104th meeting (18 April 1972)

/The first part of the meeting was taken up by the discussion of other matters/

Article 22

Mr. HONNOLD (Secretary of the Commission) recalled that the subject matter of article 22, namely, the modification of the limitation period, had been discussed at some legnth during the Commission's fourth session. The length of the prescriptive period and related matters, including modification of the period, had also been the subject of a questionnaire circulated to Governments by the Working Group on Prescription. He drew attention to the analysis of replies to the questionnaire in section 14 of document A/CN.9/70/Add.2 and, in particular, to the paragraphs of that section which dealt with rules under national laws concerning the modification of the limitation period. Those rules being greatly divergent, the problem facing the Working Group had been the achievement of some degree of unification in the draft Convention. The replies of Governments regarding the reconciliation of the divergent approaches to the question were analysed in paragraphs 26-28 of section 14 of the same document. The comments of members of the Commission had been summarized in paragraphs 29 et seq.

In article 22 (1) the Working Group had suggested a general rule excluding modification of the limitation period, subject to the exceptions in article 22 (2) and (3). The reasons for the relaxation of the rule under article 22 (2) was stated in paragraph 3 of the commentary on the article in document A/CN.9/70/Add.1. The reasons for the exception to the general rule allowed under article 22 (3) were discussed in paragraphs 5 and 6 of the commentary.

Mr. COLOMBRES (Argentina) said that article 22 was one of the most important articles in the draft Convention. It was designed to prevent the stronger party to a contract from changing the usual limitation period by, for example, the use of standard contract forms. One situation in which such changes could be imposed was that arising when a large industrial corporation sold machinery to a smaller corporation in another country. The question of developed and developing countries did not arise; the article was concerned with the protection of

the weaker party to a contract. The Commission's discussion earlier of the substance of article 22 had shown that even in municipal legislation there was a tendency to protect the weaker partner as, for example, in the case of standard contracts (contratos normativos). In Argentina, insurance companies had used standard contract forms containing provisions for the reduction of the limitation period prescribed by law and had thus vitiated the whole purpose of the limitation period. The Argentine legislature had introduced a special Act to end the practice.

The draft Convention should strive for the establishment of equilibrium between the parties to contracts and thus to protect the weaker side. He therefore urged the Commission to adopt article 22.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) observed that it would be possible, under article 22 (2), to extend the original four-year limitation period to a total of 14 years. He suggested that the 10-year extension period could be reduced somewhat to introduce greater stability in commercial relations, although he would not press that suggestion. In addition, he found the expression "or have expired" in the paragraph (2) difficult to understand. The paragraph should state that the declaration extending the limitation period must be made during the running of that period.

Mr. WARIOBA (United Republic of Tanzania) said that his delegation had opposed the inclusion of article 22 in the draft Convention at the Commission's fourth session and was still strongly opposed to it. Limitation was a question of public policy and both parties to a contract should be protected equally. He did not consider that limitation was an over-riding factor once the contract had been concluded; nor did he believe that businessmen should be encouraged to think in terms of litigation. Arguments based on the possibility that the stronger party could influence the weaker after the start of the limitation period were somewhat theoretical; by that time the stronger party would be the party which stood to benefit from the extension of the limitation period. In any case, if a weak party threatened a stronger party with the prolongation of the limitation period the latter could threaten future retaliatory measures.

Mr. ROGNLIEN (Norway), referring to the USSR representative's statement, said that the words "or have expired" meant that the declaration could be made

after the original four-year period had expired; the situation was the same as that arising under article 17 (4). If article 17 (4) was to be deleted, article 22 (2) could be reworded so that the possibilities open to the debtor could be invoked only if he made his declaration before the original four-year limitation period had expired, in which case the article could read: "... 10 years from the date on which the period would otherwise expire in accordance with articles 8 and 11". Article 22 (2) did only apply where the debtor made the declaration after the limitation period had started to run - at which point, in the view of the Working Group, he would be on an equal footing with the creditor. He agreed that the stronger party should certainly not be able to press changes in the limitation period upon the weaker party, but the Working Group had seen no great danger of abuse in that connexion after the limitation period had started to run. When that period was nearing its end and the parties were negotiating in an effort to avoid litigation, they should have an opportunity to extend it. It was not sufficient to rely on the provision regarding acknowledgement under article 17 because the debtor might not agree to recognize the debt. In such a situation, the effect of article 22 would be to avoid litigation.

