable. Paragraph 2 did not state that declarations under paragraph 1 should remain effective until a new convention had been ratified by a particular number of States, but merely that, for practical reasons, they should remain effective for 12 months after the entry into force of such a convention. He hoped the proposal, which represented the last opportunity to reach agreement on the question at issue, would be sympathetically received, since he did not wish the Conference to bar entry to the Convention by certain States.

12. Mr. SAM (Ghana) asked whether acceptance of the United Kingdom proposal would automatically entail rejection of the proposal in document A/CONF.63/L.3.

13. Mr. GUEST (United Kingdom) said he felt that it would be for its sponsors to decide what should be done with the proposal in document A/CONF.63/L.3 if his own proposal was considered first, and vice versa.

14. The PRESIDENT said the opinion of the officers of the Conference was that the United Kingdom proposal should be considered first as being more general in scope. They also felt that if the United Kingdom proposal was accepted, the proposal in document A/CONF.63/L.3 would automatically be rejected as being incompatible. However, that proposal would, of course, be considered if the United Kingdom proposal was rejected.

15. Mr. HARTNELL (Australia) expressed the view that it was in fact the proposal in document A/CONF.63/L.3 which should be considered first. Despite the absence in the United Kingdom proposal of any specific statement to that effect, it was clear that paragraph 1 of that proposal applied only to Contracting States which were parties to the 1964 ULIS, whereas the proposal in paragraph 1 of document A/CONF.63/L.3 contained no such restriction. In addition, paragraph 2 of the latter proposal would permit decla-

rations of reservations to remain effective longer than the same paragraph of the United Kingdom proposal.

16. Mr. FRANTA (Federal Republic of Germany) said he agreed with the representative of Australia that the proposal in document A/CONF.63/L.3 should be considered first. As both proposals related to the same question, they should be put to the vote in the order in which they had been submitted, in accordance with rule 41 of the rules of procedure.

17. The PRESIDENT invited the Conference to vote on paragraph 1 of the proposal for a new article 33 *bis* contained in document A/CONF.63/L.3.

*Paragraph 1 of the proposal contained in document A/CONF.63/L.3 was rejected by 18 votes to 13, with 3 abstentions.*

18. The PRESIDENT suggested that, in view of the result of the vote just taken, the Conference should proceed immediately to a vote on the United Kingdom proposal (A/CONF.63/L.28) as a whole.

19. Mr. GUEIROS (Brazil) proposed that a separate vote should be taken on each of the paragraphs of the United Kingdom proposal.

20. Mr. GUEST (United Kingdom) asked that, because of its nature, his proposal should be considered as a whole.

21. Mr. GUEIROS (Brazil) explained that, under Brazilian law, it would not be possible for a declaration automatically to cease to be effective as envisaged in paragraph 2 of the United Kingdom proposal, which was thus unacceptable to his delegation. However, his delegation fully supported paragraph 1 of that proposal, and that was why he had requested a separate vote. If the proposal was considered as a whole, his delegation would have to abstain in the voting.

22. Mr. LOEWE (Austria) recalled that his delegation had earlier opposed a proposal of the kind contained in document A/CONF.63/L.28, which offered Austria no benefits and might cause it additional problems. However, for the sake of a strong Convention, his delegation was now ready to vote for the United Kingdom proposal, which it felt should be considered as a whole in order to avoid its defeat. If a separate vote was taken, it was likely that many delegations would vote against paragraph 1 for fear that paragraph 2 would be rejected and that declarations could then remain in force permanently.

23. Mr. HARTNELL (Australia) agreed that a vote should be taken on the proposal as a whole. Although his delegation had consistently voted against such an article because it felt that it would lead to confusion in international trade, it had now been made very clear that some European countries would not ratify the Convention if they were unable to make a declaration of the kind requested. In view of the importance for the Convention of its acceptance by such States, his delegation was ready, in a spirit of pragmatism, to vote for the United Kingdom proposal and urged others to do likewise.

24. Mr. KHOO (Singapore) expressed support for the United Kingdom proposal, which represented a last-ditch effort to reach a compromise and to enable a very important trading bloc to accept the draft Convention. The proposal was reasonable and would have effect for only a limited period. He urged delegations which had not yet decided how they would vote to reflect very carefully on the proposal and to support it if possible.

25. Mr. GUEIROS (Brazil) withdrew his proposal in order to facilitate the work of the Conference. He reiterated that although his delegation would be happy to support paragraph 1 of the proposal new article, it could not accept the proposal as a whole and would have to abstain in the voting.

26. Mr. SMIT (United States of America) recalled that his delegation had consistently opposed proposals such as those contained in documents A/CONF.63/L.3 and L.28 because it believed they would introduce a lack of uniformity. He had, however, been most impressed by the insistence with which such proposals had been resubmitted, which he saw as meaning that the question was a major obstacle to ratification of the Convention by certain States. His delegation was willing to make sacrifices to accommodate those States, but not in vain. If the delegations interested in securing the passage of the proposal in document A/CONF.63/L.28 would indicate whether its approval would make adoption of the Convention by their Governments more likely, his delegation would vote accordingly.

27. Mr. JENARD (Belgium) said that acceptance of the United Kingdom proposal would cause no other problem for his delegation than that of definition. It would support the proposal.

28. Mr. SAM (Ghana) recalled that his delegation, like those of Australia and the United States, had consistently opposed proposals such as that now under consideration. However, in view of the comments by the United States delegation, he would also await the views of those in favour of the proposed new article before deciding how to vote.

29. Mr. BELINFANTE (Netherlands) said that he was sure the United States representative would understand that a delegation which had no power to sign the Convention could not give any assurance with regard to the actions of its parliament or Government. He could say, however, that if the United Kingdom proposal was rejected, it would make it still more difficult for the Netherlands to accede to the Convention.

30. Mr. FRANTA (Federal Republic of Germany) said the situation of his delegation was in many ways the same as that of the delegation of the Netherlands.

31. Mr. BURGUCHEV (Union of Soviet Socialist Republics) recalled that in both UNCITRAL and the Conference his delegation had taken a negative attitude towards reservations which would destroy uniformity in and a common approach to the application of international trade law. It maintained that attitude. The basic role and objective of UNCITRAL was to unify international trade law, and efforts should thus be made to avoid situations which would defeat that goal. However, his delegation, like that of the United States, understood that it was very important for States which were parties to the 1964 ULIS to be able to apply the definition of the international sale of goods in that Convention until a new definition was approved. Accordingly, his delegation would be prepared not to oppose the proposal contained in document A/CONF.63/L.28, but it fully agreed with the United States delegation that the situation would be very grave if the passage of that proposal did not lead to acceptance of the draft Convention by the parties to ULIS. He, too, would welcome the views of the supporters of the United Kingdom proposal on that matter.

32. Mr. GUEST (United Kingdom) said that, for the reasons given by the representative of the Nether-

lands, it was impossible for him to comment on the likelihood of his Government signing or ratifying the Convention. What he could say was that his Government was very anxious to support the work of UNCITRAL, which it considered useful, and that it would give the most serious consideration to signing the Convention, which was a product of UNCITRAL, if the proposal in document A/CONF.63/L.28 was accepted. The question of ratification of the Convention by the United Kingdom might well be determined by both internal and external factors, but, if his Government signed the Convention, it would, in accordance with the principles of international law, have to give the most serious consideration to its implementation at some stage. The rejection of the proposed article 38 *bis* would constitute an almost insurmountable barrier to the signing or ratification of the Convention by the United Kingdom.

33. The PRESIDENT invited the Conference to vote on the proposal for a new article 38 *bis* (A/CONF.63/L.28) as a whole.

*Article 38 bis (A/CONF.63/L.28) was adopted by 21 votes to none, with 14 abstentions.*

#### *Article 39*

34. The PRESIDENT invited the Conference to consider article 39 of the draft provisions approved by the Drafting Committee (A/CONF.63/7). He recalled that the Drafting Committee had expressed no opinion as regards adopting or rejecting the article.

35. Mr. GUEST (United Kingdom), speaking as Chairman of the Drafting Committee, said that the Committee had not considered the article, having been informed that the Second Committee had taken no decision on it.

36. Mr. KAMPIS (Hungary), speaking as Chairman of the Second Committee, said that, having regard to the connexion between article 39 and other articles in the draft Convention, the Second Committee had decided, at its 4th meeting, to maintain the article unchanged and leave it to the plenary session to decide whether to retain or delete it.

37. Mr. BURGUCHEV (Union of Soviet Socialist Republics), supported by Mr. GOKHALE (India), proposed that article 39 should be deleted.

38. Mr. LOEWE (Austria) said he considered it essential to retain the article, since otherwise it would not be possible to know in advance what commitments had been undertaken by parties to the Convention.

39. The PRESIDENT invited the Conference to vote on article 39, on the understanding that the drafting changes consequent on the adoption of article 38 *bis* would be made by the Secretariat.

*The result of the vote was 16 in favour and 11 against, with 8 abstentions.*

*The article was not adopted, having failed to obtain the required two-thirds majority.*

40. Mr. WATTLES (Executive Secretary of the Conference) said that the deletion of article 39 raised a problem of interpretation. On the one hand, it could be held that only the reservations specifically allowed by articles 35, 36, 37 and 38 *bis* were permissible; on the other hand, it could be argued that, since the text prohibiting reservations other than those enumerated in those articles had now been deleted, the Convention was open to any reservations which States might wish to make. The Secretary-General, as depositary of the

instruments of ratification, required guidance on how he should interpret the Convention if reservations other than those specifically enumerated in part III were made. He asked the Conference to provide the necessary guidance.

41. Mr. ROGNLIEN (Norway) said that, in his understanding, the effect of deleting article 39 was that the reservations mentioned in articles 35, 36, 37 and 38 *bis* would be permissible and would not require acceptance by other Contracting States. However, if any State wished to make other reservations, they would be valid only to the extent that they were accepted by other Contracting States, and then only in relation to the States which had accepted them but not to other States in general.

42. Mr. KHOO (Singapore) stated his delegation's view that even with the deletion of article 39, the only reservations permitted would be those specified in articles 35 to 38 *bis*. He asked the representative of the USSR to clarify his reasons for proposing the deletion of the article.

43. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he had had no hidden motive. He considered article 39 superfluous because the Vienna Convention on the Law of Treaties<sup>2</sup> prohibited any reservations incompatible with the object and purpose of the treaty (Vienna Convention on the Law of Treaties, article 19).

44. Mr. GUEST (United Kingdom) observed that he had abstained in the vote on article 39; he did not wish to express any opinion on the effects of deleting the article.

45. Mr. BELINFANTE (Netherlands) said that the decision to delete article 39 was deplorable and would greatly diminish the value of the Convention. States would be able to make not only the reservations specified in the Convention but also any other reservations which were within the general law of treaties, and not all those reservations would require acceptance by other Contracting States. The result could only be utter confusion.

46. Mr. BÖCKMARK (Sweden) said that his delegation shared the views of the USSR in general on the deletion of article 39, but the practical consequences were causing him some concern. If States made reservations which were accepted by some Contracting States but not by others, it would not be possible for parties to a dispute to know what reservations applied in any particular foreign State. He suggested that the Conference might consider establishing some method of determining, as soon as possible after receipt of a ratification containing reservations not specifically provided for in the Convention, whether the State making the reservations was to be regarded as a Contracting State or not.

47. Mr. ROGNLIEN (Norway) said he doubted whether any satisfactory solution could be found in the interpretation of the Convention as adopted. He noted the statement of the Soviet representative that he had no ulterior purpose in view in suggesting the deletion of article 39. That being so, he proposed that the Conference should reconsider its decision to delete the article.

48. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he opposed the motion; the Conference had taken a vote on a clear-cut issue, and he saw no reason to reconsider the decision.

49. The PRESIDENT put to the vote the proposal that the Conference should reconsider its decision to delete article 39.

*The result of the vote was 16 in favour and 8 against, with 11 abstentions.*

*The proposal was adopted, having obtained the required two-thirds majority.*

50. The PRESIDENT invited the Conference to resume debate on article 39.

*On the proposal of the representative of Sweden, the meeting was suspended at 9.35 p.m. and resumed at 9.40 p.m.*

51. Mr. ROGNLIEN (Norway) said that if article 39 were deleted, States would in practice to some extent be able to make the reservations they wished, including those which they had proposed to the Conference and which had been rejected by vote. While it might be maintained that certain reservations were inconsistent with the Convention, there was nothing in the Convention itself which specifically prohibited them, so that if some States made reservations which other States regarded as inconsistent with the Convention, disputes regarding the status of those reservations and of provisions of the Convention might arise, and he did not see how they would be solved. Buyers and sellers of goods would then be placed in a very difficult position, but the purpose of the Convention should be to eliminate those difficulties. Although he could understand that some States might not be in favour of an absolute prohibition on the making of reservations in agreements under public international law, the present Convention was an agreement regulating the rights and duties of buyers and sellers in private law to govern sales of an international character.

52. Mr. LOEWE (Austria) said he agreed and pointed out that if States did not intend to make reservations other than those explicitly provided for by the Convention, they had no reason to favour the deletion of article 39. If they did make other reservations, the consequences could be so far-reaching that it was difficult to see how agreements could be made under the Convention. He therefore urged the Conference to retain article 39.

53. Mr. KHOO (Singapore) said that article 39 was essential for both businessmen and lawyers because it was unfair to expect them to spend time and money finding out whether and on what terms a particular State was a party to the Convention; nor was it fair to the depositary to expect him to decide, when an instrument of ratification was deposited, whether it was within the Convention or not. He therefore strongly advocated the retention of article 39.

54. Mr. SAM (Ghana) said that he had voted for the deletion of article 39 because he had considered it superfluous. He had been surprised at the interpretation of the significance of the deletion. However, the majority of participants in the Conference seemed to accept that interpretation, and, assuming that it was correct, Ghana would have to reconsider its participation in working groups on international trade law and even in UNCITRAL itself. He therefore had no hesitation in advocating the retention of article 39.

<sup>2</sup> See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5) p. 287, document A/CONF.39/27.

55. The PRESIDENT put to the vote article 39 of the draft provisions.

*The article was adopted by 20 votes to 7, with 8 abstentions.*

56. Mr. GUEST (United Kingdom) said that in his delegation's view a vote for or against the retention of an article constituted no precedent applicable to future conventions on the principles of law relating to international transactions. That being so, and since his delegation had no strong views on article 39 relating to the present Convention, it had abstained in the vote.

#### *Articles 40 to 46*

57. The PRESIDENT invited the Conference to consider the remaining articles of the draft Convention. Since no amendments had been proposed to articles 40 to 46, he assumed that the Conference approved them and wished to adopt them.

*It was so decided.*

### AGENDA ITEM 10

**Adoption of a convention and other instruments deemed appropriate, and of the Final Act of the Conference**

#### DRAFT PREAMBLE TO THE CONVENTION (A/CONF.63/11)

*The Conference adopted the draft preamble to the Convention.*

#### CONVENTION AS A WHOLE

58. The PRESIDENT invited the Conference to take a decision on the Convention as a whole.

59. Mr. BELINFANTE (Netherlands) asked that the Convention should be put to the vote.

60. The PRESIDENT, replying to a question put by Mr. MUKUNA (Zaire), said that the headings and subheadings were part of the Convention.

*The Convention as a whole was adopted by 32 votes to none, with 5 abstentions.*

61. Mr. MUSEUX (France) said that although his delegation had voted for the Convention, it shared some of the misgivings which had been expressed. It was not entirely happy with the outcome of the Conference, for it considered that not enough effort had been made to achieve a consensus. Moreover, the primary goal of UNCITRAL was to develop international trade; uniformity was but one means to achieve that end. Finally, the text which had been adopted was not clear on a number of points and it was quite conceivable that the businessmen for whom it was intended would not be terribly interested in it.

#### FINAL ACT OF THE CONFERENCE (A/CONF.63/10)

62. The PRESIDENT suggested that the Final Act should be considered paragraph by paragraph. The blank spaces occurring in some of the paragraphs would be filled in by the Secretariat as appropriate.

#### *Paragraph 1*

*Paragraph 1 was adopted.*

#### *Paragraph 2*

63. The PRESIDENT, replying to a question put by the representative of Norway, said that the final date of the Conference, 14 June according to the Final Act, would have to be left open, as it depended on whether the Convention was signed on that day.

*Paragraph 2 was adopted, subject to that understanding.*

#### *Paragraphs 3 to 11*

*Paragraphs 3 to 11 were adopted.*

#### *Paragraph 12*

64. Mr. LOEWE (Austria) pointed out that the title of the Convention in French had been amended to *Convention des Nations Unies sur le délai de prescription en matière de vente internationale de marchandises*. Paragraph 12 of the French text should be amended accordingly.

65. Mr. BYKOV (Union of Soviet Socialist Republics) said that, since paragraph 12 referred to the reports of the First and Second Committees which had been prepared by the Secretariat but not discussed by the Conference, he assumed that all delegations had the right to consult with the Secretariat to make the necessary corrections.

66. The PRESIDENT confirmed that that was the case. The correction pointed out by the representative of Austria would be made in the French text, and also in the Spanish text.

*Paragraph 12 was adopted.*

#### *Paragraph 13*

67. The PRESIDENT, replying to a question put by the representative of Norway, said that the date of the adoption of the Convention would be given as 12 June 1974.

68. Mr. WATTLES (Executive Secretary of the Conference), replying to a question put by the representative of France, said that although the date of adoption was usually that on which the Final Act was signed, when a formal vote was taken on a Convention as a whole the date of that vote was considered the date of adoption.

69. The PRESIDENT, replying to a question put by the representative of Brazil, said that the date on which the Convention would be opened for signature would be 14 June 1974.

*Paragraph 13 was adopted.*

#### *Paragraph 14*

*Paragraph 14 was adopted.*

#### *Paragraph 15*

70. Mr. BYKOV (Union of Soviet Socialist Republics) pointed out that the title of the resolution in the Russian text did not follow the usual formula. He would consult with the Secretariat to make the necessary corrections.

*Paragraph 15 was adopted.*

#### DRAFT RESOLUTION

71. Mr. WATTLES (Executive Secretary of the Conference) said that the normal practice was to annex the resolution to the Final Act, not to insert it in the

text as had been done in the English version. The appropriate correction would be made.

72. Mr. GUEIROS (Brazil) requested that the title of the Convention in the first paragraph should be underlined, as no mention had been made in the Final Act of the amendment of the title.

73. The PRESIDENT said he saw no objection to the suggestion although that was not the usual practice.

*The draft resolution was adopted.*

#### ***Preparation of a commentary on the Convention by the Secretariat***

74. Mr. SAM (Ghana) suggested that the Secretary-General should be asked to prepare a commentary based on the one which the Conference itself had used and on the discussions that had taken place. Some reference to the commentary might be made in the Final Act.

75. The PRESIDENT said that the commentary could not be attached to the Convention, as the Conference had not had an opportunity to examine it.

76. Mr. HONNOLD (Chief, International Trade Law Branch) said it was the Secretariat's understanding that, if a commentary was prepared, it would not be attached to the Convention. He informed the Conference that the cost of preparing such a commentary could be covered within the existing financial resources.

77. Mr. BYKOV (Union of Soviet Socialist Republics) said that his delegation had strong doubts about the advisability of preparing such a commentary. It would perhaps be better to defer a decision on the matter.

*The Ghanaian proposal that the Secretariat should be asked to prepare a commentary was adopted by 15 votes to 7, with 11 abstentions.*

### **AGENDA ITEM 6**

#### **Credentials of representatives to the Conference (concluded):\***

##### **(b) Report of the Credentials Committee (A/CONF. 63/13)**

\* Resumed from the 4th meeting.

78. Mr. BÖKMARK (Sweden) asked why his country was mentioned in paragraph 3 (2), instead of in paragraph 3 (1) with the other States which had presented formal credentials in due form.

79. Mr. WATTLES (Executive Secretary of the Conference) said that at the time that the Credentials Committee met, no formal credentials from Sweden had yet been received. He trusted that that situation would be rectified.

80. Mr. ROGNLIEN (Norway), referring to paragraph 9, suggested that the phrase "as listed in paragraph 3 of this document" should be added at the end of the third paragraph after the words "accepts the credentials of all the representatives participating in the Conference."

81. Mr. SLOAN (Director, General Legal Division) said that the Norwegian representative was correct in his interpretation of the Credentials Committee resolution. However, since that resolution had been adopted by the Credentials Committee, the Conference could not amend it. It could, however, adopt a resolution of its own.

*With that clarification, the report of the Credentials Committee (A/CONF.63/13) was adopted.*

82. Mr. BYKOV (Union of Soviet Socialist Republics) said that, during the examination of credentials, his delegation had opposed the recognition of the credentials of the representatives of the Saigon régime, which could not represent the whole of South Viet-Nam because, as had been recognized in the Paris Agreement, there also existed the Provisional Revolutionary Government of the Republic of South Viet-Nam. His delegation considered it completely abnormal that the Provisional Revolutionary Government had not been invited to the Conference, for that Government should participate on an equal footing with the representatives of other States. The acceptance of the Credential Committee's report did not in any way affect his delegation's position on that matter.

83. Mr. GARCIA CAYCEDO (Cuba) indicated that his delegation shared the views expressed by the representative of the Soviet Union.

84. After an exchange of courtesies, the PRESIDENT announced that the Final Act would be signed on Friday, 14 June 1974.

*The meeting rose at 10.40 p.m.*

## SUMMARY RECORDS OF MEETINGS OF THE FIRST COMMITTEE

### 1st meeting

Tuesday, 21 May 1974, at 4 p.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.1

#### Election of officers

1. The CHAIRMAN said informal consultations had indicated a consensus that Mr. Krispis (Greece) and Mr. Gueiros (Brazil) should be nominated to fill two of the three posts of Vice-Chairman, and that Mr. Kopač (Czechoslovakia) should be nominated for the office of Rapporteur.

*Mr. Krispis (Greece) and Mr. Gueiros (Brazil) were elected Vice-Chairmen.*

*Mr. Kopač (Czechoslovakia) was elected Rapporteur.*

#### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (E/CONF.63/4, E/CONF.63/5, E/CONF.63/6 and Add.1 and 2, E/CONF.63/C.1/L.5, L.11)

2. The CHAIRMAN invited the Committee to take up the draft Convention prepared by the United Nations Commission on International Trade Law (UNCITRAL) (E/CONF.63/4) article by article. A general discussion on each complete article would be followed by consideration of the article paragraph by paragraph. He would remind members that all amendments and proposals should be submitted in writing, even if they had been introduced orally and discussed during the debate.

#### Article 1

3. Mr. KOPAČ (Czechoslovakia) said there were some short-comings in the wording of paragraph 1, the effect of which was to limit the scope of the Convention. The expression "relating to a contract of international sale of goods" was too vague and might lead to misunderstandings. For example, it might be held not to exclude rights of the buyer and seller arising from other contracts—such as those granting exclusivity—relating to the contract of sale but independent of it. The Convention should cover the breach, termination or invalidity of a sales contract, even though it was doubtful whether one could really speak of a "contract" in cases of invalidity. For the reasons outlined, his delegation had submitted the amendment contained in document A/CONF.63/C.1/L.5.

4. The meaning of paragraph 2 was not very clear. It was important, although difficult, to define prescription and to distinguish it from other rules relating to time-limits. The draft attempted to define prescription by saying what it was not; he wondered whether the approach had been very successful. The expression "a

particular time-limit" could be interpreted as a condition applicable to any notice and any acts other than the institution of legal proceedings. Such an interpretation would not seem to establish any rights connected with a unilateral declaration of avoidance of a contract in case of a breach, and it was not clear whether the seller would be covered in such cases. The point was a practical one which should be discussed.

5. Mr. GUEIROS (Brazil), referring to the comments on the draft Convention set forth in the addenda to document A/CONF.63/6, said his delegation could not agree with the general view of the Netherlands that the rules of the draft Convention would complicate international trade. As to the views expressed by the International Chamber of Commerce (ICC), he emphasized that UNCITRAL and international trade itself were deeply indebted to ICC for its work on the standardization of terms. However, he disagreed with ICC's view, as stated in paragraph 7 of its comments in document A/CONF.63/6/Add.1, that claims for payment of the price should be excluded from the scope of application of the Convention, since the price was one of the chief elements of the very concept of the sale of goods.

6. Mr. LOEWE (Austria) remarked that his delegation would find it difficult to conform strictly to the Secretariat's request that all amendments should be in writing; he wondered whether there had been a misunderstanding.

7. On the question whether the Convention should apply to actions for annulment of the contract, his delegation felt that it was useful to have the opportunity—given in article 34—of making a reservation regarding the application of the Convention to such actions. Without such a clause, his delegation would have to reconsider its attitude to the Convention. The question of invalidity should accordingly be excluded from the scope of the Convention since, if a contract was annulled, there was in fact no contract. His delegation therefore wished to propose, as a subamendment to the Czechoslovak amendment to article 1, paragraph 1 (A/CONF.63/C.1/L.5), the deletion of the reference to invalidity; the amendment was otherwise acceptable.

8. The CHAIRMAN, replying to the comment by the representative of Austria regarding the submission of amendments, said that in the general discussion on each article both written and oral amendments would be acceptable, although amendments in writing were preferable.



9. Mr. REESE (United States of America) announced that two amendments to article 1 submitted by his delegation would be circulated shortly. The first would insert the word "movable" in paragraph 1 before the word "goods", since in some systems of law the latter word also embraced real estate and the like.

10. His second amendment was more far-reaching: he proposed the deletion of article 14—which concerned matters that were very specialized and gave rise to some peculiar difficulties—and the consequent insertion, at the end of article 1, paragraph 3 (e), of the following words taken from article 14: "other than proceedings commenced upon the occurrence of the death or incapacity of the debtor, the bankruptcy or insolvency of the debtor, or the dissolution or liquidation of a corporation, company, association or entity". That would make it clear that matters currently covered in article 14 would be excluded from the Convention.

11. Mr. KRISPIS (Greece) observed that the immediate interpretation of paragraph 1 was that the Convention applied only to a valid contract. Insertion of the principle of invalidity, which would enlarge the scope of the Convention, would give rise to formidable difficulties and needed to be discussed. He, for his part, took the view that the various kinds of invalidity should be excluded from the Convention.

12. Mr. GONDRA (Spain) said his delegation agreed with the views expressed by the representatives of Austria and Greece: the fundamental principle of the continental system of law was the distinction between enforcement of the contract, actions arising from a breach of the contract and actions arising from the invalidity of the contract. Under that legal system, the philosophy underlying actions for enforcement of the contract and that underlying actions for annulment were different. That topic had been fully debated in UNCITRAL and a number of delegations, including his own, had proposed that, for greater clarity, actions for annulment should be excluded from the scope of the Convention—particularly since the International Institute for the Unification of Private Law (UNIDROIT) was concurrently preparing a draft on the validity of contracts for the international sale of goods. The possibility, under article 34, of entering a reservation did not fully satisfy his delegation.

13. Turning to questions of terminology, he noted that in paragraph 3 (a) the words "agree to buy" had been rendered in Spanish by the words "*convienen en comprar*", which implied a promise; it would be better to say "*se obligan a comprar*". In paragraph 3 (d), the word "breach" had been translated somewhat literally as "*violación*"; he understood that the correct term was "*incumplimiento*". In paragraph 3 (f), the definition of the word "person"—embracing the concept of corporate bodies—applied to the Germanic legal system; he did not feel that such a definition was suitable if the Convention was to have the widest currency, although he could not at the moment suggest a better definition.

14. Mr. KHOO (Singapore) said that his delegation had submitted a proposal in writing that would include among the definitions in paragraph 3 a definition of the term "year". Although the word "year" appeared in a number of places in the draft Convention, it had not been defined. For example, article 27, paragraph 2, stated that the limitation period should be calculated by reference to the calendar of the place

where the legal proceedings were instituted. In view of the use of various calendars in different parts of the world, such a formula might give rise to difficulties. That particular provision had been included to take account of the difference of a day on either side of the international date-line. In order to avoid ambiguity, he proposed the addition to article 1, paragraph 3, of a new subparagraph (h), reading: "Year means a year reckoned according to the Gregorian calendar." While the choice was arbitrary, the Gregorian calendar was used in most countries, and such a definition would probably be acceptable.

15. Mr. STALEV (Bulgaria) said that, in view of the difference in the notion of validity in the various legal systems, great difficulties would arise unless actions for annulment of the contract were included within the scope of the Convention, as in article 34. He therefore endorsed the Czechoslovak amendment (A/CONF.63/C.1/L.5), which made article 1 clearer.

16. Mr. ROGNLIEN (Norway) said he was reluctant to exclude invalidity entirely from the Convention, and therefore supported the retention of article 34. However, he was strongly opposed to the exclusion of claims arising from invalidity, such as claims for restitution of the goods or the payment of the price; they should definitely be covered by the Convention.

17. The Czechoslovak amendment to paragraph 1 (A/CONF.63/C.1/L.5) raised mainly a question of drafting. The existing text of paragraph 1 already included the concept of sale as expressed in the Czechoslovak amendment. That amendment was too narrow; taken literally, it excluded the claim for invalidity itself, since that claim did not "arise from" invalidity. Consequently, he proposed the insertion of the word "including" in the Czechoslovak amendment after the words "sale of goods."

18. Mr. BELINFANTE (Netherlands), replying to the representative of Brazil, said he wished to reiterate his country's view that, while the substantive articles of the draft Convention were few in number, when taken as a whole they unnecessarily complicated what was a very limited field of commercial activity. He therefore feared that the commercial world would not welcome the added complication created by the Convention.

19. Paragraph 1 already introduced a complication: lawyers not conversant with the background to the Convention would wonder why the two concepts of limitation and prescription were both included. While he understood that they had been included in order to take account of both the common-law and the civil-law systems, he felt that their inclusion together constituted a complication for the layman. While he did not have any amendment to propose, he believed that the draft text contained many similar complications.

20. Mr. KRUSE (Denmark) supported the Czechoslovak amendment, since it would explicitly include in the Convention the question of invalidity. That question should be included, since the various forms that it could take gave rise to different claims. Article 34 made it possible for any Contracting State which so wished to enter a reservation excluding invalidity. Under many national laws, the occurrence of fraud rendered a contract invalid or constituted grounds for claiming that the contract was invalid. Such claims should not be excluded from the scope of the Convention. In any case, article 9, paragraph 2, related to claims based on fraud; if the concept of invalidity was



to be excluded, that paragraph would need to be deleted or reworded.

21. Mr. TAKAKUWA (Japan) said that the wording of article 1, paragraph 1, was rather vague and could give rise to various interpretations in so far as it appeared to encompass all rights of the buyer and seller relating to a contract of sale. An attempt should be made to clarify exactly what types of right or claim were to be affected by the Convention, since the limitation of actions was closely related to the rights or claims of buyers and sellers arising out of the substantive law on sales, such as the Uniform Law on International Sale of Goods or other uniform laws to be made in the future, or such applicable law governing the contract of sales by the rules of international private law. That problem was related to various questions involved in the draft Convention.

22. His delegation would in any case have preferred the use of the word "claims" instead of "rights" in paragraph 1. The claims to be covered by rules on prescription should be the claims of buyers and sellers against each other arising out of a valid contract of sale, excluding claims based on the formation or validity of contracts.

23. Mr. NYGH (Australia) felt that the question of invalidity should be included within the sphere of application of the Convention, for the reasons already stated by the representatives of Norway and Denmark. The usefulness of the amendment proposed by the representative of Czechoslovakia could perhaps best be determined by the Drafting Committee.

24. He observed that paragraph 1 of the article under consideration failed to define the types of contract covered by the draft Convention. It might be alleged, for example, that claims based on a contract that was void *ab initio* were inadmissible, whereas claims based on a contract susceptible of avoidance, such as one concluded under duress, might be admissible until such time as the contract was actually avoided. Referring to the Czechoslovak amendment, he said that his delegation preferred the use of the words "relating to" rather than "arising from" in paragraph 1.

25. He hoped that the English version of paragraph 3 (f) could be improved so as to make it clear that the common-law type of partnership fell within the sphere of application of the Convention.

26. Mr. HERBER (Federal Republic of Germany), referring to the remarks made by the representative of the Netherlands, said that there was no way of simplifying the draft Convention other than by bringing its sphere of application more into line with the other international instruments to which it related. Article 1, paragraph 1, clearly reflected different approaches of law which a convention of universal scope had to take into account. "Prescription of rights" was an expression used in continental law which corresponded to the concept of "limitation of legal proceedings" in the common-law systems. His delegation would oppose any amendment designed to stipulate whether limitation or prescription should relate to substantive or procedural law. It was the responsibility of every Contracting State to translate the Convention into its own system of law and to stipulate what branch of law should govern its application.

27. He agreed with previous speakers that the provisions of paragraph 1 could be amplified, and in that connexion he supported the amendment proposed by the

representative of Czechoslovakia. Claims based on invalid contracts should be subject to the same rules as claims based on valid contracts. He pointed out that article 34 of the Convention provided for declarations of reservations in respect of actions for annulment of the contract, those being the kind of actions that should be excluded from the sphere of application of the Convention, rather than actions based on invalidity, which in his view were worthy of inclusion. Moreover, since article 34 provided for reservations, its terms should be reflected in the general definitions embodied in article 1. Actions for annulment were creative measures aimed at changing the legal situation of persons bringing such actions, and in that respect they differed significantly from claims arising out of a contract that were subject to prescription. The time-limits for such actions were usually shorter than the limitation period in respect of claims. For that reason, he would oppose any suggestion that article 1, paragraph 2, should be amended to extend the scope of the Convention beyond the general concept of claims.

28. Referring to the remarks made by the representative of Australia, he said that replacement of the words "arising from" in the Czechoslovak amendment by the words "relating to" would not improve the text but might, on the other hand, be construed as extending the sphere of application to claims founded in tort. Such an extension of meaning would be dangerous.

29. Mr. GUEIROS (Brazil) observed that in the civil-law system, which was based on Roman law, there were two different types of limitation: limitation of action through legal proceedings, and prescription of the right itself—also known as *preclusio* or *déchéance*. The words "limitation of legal proceedings" in article 1, paragraph 1, related solely to the limitation of action, whereas "prescription of rights" related to the civil law concept of *preclusio* or *déchéance*, which did not admit of the suspension or interruption of the prescribed time-limit.

30. Turning to the question of invalid contracts, he pointed out that there was an important difference between absolute and relative invalidity. An absolutely invalid contract was one that was void through lack of conformity with the law, whereas a relatively invalid contract remained valid until it was declared void through a judgement of annulment. If the Conference was to draft a universally acceptable Convention, it should carefully study the conceptual problems to which he had referred.

31. Mr. STALEV (Bulgaria) said that, in the light of the explanations furnished by the representative of Brazil, a fundamental question arose as to the difference between the concepts of *déchéance* and prescription. He wondered whether a time-limit established for a unilateral declaration of avoidance of the contract would be covered by the provisions of paragraph 1 or those of paragraph 2. In the latter case, the time-limit would relate to any act other than the institution of legal proceedings.

32. The CHAIRMAN said that the question raised by the representative of Bulgaria could perhaps only be answered by reference to the judicial practice of different countries.

33. Mr. GUEST (United Kingdom), referring to the difference between the concepts of limitation of actions and prescription of rights, said that it had not been the intention of the drafters of the Convention to distinguish between the effects of the termination of rights

and the limitation of legal proceedings under different legal systems. Implementation of the Convention should produce the same results, whether it was applied in relation to procedural law or substantive law.

34. He did not think it feasible to exclude from the scope of the Convention actions for annulment or actions arising from invalidity. Such exclusion would cause great difficulties to common-law countries, whose legislation did not possess the nuances of definition so often found in civil-law systems. In common law, the concept of invalidity was bound up with other legal concepts relating to the contract and could not be separated from them.

35. Introducing his delegation's amendment to article 1 (A/CONF.63/C.1/L.11), he noted that paragraph 2 of the article excluded from the scope of the Convention rules of law providing a particular time-limit within which buyers and sellers were required to perform certain acts other than the institution of legal proceedings. Such rules of law were found only in civil-law systems and had no counterpart in common-law countries. His delegation therefore proposed the insertion of the words "or a term of the contract of sale" after the phrase "a rule of the applicable law" in paragraph 2. The effect of the amendment would be to make the provisions of paragraph 2 relevant to common-law systems. Article 21, paragraph 3, contained a similar provision which went beyond the terms of his delegation's amendment and might not be acceptable to all delegations.

36. Mr. LOEWE (Austria) said that he could accept the United Kingdom amendment in principle, although he would like some assurance from the representative of the United Kingdom that the amendment would render article 21, paragraph 3, superfluous and make possible its deletion.

37. Mr. GUEST (United Kingdom) said that it was his intention at a later stage to propose the deletion of

article 21, paragraph 3, and its replacement by a specific provision relating to arbitration proceedings.

38. Mr. KRISPIS (Greece) said that, in principle, the United Kingdom amendment was acceptable to his delegation. He agreed that contract clauses providing for time-limits should be included within the scope of the Convention. He pointed out, however, that the phrase "a rule of the applicable law" could be construed as referring indirectly to contract clauses, since all such clauses, to be valid, must be supported by law. He therefore proposed that paragraph 2 should be amended to read: "This Convention shall not apply to a particular time-limit within which . . .". The deletion of the reference to a rule of the applicable law would have the same result as the United Kingdom amendment.

39. Mr. HERBER (Federal Republic of Germany) supported the amendment proposed by the representative of Greece. The decisive element in paragraph 2 was the stipulation that certain types of time-limit were not covered by the Convention in certain cases, irrespective of whether such time-limits were governed by a rule of the applicable law or by a contract. His delegation could also accept the United Kingdom amendment.

40. Mr. ROGNLIEN (Norway) observed that, if the purpose of the United Kingdom amendment was to stipulate that a party to a contract could be required to give notice of a claim and that the claim would not be deemed to become due until such notice was given, it might conflict with the provisions of article 9, paragraph 3. Moreover, the wording of the United Kingdom amendment was not consistent with that of article 21, paragraph 3, which referred to the validity of a clause in the contract of sale, rather than a term of the contract of sale.

*The meeting rose at 6 p.m.*

## 2nd meeting

Wednesday, 22 May 1974, at 10.25 a.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.2

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.5, L.11, L.14, L.20, L.21, L.22) (continued)

#### Article 1 (continued)

1. Mr. ROGNLIEN (Norway) said that adoption of the United Kingdom amendment (A/CONF.63/C.1/L.11) would raise a problem of co-ordination with the provisions of article 21, paragraph 3, and article 9, paragraph 3.

2. Mr. GUEST (United Kingdom) agreed that the articles mentioned by the representative of Norway would have to be reformulated if his amendment was adopted.

3. Mr. SAM (Ghana) felt that the Czechoslovak amendment (A/CONF.63/C.1/L.5) simply stated in another form what was already implied in the existing

wording of paragraph 1, but agreed that in a draft Convention intended to be used by businessmen it was best to be as explicit and simple as possible. He was therefore prepared to accept the amendment, but would like the reference to invalidity of the contract to be deleted. He would favour the wording of the Norwegian oral proposal, which would simply add the words "its breach or termination" at the end of the existing text of paragraph 1.

4. He did not think that the Committee should take any decision on the United Kingdom proposal (A/CONF.63/C.1/L.11) until it had considered article 9, paragraph 3, and article 21, paragraph 3.

5. His delegation fully agreed with the United States delegation that the draft applied only to the sale of "movable" things but considered that, instead of inserting the adjective "movable" before "goods" throughout the English text, it would be better to include a

definition of the term "goods" in article 1, paragraph 3. His delegation favoured the amendment to paragraph 3 (e) proposed by the United States (A/CONF.63/C.1/L.14), and it agreed with the Australian proposal that the term "partnership" should be added to the list of legal persons at the end of the amendment. For the sake of clarity, it would also like the words "private or public" to be added at the end of the amendment.

6. In order to avoid any difficulty of interpretation in the future, article 1 should be made as explicit and precise as possible. He therefore proposed that the final formulation should be left until the Committee had completed its consideration of the entire draft. There were a number of terms which warranted definition in article 1, paragraph 3; he had in mind, for instance, the terms "year" and "prescription", to which the amendments proposed by Singapore (A/CONF.63/C.1/L.21) and France (A/CONF.63/C.1/L.22) related. It might also be a good idea to transfer what was now article 7, to article 1, so that the rules for interpretation of the Convention would be clearly set out from the beginning.

7. Mr. TAKAKUWA (Japan) said that he would like to simplify and summarize the points he had raised at the first meeting. The scope of the Convention should be limited to the claims arising out of a valid contract, which meant the exclusion of any claims relating to the formation and validity of contracts. For that reason, article 9, paragraph 2, should be deleted.

8. Secondly, it was not proper to deal with prescription only without examining what kind of claims arose from the substantive rules of contract. There was really no uniform law on the sale of goods, although ULIS had entered into force in several countries, and it would be desirable to provide an opportunity for review of the provisions relating to prescription in order to adjust them to a uniform law on the sale of goods.

9. With regard to the wording of article 1, paragraph 1, despite what the representative of the Federal Republic of Germany had said at the preceding meeting, he would prefer the replacement of the word "rights" by "claims" in the English text.

10. He was in favour of the Czechoslovak amendment (A/CONF.63/C.1/L.5) except a question of validity and considered the United Kingdom amendment (A/CONF.63/C.1/L.11) acceptable. Of the two amendments proposed by the United States (A/CONF.63/C.1/L.14), the first, relating to paragraph 1, seemed to be fully justified, while the second, relating to paragraph 3, raised some doubts because, if the circumstances listed in it were excluded from the sphere of application of the Convention, the scope of the latter would be unduly restricted. It would also be better to revert later to the question whether article 14 should be deleted.

11. Mr. HARTNELL (Australia) said that he was opposed to the United Kingdom proposal (A/CONF.63/C.1/L.11), which would exclude the application of the Convention whenever a contract provided different rules concerning prescription. As the representative of Ghana had pointed out, the text of the amendment was closely related to that of article 21, paragraph 3, and his delegation agreed that it would be better to postpone consideration of it until the Committee took up article 21. His delegation agreed with the United Kingdom delegation that the Committee should be extremely cautious in trying to

define prescription. The problem was that a single definition had to cover the two concepts of "prescription" and "limitation", which were not equivalent in the two major legal systems. The French delegation's proposal (A/CONF.63/C.1/L.22) seemed to lean too much in one direction. He believed that it would in fact be better to retain the rather neutral formula for article 1, paragraph 1, used in the draft.

12. Mr. GONDRA (Spain) urged the Committee to make a clear distinction between questions of substance, which were within its competence, and questions of form which should be dealt with by the Drafting Committee. The debate thus far showed that article 1 raised essentially three fundamental problems: the question whether the Convention should cover claims relating to the validity of the contract; the distinction between prescription and lapse of rights; and the problem of the relationship between the prescription of rights and the limitation of legal proceedings. Those were the three points on which the Committee should concentrate.

13. Mr. KOPAC (Czechoslovakia) endorsed the opinion of the Spanish delegation. The first problem was that of the notion of prescription itself and in order to define it the content of paragraphs 1 and 2 of article 1 would have to be studied.

14. The rights and legal proceedings referred to in paragraph 1 were divided into two categories: the rights which the creditor could exercise immediately and the rights which he could exercise only by having recourse to a jurisdiction, whether judicial or arbitral. The latter category was itself subdivided into two types of rights: those relating to the performance of the contract—right to obtain delivery, payment, etc.—and those variable rights enjoyed by the buyer or the seller depending on the legal system which was applicable—right to institute an action for annulment of the contract, to request an extension of a time-limit, proceedings relating to the validity of the contract, etc.

15. Paragraph 2 concerned only exceptions limited to the field of application of the draft. It followed that the Convention covered all the rights exercised by the institution of judicial proceedings. The right to declare the termination of a contract did not appear to be affected by that paragraph, having regard, particularly, to the second condition enunciated at the end of that text.

16. His delegation had originally thought that the Convention should have the widest possible applicability. However, having become aware of the difficulties to which certain problems gave rise, relating in particular to the right to declare the termination of a contract and the right to obtain an extension of a time-limit, his delegation thought it would be preferable to limit the scope of the Convention to rights relating to performance only. It was for that reason that Czechoslovakia supported the suggestion that the word "rights" in the English text should be replaced by the word "claims". Consequently, if the majority of the participants agreed that the scope of applicability of the Convention should be narrower, paragraph 2 of article 1 would be acceptable to his delegation.

17. The difficulties arising in connexion with article 1 were due to the fact that the terminology of two different legal systems was being used, whereas the Convention sought to regulate a single institution. Perhaps paragraph 1 could be amended to state, in all the

languages except English, that the Convention applied to "*la prescription des actions*" and in the English text that it applied to the "limitation of legal proceedings", after which the following phrase would appear in square brackets: "[and to the prescription of the rights]".

18. The members of the Committee seemed to be divided with regard to the amendment proposed by his delegation (A/CONF.63/C.1/L.5); however, that amendment was in keeping with its original suggestion.

19. Mr. SUMULONG (Philippines) said it was essential to determine whether there was a distinction between the notion of "limitation" and that of "prescription" or whether they both had the same meaning, as would appear to be the case in article 1, paragraph 1. The reason for their juxtaposition in that text seemed to be the presence at the Conference of countries some of which applied one of the two major legal systems while some applied the other. In order to avoid any ambiguity, a new subparagraph could be inserted between subparagraphs (e) and (f) of article 1, paragraph 3, in which it would be stated that the terms "limitation of legal proceedings" and "prescription of the rights" used in article 1, paragraph 1, referred to the period during which legal proceedings could be instituted, reckoning from the time at which the right was created.

20. The amendment proposed by Czechoslovakia (A/CONF.63/C.1/L.5) would make the Convention applicable to proceedings arising from a breach of a contract and likewise to those arising from the termination or invalidity of a contract. The general feeling seemed to be that the Convention should cover legal proceedings arising from a breach of contract. Moreover, on the basis of the text of draft article 34 it could be affirmed that the draft Convention applied, subject to reservations expressed at the time of ratification or accession, to actions arising from annulment of the contract. The participants likewise seemed to agree that the Convention should be made applicable to legal proceedings for termination of a contract. His delegation thought that it would also be desirable to retain the text of draft article 34 so as to cover actions for the annulment of a contract as well.

21. Mr. GOKHALE (India) said that his delegation found article 1, paragraph 1, acceptable, for it was drafted in sufficiently broad terms to be applicable to any situation which might arise, including exceptional cases. Also, his delegation had no objections to the amendment proposed by Czechoslovakia (A/CONF.63/C.1/L.5), although it would have preferred to have the term "validity" used instead of "invalidity". He had no particular comments to make on the wording of paragraph 2 and could accept it as it stood.

22. With regard to subparagraph (f) of article 1, paragraph 3, he agreed with the representative of Ghana that it should make a reference to governments. In various countries there were two kinds of limitation periods, a general one of three years, as in the case of India, and a special one, of a longer duration, for governments. He would submit to the Committee an amendment relating to that particular point.

23. Mr. KRISPIS (Greece) said that as he understood it, the limitation of legal proceedings and the prescription of rights were two expressions which covered the same concept and had been included in order to take account of the world's various legal systems. His delegation was in favour of the amendment sub-

mitted by the representative of France (A/CONF.63/C.1/L.22) in so far as it related to the definition of the term "prescription". If that amendment was adopted, paragraph 1 of article 1 could be redrafted accordingly.

24. With reference to the amendment of the Czechoslovak delegation (A/CONF.63/C.1/L.5), he would prefer the words "relating to" in paragraph 1 to the words "arising from", the use of which might broaden the scope of article 1. Also, there was no need to mention the breach or invalidity of a contract, for it was obvious that the exercise of the right arose from one or the other. However, the use of the word "invalidity" at the end of the Czechoslovak amendment was unacceptable to his delegation, for there was no period in which a declaration of invalidity *ab initio*, as in the case of fraud, could be obtained from several jurisdictions. In short, the original text of paragraph 1 was preferable, unless France's amendment was adopted.

25. The point made in paragraph 2, which seemed to have been included for the purpose of clarifying paragraph 1, was to all intents and purposes self-evident. With regard to the United Kingdom's proposal (A/CONF.63/C.1/L.11), his delegation would prefer to delete the phrase "a rule of the applicable law providing" and redraft the beginning of paragraph 2 to read: "This Convention shall not affect the particular time-limit within which . . .".

26. In paragraph 3, subparagraph (a), of the English text the word "obligations" would be more appropriate than "duties" but he saw no need for the United States amendment (A/CONF.63/C.1/L.14) calling for the insertion of the word "movable" before the word "goods". As to the text proposed in that amendment to complete the text of paragraph 3 (e), he thought it would be preferable to adopt the suggestion of the Ghanaian delegation, even though the idea underlying it would be expressed again in article 14.

27. Mr. GUEIROS (Brazil), noting that the representatives of Spain and Czechoslovakia had emphasized the problems of substance posed by the drafting of article 1, said that in the experience of his delegation problems of drafting and language were very closely related to questions of substance. It was for the Drafting Committee to make the necessary changes when the texts were adopted.

28. His delegation thought that the Conference should prepare a simple text which could be easily understood by the businessmen whom it would concern. To begin with, it should be noted that the concept of prescription was rendered in English by two synonymous terms: "prescription" and "limitation". In order to make clear the distinction between limitation of legal proceedings and prescription of rights, the term "extinction of the rights" rather than "prescription of the rights" should be used in paragraph 1 of the English text. The former term, which was, in fact, proposed by France in its amendment to paragraph 3 (A/CONF.63/C.1/L.22), reading "extinction of the rights, claims or actions"—an amendment which had the support of his delegation—would make it possible to differentiate those two elements more clearly.

29. The United Kingdom amendment (A/CONF.63/C.1/L.11) was very sensible but it would seem preferable to adopt, with the agreement of the United Kingdom delegation, the subamendment proposed by the representative of Greece, which would shorten the text.

30. It was essential, as proposed by the delegation of Singapore (A/CONF.63/C.1/L.21), to define a "year", which was reckoned in different ways in different parts of the world. That proposal could be inserted in paragraph 3 as subparagraph (h).

31. If the amendment proposed by the representative of the Federal Republic of Germany (A/CONF.63/C.1/L.20) was adopted, it should be amended by using the expression "extinction of the rights", so as to bring it into line with the proposal of the Brazilian delegation. In any event, the question raised by the Federal Republic of Germany involved a very delicate doctrinal issue which need not be evoked in the Convention. However, if the delegation of the Federal Republic of Germany insisted on maintaining its amendment, he would not be opposed to it.

32. Lastly, he could not accept the United States amendment (A/CONF.63/C.1/L.14), for the insertion of the adjective "movable" was pointless and the proposal to add a new text to paragraph 3, subparagraph (e), would entail duplication with article 14, subparagraph (b), which also dealt with the question.

33. Mr. ROGNLIEN (Norway) said it was not possible to define in a text whether a claim was a claim or merely an action for annulment. That was for the courts to decide. Consequently, his delegation, like the Philippine representative, considered that article 34 should be retained. However, the defence of invalidity could always be brought under the terms of article 24, paragraph 2.

34. He could not accept the amendment to paragraph 3 submitted by the United States delegation (A/CONF.63/C.1/L.14), for the proceedings commenced upon the occurrence of the incapacity, etc. of the debtor might be judicial by nature and consequently so far should not be excluded from the Convention. In any case, that amendment raised the question of the incorporation of administrative procedures in the Convention and logically it would be preferable to consider the matter in depth when the Committee took up article 14.

35. With regard to the proposal concerning a definition of prescription, the Conference should be warned against any attempt to introduce a definition of that kind, in view of the differences between the common-law countries and the countries which followed the Romanist tradition.

36. Lastly, the English text of the French proposal (A/CONF.63/C.1/L.22) should be completed by adding the concept of "limitation" to that of "extinction". To that end, it might be advisable to use in paragraph 1 the expression "and to the extinctive prescription of the rights". That suggestion could be considered by the Drafting Committee.

37. Mr. KHOO (Singapore) said he agreed with the numerous delegations which considered that the scope of the Convention should be sufficiently broad to encompass both claims arising from a valid contract and actions for annulment. His delegation wondered, however, whether it was possible to deal with all the questions raised by the Philippine proposal. It might be advisable to consider them as they arose during examination of the draft Convention; the question of a claim based on fraud, dealt with in article 9, paragraph 2, was one of the most noteworthy.

38. With regard to the amendment submitted by the United Kingdom delegation (A/CONF.63/C.1/L.11),

he agreed with the representative of Australia. The countries which bought more than they sold were concerned about the problem raised by negotiations between the buyer and the seller. In his delegation's view, there was basically little need to refer to the terms of the contract provided their validity was recognized by national law. However, the question deserved to be considered at a later stage in the light of the following articles, especially article 10, paragraph 3.

39. In conclusion, he endorsed the comments by the representative of Ghana and felt that the study of the definitions in article 1 should be resumed after the whole of the draft Convention had been considered.

40. Mr. JEMIYO (Nigeria) said he favoured replacing the term "prescription" in paragraph 1 by the word "extinction", as proposed by Brazil. His delegation considered that the Czechoslovak amendment referred to points which usually came within the competence of national jurisdictions and were implicit in the current wording of paragraph 1. It also agreed with the proposal that the word "Government" should be inserted in paragraph 3, subparagraph (f).

41. Mr. KRUSE (Denmark) said he understood the motives which had prompted the British delegation to submit its amendment (A/CONF.63/C.1/L.11), but felt it was pointless to amend article 1 since article 21, paragraph 3, dealt with the situation which the amendment was intended to regulate.

42. With regard to the Brazilian proposal that the word "prescription" in paragraph 1 should be replaced by the word "extinction", he observed that the two terms were not exactly synonymous. Moreover, the proposed amendment would cause difficulties since article 1, paragraph 1, would no longer fit in with article 24, paragraph 2, or article 23.

43. Mr. FRANTA (Federal Republic of Germany) agreed with the second observation by the representative of Denmark. In the law of the Federal Republic, prescription did not entail extinction of rights.

44. Mr. GUEST (United Kingdom) said he was prepared to accept the formula proposed by the representative of Greece as a replacement for the British amendment. The proposed new wording corresponded to his delegation's intentions.

45. Like preceding speakers, he wished to stress that the English terms "limitation" and "prescription" were not synonymous. Those were two concepts which derived from different legal systems. Article 1, paragraph 1, rightly brought out the fact that the Convention would apply equally to the two concepts. The purpose of the draft under consideration was to regulate the consequences of the application of those two institutions, which differed in theory but had similar effects in practice.

46. Mr. LOEWE (Austria) said he feared that the abundant documentation and the complexity of the questions under consideration might paralyse the Committee's work. He would like a measure of order to be established in the discussion of the proposals before the Committee.

47. Referring to document A/CONF.63/C.1/L.5, he observed that the term "invalidity" was ambiguous. He would like the Czechoslovak delegation, which had submitted that amendment, to explain whether it referred to invalidity proper or to an action for annulment.

48. His delegation considered that, contrary to the United Kingdom proposal, it would be preferable not

to mention the terms of the contract in paragraph 1. If the Committee none the less wished to retain the idea proposed by the British delegation, he would favour the formulation proposed by the representative of Greece.

49. He failed to see why the United States delegation had proposed an amendment to paragraph 3, subparagraph (e). The situations referred to in that amendment were regulated by article 14. If that article was to have any practical effect, it was obvious that the sphere of application of the Convention must encompass the situations to which it referred.

50. The amendment submitted by the Federal Republic of Germany (A/CONF.63/C.1/L.20) would introduce into the Convention theoretical juridical con-

siderations which in his delegation's view would be out of place. On the other hand, the amendment proposed by Singapore (A/CONF.63/C.1/L.21) constituted a useful clarification which was quite acceptable. His delegation considered that the French amendment (A/CONF.63/C.1/L.22) entailed duplication with article 1, paragraph 1.

51. The CHAIRMAN, referring to the first comment by the representative of Austria, said that the Bureau, in co-operation with the Secretariat, would try to prepare a systematic summary of the debate which would be submitted to the Committee in the form of a questionnaire, so that the Committee would find it easier to take a decision on points still pending.

*The meeting rose at 12.35 p.m.*

## 3rd meeting

Wednesday, 22 May 1974, at 3.15 p.m.

*Chairman:* Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.3

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add.1 and 2, A/CONF.63/C.1/L.5, L.11, L.14, L.20, L.21, L.22, L.25, L.26, L.27) (continued)**

### *Article 1 (continued)*

1. The CHAIRMAN invited members to indicate, by show of hands, their views on a number of proposals that had been put forward in connexion with article 1 of the draft Convention. Those views would be transmitted to the Drafting Committee for further action as appropriate.

2. Mr. GUEIROS (Brazil), speaking on a point of order, recalled the proposal made by the representative of Singapore that the Committee should hold no further discussion on article 1 until it had considered the other articles of the draft Convention.

3. Mr. SAM (Ghana), supported by Mr. ROGNLIEN (Norway), Mr. FRANTA (Federal Republic of Germany) and Mr. TAKAKUWA (Japan), recalled that the intention of the proposal by the representative of Singapore had been that no definitive action should be taken on article 1 until the other articles had been considered. That did not mean that article 1 should not be discussed and indicative votes taken.

4. The CHAIRMAN drew attention to the Czechoslovak proposal made at the preceding meeting that actions and rights arising from the invalidity of a sales contract should be included in the sphere of application of the Convention.

*The Czechoslovak proposal was adopted.*

5. The CHAIRMAN drew attention to the amendment to article 1, paragraph 2, proposed by the representative of Greece, which had been accepted by the United Kingdom representative in lieu of his own amendment (A/CONF.63/C.1/L.11). The Greek amendment consisted in replacing the words "shall not

affect a rule of the applicable law providing" by the words "shall not apply to".

*The Greek amendment was adopted.*

6. The CHAIRMAN drew attention to the amendment to article 1, paragraph 3, proposed by the representative of France (A/CONF.63/C.1/L.22).

7. Mr. MUSEUX (France) said that, following consultations with other delegations, his delegation had concluded that its amendment was not yet ripe for discussion. It intended to submit a revised text at a later stage.

8. He proposed that the Committee should defer further consideration of article 1, paragraph 1, to the next meeting.

*It was so decided.*

9. The CHAIRMAN drew attention to the United States amendment to article 1, paragraph 3 (A/CONF.63/C.1/L.14), which would entail consequential amendments to article 14.

10. Mr. REESE (United States of America) proposed that the Committee should discuss his amendment in the context of its consideration of article 14.

*It was so decided.*

11. The CHAIRMAN drew attention to the amendment to article 1, paragraph 3, proposed by the representative of Singapore (A/CONF.63/C.1/L.21).

*The Singaporean amendment was adopted.*

12. The CHAIRMAN said that the representative of India had submitted an amendment to article 1, paragraph 3 (f), which would be circulated in writing shortly as document A/CONF.63/C.1/L.27. He invited the representative of India to introduce his amendment.

13. Mr. GOKHALE (India) said that his amendment consisted in the replacement of paragraph 3 (f) by the following text:



"(f) 'Person' includes corporation, company, association or entity, whether private or public, which can sue or be sued in its own name under its national law but does not include a government when the legal proceedings are taken by that government in its own territory."

14. The purpose of the amendment was twofold: on the one hand, to define those persons who could enter into a contract of international sale, and, on the other hand, to remove any problems that might arise in respect of contracts entered into directly by Governments.

15. Mr. NJENGA (Kenya) noted that the wording of the first part of the Indian amendment was identical to that of his own delegation's amendment to paragraph 3 (f) (A/CONF.63/C.1/L.26). His delegation would be pleased to associate itself with the entire Indian amendment. Contracts entered into by Governments in their capacity as such fell within the scope of public rather than private law.

16. Mr. BELINFANTE (Netherlands) said that the provisions of paragraph 3 (f) appeared to his delegation to be superfluous. It was a matter of common knowledge that the definition of the term "persons" included physical persons, combinations of physical persons (partnerships) and legal persons (*personnes morales*). The entire question was needlessly complicated by the fact that the French version of the subparagraph contained no translation of the English word "corporation".

17. Referring to the second part of the Indian amendment, he observed that Governments generally did not have legal personality. Only States or their legal representatives could sue or be sued. Any reference to States in the subparagraph would, however, raise problems of interpretation, since States were often immune from legal process.

18. He felt that the subparagraph should be deleted rather than confined to a statement of the obvious.

19. Mr. LOEWE (Austria) said that he was favourably disposed to the first part of the Indian amendment, which embodied a more accurate definition of the term "person" than the existing text. Unlike the representative of the Netherlands, he felt that legitimate doubts often arose as to the definition of that term, particularly in respect of legal persons and entities.

20. As to the second part of the amendment, he agreed with the representative of the Netherlands that Governments generally did not have legal personality, such personality being conferred on the State. He would oppose any attempt to provide more favourable treatment for States than for other legal persons in international trade. The question of prescription could not arise in respect of a State that was immune from legal process. The concepts of immunity and prescription should therefore be kept separate.

21. Mr. ROGNLIEN (Norway) said that, in the absence of any substantive discussion on the provisions of paragraph 3 (f), the question of its wording should be referred to the Drafting Committee. The Committee appeared to agree that the term "person" included all natural and legal persons, whether public or private, who could sue or be sued.

22. Mr. NYGH (Australia) said that, like the representative of Austria, he saw some merit in the first part of the Indian amendment. However, he agreed with the representative of Norway that the matter of drafting could be left to the Drafting Committee. The Indian

amendment took care of his own delegation's main concern, which was to ensure that the definition of "person" included limited companies and unincorporated partnerships.

23. He had some doubts as to the advisability of including a reference to Governments, or even to States, in the definition of a person. The direct participation of States in commercial activities represented a growing trend. The status of agencies which engaged in such activities on behalf of States was often in doubt and the law of immunity varied from country to country, being particularly generous in certain common-law countries. He preferred the text to remain silent on the subject, since otherwise it could give rise to difficulties of interpretation.

24. Mr. GUEST (United Kingdom) endorsed the remarks made by the representative of Australia.

25. Mr. KRISPIS (Greece) said that his delegation preferred the existing text of paragraph 3 (f), with the understanding that the term "person" included Governments or States which entered into contracts under private law.

26. Mr. KOPAC (Czechoslovakia) agreed with the representative of the Netherlands that paragraph 3 (f) should be deleted. The term "person" was understood in different ways in different countries, and it was impossible for the Convention to provide a comprehensive definition. It was clear that the buyer and the seller must have legal capacity in order to enter into a contract of international sale; the question whether they had such capacity should be solved under the applicable national laws. Apart from being superfluous, any attempt to define the term "person" would involve difficulties of translation into all the working languages of the Conference.

27. Mr. STALEV (Bulgaria) endorsed the remarks made by the representative of Czechoslovakia.

28. Mr. GUEIROS (Brazil) felt that paragraph 3 (f) should be retained. The definition of "person" was clearly not meant to be exhaustive, since it was introduced by the word "includes". The second part of the Indian amendment was unnecessary, since Governments, as public entities, were covered by the word "entity". He preferred the original wording of the subparagraph, and felt that any problem of translation into French could be dealt with by the Drafting Committee.

29. Mr. FRANTA (Federal Republic of Germany) said he believed that a definition of the term "person" should be retained in the Convention. The problem of the translation into French of the English word "corporation" should be dealt with by the Drafting Committee.

30. His delegation supported the first part of the Indian amendment, which contained a clearer definition than the text as currently drafted, but opposed the second part for the reasons stated by the representative of Australia.

31. Mr. SUMULONG (Philippines) said his understanding of paragraph 3 (f) was that it included natural and legal persons. The question of immunity should be decided by the rules of private international law. Paragraph 3 (f) should be retained.

32. Mr. LEBEDEV (Union of Soviet Socialist Republics) felt that the Indian amendment should be discussed first, but said that delegations must be given an opportunity to study it in writing before taking a decision

on it. A proposal had been made to delete paragraph 3 (f), but the Committee could not take a decision on that until it had considered all the amendments.

33. The CHAIRMAN said that the text of the Indian amendment was being circulated, and suggested that in the meantime the Committee should consider the remaining amendments to article 1, which mainly affected the English text. Proposals concerning paragraph 1 included the replacement of the words "relating to" by the words "arising from", the insertion of the word "movable" before the word "goods", and the replacement of the word "rights" by the word "claims". There was also a proposal to replace the word "duties" in paragraph 3 (a) with the word "obligations".

34. Mr. GUEIROS (Brazil) asked whether the question of replacing "relating to" by "arising from" was still at issue, in view of the fact that the Committee had already taken a decision on the question of invalidity raised by Czechoslovakia. The addition of the word "movable" would simply be a statement of the obvious, because all goods in international trade were movable goods. He was strongly in favour of replacing the word "duties" in paragraph 3 (a) with the word "obligations".

35. Mr. BELINFANTE (Netherlands) said that, if the English text was interpreted with the help of the other language texts, the word "movable" would not be necessary. The expression "movable goods" had not been used in the current ULIS text to translate the French "*objets mobiliers corporels*". It had been felt in 1964 that the word "movable" was superfluous, and he saw no reason to deviate from ULIS usage.

36. Mr. KOPAC (Czechoslovakia) said he wished to clarify the intention of his amendment (A/CONF.63/C.1/L.5). It was his delegation's opinion that article 1, paragraph 1, should define the scope of the Convention precisely. It would not be sufficient simply to replace the words "relating to" with the words "arising from", since that would exclude rights created as the result of the termination or invalidity of a contract. Some delegations were opposed to extending the Convention to cover actions for annulment, but the purpose of the amendment was to cover such questions as the return of payments to the buyer.

37. Mr. LOEWE (Austria) asked what the Drafting Committee was expected to do if amendments were referred to it without a decision by a Main Committee. All the amendments submitted involved points of substance. The Drafting Committee must be given a clear mandate. The replacement of the words "relating to" by "arising from" would change the emphasis of paragraph 1 and might have very different consequences. That was not, therefore, simply a drafting change. The Czechoslovak amendment involved considerable points of substance. For example, the representative of Czechoslovakia had said that claims arising from invalidity should be covered but that claims of invalidity should not. That seemed to contradict the Committee's earlier decision, which would keep actions for invalidity within the scope of the Convention.

38. Mr. GONDRA (Spain) asked whether drafting amendments should be submitted only to the Drafting Committee or whether they could be introduced in the First Committee.

39. The CHAIRMAN replied that drafting amendments should be submitted to the Drafting Committee through the Secretariat.

40. Mr. ALFARISI (Iraq) said he did not entirely agree with the representative of Austria and the Drafting Committee required definite instructions. If the First Committee approved a change, there was no need for the proposal to go to the Drafting Committee; if the Committee voted against an amendment, the Drafting Committee would not be able to consider it. Rule 47, paragraph 2, of the rules of procedure defined the duties of the Drafting Committee; those duties presupposed the discussion of amendments in a Main Committee or in plenary meeting of the Conference. The discussion itself was the indication required by the Drafting Committee, which would have to decide whether an amendment involved questions of form or substance.

41. The CHAIRMAN suggested that the Committee should vote on the Czechoslovak amendment (A/CONF.63/C.1/L.5).

42. Mr. GUEIROS (Brazil), speaking on a point of order, said that the Committee had already taken a decision on the words "or invalidity". It could only discuss and take a decision on the words "arising from", "breach" and "termination".

43. Mr. KOPAC (Czechoslovakia) said he had had some doubts about the vote on the word "invalidity" because it was too vague. His delegation had wished to ensure that the Convention covered the consequences of invalidity, not actions for invalidity. In any case, the fundamental point of substance to be decided was whether the scope of the Convention should be defined precisely—by enumerating the cases to be covered, as had been done in his amendment—or not. He was quite willing to see his amendment put to the vote.

44. Mr. BELINFANTE (Netherlands) observed that, if article 34 of the draft Convention was retained, the Czechoslovak proposal would not be necessary.

45. Mr. MUSEUX (France) agreed with the representative of the Netherlands. He pointed out that the Czechoslovak amendment related to paragraph 1, which the Committee had decided to discuss at the following meeting. He requested that the discussion should be suspended accordingly.

46. Mr. LOEWE (Austria) said the Committee must take a decision on the question of principle involved in the Czechoslovak amendment, which was whether the scope of the Convention should be defined in specific or general terms.

47. Mr. KOPAC (Czechoslovakia) agreed. If his amendment was accepted, the Committee could then discuss the invalidity issue.

48. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that the remaining aspects of the Czechoslovak amendment—other than the question of invalidity, which had already been voted upon—were drafting matters and should be referred to the Drafting Committee.

49. Mr. KHOO (Singapore) associated himself with the views of the representatives of the Netherlands and the USSR; the questions of breach and termination of the contract were purely drafting matters. The substance of the matter was that the Convention would extend to invalidity, although it might be desirable to add a clarifying provision to paragraph 1 to emphasize that fact.

50. Mr. STALEV (Bulgaria) said it was very important in the early stages of the Conference to draw a



clear distinction between matters of substance and matters of drafting. The Drafting Committee should be left to formulate paragraph 1 so as to include actions or claims relating to or arising from invalidity.

51. The CHAIRMAN pointed out that the First Committee must decide, in connexion with the Czechoslovak proposal, whether to include the questions of breach and termination of the contract in paragraph 1.

*The Czechoslovak proposal for the inclusion of the questions of breach and termination in paragraph 1 was adopted, subject to drafting changes.*

52. The CHAIRMAN suggested that the Committee should take up the amendments submitted by India (A/CONF.63/C.1/L.27) and Kenya (A/CONF.63/C.1/L.26), which were closely related.

53. Mr. NJENGA (Kenya) agreed that there was a close relationship between the two proposals, but felt that they should be considered separately. Members should have no serious difficulty in accepting his delegation's amendment, without prejudice to the second part of the Indian amendment relating to Governments—which he, for his part, supported.

54. Mr. NYGH (Australia) reiterated his delegation's support in principle for the Kenyan proposal, but not for the Indian amendment. However, the words "under its national law" should be scrutinized, since he was not sure what, for example, was the national law of a partnership.

55. Mr. KRISPIS (Greece) said that, while he preferred the original text of paragraph 3 (f), he took the additional words in the Kenyan amendment to be merely explicatory, and could therefore accept that amendment. However, the Indian amendment constituted a matter of substance which he could not support.

56. Mr. ROGNLIEN (Norway) agreed with the representative of Australia that a reference to national law would be ambiguous. If such a reference was to be made at all, it should be made to the law, including the conflict rules, applied by the court seized with the case. However, since the reference would necessarily be lengthy, it would be better to omit all mention of national law. Otherwise, paragraph 3 (f), as amended by Kenya, would be impossible to apply before the forum was fixed, since even if it was clear what was meant by national law, the law that ultimately applied would be that of the court subsequently seized with the case.

57. The possibility of including the words "whether corporate or not", as well as the words "which can sue or be sued", should be considered by the Drafting Committee.

58. Mr. GUEIROS (Brazil) said he agreed in part with the representative of Norway. He could accept the Kenyan amendment except for the words "under its national law", which would give rise to problems of the *lex fori*. The words "whether corporate or not" would be unnecessary, since the word "entity" was broad enough to cover both possibilities. However, the matter could be left to the Drafting Committee.

59. Mr. ALFARISI (Iraq) pointed out that, under rule 40 of the rules of procedure, the Indian amendment (A/CONF.63/C.1/L.27) should be considered first, since it was furthest removed from the original text. Consideration should then be given to the Netherlands and Brazilian oral amendments, followed by the Kenyan amendment (A/CONF.63/C.1/L.26).

60. The CHAIRMAN said he believed that the Netherlands oral amendment should be considered first, since it would delete paragraph 3 (f) entirely.

61. Mr. BELINFANTE (Netherlands) said he wished to explain his oral proposal to delete article 1, paragraph 3 (f). The only other place in the Convention where the word "person(s)" appeared was in article 1, paragraph 3 (a), which he was sure could be reworded to avoid the use of the word; thus, paragraph 3 (f), and the whole discussion on it, were superfluous.

62. The CHAIRMAN invited the Committee to indicate whether it wished to adopt the Netherlands proposal for the deletion of article 1, paragraph 3 (f).

*The proposal was rejected by 17 votes to 11.*

63. The CHAIRMAN invited the Committee to consider the Kenyan amendment (A/CONF.63/C.1/L.26).

64. Mr. NYGH (Australia) proposed the deletion of the words "under its national law".

65. Mr. KRISPIS (Greece) opposed the Australian proposal. The term "national law" had two possible meanings; it might refer to substantive law, excluding conflict of laws rules, or it could mean that private international law rules were included. Whichever meaning was accepted, the result was probably the same: if reference was made directly to municipal law, the *lex fori* applied. If there was a conflict of laws, the rules of the *lex fori* applied, under a possible characterization of the question as procedural.

66. Mr. OCHIRBAL (Mongolia) agreed with the representative of Iraq that the first amendment to be discussed should be the one furthest removed from the original text, namely, the Indian amendment.

67. He opposed the deletion from the Kenyan amendment of the words "under its national law", since without them it would be very difficult for the court to decide whether or not a particular corporation or company was a legal person.

68. Mr. LOEWE (Austria) said that the Kenyan amendment would be a noticeable improvement on the original text. He wished to point out, however, that the use of the French word "*groupement*" to translate the original English term "entity" was incorrect, since the two words did not necessarily mean the same thing. The term "entity" was a legal formula used to indicate that it could sue or be sued. He suggested that the French equivalent was the word "*entité*", which had already been used in certain other conventions.

69. He was strongly in favour of omitting the words "under its national law". The Convention was not intended to formulate private international law. A court could consider the capacity to sue or be sued under the *lex fori* or under the law of the country to which, in the court's view, the entity belonged.

70. Mr. NJENGA (Kenya) said that he could agree to the deletion of the words "under its national law", since the substance of his amendment would not be altered.

71. Mr. MUSEUX (France) agreed with the representative of Iraq on the need to comply with the rules of procedure. If the Indian amendment was adopted, there would be no need to vote on the Kenyan proposal.

72. Mr. KHOO (Singapore) said he would be unable to vote in favour of the Kenyan amendment, even in its revised form. He had difficulty with the words "in

its own name", since they had implications where agents and principals were concerned. Another difficulty was that in some countries the Government could be sued, but not necessarily in its own name; sometimes charges were brought against a public official, such as the Attorney General. If the words in question were deleted, he could vote in favour of the amendment.

73. Mrs. MELNICK (Ukrainian Soviet Socialist Republic) drew attention to an omission from the Russian text of the Kenyan amendment (A/CONF.63/C.1/L.26) which considerably narrowed the meaning of the word "person", thereby restricting it to corporations, companies and the like.

*The meeting rose at 5.50 p.m.*

## 4th meeting

Thursday, 23 May 1974, at 10.50 a.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.4

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.1, L.5, L.12, L.15, L.20, L.22 to 28, L.34 to 36, L.38) (continued)

#### Article 1 (continued)

1. Mr. BELINFANTE (Netherlands) noted with satisfaction that the ideas he had put forward at the previous meeting and had tried to express in a draft amendment (A/CONF.63/C.1/L.36) had found some support among participants. None the less, the wording proposed by the French delegation in document A/CONF.63/C.1/L.34 was certainly more satisfactory and he therefore withdrew his suggested amendment in favour of the French text.

