

## H. REPORT OF THE SECOND COMMITTEE

*Document A/CONF.97/12*

*[Original: English]  
[1 April 1980]*

### I. Introduction

#### A. SUBMISSION OF THE REPORT

1. The Conference at its 1st plenary meeting entrusted the Second Committee with the consideration of the draft articles concerning implementation, declarations, reservations and other final clauses (A/CONF.97/6) (with the exception of article X: Declarations relating to contracts in writing) and of the draft Protocol to the Convention on the Limitation Period in the International Sale of Goods (A/CONF.97/7) prepared by the Secretary-General.

2. The present document contains the report of the Second Committee to the Conference on its consideration of the draft articles referred to it, and of other proposals made to the Second Committee during its deliberations.

#### B. ELECTION OF OFFICERS

3. At its 3rd plenary meeting on 11 March 1980 the Conference unanimously elected Prof. Mantilla-Molina (Mexico) as Chairman of the Second Committee. On 17 March 1980, at the 1st meeting of the Second Committee. Mr. Mikola P. Makarevitch (Ukrainian Soviet Socialist Republic) was elected Vice-Chairman of the Second Committee. On 18 March 1980, at the 2nd meeting of the Second Committee, Dr. Venkatramiah Kuchibhotla (India) was elected Rapporteur of the Second Committee.

#### C. MEETINGS, ORGANIZATION OF WORK AND STRUCTURE OF THIS REPORT

##### (i) Meetings

4. The Second Committee held 9 meetings, between 17 March and 1 April 1980.

##### (ii) Organization of work

5. At its 1st meeting on 17 March 1980, the Second Committee adopted as its agenda the provisional agenda contained in A/CONF.97/C.2/L.1.

6. The Second Committee proceeded mainly by way of an article-by-article discussion of the draft articles before it and of the amendments to these draft articles submitted by representatives during the Conference. After initial consideration of an article and amendments pertaining thereto by the Second Committee, and subject to the decisions taken on these amendments, the article was referred to the Drafting Committee.

##### (iii) Plan of this report

7. This report describes the work of the Second Committee relating to each article before it, in accordance with the following scheme:

(a) Text of draft article prepared by the Secretary-General;

(b) Texts of amendments, if any, with a brief description of the manner in which they were dealt with;

(c) Proceedings of the Second Committee, subdivided as follows:

(i) Meetings

(ii) Consideration of the article.

## II. Consideration by the Second Committee of the draft Convention on Contracts for the International Sale of Goods: draft articles concerning implementation, declarations, reservations and other final clauses

### ARTICLE [A] DEPOSITARY

#### A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

##### *"Article A — Depositary*

*"The Secretary-General of the United Nations is hereby designated as the depositary of this Convention."*

#### B. AMENDMENTS

2. No amendments were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

3. The Second Committee considered the article on depositary at its 1st meeting on 17 March 1980.

(ii) *Consideration*

4. The text prepared by the Secretary-General was adopted.

## ARTICLE [D] RELATIONSHIP WITH CONVENTIONS CONTAINING PROVISIONS DEALING WITH MATTERS GOVERNED BY THIS CONVENTION

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

*“Article D — Relationship with Conventions containing provisions dealing with matters governed by this Convention*

*“This Convention shall not prevail over conventions already entered into or which may be entered into, and which contain provisions concerning the matters governed by this Convention, provided that the offeror and offeree or seller and buyer as the case may be have their places of business in States parties to such a convention.”*

## B. AMENDMENTS

2. An amendment was submitted to the article on “Relationship with Conventions containing provisions dealing with matters governed by this Convention” by the USSR (A/CONF.97/C.2/L.9).

3. This amendment was to the following effect:

Replace the words “over conventions” with the words “over international agreements” and the words “such a convention” with the words “such an agreement.”.

[Adopted: see Consideration, 5, below.]

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

4. The Second Committee considered the article on “Relationship with Conventions containing provisions dealing with matters governed by this Convention” at its 2nd meeting on 18 March 1980.

(ii) *Consideration*

5. At its 2nd meeting, the Committee adopted the amendment by the USSR (A/CONF.97/C.2/L.9) as amended orally by Canada to include the word “any” before “international”. It rejected an oral amendment by Nigeria to delete Article D.

## ARTICLE [F] SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL, ACCESSION

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

*“Article F — Signature, ratification, acceptance, approval, accession*

*“(1) This Convention is open for signature at the concluding meeting of the Conference on . . . . . and shall remain open for signature at the Headquarters of the United Nations, New York, until . . . . .”*

*“(2) This Convention is subject to ratification, acceptance or approval by the signatory States.*

*“(3) This Convention shall be open for accession by all States which are not signatory States.*

*“(4) Instruments of ratification, acceptance, approval and accession shall be deposited with the depositary.”*

## B. AMENDMENTS

2. No amendments were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

3. The Second Committee considered the article on “Signature, ratification, acceptance, approval, accession” at its 2nd and 4th meetings on 18 March and 24 March 1980.

(ii) *Consideration*

4. The Second Committee decided that the Convention remain open for signature by all States at the Headquarters of the United Nations, New York, until 30 September 1981. The Committee approved a suggestion by the Secretariat that the words “at any time” be added after “signatory States” at the end of paragraph 3. The Committee approved an oral amendment by Canada to replace the word “depositary” by the words “Secretary-General of the United Nations” at the end of paragraph 4.

