agreement", the following sentence: "The settlement agreement may contain a clause that any dispute arising out of or relating to the interpretation and performance of the settlement agreement shall be submitted to arbitration."

8. *Article 14.* There is a reference in this article to the fact that, where the obligation of the conciliator and the parties to keep confidential all matters relating to the conciliation proceedings is concerned, some different provision may be made by law. This must, of course, refer to national law, which governs the conciliation process if this question should arise. However, it can also happen that national law is silent on the subject. Although we should prefer the deletion of the words "or required by law", the reference could be made clearer, if it is considered necessary to retain it, by using the following wording: ". . . or required by the law applicable to the conciliation . . .".

9. *Article 16.* There is a typing error in the fourth line of the Spanish text of this article, where the words *"arbitral o conciliatorio"* should read *"arbitral o judicial"*. In any event, we agree with the exception made in the last part of this provision, although we should prefer the word *"proteger"* instead of *"conservar"*.

10. *Article 19.* In view of the observations made in paragraph 84 of the commentary, the Spanish text of this provision should be clarified by inserting the word *"abogado"* after *"representante"*, so that the passage in question would read: *". . . ni como representante, abogado o consejero de una parte . . .".* The point is that the term *"representante"* may mean the attorney for the case but not the lawyer *(abogado)* pleading it, while a *consejero* may not always be the pleader or *abogado* but an expert who advises the *representante* or the pleader.

ARGENTINA (Addendum 2)

1. The fundamental purpose of the revised draft UNCITRAL Conciliation Rules is to ensure the full autonomy of the parties in conciliation proceedings. This principle, which was upheld by Argentina at the twelfth session, with the support of Austria, France and Singapore among other countries, is now more fully respected at the commencement, in the course of, and at the termination of proceedings.

2. The principle is reflected, for example, in the flexibility of the time-limit referred to in article 2, paragraph (4), which states that the party initiating conciliation may elect to treat the expiry of the time-limit as a rejection of the invitation to conciliate.

Thus the possibility of conciliation remains despite the expiry of the time-limit.

3. It is suggested that, in article 7, paragraph (2), the words "arising from the contract" should be added after the words "the rights and obligations of the parties". This wording indicates that the first consideration would be the terms established by the parties at the time of entering into the contract. This would ensure that solutions could be envisaged without the necessity of subordinating the issue to any national law which might be applicable.

4. The criterion that the settlement should be considered final and binding (art. 13, para. (3)) is also acceptable. This is a general principle which is universally accepted in national legislations (cf. art. 850 of the Argentine Civil Code, under which settlement has the same effects as a judgement that has acquired the authority of *res judicata*). On the other hand, whether the performance of the agreement may be enforced under the procedure for the implementation of judgements is an issue that should be determined in the light of national legislation. It should be made clear, however, that the settlement may be challenged on grounds of nullity. This is a fundamental principle to be taken into consideration vis-à-vis the final and binding nature of the settlement, since the right to challenge on the ground that consent has been vitiated cannot be waived unless it is a case of relative nullity, which can be remedied.

5. Since the conciliation proceedings must be based on the full autonomy of the parties, it should be borne in mind that although it is normally appropriate for the parties to refrain from initiating any arbitral or judicial proceedings during the conciliation, recourse to such proceedings should not in itself be regarded as an obstacle to the conciliation proceedings even when the arbitral or judicial proceedings have been initiated for reasons other than the specific purpose of preserving rights, as stipulated in the exception clause in article 16. Recourse to conciliation should be possible in other circumstances as well. It is therefore suggested that there should be an express provision which would clearly envisage the possibility of recourse to conciliation during arbitral or judicial proceedings. Thus the parties would be able to pursue two parallel proceedings: arbitral or judicial proceedings, on the one hand, and conciliation proceedings, on the other. These parallel proceedings could be pursued when arbitral or judicial proceedings are temporarily suspended. Yet such suspension cannot be a prerequisite for initiating the conciliation proceedings if the parties are to be allowed full freedom in the settlement of disputes. The parties themselves can best judge whether parallel proceedings are compatible.

6. It is suggested that a special provision should be included which would envisage the possibility of the parties determining the law applicable to various questions which might give rise to disputes and which it would be inappropriate to regulate by means of specific provisions in the Conciliation Rules. The choice of the law applicable to the settlement (art. 13) is extremely important, as is agreement on the law applicable to the rendering of an accounting of the deposits received, referred to in article 18, paragraph (4).

7. As a model conciliation clause, variant A is more in keeping with the idea that conciliation proceedings may be initiated at any time, there being no requirement that the initiating party should send an invitation to the other party before resorting to arbitral or judicial proceedings.

Variant B could be interpreted as binding on the party which wishes to have recourse to an arbitrator or a judge.

Nevertheless, both clauses are based on prior and legitimate agreement between the parties and are valid possibilities within the context of the idea of autonomy of will.