

Mr. LOEWF (Austria) supported the revised version of article 15.

Mr. GUNDRA (Spain) said that the use of the term "perención" in the Spanish version was inappropriate.

The CHAIRMAN suggested that Spanish-speaking delegations should amend the text as necessary to accommodate the Spanish delegation's view and invited the Commission to approve revised article 7.

Revised article 7 was approved.

Article 16 (A/CN.9/V/CRP.31/Add.9) (continued)

Mr. SMIT (United States of America), speaking on behalf of the drafting party, said that the new text proposed for article 16 represented an attempt to resolve the problems arising where a creditor, having pursued to judgement an action based on the merits of his claim, found that the judgement could be enforced only in the country in which it was rendered, the assets of the debtor being situated in another State. Revised article 16 would allow the creditor either to institute new proceedings in the other State in order to assert his original claim (para. 1) or to take the necessary steps to obtain recognition or execution in that State of the original decision (para. 2). In both cases, he was entitled to an additional period of one year on the basis of the decision which the Commission had already taken in that connexion. He added that the Commission had already approved paragraph 2 which the drafting party had amended only as necessary to bring it into line with the new wording of paragraph 1.

Mr. MANTILLA-MOLINA (Mexico) had some misgivings with regard to the new wording of article 16. It was for the creditor to establish whether the judgement which he was seeking would be enforceable and, if it was not, he should bear the consequences. Furthermore, he feared that the new article would allow a creditor who had received only partial satisfaction of his claim through judicial proceedings to claim a review of the original judgement by resorting to a court in another State, a procedure contrary to the principle of res judicata.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) thought that paragraph 1 should be deleted. If a majority of the Commission did not agree with that view, he requested that his delegation's position should be noted in the summary record of the meeting.

Mr. COLOMBRES (Argentina) associated himself with the comments of the Mexican delegation and said that paragraph 1 would be acceptable only if it specified the effect of judgements in the two States in question. His delegation could agree to the deletion of the provision.

Mr. GUEIROS (Brazil) supported the criticism of revised article 16 made by the delegations of Mexico and Argentina. His delegation was, however, opposed to the deletion of paragraph 1 and would prefer to see its substance stated in two or three paragraphs.

Mr. LOEWE (Austria) supported the USSR delegation's proposal to delete paragraph 1.

Mr. SMIT (United States of America) observed that the deletion of paragraph 1 might have unwelcome consequences. In the absence of that provision, a creditor who had caused the limitation period to cease to run by instituting legal proceedings and had then obtained a favourable decision on the merits of his claim would be entitled to an unlimited period in which to assert that claim. The new version of paragraph 1 met the need to set a limit in that connexion; it would not conflict with the principle of res judicata because it was stated that the creditor could institute new proceedings in another State only "under the applicable law". The deletion of the provision would resolve nothing and the same problem would arise in connexion with paragraph 2, which the Commission had already approved in first reading.

Mr. MANTILLA-MOLINA (Mexico) remained convinced that article 16 was a judicial misconstruction and recommended that, if paragraph 1 was deleted, paragraph 2, which was no less fallacious, should also be deleted.

Mr. GUEST (United Kingdom) said that the arguments of the Soviet delegation, which was doubtless opposed to the additional period of one year allowed by the new article, and those of the United States delegation, which opposed the deletion of paragraph 1, were equally convincing. The solution might be to reformulate the text to indicate that, when legal proceedings had led to a decision on the merits of a claim, the limitation period should be deemed to have continued to run and that any additional period was ruled out. With regard to

paragraph 2, he asked that the commentary on the draft Convention should state that his delegation would have preferred the régime established under the original article 21 and that it had given up that régime solely in a spirit of compromise.

Mr. OGUNDERE (Nigeria) said that his delegation, which opposed the additional delay provided in paragraph 1, supported the United Kingdom delegation's proposal. He feared that paragraph 2 would also be a source of difficulty.

Mr. LOEWE (Austria) asked that it should be noted in the Commission's report that his delegation had proposed the deletion of the whole of article 16. The latter conflicted with the amendment of article 28 which the Commission had advocated and it was regrettable that its provisions were not limited so as to apply only where the original judgement was rendered in a Contracting State.

Mr. NESTOR (Romania) said that his delegation, too, thought the article should be deleted.

Mr. MANTILLA-MOLINA (Mexico) said that, having regard to Mexican legislation, the new version of article 16 would be impossible to apply. He pointed out that so many delegations were opposed to the article that it could not be said that there was any consensus; if it was adopted notwithstanding, States should at least be entitled to formulate reservations in that connexion.

Mr. GONDRA (Spain) said that his delegation would prefer paragraph 1 to be deleted and that it also had some misgivings with regard to paragraph 2. He associated himself with the comments by the Austrian representative concerning the need to restrict application of article 16 to Contracting States. He proposed that as a compromise, the article should be placed in square brackets and submitted to the diplomatic conference for consideration.

Mr. SAM (Ghana) supported the proposal by the Spanish delegation.

Mr. JAKUBOWSKI (Poland) said his delegation could agree to the deletion of paragraph 1, but not of paragraph 2.

Mr. GUEIROS (Brazil) associated himself with the comments by the Mexican representative. However, his delegation would be opposed to putting paragraph 1 in square brackets, unless the diplomatic conference had the summary records of the Commission's discussions at its disposal.

Mr. RECZEI (Hungary) supported the proposal by the Spanish delegation.

Mr. CHAFIK (Egypt) said that he would prefer to retain the article in its entirety. He felt that paragraph 1, because of the possibilities it offered to the creditor, was useful without being dangerous.

Mr. JENARD (Belgium) said that his delegation was also in favour of article 16. The provision in paragraph 1 would eliminate any temporal restriction on the assertion of the creditor's claim, at least in countries like Belgium which did not recognize that foreign decisions had the force of res judicata.

Mr. BURGUCHEV (Union of Soviet Socialist Republics), replying to the comments by the Egyptian delegation, pointed out, that it was precisely the possibilities offered to the creditor by paragraph 1 which were dangerous.

The CHAIRMAN noted that divergent opinions had emerged on the revised text of article 16 and he accordingly suggested that the provision should be placed in square brackets, as the Spanish delegation had proposed. In reply to the objection raised by the Brazilian representative, he said that the text of the draft Convention would be accompanied by a commentary prepared by the Secretariat, as well as comments by Governments.

Mr. GUEIROS (Brazil) said that, in those circumstances, his delegation could accept the Spanish proposal.

Mr. LOEWE (Austria) supported the Spanish proposal.

The CHAIRMAN suggested that the text of revised article 16 should be placed in square brackets and submitted to the diplomatic conference for consideration.

It was so decided.

Article 21 bis (A/CN.9/V/CRP.27)

Mr. KHOO (Singapore) said that the text proposed by his delegation was intended to remedy a number of defects in the draft. In its present form, the latter contained provisions which would make it possible to extend the limitation period well beyond what the Commission had wished and, in certain extreme cases, up to 15 years. For that reason the proposed article 21 bis imposed a maximum limit of 10 or 8 years, according to the individual case. Furthermore, the figures could be discussed.