## ARTICLE [G] PARTIAL RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

*“Article G — Partial ratification, acceptance, approval or accession*

*“(1) A Contracting State may declare at the time of signature, ratification, acceptance or accession that it will not be bound by the provisions of Part II of this*

Convention or that it will not be bound by the provisions of Part III of this Convention.

“(2) A Contracting State which makes a declaration pursuant to paragraph (1) of this article in respect of Part II or Part III of this Convention shall not be considered to be a Contracting State within article 1 (1) of this Convention in respect of matters governed by the Part that it has not accepted.”

#### B. AMENDMENTS

2. No amendments were submitted.

#### C. PROCEEDINGS IN THE SECOND COMMITTEE

##### (i) Meetings

3. The Second Committee considered the article on Partial ratification, acceptance, approval or accession at its 2nd meeting on 18 March 1980.

##### (ii) Consideration

4. The Second Committee adopted the article on Partial ratification, acceptance, approval or accession as prepared by the Secretary-General.

### ARTICLE [B] FEDERAL STATE CLAUSE

#### A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

##### “Article B — Federal State clause

###### “Alternative I

“In the case of a federal or non-unitary State, the following provisions shall apply:

“(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the federal government shall to this extent be the same as those of Parties which are not federal States;

“(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the federal government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

“(c) A federal State party to this Convention shall, at the request of any other Contracting Party transmitted through the depositary, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of the Convention, showing the extent to which effect has been given to that provision by legislative or other action.

###### “Alternative II

“(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

“(2) These declarations shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

“(3) If a Contracting State described in paragraph (1) of this article makes no declaration at the time of signature, ratification, acceptance, approval or accession, the Convention shall have effect within all territorial units of that State.”

#### B. AMENDMENTS

2. An amendment was submitted to the article on the federal State clause by Canada (A/CONF.97/C.2/L.2).

3. This amendment was to the following effect:

The article should contain provisions similar to Alternative II in the text prepared by the Secretary-General, and to article 31 of the Convention on the Limitation Period in the International Sale of Goods.

[Adopted as amended by an *ad hoc* working group: see Consideration, 7, below.]

#### C. PROCEEDINGS IN THE SECOND COMMITTEE

##### (i) Meetings

4. The Second Committee considered the article on the federal State clause at its 1st and 3rd meetings on 17 and 20 March 1980.

##### (ii) Consideration

5. At its 1st meeting, the Committee showed preference for Alternative II but decided to refer the matter to an informal working group composed of the representatives of Australia and Canada.

6. At the 3rd meeting, the Committee studied the proposal of the *ad hoc* working group composed of Australia and Canada, joined by Norway (A/CONF.97/C.2/L.13). This proposal suggested the addition of a fourth paragraph to Alternative II of Article B.

7. At the 3rd meeting, paragraph 1 of Alternative II was adopted as orally amended by Japan. The effect of this amendment is to add the words “acceptance, approval” after the words “signature, ratification”. Paragraph 2 was adopted as drafted. Paragraph 3 was adopted as orally amended by Australia following a discussion pertaining to an oral amendment made by the Federal Republic of Germany, which was subsequently withdrawn. The paragraph as amended now reads:

“(3) If a Contracting State makes no declaration

under paragraph (1) of this article, the Convention shall have effect within all territorial units of that State."

8. At the 3rd meeting, the Committee studied the new paragraph 4 submitted by the *ad hoc* working group; it was adopted as orally amended by Canada. The purpose of this oral amendment was to substitute the indefinite article "a" for the definite article "the" in the fifth line (A/CONF.97/C.2/L.13). The paragraph as adopted reads as follows:

"(4) Where by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, the place of business of a party to a contract shall, for the purposes of this Convention, be deemed not to be in a Contracting State, unless the place of business is in a territorial unit to which the Convention has been extended."

9. A proposal by Bulgaria to change the order of paragraphs (3) and (4) was referred to the Drafting Committee.

#### ARTICLE [C] DECLARATION OF NON-APPLICATION OF THE CONVENTION

##### A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

*"Article C — Declaration of non-application of Convention"*

"(1) A Contracting State may at any time declare that the Convention does not apply to the formation of contracts of sale or to contracts of sale between a party having a place of business in that State and a party having a place of business in another State because the two States apply to matters governed by this Convention the same or closely related rules.

"(2) If that other State is a Contracting State, such declarations shall be made jointly by the two Contracting States or by reciprocal unilateral declarations."

##### B. AMENDMENTS

2. Amendments to the article on Declaration of non-application of the Convention were submitted by the *ad hoc* working group composed of Canada, Finland, France and the Netherlands (A/CONF.97/C.2/L.10) and by the Netherlands (A/CONF.97/C.2/L.23).

3. These amendments were to the following effect:

(a) The amendment by the *ad hoc* working group proposed new wording for paragraphs 1 and 2 and added a new paragraph 3.

"(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention does not apply to contracts of sale or to their formation where the parties have their pla-

ces of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

"(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-contracting States may at any time declare that the Convention does not apply to contracts of sale or to their formation where the parties have their places of business in those States.

"(3) If a State which is the object of a declaration made under paragraph (2) of this article subsequently ratifies, accedes to, or approves of the present Convention, the declaration shall remain in effect unless the ratifying, acceding or approving State declares that it cannot accept it."

[Adopted as to paragraphs 1 and 2; rejected as to paragraph 3: see Consideration, 5, below.]

(b) The amendment by the Netherlands (A/CONF.97/C.2/L.23) proposed a new paragraph 3 which would read as follows:

"(3) If a State which is the object of a declaration under paragraph (2) of this article subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1)."

