

93rd meeting (10 April 1972)

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

The CHAIRMAN suggested that the draft Convention on prescription (limitation) should be considered article by article and that any observations made should be referred to the Working Group so that it might prepare a draft of any changes required and submit them to the Commission, which would study them during the third week of the session.

Mr. GUEST (United Kingdom) supported the Chairman's suggestion. In addition, he felt that, since the Commission had before it a long commentary prepared by the Secretariat, the Chief of the International Trade Law Branch should be asked to make a brief statement introducing each article.

Mr. LOEWE (Austria) endorsed the suggestion of the United Kingdom representative and wished to know whether amendments could be submitted orally.

Mr. SINGH (India) also endorsed the suggestion of the United Kingdom representative. In his view, delegations should submit their proposed amendments as soon as possible, so as not to delay the work of the Commission.

The CHAIRMAN said that it would indeed be useful if the Secretary of the Commission made an introductory statement before the consideration of each article. Proposed amendments should be submitted in writing as soon as possible so as not to delay the work of the Commission, especially in view of the time required for translation. He suggested that questions of form should be referred directly to the Working Group. Questions of substance would, on the other hand, be considered in plenary and the Working Group would base any new proposals on the Commission's deliberations and those proposals would then be submitted for consideration by the Commission at the last two meetings allocated to the draft Convention.

Mr. POLLARD (Guyana) endorsed the suggestion of the United Kingdom representative and proposed that consideration of the draft Convention should be deferred until the following day.

Mr. OGUNDERE (Nigeria) supported the suggestion of the United Kingdom representative and suggested that the Commission should draw up a time-table

indicating which articles of the draft Convention it intended to consider each day, so as to enable delegations to submit their proposed amendments at least a day in advance.

Mr. LOEWE (Austria) agreed that, in general, delegations should submit their amendments on questions of substance in writing and as soon as possible. He none the less wondered whether it would not be possible for amendments relating to the first few articles of the draft Convention to be submitted orally.

Mr. HONNOLD (Chief, International Trade Law Branch), before introducing article 1 of the draft Convention on prescription (limitation), remarked that the draft Convention contained 46 articles and that the Commission's schedule of meetings allowed seven working days in which to consider them. The Commission would therefore have to consider six or seven articles each day.

Article 1 of the draft Convention, which dealt with definitions, was difficult to introduce, since by its very nature, it referred to other articles of the law. There was, however, one point in article 1 which the Working Group had decided to refer to the Commission, namely the phrase in square brackets at the end of paragraph (1) ("or to a guarantee incidental to such a contract"). Paragraphs 8 to 13 of the commentary on the article (A/CN.9/70/Add.1) summarized the differing views which had emerged on that point in the Working Group. The majority of the members of the Working Group had been opposed to the inclusion of the phrase, noting that guarantees created a complex body of relationships that would be difficult to take into account in the present law and, in addition, that national rules dealt with the matter adequately (commentary, para. 9). Other members, however, had suggested that, if guarantees were not included in the field of application of the law, there was a possibility that claims based on a guarantee could be enforced after the principal obligation had been prescribed, and that the provision was therefore necessary in order to protect both the guarantor and the creditor (para. 10). The majority of the members, while agreeing with the objective that the limitation period for the debtor and the guarantor should expire at the same time, had concluded that this was difficult to achieve in practice (para. 11).

Mr. ROGNLIEN (Norway) drew attention to the studies and proposals in document A/CN.9/70/Add.2. He also pointed out that, in document A/CN.9/R.9, his delegation had proposed that a definition of "breach of contract" should be included in article 1, since that concept was clearer in Anglo-American law than was "contravention au contrat" in French law. At the same time, he wished to know how and to what extent the excellent commentary by the Secretariat (A/CN.9/70/Add.1) could be revised in the light of the Commission's work.

Mr. HONNOLD (Chief, International Trade Law Branch) replied that the commentary would have to be revised after the conclusion of the Commission's session, in the light of any changes made in the articles. The Secretariat would undertake such a revision if the Commission so wished and it would be grateful for any suggestions which would assist it in performing that task.

Mr. GUEST (United Kingdom) supported the proposal of the representative of Guyana that the consideration of article 1 should be deferred until the following meeting.

After an exchange of views between the CHAIRMAN and Mr. ROGNLIEN (Norway), it was decided that, at the next meeting, the Commission would consider articles 1 to 6 inclusive, since articles 5 and 6 were closely interrelated.