

110th meeting (24 April 1972)

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

The CHAIRMAN invited comments on the proposal of Drafting Party I in document A/CN.9/V/CRP.20.

Mr. ROGNLIEN (Norway) said that he had serious doubts about the proposal, since it merely glossed over the problems facing the Commission and did nothing to promote the adoption of a uniform law. It might only delay the adoption of such a law by a diplomatic conference. With regard to point 1 of the proposal, it must be noted that, unlike parts II and III of the draft Convention, part I, which was actually the text of the uniform law, dealt with technical matters and should not contain any provisions in square brackets, since the draft Convention must propose a definitive text. Moreover, the Working Group had arrived at another solution, which appeared in document A/CN.9/V/CRP.21 and which he hoped the Commission would be able to agree on when it considered that document. It was difficult to see what improvement points 2 and 3 of the proposal of Drafting Party I would make in the text of the draft Convention. The Drafting Party, while proposing the deletion of article 33, was expanding the sphere of application of article 36, which would become much too broad. The proposed article 36 would make the Convention on prescription a model text which States would adopt while reserving the right to apply it as they saw fit. The present text of the draft Convention was better, since it made a careful distinction between a general convention (article 33) and conventions in special fields (article 36). He felt that a compromise formula should be found for article 33 or, if that was not possible, the present text of the article should be retained in square brackets.

In reply to a request for clarification from Mr. GUEIROS (Brazil) Mr. LOEWE (Austria) said that, as a result of the decisions taken by the Commission, article 34 had been deleted and article 35 had been referred to the Working Group for a decision. The proposals made by Drafting Party I were compromise measures concerning the two points dealt with in article 33. It had been agreed to delete subparagraph (a) of that article, provided that paragraph 1

of article 3 of the draft was placed in square brackets. The brackets were intended to indicate that the provision would have to be reconsidered at a later stage. When the diplomatic conference which would meet to adopt the draft Convention came to consider paragraph 1 of article 3 it could take a decision on it, in the light of accessions to ULIS of 1964 as at that time and the results achieved by the Working Group on Sales.

Subparagraph (b) of article 33 was also deleted, but the scope of article 36 was expanded as a result of the deletion of the words "in special fields". However, it should be stressed that the scope of the amended article 36 would still be less than that of the provision appearing in subparagraph (b) of article 33, since its application was restricted to relations between States which had ratified the same instrument. That provision was essential if States which applied the 1964 ULIS were to ratify the new Convention.

Mr. SMIT (United States of America) said that, in his opinion, points 1 and 2 of the report of the Drafting Party could not be considered independently of the new formulation for articles 2 and 3 proposed by the Working Group in document A/CN.9/V/CRP.21. However, the new wording of article 36 (point 3 of the report of Drafting Party I) was quite acceptable to his delegation.

Mr. OGUNDERE (Nigeria) recalled that his delegation had spoken in favour of deleting article 33. It was satisfied with the solution worked out by the Drafting Party, since ULIS would no longer apply to States which had not ratified it.

Mr. ELLICOTT (Australia) said that he had no objection to the new wording of article 36, which was an acceptable compromise. His delegation agreed with the United States delegation that the placing of paragraph 1 of article 3 in square brackets must be considered in the light of the new wording of articles 2 and 3 formulated by the Working Group.

Mr. GUEIROS (Brazil) said that he welcomed the felicitous formulation which had been found for article 36 (A/CN.9/V/CRP.20). The amendment met the requirements of those delegations which had favoured the deletion of article 33. He entirely agreed with the proposals of the Drafting Party.