Mr. OLIVENCIA (Spain) said that his delegation's position on the issues raised under article 22 had been stated in its answer to the questionnaire circulated by the Working Group and in the debate during the Commission's fourth session. That position was inspired by a concern to reconcile the varying approaches to the question in the different legal systems - an extremely difficult task. It was in that spirit that his delegation had introduced amendments to the article (A/CN.9/V/CRP.17). In its amended version of article 22, it had omitted the provisions of article 22 (3) of the draft Convention as formulated by the Working Group, because it regarded them as unnecessary in that they related to matters under municipal law which were not covered by the draft Convention. His delegation's version of article 22 merely stated that the limitation period might be extended at any time by the debtor after it had started to run. In an article 22 bis, his delegation provided that such extension should in no event extend the limitation period beyond the end of six years from the date on which the period would have expired in accordance with the normal running period provided for in articles 8 to 11. It had felt that it would be wiser to establish a general norm to cover all possible situations.

He agreed with the USSR representative regarding the possible reduction of the extension period of 10 years contemplated in article 22 (2). Its own version of the article provided for a miximum period of 10 years - the original four-year limitation and a six-year period which was thus a compromise. His delegation's suggestions were not based on any supposed difference between developed and developing countries but had been inspired by a concern for stability in international transactions. Those proposals represented a considerable concession by comparison with his delegation's position during the Commission's fourth session, as an examination of the records would show. The provision in its amended version of article 22 (2) to the effect that the debtor might in any case waive the limitation acquired, but not the right to set a limitation period for the future, was based on the Spanish Civil Code.

He agreed with the USSR representative regarding the difficulty of interpreting the words "or have expired" in article 22 (2) of the text prepared by the Working Group.

Mr. LOEWE (Austria) said that extension of the limitation period was not permissible under Austrian law; if necessary, therefore, his delegation could accept the deletion of the whole of article 22. It would prefer its maintenance, however, because it represented the only remaining basis for the continuation of negotiations between contracting parties at the stage when the limitation period had almost expired. He thought that the entire article should be understood to mean that no debtor could be bound in advance, by the contract or by an agreement added to that contract, to a limitation period.

The USSR proposal that the declaration stipulated in article 22 (2) could be made only during the running of the limitation period was attractive and the logical consequence of the Commission's approach to article 17. He also agreed with the USSR representative that the total limitation period of 14 years possible under article 22 (2) could profitably be reduced. A period of six years from the expiration of the original limitation period would be acceptable to his delegation.

If article 22 was retained, the United States amendments (A/CN.9/V/CRP.14) should be incorporated into it.

Mr. NESTOR (Romania) said that his delegation would prefer to maintain

the text as originally drafted by the Working Group, but was prepared to accept the amendments suggested by the Soviet delegation.

Mr. OGUNDERE (Nigeria) said that his delegation considered the principle stated in article 22 (1) to be sound and could therefore support its inclusion. With regard to paragraph (2), the main reason adduced in the commentary had been that time should be allowed for negotiations to be concluded. His delegation, like that of the United Republic of Tanzania, felt that businessmen had neither the time nor the desire to indulge in unduly protracted negotiations and therefore, if the only justification for retaining article 22 (2) was to grant extra time to a debtor to enable him to complete negotiations with a creditor, his delegation saw no reason for retaining it. In such a situation, there was nothing to prevent the debtor from invoking article 17 (1); too many escape clauses would make the draft Convention ineffective. However, if it was generally felt that paragraph (2) should be retained, his delegation would be prepared to consider the proposals put forward by the Spanish delegation (A/CN.9/V/CRP.17). While his delegation was not entirely convinced of the need to retain paragraph (3), it favoured any solution which sought to establish equilibrium in the draft Convention. It was important to try to establish a situation of uniformity between the creditor and the debtor and in the different periods established throughout the Convention.

