

The CHAIRMAN said that the issue raised by the representative of India would be referred to the Working Group.

Article 4

Mr. POLLARD (Guyana) drew attention to the difference between the formulation of article 4 (1) of the draft Convention and the corresponding provisions of revised ULIS.

Mr. HONNOLD (Secretary of the Commission) said that the problem was one of the co-ordination of the texts prepared by the two Working Groups. The language prepared by the Working Group on Sales had been carried from article 6 of the earlier version of revised ULIS to article 3, paragraph 1, of the latest version of revised ULIS, without reconsideration of its substance. Accordingly, the latest version (A/CN.9/62/Add.2) did not represent a decision by the Working Group on Sales to accept or reject any particular wording. The Working Group on Prescription had dealt with the same issue in article 4 (1) of the draft Convention and the difference of language resulted from its attempt to clarify the draft. The Commission might therefore wish to consider article 4 (1) in conjunction with article 3, paragraph 1, of the latest version of revised ULIS. Article 4 (2) of the draft Convention and article 3, paragraph 2, of the latest version of revised ULIS were identical, apart from an immaterial drafting change, and had been taken from article 6 of the 1964 ULIS.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that his delegation was not inclined to defend or prefer either formulation. He did believe, however, that the formulations used in ULIS and the draft Convention should be identical.

Mr. POLLARD (Guyana) endorsed the views of the USSR representative.

Mr. LEMONTEY (France) agreed with the USSR representative. It would prejudice uniform interpretation of the two texts if they used different language. He himself had no preference for either text.

Mr. AKINTAN (Nigeria) said that he was in some doubt as to the appropriateness of the words "the preponderant" in article 4 (1) and proposed that they should be replaced by "any".

Mr. ROGNLIEN (Norway) agreed that the wording of article 4 (1) and that of ULIS should be exactly the same. The issue should be referred to the Working Group.

The amendment proposed by the Nigerian representative posed a difficulty in that a seller usually assumed certain duties in connexion with delivery, often in the form of some smaller service such as maintenance. The Commission would go too far if it excluded from the Law all contracts in which a seller had a duty beyond the delivery of goods. The Nigerian proposal would involve the exclusion from the Law of too great a range of contracts of that type.

Mr. GUEST (United Kingdom) said that the origin of article 3, paragraph 1, of the latest version of revised ULIS had been an idea put forward by the USSR representative at the penultimate meeting of the Working Group on Sales. One difficulty which arose from it was that a seller in international sales of goods (especially CIF contracts) undertook substantial obligations in addition to delivery - for example, insurance. He had the impression that neither that article nor article 4 (1) of the draft Convention were entirely satisfactory to certain delegations and it would be helpful if they were to inform the Working Group of any alternative proposals they might have.

Mr. LASALVIA (Chile) said that, in the Spanish version of article 4 (2), the word "entrega", which had no meaning in the Chilean system of law, should be replaced by some word such as "aprovisionamiento" or "ventas a futuro".

Mr. MANTILLA-MOLINA (Mexico) said that he agreed with previous speakers that the language of the draft Convention and that of ULIS should conform.

He could not support the Nigerian proposal for the reasons already explained relating to accessory obligations. He agreed with the Chilean representative regarding the use of the word "entrega". The term "contratos de compravenda" might be preferable. He would pursue the matter with the Working Group.

He proposed that, for the sake of logical sequence, the text of the draft Convention should be rearranged so that article 4 (1) was incorporated into article 5 and article 4 (2) was either incorporated into article 3 or left as a separate article 4.

Mr. ELLICOTT (Australia) proposed that the word "essential" should be omitted from article 4 (2) because it added nothing to the text and its interpretation would in any case be open to dispute. He further proposed the insertion of the word "raw" before the words "materials necessary". On many occasions, contracts for the supply of goods to be manufactured or produced involved the delivery of dies and patterns. His amendment would ensure that the text referred only to basic raw materials.