

Mr. SAM (Ghana) proposed that the round brackets should be replaced by commas.

Mr. MICHIDA (Japan) said he would not object to the deletion of the words "prescribed under that law" from the English text; they had been inserted merely to avoid any ambiguity.

Mr. KHOO (Singapore) supported the proposals for the deletion of the round brackets and the words "prescribed under that law".

Mr. JENARD (Belgium) supported the proposal put forward by the United States representative and suggested that in the French text the words "un nouveau délai de prescription" should be replaced by the words "à nouveau le délai initial de prescription".

The CHAIRMAN suggested that the Commission should adopt the text of article 18, paragraph 1 as proposed by the drafting party, with the following amendments: the round brackets would be replaced by commas; the words "prescribed under that law" would be deleted from the English text; the word "original" would be inserted before the words "limitation period" in the fourth line of the English text; and the words "un nouveau délai de prescription" would be replaced by the words "à nouveau le délai initial de prescription" in the French text.

Article 18, paragraph 1, as amended, was approved.

Articles 12 and 23 (A/CN.9/V/CRP.21/Rev.1/Add.6) (continued)

Mr. RECZEI (Hungary) said that the representative of Austria and himself had been instructed to put forward a new text of article 12, paragraph 2 and article 23, paragraph 2 (a). At the end of article 12, paragraph 2, which dealt with the counterclaim, a new sentence had been introduced making it clear that the claim and the counterclaim related to a contract or contracts concluded in the course of the same transaction. The amendment to article 23, paragraph 2 (a) followed logically on the amendment to article 12.

Mr. CHAFIK (Egypt) felt that the last sentence of article 12, paragraph 2 should be deleted because the counterclaim raised a question of procedure within the field of the lex fori. With regard to article 23, paragraph 2 (a), the two

claims in question should arise, during the same transaction, not from a contract or contracts but from the same cause. Admittedly, the Roman-law countries and the common-law countries understood the notion of cause in different ways, but the wording proposed by the drafting party gave satisfaction to neither group.

Mr. COLOMBRES (Argentina) supported the suggestion made by the representative of Egypt that the regulation of counterclaims should be left to the lex fori.

Mr. SMIT (United States of America) felt that the drafting party had found very suitable wording for article 12, paragraph 2, which he fully supported. If the second sentence of that paragraph was to be deleted, consideration should be given to deleting the whole paragraph, so as to avoid dealing only with one aspect of the problem.

Mr. GUEST (United Kingdom) supported the new article 12, paragraph 2 proposed by the drafting party. However, he would have no objection to the deletion of the last sentence of that paragraph if a majority emerged in favour of it.

Mr. LOEWE (Austria) said he opposed the deletion of the second sentence of article 12, paragraph 2 because, if the effect of counterclaims were restricted, there was the danger of re-introducing prescribed rights.

Mr. CHAFIK (Egypt) pointed out to the representative of Austria that he had not proposed that all restrictions on counterclaims should be removed but merely that the matter should be left to the lex fori.

Mr. POLLARD (Guyana) said he favoured the retention of the second sentence of article 12, paragraph 2, but in the English text the words "relate to" should be replaced by the words "arise from".

Mr. SAM (Ghana) pointed out that article 12 had been approved in first reading subject to drafting amendments. He felt that the new wording was satisfactory.

Mr. RECZEI (Hungary) pointed out that the deletion of the second sentence of article 12, paragraph 2, leaving the question of counterclaims to the different national legislations, was contrary to the aim of unification being sought. He did not oppose the amendment put forward by the representative of Guyana.

Mr. SMIT (United States) pointed out that the proposal of the representative of Guyana would restrict the scope of the text.

The CHAIRMAN noted that a majority had emerged in favour of the revised version of paragraph 2 of article 12 and he suggested that the Commission should adopt that text.

Revised article 12, paragraph 2, was approved.

The CHAIRMAN suggested that the Commission should approve revised article 23.

Revised article 23 was approved.

Article 15 (A/CN.9/V/CRP.21/Rev.1/Add.7) (continued)

Mr. GUEST (United Kingdom), speaking as a member of the drafting party which had been asked to revise article 15, pointed out that in the first reading the Commission had been divided on the question whether paragraph 1 should retain the provision relating to the consent of the debtor. Finally, the drafting party had not maintained that restriction because, under article 21, paragraph 2, the debtor could, in any case, during the limitation period, prolong that period by a written declaration. Furthermore, the drafting party had tried to formulate paragraph 2 more clearly because certain delegations, including that of the Soviet Union, had found it incomprehensible.

Mr. KAMAT (India), speaking as a member of the drafting party, said that he fully approved of paragraph 1 of article 15, but would have preferred some other formulation for paragraph 2. He considered that, to be entitled to an additional period, a creditor should produce proof that he had instituted the initial proceedings with all due dispatch. In a spirit of compromise, however, he had given his support to the text before the Commission.

Mr. OGUNDERE (Nigeria) welcomed the new wording of article 15.

Mr. GUEIROS (Brazil) said that, while he did not withdraw his proposal concerning the article and although he endorsed the Indian representative's comments, he was ready to accept the new wording in a spirit of compromise.