

Article 17 (continued)

Mr. GUEST (United Kingdom) recalled that article 17 had been referred to a small drafting group composed of the United Kingdom and USSR delegations. The USSR representative had had strong reservations with regard to the provisions of paragraph 2 of article 17 concerning actions by a subpurchaser against a buyer and also with regard to the extension of the limitation period in such cases. In the drafting group, the USSR delegation had maintained its opposition to the inclusion in the draft Convention of the provisions in question but a compromise had been achieved whereby they would be submitted to the international conference of plenipotentiaries in brackets to show that the Commission had reached no final conclusions. In the drafting group the USSR representative had adduced a number of arguments against the provisions. One related to the fact that even if a subpurchaser commenced an action against a buyer within the limitation period, the proceedings could take many years to come to judgement, although the text of article 17 would allow for an extension of one year from the date on which the legal proceedings ended - which might fall a considerable number of years after the original limitation period would have expired. The drafting group had considered that a valid argument and had therefore preferred to return to the régime established under article 20 of the original draft (A/CN.9/70), whereby the buyer was entitled to an additional period of one year from the date of the institution of proceedings for the purpose of obtaining recognition or satisfaction of his claim against the seller. The drafting group considered that a better rule as it would allow a buyer time to establish whether his claim was well-founded and because a period of one year was not inordinate. The drafting group had decided that paragraph 1 of article 17 should not be changed, that paragraph 2 should be placed in square brackets and that, in paragraph 3, all references to actions commenced by a subpurchaser against a buyer should be placed in brackets and that a new rule should be included, with the result that the text would read:

"(3) In the circumstances mentioned in this article, the creditor or the buyer

must institute legal proceedings against the party jointly or severally liable or against the seller, either within the limitation period otherwise provided by this Law or within one year from the date on which the legal proceedings referred to in paragraph 1 and 2 commenced, whichever is the later." The words "whichever is the later" had been included because certain delegations otherwise found the text obscure.

Mr. LOEWE (Austria) observed that article 17 had twice been the subject of extensive debate in the Commission and stated that the new version had not removed his delegation's reservations with regard to the proposed rules. Although he would prefer the deletion of the entire article, the Commission could make some progress if it agreed to delete at least the square brackets. The increasing use of such brackets was an admission of the Commission's inability to achieve a compromise. If the Commission, which had 29 members, could not reach agreement it might well be asked how the considerably larger membership of the United Nations could do so. He proposed the deletion of the article as the wisest course.

Mr. MANTILLA-MOLINA (Mexico) said he felt no great enthusiasm for the text formulated by the drafting group but would not oppose it. He noted that paragraph 1 required a creditor to give a debtor written notification within the limitation period of the commencement of proceedings against him. He thought that rule should be amended somewhat to require that such notification should be given immediately upon the commencement of the limitation period or, in accordance with the approach in ULIS, within a short or reasonable time after such commencement. He also felt that paragraph 3 should refer simply to the parties to proceedings as the "comprador" and "vendedor".

Mr. FARNSWORTH (United States of America) agreed with the Austrian delegate regarding the removal of the brackets in the text. Paragraph 2 dealt with a most important problem in a very satisfactory way. It would be regrettable if, because of the square brackets, the international conference of plenipotentiaries did not give adequate consideration to that problem. He proposed the deletion of the square brackets.

Mr. KENNEDY (Australia) supported the United States proposal. His delegation's views regarding the importance of paragraph 2 were well known. The words within the brackets should certainly be retained. He could accept a lesser provision such as that contained in article 20 of the draft prepared by the Working Group at its third session (A/CN.9/70) although the ideal solution would be that which his delegation had first proposed in A/CN.9/V/CRP.16.

Mr. GUEST (United Kingdom) pointed out that the compromise reached by the drafting group had involved the retention of the square brackets in the text.

Mr. OGUNDERE (Nigeria) said that he could not agree with the Austrian representative that article 17 should be deleted altogether. The international conference of plenipotentiaries must have all the material necessary for it to draw up a final version of the draft Convention. He agreed with the United States representative that all square brackets should be removed from the text and pointed out that the reasons why they had originally been included could be explained in the commentary.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said the fact that the drafting group had been composed of his own delegation and that of the United Kingdom was no accident. His delegation held the definite view that the provision contained in square brackets should be deleted as quite inconsistent with the spirit of the draft Convention. The agreed compromise was that it should be retained in brackets - a result which did not represent any concession by one group to another. The questions at issue were important and must be considered further.

Mr. KAMAT (India) pointed out that his delegation's position had been stated in the debate on the original text of article 17 (A/CN.9/70). He agreed entirely with the Austrian representative that it would be better to delete the whole of article 17. If it was not to be deleted, however, it would be quite unfair to place only the rule in paragraph 2 in brackets. The rule in paragraph 1, which was inequitable, should also be placed in brackets. The entire article should either be bracketed or deleted.

Mr. JENARD (Belgium) said that although, at first sight, he had been in favour of the text before the Commission he had come to the conclusion that it should be deleted. A major defect of the draft Convention was that it was excessively complicated. The rules proposed in article 17 regarding the establishment of dates were of logarithmic complexity and he considered that, being bizarre, they could only be a source of confusion and embarrassment to the creditor.

Mr. GUEIROS (Brazil) agreed with the Belgian representative that the article should be deleted altogether.

Mr. GUEST (United Kingdom) said that the representatives of Norway and France, neither of whom was present in the Commission, could certainly be expected to express strong opposition to any suggestion that the article should be deleted. The simpler course would be to place the entire article in square brackets and to record the views expressed during the current debate in the commentary.

The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to a compromise solution whereby the whole text of the proposed new article 17 would be placed in brackets and approved on the understanding that the views of delegations would be stated in the commentary on the article.

It was so decided.

Article 28 (continued)

Mr. JAKUBOWSKI (Poland) said that the general rule was stated in paragraph 1 and that paragraph 2 merely set forth one interpretation of the rule. Moreover, in the view of his delegation, paragraph 2 could lead to a conclusion contrary to that stated in paragraph 1. Paragraph 2 should therefore not be given the same weight as paragraph 1. He asked that his delegation's views be inserted in the commentary.

The CHAIRMAN said that the views of the Polish representative would be inserted in the commentary on article 28.

Draft decision proposed by the Working Group on Prescription

The CHAIRMAN drew attention to a draft decision proposed by the Working Group on Prescription (A/CN.9/V/CRP.26), whereby the Commission would (a) approve