2. The CHAIRMAN said that he understood that the delegation of the Federal Republic of Germany would prefer the Committee to defer the consideration of amendment A/CONF.63/C.1/L.20 until a decision had been reached regarding the French amendment (A/CONF.63/C.1/L.34).

3. Mr. MUSEUX (France) said that the text of the amendment proposed by his delegation had been drawn up in haste and was probably in need of revision. He pointed out an omission in paragraph 1 where the words "between the buyer and the seller" should be inserted after the words "in relations". The aim of that amendment was the same as that of the French delegation's amendment to article 1 (A/CONF.63/C.1/L.22): a formula had to be found which would overcome the difficulties encountered with the concepts of prescription and limitation. The problem was to define the scope of the Convention without using technical terms. That was why subparagraphs (a) and (b) of the amendment described the effects of prescription through the concept of "time-limits at the expiry of which: (a) the creditor may no longer assert his claims in a proceeding; (b) the debtor may oppose the implementation of a claim". That wording avoided any allusion to either prescription or limitation by simply mentioning "time-limits".

4. Mr. KRISPIS (Greece) said that he would like to have more details on the exact meaning of subparagraph (b) of the French amendment. His delegation regarded that subparagraph as superfluous since the idea which had motivated the French delegation was sufficiently clear from subparagraph (a).

5. Mrs. KOH (Singapore) said that she, too, would welcome more details regarding the exact scope of the

French proposal. Her delegation wondered whether it would not have the effect of rendering article 24 of the draft Convention completely ineffective. In fact, it was to be feared that a party could not rely on his claim as a defence if the latter had been barred by reason of limitation. If that was the case, she could not support the French amendment.

6. Mr. MUSEUX (France) said, in reply to the representative of Greece, that, in order to appreciate the distinction between subparagraphs (a) and (b), the matter had to be considered from the procedural point of view. In some cases, the creditor's claim could be maintained despite prescription, while in others the debtor would have grounds to oppose the implementation of a claim precisely because of prescription.

7. In order to allay the fears of the representative of Singapore, he stressed that the definition proposed by his delegation concerned only the scope of the Convention and in no way prejudged the possibility of asserting a claim.

8. Mr. MUKUNA (Zaire) thought that the French proposal had the great merit of being clear. It was important to consider that a proceeding formed a whole: both the legal action and the claim. Legal action was a subjective right to institute proceedings and could obey certain regulations inherent in such proceedings. Subparagraph (b) was perfectly justified and must be maintained in order to preserve the regulations governing legal action, but not claims.

9. Mr. GUEIROS (Brazil) proposed the following wording, in the hope that the French delegation could accept it:

"This Convention shall apply to prescription, in the sense of limitation of legal procedures and of precluding a right, by the determining lapse of time, between the buyer and seller against each other, relating to a contract of international sale of goods."

10. His delegation thought that after the word "arising" the words "between the buyer and the seller" should be inserted, but it would prefer the final phrase of the first part of paragraph 1 of the French amendment to read as follows: "questions relating to the lapse of time at the expiry of which:". It favoured maintaining subparagraph (a) of that amendment as it stood, but would prefer that the text of the English version of subparagraph (b) should conform more closely to the French version and read as follows: "may oppose the exercise of a right". In order, in the English text, to avoid repeating the words "time-

limits", the final sentence should read: "In this Convention, the period of time is expressed by the word 'time-limits'".

11. Mr. KOPAC (Czechoslovakia) said that the French amendment was an excellent means of overcoming the difficulties encountered by the Conference. His delegation none the less had some hesitations regarding the substance of that amendment. Rather than try to define the concept of prescription, it would be better to try to define the applicable national or international regulations, which would be replaced by the Convention. His delegation therefore suggested that after the words "at the expiry of which" the following should be inserted: "under the applicable law:". Without that clarification, subparagraphs (a) and (b) would be out of line with the provisions of article 24. The last sentence should be deleted since it seemed to be superfluous.

12. Mr. GUEST (United Kingdom) found the idea put forward by the French delegation interesting, and regretted that the English version of the text left much to be desired. The French amendment had the merit of eliminating technical terms, the use of which raised major difficulties in view of the different concepts adopted by the legal systems throughout the world. His delegation hoped that the other delegations would be willing to consider the substance of the French proposal without attaching too much importance to the wording. It would be the responsibility of the Drafting Committee—which should moreover note the suggestion of the Czechoslovak delegation concerning a reference to the applicable national law—to make the necessary improvements and incorporate further clarifications as required.

13. Mr. TAKAKUWA (Japan) endorsed the views of the United Kingdom delegation and shared the doubts of the representatives of Greece and Singapore. However, in view of the elucidations given by the French representative, his delegation thought that the Drafting Committee could make the necessary improvements to the French amendment.

14. Mr. HARTNELL (Australia) said that his delegation was ready to accept both the original text of paragraph 1 of article 1 and the French amendment. However, the question arose of how to reconcile the decision taken at the previous meeting with the French amendment. It did not seem clear, on reading the text, which mentioned only "relations arising out of a contract of international sale" that annulment proceedings were also included. It would be advisable, in the English text, to add the word "legal" before the word "proceeding".

15. Mr. SUMULONG (Philippines) said that the French amendment had the advantage of avoiding the use of the words "prescription" and "limitation", which caused thorny problems. By stating in its amendment that the Convention applied only to questions relating to the time-limits at the expiry of which the creditor might no longer assert his claims, the French delegation had satisfied the apprehensions which he (Mr. Sumulong) had expressed at the penultimate meeting.

16. His delegation supported the French proposal, but shared the view of the representative of Greece that subparagraph (b) should be deleted.

17. Mr. GOKHALE (India) considered that the French amendment certainly improved the original text of article 1 of the draft Convention, and supported the Australian proposal that the word "legal" should

be inserted before the word "proceeding", in subparagraph (a) of the English text. He shared the view of the representative of Czechoslovakia that the last sentence of the French amendment need not be maintained.

18. Mr. ROGNLIEN (Norway) said that the French amendment was commendable, but the words "prescription" and "limitation" should be maintained. Other articles of the draft Convention dealt with the effects of prescription. The businessmen who would have to apply the Convention should be able to have an idea of its scope without entering into difficult problems of interpretation.

19. Paragraph 1 of article 1 should be maintained, with the addition of a sentence which would reproduce the proposed French amendment. The Drafting Committee could take that suggestion into account when elaborating the final version of paragraph 1.

20. Mr. GONDRA (Spain) supported the substance of the French proposal. However, his delegation felt that the Netherlands text was better with regard to form, in that it was more general and had the advantage of allowing for the possibility that a legal action or a claim might be extinguished after a period of time. It would be better for the French amendment to be reworded to take account of that possibility, which would in any case bring it into line with the provisions of article 24.

21. Mr. NJENGA (Kenya) welcomed the French proposal, although he felt that the final sentence of the text could be omitted so as to avoid the difficulties it gave rise to. His delegation did not support the proposal by the representative of Greece to omit subparagraph (b). That omission would weaken the scope of the article and, hence, of the Convention which regulated the rights and actions of the two parties. In that connexion, he stressed that, in accordance with the provisions of article 23, a creditor could in certain cases initiate legal proceedings although the limitation period had expired. Conversely, the debtor must be able to oppose any exception; those two methods were inseparable and indispensable.

22. He endorsed the remarks made by the representative of the United Kingdom, and also considered that the French amendment should be sent to the Drafting Committee so that it could make the necessary improvements, taking into account the decisions made by the Committee at its previous meeting.

23. Mr. LEBEDEV (Union of Soviet Socialist Republics) recognized the usefulness of the French proposal and understood, as the French representative himself had said, that for the time being it was only a rough draft. The draft now had to be improved, and in particular more precision was needed in the first part of the amendment, taking into account the decision made by the Committee at its previous meeting. With regard to subparagraphs (a) and (b), the two ideas expressed in them were linked and should be retained. As the representative of Kenya had pointed out, it was not enough to retain either one or other of the two subparagraphs. In order to accommodate the objections which had been made, a sentence specifying that the preceding text would not prejudice the other provisions of the Convention could perhaps be inserted after subparagraph (b).

24. Mr. STALEV (Bulgaria) supported the French proposal and felt that the two subparagraphs should be retained.

25. Mr. SMIT (United States of America) considered that the original text of paragraph 1 gave a sufficiently clear idea of the scope of the Convention. If it was made too explicit, there was a risk of ambiguity. Thus, the situation envisaged in article 25 of the draft did not correspond to either of the two subparagraphs of the French proposal. His delegation therefore felt that the original text should be retained or, if that solution was not acceptable, that the suggestions made by the Norwegian representative should be followed.

26. Mr. JENARD (Belgium) supported the French amendment. He had appreciated some of the remarks made during the discussion, but felt that they could be taken into account during the later stages of work by the Drafting Committee.

27. Mr. JEMIYO (Nigeria) supported the French proposal and also approved the drafting improvements which various representatives had proposed. However, he would agree to revert to the original text if the amendment under consideration was not acceptable to the Committee.

28. Mr. BELINFANTE (Netherlands) thanked the Spanish representative for having brought the discussion back to the amendment which had been submitted and then withdrawn by his delegation. The proposals by France and the Netherlands in fact had the same aim: to avoid the use of the terms "prescription" and "limitation" in the English text of article 1, and to replace them with exact words which could not lead to any misunderstanding. He had felt that it was preferable to withdraw the text which he had proposed because it still contained a technical term (the verb "extinguish") which could be interpreted in various ways.

29. With regard to the proposal made by the Norwegian representative, he pointed out that as long as the words "prescription" and "limitation" remained in the text without being distinguished and carefully defined, the Committee would encounter the same difficulties.

30. Mr. FRANTA (Federal Republic of Germany) said that on the whole he supported the French proposal, which had the merit of avoiding the use of terms which were likely to be understood in several ways. Subparagraph (b) of the amendment under consideration should be retained, because it corresponded to the requirements of those legal systems in which prescription was a question of substantive law. The wording of the subparagraph avoided the difficulties which would be created by a reference to the extinction of rights and therefore seemed equally acceptable in the two great legal traditions.

31. Some representatives had referred to the provisions of article 23 *et sequitur* of the draft. That was due to a misunderstanding. The purpose of paragraph 1 of article 1 was simply to define the scope of the Convention in relation to the national law which would otherwise be applicable, but did not prejudice in any way the provisions of the Convention itself. It would therefore be desirable, as the representative of Czechoslovakia had proposed, to indicate that clearly at the outset in paragraph 1.

32. Moreover, it was clear that the French proposal needed to be reworded so as to take into account the fact that the Committee had decided to accept the changes to paragraph 1 proposed in the Czechoslovak amendment (A/CONF.63/C.1/L.5), but the Drafting Committee could be responsible for such rewording.

33. Mr. SAM (Ghana) said he appreciated the simplicity of the text proposed by the French representative, but preferred the solution advocated by the Norwegian representative, which would incorporate the French amendment. The French text should be changed as suggested by the Czechoslovak representative, whose remarks raised an important point.

34. The CHAIRMAN noted that a majority of representatives had favoured the French proposal, the text of which would replace paragraph 1 of the draft, it being understood that the Drafting Committee would alter the wording in the light of the decisions made previously by the Committee and the reservations and suggestions made during the discussion. Two representatives had expressed the wish to retain paragraph 1 of the draft and to include the text of the French proposal in paragraph 3 of article 1. If he heard no objections, he would take it that the Committee adopted the French amendment in principle and decided to refer it to the Drafting Committee.

*It was so decided.*

35. Mr. DIAZ BRAVO (Mexico) recalled that the Spanish representative had endorsed the amendment submitted and then withdrawn by the Netherlands and indicated that his delegation wished to do likewise. There were two main advantages in that text: it was concise and drafted in simple terms and it highlighted the complete extinction of any possibility of proceedings.

36. Mr. SUMULONG (Philippines) withdrew his amendment (A/CONF.63/C.1/L.35) which had the same purpose as the French amendment.

37. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that his delegation would like to have more time to study the text of the Indian amendment (A/CONF.63/C.1/L.27) as it raised complex legal questions. He requested that consideration of that amendment be postponed until a later date.

38. The CHAIRMAN, referring to rule 25 of the rules of procedure of the Conference, invited representatives to comment on the motion for adjournment proposed by the Union of Soviet Socialist Republics.

39. Mr. SAM (Ghana) and Mr. SANDERS (Guyana) supported the motion for adjournment.

*The motion for adjournment was adopted unanimously.*

40. The CHAIRMAN invited the Committee to take up article 2.

41. Mr. FRANTA (Federal Republic of Germany), speaking on a point of order, pointed out that the Committee had not considered the amendment to article 1 put forward by his delegation (A/CONF.63/C.1/L.20). His delegation had agreed that its amendment should be considered after the French proposal, but had in no way withdrawn it. The text proposed in document A/CONF.63/C.1/L.20 had a completely different purpose from the French draft. It sought to make it clear that the Convention did not affect the provisions of domestic law which treated prescription as a matter of procedural law or of substantive law. He considered that it would be useful to include an express statement to that effect in the body of the Convention.

42. The CHAIRMAN recalled that several delegations, in the course of the discussions, had stated that they were opposed to the amendment submitted by the

representative of the Federal Republic of Germany. He invited the representatives to comment on the text.

43. Mr. LOEWE (Austria), speaking on a point of order, recalled that his delegation was not in favour of including the amendment submitted by the Federal Republic of Germany in the body of the Convention. However, as a compromise he proposed that the Committee should decide to incorporate the substance of the amendment in the preamble of the Convention.

44. Mr. FRANTA (Federal Republic of Germany) accepted the proposal made by the Austrian representative.

45. The CHAIRMAN suggested that the proposal made by the Austrian representative should be adopted.

*It was so decided.*

46. Mr. LEBEDEV (Union of Soviet Socialist Republics) felt that the Committee could not take a firm decision without a precise text. He had understood that the Committee had decided to consider the Austrian proposal when it took up the question of the preamble, but he did not think that it could decide immediately that the problem could be solved within the context of the preamble. The Committee would have to decide first whether the Convention would have a preamble and, if so, to consider next the proposal of the Federal Republic of Germany (A/CONF.63/C.1/L.20). The Commission could in no way consider itself bound by a "decision" to specify in the body of the preamble whether prescription was a question of procedure or substance.

47. Mr. LOEWE (Austria) pointed out that he had proposed that the Committee should solve the problem raised by the amendment of the Federal Republic of Germany in the context of the preamble of the Convention. He had suggested that the Convention should have a preamble and that the proposal of the Federal Republic of Germany should be reflected in it in an appropriate form.

48. Mr. KRISPIS (Greece) explained that he had voted in favour of the Austrian proposal because it seemed understood that the Committee would settle later the question of the form to be given to the idea contained in the amendment of the Federal Republic of Germany. His delegation therefore reserved the right to state its position on that point at the appropriate time.

49. The CHAIRMAN stressed that, by its vote, the Committee had decided to include in a preamble the sense and not the wording of the amendment proposed by the Federal Republic of Germany.

50. Mr. ROGNLIEN (Norway) said he doubted whether it was appropriate to tackle the question even in a preamble. He referred to article 3, paragraph 2 which stated: "Unless otherwise provided herein, this Convention shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law". To introduce a provision similar to that proposed by the Federal Republic of Germany would certainly give rise to ambiguities.

51. Mr. MICHIDA (Japan) drew attention to document A/CONF.63/3 which dealt with the methods of work and procedures of the Conference. Paragraph 13 stated: "The plenary may wish to entrust the drafting of a preamble of the Convention to the Drafting Committee with the request that the text so drafted be submitted directly to the plenary". The document

was a memorandum by the Secretary-General which had been tentatively approved by the Committee and he would like to know whether the decision taken on the preamble might contradict its contents.

52. Furthermore, his delegation did not clearly understand the scope of the decision. It had understood that the large majority of members supported the French proposal (A/CONF.63/C.1/L.34) which used a wording more neutral than that of article 1, paragraph 1 and thus avoided emphasizing the difference between the two similar but not identical institutions of the two major legal systems. It appeared therefore that the Committee had accepted the French proposal in substance and had transmitted it to the Drafting Committee. It was only later that the delegation of the Federal Republic of Germany had requested that a decision should be taken on its proposal (A/CONF.63/C.1/L.20) and the Austrian delegation had made a suggestion which had been adopted by the Committee. Accordingly, he suggested that the Drafting Committee should consider the proposal of the Federal Republic of Germany at the same time as the French proposal and should submit to the Committee a new text combining both amendments.

53. Mr. HONNOLD (Chief, International Trade Law Branch) said that the procedure suggested by the Committee's decision was indeed different from that which the Secretariat had proposed in document A/CONF.63/3. That difference did not, however, give rise to any technical difficulty to the extent that the decision taken by the Committee was considered as a recommendation addressed to the plenary Conference. Any proposal by a committee could be reconsidered by the plenary Conference, i.e. in substance, when the Conference took up the question of the preamble.

## Article 2

54. The CHAIRMAN read out the text of article 2.

55. Mr. GUEIROS (Brazil), speaking on a point of order, said that many participants had left the meeting to obtain the pertinent documents. He again requested whether the methods of circulating documents could not be changed so as to avoid such a waste of time.

56. Mr. WATTLES (Executive Secretary of the Conference) said that he had addressed that question to those responsible for the distribution of documents and a reply should soon be forthcoming.

57. Mr. HARTNELL (Australia) said that, in paragraph 1 of the amendment submitted by his delegation (A/CONF.63/C.1/L.1), the reference to article 3, paragraph 1 should be deleted, so that only articles 2 and 3 were mentioned. He would also like to know if, in the second subamendment it had proposed to the Australian amendment, the Norwegian delegation suggested that article 3, paragraph 1 of the draft should be deleted.

58. Mr. ROGNLIEN (Norway) said he favoured in principle the Australian proposal to amend article 2 (A/CONF.63/C.1/L.1). However, the text of article 2, paragraph 1 in the draft Convention seemed preferable to the wording proposed by the Australian delegation.

59. His delegation supported the deletion of article 3, paragraph 1, for it was essential not to limit the field of application of the Convention only to Contracting States.

60. Mr. GONDRA (Spain) suggested that the Committee should start by considering the most radical amendment, that of the United Kingdom (A/CONF.63/C.1/L.12), which proposed the deletion of article 2. It could then take up the question of the relationships between the field of application of the future Convention and that of conventions on the international sale of goods, i.e. it could consider the French amendment (A/CONF.63/C.1/L.38) and the amendment of the Federal Republic of Germany (A/CONF.63/C.1/L.23). In the light of the decisions taken on those points, the Committee would study the amendments to the substance of article 2 as they appeared in the draft.

61. Mr. LOEWE (Austria) stressed the close links which existed between articles 2 and 3. In the opinion of his delegation, the sphere of application of the Convention on Prescription should be the same as that of the Convention dealing with questions of substance concerning the international sale of goods. In that respect, the only text in force was that of ULIS which dated from 1964 and which had not received universal acceptance. There was, moreover, a draft being studied in the UNCITRAL Working Group on the International Sales of Goods the final text of which was obviously not yet available.

62. One solution would be to base the scope of the draft Convention on that of ULIS of 1964. Admittedly, Austria was not a party to the Convention of The Hague of 1 July 1964, but it was nevertheless true that the text of ULIS could provide a satisfactory basis for determining the sphere of application of the future Convention on Prescription. However, such a solution

might perhaps not be realistic, for the work proceeding within UNCITRAL suggested that ULIS would be changed.

63. It would also be possible, as had already been suggested, to adopt the new approach of defining the sphere of application of the Convention on Prescription independently of any text existing on the international sale of goods. Undoubtedly, a convention on prescription, although it would necessarily complement a convention containing substantive rules in the field of the international sale of goods, must have its own independent life. It would nevertheless be unthinkable not to define precisely the legal relationship which must underlie such an instrument.

64. Accordingly, the best solution appeared to be to proceed along the lines of the discussions being held on the revision of ULIS. The solutions which seemed to have been favoured by the UNCITRAL Working Group on the International Sales of Goods were supported by solid majorities and they would probably be maintained until the conclusion of the discussions. It would thus be desirable to adapt the draft Convention on Prescription to the general lines of the draft Convention on the International Sale of Goods being worked out in UNCITRAL and at the same time to make provision for a change in the Convention on Prescription should the Convention on the International Sale of Goods depart from the layout now being proposed. That was the idea underlying the Australian proposal (A/CONF.63/C.1/L.1) paragraph 2 of which corresponded exactly to the revised text of ULIS.

*The meeting rose at 1 p.m.*

## 5th meeting

Thursday, 23 May 1974, at 3.05 p.m.

*Chairman:* Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.5

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.1, L.12, L.15, L.24, L.28, L.38, L.39) (continued)

#### Article 2 (continued)

1. Mr. HONNOLD (Chief, International Trade Law Branch), speaking as Secretary of the United Nations Commission on International Trade Law (UNCITRAL), said that it might be helpful to the Committee if he made a brief introductory statement on article 2, which related to the scope of the draft Convention.

2. The basic question would seem to be: when was a sale international for the purpose of the Convention? The UNCITRAL Working Group on Sales, having studied the rules on that question contained in the Uniform Law on the International Sale of Goods (ULIS) annexed to the 1964 Hague Convention, had concluded that some of the rules could be accepted for the UNCITRAL rules on sales and prescription, while others could not be accepted.

3. One of the tests in the 1964 ULIS was that of article 1, paragraph 1, which laid down that the parties must have their places of business in different States. The UNCITRAL Working Group had retained that text in its revision of ULIS. However, it had found the provision to be incomplete on one important point: the 1964 ULIS set forth no rule to deal with cases where the seller or buyer had places of business in two or more States—a situation that was not uncommon in international trade. The Working Group had accordingly drafted a provision to deal with that situation. Those two provisions were contained in article 2, paragraphs 1 and 2, of the draft Convention before the Committee (A/CONF.63/4).

4. A second aspect of the 1964 ULIS had been found unacceptable by the UNCITRAL Working Groups on Sales and on Prescription. That was the added requirement that either the contract must involve international carriage of the goods or the offer and acceptance must be effected in different States, or in a State other than the place of delivery of the goods. The Working Group on Sales had concluded that those requirements were



difficult to apply in practice, the reasons being set forth in detail by the Working Group in its report on its second session (A/CN.9/52).<sup>1</sup>

5. With regard to international shipment, the Working Group had concluded that in many sales, such as sales FOB rail or truck or sales "ex works", the place where the buyer might take the goods was no concern of the seller. Shipping instructions might be supplied after the making of the contract. The seller might or might not have an idea about where the buyer would take the goods, but since that was no part of the seller's obligation it would not be a part of the contract. Therefore, at the time when the contract was made, the question whether the contract involved international shipment provided an uncertain basis for the basic rules on the applicability of the law.

6. The Working Group had also found practical difficulties with the alternative tests of the 1964 ULIS, dealing with the place where the offer and acceptance might be deemed to have been effected. The basic difficulty was that international contracts might develop out of a series of international communications; that made it difficult to locate the State in which the offer and acceptance might be deemed to have occurred. That test also injected uncertainty in the law and had been rejected by both UNCITRAL Working Groups.

7. Another aspect of the rules of the 1964 ULIS on scope of application had received the careful attention of the Working Group on Sales, namely, the rule that the 1964 Convention would govern sales transactions even though they had no contact with any Contracting State. For example, if the seller and the buyer were in States A and B and the events connected with the sale involved only those two States, neither of which had ratified the Convention, and if litigation could be brought in State C, a Contracting State, the 1964 ULIS provided that State C could apply the Convention to the transaction even though the latter related only to non-contracting States A and B.

8. The Working Group had found that approach unacceptable. Instead, it had provided that its rules would apply either when the States of the seller and buyer were both Contracting States or when the rules of private international law led to the application of the law of a Contracting State.

9. The UNCITRAL Working Group on Prescription, in framing the rules on scope of application, had taken account of the special function of rules on the subject. That function was to prevent litigation, particularly trials of difficult issues of fact about the underlying sales transactions at a time when the evidence about that transaction was stale. For those reasons, the Working Group had concluded that the rules on the scope of the Convention should be as simple and clear as possible, and should not require the litigation of details of the underlying sales transactions.

10. While certain subsidiary and drafting issues had been raised, the Committee might find it efficient to defer consideration of those subsidiary matters until it had reached a decision on the basic question, namely, what international element of the sales transaction would render applicable the rules of the Convention on Prescription.

11. Mr. KAMPIS (Hungary) suggested that article 2, paragraph 1, and article 3 should be discussed together, after which the rest of article 2 could be discussed.

12. Mr. MICHIDA (Japan) said that, while he was not absolutely opposed to that suggestion, he would prefer to have the two texts discussed separately, since they dealt essentially with different matters. At a later stage, they could be discussed together.

13. Mr. GUEIROS (Brazil) supported the view of the representative of Japan not only for the reason he had given, but also because of the United Kingdom proposal (A/CONF.63/C.1/L.12) to delete article 2 entirely.

14. Mr. ROGNLIEN (Norway) felt that article 2, paragraph 1, should be considered together with article 3, paragraph 1, since the Australian amendments (A/CONF.63/C.1/L.1) would replace the former by the latter.

15. The CHAIRMAN ruled that article 2 should be taken up first, independently of article 3.

16. Mr. NYGH (Australia), introducing his amendments (A/CONF.63/C.1/L.1), said his delegation took the view that the scope of the draft Convention was too restrictive; the amendment would therefore make the Convention universally applicable, so far as the courts of Contracting States were concerned.

17. The aim was partly to encourage the growth of a truly international law of international trade and to obviate the need for businessmen to ascertain which States were parties to the Convention at any given time. The simplest procedure was to apply the Convention to all countries, whether Contracting or non-contracting States.

18. Another problem in common-law countries was that the courts considered the laws of limitation—of which several versions flourished in Australia—to be rules of procedure. His delegation felt it was better to apply a rule that had been internationally agreed upon than rules adopted by seventeenth century England.

19. In his amendment, the previously separate provisions of article 2, paragraph 1, and article 3, paragraph 1, had been telescoped. Furthermore, article 3, paragraph 2, would provide parties with a means of opting out of the general rule of universality in article 3, paragraph 1.

20. The Norwegian subamendments (A/CONF.63/C.1/L.28) were interesting, and the differences with respect to article 2 were merely matters of drafting that could be left to the Drafting Committee.

21. Article 2, paragraph 2, of his amendment was the proposed revised version of article 1, paragraph 2, of ULIS. It dealt with a relatively minor situation that could nevertheless arise, particularly in common-law countries, where a local agent of an undisclosed principal acted between the two parties, neither of whom had any notion that an overseas party was involved. Furthermore, if consumer goods were to be included within the scope of the Convention, the text proposed by his delegation would be essential.

22. Paragraphs 3, 4 and 5 of article 2 were merely existing paragraphs renumbered.

23. As to the United Kingdom proposal for the deletion of article 2, he considered that it had no merit. With regard to the proposal by the Federal Republic of Germany concerning article 3 (A/CONF.63/C.1/

<sup>1</sup>See *Yearbook of the United Nations Commission on International Trade Law*, vol. II: 1971 (United Nations publication, Sales No. E.72.V.4), p. 55.

L.39), he fully endorsed the comments made by the representative of Austria at the preceding meeting.

24. Mr. BELINFANTE (Netherlands) drew attention to the comments submitted by his Government, as reproduced in document A/CONF.63/6/Add.1, one of which was that the very convening of the Conference had been inopportune. His Government took that view because the revision of ULIS was still in its preliminary stages and the text might still undergo considerable modification. Furthermore, there was still considerable doubt as to what constituted an international sale. The representative of Austria had outlined three alternative definitions—the original ULIS definition, the eventual revised ULIS definition and the definition given in the draft Convention itself; in the view of his delegation, however, all three definitions were bad. In fact, the draft Convention as a whole was thoroughly bad.

25. For ULIS to be applicable, the 1964 text laid down two sets of conditions, only one of which was that the parties must have their principal places of business in different countries. The definition before the Committee, however, was much too wide. As the Australian delegation had pointed out, paragraph 4 of the commentary on draft article 2 in document A/CN.9/73 noted that one of the parties might not be aware until later that the contract was international, as in the case of a foreign undisclosed principal. That violated the rule of private law that the conditions of contract could not be changed simply by subsequent disclosure; the other party to the contract could not know beforehand who the principal was.

26. In the light of these considerations, he strongly supported the United Kingdom amendment (A/CONF.63/C.1/L.12) for the deletion of article 2. It would indeed be desirable to have a definition but, as he had said, every definition thus far proposed was bad. If a new definition was to be adopted at some future date within the context of the new ULIS, it could then be inserted into the Convention on Prescription. Otherwise, the original ULIS definition could be used.

27. Mr. GUEST (United Kingdom), explaining his proposal for the deletion of article 2, agreed that the proposal seemed irrational: how could the Convention leave undefined the fundamental matter of a contract of international sale of goods? States would then frame their own definitions, and the desired uniformity of law would consequently evaporate.

28. Yet there was some merit in his proposal. Firstly, States that had ratified the 1964 Hague Convention would find it extremely difficult to ratify a Convention on Prescription which embodied a different definition of a contract of international sale. On the other hand, the ULIS definition—which many representatives considered to have serious shortcomings—could not be incorporated into the Convention on Prescription. It could be argued that only a very small number of States had ratified ULIS and that there was no reason why the rest of the world should not proceed without regard to the definition in that Law. The answer to that was that it would be absurd to formulate a definition that differed from the one which would ultimately emerge when the final revised text of ULIS had been completed. That process would require perhaps another two sessions of the UNCITRAL Working Group on Sales, after which the final text would be considered by UNCITRAL and then by a diplomatic conference.

During that process, the definition of a contract of international sale of goods would no doubt undergo fundamental changes. The definition that finally emerged could then be incorporated into the Convention on Prescription by means of a protocol; there would consequently be uniformity between the two Conventions. In any case, certain other conventions relating to the international sale of goods also had no definition of a contract of international sale. He accordingly hoped that careful consideration would be given to his proposal.

29. Mr. ROGNLIEN (Norway) felt that, if the United Kingdom proposal was adopted, no Government—not even the Government of the United Kingdom—would take the trouble to ratify the Convention until the new ULIS had been completed; that process might take many years.

30. He fully agreed with the representative of Australia that the Convention should have universal scope by being applicable to parties in different States, whether Contracting or non-contracting States.

31. He supported the French proposal that, when a State had ratified the original or revised ULIS, the definition and scope applicable under the relevant text of ULIS should also be applicable to the Convention on Prescription; difficulties for those States would thereby be obviated.

32. The problem was how to meet the needs of States not parties to either the original or the revised ULIS. The adoption of a definition that was more limited than that of ULIS would mean that certain contracts of international sale would be subject to ULIS but not to the Convention on Prescription; that would be inconvenient for the parties concerned and, furthermore, the courts would apply their own national rules on prescription. That would be very inconvenient for any party not situated in the State where proceedings were brought, since he would risk coming under the domestic law of a foreign State. On the other hand, it would not lead to the same difficulties if the definition was to be a little broader than that in ULIS.

33. If the scope of the Convention was limited to Contracting States, one might be forced to take account of the rules of private international law; in that case, where one party or both parties to the contract were situated in non-contracting States, the Convention should apply if private international law led to the law of a Contracting State. That problem—the conflict of laws—was greater in the field of prescription than in any other branch of law. In order to avoid the uncertainty of applying rules of conflict of laws, the Convention should have a broad scope as proposed in the Australian amendment.

34. The question of the undisclosed agent had been taken into account in the Australian proposal for article 2, paragraph 2, which accorded with the view of the UNCITRAL Working Group on Sales.

35. If it was still desired—although he, for his part, felt it to be unnecessary—to bring the definition into line with that of the revised ULIS, when adopted, then a revision conference could be convened, as the representative of France had suggested.

36. Mr. JENARD (Belgium), said he was inclined to support the United Kingdom's point of view: it was unwise to multiply definitions in international conventions. Such action would give rise to the very difficult problem of the conflict of conventions.



37. On the other hand, the omission of a definition of a contract of international sale of goods from the Convention would not be a serious matter. There were already conventions on international sales that lacked such a definition, yet that fact did not prevent their ratification. Attempts to formulate a definition could prolong the debate considerably. What was even more serious, a poor definition might be adopted in haste.

38. The Australian amendment in document A/CONF.63/C.1/L.1 was much too far-reaching. If, for example, a contract was drawn up between a German seller and a French buyer and performed in Belgium—assuming the latter to be the only country of the three to have ratified the Convention—the rights of both buyer and seller would be prescribed under German and French law, and also under Belgian domestic law, but could be revived simply because the case might be brought before a Belgian court.

39. It would be infinitely preferable to have no definition for the time being but, instead, to adopt the new ULIS definition when it had been finalized. If the United Kingdom proposal was not adopted, his delegation would submit a proposal for the adoption of the definition contained in the 1964 ULIS.

40. As to the scope of the Convention, he felt that it should be restricted to parties who had their residences or places of business in different Contracting States.

41. Mr. NJENGA (Kenya) said that the United Kingdom amendment was unacceptable. The Conference could not delete a vital definition simply because it might conflict with the provisions of the 1964 ULIS, to which many States were parties. Nor could it be assumed in advance that the definition of the international sales contract that would be embodied in the revised version of ULIS would differ from that contained in the Convention on Prescription. If a definition of the contract was omitted, States might be reluctant to ratify the Convention. The main concern of the Conference should therefore be not to safeguard ULIS, but to adopt a definition relevant to a convention on prescription, on the understanding that the definition could be amended by a protocol to the Convention at a later stage.

42. His delegation viewed with sympathy the proposals made by the representative of Australia. It was not, however, convinced of the need for the Australian amendments to article 2, paragraphs 2 and 3, which appeared to raise problems of interpretation, particularly with regard to the definition of the principal place of business. The delegations of India and Kenya wished to propose an amendment to article 2, paragraph 2, designed to eliminate such problems of interpretation by providing an objective criterion for defining the principal place of business. Paragraph 2 would read:

“Where a party to a contract of sale has places of business in more than one State, his place of business for the purposes of paragraph 1 of this article and of article 3 shall be that place of business 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.”

43. Mr. DIAZ BRAVO (Mexico) said that he would have preferred the Convention on Prescription to form a chapter of the revised ULIS. As things stood, it appeared likely that the two instruments would not be

ratified by the same States in all cases and might well be divorced from each other in practice. Seen in that light, the United Kingdom amendment was consistent with the notion that both instruments should be ratified by the same countries. For that reason, he agreed with the representative of the United Kingdom that the revised ULIS and the Convention on Prescription should contain the same definition of the international sales contract.

44. Mr. NYGH (Australia), referring to the remarks made by the representative of Kenya, said that his delegation was conscious of the difficulties of interpretation to which its amended version of article 2, paragraph 3, might give rise. Since there appeared to be no major difference between himself and the representative of Kenya with regard to the underlying principle of that paragraph, he suggested that both the Australian amendment and that submitted by India and Kenya should be referred to the Drafting Committee for further action.

45. It appeared that the Committee had reached a decisive stage in its work and was now faced with the choice of either proceeding autonomously with the preparation of a convention or postponing the issue of a definition of the international sales contract, pending the final revision of ULIS.

46. Mr. HERBER (Federal Republic of Germany) felt that the Committee should turn its attention to the more general question of the sphere of application of the Convention, leaving aside for the moment the definition of the international sales contract. The Convention was obviously meant to be an adjunct to ULIS, the revision of which had unfortunately not yet been completed. That was no reason to suspend the present Conference, but it should be borne in mind that, with few exceptions, the Convention on Prescription would probably be ratified by the same States which accepted ULIS.

47. UNCITRAL was engaged in the task of constructing a uniform body of law on international sales. Any major difference of scope between the various instruments on the subject would jeopardize that task. The United Kingdom amendment was too radical and would result in States being left free to determine their own definition of the contract in accordance with national law. It was desirable that the Convention should contain a definition as close as possible to that which would be embodied in the revised version of ULIS, but it was impossible to foresee what the latter definition would be. The French amendment (A/CONF.63/C.1/L.38) represented an approach to the problem, in so far as it would enable States parties to the 1964 Convention or any revision thereof to comply with its provisions, while States not parties to that instrument would apply a specific definition embodied in the Convention on Prescription.

48. His own delegation's proposal for a new article 33 *bis* (A/CONF.63/C.1/L.23) was perhaps more flexible than the French amendment, since it would enable any State which was a party to the 1964 Convention on Sales or any future convention on the same subject to declare, by means of a reservation, that it would apply the provisions of the Convention on Prescription exclusively to rights arising from contracts governed by the 1964 Convention or any revision thereof. He felt that such an amendment was the only practical way to deal with the problem at the current stage.

49. As a substantive instrument, the Convention on Prescription should contain some definition of the extent to which it was applicable. He agreed with those members who opposed the principle of universality and felt that the Convention should be applicable solely to Contracting States. He also agreed with the representative of Kenya that a clearer definition of the principal place of business was required.

50. Mr. GOKHALE (India) said he trusted that members would find acceptable the amendment proposed by his delegation and that of Kenya, the purpose of which was to simplify the procedure for determining the principal place of business of a party to the contract of sale.

51. Mr. KRISPIS (Greece) associated himself with those members who felt that the Conference was premature. The Convention on Prescription should be modelled on the revision of the 1964 ULIS. For the reasons stated by the United Kingdom representative, he felt that article 2 should be deleted.

52. The terms of article 2, paragraph 2, of the Australian amendment were excessively complicated. In the event of legal proceedings, a judge would be placed in the invidious position of having to determine whether or not it appeared from the contract or from any dealings between the parties that they had their places of business in different States. Paragraph 3 of the amendment would create uncertainty concerning the rules applicable to prescription, since in many cases it would be difficult to discover whether a place of business other than the principal place of business had a closer relationship to the contract and its performance.

53. In the interest of simplification, a contract of international sale should be defined as any contract which contained an international element. He could not support the French amendment; it would be unprecedented for a convention to contain a reservation clause referring to a future convention.

54. Mrs. KOH (Singapore) noted that most members appeared to feel that the Convention on Prescription and ULIS should contain a uniform definition of an international sales contract. The amendments proposed by the representatives of Kenya and the Federal Republic of Germany seemed to present a workable compromise solution to the problem of achieving such uniformity.

55. Mr. SMIT (United States of America) said that the United Kingdom amendment was unacceptable. The deletion of article 2 would create a chaotic situation in which judges, confronted with the absence of a definition of a sales contract, would be compelled to define the contract by reference to national law. Consequently, definitions would vary from country to country and there would be no uniformity. There was no reason why the Convention should not contain a definition different from that embodied in ULIS, since the two instruments dealt with different problems. Nor was there any apparent reason why the present Conference should be less qualified than the future drafters of a revised ULIS to devise an adequate definition. In any case, a future diplomatic conference could take account of the definition adopted at the present Conference with a view to achieving uniformity. He urged members not to abdicate their functions by leaving the question in abeyance pending the final revision of ULIS.

56. Mr. LOEWE (Austria) endorsed the remarks made by the representative of the United States. The absence of a definition of a contract of international sale would make it impossible for States parties to determine what contracts were covered by the Convention, thus rendering it inoperative.

57. At the same time, he sympathized with the position of those States which were parties to the 1964 Hague Convention on Sales or would become parties to the revised ULIS and which felt that the scope of the Convention on Prescription should be in conformity with that of ULIS. It was preferable to retain a definition of the international sales contract, subject to possible revision at a later stage to bring it into line with the revised ULIS.

58. Mr. SAM (Ghana) endorsed the remarks made by the representatives of the United States and Austria. His delegation could support the amendment proposed by the representatives of India and Kenya, which, together with the Australian and United States amendments, should be referred to the Drafting Committee for further action as appropriate.

59. Mr. GUEIROS (Brazil) also endorsed the remarks made by the representative of the United States. The deletion of article 2 would lead to a chaotic situation in which individual States could adopt their own definition of an international sales contract. He could accept the United States amendment to article 2, paragraph 1 (A/CONF.63/C.1/L.15), except for the insertion of the word "Contracting" before "States".

60. Mr. GONDRA (Spain) said that, in order to resolve the chaotic situation referred to by the United States representative, the Committee should adopt a definition as close as possible to that which had been elaborated thus far by the UNCITRAL Working Group engaged in revising ULIS. The absence of a definition of an international sales contract in a convention containing substantive rules would be unacceptable.

61. The best way to solve the problem for States which were parties to the 1964 Hague Convention or would become parties to the revised version of ULIS was to provide for the possibility of reservations by way of derogation from articles 2 to 4 of the Convention on Prescription, as proposed by the representative of the Federal Republic of Germany (A/CONF.63/C.1/L.23).

62. Mr. MUSEUX (France) said that the diversity of views expressed thus far in debate showed that it was impossible to devise a uniform definition that would be acceptable to all countries. A definition adopted with majority support would not provide a satisfactory solution. The construction of a comprehensive body of law on international sales was an ongoing task; the history of that task—begun in 1930—showed that rules on prescription could not be isolated from uniform rules governing international sales in general.

63. The main concern should be to ensure that the courts applied a uniform definition of the sales contract, since in many countries rules concerning prescription formed part of the applicable law on sales. That was the purpose of his delegation's amendment (A/CONF.63/C.1/L.38). It was not a perfect solution to the problem, but it would at least ensure uniformity of definition at the national if not the international level.

64. The lack of a reservation clause in his delegation's amendment was due to a difference of perspective. It must be kept in mind that the drafting of a Convention on Prescription was only part of a much wider task and that the Convention should not, therefore, have its own separate definition. The definition must be the same as that used in the general international instruments covering sales. Some countries had already ratified the 1964 Hague Convention, and thus had a definition of international sales. When the revised version of ULIS on which UNCITRAL was working came into force in a few years' time, the definition contained in it would be valid. If the Convention on Prescription was seen as part of a larger whole, there would be no need for an additional protocol in the future. Nevertheless, until more countries ratified the 1964 Convention or the revised ULIS came into force, a definition was necessary, although his delegation was quite open-minded as to the form it should take.

65. Mr. MICHIDA (Japan) said his delegation felt that it was desirable to have a definition in the Convention that would not conflict with ULIS. Nevertheless, it must be borne in mind that the UNCITRAL Working Group on Sales had been reviewing the ULIS definition of an international sale and had produced a new version. His delegation was in favour of the unification of definitions, in accordance with the General Assembly resolution 2205 (XXI) establishing UNCITRAL, and felt that the Committee should leave as much room as possible for future harmonization and eventually a single definition.

66. The deletion of article 2 would leave too much room for countries to define an international sale and would lead to a variety of definitions. The convening of a diplomatic conference to draw up an additional protocol would entail the risk that the parties to the protocol might not be the same as the parties to the Convention on Prescription. The result would again be a lack of uniformity.

67. He supported the statement made by the representative of the United States and, with a view to ensuring maximum room for future harmonization and a possible single definition, was also inclined to support the proposal by the Federal Republic of Germany (A/CONF.63/C.1/L.23), which would allow States to contract out of applying articles 2 to 4 of the Convention on Prescription.

68. His delegation found it difficult to accept article 2, paragraph 2, of the Australian proposal (A/CONF.63/C.1/L.1), for three reasons. Firstly, although the new paragraph appeared to have been taken from the provisional revised text of article 1, paragraph 2, of ULIS, the latter had been left in square brackets and had therefore not been the subject of a final decision by the Working Group on Sales. There was therefore a risk that the Working Group would change the definition and that there would be a conflict between the definition in the Convention on Prescription and that contained in the new ULIS. Secondly, at the time when the draft Convention on Prescription was being drawn up, the Working Group on Prescription, of which Japan was a member, had rejected the new ULIS definition placed in square brackets by the Working Group on Sales. The Working Group on Prescription had felt that the sales law should promptly indicate whether that law itself or domestic law should apply in particular cases. Since the prescription usually

involved longer time-limits, the Working Group on Prescription had felt that the provision of the ULIS definition was less necessary. His delegation supported that view. Thirdly, the retention of the Australian definition would place an unnecessary burden on judges.

69. With reference to the proposal by India and Kenya, he pointed out that the existing text had been taken from the proposed new text of ULIS. The Working Group had spent a great deal of time on it and had approved it after a series of discussions. Although his delegation was taking no particular stand on article 2, paragraph 2, he hoped that the Drafting Committee would consider the proposals carefully and produce a reasonable text.

70. Mr. SMIT (United States of America) explained, in reply to the question raised by the representative of Brazil, that the purpose of the United States amendment (A/CONF.63/C.1/L.15) was to clarify the text. It did not change the substance of article 2, paragraph 1.

71. Article 1 of the draft Convention defined its scope, article 2 was intended to define an international sale, and article 3 dealt with the exclusion of private law. It was therefore better that article 2, paragraph 1, should define an international sale in such a way as to reflect the sense of the Convention—in other words, as a sale only between a buyer and a seller in different Contracting States.

72. Mr. KNUTSSON (Sweden) said the Committee's debate showed that it had been a mistake to choose to discuss the draft Convention on Prescription while the new ULIS was still under consideration.

73. Although he had been impressed by the United Kingdom argument in favour of deleting article 2, he had been more impressed by the arguments of delegations that considered a definition necessary. He found the definition given in article 2 quite satisfactory. To accommodate States that had ratified or would ratify ULIS, the Convention on Prescription could be drafted so as to avoid any formal definition of an international sale. States that had already ratified ULIS could be satisfied by the inclusion of provisions such as those proposed by France and the Federal Republic of Germany. Of the two, he preferred the Federal Republic of Germany's version.

74. While he agreed with the definition contained in article 2, paragraph 1, he felt that the other paragraphs of the article should be deleted so as not to prejudice the work being done on ULIS. If they were to be retained, they should remain unchanged. He could not agree with the amendment to article 2, paragraph 2, proposed by India and Kenya.

75. Mr. ZULETA (Colombia) said that he shared the concern of the representative of Kenya with regard to States that were not bound by a definition of international sale. He also appreciated the difficulties caused by having several definitions, and could therefore understand the misgiving expressed by the United Kingdom representative, although he could not agree with the United Kingdom's solution. He preferred the approach proposed by Austria and France, whereby the definition in article 2 would become a subsidiary rule for States that did not have a better definition of international sale.

76. Mr. STALEV (Bulgaria) suggested that statements should be limited to five minutes in accordance with rule 23 of the rules of procedure.

77. The CHAIRMAN felt that it would be premature to impose a time-limit.

78. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said there were three definitions of international sale in existence; they appeared in the 1964 ULIS, the draft revision of ULIS and the draft Convention on Prescription. Although the proposal to omit the definition from the Convention could not be disregarded, the absence of a definition might make it difficult for some countries to ratify or accede to the Convention. In view of the concern that had been expressed for States parties to the 1964 ULIS and for those interested in becoming parties to the revised ULIS, he asked whether the Committee might consider accepting a provision that would allow those States to make a reservation or declaration, when ratifying the Convention on Prescription, to the effect that in relations among themselves they would apply the Convention on Prescription only to contracts for the international sale of goods which came within the scope of that Convention in accordance with ULIS. Such a provision would limit the application of the Convention only in relations between States that were parties to the other international instrument governing the international sale of goods. He was not making a formal proposal, and his delegation could support the existing definition if others found it satisfactory.

79. Mr. JEMIYO (Nigeria) said that the omission of a definition might cause difficulties for States that were not parties to ULIS. His delegation was in favour of retaining article 2 with the amendments submitted by the United States, and by India and Kenya. He could not agree with the proposals by France and the Federal Republic of Germany.

80. Mr. ROGNLIEN (Norway) asked whether the provision suggested by the Soviet representative was not the same as the amendment submitted by the Federal Republic of Germany. If it was, the Committee would require only one version.

81. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his suggestion was not the same as the proposal of the Federal Republic of Germany. In response to a request by the Chairman, he agreed to submit it as a proposal in writing.

82. Mr. KOPAC (Czechoslovakia) suggested that it might be useful, in view of the different ideas that had been raised in the discussion, to establish a small working group, in accordance with rule 46 of the rules of procedure, to discuss the various proposals concerning article 2. The group should include the representative of the Soviet Union.

83. Mr. JENARD (Belgium) said it would be better to have the text of the Soviet proposal in writing before setting up a working group to discuss article 2.

84. Mr. HERBER (Federal Republic of Germany) agreed with the representative of Belgium. He appreciated the compromise solution offered by the Soviet

Union, but was not sure whether it would solve the problem. His own delegation's proposal had been intended not to preserve the legal position of other conventions, but to enable States that ratified more than one international instrument on the sale of goods to apply a single rule in their domestic law.

85. Mr. SAM (Ghana) said that the establishment of a working group might impede the Committee's work. He suggested that the Committee should wait until the Soviet proposal appeared in writing; after it had been discussed, the Drafting Committee might set up a small working group.

86. Mr. GUEIROS (Brazil) pointed out that the first three articles indicated when the Convention would apply, while the next three indicated when it would not. Consequently, he did not see how the Drafting Committee could meet until all six articles had been discussed.

87. Mr. KRISPIS (Greece) pointed out that the proposal to establish a working group presupposed the rejection of the United Kingdom proposal to delete article 2.

88. Mr. GUEST (United Kingdom) proposed that the Drafting Committee should meet on the following day to discuss the election of its officers. It would be helpful if the First Committee could give the Drafting Committee something definite to work on over the weekend.

89. The CHAIRMAN invited the Committee to vote on the United Kingdom proposal that the Drafting Committee should meet on Friday, 24 May.

*The United Kingdom proposal was adopted by 18 votes to 1.*

90. The CHAIRMAN announced that the Drafting Committee would meet at 5 p.m. on Friday, 24 May.

91. Mr. HONNOLD (Chief, International Trade Law Branch) said he wished to inform the Committee of a procedure that would be possible under United Nations practice, should the definition of international sale used in the revised ULIS differ from that adopted in the Convention on Prescription. At the time of convening a conference to complete the work on ULIS, the General Assembly might authorize that conference to prepare a protocol for States that had ratified the Convention on Prescription, so as to bring the latter into line with the new ULIS. Such authorization would not add significantly to the burden on the ULIS conference, because, if the conference adopted a definition different from that used in the Convention on Prescription, the new definition could be included in the protocol. The information he had given was not intended to be a substitute for provisions allowing reservations to be applied during the interim period, but it might help to alleviate the concern over the feasibility of bringing the two instruments in line with each other.

*The meeting rose at 6.05 p.m.*

## 6th meeting

Friday, 24 May 1974, at 10.10 a.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.6

### Other business

1. Mr. WATILES (Executive Secretary of the Conference), raising the matter of document distribution, informed the Committee that the latest documents issued would in future be circulated in the conference room before a meeting. In addition, he pointed out that the missions of Member States received the full set of documents only when they had previously so requested. The Secretariat would do its best to ensure that delegations had all the necessary documentation available for their work.

2. Mr. BELINFANTE (Netherlands) said that, in a conference such as that now taking place, delegations must receive all the amendments as soon as possible, particularly when they intended to submit changes to the draft text.

3. Mr. LOEWE (Austria) said that his delegation, in a desire to ensure the proper conduct of work and orderly debate, proposed that the Committee should discuss only one amendment or related group of amendments at a time. It also proposed that at the end of the discussion on each article, the Chair should set up an informal negotiating group from among the representatives who had taken part in the debate, in order that they might seek a compromise which would be submitted to the Committee.

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.1, L.12, L.15, L.20, L.22 to 28, L.34 to 36, L.38) (continued)

#### Article 1 (concluded)

4. The CHAIRMAN recalled that the debate on the Indian amendment (A/CONF.63/C.1/L.27) was closed and that the Committee had only to take a decision on the text.

5. Mr. GOKHALE (India) said that he would like to allay the fears expressed by some delegations that the proposed amendment might be prejudicial to the adjudication of public contracts. The amendment did not affect the application of the Convention to contracts concluded with public institutions or establishments other than the government itself. The municipal law of some countries did provide a different, a larger prescription period for the government. In some cases contracts were entered through public agencies but in some cases government also entered into contract directly.

6. Mr. GUEIROS (Brazil) said that his delegation opposed the Indian amendment because it introduced into the draft a reference to regulations which applied only in certain countries.

7. The CHAIRMAN said that it was his understanding that the Indian amendment was not acceptable to the majority of delegations. If that was indeed the

feeling of the Committee, he would take it that the proposal of the Indian delegation was rejected.

*It was so decided.*

8. The CHAIRMAN recalled that the Kenyan amendment (A/CONF.63/C.1/L.26) was submitted for decision by the Committee without the words "under its national law", which the representative of Kenya had agreed to delete.

9. Mr. MUSEUX (France), supported by Mr. GUEIROS (Brazil), requested that a separate vote should be taken on the expression "in its own name", in accordance with rule 39 of the rules of procedure.

10. The CHAIRMAN said if he heard no objection, he would take it that the motion for division made by the representative of France had been carried.

*It was so decided.*

*At the request of the representatives of Austria and France, a vote was first taken on the expression "in its own name".*

*The expression "in its own name" was rejected by 20 votes to 4.*

*The Kenyan amendment, as thus amended, was adopted by 12 votes to 11.*

#### Article 2 (continued)

11. The CHAIRMAN recalled that three points of view had been expressed during the discussion on article 2. According to the first, the article should be simply deleted. According to the others, there were grounds for retaining a definition. Some delegations were ready to accept that which currently appeared in the draft, but others would like to safeguard the interests of States which had acceded to the 1964 Uniform Law on the International Sale of Goods (ULIS) or which might accede to the future convention that UNCITRAL was in the process of elaborating, either by entering reservations to that effect, as proposed by the Federal Republic of Germany (A/CONF.63/C.1/L.23), or by amending the present text of article 2, as proposed by France (A/CONF.63/C.1/L.38). In addition, an informal working paper in a similar vein had been submitted to the Committee by the delegations of the Soviet Union and Hungary.

12. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the text which his delegation had informally submitted to the Committee was an attempt at compromise. His delegation considered that the proposals of France and the Federal Republic of Germany were not acceptable to the extent that they would authorize a State party not to apply the provisions of the Convention in respect of a State which was also a party to the Convention. The text proposed by the USSR and Hungary allowed for the possibility of reservations under which States which had acceded to the ULIS, or which might accede to any new convention, could apply the definition of the said conventions among themselves. He wished to point out that that

was a compromise solution on which his delegation would not insist.

13. Mr. GUEST (United Kingdom) recalled that the representative of Czechoslovakia had the day before proposed the setting-up of a small working group to discuss matters relating to article 2. Since there seemed to be no insurmountable differences between the proposals of the USSR, the Federal Republic of Germany and France, the representatives of those three countries, together with one or two representatives interested in the matter, might usefully meet to draw up a joint text for submission to the Committee.

14. Mr. GUEIROS (Brazil) thought that the text submitted by the USSR and Hungary was well worth considering, but that the Committee should first take a decision on paragraph 1 of article 2.

15. Mr. SUMULONG (Philippines) said that, since the draft applied exclusively to contracts of international sale of goods, it must of necessity include a definition of international sale. It was worth considering, however, whether such a definition should be drawn up at the current stage of work, for incorporation in the Convention on Prescription, or whether it was preferable to wait until the revision of the ULIS was completed, the new text of which would doubtless include a general and to some extent definitive definition of the international sale of goods.

16. In the opinion of his delegation, the substance of a definition of international sale of goods was of crucial importance, since the success of the Convention in business circles, in particular in the Philippines, would depend on the substance and clarity of such a definition. It was to be noted that in article 1 of the 1964 Hague Convention many criteria were applied to define the international sale of goods (for example, the place of business of the parties, the place of delivery, of payment, of the offer of the acceptance, etc.). The draft submitted by UNCITRAL (A/CONF.63/4), on the other hand, used only the criterion of the respective places of business of the buyer and seller, which seemed singularly inadequate.

17. His delegation thought it would be equally difficult to make a draft convention acceptable to his Government that did not include a definition of the contract for the international sale of goods as one which included the definition given in article 2, paragraph 1, of the UNCITRAL draft.

18. Mr. KRUSE (Denmark) said that it would be many years before the definitions in the various conventions relating to international sale could be brought into line, since the revision of the ULIS would not be completed before 1978 or 1979. In the intervening period, States could adopt, in the draft Convention, the principle that States which had acceded to the ULIS could rely on the definition of the contract of sale which appeared therein until such time as it became possible to draw up a uniform definition. If the Committee accepted that point of view, it could leave it to the Drafting Committee to draw up a satisfactory text. The Drafting Committee could then be guided by the joint Soviet and Hungarian proposal, which seemed to offer a possible compromise although it might give rise to considerable difficulties, and by the amendments of the delegation of France (A/CONF.63/C.1/L.38) and the delegation of the Federal Republic of Germany (A/CONF.63/C.1/L.23), which seemed quite acceptable.

19. Mr. LOEWE (Austria) shared the views of the representative of Brazil regarding the need to treat the problem raised by article 2 as two separate questions. It was first a matter of deciding whether the draft should include a definition of the contract of international sale of goods and, if so, of then elaborating such a definition; once the definition had been drawn up, it would then have to be determined whether and in what conditions States parties might depart from such a definition and apply instead the definition given in the initial or the future version of the ULIS.

20. Mr. HARTNELL (Australia) stressed that the large number of definitions could give rise to considerable confusion. He suggested that the Committee should formulate a definition of a contract of international sale of goods specifically for the draft Convention on Prescription (Limitation) and rule out the possibility of reservations being expressed. Subsequently, when the revised text of ULIS had been adopted by a diplomatic conference in 1978 or 1979, it would always be possible to review the definition incorporated in the Convention on Prescription (Limitation) with a view, if necessary, to bringing it into line with the new text.

21. Mr. FRANTA (Federal Republic of Germany) welcomed the solution proposed by the Hungarian and Soviet delegations, although with certain reservations. He also stressed the advantages of the suggestion made by the United Kingdom representative that a working group should be set up to try to reconcile the various points of view on the question. His delegation disagreed with the Austrian delegation and felt that it would be preferable not to take a decision on the United Kingdom proposal to delete article 2 (A/CONF.63/C.1/L.12) until the outcome of the consultations within the working group was known, since it was quite probable that the working group would find a satisfactory compromise solution.

22. Mr. GONDRA (Spain) said he was pleased to note that the Committee's deliberations were following the course which he had suggested. Although he felt that the logical order of discussion seemed to be that proposed by the Austrian delegation, he nevertheless recognized the merits of the argument put forward by the representative of the Federal Republic of Germany. Consequently, the Committee should perhaps first decide whether the draft Convention should contain a definition of a contract of international sale of goods, and then consider whether the uniformity of the definitions given in the various relevant conventions should be preserved, before finally, depending on the decisions reached on those questions, proceeding to draft a definition specifically for the draft Convention on Prescription (Limitation).

23. Mr. SAM (Ghana) said that, like the Austrian delegation, he felt that the Convention should include its own definition of a contract of international sale of goods. His delegation was, however, opposed to any possibility of reservations. The Committee should, moreover, decide on that point before considering the United Kingdom proposal. The possibility of establishing a definition differing from that which might be included in the new text of ULIS should not deter the Committee.

24. Mr. STALEV (Bulgaria) said that he felt that the Committee could appoint a working group, as the United Kingdom delegation had proposed, and complete its consideration of article 2 when it had received the group's report.



25. Mr. JEMIYO (Nigeria) agreed that the draft Convention should include its own definition of a contract of international sale of goods and said that he was opposed to the possibility of any reservations on that point. Consequently, he could not support the amendments submitted by France (A/CONF.63/C.1/L.38) and the Federal Republic of Germany (A/CONF.63/C.1/L.23), or the text suggested by the USSR and Hungary.

26. The CHAIRMAN invited the Committee to decide on the United Kingdom amendment (A/CONF.63/C.1/L.12) that article 2 should simply be deleted.

27. Mr. JENARD (Belgium) said that his delegation, while preferring that no definition of a contract of international sale of goods should be included in the draft Convention, felt, like a number of other delegations, that the Committee should follow the suggestion made by the representative of the Federal Republic of Germany and delay its decision on the United Kingdom amendment (A/CONF.63/C.1/L.12) so that the working group already referred to could be set up and given an opportunity to propose a solution which might perhaps alter the views of a number of delegations.

28. The CHAIRMAN invited the Committee to decide whether it should vote first on the amendment of the United Kingdom delegation (A/CONF.63/C.1/L.12).

29. Mr. KRISPIS (Greece), Mr. HARTNELL (Australia) and Mr. KRUSE (Denmark) expressed the wish that the Committee should first decide on the amendment of the United Kingdom delegation (A/CONF.63/C.1/L.12).

*The Committee decided by 17 votes to 15 to vote first on the amendment proposed by the United Kingdom delegation (A/CONF.63/C.1/L.12).*

*The amendment of the United Kingdom was rejected by 28 votes to 9.*

30. The CHAIRMAN invited the Committee to vote on the question of whether a working group should be established for the purpose of suggesting a final position with regard to a definition of a contract of international sale of goods specifically for the Convention on Prescription (Limitation).

*The Committee decided by 30 votes to 1 to establish such a working group.*

31. Mr. ROGNLIEN (Norway) said he hoped that the Committee would clearly define the working group's terms of reference. Its task should be simply to endeavour to reconcile the amendments to article 2.

32. Mr. LOEWE (Austria) said he felt that the task of the working group should be twofold: to endeavour to formulate a definition of a contract of international sale of goods which would meet the requirements of the Convention on Prescription (Limitation) and to propose a solution concerning the possibility of States parties expressing reservations which would permit them to refer to other definitions given in existing or future instruments. His delegation reserved the right to express its views on the latter point at a later stage.

33. Mr. KRISPIS (Greece) thought that the working group should be given very broad terms of reference and should be able, if necessary, to make additions to the text of the draft itself.

34. Mr. GONDRA (Spain) said he felt that, before proceeding further, the Committee should reach a decision on the possibility of reservations being expressed and on the relationship which would exist between the definition of a contract of international sale of goods set out in the Convention on Prescription (Limitation) and the definitions which were, or would be, given in other instruments.

35. Mr. FRANTA (Federal Republic of Germany) pointed out that, if the working group was asked to carry out the first task referred to by the representative of Austria, it would necessarily have to consider articles 2, 3 and 4 of the draft Convention, which would complicate its work excessively. It would be preferable therefore, simply to ask it to try to find a solution with regard to the relationship between the definition of a contract of international sale of goods which would be included in the Convention, and the definitions in the 1964 ULIS and the revised ULIS.

36. Mr. KRUSE (Denmark), supported by Mr. HARTNELL (Australia), said that the working group should first of all seek a compromise solution on the controversial question of the possibility of reservations being expressed. Since it was possible that there would be a divergence of views, the group should be able to suggest various formulas to the Committee, which would decide the question by a vote.

37. Mr. GUEST (United Kingdom) said he felt that two problems arose. Firstly, there was the problem of the definition of a contract of international sale of goods, which could be expected to give rise to a considerable number of amendments. It would seem logical to leave consideration of the question to the First Committee and to the Drafting Committee.

38. Secondly, there was the problem of the relationship between the definition of a contract of international sale which might be incorporated in the draft Convention on Prescription (Limitation) and the definitions of a contract of international sale which were, or would be, given in instruments relating to the international sale of goods. If the working group was asked to consider only the latter question, its terms of reference could be formulated quite simply and the number of its members could be limited.

39. Mr. BELINFANTE (Netherlands) associated himself with the remarks of the representatives of the Federal Republic of Germany and the United Kingdom in favour of the working group being given a limited mandate.

40. Mr. LOEWE (Austria) said that he could not agree with the views expressed by the representative of the Federal Republic of Germany. Either the possibility of derogation in favour of another convention applied only to the definition of a contract of international sale, in which case the Committee must establish its own definition of such a contract before considering the possibilities of derogation from it, or the possibility of derogation related to the whole field of application of the Convention and not simply to the definition of a contract of international sale of goods, in which case the establishment of a working group would be premature since the possibility of expressing reservations could not usefully be considered before the Committee had discussed articles 2, 3 and 4 in their entirety.

41. Mr. ROGNLIEN (Norway) supported the United Kingdom proposal that only a limited mandate should be given to the working group. There were prac-

tical reasons which militated in favour of that solution; the working group should be asked only to determine the relationship existing between the definition of a contract of international sale and other definitions, and the definition itself should be elaborated by the Committee.

42. Mr. MUSEUX (France) endorsed the observations of the representatives of Norway, the Federal Republic of Germany and the United Kingdom.

43. Mr. AL-QAYSI (Iraq) said that he was disconcerted by the direction which the discussion had taken: his delegation could not see how the representative of France could support the proposals of Norway and the United Kingdom, to the effect that the working group should be given a limited mandate, and the proposal of the Federal Republic of Germany, to the effect that it should be given a broader mandate.

44. In rejecting the amendment proposed by the United Kingdom delegation, the Committee had decided, in his view, to consider article 2 as it appeared in the draft Convention. It would therefore seem rational for the working group to be given only the task of determining the relationship which existed between the proposed text in the draft Convention and the text given in existing or future conventions.

45. The CHAIRMAN noted that two viewpoints had emerged: some representatives felt that the working group should have the task of working out a definition of a contract of international sale specifically for the draft Convention on Prescription (Limitation), whilst others considered that the working group should have a more limited mandate and should merely study the relationship between the draft Convention and other existing or future instruments.

46. Mr. JENARD (Belgium) agreed that the working group could be given a limited mandate, but considered that, in view of the complexity of the problem, it would be desirable to extend the mandate subsequently, when the Committee had finished its consideration of the definition itself.

47. Mr. MICHIDA (Japan), supporting the comments made by the representatives of Iraq, Norway and the United Kingdom, suggested that the Committee should continue its consideration of the definition of a contract of international sale.

48. Mr. AL-QAYSI (Iraq) stressed that the working group should limit its activities to the consideration of the question of the relationship which might exist between the draft Convention under consideration and other existing or future conventions.

49. Mr. DIAZ BRAVO (Mexico) said he was glad that he had voted against the establishment of the working group, but, as the Committee had decided otherwise, his delegation, with regard to the mandate of the working group, supported the proposal of the Iraqi representative that the group should prepare a text dealing only with the relationship existing between the draft Convention and other instruments.

50. The CHAIRMAN put to the vote the two proposals, the first being to give the working group a limited mandate, with only one question to consider—that of the relationship existing between the draft Convention and other conventions—and the second being to give the working group a broader mandate and to ask it also to seek to define a contract of international sale.

*The proposal to give the working group a limited mandate was adopted by 30 votes to 5.*

51. Mr. ROGNLIEN (Norway) proposed that the Chairman should appoint the representatives who would form part of the working group, so as to shorten the discussion.

52. Mr. GUEST (United Kingdom) suggested that the working group should be composed of the representatives of France, the Federal Republic of Germany and the USSR, and of any other representatives who were interested in the question.

53. Mr. GUEIROS (Brazil) felt that the representative of Japan should be a member of the working group.

54. Mr. MICHIDA (Japan) said that his delegation would be happy to participate in the activities of the working group.

55. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he would like the Hungarian delegation, which had co-sponsored his amendment, to be a member of the working group.

56. The CHAIRMAN said that the request of the representative of the Soviet Union would be taken into account.

57. Mr. LOEWE (Austria) said that he wished to make some remarks concerning the proposals before the Committee on the subject of the relationship between the draft Convention and other conventions. It seemed to his delegation that those proposals could be divided into three categories.

58. The first category included the most far-reaching proposal, namely, that submitted by France. That proposal, according to which the definition of a contract of international sale should, in the case of countries that were parties to other conventions, be automatically governed by those conventions, was not acceptable to his delegation. In the second category was the proposal which was the least far-reaching, that of the Soviet Union and Hungary. His delegation had no objection of principle to that proposal, which would allow States parties to another convention to apply another definition, by formulating reservations.

59. The proposal of the Federal Republic of Germany, which constituted an intermediate proposal, fell into the third category. Under that proposal, when a State formulated the appropriate reservation, the provisions of relevant conventions affected its relations with all other States and not only with States parties to those conventions. His delegation had very serious doubts about the validity of that proposal, if only because his country, which had not ratified the 1964 ULIS, had many commercial links with countries which had ratified that Convention. Enormous complications would arise with regard to the field of application of the Convention and of the relevant national legislation. He therefore felt that, in order to resolve those difficulties, every State should be free to determine the field of application of the instruments governing its relationship with its commercial partners, even if it was not itself a party to the instruments which its partners invoked. In his view, every State should be able to declare that, notwithstanding articles 2 and 4 of the draft Convention, it would apply the other provisions of the Convention in accordance with the definition given in the Hague Convention of 1964 or in any other convention which might subsequently be adopted. His



delegation would take up a definite position according to whether or not his suggestion that the scope of the reservations which States parties might formulate should be extended was taken into consideration by the Committee.

60. Mr. GONDRA (Spain) entirely endorsed the remarks made by the Austrian representative, not only with regard to their general tenor, but also with regard to their substance.

61. After an exchange of views in which Mr. ROGNLIEN (Norway), Mr. HARTNELL (Australia), Mr. REESE (United States of America) and the CHAIRMAN participated, it was agreed that consideration of article 2 should be resumed.

62. Mr. BELINFANTE (Netherlands), referring to the amendment submitted by Australia (A/CONF.63/C.1/L.1), said that his delegation was in favour of the new paragraph 2 proposed therein, but could not accept the other provisions. The new paragraph 2 would avoid a situation whereby a contract originally concluded between two persons residing in the same country might subsequently acquire an international character when it was found that one of the two parties was acting as an agent for a third party resident in another country.

63. Mr. BURGUCHEV (Union of Soviet Socialist Republics) drew the Committee's attention to the fact that the Australian amendment did not mention a contract of international sale. It therefore seemed there was a contradiction between the text of that amendment and that of article 1, paragraph 1, of the draft Convention, which explicitly referred to a contract of international sale. That contradiction was important because article 2, paragraph 1, proposed by the Australian representative was only concerned with the Convention's field of application and did not mention the nature of a contract of sale.

64. Mr. HARTNELL (Australia) explained that his delegation had not sought to define a contract of international sale in its amendment, because that had not seemed necessary. However, he felt that, to accommodate the concerns of the Soviet delegation, the Drafting

Committee could revise his amendment so as to reconcile the two texts.

65. Mr. KRISPIS (Greece) stressed that article 1, paragraph 1, of the draft Convention introduced a question of definition, whilst article 3, paragraph 1, was concerned with the Convention's field of application; he wondered whether two separate clauses should be included in the draft Convention. His delegation was opposed to paragraph 2 of the Australian amendment, because of its lack of practical interest and the risk that it might complicate matters.

66. Mr. JENARD (Belgium) found the text of article 2, paragraph 1, of the draft Convention unacceptable, as the question of transport, which was an important factor in determining the international nature of a sale, was not mentioned. In that respect, the definition in the 1964 ULIS was far preferable.

67. His delegation endorsed the remarks made by the Soviet representative but would nevertheless be prepared to agree that the drafting of article 2, paragraph 1, should be based on the text proposed in paragraph 2 of the Australian amendment.

68. Mr. GOKHALE (India) said that he preferred the original text of article 2, paragraph 1, to the text proposed by the Australian delegation.

69. Mr. KOPAC (Czechoslovakia) said that the definition of a contract of international sale as it appeared in article 2, paragraph 1, of the draft Convention corresponded in essence to that adopted in the Czechoslovak Code of Commerce. His delegation therefore had no difficulty in accepting it.

70. However, he could not support the Australian amendment, which had the demerit of introducing an element of insecurity. In practice, it was in fact very unusual for commercial partners not to know each other and it was only very exceptionally that one party did not know in which country the other party had its place of business. In providing that its application would not be modified even if the situation of the parties changed, the draft Convention offered the best solution.

*The meeting rose at 1 p.m.*

## 7th meeting

Friday, 24 May 1974, at 3.15 p.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.7

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.1, L.2, L.4, L.6, L.7, L.12, L.15, L.16, L.23, L.24, L.28, L.38, L.39, L.42, L.43, L.53, L.73) (continued)

#### Article 2 (continued)

1. Mr. NYGH (Australia) announced that in order to expedite the work of the Committee his delegation would not, for the time being, press its amendment to article 2, paragraph 1, contained in document A/CONF.63/C.1/L.1. His delegation had not abandoned its view that the Convention should apply in all cases

where the parties to a contract were in different States, but, in view of the comments made by various speakers at the preceding meeting, it seemed better to postpone consideration of the amendment until article 3 was discussed.

2. Mr. GUEIROS (Brazil) said that the definition given in article 2, paragraph 1, although otherwise satisfactory, lacked a vital element—carriage—without which the business world would not accept the definition. The definition used in the Convention relating to a Uniform Law on the International Sale of Goods (ULIS) annexed to the Hague Convention of 1964 included that element. He proposed the addition at the

end of paragraph 1 of the words "and the goods are in the course of carriage or will be carried from the territory of one State to the territory of another". In principle, Brazil, as a civil-law country, was opposed to definitions in the body of law, and held that "*omnis definitio in jure civile periculosa est*".

3. Mr. KNUTSSON (Sweden) drew the Committee's attention to comments on article 2 (A/CONF.63/6) by the International Chamber of Commerce (ICC). It seemed to him that ICC had felt there was a need to specify the meaning of the term "place of business" more exactly. The Drafting Committee should attend to the matter.

4. Mr. LOEWE (Austria) said he had not shared the representative of Belgium's fears that the Australian amendment to article 2, paragraph 1, would constitute a substantial change. The difficulty, if any, arose from the Australian amendment to article 3, paragraph 1, which was not restrictive. Article 2, paragraph 1, involved only a question of drafting; nothing said in the Committee had indicated any serious problems of substance. His delegation could accept a definition of international sale; such a definition would have the effect of defining the scope of the Convention.

5. However, he did agree with the representative of Belgium that article 2, paragraph 1, was too broad to be the only criterion for an international sale. It was still his feeling that the definition used in the 1964 ULIS was much the best so far produced, and he would prefer either that definition or one including points taken from ULIS, as suggested by Brazil. If that was not possible, he would favour the Australian proposal, which was based on the draft revision of ULIS and would have the merit, in the absence of any unexpected changes, of being more in line with the new Convention on international sales. The Australian proposal for article 2, paragraph 2, was not as good as the ULIS text but was acceptable because it restricted the scope of the Convention to some extent.

6. Although the existing text of the draft Convention attempted to limit its scope through the provisions of articles 3 and 4, the restrictions were at a different level and did not meet the requirements for an exhaustive and precise definition of international sales.

7. Mr. HONNOLD (Chief, International Trade Law Branch) said that the UNCITRAL Working Group on Sales had studied the question of defining an international sale and had decided that, although a criterion based on carriage was attractive, it would be difficult to apply in practice. The definition of an international sale used in ULIS required that the parties have their places of business in different countries and that, in addition, one of three other criteria should be met. The Working Group recognized that the new definition was somewhat broader than that used in the 1964 ULIS. On the other hand, the inclusion of only one of the three alternative criteria in ULIS would make the scope of the present Convention narrower than ULIS.

