

Article 25 (continued)

Article 25 was approved.

Article 26 (continued)

Mr. MANTILLA-MOLINA (Mexico) said that he was not completely satisfied with paragraph 2 since the real issue was not the calendar but rather the date.

Article 26 was approved.

Article 27 (continued)

Article 27 was approved.

Article 28 (continued)

Mr. GUEST (United Kingdom), speaking on behalf of the Working Group, noted that article 28 was a new provision which the Working Group believed would solve the problem raised by the former article 35. That problem was twofold. First, should the institution of legal proceedings in a non-Contracting State have international effect?

Secondly, what would happen if a debtor had not been informed of the fact that legal proceedings had been taken against him? Article 28 provided an answer to those two questions which the Working Group hoped would be acceptable to the Commission as a whole.

Speaking as the representative of the United Kingdom, he added that his delegation would have preferred to retain the reservation provided for in the former article 35, if only for the sake of settling the matter of proceedings instituted before an incompetent jurisdiction. In a spirit of compromise, however, his delegation had agreed to dispense with that reservation and to accept the provisions, which in its view were insufficient, of the new article 28. However, it insisted that its position on the matter should be mentioned in the commentary on the draft convention and reserved the right to raise the matter again at the time of the diplomatic conference.

Mr. OGUNDERE (Nigeria) said that his delegation, which had been opposed to the reservation provided for in the former article 35, found the solution arrived at in the new article 28 more satisfactory.

Mr. LOEWE (Austria) said that his delegation was not entirely satisfied with article 28. In the first place, it was inconsistent with the uniformity which the future Convention aimed at promoting to require that the acts in question must take place "in a Contracting State". His delegation could, nevertheless, have overlooked that point if at least the meaning of the provision had been clear. The text as worded, however, could give rise to misunderstanding, and it would be better to modify the structure of the sentence so as to say that no Contracting State would be bound to recognize the effect of the acts referred to in articles 12, 13, etc.... in respect of acts which took place in a non-Contracting State. Secondly, he considered that the last part of the article ("provided that the creditor has taken all reasonable steps to ensure that the debtor is informed of the relevant act or circumstance as soon as possible") would not be valid before the courts of his country, where it would be inconceivable for a creditor's claim to be rejected on the ground that the debtor had not been informed of the institution of legal proceedings.

Mr. SMIT (United States of America) said that he thought it might be possible for the Commission to arrive at a compromise between the position of the United Kingdom delegation, which would prefer to retain the reservation provided for in the former article 35, and that of the Austrian delegation, whose objections concerning article 28 would vanish if those provisions were of an optional rather than mandatory nature.

Mr. JAKUBOWSKI (Poland) said that his delegation also had some difficulty in accepting the rule contained in article 28 under which the institution of proceedings in a non-Contracting State would be without effect in a Contracting State. It was often the case that arbitration proceedings took place in a third country. The new article 28, by denying the parties that possibility, would go beyond the sphere of prescription.

The CHAIRMAN said that the Commission would continue its consideration of article 28 at the next meeting.