

no extension of the period unless the buyer informed the seller in writing within that period that the proceedings had commenced. Furthermore, there would be no extension unless the buyer actually instituted legal proceedings against the seller.

The CHAIRMAN suggested that in light of the comments made by the Japanese delegation, paragraph (2) should be referred to a small drafting group, which should try to agree on a compromise formulation. It should also try to clarify paragraph (3) of article 17 so as to eliminate some of the uncertainties that had been pointed out by several delegations. He suggested that the drafting group should be composed of the representatives of the USSR and the United Kingdom.

Mr. LOEWE (Austria) asked the Chairman to request an indicative vote in order to ascertain the feelings of delegations regarding the deletion or retention of paragraph (2).

Mr. GUEST (United Kingdom) said he had no objection to having the Chairman take an indicative vote, but asked him to bear in mind that several delegations had said they would agree to the deletion of paragraph (2) provided that the principle established in the former article 20 was retained.

Mr. SAM (Ghana) pointed out that several delegations might be in a difficult position if an indicative vote was taken, particularly in view of the comments just made by the United Kingdom representative. He appealed to the Austrian representative not to press his request for an indicative vote.

Mr. LOEWE (Austria) withdrew his request.

The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to refer the article to the small drafting group, in line with his previous suggestion.

It was so decided.

#### Article 18 (continued)

Mr. MICHIDA (Japan) said his delegation supported article 18 as redrafted on the basis of the former article 16. He had no question as to the

substance of the new article, but wished to make one comment on the drafting. He noted that the new text maintained the term "interrupting". Since it had been agreed to eliminate that term from the draft, he wondered whether in article 18 it might not be replaced by a term such as "ceasing to run". The corresponding changes should be made in the other language versions.

Mr. LOEWE (Austria) said his delegation had no particular interest in article 18, but he did feel that the 10-year extension provided for was too long. It would be preferable to stipulate that the over-all maximum would be 10 years; thus, the extension provided for would not exceed six years.

Mr. MANTILLA-MOLINA (Mexico) observed that paragraph (1) should not refer only to States where the debtor had his place of business, but should also cover States which were competent to deal with a dispute between the parties. Some contracts provided that the parties must submit to the jurisdiction of a given State or court of arbitration which might be different from or located in a State other than the State in which the debtor had his place of business. He therefore proposed the addition, after the words "place of business", of the following: "or where the court which, according to the contract, is competent to take cognizance of any dispute which might arise between the parties, is located...".

He suggested that the matter of the length of the extension provided should be deferred for the time being. However, rather than repeat in articles 20 and 21 the circumstances under which an extension could be granted, it would be preferable merely to state that in such and such a case, the limitation period should not extend beyond a specific number of years from such and such a date.

Mr. KAMAT (India) recalled that he had objected to the original draft of article 18 because it would result in uncertainty in the application of the Convention and would detract from the uniformity of the Uniform Law. Although the new formulation was an improvement he maintained his objections.

Mr. KHOO (Singapore) said that he was extremely concerned at the length of extension to the limitation period allowed under the articles concerning duration and extension of the limitation period (articles 10-20). Article 10 added four years to the basic limitation period of four years which had been agreed upon by the Commission and article 17 (1) provided for cessation of the limitation period, while other articles provided for one-year extensions. Article 18, in its present form, would involve a four-year extension of the limitation period. He found it difficult to accept such a long extension and the idea that an act recognized by a law which might be unknown to a national lawyer could lead to an interruption of the limitation period in that lawyer's country.

Mr. SMIT (United States of America) said that he too had been opposed to article 18 in its original form, which had been based on the idea that creditors could extend the limitation period. However, the new draft provided not only that the act interrupting the limitation period must be contemplated by the State where the act was performed, but also that such act would be recognized only if the place of business of the debtor was in that State. United States law did not recognize acts having an interruptive effect and within its own terms article 18 could therefore not operate in his country. The same would apply to all countries whose representatives were opposed to article 18, which was in fact intended only for those countries where the rule of interruptive effect applied. It was true that it detracted from the uniformity of the Convention but it should be accepted by the Commission in a spirit of compromise.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he endorsed the statement by the representative of Singapore. Each article, when considered in isolation, was quite acceptable. However the combination of all the articles led to so many reservations and extensions of the basic four-year limitation period that the exact limitation period which would apply in any one case could only be guessed at.

Mr. ROGNLIEN (Norway) said, with reference to the comments by the representatives of Singapore and of the USSR, that even if the Commission was to establish a fixed maximum time-limit on extensions of the limitation period, that limit should not apply to cases where legal proceedings were involved. Such proceedings sometimes lasted a very long time and their duration was outside the control of either party. The parties should not be penalized by a fixed time-limit in such cases.

Mr. JENARD (Belgium) noted that although article 18 detracted from the uniformity of the Uniform Law, its scope was limited and it enabled some countries to use their existing legislation. He agreed with the representative of Japan, that the word "interruption" should not be used in the Convention and with the representative of Austria, that the limitation period under article 18 should not be extended for more than six years. He could accept article 18 if those two suggestions were approved by the Commission.