8. The CHAIRMAN observed that the amendment proposed by the representative of Brazil would narrow the definition of an international sale.

9. Mr. GUEIROS (Brazil) replied that the definition was in fact broader, because businessmen had to think in terms of international sales. He had stressed the carriage element because the second optional criterion in ULIS was not necessary for an international sale and the third covered a very rare case that did not

need to be taken into consideration. The criteria of places of business in different countries and carriage of the goods were all that was necessary to describe an international sale.

10. Mr. BURGUCHEV (Union of Soviet Socialist Republics) expressed surprise that representatives who had taken part in the work of UNCITRAL and its Working Group on Sales should be discussing points that had already been agreed on in principle in the Working Group. The Committee had very little time at its disposal and should not waste it on matters of secondary importance.

11. Mr. GONDRA (Spain) agreed with the Soviet representative. The Committee should try to harmonize its definition with the one chosen by the Working Group on Sales. Although his delegation preferred the 1964 ULIS definition, one had to think of the future; if the Committee followed the line taken by UNCITRAL, there would be less likelihood of conflict at the future diplomatic conference on the international sale of goods.

12. Mr. KHOO (Singapore) said it seemed unlikely that a formula would be found to satisfy everyone. His delegation favoured a pragmatic approach and was ready to agree to the Australian proposal, which was useful in that it sought to narrow the scope of the definition.

13. The CHAIRMAN invited the Committee to vote on the Brazilian oral amendment to article 2, paragraph 1.

*The Brazilian amendment was rejected by 18 votes to 11.*

14. The CHAIRMAN invited the Committee to vote on article 2, paragraph 2, of the Australian amendments contained in document A/CONF.63/C.1/L.1.

*The Australian amendment was adopted by 17 votes to 7.*

15. Mr. REESE (United States of America) said he assumed that his delegation's amendment to article 2, paragraph 1 (A/CONF.63/C.1/L.15), would be taken up in connexion with the discussion on article 3, paragraph 1. He hoped that it would still be possible for the Drafting Committee to submit a text combining article 2, paragraph 1 and article 3, paragraph 1.

16. The CHAIRMAN invited the Committee to consider the original draft article 2, paragraph 2, as it appeared in document A/CONF.63/4.

17. Mr. GOKHALE (India) introducing amendment A/CONF.63/C.1/L.53 on behalf of the sponsors, said that it was intended to simplify the problem of ascertaining the principal place of business.

18. Mr. MUSEUX (France) supported the amendment which would simplify the application of the provisions of article 2. The original text appeared to be based on an unjustified assumption that, where a party to a contract had more than one place of business the contract was effectively concluded with the principal place of business. The proper rule was the one contained in the amendment submitted by India and Kenya.

19. Mr. JENARD (Belgium) also supported the amendment, although he felt that its provisions might lead to difficulties of interpretation. He wished to know whether the term "place of business" covered branches, agencies and offices. Under Belgian law, a transaction involving branches, agencies and offices of foreign

companies in Belgium, was considered a domestic sale if the goods remained in the country.

20. Mr. MICHIDA (Japan) said that, if the amendment submitted by India and Kenya was adopted, difficulties might arise in establishing the place of business which had the closest relationship to the contract. Agreements for the avoidance of double taxation generally used the concept of a permanent establishment and limited the definition by exclusions. If the amendment was adopted, the parties or the judge would have to ascertain the place of business; interpretations of the article would vary from country to country and from court to court. Because of the length of limitation periods, judges might also be faced with a lack of evidence. The existing text of paragraph 2 provided the necessary presumptive basis, and his delegation favoured its retention.

21. Mr. KRISPIS (Greece) said his delegation was totally opposed to paragraph 2, which was badly conceived and badly drafted. The provisions would be unworkable in practice, and courts would be involved in endless disputes over the facts of "closer relationship to the contract and its performance".

22. Mr. GUEIROS (Brazil) pointed out that ULIS also used the term "place of business". He supported the amendment submitted by India and Kenya, because it was better worded than the original provision. Determination of the relevant place of business depended on identification of the one having the closest relationship to the contract and its performance; whether one of the parties was an agent or subsidiary was irrelevant. The term "place of business" was sufficient, and the rule itself was principally a rule of interpretation.

23. Mr. JENARD (Belgium) felt that the amendment provided a relatively simple solution by making it easier to determine whether a contract was international in cases involving multinational corporations, where it was sometimes difficult to ascertain which was the principal place of business.

24. The CHAIRMAN invited the Committee to vote on the amendment (A/CONF.63/C.1/L.53).

*The amendment was adopted by 19 votes to 7.*

25. Mr. KRISPIS (Greece), referring to article 2, paragraph 4, said that, since the criteria for the international sale of goods were set forth in paragraph 1, it would be misleading to add negative criteria in paragraph 4 unless all such criteria were given, including place of domicile, place of performance, place of payment, and so on. Either all such criteria or none of them should be stated. In his view, paragraph 4 should be deleted.

26. Mrs. MELNIK (Ukrainian Soviet Socialist Republic) drew attention to her delegation's amendment (A/CONF.63/C.1/L.24) to paragraph 4, the purpose of which was to restrict the scope of the paragraph by making it quite clear that it applied only for the purposes of paragraphs 1 and 3. She suggested that the amendment could be submitted directly to the Drafting Committee.

*It was so decided.*

27. Mr. KOPAC (Czechoslovakia) said he agreed that paragraph 4 might give rise to difficulties of application and should be deleted. For example, it was impossible to imagine that nationality would not be taken into consideration; that factor could be of importance for establishing legal capacity and for other purposes. If, however, the paragraph was retained, his delegation

would support the Ukrainian amendment. The matter could be decided by the Drafting Committee.

28. The CHAIRMAN invited the Committee to vote on the retention of article 2, paragraph 4.

*Article 2, paragraph 4, was retained by 15 votes to 13.*

### *Article 3*

29. Mr. NYGH (Australia) said that, since his delegation had withdrawn article 2, paragraph 1, of its amendments in document A/CONF.63/C.1/L.1, he wished now to resubmit that amendment, which was equivalent to the deletion of the words "only" and "Contracting" in draft article 3, paragraph 1. Alternatively, he would support the Norwegian proposal to delete the latter paragraph altogether.

30. The CHAIRMAN invited the Committee to consider whether the word "Contracting" should be retained.

31. Mr. KRISPIS (Greece) said that, if both article 2, paragraph 1, concerning the definition of the subject-matter of the Convention and article 3, paragraph 1, concerning its scope were retained, he would prefer not to have the word "Contracting" in the former but to retain it in the latter. If, on the other hand, only one of the provisions was to be retained, he was inclined to prefer the omission of the word "Contracting".

32. Mr. ROGNLIEN (Norway) supported the Australian proposal that the scope of the Convention should include all States, whether or not they were Contracting States. Otherwise, the Convention would be narrower than the existing ULIS and the current draft revision of ULIS. Furthermore, restriction of the scope to Contracting States could lead to the application of the domestic law of a foreign country to one of the parties, and possibly to the application of conflict rules, which were a source of great uncertainty, especially in that particular branch of law.

33. Mr. LOEWE (Austria) drew attention to his delegation's amendment (A/CONF.63/C.1/L.6), which, while supporting the deletion of article 3, paragraph 1, offered an alternative proposal that could be regarded as a compromise.

34. In his view, an equitable situation would arise if a transaction took place between parties only one of whom was in a Contracting State. Under his proposal, the Convention would apply in such circumstances. He considered it more likely that a party in a non-contracting State would know the scope of an international convention than that a party in a Contracting State would know the domestic law of a foreign country. His proposal followed the line taken in many conventions dealing with the private law of transport, where it was sufficient for one of the parties to belong to a Contracting State in order for the convention to apply.

35. Furthermore, under his proposal, the Convention would also apply if the parties so stipulated. That differed considerably from the 1964 ULIS, under which the parties could stipulate that the Uniform Law would apply within the limits of the national laws of the parties. However, it was not necessary to have a convention in order for such a stipulation to be made.

36. Mr. GUEIROS (Brazil) supported the deletion of the word "Contracting" in article 3, paragraph 1, in order to make it consistent with article 2, paragraph 1.

37. Mr. GUEST (United Kingdom) said his Government had always taken the view that, under con-

ventions on private international law, the principle of reciprocity should be maintained. For that reason alone, he supported the principle that the scope of the Convention should be confined to Contracting States.

38. However, there were other subsidiary arguments. The scope of the draft revision of ULIS was, as far as he knew, similarly confined to Contracting States. It would be advisable, if not essential, for the two conventions to have the same scope, and the restriction would also be preferable from the point of view of the clarity and certainty of operation of the Convention on Prescription.

39. He agreed that the establishment of a régime under which the Convention was applied by virtue of the *lex fori* would also lead to certainty and clarity. But it was illogical to accept the proposition that the Convention should be applied simply because of the *lex fori*. Allegations of "juridical imperialism" could also be made if the Convention was extended to situations where the parties simply litigated in a Contracting State.

40. There remained the question of "forum shopping" and conflict of laws, which would arise whatever solution was adopted. If an action was brought in a third State—i.e. a State other than that of the seller or buyer—and if that State was not a party to the Convention, then acute problems of conflict of laws were bound to arise. However, in most cases, the choice confronting the parties to the contract was limited to either the forum of the seller or that of the buyer.

41. Under the Austrian proposal, however, forum shopping would result if the place of business of one party was not in a Contracting State. That proposal contained elements which, in his view, were not conducive to certainty and clarity and would lead to forum shopping of the worst kind.

42. While he had some sympathy for the Greek amendment (A/CONF.63/C.1/L.42), he considered that to apply the rules of private international law of the forum in that area, where there was considerable difficulty of characterization as among those States which applied limitation as a procedural question, those which considered it to be a matter of substance and those which did both, would not be the proper solution. He therefore strongly urged that the Convention should be confined to parties whose places of business were in Contracting States.

43. Mr. BELINFANTE (Netherlands) recalled that, in 1964 and for some years after, the principle of universality had prevailed with regard to the text of ULIS, although that text allowed for reservations which made the scope of the Uniform Law less universal.

44. His Government had supported the idea of universality but had faced a storm of protest, especially from lawyers in the Netherlands. They had taken the view that it was wrong to replace the rules of private international law by an "expansionist" universal rule, and that parties belonging to non-contracting States should not be compelled to submit to the rules of ULIS. As a result of the protest, the Netherlands Parliament had refused to ratify ULIS as it stood.

45. His country had accordingly ratified the 1964 Hague Convention with certain reservations, and in practice applied it only if the rules of private international law gave rise to its application. The experience of the Netherlands might serve as a warning to countries which had not yet become parties to the 1964

Convention of the dangers of a universalist approach. He urged the retention of the word "Contracting" before "States" in paragraph 1.

46. A modest compromise solution to the problem of reconciling the universalist and restrictive approaches was provided by the Austrian alternative proposal in document A/CONF.63/C.1/L.6, whereby the Convention would apply not only when the seller or buyer had his place of business in a Contracting State but also when the seller and buyer had stipulated that the Convention should apply to their contract. That proposal was acceptable, although he would have preferred a more explicit provision for a written or express stipulation.

47. Mr. JENARD (Belgium) agreed with the representatives of the United Kingdom and the Netherlands that the word "Contracting" should be retained in paragraph 1. The absence of such a restrictive element might encourage forum shopping and jurisdictional conflicts, and would deprive the Convention of the element of security that was so essential to the businessmen who would use it.

48. Mr. KRUSE (Denmark) said that his delegation also favoured retaining the word "Contracting" in paragraph 1. If the Committee decided to delete that word, some provision should be made for States wishing to retain it to make a reservation to that effect, as had been done in the case of ULIS.

49. Mr. NYGH (Australia) noted that the representatives of the United Kingdom and Belgium had invoked the spectre of forum shopping but had omitted to mention that it had haunted the common-law countries for many years, as was evidenced by a number of well-known court cases. The purpose of his delegation's amendments to article 2, paragraph 1, and article 3 (A/CONF.63/C.1/L.1) was to ensure that the parties to a contract would have a choice, not between the domestic laws of two States, as was currently the case, but between an international system and national laws. He acknowledged that the situation might be different in civil-law systems, where prescription was regarded as a substantive rather than a procedural question. The Austrian alternative proposal in document A/CONF.63/C.1/L.6 might go some way towards solving that problem.

50. In criticizing the concept of universality, the United Kingdom representative had also raised the problem of "juridical imperialism", an art of which the United Kingdom and his own country were prime exponents. The Australian courts, for example, currently applied domestic law to all cases, irrespective of the nationality of the parties to the proceedings. He trusted that, upon reflection, members would be more disposed towards a uniform international system than a localized system of juridical imperialism.

51. Mr. TAKAKUWA (Japan) said he agreed with the representative of Norway that the sphere of application of the Convention should be as broad as possible, but nevertheless felt that the word "Contracting" should be retained in article 3, paragraph 1, as a means of preserving an element of certainty and reciprocity in the Convention. As had been pointed out, the Austrian alternative proposal would lead to undesirable results such as forum shopping and the inequality of parties to legal proceedings.

52. Mr. KRISPIS (Greece) pointed out that through "forum shopping" the parties tried to obtain indirectly,

by procedural means connected with the jurisdiction of the courts on cases with foreign elements, the application of the law they preferred. But, while "forum shopping" was indirect "law shopping", the principle of *lex voluntatis*, i.e. the rule of conflict of laws permitting the parties to choose, with some qualifications, the law of their preference, was direct "law shopping". The former was outside of the Convention, while the latter must not be harmed by it.

53. The CHAIRMAN invited the Committee to vote on the various amendments to article 3, paragraph 1.

54. Mr. REESE (United States of America) withdrew his delegation's proposal for the deletion of paragraph 1 in document A/CONF.63/C.1/L.16.

55. Mr. ROGNLIEN (Norway) pointed out that document A/CONF.63/C.1/L.28 contained subamendments by his delegation to the Australian amendments to articles 2 and 3 (A/CONF.63/C.1/L.1). He supported the Australian proposal for the deletion of the word "Contracting" in article 3, paragraph 1. The Norwegian amendment in document A/CONF.63/C.1/L.2 should be regarded as a subsidiary proposal, to be taken up by the Committee only if the Australian proposal was rejected.

56. Mr. PELICHET (Observer for the Hague Conference on Private International Law) said it was premature for a vote to be taken on whether to delete the word "Contracting" in article 3, paragraph 1. The Committee should first decide whether it wished article 3 to exclude the application of the rules of private international law.

57. The CHAIRMAN noted that the rules of procedure dictated that the Committee should first vote on amendments furthest removed in substance from the original text. If the representative of Austria did not object, he would omit calling for a vote on the Austrian proposal in document A/CONF.63/C.1/L.6 for the deletion of article 3, paragraph 1, and would invite members to vote on a question of principle, namely, whether or not the word "Contracting" in that paragraph should be deleted.

58. Mr. LOEWE (Austria) agreed to the procedure suggested by the Chairman.

*The deletion of the word "Contracting" in article 3, paragraph 1, was rejected by 25 votes to 9.*

59. The CHAIRMAN drew attention to the alternative Austrian proposal in document A/CONF.63/C.1/L.6.

*The Austrian proposal (A/CONF.63/C.1/L.6, para. 2) was rejected by 25 votes to 4.*

60. The CHAIRMAN drew attention to the Greek amendment to article 3 (A/CONF.63/C.1/L.42).

61. Mr. KRISPIS (Greece) said that his delegation's amendment presupposed the deletion of paragraphs 1 and 2 of article 3. It should therefore be discussed in conjunction with the various amendments to article 3, paragraph 3.

62. Mr. LOEWE (Austria), introducing his delegation's amendment to article 3, paragraph 3 (A/CONF.63/C.1/L.7), said he took the view that the parties should have greater freedom to "contract out" of the Convention than was provided under draft article 3, paragraph 3, in document A/CONF.63/4. In fact, they should be able to exclude the application of the Convention without necessarily knowing how to fill the gap.

63. Furthermore, under paragraph 3 (b) of the Austrian amendment, the parties would be free to agree that prescription should be governed by the law of a specific State. Whether the court would necessarily apply the law chosen by the parties was another question, particularly in common-law countries, where the parties would not be permitted to choose the law that would apply; that consequence was not allowed for in paragraph 3 (b).

64. The matter became a little more complicated when the parties, instead of referring specifically to the provisions concerning prescription, agreed that their contract as a whole would be governed by the law of a specified State. Since common-law systems did not regard prescription as a part of material law, such a stipulation in the contract would be inoperative under common law. He conceded that paragraph 3 (c) would consequently be somewhat limited in scope. If, for example, the parties chose French law, it could in general be presumed that they agreed to choose a law which contained provisions on prescription. Conversely, if they chose a common-law system, it could be presumed that they did not wish to apply the law on prescription.

65. The CHAIRMAN drew attention to the Norwegian amendment to article 3 (A/CONF.63/C.1/L.2).

66. Mr. ROGNLIEN (Norway) proposed that the Committee should postpone consideration of paragraph 2 of the Norwegian amendment and first decide whether it wished to adopt paragraph 1 (a) and (b), the wording of which was taken from the revised text of ULIS thus far prepared by the UNCITRAL Working Group on the International Sale of Goods.

67. The CHAIRMAN suggested that the Committee should first vote on paragraph 1 (b) of the Norwegian amendment.

68. Mr. NYGH (Australia) said that subparagraph (b), as it stood, was meaningless to common-law countries, which always applied the law of the forum in cases of prescription. He could accept the subparagraph with the addition of the words "to the contract of sale" after the word "State".

69. Mr. ROGNLIEN (Norway) said that the purpose of subparagraph (b) was to stipulate that, whenever conflict rules led to the application of the law of a Contracting State, the Convention, rather than the domestic law of the State, should apply. The addition proposed by the representative of Australia would restrict the scope of the subparagraph to cases where the law of the contract was applied by the courts, which was not his delegation's intention.

70. Mr. REESE (United States of America) felt that it would be impossible to apply subparagraph (b) in his country, where the *lex fori* was applied to all cases of prescription.

71. Mr. GUEST (United Kingdom), speaking on a point of order, said that the Committee should vote on paragraph 1 of the Norwegian amendment as a whole, and not only on subparagraph (b), since the representative of Norway had not moved that any part of paragraph 1 should be voted on separately.

72. Mr. AL-QAYSI (Iraq) agreed with the representative of the United Kingdom. Rule 39 of the rules of procedure indicated that, once an amendment was introduced, it should be voted on *in toto* unless a motion for division was made. Moreover, he objected to

the fact that the process of voting had been interrupted by a discussion of the substance of the Norwegian amendment. Rule 38 made it clear that, after the Chairman had announced the beginning of voting, no representative should interrupt the voting except on a point of order in connexion with the actual conduct of the voting.

73. Mr. HONNOLD (Chief, International Trade Law Branch) said it was the understanding of the Secretariat officials whom he had consulted on the matter that rule 38 forbade the interruption of a vote on an individual amendment, but did not preclude discussion between votes on a series of amendments.

*The meeting rose at 6.05 p.m.*

## 8th meeting

Tuesday, 28 May 1974, at 10.20 a.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.8

### Organization of work

1. The CHAIRMAN said that, with a view to speeding up the Committee's work, he was requesting delegations to follow certain rules.
2. Amendments should be submitted in writing not later than the day before the meeting at which they were to be discussed; amendments submitted after that time would be considered only if the Committee expressly decided to do so.
3. Amendments which were of a purely editorial nature would be noted and referred to the Drafting Committee without discussion.
4. As far as possible, amendments relating to several paragraphs of an article should be submitted separately.
5. Once an amendment had been put to the vote, no statements proposing changes would be permitted.
6. He had thought it advisable to make those rules, on the understanding that they amounted to an appeal to delegations to co-operate, rather than a tightening of the rules of procedure.

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.1, L.2, L.4, L.6, L.7, L.16, L.28, L.29, L.30, L.39, L.42, L.43, L.52) (continued)

#### Article 3 (concluded)

7. Mr. KRISPIS (Greece) announced that a change should be made in the amendment submitted by his delegation (A/CONF.63/C.1/L.42): the words "as to the whole contract of sale," should be added after the word "lead". The Committee had before it seven amendments to article 3, paragraph 3, all of which depended on its decision on the Norwegian amendment. Accordingly, the discussion should deal with all the amendments.
8. The CHAIRMAN suggested that the Committee should first decide on paragraph 1 (b) of the Norwegian delegation's amendment (A/CONF.63/C.1/L.2), as subamended by the proposal of the Australian delegation to add the words "to the contract of international sale of goods" after "the application".
9. Mr. BELINFANTE (Netherlands) observed that the Norwegian representative was not present and that it would have been useful for the Committee to hear him explain the reasons for his proposal.

10. Mr. JENARD (Belgium) said that the basic issue was whether, apart from cases in which the seller and buyer had their places of business in different Contracting States at the time of the conclusion of the contract, the Convention should also apply when the law of the forum designated the domestic law of a State party to the Convention as being applicable.

11. The amendment in document A/CONF.63/C.1/L.2 satisfied the requirement of ensuring the widest possible application of the Convention, but it did so to the detriment of the certainty of juridical relations, for it would be difficult for users to determine *a priori* which law governed the operation of prescription in their contractual relations. The amendment should therefore be rejected: it would make the Convention into a hybrid instrument—at once a convention on reciprocity and one embodying a uniform law.

12. Mr. HARTNELL (Australia) endorsed the view of the Belgian representative; he understood that one of the objectives of the Norwegian delegation's amendment (A/CONF.63/C.1/L.2) was to bring the text of the draft Convention into line with the revised ULIS draft. The Australian delegation's subamendment did in fact limit the scope of the provision proposed by the Norwegian delegation and was a possible compromise solution.

13. Mr. FRANTA (Federal Republic of Germany) agreed with the representative of Belgium that the Committee should decide on the substantive question raised by the amendment in document A/CONF.63/C.1/L.2, which would have the effect of making the Convention applicable even if the parties to the contract had no place of business in Contracting States. Such a provision would extend the sphere of application of the Convention too far, and his delegation opposed the change.

14. Mr. GUEIROS (Brazil), speaking on a point of order, said that the Committee should take a decision on the amendment in document A/CONF.63/C.1/L.28, which had also been submitted by the Norwegian delegation and superseded the amendment in document A/CONF.63/C.1/L.2.

15. Mr. HONNOLD (Chief, International Trade Law Branch) explained that that amendment had been submitted on the assumption that the Committee would not limit the provisions concerning the site of the places of business of the seller and buyer. Since that assump-



tion had proved unfounded, the proposal should be deemed to be no longer before the Committee.

16. Mr. SUMULONG (Philippines) endorsed the views of the delegations of Belgium and the Federal Republic of Germany. The use of the word "or" in the Norwegian amendment (A/CONF.63/C.1/L.2) gave reason to fear that the sphere of application of the Convention would be extremely wide, since it could apply even to cases in which the seller or the buyer, at the time of the conclusion of the contract, had no place of business in Contracting States.

17. Mr. PELICHET (Observer for the Hague Conference on Private International Law), speaking at the invitation of the Chairman, emphasized the usefulness of the amendment proposed by the Norwegian delegation (A/CONF.63/C.1/L.2). To view the matter from the standpoint of a common-law country, which, by definition, held that prescription was a procedural matter, that country would apply the Convention only if it had ratified it, because the Convention would then have become part of its own procedural law and its interest would clearly lie in applying the Convention. On the other hand, if the matter was approached from the standpoint of a Roman law country, the amendment in document A/CONF.63/C.1/L.2 would enable that country to apply the provisions of the Convention, inasmuch as the law applicable to the dispute, determined by the rules on conflict of laws, would be that of a Contracting State.

18. Such a solution was conducive to the unification of law and the safeguarding of the security of the parties. It left the rules of private international law to determine the law applicable to the contract, and there would be no reason to deem the provisions of the Convention inapplicable if the applicable law was that of a Contracting State. It was in that that the security of the parties lay.

19. Mr. AL-QAYSI (Iraq) said that in considering the amendment proposed in document A/CONF.63/C.1/L.2 to article 3, paragraph 1, the Committee should bear in mind paragraph 2 of the same article, since the two provisions appeared to contradict each other.

20. Mr. KOPAC (Czechoslovakia) said that he discerned two opposing trends; the first favoured a broad sphere of application and the second a limited sphere of application in the event that the seller and buyer had their places of business in Contracting States. The Norwegian delegation's amendment (A/CONF.63/C.1/L.2) was a possible compromise formula, inasmuch as if the buyer and seller had their places of business in Contracting States, the provisions of the Convention would apply and there would be no need to take into account the rules of private international law; those provisions would apply even to transactions between citizens of non-contracting States, since the rules of private international law would so require. One way out might be to make provision for reservations on the question of the sphere of application of the future Convention. His delegation fully endorsed the amendment.

21. Mr. TAKAKUWA (Japan) supported the amendment submitted by the Norwegian delegation (A/CONF.63/C.1/L.2), as subamended by the Australian delegation, and endorsed the view expressed by the Observer for the Hague Conference on Private International Law.

22. He stated the view on the relation between this uniform law and the principles of international private law by civil law approach, that this uniform law should apply only when the law of a Contracting State applied to the substantive part of the contract of sale, i.e. when the applicable law to the contract of sale was the law of a Contracting State. By his reasoning, rules on prescription constituted an integral part of rights and obligations of the parties. If the applicable law on prescription or limitation of actions became the law of the forum, the prescription system applicable to the same right would become diversified by incidents such as whether the forum is a Contracting State or not. On the other hand, when the law of a non-contracting State applied to the substantive part of the contract either by virtue of the rules of international private law or by the choice of the parties, it would be appropriate that this uniform law should not apply, so that diversification of applicable law in one contractual relation could be avoided. Consequently, he suggested that an appropriate solution would be to make a provision to the effect that this uniform law should apply when the application of the rules of international private law or the parties' choice lead to the application of a Contracting State to the contract of sale.

23. Under the Norwegian delegation's amendment, uniform rules would not apply unless the rules of private international law provided for the application of the law of a Contracting State to contracts of international sale of goods; that was entirely satisfactory for a civil-law country.

24. Mr. SMIT (United States of America) said that article 3 raised two fundamental issues. Firstly, the businessman, who would be the principal user of the future instrument, had to be able to determine—on his own and *a priori*—the sphere of application of the Convention, which should clearly be limited. That explained the reference to the place where the seller and buyer had their business headquarters—Contracting States—and the absence of a reference to the rules of private international law.

25. The second issue was to find a formula which would give the contracting parties the option of choosing some other law. It was for that reason that his delegation had submitted an amendment to paragraph 3 of article 3 (A/CONF.63/C.1/L.16). However, the Norwegian proposal (A/CONF.63/C.1/L.2) reinstated the rules of private international law for the purpose of choosing the applicable law and thereby reinstated several possible choices. If the Committee wished to broaden the sphere of application of the Convention, then the Convention should embody its own criteria and should not confine itself to referring to the extremely diverse rules of the Contracting States on the choice of the applicable law.

26. The CHAIRMAN invited the Committee to vote on the amendment in document A/CONF.63/C.1/L.2, as subamended by the Australian delegation.

*The amendment in A/CONF.63/C.1/L.2 was rejected by 21 votes to 15.*

27. The CHAIRMAN invited the Committee to consider the amendments to article 3, paragraph 3, beginning with the Danish amendment (A/CONF.63/C.1/L.4) and the United States amendment (A/CONF.63/C.1/L.16).

28. Mr. SMIT (United States of America), speaking on a point of order, remarked that his delegation's amendment sought not only to replace the word "val-

idly" by "expressly", but added on further condition to the original text. The two proposals were closely related—they in fact formed a single proposal.

29. Mr. MUSEUX (France) asked the representative of the United States whether "the law of a non-contracting State" meant the law relating to prescription or the law governing the contract of sale itself.

30. Mr. SMIT (United States of America) replied that he had had in mind the law applicable to the contract of sale.

31. Mr. BELINFANTE (Netherlands) said that his delegation found itself in a difficult position. He did not know what would happen, if the United States amendment was adopted, to his delegation's amendment (A/CONF.63/C.1/L.43), which was on the same lines as the United States amendment, but seemed to be more felicitously worded.

32. Mr. KRISPIS (Greece) asked why the United States delegation had omitted from its amendment the adverb "validly", which appeared in the original text of the draft Convention. According to an almost universal rule of private international law, the parties could choose the law to govern their contract, provided that such a law was of a State with which the contract had some connexion. He proposed that the adverb in question should be restored in the United States amendment, which would then read: "shall not apply when the parties have validly and expressly chosen . . .".

33. Mr. SMIT (United States of America) replied that his delegation's purpose in not keeping the idea of validity in the text had been to obviate problems of private international law. It should be clearly understood that, in practice, parties frequently chose a law having no bearing on the contract itself. The law of the United Kingdom, for example, was often chosen, because the parties had confidence in the competence and equity of English courts; the Supreme Court of the United States had repeatedly ruled that the choice of English law by parties was entirely legitimate. For that reason, his delegation could not accept the suggestion of the representative of Greece.

34. Mr. KRUSE (Denmark) pointed out that the proposals of his delegation and that of the Netherlands were just as relevant as the United States proposal.

35. Mr. SMIT (United States of America), speaking on a point of order, said that in order to facilitate matters his delegation's proposal should be put to the vote first, and thereafter the Netherlands proposal, since the two proposals were similar in that they laid down one or two conditions. The Committee could then move on to the proposals submitted by Denmark and the Federal Republic of Germany, which required the operation of the rules of private international law.

36. Mr. GOLDSTAJN (Yugoslavia) said that there was a matter of principle involved to which the Committee should first direct its attention. A reading of the amendments proposed made it clear that they were all aimed at limiting the freedom of choice—the autonomy—of the parties. Their autonomy was, however, recognized by the old ULIS and would certainly be recognized again by the new ULIS which was being drafted. If, therefore, one of the amendments before the Committee should be adopted, the courts would have the burdensome task of trying to reconcile the provisions of ULIS and the very different provisions of the Convention on prescription.

37. Mr. HARTNELL (Australia) endorsed the comments made on all the amendments under consideration. Accordingly, he agreed to delete the words "by declaration in writing" from the text of article 3, paragraph (2), proposed by his delegation (A/CONF.63/C.1/L.1).

38. His delegation could not accept the United States amendment, which was not only too complicated but also had the defect of establishing discrimination and limiting the choice of the parties.

39. Mr. SAM (Ghana) expressed concern at the slow progress of the Committee's work. He suggested, however, that the situation might be remedied by inviting the delegations which had sponsored the amendments under consideration to meet and endeavour to work out a joint text. As the amendments had some similarities, it would be most desirable to combine them in a single text which might be acceptable to the Committee.

40. Mr. GOKHALE (India) said that he saw no need for the second part of the United States amendment, which could only lead to confusion.

41. Mr. SUMULONG (Philippines) said that, in practice, the parties could stipulate only which law of the non-contracting State would govern the contract. His delegation therefore asked what would happen if the parties did not satisfy the second condition embodied in the United States amendment, in other words, when they had not "expressly excluded the application of this Convention".

42. Mr. SMIT (United States of America) replied that, in practice, parties made reference only to the law of a non-contracting State. It was for that very reason that his delegation had sought to remove any ambiguity about the intention of the parties expressly to exclude the application of the Convention.

43. Mr. TAKAKUWA (Japan) said that the United States proposal (A/CONF.63/C.1/L.16) and the proposal by the Federal Republic of Germany (A/CONF.63/C.1/L.39) were not identical: the two conditions laid down in them were linked, in the former, by the co-ordinating conjunction "and" and, in the latter, by the disjunctive conjunction "or". Moreover, his delegation did not see why all the amendments had to be put to the vote, in view of the fact that the Norwegian amendment had been rejected.

44. Mr. FRANTA (Federal Republic of Germany) said that his proposal was quite different from that of the United States. There was no reason to require parties to stipulate that they excluded the application of the Convention. They should be given complete freedom in that respect, and his delegation's amendment should be understood in that sense.

45. Mr. SMIT (United States of America) suggested that the question of principle should be settled first by deciding whether parties which wished to exclude the application of the Convention were required so to stipulate expressly or had to refer to the rules of private international law.

46. Mr. FRANTA (Federal Republic of Germany) said that the question should not be framed in that way. Some delegations wished to lay down the conditions in which parties might exclude the application of the Convention, but other delegations—like his own—felt that parties should have complete freedom of choice.

47. Mr. BELINFANTE (Netherlands) said that his delegation was willing to have consultations with the



delegations of Denmark, the United States and the Federal Republic of Germany.

48. Mr. SMIT (United States of America) said that his delegation would like to know the general feeling of the Committee. The delegations concerned would have a better idea of what to do if they knew from the outset on which lines the Committee wanted the joint text to be drafted.

49. Mr. GUEST (United Kingdom), endorsed the suggestion made by the representative of Ghana, and said that no progress could be made unless one of two steps was taken: either to refer the issue to a small working group or to suspend the meeting in order to consider in what order the amendments would be taken up.

50. Mr. BURGUCHEV (Union of Soviet Socialist Republics) agreed with the representative of the United States that it would not suffice for the parties to choose the law of a non-contracting State in order for the application of the Convention to be automatically excluded. His delegation therefore supported the amendment submitted by the United States (A/CONF.63/C.1/L.16), provided that the word "validly" was inserted, and that the beginning of the sentence read: "This Convention shall not apply when the parties have validly and expressly chosen . . .".

51. Mr. AL-QAYSI (Iraq) said that the Committee had to decide on three questions of principle: first, the nature of the choice made by the parties, which could be either valid or express, or both. Second, the subject of the choice, which could be either a non-contracting State or any State. Third, the conditions governing the choice, which could be of two kinds or of only one kind.

52. In voting on those questions of principle, the Committee might give the Drafting Committee some indication as to the way in which the text should be drawn up.

53. Mr. JENARD (Belgium) felt that the widest possible discretion should be left to the parties. It was not necessary to qualify their choice or specify the State involved. It was important only for the parties to choose a law, as was the case in current practice.

54. His delegation, which saw almost no difference between the Australian amendment (A/CONF.63/C.1/L.1) and that of the Federal Republic of Germany (A/CONF.63/C.1/L.39), except that the text of the first had the advantage of being shorter, endorsed the proposal made by the representative of Ghana to the effect that the delegations concerned, namely the delegations of Australia, Denmark, the Federal Republic of Germany, the Netherlands and the United States, should hold consultations on the matter.

55. The CHAIRMAN said that, since there seemed to be general support within the Committee for the proposal made by the representative of Ghana, he would suspend the meeting to enable the delegations concerned to hold consultations.

*The meeting was suspended at noon and resumed at 12.20 p.m.*

56. The CHAIRMAN announced that the representatives of Australia, Denmark, the Federal Republic of Germany, the Netherlands, Norway and the United States of America, meeting as an informal working group, had agreed to submit to the Committee the following text to replace paragraph 3 of article 3:

"This Convention shall not apply when the parties have expressly excluded its application."

*The text proposed by the informal working group was adopted by 32 votes to none.*

#### Article 4

57. Mr. ANTONIEWICZ (Poland) pointed out that his delegation, which had participated in the work of the Working Group on Prescription, had always considered that the exclusion of ships, vessels and aircraft from the field of application of the Convention was not justified. Should the Committee reject the amendment concerned (A/CONF.63/C.1/L.30), he would request that the exclusion should at least be limited to registered ships, vessels and aircraft. With regard to sales of electricity, his delegation, in view of the growing importance of international sales in that field, also proposed the deletion of subparagraph (f) of article 4.

58. Mr. HARTNELL (Australia), introducing the amendments contained in document A/CONF.63/C.1/L.52, pointed out that his delegation wished to delete subparagraph (a), which had been inserted in the Convention in order to bring the latter into line with the future text of the revised ULIS. Since the Committee had already decided to exclude from the field of application of the Convention sales which did not appear to be clearly international in character at the time of the conclusion of the contract, his delegation did not see why the exclusion provided for in subparagraph (a) of article 4 should be maintained. In any event, his delegation felt that the drafting of that provision was cumbersome; accordingly, if its first proposal was rejected, it proposed a simplified text of subparagraph (a).

59. Nor did his delegation see why sales by auction should be excluded: if a sale was international in character under the terms of the Convention, the modalities of the act of sale itself were of little importance.

60. With reference to subparagraph (e), he fully agreed with the delegations of the USSR and Poland that ships, vessels and aircraft were goods which should not be excluded from the field of application of the Convention.

61. His delegation was prepared to support the deletion of subparagraph (f) proposed by the USSR and Poland.

62. Mr. BELINFANTE (Netherlands) felt that the wording of subparagraph (a) of article 4 was very unwieldy, and would much prefer the simplified text proposed by the representative of Australia. His delegation supported the retention of subparagraph (b) but had no rigid view about subparagraph (f). If the deletion of the latter were put to the vote, his delegation would abstain. With reference to subparagraph (e), he considered it desirable to make an exception for registered ships, vessels and aircraft, because the divergencies in national laws on that point would lead to inextricable difficulties. He was therefore prepared to accept the insertion of the word "registered", as proposed by the representative of Poland.

63. Mr. BURGUCHEV (Union of Soviet Socialist Republics) stated that his delegation did not understand why international sales of electricity should be excluded from the scope of the Convention whereas sales of gas were not. The USSR was entirely in favour of the simplified version of subparagraph (a) proposed by the delegation of Australia.

64. Mr. KRISPIS (Greece) opposed the deletion of subparagraph (a) but would readily accept the alternative simplified draft proposed by Australia. The Greek delegation was indifferent concerning subparagraph (f), but favoured retaining subparagraphs (b) and (e).

65. Mr. STALEV (Bulgaria) was in favour of deleting subparagraphs (a), (b), (e) and (f).

66. Mr. GUEIROS (Brazil) supported the simplified version proposed by Australia for subparagraph (a). The Brazilian delegation was in favour of deleting subparagraphs (e) and (f), but wished to retain subparagraph (b) because sales by auction involved rules of domestic law which were sometimes difficult to interpret.

67. Mr. SAM (Ghana) said he did not have a rigid view of the provisions of article 4. He would have no difficulty in accepting the simplified version of subparagraph (a). He would be in favour of retaining subparagraph (f), since it was hard to demonstrate the tangible character of electricity. He would have no objection to the proposals of the USSR and of Poland for the deletion of subparagraph (e) if the majority voted in favour of doing so.

68. Mr. GOKHALE (India) voiced his preference for the simplified version of subparagraph (a) proposed by Australia.

69. Mr. GOLDSTAJN (Yugoslavia) wished to retain the substance of subparagraph (a), the text of which could be refined by the Drafting Committee. Subparagraphs (b), (e) and (f) could be deleted.

70. Mr. GUEST (United Kingdom) supported the wording of subparagraph (a) proposed by Australia, subject to some minor comments which would be communicated to the Drafting Committee. His delegation

was in favour of retaining subparagraphs (d), (e) and (f). It wished to point out, with regard to subparagraph (e), that ships and aircraft were often subject to various charges which made their sale extremely complicated.

71. Mr. KOPAC (Czechoslovakia) supported the amendments put forward by the USSR and by Poland. He favoured a simplification of subparagraph (a) but pointed out that the text proposed by Australia was ambiguous; it failed to make clear whether the decisive criterion of exclusion was the intention of the buyer or the final destination of the consumer goods in question.

72. The CHAIRMAN invited the members of the Committee to vote on the amendments to article 4.

*The Australian amendment for the deletion of subparagraph (a) (A/CONF.63/C.1/L.52) was rejected by 35 votes to 3.*

*The Australian amendment for the deletion of subparagraph (h) (A/CONF.63/C.1/L.52) was rejected by 36 votes to 4.*

*The amendments by Australia, Poland and the USSR for the deletion of subparagraph (e) (A/CONF.63/C.1/L.29, L.30 and L.52) were rejected by 22 votes to 16.*

*The amendments by Poland and the USSR for the deletion of subparagraph (f) (A/CONF.63/C.1/L.29 and L.30) were rejected by 18 votes to 13.*

*The Australian alternative amendment for the simplification of the wording of subparagraph (a) (A/CONF.63/C.1/L.52) was adopted by 35 votes to 7.*

*The meeting rose at 1.05 p.m.*

## 9th meeting

Tuesday, 28 May 1974, at 3.10 p.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.9

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.3, L.8, L.13,\* L.31) (continued)

#### Article 5

1. The CHAIRMAN drew attention to the amendments to article 5 proposed by Denmark (A/CONF.63/C.1/L.3) and Austria (A/CONF.63/C.1/L.8).

2. Mr. GUEIROS (Brazil) said that he was opposed to the Austrian proposal for the deletion of article 5 (a). He could accept the Danish amendment, provided that it was included as an additional subparagraph either before or after subparagraph (b), rather than as a replacement for it.

3. He noted that the English and Spanish versions of subparagraph (d) in document A/CONF.63/4 did not reflect the element of arbitration that was present in the French version.

4. The CHAIRMAN said that inconsistencies in the different language versions of subparagraph (d) would be referred to the Drafting Committee for consideration.

5. Mr. KRUSE (Denmark), introducing amendment A/CONF.63/C.1/L.3, said that it should be considered in the light of work currently being done by various international organizations with a view to the harmonization of rules on products liability. The Convention as currently drafted excluded claims based on personal injury and nuclear damage caused by the goods sold. That exclusion should be extended to cover claims based on all damage to property other than the goods sold. In many legal systems, claims based on such damage were founded in tort and should not, therefore, be covered by a Convention dealing with contractual obligations.

6. Mr. BARCHETTI (Austria), introducing amendment A/CONF.63/C.1/L.8, said that personal injury was usually a more serious matter than damage to property and should not be excluded from the scope of the Convention, especially since such exclusion could

\* Previously published as document A/CONF.63/C.1/L.55.

have the absurd effect of making limitation periods in respect of personal injury shorter than those in respect of material damage. Subparagraph (a) should therefore be deleted.

7. Mr. KRISPIS (Greece) said that article 5 (e) as currently drafted might nullify the effect of a judgement rendered in a Contracting State pursuant to the Convention, the enforcement or execution of which was sought in a second Contracting State. That possibility would be eliminated by the addition at the end of subparagraph (e) of the words "except if such document has been obtained in a Contracting State".

8. Mr. PELICHET (Observer for the Hague Conference on Private International Law) noted that article 5 (a) excluded all claims based on tortious liability but not claims based on products liability in respect of personal injury or damage to property. The Hague Conference on Private International Law had adopted a law on products liability in 1972, and the Council of Europe was currently preparing a law on producers' liability. In order specifically to exclude such liability from the scope of the Convention, he suggested that article 5 (a) should be amended to read: "Death of, or personal injury or material damage sustained by any person".

9. Mr. AL-QAYSI (Iraq) noted that the Danish amendment to article 5 (b), which referred to damage to property other than the goods sold, seemed incompatible with the original text, which referred to the two elements of nuclear damage and the goods sold. He asked whether the Danish proposal could be construed as an amendment within the meaning of rule 40 of the rules of procedure.

10. Mr. KRUSE (Denmark), replying to the representative of Iraq, acknowledged that his delegation's amendment was more far-reaching than the text of subparagraph (b) as currently worded, the reason being that the rules on products liability were concerned essentially with damage to property other than the goods sold.

11. Mr. GUEST (United Kingdom) said that his delegation supported article 5 as currently worded. It attached particular importance to subparagraph (a), whereby claims based on death or personal injury were excluded from the scope of the Convention. Although the need for that subparagraph had been diminished by the Committee's decision on consumer sales, it was important to have such a provision, because the effects of many carcinogenic or poisonous substances often remained undetected until many years after the delivery of the goods concerned. His delegation was therefore opposed to the Austrian amendment. It was also opposed to the Danish amendment because it did not believe that all aspects of products liability should be excluded from the scope of the Convention.

12. He noted that article 5 (e) dealt with the *titre exécutoire*, and felt that it should be left to the legal systems which recognized such a document to decide whether the wording of that subparagraph was appropriate.

13. Mr. LANDFERMANN (Federal Republic of Germany) supported the Austrian proposal for the deletion of article 5 (a). Under the law of his country, a distinction was made between contractual and delictual claims based on death or personal injury. He felt that all contractual claims of that type should be

governed by the Convention and all delictual claims by national law. However, his delegation had no strong views on the subject and would bow to the majority opinion.

14. He noted that the purpose of the Danish amendment was to exclude all questions of products liability from the scope of the Convention. Under German law, such questions did not arise in respect of the contractual relations between parties to a contract, but only in respect of third parties who had no contractual relationship with the producer.

15. Mr. NYGH (Australia) said that he could not support the Austrian amendment, but he agreed with the representative of Denmark that the entire question of products liability should be excluded from the scope of the Convention. The wording of the Danish amendment could perhaps be improved by the Drafting Committee.

16. He saw no fundamental difference of principle between personal injury and damage to property. Both types of damage raised the possibility of third-party claims; in particular, a party who had purchased property imported from abroad might face legal action in his own country in respect of damage caused by that property to the ultimate consumers to whom it had been resold. Under the Australian system of prescription, the corresponding limitation period was six years from the time when the damage was caused, while the Convention proposed a period of two or four years, as appropriate. The exclusion of products liability from the scope of the Convention would go some way towards solving certain problems related to articles 8, 10 and 17.

17. Mr. STALEV (Bulgaria) said that subparagraphs (a) and (b) performed the necessary function of excluding liability in respect of claims based on death, personal injury or damage caused by the goods sold. Such liability was defined differently—as either contractual or extracontractual—under different legal systems. He could not support the Danish amendment because all damage other than nuclear damage caused by defects in the goods sold should be covered by the Convention. Subparagraphs (a) and (b) should remain as currently drafted.

18. Mr. KRUSE (Denmark), referring to the remarks made by the representative of the Federal Republic of Germany, said that in some States products liability was regarded as a contractual liability and in others it was dealt with as a specific tort outside the contract. If the entire question was not removed from the scope of the Convention, some States would apply the rules of the Convention to products liability, while others would not.

19. Mr. GARCIA CAYCEDO (Cuba) said that, as his delegation was speaking for the first time at the Conference, it wished to make clear that, had it been present for the election of the Vice-Chairmen of the Conference, it would have voted against the election of Chile. His country considered it inadmissible that a Fascist Government which repressed the people should represent the group of Latin American countries.

20. Mr. ROGNLIEN (Norway) said that he was opposed to the Austrian amendment and preferred the existing wording of subparagraph (a).

21. He could support the Danish amendment, which would have the same effect as the suggestion made by

the Observer for the Hague Conference. Products liability in respect of claims based on contract or on tort should be excluded from the scope of the Convention. In the case of extracontractual claims, the limitation period would normally commence at the time when the damage was caused, rather than the time of delivery of the goods. The same rule should apply to claims founded in contract.

22. Referring to the existing wording of subparagraph (b), he pointed out that there was already in existence a convention on nuclear damage, the terms of which prohibited States parties from adhering to any outside arrangement relating to the same subject. States which had ratified a convention on nuclear damage would be unable to ratify the Convention on Prescription in the event of any divergence of rules between the two instruments. Subparagraph (b) should therefore be retained and the Danish amendment should either be inserted as an additional subparagraph between subparagraphs (a) and (b) or be incorporated into subparagraph (a), as suggested by the Observer for the Hague Conference.

23. Mr. BELINFANTE (Netherlands), referring to subparagraph (a), said it was a statement of the obvious to specify that claims based on death or personal injury should be excluded from the sphere of application of a Convention which applied to claims arising from the contract of sale. He therefore supported the Austrian proposal for deletion of the subparagraph.

24. With regard to subparagraph (b), he noted that the purpose of the Danish amendment was to exclude from the scope of the Convention claims based on tortious liability in respect of damage caused to property other than the goods sold. He could support that amendment, although it appeared superfluous in view of the fact that the Convention applied solely to claims founded in contract.

25. Mr. DIAZ BRAVO (Mexico) said that the provisions of subparagraph (e) were too far-reaching and might render the Convention inapplicable to certain types of sales contract. In the Latin American countries in particular, the invoice for the goods sold frequently represented the only title to the goods and should not be excluded from the scope of the Convention. Subparagraph (e) should therefore be either deleted or amended to read: "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, other than the invoice".

26. Mr. KRUSE (Denmark) agreed that if nuclear damage was not mentioned in article 5 (b) it might be difficult for States that had ratified the conventions on nuclear damage to ratify the Convention on Prescription. The addition to his amendment (A/CONF.63/C.1/L.3) of a phrase such as "even if the cause is nuclear" would be sufficient; the matter could be left to the Drafting Committee.

27. Mr. ROGNLIEN (Norway) said the Danish proposal should be included as a new subparagraph (a bis). If the intention was to make the amendment part of subparagraph (b), the Secretariat should be requested to look into the relationship between the damage and the goods in the light of the Paris and Vienna conventions on nuclear damage.

28. Mr. MICHIDA (Japan) supported the Danish proposal, but said that he wished the existing subparagraph (b) to be retained.

29. Mr. KRUSE (Denmark) said that, in view of the comments of the representative of Norway, he wished to revise his amendment to provide for the insertion of an additional subparagraph reading: "(a bis) Damage to property other than the goods sold".

30. Mr. JENARD (Belgium) said it seemed to him that there was no substantial difference between the amendment suggested by the Observer for the Hague Conference and that submitted by Denmark.

31. Mr. PELICHET (Observer for the Hague Conference on Private International Law) agreed, and withdrew his suggestion.

32. Mr. KRISPIS (Greece) announced that he was withdrawing his oral amendment, on the understanding that the Convention would apply in both States.

33. The CHAIRMAN invited the Committee to vote on the Austrian amendment (A/CONF.63/C.1/L.8).

*The Austrian amendment was rejected by 32 votes to 6.*

34. The CHAIRMAN invited the Committee to vote on the Danish amendment (A/CONF.63/C.1/L.3), as orally revised.

*There were 15 votes in favour and 15 against. The Danish amendment was rejected in accordance with rule 45 of the rules of procedure.*

35. The CHAIRMAN invited the Committee to vote on the Mexican oral proposal that article 5 (e) should be deleted.

*The proposal was rejected by 27 votes to 2.*

36. The CHAIRMAN invited the Committee to vote on the Mexican oral amendment to article 5 (e).

*The amendment was rejected by 19 votes to 2.*

37. The CHAIRMAN invited the Committee to vote on article 5 as a whole, as it appeared in document A/CONF.63/4.

*Article 5 was adopted by 32 votes to 1.*

#### Article 6

38. Mr. GUEST (United Kingdom), introducing amendment A/CONF.63/C.1/L.13, said that its purpose was to raise the question whether article 6 was needed in the Convention on Prescription. The article had originally consisted of the text of article 6 of the 1964 ULIS and had subsequently been divided into two parts, which had been the subject of considerable discussion in the UNCITRAL Working Groups on Sales and on Prescription. The fundamental issue in article 6 had to do with the very familiar question of the difficulty of differentiating between contracts for the sale of goods and contracts for the supply of services. As it stood, article 6 dealt with only certain aspects of the problem, and the amendment raised the question whether it was better to leave to national law the aspects not covered by the Convention or all the aspects of the issue. Although it might be argued that there was a need to single out the most difficult issues and that article 6 was designed to do precisely that, he would be very interested to hear the arguments.

39. Mr. ANTONIEWICZ (Poland), introducing amendment A/CONF.63/C.1/L.31, said the intention was to bring within the scope of the Convention contracts for the sale of machinery and equipment that in-

cluded the provision of know-how and services. His delegation wished to ensure that industrial co-operation and co-production agreements, which were playing an increasingly important part in international trade, were covered by the Convention.

40. Mr. MICHIDA (Japan) said the purpose of article 6 could be seen from paragraph 2 of the commentary on the article in the document attached to document A/CONF.63/5. In Japan, however, experts had found that there would be difficulty in applying the Convention to contracts of the kind mentioned, especially in the situation outlined in the second sentence of paragraph 3 of the commentary. The existing text of article 6, paragraph 1, did not make it clear whether the contracts should be considered to be separate or not, thus throwing the burden of decision on national courts. Although there was some feeling that the article provided a procedure for interpretation, the criticism had been raised that there might be difficulties in ascertaining its true meaning. Although his delegation could sympathize with the United Kingdom representative's reasoning, it could not support his amendment. Article 6 should be referred to the Drafting Committee, which should be instructed to prepare a text more in accordance with the points made in the commentary on the draft article.

41. Mrs. JUHASZ (Hungary) said she supported the Polish amendment because it clarified the scope of the Convention.

42. Mrs. KOH (Singapore) said she understood that one reason why the United Kingdom was proposing the deletion of article 6 was that the article was confined to a single aspect of the distinction between contracts for the sale of goods and contracts for the supply of labour. The article should perhaps, therefore, include a more exhaustive statement of the distinction between the different kinds of contracts.

43. Furthermore, to leave it to the national courts to make the distinction might not lead to uniformity; for example, some courts might base the distinction between the two contracts on whether the contract ultimately led to the transfer of goods, even if the supply of labour was involved.

44. Mr. BURGUCHEV (Union of Soviet Socialist Republics) proposed that, since article 6 was unclear, it should be transmitted to the Drafting Committee, together with the relevant article of ULIS and the Polish amendment (A/CONF.63/C.1/L.31), for reformulation.

45. Mr. ROGNLIEN (Norway) observed that the meaning of the Polish amendment was difficult to grasp, and he was not sure whether it constituted a change of substance. With reference to paragraph 1 of the amendment, he considered that the performance of other obligations, even if decisive, even if constituting a decisive part, could fall within the ordinary concept of a contract for the sale of goods. Paragraph 2 was also unclear. If the amendment was to be put to the vote, he would vote against it. If, on the other hand, it was decided that the amendment did not relate to substance, it should be transmitted to the Drafting Committee.

46. With regard to the United Kingdom proposal for the deletion of article 6, he requested that separate votes should be taken on the deletion of paragraph 1 and of paragraph 2.

47. Mr. GUEIROS (Brazil) drew attention to the difficulty, in the case of mixed contracts, of deciding

what was the "preponderant part" of the contract. For example, could the know-how supplied under a contract for the sale of goods be regarded in some cases as the preponderant part of the contract? He considered that paragraph 1 of the original text, together with paragraph 2 of the Polish amendment, should be transmitted to the Drafting Committee for its consideration.

48. Mr. BELINFANTE (Netherlands) agreed that article 6 as currently worded was unsatisfactory. However, it would be unwise to delete it, as the United Kingdom had proposed, since such a provision was useful in mixed contracts. He agreed with the representative of Norway that separate votes should be taken on paragraphs 1 and 2.

49. The main objection to the current text was the use of the words "preponderant" and "substantial". What did they mean? Was there also an intermediate point between them, and would the Convention apply in such a case? On the other hand, did the two terms perhaps overlap? A further objection was the fact that paragraph 1 was phrased in the negative and paragraph 2 in the positive. The Polish amendment did not suffer from that defect, but its wording was not clear and it should be referred to the Drafting Committee.

50. Mr. KOPAC (Czechoslovakia) said that, in his view, article 6 was very important, since it defined the scope of the Convention, and it should not be deleted. However, he agreed that the current text was unsatisfactory. The words "preponderant" and "substantial" could be interpreted in different ways—for example, on the basis of value or of quantity—and were therefore a source of uncertainty.

51. The wording should be made clearer in one of two ways: either the scope should be extended, as proposed in the Polish amendment (A/CONF.63/C.1/L.31)—an alternative which he preferred—or it should be restricted by deletion of the words "preponderant" and "substantial".

52. He wished to propose the following alternative wording for paragraph 1 if the Polish amendment was rejected: "This Convention shall not apply to contracts in which the obligations of the seller consist in the supply of labour or other services". He would also propose that the word "substantial" in paragraph 2 should be deleted.

53. Mr. GUEST (United Kingdom), replying to the representative of Norway, said that his delegation's amendment (A/CONF.63/C.1/L.13) should be taken as applying to article 6 as a whole; there should not be a separate vote on the deletion of each paragraph.

54. With regard to the Polish amendment, paragraph 2 in particular involved a change of substance, and the Drafting Committee would need a clear mandate in that regard.

55. Mr. KRISPIS (Greece) agreed that the meaning of the words "preponderant" and "substantial" was difficult to determine. Furthermore, the article was badly drafted; in paragraph 2, the words "shall be considered to be sales within the meaning of this Convention" suggested the existence of a legal fiction. That difficulty could be avoided by stating simply: "This Convention shall apply to contracts for the supply of goods to be manufactured or produced, unless ...". The matter should be referred to the Drafting Committee.

56. Mr. GARCIA CAYCEDO (Cuba) opposed the deletion of article 6, which was important from the point of view of mixed contracts. However, the wording was not very clear. The Polish amendment (A/CONF.63/C.1/L.31) was an improvement, but needed further consideration.

57. Mr. ROGNLIEN (Norway) proposed that paragraph 1 should be deleted, for the following reason. At the time of drawing up the contract, it was very difficult to know which would be most important—the supply of goods, or maintenance of other services. That depended on the quality of the goods, the purpose for which they were used, and many other factors. It might be that the obligation to provide services would subsequently prove to be more important, even if it was not considered so at the outset.

58. Mr. SAM (Ghana) said that he fully supported the Norwegian proposal to delete paragraph 1, since he was convinced that the parties to a contract would themselves be in a position to know whether they required goods or services under the contract.

59. As to paragraph 2, he agreed with the representative of Greece that the wording should be considered by the Drafting Committee, account being taken of the comments made by the representatives of Japan and Singapore.

60. While the Polish amendment might have merits of its own, he did not see what it sought to achieve; he therefore felt that it, too, should be transmitted to the Drafting Committee.

61. The CHAIRMAN said that, since the United Kingdom representative opposed the Norwegian motion for separate votes on the deletion of paragraphs 1 and 2, the motion would be put to the vote in accordance with rule 39 of the rules of procedure.

*The motion was rejected by 19 votes to 14.*

*The United Kingdom amendment (A/CONF.63/C.1/L.13) was rejected by 34 votes to 5.*

62. After a brief procedural discussion, the CHAIRMAN ruled that the Polish amendment (A/CONF.63/C.1/L.31) touched upon matters of substance and should therefore be put to the vote.

*The Polish amendment (A/CONF.63/C.1/L.31) was rejected by 23 votes to 13.*

63. Mr. GUEIROS (Brazil), speaking in explanation of vote, said that he had voted against the Polish amendment, since it had not been agreed to transmit it to the Drafting Committee. His delegation accepted the second paragraph of the amendment, subject, however, to further drafting. As he had been required to vote on the amendment as it stood, he had voted against it.

64. The CHAIRMAN drew attention to the Czechoslovak oral proposal submitted as an alternative to the Polish amendment.

65. Mr. GOKHALE (India) requested a clarification of that proposal. He wondered whether it was intended to cover contracts where the preponderant part of the obligation consisted in the supply of goods and a very small part consisted in the supply of labour or other services.

66. Mr. KOPAC (Czechoslovakia) replied that he had in mind contracts of different types, including the delivery of goods and the performance of services.

Since the wider scope of the Polish amendment had been rejected, it was necessary to prevent varying interpretations of the definition of the term "contract of sale" by omitting the reference to the "preponderant part" of the obligations. Restricting the scope of the definition in that way, although regrettable, was necessary for the purposes of legal security.

67. He proposed the deletion of the word "substantial" in paragraph 2 because that word could be interpreted differently in different countries. It would be useful to have a precise distinction between contracts of sale and other types of contract.

68. Should his amendments be adopted, even if a small part of the materials were supplied by the party ordering the goods, the contract would not fall within the scope of the Convention. The adoption of his amendments would prevent different interpretations of the article and—what was most important—if a contract involved obligations of the party ordering the goods, the obligations of both parties would be modified to some extent.

69. Mr. SAM (Ghana) said that, while he appreciated the concern of the representative of Czechoslovakia, he felt that the amendments he had proposed should be referred to the Drafting Committee for further consideration.

70. Mr. KOPAC (Czechoslovakia) said that his amendments involved a matter of substance.

71. Mr. BELINFANTE (Netherlands) observed that article 6 was unclear to begin with and the Czechoslovak amendments widened the gap between the two paragraphs. The amendments should be rejected and article 6 as a whole should be referred to the Drafting Committee for improvement.

72. Mr. KRISPIS (Greece) said that he could not accept the Czechoslovak amendments, which would exclude mixed contracts from the scope of the Convention.

73. Mr. ROGNLIEN (Norway) cautioned against referring to the Drafting Committee matters which were not drafting points. The words "preponderant" and "substantial" were important and their deletion would render the article meaningless.

74. Mr. KOPAC (Czechoslovakia) said the difficulty was that article 6 approached the definition of the sale of goods from a negative standpoint by excluding certain contracts from coverage by the Convention.

75. There was no contradiction between his amendments and paragraph 2 of the article, which contained the substance, nor was there any gap between paragraphs 1 and 2. Perhaps the Committee should take a decision in principle on one of three options: it could accept the text as it stood, it could adopt his amendments, or it could specify that the Convention covered contracts in which all materials were provided by the supplying party.

*The Czechoslovak oral amendments were rejected by 31 votes to 2.*

76. Replying to a question put by Mr. MICHIDA (Japan), the CHAIRMAN said that all articles adopted by the Committee would be referred to the Drafting Committee. However, no further substantive changes would be made.

*The meeting rose at 5.55 p.m.*



## 10th meeting

Wednesday, 29 May 1974, at 10.15 a.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.10

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, 63/5, 63/6 and Add.1 and 2, A/CONF.63/C.1/L.10, L.17, L.18, L.40 L.44, L.54, L.56, L.57, L.60, L.63, L.71)**  
(continued)

### Article 7

1. Mr. HONNOLD (Chief, International Trade Law Branch), speaking as the Secretary of the United Nations Commission on International Trade Law (UNCITRAL), said that the draft Convention under consideration was one of a series of conventions on harmonization and unification undertaken by UNCITRAL. The Committee might be interested in the reasons underlying article 7, since UNCITRAL was employing the same approach in the preparation of other draft conventions. For example, a provision similar to that in article 7 of the draft Convention under consideration was to be found in the draft text of the Uniform Law which had been provisionally approved by the Working Group on the International Sales of Goods,<sup>1</sup> and in article 4 of the draft convention on international bills of exchange and international promissory notes.<sup>2</sup>

2. It had been thought necessary to include the provision in article 7 because of special problems of achieving uniformity in the application of such international conventions. In some countries, ratification alone ensured that an international convention entered into force; in this case, the international character of the rules was apparent. However, in other countries, it was necessary to incorporate the provisions of an international convention into internal legislation. In the latter case, the international character of the convention was in danger of becoming blurred, and its provisions might then be interpreted by the courts as though they were of domestic origin, and in the light of domestic legal idioms. That situation was exemplified by the "Hague Rules" on bills of lading embodied in the Brussels Convention of 1924,<sup>3</sup> which had been adopted more than 50 years earlier and had been applied throughout the world. Research in the application of this Convention revealed that its provisions had often been applied without regard to its objective to secure uniformity and without regard to settled interpretations in other countries. Applying an international convention in that way could, of course, nullify the process of unification that was the reason for the convention's existence.

3. That was why UNCITRAL had deemed it important to include a provision, such as the one proposed in article 7, which would draw the attention of the tribunal responsible for applying the Convention

to its international character and to the need to interpret it in a manner that was consistent with the objective of achieving unification.

4. The CHAIRMAN observed that the Committee had before it two amendments, one submitted by Austria (A/CONF.63/C.1/L.9) and the other by the USSR (A/CONF.63/C.1/L.40), both of which proposed the deletion of article 7.

5. Mr. GUEIROS (Brazil) said he thought that article 7 merely stated the obvious, but that it would be as well to retain it, if only as guidance for the judges who would be required to interpret the Convention. His delegation was opposed to the deletion of the article, as proposed by the delegations of Austria and the USSR.

6. Mr. KRISPIS (Greece) said that provisions such as the one in article 7 had proved invaluable in all international conventions in the field of private law. It was important to refer to the international character of the Convention, and his delegation was in favour of retaining the original wording of article 7.

7. Mr. BARCHETTI (Austria) said that he had no doubts about the usefulness of the provision in article 7, but would prefer it to be included in the preamble to the Convention.

8. Mr. SAM (Ghana) said that he could not support the amendments proposed by Austria and the USSR. Already during the consideration of article 1, his delegation had said how useful article 7 was and had even proposed that the text should be placed at the beginning of article 1, paragraph 3. It would like to reiterate that proposal, although it was willing to retain article 7 in its current form.

9. Mr. HARTNELL (Australia) said that he favoured retaining article 7 in the draft Convention. The article would be of no great practical interest to the Australian courts, but it at least had the merit of promoting the uniformity of private international law.

10. Mr. ROGNLIEN (Norway) said that his delegation had originally favoured deletion of the article, but that having heard the arguments, it had reached the conclusion that article 7 could play a helpful role by ensuring uniform interpretation in different law systems and by drawing the attention of the courts in the common-law countries to the necessity of taking the international character of the Convention into account so as not to interpret its provisions in a restrictive manner. He therefore supported the wording of article 7, as it appeared in the draft Convention.

11. Mrs. JUHASZ (Hungary) said she did not think that article 7 could resolve the problems posed by the interpretation and application of the Convention. Her delegation supported the Austrian and USSR amendments to delete the article. However, if the majority of members of the Committee was opposed to such deletion, she would propose that the article should be referred to the Drafting Committee.

12. Mr. GUEST (United Kingdom) said that there were three arguments in favour of retaining the original

<sup>1</sup> See *Yearbook of the United Nations Commission on International Trade Law*, vol. III: 1972 (United Nations publication, Sales No. E.73.V.6), p. 109, document A/CN.9/70.

<sup>2</sup> *Ibid.*, p. 145, document A/CN.9/67.

<sup>3</sup> League of Nations, *Treaty Series*, vol. CXX, No. 2764, p. 155.

wording of article 7. Firstly, that wording would provide a useful frame of reference for the judges in the common-law countries who were only too apt to interpret the provisions of internal law restrictively, and would serve to make them more conscious of the difference between the provisions of internal law and those of an international instrument. Second, the wording of article 7 would encourage the judges of the common-law countries to interpret the Convention and to relinquish their instinctive disinclination to recognize the binding force of an international instrument. Third, UNCITRAL, when drafting the article, had been prudent enough to think of the future, realizing that its work was the first stage of a long undertaking of perhaps 40, 50 or 60 years' duration—namely the preparation of a set of rules pertaining to international trade law. Article 7 pointed the direction in which UNCITRAL would continue to strive, having been entrusted by the General Assembly with the task of promoting the uniformity and harmonization of international trade law.

13. Mr. JENARD (Belgium) said that while article 7 did not inspire enthusiasm it had the merit of drawing the attention of judges to the fact that they should not refer solely to the provisions of their national law. His delegation intended to submit a proposal that would improve the current wording of article 7.

14. Mr. GOKHALE (India) endorsed the comments of the representative of the United Kingdom.

15. Mr. KOPAC (Czechoslovakia) said he felt that the wording of article 7 was too vague. His delegation, although it did not see the point of setting guidelines for judges, could agree to including in the preamble to the draft Convention a provision referring to the notions of uniformity and harmonization, and would like to suggest that the Drafting Committee should consider that possibility.

16. Mr. PARKS (Canada) supported the comments made by the representative of Brazil and said that his delegation favoured the retention of article 7, which aptly reflected the spirit in which the Convention had been prepared.

17. Mr. STALEV (Bulgaria) observed that it was the unanimous view of all the representatives that the international character of the Convention played an important role in its interpretation and application. His delegation therefore thought that that international character should be stressed by including a reference to it in the preamble to the draft Convention.

18. Mr. LEBEDEV (Union of Soviet Socialist Republics), supported by Mr. AYUSH (Mongolia) and Mr. KIBIS (Byelorussian Soviet Socialist Republic), said he saw no point in retaining a provision which was unclear to some delegations and of no practical interest to others. Even though there appeared to be agreement that the Convention should not be merged in the provisions of internal law but should keep its international character, to state that fact and to make an exaggerated attempt to draw it to the attention of the courts would be superfluous. If members really wished to conserve the idea on which the article was based, perhaps it would be possible to include it in the preamble to the draft Convention.

19. Mr. ROUTAMO (Finland) observed that in some countries international conventions, when applied, became part of internal law. If the idea on which article 7 was based was stated in the preamble, it was

doubtful whether it would be taken into consideration in those countries.

20. The Chairman invited members to vote on the amendments submitted by Austria (A/CONF.63/C.1/L.9) and the USSR (A/CONF.63/C.1/L.40).

*The Austrian and USSR amendments were rejected by 24 votes to 14.*

21. The CHAIRMAN then invited the Committee to decide whether the text of article 7 should remain where it was in the draft Convention or should be transferred to the preamble.

*The Committee decided to retain the text of article 7 as it appeared in the draft Convention by 21 votes to 15.*

#### Article 8

22. The CHAIRMAN, with the agreement of Mr. REESE (United States of America), said that the United States amendment (A/CONF.63/C.1/L.17) would be referred to the Drafting Committee because it was concerned only with a drafting question.

23. Mr. BARCHETTI (Austria) observed that there were already a great many limitation periods and that the adoption of the four-year period envisaged in article 8 would only complicate the situation. It seemed to his delegation that a three-year period would be sufficient, bearing in mind the modern methods of communication which currently existed.

24. Mr. JEMIYO (Nigeria) proposed that the limitation period should be not four but six years.

25. Mr. GUEST (United Kingdom) considered that a four-year period was acceptable, although his delegation had proposed a five-year limitation period (A/CONF.63/C.1/L.54). His delegation had also proposed that in article 8 the words "subject to the provisions of article 10" should be deleted, but felt that it would be better to study that proposal during the consideration of article 10. However, the main thing was to provide for a period sufficiently long to allow the parties to negotiate rather than take their differences to court.

26. Mr. GUEIROS (Brazil) recalled that UNCITRAL had opted for a four-year period as a compromise solution. Two elements needed to be taken into consideration in determining the length of the period: the need to ensure the stability of commercial relations, and the need to allow sufficient time for the consideration of the documents under litigation and for the initiation of negotiations. Since transactions were made rapidly in the modern world, it would be preferable to provide for a three-year period. However, if the four-year period was retained by the Committee, that same period should apply to all situations which might arise.

27. Mr. JENARD (Belgium) supported the remarks made by the Brazilian representative. His delegation too would prefer a three-year period, but was prepared to accept the four-year period adopted by UNCITRAL as a compromise solution. It was unfortunate that amendments had been submitted which called that compromise into question.

28. Mr. ROGNLIEN (Norway) indicated that his delegation, after some hesitation, had submitted an amendment (A/CONF.63/C.1/L.56) in view of the special two-year limitation period envisaged in article 10 in case of a defect or lack of conformity. That provision introduced unnecessary complications. If a two-year period was accepted for claims arising from one



of the most important elements in the performance of a contract, there seemed to be no point in fixing a different period for other flaws in performance which were liable to give rise to claims. His Government would have difficulty in ratifying the Convention if it provided for limitation periods of varying duration. His delegation was less concerned with the actual duration of the period than with its uniformity. It would prefer a three-year period, but was prepared to accept a four-year period on conditions that the limitation period was uniformly applicable.

29. In advocating a single limitation period, he was aware of the special nature of the situation referred to in article 10, and would be prepared to accept an additional period of one year, as envisaged in other provisions of the draft, so as to allow the buyer time to discover the defect or lack of conformity.

30. In any event, it would be difficult to take a decision on article 8 before considering article 10. His delegation therefore requested that the amendments relating to article 8 should not be put to the vote until article 10 had been discussed.

31. After an exchange of views in which Mr. HARTNELL (Australia), Mr. KRUSE (Denmark), Mr. SAM (Ghana), Mr. FRANTA (Federal Republic of Germany) and Mr. MUSEUX (France) participated, the CHAIRMAN invited the Committee to decide whether to consider articles 8 and 10 separately.

*The Committee decided to consider articles 8 and 10 separately, by 26 votes to 8.*

32. Mr. MUSEUX (France) felt that the four-year limitation period was too short, particularly since it could only be interrupted by the commencement of judicial proceedings. However, his delegation, recognizing that it was a compromise solution adopted by consensus by UNCITRAL, supported the formula proposed in the draft. Nevertheless, his delegation was in favour of a different limitation period in the case of a defect or lack of conformity.

33. Mr. STALEV (Bulgaria) said that his delegation was in favour of a three-year limitation period, which would have the advantage of allowing a rapid normalization of relations between the parties. Moreover, it should not be forgotten that article 21 of the draft offered the possibility of extending the limitation period.

34. Mr. GOKHALE (India) said that a three-year period would be reasonable, but he would not object to the compromise solution proposed by UNCITRAL.

35. Mr. REESE (United States of America) supported the position taken by the Norwegian representative. He had no objection to the four-year period, but was firmly convinced that the Convention should provide for a single limitation period.

36. Mr. HARTNELL (Australia) supported the amendment submitted by the United States (A/CONF.63/C.1/L.17). The duration of the limitation period provided for in article 10 should be identical to that stipulated in article 8.

37. Mr. SUMULONG (Philippines) considered that the question of the duration of the limitation period should be resolved in the simplest possible way bearing in mind the concerns of business circles. The International Chamber of Commerce had favoured a five-year period, and he therefore supported the United Kingdom proposal (A/CONF.63/C.1/L.54) which provided

for a period of that duration. That would give the parties more time to seek an amicable solution.

38. Mr. JEMIYO (Nigeria) proposed an oral amendment to article 8 that would replace the words "four years" by "six years". His delegation advocated an extension of the period so as to give the parties all the time they needed to settle their differences out of court. A shorter limitation period might prejudice the interests of the developing countries which, in order to defend their rights or assert a claim, had to overcome barriers of distance, language and variations in law. The Nigerian legislation, like that of many common-law countries did in fact provide for a six-year limitation period.

39. Mr. SAM (Ghana) said that the length of the limitation period should be fixed in relation to the needs of businessmen and lawyers. At present experts often had to be called in to carry out thorough investigations in order to establish that a breach of contract had taken place. The Ghanaian delegation would therefore have great difficulty in accepting a limitation period of three years. It favoured a six-year period, as suggested by the representative of Nigeria, or a five-year period at the very least.

40. When a seller supplied goods which did not conform to the contract, the date when the goods were placed at the buyer's disposal was often merely a theoretical one, since there were sometimes hidden flaws which were only revealed by use. Hidden flaws should be excluded from the scope of the Convention. When the lateness of a claim could not be imputed to the fault of a plaintiff, it was unjust to deprive him of the right to bring an action.

41. It had been said that if the limitation period were too long, the seller would be troubled by an element of uncertainty. That was a superficial argument, since the seller was not freed from uncertainty at the moment of delivering the goods. He should be encouraged to be concerned about the durability of his products. If he felt that a lengthy limitation period exposed him to undue risks, it was up to him to take precautions against such risks by manufacturing durable and reliable products. That was particularly important in the sale of heavy equipment. The developed countries should show understanding of the difficulties of the developing countries concerning the length of the limitation period.

