

117th meeting (28 April 1972)

Article 11 (continued)

Article 11 was approved.

Article 12 (continued)

Mr. MANTILLA-MOLINA (Mexico) recalled that, when the provision in paragraph 1 was first examined, his delegation had stated that its wording could give the impression that cessation of the limitation period was linked indiscriminately with the institution of judicial proceedings or the delivery of the request for such proceedings to the defendant. The lack of clarity was all the more regrettable because paragraph 2 of article 13, on arbitration, stated that delivery of the request was taken into consideration. The problem was of considerable practical importance, since, in international proceedings, the institution of proceedings and delivery of the request to the defendant were often separated by several months.

Mr. RECZEI (Hungary) said he had reservations on the words "different contract" at the end of paragraph 2. Indeed, parties frequently maintained continuous trade relations and concluded a series of successive "different" contracts. Thus, the condition provided for at the end of paragraph 2 should not cover the contract, but the relationship between the parties.

Mr. MANTILLA-MOLINA (Mexico) said that the Commission had agreed to consider the article paragraph by paragraph and he regretted that members were not following that procedure.

The CHAIRMAN said that he had submitted article 12 as a whole for consideration by the Commission. He asked representatives to confine their comments to a single article.

Mr. KENNEDY (Australia) proposed deleting the words "against the debtor" in paragraph 1, in order that the provision should cover acts performed by way of counterclaim.

Mr. LOEWE (Austria) recommended that paragraph 1 should remain in its

present form and that it should be left to the relevant court to fix the date on which the period would cease to run. The case foreseen in article 13 was different, because the rules relating to arbitration did not always stipulate which acts would involve cessation of the period. In reply to the representative of Australia, he said that paragraph 2 was intended to cover acts performed by way of counterclaim.

His delegation, however, felt that at the end of paragraph 1, the words "for the purpose of obtaining satisfaction or recognition of his (the creditor's) claim", were open to criticism because it was not clear how a party could obtain satisfaction of his claim during legal proceedings. It would be better to use the phrase "for the purpose of obtaining recognition of his claim".

Mr. COLOMBRES (Argentina) said that the arguments put forward by the Mexican delegation on paragraph 1 lost their force when the provision was considered in the general context of articles 12, 13 and 15. He did not think the difference between articles 12 and 13, pointed out by the representative of Mexico, was important. Paragraph 1 of article 13 stipulated clearly that the limitation period ceased to run when either party commenced arbitral proceedings. Paragraph 2 of article 13 was merely an exception to the general rule established under article 12.

Mr. SMIT (United States of America) said that, if the Mexican delegation was concerned about a case in which delivery of a request for proceedings had not been received by the debtor, the new article 28 should suffice to dispel its fears. Like the representative of Austria, he believed that only paragraph 2 of article 12 referred to acts performed by way of counterclaim. He fully supported the comments made by the Hungarian delegation.

Mr. MANTILLA-MOLINA (Mexico) said that his delegation was not convinced by the Argentine representative's reasoning, and still believed that the wording of articles 12 and 13 was inconsistent. If the Commission decided to retain paragraph 1 of article 12, he asked that his delegation's position be reflected in the record of the meeting.

The CHAIRMAN suggested that a drafting group, composed of the representatives of Austria and Hungary should be entrusted with the task of formulating the drafting changes which had been suggested during the discussion of article 12.

It was so decided.

The CHAIRMAN invited the Commission to take a decision on article 12, subject to the drafting changes entrusted to the drafting group.

Article 12 was approved.

Article 13 (continued)

Article 13 was approved.

Article 14 (continued)

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that subparagraph (d) of the provision was unnecessary, since the cases provided for in the different paragraphs were only examples, as indicated by the words "including" which preceded the enumeration.

Mr. GUEST (United Kingdom) said that subparagraph (d) had been added by the Working Group to satisfy the Australian delegation, which had pointed out that company law in the common-law countries provided for situations which were similar to, but nevertheless different from, liquidation.

Mr. NESTOR (Romania) supported the representative of the USSR and said that the exceptions should be explicitly described. He would prefer deletion of subparagraph (d).

Mr. SMIT (United States of America) also shared the view of the USSR representative. Article 15 was sufficiently explicit to allow for deletion of subparagraph (d) of article 14.

Mr. KHOO (Singapore) proposed solving the problem by deleting subparagraph (d) and amending subparagraph (d) to read "the dissolution or liquidation or other cognate proceedings in respect of a corporation, company, association or entity".

Mr. KENNEDY (Australia) supported the proposal made by the representative of Singapore. However, if the Commission was against that proposal, his delegation would accept deletion of subparagraph (d).

Mr. RECZEI (Hungary) proposed that the whole of article 14 should be deleted. The provision concerned only procedural questions, which were settled in