[Adopted as amended: see Consideration, 5, below.]

##### C. PROCEEDINGS IN THE SECOND COMMITTEE

###### (i) Meetings

4. The Second Committee considered Article C at its 1st, 3rd, 4th and 5th meetings on 17, 20, 24 and 25 March 1980.

###### (ii) Consideration

5. At its 1st meeting the Second Committee established an *ad hoc* working group composed of Canada, Finland, France and the Netherlands. At the 3rd meeting the proposal of the *ad hoc* working group (A/CONF.97/C.2/L.10) was studied and paragraphs 1 and 2 of the proposal were adopted. At the 5th meeting, the new text of paragraph 3 proposed by the Netherlands (A/CONF.97/C.2/L.23) was adopted as amended orally following a statement by the Secretariat.

#### ARTICLE [C bis] PROPOSAL BY AUSTRALIA WITH RESPECT TO "DECLARATION OF APPLICATION"

##### A. TEXT SUBMITTED BY AUSTRALIA

1. The text submitted by Australia for a new article C bis (A/CONF.97/C.2/L.3) provided as follows:

"A Contracting State may, at the time of signature, ratification or accession, make a declaration that it will apply the Convention only where the parties have chosen the Convention as the law governing the formation and interpretation of their contract."

## B. AMENDMENTS

2. No amendments to this proposal were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

## (i) Meetings

3. The 2nd Committee considered Article C *bis* by Australia at its 1st and 2nd meetings on 17 and 18 March 1980.

## (ii) Consideration

4. At its 2nd meeting, the Committee rejected Article C *bis* proposed by Australia.

ARTICLE [C *bis* AND C *ter*] PROPOSAL BY CZECHOSLOVAKIA

## A. TEXT SUBMITTED BY CZECHOSLOVAKIA

1. The text submitted by Czechoslovakia for two new articles (A/CONF.97/C.2/L.7) and described as C *bis* and C *ter* by the Chairman provided as follows:

"Any State may declare, at the time of the deposit of its instrument of ratification or accession, that it will apply the Convention only to contracts of sale of goods between parties having their places of business in different Contracting States."

"Any State may declare, at the time of the deposit of its instrument of ratification or accession, that it will apply article 8 paragraph (2) only if a usage is not contrary to the Convention."

## B. AMENDMENTS

2. No amendments to this proposal were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

## (i) Meetings

3. The Second Committee considered Articles C *bis* and C *ter* proposed by Czechoslovakia at its 2nd meeting on 18 March 1980.

## (ii) Consideration

4. At its 2nd meeting, the Committee rejected Article C *bis* and C *ter* proposed by Czechoslovakia.

## ARTICLE [X] DECLARATIONS RELATING TO CONTRACTS IN WRITING

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

"Article X — Declarations relating to contracts in writing

"A Contracting State whose legislation requires a contract of sale to be concluded in or evidenced by writing may at the time of signature, ratification or

accession make a declaration in accordance with article 11 that any provision of article 10, article 27, or Part II of this Convention, which allows a contract of sale or its modification or abrogation or any offer, acceptance, or other indication of intention to be made in any form other than in writing shall not apply where any party has his place of business in a Contracting State which has made such a declaration."

## B. AMENDMENTS

2. Amendments were submitted to the article on Declarations relating to contracts in writing by the Federal Republic of Germany (A/CONF.97/C.1/L.96) and the United Kingdom (A/CONF.97/C.1/L.88).

3. These amendments were to the following effect:

(i) *Federal Republic of Germany* ((A/CONF.97/C.1/L.96):

Insert after the words "at the time of signature, ratification or accession" the words "or at any time thereafter".

[Modified adopted: see Consideration, 6, below.]

(ii) *United Kingdom* (A/CONF.97/C.1/L.88):

1. Insert after the word "ratification" in the second line of Article X the words "acceptance, approval".

[Rejected: see Consideration, 6, below.]

2. Replace the words "a Contracting State" in the last line by the words "the Contracting State".

[Adopted: see Consideration, 7, below.]

## C. PROCEEDINGS IN THE SECOND COMMITTEE

## (i) Meetings

4. The Second Committee considered the article on Declarations relating to contracts in writing at its 2nd, 3rd and 4th meetings on 18, 20 and 24 March 1980.

## (ii) Consideration

5. When it adopted its agenda, at its 1st plenary meeting, the Conference decided to entrust the consideration of Article (X) to the First Committee. At its 2nd meeting, the Second Committee was informed that a subsequent meeting would be attended by the Rapporteur of the First Committee who would report on the decisions taken by the First Committee and inform the Second Committee of the matters remaining to be considered by the Second Committee. At its 3rd meeting, the Second Committee heard the report of the Rapporteur of the First Committee.

6. At its 3rd meeting, the amendment by the Federal Republic of Germany (A/CONF.97/C.1/L.96) and the first part of the amendment by the United Kingdom (A/CONF.97/C.1/L.88) were orally amended by the Netherlands. This amendment was to the effect of striking the words "at the time of signature, ratification or accession" and replacing them by the words "at any time". This amendment was accepted. In referring the

article to the Drafting Committee, the Committee agreed that the words "at any time" did not mean that declarations made in accordance with article X could be applied retroactively.

7. The second part of the amendment by the United Kingdom (A/CONF.97/C.1/L.88) was adopted.

8. The Committee also drew the attention of the Drafting Committee to the fact that the word "abrogation" was to mean "termination by agreement".