Mr. OGUNDERE (Nigeria) said he agreed with the representatives of Singapore and the USSR. He had been opposed to article 18 in its original form but could accept the new draft, since it stated that debtors would be affected only if their place of business was in the State where the interruptive act occurred. With reference to the suggestion by the representative of Belgium, for a total limitation period of 10 years, he thought 10 years was too long a time and preferred a total of eight years.

Mr. GUEST (United Kingdom), referring to the comments by the representative of Singapore, said that the prospect of various extensions of the limitation period caused great concern to anyone practising common law. In common law only a very brief extension of the limitation period was allowed, in cases of acknowledgement by the creditor. Civil law was more flexible in allowing an extension when the justice of the situation demanded it. He fully supported retention of article 18, since it could not prejudice countries where interruption did not exist and might even be of benefit to those countries in certain circumstances.

The Commission in any case was not called upon to adopt a final text for the Convention on prescription. That was the task of the diplomatic conference, which would work on the basis of the draft submitted by the Commission.

Mr. MUDHO (Kenya) said that although he had been opposed to the original formulation of article 18 he could accept the new text, which was more precise. With reference to the over-all limitation period, he agreed that a 10-year period was excessive and supported a total limitation period of eight years, as suggested by the representative of Nigeria.

Mr. KAMAT (India) said he recognized the validity of the arguments advanced by the representatives of the United States and the United Kingdom. However, the requirement that the debtor should have his place of business in a State where a given act had the effect of interrupting the period did not solve the difficulty for his country. The courts would have to inquire into a number of questions of fact, such as whether the debtor had his place of business in another country, what effect the law would have and so forth. The difficulties of proof would be considerable. He felt it would be preferable to spell out certain acts which would be considered as having the effect of interrupting the period and then agree on a compromise text.

Mr. CHAFIK (Egypt) said he supported the retention of article 18 because it envisaged cases which were well known in many countries, including his own. He agreed, however, with the representatives of Singapore and the USSR that the draft Convention provided for too many different periods. It would be preferable to adopt, as far as possible, a single period for all cases of extension, which might be eight or 10 years if it was to be a long one or one or two years if it was to be a short one.

Mr. SAM (Ghana) said his country's position had already been quite adequately explained by representatives of other common law countries. He agreed that the Commission should try to make the length of the extension the same in all cases.

The CHAIRMAN said he took it that the Commission approved article 18, with the drafting change suggested by Japan, i.e. to replace the term "interrupting" by an equivalent expression such as "ceasing to run".

Mr. KHOO (Singapore), speaking on a point of order, asked whether it was really clear that there was a consensus in favour of the retention of article 18. He thought that the point raised by the Indian representative, regarding the difficulties of the courts, had some force. He wondered whether the Indian representative would agree to the retention of the article.

The CHAIRMAN said that, despite the divergent views that had been expressed in the Commission, it seemed clear that members had accepted article 18 as a compromise solution. The most recent remarks made by the Indian representative

had not been supported by any other delegation. Furthermore, as the United States representative had pointed out, the article would not affect those countries which did not accept or recognize cases such as the ones envisaged in article 18.

The only point on which there was not yet clear agreement was the matter of how long the extension should be. He took it that most members were against granting an extension allowing for a total period of 14 years. The Austrian representative had suggested an extension of six years, which would bring the over-all period to 10 years, but others had preferred an extension of four years. After asking for a show of hands, he noted that no delegation wished to maintain the extension of 10 years.

Mr. MICHIDA (Japan) pointed out that page 10 of the summary record of the 101st meeting (A/CN.9/SR.101) of 14 April 1972 contained a statement by the Chairman to the effect that it appeared that a consensus had arisen in favour of article 16, revised in accordance with the suggestions which had been made. The Chairman had 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, which was now being considered as article 18.

Mr. KAMAT (India) stressed that the summary record had clearly stated that a redrafted text of article 16 would be prepared by the Working Group. While his delegation did not wish to take issue on the matter if it was the view of the Chair that a consensus now existed in favour of the redrafted text, now under consideration as article 18, it did wish the report to reflect very clearly that his delegation and certain others did not approve of the approach in the article, which sought to interrupt the limitation period for certain acts, without spelling out what those acts were. In the view of his delegation, that would greatly detract from the uniformity of the law and would also create substantial difficulties with regard to proof.

Mr. KHOO (Singapore) said that he was extremely concerned about the number of exceptions allowed under the Convention and said that his delegation intended to submit a proposal with regard to a maximum limitation period.

The CHAIRMAN requested the representative of Singapore to submit his proposal as soon as possible and invited representatives to indicate by raising their hands whether they were in favour of a 10-year period, a six-year period or a four-year period.

He noted that there were no representatives in favour of a 10-year period, four representatives in favour of a six-year period, and 14 in favour of a four-year period.

Mr. COLOMBRES (Argentina) suggested that in the Spanish text "interrupción" should be replaced by "cesar de correr" because in some States interruption gave rise to a new limitation period whereas in others limitation period was merely suspended.

The CHAIRMAN suggested that article 18 should be referred to a drafting group composed of the representatives of Argentina, Japan and Singapore.

It was so decided.

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