

119th meeting (1 May 1972)

New draft proposed by the Working Group on Prescription (A/CN.9/V/CRP.21/Rev.1)
(continued)

Article 19 (continued)

Article 19 was approved.

Article 20 (continued)

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that in the English text the words "which is not personal to the creditor" seemed to duplicate the other terms used to define the circumstances envisaged in article 20. There should be no difficulty in deleting those words.

Mr. MANTILLA-MOLINA (Mexico) said that the French and Spanish versions of article 20 diverged from the English version on one point. The French text spoke of a circumstance which the creditor could "neither foresee (prévoir) nor overcome" whereas the English text used the words "avoid" and "overcome". The terminology used in the English text seemed more appropriate for there were examples of force majeure, war for example, which could easily be foreseen without it being possible to overcome them. The terms used should therefore be harmonized.

Mr. GUEST (United Kingdom) explained that the Working Group had used the terms "not personal to the creditor" to introduce the idea of non-imputability. There were in fact unforeseeable and insurmountable circumstances which were personal to the creditor - the fact that he fell ill, for example. Such circumstances were excluded from the field of application of article 20.

Mr. SMIT (United States) said he was afraid that the expression "not personal to the creditor" would give rise to uncertainty and confusion. He would prefer it to be replaced by the expression "beyond the control of the creditor" which was more currently employed by Anglo-Saxon jurists.

Mr. SAM (Ghana) supported the suggestion made by the United States representative.

Mr. LOEWE (Austria) pointed out that, in the preceding articles, the Commission had decided to restrict the extension of the limitation period to a duration of four years, making a total maximum period of eight years. He proposed that the period of extension should also be limited to four years in the case of article 20.

The CHAIRMAN, after having requested those members of the Commission in favour of the Austrian proposal to signify, noted that a majority favoured the restriction of the period of extension to four years. Article 20 would therefore be amended to that effect. He proposed that the drafting changes should be entrusted to a small group composed of the representatives of the United States, Mexico, the USSR and Belgium.

It was so decided.

Article 21 (continued)

Mr. BURGUCHEV (Union of Soviet Socialist Republics) requested a clarification of the meaning of the new provision which appeared in paragraph 3 and which seemed to nullify the effects of paragraphs 1 and 2. Two questions arose: What was the aim of the proposed waiver? Should the waiver be made before or after the expiry of the normal limitation period? His delegation would favour the deletion of that provision, whose meaning and scope it did not understand.

Mr. MAHUNDA (United Republic of Tanzania) said that his delegation, during the first reading of the draft, had put forward very serious objections to the article under consideration. In Tanzania, limitation was a question of public policy completely removed from the initiative of the parties. His delegation, noting that the provision which it had opposed had not been amended, reserved the right to take the necessary measures at the time of the conclusion of the convention.

Mr. GONDRA (Spain) pointed out that his Government, in its reply to the Secretariat's questionnaire, had expressed reservations concerning the desirability of authorizing modification of the limitation period in the convention.