42. He concluded by stating his support for a six-year limitation period.

43. Mrs. JUHASZ (Hungary) understood the point of view of the developing countries, but pointed out that UNCITRAL had already discussed that point at great length and had reached a compromise on a four-year period. The Hungarian delegation supported that compromise solution.

44. Mr. KOPAC (Czechoslovakia) observed that a prolonged period had advantages but also disadvantages. It did allow the parties more time to negotiate and settle their differences amicably. It should be recalled that article 21 of the draft provided for an extension of the limitation period. An overlong period had disadvantages, since it obliged the parties to keep for a very long time the documents liable to be used as evidence, and sometimes caused difficulties when the creditor had to substantiate his claim, particularly in cases in which witnesses were no longer available.

45. The Czechoslovak delegation was in favour of a short period. The Socialist countries, in commercial

transactions amongst themselves, used a limitation period of two years with satisfactory results.

46. The interests of the developing countries should certainly be taken into account, but he was not sure that a very long period would necessarily be to their advantage. The key question for them was that of lack of conformity dealt with in article 10, and when that article was examined efforts should be made to satisfy them.

47. The Czechoslovak delegation would vote in favour of the present version.

48. Mr. GONDRA (Spain) said that his delegation for the time being would abide by the compromise solution reached by UNCITRAL after a difficult debate. With a view to providing parties with the greatest possible legal certainty, his delegation was in favour of a single period of four years, but would be ready to accept an extension of that period in cases of a lack of conformity. Such extension could be either provided for by law, or stipulated by the contract, or agreed to by the parties in conformity with article 21.

49. Mr. SANDERS (Guyana) supported the oral amendment proposed by Nigeria, or should that not be acceptable, the United Kingdom amendment. The fact that the four-year period now stipulated in the draft was a compromise was not a convincing argument since the Conference was more representative than UNCITRAL.

50. Mr. HAUSHEER (Switzerland) asked whether the application of article 23 might lead to an extension of the limitation period beyond the eight years specified in article 21, as was permissible under Swiss law.

51. Mr. BELINFANTE (Netherlands) said that he did not object to the four-year limitation period, but noted that the only argument advanced in favour of that period was that it was the result of a compromise in UNCITRAL. His delegation appreciated the arguments of Nigeria and Ghana and wondered whether it might not be possible to seek a further compromise which would satisfy the developing countries to a greater extent.

52. Mr. BARNES (Ireland) strongly supported the idea of a single limitation period. If, in order to have a single period, it was necessary to agree to a compromise in terms of an extension of its duration, his delegation was prepared to do so.

53. Mr. NICOL (Sierra Leone) supported the Nigerian amendment for the reasons given by the Nigerian and Ghanaian representatives.

54. Mr. LEBEDEV (Union of Soviet Socialist Republics) emphasized that two requirements governed the choice of a limitation period: that of maintaining the legal relationship between the parties to the contract and that of allowing a sufficiently long time for conducting negotiations which might avoid appeals to the courts. Obviously none of the periods agreed on by the Committee would be wholly satisfactory to everyone and in every case. In opposing the choice of a short period, some delegations had mentioned the case of the lack of conformity of the goods. The problem involved actually seemed to be not so much that of the length of the period as that of the time it started. Moreover, the Committee should discuss it in connexion with article 10.

55. The four-year period referred to in the draft Convention was the result of a compromise adopted by consensus in UNCITRAL. When that decision had been

adopted, the USSR had stated that it preferred a period of three years. If the Committee decided not to abide by the four-year period specified in the draft, his delegation would be in favour of a three-year period; if, on the other hand, the Committee accepted the text on which a consensus had been reached in UNCITRAL, his delegation would support that solution.

56. Mr. MICHIDA (Japan) supported the four-year period specified in the draft Convention out of respect for the compromise accepted by UNCITRAL. His delegation could go along with a five-year period, as it had stated in the course of UNCITRAL's work. Its preference for a longer period was justified, firstly, by the slowness of communication between persons using different languages, when considerable documentation had to be translated, and secondly by the difficulty that might arise in obtaining the services of a legal counsel competent in often highly specialized fields. Again, the fact must not be overlooked that, at least in countries applying the principle of free enterprise, many transactions were, at a given moment, bedevilled by insolvency or non-payments. To adopt a longer limitation period would enhance the possibility of payment by the creditor, in that it would enable enterprises experiencing temporary difficulties to reorganize and resume their activities. It was primarily for those two reasons that his delegation was prepared to support the adoption of a five-year period, if the initial compromise formula was reviewed.

57. Mr. BARCHETTI (Austria) announced that his delegation was withdrawing amendment A/CONF.63/C.1/L.10 in favour of the adoption of a three-year period, but was still opposed to a period of more than four years.

58. Mr. KHOO (Singapore) thought that emphasis had been rightly placed on the difficulties that would ensue from an unduly short limitation period. The Convention on prescription should be applied throughout the world, including the most isolated areas with which communication might be slow. Moreover, the domestic law of a number of common-law countries, including Singapore, provided for a limitation period of six years. Accession to the Convention would, in those countries, mean the coexistence of periods of different duration and complicate business life. For that reason his delegation would support the Nigerian proposal for the introduction of a six-year period. If, however, that proposal was not acceptable to the majority, his delegation would then vote for the United Kingdom amendment (A/CONF.63/C.1/L.54).

59. It was also important to prescribe a single limitation period in the Convention so as to make the text as easily understandable as possible.

60. Mr. KNUTSSON (Sweden) remarked that the close links between article 8 and article 10 prevented the Committee from taking a decision on the former before considering the latter. He therefore proposed that the Committee should decide on article 8 by a vote which would be purely indicative, leaving the final decision until after consideration of article 10, which might enable a compromise to be reached.

61. Mr. FRANTA (Federal Republic of Germany) said that his delegation was prepared to accept a four-year period. It was not in favour of the principle of the uniformity of the limitation period, because claims arising from a lack of conformity of the goods must be limited by a shorter period. His delegation reserved

the right to return to the matter during consideration of article 10.

62. Mr. KRUSE (Denmark) thought that the choice of a single period was the simplest solution. With regard to the decision on article 8, he strongly supported the Swedish proposal.

63. The CHAIRMAN said it was his understanding that the Committee was in favour of the procedure suggested by the Swedish representative and therefore suggested that the Committee should take an indicative decision on the oral amendment of the Nigerian delegation proposing the adoption of a six-year period.

*The Committee rejected the oral amendment of the Nigerian delegation by 23 votes to 13.*

64. The CHAIRMAN called on the Committee to take an indicative decision on the United Kingdom amendment (A/CONF.63/C.1/L.54) proposing the adoption of a five-year period.

*The Committee rejected the amendment (A/CONF.63/C.1/L.54) by 20 votes to 17.*

65. Mr. ROGNLIEN (Norway), speaking on a point of order, said that his delegation maintained its amendment proposing the adoption of a three-year period (A/CONF.63/C.1/L.56).

66. Mr. MUSEUX (France) suggested that the Committee should also take an indicative decision on the adoption of a four-year period.

*The Committee decided in favour of a four-year period by 36 votes to 4.*

#### Article 9

67. The CHAIRMAN suggested that the Committee should start with a general debate before taking up the article paragraph by paragraph.

68. Mr. REESE (United States of America) said that his amendment (A/CONF.63/C.1/L.18) referred only to the wording and that his delegation was prepared, provided the substance of article 9 was not changed, to agree that the Committee should refer the text to the Drafting Committee.

69. Mr. BARCHETTI (Austria) reserved the right not to submit his delegation's amendment (A/CONF.63/C.1/L.44) until article 9, paragraph 3, to which it referred, was taken up.

70. Mr. GUEST (United Kingdom) explained that the amendment his delegation proposed to submit to article 9, paragraph 2 (A/CONF.63/C.1/L.57) was

intended to enable a second type of fraud, not covered in the text of the draft, to be considered: the case where the claim had been wittingly and deliberately concealed by the debtor. If such a case arose, the limitation period should run only from the date on which the fraud was actually discovered. The fate of such a provision was, of course, closely linked with that of article 10, paragraph 2, in which the matter was already broached.

71. Mr. ROGNLIEN (Norway) explained that the purpose of his delegation's amendment (A/CONF.63/C.1/L.60) was only to change the wording of article 9, paragraph 1. He would prefer the text of paragraph 2 on fraud to appear in article 10 in connexion with the claim arising from lack of conformity. The common period of four years would apply to claims arising from fraud and start to run on the same date as in the other cases. On the other hand, an additional limitation period of one year from the date on which the fraud had been or could reasonably have been discovered would be prescribed for those claims, as his delegation had proposed in its amendment (A/CONF.63/C.1/L.61) to article 10. Apart from the inclusion of a reference to the lack of conformity of the goods, paragraph 3 would remain unchanged.

72. The only matter of substance raised in the amendment (A/CONF.63/C.1/L.60) was that of the link between that proposal and that submitted by his delegation concerning article 10 in its amendment A/CONF.63/C.1/L.61.

73. Mr. KNUTSSON (Sweden) thought it necessary to specify that article 9, paragraph 2, would apply only to sufficiently serious cases of fraud and his delegation had therefore tried to find a satisfactory wording to describe the type of fraud concerned, as was apparent from amendment A/CONF.63/C.1/L.63.

74. Mr. KAMPIS (Hungary) explained that his delegation's amendment (A/CONF.63/C.1/L.71) was merely intended to bring the text of article 9, paragraph 3, into line with article 1, paragraph 3 (d), of the draft, as it was intended that article 9 should cover only failure of performance by a party and not performance that was not in conformity with the contract and because the expression "breach of the contract", defined earlier as relating to either aspect, could not therefore be used.

*The meeting rose at 1 p.m.*

## 11th meeting

Wednesday, 29 May 1974, at 3.15 p.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.11

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add.1 and 2, A/CONF.63/C.1/L.18, L.19, L.32, L.33, L.37, L.44, L.45, L.57, L.58, L.60, L.61, L.63 to 66, L.71, L.72) (continued)**

#### Article 9 (continued)

1. Mr. KAMPIS (Hungary) said that his delegation's amendment to article 9 (A/CONF.63/C.1/L.71) was simply a matter of drafting.

2. The CHAIRMAN said that the Hungarian amendment would be referred to the Drafting Committee.

3. With regard to the Norwegian amendment (A/CONF.63/C.1/L.60), which was linked with article 10, he suggested that it too should be referred to the Drafting Committee. He assured the representative of Norway that the question of fraud would be discussed in the context of article 10.

4. The United Kingdom amendment (A/CONF.63/C.1/L.57), which concerned the question of fraud, would also be considered in the context of article 10.

5. Mr. AL-QAYSI (Iraq) pointed out that the rules of procedure made no provision for referring amendments to the Drafting Committee merely because the sponsors so wished. That was a matter to be decided by the First Committee itself.

6. Mr. BARCHETTI (Austria), introducing his delegation's amendment (A/CONF.63/C.1/L.44), the effect of which would be to delete the first sentence of paragraph 3, said that paragraph 1 very wisely provided for the limitation period to commence on the date on which the claim became due. That presupposed that the claimant had knowledge of the circumstances that gave rise to his claim. Hence, it was incomprehensible that paragraph 3, relating to a breach of the contract, should set as the commencement of the limitation period the date on which such breach occurred, rather than the date on which the claimant learnt of the breach of the contract by the other party.

7. With respect to paragraph 2, he proposed the following formula, based on the wording of the United States amendment to that paragraph in document A/CONF.63/C.1/L.18:

"A claim arising from a breach of the contract shall accrue on the date on which the breach was or reasonably could have been discovered."

8. Mr. GONDRA (Spain) emphasized the importance of the question of the commencement of the limitation period. In earlier discussions on the article, particular stress had been laid on the contradiction between the general principle, which had been accepted, and the question of the limitation period in the case of a breach of the contract. He therefore welcomed the Austrian proposal. He also shared the view of the representative of the Federal Republic of Germany that the United States amendment (A/CONF.63/C.1/L.18) involved a change of substance. However, he fully supported that amendment, the wording of which appeared to be clearer and more consistent with the principle set forth at the beginning of the article.

9. Mr. BELINFANTE (Netherlands) observed that he could understand the cases that would be covered by article 9, but he wished to know what would happen in other cases. For example, where the buyer succeeded in obtaining termination of the contract for lack of conformity of the goods, and the seller had the right to recover the goods that had been delivered, it was not clear when the claim would become due. Although a claim would probably become due at the time of a unilateral declaration by the buyer, it was not clear whether, in the event of a court decision, the claim would become due from the date of the judgement or from the expiration of the period allowed for appeal. There was also the question when the right to terminate a contract became due. He wondered whether the date envisaged in paragraph 1 was the best approach, or whether UNCITRAL had considered other possibilities. The limitation period should run from the time of termination of the contract or the time of delivery of the goods. If the Committee felt that the date on which the claim became due was a sufficient criterion, he would not contest the decision, but he wished to know which factor was the decisive one.

10. Mr. SAM (Ghana) said that he could accept the first paragraph of draft article 9. As to paragraphs 2 and 3, however, he agreed with the views submitted by Israel in document A/CONF.63/6/Add.1. He therefore proposed that article 9 should be drafted in the

following way: firstly, the last sentence of paragraph 3 of the draft article should govern the whole of article 9; then, paragraphs 2 and 3 should be combined into one, the wording being that of paragraph 2 of the Israeli proposal to which he had just referred.

11. Mr. KAMPIS (Hungary) pointed out that deletion of the first sentence of paragraph 3 in accordance with the Austrian amendment (A/CONF.63/C.1/L.44) would result in a serious omission, since that sentence was a very important clarification of paragraph 1. His delegation would therefore be submitting an amendment containing a simple solution to that problem.

12. Mr. KOPAC (Czechoslovakia) recalled that, in connexion with article 1, the Committee had decided, by its approval in substance of his delegation's amendment (A/CONF.63/C.1/L.5), that the Convention should include claims arising from the contract itself and from the breach, termination or invalidity of the contract.

13. He considered that paragraph 1 was quite clear in respect of the first group of claims, namely, those arising directly from the contract, because it would be apparent from the terms of the contract when the claim became due or, if the contract was silent on that point, the law itself could set the due date. Problems arose, however, with the other groups of claims. The first such group comprised claims arising from a breach of the contract, and paragraph 3 dealt with that question. However, the matter became more difficult in the case of termination of the contract, and in that connexion he agreed to some extent with the representative of the Netherlands. It might be advisable to specify the date of commencement of the limitation period in case of termination; perhaps termination itself could constitute the starting-point of the limitation period.

14. With regard to the question of invalidity, he did not fully understand paragraph 2, which dealt with fraud. It was very difficult to reach a conclusion, since it was not clear which rights or claims should be covered. That problem should be referred to the Drafting Committee. One question was that of the right to terminate a contract, which was not covered by the Convention. It was not a claim; claims could arise only after the termination of the contract. He therefore suggested that paragraph 2 should be considered at a later stage in connexion with lack of conformity or invalidity; the problem could not be solved at present, since the scope of the Convention had not yet been defined, particularly in connexion with invalidity.

15. Mr. FRANTA (Federal Republic of Germany), commenting on the United States amendment (A/CONF.63/C.1/L.18), pointed out that the word "accrues", as used in paragraph 1 of the amendment, meant the date on which the claim was established or became effective, whereas the words "becomes due" used in the draft article meant the date on which the claim could be exercised. The distinction was important; if, for example, it was stipulated in a contract of sale that the price was to be paid one year after the conclusion of the contract, the claim would accrue on the date of the conclusion of the contract but would not become due until one year after that date. He therefore considered that the amendment to paragraph 1 was not merely a drafting change.

16. With regard to paragraph 2 of the United States amendment, he preferred the original wording, which was more in keeping with the aim of the Convention. However, that was a matter of drafting.

17. He supported paragraph 3 of the United States amendment, which would delete the first sentence of paragraph 3 of the draft article, as would the Austrian proposal (A/CONF.63/C.1/L.44). The term "breach of contract" was very vague and open to different interpretations and, as the representative of Austria said, it was not necessary to have a special provision for that kind of claim, since the beginning of the limitation period could be covered by paragraph 1.

18. While the wording for paragraph 3 proposed by the United States was not entirely satisfactory, that again was a matter for the Drafting Committee.

19. Turning to the Hungarian amendment (A/CONF.63/C.1/L.71), he said he did not agree that the words "from a breach of the contract" should be replaced; while that term was not very clear, the words "a failure of performance" proposed in the Hungarian amendment referred to a different kind of claim which was already covered in paragraph 1.

20. He could not support the Swedish amendment (A/CONF.63/C.1/L.63), since it would link a civil right to a criminal offence. On the other hand, he wished to support the Austrian proposal in document A/CONF.63/C.1/L.44.

21. Referring to the United Kingdom amendment (A/CONF.63/C.1/L.57), he said that paragraph 2 already covered cases in which fraud was committed either before or at the time of the conclusion of the contract. The only element added by the amendment related to cases in which fraud was committed after the conclusion of the contract, and the amendment was therefore unnecessary.

22. The Norwegian amendment (A/CONF.63/C.1/L.60) presupposed the deletion of paragraph 2, to which his delegation was opposed. Moreover, the phrase "but a claim arising from a defect or other lack of conformity on the date on which the goods are actually handed over to the buyer" was more relevant to the provisions of article 10 than to those of article 9.

23. Mr. REESE (United States of America), replying to the remarks made by the representative of the Federal Republic of Germany, said that in United States usage the words "the date on which the claim accrues" meant the date on which the claim could first be asserted or exercised.

24. Mr. GUEIROS (Brazil) said that the Hungarian amendment to article 9, paragraph 3, was superfluous in view of the fact that article 1, paragraph 3 (d) defined breach of contract as "the failure of a party to perform the contract or any performance not in conformity with the contract".

25. His delegation wished to propose an amendment to article 9, paragraph 1, drawn from Czechoslovakia's comments in document A/CONF.63/6/Add.1. It consisted in adding at the end of the paragraph the words "or on which the right could have been exercised".

26. His delegation supported the Ghanaian oral amendment to paragraphs 2 and 3.

27. Mr. GOKHALE (India) said that paragraph 3 referred to two different questions which could more appropriately be dealt with in separate paragraphs, namely, the date on which claims became due in cases of breach of contract and the effect of the giving of notice on the commencement of the limitation period.

28. It was unnecessary to specify the date on which claims became due in cases of breach. With regard to the giving of notice, he recalled that, in the discussion

on article 8, many delegations had spoken in favour of a limitation period longer than four years. To meet their views, the limitation period should be extended to take account of the period within which notice was required to be given.

29. Mr. ROGNLIEN (Norway), referring to the discussion that had arisen concerning the wording of paragraph 1, said that the UNCITRAL Working Group on Prescription had considered the phrase "the date on which the claim can first be exercised" as an alternative to "the date on which the claim becomes due", but had discounted that alternative because the date on which the claim could be exercised usually depended on the law applied by the court, and in such cases the parties would not know exactly the date of commencement of the limitation period before legal proceedings were instituted.

30. Referring to the remarks made by the representative of the Federal Republic of Germany concerning the Norwegian amendment (A/CONF.63/C.1/L.60), he said that his delegation's intention was not to delete paragraph 2 but to transfer its provisions to article 10.

31. Paragraph 3 stated that a claim arising from a breach of contract should be deemed to become due on the date on which such breach occurred. That was a useful clarification, in view of the fact that most claims were based on breach of contract. Paragraph 2 of his delegation's amendment to article 9 went further than the present paragraph 3 and was designed to stipulate a precise starting-point for limitation periods in respect of claims arising from breach of contract or from a defect or other lack of conformity. The commencement of such limitation periods should not depend on the time within which notice was required to be given, which was usually specified in the laws on sale by the words "within a reasonable time" or "promptly" and would add little to the length of the limitation period.

32. The United States proposal for the replacement of the words "becomes due" by "accrues" in paragraph 1 of the article was simply a question of drafting. He felt, however, that the word "accrues" might not always be understood in civil-law countries.

33. Referring to the Czechoslovak proposal that the limitation period in respect of a claim arising from the breach, termination or invalidity of a contract should commence on the date on which the claim could first have been exercised, he pointed out that that possibility was already covered by the provisions of paragraph 1 and by the words "shall . . . be deemed to become due on the date on which such breach occurs" in paragraph 3.

34. Nothing in the Ghanaian amendment, except for the provisions of paragraph 2 (c), could be construed as adding any new element to the existing text of article 9, paragraph 3. He was not sure whether the intention of the representative of Ghana was to stipulate that "the date on which the claim becomes due" meant the date on which the claim could be exercised in all cases except breach of contract or fraud.

35. Mr. STALEV (Bulgaria) said that little could be achieved by voting on the present text of article 9, which did not reflect the amendments to article 1 already adopted. The main concern of the Committee should be to bring the provisions of article 9 into line with those of article 1, as amended. That could be done either by devising a general rule on commencement of the limitation period covering all the different rights and claims

referred to in article 1 or by enumerating different rules to fit the different cases. The Committee should decide which of the two alternatives it preferred and assign the task of formulating an acceptable text to the Drafting Committee.

36. Mr. BARCHETTI (Austria) agreed with the representative of Hungary that the substance of the Austrian amendment (A/CONF.63/C.1/L.44) did not require the deletion of the first sentence of paragraph 3. It would be sufficient to replace the word "occurs" by the words "was or reasonably could have been discovered".

37. Mr. JENARD (Belgium) said that his delegation was favourably disposed towards the present text of paragraph 1. It was not familiar with the concept of "breach of contract" in paragraph 3 but could accept the paragraph as a useful clarification of the provisions of paragraph 1.

38. He had no objection to the Drafting Committee's using the Ghanaian amendment as a basis for revision of article 9, but felt that it should not be adopted in its entirety. He had particular difficulty with the word "reasonably" in paragraph 2 (c) of the amendment.

39. The CHAIRMAN suggested that the Ghanaian proposal should be regarded as a drafting amendment and referred to the Drafting Committee for further action.

*It was so decided.*

40. Mr. KRISPIS (Greece) said that it was important to keep the terminology uniform. In articles 8 and 9 only the word "limitation" was used, whereas article 1 referred to both "limitation" and "prescription". The Conference should decide on one or the other of those terms.

41. Paragraph 1 was the cardinal rule of article 9, and its purpose was to state clearly the starting-point of the limitation period, which in all civil-law countries commenced at the time of the *actio nata*. The Drafting Committee should choose between the expressions "the claim becomes due" and "the right could have been exercised"; either was acceptable, but it would be misleading to use both.

42. His delegation could not support the Swedish amendment to paragraph 2 (A/CONF.63/C.1/L.63). That was because fraud in civil law was broader in meaning than fraud in criminal law, and it was preferable to retain the civil-law meaning.

43. With regard to the Hungarian amendment to paragraph 3 (A/CONF.63/C.1/L.71), he pointed out that there was a difference between breach of contract and failure of performance. The former implied *culpa* and, since his delegation preferred the concept of *culpa*, it would vote against the Hungarian proposal.

44. Mr. SUMULONG (Philippines) said that his delegation would prefer to use in paragraph 1 the wording "on which the claim accrues", as proposed in the United States amendment (A/CONF.63/C.1/L.18). Under Philippine law a claim became due at the time of the conclusion of the contract, since either party could claim that the other was bound by the contract. The claim accrued, however, only if there was a failure to perform which gave rise to a cause for complaint. Thus, the United States amendment was more accurate and precise.

45. His delegation failed to see how the second sentence of paragraph 3 fitted in with paragraph 1. For example, if in a contract of sale it was agreed that the

buyer should give notice of any lack of conformity he discovered within a specified period from the time when the goods were handed over, and that otherwise he would have no basis on which to seek avoidance of the contract, then the limitation period would begin not when notice of lack of conformity was given but when the goods were handed over, and consequently it could not be affected by the requirement of notice. The second sentence of paragraph 3 therefore seemed superfluous.

46. Mr. KOPAC (Czechoslovakia) suggested that the most important question for the Committee to decide was whether there should be a detailed rule or a general rule to define the commencement of the limitation period. Both solutions had advantages and disadvantages. If there was to be a general rule, there was the disadvantage that the expression "when the claim becomes due" had different meanings in the different legal systems, so that it would be difficult for businessmen to ascertain precisely when the limitation period started. If the solution of a detailed rule was preferred, the limitation period would be more clearly defined but a great deal more work would be required.

47. The present text of the draft Convention lay somewhere between those two solutions. The general rule was defined in article 9, paragraph 1; there followed special provisions pertaining to fraud, breach of contract, defect or lack of conformity, and so forth.

48. His delegation was willing to support the suggestion that discussion of the detailed provisions should be postponed until a later stage, when the full scope of the Convention would have been determined by the Drafting Committee. In the meantime the First Committee should merely decide whether it would prefer a general rule or a detailed rule on the commencement of the limitation period.

49. Mr. HONNOLD (Chief, International Trade Law Branch) recalled that the Committee had previously adopted the substance of the Czechoslovak amendment to article 1, paragraph 1 (A/CONF.63/C.1/L.5), thus defining to some extent the scope of the Convention.

50. Mr. KOPAC (Czechoslovakia) said that the full scope of the Convention would only be known when the Drafting Committee had settled certain questions of terminology. For example, the present text of article 9, paragraph 1, if retained, would exclude the right to declare the contract avoided. If, however, the Brazilian oral amendment was adopted, that right could be exercised and the scope of the Convention would be broader.

51. Mr. GUEST (United Kingdom) suggested that three trends of thought could be discerned in the discussion. First, there was the approach represented by the United States proposal (A/CONF.63/C.1/L.18), which would lay down two rules for the date of commencement of the limitation period—either the date on which the claim accrued or the date on which fraud was or could have been discovered. Secondly, there was the approach exemplified by the UNCITRAL draft, which stated a general rule but went further than the United States proposal by making provision for instances of both fraud and breach of contract. Thirdly, there was the enumerative approach advocated by the representative of Bulgaria, whereby article 9 would be amplified to give numerous instances of when the claim was deemed to become due. That approach was exemplified by the amendment originally proposed by



Israel and formally submitted by the representative of Ghana.

52. The Drafting Committee would be unable to proceed with its work until it knew which of those approaches the First Committee favoured. He for one felt that it would be impossible, in the limited time available, to adopt the enumerative approach. Most civil-law codes contained relatively simple rules and their detailed application was left to the judges. The same was true of common-law systems. He therefore favoured either the United States proposal or the original text.

53. Mr. KNUTSSON (Sweden) endorsed the comments of the representative of the United Kingdom. His delegation preferred the approach embodied in the existing text, since it laid down the general rule and provided some useful clarifications.

54. His delegation agreed with the Belgian delegation that the word "reasonably" in paragraph 2 (c) of the Israeli text should be deleted. It also supported the view that the second sentence of paragraph 3 of the UNCITRAL text should form a separate paragraph, since it was applicable to the whole of article 9.

55. Mr. REESE (United States of America) said he fully agreed with the United Kingdom representative that the question of approach must be resolved before the article was referred to the Drafting Committee. His delegation preferred the general approach—as in the present text or in its own proposal—to the enumerative approach.

56. In addition, certain questions of substance must be settled before the Drafting Committee could begin its work. For example, the inclusion of the words "or reasonably could have been" made the present text of paragraph 2 substantially different from that proposed by Israel. The Swedish amendment (A/CONF.63/C.1/L.63) was also a substantive proposal and should be accepted or rejected before the article was redrafted.

57. The CHAIRMAN pointed out that any discussion pertaining to fraud was to be left until the Conference took up article 10.

58. Mr. JENARD (Belgium) said the representative of the United Kingdom had outlined very clearly the three choices open to the Committee. Because of the very broad scope of the Convention, and particularly its extension to cover invalidity, it would be very difficult to adopt an enumerative approach. The grounds for initiating actions for annulment were similar in most countries; there was also the risk of embarking on difficult discussions about the capacity of the parties, fraud, error and breach. It had been a mistake to make the scope of the Convention so sweeping, but the only remedy was a general rule. The existing text of article 9 was better than that proposed by the United States, in that the former was more specific about cases of breach of contract.

59. The CHAIRMAN asked whether the Committee wished to adopt an enumerative approach or preferred to work towards a general rule.

60. Mr. STALEV (Bulgaria) said the matter was one for the Drafting Committee.

61. The CHAIRMAN agreed with the representative of Bulgaria, but said that the Drafting Committee would need a little more guidance. He suggested that

the Committee should take an indicative vote on the approach it preferred.

62. Mr. KHOO (Singapore) said it might not be clear to everyone what was meant by an enumerative approach. Moreover, the distinction between a general and an enumerative approach might be too simple. The Ghanaian proposal did not seem to be very different from the approach adopted in the UNCITRAL draft, although it might serve as a basis for improving the text. Article 9 should contain a general rule and some more specific provisions. The Ghanaian proposal was an extension of the specific provisions. If the Convention was to cover invalidity, the Committee must give very serious consideration to the specific provisions. He appealed to the Committee not to make general and enumerative approaches mutually exclusive.

63. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said it was clear from the discussion that there were three possible approaches: a general approach, such as that contained in the existing text of paragraph 1, where the commencement of the limitation period was not defined; a general definition, together with a list of the most important cases involving a definite date of commencement of the limitation period; and a specific and exhaustive enumeration based on the general principle. He agreed with the United Kingdom representative that time would not allow an exhaustive treatment, because substantive questions were involved. He therefore favoured a general approach or the retention of the text as it stood.

64. Mr. HONNOLD (Chief, International Trade Law Branch) said he wished to suggest a procedure that might allow the Committee to reach a decision on article 9. The fundamental point was the amount of detail to be included in the article. One way to resolve the issue would be to agree that either the first or the second approach mentioned by the United Kingdom representative should be adopted. The first step would then be to decide whether to retain or delete the first sentence of paragraph 3; the decision on that point would give an indication of the general feeling about the amount of detail desired.

65. Mr. MUSEUX (France) said that he was inclined to favour the existing text of article 9. The Czechoslovak and Brazilian amendments to paragraph 1 could be transmitted to the Drafting Committee for consideration, because the decision already taken on article 1 meant that article 9, paragraph 1, should mention rights as well as claims. The Ghanaian proposal appeared to state a general rule in its paragraph 1 and repeat it, in a subsidiary position, in paragraph 2 (c).

66. Mr. JENARD (Belgium) said he was in favour of taking an indicative vote on the suggestion made by the Chief of the International Trade Law Branch.

67. Mr. BELINFANTE (Netherlands) said that all the issues involved in article 9, apart from fraud, which the Committee would be discussing later, were drafting matters. The Committee must indicate the lines along which the Drafting Committee should work. The fact that he did not consider the draft satisfactory did not mean that an attempt should be made to provide a complete enumeration, which in any event would be impossible. The Drafting Committee could follow the lines indicated in the Ghanaian proposal, with the word "reasonably" deleted, and make the enumeration

broad. Alternatively, he would support the United States proposal to have only one general rule.

68. Mr. SAM (Ghana) said he found it encouraging that his delegation's proposal had received so much support in the Committee. He asked whether the representative of France would find the Ghanaian amendment more acceptable if paragraph 2 (c) was deleted.

69. Mr. MUSEUX (France) said the deletion of paragraph 2 (c) would make the Ghanaian amendment acceptable. However, the whole matter seemed to be a question of drafting changes; the Drafting Committee could use the Ghanaian proposal as a guideline.

70. The CHAIRMAN asked the Committee to indicate by show of hands whether it wished the Drafting Committee to adopt the general approach of article 9, paragraph 1, to retain the substance of paragraphs 1 and 3, or to produce a more detailed enumeration.

*It was decided to retain the substance of paragraphs 1 and 3.*

71. Mr. FRANTA (Federal Republic of Germany) pointed out that the United States and Austria had proposed the deletion of the first sentence of paragraph 3.

72. The CHAIRMAN said that that was a matter for the Drafting Committee to decide.

### Article 10

73. Mr. GONDRA (Spain) felt that article 10 should be simplified, since it involved two different limitation periods. His delegation was prepared to accept the majority view regarding the desirable limitation period but wished to emphasize the importance of avoiding a proliferation of different periods, which would create great uncertainty in the commercial world. It would therefore favour the deletion of article 10, provided that a provision could be inserted in article 9 specifying the date of commencement of the limitation period in case of a defect or lack of conformity of the goods. In that respect, he supported the Swedish amendment (A/CONF.63/C.1/L.64), which would replace article 10, paragraphs 1 and 2, by a single provision covering claims arising from a defect or lack of conformity of the goods. He would prefer the insertion in article 9 of a provision stating that the limitation period should commence on the date on which the goods were actually handed over to the buyer, since that was a question of fact, whereas the date on which the risk passed to the buyer—the alternative formula proposed by Sweden—was a legal question that was much more difficult to determine. He therefore suggested a text along the lines of the United States amendment (A/CONF.63/C.1/L.19), but with an additional paragraph reproducing the Swedish amendment in document A/CONF.63/C.1/L.64.

*The meeting rose at 5.50 p.m.*

## 12th meeting

Thursday, 30 May 1974, at 10.15 a.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.12

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.19, L.32, L.33, L.37, L.45, L.58, L.61, L.64, L.65, L.66, L.72, L.75) (continued)**

### Article 10 (continued)

1. The CHAIRMAN read out the list of amendments relating to article 10 and observed that the Committee also had before it an oral amendment by the representative of Nigeria suggesting that in paragraphs 1 and 2 of article 10 the word "three" should be substituted for the word "two". The Chairman invited the sponsors of the amendments to introduce their proposals.

2. Mr. REESE (United States of America) said that his delegation's amendment (A/CONF.63/C.1/L.19) was simply a drafting change and therefore could without difficulty be referred directly to the Drafting Committee.

3. Mr. ANTONIEWICZ (Poland) noted, with reference to paragraph 1, that goods could be handed over through an agent. The aim of his amendment (A/CONF.63/C.1/L.32) was simply to make it explicit that that situation came within the Convention's sphere of application.

4. Mr. KRUSE (Denmark) thought that there was no need to stipulate in article 10 a limitation period different from that in article 8, nor to establish a dif-

ferent period when the lack of conformity was a hidden defect, except in the case of fraud. His delegation therefore proposed, in the amendment contained in document A/CONF.63/C.1/L.33, that paragraphs 1 and 2 of article 10 should be combined into a single paragraph providing for a limitation period of four years.

5. His delegation also proposed that paragraph 3 should be amended so that the period would commence on the same date as that provided for in paragraph 1, and so that the buyer would always enjoy a minimum period of one year beyond the date of the expiration of the period of the undertaking.

6. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation's amendment (A/CONF.63/C.1/L.37) contained two recommendations and a proposal. His delegation considered the eight-year limitation period provided for in paragraph 2 of article 10 too long and recommended that consideration should be given to the possibility of reducing it. He would be prepared to accept a duration of four years, the same as that provided for the general limitation period.

7. The concept of the handing over of the goods might give rise to uncertainty. Were the goods handed over when they were embarked, when they were unloaded at the port of destination or when the buyer



actually took possession of them? His delegation thought that the Drafting Committee should consider that problem.

8. The aim of the third USSR proposal was to specify that the limitation period of a claim based on the undertaking was the same as that of a claim based on a defect or lack of conformity.

9. Mr. BARCHETTI (Austria) said that his delegation was withdrawing its amendment (A/CONF.63/C.1/L.45) in favour of the amendment submitted by the delegation of the Federal Republic of Germany (A/CONF.63/C.1/L.72).

10. Mr. GUEST (United Kingdom) said that British trade circles had been unanimous in opposing two limitation periods. His delegation had therefore submitted an amendment (A/CONF.63/C.1/L.58) whereby the first two paragraphs of article 10 would be deleted; that would leave one single general limitation period applicable in all cases and would have the added advantage of establishing only one date of commencement, that provided for in article 9. It was true that the expression "the date on which the claim becomes due" was ambiguous, but it was to be hoped that its meaning would be made clear by the provisions of the revised ULIS. If the first part of the United Kingdom amendment was not acceptable, his delegation would support the Danish amendment (A/CONF.63/C.1/L.33).

11. The purpose of the second part of the amendment was to bring the wording of what was currently paragraph 3 more closely into line with the commercial effects of the undertaking. By giving an undertaking, the seller committed himself either to remedying any defect discovered during the period of the undertaking, or to remedying any defect which was discovered during the period of the undertaking and of which he was notified within that period. In practice, the second alternative was the course generally adopted. His delegation considered that the wording it proposed was closer to the reality of commercial transactions than the text of the draft or the Danish amendment.

12. Mr. ROGNLIEN (Norway) shared the view of the delegations of Denmark, the United Kingdom and Sweden in that his delegation's main aim was to ensure the uniformity of the limitation period. If an agreement was reached on that point, the only difficulties remaining would be drafting problems.

13. His delegation's amendment (A/CONF.63/C.1/L.61) therefore involved, first the deletion of paragraph 1 of article 10. As a compromise, his delegation proposed a special provision in square brackets which prescribed an additional one-year limitation period where the lack of conformity was a hidden defect. That was merely a compromise solution, which should be put to the vote only if the Danish, United Kingdom and Swedish amendments were rejected.

14. The third change proposed by his delegation consisted of reducing from eight to six years the maximum limitation period provided for in the existing paragraph 2 of article 10.

15. Finally, his delegation proposed that the question of undertakings should be dealt with in a separate article which would reproduce the text of existing paragraph 3. The United Kingdom amendment to that paragraph covered only the second alternative that representative had mentioned, and was so worded as to prevent the buyer from invoking the undertaking unless he had given notice of the lack of conformity

during the period of the undertaking. The Danish amendment was not satisfactory. When the period of the undertaking was long, it would be reasonable to set a maximum limit for the limitation period. Conversely, when the period of the undertaking was very short, it would be desirable for the buyer to enjoy the four-year period provided for under article 8. In order to resolve that problem, his delegation suggested that a small working group should be set up to find a satisfactory form of wording for the provision which currently appeared in paragraph 3 of article 10.

16. Mr. KNUTSSON (Sweden) thought that article 10 raised three fundamental questions. Should a special period be prescribed for the situation covered therein? Should a commencement date different from that provided for in paragraph 1 be established in the case of a concealed defect? Should the Convention include a special provision concerning undertakings? His delegation, in accordance with the views of trade circles in his country, replied in the negative to the first two questions. It advocated a uniform limitation period commencing on the date on which the claim became due. It had therefore submitted the amendment contained in document A/CONF.63/C.1/L.64. It proposed that paragraphs 1 and 2 of article 10 should be deleted and that a single provision should be inserted stating that the limitation period would commence on the date on which the goods were actually handed over.

17. His delegation's amendment to paragraph 3 of article 10 appeared in document A/CONF.63/C.1/L.66. Its aim was essentially to simplify and clarify the wording of the paragraph by taking as the commencement date for the limitation period the date of expiration of the period of the undertaking. His delegation could accept the United Kingdom amendment, but would prefer its own solution, which it considered simpler. If its amendment was not accepted, it would suggest, as stated in paragraph 2 of its amendment, that the buyer should benefit from an additional period of two years from the date of the expiration of the period of the undertaking.

18. Some delegations regarded a four-year period in the case of a defect or lack of conformity as too long. Others considered that period too short. They should all be reminded that the law on the sale of goods would contain regulations governing periods of notification; those periods would be short, which would oblige the parties to act with diligence, whatever the duration of the limitation period.

19. In a third amendment (A/CONF.63/C.1/L.65) his delegation proposed a means of eliminating the ambiguity arising from the expression "on which the goods are actually handed over to him (the buyer)". There were cases where the buyer never took possession of the goods, since he had resold them while they were still in transit. It would therefore be preferable to take the date on which the risk passed to the buyer as the commencement date, since it would be easier to determine. That last proposal did not concern the substance of article 10 and his delegation would not insist that it should be put to the vote.

20. The CHAIRMAN said that Australia had submitted a subamendment to the Swedish amendment in document A/CONF.63/C.1/L.64.

21. Mr. NYGH (Australia) said that the proposed subamendment referred to the last part of the Swedish amendment, which would read as follows:

"For the purpose of article 9, paragraph 1, a claim arising from a defect or lack of conformity shall be deemed to become due on the date on which the defect is or could reasonably be discovered by the buyer."

22. His delegation was strongly in favour of a uniform limitation period but felt that article 10 should establish a specific commencement for that period in the event of defect or lack of conformity and that, therefore, the amendments which proposed simply deleting paragraphs 1 and 2 of article 10 were not satisfactory.

23. In principle, he supported the general intent of the Swedish amendments but wished to avoid any reference to the handing over of goods or to the passing of risks since those were legal concepts that lent themselves to different interpretations. He intended to determine the commencement of the period on the basis of a strictly empirical criterion, setting it at the time when the buyer could reasonably undertake an inspection of the goods and discover the defects. His proposal was very similar to that of the United States (A/CONF.63/C.1/L.19), the only difference being that it included the words "by the buyer". That was not simply a matter of drafting, for there were instances in which a buyer resold the goods in their original packing, in which case some time might elapse before he was informed of the defect or lack of conformity.

24. Mr. FRANTA (Federal Republic of Germany) recalled that article 10, paragraph 1, of the draft was designed to meet the view that the Convention should contain a provision specifically concerning the limitation period for claims arising from a defect or lack of conformity. In order to avoid any misunderstanding as to the date on which claims became due, it was essential to specify that the limitation period commenced on the date on which the goods were actually handed over. Moreover, the danger that the amount of time elapsed might make it difficult to prove anything and the uncertainty that would result for the seller if a general four-year period was applied as provided for in article 8 had resulted in the provision of a shorter limitation period for that type of claim.

25. In the Federal Republic of Germany, the limitation period in respect of claims arising from a defect or lack of conformity was six months. In its amendment (A/CONF.63/C.1/L.72) his delegation therefore proposed, as a compromise measure, a limitation period of one year commencing on the date on which the goods were actually handed over. That commencement was much more exact and much less debatable than the time at which the defect or lack of conformity was or could reasonably have been discovered (A/CONF.63/C.1/L.19) or the date on which the risk passed (A/CONF.63/C.1/L.65).

26. Similarly, the two-year period and the maximum limit of eight years from the date on which the goods were actually handed over to the buyer provided for in article 10, paragraph 2, seemed too long. For the reasons already expressed, a claim arising from a defect or lack of conformity which was not discovered at the time when the goods were handed over should be subject to a two-year limitation period commencing on the date on which the goods were actually handed over to the buyer.

27. With regard to paragraph 3, his delegation was in favour of the wording proposed by the United Kingdom delegation (A/CONF.63/C.1/L.58).

28. Mrs. JUHASZ (Hungary) said that the amendment proposed by her delegation, (A/CONF.63/C.1/L.75) related mainly to drafting and could be referred to the Drafting Committee. Her delegation, however, wished to state that it was in favour of shortening the limitation periods provided for in article 10, paragraphs 1 and 2 of the draft.

29. Mr. JEMIYO (Nigeria) explained that his oral amendment would increase to three years the limitation periods provided for in article 10, paragraphs 1 and 2, for the reasons already given during the debate on article 8. Paragraph 1 seemed to refer to obvious defects or lack of conformity over which the developing countries encountered special difficulties, mainly because of the time it took for goods to reach their final destination. Increasing the limitation period to three years would make it possible to take account of those circumstances. Likewise, the developing countries would prefer to see the limitation period provided for in paragraph 2, relating to claims arising from a defect or lack of conformity which could not be discovered at the time the goods were handed over, increased to three years, for it was common knowledge that those countries bought equipment, which was often highly technical, to train skilled personnel, and that they did not have specialists capable of inspecting the goods on arrival. Foreign experts therefore had to be called upon and the extension of the limitation period would make it possible to take account of the time such procedures took and would smooth over certain difficulties that would arise from the proposed definition of the commencement of the limitation period.

30. Mr. GUEIROS (Brazil) said he favoured the formula proposed by the Swedish delegation (A/CONF.63/C.1/L.64) for, even if there were practical reasons in favour of a short limitation period in the case of claims arising from a defect or lack of conformity, discovery of such defect or lack of conformity might nevertheless take time and a four-year limitation period seemed appropriate. His delegation was also in favour of the amendments in document A/CONF.63/C.1/L.65 and L.66.

31. Mr. KRISPIS (Greece) said he preferred the original text of draft article 10. A two-year limitation period in respect of claims arising from a defect or lack of conformity seemed reasonable. Such claims were fairly rare in practice and it was desirable not to prolong the seller's uncertainty. The one-year period proposed by the delegation of the Federal Republic of Germany would no doubt be even more satisfactory but since the majority of participants did not seem prepared to accept it, two years was an acceptable compromise.

32. However, his delegation supported the Swedish amendment (A/CONF.63/C.1/L.65) which would substitute the date on which the risk passed to the buyer for the date on which the goods were actually handed over as the commencement of the limitation period. Indeed, that date seemed easier to define in law. However, the words "under the law applicable to the contract of sale" should be added after the word "buyer".

33. Mr. STALEV (Bulgaria) was in favour of the initial text of draft article 10 and emphasized that the provisions of paragraph 3 sufficiently safeguarded the interests of the buyer in transactions relating to capital goods, for the seller generally gave a specific undertaking in such cases. In other cases a limitation period of four years would undoubtedly be too long.

34. His delegation could not accept the Australian delegation's suggestion that the date on which the defect or lack of conformity was or could have been discovered should be the general commencement of the limitation period. Practical experience had shown that it was often very difficult to establish the cause of the defect and undue lengthening of the limitation period would only make that difficulty greater.

35. Mr. JENARD (Belgium) said he preferred the initial text of the draft, which reflected a compromise between the needs of the various countries and took into account the difficulties peculiar to proving lack of conformity and the interest of the parties to the contract of sale.

36. The four-year period proposed in the Danish amendment (A/CONF.63/C.1/L.33) would be far too long in cases of obvious defect or lack of conformity and much too short in the case of hidden defects. The United Kingdom amendment (A/CONF.63/C.1/L.58) had the advantage—which might also be a disadvantage—of leaving uncertain the commencement of the limitation period; the Norwegian amendment (A/CONF.63/C.1/L.61) was hardly an improvement on the initial text; the Australian proposal was not satisfactory for setting the date on which the defect or lack of conformity was discovered as the commencement of the limitation period did not obviate the need to stipulate a maximum period. Finally, the Swedish amendment (A/CONF.63/C.1/L.65) might lead to confusion since there was no uniform definition in the various countries of the time at which the risk was passed. The initial text of the draft therefore seemed less open to criticism. However, his delegation supported the wording proposed by the United Kingdom delegation for paragraph 3 (A/CONF.63/C.1/L.58).

37. Mr. BARNES (Ireland) pointed out that the stability and security of legal transactions seemed to require the adoption of a uniform limitation period. There could, however, be exceptions in three particular cases. For instance, there should be a specific provision for fraud. According to a universally acknowledged rule no one could claim his own error as an excuse. In that connexion his delegation preferred the text of article 10, bearing in mind article 9, paragraph 2, as amended at the suggestion of the United Kingdom. The second case was that of hidden defects, which might be expected to come to light before the end of the limitation period provided that period was sufficiently long. One possible compromise on that point might be to apply a general limitation of more than four years. Finally, there was the case in which the seller gave a specific undertaking for which no particular provision seemed to be needed. However, in a spirit of co-operation, his delegation was prepared to agree to a formula based on the wording of the United Kingdom amendment (A/CONF.63/C.1/L.58).

38. Mr. GOKHALE (India) was in favour of a uniform limitation period. His delegation supported the Australian proposal concerning the commencement of the limitation period and strongly supported the United Kingdom amendment (A/CONF.63/C.1/L.58) to paragraph 3.

39. Mr. KRUSE (Denmark) said that the amendment submitted by his delegation (A/CONF.63/C.1/L.33) should be revised by adding at the end of paragraph 1 the words "or refused by him". He emphasized the close relationship, implicit in the text of article 10,

between the effect of the rules of notification and the effect of prescription in the strict sense.

40. His delegation supported the Norwegian proposal that a working group should be given the task of settling the remaining difficulties with regard to article 10, paragraph 3, which were basically of a drafting nature.

41. Mr. BELINFANTE (Netherlands) said that his delegation was in favour of a uniform prescription period and would support the United Kingdom amendment (A/CONF.63/C.1/L.58) or the Danish amendment (A/CONF.63/C.1/L.33).

42. His delegation was of the view that, notwithstanding the provisions of article 10, a claim arising from lack of conformity could be tenable only if it was brought soon enough after the discovery of the lack of conformity so that the claimant could produce proof of his allegations. The liability of the seller would be very difficult to establish if the buyer had used the goods for some time before alleging lack of conformity. It was therefore in the buyer's interest to notify the seller without delay, and the length of the prescription period was only of limited importance. In his delegation's view, there was, accordingly, no reason not to make the period of four years generally applicable.

43. Mr. MICHIDA (Japan) said that his delegation would prefer a uniform prescription period in accordance with the terms of the mandate of the UNCITRAL Working Group on Time-limits and Limitations (Prescription) in the field of the international sale of goods. The general period of four years was therefore satisfactory.

44. The distinction made in the text of article 10 between different types of lack of conformity seemed to be so complicated that it might give rise to disputes in practice. His delegation therefore supported the principle underlying the Danish amendment (A/CONF.63/C.1/L.33) and the Swedish amendment (A/CONF.63/C.1/L.64) in regard to paragraph 1. A period of four years would appear to be applicable in all cases of lack of conformity.

45. The date on which the goods were handed over to the buyer was, as far as his delegation was concerned, the least sound point of departure for determining the prescription period in respect of a claim based on lack of conformity. The date on which lack of conformity was or could reasonably have been discovered might give rise to controversy. There were, however, two possibilities for a compromise solution on that point: either to extend the period, for instance to five years, or to follow the model provided by the revised draft text of ULIS, stipulating that a uniform period should apply to claims based on lack of conformity, except where such lack of conformity constituted a breach of an undertaking covering a longer period.

46. The wording proposed by the United Kingdom delegation (A/CONF.63/C.1/L.58) for paragraph 3 seemed to be preferable to the solution advocated by the Danish delegation (A/CONF.63/C.1/L.33), which might unduly prolong the prescription period. Lastly, his delegation was opposed to including a provision on fraud in the convention since such cases were highly exceptional in international commercial transactions. Nevertheless, should such a case arise, it could be dealt with by applying the provisions concerning lack of conformity or breach of contract. The definition of fraud differed widely from one country to another and a provision on that subject would require the inclusion

in the convention of a definition of fraud, which would be difficult, if not impossible, to make complete and satisfactory to everyone.

47. Mr. NYGH (Australia) agreed with the representative of Japan that a uniform prescription period of five years would make it possible to solve the problems indicated by various delegations. However, it seemed doubtful, in view of the statements made at the preceding meeting, that some delegations would be prepared to accept such a period. His delegation was somewhat reluctant to accept the possibility suggested by the representative of Japan of prolonging the prescription period in the case of sales of manufactured goods by means of an undertaking. The market today was dominated by sellers who were strong enough to refuse such undertakings and it was only in exceptional cases that the buyer was in a position to demand the inclusion of an undertaking in the contract.

48. He acknowledged the justice of the remarks made by the representative of Belgium regarding his own delegation's amendment. It was true that in practice lack of conformity might be discovered only after a lengthy period of time, possibly more than 10 years. Nevertheless, his delegation was not opposed to a general period of, say, eight to 10 years.

49. With regard to article 10, paragraph 3, he endorsed the views expressed by the representative of Ireland, who felt that the paragraph did not add anything to the provisions of common law. He could not, however, fully subscribe to the United Kingdom proposal (A/CONF.63/C.1/L.58) which, although it offered certain advantages, had a drawback, as far as countries like Australia which imported manufactured goods were concerned, in that it had the effect of shortening the prescription period.

50. Mr. TEMER (Yugoslavia) said that his delegation favoured a single prescription period of four years both for lack of conformity and for hidden defects. In determining the most appropriate prescription period, it should be borne in mind that, on the one hand, the convention should be ratified by the largest possible number of countries and that, on the other, it should be simple and easy to interpret both for buyers and sellers and for the judges and arbitrators who would have to apply it.

51. The Committee would be well advised to seek a compromise which could reconcile the differences between the representatives of countries which exported manufactured goods, who had expressed a preference for a single, relatively short, prescription period and those of the representatives of the developing countries, who would like a longer prescription period.

52. Such a compromise should be facilitated by the fact that nothing in the convention prevented the buyer from arranging to submit proof in case of disputes, for example by sending a notification. Moreover, if it was desired that a shorter period should be applied in cases of lack of conformity, it would then be appropriate to emphasize the protection of the rights of the buyer or the creditor.

53. He hoped that the Drafting Committee would arrive at a satisfactory compromise solution taking into account the various considerations he had indicated.

54. Mr. SUMULONG (Philippines) also endorsed the view of delegations which had declared themselves in favour of a single prescription period. As the representative of a developing country, he stressed the importance of imports of manufactured and capital goods

for the industrialization of such countries. As the Ghanaian and Nigerian delegations had pointed out, it was necessary not only to have a certain amount of time but also to call upon the services of experts and technicians in order to discover a lack of conformity or hidden defect. In the event that a lack of conformity or hidden defect was discovered, the buyer and the seller should have the possibility of exploring means of settling their dispute amicably and without instituting judicial or arbitral proceedings. Consequently, it would be advisable to adopt the prescription period envisaged in article 8, the length of which could be extended if necessary.

55. His delegation could not agree that in the event of lack of conformity, the prescription period should commence on the date on which the goods were handed over. It supported the Australian proposal that the prescription period should commence on the date on which the lack of conformity was or could reasonably have been discovered by the buyer. His delegation also supported the United Kingdom proposal regarding article 10, paragraph 3, to the effect that the buyer should notify the seller of the fact on which the claim was based, provided that such notification was given within the period of the undertaking.

56. Mr. PARKS (Canada) supported the principle of a uniform prescription period. The period of four years which UNCITRAL had agreed upon as a compromise seemed reasonable to his delegation, inasmuch as it provided the necessary time to assert a claim, without the time being unduly long.

57. He also supported the United Kingdom proposal regarding the undertaking given by the seller but found the term "the goods are actually handed over to the buyer" in article 10, paragraphs 1 and 2, vague and unsatisfactory. In that regard, he would prefer the wording proposed by the Swedish delegation in documents A/CONF.63/C.1/L.64 and L.65.

58. Mr. SAM (Ghana) said that he did not agree with the delegations which had referred to ULIS. That text was being revised at present, and much time was still needed to complete the consideration of the decisions to be taken by the Working Group on the International Sale of Goods. To refer to a text which was not yet definitive was a handicap rather than a help.

59. Concerning the length of the limitation period, Ghana, like the other developing countries, could contemplate only a fairly long period, given the particular difficulties of those countries, especially in communications. It should not be difficult to solve the problem of fixing an appropriate period in cases of non-conformity since a judge could always easily decide what was a reasonable period in which the defect could be discovered. His delegation therefore supported the Nigerian proposal that the period mentioned in paragraphs 1 and 2 of article 10 be extended to three years. It would not oppose a longer period, but feared that some delegations would not be able to accept that solution.

60. The United Kingdom amendment (A/CONF.63/C.1/L.58) was acceptable, and it was to be hoped that the fears of the representative of Australia as to the possible consequences of the application of that text would not materialize. If the Danish proposal (A/CONF.63/C.1/L.33) was retained, it would be necessary to re-examine the texts of articles 8 and 22. The Swedish amendment (A/CONF.63/C.1/L.65) would

be an excellent solution to the difficulties facing the Committee.

61. Mr. KRISPIS (Greece) observed that in his amendment (A/CONF.63/C.1/L.33) to paragraph 1 of article 10, the representative of Denmark suggested the words: "the date on which the goods are handed over to the buyer". In practice, that wording raised the following problem when an action was based on non-conformity: the starting-point of the limitation period might vary according to whether the buyer simply accepted the goods or accepted them after having refused them first. In the second case, it would be necessary to specify whether the period began with the acceptance or with the preceding refusal. In that respect, the Polish amendment (A/CONF.63/C.1/L.32) made the text more precise.

62. Mr. MUSEUX (France) stressed that the diversity of the proposed amendments bore witness to the complexity of the problems facing the Committee. However, it should not be forgotten that the text adopted by consensus by UNCITRAL did at least have the merit of being realistic. If two periods had been envisaged, one general and one for the particular case of non-conformity, it was because in trade practice the situations were different.

63. Without wishing to make a thorough study of the question for the present, his delegation would like to draw the Committee's attention to its economic importance. If a very long period were imposed on the seller in the case of non-conformity, he would have to bear higher costs. He would have to take out insurance, the cost of which would be all the higher because of the difficulty for the insurer to assess the risk. The cost of the goods would thus be increased and consequently the sales price, which in fact meant that the buyer and consumer would suffer. It would therefore be regrettable in economic terms to have a long limitation period in the case of non-conformity.

64. Mr. KHOO (Singapore) stated that his delegation had voted in favour of a uniform limitation period on condition that the period be longer than four years, which would allow the developing countries to overcome their particular problems. However, special provisions should be made if the limitation period were shorter.

65. The CHAIRMAN said that the debate had been very useful in allowing the delegations to bring their viewpoints somewhat closer together. He therefore thought that the moment had come to contemplate setting up a small working group to establish a compromise text from the many suggested amendments and the various opinions put forward. Naturally the working group would be free to propose not merely one but several solutions. It should comprise both the delegations which had proposed amendments and also those which had stated their opinions. He proposed that the Committee establish a working group comprising the representatives of the following countries: Australia, Denmark, the Federal Republic of Germany, Ghana, Greece, Nigeria, Norway, the Philippines and Sweden.

*It was so decided.*

66. After a brief exchange of views in which the CHAIRMAN, Mr. FRANTA (Federal Republic of Germany), Mr. JENARD (Belgium) and Mr. GUEST (United Kingdom) took part, the CHAIRMAN appointed Mr. Sam (Ghana) Chairman of the Working Group.

67. The CHAIRMAN suggested that, in order to facilitate the Working Group's task, the Committee make its position clear by an indicative vote as to whether the Convention should provide for a uniform limitation period or should provide for several limitation periods.

*The Committee voted in favour of adopting a uniform limitation period by 27 votes to 10.*

*The meeting rose at 1.05 p.m.*

## 13th meeting

Thursday, 30 May 1974, at 3.20 p.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.13

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add.1 and 2, A/CONF.63/C.1/L.41, L.57, L.61, L.62, L.63, L.67, L.68, L.74) (continued)**

*Article 9 (concluded)\**

1. The CHAIRMAN invited the Committee to discuss the question of fraud in the context of article 9, paragraph 2, of the draft Convention (A/CONF.63/4).

2. Mr. ROGNLIEN (Norway) said that article 9, paragraph 2, was a matter for the Drafting Committee to deal with. In his view, the limitation period should commence at the normal time but should be extended so as not to expire before the expiration of one year

from the date on which a fraud was or could reasonably have been discovered. The single limitation period of four years would then be maintained consistently, with a one-year extension from the time of discovery of the fraud to allow the innocent party to assert his claim. In cases of fraud, there should be an over-all time-limit of eight or ten years for the matter to be brought before the courts.

3. The United Kingdom amendment (A/CONF.63/C.1/L.57) would extend the scope of the fraud provisions. The existing draft distinguished between fraud committed before or at the time of the conclusion of the contract (article 9, para. 2) and fraud committed after the conclusion of the contract (article 20). He would like the principle of article 20, which allowed for an extension of the period, to be included in article 9. Apart from that he supported the United Kingdom amendment, which had precisely that effect.

\* Resumed from the 11th meeting.

However, the fact that a claim had been concealed should be enough to bring the provision into operation; there was no need to state explicitly that the concealment must have been fraudulent.

4. Mr. ADAMSON (United Kingdom) said that the purpose of the United Kingdom amendment was to deal with actions for fraud when the claim had been concealed. His delegation felt that that possibility should also be covered and that the appropriate place to do so was in article 9. Cases might arise which were not cases of fraud committed before or at the time of the conclusion of the contract. For example, the seller might offer for sale goods to which he believed he had good title; if he concluded the contract and subsequently discovered that his title was not good but concealed the information from the buyer, the buyer would be unable under the existing form of words to pursue a claim for fraud on the part of the seller and would find there was no provision for claims in case of such concealment. His delegation therefore thought it prudent to add the words appearing in its amendment.

5. With reference to the Norwegian proposal to allow an additional year in cases of fraud and a final limit of eight years, his delegation felt that it was not desirable to have a proliferation of limitation periods. He would prefer a single period whose starting date could be changed in the event of fraud. The question of transferring the issue of fraud from article 20 to article 9 should be left open for the time being. Article 9 dealt with the commencement of the limitation period; it might also be necessary to deal with supervening fraud in article 20.

6. Mr. KNUTSSON (Sweden) said that it would be very difficult to dispense with a fraud clause altogether, although he could understand the reasoning of those delegations which had wanted to move in that direction. He was concerned that the concept of fraud might differ from country to country. The purpose of his delegation's amendment (A/CONF.63/C.1/L.63) was to stress that the provision was a special one that applied only in exceptional cases.

7. Mr. KRUSE (Denmark) supported both the retention of article 9, paragraph 2, and the adoption of the United Kingdom amendment. He agreed that cases of fraud could arise that were not covered by the original text of the paragraph. Like the representative of Norway, however, he felt there was no need to mention fraud in connexion with the concealment of a claim. Although he could agree that fraud was covered by article 20, the special provision was necessary from a moral standpoint. Fraud was a serious offence; the proposed text was better than that of draft article 20, which allowed the buyer only one year to exercise his rights.

8. The Swedish amendment would be difficult to apply. Although the intention was to make the provision applicable only to serious cases, it was difficult to ascertain when fraud constituted a criminal offence.

9. Mr. FRANTA (Federal Republic of Germany) said he could accept the principle contained in article 9, paragraph 2, and preferred it to the approach proposed in the Norwegian amendment to article 10, which could have the effect of shortening the limitation period in cases of fraud. On the other hand, paragraph 3 of the Norwegian amendment merited consideration. The existing text of article 9, paragraph 2, provided no limitation if fraud was discovered, say, 30 years after the conclusion of a contract.

Article 21 could not be invoked in such cases, because it was only applicable if the limitation period had already begun. His delegation could accept the idea of a period of six years or longer to allow additional time for the submission of claims in case of fraud.

10. If article 10 was retained in the draft Convention, there was some question whether article 9, paragraph 2, was applicable in cases of fraud. Article 9, paragraph 2, referred only to article 9, paragraph 1, which was in turn subject to the provisions of article 10. In the case of a claim made under article 10, there would be no provision for fraud. The question was one both of substance and of drafting. The provisions of article 9, paragraph 2, should apply to claims for defects and lack of conformity where fraud was involved.

11. He could not support the Swedish amendment because he felt that the Convention should not connect civil and criminal law.

12. Mr. KOPAC (Czechoslovakia) pointed out that the provisions relating to fraud were limited to fraud occurring before or at the time of the conclusion of the contract. Consequently, they applied only in case of invalidity. There was, however, no general provision in the draft Convention concerning the commencement of the limitation period in the event of invalidity. He was not certain whether a special provision covering fraud was advisable, because it might lead to the application of the general rule on the commencement of the limitation period, and that might benefit the debtor more than the creditor. There might be cases where invalidity was the result of legal proceedings rather than a provision of the law, in which case the limitation period would begin at the end of the legal proceedings, when the contract was declared invalid. Under the provisions of the draft Convention, however, the limitation period would begin from the time of the fraud. It might be better not to have a provision governing fraud, because fraud was interpreted differently in different systems. He was unable to support the Swedish amendment because of the difficulty of defining fraud. It would be better to delete the provision altogether and to rely on article 12, which set forth a general principle and indicated the procedure to be followed. However, if it was retained, the Drafting Committee should be instructed to revise it and bring it into line with the principle that only contractual claims were covered by the Convention.

13. Mr. KRISPIS (Greece) said he was in favour of retaining the existing wording of article 9, paragraph 2. In civil-law texts fraud was given its usual literal meaning, unless there was an indication to the contrary. He would prefer that principle to be observed in the Convention. The Swedish amendment, however, raised difficulties because it referred to criminal law. Criminal-court judges would be obliged to apply the criminal law of the country, but would be faced with the problem of ascertaining when the fraud was committed and which country was materially involved. If the Swedish proposal became law, it would be necessary to refer to the law applicable to the act that was to be qualified as fraud.

14. He supported the United Kingdom proposal, but felt that it was incorrect to speak of concealing a claim; only the situation or the fact of a claim could be concealed. The Drafting Committee should bear that in mind.



15. In the light of the indicative decision taken at the preceding meeting, he could not support the Norwegian proposal.

16. Mr. HARTNELL (Australia) said that he supported the United Kingdom amendment, which was eminently sensible because it covered a practical problem. Nevertheless, he agreed with the representative of Greece that the Drafting Committee should make it clear that only the fact or situation of the claim could be concealed. He could not support the Swedish proposal, which raised the problem that a civil action might require a criminal trial to establish the facts, or the Norwegian proposal, because it moved away from the principle of a suitable limitation period and might even shorten the limitation period in the event of fraud.

17. Mr. JEMIYO (Nigeria) expressed support for the United Kingdom amendment to article 9, paragraph 2 (A/CONF.63/C.1/L.57), subject to the comments of the representatives of Greece and Australia. However, owing to procedural difficulties, he could not support the Swedish amendment (A/CONF.63/C.1/L.63). Under Nigerian common law, a criminal case must have precedence over a civil action and, since that would take time, the purposes of the Convention would be defeated.

18. Mr. GOKHALE (India) favoured the retention of the basic text of article 9, paragraph 2, which would cover the cases that the United Kingdom representative had in mind. However, he would not oppose the United Kingdom amendment if it enabled the question to be clarified beyond all doubt.

19. Mr. BELINFANTE (Netherlands) said he fully agreed with the Czechoslovak representative's point of view. He had the same objections as previous speakers to the Swedish amendment. Criminal provisions relating to fraud differed from country to country; that amendment would not, therefore, bring about uniformity of action under the Convention. As to the Norwegian amendment to article 10 (A/CONF.63/C.1/L.61), the fact that it involved different limitation periods ran counter to the majority vote at the preceding meeting in favour of a single period. Since he had no objection to the United Kingdom amendment (A/CONF.63/C.1/L.57), he would abstain from voting on it.

20. He regretted the existence of a provision on fraud, since it was often very difficult to determine what constituted fraud—for example, in the case of the sale of a supposedly new car which subsequently proved to be second-hand, or a second-hand car whose previous mileage was subsequently found to have been falsely stated by the seller. Fraud was only one of the grounds for annulment of the contract; there was therefore no need for a special provision. However, if one was felt to be necessary, then article 9, paragraph 2, was the least harmful.

21. Mr. JENARD (Belgium) said that he fully supported the comments and conclusions of the Netherlands representative.

22. Mr. ROGNLIEN (Norway) announced that he was withdrawing his amendment to article 10 (A/CONF.63/C.1/L.61). As for the United Kingdom amendment (A/CONF.63/C.1/L.57), he supported it in substance; it appeared to mean that the claim was based on concealment of the fraud. He felt that it should be referred to the Drafting Committee.

23. Mr. KRUSE (Denmark) regretted the withdrawal of the Norwegian amendment. He agreed with the representative of the Federal Republic of Germany that an over-all limitation period was needed in cases of fraud. The prospect of a limitation period lasting for, say, 30 or 40 years was ridiculous. Perhaps the matter could be referred to the Drafting Committee.

24. Mr. SUMULONG (Philippines) supported the retention of article 9, paragraph 2. The Swedish amendment would create difficulties of proof, particularly the quantum of proof, since—in the Philippines, at least—in order to establish that a crime had been committed, proof beyond reasonable doubt was required, whereas less evidence was sufficient in civil cases.

25. With regard to the United Kingdom amendment, he stressed the lack of agreement on what constituted fraud—as, for example, in certain cases of lack of conformity of the goods or when the seller concealed a defect in his title to the goods. He therefore preferred the paragraph as it stood.

26. The CHAIRMAN invited the Committee to vote first on the principle of including a special provision on fraud in the Convention.

*The principle of including a special provision on fraud was approved by 27 votes to 4.*

27. Mr. KNUTSSON (Sweden) withdrew his delegation's amendment (A/CONF.63/C.1/L.63).

28. The CHAIRMAN invited the Committee to vote on the United Kingdom amendment to article 9, paragraph 2.

*The United Kingdom amendment (A/CONF.63/C.1/L.57) was adopted by 19 votes to 11.*

29. Mr. KRUSE (Denmark) drew attention to the question raised by the representative of the Federal Republic of Germany, namely, whether article 9, paragraph 2, relating to fraud could also be applied to cases of lack of uniformity as referred to in article 10. He was sure that article 9, paragraph 2, was intended to include cases arising under article 10, but clarification would be useful. The matter should be referred to the Drafting Committee.

30. The CHAIRMAN assured the representative of Denmark that the Drafting Committee would consider the question.

#### Article 11

31. Mr. ROGNLIEN (Norway), introducing his delegation's amendment to article 11 (A/CONF.63/C.1/L.62), said that the amendment would extend the scope of both paragraphs of article 11 to include the entitlement to declare performance of the contract due. The entitlement of one party to declare the contract terminated or performance due could be based either on law—for example, if the other party was adjudged bankrupt—or on a specific stipulation in the contract laying down certain conditions under which the declaration could be made. The special provisions of article 11 were necessary to deal with the many situations that could arise; he therefore opposed deletion of the article.

32. Mr. KNUTSSON (Sweden) observed that the draft Convention was very complicated and could be simplified with advantage. To that end, his delegation's amendment (A/CONF.63/C.1/L.67) proposed deletion of article 11, simply on the grounds that it was unnecessary. Its provisions—with the possible exception of the second sentence of paragraph 2—would be covered by the interpretation of article 9.

33. Mr. KRISPIS (Greece) said that, in his view, article 11 served a useful purpose and should be retained. There was some doubt as to whether the cases it covered would come under other articles, and an express provision was therefore preferable. As to the Norwegian amendment (A/CONF.63/C.1/L.62), the addition was welcome and he would vote in favour of it.

34. Mr. MICHIDA (Japan) agreed with the representative of Sweden that article 11 was very complex. It could be improved by further drafting. He could not, however, support the proposal to delete it.

35. Mr. KAMPIS (Hungary) supported the retention of article 11. However, he wished to call the Drafting Committee's attention to the last sentence of paragraph 1, which he considered superfluous.

36. Mr. MUSEUX (France) also supported the retention of article 11. He agreed that it was somewhat complicated and could perhaps be simplified by the Drafting Committee. In that connexion, he drew attention to his Government's proposal in document A/CONF.63/6/Add.2.

37. Mr. SAM (Ghana) agreed that article 11 was difficult to grasp at first sight. He would not, however, advocate its deletion; rather, it should be referred to the Drafting Committee. In that connexion, he suggested that the words "all relevant instalments" in the second sentence of paragraph 2 should be replaced by the words "all future instalments".

38. He had no strong objection to the Norwegian proposal (A/CONF.63/C.1/L.62), which could also be referred to the Drafting Committee.

*The Swedish amendment (A/CONF.63/C.1/L.67) was rejected by 31 votes to 4.*

*The Norwegian amendment (A/CONF.63/C.1/L.62) was rejected by 18 votes to 6.*

#### *Proposed article 11 bis*

39. Mr. REESE (United States of America), introducing the Norwegian-United States amendments in document A/CONF.63/C.1/L.41, pointed out that they were interrelated and did not change the substance of the articles in question. In the proposed new article 11 bis, an attempt was made to state two points as clearly as possible.

40. Mr. ROGNLIEN (Norway) said that document A/CONF.63/C.1/L.41 comprised a set of alternatives to certain articles in that section of the draft Convention which dealt with the cessation and extension of the limitation period (articles 12 to 20). The articles in question were concerned, *inter alia*, with defining the circumstances in which the limitation period should cease or continue to run. The phrase "cease to run" had been coined by the UNCITRAL Working Group on Time-limits and Limitations (Prescription) as a neutral expression easier to interpret than the more technical concept of interruption; under some national laws, the latter concept connoted the renewal as well as the cessation of the limitation period. However, the phrase "cease to run" presented difficulties to certain delegations, and the purpose of document A/CONF.63/C.1/L.41 was to resolve some of those difficulties.

41. Paragraph 1 of the proposed article 11 bis stated that a claim should not be barred by reason of limitation if it was asserted in legal proceedings before the expiration of the limitation period. That formula had the advantage of providing that the original limitation period continued to run in such cases, without intro-

ducing the concept of cessation. Paragraph 2 reproduced essentially the provisions of the present article 15 and, if adopted, would make the latter superfluous. He proposed that the Committee should take a decision on the general question whether it wished to retain the phrase "cease to run" in the various articles dealing with the cessation and extension of the limitation period, or whether it preferred to adopt another approach along the lines set forth in document A/CONF.61/C.1/L.41. In the light of that decision, the Committee could proceed to consider the section on cessation and extension of the limitation period article by article.

42. Mr. ZULETA (Colombia) said he had some doubts as to the compatibility of the proposed new article 11 bis with article 9, paragraph 2, of the Convention. He cited the hypothetical case of a buyer who had been the victim of fraud committed by a seller in the performance of an international sales contract and who many years later instituted judicial proceedings against the seller, alleging that he could not reasonably have discovered the fraud at the time when it was committed. If the judicial proceedings failed to result in a decision binding on the merits of the claim, he wondered whether, under the proposed article 11 bis, the limitation period would begin to run anew from that time or whether the claimant would have only one year in which to institute fresh proceedings.

43. Mr. STALEV (Bulgaria) said he could not support the proposed article 11 bis, paragraphs 1 and 2 of which covered the same ground as articles 12 and 15 respectively of the existing text. The phrase "cease to run" represented a felicitously neutral concept and was infinitely preferable to the notion of interruption, which gave rise to diverse interpretations under different national laws.

44. Mr. JENARD (Belgium) felt that members needed more time to study the amendments submitted by Norway and the United States before deciding whether they provided an effective alternative to the present wording of articles 12 *et seq.*

45. The CHAIRMAN said that the issue was clearly whether the Committee wished to retain the formula "the limitation period shall cease to run" or to replace it by some other formula such as the one used in the proposed article 11 bis.

46. Mr. LEBEDEV (Union of Soviet Socialist Republics) agreed with the Chairman's interpretation of the issue before the Committee. If he had understood the representatives of Norway and the United States correctly, the purpose of their amendments was not to change the substance of the Convention but to recast certain of its provisions from the structural standpoint. His delegation preferred the existing text and would have difficulty in accepting the new article 11 bis.

47. Mr. GUEST (United Kingdom) associated himself with the remarks made by the representative of Bulgaria.

48. Mr. BELINFANTE (Netherlands) said that his delegation favoured the "cease to run" formula, which was also employed in the new draft Civil Code of the Netherlands. In contrast, the phrase "a claim shall not be barred by reason of limitation" in the proposed article 11 bis was an awkward, negative expression. It was clear that the limitation period ceased to run when legal proceedings were instituted and that it recommenced subsequently.



