

of paragraph 1 differed considerably from the English and French texts, which stated that cases where the Uniform Law did not apply should be specified in the Uniform Law itself ("unless otherwise provided herein").

Mr. JAKUBOWSKI (Poland) recalled that in its reply to the questionnaire, his Government had declared that it was in favour of a general application of the Uniform Law, without regard to the law of the contract. It supported paragraph 1, amended if necessary as proposed by the Mexican delegation. Paragraph 2 gave rise to more serious problems. In such a specialized field as prescription, there were considerable differences between the various legal systems, particularly in that the countries with civil law systems believed that it was a matter deriving from jus cogens, whereas the common law countries did not. The question might perhaps be referred back to the Working Group for further discussion.

The CHAIRMAN said that there appeared to be a consensus on paragraph 1. However, most members of the Commission were in favour of deleting paragraph 2, although some insisted that it should be retained. A compromise must be found. The solution might be to retain paragraph 2, but to introduce a provision to the effect that application of the Uniform Law could only be excluded by an express stipulation of the parties to the contract and to include the addition proposed by the Spanish delegation. He therefore suggested that paragraph 2 of article 2 should be referred back to the Working Group for redrafting, taking into account the suggestions of the observer for the Hague Conference and the proposals made by the representatives of the United Kingdom and Spain.

It was so decided

Article 3

Mr. HONNOLD (Secretary of the Commission) said that the Working Group on Prescription had approached the problem of the definition of the international sale of goods from the same angle as the Working Group on Sales, confining itself to certain drafting amendments. The Working Group on Prescription had had to decide for example whether the Uniform Law should retain all the criteria for the international sale of goods specified in ULLIS. The Working Group had decided

to simplify those criteria by establishing a basic criterion, namely the fact that the seller and the buyer had their places of business in different States. The criterion of international carriage of the goods had been rejected for the reasons explained in paragraph 4 of the commentary on article 3.

Such a simplification also met the wishes of some members who were anxious that the Uniform Law should apply to transactions in which carriage of goods preceded the conclusion of the contract.

The CHAIRMAN invited the members of the Commission to consider article 3 paragraph by paragraph.

Mr. POLLARD (Guyana) recalled that during the discussion of the UNCITRAL report on its fourth session by the Sixth Committee, his delegation had already stated that the definition of the international sale of goods should be the same in both uniform laws. Despite what the Secretary of the Commission had said, he did not think that the Working Group on Prescription had adhered closely to the solution adopted by the Working Group on Sales. In the latter's report (A/CN.9/62), there was a provision (paragraph 2 of article 1) which should also appear in article 3 of the draft Convention on Prescription immediately after paragraph 1, to ensure uniformity of the definition. His delegation would like to know why there were such discrepancies in the texts drafted by the two Working Groups.

Mr. HONNOLD (Secretary of the Commission), replying to the representative of Guyana, said that the Working Group on Prescription and the Working Group on Sales had both worked towards more objective criteria for determining the place of business of the parties. The phrase at the end of paragraph 2 of article 3 of the draft Convention on Prescription ("having regard to the circumstances known to... of the contract") had its counterpart in article 1 of the revised Uniform Law on the International Sale of Goods (A/CN.9/62/Add.2). The latter text appeared between brackets to indicate that the final wording had not yet been decided. In any case, it could be stated that the two Working Groups had worked along the same lines, even though they had not adopted identical formulae.

Mr. POLLARD (Guyana) said that he was not convinced by the explanations given by the Secretary of the Commission because the wording at the end of paragraph 2 of article 3 of the draft Convention on Prescription and at the end of subparagraph (a) of article 4 of the revised Uniform Law on the International Sale of Goods was identical.

Mr. HONNOLD (Secretary of the Commission) said that the discrepancies between the two texts could no doubt be explained by a time factor. When it drew up the definitive text of the draft Convention, the Working Group on Prescription had not seen the latest revised text of ULIS, which dated from January 1972.

Mr. LEMONTEY (France) observed that the Commission had before it three definitions of the international sale of goods. One was contained in a text which would become an instrument of substantive law, that of the 1964 ULIS, while the other two were drafts prepared by the Working Group on Sales and the Working Group on Prescription respectively. Ideally, his delegation would have liked the definition of ULIS to be reproduced word for word in the draft instrument on prescription, but it recognized that that was not possible.

There remained, therefore, the two proposals from the Working Groups. That of the Working Group on Prescription was more general, since the only criterion laid down was that the parties should have their places of business in different States. That of the Working Group on Sales introduced other factors. It was hardly acceptable for the two drafts to contain different definitions of the international sale of goods. He therefore proposed that the draft instrument on prescription should reproduce the latest text of the definition adopted by the Working Group on Sales, with the proviso that the provision contained in article 33, paragraph (a) should be adopted and even extended to States which had not yet acceded to the 1964 ULIS.

Furthermore, as it was probable that the Convention on Prescription would enter into force before the revised Uniform Law on the sale of goods, he would prefer the Convention to contain a revision clause under which its definition of the international sale of goods would be automatically adjusted to correspond to that of the future revised ULIS.

Mr. ROGNLIEN (Norway) pointed out that it was difficult to ensure that the definition of the international sale of goods contained in the draft Convention on Prescription corresponded to the revised ULIS since that text was still being drafted and the Convention on Prescription would very probably be adopted before the revised ULIS. That difficulty could be overcome by providing a revision clause, as the representative of France had proposed, or better still, by extending the scope of article 33, paragraph (a) to cover the new definition which might be contained in the final text of the revised ULIS.

In any event, the Working Group on Prescription had felt that the identity of purpose of the two texts was not such as to call for absolute uniformity. It had envisaged the draft Convention as a separate instrument, which would, of course, be part of a single system but would not require a totally unified terminology.