## ARTICLE [H] DECLARATIONS

### A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

#### *"Article H — Declarations*

"(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance, approval or accession.

"(2) Declarations, and the confirmation of declarations, shall be in writing and shall be formally notified to the depositary.

"[(3) Declarations made under Article B shall state expressly the territorial units to which the Convention applies.]

"[(4) If a Contracting State described in Article B makes no declaration at the time of signature, ratification, acceptance, approval or accession, the Convention has effect within all territorial units of that State.]

"(5) Declarations take effect simultaneously with the entry into force of this Convention in respect of the State concerned, except for declarations of which the depositary receives formal notification after such entry into force. The latter declarations shall take effect on the first day of the month following the expiration of six months after the date of their receipt by the depositary except that reciprocal unilateral declarations under Article C shall take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

"(6) Any State which has made a declaration under this Convention may withdraw it at any time by means of a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of receipt of the notification of the depositary.

"(7) In the case of withdrawal of a declaration made under Article C of this Convention, such withdrawal also renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article."

## B. AMENDMENTS

2. An amendment to the article on Declarations was submitted by the United Kingdom (A/CONF.97/C.2/L.6).

3. This amendment was to the effect of deleting paragraph 4 and of substituting the words "shall take" for the word "takes" in the third line of paragraph 6 and the words "shall render" for the word "renders" in the second line of paragraph 7.

[Adopted as to paragraph 4 and referred to the Drafting Committee as to paragraphs 6 and 7: see Consideration, 5, below.]

## C. PROCEEDINGS IN THE SECOND COMMITTEE

### (i) *Meetings*

4. The Second Committee considered the article on Declarations at its 2nd and 5th meetings on 18 and 25 March 1980.

### (ii) *Consideration*

5. At its 2nd meeting, the Second Committee adopted paragraphs 1, 2 and 6 of the article on Declarations. At the 5th meeting, paragraphs 3 and 4 were deleted on an oral proposal by Canada. Paragraph 5 was approved after an oral amendment by France to suppress the six months' delay provided for by this paragraph had been rejected. Paragraphs 6 and 7 were approved and referred to the Drafting Committee with respect to the proposal by the United Kingdom to use the jussive future (A/CONF.97/C.2/L.6).

## ARTICLE Y — PROPOSAL BY AUSTRIA WITH RESPECT TO RESERVATIONS

### A. TEXT SUBMITTED BY AUSTRIA

1. The text submitted by Austria for a new article Y (A/CONF.97/C.2/L.4) provided as follows:

"No reservation other than that made in accordance with Article X shall be permitted."

## B. AMENDMENTS

2. No amendments to this proposal were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

### (i) *Meetings*

3. The Second Committee considered new Article Y proposed by Austria at its 6th meeting on 26 March 1980.

### (ii) *Consideration*

4. At its 6th meeting, the Second Committee adopted the new article Y proposed by Austria with a new wording suggested by the Secretariat. The new article reads:

"No reservations shall be permitted except those expressly authorized in this Convention."

## ARTICLE [J] ENTRY INTO FORCE

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

*“Article J — Entry into force*

“(1) This Convention enters into force on the first day of the month following the expiration of [thirteen.] months after the date of deposit of the [tenth] instrument of ratification, acceptance, approval or accession by which a State declares that it will not be bound by the provisions of Part II or Part III of this Convention pursuant to Article G above.

“(2) For each State ratifying, accepting, approving or acceding to this Convention after the [tenth] instrument of ratification, acceptance, approval or accession has been deposited, this Convention, with the exception of the part excluded, enters into force in respect of that State on the first day of the month following the expiration of [thirteen] months after the date of deposit of its instrument of ratification, acceptance, approval or accession.

“(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at the Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at the Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect, such denunciation or denunciations to be effective on the date this Convention enters into force in respect of that State.

“(4) A State which partially ratifies, accepts, approves or accedes to this Convention pursuant to Article G by declaring that it will not be bound by the provisions of Part II of this Convention and which is a party to the 1964 Hague Sales Convention shall at the same time denounce that Convention by notifying the Government of the Netherlands to that effect, such denunciation to be effective on the date this Convention enters into force in respect of that State.

“(5) A State which partially ratifies, accepts, approves or accedes to this Convention pursuant to Article G by declaring that it will not be bound by the provisions of Part III of this Convention and which is a party to the 1964 Hague Formation Convention shall at the same time denounce that Convention by notifying the Government of the Netherlands to that effect, such denunciation to be effective on the date this Convention enters into force in respect of that State.

“(6) Upon the deposit of the [tenth] instrument of

ratification, acceptance, approval or accession (including an instrument which contains a declaration pursuant to article G), the depositary shall inform the Government of the Netherlands as the depositary of the 1964 Hague Formation Convention and the 1964 Hague Sales Convention of the date on which this Convention will enter into force and of the names of the Contracting States to this Convention.”

## B. AMENDMENTS

2. Amendments to the article on Entry into force were submitted by the United Kingdom (A/CONF.97/C.2/L.6, A/CONF.97/C.2/L.8 and A/CONF.97/C.2/L.12) and a revised text of the initial proposal was submitted by the Secretary-General (A/CONF.97/C.2/L.17).

3. These amendments were to the following effect:

(a) In document A/CONF.97/C.2/L.6 the United Kingdom suggested that in paragraphs 1 and 2 of the article the future tense be substituted for the present tense.

