

101st meeting (14 April 1972)

Article 15 (continued)

Mr. OGUNDERE (Nigeria) said he was in favour of retaining article 15 which was justified because it provided for the case of legal proceedings commenced in well-defined situations. The inclusion of those provisions in article 12 would be an unnecessary complication.

Mr. ELLICOTT (Australia) said that, he, too, supported the retention of article 15. The term "dissolution" in subparagraph (c), however, seemed to him to be too restrictive. In Australian law, that word was only used when a legal entity ceased to exist. The term "liquidation" would undoubtedly be more appropriate since it was broader in scope and could, in Australian law, refer to other situations besides insolvency which required the appointment of a receiver.

Mr. CHAFIK (Egypt) also supported the retention of article 15 independently of article 12. It should, however, be specified that the creditor must perform the act referred to at the end of the first sentence of article 15 only if the law applicable to the proceedings so required. In Egyptian law, only the bankruptcy of a company, not judicial liquidation, affected debts and their prescription.

Mr. KHOO (Singapore) agreed to article 15, subject to the change suggested by the representative of Australia.

Mr. JENARD (Belgium) said that he, too, was in favour of retaining article 15.

Mr. SAM (Ghana) said that he favoured the retention of article 15. The article was, however, still unclear with regard to its effects on third parties, especially in the case of bankruptcy. He therefore thought that the article should be revised in order to avoid any confusion in its application and any conflict with national laws.

Mr. POLLARD (Guyana) agreed to article 15 subject to a change which would make it more general in character. For instance, in the first line of the article, the words "upon the occurrence of" might be replaced by the words "upon such an occurrence as". The suggestions made by the representatives of Hungary and Egypt should also be taken into account.

Mr. OLIVENCIA (Spain) said that he had not been aware of the written proposal of the United States representative, but he, too, thought that a convention could not provide for all the specific cases to which it could apply. It would therefore be desirable to find a general formula which would at the same time avoid the problem raised by the interpretation of the different subparagraphs. In particular, he shared the doubts of the representative of Mexico concerning subparagraph (d).

The CHAIRMAN noted that there appeared to be consensus in favour of retaining article 15 subject to changes. The article would therefore be referred to the Working Group which would seek to give it a more general formulation, taking into account the various proposals which had been made.

He invited the members of the Commission to consider article 16.

#### Article 16

Mr. SZASZ (Hungary) said that he was in favour of the interruption of the limitation period provided for in article 16. It should not, however, be possible for such an interruption to occur several times in succession since that would result in prolonging the limitation period indefinitely. He therefore suggested that a restriction to that effect should be introduced into article 16, specifying that it would no longer be possible to interrupt the limitation period after a certain lapse of time, which might for example be six years, from the start of the initial period.

Mr. JENARD (Belgium) pointed out that article 16 had been introduced at the request of various delegations whose national laws provided for the possibility of interrupting the limitation period without recourse to judicial proceedings. He admitted, however, that article 16 was too broad in scope and he proposed the introduction of two limitations: first, it could be specified that the