

For participants only  
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## **Draft report of the Working Group on Electronic Commerce on the work of its forty-third session**

### **Addendum**

#### **IV. Electronic contracting: provisions for a draft convention (continued)**

##### **CHAPTER IV. FINAL PROVISIONS**

##### **[Article X. Declarations on exclusions**

1. The text of the draft article was as follows:

“1. Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph 1 (b) of article 1 of this Convention.]

“2. Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not apply this Convention to the matters specified in its declaration.

“3. Any declaration made pursuant to paragraphs 1 and 2 of this article shall take effect on the first day of the month following the expiration of [six] months after the date of its receipt by the depositary.]”

##### *Paragraph (1)*

2. It was recalled that, at its forty-first session, the Working Group had agreed to consider, at a later stage, a provision allowing a Contracting State to exclude the application of subparagraph (b) of article 1, paragraph 1, along the lines of article 95 of the United Nations Sales Convention (see A/CN.9/528, para. 42). The Working Group noted that it had not yet concluded its deliberations on possible



exclusions to the preliminary draft convention under draft article 2 (see A/CN.9/527, paras. 83-98). It was further noted that, as drafted, paragraph (1) was premised on the assumption that Variant A of subparagraph (1) of article 1 would ultimately be adopted.

3. It was pointed out that the Vienna Sales Convention included a provision extending its scope of application when the rules of private international law led to the application of the law of a Contracting State (subparagraph (1) (b) of Article 1), and also allowed a State to declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it would not be bound by that subparagraph (Article 95) and that the draft convention should contain a corresponding provision.

4. On that basis, the Working Group agreed to retain paragraph (1) and to delete the square brackets therefrom.

*Paragraph (2)*

5. In response to a question, it was noted that paragraph (2) was distinct from paragraph (1) in that paragraph (1) intended to exclude the application of the Convention altogether where the rules of private international law would otherwise lead to its application, whereas paragraph (2) was concerned with the exclusion of specific matters such as, for example, the exclusion of matters relating to powers of attorney or concerning family law matters.

6. It was said that, given the existence of article 2, the circumstances in which a State should be afforded an opportunity to exclude other matters from the draft convention should be restricted. In response, it was noted that draft article X had been added as a possible alternative, in the event that consensus could not be reached on possible exclusions under article 2 to the preliminary draft convention. Additionally, it was said that, whilst article 2 was concerned with the exclusion of certain types of contractual arrangements, other such matters could arise that a State would also wish to exclude from the coverage of the Convention. It was said that paragraph (2) of article X provided a State with flexibility to exclude such matters and that therefore, independently of article 2, paragraph (2) was a critical provision to the capability of countries to ratify and utilize the Convention

7. Support was expressed for paragraph (2) of Article X as currently drafted. However, it was suggested that the paragraph should be reformulated to take account of the fact that the types of matters that might need to be excluded by any given State might change depending on the evolution of technology in legal communications. For that reason, a declaration in that respect might need to be made after the deposit of an instrument of ratification, acceptance, approval or accession. To accommodate that fact, it was suggested that the words "at any time" should be inserted into the clause.

8. The Working Group agreed to retain the text in paragraph (2) and include the term "at any time" instead of "at the time of the deposit of its instrument of ratification, acceptance, approval or accession". It was recognized, however, that paragraph (2) of article X could not be assessed in isolation and that it might be necessary to review it in light of the final decision taken in respect of article (2).

*Paragraph (3)*

9. A question was raised as to whether the time when a declaration should take effect should coincide with the date that the convention entered into force for the State that made the declaration. It was noted that, whilst there were precedents in some international instruments where the time when a declaration took effect coincided with the time when the instrument entered into force for the declaring states, there were other precedents where these times did not so coincide.

10. The Working Group noted that article 97 of the United Nations Sales Convention provided, in part, that a "declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary". A similar provision was contained in paragraph (3) of article 26 of the United Nations Convention on Independent Guarantees and Stand-By Letters of Credit. It was agreed that a provision along those lines should be included in the draft paragraph.

11. Subject to those amendments, the Working Group agreed to retain the text of paragraph (3).