

107th meeting (19 April 1972)

Article 29 (continued)

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation had the most serious reservations with regard to article 29. The adoption of article 29 would mean that ratification or accession would have different effects for different States according to whether a unitary State or a federal State was involved.

The CHAIRMAN noted that the majority of delegations which had spoken on article 29 had expressed a wish that consideration of it should be deferred until the sphere of application of the draft Convention was clearly defined and he suggested that the Commission should postpone further consideration of that article.

It was so decided.

Article 30

The CHAIRMAN noted that no delegation appeared to wish to speak on article 30 and he suggested that that article should be considered adopted.

It was so decided.

Part III: Declarations and reservations

Mr. ROGNLIEN (Norway) said that the Working Group had before it proposed amendments which would limit the application of the draft convention to relations between nationals of Contracting States. The Working Group proposed to draft a provision to that effect which would take the form either of an express stipulation which would be general in scope, or of an optional reservation.

Article 31

Mr. MATTEUCCI (International Institute for the Unification of Private Law) said that he had doubts regarding the advisability of the provisions of article 31, which had been modelled on those of article II of the 1964 Convention where they had been introduced to reserve the application of the Uniform Law

adopted by the Scandinavian countries and that which the Benelux countries were in the process of elaborating. It might be asked whether the reasons which justified the inclusion of those provisions in ULIS were valid in the case of an instrument on prescription, a matter which related more to procedure. It might be feared that article 33 would give rise to difficult situations: in the case of successive international sales, one of which took place within a free exchange zone having its own rules and the other between States subject to the Convention on prescription, the buyer might have to take account of two different limitation periods in his relations with the seller, on the one hand, and in his relations with the subpurchaser, on the other hand. It would obviously be preferable if all countries recognized the same rule on limitations.

Mr. JENARD (Belgium) said he thought that article 31 was useful. The draft Convention text which represented a compromise between States having different legal systems, no longer appeared necessary between countries which applied the same rules. Moreover, article 31 made it possible to avoid conflicts of conventions. Once the sphere of application of the Uniform Law had been clearly defined, some provisions of the article could be deleted.

Mr. MANTILLA-MOLINA (Mexico) said he would like to have an explanation regarding the scope of article 31. If the text was interpreted literally, any Contracting State might at any time declare that the Uniform Law did not apply to a given contract, which seemed quite surprising.

Mr. LOEWE (Austria) shared the view of the Belgian delegation. It should be noted, moreover, that the volume of trade between countries which had already adopted common provisions was in general quite considerable by comparison with that between such countries and third countries, and it would be unnecessarily complicated to seek to apply a new system to them. Lastly, it should be pointed out that relations between countries having the same rules were exclusively bilateral and had no effect on third States.

Mr. CHAFIK (Egypt) shared the view of the representatives of Belgium and Austria. The article under consideration was, in fact, designed to encourage regional unification at the same time as universal unification. Regional

unification was of unquestionable importance to countries which, like those grouped within the Arab League, had not only ties of proximity, but also deeper affinities.

Mr. GUEIROS (Brazil) said he had listened with great interest to the statement by the observer for UNIDROIT. He himself shared the doubts of the Mexican delegation regarding the scope to be given to article 31.

Mr. ROGNLIEN (Norway) pointed out that it was article II of the 1964 Hague Convention which had served as a model for article 31. When it adopted an international convention, a State incorporated it into its internal law, following procedures which depended on its Constitution and which the text of article 31 could not set out in detail. He thought, however, that the Working Group should try to improve the wording of the article. He agreed with the principle stated in article 31, but if it created difficulties for certain States, the words "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", at the end of paragraph (1), should perhaps be deleted.

Mr. OGUNDERE (Nigeria) said he understood the position of those who supported article 31, although he was not convinced by their arguments. The aim of the draft Convention was, in fact, to set uniform rules. Article 31, which seemed made to measure for certain European countries and which introduced an important reservation in their favour would make it all the more difficult to apply a convention which was not designed for professors of law but for merchants and businessmen.

Mr. ROGNLIEN (Norway) observed that article 31, which was couched in general terms, was also applicable to groups of African or Latin American countries, for example, a fact which the latter should take into account.

Mr. KAMAT (India) said that he could not agree with the proposal of the Norwegian delegation which, by deleting the last two lines of paragraph (1), would deprive article 31 of its justification. That provision would become much too broad in scope. He approved of the concern to preserve regional unity, provided that, as stated in article 31, the legal rules of the countries concerned were the same or very closely related.

The CHAIRMAN noted that a consensus appeared to have emerged in favour of retaining article 31. That article should, however, be referred to the Working Group so that it could improve the text in the light of the observations which had been made regarding it, in particular by the Mexican delegation.

#### Article 32

The CHAIRMAN noted that no delegation had expressed a wish to speak on article 32 and he suggested that it would be considered adopted.

It was so decided.

#### Article 33

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he thought that article 33, which contained a special reservation in favour of States which had ratified the 1964 ULIS, was not justified from either the legal or the practical viewpoint. He therefore requested that the article should be deleted.

Mr. ROGNLIEN (Norway) said that the Working Group had drafted a new version of article 33 which extended the application of that provision to States Parties to any Convention on the international sales of goods, without restricting it, as the present text did, to States Parties to the 1964 ULIS. According to the new version, article 33 could be applied, inter alia, to the revised ULIS. The justification for the article was evident since, without the reservation contained therein, it would appear difficult to ask States which had already ratified an instrument on sales containing a certain definition of international sales to adopt another on limitation containing another definition of international sales.

Mr. MUDHO (Kenya) shared the view of the representative of the Soviet Union. Article 33, which ran counter to the uniformity sought, would, in fact, raise insuperable difficulties with regard to the application of the Convention between a country which had ratified the 1964 ULIS and a third country. It might, however, be thought that article 33 applied in conditions similar to those of article 31 and that States Parties to the 1964 ULIS could have recourse to it only in respect of relations between themselves.