[Referred to the Drafting Committee: see Consideration, 5, below.]

(b) The amendment proposed by the United Kingdom in document A/CONF.97/C.2/L.8 was to the effect of substituting in paragraph (1) the words “including an instrument which contains a declaration pursuant to Article G” for the passage starting with “including” to the end of paragraph (1).

[Adopted: see Consideration, 5, below.]

(c) In the proposal contained in A/CONF.97/C.2/L.12, the United Kingdom suggested that the Committee should consider whether the words “such denunciation or denunciations to be effective on the date this Convention enters into force in respect of that State” in paragraph (3) and the similar passages in paragraphs (4) and (5) have any effect.

[Withdrawn: see Consideration, 5, below.]

(d) The new text proposed by the Secretary-General in A/CONF.97/C.2/L.17 is as follows:

“(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the [tenth] instrument of ratification, acceptance, approval or accession (including the deposit of an instrument of ratification, acceptance, approval or accession by which a State declares, pursuant to Article G, that it will not be bound by the provisions of Part II or Part III of this Convention).

“(2) For each State ratifying, accepting, approving or acceding to this Convention after the [tenth] instrument of ratification, acceptance, approval or accession has been deposited, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month follow-

ing the expiration of twelve months after the deposit of its instrument of ratification, acceptance, approval or accession.

“(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at the Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at the Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

“(4) A State which partially ratifies, accepts, approves or accedes to this Convention pursuant to Article G by declaring that it will not be bound by the provisions of Part II of this Convention and which is a party to the 1964 Hague Sales Convention shall at the same time denounce that Convention by notifying the Government of the Netherlands to that effect.

“(5) A State which partially ratifies, accepts, approves or accedes to this Convention declaring, pursuant to Article G, that it will not be bound by the provisions of Part III and which is a party to the 1964 Hague Formation Convention shall at the same time denounce that Convention by notifying the Government of the Netherlands to that effect.

“(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.”

[Adopted as amended: see Consideration, 5, below.]

#### C. PROCEEDINGS IN THE SECOND COMMITTEE

##### (i) Meetings

4. The Second Committee considered the article on the Entry into force at its 4th and 5th meetings on 24 and 25 March 1980.

##### (ii) Consideration

5. At its 4th meeting the Second Committee retained the revised text proposed by the Secretary-General in document A/CONF.97/C.2/L.17 as amended by the United Kingdom (A/CONF.97/C.2/L.8). Oral amendments by France and Austria were rejected. Paragraphs (2), (3), (4), (5) and (6) were adopted as drafted. An oral amendment by Ghana purporting to add the words

“after it has entered into force” after the words “this Convention” in the second line of paragraph (2) was rejected. The proposal by the United Kingdom contained in A/CONF.97/C.2/L.6 to use the future tense instead of the present tense was referred to the Drafting Committee. An oral proposal by Iraq to add a new sentence to paragraph (3) which would embody in paragraph (3) the substance of paragraphs (4) and (5) was rejected. The United Kingdom withdrew its proposal contained in document A/CONF.97/C.2/L.12.

## ARTICLE [E] DATE OF APPLICATION

### A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

#### “Article E — Date of application

“Each Contracting State shall apply the provisions of this Convention to:

“(a) the formation of contracts falling within the scope of article 1 of this Convention when the proposal for concluding the contract has been made on or after the date of entry into force of this Convention in respect of the States in which the parties have their places of business; and to

“(b) contracts falling within the scope of article 1 of this Convention which were concluded on or after the date of entry into force of this Convention in respect of the States in which the parties have their places of business.”

### B. AMENDMENTS

2. Amendments to the article on Date of application were submitted by the USSR (A/CONF.97/C.2/L.20) and by the *ad hoc* working group composed of France, the Federal Republic of Germany, Japan, the Netherlands and the Hague Conference on Private International Law (A/CONF.97/C.2/L.11).

3. These amendments were to the following effect:

(a) The amendment by the USSR proposed that the article should be worded as follows:

“Each Contracting State shall apply the provisions of this Convention to:

“(1) The formation of contracts falling within the scope of article 1 of this Convention when the proposal for concluding the contract has been made on the date of entry into force of this Convention in respect of that State or later;

“(2) Contracts falling within the scope of article 1 of this Convention which were concluded on the date of entry into force of this Convention in respect of that State or later.”

[Withdrawn: see Consideration, 5, below.]

(b) The proposal by the *ad hoc* working group composed of France, the Federal Republic of Germany, Japan, the Netherlands and the Hague Conference on



Private International Law proposed a new formulation for Article E which would read as follows:

“(1) This Convention does not apply to contracts concluded before its entry into force in respect of the Contracting States or States referred to in article 1.

“(2) This Convention does not apply to the formation of contracts when the proposal for concluding the contract has been made before its entry into force in respect of the Contracting State or States referred to in article 1.”

[Adopted as orally amended: see Consideration, 5, below.]

#### C. PROCEEDINGS IN THE SECOND COMMITTEE

##### (i) Meetings

4. The Second Committee considered the article on Date of application at its 2nd and 4th meetings on 18 and 24 March 1980.

