Mr. SINGH (India) said that his country, which was more often a buyer than a seller, had every interest in retaining article 20. He supported the amendment proposed by the Australian delegation.

Mr. CHAFIK (Egypt) said that he was in favour of retaining article 20, which, although it would probably complicate the Uniform Law, was a necessary element. He felt that the Australian proposal merited consideration, and he proposed that the matter should be referred back to the Working Group.

Mr. GUEST (United Kingdom) agreed with the Australian representative that article 20 was a very important provision of the Uniform Law. If articles 18 and 19 were regarded as necessary, it was difficult to justify the deletion of article 20, which dealt with a situation that arose much more frequently. He supported the Australian amendment. If the amendment proved unacceptable to the Commission as a whole, the Commission should at least retain article 20 in its present form. His delegation believed that the additional one-year period provided for in article 20 should not be further extended.

The CHAIRMAN noted that a majority had come out in favour of retaining article 20, that some delegations even felt that that provision should be strengthened by replacing the additional one-year period by a two-year period, while yet other delegations were in favour of its deletion. In the circumstances, the present text appeared to constitute a compromise. He therefore suggested that article 20 should be retained as it stood and should be merely referred back to the Working Group for any necessary drafting changes.

It was so decided.

Article 21

Mr. SMIT (United States of America) said that, in principle, article 21 fulfilled a worthy purpose: it was normal, if a creditor had obtained a judgement in one State which he could not have carried out in another State, to extend the limitation period so that he could institute the necessary legal proceedings in that other State. In fact, however, article 21 was made redundant by the

provisions of article 12. Article 21 would be necessary only if interruption of the limitation period was not intended to have an international effect. The opposite of that was laid down, and the reservations in article 35 were the exception rather than the rule.

In addition, the concept of "recognition" of a judgement was ambiguous, and was interpreted in various ways in different countries. If the Commission decided to retain article 21, what form of recognition was intended should be specified.

Mr. ROGNLIEN (Norway) considered that article 21 was useful, since it referred to the particular case, not taken into account in articles 12, 13 or 16, where a final judgement or award was obtained. The wording of the article was not perhaps ideal, and it could no doubt be improved by the Working Group, taking into account in particular the remarks made by the representative of the United States with regard to the various forms of recognition which were possible, and specifying that the judgement referred to was neither recognized nor enforceable in the State in which its application was sought.

Mr. LOEWE (Austria) thought that article 21, the application of which seemed to be connected with that of articles 12 and 35, posed complex problems and might lead to a legal impasse. If, for example, a claim was founded on the judgement, not recognized in Austria, of a foreign court, the application of article 21 would have the effect, if the normal limitation period had already expired, of reviving a claim which in Austrian law was extinguished. For that reason, his Government would no doubt have to register reservations with regard to the article if it was retained. Even the wording of article 21 was not beyond criticism: in the case of a judgement which, for example, only partially granted the claims of a creditor, the text as it stood would nevertheless allow that creditor to institute proceedings for the entire claim within the new limitation period he was granted; one might equally imagine a creditor invoking an unrecognized judgement even when it had been given against him. His delegation therefore favoured deleting article 21 or, if that article was retained, providing in article 35 for the possibility of its non-application.

Mr. OGUNDERE (Nigeria) said that to a certain extent he shared the opinion of the representative of Austria. In addition, he wondered why, while the additional limitation period provided for in article 20 was one year, that in

article 21 was four years. If a consensus emerged in favour of article 21, his delegation could support it, provided that an attempt was made to harmonize the length of the various extensions.

Mr. LEMONTEY (France) thought that article 21 was a necessary complement to article 12, and that it also took into account the desire for fairness by granting a plaintiff a supplementary period to allow him to secure the enforcement of a judgement in his favour. However, it should be specified that the competence of the State which did not recognize the judgement in question, and in which the creditor might institute new proceedings, should be based on rules independent of the convention, so that further cases of jurisdictional competence would not arise. As to the four-year period, it should be taken into account that for different situations the draft provided for specific periods which were not all of the same length. He would therefore prefer article 21 not to lay down a specific period, but to provide that the creditor should be entitled to a "new limitation period" whose length would depend on the type of claim. If, for example, that claim was based on lack of conformity, the length of the new period would be that which was laid down for such cases. His delegation would also not be opposed to provision being made in article 35 for the possibility of making reservations with regard to article 21.

Mr. JENARD (Belgium) thought that article 21 usefully supplemented article 12 since it both provided for the new case where a judgement had been made and specified the length of the extension of the limitation. Since article 21 referred precisely to the cases where one State did not recognize the judgement of another State, the possibility of departing from that article should not be included in article 35.

Mr. GUEST (United Kingdom) said that he favoured deleting article 21, which introduced unnecessary complications. In fact, before considering proceedings in the United Kingdom, a party should normally ask in which country the assets of the other, foreign, party were situated, and whether a judgement rendered in the United Kingdom would be enforceable in the country in question. Article 21 also carried the risk of indefinitely prolonging the limitation period: if, for example, the judgement rendered following an action instituted shortly before the end of the normal four-year limitation period became final only at the

end of three years, the article would give rise to an additional period of four years, or a total of 11 years. If the Commission decided to retain article 21, it should at least reduce to one year the length of the extension, and should also set a limit to the total length of the extended period, which should not exceed 10 years.

Mr. ELLICOTT (Australia) said that he shared the view of the representative of the United Kingdom, but would not oppose retaining article 21 if it was decided to set a maximum length for the extended limitation period.

Mr. JAKUBOWSKI (Poland) said that he favoured retaining article 21, which seemed to be very useful. The suggestion just made by the representative of the United Kingdom with regard to reducing the extension period to one year could serve as a basis for a compromise. On the other hand, the example that representative had quoted with reference to the total length of the limitation period after extension did not really seem convincing, and his delegation was opposed to the idea of setting a maximum length for the period.

Mr. ROGNLIEN (Norway), supported by Mr. SINGH (India), Mr. CHAFIK (Egypt), and Mr. LEMONTEY (France), said that he did not disagree with the intention behind the proposed reduction of the extension period to one year, but found it difficult to agree to the idea of setting a maximum limit to the limitation period after extension. It might happen that the proceedings by the creditor were held up by the system of procedure itself, through no fault of the creditor. If the question of the non-recognition of a judgement in another country was to arise, that judgement would have had to have been rendered; in addition, a second action could not be instituted before the first action had been terminated.

The CHAIRMAN noted that a consensus had emerged in favour of retaining article 21, while reducing the length of the extension to one year, but without setting a limit for the total length of the limitation period after extension. Article 21 would therefore be referred back to the Working Group, who would be asked to reformulate it in accordance with the observations which had been made.