

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.

Mr. MANTILLA-MOLINA (Mexico) said that his delegation warmly supported the text proposed by the representative of Singapore because it had proposed that formula with regard to article 22.

Mr. LOEWE (Austria) said that he could agree in principle with the provision proposed by the delegation of Singapore, but pointed out that the words "no legal proceedings shall in any event be brought" gave the impression that a period of estoppel was involved. It would be better, in the context of the draft Convention, to use the appropriate terminology and to replace the phrase by the words "any action shall be prescribed".

Mr. OGUNDERE (Nigeria) said that he favoured the establishment of a maximum over-all period and, consequently, the proposed new article. However, he felt that it was not advisable to contemplate a period of 10 years in some cases and 8 in others; he would prefer the maximum over-all period to be 8 years in every case.

Mr. COLOMBRES (Argentina) warmly supported the proposal by the representative of Singapore, but felt that it should be amended in the way indicated by the Austrian representative.

Mr. JENARD (Belgium) said that he was in favour of the new article 21 bis, with the amendment proposed by the Austrian representative.

Mr. GUEIROS (Brazil) unreservedly supported the proposal by the representative of Singapore, including the new formulation of the title.

Mr. GUEST (United Kingdom) said that his delegation was in favour of a maximum over-all period. However, the adoption of an article such as that under consideration would probably make it necessary to recast a number of articles which already stipulated maximum periods, in order to harmonize the drafting of the entire section on the modification of the period.

Mr. SMIT (United States of America) said that he wished to express his delegation's reservations with regard to the proposed new article. In fact, articles 18, 20 and 21 already stipulated a maximum period and it was rather unlikely that the application of articles 15, 17 and 19 would lead to excessive extensions. However, the new article 21 bis could give rise to serious injustices.

For example, if a creditor had agreed to extend the stipulated period of payment on condition that the debtor extended the limitation period in the manner set out in paragraph 2 of article 21 and if, upon the expiration of the extended period, the debtor was still not in a position to pay, the creditor might not have enough time to assert his claim before the limitation was applied under article 21 bis. If that provision was adopted, his delegation would like its reservations to be reflected in the report.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) felt that although the proposed new article was of interest, its provisions could not be adopted without due consideration because a number of articles already provided for a maximum period. His delegation would be opposed to its immediate adoption, and would propose that it should be submitted to the diplomatic conference which would be able to consider it in a better perspective.

Mr. KAMAT (India) said that he favoured the idea of a temporal limitation on extensions of the limitation period. However, his delegation had not had time to make a detailed examination of the practical consequences which the new provision submitted by the representative of Singapore might have. It fully supported the suggestion by the representative of the USSR and wished to propose that the text of the article should be placed in square brackets so as to bring it to the attention of the diplomatic conference.

Mr. CHAFIK (Egypt) said that he agreed with the principle embodied in the proposed new article, but reserved his position because he had not had time to study its effects or to consider its place in the draft. In fact, it might be appropriate to insert it after article 8 rather than after article 21.

Mr. GONDRA (Spain) said that the proposal by the representative of Singapore needed careful study and for that reason the Commission should take no immediate decision on it but should refer it to the diplomatic conference.

Mr. SZASZ (Hungary), supported by Mr. MUDHO (Kenya) and Mr. SAM (Ghana), said that in principle he was in favour of establishing a maximum over-all limitation period, but felt that the Commission was not in a position to take a decision on the new article 21 bis in the time available. He therefore proposed that article 21 bis should be placed in square brackets and brought to the attention of the diplomatic conference.

The CHAIRMAN noted that there appeared to be a consensus in favour of referring the new article 21 bis to the diplomatic conference. He suggested that the Commission should decide to place article 21 bis in square brackets and to refer it to the conference, together with the comments made by the members of the Commission, including the amendment proposed by the representative of Austria.

It was so decided.

Article 28 (A/CN.9/V/CRP.21/Rev.1/Add.8) (continued)

Mr. SMIT (United States of America) said that the drafting party entrusted with the revision of article 28, composed of the representatives of Austria, Poland and the United States, had endeavoured to eliminate the objections raised with regard to the previous wording of that article. The basic difference between the two texts was that the old article 28 could be interpreted as being a compulsory provision, while the new article was optional.

Mr. GUEST (United Kingdom) stated that the new version of article 28 in no way modified the reservations he had expressed during consideration of the original article prepared by the Working Group.

Mr. OGUNDERE (Nigeria) inquired as to the reason for paragraph 2, which did not seem very useful since the sphere of application of the Convention had been limited to relations between nationals of Contracting States.

Mr. MUDHO (Kenya) wondered whether the reference in paragraph 2 to article 13, which concerned arbitration, was really necessary. It was not very likely that a party to arbitral proceedings would be unaware that such proceedings were being held.

Mr. SMIT (United States of America) agreed that it might perhaps appear superfluous for article 28 to enumerate the situations falling outside the sphere of application of the Convention; however, the drafting party had wished to eliminate any uncertainty and any possibility of argument a contrario. The drafting party had thought it advisable that the creditor should have the responsibility of informing the debtor of acts he might have performed, because of the excessive time lapse which occurred in some countries between performance and notification of an act.