

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.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said that despite the clarification given by the United States representative, he still had doubts as to the need for paragraph 2. The circumstances referred to in that paragraph came under national law and paragraph 2 in no way helped to solve the questions raised by those circumstances. While he was not opposed to retaining paragraph 2, he could see no purpose in doing so.

Mr. SZASZ (Hungary) said that he did not object to the provisions of the new article 28, but paragraph 2, which elaborated on paragraph 1, would perhaps be better placed in the commentary than in the actual text of the draft Convention.

Mr. JAKUBOWSKI (Poland) said that retention of paragraph 2 was very important for his delegation, because contracts of international sales concluded in Poland very often contained an arbitration clause providing for arbitral proceedings in a third country.

Mr. GUEST (United Kingdom) said he understood the reasons for including paragraph 2, but that the meaning of the last phrase in that paragraph was not very clear to him. Paragraph 1 stated that the creditor must take all reasonable steps to inform the debtor and paragraph 2 stated that the Convention did not regulate cases in which the creditor had failed to take the requisite steps. That was an apparent contradiction. He would be quite favourable to inclusion of paragraph 2 in the commentary on the draft Convention, as suggested by the representative of Hungary.

Mr. CHAFIK (Egypt) said he was in favour of paragraph 1; he would not oppose retention of paragraph 2 but would prefer it to be transferred to the commentary.

Mr. LOEWE (Austria) observed that paragraph 2 had been inserted at the request of the Polish delegation and that his delegation had no fixed position on the matter. With regard to paragraph 1, the Commission should avoid any misunderstanding. Paragraph 1 merely stipulated that a Contracting State was obliged to give effect to acts or circumstances referred to in the enumerated articles on two conditions: those acts or circumstances must have been performed or have taken place in a Contracting State and the creditor must have taken all

reasonable steps to inform the debtor as soon as possible. When either of those conditions was not fulfilled, each State was free to apply its national law. The distinction was an important one for his delegation, because Austria had concluded bilateral agreements regulating lis pendens which did not take account of the second condition mentioned in article 28, paragraph 1.

Mr. GONDRA (Spain) said that there was no need for paragraph 2, except as a commentary. It would be desirable to improve the Spanish version of article 28 by using the words "medidas requeridas" instead of the words "razonables disposiciones" in paragraph 1, and "disposiciones necesarias" in paragraph 2.

The CHAIRMAN suggested that the Commission should approve paragraph 1 of article 28 and should place paragraph 2 in the commentary on the draft Convention together with the comments made by members of the Commission.

It was so decided.