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

provisions of article 16 were only applicable if the debtor had his place of business in a State whose national law recognized such a procedure; secondly, as the representative of Hungary had just suggested, a time-limit could be set for such a procedure, for example, by adding to article 16 the last sentence of article 19 according to which "the limitation period shall in no event be extended beyond 10 years from the date on which the period would otherwise expire in accordance with article 8 to 11".

Mr. SMIT (United States of America) said he thought that article 16 contradicted the other provisions of the draft Convention since it allowed a creditor to extend the limitation period by a unilateral act. He therefore proposed that the article should be deleted.

Mr. WARIOBA (United Republic of Tanzania) supported the United States representative's proposal.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) expressed doubts as to the advisability of retaining article 16. Article 16 was unclear since there was some question as to how far it duplicated articles 12 and 17 and the words "manifesting his desire" were too vague. He tended to favour the deletion of article 16 which seemed to him to serve little purpose and to be complicated to apply. He would, however, be prepared to consider any compromise formula which the Working Group might work out. Article 16 should at least be crystal clear from the legal point of view and its tenor should correspond to that of articles 12 and 17.

Mr. LEMONTEY (France) said he thought that article 16 should be retained since it reflected a principle recognized by various national laws. Moreover, by offering a creditor the opportunity to interrupt the limitation period, the article counterbalanced article 22, which allowed the debtor to extend the limitation period. He nevertheless supported the suggestions of the representative of Belgium to limit the scope of application of article 16.

Mr. MICHIDA (Japan) felt that article 16 lacked clarity and he wondered in particular what should be understood by the term "public authority": did that term refer to an administrative department of some kind or was it applicable only

to judicial departments operating under the control of the courts? In Japan, for example, the postal services guaranteed the date of delivery of a letter to the addressee and its contents in the case of registered mail, and the Japanese courts would have to ask whether they should consider the postal administration as a "public authority". It might also be asked whether the words "notice of this act is served" could apply to the dispatch of a letter. For that reason, his position was close to that of the Norwegian delegation (A/CN.9/R.9) which proposed either that article 16 should be deleted or that it should be rephrased to introduce certain essential clarifications.

Mr. GUEST (United Kingdom) said that at first sight his delegation's position with regard to article 16 had been unfavourable and had been similar to that of the representatives of the United States and the Soviet Union. Upon reflection, however, it appeared that the retention of that article could be justified because of the existence in certain national legal systems of acts other than judicial proceedings which interrupted the limitation period. By limiting the application of article 16 to cases where a debtor had his place of business in a State whose law recognized the act in question, the proposal of the representative of Belgium, which had been supported by the representative of France, did not derogate from the interests of the State of the creditor whose law did not recognize that act; such a solution was, on the contrary, advantageous to the creditor since he could benefit from an interruption of the limitation period without his own national law in turn opening up the same possibility.

Mr. OGUNDERE (Nigeria) said he thought that the advantage pointed out by the United Kingdom representative would in fact raise serious practical difficulties if, for example, a national of a country which did not recognize that method of interrupting the limitation period found himself in a country which applied it and his creditor seized that opportunity to notify him of his desire to interrupt the limitation period. In principle, his delegation's position was similar to that of the representatives of the United States and Tanzania. However, if a consensus emerged in favour of rephrasing article 16, he could concur in it.

Mr. MANTILLA-MOLINA (Mexico) said that he was against the retention of article 16 both for the theoretical reasons already adduced by other members of the Commission and for practical reasons. The purpose of the article, which was to avoid judicial proceedings as far as possible, could be achieved even if the provision contained therein was deleted, for example, in the hypothesis where the parties to a dispute were in good faith, by the use of the provisions of article 17 or article 22, paragraph (2), which allowed the debtor to interrupt the limitation period in order to prolong efforts at negotiation.

Article 16 might create many uncertainties, particularly on the question of the extent to which the jurisdiction of the other party would recognize that the limitation period had been interrupted by the act performed by the creditor. In the circumstances, it would be preferable simply to delete the article.

Mr. KAMAT (India) said that, despite what the United Kingdom representative had said, his delegation had considerable reservations about article 16, basically because it ran counter to the general spirit of the draft convention which was to promote uniformity. It would be unfortunate if the convention left it up to the national jurisdictions to determine what acts could interrupt the limitation period. Resorting to the reservations provided for under article 35 would not solve the problem, for the interruption would continue to be effective in States whose laws recognized its validity. Moreover, as the representative of Japan had pointed out, the term "public authority" was ambiguous. Either article 16 should be radically amended so as to indicate precisely what acts could interrupt the limitation period - thus giving all parties an element of certainty - or it should simply be deleted.

Mr. LOEWE (Austria) said that at first glance he was not much in favour of article 16. Under Austrian law, in order to interrupt the limitation period the creditor must perform an act which involved a certain amount of risk for him. Interruption therefore was not completely unilateral.

However, the unification of laws, should not be pursued as an end in itself. In that respect his position was similar to that of the United Kingdom. He was against article 16 as it stood but would agree to its being kept if its effects were limited to the territory of countries that recognized the sort of acts it

referred to. The only parties for whom it would be a disadvantage would be those established in a country whose legislation recognized the acts in question. If the article were phrased in such a way as not to place the other parties at a disadvantage, it would be acceptable, subject to the limitations suggested by the representative of Belgium himself.

