

Article 9 (continued)

Mr. KHOO (Singapore) said his delegation could not accept the starting-point for the limitation period specified in the first sentence of article 9 (5), according to which if, as a result of a breach of contract by one party before performance was due, the other party thereby became entitled to and elected to treat the contract as terminated, the limitation period in respect of any claim arising out of such breach would commence on the date on which such breach occurred. In the view of his delegation, that provision could be applied only in the simplest situations, such as that illustrated in the commentary (A/CN.9/70/Add.1, page 35, para. 10). There were many other situations in which it would introduce an element of uncertainty. For example, a contract might be signed for the supply of 2,000 telex lines, of which 1,000 were to be completed by the end of 1972 and 1,000 by the end of 1973. The contract might stipulate that the seller was to proceed diligently to the delivery and installation of the lines and that, if he did not, the buyer would be entitled to terminate the contract either with or without notice. Other than those stipulations, the contract might not specify any further subperiods or dates for partial delivery and installation. The seller might fail to take the necessary steps to complete the supply and installation of the lines within the time provided, and might fail to inform the buyer whether or not he intended to meet the terms of the contract. The buyer could not be expected to wait until the end of the year to terminate the contract, but should be able to do so whenever it became evident to him that the seller had no intention of honouring it. The problem then arose as to how to determine the date on which the breach of contract occurred. Of the three possible dates for the commencement of the limitation period, mentioned in paragraph 11 of the commentary, it would seem that the only one which could reasonably be applied in that case would be the notification of termination, i.e. the date on which the buyer notified the seller that, in view of the latter's apparent inability or unwillingness to honour the contract, it should be terminated.

His delegation doubted seriously whether article 9 (5) would be workable in practice. He therefore asked that the Working Group should reconsider that paragraph.

The CHAIRMAN asked the representative of Singapore to transmit his suggestions to the Working Group, preferably in written form.

Articles 12, 13 and 15

Mr. HONNOLD (Secretary of the Commission) said that articles 12, 13 and 15 were concerned with action under three types of legal proceedings that stopped the running of the limitation period. The significance of such legal proceedings was that they prevented the limitation period from expiring so that the claim would not be barred under article 24. As noted in paragraph 1 of the commentary to article 12 (A/CN.9/70/Add.1, page 41), the reference in the heading to "interruption" did not imply that the consequences of "interruption" under various national legal systems were imported into the Law. The text of the Law itself did not use the term "interruption" in connexion with those provisions. Article 16, which did refer to "interruption", was scarcely an exception since the reference was limited to those legal systems that used that concept. The Working Group had felt that the use of the term in the general heading for that group of articles might be helpful as an indication of the general character of the problem with which the articles dealt. However, in view of the ambiguity of the term, he understood that the Working Group might wish, as a matter of style, to consider whether the heading might be modified.

The aim of articles 12, 13 and 15 was to define the stage which proceedings must reach before the expiration of the period in order to stop the running of the period. Article 12, which dealt with judicial proceedings, took account of the fact that such proceedings were instituted in various ways in different legal systems. Paragraphs 3 and 4 of the commentary to article 12 therefore referred to the rules of the jurisdiction where the proceedings were brought, which defined the steps to be taken in order to institute proceedings. A different approach was taken with regard to other proceedings, such as arbitration.