

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

in those countries where the judge could intervene, the nature of that intervention varied considerably; it might be optional or mandatory. The Working Group had therefore preferred to adopt a very flexible solution; it had reproduced the original text while making allowance in article 34 for possible reservations.

Mr. OGUNDERE (Nigeria) recalled that his delegation had expressed the view that the article should be deleted. If it was to be retained, it should include a provision stating that it would not apply in countries whose legal systems permitted the judge to intervene in the proceedings. In any event, if the current text was retained with a provision concerning possible derogations, the latter provision should be included in the article itself, not in a separate article.

Mr. MUDHO (Kenya) said he fully agreed with the views expressed by the representative of Nigeria. He considered the Working Group's solution less satisfactory than the amendment proposed by the United Kingdom representative during the first reading, according to which the provisions of the article would not apply where the rules of public policy of the forum otherwise provided.

Mr. MANTILLA-MOLINA (Mexico) considered that the Working Group had not made the necessary effort to reconcile the various points of view and had merely adopted the majority opinion. Furthermore, by laying down a general rule and at the same time making it possible to derogate from that rule the Group had departed from the principle of uniformity which should form the very basis of the Convention. Although intervention by a judge might be justified under some national laws, it might be in the interest of the parties themselves not to invoke limitation, either because they wanted their dispute to be considered in detail or because they tacitly wished to extend the limitation period. In a spirit of conciliation, he suggested that in those countries where the law provided that the judge could invoke limitation suo officio, that should not be done until the judgement had been handed down, after the case had been considered in detail. He was opposed to the Australian proposal, according to which the tribunal could draw the attention of the parties to the possibility of invoking limitation, for that would be out of keeping with the impartiality of the judge.

Mr. GUEST (United Kingdom), referring to the statement by the representative of Kenya, observed that the United Kingdom proposal had not been accepted by the Working Group. The latter's solution nevertheless had definite advantages, for article 34 enabled a State to declare expressly that it intended to make a reservation to the application of article 22. It would thus be possible to ascertain which States applied article 22 and which States derogated from it.

Mr. LOEWE (Austria) considered that the provisions of articles 22 and 34 constituted a fair compromise, which all delegations should be able to accept. The incorporation of reservations into article 22 itself might lead to confusion and should be avoided.

Mr. KHOO (Singapore) inquired whether the Group had considered the possibility of simply deleting article 22. If so, he would like to know why the Group had not adopted that solution.

Mr. GUEST (United Kingdom) said that the Working Group had indeed considered that possibility, but had decided that the deletion of article 22 would not be a satisfactory solution, because under article 23, paragraph 1 the judge would then be obliged to invoke limitation suo officio.

Mr. JENARD (Belgium) shared the view that it would be a mistake to delete article 22. Without that provision it would not be clear whether it was for the parties or for the judge to invoke limitation. Moreover, the problem would arise again in article 23.

Mr. OGUNDERE (Nigeria) said that he did not see how article 34 could be amended to meet the objections his delegation had raised with respect to article 22. If, nevertheless, article 22 was approved, he would request that the Commission's report should indicate that reservations had been expressed by several delegations regarding that provision.

Mr. RECZEI (Hungary) said that provision could be made in article 22 for the possibility of reminding the parties that they were entitled to invoke limitation to be open to the judge.

Mr. CHAFIK (Egypt) said that the suggestion made by the Hungarian delegation would be contrary to the principle of the judge's impartiality.

Mr. HYERA (United Republic of Tanzania) proposed that the Commission should suspend its discussion of article 22 and take a decision on that article when it took up article 34.

The CHAIRMAN said that, in his opinion, it would be better for the Commission to take a decision immediately on article 22. He proposed that the article should be approved on the understanding that the objections raised by various delegations would be reflected in the Commission's report and that the question of reservations would be considered in connexion with article 34.

Article 22 was approved.

Article 23 (continued)

Mr. MANTILLA-MOLINA (Mexico) said that the article was incomprehensible, at least in the Spanish version. Moreover, even the English and French texts of paragraph 1 were not precisely equivalent. The English text appeared to sustain the interpretation that a claimant could be prevented from pressing a claim in respect of which the period of limitation had expired only by judicial decision. The French text, on the other hand, indicated that the claim itself would not be recognized.

Mr. RECZEI (Hungary) recalled that in connexion with the discussion of article 12, his delegation had requested that the words "out of a different contract", which appeared at the end of paragraph 2, should be replaced by a formulation indicating that the restriction in question did not apply to the contract but to the commercial relationship between the two parties. He recommended that the wording adopted for that purpose should also be used in article 23, paragraph 2 (a), which referred to "the same contract".

Mr. SMIT (United States of America) supported the suggestion put forward by the Hungarian delegation. Replying to the point raised by the Mexican delegation, he observed that article 22 met the Working Group's concern to establish a general rule. That provision was not incompatible with article 23 inasmuch as the latter was "Subject to the provisions... of article 22".

Mr. COLOMBRIS (Argentina) supported the comments made by the representative of Mexico with reference to paragraph 1 and recommended that the French and Spanish texts should be changed accordingly.