49. He agreed with the representative of Bulgaria that paragraphs 1 and 2 of the proposed new article covered the same ground as articles 12 and 15 of the existing text. His delegation would not oppose the adoption of paragraph 1 as a general introductory provision, but it considered that draft article 15 should be deleted and was therefore opposed to paragraph 2 of the amendment.

50. Mr. MUSEUX (France) recalled that the representative of Norway had proposed that the Committee should decide whether articles 12 to 20, as currently worded, presented difficulties of interpretation that might require consideration of the alternative proposals set forth in document A/CONF.63/C.1/L.41. Accordingly, he (Mr. Museux) proposed that the Committee should defer consideration of the latter document until it had completed its discussion of the article in question.

51. Mr. ROGNLIEN (Norway) said that he could agree to the French proposal if it represented the consensus of the Committee.

52. Mr. REESE (United States of America) said that he too could accept the French proposal, on the understanding that the merits of the amendments in document A/CONF.63/C.1/L.41 would be discussed at some later stage.

53. He noted that the representative of the Netherlands had stated that the limitation period ceased to run when legal proceedings were instituted and that it recommenced subsequently; that implied suspension of the statutory period during legal proceedings. However, it was precisely the concept of suspension which gave rise to problems of interpretation in some quarters. Paragraph 2 of the proposed article 11 *bis* was designed to obviate those problems by providing for a one-year extension of the limitation period in cases where the legal proceedings ended without a decision binding on the merits of the claim.

54. The CHAIRMAN said that, if there was no objection, he would take it that members accepted the French representative's proposal that the Committee should continue its consideration of the articles of the draft Convention and revert to the amendments in document A/CONF.63/C.1/L.41 if it was found that the draft articles gave rise to difficulties of interpretation.

*It was so decided.*

#### Article 12

55. The CHAIRMAN drew attention to the amendments to article 12 submitted by Sweden (A/CONF.63/C.1/L.68) and Norway (A/CONF.63/C.1/L.74).

56. Mr. KNUTSSON (Sweden), introducing his delegation's amendment (A/CONF.63/C.1/L.68) said that paragraph 2 of article 12 was of very little practical importance, since the question of claims relied on for set-off was dealt with in article 24. Furthermore, he could see no justification for giving retroactive effect to counterclaims as provided in that paragraph. It could therefore be deleted.

57. Replying to a question put by the Chairman, he said that, under Swedish law, a counterclaim could be relied on for the purpose of set-off only up to the amount of the principal claim.

58. Mr. HAUSHEER (Switzerland) said that in Switzerland, in addition to normal judicial procedures, a special quasi-judicial institution existed for the enforcement of claims relating to contracts. The quasi-judicial procedure had proved very effective, and he felt

that the Convention should provide for such special procedures. He therefore proposed that in article 12, paragraph 1, the words "or similar" should be inserted after the word "judicial".

59. Mr. ZULETA (Colombia) said that the Swiss proposal was sound, but it might be preferable to use the word "equivalent" rather than "similar".

60. Mr. KRUSE (Denmark) asked whether, under the laws of Switzerland and the countries of Latin America, the proceedings initiated by acts of the kind referred to in article 12, paragraph 1, were not considered to be judicial proceedings.

61. Mr. HAUSHEER (Switzerland) said that, as far as Switzerland was concerned, such proceedings were not considered to be judicial proceedings although they might lead to judicial proceedings.

62. Mr. ZULETA (Colombia) said that the situation was similar in Colombia. The commercial code provided for special proceedings which were not strictly judicial proceedings since they did not involve the judiciary branch of government.

63. Mr. GUEST (United Kingdom) wondered whether the point raised by the representative of Switzerland was not covered to some extent in article 14. He added that, if the Committee decided to retain paragraph 2 of article 12, it might be preferable to incorporate it in article 24 so as to provide similar procedures for all counterclaims.

64. Mr. FRANTA (Federal Republic of Germany) associated himself with the views expressed by the United Kingdom representative regarding the Swiss proposal. Furthermore, he felt that the words "or similar" were too vague and that their insertion would change the whole sense of articles 12, 13 and 14.

65. He supported the Swedish proposal for the deletion of paragraph 2, since he agreed with the representative of Sweden that the provisions of article 24, paragraph 2, were adequate.

66. Mr. KAMPIS (Hungary) said that he supported the views expressed by the United Kingdom representative in all respects.

67. Mr. STALEV (Bulgaria) said that, while he considered the provisions of article 12, paragraph 2, to be reasonable, the wording might be improved in the light of the observations made by the representative of Sweden.

68. He supported the views expressed by the United Kingdom representative.

69. Mr. ROGNLIEN (Norway) observed that the point raised by the representative of Switzerland was already covered in article 18. Normally the period of limitation could be interrupted only by judicial or other legal proceedings, but in article 18 provision was made for the possibility of other proceedings. The insertion of the words "or similar" in article 12, paragraph 2, would in effect change the whole system set out in the draft Convention.

70. While he agreed with the representative of the United Kingdom that the position of paragraph 2 of article 12 might be changed, he felt that the best solution might be to incorporate it in a new article 11 *bis*.

71. Mr. KRISPIS (Greece) said that adoption of the Swiss proposal would render article 13 superfluous. He believed that article 12, paragraph 1, as it stood could be interpreted to cover the point raised by the representative of Switzerland.

72. He agreed with the Swedish proposal concerning paragraph 2. Since a counterclaim could, in effect, be considered to be a claim, and since the procedure with regard to claims was dealt with adequately in paragraph 1 of the article, there was no reason to retain paragraph 2.

73. Mr. MUSEUX (France) associated himself with the views expressed by the representative of Norway. He felt that the point raised by the Swiss representative was dealt with adequately in article 18.

74. He too had some misgivings with regard to the usefulness of article 12, paragraph 2.

75. Mr. BELINFANTE (Netherlands) said he shared the view that the wording proposed by the representative of Switzerland was superfluous.

76. With regard to the Swedish proposal, he believed that paragraph 2 should be retained, since a counterclaim could not be regarded as being the same as a claim to be relied on as a defence or for the purposes of set-off, as referred to in article 24. A counterclaim might be made for an amount larger than that of the original claim and could not, therefore, be met by set-off. The Convention should state clearly that, in cases where claims could not be met by set-off, the period between

submission of the claim and submission of the counterclaim should not be considered to constitute part of the limitation period. Consequently, article 12 paragraph 2, should be retained.

77. He proposed the insertion of a new paragraph stating that the rule applied to the acts mentioned in paragraph 1 should also apply to third-party attachment by the creditor's creditor of the goods of the debtor. Such a provision would eliminate the possibility of a claim's lapsing by virtue of limitation.

78. Mr. KRUSE (Denmark) said he could not agree with the representative of Norway that the point raised by the representative of Switzerland was dealt with in article 18, since the acts mentioned in that article had the specific effect of initiating a new limitation period. He believed that the Swiss proposal was covered more adequately in article 14. However, the question was one of local law and he felt that it would not be in the broad interest of the Convention to take account of local laws.

79. Mr. GOKHALE (India) supported the Swedish proposal.

*The meeting rose at 5.55 p.m.*

## 14th meeting

Friday, 31 May 1974, at 10.35 a.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.14

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.19, L.32, L.33, L.37, L.45, L.58, L.59, L.61, L.64, L.65, L.66, L.68, L.72, L.74, L.76, L.78, L.79, L.89, L.95, L.104) (continued)

#### Article 12 (concluded)

1. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that in his delegation's view there was a substantive difference between, on the one hand, the Russian and English versions of paragraph 1 of article 12 and, on the other hand, the French text. Since the French text seemed more clear, his delegation had submitted a proposal (A/CONF.63/C.1/L.59) which would bring the Russian and English texts into line with the French.

2. In addition, paragraph 2 of article 12 should be deleted and made into a new article 14 *bis* which would begin with the words "For the purposes of articles 12, 13 and 14, . . .", so as to cover specifically cases in which a counterclaim was raised, not only as part of a court examination but also in the case of the arbitral and administrative proceedings provided for in articles 13 and 14. The new article 14 *bis* would come immediately after article 14.

3. Mr. BELINFANTE (Netherlands) pointed out that the French text of his delegation's amendment (A/CONF.63/C.1/L.79) did not correspond exactly with the English original. The term "*tierce opposition*" should be replaced by "*saisie-arrêt*".

4. The original text of article 12 dealt only with actions involving the buyer and the seller. It was however possible that a third party might have a legitimate interest in suspending or interrupting the limitation period. That was particularly likely to happen when the creditor's creditor wished to protect his claim by means of an attachment on the property of his debtor's debtor. The third party must be able to mitigate the effects of his debtor's negligence by means of a provisional attachment and thus prevent the limitation of the latter's claim.

5. Mr. JENARD (Belgium) said that he would submit what was essentially a drafting amendment to the second sentence of paragraph 1 of article 12.

6. His delegation was prepared to support the USSR amendment to paragraph 2 (A/CONF.63/C.1/L.59). It also approved of the Netherlands amendment (A/CONF.63/C.1/L.79) and thought that the point raised by the Swiss delegation (A/CONF.63/C.1/L.89) might be taken care of in the other articles dealing with the cessation and extension of the limitation period.

7. Mr. KRUSE (Denmark) supported the Swedish proposal (A/CONF.63/C.1/L.68) that paragraph 2 of article 12 should be deleted. The Swiss amendment (A/CONF.63/C.1/L.89) dealt with a situation which it would certainly be more appropriate to cover in article 14. The Netherlands amendment (A/CONF.63/C.1/L.79) seemed to concern the case of a successor to the rights of one of the parties to the contract, since the creditor's creditor entered into the rights of the creditor. If the Committee thought that the Convention

should take account of that situation, the Drafting Committee should be asked to study the possibility of including a general provision dealing with the rights of successors.

8. Mr. KRISPIS (Greece) approved of the idea in the Netherlands amendment (A/CONF.63/C.1/L.79) and thought that it might perhaps even be desirable to have a specific provision dealing with the general problem of attachment.
9. Mr. BURGUCHEV (Union of Soviet Socialist Republics) thought that the Netherlands proposal (A/CONF.63/C.1/L.79) was already covered to a certain extent in paragraph 2 of article 17, which seemed to deal with the same point. The amendment could therefore be considered directly by the Drafting Committee.
10. Mr. TRUDEL (Canada) gave his full support to the USSR amendment (A/CONF.63/C.1/L.59). His delegation also approved of the idea in the Netherlands proposal (A/CONF.63/C.1/L.79) but thought that its scope should be broadened, as suggested by the representative of Greece.
11. Mr. KIBIS (Byelorussian Soviet Socialist Republic) pointed out that article 1, paragraph 3 (e), stated that the term "legal proceedings" included judicial, administrative and arbitral proceedings; furthermore, article 12 covered the case of judicial proceedings, article 13 that of arbitral proceedings and article 14 that of administrative or other proceedings. Thus, there seemed no need to include the words "or similar" as suggested in the Swiss amendment (A/CONF.63/C.1/L.89).
12. Mr. GUEST (United Kingdom) agreed that the text of paragraph 2 should be retained, subject to the amendment proposed by the delegation of the Soviet Union (A/CONF.63/C.1/L.59) and the change suggested by the Norwegian delegation (A/CONF.63/C.1/L.74). His delegation could not therefore accept the Swedish amendment (A/CONF.63/C.1/L.68).
13. As for paragraph 1, his delegation supported the Soviet proposal (A/CONF.63/C.1/L.59) but not the Swiss proposal (A/CONF.63/C.1/L.89).
14. Mr. KAMPIS (Hungary) opposed the deletion of paragraph 2, but approved of the Soviet proposal (A/CONF.63/C.1/L.59).
15. Mr. GOKHALE (India) supported the Soviet proposal concerning paragraph 1 of article 12 (A/CONF.63/C.1/L.59) and the Swedish proposal (A/CONF.63/C.1/L.68) that paragraph 2 should be deleted; he could, however, accept the Soviet proposal concerning the same paragraph if the Committee did not adopt the first solution. The Netherlands amendment (A/CONF.63/C.1/L.79) might involve complications, since the Convention dealt essentially with the rights of the seller and the buyer. Finally, his delegation could not support the Swiss amendment (A/CONF.63/C.1/L.89), which it thought redundant.
16. Mr. KOPAC (Czechoslovakia) was opposed to the deletion of paragraph 2 and could not therefore support the Swedish amendment (A/CONF.63/C.1/L.68). On the other hand, he supported the Soviet proposals concerning paragraphs 1 and 2 (A/CONF.63/C.1/L.59).
17. The Norwegian amendment (A/CONF.63/C.1/L.74) and the Netherlands amendment (A/CONF.63/C.1/L.79) might usefully be referred to the Drafting Committee. However, he had some doubts about the

Netherlands proposal, since the relations between one of the parties to the contract and a third party were not necessarily international in character.

18. Mr. FRANTA (Federal Republic of Germany) approved of the deletion of paragraph 2 and therefore supported the Swedish amendment (A/CONF.63/C.1/L.68). There really seemed to be no justification for investing a counterclaim with a retroactive effect, for it was a claim like any other. On the other hand, his delegation approved of the idea which seemed to emerge from the Netherlands proposal (A/CONF.63/C.1/L.79); that idea—perhaps to be expressed in an improved version of the amendment—seemed to be that a third party, having taken over a seller's or a buyer's claim must be able, by initiating proceedings, to prevent the prescription of that claim.
19. Mr. TAKAKUWA (Japan) said that his delegation had no firm views about paragraph 1 of the Soviet amendment (A/CONF.63/C.1/L.59), which was merely a drafting matter. On paragraph 2 of article 12, his delegation saw little merit in having a provision regarding counterclaim. From his knowledge and experience as a legal expert, he felt that such a provision would be of little practical value and, therefore, should be deleted. He added that the phrase such as "counterclaim shall be related to a contract or contracts concluded in the course of the same transaction" was full of ambiguity. Moreover, it was difficult to justify the inclusion of an article 14 *bis* devoted exclusively to counterclaims and coming after article 14. This was not an appropriate place.
20. In view of the difficulties of interpretation of the text of paragraph 2, his delegation approved of its deletion, in accordance with the Swedish proposal (A/CONF.63/C.1/L.68). The Netherlands amendment (A/CONF.63/C.1/L.79) would be acceptable if its scope was broadened, as the representative of Greece had suggested. Finally, the Swiss amendment (A/CONF.63/C.1/L.89) seemed redundant, since the situation it dealt with was already covered in articles 13 and 14.
21. Mr. KNUTSSON (Sweden) pointed out that, if the Committee decided to follow the Soviet proposal (A/CONF.63/C.1/L.59) and insert a new article 14 *bis*, it would be necessary to revise the provisions of article 13, which already covered the possibility of arbitral proceedings.
22. He understood the idea behind the Netherlands proposal (A/CONF.63/C.1/L.79), but was not sure that it was really relevant to the future Convention, since attachment proceedings did not apparently lead to a final decision on the merits of the case between the seller and the buyer.
23. Mr. HARTNELL (Australia) supported the second part of the Soviet proposal (A/CONF.63/C.1/L.59) and the drafting change suggested by Norway (A/CONF.63/C.1/L.74).
24. His delegation was reluctant to give an opinion on the Netherlands amendment (A/CONF.63/C.1/L.79), since it thought the amendment might give rise to considerable confusion, which could frustrate the purpose of the Convention: there was in fact no assurance that all the parties to the contract would necessarily be advised of any action brought by a third party which would cause the limitation period to cease to run.
25. Furthermore, his delegation was opposed to the Swedish amendment (A/CONF.63/C.1/L.68); neither

could it support the Swiss amendment (A/CONF.63/C.1/L.89) which made the meaning of paragraph 1 too vague. A possible solution might be to define the idea of "judicial proceedings" in the text of paragraph 1.

26. Mr. SAM (Ghana) said that he could not support the amendment of the Swedish delegation (A/CONF.63/C.1/L.68). He suggested that the Committee should postpone its decision on the Swiss amendment (A/CONF.63/C.1/L.89) so that the Swiss delegation could consult the delegations of the Latin American countries which encountered the same problem because of the provisions of their Constitutions. In any case, it seemed that paragraph 1 of article 12 was not the appropriate place to settle the question.

27. His delegation was in favour of referring the amendments of the delegations of the Netherlands (A/CONF.63/C.1/L.79), the Soviet Union (A/CONF.63/C.1/L.59) and Norway (A/CONF.63/C.1/L.74) to the Drafting Committee.

28. Mr. SUMULONG (Philippines) supported the proposal of the Swedish delegation (A/CONF.63/C.1/L.68) for the same reasons as those expressed by the representative of the Federal Republic of Germany. Experience showed that a long interval could elapse between the introduction of a claim and that of a counterclaim, and there was no justification for making counterclaims retroactive. Moreover, in Philippine law for example, rejection of the claim did not necessarily involve rejection of the counterclaim.

29. The proposal by the Swiss delegation (A/CONF.63/C.1/L.89) seemed pointless and related to a situation which was already covered in article 14 of the draft. On the other hand, his delegation supported the Soviet proposal (A/CONF.63/C.1/L.59) concerning paragraph 1 of article 12. Lastly, it appeared that the Netherlands proposal (A/CONF.63/C.1/L.79) could not be included in the Convention without some modification, and he therefore proposed that it should be referred to the Drafting Committee.

30. Mr. NJENGA (Kenya) considered that the Swedish proposal was acceptable, as the problems involved in applying paragraph 2 of article 12 had been particularly highlighted in the analytical compilation of comments and proposals by Governments and interested international organizations (A/CONF.63/6/Add.1). His delegation also accepted the first part of the Soviet amendment (A/CONF.63/C.1/L.59), which would undoubtedly improve the drafting of the first sentence of paragraph 1, but could not support the second part of that amendment.

31. His delegation was also opposed to the Norwegian, Swedish and Swiss amendments (A/CONF.63/C.1/L.74, L.68 and L.89), in particular the Swiss amendment, as the addition of the words "or similar" proposed in that amendment might make the text too vague and give rise to ambiguity. His delegation would take a position on the Netherlands amendment (A/CONF.63/C.1/L.79) when the representative of that country had explained it more fully to the Committee.

32. Mr. WAGNER (German Democratic Republic) supported the Soviet amendment (A/CONF.63/C.1/L.59) aimed at moving paragraph 2 of article 12, and making it a new article 14 *bis*. He stressed that it was not unusual in international trade for a counterclaim to be introduced at a very late stage, after long negotiations.

33. Mrs. DE BARISH (Costa Rica) said that she was in favour of the first part of the Soviet amendment (A/CONF.63/C.1/L.59) and would also be prepared to support the second part of that amendment. Her delegation could also support the Norwegian and Swedish amendments (A/CONF.63/C.1/L.74 and L.68). With regard to the Swiss amendment (A/CONF.63/C.1/L.89), her delegation felt that, if the Convention was to commend wide support, the opinions of the minority countries represented at the Conference should not be ignored. The idea behind the Swiss amendment, which had been supported at the previous meeting by the Colombian representative, was worth retaining. She would support the Swiss amendment, which retained the wording of paragraph 1 of article 12 and also had the advantage of widening its scope.

34. Mr. BELINFANTE (Netherlands) said that he hoped that the explanations which he would provide would clarify the meaning and the exact scope of his proposal. Replying first to the Danish representative, he stressed that the creditor's creditor could not be considered to be one of the persons envisaged in paragraph 3 (a) of article 1—in other words, as one of the successors to the rights or duties under the contract of sale. The hypothesis which his delegation had in mind was quite different: it concerned a creditor who, not being a party to the contract of sale, wished to safeguard his rights by taking a preliminary measure against his debtor who, unlike him, was a party to the contract of sale. It was important to stress the preliminary nature of such a measure, if only to dispel the fears voiced by the Greek, Indian and Japanese delegations and perhaps by the Australian representative, who seemed to have thought that the proceedings instituted by the creditor in question would amount to an act of performance. The confusion was perhaps caused by the use of the expression "a third party attachment" which in common-law countries no doubt related to proceedings different from those envisaged by his delegation.

35. When he had drafted his amendment, he had had in mind the procedure of *saisie-arrest*, which was well known in countries with a Romanic tradition and in countries whose legal systems were based on the *Code Napoléon*. It enabled the creditor to safeguard his rights even before any judgement had been made on the validity of his claim. To take a practical example, if a creditor learned that his debtor had sold some goods and that the buyer therefore owed \$10,000 to his debtor, he could attach that amount. After accomplishing that preliminary act, he would then have to obtain a validity judgement from the court which would recognize the reality of the claim and grant the amount attached to the creditor concerned.

36. He realized that there was perhaps no similar type of proceedings in the common-law countries or that, at least, the word "attachment" which he had used in his amendment might cause confusion for representatives of those countries. However, in reply to the remarks made by the Swedish representative, he wished to stress that the proceedings in question concerned only the validity of the claim of the creditor of one of the two parties to the contract of sale and did not concern the relations between the seller and the buyer. It was not a matter of proceedings involving those two parties, as the Philippine representative had wrongly believed; if that had been the case, the limitation period would clearly have ceased to run.

37. Moreover—in reply to the remarks made by the Czechoslovak representative—it was of little importance whether the claim made by the third party had an international character or not. What needed to be clearly understood was that, if no proceedings were instituted between the seller and the buyer, the limitation period would expire after four years, at which time the third party (the “creditor’s creditor”) would no longer be able to assert his claim, which would be barred by reason of limitation. It was precisely to avoid that situation that his delegation had submitted its amendment.

38. In conclusion, he suggested, in reply to the Ghanaian representative, that his amendment should become paragraph 3 of article 12 or that, if that solution was not acceptable to the Committee, the Drafting Committee should decide on the most suitable place for its inclusion.

39. Mr. KRISPIS (Greece) agreed that the third party creditor should be able to take preliminary measures before judgement had been passed. The matter should be made very clear, however, as it concerned a question of substance and not of form.

40. At the suggestion of the CHAIRMAN, Mr. ROGNLIEN (Norway) agreed that his amendment (A/CONF.63/C.1/L.74) should be referred to the Drafting Committee.

41. The CHAIRMAN announced that he would put to the vote the various amendments before the Committee.

*The Swedish amendment (A/CONF.63/C.1/L.68) was rejected by 25 votes to 9.*

*At the request of the Soviet representative, a separate vote was taken on the two parts of the amendment (A/CONF.63/C.1/L.59).*

*The first part of the Soviet amendment was adopted by 32 votes to none.*

*The second part of the Soviet amendment was adopted by 24 votes to 5.*

*The Soviet amendment, as a whole, was adopted.*

*The Netherlands amendment (A/CONF.63/C.1/L.79) was rejected by 13 votes to 7.*

*The Swiss amendment (A/CONF.63/C.1/L.89) was rejected by 32 votes to 3.*

#### Article 13

42. The CHAIRMAN said that the Committee had before it a single amendment submitted by the Soviet Union (A/CONF.63/C.1/L.78), proposing the deletion of paragraph 3.

43. Mr. BURGUCHEV (Union of Soviet Socialist Republics), supported by Mr. JENARD (Belgium) and Mr. MUSEUX (France), stressed that paragraph 1 of article 13 stipulated very clearly that arbitral proceedings interrupted the limitation period. It was therefore hard to see what could be added by paragraph 3, which was not very clear in any language. His delegation, which was proposing the deletion of the paragraph, would not insist on its amendment if other delegations could explain to it the meaning and purpose of paragraph 3.

44. Mr. GUEST (United Kingdom) said that in some common-law countries commercial contracts very often included a so-called Scott-Avery clause. Such a clause stipulated that arbitration was required before a claim could arise; prior recourse to arbitration must be had

before the parties could institute court proceedings. The question was whether the limitation period commenced after the arbitration award or commenced normally as soon as the claim arose. In the absence of a particular provision regarding the question in the Convention, the limitation period could not commence until the rendering of the arbitration award if the contract of sale included a Scott-Avery clause. Whether or not the solution contained in article 13, paragraph 3, of the draft Convention was a good one, its intent was that the limitation period should commence to run at the moment when the claim arose.

45. He hoped that the explanation he had given would clarify the meaning of paragraph 3; however, he would not oppose deleting it if the majority of delegations felt that the provision was too difficult to interpret.

46. Mr. HONNOLD (Chief, International Trade Law Branch), supported by Mr. SAM (Ghana) and Mr. ROGNLIEN (Norway), said that the difficulties created by paragraph 3 were due partly to the place at which it had been inserted into the draft Convention. Since, according to the representative of the United Kingdom, the question was when the prescription period commenced to run if the contract contained a Scott-Avery clause, the solution might be to attach article 13, paragraph 3, to article 9, paragraph 1, which specified the date on which the limitation period commenced. The Drafting Committee might try to determine the best place for inserting article 13, paragraph 3.

47. Mr. KOPAC (Czechoslovakia) said that after the explanation given by the representative of the United Kingdom, his delegation was just as confused as before concerning the exact meaning of article 13, paragraph 3. Since the provision was too vague, it would better to delete it outright. The Convention could not, after all, attempt to settle every special problem that arose in the various legal systems of the world. However, while his delegation left that suggestion for the Committee to decide, it felt that the difficulties raised by article 13, paragraph 3, might be overcome by a reference to the provisions of article 21.

48. Mr. KRISPIS (Greece) supported the USSR amendment to delete paragraph 3. In addition, he felt some doubt about paragraphs 1 and 2. Taken literally, paragraph 1 meant that the moment at which the arbitral proceedings were commenced should be decided by examining first the arbitration agreement and then the law applicable to it; yet the beginning of paragraph 2 suggested that the applicable law might not contain any provision on the question, and that was difficult to imagine.

49. Mr. GARCIA CAYCEDO (Cuba) said that he favoured deleting paragraph 3, which did not seem clear to him. In paragraph 2, he believed, it would be preferable to use the word “domicile” rather than the word “residence”.

50. Mr. HARTNELL (Australia) said that if paragraph 3 was deleted, the parties to a contract containing a Scott-Avery clause would be allowed a limitation period which was practically unlimited. His delegation could not accept such a solution. He recognized that the wording of the provision in paragraph 3 was not clear and that it might be possible to place it elsewhere in the Convention, but he was firmly in favour of retaining it.

51. Mr. STALEV (Bulgaria) observed, in connexion with paragraph 1, that arbitration agreements generally stipulated that the applicable law was that of the coun-

try in which proceedings had been instituted. The Drafting Committee should take account of the fact that there was a difference between the law applicable to the arbitration agreement and the law applicable to arbitral proceedings in general.

52. Mr. KHOO (Singapore) said that the Scott-Avery clause was often used in common-law countries. His delegation therefore believed that the provision of paragraph 3 should be retained, either in article 13 or in a more appropriate part of the Convention.

53. Mr. BELINFANTE (Netherlands) said that he found it difficult to understand just what article 13, paragraph 3, meant. He realized, however, that the use of a Scott-Avery clause in contract might create serious problems since the right of one party might be prescribed under the convention even before its existence had been recognized by an arbitrator. Nevertheless, his delegation favoured deleting paragraph 3.

54. He also drew the First Committee attention to the observations by his Government concerning article 13 which were contained in document A/CONF.63/6/Add.1.

55. Mr. KAMPIS (Hungary) pointed out for the benefit of the Drafting Committee that the use of the terms "residence" and "place of business" in paragraph 2 was not in exact agreement with their use in article 2.

56. Mr. ROUTAMO (Finland) felt that the First Committee could decide at once on the proposal to delete paragraph 3. Those who favoured retaining it would have all the time they needed to prepare an amendment to article 21; in his delegation's opinion, that was the article in which the problem should be dealt with.

57. Mr. BARNES (Ireland) supported the representatives of the United Kingdom, Australia, Singapore and Norway. He believed that deletion of paragraph 3 would be disastrous. While it was true that a claim did not arise until the arbitration award had been made, it was already in existence earlier in the embryonic state and had a right to life. Moreover, some contracts stipulated that the arbitration award did not become enforceable until it had been confirmed by a judicial authority. The parties would then have unlimited time to assert their claims.

58. For the sake of greater clarity, it would no doubt be preferable to replace the words "of this article" at the beginning of paragraph 3 with the words "of article 9, paragraph 1,".

59. Mr. TRUDEL (Canada) said he realized that paragraph 3 was intended to settle a specific problem which was of great importance in some legislations. He hoped that it would be possible to find a formulation which would make it more widely acceptable. In connexion with paragraphs 1 and 2, he pointed out an apparent inconsistency between the last words of paragraph 1 and the first words of paragraph 2. It might be possible to eliminate the inconsistency by combining the two paragraphs.

60. The CHAIRMAN declared the debate on article 13 closed and invited the Committee to vote on the USSR amendment (A/CONF.63/C.1/L.78).

61. Mr. KHOO (Singapore), speaking on a point of order, recalled that the representative of the USSR had indicated his willingness to withdraw the amend-

ment if it was not supported by a large majority. It seemed premature to take a vote at present. It would no doubt be preferable to establish a small working group to study the question further.

62. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he was not yet withdrawing his amendment but agreed with the representative of Singapore that it would be premature to put it to the vote at once. In view of the concern expressed by the common-law countries, his delegation would not object to the establishment of a small working group, consisting of no more than five delegations, to try to reconcile the divergent views expressed in connexion with paragraph 3, envisaging the possible transfer of the main idea of that paragraph to article 21.

63. The CHAIRMAN suggested that the Committee should establish a small working group consisting of the representatives of France, Ireland, Kenya, the United Kingdom and the USSR to formulate more clearly the provision contained in paragraph 3 and to examine the question where that provision might best be inserted. If there was no objection, he would take it that his suggestion was accepted.

*It was so decided.*

#### *Article 10 (continued)*

64. Mr. SAM (Ghana) said that the small working group established to study article 10 had reached agreement on the text of two variants corresponding to the first two paragraphs of the article but had not considered paragraph 3, since it had been the working group's understanding that there was agreement on the United Kingdom amendment to that paragraph (A/CONF.63/C.1/L.58).

65. Mr. VIS (Secretary of the Committee) read out the two variants relating to article 10, paragraphs 1 and 2, proposed by the small working group.<sup>1</sup>

66. Mr. ROGNLIEN (Norway) suggested to the United Kingdom delegation that it should reword its amendment to paragraph 3 so as to take account of the comments made on the amendment.

67. Mr. GUEST (United Kingdom) said that, as the representative of Ghana had stated, it had been the understanding of the working group that there was broad agreement on the United Kingdom amendment and that the Committee would be able to adopt it, subject to changes in wording which his delegation intended to present at the time of the vote.

68. Mr. MUSEUX (France) observed that delegations had not yet received in their working languages the text of the two provisions adopted by the working group. Since the question required careful reflection, it would be desirable to postpone the vote until the following week.

69. The CHAIRMAN confirmed that it was his intention to follow that procedure.

#### *Other matters*

70. Mr. ROGNLIEN (Norway) said that the circulation of documents was not always satisfactory. At the preceding meeting the Committee had had to postpone a decision because the text of an amendment had not been circulated early enough for delegations to see it.

<sup>1</sup> Subsequently issued as document A/CONF.63/C.1/L.103.



He requested that all existing proposals for amendments should be circulated without delay.

71. Mr. VIS (Secretary of the Committee) said that all amendments submitted by delegations were circulated

within 24 hours. The text referred to by the representative of Norway had been submitted only a short time before the beginning of the meeting.

*The meeting rose at 1 p.m.*

## 15th meeting

Friday, 31 May 1974, at 3.20 p.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.15

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add. 1 and 2, A/CONF.63/C.1/L.46, L.47, L.48, L.76, L.77, L.80, L.81, L.85, L.86, L.90, L.96, L.97) (continued)**

### Article 14

1. The CHAIRMAN drew attention to the amendments to article 14 submitted by Austria (A/CONF.63/L.46), the Netherlands (A/CONF.63/C.1/L.80) and Mexico (A/CONF.63/C.1/L.86).

2. Mr. BARCHETTI (Austria) said that his delegation's amendment was designed to bring subparagraph (c) of the article into line with subparagraphs (a) and (b) by providing that it should apply only to debtor corporations, companies, associations or entities. He felt that the problem was one of drafting, and he would have no objection to its being referred to the Drafting Committee.

3. Mr. BELINFANTE (Netherlands) said that his delegation's amendment to article 14 (c) had the same purpose as those submitted by Austria and Mexico. The Austrian amendment was perhaps more succinct and better drafted than his own. Unlike the representative of Austria, however, he felt that the amendments involved points of substance, requiring a vote by the First Committee before they could be transmitted to the Drafting Committee.

4. The Committee might also wish to consider the possibility of deleting subparagraphs (a) to (c), which were merely illustrations of proceedings other than those mentioned in articles 12 and 13. The article would then read:

"In any legal proceedings other than those mentioned in articles 12 and 13, 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, unless the law governing the proceedings provides otherwise."

5. Mr. REESE (United States of America) recalled that at the 1st meeting of the Committee his delegation had submitted an amendment to article 1, paragraph 3 (e) (A/CONF.63/C.1/L.14), which would have made it clear that the matters currently covered in article 14 (a), (b) and (c) were excluded from the scope of the Convention. Those matters involved highly specialized rules which differed considerably from country to country. In the United States, for example, the courts were empowered to set time-limits often much shorter than four years for the filing of claims in proceedings

involving bankruptcy, the administration of estates, the liquidation of companies and the like.

6. Article 1, paragraph 2, excluded from the scope of the Convention rules governing the giving of notice or the performance of any act other than the institution of legal proceedings; under the law of many countries, however, the act of filing claims or giving notice of such claims in bankruptcy or similar proceedings was in itself regarded as an act instituting legal proceedings. It should therefore be made clear that the Convention did not affect a rule of the applicable law providing a time-limit other than four years for the filing of claims in such specialized proceedings. To that end, his delegation had submitted an amendment to article 14, which would add at the end of the article the words: "and provided that in legal proceedings commenced upon the occurrences specified in subparagraphs (a), (b) or (c) of this article, the law governing such proceedings may provide a period for the filing of claims that is different from the period of limitation set forth in article 8 of this Convention".

7. Mr. HAUSHEER (Switzerland) asked whether the particular problems experienced by Switzerland in respect of extrajudicial or quasi-judicial proceedings, which he had mentioned at the 13th meeting, would be taken care of by the United States amendment.

8. Mr. REESE (United States of America) replied that his delegation's amendment did not go beyond the special case of time-limits for the filing of claims.

9. Mr. BELINFANTE (Netherlands) asked the representative of the United States whether his proposed addition to article 14 was not superfluous in view of the provisions of article 1, paragraph 2, of the draft Convention.

10. Mr. REESE (United States of America) said that article 1, paragraph 2, made the Convention applicable to the institution of legal proceedings. The point he wished to make was that the filing of claims in bankruptcy and similar proceedings was itself regarded in many cases as an act instituting legal proceedings and should be excluded from the sphere of application by express stipulation. The drafters of the Convention might well have intended to cover that point by the words "unless the law governing the proceedings provides otherwise" at the end of article 14. If so, the problem was one of drafting, but the existing text would in any case need to be improved along the lines he proposed.

11. Mr. HONNOLD (Chief, International Trade Law Branch) said that the words "unless the law governing the proceedings provides otherwise" were indeed in-

tended to cover the problem raised by the representative of the United States. He drew attention to the commentary on article 14 in the document attached to document A/CONF.63/5, which indicated that the phrase in question was considered necessary because creditors might often rely on the national rules governing those proceedings such as rules specifying the period during which claims might be filed; unless such local rules were honoured, the creditors could be misled as to their rights.

12. The CHAIRMAN said that, in the light of the explanations furnished by the Chief of the International Trade Law Branch, the United States amendment appeared to involve a question of drafting rather than substance. He therefore suggested that the amendment should be referred to the Drafting Committee.

*It was so decided.*

13. The CHAIRMAN said he agreed with the representative of the Netherlands that the three amendments to article 14 (c) before the Committee related to the substance of the article and required a vote to be taken. If the representative of the Netherlands had no objection, he would call for a vote on the Austrian amendment only, which effectively reflected the substance of all three amendments.

14. Mr. BELINFANTE (Netherlands) agreed to the procedure suggested by the Chairman.

*The Austrian amendment (A/CONF.63/C.1/L.46) was adopted by 30 votes to none.*

15. The CHAIRMAN drew attention to the Mexican proposal in document A/CONF.63/C.1/L.86 for the addition to article 14 of a new subparagraph (d). Since the text of the amendment was not yet available in all the working languages, he suggested that it should be left in abeyance and transmitted to the Drafting Committee for further action as appropriate.

*It was so decided.*

#### Article 15

16. Mr. BARCHETTI (Austria), introducing the amendment to the French text contained in document A/CONF.63/C.1/L.47, pointed out that, in the event of a decision binding on the merits of the claim during legal proceedings, the Convention would not apply by virtue of article 5 (d). A procedural decision, on the other hand, should be treated as an instance of no final decision, because the creditor's situation was the same: he would not be able to rely on a decision in order to demand execution.

17. Mr. ROGNLIEN (Norway), introducing the amendment contained in document A/CONF.63/L.77, said that the reason for proposing the deletion of the word "final" in paragraph 1 was that, under the terms of article 5 (d), any decision on the merits would put the case outside the scope of the Convention. The purpose of the amendment to paragraph 2 was to ensure that the exceptions provided for would apply only if the creditor discontinued the proceedings without the consent of the debtor or deliberately allowed them to lapse. The creditor must be afforded the possibility of terminating the proceedings with the consent of the debtor. The parties might wish, for example, to discontinue proceedings in a court that was not competent and to transfer the proceedings to another forum.

18. Mr. BELINFANTE (Netherlands), introducing his delegation's proposal for the deletion of article 15, (A/CONF.63/C.1/L.81), said the idea of allowing

an additional year in certain circumstances was too complicated. His delegation's main objection, however, was to the provision that the creditor should be entitled to an additional period of one year unless legal proceedings had ended because the creditor had discontinued them or allowed them to lapse. The effect of paragraph 2 was that, if a creditor asserted a claim in an incompetent court or in a court where the judge could not go into the merits of the claim, a creditor could not discontinue the proceedings without terminating the limitation period. He would thus be forced to continue the action, when in fact it would have been easier to discontinue the case and begin new proceedings in a forum where the judge could go into the merits of the claim. He was glad to see that the deletion of article 15 was also proposed in document A/CONF.63/C.1/L.41.

19. There was, however, the question what would happen if article 15 was deleted. In his opinion, there would be no adverse consequences. Once a case was in progress, the limitation period would cease to run under the provisions of article 12. If the claimant decided to discontinue the case and reopen it without any decision on the merits of the claim, the period would also cease to run. He understood the expression "cease to run" to mean that if proceedings were discontinued, with or without the consent of the debtor, the period of limitation would start to run again. Although it could be objected that the result might be unpleasant for a party who had already allowed most of the limitation period to pass, failure to act in good time did not deserve any better reward.

20. Mr. HONNOLD (Chief, International Trade Law Branch) said that under the UNCITRAL draft, he understood the expression "cease to run" to mean that the running of the limitation period would stop and not merely be suspended as, for example, during the legal proceedings. The running of the period would not recommence, and the period would never expire, except in those situations specified in the draft.

21. Mr. KRUSE (Denmark) said it appeared that the representative of the Netherlands had a different system in mind. Nevertheless, the draft Convention contained a system that should be retained. The relationship between articles 5 (d), 12, 15, 16 and 29 was complicated; it would have been better if they could have been brought together and shortened. His delegation wished to retain article 15 and could support the Norwegian amendment to it.

22. Mr. KNUTSSON (Sweden), introducing the amendment contained in document A/CONF.63/C.1/L.96, said his delegation shared the concern expressed by the representatives of Norway and the Netherlands that the existing text could prevent a creditor from withdrawing from unsatisfactory proceedings that might lead to dismissal of the claim. It was unlikely that the deletion proposed by his delegation would be exploited; if a creditor knew that dismissal of a claim was inevitable, he would be unlikely to go to the wrong court in the first place.

23. Mr. REESE (United States of America) reiterated his delegation's view that the expression "cease to run" was not entirely felicitous. It was clearly open to different interpretations. Moreover, there appeared to be some inconsistency between the provisions of article 12, which stated that the limitation period should "cease to run", and those of article 15, which



allowed the period to continue to run or granted additional time. The draft Convention appeared to be trying to establish two important provisions: firstly, if a claim was asserted within the statutory period, the Convention would not preclude pursuit of the claim, even if proceedings continued well beyond the end of the limitation period, and, secondly, in the case of a judgement not binding on the merits of the claim, the creditor should receive some dispensation. The Drafting Committee should consider the differences between the text of the draft Convention and the text of the amendments contained in document A/CONF.63/C.1/L.41. The existing text lacked clarity, used a confusing term, and contained contradictory language.

24. Mr. LANDFERMANN (Federal Republic of Germany) said he agreed with the principle that, where proceedings ended without a decision binding on the merits of the claim, the limitation period should be deemed to continue to run. Where the limitation period had expired, the creditor should be granted an additional period in most cases, because it was only rarely that a creditor would withdraw without very good reason. The Convention should cover at least the situations indicated by Norway and the Netherlands: the creditor should be able to withdraw with the consent of the debtor or if it became obvious that the court was not competent. His delegation would support the Norwegian proposal (A/CONF.63/C.1/L.77), and it could also support the Swedish amendment (A/CONF.63/C.1/L.96).

25. Mr. GUEST (United Kingdom) said that he favoured the retention of article 15. He could support the Norwegian proposal, but not the use of the word "intentionally" in paragraph 2. Under the procedural system of the United Kingdom, a creditor's failure to pursue a claim entitled the debtor to apply to the court for dismissal of the case. No additional period would be granted in such instances, where the fault lay with the creditor. The word "intentionally" would cause difficulty, because petitions for dismissal were frequently contested. He could not support the Swedish amendment.

26. Mr. CATHALA (France) observed that his delegation appreciated the consequences of retaining or deleting article 15. The representative of the Netherlands had shown quite clearly that the situation produced by the deletion of article 15 would be very much more serious than that which would exist if paragraph 2 of the article were retained. On the other hand, the consequences of article 15 were more serious than those resulting from the provisions of some national legislations. In France, for example, the termination of proceedings in a court that was not competent entitled the creditor to a new limitation period, while the Convention would grant only one year. He was not in favour of the Norwegian amendment in view of the difficulty, in a procedural system, of distinguishing between proceedings discontinued with and without the consent of the debtor. The idea of allowing proceedings to lapse "intentionally" was a new one; the whole concept of "lapse" was based on the failure of the creditor to act.

27. He could support the Swedish amendment, because it would be better not to limit the creditor's rights.

28. Mr. GOKHALE (India) said that he was in favour of retaining article 15, although he agreed with

the Norwegian proposal to delete the word "final" in paragraph 1. He did not think that the word "intentionally" should be included in paragraph 2; it seemed to be implicit that a creditor who had allowed proceedings to lapse had done so intentionally.

29. Mr. JENARD (Belgium) said that, in general, he agreed with the reasons stated by the representative of France for retaining article 15. He supported the Swedish amendment (A/CONF.63/C.1/L.96), and also the Austrian amendment to the French text (A/CONF.63/C.1/L.47).

30. The CHAIRMAN invited the Committee to vote on the amendments to article 15.

*The Netherlands amendment (A/CONF.63/C.1/L.81) was rejected by 35 votes to 4.*

*The Swedish amendment (A/CONF.63/C.1/L.96) was adopted by 18 votes to 8.*

31. The CHAIRMAN noted that, since paragraph 2 had been adopted in the formulation proposed in the Swedish amendment, paragraph 2 of the amendment proposed by Norway (A/CONF.63/L.77) no longer applied; he would therefore put to the vote only paragraph 1 of the Norwegian amendment.

*The amendment was adopted by 27 votes to none.*

32. The CHAIRMAN pointed out that the amendment proposed by Austria (A/CONF.63/C.1/L.47) was incorporated in the text of the Norwegian amendment, as adopted.

#### Article 16

33. Mr. ROGNLIEN (Norway) and Mr. GARCIA CAYCEDO (Cuba) complained that a number of amendments to article 16 had not been circulated in writing, or were not yet available in all the working languages. Even where texts had been distributed, the members of the Committee had had no time to study them. It was therefore difficult to see how a constructive debate could be held on so complicated an article.

34. Mr. JENARD (Belgium) said he understood that the United Kingdom amendment proposed the deletion of article 16; he could support that proposal, provided that article 29 was retained. It would be helpful if the Committee at least discussed whether to retain or delete article 16.

35. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he was in favour of deleting article 16. If, however, the Committee decided to retain it, he would have some amendments to propose.

36. Mr. GUEST (United Kingdom) introducing his delegation's amendment (A/CONF.63/C.1/L.76), said that any competent lawyer, when advising a client concerning litigation involving a foreign defendant, would consider whether, if the client obtained a judgement in his own country, that judgement would be enforceable in another country; he would also consider whether the defendant had assets in the creditor's country which could be seized or, if the judgement of the court was recognized in a foreign country, whether the defendant had assets there which could be seized. Those were elementary precautions which any lawyer could be relied upon to take.

37. However, article 16 seemed to imply a different approach. Paragraph 1 referred to the case of a plaintiff who brought an action in country A, within the limitations of the Convention. In so far as he was not precluded by a decision in the case, the article gave

him, if he was unsuccessful, a further year in which he could reassert his original action in another State. That seemed an unnecessary luxury. Paragraph 2 provided that, if recognition or execution of a decision given in State A was refused in State B, the creditor had a further year from the date of refusal. That again seemed to be an unnecessary luxury, since a competent lawyer would surely find out in advance whether a judgement was likely to be enforceable. The draft Convention was complicated enough without making provision for that additional period. He saw no merit in article 16, because a lawyer would naturally protect his client's interests. There might be hard cases, but they would be few and far between and they provided no justification for retaining the article.

38. Mr. SAM (Ghana) said that, having considered article 16 with great attention, he had concluded, for reasons which had been expressed in essence by the United Kingdom representative, that article 16 was superfluous and could be deleted.

39. Mr. NYGH (Australia) said that he was not so sanguine as the United Kingdom representative concerning the ability of a lawyer—especially in a country such as Australia, remote from traditional centres of commercial wealth—to predict the extent to which his client would be able to obtain enforcement of a favourable judgement. It must be recalled that in practice a plaintiff who obtained a judgement in his own country might find that, although the judgement was of dubious value as far as the possibility of enforcement was concerned, it nevertheless had definite utility as a bargaining point. Furthermore, while it was true that one could obtain information in advance as to the likelihood of a judgement's being enforceable in a foreign country, it was often difficult to determine exactly to what extent it would be enforceable in practice. In the light of those considerations, he concluded that article 16 had a positive value and should be retained.

40. Mr. ROGNLIEN (Norway) said that he was in general agreement with the representative of Australia. If a plaintiff was in the position, envisaged by article 15, of being without a decision binding on the merits of his claim, then article 15 gave him a further year. On the other hand, should the United Kingdom view prevail and article 16 be deleted, the plaintiff who obtained a judgement would be in a worse position than if he had failed to obtain any decision binding on the merits of the case. It was true that a judgement might be subject to a new prescription period outside the scope of the Convention, in accordance with article 5 (d), but in any event the value of obtaining a judgement lay in the presupposition that it would be recognizable in the State in which the plaintiff sought execution. The system of recognizing judgements varied widely from country to country. If the judgement was recognized in a particular foreign country the litigant might have a new period of time in accordance with national law, quite apart from the provisions of the Convention. However, some States did not recognize foreign judgements in the absence of a bilateral agreement, in which case no new limitation period would run in such a State. The position was, therefore, that if the period still ran the plaintiff could seek another judgement on the original claim, but if judgement in a foreign State was given after the original limitation period had expired or was near its end, the creditor might be in difficulties. Why should not a creditor who thought he had the benefit of a judgement not also

have the benefit of another year during which he could go to another State and ask judgement there, so that he would have the same advantage as he would have had under article 15? Seen in that light, article 16 could not be said to be a luxury.

41. He agreed in general with the reasoning of the representative of Australia and would merely state, in amplification of his arguments, that not every debtor had all his assets in one country, and the creditor should have the possibility of seizing assets in several States. For those reasons, he was in favour of retaining article 16, although he might be prepared to consider proposals for limiting its scope.

42. Mr. JENARD (Belgium) pointed out that, in so far as article 16 was concerned with international effect, it was amplified by article 29; furthermore, if article 22 was accepted, article 16 might not be necessary at all. If a judgement was not recognized in a certain State a new claim must be filed there, and article 16 might be necessary for that; however, such a process could go on indefinitely except as limited by article 22 and, even then, it might be possible to refile a claim after the end of the 10-year period provided for in that article. If the provisions of article 29 and the limitation laid down in article 22 were both accepted, it should be possible to eliminate article 16 altogether.

43. Mr. STALEV (Bulgaria) said he could not agree with the United Kingdom representative that article 16 could be dispensed with. No matter what precautions a lawyer might take, there would always be a degree of uncertainty regarding judgement in a foreign country, and the provisions of article 16 seemed to be helpful in that regard, and also equitable. Nor could he agree that the need for article 16 was diminished because of the provisions of article 29; he considered that both articles were necessary.

44. Mr. BARCHETTI (Austria) recalled his Government's proposal in its comments reproduced in document A/CONF.63/6/Add.1, that, at the very least, paragraph 2 of article 16 should be deleted. He accordingly supported the position of the United Kingdom representative and shared the views expressed by the representative of Belgium.

45. Mr. TAKAKUWA (Japan) expressed support for the United Kingdom proposal to delete article 16. He said that there had not been such a rule as that article, which so heavily protected a creditor. The claims in the present Convention were ordinary claims in the field of trade and there was no reason for making a special article like that. There had not been a general rule on recognition and enforcement of foreign judgements, and it would be wiser not to venture too far into matters of recognition and enforcements, especially in that Convention, lest it should become the cause of complicated litigation.

46. Mr. BARNES (Ireland) supported the United Kingdom proposal that the article should be deleted. The arguments for retention were based only on hard cases, and hard cases made bad law. It had been suggested that the article conferred territorial jurisdiction on a court, but in fact that depended on the applicable law. If the plaintiff's own country had territorial jurisdiction, either he would obtain a satisfactory judgement there or he would not. It was only in the latter case that problems arose, and article 16 provided no solution to them, since it was doubtful whether

the plaintiff could sue in another country on the basis of an unsatisfactory judgement in his own. The effect of the article was merely to give the plaintiff one more year to do what his lawyers should have advised him to do in the first place.

47. Mr. JEMIYO (Nigeria) noted that the article dealt with a very complex matter and supported the United Kingdom proposal for its deletion.

48. Mr. LANDFERMANN (Federal Republic of Germany) agreed with the representative of Belgium that the deletion of article 16 would mean that the assertion of a claim would cause the limitation period to cease to run by virtue of article 12; a further effect of its deletion would be that, by virtue of article 29, a creditor could start new proceedings during as long a period as he wished. The only over-all limit was that provided for in article 22. The principle of article 16 was therefore sound; in many cases a creditor, without fault, chose the wrong jurisdiction, and he should be entitled to the extra year provided for in the article.

49. Mr. KHOO (Singapore) thought that the article should be deleted; it would encourage multiplicity of proceedings but would be effective only in a few exceptional cases. There would be no problems of territorial jurisdiction if the Convention provided for a longer general limitation period. Accordingly, the period presented in article 8 should be increased.

50. Mr. BELINFANTE (Netherlands) recalled that he had already proposed the deletion of article 15 and said that he would also agree to the deletion of article 16, although, perhaps, for reasons other than those advanced so far. The difficulty might be over the interpretation of the phrase "to have ceased running", in which case it could be solved in the Drafting Committee.

51. He agreed that the purpose of the article was to cover special cases. He could not understand what the representative of Belgium had meant in his reference to article 29. That article did not mention article 16 and was therefore not relevant to it.

52. Mr. JENARD (Belgium) pointed out that article 29 did refer to article 12, which was relevant to article 16. He had meant to stress the importance of recognizing that a claim had ceased to run in certain circumstances; the value of article 16 was that it would enable a creditor to institute further proceedings.

53. Mr. SUMULONG (Philippines) thought that the article should be deleted because it would lead to a multiplicity of costly and lengthy proceedings, to the detriment of both creditor and debtor. It might encourage creditors to file claims in the courts of many different countries without proper preparation. The extra year provided for in the article would not be necessary if the case was properly prepared in the first place.

54. Mr. ROGNLIEN (Norway) said that the combined effect of articles 12 and 29 might be to provide for an unlimited limitation period in certain cases of litigation in Contracting States. The problem was then not only a multiplicity of proceedings but never-ending proceedings. On the other hand, a creditor winning his case in a country where the debtor had no assets might not be able to obtain satisfaction unless he could institute proceedings in another country. He would need such opportunity, even where the original proceedings

took place in a non-contracting State. He noted that lawyers were rarely aware of all the facts which should be taken into account in preparing a case with international implications.

55. Mr. ZULETA (Colombia) agreed with the representative of Norway concerning the combined effect of articles 12 and 29. If article 16 was adopted, the text of article 22 must clearly establish the legal certainty of the limit on legal proceedings.

56. Mr. GOKHALE (India) supported the United Kingdom proposal. He agreed with the representative of the Philippines that multiplicity of proceedings should be avoided. It often happened that the initial trial was so lengthy as to exhaust the litigant. The Convention should not facilitate that possibility.

57. Mr. HJERNER (Sweden) said that he would be prepared to consider the deletion of article 16 if it would simplify the Convention, but there should be no simplification at the expense of justice. Any decision on the article must take into account its relation to article 29.

58. He agreed with the views of the representative of Belgium, but did not see that article 29 could be applied when a creditor obtained, in a foreign State, a final decision binding on the merits of the claim which was not binding in his own or another State. Article 29 required Contracting States to give effect to article 15, which appeared not to take account of the situation he had outlined. A creditor who had obtained an unenforceable decision would be deprived of the opportunity to institute new proceedings if article 16 was not retained or article 29 extended.

59. Mr. HONNOLD (Chief, International Trade Law Branch) said that he sensed some misunderstanding as to the approach and effect of the UNCITRAL draft.

60. It was important to understand the effects of article 12. As it had been noted when proceedings are brought the limitation period was not suspended, but stopped; in other words, the limitation period would never expire unless there was a further provision to start it running again. The only exception was that provided for in article 15 to cover cases in which no final decision binding on the merits of the claim was reached. The effect of deleting article 16 would be to enable a creditor to sue in another State, even when a decision binding on the merits of the claim had already been obtained elsewhere; no limitation period would then apply, except the period of 10 years provided for in article 22.

61. Another complication was the question whether the initiation of proceedings in one State caused the limitation period to cease to run in another State. If article 29 was adopted, a creditor would be able to initiate further proceedings in another Contracting State within the 10-year period provided for in article 22.

62. Thus, the effect of deleting article 16, if no further provision was made, would not be to make the filing of further proceedings more difficult, but to make that process freer of limitation, subject to the 10-year period.

63. He noted that the situation was explained more clearly in the commentary on the draft Convention attached to document A/CONF.63/5.

*The meeting rose at 6 p.m.*

## 16th meeting

Monday, 3 June 1974, at 10.20 a.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.16

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.48, L.49, L.69, L.76, L.85, L.90, L.97, L.103, L.104, L.105) (continued)**

### *Article 10 (continued)\**

1. The CHAIRMAN drew attention to the amendment to article 10 submitted by the United Kingdom and Norway (A/CONF.63/C.1/L.104) and the proposal by the Working Group (A/CONF.63/C.1/L.103), which consisted of two alternatives.

2. Mr. GUEST (United Kingdom), introducing the amendment to article 10 contained in document A/CONF.63/C.1/L.104, said it reflected the basic support for the idea that the limitation period should commence on the date on which the buyer notified the seller. It also took into account the comments made by the representative of Norway at a previous meeting.

3. According to the amendment, the limitation period for a claim arising from an undertaking could be extended beyond the period of the undertaking, provided that the notification was made before the date of the expiration of the period of the undertaking.

4. Mr. HARTNELL (Australia) said he was opposed to the proposal of the United Kingdom and Norway because it imposed a new obligation on the buyer, who would have to notify the seller independently of the terms of the contract. Consequently, he suggested that if the date of the expiration of the period of the undertaking was later than the date of notification, the limitation period should commence on the date of the expiration of the undertaking.

5. Mr. BURGUCHEV (Union of Soviet Socialist Republics) thought that explicit reference should be made in the amendment to the duration of the limitation period, which in his view should be two years.

6. Mr. ROGNLIEN (Norway) said that the amendment was not a substantive one. The date on which the buyer was required to make the notification would depend on the terms of the contract and the applicable law. He did not agree with the suggestion made by the Australian representative, because it was important that the limitation period should commence already on the date of the notification and not only on the date of the expiration of the period of the undertaking. With regard to the comments by the representative of the Soviet Union, he considered that a four-year period should apply in that case too. There were various forms of undertaking and the provisions of article 10, paragraph 3, should be applicable to all cases. It might be advisable to make article 10, paragraph 3, a separate article in the Convention.

7. Mr. GOKHALE (India) said he shared the misgivings expressed by the representative of Australia.

8. Mr. SMIT (United States of America) considered that paragraph 3 was unnecessary since in case of breach of the contract the applicable law would apply. Furthermore, the proposal by the United Kingdom and Norway did not oblige the buyer to make a notification immediately. In his view, it would be better to delete paragraph 3 and consider the matter when discussing the proposal by the Working Group.

9. Mrs. KOH (Singapore) inquired what would happen if goods covered by a seven-year express undertaking were found to be defective in the year in which they were handed over, the buyer so notified the seller and the four-year limitation period commenced, and the same goods were found to have other defects in the sixth year, while they were still covered by the undertaking.

10. Mr. GUEST (United Kingdom) said that the limitation period in respect of the first defect would commence on the date of notification of that defect and the corresponding period for the second defect would begin on the date of notification of that defect.

11. Mr. GUEIROS (Brazil) said he found article 10, paragraph 3, of the draft Convention unsatisfactory in its existing form because of the difficulties arising from the phrase "the date on which the buyer discovers or ought to discover the fact on which the claim is based". He considered the notification required in the amendment submitted by the United Kingdom and Norway (A/CONF.63/C.1/L.104) much more acceptable.

12. With regard to the comments by the USSR representative, he reserved the right to revert to the question when the Committee took up document A/CONF.63/C.1/L.103.

13. Mr. KRISPIS (Greece) said that the rule contained in article 10, paragraph 3, of the draft Convention was useful; if the limitation period commenced on the date on which the buyer notified the seller of the fact on which the claim was based there would be greater certitude than if that period commenced on the date on which the buyer discovered or ought to discover the fact on which that claim was based.

14. However, to make the paragraph clearer, he proposed that the phrase "validly, in accordance with the law applicable to the contract of sale" should be inserted after the words "If the seller gives".

15. Mr. FRANTA (Federal Republic of Germany) said he supported the amendment proposed by the delegations of the United Kingdom and Norway. He did not think that the clarification proposed by the representative of Greece was necessary, and did not support the amendment suggested by the delegation of Australia, because it would tend to make the limitation period too long.

16. Mr. BELINFANTE (Netherlands) considered that it would be preferable for the rule contained in article 10, paragraph 3, to be embodied in a separate article, because the provisions of that paragraph were not very closely linked to the content of paragraphs 1 and 2. The matter could perhaps be left to the Draft-

\* Resumed from the 14th meeting.

ing Committee. That Committee could probably make a change, which he considered necessary, in the English text of paragraph 3, namely replacing the word "gives", in the first line, by the words "has given".

17. Mr. SAM (Ghana) said he was prepared to accept the amendment proposed by the delegations of the United Kingdom and Norway, which solved the problem of the uncertainty arising from the phrase "the date on which the buyer discovers or ought to discover".

18. The amendment proposed by the representative of Greece seemed unnecessary, since its content was already implicit in the text of the article. With regard to the comments by the USSR representative, it might be advisable to include in the paragraph, for greater clarity, the words "the limitation period indicated in article 8".

19. Mr. WAGNER (German Democratic Republic), referring to paragraphs 1 and 2 of article 10 of the draft Convention, said he favoured alternative A in document A/CONF.63/C.1/L.103. However, if the majority of delegations preferred alternative B it would be necessary to set a specific period of two years and not more than four years in the case of latent defects.

20. With regard to article 10, paragraph 3, he could not accept the amendment submitted by Norway and the United Kingdom, and considered that the existence or non-existence of an undertaking did not fundamentally alter the question. A form of wording must be found which applied only to cases in which the period of the undertaking was longer than the limitation period.

21. Mr. KHOO (Singapore) said that if the amendment proposed by the delegations of Norway and the United Kingdom was accepted, his delegation would like it to be amended to take into account the problem of repeated breaches, which his delegation had mentioned earlier.

22. Mr. SMIT (United States of America) said he would find it very difficult to vote on article 10, paragraph 3, of the draft Convention unless a decision had previously been taken regarding the first two paragraphs.

23. The CHAIRMAN said that if there were no objections he would take it that the Committee decided to defer the voting on article 10, paragraph 3, until the afternoon meeting.

#### Article 16 (concluded)

24. The CHAIRMAN asked the USSR representative whether the amendment he had submitted (A/CONF.63/C.1/L.85) concerned a substantive matter or a drafting matter.

25. Mr. BURGUCHEV (Union of Soviet Socialist Republics) replied that his amendment related mainly to a drafting question and could therefore be referred to the Drafting Committee.

26. The CHAIRMAN said that the question raised by the USSR delegation in document A/CONF.63/C.1/L.85 would therefore be referred to the Drafting Committee. He drew the attention of the members of the Committee to the amendments in documents A/CONF.63/C.1/L.90 and L.97, submitted by the delegations of Norway and Sweden respectively.

27. Mr. SMIT (United States of America) said that the deletion of the whole of article 16 would create

unfortunate situations, in that the limitation period would come to a complete stop and the creditor would be able to assert his claim in perpetuity.

28. Mr. ROGNLIEN (Norway) thought that article 16 should provide the creditor with the same possibilities as article 15. This amendment was substantive to the extent that it proposed that the creditor should be entitled to an additional period of one year only when a claim was upheld by the decision. The article would apply whenever such decision was given in a Contracting or a non-contracting State and not recognized in the other State. Article 16 was most important in relation to judgements originating from non-contracting States, in which cases the effect was to extend the period. As to judgements originating from Contracting States, the effect was to limit the period, and he asked that it be compared with article 29.

29. Although the wording of the article seemed complicated, in the long run its provisions would result in a simpler system for the parties by avoiding different solutions regarding judgements from Contracting and non-contracting States.

30. He did not attach great importance to paragraph 2, unlike some delegations during the debate, but it had to be limited in two respects. It should only apply if the appropriate measures requesting execution were taken within the period fixed by the law governing execution, in other words the law in force in the State refusing the *exequatur*; and secondly, the creditor only should be allowed the additional period of one year when the original judgement was in his favour.

31. Mr. NYGH (Australia) observed that in the previous meeting his delegation had opposed the proposal of the United Kingdom and Austria to delete the article completely or delete only paragraph 2. He thought that the intention of the Norwegian delegation was not reflected in its proposal. His delegation fully supported the Swedish amendment (A/CONF.63/C.1/L.197), which was a far better text than the present one.

32. Mr. JENARD (Belgium) disagreed with the statement of the representative of the United States, because if article 16 were deleted the provisions of article 22 of the draft Convention would continue to govern the situation. It concerned a question of fact, namely determining the place where the goods were. For that reason, he thought that it would be appropriate to delete article 16 and supported the Swedish proposal.

33. Mr. GUEIROS (Brazil) said that his delegation could not support the Austrian amendment (A/CONF.63/C.1/L.48) or the United Kingdom amendment (A/CONF.63/C.1/L.76). Nor could he accept the first part of the amendment of the Soviet Union (A/CONF.63/C.1/L.85); but since he did support the second part, he could not support the Swedish amendment (A/CONF.63/C.1/L.105).

34. Mr. HJERNER (Sweden) explained that in the document containing his delegation's amendment (A/CONF.63/C.1/L.97) there had been a drafting error, inasmuch as his amendment consisted in deleting the whole of paragraph 2 and deleting in paragraph 1 the remainder of the phrase following the words "in another State" and substituting the following: "A new limitation period in respect of this claim shall commence on the date of the decision."

35. The resulting system would be in complete agreement with that followed by articles 16, 22 and 29 of

the draft Convention. His delegation could not support the deletion of article 16 unless article 29 was retained or extended. The latter did not oblige a Contracting State to recognize acts of a non-contracting State. The differences in the domestic law of the various countries concerning the recognition of foreign judgements had prompted his delegation to propose that amendment, since with the new period of limitation the creditor was given proper time to begin appropriate proceedings before a new court.

36. Mr. ROGNLIEN (Norway) presumed that the amendment proposed by the Swedish delegation was based on the assumption that the decision was favourable to the creditor: that point should therefore be made clear by adding the words "in his favour" after the word "binding" or by allowing the Drafting Committee to do so.

37. Mr. BELINFANTE (Netherlands) recalled that at the preceeding meeting Mr. Honnold had explained that the deletion of article 16 would have the opposite effect to that sought by the United Kingdom with its amendment. Mr. Guest and Mr. Honnold differed on that point. It was clear that a mere judge would be even more doubtful in reaching a decision. The Swedish proposal was the best in that it suggested a clear solution. He would therefore vote in favour of it and against the United Kingdom proposal. He thought that the Norwegian proposal would complicate the situation still further and he would therefore abstain when it came to the vote. Although it had already been decided that the Soviet Union proposal would go to the Drafting Committee, as a purely formal amendment, he was of the opinion that the first part was a substantive amendment, which would limit article 16 even further; but he would support it since it also made the meaning clearer.

38. Mr. WAGNER (German Democratic Republic) recalled that, among the comments made on the draft Convention, his delegation had stated that the provisions of article 16, paragraph 1, could serve such creditors not satisfied with a decision obtained in one State, to assert their claim in another State, but he did not think that it was appropriate for this Convention to facilitate such aspirations. For that reason, he supported the Norwegian amendment to the paragraph. The present wording of paragraph 2 was satisfactory, and the Norwegian amendment was therefore superfluous.

39. Mr. SAM (Ghana) thought that the Swedish amendment (A/CONF.63/C.1/L.97) did not clarify the situation resulting from the differences in the domestic legislation of the various States. He therefore continued to support the United Kingdom amendment, and, if that were rejected, would support the Swedish amendment.

40. The CHAIRMAN invited the Committee to vote on the United Kingdom amendment (A/CONF.63/C.1/L.76).

*The amendment was rejected by 19 votes to 16.*

41. The CHAIRMAN invited the Committee to vote on the Austrian amendment (A/CONF.63/C.1/L.48).

*The amendment was rejected by 18 votes to 6.*

42. After a brief procedural discussion in which the representatives of India and the United States took part, the CHAIRMAN invited the Committee to vote on the Swedish amendment to paragraph 1 of article 16 (A/CONF.63/C.1/L.97).

*The amendment was adopted by 17 votes to 9.*

43. Mr. HJERNER (Sweden) said that although in the examples given reference had been made to favourable decisions, such a distinction had not been made in the text which had just been adopted because it would have been too complicated.

44. Mr. ROGNLIEN (Norway) thought that in paragraph 1 of article 16 a distinction should be made between favourable and unfavourable decisions. The creditor should not be entitled to an additional limitation period when the decision was against him. In paragraph 2 it should be stressed that execution of the decision should be sought within the period prescribed by the applicable law. He hoped that the Drafting Committee would take those considerations into account.

45. Mr. JENARD (Belgium) said that the question raised by the representative of Norway concerning article 16, paragraph 1, was a substantive one and that a distinction should be made between the decisions.

46. Mr. SMIT (United States of America), supported by the representative of the United Kingdom, proposed that the substantive question raised by the representative of Norway should be put to the vote.

47. The CHAIRMAN invited the Committee to vote on the question whether article 16, paragraph 1, applied to all decisions irrespective of whether they were favourable or unfavourable.

*The indicated interpretation of article 16, paragraph 1, was approved by 18 votes to 8.*

#### *Article 17*

48. Mr. BARCHETTI (Austria) said he believed that article 17 of the draft Convention was superfluous and that it would be better to delete it entirely.

49. Mr. KNUTSSON (Sweden) agreed that article 17 should be deleted. It was highly unlikely that there would be parties jointly and severally liable within the sphere of application of the Convention, and with respect to claim actions, the provisions of paragraph 2 of the article were too complicated and would not solve the problems that might arise.

50. Mr. BURGUCHEV (Union of Soviet Socialist Republics) also agreed that article 17 in its entirety, or at least paragraph 2 thereof, should be deleted.

51. Mr. ROGNLIEN (Norway) said that in his view article 17 was useful for avoiding unnecessary litigation in the case envisaged in paragraph 1 and for giving a purchaser the additional time he would need in the situation envisaged in paragraph 2.

52. His delegation favoured the Swedish delegation's proposed amendment to article 17, paragraph 3, and considered it the most logical solution.

53. Mr. KRISPIS (Greece) endorsed the view that article 17 should be deleted and said that he did not share the fear expressed by the representative of Norway. He saw no need for retaining the provision of article 17 in an international convention, since in practice the creditors would try to institute proceedings against all debtors. If the Committee decided to retain article 17, he would vote in favour of the Swedish proposal.

54. Mr. SAM (Ghana) said he continued to believe that article 17 was useful. He agreed with the repre-



sentative of Norway in that respect but disagreed with him concerning paragraph 2, which he believed should be deleted. That paragraph envisaged two steps: the commencement of proceedings against the buyer and the buyer's informing the seller of the proceedings. The periods involved might be very different in national legislations, with the result that paragraph 2 had no practical usefulness, and hence it would be pointless for the buyer to inform the seller. The Convention should relate only to international cases, and for that reason the reference to cases in which domestic jurisdiction would apply should be deleted.

55. Mr. GOKHALE (India) said that he favoured deleting article 17 and therefore supported the amendments submitted by Austria, the Soviet Union and Sweden.

56. Mr. GUEIROS (Brazil) said that the wording of article 17 of the draft Convention was due to the different treatment of such cases in different legislative systems. His delegation favoured retaining article 17 and rejected the amendment proposed by the Austrian delegation (A/CONF.63/C.1/L.49) and part of the Soviet amendment (A/CONF.63/C.1/L.69), since it believed that paragraph 2 should be deleted. With regard to the Swedish amendment (A/CONF.63/C.1/L.105), he agreed that the word "commenced" should be replaced with the word "ended".

57. Mr. KOPAC (Czechoslovakia) supported the proposal to delete article 17 of the draft Convention, since it was superfluous and might give rise to difficulties, especially difficulties of interpretation. He believed that there was no solution that would protect the buyer from the need to commence more than one proceeding, which was the motivation of the Norwegian amendment. He opposed the Swedish proposal to postpone the commencement of the one-year period referred to in article 17, paragraph 3, until the ending of the proceedings, since that would mean making the period too long. On the other hand, relations between the purchaser and the subpurchasers should remain outside the scope of the Convention.

58. Mr. HARTNELL (Australia) said that article 17, paragraph 2, dealt only half-way with a problem of great importance to the countries in which, as in Australia, the period provided under domestic legislation was longer than the period established in the draft convention. The buyer would be deprived of effective recourse. The Ghanaian delegation, whose situation was similar, favoured deleting paragraph 2. He agreed with the representative of Ghana that the paragraph raised serious problems, but his delegation wanted to arrive at a compromise solution which would minimize the problems that arose, and it therefore proposed amending article 17, paragraph 2, by inserting the words "or if the buyer receives notice of a claim by a subpurchaser which may result in legal proceedings" after the words "against the buyer" and

adding the words "or that he has received notice of such claim" at the end of the paragraph.

59. His delegation was trying to achieve a compromise solution that would affirm the predominance of the limitation period established in the draft convention without obligating the buyer to wait until the commencement of proceedings. It could support article 17, paragraph 1, and it would support paragraph 3 of the article subject to the amendment submitted by the Swedish delegation.

60. Mr. ROGNLIEN (Norway) said that it was only partly true that article 17, paragraph 2, dealt with relations that would be governed by domestic law. The fact was that the paragraph applied to a situation involving three parties: the seller, the buyer and the subpurchaser. The relations between the latter two parties might be outside the scope of the Convention, but the relations between the buyer and the seller were within its sphere of application, that is to say, they involved the international sale of goods. If article 17, paragraph 2, was deleted, domestic law could not be resorted to for such international trade relations. Paragraph 1 of the article was limited to cases involving more than one buyer or seller or their successors or assigns, which meant that it applied to cases governed by the Convention and not by domestic law.

61. Mr. BELINFANTE (Netherlands) endorsed the comments of the representatives of Australia and Norway. Article 17, paragraph 2, of the draft Convention was important not only to countries with longer limitation periods but to other countries as well. The protection afforded by that paragraph to the buyer should not be underestimated. Even in the circumstances envisaged by the representative of Ghana, it should be recognized that in most cases subpurchase would take place within four years.

62. While the Convention did not relate to national sales of goods, it had an influence on them. Consequently, in order to eliminate any difficulties, it would be desirable to consider the possibility of extending the period. Otherwise the buyer would encounter difficulties. Article 17, paragraph 2, was justified because it could prevent unnecessary litigation. For example, in the case of the resale of internationally acquired goods, if the subpurchaser instituted proceedings against the buyer, the latter probably would not initiate proceedings against the seller if he believed that the decision would be favourable to him. For those reasons, his delegation opposed deleting the paragraph.

63. It would vote in favour of the second part of the Swedish amendment (A/CONF.63/C.1/L.105) even though it was not satisfied with the compromise formula the amendment contained.

*The meeting rose at 1 p.m.*

## 17th meeting

Monday, 3 June 1974, at 3.15 p.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.17

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add.1 and 2, A/CONF.63/C.1/L.49, L.50, L.69, L.82, L.88, L.92, L.93, L.99, L.103, L.104, L.105, L.106, L.108) (continued)

#### Article 17 (concluded)

1. Mr. TEMER (Yugoslavia) said that article 17 should be deleted, because its provisions were insufficiently clear and could give rise to difficulties of application.

2. Mr. GUEST (United Kingdom) said that, although the régime established by article 17 was not entirely satisfactory, his delegation favoured retaining paragraph 2, at least until a decision was taken on article 10. If the Committee decided to delete paragraph 2, his delegation would press for the provision of the longest possible limitation period in article 10—preferably five or six years—to meet the contingency referred to by the representative of Australia at the preceding meeting. A shorter limitation period would raise difficulties in respect of recourse actions.

3. Mr. JENARD (Belgium) said that, in the light of the arguments advanced by the representative of Australia at the preceding meeting, his delegation supported the retention of paragraph 2.

4. The CHAIRMAN drew attention to the proposals for the deletion of article 17 submitted by Austria (A/CONF.63/C.1/L.49), the USSR (A/CONF.63/C.1/L.69) and Sweden (A/CONF.63/C.1/L.105).

*The deletion of article 17 was rejected by 20 votes to 16.*

5. The CHAIRMAN drew attention to the alternative USSR proposal in document A/CONF.63/C.1/L.69 for the deletion of paragraph 2 of the article.

