

His delegation doubted seriously whether article 9 (5) would be workable in practice. He therefore asked that the Working Group should reconsider that paragraph.

The CHAIRMAN asked the representative of Singapore to transmit his suggestions to the Working Group, preferably in written form.

Articles 12, 13 and 15

Mr. HONNOLD (Secretary of the Commission) said that articles 12, 13 and 15 were concerned with action under three types of legal proceedings that stopped the running of the limitation period. The significance of such legal proceedings was that they prevented the limitation period from expiring so that the claim would not be barred under article 24. As noted in paragraph 1 of the commentary to article 12 (A/CN.9/70/Add.1, page 41), the reference in the heading to "interruption" did not imply that the consequences of "interruption" under various national legal systems were imported into the Law. The text of the Law itself did not use the term "interruption" in connexion with those provisions. Article 16, which did refer to "interruption", was scarcely an exception since the reference was limited to those legal systems that used that concept. The Working Group had felt that the use of the term in the general heading for that group of articles might be helpful as an indication of the general character of the problem with which the articles dealt. However, in view of the ambiguity of the term, he understood that the Working Group might wish, as a matter of style, to consider whether the heading might be modified.

The aim of articles 12, 13 and 15 was to define the stage which proceedings must reach before the expiration of the period in order to stop the running of the period. Article 12, which dealt with judicial proceedings, took account of the fact that such proceedings were instituted in various ways in different legal systems. Paragraphs 3 and 4 of the commentary to article 12 therefore referred to the rules of the jurisdiction where the proceedings were brought, which defined the steps to be taken in order to institute proceedings. A different approach was taken with regard to other proceedings, such as arbitration.

Mr. ROGNLIEN (Norway) remarked that the draft did not use technical legal terms which had different meanings under different legal systems, such as "suspension" and "interruption"; however, the heading of the group of articles did use the word "interruption". Since that term might lead to confusion, he suggested that it might be replaced by a word such as "discontinuance" or, in French, "arrêt".

Mr. POLLARD (Guyana) said the wording of article 12 was vague and difficult to understand. He therefore proposed that the beginning of article 12 (1) should be amended to read as follows: "The limitation period shall cease to run when the creditor performs any act which, under the law of the jurisdiction where such act is performed, is recognized as:". The word "as" should then be deleted from subparagraphs (a) and (b).*

Mr. ELLICOTT (Australia) pointed out that article 12 (2) treated the counterclaim as the institution of judicial proceedings, in other words, as falling under the terms of article 12 (1) (a). He felt it would be more appropriate to treat it as falling under the terms of subparagraph (1) (b). He suggested that the words "which he has commenced against the debtor in relation to another claim" in subparagraph (1) (b) should either be omitted or replaced by the words "which the debtor has instituted against him or which he has instituted against the debtor".

Mr. OLIVENCIA (Spain) said the entire text of the articles under consideration was obscure; the Commission must not lose sight of the fact that the draft Convention was designed mainly to serve businessmen and not lawyers. The Spanish text was incomprehensible and he had had to refer to the French text in order to understand the meaning of the articles. He suggested that the Spanish translation should be based on the French text, since many of the errors in the Spanish text seemed to stem from the fact that it had been translated from the English. The entire draft Convention was indeed much too long and confusing and should be considerably simplified, systematized and synthesized.

Mr. MANTILLA-MOLINA (Mexico) said he had had difficulty in understanding the French, Spanish and English versions. For example, as he understood it, article 12 (1) (b) envisaged the contingencies set forth in article 15. It would

* Subsequently circulated as document A/CN.9/V/CRP.13.

have been much simpler merely to make reference to that article, rather than trying to spell out the situation in such complicated terms.

The CHAIRMAN said that the suggestion made by the Spanish representative would be transmitted to the Secretariat.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that the words "as invoking his claim" in article 12 (1) (b) were not clear to him. He did not understand what sort of claim was meant. If it was a counterclaim, that should be made clear. If the words referred to the introduction of a petition to increase the sum involved in the original claim, there was no purpose in introducing that subparagraph, since it was covered by subparagraph (a). He would appreciate clarification as to what the drafters had had in mind.

Mr. LEMONTEY (France) said that the use of the word "interruption" in the heading for that section of the draft Convention was confusing. He suggested that a different heading should be used which would be neutral and not likely to lead to errors of interpretation. He suggested the use of a heading such as "cessation of the running of the limitation period" (cessation du cours de la prescription).

Mr. HONNOLD (Secretary of the Commission) pointed out that, whereas the headings of the main sections of the draft Convention had been prepared by the Working Group, the bracketed captions in the commentary (A/CN.9/70/Add.1) had been inserted for ease of reference and had no legal effect.

Mr. ROGNLIEN (Norway) pointed out that the Working Group had not used the technical terms "interruption" or "suspension" in the body of article 12. The text left it for municipal law to decide what acts should be recognized as instituting judicial proceedings and thus causing discontinuance. The effects of such discontinuance, however, were not left to municipal law - except where a judgement or award was made. The effects under the draft Convention of such discontinuance were stated in articles 18 et seq. Discontinuance was not interruption in the sense that a full new limitation period would commence to run exactly from the time of the act causing the original limitation period to cease to run. Nor was it suspension in the sense that the former limitation period would recommence at the conclusion of the judicial proceedings. The effect of the text was that a new period, as specified in articles 18 et seq., would commence to run after the term of the discontinuance. The Working Group had felt that it would be easier in practice

for parties to proceedings to calculate the extension of the limitation period as from the conclusion of the proceedings, according to the rules in articles 18 et seq.