Mr. RECZEI (Hungary) felt that the period specified in paragraph (2) was too long. Both the Spanish and United States proposals were highly commendable, but he tended to favour the United States proposal (A/CN.9/V/CRP.14), which would ensure that stronger parties were not able to impose their will on weaker parties. However, if the Commission adopted the United States formulation to the effect that at any time after its commencement the limitation period might be extended by a declaration and that a new period would then commence, it would be necessary to adopt a further provision stating that such extension could take place on only one occasion, in order to prevent the limitation period from being prolonged indefinitely. The Commission might therefore wish to choose between the Spanish proposal to set a maximum limit or the United States proposal, as amended by his delegation

Mr. MUDHO (Kenya) agreed with the Tanzanian representative that limitation

was a matter of public policy and therefore found it difficult to accept paragraph (2). An amendment along the lines proposed by the Spanish delegation would be satisfactory and would prevent parties from prolonging the extension period indefinitely. The present formulation of paragraph (2) might give parties undue freedom with regard to extending the limitation period.

Mr. ELLICOTT (Australia) said that his delegation was inclined to support the retention of article 22. In its view, there was no clear-cut distinction between a situation of acknowledgement and one of modification. Parties engaged in negotiations at the end of the initial limitation period who might be loath to enter into litigation might wish to extend the period and should have an opportunity of doing so. However, a debtor might not wish to extend the limitation period by as much as four years and might find an extension of one or two years more convenient. His delegation fully agreed with the Tanzanian representative that it was undesirable to give undue attention to the possibility of subsequent litigation at the time of entering into a contract.

Mr. GUEST (United Kingdom) said that, ideally, complete autonomy of the parties to lengthen, shorten or even waive the limitation period would be desirable. However, such a solution had proven unacceptable and the Working Group had adopted the compromise in article 22. The inclusion of a provision allowing an extension after the commencement of the limitation period had been urged by the Egyptian representative and would seem to obviate the possibility that a stronger party might impose its will upon another party. His delegation had no objection to shortening the over-all period from 14 to 10 years. However, with regard to paragraph (3), it wished to point out that in civil law systems periods were usually specified during which the buyer was required to notify the seller of any defects in goods and that a similar régime had been established in ULIS. However, no such provisions existed in common law systems and, in the view of his delegation, the present system whereby parties agreed to such notice by contractual provisions should be placed outside the scope of the Convention. That point should be made quite clear. However, as the commentary on the article pointed out, article 22 (3) had a second purpose, namely the question of arbitration. It was a fact that in most commodity markets there were provisions for the submission of claims for arbitration within a

certain period, which would normally be shorter than the four years envisaged as the limitation period for the purposes of the draft Convention. Those provisions should be upheld, provided they were valid under the applicable law. They were obviously open to abuse, but courts could exercise close control to ensure that the weaker party was not placed at a disadvantage.

Finally, his delegation agreed with the Austrian representative with regard to the advantages of a modest extension of the limitation period to make possible further negotiations. Businessmen were most reluctant to embark upon litigation in order to bring disputes to a speedy end; they clearly preferred to solve them by negotiation and agreement, and in such a case a modest extension of the limitation period or a waiver of the limitation period would seem to be in the best interests of all parties.

