

Mr. CHAFIK (Egypt) said that the limitation period of four years had been chosen in the interest of developing countries, where businessmen had not the same facilities as in developed countries and needed time to find out and assert their exact rights.

Mr. MUDHO (Kenya) agreed with the representative of Egypt. In his country the period of limitation was longer than four years but he could accept the compromise solution in article 8.

Mr. JENARD (Belgium) said that his delegation would prefer a limitation period of three years but could agree to a period of four years, in the interests of achieving a consensus.

Mr. RECZEI (Hungary) said that a limitation period of four years was a purely mathematical compromise between five and three years, which his delegation could accept.

Mr. OGUNDEFE (Nigeria) pointed out that all national legislations had different periods of limitation. He could, however, accept the compromise period of four years.

The CHAIRMAN said that there appeared to be agreement regarding article 8, subject to consequential changes if the Austrian amendment to article 9 was adopted.

Article 9

Mr. OLIVENCIA (Spain) said that, as the Working Group had endeavoured to solve all the practical problems connected with the commencement of the limitation period, the resulting text was not very clear. Furthermore, the draft Convention, in article 9 and in article 10, drew a distinction between actions for annulment of a contract and actions deriving from breach of contract, which should in fact be treated in the same manner. A uniform period of limitation should be applied to both types of action and the Commission should attempt to have a consistent language in articles 9 and 10. If the commencement of the limitation period was the same for all claims, the goal of uniformity among the various systems of law would be promoted.

Mr. ROGNLIEN (Norway) agreed that articles 9 and 10 were interrelated. Article 11 was also connected to those articles. For that reason he had proposed various amendments to those three articles (A/CN.9/R.9). The amendments consisted in regrouping and amending the provisions of the three articles. He proposed that those amendments should be referred to the Working Group.

Mr. GUEST (United Kingdom) said that the Working Group had devoted many meetings to its discussion of the text on the commencement of the limitation period. It had adopted the formulation in the draft because it had felt that it would be more comprehensible to the businessmen who would have to apply it. He hoped the Commission would be able to endorse that text. His delegation thought it would be useful to consider the Norwegian proposal that, for the benefit of the civil law countries, the concept of breach of contract should be defined in article 1.

Mr. OLIVENCIA (Spain) pointed out that the French text for article 9 (1) had not been drafted in final form, but contained two alternative wordings. If his delegation's amendments (A/CN.9/V/CRP.10) regarding the commencement of the period were not accepted, it would favour the second alternative wording in the French text, namely "l'exécution de l'obligation devient exigible". That formulation should then be translated directly into the other languages. His delegation felt that would be a suitable compromise solution.

Mr. MANTILLA-MOLINA (Mexico) said he strongly supported the Spanish proposal. It must be made perfectly clear that prescription referred to prescription of the claim and not prescription of the right on which it was based. That was particularly important in the case of the civil law countries.

Mr. ELLICOTT (Australia) said his delegation was in favour of the adoption of the text of article 9 (1) as it stood. The Working Group represented the various legal systems represented on the Commission and all the questions raised at the current meeting had already been amply discussed. The Working Group had been instructed to formulate a text that was certain, realistic and simple and it had endeavoured to do precisely that. He appealed to members to accept the texts of article 9 (1) and article 10, in general terms, as they had been drafted by the Working Group.

Mr. SMIT (United States of America) said his delegation was quite willing to accept the text of article 9 (1) as drafted by the Working Group. However, articles 9, 10 and 11 raised the additional question of when the period should commence in connexion with the various types of claims that might arise in relation to a contract. It seemed to him that, if the main aim of the Commission was to provide a practical text for the use of businessmen and lawyers, it would be more logical to have a single article setting out the various dates on which the period would commence. It should begin with the most general rule - namely, the one currently embodied in article 10 - and then go on to specific rules. His delegation would submit a draft concerning the commencement of the period in the various circumstances that might arise.

He did not agree with the criterion used in article 10, which introduced an element of uncertainty and did not take into account the question of fraud. His delegation would also be submitting an amendment in that connexion. He asked that his delegation's proposals should be considered by the Working Group on Prescription in conjunction with the other proposals that would be before it.

The CHAIRMAN suggested that the United States delegation should submit its proposals to the Working Group for its consideration.

Mr. ROGNLIEN (Norway) suggested that the Spanish and Mexican positions might be met if the criterion set forth in article 10, namely that the limitation period should commence on the date on which the claim could first be exercised, was incorporated into the first paragraph of article 9 as the principal rule for the commencement of the period and if the criterion concerning breach of contract was included in a second paragraph of article 9.

Mr. LOEWE (Austria) said his delegation preferred the second alternative wording in the French text of article 9 (1). The first question which had to be considered in examining the two alternative versions was whether or not they meant the same thing; it seemed to him that they did not. There were two solutions to the problem; either to adopt the English text or to use the second alternative French text. If that was not possible, the Working Group should reconsider the whole paragraph.

He fully agreed with the remarks made by the Spanish and Mexican representatives and stressed that the concept of "breach of contract" was completely foreign to his country and others under the civil law system. No jurist in those countries could do much with the concept, even if it was defined under article 1. The problem presented by article 9 (1) was one of the most difficult ones facing the Commission during the current session. He suggested that, rather than defining "breach of contract" in article 1, the Commission might follow the opposite approach and adopt the Spanish proposal, expounding it for the benefit of the common law countries. He had serious misgivings regarding the use of different wording in the English and French versions and felt it would be simpler to translate the French wording into English.

Mr. JENARD (Belgium) said the wording of article 9 (1) had presented very complex problems to the Working Group on Prescription, as was shown by the difference in the French and English texts. If the Austrian suggestion was not acceptable to the Commission, his delegation would be willing to give favourable consideration to the Norwegian suggestion.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said his delegation had no comments to make on the substance of articles 9, 10 and 11, although the language adopted by the Working Group did not impress his delegation as being particularly brilliant. Nor was it happy about the difference in the English and French texts. A norm as important as the one in question should not be stated in such complex terms. The purpose of the draft was to provide a text that would be more practical than theoretical; the Commission should therefore ask the Working Group to consider how best it could simplify the draft in order to make it useful to ordinary businessmen. The United States proposal was worthy of consideration. Although he did not wish to suggest a general definition for the commencement of the period, he felt that it would be more methodical to give a general definition first and then set out the exceptions for individual cases. Articles 9, 10 and 11 could be combined without detriment to the text of the draft Convention.

Mr. LEMONTÉY (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.