##### (ii) Consideration

5. At its 2nd meeting, the Second Committee established an *ad hoc* working group composed of France, the Federal Republic of Germany, Japan, the Netherlands and the Hague Conference on Private International Law to draft a new text for Article E. At its 4th meeting, the Second Committee considered the proposal of the *ad hoc* working group. An oral amendment was submitted by the United Kingdom to replace in both paragraphs the words “*Contracting States or State*” by “*the Contracting States or the Contracting State*”. An oral amendment was submitted by Bulgaria to reverse the order of paragraphs (a) and (b). The Committee adopted the article on Date of application as orally amended by the United Kingdom and Bulgaria. The Netherlands orally submitted an amendment to the French version which was referred to the Drafting Committee. The amendment by the USSR was withdrawn at the 4th meeting.

6. An oral proposal made by France to place the article on Date of application after the article on Entry into force was adopted.

### ARTICLE [K] DENUNCIATIONS

#### A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

##### “Article K — Denunciations

“(1) A Contracting State may denounce this Convention (or Part II or Part III thereof), by means of a formal notification in writing addressed to the depositary.

“(2) The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such

longer period after the notification is received by the depositary.”

#### B. AMENDMENTS

2. Amendments to the article on Denunciations were submitted by the United Kingdom (A/CONF.97/C.2/L.6 and A/CONF.97/C.2/L.15) and by the German Democratic Republic (A/CONF.97/C.2/L.16).

3. These amendments were to the following effect:

(a) Document A/CONF.97/C.2/L.6 suggested that the future tense be substituted for the present tense in paragraph (2).

[Referred to Drafting Committee: see Consideration, 5, below.]

(b) Document A/CONF.97/C.2/L.15 suggested that the words “for the denunciation to take effect” be added after the words “where a longer period” in the second sentence of paragraph (2).

[Adopted: see Consideration, 5, below.]

(c) Document A/CONF.97/C.2/L.16 suggested adding a new paragraph (3) to read as follows:

“This Convention does not apply to contracts concluded after its denunciation becomes effective for the Contracting State or States referred to in article 1.”

[Rejected: see Consideration, 5, below.]

#### C. PROCEEDINGS IN THE SECOND COMMITTEE

##### (i) Meetings

4. The Second Committee considered the article on Denunciation at its 6th meeting on 26 March 1980.

##### (ii) Consideration

5. At its 6th meeting, the Committee adopted the article on Denunciation as amended by the United Kingdom (A/CONF.97/C.2/L.15). The other amendment by the United Kingdom (A/CONF.97/C.2/L.6) was referred to the Drafting Committee. A proposal by the German Democratic Republic (A/CONF.97/C.2/L.16) to add a third paragraph was rejected.

### TESTIMONIUM [AUTHENTIC TEXT AND WITNESS CLAUSE]

#### A. TEXT BY THE SECRETARY-GENERAL

1. The text proposed by the Secretary-General provided as follows:

“DONE at . . . . ., this day of . . . . .  
 . . . . in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

“IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.”

## B. AMENDMENTS

2. No amendments to the Testimonium (authentic text and witness clause) were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

3. The Second Committee considered the Testimonium (authentic text and witness clause) at its 6th meeting on 26 March 1980.

(ii) *Consideration*

4. The text prepared by the Secretary-General was adopted.

TITLES AND ORDER OF DRAFT ARTICLES CONCERNING IMPLEMENTATION, DECLARATIONS, RESERVATIONS AND OTHER FINAL CLAUSES

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General<sup>1</sup> provided as follows:

*Annex*

- "Article A — Depositary
- "Article D — Relationship with international agreements containing provisions dealing with matters governed by this Convention
- "Article F — Signature, ratification, acceptance, approval, accession
- "Article G — Partial ratification, acceptance, approval or accession
- "Article B — Federal State clause
- "Article C — Declaration of non-application of Convention
- "Article X — Clause relating to contracts in writing
- "Article H — Procedure relating to declarations
- "Article Y — Reservations
- "Article J — Entry into force
- "Article E — Date of application
- "Article K — Denunciation
- "Testimonium"

## B. AMENDMENTS

2. No amendments were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

3. The Second Committee considered the order of the draft articles concerning implementation, declarations, reservations and other final clauses at its 9th meeting on 1 April 1980.

<sup>1</sup> This text is to be found in Annex (A/CONF.97/C.2/L.24).

(ii) *Consideration*

4. At its 9th meeting the Second Committee approved the order proposed by the Secretary-General and referred the matter to the Drafting Committee.

III. Consideration by the Second Committee of the draft Protocol to the Convention on the Limitation in the International Sale of Goods

## PREAMBLE

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General<sup>1</sup> provided as follows:

"The States Parties of this Protocol,

"Considering that international trade is an important factor in the promotion of friendly relations amongst States,

"Believing that the adoption of uniform rules governing the limitation period in the international sale of goods would facilitate the development of world trade,

"Considering that amending the Convention on the Limitation Period in the International Sale of Goods, concluded at New York on 12 June 1974, to conform to the Convention on Contracts for the International Sale of Goods, concluded at Vienna on . . . April 1980, would promote the adoption of the uniform rules governing the limitation period contained in the Convention on the Limitation Period in the International Sale of Goods,

"Have agreed to amend the said Convention as follows:"

## B. AMENDMENTS

2. No amendments to the Preamble were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

3. The Second Committee considered the Preamble at its 6th meeting on 26 March 1980.

(ii) *Consideration*

4. The text prepared by the Secretary-General was adopted.

## ARTICLES I TO VI

## A. TEXT BY THE SECRETARY-GENERAL

1. The Committee had before it documents A/CONF.97/7, A/CONF.97/C.2/L.18, A/CONF.97/C.2/L.18/Add.1 and A/CONF.97/C.2/L.28.