*The proposal was rejected by 21 votes to 13.*

6. The CHAIRMAN drew attention to paragraph 2 of the Swedish amendment (A/CONF.63/C.1/L.105) and the second part of the oral amendment proposed by Australia at the preceding meeting, both of which called for the replacement of the word "commenced" by "ended" in article 17, paragraph 3.

*The proposal was adopted by 17 votes to 7.*

7. The CHAIRMAN drew attention to the first part of the Australian amendment introduced at the preceding meeting, which would replace article 17, paragraph 2, by the following text:

"Where legal proceedings have been commenced by a subpurchaser against the buyer or if the buyer receives notice of a claim by a subpurchaser which may result in legal proceedings, the limitation period prescribed by this Convention shall cease to run in relation to the buyer's claim against the seller, if the buyer informs the seller in writing within that period that the proceedings have been commenced or that he has received notice of such claim."

8. Mr. NYGH (Australia) explained that the purpose of his delegation's amendment was to strengthen the ability of the buyer to take recourse action against the seller, by providing that the receipt of notice of a subpurchaser's claim which might result in legal proceedings and the transmittal of such notice by the buyer to the seller should be sufficient to cause the cessation of the limitation period in relation to the buyer's claim against the seller.

9. Mr. KNUTSSON (Sweden) asked whether the representative of Australia envisaged any change in paragraph 3 to provide for the possibility that legal proceedings might not be instituted. He wondered, for example, what the status of the buyer's claim against the seller would be if the notice given by the subpurchaser did not lead to the institution of legal proceedings.

10. Mr. NYGH (Australia) replied that his delegation preferred paragraph 3 to remain in its present form. The institution of legal proceedings was a *sine qua non* for the purposes of the article. When the buyer received notice from the subpurchaser, he would notify the seller accordingly and await the outcome of the legal proceedings. If the latter resulted in a decision adverse to him, the buyer would be in a position to exercise his right of recourse against the seller; otherwise, he would not need to become involved in unnecessary litigation with the seller and the question would lapse.

*There were 16 votes in favour of the Australian proposal and 16 against. In accordance with rule 45 of the rules of procedure, the proposal was not adopted.*

#### Article 10 (concluded)

11. The CHAIRMAN drew attention to the alternative texts for article 10, paragraphs 1 and 2, submitted by the Working Group in document A/CONF.63/C.1/L.103, and the amendment to article 10, paragraph 3, submitted by Norway and the United Kingdom in document A/CONF.63/C.1/L.104. If there was no objection, he would call for a vote on alternative A proposed by the Working Group.

12. Mr. MUSEUX (France) said it would be premature for the Committee to take a vote on the proposals in document A/CONF.63/C.1/L.103 before discussing two basic issues: firstly, whether the starting-point for the limitation period should be the date on which the goods were actually handed over or the date on which the defect or lack of conformity was or could reasonably have been discovered, and, secondly, whether the length of the limitation period in respect of claims arising from patent and latent defects should be the same or different. Once those points had been discussed, the Committee would be able to take an informed decision on the wording of article 10.

13. Referring to the alternatives proposed by the Working Group, he noted that the second sentence



of alternative A was not incompatible with the provisions of alternative B, to which it could be added as a third paragraph.

14. Mr. ROGNLIEN (Norway) said that if the debate on article 10 was reopened his delegation would press, *inter alia*, for the combination of alternative A with paragraph 2 of alternative B.

15. Mr. GUEIROS (Brazil) said that the alternatives proposed by the Working Group raised problems of drafting that could well cause the debate on article 10 to be reopened, however undesirable that might be. Alternative A raised the question of the difference between the concepts of "handing over" and "delivery", which had been discussed but not properly resolved by the UNCITRAL Working Group on Prescription. His delegation also had difficulty with the words "the date on which the defect or lack of conformity is or could reasonably be discovered" in paragraph 2 of alternative B. Subject to that reservation, he could support alternative B, on the understanding that it should be transmitted to the Drafting Committee for further improvement of the wording.

16. Mr. ZULETA (Colombia) noted that the wording of the second sentence of alternative A in the Spanish version was inconsistent with the English and French versions. He endorsed the remarks made by the representative of Brazil in respect of the wording of alternative B.

17. Mrs. JUHASZ (Hungary) said she had difficulty with the words "where the contract involves the carriage of goods" in the second sentence of alternative A. It was her understanding that all contracts of international sale involved the carriage of goods. She also regretted the absence of a precise definition of "place of destination". She wondered what the place of destination would be in a case where the buyer bought goods for delivery f.o.b. or c.i.f. in one city but the final destination of the goods was another city.

18. The CHAIRMAN said that that question could be answered by reference to the shipping documents.

19. Mr. MICHIDA (Japan) suggested that the Chairman of the Working Group should be requested to introduce document A/CONF.63/C.1/L.103. He recalled that, in an indicative vote taken at the 12th meeting, the Committee had favoured by 27 votes to 10 the adoption of a uniform limitation period. He wondered whether the Working Group's proposals were designed to reflect the result of that vote.

20. Mr. SAM (Ghana) said that the representative of Japan had raised an important question. Article 10 was vital to the Convention, and he urged the Chairman to reopen the debate on the substance of the article, in accordance with the proposal made by the representative of France.

21. Mr. SMIT (United States of America) said he had some difficulty with the words "place of destination" in the second sentence of alternative A. In international trade it was not unusual for a buyer in country X to purchase goods for delivery f.o.b. at a port in the seller's country Y and then resell those goods to a subpurchaser in a third country Z. If "place of destination" meant the ultimate place of destination, the sentence would introduce an element of uncertainty and should be deleted. He could accept its retention, however, if it was intended to refer to the place of destination specified in the contract. In that

case, the words "according to the contract" should be added at the end of the sentence.

22. Mr. SAM (Ghana), speaking as Chairman of the Working Group, said that the Group's intention had been to refer to the place of destination specified in the contract. He could accept the addition proposed by the representative of the United States.

23. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he agreed with the representative of France that a vote on alternatives A and B would be premature and would only result in a division of opinion. With a view to achieving a compromise solution, he proposed the establishment of a small working group to formulate proposals regarding three fundamental issues: firstly, whether the limitation periods in respect of claims based on latent and patent defects should be the same or different; secondly, whether in both cases the limitation period should begin on the same date or on different dates; and, thirdly, what the duration of the period should be. Clarification of those issues by a working group would pave the way for a definitive decision in the Committee on the substance of article 10.

24. Mr. ADAMSON (United Kingdom) said that the establishment of a new working group would unduly delay the Committee's work. He saw more merit in the French representative's proposal, in accordance with which the Committee would decide whether it wished to adopt uniform or different rules to govern claims arising from patent and latent defects, and would then go on to consider the alternative proposals in document A/CONF.63/C.1/L.103.

25. The question of the duration of the limitation period could not be divorced from the choice of rules which the Committee must make. He noted that those who argued for different sets of rules to govern the two types of claim generally favoured a fairly short limitation period, while those who preferred a uniform rule favoured a longer limitation period for reasons of equity.

26. Mr. NJENGA (Kenya) supported the views expressed by the United Kingdom representative.

27. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he was ready to discuss the substance of article 10 if the Committee so wished. He suggested that the limitation period should be two years in every case.

28. Mr. MUSEUX (France) said that the two questions which must be answered before the Committee could vote on the alternatives proposed by the Working Group (A/CONF.63/C.1/L.103) were when the limitation period should begin to run and whether the period should be the same for claims relating to patent and latent defects. The questions should be put to the Committee in that order, because the second could not be answered until the Committee had decided on the date from which the limitation period should run.

29. Mr. BURGUCHEV (Union of Soviet Socialist Republics) observed that there was a third question to be answered, namely, the actual duration of the limitation period for patent and latent defects respectively.

30. The CHAIRMAN suggested that the Committee should first consider the two questions formulated by the representative of France.

31. Mr. ROGNLIEN (Norway) said that the limitation period should run from the same date in the case of both patent and latent defects and should be only slightly extended in the case of hidden defects.

32. Mr. NIJENGA (Kenya) said that, if an equitable balance was to be struck between the interests of the buyer and those of the seller, there must be different starting-points for the limitation period in respect of patent and latent defects. In the case of a sale of complex machinery, for instance, the buyer might not discover a hidden defect within, say, two years. Thus, he would be denied all recourse against the seller if the time allowed was so short, and it should therefore be longer. As to the second question before the Committee, the period should be the same, provided that it ran from the date of discovery of the defect. It should be two years in both cases.

33. Mr. KHOO (Singapore) said that the question of latent defects was a matter of great difficulty and concern. Some provision such as article 10, paragraph 2, was obviously necessary to deal with it. However, he could accept a uniform limitation period with respect to both apparent and hidden defects if it was fairly long.

34. Mr. ZULETA (Colombia) felt that in both cases the limitation period should run from the time when the goods were handed over to the buyer or refused by him, but that in the case of hidden defects its duration should be considerably longer.

35. Mr. GOKHALE (India) said that while the limitation period prescribed in article 8 applied to both patent and latent defects, the commencement of the period should be different in the two cases; in the case of obvious defects it should run from the time when the goods were handed over to the buyer, and in the case of latent defects from the time when the defect was or could reasonably be discovered.

36. Mr. SAM (Ghana) agreed with the representative of India.

37. Mr. NYGH (Australia) also agreed that the limitation period should be the same for patent and latent defects but that the date from which it would run should be different in the two cases. It was difficult to specify that date, however, even in the case of patent defects. He could have accepted the wording of the second sentence of alternative A of the Working Group's proposal (A/CONF.63/C.1/L.103), but the place of destination had been made uncertain by the United States oral amendment. For latent defects, he could support the wording in paragraph 2 of alternative B, namely, "the date on which the defect or lack of conformity is or could reasonably be discovered", which had originally been proposed by his delegation.

38. Mr. GUEIROS (Brazil) said that there should be a single uniform limitation period for both patent and latent defects. That was not the case in Brazilian domestic law, but it was important to simplify the relevant provisions in international law so as to facilitate the application of the Convention.

39. Mr. JEMIYO (Nigeria) said that he could agree to a uniform limitation period for patent and latent defects, provided that the period itself was sufficiently long.

40. Mr. BELINFANTE (Netherlands) associated himself with the views expressed by the representatives of Brazil and Nigeria. There should be a single limita-

tion period for both types of defect, and no distinction should be made between claims arising from defects and those arising from lack of conformity. The commencement of the limitation period should also be the same in both cases, provided that the period itself was not unreasonably short. If it was long enough, it did not matter whether the defects were patent or latent or whether the period ran from the date when the goods were handed over or from the date of discovery of the defect.

41. Mr. SUMULONG (Philippines) said that in the case of obvious defects the limitation period should run from the date on which the goods were handed over, but it might be slightly shorter in the case of lack of conformity. In the case of hidden defects, the limitation period should logically run from a different date, since it might take several years for the defect to become apparent—in the case of the purchase of machinery, for instance. However, it would be simpler to adopt the compromise suggested by the representatives of Singapore and the Netherlands and make no distinction between obvious and hidden defects, provided that the period of limitation was lengthened, say, to six years.

42. Mr. JENARD (Belgium) agreed that the limitation period should be uniform but felt that it should run from different dates for patent and latent defects. In the first case, the date when the goods were handed over should be the starting-point of the limitation period. A two-year period from that date would seem reasonable.

43. Mr. ADAMSON (United Kingdom) said that there should be a single limitation period, which should run from the same date for both patent and latent defects. He wished to stress the importance of certainty with regard to the limitation period. It would be a mistake to establish different provisions with regard to patent and latent defects, since that would only introduce confusion and make the certainty which the Convention was intended to introduce an impossibility. In any event, separate provisions for patent and latent defects would lead to a host of difficulties. There was, for instance, the questions of the discoverability of defects, which was difficult to determine in the case of contracts under domestic law and even more so in the case of international contracts. The seller would not know for an indefinite time whether he was liable to a claim for a hidden defect, because he would not know whether or when such a defect might be discovered.

44. Many delegations were in favour of a relatively short period for latent defects, starting from the time of their discovery, but that solution involved serious difficulties; the beginning of the period was not predictable, proof was difficult, it was not easy to establish the date from which the limitation period should run, and there was the further uncertainty of the length of the limitation period, for which a cut-off date would have to be specified.

45. A uniform period of limitation for all types of defect would have considerable advantages in international trade relations. The creditor would be at no disadvantage if the date on which the goods were actually handed over was taken as the starting-point of the period of limitation. The next question was the length of the period itself; it should be fairly long, which would prevent further difficulties.

46. Mr. KNUTSSON (Sweden) said that he too was in favour of a uniform duration and uniform date of commencement for the limitation period in the case of both patent and latent defects. It was difficult for delegations to decide on either of the alternatives proposed by the Working Group in document A/CONF.63/C.1/L.103 if they did not know how long the limitation period was to be. He suggested that an indicative vote might be taken on limitation periods of different lengths in relation to each alternative.

47. Mr. NYGH (Australia) said that, like the United Kingdom representative, he was anxious to avoid introducing complexities into the Convention by making distinctions between patent and latent defects and varying the duration of the limitation period. Nevertheless, allowance must be made for transactions involving the carriage of goods. The limitation period could begin on the date on which the goods were actually handed over, provided that that was the date of their arrival at the place of final destination. That difficulty could be resolved as provided for in the Working Group's alternative A, subject to changes in the second sentence to indicate that, where the parties contemplated carriage of the goods subject of the international sale, the handing over should be deemed to have taken place upon the arrival of the goods at the port of destination described in the documents of carriage.

48. Mr. KHOO (Singapore) observed that it might be simpler merely to delete the second sentence of alternative A.

49. Mr. OLIVENCIA (Spain) said that he had great difficulty in choosing between the two alternatives proposed by the Working Group, especially as the Spanish text was not in conformity with the French and English texts, the expression "defect or lack of conformity" being translated as "*vicio*", which referred to a different concept. It would be better to use the words "*supuesta falta de conformidad*", which would cover not only a defect but also the delivery of less than the amount of goods specified in the contract or of different goods. A four-year limitation period was not too long for the discovery of latent defects, particularly in the case of complex machines such as computers. The period should be the same for all types of obvious defects and the starting-point should be the date on which the defect or lack of conformity was reported by the buyer, which would be the date on which the goods were actually handed over to him. In that connexion, he found the Australian representative's reformulation of the second sentence of alternative A completely satisfactory. However, it would be unjust to specify the same date for the limitation period with respect to hidden defects, and he therefore preferred alternative B.

50. Mr. GUEIROS (Brazil) said that no defect could be discovered until the goods had been handed over, and he agreed with the representative of Australia on the meaning of the words "handing over". The French and Spanish texts should be corrected to make that point clear.

51. Mr. MUSEUX (France) said the Australian amendment to alternative A should also be incorporated in alternative B. The essential difference between alternative A and alternative B did not relate to the second sentence of alternative A.

52. He reminded members that the Committee was supposed to be taking a decision on the two points he had raised earlier; an indicative vote would be sufficient.

53. Mr. GUEIROS (Brazil) said he felt that the time had come for a definitive vote.

54. Mr. ROGNLIEN (Norway), supported by Mr. BELINFANTE (Netherlands) and Mr. SAM (Ghana), said the Committee should not take a definitive vote on a question of principle.

55. The CHAIRMAN invited the Committee to indicate whether it was in favour of a limitation period that began to run when the goods were handed over or when a defect or lack of conformity was discovered.

*The Committee indicated by 22 votes to 15 that the limitation period should begin to run when the goods were handed over.*

56. The CHAIRMAN invited the Committee to indicate whether it was in favour of a uniform period of limitation for both patent and latent defects and lack of conformity.

*The Committee indicated by 29 votes to 3 that the limitation period should be uniform.*

57. The CHAIRMAN invited the Committee to decide on the length of the limitation period, after which article 10, together with the Australian oral amendment, could be referred to the Drafting Committee.

58. Mr. KHOO (Singapore) recalled that the Committee, at the 10th meeting when discussing article 8, had adopted a limitation period of four years, subject to a decision on article 10. He suggested that article 8 should be considered along with article 10, so as to avoid having different limitation periods in the two articles.

59. The CHAIRMAN invited the Committee to decide whether it wished the limitation period to be specified in articles 8 and 10 as three, four, five or six years.

*There were 4 votes in favour of three years, 26 in favour of four years, 10 in favour of five years and 3 in favour of six years.*

*It was decided that the limitation period should be four years.*

60. The CHAIRMAN invited the Committee to vote on the Greek oral subamendment to the Norwegian-United Kingdom amendment to article 10, paragraph 3 (A/CONF.63/C.1/L.104).

*The subamendment was rejected.*

*The amendment (A/CONF.63/C.1/L.104) was adopted by 23 votes to none.*

#### Article 18

61. Mr. BARCHETTI (Austria) said that, in view of the decision that the limitation period should be four years, his delegation's amendment to article 18 (A/CONF.63/C.1/L.50) was simply a drafting matter.

62. Mr. BELINFANTE (Netherlands), introducing the amendment contained in document A/CONF.63/C.1/L.82, said that, when a very similar amendment proposed by his delegation (A/CONF.63/C.1/L.79) to article 12 had been rejected, he had assumed that the Committee felt that the Convention should only cover matters directly related to international sales.

However, the debate on article 17, paragraph 2, had made it clear that the influence of domestic matters on international sales must be taken into consideration.

63. Mr. KAMPIS (Hungary), introducing the amendment contained in document A/CONF.63/C.1/L.88, said that the purpose of the Conference was to establish uniform rules on prescription that would be simple to apply. Article 18 conflicted with that principle because it led to uncertainty. His delegation therefore proposed the deletion of the article.

64. Mr. FRANTA (Federal Republic of Germany) announced that he was withdrawing the amendment contained in document A/CONF.63/C.1/L.92.

65. Mr. MANZ (Switzerland) introduced the amendment contained in document A/CONF.63/C.1/L.93, the purpose of which was to allow both parties to the contract to invoke the provisions of article 18 in cases where the contracting parties had designated in their contract the forum and the applicable substantive law of the country of the seller and the latter had fulfilled his obligation.

66. Mr. ROGNLIEN (Norway) said that, if article 18 was adopted, paragraph 1 should indicate that the provisions of the article would apply to either a recommencement or an extension of the limitation period, depending on the applicable law. He could accept an additional period of four years.

67. Paragraph 2 should be deleted, because its substance was spelt out elsewhere in the draft Convention.

68. Mr. KNUTSSON (Sweden), introducing the amendment contained in document A/CONF.63/C.1/L.106, said that his delegation's reasons for wishing to delete article 18 were the same as those expressed by the representative of Hungary. The purpose of the Conference was to produce uniform rules; there was no reason to make concessions to national law on such a key issue as the termination of the limitation period. He agreed with the representative of Switzerland that provisions of the kind contained in article 18 should apply to both parties, but he had not reached the same conclusions as the representative of Switzerland. The difficulty of grasping the relationship between domestic law and the Convention would make it very hard to interpret article 18.

69. Mr. BURGUCHEV (Union of Soviet Socialist Republics), introducing the amendment contained in document A/CONF.63/C.1/L.108, said that the Committee's decision on the limitation period made paragraph 1 of his amendment unnecessary, while paragraphs 2 and 3 were really drafting matters.

70. The CHAIRMAN said that paragraphs 2 and 3 of the Soviet amendment would be referred to the Drafting Committee.

71. Mr. JENARD (Belgium) said his delegation would prefer to retain article 18, the scope of which was limited by its reference to domestic law. The rule involved was not a complicated one; the creditor must not be deprived of his rights. Paragraph 2 of the article was not necessary.

72. Mr. STALEV (Bulgaria) noted that article 18 introduced a parallel validity of domestic law into a Convention that was intended to provide uniform regulation. In view of the difficulties that might lead to, and bearing in mind the provisions of article 29, he was in favour of deleting article 18.

73. Mr. GUEIROS (Brazil) said his delegation was in favour of retaining paragraph 1 but supported the proposal to delete paragraph 2.

74. Mr. WAGNER (German Democratic Republic) supported the Hungarian proposal, since article 18 would introduce uncertainty into international trade relations. If the article was retained, the new limitation period should be brought into line with the original one. In the light of the comments on article 18 contained in the commentary attached to document A/CONF.63/5, he could not support the Swiss proposal.

75. Mr. MUSEUX (France) agreed with the representative of Belgium that article 18 should be retained. It must be recognized that the kind of actions to which the Convention related were more complicated in some States than in others, and the scope of article 18 was, after all, very limited. The act involved must be an act performed in the debtor's country, and not in the creditor's. The Swiss amendment might make the scope of article 18 too broad. As to the international effect of the provision, the fact that the law of the debtor's country allowed an interruption of the prescription period should not cause too much difficulty.

*The meeting rose at 6 p.m.*

## 18th meeting

Monday, 3 June 1974, at 8.10 p.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.18

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add.1 and 2, A/CONF.63/C.1/L.50, L.51, L.82, L.83, L.88, L.91, L.93, L.99, L.100, L.102, L.106, L.107, L.108, L.109, L.114, L.124) (continued)**

*Article 18 (concluded)*

1. Mr. KOPAC (Czechoslovakia) said that he supported the Swedish amendment (A/CONF.63/C.1/

L.106), since he felt that acceptance of article 18 would lead to the application of municipal laws side by side with uniform rules and thus defeat the object of the Convention. It would also create inequality between the parties to a contract. Similarly, while the Swiss amendment (A/CONF.63/C.1/L.93) had the merit of seeking to place the creditor and debtor in the same legal position, it would to some extent complicate the problems pertaining to the limitation period, since not only the uniform rules, but also the rules of the seller and buyer would apply. Moreover, the

latter might well be incompatible. He could not support the Norwegian amendment (A/CONF.63/C.1/L.99). In addition, he did not understand the amendment proposed by the Netherlands (A/CONF.63/C.1/L.82), since it was unclear whether the debtor's law, which would vary from country to country, would apply to third-party attachments or whether all such attachments would be subject to the same rules.

2. Mr. BELINFANTE (Netherlands) observed that some countries, including his own, recognized the concept of an act, other than the institution of legal proceedings, which could interrupt the limitation period. He did not see why countries which did not recognize that concept should wish to deprive others of the possibility of reaching a settlement other than by going to law. If, however, it was indeed the intention of the Committee to delete article 18, it should be clearly stated elsewhere in the Convention that no interruption of the limitation period was possible other than by the institution of proceedings, since the principle underlying paragraph 1 of the article was so deeply enshrined in the legal practice of his own country that the lawyers and judges might otherwise refuse to believe it had been abolished.

3. He assured the representative of Czechoslovakia that his amendment was intended to apply only to those countries which recognized third-party attachments. They felt it important to state that such attachments would have the same effect as the acts mentioned in paragraph 1 of article 18.

4. Mr. JENARD (Belgium) said his delegation considered the retention of article 18 to be of some importance. Belgian law, for example, currently provided for the interruption of a limitation period otherwise than by the institution of proceedings, but it was uncertain whether any provision of municipal law other than the right to institute proceedings would remain if the article was deleted. Furthermore, to force parties to go to law would introduce inequalities because of differences in the cost of lawsuits in various countries.

5. Mr. KAMPIS (Hungary) drew attention to the title of the section of the Convention containing the present articles 12 to 20. Since all those articles, with the understandable exception of article 19, referred only to legal proceedings as a means of interrupting the limitation period, his delegation felt that article 18 was outside the scope of the entire Convention. In his view, the article could be deleted, and the point raised by the representative of Belgium concerning domestic measures for the interruption of the limitation period could be covered in article 24.

6. Mr. GUEST (United Kingdom), supported by Mr. HAMBURGER (Austria), said his delegation would have no objection to the retention of article 18, but that it was opposed to the Swiss amendment to that article (A/CONF.63/C.1/L.93).

7. Mr. STALEV (Bulgaria) said he feared that the introduction of grounds for the interruption of the limitation period according to national law might seriously delay the judicial solution of a dispute. Accordingly, he favoured the deletion of article 18.

8. The CHAIRMAN invited the Committee to vote on the amendments submitted to article 18.

*The amendments proposed by Hungary (A/CONF.63/C.1/L.88) and Sweden (A/CONF.63/C.1/L.106) were rejected by 13 votes to 11.*

*The amendment proposed by Switzerland (A/CONF.63/C.1/L.93) was rejected by 18 votes to 3.*

*The amendment proposed by Norway (A/CONF.63/C.1/L.99) was rejected by 13 votes to 4.*

*The amendment proposed by the Netherlands (A/CONF.63/C.1/L.82) was rejected by 14 votes to 3.*

#### Article 19

9. Mr. HAMBURGER (Austria), introducing his delegation's amendment (A/CONF.63/C.1/L.51), said he felt that acknowledgement otherwise than in writing should be sufficient to institute a new limitation period. In view of their similarity, he was willing to support the Netherlands amendment (A/CONF.63/C.1/L.83) or that proposed by the Federal Republic of Germany (A/CONF.63/C.1/L.91) and to withdraw his own, if that was the wish of the Committee.

10. Mr. BELINFANTE (Netherlands), introducing his delegation's amendment (A/CONF.63/C.1/L.83) said he agreed that its purpose was the same as that of the amendments proposed by Austria (A/CONF.63/C.1/L.51) and Yugoslavia (A/CONF.63/C.1/L.114); however, the first was perhaps insufficiently explicit and the second unduly complex. The final choice between the three amendments was a drafting matter.

11. Mr. FRANTA (Federal Republic of Germany) agreed with the representative of the Netherlands that the Austrian, Netherlands and Yugoslavian amendments were based on the principle that both express and implied acknowledgements should be sufficient to institute a new limitation period. The proposal of the delegation of the Federal Republic of Germany had the same purpose. If the common principle of these amendments was accepted, the matter would be referred to the Drafting Committee.

12. Mr. BÖCKMARK (Sweden) said that the purpose of paragraph 1 of his delegation's amendment (A/CONF.63/C.1/L.107) was the same as that of the amendments already mentioned. Although his delegation did not see the need for paragraph 2 of article 19, it had submitted its amendment to that paragraph in view of the apparent general desire to include some such clause.

13. Mr. BURGUCHEV (Union of Soviet Socialist Republics) withdrew his delegation's amendment (A/CONF.63/C.1/L.109).

14. Mr. TEMER (Yugoslavia) said that his delegation had submitted its amendment (A/CONF.63/C.1/L.114) because it felt that, in limiting acknowledgement by implication to the payment of interest or partial performance, the provisions of paragraph 2 of article 19 became too restrictive. A debtor might, for example, write to a creditor requesting extension of the period for performance, and an act of that kind should also be considered as constituting acknowledgement by implication.

15. Mr. NYGH (Australia) said that although, according to Australian law, an acknowledgement must be in writing and must be signed by the maker, disputes still occasionally arose over the question of what constituted an acknowledgement. The Convention should therefore provide as little opportunity as possible for dispute over that question. If a compromise must be made, his delegation might be able

to accept the substitution of the word "expressly" for the expression "in writing", but it would at all events oppose the addition of the phrase "or by implication". With regard to paragraph 2, his delegation favoured the present wording, which made it clear that the overriding question was whether the debtor acknowledged his indebtedness. It would therefore oppose the Swedish and Yugoslav amendments.

16. Mr. JEMIYO (Nigeria) said that his delegation favoured the present wording of article 19, which was unambiguous.

17. Mr. GUEIROS (Brazil) said that his delegation could accept the amendments of the Netherlands, the Federal Republic of Germany, Sweden and Yugoslavia regarding the substitution of other expressions for the words "in writing". The wording proposed by the Federal Republic of Germany was particularly felicitous. His delegation could also accept the rephrasing proposed by the representative of the Soviet Union. However, his delegation would prefer paragraph 2 to be left unchanged.

18. Mr. SAM (Ghana) said that his delegation supported the wording of article 19 as prepared by UNCITRAL (A/CONF.63/4), for, as the Australian delegation had pointed out, disputes could arise over what constituted an acknowledgement even when the acknowledgement had been given in writing.

19. Mr. MUKUNA (Zaire) agreed with the representative of Ghana, adding that his own delegation was, in principle, against the idea of introducing implicit obligations as proposed in some of the amendments.

20. Mr. GUEST (United Kingdom) said that his delegation, too, supported the text of article 19 as currently worded for the reasons given by the representatives of Australia, Nigeria and Ghana.

21. Mr. HAMBURGER (Austria) pointed out that there was a difference between an acknowledgement and an acknowledgement by implication. Paragraph 1 dealt with acknowledgements in general. Under national laws, requirements for what constituted an acknowledgement varied. In his country for instance, the only requirement necessary for a sale was the form free expression of a common will of the two parties to enter into a contract. The same freedom of form would apply to an acknowledgement.

22. In any event, what constituted an acknowledgement would be interpreted according to national legislation. Consequently his proposal to delete the words "in writing" would allow interpretation according to the requirements of national legislation and would seem to be quite appropriate.

23. Mr. JENARD (Belgium) said that his delegation was in favour of the amendments that had been proposed, particularly that of the Federal Republic of Germany. Under Belgian law, an acknowledgement could be either express or implied, and there were a number of cases in which the courts had ruled on the existence of tacit acknowledgement.

24. Mr. GOKHALE (India) said that he was in favour of keeping the words "in writing", for, since article 19, paragraph 1, provided for a fresh period of limitation in the event that a debt was acknowledged, the question of whether or not the acknowledgement had been made should not be a matter of inference.

25. Mr. MUSEUX (France) said that while he was in favour of deleting the words "in writing", the fact remained that the acknowledgement must be unequivocal. He therefore supported the amendment proposed by the Federal Republic of Germany (A/CONF.63/C.1/L.91).

26. Mr. WAGNER (German Democratic Republic) said that under paragraph 1 an acknowledgement in writing was required for a new limitation period to start to run; moreover, that period should be the same as the original period. In order, however, to cover other cases, article 2 should include other effective acts by the debtor, such as the initiation of negotiations, which could be taken to constitute acknowledgement.

27. Mr. TAKAKUWA (Japan) said that his delegation had no strong feelings either way. It did believe, however, that the paragraph as currently worded was somewhat vague and might lead to misinterpretation. Accordingly, the paragraph should be written expressly and clearly both for civil-law countries and for common-law countries.

28. The CHAIRMAN invited the Committee to vote on the amendments proposed to article 19.

*The amendment proposed by the Federal Republic of Germany (A/CONF.63/C.1/L.91) was rejected by 18 votes to 9.*

*The amendment proposed by Austria (A/CONF.63/C.1/L.51) was rejected by 18 votes to 7.*

*The amendments proposed by the Netherlands (A/CONF.63/C.1/L.83) and Sweden (A/CONF.63/C.1/L.107, para. 1) were rejected by 16 votes to 9.*

29. The CHAIRMAN invited the Committee to vote on paragraph 2 of the Swedish amendment.

*The amendment proposed by Sweden (A/CONF.63/C.1/L.107, para. 2) was rejected by 17 votes to 5.*

*The amendment proposed by Yugoslavia (A/CONF.63/C.1/L.114) was rejected by 9 votes to 9.*

#### Article 20

30. Mrs. KOH (Singapore), introducing her delegation's amendment (A/CONF.63/C.1/L.124), said that the circumstances with which article 20 was concerned might be completely unknown to a debtor, even though their consequences could affect him severely. As her delegation considered the article unsound, it thought the best solution would be to delete it entirely.

31. Mr. BELINFANTE (Netherlands), introducing his delegation's amendment (A/CONF.63/C.1/L.84), observed that article 20 dealt with special circumstances beyond a creditor's control that prevented him from taking action which would cause the limitation period to cease to run. While supporting the objectives of the article in general, he found it anomalous that there might be circumstances affecting the creditor of which the debtor could have no knowledge. It might well happen, for example, that after four years a debtor would think he was clear of all claims, only to be confronted by the creditor with a situation in which, for reasons alleged to have been beyond the creditor's control, the limitation period had in fact ceased to run. That would be an undesirable situation, and he accordingly recommended that for the protection of all concerned, the words "known to the debtor" should be inserted in the first line of the article.

32. Mr. ROGNLIEN (Norway), introducing his delegation's amendment (A/CONF.63/C.1/L.100), said



he considered that article 20 was intended to cover cases where the creditor had been prevented by circumstances beyond his control from asserting a claim, and those circumstances might include fraud, coercion or duress on the part of or concerning the debtor. The article was, of course, not intended to cover purely personal circumstances of the creditor, such as illness, and its object might be best achieved by replacing the words "beyond the control of the creditor" which are repetitious by the words "not personal to the creditor".

33. Turning to the second part of his delegation's proposed amendment, relating to the substitution of "10 years" for "four years" as the maximum extension of the limitation period, he pointed out that, as the circumstances beyond the creditor's control might continue over a long period, it would be more logical to have no maximum period of extension at all. The period of 10 years, suggested as a compromise, had the merit of being the limitation period specified in article 22. The limitation periods should be standardized throughout the Convention.

34. The reference to articles 8 to 11 in the last line of article 20 should be reconsidered, since it included article 9, the second paragraph of which was concerned with cases of fraud, where there was no fixed limit. If his suggestion of changing the period specified in article 20 to 10 years was adopted, the last line could refer to "articles 8 to 11, with the exception of paragraph 2, article 9", but he was content to leave the details to the Drafting Committee.

35. Mr. ADAMSON (United Kingdom), introducing his delegation's amendment (A/CONF.63/C.1/L.102), said that in general he agreed with the representative of Singapore that the article was unsuitable in its present form. It was too broad and too complicated in relation to the international sale of goods because it introduced concepts which were difficult to prove even in the context of domestic law, let alone in international practice. One such concept, for example, was whether the circumstances alleged to have been beyond the control of the creditor had in fact been impossible to avoid or overcome. He was therefore in favour of the deletion of article 20 in its present form.

36. There was, however, one matter with which the Convention should deal, namely, the question of fraud. The reference in article 9, paragraph 2, covered cases of fraud *in limine*, which prevented the commencement of the limitation period. In addition, however, the Convention should be concerned with what might be called supervening fraud, where the creditor had been induced to refrain from starting legal proceedings by some kind of misrepresentation after the limitation period had begun.

37. He did not think it was necessary to complicate the Convention by including a specific cut-off period in the last sentence of article 20, since a period was in fact provided by article 22.

38. Mr. JEMIYO (Nigeria) said he agreed with the view that it was difficult to prove cases of *force majeure*, where the creditor alleged that circumstances had been beyond his control and he had been unable either to avoid or to overcome them. As article 20 might well be unworkable in practice, he supported the proposal by the representative of Singapore that it should be deleted.

39. Mr. GUEIROS (Brazil) said that the purpose of all the amendments before the Committee seemed to be to limit the scope of article 20. In the opinion of his

delegation, the article was suitable as it stood, bearing in mind the fact that the Convention was intended to be of use for businessmen rather than lawyers. However, in the event of the proposed amendments being rejected he would not object to their being referred to the Drafting Committee for review.

40. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he could not agree with the proposal to limit the substance of article 20 by including in it a reference to cases of fraud; nor could he agree with the proposal to extend the limitation period to 10 years. As he had noted earlier, in connexion with article 18, the cross-reference at the end of article 20 should be to articles 9 to 11 rather than 8 to 11, because article 8 did not deal with the question of when the limitation period should begin to run.

41. With that reservation, he supported the text of article 20 as it appeared in the draft Convention.

42. Mr. SAM (Ghana) said that he could not agree with the proposal by the representative of Singapore that article 20 should be deleted; on the contrary, his delegation found the article to be useful.

43. With reference to the other proposed amendments, that of the Netherlands (A/CONF.63/C.1/L.84) was likely to have the opposite effect from what was presumably intended. It referred to circumstances known to the debtor which prevented the creditor from performing certain acts, but there could be many circumstances connected with the debtor (e.g. his incapacity, or his concealment of his identity or whereabouts) which were obviously "known to the debtor" and would prevent the creditor from initiating whatever action was necessary.

44. With regard to the first of the amendments proposed by Norway (A/CONF.63/C.1/L.100), he pointed out that the words "beyond the control" had been specifically agreed upon during the discussion in UNCITRAL, and he regretted any attempt to reopen the question. Similarly, in the case of the second of the Norwegian amendments, the period of four years had been agreed upon in previous discussions.

45. The scope of article 20 went much further than the question of fraud to which the United Kingdom amendment (A/CONF.63/C.1/L.102) sought to limit it, and he was opposed to that amendment for that reason.

46. Mr. HJERNER (Sweden) said that although his delegation favoured the deletion of the article, the fact that the general limitation period was only four years made it imperative for some provision to be made for cases of *force majeure*. Citing the instances of claims which had arisen during the Second World War not having been settled until several years after the end of that war, he said it was clear that an additional four-year period would not be enough. He therefore suggested that the additional period should be at least 10 years.

47. The United Kingdom proposal had come somewhat as a surprise, it having been his understanding that cases of fraud would be dealt with elsewhere in the Convention. His delegation could not agree to article 20 being completely restructured and confined solely to cases of fraud. It would therefore support the proposal in paragraph 2 of the Norwegian amendment (A/CONF.63/C.1/L.100) to extend the over-all limitation period, or any provision with the same general purpose; it would prefer to deal with the suggestion made by the

United Kingdom when the matter of fraud in general was discussed.

48. Mr. NYGH (Australia) said that although, initially, his delegation had had doubts similar to those of the representative of the United Kingdom, it now felt that article 20 did serve a useful purpose, and it would be able to support it in its present form. It would therefore not support the amendments proposed by the representatives of the Netherlands and Norway. However, as the representative of Norway had pointed out, article 20 and article 9, paragraph 2, would have to be co-ordinated in order to avoid the problem of double extension.

49. Mr. MICHIDA (Japan) said that his delegation was opposed to the deletion of article 20 and to the amendment proposed by the Netherlands. Also, the 10-year period proposed by the representative of Norway was too long. As to the United Kingdom proposal, his delegation was not prepared to support it at the present time. However, it would go along with any suggestion made by the Drafting Committee to improve the wording of article 20.

50. Mr. SMIT (United States of America) said that his delegation agreed with the views expressed by the representative of Ghana. He pointed out that there was a legal principle in the United States to the effect that if circumstances beyond a person's control prevented him from exercising his rights, those rights were not forfeited. Although it might be argued accordingly that the limitation period should be extended as long as the circumstances persisted, some compromise must be reached. His delegation was prepared to support the Norwegian proposal that the limitation period should be as long as possible, and if it was stated in article 20 that the period should be at least 10 years, his delegation would not object. It would, however, prefer to have a separate article on the over-all limitation period.

51. Mr. KOPAC (Czechoslovakia) said that his delegation considered article 20 to be very important. Accordingly, it could not support the United Kingdom amendment which would limit article 20 to cases of fraud. In addition, his delegation hesitated to accept the amendment proposed by the Netherlands because of the subjective factor which it involved. Although his delegation felt that article 20 as currently drafted was perhaps repetitious, it did not look favourably upon the proposal in paragraph 1 of the Norwegian amendment (A/CONF.63/C.1/L.100). He suggested that the article should be referred to the Drafting Committee.

52. Mr. GOKHALE (India) maintained that article 20 was satisfactory as it stood; it was an article of practical value in cases where circumstances beyond a creditor's control prevented him from instituting legal proceedings. The fact that the debtor might not know of the existence of those circumstances was irrelevant in the context of the article.

53. Mr. BELINFANTE (Netherlands) said that some representatives who had raised objections to his proposed amendment did not seem to have fully understood it. The gist of it was as follows: article 20 dealt with circumstances in which a creditor could not exercise his rights owing to circumstances beyond his control. On the other hand, if the debtor was unaware of those circumstances, which might be personal to the creditor, he should not thereby be excluded from the benefit of limitation, which was designed to ensure that parties would not be involved in lawsuits arising long after the fact, when most of the proof was likely to have been destroyed.

54. To the extent that the words "beyond the control of the creditor" might give rise to difficulties of interpretation, he agreed with the first Norwegian amendment. In fact, the French text better expressed the idea of circumstances which could not be imputed to the creditor.

55. Mr. MUSEUX (France) said he regretted that he could not accept the United Kingdom amendment to article 20. Furthermore, while he was in sympathy with the object of the second Norwegian amendment to extend the limitation period, he thought that the best way of achieving it would be merely to omit the last sentence of article 20, since a 10-year limitation period was expressly provided in article 22.

56. The CHAIRMAN invited the Committee to vote on the proposed amendments to article 20, beginning with the proposal by Singapore.

*The Singaporean amendment (A/CONF.63/C.1/L.124) was rejected by 24 votes to 3.*

*The United Kingdom amendment (A/CONF.63/C.1/L.102) was rejected by 26 votes to 2.*

*The Netherlands amendment (A/CONF.63/C.1/L.84) was rejected by 22 votes to 2.*

*The first Norwegian amendment (A/CONF.63/C.1/L.100) was rejected by 19 votes to 1.*

*The second Norwegian amendment (ibid.) was rejected by 13 votes to 10.*

*The meeting rose at 10 p.m.*

## 19th meeting

Tuesday, 4 June 1974, at 10.15 a.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.19

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add.1 and 2, A/CONF.63/C.1/L.87, L.98, L.101, L.110, L.115, L.122, L.123, L.129, L.138) (continued)**

### Article 21

1. Mr. GUEST (United Kingdom) said that the amendment submitted by his delegation (A/CONF.63/

C.1/L.87) was based on the United Kingdom's observations regarding the draft Convention. Its purpose was to enable the parties to set a shorter period of limitation than that referred to in the draft Convention in cases where arbitral proceedings had been agreed to. It was a common clause which should be recognized and useful because it encouraged the use of arbitral proceedings. The last part of the paragraph was intended to prevent any abuses which might occur. In the English text of the amendment submitted by the United King-



dom delegation, there was a typing error: the word "valued" should read "valid".

2. Mr. STALEV (Bulgaria) said that the amendment submitted by his delegation (A/CONF.63/C.1/L.98) brought article 21 into line with the period upon which the Committee had agreed the previous day and recognized the important fact that international trade should be governed by flexible rules. At the same time, an effort had been made to reconcile flexibility with justice, allowing limited contractual freedom to set a minimum period of two years and a maximum period of eight years. If the parties were not given that option, those who were not satisfied with the Convention might well attempt to avoid implementing it by applying article 21, paragraph 3, as it was worded in the draft Convention and that would be contrary to the purposes of the Convention. Article 21, paragraphs 2 and 3, seemed unnecessary. In his view, the United Kingdom proposal had the same aim as that of his delegation.

3. Mr. ROGNLIEN (Norway) said that his delegation accepted article 21, paragraph 1, as it stood as a compromise solution, but it had proposed an amendment to paragraph 2 (A/CONF.63/C.1/L.101), because it did not agree that the over-all period should be four years only. What was important was that any declaration regarding extension of the period should have a limit, but the parties should be able to renew it if they saw fit. There could be many reasons for extending the period and there should be no fear that the provision would be abused at this stage, even if such possibility of abuse existed before or at the time when the contract was concluded or implemented. Subsequently, the parties had greater freedom when judging whether they wanted the period to be extended. Any doubts could be avoided by strictly limiting the period of each extension. In order to bring into line the three-year period referred to in the second sentence of his amendment with the period adopted the previous day by the Committee, the word "three" should be replaced by the word "four". In the last part of his delegation's amendment, a 10-year period was prescribed in order to meet the parties' needs which might arise in exceptional circumstances, for example when they wanted to await the outcome of a legal dispute in such a case when the decision was too tardy. He felt that the general period should be independent of the provision in article 22. His delegation found the United Kingdom amendment (A/CONF.63/C.1/L.87) acceptable.

4. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation supported the Bulgarian amendment which embodied the idea of allowing the parties to set periods different from that established in the draft Convention. He therefore withdrew the draft amendment submitted by his delegation (A/CONF.63/C.1/L.110).

5. Mr. GOKHALE (India) said that the concept of limitation was a matter of public policy and that the fixing of a period which differed from that established in the draft Convention should not be left to the parties to negotiate, since that would defeat the purpose of the draft Convention. He had therefore submitted a draft amendment (A/CONF.63/C.1/L.115) for the deletion of paragraph 2 and the reference to that paragraph in article 21, paragraph 1.

6. Mr. KOPAC (Czechoslovakia) said that his delegation's amendment (A/CONF.63/C.1/L.122) covered two points. In the existing text of article 21, paragraph 3, of the draft Convention, reference was made

to the acquisition or exercise of a claim. His delegation's amendment added the "continuation" of a claim to those concepts. Thus, the majority of cases for which the clause would be applicable would be covered and it would be brought into line with article 39 of the new ULIS. The second point concerned the judicial proceedings referred to in article 21, paragraph 3. The concept of judicial proceedings was too narrow and paragraph 3 should refer to all legal proceedings, including arbitration. He realized that some delegations might have difficulty in accepting that amendment, particularly the United Kingdom delegation, but he felt that it was necessary to replace the word "judicial" by the word "legal". His delegation supported the amendment submitted by the Bulgarian delegation (A/CONF.63/C.1/L.98).

7. Mr. FRANTA (Federal Republic of Germany) introduced his delegation's amendment (A/CONF.63/C.1/L.123) and pointed out that, in practice, the aim of article 21, paragraph 1, was to exclude any possibility of the parties shortening the limitation period by agreement between themselves. In his view, that was neither necessary nor useful since, in certain circumstances, it might be advantageous to the parties to have the possibility of a shorter period. That was precisely the aim of his amendment.

8. Mr. SMIT (United States of America) introduced his delegation's amendment (A/CONF.63/C.1/L.129) and explained the basis for the changed text proposed for article 21, paragraph 3. He pointed out that, in the second line of the amendment, it would be better to use the word "existence" rather than "exercise".

9. In his delegation's view, the United Kingdom proposal (A/CONF.63/C.1/L.87) was too limited because it did not take into account situations which, like arbitration, might occur frequently.

10. His delegation would not support any other amendment to article 21, because the current wording together with its own amendment would establish an appropriate and satisfactory balance.

11. Mr. KAMPIS (Hungary) said that his delegation's amendment (A/CONF.63/C.1/L.138) dealt with the substance rather than the form because its aim was to allow for extension of the limitation period only within the established limit of four years.

12. The CHAIRMAN said that the representative of Austria had just submitted an amendment to article 21 (A/CONF.63/C.1/L.139). If he heard no objection, he would take it that the Committee agreed to consider it.

*It was so decided.*

13. Mr. LOEWE (Austria) apologized for submitting his amendment (A/CONF.63/C.1/L.139) so late and said that its purpose was to incorporate in the draft Convention a provision which generally appeared in international conventions on transport claims and was embodied in his country's legislation.

14. Mr. GUEIROS (Brazil) found the original version of article 21 perfectly acceptable, although some of the amendments submitted introduced useful changes.

15. Referring to the United Kingdom proposal (A/CONF.63/C.1/L.87), he said that article 1 of the draft Convention already adequately defined what would be understood by proceedings and that definition included arbitral proceedings. His delegation could therefore not accept the amendment.

16. The Bulgarian proposal (A/CONF.63/C.1/L.98) was concise and clear and his delegation supported it. However, the Norwegian amendment (A/CONF.63/C.1/L.101) allowed for an excessive extension of the limitation period, which his delegation could not accept. Similarly, he found the proposal of the Indian delegation (A/CONF.63/C.1/L.115) unacceptable. The Czechoslovakian amendment (A/CONF.63/C.1/L.122) involved minor changes and he suggested that the Spanish and French versions should be revised.

17. Lastly, he found the amendment proposed by the Federal Republic of Germany (A/CONF.63/C.1/L.123) unacceptable. However, the proposal in the United States amendment (A/CONF.63/C.1/L.129) was useful and he had no hesitation in accepting the Hungarian proposal (A/CONF.63/C.1/L.138).

18. Mr. OLIVENCIA (Spain) said that two main trends emerged from the amendments submitted to the Committee. One sought to ensure respect for the will of the parties, while the other emphasized the imperative character of prescriptive rules. An extreme example of the first trend could be seen in the amendment proposed by the delegation of the Federal Republic of Germany (A/CONF.63/C.1/L.123), and the second was reflected in the Indian amendment (A/CONF.63/C.1/L.115).

19. Of the two trends, his delegation preferred that which emphasized the imperative character of prescriptive rules, since, if excessive attention was paid to the will of the parties, there was a danger that the will of the stronger would prevail over that of the weaker. Moreover, the attainment of the objective of uniformity would be prejudiced if the will of the contracting parties were allowed free play.

20. Between the two extremes there were a number of amendments which might be described as intermediate, and which deserved special attention, such as those proposed by Bulgaria (A/CONF.63/C.1/L.98) and Norway (A/CONF.63/C.1/L.101).

21. With reference to the United States proposal (A/CONF.63/C.1/L.129), he pointed out that the Spanish text should read "*a partir de la fecha en que el derecho haya nacido*" or "*haya surgido*", instead of "*a partir de la fecha en que el derecho pueda ser ejercido*".

22. He inquired whether the rule proposed by Austria (A/CONF.63/C.1/L.139) was covered by the modification of the limitation period under article 21, or referred to a suspension and extension of the period.

23. In conclusion, he said that his delegation preferred rules of prescription having imperative force.

24. Mrs. DE BARISH (Costa Rica), referring to the amendment proposed by Hungary (A/CONF.63/C.1/L.138), said that the words "in accordance with the provisions of this Convention" should be replaced by "in accordance with articles 8 to 11 of this Convention".

25. Mr. MUSEUX (France) expressed his preference for fairly strict rules. His delegation considered that the process of unification had gone too far, but since it had been accepted he did not want to see a return to a diversity of systems. In that connexion, account should also be taken of the judicious observation made by the representative of Spain to the effect that the prescription clause generally favoured the stronger party. The amendment proposed by Bulgaria fixed limits to the will of the parties by establishing a maximum and minimum limitation period, but it was not acceptable because it destroyed uniformity and reduced still further the agreed

four-year limitation period, which his delegation considered to be already short enough.

26. Nor was the amendment proposed by the United Kingdom delegation (A/CONF.63/C.1/L.87) acceptable, because it laid down an unjustifiable exception for arbitral proceedings. Moreover, the French translation was inaccurate, since it should read "*La procédure d'arbitrage doit être engagée*" instead of "*peut être engagée*".

27. On the other hand, the amendment submitted by Austria (A/CONF.63/C.1/L.139) seemed acceptable to his delegation, since it encouraged negotiations between the creditor and the debtor.

28. His delegation therefore supported the current version of paragraph 1 of article 21 and the Austrian amendment (A/CONF.63/C.1/L.139) to paragraph 2, and would prefer paragraph 3 to be deleted.

29. Mr. HARTNELL (Australia) said that his delegation did not agree with article 21, paragraph 3, as it stood, and therefore supported the amendment submitted by the United Kingdom (A/CONF.63/C.1/L.87). Article 1, paragraph 2, of the draft Convention did not provide for arbitral proceedings, and while his delegation had opposed the adoption of that paragraph, it felt that having been adopted, it would remain incomplete without the provision proposed by the United Kingdom. With reference to the new paragraph 3 proposed by the United States (A/CONF.63/C.1/L.129), his delegation endorsed the observations made by the representative of Spain concerning the expression "*a partir de la fecha en que el derecho pueda ser ejercido*". His delegation could not support the amendment submitted by Bulgaria (A/CONF.63/C.1/L.98) because it agreed with the delegation of India that prescription was a matter of official policy. On the subject of the amendment submitted by the Federal Republic of Germany (A/CONF.63/C.1/L.123), he shared the view of the representative of Spain that it would favour one of the parties.

30. His delegation could support the proposal made by Norway (A/CONF.63/C.1/L.101), but it had some difficulty with the wording. The replacement of the words "during the running of the limitation period" by "after the commencement of the limitation period" would mean that the declaration could be made after the period had expired. The second part of the provision was very clear, but what was not clear was the implications of the last sentence, which seemed to contradict the preceding provision.

31. His delegation could not support the amendment proposed by Czechoslovakia (A/CONF.63/C.1/L.122), since it felt that the use of the adjective "legal" in the English text unjustifiably excluded arbitral proceedings.

32. Mr. LOEWE (Austria) said that on the whole most of the amendments submitted improved the text, but that some were incompatible with each other. His delegation could support the amendment submitted by the United Kingdom (A/CONF.63/C.1/L.87), but agreed with the observation made by the representative of France, and would prefer it if the rules did not apply solely to arbitral proceedings. The amendment proposed by Bulgaria (A/CONF.63/C.1/L.98) might serve as a compromise solution in that connexion. Referring to the amendment submitted by Norway (A/CONF.63/C.1/L.101), he said that he did not fully understand its purpose.

33. The amendment submitted by Czechoslovakia (A/CONF.63/C.1/L.122) dealt with a question of detail which should be referred to the Drafting Committee. His delegation was prepared to support the amendment submitted by the Federal Republic of Germany (A/CONF.63/C.1/L.123), which made it possible to shorten the limitation period.

34. The United States amendment (A/CONF.63/C.1/L.129) dealt with a question of form which should be referred to the Drafting Committee, and, similarly, that proposed by Hungary (A/CONF.63/C.1/L.138) provided for little change in the substance of the article.

35. Commenting on the amendment proposed by his own delegation (A/CONF.63/C.1/L.139), which was based on the same idea as that expressed by the representative of India, he said that the wording was of little importance, provided it expressed the basic idea that the limitation period should not run while negotiations were in progress, in other words, that the period should be extended by the length of time which elapsed until the debtor replied in writing.

36. Mr. JENARD (Belgium) said that the representative of Spain had stated the problem clearly: a choice had to be made between respect for the autonomy of the will of the parties and strict compliance with the rules. The unification of rules was advanced as an argument against the first alternative. If unification did not correspond to commercial needs, it could not be given practical effect. It would be preferable if the other parts of the Convention could be applied. It was also argued that the weaker party should be protected. It might be in the interest of the weaker party to resort promptly to the courts. Belgian legislation protected the weaker party, and did so without requiring an extension of limitation periods. His delegation supported the solution proposed in the amendment submitted by Bulgaria (A/CONF.63/C.1/L.98), which represented a compromise designed to allow some latitude for the autonomy of the parties, while at the same time setting limits to it. It also supported in principle the amendment submitted by Austria (A/CONF.63/C.1/L.139), but in view of the clarification offered by the representative of Austria, felt that it should be inserted somewhere else in the text, rather than in article 21. His delegation supported it because under the current system the causes of the suspension of the limitation period always centred on the creditor, on the assumption that he was the stronger party, which was not necessarily the case; he could also be the weaker party. Moreover, it should not be forgotten that in some countries legal proceedings were expensive.

37. Mr. SMIT (United States of America) noted that some delegations had held that the concept of prescription was one of public policy, and he wondered what concept of public policy was involved. Prescription was supposed to have two purposes: the first would be to protect the parties against insecurity, but, even when the validity of that aim was recognized, the debtor should be able to decline such protection. That was based on the assumption that the debtor was always the weaker party, which was a dangerous generalization. The other purpose would be to protect the courts from the obligation to judge old cases, which would also help to meet the need for society to limit the number of lawsuits. To that extent it was, in fact, a question of public policy. He felt that article 21, in its current form, effectively carried out the function for which it was designed. Article 21, paragraph 3, did not cover the same

matters as those covered by article 1, paragraph 2: the latter referred to "a rule of the applicable law", while the former referred to "a clause in the contract of sale". Article 21, paragraph 3, clearly performed a function completely different from that of article 1, paragraph 2.

38. The amendment submitted by his delegation (A/CONF.63/C.1/L.129) would enable the parties to restrict the limitation period, and the drafting changes which it introduced clarified the rule provided for in article 21, paragraph 3. With reference to the observation made by the representative of Spain, he pointed out that he had already indicated that in his delegation's amendment the words "the exercise" should be replaced by "the existence". When a claim accrued, the party entitled to that claim would have to notify the other party of its existence. If he did not do so within a certain time-limit, the claim would cease to exist. He felt that that concept was expressed more clearly in the amendment submitted by his delegation.

39. Mr. BELINFANTE (Netherlands) said that he found it difficult to understand article 21 of the draft Convention. As he saw it, paragraph 2 in its existing form lacked purpose if the limitation period was to run in all cases for four years.

40. Furthermore, he failed to understand why there was a reference in paragraph 3 to the acquisition of a claim, since, by definition, the draft Convention dealt solely with the prescription of rights not the acquisition of rights.

41. Of the amendments submitted for the Committee's consideration, he found the amendment submitted by the delegation of Austria (A/CONF.63/C.1/L.139) acceptable because he felt that there was no reason why the parties should not be able to extend the limitation period by mutual agreement, if they so wished.

42. The amendment submitted by the United Kingdom delegation (A/CONF.63/C.1/L.87) was too restrictive and that submitted by the Norwegian delegation (A/CONF.63/C.1/L.101) seemed to him to be unnecessary. The Bulgarian amendment (A/CONF.63/C.1/L.98), although it simplified the issue, did not significantly improve the wording.

43. His delegation could not support the Indian amendment (A/CONF.63/C.1/L.115) because it considered that prescription was not a matter of public interest in all cases. In the Netherlands, there was ordinary prescription—which was subject to change by agreement of the parties—and prescription as a matter of public policy (*déchéance*), which the parties could not change as they saw fit.

44. The Czechoslovak amendment (A/CONF.63/C.1/L.122) and the United States amendment (A/CONF.63/C.1/L.129) had his delegation's support.

45. The amendment submitted by the delegation of the Federal Republic of Germany (A/CONF.63/C.1/L.123), if accepted, would entail the risk of allowing the stronger party to impose on the weaker unduly short limitation periods, and his delegation could not therefore accept it in its existing form, although it believed that the objective of the representative of the Federal Republic of Germany was to enable the parties to shorten the limitation period in accordance with the applicable national law.

46. The amendment proposed by the Hungarian delegation (A/CONF.63/C.1/L.138) improved the existing text somewhat, and his delegation would therefore vote for it.

47. Mr. HONNOLD (Chief, International Trade Law Branch) said he believed that the Drafting Committee would be in a position to review the wording of the amendment submitted by the delegation of the Federal Republic of Germany (A/CONF.63/C.1/L.123) in the light of the comments suggested by the representative of the Netherlands.

48. Mr. TEMER (Yugoslavia) observed that the Committee had spent a great deal of time and effort on the consideration of articles 8 and 10 in order to reach agreement. Yet, some of the amendments that the Committee was currently considering seemed to be designed to rule out the application of those articles, and his delegation could not accept that that should happen. If too many opportunities were afforded to the parties to alter the limitation period to suit their convenience and if there was also an article relating to reservations, the Convention would be devoid of any meaning.

49. The Bulgarian amendment (A/CONF.63/C.1/L.98) and the Austrian amendment (A/CONF.63/C.1/L.139) constituted interesting compromise solutions.

50. Mr. KAMPIS (Hungary) said that his delegation, which was in favour of promoting uniformity of the rules, had three questions concerning the various amendments submitted.

51. First, he asked whether the parties were entitled to change the limitation period in cases other than those provided for in paragraphs 2 and 3 of article 21 of the draft Convention. Secondly, he would like to know how long the extension period could run. Thirdly, he wondered whether the more appropriate date for the commencement of the period was the one suggested in the existing text or the one proposed by Hungary (A/CONF.63/C.1/L.138).

52. The amendment proposed by Austria (A/CONF.63/C.1/L.139) did not contradict the provisions in paragraph 2 and could be included along with them in the Convention. The wording proposed by the Austrian delegation could be inserted between articles 19 and 20.

53. Mr. BARNES (Ireland) observed that the United States representative had concluded that article 21, paragraph 2, could be retained. His delegation disagreed, although for altogether different reasons from those advanced by the Indian delegation.

54. The purpose of article 21, paragraph 2, was to avoid potential conflict between the debtor and the creditor, forcing the latter to take legal proceedings; yet if article 23 was accepted, a confused situation would arise inasmuch as, under its provisions, the action would not be barred by expiration of the limitation period unless a party to the legal proceedings so requested. In view of the legal conflicts to which the contradictory provisions of those articles might give rise, he believed that, if article 23 was adopted, article 21, paragraph 2, would become superfluous and should be deleted.

55. Mr. STALEV (Bulgaria) said that two main objections against the autonomy of the parties had been raised, the first based on the idea that limitation was a matter of official policy and the second prompted by an exaggerated desire for uniformity. The first argument was, to say the least, extraordinary, because article 3, paragraph 3, afforded the parties far greater autonomy than his delegation was proposing. On the other hand, article 23 stated quite clearly that expiration of the

limitation period would be taken into consideration only at the request of one of the parties. As to the promotion of uniformity, he reminded members that ULIS was based, quite simply, on contractual autonomy, and he asserted that uniformity was perfectly consistent with autonomy.

56. Mr. MICHIDA (Japan) said he thought that the requirement of a declaration in writing, as provided for in article 21, paragraph 2, might give rise to difficulties, since the notes and documents exchanged by the creditor and the debtor could lend themselves to different interpretations.

57. The Indian delegation had expressed objections to paragraph 2, maintaining that limitation was within the ambit of official policy. The representative of the United States had reciprocated with sound arguments based on the necessity of affording the parties protection, although his reasoning did not carry weight in Japan, where a basic effect of limitation was to bar the action and where limitation was therefore fundamentally independent of the will of the parties.

58. In view of the reasons he had stated, his delegation could not accept article 21, paragraph 2, and would prefer to rely instead on the provisions of article 19. His delegation therefore supported the Indian proposal (A/CONF.63/C.1/L.115) calling for the deletion of article 21, paragraph 2.

59. Mr. JEMIYO (Nigeria) said that the Norwegian amendment (A/CONF.63/C.1/L.101) and the Bulgarian amendment (A/CONF.63/C.1/L.98) were not acceptable to his delegation because they were designed to extend the limitation period, which would defeat the Convention's over-all aim of seeking uniformity of the period. That was why he supported the amendment submitted by the Indian delegation (A/CONF.63/C.1/L.115). Extension of the period at the wish of the parties was contrary to the concept of public policy on which limitation rested.

60. Mr. BOKMARK (Sweden) felt that the parties should be able to opt to shorten the limitation period. That would not give rise to abuse if internal law was applied. He construed the amendment submitted by the Federal Republic of Germany (A/CONF.63/C.1/L.123) as meaning that internal law would apply, and therefore supported it. The amendment submitted by Austria (A/CONF.63/C.1/L.139) was of great interest, but it should state explicitly that if the debtor waited too long before answering and his reply was then negative, the limitation period would not have been extended. The amendment submitted by Norway (A/CONF.63/C.1/L.101) had the same purpose and was also of interest. In Sweden, the autonomy of the will of the parties was respected, and his delegation therefore supported the Norwegian amendment. It also favoured the United Kingdom amendment (A/CONF.63/C.1/L.87).

61. Mr. SAM (Ghana) said he supported the amendment submitted by the Indian delegation (A/CONF.63/C.1/L.115), because he felt that article 17, paragraph 2, should be deleted. He also believed that the extension of the limitation period should begin to run from the date of the declaration of the debtor concerning acknowledgement of the debt. He supported the argument of the representative of Yugoslavia, because if exceptions to the rule concerning the limitation period were allowed, it would defeat the purpose of preparing the draft Convention. Once a limitation period of four

years had been agreed upon, there should be no attempts to undermine it, since many countries, including Ghana, would feel that the final product of all the efforts entailed in preparing a draft Convention was not worth adopting.

62. The amendment submitted by the United Kingdom delegation (A/CONF.63/C.1/L.87), although well drafted, seemed to him to be too restrictive. The meaning of the term "legal proceedings", as used in the Convention, had already been defined in article 1, paragraph 3, and that definition included arbitral proceedings. Furthermore, his delegation thought that the parties should not be allowed to shorten the limitation period as they saw fit. His delegation would therefore vote against that amendment.

63. His delegation could not accept the amendments submitted by the Bulgarian delegation (A/CONF.63/

C.1/L.98) and the Norwegian delegation (A/CONF.63/C.1/L.101). On the other hand, it would give its whole-hearted support to the proposal of the Indian delegation (A/CONF.63/C.1/L.115). He understood that the Czechoslovak delegation had agreed that its amendment (A/CONF.63/C.1/L.122) should be referred to the Drafting Committee and was entirely in agreement with that procedure.

64. He could not support the amendment submitted by the Federal Republic of Germany (A/CONF.63/C.1/L.123) or that submitted by Hungary (A/CONF.63/C.1/L.138). In conclusion, he expressed his delegation's support for the United States amendment (A/CONF.63/C.1/L.129), which, he felt, would improve the existing text considerably.

*The meeting rose at 1.15 p.m.*

## 20th meeting

Tuesday, 4 June 1974, at 3.20 p.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.20

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 Add.1 and 2, A/CONF.63/C.1/L.87, L.98, L.101, L.110, L.115, L.122, L.123, L.129, L.130, L.137, L.138, L.139, L.141) (continued)**

1. Mr. WATTLES (Executive Secretary of the Conference) requested delegations that had not yet submitted their credentials to do so as soon as possible. All delegations should ensure that they were in possession of full powers to enable them to sign the Convention. Full powers were not necessary for signing the Final Act of the Conference.

### *Article 21 (concluded)*

2. Mr. SMIT (United States of America) said that the amendment to article 1, paragraph 2, deleting the reference to the applicable law had been adopted in his absence. The modified text made it clear that the Convention did not affect a rule of law or a provision in a contract requiring the giving of notice. Since article 1, paragraph 2, mentioned only legal proceedings, the United Kingdom amendment to article 21, paragraph 3 (A/CONF.63/C.1/L.87), was necessary to allow the valid inclusion in the contract of a clause requiring arbitral proceedings to be commenced within a period shorter than the limitation period. In the absence of the provisions of article 21, paragraph 3, the courts might construe article 1, paragraph 2, as being applicable only to the laws governing a particular time-limit. Article 21, paragraph 3, must be retained to avoid misunderstanding.

3. Mr. ROGNLIEN (Norway), introducing the amendment contained in document A/CONF.63/C.1/L.101, said that the first sentence involved no changes of substance. The words "during the running of the limitation period" in article 21, paragraph 2, were not

appropriate once the limitation period had ceased to run in accordance with articles 12, 13, 14, 17 and 18. In such cases, the parties should not be excluded from the possibility of declaring the period extended. It was not intended that the amended text should allow the revival of a prescribed claim. In the light of the provisions of article 22, the second sentence of paragraph 2 of article 21 and the part of the third sentence of his amendment following the words "The debtor may renew the declaration" were unnecessary. He suggested that they should be deleted to simplify matters. If that was done, he would no longer press for the deletion of article 22.

4. He could support the United Kingdom amendment to paragraph 3, but he had some difficulty with the expression "the law applicable to the contract of sale", which might refer as well to the law governing the shortening of the limitation period as to the extent to which the parties to the contract could exclude the jurisdiction of the court. In the latter case, the court would have to decide to what extent such a clause was valid, and it should be allowed to apply its own law, including the provisions of private international law. If the United Kingdom representative could accept the expression "the applicable law", he would have no difficulty with the amendment.

5. Mr. MANZ (Switzerland) recalled that his delegation had asked for a clarification of the relationship between article 8, article 21, paragraph 2, and article 23. The question was a vital one as far as his delegation was concerned. Under Swiss law, if the debtor had agreed to extend the limitation period and the parties had begun to discuss a settlement of the dispute out of court towards the end of the second period, they could declare that they would not invoke the expiration of the limitation period within the next two years or so. If such a procedure was possible under the Convention, his delegation would have fewer mis-

givings about the shortness of the limitation period. It had been clear from the discussion of the Austrian proposal that many delegations considered that negotiation should be encouraged, because it was an excellent way to avoid unnecessary judicial proceedings. He agreed with the United States representative that the limitation period served the interests not only of the parties but also of the courts; it should therefore be interpreted flexibly.

6. Mr. SUMULONG (Philippines) pointed out that the fundamental issue raised by article 21 was whether the parties should be precluded from modifying the limitation period or whether they should be allowed to do what they felt was in their best interests. His delegation shared the view, expressed by the majority of delegations during the discussion of article 3, that the parties should be free to exclude the application of the Convention. Consequently, he could not support article 21, paragraph 1. Where adhesion contracts were concerned, the position was a matter of evidence. If a court decided that duress was involved, the adhesion contract would be invalid. Allowing the parties freedom of action would not be in conflict with public policy, because it would reduce the number of cases that were brought to court. As the International Chamber of Commerce had pointed out, many claims in respect of defects were settled by negotiation—a procedure he was sure the Committee did not wish to prevent. He favoured the amendments proposed by Bulgaria (A/CONF.63/C.1/L.98) and Norway (A/CONF.63/C.1/L.101).

7. Mr. KOPAC (Czechoslovakia) said he shared the view that there should be a compromise between flexibility and rigidity. He could accept the Bulgarian amendment, which was a good basis for such a compromise because it allowed the parties freedom to modify and adapt the limitation period.

8. The existing text of article 21, paragraph 3, and the United Kingdom amendment (A/CONF.63/C.1/L.87), on the other hand, destroyed the compromise. Article 3 of the draft Convention allowed the parties to modify the rules without any limitations in the form of arbitration clauses. Since most international sales contracts contained arbitration clauses, the effect of the provisions of article 21, paragraph 3, would be very limited. His delegation had therefore proposed the use of the words "legal proceedings" instead of "judicial proceedings", as being more in line with the principle of compromise and balance.

9. Mr. GOKHALE (India) said there seemed to be general agreement that article 21, paragraph 2, should be deleted, together with any references to it. Quite apart from the principle of public policy, it seemed that the exception provided for in paragraph 2 destroyed the fundamental principle laid down in paragraph 1 of the article. Article 8 established a reasonably long limitation period, and articles 15 to 20 covered contingencies that might arise. If the debtor was allowed further liberties, the whole purpose of the Convention would be lost.

10. His delegation could accept the United States amendment to paragraph 3 contained in document A/CONF.63/C.1/L.129. The United Kingdom amendment introduced new provisions and could therefore be accepted as an additional paragraph to article 21. The intention behind the Austrian amendment (A/CONF.63/C.1/L.139) was good, but the amend-

ment would give rise to difficulties and confusion. It was not clear what would happen if the debtor made his declaration after a period of, say, seven years.

11. Mr. HJERNER (Sweden) said his delegation had already indicated its preference for the amendment submitted by the Federal Republic of Germany (A/CONF.63/C.1/L.123). Although in most cases the two-year minimum period proposed by Bulgaria would be sufficient, particularly if judicial proceedings were instituted, the pattern was different when the parties instituted arbitral proceedings. The United Kingdom amendment removed any restrictions in the event of arbitration. It was important not to interfere with the practice whereby, in case of a complaint, the buyer employed an inspector whose decisions were binding on the seller if the latter failed to go to arbitration within a fairly short period. He could not support the Bulgarian proposal, which would interfere with that practice. The simplest approach was to accept the Federal Republic of Germany's proposal and allow the parties to shorten the limitation period.

12. Mr. GUEST (United Kingdom) reminded the Committee of the history of draft article 21. When the draft was being prepared, the delegations of developing countries had insisted that it should not be made possible for sellers to use standard form contracts that would shorten the limitation period. Article 21 reflected that view, and it would be a pity to put obstacles in the way of developing countries wishing to accede to the Convention by placing limits on the contract of sale. If the amendment proposed by the Federal Republic of Germany was adopted, it would encourage traders to use standard form contracts. Article 21 as it stood struck a reasonable balance between the demands of the developing countries and practical reality. Paragraph 2 would not be unjust to the creditor, because a declaration of extension would be possible only if the limitation period had started. Depending on the outcome of the debate on article 22, it might be possible to accept the Norwegian amendment.

13. Paragraph 3 did not upset the balance of paragraph 1, because the reference to judicial proceedings allowed a shorter period in the case of arbitration proceedings. That simply reflected the practice of the commodity markets. The Austrian amendment would only apply in very rare cases, because the usual procedure was to reject a demand outright while expressing one's readiness to discuss it. The UNCITRAL Working Group on Prescription had considered the issue of suspension, and had decided that it was not a practical one.

14. All the amendments before the Committee contained points of substance; he hoped they would all be put to the vote.

15. Mr. MICHIDA (Japan) said that, if the proposals designed to give the parties complete freedom were accepted, the whole point of unification would be lost and developing countries would find it more difficult to accede to the Convention. He endorsed the comments made by the representative of the United Kingdom.

16. Mr. GUEIROS (Brazil) supported the Bulgarian amendment. Although he appreciated the points made by the representatives of Spain and India, he had been most impressed by the United Kingdom representative's statement. In order to ensure widespread support



for the Convention, the Conference should accept a compromise. Although the commercial legislation of Brazil allowed parties to make their own agreements concerning limitation, the provisions of the Convention would have to be taken into account. Even countries in which prescription was a matter of public policy would have to accept a compromise.

17. The CHAIRMAN observed that article 21 was already a compromise.

18. Mr. GOKHALE (India) said that paragraph 2 should be retained, provided that the extension mentioned in it applied to the initial limitation period. He could support the Hungarian proposal.

19. The CHAIRMAN announced that he would put to the vote the various amendments before the Committee.

20. After a brief discussion in which Mr. LOEWE (Austria), Mr. BELINFANTE (Netherlands), Mr. AL-QAYSI (Iraq) and Mr. STALEV (Bulgaria) participated, the CHAIRMAN ruled that the amendments submitted by India (A/CONF.63/C.1/L.115) and the Federal Republic of Germany (A/CONF.63/C.1/L.123) were the furthest removed in substance from the original text and should be voted on first, in accordance with rule 40 of the rules of procedure.

21. Mr. MUSEUX (France) asked whether adoption of the Indian proposal for the deletion of paragraph 2 would imply rejection of the Austrian amendment (A/CONF.63/C.1/L.139).

22. Mr. SAM (Ghana) recalled that many of the delegations which had supported the Austrian amendment at the preceding meeting had expressed the view that its proper place was not necessarily in article 21 and that it could conveniently be placed elsewhere in the Convention. If that was the understanding, the Austrian amendment would not be prejudiced by adoption of the Indian amendment.

23. Mr. LOEWE (Austria), supported by Mr. HJERNER (Sweden), proposed that the vote on the Austrian amendment should be taken after the Committee had disposed of all the other amendments to article 21. If it was adopted, the Drafting Committee should be assigned the task of further improving its wording and determining the proper place for it in the Convention.

*It was so decided.*

*The Indian amendment (A/CONF.63/C.1/L.115) was rejected by 26 votes to 14.*

*The amendment proposed by the Federal Republic of Germany (A/CONF.63/C.1/L.123) was rejected by 26 votes to 4.*

*The Bulgarian amendment (A/CONF.63/C.1/L.98) was rejected by 21 votes to 15.*

24. The CHAIRMAN announced that the Norwegian amendment (A/CONF.63/C.1/L.101) had been revised by the sponsor to read as follows:

"The debtor may at any time after the commencement of the limitation period extend the period by a declaration in writing to the creditor. Such declaration shall not have effect beyond the end of four years from the date on which the period would otherwise expire. The debtor may renew the declaration, subject to article 22."