Mr. POLLARD (Guyana) could not support the retention of article 22. The argument that a declaration by the debtor in writing to extend the limitation period after its commencement could protect the weaker party was not valid. A creditor might coerce a weaker debtor into making precisely the sort of declaration envisaged in article 22. For those reasons, his delegation also opposed the amendments, particularly those of the United States. The Spanish amendments were also unacceptable from the standpoint of principle. Finally, the article specified the exceptions before stating the rule and his delegation felt that such an order was unacceptable.

Mr. MANTILLA-MOLINA (Mexico) supported the Spanish amendments (A/CN.9/V/CRP.17) but wondered whether it would be enough to delete paragraph (3). Even if it was deleted, the clauses in the contract of sale to which the paragraph referred would still be valid. A good way of achieving a reduction in the limitation period would be to stipulate in the contract that the parties could exercise a claim within 60 days after the arrival of the goods. Such a procedure would be in accordance with article 22 (3). With regard to the comments by the Nigerian delegation, he felt that it was one thing to waive the limitation period and grant an extension to enable negotiations to be continued, as in article 22, but it was another to oblige the debtor to recognize that he was in breach of contract.

Mr. SAM (Ghana) said that his delegation had no strong views on the

retention of article 22. Although it considered that the Spanish proposal to reduce the over-all limitation period from 14 to 10 years had great merit, it preferred the United States proposals. It also supported the Soviet proposal to specify that the declaration should be made within the limitation period. It could not support the United States amendment to paragraph (1), since it felt that it would be better to retain the existing wording. However, it could support the United States amendment to paragraph (2), which would shorten the total limitation period from 14 to 8 years and allow it to be extended on only one occasion. His delegation agreed with the Mexican delegation's opinion on the dissimilarity of articles 22 and 17. Finally, it wished to appeal to the Commission to accept article 22 as amended by the United States and modified by other delegations.

Mr. SMIT (United States of America) noted that many delegations had agreed that limitation was a question of public policiy. It seemed that his delegation's proposals (A/CN.9/V/CRP.14) reflected that fact more appropriately than the present paragraph (1). If the parties wanted to avoid the creation of stale claims by making the limitation period shorter, they would be pursuing the very policy which the statute of limitations sought to implement. However, it was necessary to ensure that the stronger party did not impose its will upon the weaker party and the United States proposal achieved that goal.

With regard to paragraph (2), since his delegation took the view that the parties should not be permitted to extend the limitation period ad infinitum, it was opposed to any provisions that had that consequence. However, it appreciated that, if the parties were in fact engaged in negotiations, they should not be forced into litigation. The amendment to paragraph (2) had been proposed not because his delegation felt that four years was a suitable period but because in some cases it might be difficult to determine whether the debtor had given an acknowledgement under article 17 or a declaration under article 22 (2) and there would be some uncertainty as to the length of the extension. The amendment therefore made it clear that, whether extension of the limitation period was based on an acknowledgement by the debtor under article 17 or a declaration under article 22, the consequences were the same. Another way to achieve that result would be for article 22 (2) to require the declaration to state the length of time by which the limitation period was extended. The declaration would then be easier to distinguish from an acknowledgement under

article 17. In view of previous comments, and particularly the statement by the Hungarian representative, he was prepared to accept a shorter extension period than four years, so that the over-all limitation period would not be longer than six years. He agreed with the Hungarian representative that only one extension should be allowed. There appeared to be some measure of agreement that the debtor should be entitled to a moderate extension of the limitation period. The United States proposal, as revised, could be a possible compromise.

Mr. CHAFIK (Egypt) said that article 22 as a whole was useful and acceptable. Paragraphs (1) and (2) should be maintained in their existing formulation, because they protected the interests of the weaker party and allowed a reasonable period for the debtor and creditor to conduct negotiations which might be long and difficult. He agreed with the suggestion by the USSR representative: the text of article 22 (2) should specify that the declaration by the debtor should be made during the original limitation period. Article 22 (3) was somewhat confusing but he could support it, since the final authority would be "the applicable law". The text of article 22 should be reconsidered by the Working Group.

