

He noted that the representatives of Australia, Egypt, Ghana, Guyana, Norway, Poland and the United States were in favour of extending the scope of article 14.

Mr. ROGNLIEN (Norway) thought that representatives should have been invited to indicate their views on his delegation's amendments in document A/CN.9/R.9.

Mr. OLIVENCIA (Spain) noted that the Commission agreed that the Uniform Law should apply only to direct relations between the buyer and seller. It would be dangerous to apply it to third parties, even if they were joint debtors, since the question of incidental guarantees, which had been discussed during the debate on article 1, would then be reintroduced into the sphere of application of the Convention. Perhaps the Working Group could consider the matter and report back to the plenary meeting.

Mr. GUEST (United Kingdom) said he fully supported the Chairman's request for an expression of opinion. The Working Group thus had some indication of the strength of feeling on article 14, which it would take into account in its consideration of that article.

The CHAIRMAN said that, in view of the opinions expressed by the representatives of Spain and the United Kingdom, article 14 should be referred to the Working Group for clarification of its contents and implications. The Working Group should make sure that the text was not so vague that it could cover other matters such as incidental guarantees, as pointed out by the Spanish representative.

Article 15 (continued)

Mr. RECZEI (Hungary) said that he had some difficulties with regard to article 15. In the case of inheritance due to death of a debtor or a liquidation of a company, the executors ex officio took account of outstanding claims but did not issue appeals to creditors. They simply enumerated the creditors. The provision in article 15 to the effect that the limitation period would cease to run only if the creditor performed an act recognized under the law applicable to the proceedings listed in article 15 was a dangerous one, since some creditors might have no knowledge of the existence of the legal proceedings. Perhaps the article could include a provision stating that, in cases where the applicable law did not require

any act to be performed on behalf of the creditor, the limitation period would start from the beginning of such proceedings and would run until the end of the proceedings. Furthermore, in cases where the executor enumerated among the creditors a creditor who was not required to perform any act, he wondered whether that enumeration could be considered as an acknowledgement under article 17 and whether the limitation period would therefore start anew. The Commission should either delete the article or insert a sentence referring to systems where there was no obligation for the creditor to take action in case of the insolvency of a debtor.

Mr. MANTILLA-MOLINA (Mexico) found article 15 difficult to understand, perhaps because of the different concepts which existed in various legal systems. In Mexican law, for instance, judicial proceedings were undertaken to establish the rights of creditors after a bankruptcy. Article 12 (1) (a), which covered judicial proceedings, already covered all the contingencies referred to in article 15. The latter article could therefore be deleted from the draft Convention.

Mr. SMIT (United States of America) explained article 12 stated that the limitation period would cease to run only when the creditor took action against the debtor. Article 15 was intended to cover situations when it was not the creditor, but someone else, who took action against the debtor. It allowed the creditor an opportunity to present his own claim. However, he felt that the draft article was somewhat too specific and should perhaps be comprehensive enough to cover all forms of interposition of claims. As his delegation had proposed (A/CN.9/V/CRP.14), articles 12, 13 and 15 should be replaced by a new formula.

Mr. GUEST (United Kingdom) said that article 15 was useful and should be retained. In some legal systems, proceedings such as those mentioned were characterized as being judicial, whereas in other systems they were regarded as administrative. For instance, in the United Kingdom, in a case of bankruptcy the limitation period ceased when the bankruptcy came into force. Afterwards the law of bankruptcy was the one which applied with regard to the time at which the creditor should assert his claim. The Working Group had considered that partly judicial and partly administrative situations of that type should be dealt with in article 15, which was parallel to but distinct from article 12.

In reply to the objection of the United States representative that article 15 was too specific, he said that lawyers were usually helped by having their attention drawn to the specific situation in which they were interested, rather than by being faced by general principles which they might have difficulty in interpreting, particularly if a foreign legal situation was involved.

Mr. JAKUBOWSKI (Poland) fully agreed with the representative of the United Kingdom. There was advantage in specifying the situations covered by the Convention, in view of the conceptual differences in different legal systems. Article 13, for instance, was important because it indicated what was considered to be the time of institution of arbitration proceedings. In ad hoc arbitration procedure, the document of claim was normally filed only after the court had been constituted, and that could take a year or more.