<sup>1</sup> This text is to be found in A/CONF.97/C.2/L.18.

## B. AMENDMENTS

2. Amendments were submitted by Norway (A/CONF.97/C.2/L.14 and A/CONF.97/C.2/L.19), the Federal Republic of Germany (A/CONF.97/C.2/L.21) and Japan (A/CONF.97/C.2/L.26).

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

3. The Second Committee considered these articles at its 7th, 8th and 9th meeting on 27, 28 March and 1 April 1980.

(ii) *Consideration*

4. At its 7th and 8th meetings, the Committee considered the comparative table prepared by the Secretary-General concerning provisions of the Prescription Convention and of the Contracts Convention in regard to scope of application and final provisions. At its 8th meeting the Committee decided to include in the draft Protocol articles amending articles 3, 4, 31, 34, 37 and 40 of the Prescription Convention. The relevant articles (I to VI) are to be found in document A/CONF.97/DC/L.8/Rev.1 and were considered and adopted by the Committee at its 9th meeting.

ARTICLE VII  
(old *Article VI*)

## A. TEXT BY THE SECRETARY-GENERAL

1. The text proposed by the Secretary-General provided as follows:

“The Secretary-General of the United Nations is hereby designated as the depositary for this Protocol.”

## B. AMENDMENTS

2. No amendments were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

3. The Second Committee considered Article VII at its 6th meeting on 26 March 1980.

(ii) *Consideration*

4. The text prepared by the Secretary-General was adopted.

ARTICLE VIII  
(old *Article V*)

## A. TEXT BY THE SECRETARY-GENERAL

1. The text proposed by the Secretary-General provided as follows:

“(1) This Protocol shall be opened for accession by all States that are Contracting Parties or signatories in respect of the Convention of 12 June 1974.

<sup>1</sup> The text of articles VII *et seq.* is to be found in A/CONF.97/C.2/L.18 under the old numbers indicated in brackets.

“(2) Instruments of accession shall be deposited with the Secretary-General of the United Nations.”

## B. AMENDMENTS

2. An amendment to article VIII was submitted by Austria (A/CONF.97/C.2/L.22).

3. This amendment was to the effect of including a new article V *bis* to read as follows:

“Ratification of or adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.”

[Adopted as amended: see Consideration, 5, below.]

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

4. The Second Committee considered article VIII at its 6th, 7th and 9th meetings on 26 and 27 March and 1 April 1980.

(ii) *Consideration**Paragraph 1*

5. At its 9th meeting the Committee accepted an oral amendment submitted by the USSR to delete the words “that are Contracting Parties or signatories in respect of the Convention of 12 June 1974” and adopted the paragraph as amended.

*Paragraph 2*

6. At its 7th meeting, the Committee adopted the new article proposed by Austria (A/CONF.97/C.2/L.22) and subsequently amended orally to read as follows:

“Accession to this Protocol by any State which is not a Contracting Party to the Convention shall have the effect of accession to the Convention as amended by this Protocol.”

7. At its 9th meeting, the Committee accepted an oral amendment submitted by France to add the new article as paragraph 2 to Article VIII. At the 9th meeting a further oral amendment was adopted to add the words “*Subject to the provisions of Article XI*” at the end of new paragraph 2.

*Paragraph 3*

8. The Committee adopted the text prepared by the Secretary-General (former paragraph (2)) at its 6th meeting.

ARTICLE IX  
(old *Article VI*)

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

“(1) This Protocol shall enter into force on the first day of the . . . . . month following the

deposit of the [second] [sixth] instrument of accession, provided:

“(a) that the Convention of 12 June 1974 is itself in force on that date; and

“(b) that the Convention on contracts for the international sale of goods, concluded at Vienna on . . . . . is also in force.

“If applicable, this Protocol shall enter into force on that date when both conditions referred to above are fulfilled.

“(2) For each State acceding to this Protocol after the [second] [sixth] instrument of accession has been deposited, this Protocol shall enter into force on the first day of the . . . . . month following the deposit of the instrument, provided that the conditions set forth in paragraph (1) of this article for the purpose of the initial entry into force of this Protocol are fulfilled by that date.

“If applicable, this Protocol shall enter into force for the State concerned on the date when the said conditions are fulfilled.”

#### B. AMENDMENTS

2. No amendments were submitted.

#### C. PROCEEDINGS IN THE SECOND COMMITTEE

##### (i) Meetings

3. The Second Committee considered Article IX at its 6th meeting on 26 March 1980.

##### (ii) Consideration

4. At its 6th meeting, the Committee decided that the Protocol should enter into force on the first day of the *sixth* month following the deposit of the *second* instrument. The Committee decided that for each State acceding to the Protocol after the *second* instrument of accession has been deposited, the Protocol should enter into force on the first day of the *sixth* month following the deposit of the instrument. The last sentence of each paragraph of this article was referred to the Drafting Committee.

#### NEW ARTICLE VI *bis* — PROPOSAL BY CZECHOSLOVAKIA

##### A. TEXT PROPOSED BY CZECHOSLOVAKIA

1. The text proposed by Czechoslovakia (A/CONF. 97/ C.2/L.27) provided as follows:

##### “New Article VI *bis*

“Any State may declare, at the time of the deposit of its instrument of accession, that it will apply the Protocol only to contracts of sale of goods between parties having their places of business in different Contracting States.”