*The Norwegian amendment (A/CONF.63/C.1/L.101), as revised, was rejected by 23 votes to 12.*

*The Hungarian amendment (A/CONF.63/C.1/L.138) was adopted by 20 votes to 6.*

*The Czechoslovak amendment (A/CONF.63/C.1/L.122) was rejected by 13 votes to 7.*

25. After a brief discussion in which the CHAIRMAN, Mr. LOEWE (Austria), Mr. GUEST (United Kingdom), Mr. HJERNER (Sweden) and Mr. HONNOLD (Chief, International Trade Law Branch) participated, the CHAIRMAN ruled that the Committee should next vote on the United Kingdom amendment (A/CONF.63/C.1/L.87) and, if it was rejected, proceed to vote on the United States amendment (A/CONF.63/C.1/L.129).

*The United Kingdom amendment (A/CONF.63/C.1/L.89) was adopted by 15 votes to 12.*

26. Mr. SAM (Ghana) requested that a vote should be taken on the United States amendment.

27. Mr. SMIT (United States of America) said that his delegation's amendment was not incompatible with the United Kingdom amendment. The original text of article 21, paragraph 3, had been intended to make clear that the article should not affect the validity of two types of contract clauses: firstly, clauses concerning a time-limit by reason of which the acquisition or exercise of a claim was dependent upon one party's giving notice to the other party, and, secondly, clauses whereby a party to a contract could be required to institute arbitral or other non-judicial proceedings within a certain period of time as a condition for the acquisition or exercise of a claim. The United Kingdom amendment covered the second point, and the United States amendment was designed to clarify the intention of the original text with regard to the first type of clause.

28. He proposed that the amendment should be put to the vote and, if adopted, be transmitted with the United Kingdom amendment to the Drafting Committee, which should be requested to draw up a consolidated text incorporating the substance of the two amendments.

29. He wished to revise his amendment so as to replace the word "exercise" by "existence" and the word "judicial" by "legal".

30. The CHAIRMAN pointed out that the adoption of the United Kingdom amendment implied rejection of the United States amendment.

31. After a brief discussion in which Mr. AL-QAYSI (Iraq), Mr. GUEST (United Kingdom), Mr. SMIT (United States of America) and Mr. BURGUCHEV (Union of Soviet Socialist Republics) participated, Mr. AL-QAYSI (Iraq) drew attention to rule 33 of the rules of procedure, providing that a proposal which had been adopted or rejected could not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decided.

32. Mr. BELINFANTE (Netherlands), supported by Mr. HJERNER (Sweden) and Mr. GUEIROS (Brazil), moved for reconsideration of the United States amendment, in accordance with rule 33.

33. Mr. ROGNLIEN (Norway) opposed the motion on the ground that the United States amendment was inconsistent with the provisions of article 1, paragraph 2.

*The motion for reconsideration of the United States amendment (A/CONF.63/C.1/L.129) was rejected by 16 votes to 14.*



*The Austrian amendment (A/CONF.63/C.1/L.139) was rejected by 17 votes to 9.*

#### Article 22

34. The CHAIRMAN pointed out that the Committee had to decide whether or not article 22 should be retained, and invited the sponsors of amendments to introduce them.

35. Mr. ROGNLIEN (Norway) said that his delegation's amendment (A/CONF.63/C.1/L.130) was intended to prevent duplication of the provisions regarding the over-all limits to the limitation period. He withdrew the principal and subsidiary proposals and maintained, as an amendment, only the text described as an alternative for drafting purposes (subsidiary proposal). His delegation would have preferred there should be no maximum limits in articles 18, 20 and 21 besides the over-all limitation period laid down in article 22. Exceptions to this over-all limitation were necessary in the case of matters coming under article 15, paragraph 2, and article 16, since the over-all limitation period might expire while court proceedings were under way, and their duration might be beyond the control of the creditor.

36. Cases under article 19 should also be excepted, since an acknowledgement by the debtor might be made at a late stage and furnish the basis for a new claim. However, as the provisions of article 19 could be interpreted in the same sense, he would not press for the inclusion of the reference to it in his amendment. The reference to article 20 in its present version might also be deleted.

37. Mr. ADAMSON (United Kingdom) said that the aim of his delegation's amendment (A/CONF.63/C.1/L.137) was to bring about a complete cut-off, at the end of 10 years in every case, of the period during which legal proceedings could be brought. It was important that the parties should know that their position was secure after a certain lapse of time, and the existing wording of article 22 did not make that point clear. The amendment was also intended to rule out any special period in case of defects or lack of conformity, the provisions for which were already to be found in article 10.

38. He was opposed to the Norwegian amendment because it might result in an indefinite extension of the limitation period, particularly in cases under article 16, which would leave the parties in an undesirable state of uncertainty about possible claims. The question of the possible postponement of the limitation period—under article 9, paragraph 2, for instance—would not be affected by the United Kingdom amendment. He reserved his position with regard to the Czechoslovak amendment, which he had not yet had time to study.

39. Mr. KOPAC (Czechoslovakia) said that, in submitting its amendment (A/CONF.63/C.1/L.140), his delegation had been motivated by the same reasons as the United Kingdom delegation, and the two texts were very similar. The only difference was that the Czechoslovak amendment mentioned articles 15, paragraph 2, to 21, whereas the United Kingdom amendment referred to "any provision" of the Convention and would thus conflict with article 24, under which legal proceedings could be instituted after the expiration of the limitation period. There were also cases where proceedings could be prolonged, or could be interrupted and resumed—under article 19, for instance. The

differences were slight and could well be ironed out by the Drafting Committee.

40. He withdrew the proposal for a new article 22 *bis* (A/CONF.63/C.1/L.141), which was superfluous in view of article 5 (d).

41. Mr. ZULETA (Colombia) said that his delegation's amendment (A/CONF.63/C.1/L.145) went much further than that of the United Kingdom and would meet a need which had been noted by States that were not represented at the Conference and had not taken part in earlier discussions of the draft Convention. Its aim was to establish a definite date after which no further legal proceedings could be brought. The draft Convention provided for the commencement of the limitation period but it contained no clear provision regarding a cut-off date. The period should not be as short as 10 years and might be as long as 25 years or more, provided that some definite date was fixed.

42. Mr. LOEWE (Austria) said that his delegation attached great importance to the retention of article 22. There must obviously be a date beyond which the debtor could be certain that no more claims against him were possible. Article 10, in the form in which it had been adopted by the Committee, laid down a limitation period of eight years but did not specify a cut-off date. Elsewhere, as in article 22, an over-all limitation period of 10 years was mentioned. It might be preferable to establish the same period in all cases for the cut-off of legal proceedings. He feared that, if the exceptions mentioned in the Norwegian amendment (A/CONF.63/C.1/L.130) were allowed, the limitation period might exceed 10 years. He sympathized with the motives behind the Colombian amendment, but he had very considerable doubts about it because of the length of the period envisaged. The representative of Colombia had mentioned 25 years or more. That was unnecessary, in his opinion; it would suffice to provide for a cut-off period of 10 years, which would not, however, run from the date of the conclusion of the contract.

43. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that there seemed to be a contradiction between article 22, which provided that no legal proceedings should be brought after the expiration of 10 years from the date on which the limitation period commenced to run, and article 23, under which the expiration of the limitation period was to be taken into consideration in legal proceedings only at the request of a party to such proceedings. Article 22 ruled out the possibility of bringing legal proceedings after a period of 10 years, but article 23 envisaged the possibility of so doing.

44. Mr. GUEIROS (Brazil) said that his preference was for the Colombian amendment (A/CONF.63/C.1/L.145). If that amendment could not be voted on because of the lateness of its submission, he would vote for the United Kingdom amendment (A/CONF.63/C.1/L.137). The United Kingdom text was preferable to that of Norway (A/CONF.63/C.1/L.130) because it did not provide for any exceptions, but he felt that it should be made consistent with the final text of article 10, which provided for a limitation period of eight years; however, he would defer to the wishes of the majority on that point.

45. The Colombian amendment would establish a clear date for the end of the limitation period, reckoned

from the time when the contract was signed. The Austrian representative's doubts had probably been motivated by concern about the existence of different dates for the performance of a contract; several dates were often specified in a contract for the completion of different phases of the work. That point might be cleared up by some changes in the drafting.

46. Mr. SMIT (United States of America) said that the United Kingdom and Czechoslovak proposals were intended to achieve the same result, but he preferred the wording of the Czechoslovak amendment. As the Soviet representative had pointed out, there was some inconsistency between article 22 and article 23; that was true both of the original text of article 22 and of the United Kingdom amendment. If proceedings were brought in violation of article 22, could the judge invoke article 23 of his own motion? The same question arose with regard to article 24. The Czechoslovak text was clearer, because it sought to fit the principle into the context of the limitation period and would thus apply to all articles relating to the limitation period, including articles 23 and 24, whereas the United Kingdom text would not. Furthermore, the limitation period at the end of 10 years might not be the original limitation period—under articles 18 and 19 for instance; it could be a new period or an extension. He therefore thought that the Czechoslovak amendment, good as it was, could be improved if it was reworded to read as follows:

"Notwithstanding the provisions of this Convention, any limitation period shall not be extended or renewed beyond 10 years from the date on which it commenced to run under articles 9 to 11 of this Convention."

47. Turning to the Norwegian amendment, he said that he would certainly prefer article 20 to be among exceptions, but the Committee had decided otherwise earlier in the debate. Nevertheless, a creditor might be compelled to institute legal proceedings in order to ensure the continuation of the limitation period.

48. As to the Colombian amendment, the termination of the limitation period should also be the starting-point for deciding the cut-off date. It should not be reckoned from the date of the conclusion of the contract, since some contracts might take up to five years to carry out—as in the case of contracts for the installation of machinery—and the buyer might not discover a defect until a considerable time later and would therefore be unable to make a claim before the end of the limitation period. The limitation period must run from the time when the buyer asserted his claim or, in the case of fraud, when he discovered the defect giving rise to the claim.

49. For the reasons he had indicated, he would vote against the Colombian and Czechoslovak amendments.

*The meeting rose at 6.05 p.m.*

## 21st meeting

Wednesday, 5 June 1974, at 10.15 a.m.

*Chairman:* Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.21

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.1/L.111, L.116, L.117, L.125, L.130, L.131, L.132, L.142, L.145, L.147, L.148) (continued)**

### *Article 22 (continued)*

1. Mrs. JUHASZ (Hungary) supported the amendment submitted by the delegations of Czechoslovakia and the United States (A/CONF.63/C.1/L.147). She was opposed to that submitted by the delegation of Colombia (A/CONF.63/C.1/L.145).

2. Mr. WAGNER (German Democratic Republic) also expressed support for the amendment by Czechoslovakia and the United States (A/CONF.63/C.1/L.147), which, in his opinion, provided a simple, easily understood text and eliminated the contradictions mentioned earlier by the representative of the Soviet Union.

3. Mr. NYGH (Australia) associated himself with the delegations which had expressed their support for the amendment by Czechoslovakia and the United States; it was in the interest of both debtors and the courts that there should be a time-limit on litigation.

4. He could not support the other amendments (A/CONF.63/C.1/L.130, L.145 and L.148).

5. Mr. GUEIROS (Brazil) and Mr. KHOO (Singapore) also expressed support for the amendment by Czechoslovakia and the United States (A/CONF.63/C.1/L.147).

6. Mr. MUSEUX (France) said that it was difficult to reconcile the provisions of the amendment by Czechoslovakia and the United States with the provisions in, for example, article 12 of the draft Convention concerning cessation and extension of the limitation period. While he was in favour of setting a maximum period in the manner outlined in article 22, he believed that wording should be found which would take into account the possible results of doing so.

7. Mr. ROGNLIEN (Norway) said that the wording of the amendment by Czechoslovakia and the United States (A/CONF.63/C.1/L.147), especially the first part of it, was excellent; however, he wished to propose a subamendment to the last part of the text: after the words "this Convention" the words "except to the extent that the period has been extended in accordance with articles 15, paragraph 2, 16 or 19" should be added.

8. Mr. OLIVENCIA (Spain) said that he shared the doubts expressed by the representative of France; moreover, in the Spanish text it was difficult to understand whether, when the act determining extension or renewal had taken place before 10 years had elapsed,

that meant that the effects of the act could not be extended for more than 10 years or that the act could not be carried out after 10 years had elapsed.

9. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the text proposed by the delegations of Czechoslovakia and the United States (A/CONF.63/C.1/L.147) was concise and satisfactory, and that he would vote in favour of it. The subamendment submitted orally by the delegation of Norway, on the other hand, was unacceptable to him.

10. Mr. LOEWE (Austria) agreed with the representative of the Soviet Union. The comments by the representative of France were certainly of interest, but he himself did not believe that the problem would be solved by the oral proposal of the delegation of Norway.

11. Mr. JENARD (Belgium) said that he, too, was unable to support the subamendment submitted orally by the delegation of Norway, largely on account of the reference to articles 15 and 16.

12. Mr. SUMULONG (Philippines) said that, while he was in favour of a maximum period of 10 years, he believed that provision should be made for exceptions such as those suggested by the representative of Norway, when the creditor was unable to initiate proceedings owing to circumstances beyond his control, for example, in the case of a localized war.

13. Mr. FRANTA (Federal Republic of Germany) said that his delegation supported the amendment submitted by Czechoslovakia and the United States because it believed that a maximum time-limit would have to be established on the extension or renewal of the limitation period. The problems raised by the delegation of France were non-existent; article 12 stated that the limitation period would cease to run when the creditor commenced judicial proceedings, and that principle would apply even if 10 years had elapsed. The amendment by Czechoslovakia and the United States referred only to extension or renewal, and had no bearing on the kind of situation contemplated in article 12. Of course, in cases in which the proceedings had not ended, the application of the extension provided for in article 15, paragraph 2, of the draft Convention would be subject to the provisions of the new article 22, but he saw no difficulty in that.

14. The problem in connexion with article 16, the provisions of which should not be governed by the 10-year period, was more difficult. In short, his delegation could accept the amendment to article 22 proposed by Czechoslovakia and the United States (A/CONF.63/C.1/L.147), except with respect to its effects on article 16.

15. Mr. BELINFANTE (Netherlands) agreed with the representative of the Federal Republic of Germany that the text submitted by Czechoslovakia and the United States with respect to article 22 in no way affected the provisions of article 12, contrary to what had been stated by the delegation of France. The same applied, in his opinion, to articles 13 and 14, but he asked the sponsors of amendment A/CONF.63/C.1/L.147 to confirm that view. The proposal by Norway, on the other hand, had no bearing on the issue raised by France; it referred to the extension of the limitation period in specific cases. He asked whether a vote would be taken on each article to which the exception proposed by Norway applied. At any rate, his delegation

supported the amendment proposed by Czechoslovakia and the United States (A/CONF.63/C.1/L.147).

16. Mr. SAM (Ghana) welcomed the spirit of compromise shown by the Committee in its consideration of article 22. His delegation believed, like those of the Philippines and the Netherlands, that the amendment proposed by Czechoslovakia and the United States had no bearing on the situations to which the delegations of France and Norway had referred. He asked what the opinion of the United States and Czechoslovakia was on that issue. It was possible that the opening phrase in the original article 22 "Notwithstanding the provisions of articles 12 to 21" referred to those situations.

17. Mr. SMIT (United States of America) said that the representative of France was correct in saying that the period mentioned in his amendment to article 22 (A/CONF.63/C.1/L.147) did not affect the situation which arose when a claim had been asserted; however, it could happen that a party deliberately made successive claims in several countries so that the period might cease to run. That problem could be eliminated by adopting a provision to the effect that proceedings could not be initiated in one country with a view to postponing indefinitely the expiry of a period of limitation in another; that proviso could be added to article 29, or to article 22, in which case a consequential amendment to article 24 would be required. A provision could be added to the last-named article to the effect that no legal proceedings could be initiated once the limitation period had commenced. The best course might be to take a token vote to determine whether such a change in the articles he had mentioned was feasible.

18. Mr. KOPAC (Czechoslovakia) said that the representative of the Netherlands was correct in stating that the amendment referred solely to extension or renewal and not to a situation in which the limitation period had ceased to run as provided for in articles 12, 13 and 14. Accordingly, the reservations expressed by France did not appear to be justified. The amendment submitted by the United States and his delegation did not affect the situations contemplated in article 15, and that was deliberate. The intention of the sponsors of amendment A/CONF.63/C.1/L.147 had been to set a definite time-limit, and, in his opinion, 10 years was sufficiently long. For those reasons he could not accept the exceptions proposed by Norway.

19. The CHAIRMAN asked whether the amendment should be referred back to the sponsors so that they might consider the counter-proposals of France, Norway and the United Kingdom.

20. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that it was unnecessary to refer the amendment back to the sponsors since the period proposed was clear and definite; no provision should be made for exceptions to it.

21. Mr. ADAMSON (United Kingdom) withdrew his amendment; he found that the amendment proposed by the delegations of the United States and Czechoslovakia more accurately expressed what he had wanted to say. The remarks made by the representatives of France and Norway had confused the issue, and the amendment proposed by the latter delegation was unnecessary. The only relevant change, in any case, would be that proposed by the delegation of Ireland. As the representative of the Soviet Union had said, to refer the amendment back to its sponsors would serve no pur-

pose, and it would be preferable to put the Norwegian amendment to the vote. If a vote was taken, his delegation would vote against any proposal requiring a change in the amendment submitted by the delegations of Czechoslovakia and the United States.

22. Mr. MUSEUX (France) explained, for the benefit of the representatives of the Soviet Union and the United Kingdom, that it had not been his delegation's intention to extend the limitation period for bringing new proceedings beyond 10 years. His delegation favoured setting up a small working group to resolve the problem, which was one of interpretation.

23. Mr. ROGNLIEN (Norway) said that the Committee, in making its decision, should take into account two considerations of equal importance: the desire of the Committee to establish a general over-all time-limit, and the need to avoid interfering with court procedures, which differed greatly from one country to another. Any solution adopted should combine both considerations. In the case covered by article 15 of the draft Convention, it would be unjust to deprive the creditor of the additional period of one year laid down in paragraph 2 of that article. A country's domestic legislation could not derogate from the Convention and would therefore not be a solution. The case covered by article 16 was somewhat different, in that nothing expressly was said about the judgement on the merits of the claim since that would be outside the scope of the Convention; the problem in that instance was not so acute. His delegation was prepared to agree to a compromise that, no exception should be made in the case of article 19. Exceptions should then be made only in cases in which legal proceedings had been instituted, without any limitation in time within which a final decision may be given, and further with regard to the short period of relief after the judgement.

24. Mr. DIAZ BRAVO (Mexico) said that it was his understanding that the difficulties arising in connexion with article 22 of the draft Convention stemmed from the fact that the Convention had been obliged, in respect of that article and also articles 9 and 11, to rely on domestic legislation. His delegation supported the substance of the amendment proposed by the delegations of Czechoslovakia and the United States (A/CONF.63/C.1/L.147) in so far as it coincided with the rules approved by UNCITRAL. The doubts expressed by the delegations of France and Spain probably arose from the reference to the limitation period being "extended" and "renewed", but that was merely a matter of form which could be resolved by the Drafting Committee. Unless a form of words such as that drawn up by the delegations of Czechoslovakia and the United States was included in the Convention, the periods provided for in the Convention could run virtually indefinitely. For that reason, a special limitation period was being sought in order to obviate the possibility of extending the period indefinitely by one device after another.

25. Mr. GOKHALE (India) said that his delegation would support the amendment submitted by the delegations of Czechoslovakia and the United States (A/CONF.63/C.1/L.147) on the understanding that it did not affect the provisions of articles 15 and 16. He saw no reason for the difficulties and doubts to which the amendment had given rise. He had a few minor drafting changes to suggest, but he first wanted the delegations of Czechoslovakia and the United States to

confirm that their amendment did not affect the provisions of articles 15 and 16.

26. Mr. BARNES (Ireland) withdrew his delegation's amendment (A/CONF.63/C.1/L.148).

27. Mr. ROUTAMO (Finland) said that he understood that the limitation period laid down in the Czechoslovakian and United States amendment (A/CONF.63/C.1/L.147) would affect the provisions of articles 15 and 16 and for that reason considered the Norwegian amendment (A/CONF.63/C.1/L.130) more satisfactory. He held, moreover, that the additional period of one year provided for in those articles should not be eliminated and he therefore could not accept the amendment submitted by the United States and Czechoslovakia.

28. Mr. ZULETA (Colombia) said that the amendment submitted by the delegations of the United States and Czechoslovakia (A/CONF.63/C.1/L.147) had the advantage of simplifying the first part of the wording, which constituted a reminder that the limitation period could not be extended or renewed once the time-limit had been reached. The wording of the amendment was more satisfactory than that submitted by his delegation (A/CONF.63/C.1/L.145), but two difficulties remained: articles 9, paragraph 2, and 10, already approved, referred to an arrangement which would be difficult to apply in countries where proceedings were written: the date on which the limitation period began in the case of a claim arising out of fraud by one of the parties or a defect in the goods. In countries in which the rigid written procedure prevented that fact from being established, the proceedings could be extended indefinitely. For that reason his delegation had sought to lay down an exact date, or one which could be established in advance on which the limitation period would commence. He understood why the Committee was unwilling to make that date the date on which the contract was concluded, and asked why it should not be the date on which the goods were handed over. There were three separate issues: the Committee had to decide whether it wanted to have a provision excluding the extension or renewal of the limitation period beyond a certain time-limit; it had to determine the date on which the periods would commence, either by the method laid down in articles 9, 10 and 11 or otherwise; and finally, it had to decide whether a compromise solution could be reached for establishing the date on which the limitation period would begin to run. A convention which was intended to be universal in scope could not ignore the difficulties he had mentioned at the beginning of his statement.

29. Mr. STALEV (Bulgaria) supported the amendment submitted by the delegations of Czechoslovakia and the United States (A/CONF.63/C.1/L.147), but suggested that the Drafting Committee should consider whether the articles of the Convention which dealt with the renewal or extension of the period should be placed between brackets.

30. Mr. BÖKMARK (Sweden) said that his delegation supported the Norwegian proposal (A/CONF.63/C.1/L.130) since it was not clear that the proposal of the delegations of Czechoslovakia and the United States (A/CONF.63/C.1/L.147) covered exceptions in the cases mentioned in the Norwegian amendment.

31. Mr. SAM (Ghana) considered that the amendment submitted by the delegations of Czechoslovakia and the United States (A/CONF.63/C.1/L.147) should stand as variant A. Then, since the delegations

of Czechoslovakia and the United States had recognized that the comments of the representatives of France and Norway should be taken into account, they could constitute variant B, and a vote could be taken.

32. Mr. ZULETA (Colombia) withdrew his delegation's amendment (A/CONF.63/C.1/L.145).

33. The CHAIRMAN suggested that a working group comprising the delegations of Czechoslovakia, the United States, Norway, the United Kingdom and the Soviet Union should be set up to consider the amendment submitted by the delegations of Czechoslovakia and the United States (A/CONF.63/C.1/L.147), together with the amendment to that document orally proposed by the representative of Norway. If he heard no objection, he would take it that the Committee agreed that the working group should be set up as described.

*It was so decided.*

#### Article 23

34. Mr. MAHMOOD (Pakistan) introduced his delegation's amendment (A/CONF.63/C.1/L.125) and pointed out that the agent who could invoke limitation varied from country to country. In some countries it could be invoked *suo officio* by the courts, whereas in others it could be taken into consideration only at the request of a party to proceedings.

35. The problem had been resolved in the draft Convention by providing, in article 23, a general rule to the effect that the expiration of the limitation period should be taken into consideration only at the request of a party to proceedings, and by incorporating, in article 35, a reservation to the effect that any State might declare, when ratifying or acceding to the Convention, that it would not apply the provisions of article 23.

36. In order to simplify the Convention and avoid the need to include two articles on the same question, his delegation offered the text contained in its amendment (A/CONF.63/C.1/L.125), with the observation that if the text was accepted, the amendment to delete article 35 (A/CONF.63/C.1/L.126) should also be accepted. If the amendment to article 23 was rejected, his delegation would withdraw the amendment concerning article 35.

37. Mr. GOKHALE (India) said that in his view the question of prescription was a matter of public interest, and that was why he had submitted the amendment contained in document A/CONF.63/C.1/L.142.

38. Mr. SMIT (United States of America) said that his delegation's amendment (A/CONF.63/C.1/L.131) related to wording rather than substance and might therefore be transmitted directly to the Drafting Committee for study.

39. Mr. LOEWE (Austria) said that both in the present text of article 23 and in the text proposed by the Pakistan delegation (A/CONF.63/C.1/L.125) the result was the same, namely, that the parties should apply their national legislation with respect to the question.

40. However, if the present text was accepted, it could be known in each case what the position of the State concerned was; that would not be true if the Pakistan amendment or the Indian amendment (A/CONF.63/C.1/L.142) was accepted. His delegation preferred the present system.

41. Mr. GUEIROS (Brazil) endorsed the comments of the representative of Austria and said that his delegation preferred the present text of article 23, although it would like to have the text submitted to the Drafting Committee, which could deal with the form of the article.

42. Mr. NJENGA (Kenya) and Mr. BÖCKMARK (Sweden) said that they favoured the Indian amendment (A/CONF.63/C.1/L.142) to delete article 23 in its entirety.

43. Mr. JENARD (Belgium) said that he, like the representative of Austria, preferred retaining the original text of article 23.

44. Mr. STALEV (Bulgaria) proposed putting the question to the vote.

45. Mr. BELINFANTE (Netherlands) pointed out that in many countries there were two classes of prescription provisions: one was not a matter of public interest but was applied at the request of a party, while the other resulted in *déchéance*, which was considered a matter of public interest, and could be applied by the courts *suo motu*. In India all prescription was a matter of public interest, but since in some other countries that was not the case, the possibility had to be covered, as provided in the excellent amendment submitted by Pakistan.

46. Mr. ZULETA (Colombia) said that if the rules concerning the commencement of the limitation period were clearly defined, he would support the Pakistan amendment (A/CONF.63/C.1/L.125), since it reconciled the two systems. As that was not the case, however, he favoured retaining the present wording of article 23, which placed the burden of proof on the party invoking limitation.

47. The CHAIRMAN put to the vote the amendments to article 23 by India (A/CONF.63/C.1/L.142) and by Pakistan (A/CONF.63/C.1/L.125).

*The amendment proposed by India was rejected by 26 votes to 3.*

*The amendment proposed by Pakistan was rejected by 25 votes to 10.*

48. Mr. MAHMOOD (Pakistan) said that, in view of the result of the vote, he would withdraw his amendment to article 35.

#### Article 24

49. Mr. BURGUCHEV (Union of Soviet Socialist Republics) introduced his amendment (A/CONF.63/C.1/L.111) and said that its purpose was to distinguish clearly between the two aspects of the question, to which article 24 referred.

50. Mr. ROGNLIEN (Norway) said, with reference to his delegation's amendment (A/CONF.63/C.1/L.116), and to the expression "in the course of the same transaction" that it was preferable to leave the question to the Drafting Committee.

51. Mr. KHOO (Singapore), introducing amendment A/CONF.63/C.1/L.127, said that his delegation had based it on the fact that in his country counterclaim was not the same as set-off and therefore the original version of article 24 excluded the possibility of counterclaim for the common-law countries.

52. Mr. SMIT (United States of America) said that his delegation had decided to withdraw its amendment (A/CONF.63/C.1/L.132) to article 24 and to prepare another amendment (A/CONF.63/C.1/L.143), which he proceeded to read out.

53. That formulation differed from the present text of article 24, under which no claim could be enforced if the limitation period expired at any time during the proceedings. Under the amended version, in situations in which the limitation period ceased to run by virtue of article 12, the 10-year limit could be made applicable by commencing proceedings before expiration of the period, and the amendment therefore solved the problem raised by the representative of France; it also solved the problems mentioned by other delegations with respect to the application of articles 15 and 16.

54. Mr. KHOO (Singapore) said that there were differences between the provisions of article 12, paragraph 2, and the provision of article 24, paragraph 2, since counterclaim was subject to only one condition in the first case and to two conditions in the second.

55. Mr. LOEWE (Austria) said that the Soviet amendment (A/CONF.63/C.1/L.111) restricted the applicability of article 24 too much, whereas the Singaporean amendment (A/CONF.63/C.1/L.127) completed it; he therefore supported the latter amendment. With regard to the United States amendment (A/CONF.63/C.1/L.143), he believed that any change in article 24, paragraph 1, was an improvement, since the wording of the paragraph was unclear, at least in French. He believed that the reference to article 25 in the United States amendment was an error.

56. Mr. GUEIROS (Brazil) said that he would have no difficulty in accepting the Soviet amendment (A/CONF.63/C.1/L.111). With regard to the Singaporean amendment (A/CONF.63/C.1/L.127), he said that in Brazilian legislation, which was based on Roman law, defence and counterclaim were procedural institutions, whereas set-off was not. He agreed to the inclusion of counterclaim but believed that set-off should not be mentioned in the amendment, since it might be the object of a counterclaim. In other respects he agreed with the Singaporean amendment.

57. Mr. ROGNLIEN (Norway) said that the Soviet proposal (A/CONF.63/C.1/L.111) would limit the right to set-off too severely. The present wording of article 24, paragraph 2, contained two independent hypotheses, either of which could exist without the other. Before deciding on the Singaporean amendment (A/CONF.63/C.1/L.127), the Committee should decide whether counterclaim should be dealt with only in article 12, paragraph 2, or in article 24. If counterclaim was mentioned in article 24, it would be limited to the purposes of defence against a claim. The Singaporean proposal altered the structure of the draft Convention in that respect.

58. Mr. ZULETA (Colombia) supported the USSR amendment (A/CONF.63/C.1/L.111) because he considered it sufficiently limiting and also supported the Singaporean amendment (A/CONF.63/C.1/L.127) because in the legal system of Colombia and many other countries, set-off, counterclaim and defence were three different things.

59. He requested that the new United States amendment (A/CONF.63/C.1/L.143) should be treated in the same way as his own delegation's amendment had been treated on the previous day.

60. Mrs. JUHASZ (Hungary) supported the Soviet proposal (A/CONF.63/C.1/L.111).

61. Mr. SMIT (United States of America) replying to the comments of the representative of Austria, said that he did not oppose retaining the reference to article 23 in article 24, paragraph 1, provided that the paragraph also included a reference to article 25, which he considered necessary.

62. Mr. LOEWE (Austria) expressed surprise at the fact that some delegations supported both the USSR amendment (A/CONF.63/C.1/L.111) and the Singaporean amendment (A/CONF.63/C.1/L.127), since he believed that the two were incompatible.

*The meeting rose at 1 p.m.*

## 22nd meeting

Wednesday, 5 June 1974, at 3.15 p.m.

*Chairman:* Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.22

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6, Add.1 and 2, A/CONF.63/C.1/L.111, L.127, L.144) (continued)

#### *Articles 22 and 24 (concluded)*

1. Mr. SMIT (United States of America) said that the working group established at the preceding meeting, composed of the representatives of Czechoslovakia, France, Norway, the USSR, the United Kingdom and the United States, had agreed on the following texts for article 22 and article 24, paragraph 1, which were closely linked:

#### *"Article 22*

"Notwithstanding the provisions of articles [15 (2)], [16], [17], [18], [19] and [21] of this Con-

vention, a limitation period shall in any event expire not later than 10 years from the date on which it commenced to run under articles 9 to 11 of this Convention.

#### *"Article 24*

"1. Subject to the provisions of paragraph 2 of this article and of articles [15 (2)], 23 and [25], no claim shall be recognized or enforced in any legal proceedings commenced either after the expiration of the limitation period or after the expiration of 10 years from the date of commencement of the limitation period under articles 9 to 11 of this Convention."

2. What the working group had had in mind in submitting those two texts together was that, although article 22 would provide a 10-year cut-off if the limitation period was extended or renewed beyond the



initial four years, it did not cover a period that had ceased to run, which could not be extended or renewed. Article 24, paragraph 1, was intended to prevent proceedings being brought at a later date. Taken together, the two texts provided that there should be a cut-off for the limitation period 10 years after it had started to run, but that should not apply if proceedings were brought before the period had expired. Lastly, the reason why the working group had placed the article numbers in square brackets in its text of article 22 was to enable the Committee to decide whether the principle enunciated in that article should be subject to the exceptions provided for in the articles enumerated. That would be clear if a vote was taken on the retention or deletion of each one.

3. Mr. FRANTA (Federal Republic of Germany) said that the meaning of the word "Notwithstanding" at the beginning of the text for article 22 was unclear to him. His delegation wished the extension provided for in article 16 to be for more than 10 years, but it did not know whether the inclusion or exclusion of a reference to that article in article 22 would achieve that purpose.

4. Mr. ROGNLIEN (Norway) suggested that the word "Notwithstanding" should be replaced by the words "Subject to the provisions of".

5. Mr. SMIT (United States of America) said he could accept that suggestion.

6. Mr. STALEV (Bulgaria) said that the inclusion of the words "Subject to" might have the effect of allowing a longer period than 10 years before a cut-off in the case of proceedings under the articles enumerated.

7. Mr. SMIT (United States of America) pointed out that some delegations took the view that there should not be a cut-off after 10 years in the case of those articles.

8. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he could not accept the words "Subject to", which were opposite in meaning to the word "Notwithstanding".

9. Mr. MUSEUX (France) concurred in the view expressed by the Soviet representative.

10. Mr. BELINFANTE (Netherlands) said that it would be easier for the Committee to decide first whether it wanted to allow any exceptions to the principle enunciated in article 22; if it did, it could then decide which exceptions it wished to include.

11. After a brief discussion in which Mr. BURGUCHEV (Union of Soviet Socialist Republics), Mr. NYGH (Australia), Mr. ROGNLIEN (Norway), Mr. JENARD (Belgium) and Mr. ROUTAMO (Finland) participated, the CHAIRMAN invited the Committee to vote on whether any exceptions should be included in article 22.

*The Committee decided by 21 votes to 18 that no exceptions should be included in article 22.*

12. Mr. MUSEUX (France) said the articles specified in the text had been selected deliberately because the period of 10 years applied to those articles. The listing should be retained as it was, and the beginning of the article should read as submitted by the working group.

13. Mr. SAM (Ghana) said that the majority of the Committee did not want any exceptions in the

article. The Committee should revert to the Czechoslovak and United States proposals.

14. Mr. KHOO (Singapore) observed that, in the light of the vote that had been taken, the whole matter could be placed in the hands of the Drafting Committee.

15. The CHAIRMAN pointed out that, before that could be done, the Committee would have to accept the text submitted by the working group.

16. Mr. ADAMSON (United Kingdom) said a decision had been taken on the principle involved. The text should be referred to the Drafting Committee. No further action was required for the time being.

17. Mr. ROGNLIEN (Norway) said that the proposal itself must be put to the vote. The paragraph should begin with the word "Notwithstanding", and there should be no reference to articles 12, 13 and 14.

18. Mr. LOEWE (Austria) said it would be absurd, after the Committee's decision not to allow any exceptions, to adopt an article that contained exceptions. There had been no intention of excluding the situations covered by any articles from the 10-year period. It was for the Drafting Committee to consider the text.

19. The CHAIRMAN put to an indicative vote the question whether the Committee should vote on the text of article 22 submitted by the working group.

*The Committee indicated by 18 votes to 9 that it wished to vote on the text.*

20. Mr. JENARD (Belgium) said the article made the situation far too complicated. He would prefer a provision to the effect that no proceedings could be started more than 10 years after the beginning of the period specified in articles 9 to 11. If article 22 was not simplified, it would be impossible for the layman to understand the Convention.

21. The CHAIRMAN invited the Committee to vote on the substance of the text for article 22 by the working group, on the understanding that the precise wording would be left to the Drafting Committee.

*The substance of the text was adopted by 22 votes to 3.*

22. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that he had voted in favour of the working group's text on the understanding that the provisions of article 22 applied only to articles 15 to 21.

23. Mr. LOEWE (Austria) said the text for article 24, paragraph 1, submitted by the working group was a very complicated way of saying something simple. In the light of the Committee's decision that there should be no exceptions under article 15, paragraph 2, in the context of article 22, he could see no reason for the reference to article 15, paragraph 2 which appeared in square brackets in the text for article 24.

24. Mr. SMIT (United States of America) agreed that it would be logical to delete the reference to article 15, paragraph 2 in article 24, paragraph 1.

25. Mr. ROGNLIEN (Norway) said the question whether the reference was to be deleted should be put to the vote.

*The Committee decided by 19 votes to 3 to delete the reference to article 15, paragraph 2 in article 24, paragraph 1.*

*The substance of the text for article 24, paragraph 1, submitted by the working group was adopted by 18 votes to 5.*



26. After a brief discussion in which Mr. GUEIROS (Brazil), Mr. SMIT (United States of America), Mr. BÖKMARK (Sweden), Mr. ADAMSON (United Kingdom), Mr. BELINFANTE (Netherlands) and Mr. HONNOLD (Chief, International Trade Law Branch) participated, the CHAIRMAN said he took it that the Committee wished to delete the reference to article 25 in article 24, paragraph 1.

*It was so decided.*

27. The CHAIRMAN invited the Committee to vote on the remaining amendments to article 24.

*The Soviet amendment (A/CONF.63/C.1/L.111) was rejected by 18 votes to 12.*

*The Singaporean amendment (A/CONF.63/C.1/L.127) was adopted by 14 votes to 11.*

#### *Proposed article 33 bis*

28. The CHAIRMAN drew attention to the proposal for a new article 33 *bis* submitted by six delegations (A/CONF.63/C.1/L.144). In that connexion, he invited the Chairman of the working group, established by the Committee at its 6th meeting to examine the relationship between the draft Convention on Prescription and existing and future conventions containing definitions of the international sale of goods, to report on the group's findings.

29. Mr. MICHIDA (Japan), Chairman of the working group, said that the principal problem which had exercised the members of the group—the representatives of Denmark, France, the Federal Republic of Germany, Hungary, Japan, the USSR and the United States—was the possibility that the retention in article 2 of a definition of an international sales contract different from that contained in the 1964 ULIS or the revised version thereof might deter present and future States parties to ULIS from ratifying the Convention on Prescription. The working group had considered three approaches to the problem: that represented by the French amendment to article 2 (A/CONF.63/C.1/L.38), which was designed to safeguard the interests of States parties to ULIS or any future convention on sales by stipulating that they should apply the provisions of such a convention with regard to the definition of a contract of international sale of goods; the original proposal by the Federal Republic of Germany for a new article 33 *bis* (A/CONF.63/C.1/L.23), which would have allowed such States to enter reservations to the same effect; and an informal compromise proposal by Hungary and the USSR, whereby States which had acceded to ULIS or might accede to any future convention on sales would be allowed to apply the definition contained in ULIS or the convention in question among themselves.

30. The working group had been unable to achieve unanimity on any of the three proposals. The representative of the Federal Republic of Germany, echoing the remarks made by the representative of Austria at the 6th meeting of the Committee had suggested that all States, and not merely those which were or would become parties to ULIS, should have the opportunity to reserve the right to apply the definition contained in ULIS. Accordingly, the representative of the Federal Republic of Germany had submitted to the working group the proposal which, sponsored by six delegations, was now before the Committee. Some members of the working group had observed that the new proposal

would allow unreasonable latitude for States to make declarations by way of derogation from article 2 of the Convention and would hamper future efforts to achieve a uniform definition. However, the working group had been unable to reach agreement on an alternative proposal, and document A/CONF.63/C.1/L.144 was therefore submitted to the Committee, independently of the group, by its sponsors.

31. His personal suggestion on how to proceed was that a vote should be taken after the Committee had discussed the new proposal; if the proposal was rejected, the Committee would have to decide on the principle of whether a reservation clause for the purpose of derogation from article 2 should be included in the Convention. The Chairman might wish to call for an indicative vote on that point.

32. Mr. FRANTA (Federal Republic of Germany), introducing the proposal for a new article 33 *bis* (A/CONF.63/C.1/L.144), said that the sponsors, all of which were or would become parties to ULIS, felt that the existence, in the Convention on Prescription and in ULIS, of two separate definitions of an international sales contract would create an intolerable situation for the courts and for business circles in States which acceded to both instruments. In the absence of a uniform definition, however, the proposed new article presented a workable compromise solution.

33. Paragraph 2 of the article provided that a reservation thereunder should cease to be effective one year after the revised ULIS had entered into force in respect of 20 States. At that stage, it would be possible to harmonize the sphere of application of the revised ULIS with that of the Convention on Prescription by means of a protocol to the latter. The words "Any State" had been used in paragraph 1 of the proposed article so as not to restrict its application to States which had ratified ULIS or would do so in the future, since it was his understanding that certain other States might be interested in reserving their position on article 2 of the Convention on Prescription.

34. Mr. LOEWE (Austria) said that his delegation could support paragraph 1 of the proposal in document A/CONF.63/C.1/L.144. Austria was considering the possibility of acceding to the 1964 ULIS and would be placed in a difficult situation if its sphere of application differed from that of the Convention on Prescription. The existence of uniform international legislation on sales was of paramount importance for the harmonious conduct of his country's trade relations, since many of its trading partners were parties to the 1964 Convention. Accordingly, he felt that the matter should be left open pending the achievement of a uniform definition, so that States like Austria would not be compelled to make an invidious choice between the Convention on Prescription and ULIS.

35. The Committee's decision on the proposed new article would be decisive for the success of the Convention. States which had not ratified ULIS, and had no intention of doing so, might be inclined to oppose the article on the ground that it would create two separate sets of rules under the same Convention. However, it should not be forgotten that, if no provision was made for reservations with regard to article 2, States parties to ULIS might be unable to ratify the Convention on Prescription. For reasons of practicality, he urged members to accept paragraph 1 of the proposed new article as a compromise solution.

36. On the other hand, paragraph 2 appeared to presuppose that ratification of the revised ULIS by 20 States would render the 1964 ULIS obsolete, which was not necessarily the case. The paragraph should therefore be deleted.

37. Mr. HARTNELL (Australia) said that his delegation was totally opposed to the proposed new article 33 *bis*. The adoption of such a reservation clause would be inconsistent with the Committee's desire—evidenced by its vote in favour of a single limitation period—to simplify the provisions of the Convention.

38. He observed that all States were free to translate international rules into their national laws in the manner they deemed most appropriate. Adoption of the proposed reservation clause would have the effect of further complicating international trade relations, since the terms of the clause would not be reflected in the legislation of countries which did not take advantage of it, and businessmen in those countries could not, therefore, be expected to be aware of the possibility that their trading partners would invoke the clause. That situation would create uncertainty in the application of the Convention. Moreover, the text of the 1964 ULIS had been widely criticized, even by States which had ratified it, and the drafters of the contemplated revised version had already succeeded in simplifying its provisions considerably. Paragraph 2 of the proposed new article contained an arbitrary stipulation

which would unduly hamper the effective application of a revised version of ULIS drawn up under the auspices of the United Nations.

39. Despite its opposition to the proposed article, his delegation saw no reason why States which so desired should not be free to apply the ULIS definitions in their dealings with each other.

40. Mr. GUEIROS (Brazil) reiterated his view that the definition of an international sales contract in the existing text of article 2 was too vague and could even be applied to domestic contracts. In particular, it lacked the essential international element of carriage, which was present in the 1964 version and the draft revision of ULIS. The proposed new article was therefore a necessary addition to the Convention. Brazil had not acceded to the 1964 ULIS but traded with States which had done so, and in such dealings it applied the ULIS definition of an international contract.

41. He felt that paragraph 2 of the proposed new article 33 *bis* required ratification of the revised ULIS by an excessively large number of States before the effect of the reservation clause would lapse. Subject to that comment, his delegation could accept the proposed article, on the understanding that, if adopted, it would be transmitted to the Drafting Committee for further improvement of the wording.

*The meeting rose at 6 p.m.*

## 23rd meeting

Wednesday, 5 June 1974, at 8.20 p.m.

*Chairman:* Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.23

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add.1 and 2, A/CONF.63/C.1/L.112, L.119, L.120, L.128, L.133, L.144) (continued)

#### *Proposed article 33 bis (concluded)*

1. Mrs. JUHASZ (Hungary) said that one of the principal objectives of the Conference was to achieve uniformity in respect of prescription in the international sale of goods, and the proposed article 33 *bis* (A/CONF.63/C.1/L.144) would not have that effect. She would prefer the system proposed in article 2 of the draft Convention (A/CONF.63/4), whereby its provisions would apply to those contracts that were defined by the Convention as being international; however, she could accept an arrangement whereby any Contracting State could declare a mutual relationship with other States making the same declaration, so that as between those States the Convention would apply only to international sales of goods specified in the Uniform Law on the International Sale of Goods (ULIS) annexed to the Hague Convention of 1964.

2. Mr. STALEV (Bulgaria) agreed that the existence of duplicate systems for treating contracts of international sale of goods could give rise to difficulties, but

said they should not be incapable of solution and were far less serious than the difficulties which would arise for States not parties to the ULIS Convention. He could not, therefore, accept the proposal in document A/CONF.63/C.1/L.144, although he might agree to a compromise solution on the lines suggested by the representative of Hungary.

3. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the Conference was confronted with an anomalous situation in which six States maintained that applying the Convention as it stood would cause difficulties for them, in apparent disregard of the fact that the reservation clause they proposed would create even greater difficulties for a much larger number of other States. A minority was seeking to impose its will on the majority, and adoption of their proposal would go against the general principles of international agreements, to say nothing of the spirit of ULIS and of UNCITRAL itself. He considered the proposal unacceptable.

4. Mr. YUSHITA (Japan) said that the Convention should be not only reasonable and balanced but also simple, uniform and easy to understand, so that it would afford the maximum benefit both to the courts and to those engaged in the international sale of goods. He would therefore like to see a single clear definition of the international sale of goods applicable to all

Contracting States, though that did not mean that his delegation was opposed to compromise so long as the compromise was reasonable and needed for the success of the Conference.

5. He found the proposal in document A/CONF.63/C.1/L.144 unacceptable in several respects. The words "Any State", without qualification, went much further than the wording used in the proposal for a new article 33 *bis* originally put forward by the Federal Republic of Germany and later withdrawn (A/CONF.63/C.1/L.23). The text now proposed contained a much wider option than was necessary and, as the representative of Australia had pointed out, was likely to cause serious difficulties for those engaged in the international sale of goods.

6. The stipulation in paragraph 2 of the new article 33 *bis* that 20 States must accede to a new convention on the international sale of goods before the reservation made under paragraph 1 became inoperative even if the new convention on the international sale of goods itself should have entered into force with the ratification of a small number of States also seemed unnecessary, and hardly in keeping with the spirit of compromise which he felt was desirable. He could understand that some States might find it difficult to accept the definition of the international sale of goods provided by article 2, paragraph 1, of the draft Convention, but he did not see how the proposed amendment would constitute a necessary compromise solution and could not, therefore, support it.

7. Mr. BELINFANTE (Netherlands) pointed out that only four of the six sponsors of the proposal had ratified the ULIS Convention; one speaker in the debate, on the other hand, had said that, although his Government did not wish to become a party to the ULIS Convention, it would be in favour of the proposed new article. The fact that any State, and not merely those which had ratified the ULIS Convention, could make the declaration, was an attractive feature of the proposal. The ULIS countries had the benefit of the definition of international sales of goods provided by the 1964 Convention, and those accepting the new ULIS would also have a definition. States not ratifying either the old or the new ULIS had no such definition and were free to choose the one contained in the draft Convention on Prescription, although he considered it inferior to the ULIS definition, which itself was far from perfect. States which were not parties to the original ULIS and did not contemplate acceding to the new Convention on Sales could still use the ULIS definition of the international sale of goods by making the declaration provided for in the proposed new article. If all of them did so, the fears expressed by several delegations that two definitions would be operating at the same time might well prove groundless.

8. Mr. JEMIYO (Nigeria) advocated a uniform definition of the international sale of goods but said that, since that might be difficult to achieve in practice, he would be prepared to accept the solution advanced in paragraph 1 of the proposed new article. However, he saw serious objections to the figure of 20 States stipulated in paragraph 2 of the draft; most similar agreements concluded under United Nations auspices specified a lower figure, such as 10. A far more serious point was that paragraph 2 would, in his opinion, greatly compromise the usefulness of the proposed

new ULIS, and he could therefore not support the amendment.

9. Mr. MUSEUX (France) conceded that a number of representatives had described the amendment as strange and anomalous because it would not be conducive to the degree of uniformity which all were seeking. However, he felt that practical considerations must prevail; the Conference had been convened in connexion with the international sale of goods, and the Convention it was preparing was only one part of a larger whole which remained to be completed. As he had pointed out when introducing his delegation's amendment to article 2 (A/CONF.63/C.1/L.38) at the fifth meeting of the Committee, the drafting of a Convention on Prescription was only part of a much wider task. The drafters of the definition which would form part of the new ULIS might be able to devote far more time to it than had been available in the case of the present Convention; meanwhile, the existing ULIS contained the most satisfactory definition of a contract of international sale of goods, and the proposed article 33 *bis* gave all States an opportunity to avail themselves of that definition. It was not a matter of a minority's seeking to impose its will on the majority; the sponsors of the proposal certainly did not wish to force States which were not in favour of the ULIS definition to adopt it. The gist of the proposal was that States which applied the ULIS definition could continue to apply it during a transitional period. That was surely far more logical than asking them to abandon the definition they already had, in favour of one which did not yet exist. For those reasons, the States which had proposed the amendment under discussion felt that they should be able to count on the understanding of the Committee.

10. Mr. JENARD (Belgium) said he could not agree with the argument that adoption of the amendment would introduce confusion because parties to a contract in different States might not know what provisions applied in the other State. Those opposing the amendment used that as a ground for stating that the definition in the draft Convention was preferable because it was simpler. In his view, it was too simple; one could well imagine a situation in which a transaction that the parties had regarded as a domestic sale turned out, to their surprise, to be an international sale within the meaning of the Convention. There was no question of a minority's having its way; what was needed was a Convention acceptable to all, and in the view of his delegation, if the definition proposed in the UNCITRAL draft (A/CONF.63/4) was adopted the acceptability of the Convention would be seriously compromised. He earnestly hoped that a solution acceptable to all could be found.

11. Mr. BARRERA GRAF (Mexico) said that he welcomed any attempt to achieve a compromise solution; in that spirit, he could not see why those States which had adopted the ULIS definition could not also accept the definition contained in the present draft Convention. However, he was prepared to regard the proposed new article as a possible compromise, although he would be reluctant to accept a clause allowing "any State" to declare a reservation; the opening words should be amended so as to restrict the proposal to States which had adopted, or intended to adopt, the ULIS definition.

12. He recalled that the number of ratifications or accessions required to bring the 1964 ULIS Conven-

tion into effect had been only six, and he proposed that that figure, instead of 20, should be stipulated in paragraph 2 of the amendment.

13. Mr. NJENGA (Kenya) observed that it was usual for States acceding to conventions which implied obligations at variance with those they had accepted under other conventions to take whatever action was necessary on their part to reconcile the differences. In the present case the States concerned could, for example, amend the previous Convention or endeavour to persuade others to modify the present draft Convention. However, he did not think that the proposal for a new article 33 *bis* would achieve the desired purpose because, as the representative of Australia had pointed out at the preceding meeting, it would destroy the principle of uniformity at which the Convention was aimed. If any State could declare that when applying the Convention it would also apply the definition from a quite different Convention, the result could only be confusion. He did not think that any State which had not ratified the 1964 ULIS Convention and had no intention of ratifying the new Convention on Sales would adopt the definitions provided by them. He was thinking mainly of Africa, where only one country had become a party to the 1964 Convention. It was not realistic to suppose that States would adopt a definition they had had no part in formulating, in preference to the definition provided by a Convention in the making of which they had actually participated.

14. In his view, the solution was for the countries which had ratified the ULIS Convention to agree on amending the 1964 definition. If that was not possible, they could revise the proposal under discussion (A/CONF.63/C.1/L.144) so as to limit its scope to the application of the Convention among themselves. For example, they could add at the end of paragraph 1 the words "with respect to other States parties to that Convention". That might make the amendment more acceptable; if it was adopted in its present form, he would have great difficulty in recommending his Government to ratify the Convention.

15. Mr. SAM (Ghana) said he appreciated the position of the sponsors of the proposed new article, which, having ratified and brought into force the ULIS Convention, were now being asked to accept the provisions of a new and different Convention. By offering other States the opportunity to apply ULIS in order to ensure uniformity at the international level, they were demonstrating magnanimity, rather than trying to impose a minority view. However, acceptance of the amendment would lead to the confusion referred to by the representative of Australia, for there would then be three different definitions of the international sale of goods, in the old and new ULIS and in the Convention on Prescription.

16. It had been claimed that the sponsors of the amendment had made their proposal because they found the definition of the international sale of goods contained in the draft Convention unsatisfactory. He wondered why, in that case, they did not assist the members of the Committee who had less experience in the field of international trade law in finding a new and universally acceptable definition. It was regrettable that they had not done so, or that they had not simply agreed to apply the ULIS definition among themselves until a new definition was evolved.

17. Paragraph 2 of the proposed text was also unsatisfactory; the sponsors, whose representatives in the Second Committee of the Conference had agreed that the Convention should come into force when ratified by only 10 States, were now saying that the declaration of reservation should be effective until there were far more ratifications than had been required to bring the original ULIS into force. He appealed to the sponsors of the amendment to contribute to the elaboration of a satisfactory definition for inclusion in the Convention.

18. Mr. OLIVENCIA (Spain) pointed out that the situation with regard to paragraph 1 of the amendment was not as simple as it might seem, since that paragraph could apply not only to States which had already ratified ULIS, but also to those which might do so in the future. Thus, there did seem to be a need for a reservation clause, however inappropriate such a provision might be. He had serious doubts concerning paragraph 2 of the proposal article, not only because it called for ratification by too large a number of States, but because a vacuum might result when the declaration of reservation ceased to be effective.

19. Mr. GOKHALE (India) felt that acceptance of the Convention would inevitably cause hardships for individual States, but that was no justification for entering a reservation as proposed in the amendment.

20. Mr. LANDFERMANN (Federal Republic of Germany) assured the Committee that the provisions of the proposed article would have absolutely no influence on the entry into force either of the new ULIS Convention or of any other agreement under United Nations auspices. The amendment called for ratification by 20 States only because its sponsors had felt that it would not be appropriate for the declaration to cease to be effective until substantially more States had ratified the new ULIS Convention. Once the declaration ceased to be effective, there would be no vacuum because, like all other States, those which had made the declaration of reservation would have to apply the definition of the international sale of goods contained in the Convention on Prescription.

21. The CHAIRMAN invited the Committee to vote on the amendment contained in document A/CONF.63/C.1/L.144.

*The amendment was rejected by 19 votes to 14.*

22. The CHAIRMAN suggested the establishment of a new working group, composed of the representatives of Belgium, the Federal Republic of Germany, Ghana and the USSR, to consider the relationship between the draft Convention on Prescription and existing and future conventions containing definitions of the international sale of goods and to propose one or more compromise formulae which would reconcile the views expressed concerning a possible declaration of reservation. He earnestly hoped that such proposals would be forthcoming in time for a vote by the end of the week.

23. Mr. SMIT (United States of America) proposed that the representative of Australia should also be a member of the working group in order to ensure balance.

*It was so decided.*

24. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the composition of the working group did not hold out much hope of success. His own delegation had done everything possible in the earlier working group to reach a compromise. No effort

should be spared in the new working group to reach a reasonable accommodation; if some delegations again maintained a rigid position, the group's efforts would be doomed to failure.

25. Mr. GUEIROS (Brazil) recalled the difficulties experienced by the earlier working group and asked whether the new group should try once more to reach a compromise on a declaration of reservation or whether it should seek a new definition of the international sale of goods. Any proposal for a new definition would raise procedural questions with regard to article 2 of the draft Convention, which the Committee had already accepted.

26. Mr. JENARD (Belgium) felt that the working group might be able to arrive at a new definition.

27. The CHAIRMAN said that the appropriate rules of procedure would be applied if the working group produced a new definition. If it put forward a compromise proposal concerning a declaration of reservation, the Committee should simply vote on that proposal.

#### Article 25

28. Mr. SMIT (United States of America) said that his delegation's amendment to article 25 (A/CONF.63/C.1/L.133) was merely a matter of drafting and could be referred to the Drafting Committee.

*It was so decided.*

#### Article 26

29. The CHAIRMAN noted that no amendments had been submitted to article 26.

#### Article 27

30. Mr. BÖKMARK (Sweden), introducing his delegation's amendment (A/CONF.63/C.1/L.120), said that the provisions of article 27 were very special and were therefore of limited interest. The article could be deleted without causing inconvenience.

31. Mr. GUEIROS (Brazil) said that, in his view the article was very important. Although the principle, referred to in the commentary on article 27 in the document attached to document A/CONF.63/5, of excluding the first day and including the last when calculating the limitation period was the opposite of the one applied under the laws of Brazil and many other civil-law countries, he would agree to it. He preferred the original draft of paragraph 2 to the text proposed by Singapore (A/CONF.63/C.1/L.128).

32. Mr. BURGUCHEV (Union of Soviet Socialist Republics) pointed out, with reference to the Singaporean amendment, that as the result of an earlier amendment (A/CONF.63/C.1/L.21) article 1 now included an indication of the calendar to be used for the purposes of the Convention. Consequently, there was no need to repeat the word "calendar" in article 27, paragraph 2, which should be examined to see whether it could be brought into harmony with article 1, paragraph 3 (h).

33. Mr. NYGH (Australia) agreed with the Brazilian representative's comments on paragraph 1. He pointed out that one of the reasons which had motivated the Singaporean delegation to submit an amendment to paragraph 2 (A/CONF.63/C.1/L.128) was the fact that the international date-line ran through the Pacific basin. Naturally, that created a problem only for countries in that area, and the Singaporean

amendment was perhaps a matter for the Drafting Committee, since in view of the definition of the word "year" in article 1, paragraph 3 (h), it did not add anything to the Convention. In the absence of the representative of Singapore, he would support the amendment on the usual understanding that it might be referred to the Drafting Committee.

34. Mr. SAM (Ghana) said he understood the intention of the representative of Singapore. In view of the definition in article 1, paragraph 3 (h), it seemed useless to repeat the word "calendar" in article 27, paragraph 2. The amendment was therefore in order and his delegation would support it.

35. Mr. ROGNLIEN (Norway) said that the purpose of article 27 was to ensure that the limitation period was calculated by reference to one system only. His delegation supported the Singaporean amendment on the understanding that it would be referred to the Drafting Committee. It was not in favour of the Swedish amendment.

36. Mr. BÖKMARK (Sweden) said that, in view of the lack of support, he withdrew his delegation's amendment (A/CONF.63/C.1/L.120).

*The Singaporean amendment (A/CONF.63/C.1/L.128) was adopted by 27 votes to 1.*

#### Article 28

37. Mr. BÖKMARK (Sweden) withdrew his delegation's proposal for the deletion of article 28 (A/CONF.63/C.1/L.119).

38. Mr. GUEIROS (Brazil) proposed that the Latin expression "*dies non juridicus*" should be replaced by the words "non-business day", since the Convention was intended for the use of laymen and the expressions were interchangeable. The amendment related to the English text only.

39. Mr. MUSEUX (France) proposed a drafting change in the French text. After the word "*obstacle*" in the second line, the text should read: "*à ce qu'une procédure soit engagée devant la juridiction à laquelle le créancier a recours comme prévu à l'article 12. . .*".

40. The CHAIRMAN said that the Brazilian and French amendments would be referred to the Drafting Committee.

41. Mr. BURGUCHEV (Union of Soviet Socialist Republics), introducing his delegation's amendment (A/CONF.63/C.1/L.112), said that it would fill a gap in article 28. It seemed only reasonable to provide for cases where arbitral proceedings were instituted under article 13.

42. Mr. ROGNLIEN (Norway) said that there was a problem; as arbitral proceedings could be commenced unofficially without any public notice being given, there was nothing to prevent a creditor from instituting such proceedings on a holiday. The amendment could be referred to the Drafting Committee, but he felt that if it was adopted it would not fit into the system.

43. Mr. ENDERLEIN (German Democratic Republic) pointed out that there were two kinds of arbitration procedures. *Ad hoc* arbitration could, of course, be initiated on a holiday but in many countries there were also permanent arbitration bodies, and proceedings involving them could not be instituted on an official holiday. He therefore supported the amendment.

44. Mr. STALEV (Bulgaria) and Mr. GUEIROS (Brazil) supported the Soviet amendment.

45. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the representative of the German Democratic Republic had explained the situation quite succinctly. *Ad hoc* arbitration proceedings would not, of course, be covered by the amendment.

46. Mr. BELINFANTE (Netherlands) supported the amendment, which would be helpful to a number of countries even if it was not necessary in others. In any event, it would do no harm.

*The Soviet amendment (A/CONF.63/C.1/L.112) was adopted by 32 votes to none.*

*The meeting rose at 10 p.m.*

## 24th meeting

Thursday, 6 June 1974, at 10.30 a.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.24

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add.1 and 2, A/CONF.63/C.1/L.113, L.117, L.135, L.136 and L.150) (continued)

#### Article 29

1. Mr. HONNOLD (Chief, International Trade Law Branch) said that article 29 dealt with the very complex problem of the effect in a Contracting State of acts or circumstances which took place in another Contracting State, a problem that had already been considered by UNCITRAL. By way of example, he mentioned the cases cited in the commentary on article 29 in document A/CONF.63/5.

2. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his amendment (A/CONF.63/C.1/L.113) was not one of substance, and he therefore suggested that it should be transmitted to the Drafting Committee.

3. Mr. ROGNLIEN (Norway) said that his delegation had decided to submit its amendment (A/CONF.63/C.1/L.117) because it did not agree that the relations between private parties to a sales contract should be dependent on a principle of reciprocity between States in respect of the drafting of a convention. The word "Contracting", the second time it appears in article 29, should therefore be deleted, so that Contracting States would be obliged to give effect to acts or circumstances which took place in another State, whether or not it was a Contracting State.

4. Mr. GUEST (United Kingdom), introducing his delegation's amendment (A/CONF.63/C.1/L.135), said that it consisted in replacing the article as currently drafted by two paragraphs, the first of which had the same purpose as the amendment proposed by the USSR delegation. The second paragraph, on the other hand, was substantive, the intention being to stipulate an additional requirement for recognition of the interruption of the limitation period on one State by the assertion of a claim in another State. That requirement introduced the concept of the competence of legal proceedings, which was recognized in all legal systems and the clarification of which was precisely the purpose of the Austrian amendment (A/CONF.63/C.1/L.150).

5. With regard to the Norwegian amendment (A/CONF.63/C.1/L.117), he said it was his belief that reciprocity was the essence of the Convention.

6. Mr. SMIT (United States of America) withdrew paragraph 1 of the amendment proposed by his delegation (A/CONF.63/C.1/L.136) since it had the same purpose as the Soviet amendment (A/CONF.63/C.1/L.113).

7. He wished to revise paragraph 2 of his amendment by deleting the last part, beginning with the words "provided that the creditor". The reason for the amendment was that the existing text of article 29 referred to acts which led to the commencement of proceedings. However, articles 19 and 21 (2) referred to acts of a different kind, and they should be mentioned in that context.

8. Mr. LOEWE (Austria) said that, as the United Kingdom representative had already noted, his delegation's amendment (A/CONF.63/C.1/L.150) was based on the same ideas as the United Kingdom amendment. It would be bad legislative policy to give effect to all acts performed in any State. The Convention should clearly specify where the acts referred to should be given effect.

9. His attention had been drawn to some imprecise wording in the amendment, which could be corrected by inserting the conjunction "or" between subparagraphs (a) and (b) and replacing the words "in the first Contracting State" at the end of subparagraph (b) by the words "in the Contracting State in which they are to be given effect".

10. The United Kingdom amendment was well-conceived, but differed from his own delegation's in that it referred to the international rules of competence. The Norwegian amendment was diametrically opposed to that submitted by his own delegation, and he did not think that it should be approved.

11. Mr. STALEV (Bulgaria) said that the purpose of the amendments submitted by the United Kingdom (A/CONF.63/C.1/L.135) and Austria (A/CONF.63/C.1/L.150) was to clarify the problem of international competence, but his delegation in any case preferred the United Kingdom amendment because that of Austria was more restrictive; the latter amendment required the act to have taken place in the State in which the debtor had his place of business, a provision which did not take into account the possibility of



arbitration proceedings being conducted in a third country.

12. The United States amendment (A/CONF.63/C.1/L.136) was reasonable, in so far as it appeared preferable to mention articles 19 and 21 expressly in that context. Accordingly, he could support the amendments of the United Kingdom and the United States, but not the Norwegian amendment (A/CONF.63/C.1/L.117).

13. Mr. GUEIROS (Brazil) supported the amendment proposed by the Soviet Union (A/CONF.63/C.1/L.113), which had been referred to the Drafting Committee. He also supported the amendment submitted by Norway (A/CONF.63/C.1/L.117), and could accept the United Kingdom amendment (A/CONF.63/C.1/L.135), if the word "Contracting" was deleted whenever it appeared, and on the understanding that it was the court, and not the proceedings which was recognized as competent.

14. Mr. JENARD (Belgium) said that two of the amendments had already been submitted in UNCITRAL and had been rightly rejected. If the United Kingdom amendment (A/CONF.63/C.1/L.135) was adopted, the draft Convention would be completely void of international effect. An element of confusion would be introduced because of the enormous disparity between national legislations in respect of competence. Acceptance of the Austrian amendment (A/CONF.63/C.1/L.150) would also lead to uncertainty, and the result of both amendments would be to deprive the Convention of any practical effect.

15. Mr. ROGNLIEN (Norway) supported the drafting amendments presented by the Soviet Union (A/CONF.63/C.1/L.113) and the United States (A/CONF.63/C.1/L.136). Referring to the amendments submitted by the United Kingdom (A/CONF.63/C.1/L.135) and Austria (A/CONF.63/C.1/L.150), he said that both contained interesting points which should be considered. His delegation could accept the Austrian amendment provided that it was not restricted to Contracting States. The same applied to the United Kingdom amendment. Moreover, he would prefer paragraph 2 of the latter amendment to include the reference to articles 15, 17 and 18 which was made in paragraph 1. He agreed with the suggestion that a small working group should be set up to combine those amendments.

16. Mr. HARTNELL (Australia) associated himself with the remarks made by the representative of Belgium. He also felt that the Norwegian amendment (A/CONF.63/C.1/L.117) was a useful one and would support it for that reason.

17. Mr. TAKAKUWA (Japan) said he understood the concepts on which article 29 was based, but doubted whether that type of rule was practical and adequate. In most cases, the rule embodied in article 29, like that in article 16, would not be justified. For that reason, his delegation favoured the deletion of the article. He felt that the amendments proposed by the United Kingdom and Austria had the most merit, but reserved his position in that regard.

18. Mr. SMIT (United States of America) felt that the Norwegian amendment (A/CONF.63/C.1/L.117) was unacceptable, since the effects of the Convention should be limited to Contracting States. He supported the ideas on which the United Kingdom and Austrian amendments were based, because of the restrictive

effect they would have with regard to the institution of proceedings in various States. He fully supported the enumeration of articles given in the two paragraphs of the United Kingdom amendment (A/CONF.63/C.1/L.135), since the two groups of articles should be treated differently. He could accept paragraph 1 of the United Kingdom amendment in its entirety, but shared the concern expressed by the representative of Belgium with regard to paragraph 2. It was not the proceedings which were competent but the courts, and the introduction of the problem of competence would raise many problems and create a high degree of uncertainty with regard to the international effect of the Convention. The amendment submitted by Austria (A/CONF.63/C.1/L.150) was aimed at eliminating that uncertainty by providing criteria for determining competence and, for that reason, he would support that part of the amendment. His delegation favoured the consolidation of the amendments submitted by the United Kingdom and Austria into a single amendment which would contain the substance of paragraph 1 of the United Kingdom amendment and a paragraph listing exceptions based on the criteria set forth in the Austrian amendment. He thought that a small working group should be set up to examine and redraft the amendments.

19. Mr. BELINFANTE (Netherlands) said that the amendment submitted by the United Kingdom (A/CONF.63/C.1/L.135) was unacceptable in its present form, although he felt that it could very easily be changed. The manner in which it restricted the scope of article 29, however, could not be accepted. The Austrian amendment was much more clear, but restricted the scope of article 29 excessively. He suggested the use of the concept of competence found in the last Hague Convention on the subject; although it was not accepted by many countries, it was one of the clearest ways of solving the problem of competence. If that suggestion was not accepted, he would have no difficulty in accepting the present text with the drafting improvements proposed by the United Kingdom and the Soviet Union. He would vote in favour of the amendment submitted by Norway (A/CONF.63/C.1/L.117). The United States amendment (A/CONF.63/C.1/L.136) was very clear and stated what many delegations thought, but he wondered whether it was really necessary to introduce a reference to articles 19 and 21. He felt that that amendment was superfluous and hoped that it would not be adopted.

20. Mr. KOPAC (Czechoslovakia) observed that articles 12, 13, 14, 15 and 17 of the draft Convention related to questions involving legal proceedings, whereas articles 18, 19, 20 and 21 related to substantive matters. That fact was very important because in private international law, as the representative of the Netherlands had pointed out, it was impossible to speak of recognition of matters of substance. For that reason, his delegation believed that the amendment submitted and later orally subamended by the United States delegation (A/CONF.63/C.1/L.136) was superfluous and that article 29 should be accepted in its present form with some drafting changes.

21. The amendment submitted by the United Kingdom (A/CONF.63/C.1/L.135) was, in his view, unacceptable because it would give rise to difficulties with regard to competence; he also could not accept the Norwegian amendment (A/CONF.63/C.1/L.117).



22. Mr. BÖKMARK (Sweden) referred to the relationship existing between article 16 and article 29 of the draft Convention and supported the Norwegian amendment (A/CONF.63/C.1/L.117).

23. The present text also had some merit if he was correct in interpreting it to mean that under the article nothing in the Convention would prevent Contracting States from recognizing acts that had taken place in non-contracting States if they so desired.

24. His delegation would vote against the amendments submitted by Austria (A/CONF.63/C.1/L.150) and the United Kingdom (A/CONF.63/C.1/L.135) and would also vote against the United States proposal (A/CONF.63/C.1/L.136), which it considered unnecessary.

25. Mr. FRANTA (Federal Republic of Germany) said he believed that the amendments submitted by the United Kingdom (A/CONF.63/C.1/L.135) and Austria (A/CONF.63/C.1/L.150) were useful. It had been said that the latter would cause some uncertainty if accepted, but in his view that problem was unavoidable.

26. On the other hand, he could not support the amendment submitted by the delegation of Norway (A/CONF.63/C.1/L.117), which would force Contracting States to take account of proceedings commenced in any State.

27. He believed that the United States amendment (A/CONF.63/C.1/L.136), as later corrected by the United States delegation, was superfluous.

28. Mr. OLIVENCIA (Spain) recalled that, when article 3 of the draft Convention had been discussed, his delegation had opposed the inclusion of the word "Contracting" in the text.

29. Following the same approach, he did not understand why effect should be denied in every case to an act of interruption of the limitation period when that act had taken place in a non-contracting State.

30. His delegation supported the amendment submitted by Norway (A/CONF.63/C.1/L.117) and opposed those submitted by the United Kingdom (A/CONF.63/C.1/L.135) and Austria (A/CONF.63/C.1/L.150). In his delegation's view, the amendment submitted by the United States (A/CONF.63/C.1/L.136) and later corrected by its sponsor supplied an element of clarification, and Spain was therefore prepared to accept it.

31. Mr. DIAZ BRAVO (Mexico) said that the principle being considered by the Committee would provide an opportunity to make clear the international nature of the Convention but could also introduce elements of conflict between countries. His delegation was therefore pleased to note the spirit of conciliation prevailing at the meetings.

32. The amendment proposed by the USSR delegation (A/CONF.63/C.1/L.113) agreed in its essentials with a proposal formulated in UNCITRAL which had the advantage of stipulating obligatory notice to the debtor, and his delegation was therefore prepared to support it.

33. His delegation had at first believed that the Norwegian amendment (A/CONF.63/C.1/L.117) was not acceptable, but the arguments advanced by the Spanish delegation had persuaded his delegation to change its view.

34. The amendment proposed by the United Kingdom (A/CONF.63/C.1/L.135) had the disadvantage of eliminating the requirement of notice to the debtor and limiting the debtor's right to a hearing. Another unfavourable feature was the reliance on national legislation that was implied in the amendment.

35. Paragraph 2 of the amendment submitted by the United States (A/CONF.63/C.1/L.136) was not, in his view, so superfluous as some delegations had suggested.

36. Lastly, the amendment proposed by Austria (A/CONF.63/C.1/L.150) included a number of interesting elements, particularly the provision contained in subparagraph (a), provided that the parties were left free to choose the State in which proceedings should be instituted and that the State in question might or might not be party to the Convention.

37. His delegation endorsed the United States proposal to establish a working group to combine the various amendments submitted thus far into a single amendment, and it proposed the delegations of the Soviet Union, the United States, Austria and Norway as members of such a group.

38. Mrs. JUHÁSZ (Hungary) said that the purpose of article 29 was to ensure that acts were given full effect; a State that did not recognize the validity of claims asserted in another State would also be unwilling to become a contracting party to the Convention. In any case, her delegation favoured the present text and opposed any proposal to restrict it.

39. The Norwegian amendment (A/CONF.63/C.1/L.117) was worthy of consideration and was based on the same reasons as had been stated by the Spanish, Bulgarian and Mexican delegations, that is to say, it was opposed to the principle that a claim asserted in a Contracting State could produce effects only in another Contracting State.

40. Lastly, her delegation favoured the amendment proposed by the Soviet delegation (A/CONF.63/C.1/L.113) and the proposal to establish a working group.

41. Mr. GOKHALE (India) supported the amendment proposed by the Soviet delegation. His delegation recognized the usefulness of the United Kingdom amendment (A/CONF.63/C.1/L.135) but believed that paragraph 2 did not relate to a concrete situation. Proceedings commenced in a State not having jurisdiction were not competent. It would be best to refer the United Kingdom amendment, together with the Austrian amendment, to the Drafting Committee, which would put it into appropriate form.

42. With regard to the United States amendment (A/CONF.63/C.1/L.136), he doubted that article 20 should be omitted. If the amendment was to be submitted to the Drafting Committee, a reference to that article should be added. On the other hand, his delegation supported the amendment proposed by Norway (A/CONF.63/C.1/L.117).

43. Mr. ROGNLIEN (Norway) said that the competence of the court of the place of business was essential and that the amendment proposed by Austria (A/CONF.63/C.1/L.150) deserved consideration. Another important connecting point that the working group would have to consider was the place where the delivery, or rather the handing over of the goods to the buyer was effected.