Mr. LASALVIA (Chile) said that the representative of France, whose remarks he endorsed entirely, had anticipated the Chilean delegation's comments.

He supported the Spanish representative's remarks regarding the Spanish version of the draft Convention.

Mr. DEI-ANANG (Ghana) supported the amendment of the representative of Guyana to article 12.

Mr. GUEST (United Kingdom) said that the Working Group had used the expression "cease to run" in article 12 because it was bringing into operation a novel system not reflected in any current legal system. The consequences of discontinuance varied from one legal system to another. Under English law, for example, the period of limitation continued to run during legal proceedings although the length of the latter was governed as a procedural matter.

There were three possible results in the operation of the system introduced under article 12. First, the creditor could obtain judgement in his favour - in which case the draft Convention ceased to be applicable by virtue of the exclusions for which article 6 provided. Secondly, the creditor could fail to win his case, in which case the matter would be closed in so far as the jurisdiction before which the proceedings had been instituted was concerned. Thirdly, the proceedings could be abortive - for example, the creditor could withdraw his claim, or the jurisdiction before which the proceedings were instituted could declare itself incompetent; such situations were dealt with under articles 18 et seq. Such being the operation of the system, the Working Group had felt that it need not specify the consequences of its use for municipal law.

Referring to the USSR representative's queries regarding article 12 (1) (b), he said that if a creditor instituted proceedings against a debtor for a sum of money owed to the creditor as a result of a loan and, subsequently, the creditor added an extra claim to his already instituted proceedings - for example, a claim for the price of goods sold to the debtor - the intention was that article 12 (1) (b) would stop the running of the limitation period in respect of the claim for the price of the goods. It could be argued that article 12 (1) (a) would cover such a situation

but the Working Group had felt that the provision should be made quite clear. It was for the Working Group to consider whether article 12 (1) (b), which concerned situations where the creditor was the plaintiff, was strictly necessary. That was a difficult question in view of the provisions regarding counterclaims in article 12 (2), in which the creditor was the defendant.

Mr. POLLARD (Guyana) said that the Working Group's indiscriminate use of the words "cease to run" and "interruption" had led to confusion. Only article 16 was genuinely concerned with interruption. Article 14 was rather concerned with the termination of the limitation period. He suggested, therefore, that the heading of the section should be changed to read: "Termination and interruption of the limitation period".

Mr. SMIT (United States of America) said that the introduction of a wholly novel system implied the introduction of wholly novel problems, although he had no objection to the system which the Working Group proposed.

A problem which could arise under that system would result from a situation in which a court not having jurisdiction nevertheless decided a case on its merits. Article 16 would not apply in such a case and the limitation period might therefore never cease to run. He wondered whether there was any strong reason why the Commission should select the novel system. His delegation found articles 12, 13 and 15 unnecessarily prolix and detailed; they did no more than define the point at which legal proceedings were commenced. That could be done in a single article in simpler language providing that the limitation period should be interrupted or cease to run when a claim was asserted in legal proceedings. It would be left for municipal law to determine the exact date upon which the claim was interposed. The compression of articles 12, 13 and 15 into a single article would avoid many additional problems arising from the text as it stood. His delegation would propose a draft text of a single article.*

Mr. LEMONTEY (France) said that articles 12, 13, 15, 18 and 21 were related and the heading of the section should be altered to make their relationship clear.

Mr. OLIVENCIA (Spain) said that the Commission did indeed have a new system before it but it was one which lacked order and should be systematized. The text

* Subsequently circulated as document A/CN.9/V/CRP.14.

should refer, first, to acts which caused the limitation period to cease to run and should enumerate those acts. It should then deal with the concepts inherent in each of the acts enumerated and, lastly, should state the effects deriving from each of them.

Mr. CHAFIK (Egypt) drew a distinction between the suspension and the interruption of the limitation period. He could accept the wording "shall cease to run" in article 12 (1) but thought it wiser, in view of the difficulty raised by the word "interruption", to remove the headings from the draft Convention.

Mr. COLOMBRES (Argentina) proposed that article 12 (1) (b) should be eliminated by the inclusion of the concept of counterclaims in the text of article 12 (1) (a).

Referring to the French representative's remarks concerning the grouping of articles, he agreed that the heading should be worded in neutral language - for example: "Cessation of the running of the limitation period".

Mr. OLIVENCIA (Spain) supported the Argentine representative's proposal regarding the elimination of article 12 (1) (b).

The CHAIRMAN said that the comments and proposals made during the debate would be referred to the Working Group.

Article 14

Mr. LOEWE (Austria) said that his delegation would prefer article 14 not to appear in the draft Convention. It believed that the institution of proceedings in a court against a joint debtor should in no way involve interruption or cessation of the limitation period vis-à-vis another joint debtor. In the opinion of his delegation, claims against the debtors might be of different kinds and it did not seem a good idea to make the limitation period depend on whether another person was a joint debtor. A debtor against whom no claim was filed, but in respect of whom the limitation period was interrupted might have great difficulties with regard to evidence, and one of the objectives of the institution of the limitation period was not to risk a procedure in which one party, for the reason that too much time had elapsed, would not be able to invoke evidence. It would surely be better to allow the limitation period to run irrespective of any link between debtors.