Mr. LEMONTEY (France) supported the position taken by the delegations of Spain, Mexico, Austria and Belgium, but was willing to have the Working Group take into account the conflict of systems by defining "breach of contract". However, it would be difficult, as a matter of principle, to embody in the same convention the two concepts representing different legal systems. The Working Group should reconsider the matter.

The CHAIRMAN agreed with the French delegation's view that the problem had not yet been adequately solved. He therefore suggested that the matter should be referred to the Working Group, which should consider it as a matter of priority, since the solution to the problem raised in article 9 (1) would also have a bearing on the remainder of article 9, as well as on articles 10 and 11. If he heard no objection, he would take it that the Commission agreed to that suggestion and that it could proceed to consider the implications of the Austrian amendment to article 8, whereby the limitation period would be reduced to one year in the case referred to in article 9 (3) (A/CN.9/V/CRP.1).

It was so decided.

Article 9 (3)

Mr. MICHIDA (Japan) stressed that transactions in international trade often involved huge and complicated industrial plant systems and heavy machinery. Claims regarding defects in the operation of such machinery often included requests for a group of engineers to go to the factory in question and investigate the situation. That was a time-consuming procedure and his delegation could not accept any proposal to shorten the limitation period in such cases. If the parties wished to shorten the period by mutual agreement, they should be able to do so, but he did not agree to the incorporation of such a principle in the law.

Mr. DEI-ANANG (Ghana) said that his delegation whole-heartedly endorsed the Japanese representative's remarks.

Mr. RECZEI (Hungary) said that the Working Group would be able to simplify the text if it based its approach on two situations, namely, that arising when a contract had been fulfilled, but not in accordance with its terms, and that arising when one party failed to fulfil the contract, and on the fact that in both cases a subsidiary situation could arise whereby a party entitled to do so notified the other party of his intention to terminate the contract.

Mr. LOEWE (Austria) said that the idea of a limitation period of four years in respect of a claim arising from lack of conformity was absolutely unacceptable to his delegation. Austrian legislation provided for a six-month preclusion period which could not be interrupted, suspended or prolonged. The system worked well and was not outlandish considering that article 49 of the 1964 ULIS, which had been the subject of considerable discussion, provided for a period of one year. It was regrettable that the provision for the suspension of the limitation period during negotiations had disappeared from ULIS; it had offered an opportunity of making a distinction between machinery and, for example, apples. Article 33 of the draft Convention, as it stood, would allow all States to invoke the provisions of article 49 of the 1964 ULIS instead of being bound for the four-year limitation period provided under the draft Convention. He suggested that the opportunity available under article 33 to any State which had ratified the 1964 ULIS to opt for other provisions should also be extended to those States, such as his own, which had not ratified that instrument.

Mr. HONNOLD (Secretary of the Commission) observed that article 49 of the 1964 ULIS provided for a limitation period starting from the point at which a buyer gave notice in accordance with article 39 of the same text. Under the latter article, the buyer might be entitled to give notice of a lack of conformity of the goods as late as two years from the date on which the goods were handed over. Under article 49, therefore, the total prescriptive period could amount to three years.