44. Mr. SAM (Ghana) said that article 29 was very important, since the international effect referred to might create enormous difficulties. He believed that the purpose of the amendments submitted by Norway (A/CONF.63/C.1/L.117) and the United Kingdom (A/CONF.63/C.1/L.135) was to achieve the degree of certainty required in the matter. For that reason, care should be taken to arrive at a formulation that would provide such certainty, and the Norwegian amendment should therefore be considered with close attention. The United Kingdom amendment had some merits, although he recognized the difficulties that the determination of competence in courts would create. The amendment submitted by the Austrian delegation (A/CONF.63/C.1/L.150) provided the necessary certainty he had mentioned. He supported the establishment of a small working group to examine the proposals and try to reconcile them.

45. Mr. TAKAKUWA (Japan) accepted the general principles of the United Kingdom amendment (A/CONF.63/C.1/L.135) and the Austrian amendment (A/CONF.63/C.1/L.150) and considered it very important to limit effects to Contracting States. Of the two, he preferred the United Kingdom amendment, but he believed that the requirement in its paragraph 2 (b) was unnecessary and should be deleted. He reaffirmed that his delegation did not favour the present wording of article 29 and hoped that the majority would accept the United Kingdom or the Austrian amendment.

46. Mr. JENARD (Belgium) pointed out that if a working group was entrusted with examining a list of courts that would have competence, the group's work would be extremely difficult, as had been the case of all international meetings that had attempted to solve that problem. If a list of courts that could have competence was included, at least 10 would have to be indicated. The concept of competence suggested by the representative of the Netherlands might be adopted,

but that concept also involved difficulties. He believed that at the present stage of the work the Committee could not afford to take the time that would be required for reaching agreement on how the competence of courts was to be determined.

47. Mr. STALEV (Bulgaria) felt that if article 29 was applied in its present form, international effects might in some cases be recognized to exist for a claim asserted before a court that would be incompetent under the national legislation of the country in which the court was situated. After hearing the statement of the representative of Spain, he believed that the question of acts taking place in a non-contracting State should be reconsidered and that such acts should, by virtue of agreement between the parties, have international effects.

48. After a procedural debate in which Mr. GUEST (United Kingdom), Mr. BÖKMARK (Sweden), Mr. ROGNLIEN (Norway), Mr. SAM (Ghana), Mr. JENARD (Belgium), Mr. KHOO (Singapore), Mr. MUSEUX (France), Mr. SMIT (United States of America), Mr. LOEWE (Austria), Mr. STALEV (Bulgaria), Mr. OLIVENCIA (Spain), Mrs. DE BARRISH (Costa Rica) and Mr. BURGUCHEV (Union of Soviet Socialist Republics) took part, the CHAIRMAN, with a view to determining the sense of the Committee, invited the members to vote on the question of placing restrictions on the text of article 29.

*The Committee opposed the introduction of restrictions in the text of article 29 by 20 votes to 14.*

49. The CHAIRMAN then invited the members of the Committee to indicate whether they wanted to expand the scope of the text of article 29 in such a way as was proposed in the Norwegian amendment (A/CONF.63/C.1/L.117).

*There were 17 votes in favour and 17 against. The motion was not adopted.*

*The meeting rose at 1.15 p.m.*

## 25th meeting

Thursday, 6 June 1974, at 3.15 p.m.

Chairman: Mr. CHAFIK (Egypt).

A/CONF.63/C.1/SR.25

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add.1 and 2, A/CONF.63/C.1/L.78, L.118, L.136, L.146, L.151) (concluded)**

*Article 29 (concluded)*

1. The CHAIRMAN invited the Committee to vote on the United States amendment to article 29 (A/CONF.63/C.1/L.136).

2. Mr. SMIT (United States of America) announced that his delegation wished to withdraw paragraph 1 of its amendment and to revise paragraph 2 to read as follows:

"A Contracting State shall be required to give effect to acts referred to in articles 19, 20 and 21 wherever they take place."

*The United States amendment, as orally revised, was rejected by 13 votes to 10.*

3. The CHAIRMAN said that, in view of the rejection by the Committee of all the amendments to article 29, the article would remain as currently drafted and would be transmitted to the Drafting Committee for improvement of the wording.

*Proposed article 29 bis*

4. Mr. JENARD (Belgium), introducing his delegation's proposal in document A/CONF.63/C.1/L.146, said that under the terms of the Convention the limitation period could be interrupted only by the institution of legal proceedings. In many cases, however, the debtor did not own property in the creditor's State of residence and the creditor was compelled to institute proceedings in the State in which the debtor

owned property or had his place of residence. The costs of such proceedings varied considerably from country to country and under many national laws an alien or non-resident plaintiff was required to provide security (*cautio judicatum solvi*) against the possibility that the proceedings might result in a decision adverse to his cause. Some States waived that requirement in respect of foreign nationals, while others granted exceptions for cases involving international sales transactions. The purpose of the proposed new article was to eliminate discrimination against the creditor in that regard by providing uniform exemption.

5. Mr. MUSEUX (France) associated himself wholeheartedly with the Belgian proposal, which would greatly contribute to the elimination of discrimination against foreign plaintiffs and plaintiffs not domiciled in the State of the forum.

6. Mr. GUEIROS (Brazil) supported the Belgian proposal, but felt that the Latin phrase *cautio judicatum solvi* could conveniently be replaced by a more commonly used expression.

7. Mr. OLIVENCIA (Spain) also supported the proposal. It would be wholly consistent with the spirit of the Convention to eliminate arbitrary discrimination against foreign plaintiffs in respect of the *cautio judicatum solvi*, which was known in Spanish law as the "*caución de arraigo en juicio*".

8. Mr. NYGH (Australia) said that he had difficulty with the proposed new article, which appeared to be relevant only to civil-law countries. Under Australian law any plaintiff, whether an Australian national or not, could be required, at the defendant's request, to provide security for costs against the outcome of the proceedings if he had no demonstrable assets in the State in which the proceedings were brought. That was a useful protection against the institution of proceedings for vexatious purposes. He was not sure whether the Belgian proposal would interfere with Australian judicial practice in that regard or whether it was merely intended to eliminate discrimination against foreign plaintiffs.

9. Mr. JENARD (Belgium) said that the problem raised by the representative of Australia might perhaps be taken care of by the text of article 17 of the Hague Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters of 1971, which read as follows:

"No security, bond or deposit, however termed under the law of the State addressed, shall be required by reason of the nationality or domicile of the applicant to guarantee the payment of judicial costs or expenses . . .".

10. Mr. MUSEUX (France) pointed out that the *cautio judicatum solvi* was required of both foreign plaintiffs and plaintiffs not domiciled in the State in which the proceedings were instituted.

11. Mr. NYGH (Australia) said that, in view of the explanation furnished by the representative of France, he could not accept the Belgian proposal.

12. Mr. NJENGA (Kenya) said that alien and non-resident plaintiffs were required to provide security for costs in Kenya and many other States, not for any discriminatory reason but in order to ensure that the costs of the proceedings could be recovered from the plaintiff if the court so ruled. There was no justification for dispensing with that practice.

13. Mr. SMIT (United States of America) said that the article proposed by the representative of Belgium was a general provision common to treaties of friendship, commerce and navigation, but out of place in a specialized convention on prescription.

14. Mr. GUEST (United Kingdom) endorsed the remarks made by the representative of Kenya. The Belgian proposal was more relevant to a convention on enforcement of judgements than to a convention on prescription.

15. Mr. BARNES (Ireland) said that, if the proposed article was adopted, it would have the effect of discriminating between two types of litigant under Irish law; plaintiffs resident in Ireland would still be required to provide security for costs, while non-resident plaintiffs would be dispensed from that obligation. The proposal was therefore not in conformity with the provisions of the Irish Constitution, which forbade discrimination between parties to litigation.

16. Mr. GOKHALE (India) said that the legal position in India was similar to that obtaining in Australia. The court could, at the request of the debtor, require a creditor who had no assets in India to provide security for costs. That practice was designed to prevent reckless litigation.

17. Mr. STALEV (Bulgaria) expressed his disagreement with the United States representative's contention that the Belgian proposal was irrelevant to the terms of a convention on prescription. The Convention stipulated that the limitation period could be interrupted by the institution of legal proceedings. There was no reason why it should not also contain a provision aimed at removing financial obstacles to the institution of such proceedings.

18. Mr. TEMER (Yugoslavia) said he also disagreed with those who felt that the Belgian proposal was irrelevant to the draft Convention. Under article 12, the limitation period would cease to run when the creditor performed any act which, under the law of the jurisdiction where such act was performed, was recognized as commencing judicial proceedings against the debtor or as asserting his claim in such proceedings already instituted against the debtor. During the discussion on certain other articles, examples had been cited of cases in which the creditor might be deterred from asserting his claim because of the expense of litigation. The Belgian proposal had been introduced rather belatedly, but it could not be said that it had no merit.

19. Mr. BARRERA GRAF (Mexico) said that the exemption provided by the proposed article was unexceptionable in principle, but its proper place was not in a convention on prescription. The only circumstance in which the requirement of the *cautio judicatum solvi* could be waived under the Convention would be when the debtor, subsequent to the institution of proceedings by the creditor, entered a defence based on the contention that the claim had become barred by limitation (*excepción de prescripción*).

20. The CHAIRMAN invited the Committee to vote on the Belgian proposal for a new article 29 bis.

The Belgian proposal (A/CONF.63/C.1/L.146) was rejected by 23 votes to 11.

21. Mr. BURGUCHEV (Union of Soviet Socialist Republics), speaking in explanation of vote, said that his delegation had no objection to the Belgian proposal in principle but felt that it was not relevant to the provisions of the Convention.

*Article 33*

22. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that article 33, paragraph 2, seemed superfluous; the problem it dealt with had already been taken care of by the Drafting Committee in connexion with article 2.

23. The CHAIRMAN said that, in the absence of any amendments to article 33, he took it that the Committee approved the article and wished to transmit it as it stood to the Drafting Committee, which should be requested to take account of the Soviet representative's comment.

*It was so decided.*

*Article 34*

24. Mr. ZULETA (Colombia) drew attention to the fact that, under the legislation of many Latin American countries, the circumstances referred to in articles 9, 10 and 11 of the Convention could lead to the bringing of actions for annulment of the contract. By virtue of the declaration provided for in article 34, therefore, a situation might arise in which some Contracting States would be able to countenance the institution of actions for annulment in the courts of other Contracting States, while rejecting such actions in their own courts. Such States would be in the anomalous position of applying the Convention in theory and circumventing its provisions in practice.

25. The CHAIRMAN said that, in the absence of any amendments, he took it that the Committee approved article 34.

*It was so decided.*

*Article 35*

26. The CHAIRMAN pointed out that article 35 had already been approved during the discussion on article 23.

*Proposed article 35 A*

27. Mr. ROGNLIEN (Norway), introducing his delegation's proposal for a new article 35 A (A/CONF.63/C.1/L.118), said that its purpose was to enable States becoming parties to the Convention to stipulate by express declaration that they intended to apply its provisions regardless of whether the seller and buyer had their places of business in Contracting or non-contracting States. Many conventions, such as the 1964 ULIS Convention, provided uniform laws whose provisions could only be implemented literally and incorporated word by word into national law, unless otherwise indicated, by an express declaration in accordance with the clauses of the Convention. However, his proposal might be superfluous if, as he had been given to understand, it was intended to make the substantive rules on Prescription binding only as a Convention and to allow some latitude in the implementation and incorporation of its provisions into national law. The final wording of article 30, which was under consideration in the Second Committee, would be of decisive importance in that regard.

28. Mr. LOEWE (Austria) said that the Norwegian proposal (A/CONF.63/C.1/L.118) did nothing to change the substance of the provisions already adopted by the Committee but merely extended the application of the Convention to non-contracting States. In his view, the great merit of the proposal was that it simplified the procedure for those countries which

wished to enlarge the scope of application of the Convention. Instead of having to adopt new domestic legislation, they would merely have to make a declaration when they deposited their instruments of ratification or accession. It would certainly simplify the procedures in his country, and he therefore supported it.

29. Mr. MICHIDA (Japan) said that the Norwegian proposal, which would enable States to make a reservation to the principle adopted in article 3, paragraph 1, namely, that the Convention should apply when the seller and buyer had their places of business in different Contracting States, was unsatisfactory. It would create difficulties because it would not be easy to ascertain which countries had made that reservation. The proposal would thus create uncertainty as to the application of the Convention, for which reason he was unable to support it.

30. Mr. HJERNER (Sweden) concurred in the view expressed by the representative of Japan. Even though a State might be free to apply the provisions of the Convention to nationals of non-contracting States, it would be preferable not to include the Norwegian proposal in the Convention itself. Its inclusion would be tantamount to a recommendation that Contracting States should apply that provision and would suggest that the Conference had thought that such a system be desirable. That was not the case, since the Committee had adopted article 3, paragraph 2, providing that the Convention should apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law. Adoption of the Norwegian proposal would mean that the rules of private international law would apply in the case of non-contracting States. For those reasons he could not support it.

31. Mr. GUEIROS (Brazil) supported the Norwegian proposal, which would ensure that many States not represented at the Conference were able to apply the Convention, since it would be extended to non-contracting States. Furthermore, that provision would do away with the difficulty of ascertaining whether or not a State had acceded to the Convention.

32. Mr. ROGNLIEN (Norway) said it was clear from the debate that the provision embodied in his delegation's proposal (A/CONF.63/C.1/L.118) was self-evident and did not need to be spelt out. He therefore withdrew the proposal.

*Article 36*

33. The CHAIRMAN noted that no amendments had been submitted to article 36.

34. Mr. OLIVENCIA (Spain) said that the Drafting Committee should be asked to reword the beginning of paragraph 1 in the Spanish text, where the word "*deroga*" (derogate from) was used for the words "prevail over" in the English text. A derogation could hardly apply to conventions which had not yet been entered into.

*Article 36 was adopted.*

*Article 13 (concluded)\**

35. Mr. BARNES (Ireland), speaking as Chairman of the informal working group composed of the representatives of France, Ireland, Kenya, the USSR and the United Kingdom, which had been established at the 14th meeting to consider article 13, paragraph 3, said that the working group had been unable to reach

\* Resumed from the 14th meeting.

any agreement on a text. It had decided to recommend that a vote should be taken on the Soviet amendment (A/CONF.63/C.1/L.78), which proposed the deletion of paragraph 3. If the amendment was not adopted, the paragraph should be referred to the Drafting Committee.

*The Soviet amendment (A/CONF.63/C.1/L.78) was rejected by 16 votes to 14.*

36. The CHAIRMAN said that article 13, paragraph 3, would be referred to the Drafting Committee.

*Article 2 (concluded)\*\**

37. Mr. SAM (Ghana), speaking as Chairman of the informal working group, composed of the representatives of Australia, Belgium, the Federal Republic of Germany, Ghana and the USSR, established at the 23rd meeting had been unable to agree on any formulation for a definition of the international sale of goods. It therefore proposed that the Belgian amendment to article 2, paragraph 1 (A/CONF.63/C.1/L.151) should be put to the vote, but not as a text submitted by the working group.

38. Mr. JENARD (Belgium) observed that he was by no means a strong supporter of the draft Convention as it had emerged from the debate, for it gave far too much latitude to dishonest creditors. However, he had thought it might be worth while to try once more to solve the problem of defining the international sale of goods. Two conditions were necessary. First, there must be a contract for an international sale of goods and, secondly, the parties must have their places of business in different Contracting States. His amendment (A/CONF.63/C.1/L.151) did not really attempt a definition; it merely gave a few indications which might serve as a basis for attempting a compromise, and it had the advantage of not tying the hands of the Drafting Committee.

39. Mr. NYGH (Australia) said he regretted that he had been unable to support the Belgian proposal in the working group, and could not now support it. Although the wording was reminiscent of that proposed earlier by his own delegation for article 2, paragraph 1, in document A/CONF.63/C.1/L.1, it was in essence a proposal that had already been rejected. If it was adopted, there would be little difficulty in applying it in the Australian courts because, subject to the exclusion of consumer sales and provisions of article 2, paragraph 2, all transactions between persons having their places of business in different States were regarded as international in Australia regardless of whether there was any carriage of goods. But that might not be so in other States, such as Belgium, which applied the Uniform Law on the International Sale of Goods (ULIS) Annexed to the Hague Convention of 1964 definition, or in countries which applied definitions laid down by their national legislation. The Belgian proposal would therefore do nothing to improve a difficult situation.

40. Mr. MUSEUX (France) said that, although the Belgian proposal was not ideal, it was the best safeguard for the future of the Convention. It would enable States which would otherwise have difficulty in doing so to accede to the Convention, and it fitted into the framework of the Convention as it stood.

41. Mr. ROGNLIEN (Norway) deplored the Committee's decision not to allow States parties to the 1964

Hague Convention to adopt the ULIS definition. It had thus made it impossible for those States, many of which were among the most important in international trade, to ratify the Convention on Prescription. That was a most unfortunate situation. The representative of Belgium had attempted a solution but, in the view of the Norwegian delegation, that solution was less satisfactory than permitting some States to use the ULIS definition. The ULIS definition was at least well known, and it would be certain what definition would apply. If the question was left to the courts, the situation would be quite different. It might not be so bad if it could be left to the courts on an equal basis in all countries, but that was hardly possible in the case of countries which were parties to the 1964 ULIS; furthermore, countries which had not adopted the ULIS definition would apply others, and the end result would be confusion. The situation was so deplorable that he believed an effort should be made to find a solution in the plenary meeting of the Conference. He could not stress too strongly that the fate of the whole Convention was at stake.

42. Mr. LOEWE (Austria) associated himself very strongly with the Norwegian representative's remarks. A decision which barred any possibility of States making reservations with regard to the scope of application of the Convention seriously diminished its chances of success. The question should be reopened in plenary meeting.

43. The representative of Belgium had made a commendable effort to find a way out, but the way out he had found was not satisfactory. It would be very difficult for States which had no definition to accept the Convention if it contained the Belgian text. The civil-law countries, where judges did not have as much latitude as in common-law countries, would find themselves in a particularly difficult position; it was not possible for civil-law countries to leave to the judge the decision as to whether or not the Convention applied. He was therefore unable to support the Belgian amendment.

44. Mr. GUEIROS (Brazil) said that the Belgian text omitted one of the major elements in deciding whether or not a sale was international, namely, the question of the carriage of goods. In the absence of a definition, he agreed that it was necessary to lay down guidelines for both civil-law and common-law countries, but one of the major guidelines—carriage of goods—was not included. The Belgian solution was not, therefore, really satisfactory but it was better than none, and his delegation would support it.

45. Mr. GARCIA CAYCEDO (Cuba) said that the word "*establecimiento*" in the Spanish text did not reflect the intention of the Belgian proposal. What was really meant was the head office, or *sede social*.

46. Mr. DIAZ BRAVO (Mexico) agreed with the representatives of Norway and Austria that it was deplorable that the Committee should have refused to allow States parties to ULIS to use the ULIS definition and other States to use their own legal definitions. That meant that those States would not be able to accede to the Convention. He hoped that the matter would be rectified in plenary meeting. The decision was entirely wrong.

47. He agreed that the Belgian text was not fully satisfactory, but it was a valiant attempt to solve the problem of defining the international sale of goods. It

\*\* Resumed from the 7th meeting.

was unfortunate that the ULIS countries had not submitted to the working group definitions that excluded consumer sales, as was not the case for the Belgian text.

48. Mr. JENARD (Belgium) said the representative of Mexico was mistaken, since the Belgian proposal did exclude consumer sales. There were other exclusions and border-line cases which were not mentioned, but they made little difference to the large international transactions to which the Convention would apply.

49. Mr. KAMPIS (Hungary) said he found the Belgian proposal interesting but somewhat surprising, and he had some difficulty in taking a position on it. He would like to have time to reflect on it.

50. Mr. BÖKMARK (Sweden) said that it was impossible to decide on a definition of the international sale of goods which could be inserted in the Convention at the present time. The original text of article 2, paragraph 1, must therefore be retained. Nevertheless, the Belgian proposal had great merits, and it could perhaps be included as the first paragraph of article 3, thus enabling States that wished to do so to apply the ULIS definition. He therefore proposed that the present text of article 3, paragraph 1, should be replaced by the Belgian text (A/CONF.63/C.1/L.151). Although the discussion on article 3 was now closed, it could be reopened by a procedural vote.

51. Mr. SMIT (United States of America) said that the Belgian amendment was the best attempt so far to escape from the impasse in which the Committee found itself. Although it would limit the scope of the Convention slightly, the sacrifice was probably worth while, because the way would be open for many States to ratify the Convention. He did not think that the element of uncertainty was a very serious problem, particularly in view of the fact that a second criterion was laid down. If the States that had ratified ULIS felt that the amendment would increase their willingness to ratify the new Convention, the sacrifice was certainly worth considering.

52. Mr. KAMPIS (Hungary) asked whether the Belgian proposal was to replace article 2, paragraph 1, or article 3, paragraph 1. In the latter case, there would be two definitions in the Convention.

53. Mr. JENARD (Belgium) said his amendment was intended to replace article 2, paragraph 1, which provided too broad a definition. If his proposal was adopted, article 3, paragraph 1, would be deleted. It was for the Drafting Committee to decide on the most suitable place to insert his proposal.

54. Mr. GUEST (United Kingdom) said, with regard to the point raised by the United States, that adoption of the Belgian amendment would substantially increase

the likelihood that the United Kingdom would sign and ratify the Convention.

55. Mr. LOEWE (Austria) said that he had no written text of the Belgian amendment and had not had much time to consider it. However, as he understood it, the Belgian definition would allow countries that had already adopted a definition to apply their criteria to international sales, including consumer sales, while countries that had not adopted a definition would use other criteria. The result would be some uncertainty, although it was true that the proposal did limit the scope of the Convention. His delegation was in favour of a universal Convention with a minimum of exceptions; in particular, it should not exclude consumer sales. He found it strange that whenever a proposal that would broaden the scope of the Convention was made, it seemed to cause general alarm, while proposals to limit the scope of the Convention were warmly welcomed. If that trend continued, there would not be much left for participants in the Conference to sign. His delegation hesitated to accept the Belgian proposal.

56. The CHAIRMAN pointed out that the amendment did cover most sales.

57. Mr. FRANTA (Federal Republic of Germany) supported the Belgian proposal.

58. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the working group had been unable to reach a compromise. The essence of the matter was that the Belgian proposal would exclude any definition of an international sale. He had the impression that most delegations, like his own, would be unable to support the proposal as it stood.

59. An alternative approach that had been discussed in the working group was to follow the procedure adopted in many conventions and allow reservations that did not relate to the substance of the Convention. Such a reservation would make it easier for States parties to ULIS to ratify the convention. He believed that the question should be referred to the plenary meeting.

60. After a brief discussion in which Mr. ROGNLIEN (Norway), Mr. SAM (Ghana) and Mr. MUSEUX (France) participated, the CHAIRMAN suggested that the Belgian proposal (A/CONF.63/C.1/L.151) should be referred to the plenary meeting.

*It was so decided.*

#### Completion of the Committee's work

61. The CHAIRMAN said that the Committee had completed its work.

*The meeting rose at 5.30 p.m.*

## SUMMARY RECORDS OF MEETINGS OF THE SECOND COMMITTEE

### 1st meeting

Tuesday, 28 May 1974, at 10.30 a.m.

Chairman: Mr. KAMPIS (Hungary).

A/CONF.63/C.2/SR.1

#### Election of Officers

##### *Election of the Vice-Chairmen*

1. Mr. STEEL (United Kingdom) nominated Mr. Parks (Canada) for the post of Vice-Chairman.

*Mr. Parks (Canada) was elected Vice-Chairman by acclamation.*

2. The CHAIRMAN suggested that, as consultations were still continuing, the election of the other two Vice-Chairmen should be postponed.

*It was so decided.*

##### *Election of the Rapporteur*

3. The CHAIRMAN suggested that the election of the Rapporteur should be postponed.

*It was so decided.*

#### Organization of work

4. The CHAIRMAN recalled that the plenary had entrusted the Second Committee with the consideration of part II (articles 30 to 32) and part IV (articles 39 to 46) of the draft Convention (A/CONF.63/4). He suggested that the Committee should consider the relevant articles individually.

#### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/5, A/CONF.63/6 and Add.1 and 2)

##### *Article 30*

5. The CHAIRMAN drew attention to the third paragraph of the commentary on the article contained in document A/CONF.63/5.

6. Mr. BYKOV (Union of Soviet Socialist Republics) pointed out that article 30 appeared in document A/CONF.63/4 within square brackets because serious doubts had been expressed about the need for its inclusion; he shared those doubts. Under the principle of *pacta sunt servanda*, a State becoming party to an international treaty was thereby obliged to ensure observance of the treaty. Thus the article was redundant and should be deleted.

7. Mr. DE GREIFT (Belgium) agreed that the article was superfluous, since the rules in the draft Convention were automatically applicable of themselves.

8. Mr. MAKAREVITCH (Ukrainian Soviet Socialist Republic) agreed that the article was superfluous and should be deleted. The Committee's goal was to draft a clear and effective Convention, and the article merely

referred to what was already an accepted principle in international legal practice.

9. Mr. BAJA (Philippines) supported the deletion of the article for substantially the same reasons as the representative of the USSR. It was understood that when a State became a contracting party to an international agreement, it would take the domestic legislative action necessary to give effect to that agreement.

10. Mr. HAMBURGER (Austria) agreed that the article was superfluous and said that it might even cause difficulties for some countries, which would require separate implementing legislation. Since the Convention concerned what would be a uniform law, his delegation considered it self-implementing.

11. Mr. STEEL (United Kingdom) agreed that the article referred to what was already a fundamental provision of international law. However, it should not be overlooked that the article called for the Convention to be given the force of law "not later than the date of the entry into force" of the Convention in respect of a particular State. That provision might cause problems in respect of, for example, a federal State, where the pace of implementation might vary from one unit of the State to another. Thus, while the article should be deleted, the fact that the law of all parts of a country must be such as to permit implementation should be borne in mind.

12. Mr. RAJU (India) said his delegation welcomed the intent behind the proposed article 30, since implementing legislation in respect of international conventions was required in India. The final version of the article should specify that Contracting States should give part I of the Convention the force of law, subject to any changes necessary as a result of reservations.

13. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee approved the deletion of article 30 without a vote.

*It was so decided.*

##### *Article 31*

14. Mr. BYKOV (Union of Soviet Socialist Republics) said his delegation had very serious doubts about the advisability of including such an article in the Convention. While any State might have its own specific problems connected with domestic legislation, all States acceding to an international treaty must nevertheless ensure observance of the treaty on an equal basis. The proposed article would lead to the granting of a privileged position to federal States, as opposed to unitary States, which would be contrary to the principle of the sovereign equality of States. Retention of the article



would cause difficulties for the parties to the Convention and make it unclear whether the Convention applied to the whole of the territory of the other State. The article should, therefore, be deleted.

15. Mr. HAMBURGER (Austria) said that, unless express reservations were entered, the act of ratification of an international treaty by a State implied that the treaty was being or could be implemented in all parts of that State. He could thus see no merit in the proposed article. He also agreed with the representative of the USSR that there should be no distinction between unitary and federal States. Not only would the article impose on federal States the additional burden of indicating what action had been taken in each of their constituent states or provinces, but, under the Austrian Constitution for example, it would be impossible to provide a legally valid document containing the information referred to in paragraph (c) of the article.

16. Mr. RAJU (India), expressing complete agreement with the representative of the USSR, said that he fully supported the deletion of the article.

17. Mr. JACHEK (Czechoslovakia) said that he supported the Indian representative. The procedure referred to in the article was a matter for internal action within the States concerned, and the article was therefore superfluous.

18. Mr. TRUDEL (Canada) said that, even though Canada had problems as a result of differing provincial rules concerning prescription, article 31 should not be retained in its present form. It should be replaced by a text like that found in other international treaties, stipulating that a State must specify at the time of ratification to what constituent states or provinces of its territory the treaty would apply and without prejudice to the subsequent accession to the treaty by its remaining states or provinces. His delegation would submit a suitable text after consultations with the delegations of countries having problems similar to those of Canada.

19. Mr. STEEL (United Kingdom) agreed with the representative of Canada that the article was unsatisfactory in its present form but that it did concern a real problem. The difficulty was that, in federal States where individual states or provinces exercised some measure of competence in respect of an international treaty, the federation as a whole could not ratify such a treaty unless every constituent state or province had passed appropriate legislation. That might well be a serious obstacle to the speedy implementation of the Convention which all desired. With the differences between English and Scottish law in mind, he intended to submit to the Secretariat an amendment to the article which could perhaps be combined with suggestions from other delegations.

20. Mr. WYNDHAM (Australia) suggested that further discussion of the article should be postponed until the text of the amendment proposed by the representative of Canada was available.<sup>1</sup>

21. Mr. MAKAREVITCH (Ukrainian Soviet Socialist Republic) agreed with the representatives of the USSR and Austria that retention of the article in its present form would lead to unequal treatment of unitary and federal States and would complicate the implementation of the Convention after its entry into force. The measures necessary for the application of the Conven-

tion within an individual Contracting State fell solely within the domestic jurisdiction of that State. The article should be deleted.

22. Mr. DALTON (United States of America) said that he sympathized with those delegations which queried the advisability of or would have the difficulty in implementing the article in its present form. His delegation would welcome texts of the proposed amendments to the article.

23. Mr. BYKOV (Union of Soviet Socialist Republics) expressed his delegation's whole-hearted support for the proposals for the deletion of the article. While he appreciated that federal States or those with differing laws in various parts of their territory might wish the article to be retained in an amended form, amendments satisfactory to them might create problems for other States, whereas the approach should be that the obligation of all parties to the Convention should be the same.

24. Mr. CATHALA (France) said that he shared the doubts expressed by other delegations, particularly that of the USSR. Paragraph (c) of the article might even create a dangerous situation and would certainly complicate greatly the task of implementing the Convention. However, he had no objection to the Australian proposal that discussion should be suspended until delegations which wished to do so had submitted amendments to the article.

25. The CHAIRMAN said that if he heard no objection, he would take it that the Committee agreed to suspend discussion of the article and to ask delegations having amendments to submit them in writing as soon as possible.

*It was so decided.*

#### Article 32

26. Mr. BYKOV (Union of Soviet Socialist Republics) said his delegation could support the article, which it saw as meaning that the Convention should not have retroactive effect, a principle already enshrined in international law. He pointed out that the Russian text of the article could be improved and said that his delegation would take the matter up with the Secretariat.

27. Mr. KUMI (Ghana) said that he supported the article, which was, as it should be, forward-looking rather than backward-looking.

28. Mr. RAJU (India) said that his delegation could support the article but that, in view of the importance of knowing clearly at what point in time a State should apply the Convention, the wording of the article should be amended by the Drafting Committee.

29. Mr. KHOO (Singapore) said his delegation supported the article. He felt that the concern expressed by the representative of India was provided for in article 42, paragraph 2.

30. The CHAIRMAN pointed out that article 42, paragraph 2, referred to the date of entry into force of the Convention as a whole, and was thus independent of article 32, which sought to prevent the retroactive application of the Convention in respect of contracts. He suggested that the Committee should, therefore, approve article 32, subject to the revision of the text by the Drafting Committee as proposed by the representative of India.

*It was so decided.*

<sup>1</sup> Subsequently circulated as document A/CONF.63/C.2/L.1.

## Article 39

31. Mr. WATTLES (Executive Secretary of the Conference) said that in considering the final text of article 39 the Committee might wish to bear in mind the formulation adopted in previous General Assembly resolutions—for example, the resolution (3166 (XXVIII)), embodying the text of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, article 14 of which stated that the Convention would be open for signature by all States until the end of 1974. That formulation thus met the convenience of Governments in giving about one year for signature; insertion of the words "30 June 1975" in article 39 would achieve the same object.

32. Mr. STEEL (United Kingdom) said that he found the Secretariat's proposal acceptable. He recalled that, when the General Assembly adopted resolution 3166 (XXVIII) embodying the text of the "Convention on the Protection of Diplomats", it also adopted an understanding about how the Secretary-General would discharge his functions as a depositary of a convention containing an "all States clause."

33. Mr. BYKOV (Union of Soviet Socialist Republics) expressed his support for the Secretariat's proposal that the Convention should be open for signature by all States. The opening of the Convention to all States would accord with the principle of the universality of general multilateral treaties.

34. Mr. HAMBURGER (Austria) proposed that the date should be extended to December 1975 so as to take account of the internal procedures of States such as Austria where numerous bodies and representatives of private enterprise had to be consulted.

35. Mr. MAKAREVITCH (Ukrainian Soviet Socialist Republic) agreed that article 39 as drafted expressed his support for the Secretariat's proposal that the Convention should be open for signature by all States until extending the time-limit to December 1975.

36. Mr. WYNDHAM (Australia) said that in the case of a relatively long and complicated document such as the present Convention, more time might be needed for all States to sign it. He therefore supported extension of the date to December 1975.

37. Mr. RAJU (India) said he accepted the wording proposed by the Secretariat, including the time-limit of one year which he found reasonable.

38. Mr. HAMBURGER (Austria) said that many States might have lengthy procedures to complete before they could sign the Convention; he hoped that the Indian representative was not opposed in principle to a one and a half year time-limit.

39. Mr. RAJU (India) said that one year was the normal time for similar United Nations Conventions, but he did not object to a longer period if other States so wished.

40. The CHAIRMAN proposed that in the light of the views expressed the Committee should adopt the following text for article 39: "This Convention shall be open for signature by all States until 31 December 1975 at United Nations Headquarters in New York."

*It was so decided.*

## Article 40

41. The CHAIRMAN proposed that the Committee should adopt article 40 as drafted.

*It was so decided.*

## Article 41

42. Mr. WATTLES (Executive Secretary of the Conference) pointed out that the text of the present Convention followed the text adopted by the General Assembly in resolution 3166 (XXVIII) by providing in article 16 that the Convention would remain open for accession by any State.

43. Mr. BYKOV (Union of Soviet Socialist Republics) observed that the text of the article proposed by the representative of the Secretary-General which provided for the Convention to be open for accession by any State accorded with the principle of the universality of general multilateral treaties, and that he supported the proposal.

44. The CHAIRMAN proposed that the Committee should adopt article 41 as drafted in article 16 of the Convention annexed to General Assembly resolution 3166 (XXVIII).

*It was so decided.*

## Article 42

45. The CHAIRMAN said that the period of six months tentatively inserted in paragraph 1 must be confirmed, and a decision must be taken regarding the number of ratifications or accessions needed to bring the Convention into force.

46. Mr. RAJU (India) said that the period should not be unduly prolonged; he suggested three months, which was a normal period in international agreements.

47. Mr. STEEL (United Kingdom) pointed out that Governments which acceded to the Convention would need a fairly substantial time to notify all the national organizations and individuals concerned that a convention which would affect them would shortly come into force; he suggested that six months would be a more suitable period.

48. Mr. WATTLES (Executive Secretary of the Conference) pointed out that the Secretariat would normally need about one month to notify all States that the number of instruments required to bring the Convention into force had been deposited.

49. Mr. BUHL (Denmark), supported by Mr. BAJA (Philippines), said that he considered six months to be the shortest period in which Governments could make the necessary arrangements.

50. The CHAIRMAN suggested that the Committee should confirm the period of six months in article 42, paragraph 1.

*It was so decided.*

51. Mr. MAKAREVITCH (Ukrainian Soviet Socialist Republic) proposed that the number of instruments of ratification or accession required to bring the Convention into force should be 10.

52. Mr. RAJU (India) said that the number of ratifications required was normally about 20 per cent of the number of potential signatories. He therefore thought a figure of 15 would be preferable.

53. The CHAIRMAN suggested that the Committee should agree that the number of ratifications or accessions required to bring the Convention into force should be 10. The article would therefore read as follows:

"1. This Convention shall enter into force 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 six months after the date of the deposit of its instrument of ratification or accession."

*It was so decided.*

#### Article 43

54. The CHAIRMAN proposed that the Committee adopt article 43 as drafted.

*It was so decided.*

#### Article 44

55. Mr. BYKOV (Union of Soviet Socialist Republics) said that his delegation objected for reasons of principle to the inclusion of the article because it contradicted the Declaration on the Granting of Independence to Colonial Countries and Peoples, which demanded the immediate and unconditional granting of independence to colonial Territories. The article was not only outmoded; it was contrary to the requirements of numerous resolutions of United Nations organs regarding the elimination of colonialism. It was not a question of choosing between alternatives A and B; neither alternative was acceptable. The article should be deleted entirely.

56. Mr. STEEL (United Kingdom) said that his Government had brought most of its former dependent Territories to independence and self-government. It took seriously its duty towards the few Territories for which it still had international responsibility and would not force on them any obligations affecting their internal government which they themselves were not willing to accept. Before his Government ratified or acceded to any international agreement that would impose such obligations, it asked the Government of every dependent Territory concerned whether or not it wished to accept the agreement, and until the necessary consent had been enacted in that Territory, the United Kingdom had been enacted in that territory, the United Kingdom Government could not ratify or accede to the agreement so as to bind itself in respect of that Territory. If in the present case there was a territorial application clause such as that provided in draft article 44, the United Kingdom Government could consult the Governments of dependent Territories in advance and, when ratifying or acceding to the Convention in respect of the United Kingdom itself, could declare which of those Territories were willing and able to accept the obligations of the Convention and could ratify or accede in respect of them also, leaving it to the other Territories to accept the Convention later if they so desired. In the absence of such a clause, the United Kingdom Government would be precluded from accepting the Convention both on its own behalf and on behalf of any of its dependent Territories, until all its dependent Territories were ready and willing to apply it. The effect of omitting article 44 would thus be to prevent even those Territories which wanted to do so from enjoying the benefits of the Convention.

57. Mr. ADESALU (Nigeria), supported by Mr. MUKUNA KABONGO (Zaire) and Mr. JACHEK (Czechoslovakia), agreed with the representative of the USSR that the proposed article 44 was a relic of colonialism and should be deleted entirely.

58. Mr. RAJU (India) said that the draft article was superfluous and would be inconsistent with the Charter and with the Declaration on the Granting of Independence

to Colonial Countries and Peoples. The Committee's aim was to formulate general rules for the application of the Convention. If article 44 was to be retained at all, he proposed the following formulation: "This Convention is binding on each Party in respect of its entire Territory."

59. Mr. KUMI (Ghana) said that he understood the concern of the United Kingdom representative and the reasons which prevented him from accepting the deletion of the territorial application clause. However he appealed to him not to insist on its retention.

60. Mr. MAKAREVITCH (Ukrainian Soviet Socialist Republic) said that his delegation, too, felt that article 44 should be deleted, for, as a matter of principle, it supported all peoples who were struggling for their liberation. Article 44 was contrary to the Declaration on the Granting of Independence to Colonial Countries and Peoples and similar resolutions.

61. Mr. CATHALA (France) said that although his delegation did not wish to go against earlier resolutions, it felt that, in view of the earlier decision to postpone a final consideration of article 31, the same should perhaps be done with respect to article 44, as there might be a connexion between the two. If it proved necessary to retain article 44, his delegation would prefer alternative A and would like the words "for whose international relations it is responsible" in paragraph 1 to be replaced by "whose international relations it is competent to stipulate".

62. Mr. BYKOV (Union of Soviet Socialist Republics) said that the general opinion seemed to be in favour of deleting the article for the reasons of principle he had mentioned. The issue was not a technical one, and had no connexion with article 31. The time of colonialism was long past. The article in question was colonial and should not be retained in any form. The Convention most recently adopted by the General Assembly, on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, contained no such article.

63. The CHAIRMAN said that there were two alternative courses of action—either postpone the discussion because of the connexion between articles 31 and 44, as proposed by the representative of France, or vote on the substance of article 44.

64. Mr. KUMI (Ghana) said that there seemed to be a general consensus in favour of deleting article 44. There was no need for a vote unless some delegation objected to the deletion.

65. Mr. BUHL (Denmark) said that his delegation considered article 44 to be a purely technical article. The ability to limit the territorial application of the Convention would be important to certain States in order not to delay their ratification of the Convention. He would therefore prefer to see consideration of the article deferred to a later meeting.

66. Mr. MAKAREVITCH (Ukrainian Soviet Socialist Republic) supported the Ghanaian proposal that article 44 should be put to the vote.

67. Mr. WYNDHAM (Australia) said that, in view of the progress made by the Committee, there was no need for an immediate decision on the matter. His delegation would be in favour of deferring final consideration of the article to a later meeting, by which time the Committee would have before it all the proposals members might wish to make. A decision taken

before all the proposals had been considered might not prove to be the most constructive one.

68. Mr. TRUDEL (Canada) supported the proposal to postpone consideration of the matter. The desire of certain States to find a solution to their problems was the issue, not colonialism.

69. Mr. BYKOV (Union of Soviet Socialist Republics) said that there was no connexion between articles 31 and 44. The issue was whether to retain a colonial article or delete it. The retention of article 44 would be tantamount to the indirect legitimization of colonialism. His delegation supported the proposal that a vote should be taken on article 44.

70. Mr. PETROV (Bulgaria) asked whether Ghana had made a formal proposal to put the matter to a vote and requested information on the rules of procedure.

71. Mr. CATHALA (France) said that his delegation had been in favour of deleting article 31 and therefore also of deleting article 44. However, it had felt that, as a matter of courtesy, those delegations that wished to present alternative formulae should be given an opportunity to do so. It would in any event be necessary to put the article to the vote.

72. Mr. WYNDHAM (Australia) said that his delegation agreed with that view. Since there was no great urgency to make a decision, the delegations which had strong views on the matter could be given time for consultation and the opportunity to present a new text to the Committee, which could then proceed to a vote. His delegation was in favour of suspending final consideration to allow time for consultation as a matter of courtesy.

73. The CHAIRMAN said that in accordance with rule 25 of the rules of procedure the Committee would now vote on the motion to adjourn the debate.

*There were 11 votes in favour, 11 against. The motion was not adopted.*

74. The CHAIRMAN invited the Committee to vote on the proposal to delete article 44.

*The proposal was adopted by 16 votes to 4, with 9 abstentions.*

75. Mr. STEEL (United Kingdom), explaining his delegation's vote, said that the issue had not been colonialism but rather the procedure by which countries might become parties to the Convention. The effect of the vote would be that his own country and others which had Territories for which they were internationally responsible would not be able to ratify the Convention until they had asked each such Territory whether or not it wanted the Convention to apply to it and had obtained the consent of all of them. That would delay by a substantial period their possible ratification of the Convention.

76. With regard to the statement that article 44 was contrary to General Assembly resolution 1514 (XV) and the United Nations Charter, he read out the text of Article 73 of the Charter which set out the duties of Members of the United Nations which had or which assumed responsibilities for the administration of Territories whose peoples had not yet attained full self-government. The main theme throughout that Article was that countries which had international responsibility for Non-Self-Governing Territories must have regard to the interests and wishes of the peoples of those Territories and must foster self-government with a view to eventual self-determination. His Government considered that to force the Convention on peoples

of the dependent Territories without consulting them would be inconsistent with its obligations as laid down in the Charter.

77. With regard to the statement that as a result of the adoption of General Assembly resolution 1514 (XV) the term "dependent Territories" was out of date, he pointed out that that term had been used in a much more recent resolution, namely, resolution 2625 (XXV) embodying the Declaration on Friendly Relations which specifically stated that the territory of a colony or other Non-Self-Governing Territory had, under the Charter, a status separate and distinct from the territory of the State administering it. That resolution had been unanimously adopted, which meant that the General Assembly as a whole had recognized the legitimate existence of Non-Self-Governing Territories and the responsibility of the administering Powers towards such Territories. It was because his delegation did not wish to force international obligations upon dependent Territories that it had considered a provision such as that contained in article 44 highly desirable, and it very much regretted the vote which had just taken place.

78. Mr. BYKOV (Union of Soviet Socialist Republics) congratulated the Committee on rejecting the colonial clause and thus acting in accordance with the United Nations Charter and resolution 1514 (XV). The speedy granting of independence to colonial countries and peoples accorded with the basic interests of peoples. It was no accident that that clause no longer appeared in many recent international agreements.

#### Article 45

79. Mr. WATTLES (Executive Secretary of the Conference) said that in the view of the Secretariat the article was unnecessary, as the Secretary-General had had some 29 years of experience of acting as depositary for international treaties. However, if the article was retained, it could not be put into final form until the formalities under part III of the Convention had been completed.

80. Mr. WYNDHAM (Australia) said that, since the article defined the way in which the Secretary-General should carry out his role as depositary and listed the type of communications for which notification was necessary, it might prove to be restrictive. He therefore agreed to its deletion.

81. Mr. DALTON (United States of America) said that, since article 45 did not give an exhaustive list of the depositary functions normally mentioned in international agreements, his delegation could support the proposal to delete the article.

82. Mr. STEEL (United Kingdom) said that his delegation had no objection to the proposal, particularly since the Vienna Convention on the Law of Treaties—though that, of course, was not yet in force—contained a more exhaustive list of the duties of a depositary, and there was no need to set out a less satisfactory enumeration in the present Convention.

83. The CHAIRMAN said that if he heard no objection, he would take it that article 45 was to be deleted.

*It was so decided.*

#### Proposed additional article

84. Mr. HAMBURGER (Austria) said that his delegation had intended to suggest earlier that a termination clause to the effect that the application of the

Convention would terminate if the number of parties bound by it fell below five should be included in the Convention. He asked the Secretariat to suggest appropriate wording.

85. Mr. WATTLES (Executive Secretary of the Conference) suggested the following text: "This Convention shall cease to be in force if the number of Contracting States should fall below five."

86. Mr. BYKOV (Union of Soviet Socialist Republics) said that the Committee should complete consideration of article 46 before turning to the matter raised by the representative of Austria. His delegation had serious doubts as to the advisability of the proposed addition, for, in discussions in connexion with

the Vienna Convention on the Law of Treaties, it had been observed that although certain conventions did contain such a clause, such cases were very rare. That was why the Vienna Convention made no provision for them. If the number of States parties to the Convention dropped to five and those five still agreed to continue to apply the Convention, there was no reason to deprive them of the opportunity to do so. He asked the representative of Austria not to press the matter.

87. The CHAIRMAN suggested that proposals in relation to articles 31 and 46 should be submitted in writing for consideration at the next meeting.

*The meeting rose at 1.10 p.m.*

## 2nd meeting

Wednesday, 29 May 1974, at 10.35 a.m.

*Chairman:* Mr. KAMPIS (Hungary).

A/CONF.63/C.2/SR.2

### Election of Officers (*concluded*)

1. Mr. MUKUNA KABONGO (Zaire) nominated Mr. Adesalu (Nigeria) for the office of Vice-Chairman.

*Mr. Adesalu (Nigeria) was elected Vice-Chairman.*

2. Mrs. KOH (Singapore) nominated Mr. Raju (India) for the office of Vice-Chairman.

3. Mr. BAJA (Philippines) and Mr. ADESALU (Nigeria) supported the nomination.

*Mr. Raju (India) was elected Vice-Chairman.*

### Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.2/L.1) (*continued*)

#### Article 46

4. The CHAIRMAN recalled that, at the previous meeting, the representative of Austria had suggested that a termination clause should be inserted in the Convention.

5. Mr. DALTON (United States of America) said that his delegation had some hesitation with regard to the idea embodied in the proposal. Normally no provision was made for the termination of multilateral treaties in the event that the number of parties to such treaties dropped below a certain figure. The general rule which was codified in article 55 of the Vienna Convention on the Law of Treaties<sup>1</sup> was that, unless a treaty contained a specific provision to that effect, termination did not follow automatically once the num-

ber of parties dropped below the minimum necessary for the treaty's entry into force. His delegation saw no reason why those States that wished to continue to implement a convention should be prevented from doing so merely because of the limited number of parties to it. If the Austrian suggestion was adopted, such States would have to readopt the convention, and there seemed little point in that.

6. Mr. HAMBURGER (Austria) said that, in view of the general feeling in the Committee, he would not press the matter.

7. The CHAIRMAN said that if he heard no objection, he would take it that article 46 was adopted unchanged.

*It was so decided.*

#### Article 31 (*continued*)

8. Mr. TRUDEL (Canada), introducing his delegation's amendment (A/CONF.63/C.2/L.1), said that it was intended for countries like his own in which different systems of law were applicable in relation to prescription in the international sale of goods. The proposed text had been patterned closely on similar clauses in existing conventions and therefore should not raise too many difficulties. However, as certain other delegations would like to see certain nuances in the draft, he suggested that the discussion of it should be postponed.

9. The CHAIRMAN said that in the absence of any objections, he would declare the discussion postponed to the following morning.

*It was so decided.*

*The meeting rose at 10.50 a.m.*

<sup>1</sup> See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), p. 289, document A/CONF.39/27.

### 3rd meeting

Thursday, 30 May 1974, at 10.45 a.m.

Chairman: Mr. KAMPIS (Hungary).

A/CONF.63/C.2/SR.3

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.2/L.1) (continued)**

*Article 31 (continued)*

1. The CHAIRMAN invited the Committee to resume consideration of the amendment (A/CONF.63/C.2/L.1) proposed by Canada to article 31 of the draft Convention.

2. Mr. TRUDEL (Canada) said that consultations on the text of the proposed amendment had revealed a need for more research and further exchanges of views. He was confident that an improved text would emerge, but meanwhile he must regretfully propose the adjournment of discussion of the draft amendment.

3. The CHAIRMAN suggested that the meeting should be adjourned.

*It was so decided.*

*The meeting rose at 10.50 a.m.*

### 4th meeting

Friday, 7 June 1974, at 3.25 p.m.

Chairman: Mr. KAMPIS (Hungary).

A/CONF.63/C.2/SR.4

**Consideration of the draft Convention on Prescription (Limitation) in the International Sale of Goods (A/CONF.63/4, A/CONF.63/C.2/L.1, L.2, L.3,\* L.4, L.70) (concluded)**

*Article 31 (concluded)*

1. Mr. DALTON (United States of America), in reply to a question from the Secretary of the Committee, said that his delegation's amendment (A/CONF.63/C.2/L.3) should constitute a separate article from article 31.

2. Mr. TRUDEL (Canada), introducing his delegation's amendment (A/CONF.63/C.2/L.2), which had been drafted following consultations and which superseded the amendment contained in document A/CONF.63/C.2/L.1, said that under the Canadian Constitution, which conferred upon the provinces exclusive power to legislate in private and commercial matters, the federal Parliament could not pass laws directly on such matters as prescription. However, only Canada as a sovereign State had access to international forums and could participate in international treaties. Canada wanted a uniform law on the subject and did not wish to have any special privilege. That was why it had not supported article 31 as originally drafted.

3. Under the amendment proposed by his delegation, the Convention would apply in the case of Canada, as in the case of other countries, in all parts of its territory where the competent legislative authority had given the Convention the force of law. The disadvantages of the proposal were minimal, for, as international trade generally consisted of a series of repeated actions, it could be assumed that the businessmen involved would know the addresses of the persons in another country with

whom they were dealing. In the case of Canada, they would be able to tell whether or not the Convention applied to those persons simply by referring to the Canadian declaration, which would specify what provinces had passed their own laws to apply to the uniform law. It would be no more complicated than verifying whether a particular unitary State had signed the Convention. Article 31 was the only way by which Canada would be able to adhere to the Convention.

4. Although the amendment was closely patterned on similar provisions in earlier conventions, two changes had been introduced. One was the addition of the third paragraph, the purpose of which was to clarify the situation that would apply in the case of States under whose Constitution the central Government had power to legislate on all matters. The purpose of the second change was to make it clear that the different systems of law applicable in the various territorial units must be based on the Constitution of the federal State.

5. Mr. HARTNELL (Australia) said that his delegation was sympathetic towards the problem faced by Canada and similar States and would certainly like Canada to be able to ratify international conventions generally. However, his delegation would withdraw its subamendment (A/CONF.63/C.2/L.4) to the Canadian amendment, for it felt that at the present stage it should vote against any form of federal clause.

6. Mr. KOPAČ (Czechoslovakia) said that the scope of the Canadian amendment was now much broader. It made no mention of federal States and, in effect, constituted a colonial clause rather than a federal one, thus raising a problem which had already been resolved.

7. Mr. STEEL (United Kingdom) said that he regarded the statement just made as an erroneous conception of the problem. Alternative B of the original draft article 44 which had been deleted could be

\*Previously issued as document A/CONF.63/C.1/L.134, and reclassified by document A/CONF.63/C.2/L.3/Corr.1.

described as a colonial application clause, since it referred to non-metropolitan territories. Article 31, on the other hand, dealt with parts of metropolitan territories and related, for instance, to the situation in the United Kingdom where there were two different systems of law and where, for example, Scottish law on prescription differed from English law. Scotland could hardly be described as a non-metropolitan territory. The case in federal States was even stronger. The United Nations Commission on International Trade Law had recognized that there was a difference, for it had drafted two separate articles on that subject for incorporation in the draft Convention, one of which—article 44—the Committee had already considered. The Committee was therefore dealing with the present matter for the first time and was not reverting to a question which had already been disposed of.

8. Mr. BYKOV (Union of Soviet Socialist Republics), referring to the statement by the United Kingdom representative that the colonial clause had been settled once and for all and that the Committee should not revert to it, said that the question raised by the representative of Czechoslovakia with respect to article 31 was quite understandable, as the amendment proposed by the representative of Canada was very ambiguous.

9. When the Committee had discussed the original version of article 31, which was clearly intended for federal States, serious doubts had been expressed about the advisability of including such an article in the Convention, and it had been stated that to do so would not facilitate the application of the Convention. It had also been said that such an article would create an unequal situation between various parties by giving a privileged position to federal as compared with unitary States.

10. He agreed with the representative of Czechoslovakia that the article as now formulated was broader in scope than the former federal clause, for it referred, not to units of federal States, but to territorial units. Pointing out that the Vienna Convention on the Law of Treaties<sup>1</sup> stipulated in article 29 that international treaties were applicable to the entire territory of Contracting Parties, he stressed that article 31 would not be in line with that provision. Furthermore, it was natural that States which adhered to the Convention on prescription should take certain legislative, administrative or other measures to ensure that it was applied throughout their territory.

11. In the view of his delegation, article 31 would create more problems than it would solve. The Committee had spent several weeks considering uniform rules for sellers and buyers in international sales; yet, if an article such as that proposed by the representative of Canada was included in the Convention, the Committee would now be departing from uniform norms. That, in turn, would create complete uncertainty for businessmen, who would then have to know not only whether a State was a Contracting Party but also which regions, provinces or districts of that State were applying the Convention. His delegation therefore had grave doubts about the advisability of including article 31 in the form proposed by Canada.

12. Mr. MUSEUX (France) said that although article 31 was not necessary as far as his own delegation

was concerned, it recognized that it might be for others. Hence, in a spirit of co-operation it would support the Canadian amendment, on the understanding that adoption of the amendment would make it easier for federal States to become parties to the Convention.

13. Mr. STEEL (United Kingdom) said that he did not think the Soviet Union representative had provided a satisfactory answer to the case put forward for article 31 by the representative of Canada. The article was not one which his own delegation regarded as vital; however, it seemed that the Soviet attitude was a bit inflexible and not sufficiently sympathetic to those countries which had real problems in dealing with the matter.

14. He pointed out that he had not said that the proposal contained in former draft article 44 had been disposed of for all time, but merely that it had been disposed of for the purposes of the Convention.

15. While the Soviet representative had rightly drawn attention to the article of the Vienna Convention on the Law of Treaties which stated that a treaty was binding on a State in respect of its entire territory, he had omitted to mention the rest of the article containing the qualifying provision that that was the case unless a different intention was apparent from the treaty or was otherwise established. That point was therefore less convincing than had initially appeared.

16. Mr. YUSHITA (Japan) said that he shared the views expressed by the representative of France and would support the Canadian amendment. However, he felt that the expression "in relation to this Convention" in paragraph 1 was not quite clear. It might be better to insert the words "the matters dealt with in" before the words "this Convention". Secondly, if and when the Canadian proposal was accepted, it would have to be determined when amendments to declarations of States would come into effect. That could be discussed in connexion with article 38. Logically, amendments which added territorial units to which the Convention applied should be treated as cases of accession—in other words, in accordance with article 42, paragraph 2. On the other hand, if an amendment contained a reduction of the number of territorial units to which the Convention applied, it should be treated as a denunciation—in other words, in accordance with article 43, paragraph 2.

17. Mr. JEMIYO (Nigeria) said that under the Nigerian federal Constitution prescription fell within the competence of the individual States. He would therefore support the Canadian amendment.

18. Mr. NANOWSKI (Poland) said that although his delegation was sympathetic to the Canadian amendment for the reasons given by the representative of France, the fact remained that the main purpose of the Convention was to achieve uniformity. Consequently his delegation found the arguments advanced by the representative of the Soviet Union more convincing and would vote against the Canadian amendment.

19. Mr. JENARD (Belgium) said that his delegation would support the Canadian amendment.

20. Mr. RAJU (India) said that the Canadian amendment was not acceptable, since it might lead to intervention in the internal affairs of States and to the interpretation of a State's constitutional provisions by third parties. If delegations so wished, the amendment could be replaced by a formula analagous to the federal clause (article 10) in the Protocol to the International

<sup>1</sup> See United Nations Conference on the Law of Treaties, 1968 and 1969, *Official Records* (United Nations publication, Sales No. E.70.V.5), p. 289, document A/CONF.39/27.



Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex), namely, "the provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions".

21. Mrs. JUHASZ (Hungary) agreed with the representatives of Czechoslovakia, the Soviet Union, Poland and India that the Canadian amendment would create uncertainties and might be tantamount to a reconsideration of article 44. Her delegation would not be able to support it.

22. Mr. WAGNER (German Democratic Republic) said that he understood the problem encountered by federal States in applying international Conventions. However, those problems were internal affairs of such States, and they should settle them accordingly. His delegation therefore supported the views expressed by the representatives of the Soviet Union, Czechoslovakia, Poland, India and Hungary.

23. Mr. CHAFIK (Egypt) said that although the federal clause was not important to his own delegation, it would in a spirit of international co-operation support the Canadian amendment, which seemed to provide a good solution to the problem.

24. Mr. HAMBURGER (Austria) said that while the problem of application of the Convention did not apply to Austria, even though it was a federal State, it was none the less sympathetic to the problems of other such States. It would support the Canadian amendment, provided that it applied only to countries whose constitutions made application of the Convention problematical. The opening phrase of paragraph 1 should be "If a federal or non-unitary Contracting State". With reference to article 31 as drafted by UNCITRAL (A/CONF.63/4), his delegation could accept paragraphs (a) and (b) but not paragraph (c).

25. Mr. KIBIS (Byelorussian Soviet Socialist Republic) said that, while his delegation fully appreciated the situation in which Canada found itself as a result of its internal structure, it was also fully aware that the aim of the Conference was to unify international law on prescription. Furthermore, the Convention was intended to apply to all territory units of an individual State. Consequently, his delegation associated itself with those which were opposed to the Canadian amendment.

26. Mr. DALTON (United States of America) said that his own country, although a federal State, would have no difficulty in applying the Convention. He was, however, sympathetic to the problem raised by the representatives of Canada and Nigeria, where competence in respect of international treaties lay with individual units of the State. Since his country would regret not being able to be in a treaty relationship with its neighbour and with the friendly State of Nigeria, he would vote for the Canadian amendment.

27. Mr. SPEEKENBRINK (Netherlands) felt that the Canadian amendment represented a legitimate interest of a particular group of States. Accordingly, his delegation, subscribing to the spirit of international co-operation for which the representatives of France and Egypt had appealed, supported the Canadian amendment.

28. Mr. VON HOESSLE (Federal Republic of Germany) said that his delegation supported the Canadian amendment.

29. Mr. TRUDEL (Canada) pointed out that if a federal clause of the kind his delegation was proposing was not approved, States like his own would be unable to contribute to the uniformity the Conference so clearly desired by acceding to the Convention.

30. Mr. HAMBURGER (Austria) recalled that his delegation had orally proposed a subamendment to the Canadian amendment, under which the first sentence of the new article 31 would begin: "If a federal or non-unitary Contracting State..."

31. Mr. TRUDEL (Canada) said that the Austrian subamendment might be unduly restrictive, for the problem raised in his own amendment affected countries other than Canada.

32. Mr. AL-QAYSI (Iraq) asked how the Austrian subamendment could be applied in the case of the United Kingdom, which was a unitary State but had two different legal systems.

33. Mr. HAMBURGER (Austria) suggested that the problem of States like the United Kingdom might be covered by the proposed article 31 *bis*.

34. Mr. STEEL (United Kingdom) was of the opinion that the proposed article 31 *bis* dealt with a different problem and did not help the United Kingdom on the point dealt with by article 31. While the United Kingdom might arguably be included among the "non-unitary" States mentioned in the Austrian subamendment, such a description would not really be apt. The subamendment would put his delegation in some embarrassment and he therefore appealed to the Austrian delegation not to press it.

35. Mr. MUSEUX (France) considered that the Austrian subamendment had been put forward because Austria would not wish to make the declaration of the type permitted under the proposed article 31. Pointing out that allowance for such an eventuality had been made in paragraph 3 of the Canadian amendment, he asked the representative of Austria to withdraw his proposal.

36. Mr. HAMBURGER (Austria) withdrew his proposal.

37. Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he fully understood the United Kingdom's position with regard to the Austrian proposal, since problems under article 31 would arise for other than federal States. None the less, as his delegation had already emphasized, such problems should be settled in accordance with internal legislation, the main goal in elaborating the Convention being the accession to it of all States on an equal footing. Acceptance of the Canadian proposal would complicate the situation rather than assist in achieving uniformity, and his delegation therefore understandably maintained its reservations concerning that proposal.

38. The CHAIRMAN invited the Committee to vote on the amendment submitted by Canada in document A/CONF.63/C.2/L.2.

*The Canadian amendment (A/CONF.63/C.2/L.2) was adopted by 15 votes to 11, with 2 abstentions.*

39. The CHAIRMAN recalled that the representative of Japan had raised two points with regard to the Canadian amendment. If he heard no objection, he would take it that the Committee agreed to refer to the Drafting Committee the Japanese proposal to add

the words "the matter dealt with in" after the words "in relation to" in the first paragraph of document A/CONF.63/C.2/L.2.

*It was so decided.*

40. Mr. AL-QAYSI (Iraq) said that the point raised by the representative of Japan concerning the entry into force of declarations under the Canadian amendment seemed to be a matter of substance rather than of drafting and should therefore be discussed by the Second Committee.

41. Mr. YUSHITA (Japan) explained that his particular concern had been with the timing of the entry into force of amendments to declarations made under the Canadian version of article 31. His delegation considered that original declarations under that article should enter into force for the States concerned at the same time as the Convention but the question remained as to when amendments to such declarations should enter into force, since amendments to such declarations could be made at any time.

42. Mr. STEEL (United Kingdom), supported by Mr. CHAFIK (Egypt), agreed that the point raised by the representative of Iraq was valid, but proposed that the matter should none the less be referred to the Drafting Committee in order to save time.

43. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to refer the question of the entry into force of amendments to declarations under article 31 to the Drafting Committee.

*It was so decided.*

#### *Article 31 bis*

44. Mr. DALTON (United States of America) said that, while the proposal his delegation was making in document A/CONF.63/C.2/L.3 might seem self-evident, he felt that the inclusion of such a clause, as in other conventions on similar subjects, would be of use. Since the amendment referred to the conflict of laws, a problem different from that covered in the new article 31, he proposed that it should be referred to the Drafting Committee for inclusion as a separate article.

45. Mr. AL-QAYSI (Iraq) said that the words "in relation to that matter" in the United States proposal were redundant. In his opinion, the amendment really sought to deal with the problem of the existence of two or more legal rather than territorial units within a State, in which case the article would require extensive redrafting.

46. Mr. HARTNELL (Australia) said his delegation was willing to leave the question of whether the United States proposal should be incorporated in article 31 or appear as a separate article to the Drafting Committee. He was mainly concerned with how a court would decide which was the "appropriate" unit in cases involving the law of another State; would it, for example, be necessary for a foreign court to hear evidence from a United States lawyer in order to determine which territorial unit of the United States was competent in cases where questions of the conflict of United States laws arose?

47. Mr. DALTON (United States of America) suggested that the foreign court would consider the constitutional system of the other State to see what was its system of law and would then look at the general

rules governing conflict of laws in order to decide which laws were most pertinent to the transaction concerned.

48. Mr. HARTNELL (Australia) construed that reply to mean that a foreign court would in fact need to hear a lawyer from the other State, a procedure which would involve great expense.

49. Mr. MUSEUX (France) agreed that the United States proposal should be the subject of a separate article. As to the substance of the proposal, he largely agreed with the representative of Australia and proposed that the term "unit appropriate" should be replaced by the term "unit concerned".

50. Mr. DALTON (United States of America) proposed that, in order to avoid repetition of the word "concerned", the phrase used should be "unit indicated".

51. Mr. MUSEUX (France) said that he could accept the proposal just made by the United States representative on the understanding that the reference was in fact to the unit concerned.

52. Mr. AL-QAYSI (Iraq) said that, while he did not wish to undermine the substance of the United States amendment, it might be more appropriate for it to read:

"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 as determined by the legal system of the State concerned."

That would cover both federal and unitary States with two or more different legal systems.

53. Mr. HARTNELL (Australia) said that, although the version proposed by the representative of Iraq was clearer, the problem of the determining role of the "legal system of the State concerned" still remained. Thus, under Australian law, it would continue to be necessary for a court to hear testimony from an expert on the legal system of the other State in order to know which of its legal units was competent in a matter. It might be best, therefore, if the Convention contained no article of the type proposed by the United States and if each State relied on its own rules governing conflict of laws when such questions arose.

54. Mr. STEEL (United Kingdom) agreed that the problem of the need for expert testimony was a real one, but he felt that the conflict of laws and therefore the possible need for expert evidence could not be avoided in international trade. The United States proposal gave useful guidance in that difficult field and should be retained, subject to refinement by the Drafting Committee.

55. Mr. HARTNELL (Australia) agreed with the United Kingdom representative that the problem at issue was that of the conflict of laws. However, his own view was that such conflicts should be solved according to the law of the State in which a suit was brought, whereas the United Kingdom representative was saying that the applicable legislation should be that of the State connected with the contract, a proposal which would inevitably lead to additional expense.

56. Mr. HAMBURGER (Austria) felt that the phrase "shall be construed" was unduly restrictive, since it was likely to preclude a court from applying the normal procedures of conflict of laws and might

thus put businessmen to the trouble of obtaining expert witnesses to testify concerning the law of the "unit appropriate". If the expert witness turned out to be wrong, or his views were not upheld by the court, much time and expense would have been wasted.

57. Mr. AL-QAYSI (Iraq) pointed out, by way of example, that it was impossible for a person to have a domicile in "the United States"; it must be in one particular state of the United States. The purpose of the amendment in such cases was to make it clear that the law to be applied was the *lex fori*. Having said that, he shared the Australian representative's apprehensions that, in fact, expert evidence was likely to be required.

58. Mr. YUSHITA (Japan) said that as he saw it, the United States proposal was meant to state the obvious and he wondered if it related to the substantive problem of the conflict of laws.

59. Mr. BYKOV (Union of Soviet Socialist Republics) considered that the United States proposal might create problems rather than solve them. It referred to "the legal system of the State concerned", but in the Soviet Union, for example, there was only one legal system whereas there were many different State legislatures, and that might cause problems which the proposed amendment would do nothing to solve. He was therefore sceptical regarding the value of the draft amendment but would not object to it if other delegations felt that it served a useful purpose.

60. The CHAIRMAN inquired whether the Committee wished to vote on the United States draft amendment to article 31 *bis*.

61. Mr. CHAFIK (Egypt) said that he assumed the vote would be on the question whether an amendment of the kind proposed was needed in principle, and not on the text as submitted. If the principle was accepted, the United States proposal would then presumably be sent to the Drafting Committee.

62. Mr. DALTON (United States of America) said that that was his understanding.

63. The CHAIRMAN put to the vote the United States amendment (A/CONF.63/C.2/L.3) relative to article 31 *bis* of the draft Convention.

*The amendment was adopted by 10 votes to 3, with 11 abstentions.*

64. The CHAIRMAN said that the draft amendment would be sent to the Drafting Committee together with an indication of the views expressed and proposals made by delegations.

#### Article 37

65. Mr. MUSEUX (France) observed that the provision in article 37 was not usually found in international conventions. It might, of course, prove to be of use if States, when applying the Convention, made limitations which resulted in non-uniform application, and he was therefore in favour, at least in theory, of inserting the article. However, the Committee should bear in mind the work of the First Committee, which was having difficulty in agreeing on a definition of international sales that was satisfactory to and accepted by all delegations. He suggested that while that uncertainty prevailed, article 37 should not be included in the Convention. If a satisfactory solution was found to the problem of defining international sales, the article could always be reinstated.

66. Mr. AL-QAYSI (Iraq) pointed out that a two-thirds majority would be needed to reverse a decision of the Committee.

67. Mr. MUSEUX (France) replied that that would be no problem if States agreed on a satisfactory compromise regarding a definition of international sale of goods.

68. Mr. HAMBURGER (Austria), supported by Mr. NANOWSKI (Poland) and Mr. HARTNELL (Australia), suggested that the article might be left unchanged and merely passed to the plenary session for review.

69. Mr. YUSHITA (Japan) said that he supported that suggestion. If it should prove impossible in the plenary session to reach a compromise on the definition of the international sale of goods in article 2, the plenary could then turn to specific consideration of draft article 37 in the light of that failure. In general, his delegation considered that the article was desirable for the sake of uniformity, though he would be prepared to accept any reasonable compromise.

70. The CHAIRMAN suggested that article 37 should not be put to the vote. The article would be maintained in the form in which it was presented in the draft Convention, it being understood that it could be reconsidered in the plenary session.

*It was so decided.*

#### Article 38

71. Mr. STEEL (United Kingdom) withdrew the amendment (A/CONF.63/C.1/L.70), which had been proposed by his delegation, as it was no longer applicable.

72. Mr. WATTLES (Executive Secretary of the Conference) pointed out that the declarations provided for in articles 34 and 35 of the draft Convention had to be made at the time of deposit of the instrument of ratification or accession and must therefore be presumed to take effect at the same time. It would cause confusion if article 38 specified that they took effect some months later, and he therefore suggested that the reference to articles 33 to 35 should be deleted.

73. Mr. YUSHITA (Japan) observed that paragraph 2 of article 38 dealt with the withdrawal of declarations. He did not therefore think that the reference to "articles 33 to 35" should be deleted from paragraph 2.

74. Mr. STEEL (United Kingdom) said that paragraph 1 of the article was concerned with two different matters: where declarations were to be addressed, and when they should take effect. The article should be redrafted to make that point clear. While he could offer various suggestions which would have that effect, they did not include deletion of the reference to articles 33 and 34.

75. Mr. BYKOV (Union of Soviet Socialist Republics) said that the necessary drafting changes could best be made by the Drafting Committee.

76. Mr. MUSEUX (France) agreed and pointed out in that connexion that the Canadian amendment (A/CONF.63/C.2/L.2) which the Committee had just adopted also dealt with the notification of declarations to the Secretary-General and should therefore be mentioned in article 38.

77. The CHAIRMAN suggested that the text of the article, together with the draft amendments suggested

by the representative of the United Kingdom, should be referred to the Drafting Committee.

*It was so decided.*

78. Mr. YUSHITA (Japan) said that the period of three months suggested in the draft article seemed too short, especially in the case of the withdrawal of a declaration. He had no decided views on the time-limit but felt that six months would be more practical.

79. Mr. NANOWSKI (Poland) said that a decision on the time-limit was a substantive matter which he

did not think should be referred to the Drafting Committee.

80. Mr. DALTON (United States of America), supported by Mrs. JUHASZ (Hungary), expressed support for a six-month period.

81. The CHAIRMAN invited the Committee to vote on the Japanese proposal that the period time specified in paragraphs 1 and 2 of article 38 should be six months.

*The proposal was adopted by 23 votes to none, with 2 abstentions.*

*The meeting rose at 5.55 p.m.*

*Part Three*

**COMPARATIVE TABLE OF THE NUMBERING  
OF THE ARTICLES OF THE CONVENTION**



**Comparative table of the numbering of the articles of the Convention on the Limitation Period in the International Sale of Goods and of the draft articles considered by the Conference**

<i>Number of article in Convention on the Limitation Period in the International Sale of Goods (A/CONF.63/15)</i>	<i>Number of article in draft provisions approved by the Drafting Committee (A/CONF.63/7)</i>	<i>Number of article in UNCITRAL draft provisions (A/CONF.63/4)</i>	<i>Relevant paragraphs in the report of the First Committee (A/CONF.63/9 and Add.1-8)</i>	<i>Relevant paragraphs in the report of the Second Committee (A/CONF.63/12)</i>	<i>Plenary meeting at which article discussed</i>
1	1	1	8-15		6th
2	2	2	16-22		6th
3	3	3	23-28		7th
4	4	4	29-33		7th
5	5	5	34-38		7th
6	6	6	39-43		7th
7	7	7	44-48		7th
8	8	8	49-54		7th
9	9(1)	9(1)	55-60		7th
	9(2)(a)	9(3) second sentence	55-60		
	9(2)(b)	13(3)	86-91		
10	10(1)	9(3) first sentence	55-60		7th
	10(2)	10(1)(2)	66-72		
	10(3)	9(2)	61-65		
11	11	10(3)	66-72		7th, 8th
12	12	11	73-77		8th
13	13	12(1)	81-85		8th
14	14	13(1)(2)	86-91		8th
15	15	14	92-96		8th
16	16	12(2)	81-85		8th
17	17	15	97-101		8th
	18	16	102-106		8th
18	19	17	107-111		9th
19	20	18	112-117		9th
20	21	19	118-122		9th
21	22	20	123-127		9th
22	23	21	128-133		9th
23	24	22	134-140		9th
24	25	23	144-147		9th
25	26	24	149-154		9th
26	27	25	155-158		9th
27	28	26	159-162		9th
28	29	27	163-167		9th
29	30	28	168-172		9th
30	31	29	173-178		9th
		30		11-13	
31	32	31		14-19	9th
32	33			20-23	9th, 10th
33	34	32		24-26	10th



## Part Three. Comparative table of the numbering of the articles of the Convention

<i>Number of article in Convention on the Limitation Period in the International Sale of Goods (A/CONF.63/15)</i>	<i>Number of article in draft provisions approved by the article in draft Committee (A/CONF.63/7)</i>	<i>Number of article in UNCITRAL draft provisions (A/CONF.63/4)</i>	<i>Relevant paragraphs in the report of the First Committee (A/CONF.63/9 and Add.1-8)</i>	<i>Relevant paragraphs in the report of the Second Committee (A/CONF.63/12)</i>	<i>Plenary meeting at which article discussed</i>
34	35	33	182-185		10th
35	36	34	190-193		10th
36	37	35	194-198		10th
37	38	36	202-205		10th
38					10th
39	39	37		27-29	10th
40	40	38		30-36	10th
41	41	39		37-39	10th
42	42	40		40-42	10th
43	43	41		43-45	10th
44	44	42		46-48	10th
45	45	43		49-51	10th
		44		52-54	
		45		55-57	
46	46	46		58-60	10th