

Mr. LOEWE (Austria) pointed out that, in the preceding articles, the Commission had decided to restrict the extension of the limitation period to a duration of four years, making a total maximum period of eight years. He proposed that the period of extension should also be limited to four years in the case of article 20.

The CHAIRMAN, after having requested those members of the Commission in favour of the Austrian proposal to signify, noted that a majority favoured the restriction of the period of extension to four years. Article 20 would therefore be amended to that effect. He proposed that the drafting changes should be entrusted to a small group composed of the representatives of the United States, Mexico, the USSR and Belgium.

It was so decided.

Article 21 (continued)

Mr. BURGUCHEV (Union of Soviet Socialist Republics) requested a clarification of the meaning of the new provision which appeared in paragraph 3 and which seemed to nullify the effects of paragraphs 1 and 2. Two questions arose: What was the aim of the proposed waiver? Should the waiver be made before or after the expiry of the normal limitation period? His delegation would favour the deletion of that provision, whose meaning and scope it did not understand.

Mr. MAHUNDA (United Republic of Tanzania) said that his delegation, during the first reading of the draft, had put forward very serious objections to the article under consideration. In Tanzania, limitation was a question of public policy completely removed from the initiative of the parties. His delegation, noting that the provision which it had opposed had not been amended, reserved the right to take the necessary measures at the time of the conclusion of the convention.

Mr. GONDRA (Spain) pointed out that his Government, in its reply to the Secretariat's questionnaire, had expressed reservations concerning the desirability of authorizing modification of the limitation period in the convention.

Paragraph 3 of article 21 had been introduced at the initiative of the Spanish delegation so as to offer the debtor the possibility of waiving limitation after the expiry of the limitation period. That provision was linked to article 22 which allowed the parties to invoke limitation.

In spite of the general reservations it had expressed on article 21, his delegation was ready to accept the present wording.

Mr. GUEST (United Kingdom) said that the Working Group had discussed the revision of article 21 at great length. With regard to paragraph 2, the members of the Working Group who, as a majority, felt that a four-year extension was too short, had said they would abide by the Commission's decision. Paragraph 3 had been inserted at the suggestion of the Spanish delegation and seemed to have been welcomed by the Commission. The waiver envisaged would take place after the expiry of the limitation period, as was clear from the French and Spanish texts.

Mr. HONNOLD (Secretary of the Commission) drew attention to the amendment to article 21 proposed by the Norwegian delegation (A/CN.9/V/CRP.22). Should that amendment not be adopted, the Norwegian representative had asked the Secretariat to mention the amendment in the Commission's report.

Mr. MUDHO (Kenya) pointed out that his delegation, like that of Tanzania, had been very concerned about paragraph 2 of article 21, which gave the parties an excessive freedom which was incompatible with the whole basis of limitation. His delegation was ready, however, to approve paragraphs 1 and 2 of article 21 provided that the maximum limitation period was restricted to eight years. It had some difficulty with paragraph 3 whose exact meaning it failed to grasp. He would accept, however, the article as a whole, if a majority was in favour of it, provided that his comments were reflected in the report.

Mr. MANTILLA-MOLINA (Mexico) felt that paragraph 3 could be deleted without difficulty because the waiver, which took place after the expiry of the limitation period, would take effect only in the circumstances envisaged in article 22. Paragraph 4 contained a general provision which should appear, not in the article on the modification of the limitation period, but in paragraph 2 of article 1. Should the latter suggestion not be accepted, he would like his remarks to be reflected in the report.

Mr. RECZEI (Hungary) said his delegation would like paragraph 2 to be replaced by the amendment proposed by Norway (A/CN.9/V/CRP.22). It would favour the deletion of paragraph 3 because it felt that the waiver envisaged had no specific effect: when the limitation period had expired, the debtor should merely abstain from invoking limitation to ensure that the limitation period was not taken into consideration.

Certain representatives had criticized paragraph 2 because in their countries limitation was a question of public policy. Their reasoning was perhaps not very accurate, because, while the existence itself of limitation was indeed a matter for public policy, the length of the limitation period or the autonomy allowed to the parties in that respect were actually matters for regulation.

Mr. OGUNDERE (Nigeria) said that he had certain reservations about paragraphs 3 and 4 but in the spirit of compromise he was ready to approve the article as a whole.