#### B. AMENDMENTS

2. No amendments were submitted.

#### C. PROCEEDINGS IN THE SECOND COMMITTEE

##### (i) Meetings

3. The Second Committee considered the new article submitted by Czechoslovakia at its 9th meeting on 1 April 1980.

##### (ii) Consideration

4. The Second Committee rejected the Czechoslovakian proposal.

#### ARTICLE X (old Article VII)

##### A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

“Any ratification or accession effected in respect of the Convention of 12 June 1974 after the entry into force of this Protocol shall be considered to constitute an accession in respect of this Protocol provided that the State concerned notifies the depositary accordingly.”

#### B. AMENDMENTS

2. No amendments were submitted.

#### C. PROCEEDINGS IN THE SECOND COMMITTEE

##### (i) Meetings

3. The Second Committee considered Article X at its 6th meeting on 26 March 1980.

##### (ii) Consideration

4. At its 6th meeting, the Committee adopted Article X as amended orally by the United States in order to place at the beginning of the article the part of the article which begins with the words “provided that the State”. The Netherlands which had made an oral amendment to the same effect withdrew its amendment.

#### ARTICLE XI (old Article VIII)

##### A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

“Any State which becomes a Contracting Party to the Convention of 12 June 1974 as amended by this Protocol, by virtue either of Article VI or of Article VII of this Protocol shall, unless it notifies a contrary intention, be deemed to be also a Contracting Party to the Convention of 12 June 1974, unamended, in relation to any Contracting Party to the latter Convention not yet a Contracting Party to this Protocol.”

## B. AMENDMENTS

2. No amendments were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

3. The Second Committee considered Article XI at its 7th meeting on 27 March 1980.

(ii) *Consideration*

4. At its 7th meeting, the Committee adopted Article XI as orally amended by the United States of America to add the words "*the depositary of*" after the words "*unless it notifies*" and as further amended to include a reference to article VIII.

ARTICLE XII  
(old *Article VIII bis*)

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General<sup>1</sup> provided as follows:

*"Denunciation*

"1. A Contracting State may denounce this Protocol by notifying the depositary to that effect.

"2. The denunciation shall take effect on the first day of the month following the expiration of 12 months after receipt of the notification by the depositary.

"3. Any Contracting State in respect of which this Protocol ceases to have effect by application of paragraphs 1 and 2 of this article shall remain a Contracting Party to the Convention of 12 June 1974, unamended, and shall consequently continue to be bound by the said Convention in accordance with the provisions of the latter and with article [VIII] of this Protocol, unless it denounces the unamended Convention in accordance with article 45 thereof."

## B. AMENDMENTS

2. No amendments were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

3. The Second Committee considered article XII at its 7th, 8th and 9th meetings on 27 and 28 March and 1 April 1980.

(ii) *Consideration*

4. At its 7th meeting, the Committee requested the Secretary-General to prepare an article on denunciation to be added to the Draft Protocol. At its 8th meeting, the Committee adopted paragraphs 1 and 2. At its 9th meeting it accepted an oral amendment submitted by Japan to delete the words "and with article [VIII] of this Protocol" and adopted paragraph 3 as amended.

<sup>1</sup> This text is to be found in A/CONF.97/C.2/L.18/Add.2.

ARTICLE XIII  
(old *Article IX*)

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General provided as follows:

"(1) The depositary shall transmit certified true copies of this Protocol to all the Contracting Parties and signatories in respect of the Prescription Convention.

"(2) When this Protocol enters into force in accordance with article VI, the depositary shall prepare a text of the Prescription Convention as amended by this Protocol and shall transmit certified true copies to all States Parties or entitled to become Parties to the Prescription Convention as amended by this Protocol."

## B. AMENDMENTS

2. No amendments were submitted.

## C. PROCEEDINGS IN THE SECOND COMMITTEE

(i) *Meetings*

3. The Second Committee considered article XIII at its 7th and 9th meetings on 27 March and 1 April 1980.

(ii) *Consideration*

4. At its 7th meeting, the Committee approved an oral amendment submitted by the United States to replace the words "*the Prescription Convention*" by the "*Convention of 12 June 1974*". At its 9th meeting, the Committee approved an oral amendment submitted by the USSR to replace, in paragraph 1, the words "*the Contracting Parties and signatories in respect of the Convention of 12 June 1974*" by the word "*States*", and to delete in paragraph 2, the words "*or entitled to become Parties*". The article as amended was adopted.

TESTIMONIUM (AUTHENTIC TEXT AND  
WITNESS CLAUSE)

## A. TEXT BY THE SECRETARY-GENERAL

1. The text prepared by the Secretary-General<sup>1</sup> provided as follows:

"DONE at . . . . . this day of . . . . .  
. . . . . in a single original, of which the (Arabic), Chinese, English, French, Russian and Spanish text are equally authentic."

## B. AMENDMENTS

2. No amendments were submitted.

<sup>1</sup> This text is to be found in A/CONF.97/C.2/18.

**C. PROCEEDINGS IN THE SECOND COMMITTEE****(i) Meetings**

3. The Second Committee considered the testimony at its 7th meeting on 27 March 1980.

**(ii) Consideration**

4. The Committee removed the brackets and adopted the text prepared by the Secretary-General.

**IV. Consideration of the Report of the Drafting Committee to the Committee**

At its 9th meeting on 1 April 1980, the Committee decided that the Drafting Committee should report directly to the Plenary Conference.

**V. Consideration of the Report of the Committee to the Plenary Conference**

At its 9th meeting on 1 April 1980, the Committee considered and adopted the draft report submitted by the Rapporteur.