

Article 34

Mr. WARIOBA (United Republic of Tanzania) said that article 34 would have the effect of jeopardizing the Commission's efforts in earlier articles to prepare a uniform statement to replace the rules of private international law. There would be no harm in omitting article 34, which would only lead to considerable confusion.

Mr. MUDHO (Kenya) said that article 34 would completely weaken article 2 (1) and that parties which had not acceded to previous Conventions on the conflict of laws affecting limitation in respect of the international sale of goods would be placed in a very difficult situation. He would be prepared to retain article 34 if delegations which had acceded to such Conventions could provide some clarification as to its intent.

Mr. DROZ (Hague Conference on Private International Law) emphasized that article 34 referred to States that had already acceded to Conventions on the conflict of laws affecting limitation in respect of the international sale of goods. He knew of no conventions in force which specifically dealt with that subject. The 1955 Hague Convention on the Law Applicable to International Sales of Goods was silent on the matter. A question of principle was involved, namely, whether a State which signed a treaty was no longer bound by its commitments under a previous treaty.

Mr. GUEIROS (Brazil) said that he could not accept the argument advanced by the representative of the Hague Conference. Article 34 discouraged the uniformity which the Commission was striving to achieve. It should be either deleted or referred back to the Working Group, which could seek a compromise.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that article 34 might create confusion and uncertainty in the application of the Convention. The provisions of the article detracted from the uniformity aimed at by the Commission in the drafting of the Convention.

Mr. KAMAT (India) said that article 34 was not really necessary, since it was intended to cover two types of situations whose likelihood of occurring was actually very remote. The article referred to countries which were already parties

to other Conventions on the conflict of laws affecting limitation in respect of the international sale of goods; however, as the representative of the Hague Conference had indicated, no such instrument existed and the parties to the 1955 Hague Convention did not consider it applicable to limitation. The article also had in mind countries which become parties to such Conventions before they became parties to the Convention on prescription. That was unlikely to occur. His delegation agreed that the applicability of the Convention should not be reduced.

Mr. RECZEI (Hungary) said that confusion would result if allowance were made for States to enter reservations on limitation. Article 34 spoke of Conventions on the conflict of laws "affecting" limitation; however, no such convention existed. The situation was unclear in respect of the 1955 Hague Convention. If the applicable law was continental law, then limitation was affected, whereas it was not affected if the applicable law was common law. Article 34 attempted to give universal effect to a Convention which had been ratified by only seven States. The States which had ratified that Convention and planned to become Parties to the Convention on prescription would have to decide which of the two would prevail in cases in which they were involved. He therefore agreed that article 34 should be deleted.

Mr. OGUNDERE (Nigeria) said that the views he had expressed with regard to article 33 also applied to article 34. Article 34 should be deleted, as it was not conducive to uniformity and would only lead to confusion. If the relationship between the 1955 Hague Convention and the draft Convention on prescription was disputed among specialists, persons who were not specialists would encounter even greater difficulties. Moreover, it was essential that the Convention should not consolidate the interests of a few States at the expense of the interests of the international community.

Mr. JENARD (Belgium) said that, although Belgium was a party to the 1955 Hague Convention, it would not object to the deletion of article 34, because it felt that the Hague Convention did not specifically cover limitation.

Mr. COLOMBRES (Argentina) proposed that an attempt should be made to limit the cases covered in the article to reciprocal relations between two States having obligations under another treaty.

The CHAIRMAN observed that there appeared to be a consensus to delete article 34.

Article 35

Mr. GUEST (United Kingdom) said that article 35 raised a general problem regarding a point of policy determined by the Working Group at its previous session, namely, that, in the case of a claim involving, for example, a buyer in the United Kingdom and a seller in Japan, if both States were parties to the Convention, the institution of legal proceedings in the United Kingdom should have the effect of causing the limitation period to cease to run in Japan and international effect would be given to that interruption. His delegation considered that policy far too ambitious. There should be uniformity, whatever the forum. Moreover, under United Kingdom legislation, one year could pass before a foreign party learned of a claim brought against it. It was unreasonable to ask a foreign court to recognize the interruption of the limitation period. Accordingly, if the Commission ultimately decided to give international effect to such interruptions, it would be essential to include a provision along the lines of that contained in article 35.

Mr. ROGNLIEN (Norway) recalled that the initial draft Convention had provided for giving only local effect to interruption; ultimately, the Working Group had felt that it would be strange if the international Convention did not also provide for international effect of interruption and that such interruption should be international unless otherwise provided in the text. Article 35 had been included in order to allow States to enter reservations.

A number of members had serious doubts as to the workability of article 35 and feared that considerable practical difficulties would arise for private parties if many States elected to make the reservation under the article. He personally thought that the scope of article 35 should be limited to articles 15 and 16. It was extremely important that judicial proceedings instituted in any State, under article 12 for instance, should have a universal effect of interruption of the limitation period. Lack of knowledge of the institution of proceedings should not lead to abuse, since those proceedings were in the hands of a public authority and were therefore of public notoriety. He agreed with the representative of the United Kingdom that, in some instances, time might elapse before the other party