Mr. KAMAT (India) said that, in spite of his delegation's reservations on paragraph 2, he was ready to support the new text of that paragraph, which was a valid compromise in the sense that it restricted the possibilities of extension to a maximum of four years. On the other hand, paragraph 3 seemed to go beyond what had been agreed upon within the Commission and to contradict the desire, expressed in the previous paragraph, not to prolong the limitation period indefinitely. It might therefore be thought that the provision of article 22 made paragraph 3 superfluous.

Mr. DEI-ANANG (Ghana) agreed with the representative of Hungary that the revised version of paragraph 2 proposed by Norway was clearer than the text prepared by the Working Group and should be adopted. He did not understand the exact meaning of paragraph 3, and would like it to be deleted.

Mr. SMIT (United States of America) said he supported the amendment proposed by Norway, which would enable the debtor to extend the period beyond four years. His delegation approved of the two-stage procedure suggested by Norway, provided that the extension was calculated not from the expiration of the normal limitation period but from the date of the declaration by the debtor, in accordance with the provision of article 19, paragraph 1 relating to the acknowledgement of debt.

Article 21, paragraph 3 was not superfluous, since it dealt with the period between the expiration of the limitation period and the commencement of proceedings, which was covered neither by article 21, paragraph 2, nor by article 22.

Mr. GONDRA (Spain) agreed with the United States representative that paragraph 3 did not overlap with article 22, although the two articles did have the same basis. Paragraph 4, on the other hand, was not clear and could lead to confusion with regard to the application of the provisions concerning "time-limits" (déchéance), which under article 1, paragraph 2 were excluded from the sphere of application of the Uniform Law. Article 21, paragraph 4 should therefore be deleted, in order to avoid all ambiguity.

Mr. JENARD (Belgium) said he could accept the article, although he would have preferred the parties to be given an opportunity to reduce the limitation period. In his view, the text proposed by the Working Group was preferable to that suggested by the Norwegian delegation, for it was clearer and provided for a maximum limitation period of eight years, as did articles 18, 19 and 20. He had no objection to deleting paragraph 3 but would prefer to retain paragraph 4; he could accept the amendment to the latter paragraph proposed by the Mexican delegation.

Mr. LOEWE (Austria) said he agreed with the Belgian delegation, but considered it necessary to delete paragraph 3, which in his view was out of keeping with the spirit of the Convention for the reasons given by the representative of the Soviet Union and India.

Mr. GUEST (United Kingdom) said he approved of the current version of article 21. Paragraph 2 seemed preferable to that proposed by the Norwegian delegation, which was too complicated. The four-year extension beyond the end of the initial limitation period was, in fact, a satisfactory compromise between the position of those who favoured unlimited extension and the position of those who were opposed to any extension.

The CHAIRMAN observed that there seemed to be a consensus in favour of paragraph 1. A majority wished to retain paragraph 2, despite the reservations

expressed by some delegations, which would be included in the report. A majority was likewise in favour of deleting paragraph 3 and retaining paragraph 4, the text of which should no doubt be amended in order to avoid any confusion with "time-limits" (déchéance). He therefore suggested that the Commission should approve paragraphs 1 and 2 of article 21, delete paragraph 3 and approve paragraph 4, subject to the introduction of drafting changes in paragraph 4.

It was so decided.

Article 22 (continued)

Mr. MAHUNDA (United Republic of Tanzania) recalled the objection of principle which his delegation had formulated during the first reading of the article. He considered that the article should be deleted.

Mr. KAMAT (India) recalled that his delegation had already expressed very serious reservations concerning article 22, which reproduced word-for-word the original article 23. The Commission had, however, instructed the Working Group to prepare a compromise text, taking into account all the views expressed, and it had been understood that if the Group could not find a solution, it should allow for reservations to that article.

Mr. GUEST (United Kingdom) said that the Working Group had been unable to find a form of wording that reconciled the opposing positions. It had therefore retained the original text, while providing in article 34 that any State could derogate from article 22 by making an express declaration to that effect at the time of the deposit of its instrument of ratification or accession.

Mr. DEI-ANANG (Ghana) considered that the provision concerning possible reservations could have been included in article 22. He recalled that the Australian delegation had proposed a compromise solution concerning which the Working Group had given no explanation, although it had been instructed to take into account all the views expressed.

Mr. JENARD (Belgium) said that the Working Group had indeed considered all the views expressed in plenary, but had been unable to find a compromise formula that would reconcile certain irreconcilable positions. Furthermore, even