

gauge the feeling of the Commission. He noted that nine delegations were in favour of having the period commence from the date of expiration of the original period and that seven delegations favoured the United States formulation.

He then invited representatives to indicate by raising their hands whether they were in favour of the deletion of article 22 (3). He noted that four delegations were in favour of the deletion of that paragraph.

He then drew attention to article 22 (2) proposed by the Spanish delegation (A/CN.9/V/CRP.17), which provided that the debtor could waive the limitation acquired. After asking for a show of hands on that amendment, he noted that eight delegations supported it.

Drawing attention to the Spanish amendment entitled "article 22 bis", he asked members whether they agreed with the principle contained therein, to the effect that the extension should also cover the situations envisaged in articles 18 and 19.

Mr. OLIVENCIA (Spain) said he felt that the amendment could be referred directly to the Working Group, since it was mainly aimed at achieving greater symmetry in the draft as a whole and was not of a substantive nature.

The CHAIRMAN said that, in view of the Spanish representative's remarks, the Spanish amendment entitled "article 22 bis" would be referred directly to the Working Group.

Article 23

Mr. WARIOBA (United Republic of Tanzania) stressed that, at the fourth session of the Commission, his delegation had opposed the inclusion of article 23 in the draft Convention. It seemed to his delegation that the Commission had already established too many exceptions to the rules regarding limitation, particularly in articles 8 to 11. The inclusion of article 23 would have far-reaching implications. If only the parties were allowed to raise the question of limitation in court, three possible situations might arise. In the first place, the parties might agree, before going to court, not to raise the issue of limitations, which would be tantamount to allowing an implied modification of the

Law by the parties. In the second place, the parties might simply be unaware of the existence of the limitation period. In the third place, the court might draw attention to the question of limitation but would not be able to do more than that.

In view of all the exceptions provided for in articles 17, 22 and 23, he failed to see where public policy considerations were taken into account in the draft, which removed the power of public authorities to do anything regarding limitation. If the Commission wished to discourage stale claims, it must enable the public authorities to do so. He had not submitted an amendment proposing the deletion of article 23 because he had already made his position clear at the fourth session and had not succeeded in influencing the Working Group. However, he wished to place on record his delegation's opposition to that article, which had the effect of tying the hands of the public authorities and making the entire Law work on behalf of the autonomy of the parties.

Mr. POLLARD (Guyana) said his delegation supported article 23 in principle, although it felt its formulation was vague and should be improved. He therefore suggested that it should be amended to read as follows: "Expiration of the limitation period shall be pleaded as a bar to the exercise of a claim in any legal proceedings only by the party against whom such a claim is sought to be exercised."

The point raised by the representative of Tanzania was a valid one, but he felt that it was unwise to give the court the power to say that a claim had been barred, since that would place it in the position of acting as an advocate.

Mr. KAMAT (India) said his delegation fully shared the views expressed by the Tanzanian representative. He was not convinced by the justification for the article mentioned in the commentary (A/CN.9/70/Add.1, p. 59). If, as was stated in the commentary, a party who could interpose that defence would rarely fail to do so, there should be no objection to having the court impose the limitation. The second argument mentioned in the commentary, namely, that the tribunal could draw attention to the lapse of time and inquire whether the party wished the issue to be taken into consideration was contrary to judicial propriety, since the court would not have the power to enforce the limitation. Article 22

provided the parties with an opportunity to agree in advance to a modification of the period; in the absence of such an agreement, the court should be able to raise the issue of limitation suo officio. His delegation maintained its position that public policy was an essential consideration in the drafting of the Convention and reiterated its dissatisfaction with the inclusion of article 23.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) informed members that his delegation would be submitting a corrected English version of its observations and proposals concerning the draft Convention.*

* Subsequently circulated as document A/CN.9/V/CRP.15/Rev.1 (English only).