

paragraph 1 to cover all possible delaying tactics and the Spanish delegation's proposal contained in document A/CN.9/V/CRP.17.

Mr. MICHIDA (Japan) reminded the Commission that its usual practice was to take decisions by consensus; he stressed the danger of hasty decisions. The contemplated drafting group should be given time to reflect on the question whether to retain or delete the reference to the consent of the debtor in paragraph 1. If the group could not reach a solution on that point, he would support the Nigerian proposal to place the words "without the consent of the debtor" in square brackets.

Mr. JENARD (Belgium) observed that the Austrian representative had proposed the submission of a compromise text designed to command the widest possible support. An effort should be made to reach agreement and to avoid leaving words in square brackets.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) considered that the Commission should avoid hasty decisions and await the proposals of the envisaged drafting group.

Mr. SAM (Ghana) supported the representative of the Soviet Union and proposed that consideration of article 15 be suspended.

Mr. KAMAT (India) suggested that the representative of Singapore should be a member of the envisaged drafting group.

The CHAIRMAN suggested that consideration of article 15 should be referred to a drafting group composed of the representatives of the Soviet Union, India, the United Kingdom, the United States and Singapore.

It was so decided.

Article 16 (continued)

Mr. DEI-ANANG (Ghana) reminded the Commission he had already suggested that the end of paragraph 1 and the end of paragraph 2 of article 16 should be amended in accordance with the Australian representative's proposal concerning article 15.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that article 16 (1) seemed particularly obscure, since it did not spell out the reason why the creditor should commence fresh legal proceedings.

Mr. LOEWE (Austria) reminded the Commission of the objections he had made during the discussion of former article 21, which was the basis of new article 16. Furthermore, it seemed that the Working Group had exceeded its terms of reference by providing, in paragraph 2, that the creditor could be entitled to an additional period of one year from the date when recognition was refused. In Austria, for example, only decisions given in countries with which Austria had concluded a treaty on that subject could be recognized or executed. Consequently, any Austrian lawyer knew whether proceedings commenced in Austria to obtain recognition of a foreign judgement were admissible. In cases where a decision had been given in a State which had not concluded such a treaty with Austria it would be far too easy for a creditor to request recognition or execution in that country in order to seek refusal and thus benefit by an additional period. If that provision was retained, he thought that his country might refrain from becoming a party to the envisaged Convention.

Mr. ROGNLIEN (Norway), speaking as the representative of Norway, observed that former article 21 had not given creditors the opportunity to commence fresh proceedings in a State unless that State did not recognize a previous decision given in another State. New article 16 took into account the exclusion provided for in new article 5 (d) and dealt solely with a procedural question. The wording of article 16 was obscure; he recalled that he had proposed new wording in document A/CN.9/V/CRP.22, and requested that it be included in the Commission's report. In any case, he favoured the proposed additional period of one year.

Mr. SMIT (United States of America) observed that article 16 concerned the case of a creditor who had obtained a decision in his favour in one State but was unable to have it executed in that State because, for example, his adversary had no property there. When the creditor considered commencing fresh proceedings in a State where his debtor had property, he could try to obtain a new decision on the merits on the basis of his original rights, and that was the case envisaged in paragraph 1. The creditor could also consider seeking to have the existing decision recognized in the second State, and if that failed, he could resort to the provisions of paragraph 2, which gave him an additional period in which to commence fresh proceedings.

Mr. MANTILLA-MOLINA (Mexico) considered that article 16 raised complex questions; the members of the Commission should be given more time to think about it. He therefore suggested that the Chairman should bring the meeting to an end.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that in view of the explanations given he was not opposed to retaining paragraph 1, provided that the reason for that paragraph was clearly specified.

The CHAIRMAN suggested that the United States representative should propose a new and clearer wording for paragraph 1.