Mr. KAMAT (India) said that modification of the limitation period was a matter for public policy as well as for the parties to the dispute. He could not accept the argument that because negotiations were in progress a modification of the limitation period should be allowed and that public policy should be ignored, since experience had shown that negotiations usually succeeded only after a suit had been filed. He pointed out that a shorter extension period than that provided in article 22 (2) was allowed under other articles, such as article 18. As the United States representative had said, the stronger party might have an opportunity to coerce the weaker party into agreeing to a shorter limitation period. Any reference to extension or reduction of the limitation period should therefore be omitted from the Convention.

For the purposes of a new limitation period, no distinction should be drawn between an acknowledgement under article 17 and a declaration under article 22. That was not because there already existed a rule on limitation periods after acknowledgement by the debtor, in article 17, but because matters of public policy would be involved if extensions of the limitation period were allowed after a declaration under article 22.

With regard to a shorter over-all limitation period, he was prepared to accept the views of the majority, although a 10-year period was acceptable.

Mr. ROGNLIEN (Norway) said that an acknowledgement under article 17 meant that there were no more grounds for negotiations between debtor and creditor - that the debtor had yielded to the creditor. If a possibility of extension during negotiations was desired, the Convention should include an article such as article 22. With reference to the over-all length of the limitation period, the United States proposal for article 22 (2) (A/CN.9/V/CRP.14) had some merit. An extension of the limitation period might be needed because the parties wished to negotiate their dispute without going to court, or the decision of the parties might depend on a point of principle, which was to be decided by a court. For instance, in the case of a complicated lawsuit between one of the parties and a third party, many years might elapse before the court took a final decision, and that decision could affect relations between debtor and creditor. The parties might therefore face a very long period before they could settle their case. The Working Group had therefore considered that the parties should be able to repeat the extension procedure once. The reason why the text of article 22 (2) had mentioned a period of 10 years was to avoid repeating how often the limitation period could be extended. The maximum limitation period should not be computed from the time when the original period of limitation had started to run, since that time was uncertain under the new formula adopted in articles 8 to 11. For instance, if a claim was based, under article 9, on a lack of conformity which could not be discovered at the time of examination of the goods, the start of the original period of limitation from the time of recovery would be a bad point for computing the over-all time limit; in such cases the criteria for determining the starting-point of the limitation period would have to be decided by the courts. He therefore supported the United States proposal that the new period of limitation would run from the date of the declaration. He also agreed that it should be possible for the parties to repeat their declaration under article 22; such repetition might be necessary in some cases and there was no danger of abuse, since the parties could judge whether or not such a repetition was in their interests.

Regarding cases where the declaration might be made after the limitation period had expired, he explained that the authors of the draft had intended the extension

of the limitation period to be carried out either by a formal agreement or by a declaration that the limitation period would not be invoked as a defence in legal proceedings. Such a declaration was related to article 23, which stated that expiration of the limitation period would be taken into consideration only at the request of a party to legal proceedings. It might be in the interest of the debtor not to invoke the limitation period as a defence, for instance in the case of a counterclaim based on the contract, when the debtor would not want the limitation period to be invoked against his counterclaim. He therefore supported article 23. The Uniform Law could perhaps distinguish between the different aspects of extension of the limitation period and say that the declaration must be made before the limitation period expired. It could also state that when litigation occurred, article 23 would apply. He agreed that article 22 should be sent back to the Working Group, which could examine the possibility of reducing the over-all limitation period, which should, however, not be too short.

Mr. JAKUBOWSKI (Poland) agreed that the limitation period should be modified, but only in the sense of extending it. It should not be reduced from a total of 10 years, as had been suggested by the United States delegation.