Moreover the only difference remaining between the two texts was minimal. The Working Group might have repeated the text decided upon by the Working Group on Sales word for word, but it had felt that would unnecessarily complicate the definition and position of the parties. The Working Group had therefore adopted the main criterion of places of business in different States, without the small exception adopted by the Working Group on Sales in respect to what appears from the contract. Indeed, in respect of prescription, the need for full certainty at the time of the conclusion of the contract might not be of immediate concern to the parties; it only became important at the time of action in the event of a dispute. The parties would however always have the possibility of having full certainty by mutually disclosing their places of business.

For his part, he felt the simple and large definition in the draft Convention was adequate. However, to satisfy those who had expressed misgivings on that point, it would be desirable to extend the derogation permitted under article 33, paragraph (a) to cover the definition which would be contained in the revised text of ULIS.

Mr. LOEWE (Austria) pointed out that, if the Convention on Prescription was to be concluded in the near future, it would be impossible to take into account the revised text of ULIS, which was still being worked out. The Working Group on Prescription had been right to widen the scope of applicability of the draft as much as possible; it was not as wide as the 1964 ULIS since sales to consumers were excluded, but it was wider than the revised text of ULIS, since paragraph 2 of

article 1 of that text had not been repeated in the draft. It would not be desirable to incorporate it at the present stage. Indeed, the attempts to make the revised text of ULIS more precise were justified by the desire to avoid a situation where a party unknowingly became subject to the provisions of the Uniform Law and forfeited his rights because he had not complied with that Law (because, for example, he had been late in making a claim which should have been made upon delivery). The case of prescription was completely different in that respect.

He proposed, therefore, that the rules drawn up by the Working Group should be maintained as they were. He did not see the need for burdening article 33 with a revision clause, since such revision would in any case be made when the need was felt, especially as UNCITRAL would undoubtedly be anxious to ensure the continuing adjustment of an international instrument drawn up under its auspices.

Mr. MATEUCCI (International Institute for the Unification of Private Law), speaking at the invitation of the Chairman, said he shared the opinions expressed by the representative of France, except that he did not consider it desirable to insert a revision clause in the draft a priori. He would prefer that the scope of article 33, paragraph (a) should be extended.

In the opinion of UNIDROIT, the best solution would be to synchronize all the efforts to unify international trade law and to submit all the draft Conventions to a single diplomatic conference; it would thus be possible to arrive at a single definition of the international sale of goods. It was not essential to complete the draft on prescription at all costs before the revision of ULIS. A delay of one or two years would not have disastrous consequences.

Mr. DEI-ANANG (Ghana) said he shared the concern expressed by the representative of Guyana concerning the discrepancies, however small, between the definitions of the international sale of goods, since his delegation considered the draft Convention on Prescription to be an essential complement of ULIS. In fact, the problem was less one of definition than of scope of applicability. It could be solved by including in the draft Convention a provision making the Convention applicable to all contracts covered by the definition which would be given in the Uniform Law on the International Sale of Goods.

To link the two texts in that way would be to delay the adoption of the draft on prescription, but, like the observer for UNIDROIT, he did not feel that was a

matter for concern. The important thing was to avoid a multiplicity of definitions. With that in mind, his delegation proposed the postponement of all decisions on the definition of the international sale of goods for the purposes of the draft Convention.

Mr. FARENSWORTH (United States of America) was also apprehensive that two different definitions might be adopted. It seemed to him that the instruments currently being drawn up would more easily gain the support of Governments and would be more widely utilized by the parties if the scope of their applicability was the same.

Mr. ELLICOTT (Australia) said he shared the opinion of the United States representative that the text of the draft Convention should remain as close as possible to that of ULIS. However, a comparison of article 1, paragraph 1 of the latter text with the definition given in article 3, paragraph 1, of the draft Convention revealed that the first contained elements which were not in the second. Paragraph 1 (b) of ULIS could hardly be repeated, since it referred to the rules of private international law whose application was excluded under the terms of article 2, paragraph 1 of the draft Convention. It was, however, possible to retain one of the elements in paragraph 1 (a) of ULIS by stipulating in article 3, paragraph 1, of the draft Convention that a contract for a sale of goods would be considered international if the seller and buyer had their places of business in different contracting States. That was his delegation's proposal (A/CN.9/V/CRP.3). Insertion of the word "contracting" would, admittedly, restrict scope of the draft Convention, but it was easier, if the need arose, to extend the scope of an instrument than to restrict it. The addition would have the advantage of ensuring greater uniformity between the two texts. It also met the practical goal of eliminating the difficulties which businessmen from non-Contracting States might encounter if they believed that their obligations were extinguished under the law of their own country but remained in force under the Uniform Law on Prescription. However, if the proposed change was not acceptable to members of the Commission, his delegation would be willing to withdraw its proposal.

Mr. GUEST (United Kingdom) observed that all members of the Commission were troubled by the noticeable discrepancies between the two definitions. Being a member of both Working Groups, he had become aware that the revision of ULIS was

a more difficult task than had been expected and could not be expected to yield concrete results for several years to come. In the circumstances, it would be very regrettable if the Commission postponed work on the definitive text of the draft Convention on Prescription. On the contrary, it was important that the Commission should soon produce some tangible and positive results or it would lose the confidence of the General Assembly.

Mr. FEDOROV (Union of Soviet Socialist Republics) indicated that the USSR representative to the Commission had only just arrived in New York. He requested the Chairman to reserve his right to make statements on matters already discussed by the Commission.

The CHAIRMAN said that the USSR representative would be given every opportunity to express the views of his Government.