Mr. KAMAT (India) stressed that the new version of article 3 drawn up by the Working Group could not fully meet the objections of his delegation with regard to article 33, in so far as the definition which was to be included in the revised law on sales was still in the process of formulation. His delegation, which had spoken in favour of a reservation allowing the application of the definition in the revised ULIS, did not believe that the placing of paragraph 1 of article 3 in square brackets should give rise to any objections, since the diplomatic conference to which the draft Convention would be submitted would not be able to meet before 1973 at the earliest. It was to be hoped that in the meantime the Working Group on Sales would succeed in putting the definition of an international sale into final form. If the Commission did not agree that the provision in paragraph 1 of article 3 should be placed in square brackets, thought would have to be given to reconsidering the content of article 33. The solutions proposed by the Drafting Party appeared to be the best compromise possible in the circumstances.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) felt that the representative of Austria had clearly explained the criteria that had guided the members of Drafting Party I in working out the compromise now before the Commission.

In the view of his delegation, article 36 was unacceptable without the reformulations introduced by the Drafting Party because it allowed the conclusion of agreements concerning limitation only in special fields. Article 33 was unacceptable because it referred to instruments which were unrelated to the draft and were binding upon States which had not acceded to them.

Paragraph 1 of article 3 was to be put in square brackets so as to emphasize that the question of the sphere of application of the draft Convention had not yet been solved and that no decision had been taken as to whether and under what conditions the Convention would apply between States parties and third States. The square brackets therefore meant that the definition of sales must be reconsidered and there was no way at present of knowing the outcome of such reconsideration.

To avoid insoluble difficulties in the future, the Commission should endorse the proposals of Drafting Party I; they represented the best possible compromise and did not prejudice the sphere of application of the Convention.

Mr. JENARD (Belgium) said that he fully agreed with the solution put forward by Drafting Party I on condition that it was adopted in its entirety. It was a double compromise the elements of which could not be fragmented. He had not pressed for the retention of article 33 (a), on condition that the definition of sales was put in square brackets; the existing definition was not satisfactory but he hoped that the Working Group on Sales would make further progress towards a definition which would be acceptable to all States. He had also agreed that article 33 (b) should be deleted, because the new version of article 36 was satisfactory, since it enabled the 1964 ULIS to be applied in relations between States which had ratified that instrument.

Mr. RECZEI (Hungary) supported the adoption of the proposals submitted by Drafting Party I; they should be considered as a whole. Placing paragraph 1 of article 3 in square brackets did not amount to deleting it, but was simply aimed at leaving the question open for the future. There was no reason to postpone a decision on the proposals by Drafting Party I, when they were viewed in that light.

Mr. CHAFIK (Egypt) said he could not accept the idea that the draft Convention should be submitted to a diplomatic conference without prior settlement of the question of definition. He was therefore opposed to placing paragraph 1 of article 3 in square brackets. The Commission must take a decision on that point, either by adopting a final definition or by making reference to a definition contained in another instrument.

Mr. LEMONTEY (France) said that, in his view, the three proposals prepared by Drafting Party I formed an indivisible whole. He agreed with the representatives of India and of the USSR, that the diplomatic conference could be entrusted with the task of taking a decision on the definition of international sales, in the light of the new draft which might be prepared by the Working Group on Sales. In any case, he could agree to the proposals of Drafting Party I only if the compromise which had been attained was accepted as a whole.

Mr. SMIT (United States of America) and Mr. ROGNLIEN (Norway) pointed out that it would be difficult for the Commission to take a decision on paragraph 1 of article 3 before it had agreed on the new draft of that paragraph, proposed by the Working Group.

Mr. GUEST (United Kingdom) supported the comments by the representatives of the United States and of Norway; to avoid a possibly sterile debate, he suggested that the Committee should first adopt all the conclusions reached by Drafting Party I (A/CN.9/CRP.20) and should reserve the right to come back to the definition of sales during consideration of the new draft proposed by the Working Group on Prescription (A/CN.9/V/CRP.21).

The CHAIRMAN suggested that the Commission might adopt all the changes proposed by Drafting Party I (A/CN.9/V/CRP.20) on the understanding that, if the Commission wished to reconsider the definition placed in square brackets (paragraph 1 of article 3), it could do so during its consideration of the new draft proposed by the Working Group.

It was so decided.

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up by the discussion of other matters