Mr. CHAFIK (Egypt) stated that he supported article 16 provided it was accompanied by the limitations suggested by the representative of Belgium.

Mr. OLIVENCIA (Spain) stated that his delegation's position was similar to that of the representative of Austria. Article 16 should be kept provided it was modified and made more specific. The article raised numerous difficulties, for, by referring to national laws it seemed to run counter to the spirit of the draft on a major point, namely acts of interruption. However, he was prepared to agree that the validity of the acts mentioned in article 16 should be recognized when the debtor had his place of business or was normally resident in a country in which such acts were recognized.

As it now stood the article gave rise to divergent interpretations. It did not refer to lex fori, as some had said, but rather to the law of the country in which the act was performed and there was no way of being sure how the provisions would be applied in a country where the mere sending of a registered letter could interrupt the limitation period. To use the reservation provided for under article 35 would create further confusion.

The best solution would be to rephrase article 16 so that its application was limited to cases in which the debtor's country recognized the validity of the acts to which it referred. In addition, the ambiguity of the phrase "act... manifesting his desire to interrupt" must be eliminated. The commentary on the article stated that presumably the national law in question gave legal effect to that manifestation of desire. If that were the case, the article itself should make that quite clear.

Mr. KHOO (Singapore) said he was in favour of deleting article 16 because it would create huge problems for businessmen and lawyers alike by requiring that they refer to national laws in order to determine whether or not a given act interrupted the limitation period. Another disadvantage would be that it would subject the parties to the diversity of national laws and thus would encourage

lengthy lawsuits, whereas creditors should on the contrary be encouraged to exercise their rights diligently. Finally, it ran counter to the convention's aim of unifying and harmonizing laws. However, if the majority was in favour of keeping article 16 his delegation could agree, providing it was recognized that the acts referred to in the article interrupted the limitation period both in the creditor's country and in that of the debtor.

Mr. LASALVIA (Chile) said that his delegation was in favour of deleting the article for the reasons already stated by many delegations. However, if the majority wished it to remain, he would have no objection, provided the proposed amendments were made, particularly those of the representative of Spain.

There was an inaccuracy in the Spanish version of the article. The term "la autoridad publica" normally meant the executive. The indefinite article should be substituted for the definite article in order to make the text clearer.

The elimination of article 14, the text of which could be found in the foot-note in paragraph 2 of the commentary on article 16, was unfortunate. That article reflected a spirit of unification and could have been very valuable to businessmen. His delegation would very much like to see it replace article 16.

Mr. LOEWE (Austria) agreed with the representative of Chile concerning the reinsertion of article 14.

Mr. NESTOR (Romania) said he was in favour of deleting article 16. That article could not serve as a counterpart to article 22 since the two provisions were not comparable. In fact, as far as limitation was concerned, the creditor mentioned in article 16 was in fact the "debtor" of an obligation in that he must exercise his rights before the expiration of the four years and was authorized to extend that period by a unilateral act. The debtor's position was different since he was in effect the beneficiary of a right which he could exercise only during proceedings. There was therefore no question of offsetting article 22 by article 16 and the best solution would be to delete article 16 unless a generally acceptable formula could be found and that seemed unlikely.

Mr. ELLICOTT (Australia) said that in addition to the three alternatives already mentioned, namely to delete article 16, keep it or limit its effect, there

was a fourth alternative, namely to make article 16 a rule with general application enabling any creditor to interrupt the limitation period once and only once. Indeed, one of the problems the Commission would encounter would be that of a suit brought against the buyer by a national subpurchaser in countries where the limitation period was more than four years as was the case in Australia. If such a suit was brought after the expiration of the limitation period provided by the Uniform Law the buyer exposed to the action of the subpurchaser would have no recourse against the original seller. It would be difficult to solve that problem by amending the national limitation periods, for in countries with a federalist structure the limitation periods were determined by each state. However, it could be solved by enlarging article 16 so that it would protect any buyer against any seller. The "new limitation period" would not necessarily be four years and could be reduced to two, for example.

Mr. SAM (Ghana) endorsed the Australian representative's remarks but said that he was not convinced by the argument put forward by the United Kingdom representative. To take account of the particularities of certain States would be contrary to the very purpose of the Uniform Law which was to be generally acceptable.

Article 16 might be improved by taking account of the suggestions of the Hungarian and Norwegian delegations. However, the effect in the long run would be the same.

The best thing to do would be to delete the article unless a generally acceptable formula could be found.

Mr. MUDHO (Kenya) said he was in favour of deleting article 16 for the reasons already stated. If the Commission decided to keep it, his delegation could accept it in a spirit of compromise provided it stipulated that the act interrupting the limitation period was recognized both by the legislation of the creditor's country and that of the debtor, as had already been suggested.

As it stood the article lacked precision and the word "manifesting" in particular was too vague. The act in question should not "manifest" the desire to interrupt the limitation period; it must bring about the interruption.

The CHAIRMAN noted that several delegations were in favour of deleting article 16, but that some were willing to consider a redrafted text. Others had spoken in favour of retaining the article, with various changes. Thus, it appeared that a consensus had arisen in favour of article 16, revised in accordance with the suggestions which had been made. Consequently, he suggested that the delegations which had suggested changes should transmit them to the Working Group, which would be responsible for the preparation of the new text of article 16.

It was so decided.

/The last part of the meeting was taken up by the discussion of other matters/