Mr. KHOO (Singapore) said that he was prepared to accept the principle in article 22 that a limited degree of autonomy, apart from public policy, should be given to the parties in extending the limitation period. He could not agree, however, that the over-all limitation period shculd amount to 10 years, though he could support a shorter period. The text of article 22 (1) and (2) was inelegant and unnecessarily complicated. Article 22 (1) said that the limitation period could not be modified by any agreement between the parties, except in the cases provided for in paragraph (2), while article 22 (2) said that the debtor could extend the limitation period by a declaration. Taken in conjunction, those two statements gave the impression that only a unilateral declaration by the debtor would be accepted as valid for the extension of the limitation period and that any other modification of the period was excluded. Article 22 (2) was therefore extremely unsatisfactory if the intention of the Working Group had been to provide for modification of the limitation period by agreement.

With reference to the Indian representative's statement, agreement for the extension of a limitation period was most often reached during negotiations by the parties. The buyer and the seller found that negotiations took so long that not much time was left for legal proceedings, so that one of the parties suggested that they should agree to extend the limitation period. Public policy on matters of extension of the limitation period should therefore be subordinate to the conduct of such negotiations.

The Working Group should improve the text of article 22, bearing in mind that article 16 provided that the limitation period could be extended after an act by the creditor. Article 22 should in fact make a reference to article 16.

The CHAIRMAN invited representatives to indicate by raising their hands whether they were in favour of the deletion of article 22.

He noted that the delegations of Guyana and the United Republic of Tanzania were in favour of the deletion of article 22. It was clear that the majority of members wished to retain that article.

Mr. GUEIROS (Brazil) said he wished to stress that his delegation still favoured a three-year limitation period, as proposed in the Austrian amendment to article 8 (A/CN.9/V/CRP.1). In modern times, when telex messages could be used as evidence, that period was quite ample for the purpose of allowing the parties to obtain the necessary documentation.

His delegation supported the United States amendments to article 22 (A/CN.9/V/CRP.14) and favoured referring them, and the other proposals that had been made, to the Working Group.

The CHAIRMAN said that the Commission should decide whether it agreed to the principle established in article 22 (1) or whether it wished to adopt the United States proposal allowing for a reduction of the period. He invited representatives to indicate by raising their hands whether they were in favour of the United States proposal.

He noted that only the delegations of the United States, Brazil and Austria were in favour of the United States proposal. He therefore took it that the Commission agreed to maintain the principle established in article 22 (1) of the draft.

Mr. ROGNLIEN (Norway) explained that he had not indicated support for the United States proposal because the Working Group had agreed, as a compromise, to a limitation period of four years, not subject to modification. However, his delegation might wish to consider the possibility of allowing a reduction of the period if the Commission subsequently decided to establish a longer period than four years.

The CHAIRMAN drew the attention of members to the various proposals concerning the duration of the extension period envisaged in article 22 (2). He invited representatives to indicate by raising their hands which proposal they favoured.

He noted that only two delegations favoured an extension of a period of 10 years, namely, a total period of 14 years. Seven delegations favoured an extension which would provide for a maximum total period of six years. Fourteen members favoured an extension of four years, namely, a maximum of eight years.

Mr. OLIVENCIA (Spain) explained that his delegation had agreed, in a spirit of compromise, to an extension period of four years, although it had originally proposed a maximum extension of six years. He stressed that his proposal still differed from the United States proposal in respect of the date when the extension would begin to run.

The CHAIRMAN, after asking representatives to indicate their views by a show of hands, noted that a majority of members agreed that the extension provided for in article 22 (2) should begin before and not after the expiration of the initial period.

He then asked representatives to indicate whether they wished to have the new period commence from the date of expiration of the initial period, as proposed in the existing draft, or from the date of the declaration by the debtor, as proposed in the United States amendment (A/CN.9/V/CRP.14).

Mr. ROGNLIEN (Norway) said it would be premature for the Commission to take a position on the matter at that stage. It would be preferable to await the outcome of the Working Group's deliberations concerning article 19.

The CHAIRMAN pointed out that the indication he was requesting was intended only to provide information for the Working Group, in order to help it

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.*

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