

and date at one place corresponds to a different time and date at another place, e.g. a breach of contract occurs at 6 p.m. on 8th April in London. At this time, it is 4.00 a.m. on the 9th in Sydney, Australia. Which point of time does an Australian court take into account as the commencing point in calculating the limitation period? Under 27.2 the date of commencement would be the 9th April in an Australian court (but would be 8th April in an English court).

Article 28 (A/CN. 9/70. Annex I)

Where the last day of the limitation period falls on an official holiday or other *dies non juridicus* precluding the appropriate legal action in the jurisdiction where the creditor institutes judicial proceedings as envisaged in Article 12 or asserts a claim as envisaged in Article 15, the limitation period shall be extended so as not to expire until the end of the first day following that official holiday or *dies non juridicus* on which such proceedings could be instituted or on which such a claim could be asserted in that jurisdiction.

Article 28 (Final draft)

Where the last day of the limitation period falls on an official holiday or other *dies non juridicus* precluding the appropriate legal action in the jurisdiction where the creditor institutes judicial proceedings as envisaged in Article 12 or asserts a claim as envisaged in Article 14, the limitation period shall be extended so as not to expire until the end of the first day following that official holiday or *dies non juridicus* on which such proceedings could be instituted or on which such a claim could be asserted in that jurisdiction.

Commentary

This provision is self-explanatory. It is not extended to cover arbitration proceedings because official holiday and *dies non juridici* are not generally an impediment to the more informal manner in which arbitration proceedings are commenced. (vide Article 13 (2)).

Article 35 (A/CN. 9/70 Annex I)

- (1) Any State may declare, at the time of the deposit of its instrument of ratification or accession to the present Convention, that it shall not be compelled to apply the provisions of Articles 12, 14, 15, 16 or 18(1) (b) of this Convention where the relevant acts or circumstances took place outside the jurisdiction of that State.
- (2) Any State which has not made a declaration under paragraph 1 of this article may at any time declare that it will not be compelled to apply the provisions of the articles referred to in that paragraph where the relevant acts or circumstances took place within the jurisdiction of a State which had made a declaration under that paragraph.
- (3) Any State which makes a declaration under paragraph 1 or 2 of this article shall specify the particular article or articles of this Convention in respect of which the declaration is made.

INTERNATIONAL EFFECT

Article 29 (Final draft)

A contracting State shall give effect to acts or circumstances referred to in Articles 12, 13, 14, 15, 17 and 18 which take place in another contracting State, 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.

Commentary

This article seeks to give an "international effect" to certain acts and circumstances. The purpose is to create a legal regime for the contracting States whereby acts performed in one contracting State would have the identical legal consequences in all other contracting States as they have in the State in which they are performed. The provision promotes uniformity of legal consequences, inasmuch as the relative position of debtor and

creditor in relation to limitation remains the same in all contracting States. From the fact that Article 35 of the first draft permitted a State by reservation to *exclude* the 'international effect' of Articles 12, 14, 15, 16 and 18 (1) (b), the inference is that these articles were otherwise to have 'international effect' in that draft. Article 29 now expressly confirms this effect, and the present draft Convention contains no provision permitting a reservation excluding this effect. The emphasis on international effect' has, therefore, been taken one step further. The view that 'adherence to the Convention by some States would be facilitated if they could, by declaration, limit the 'international effect' that results from certain of the articles of the Uniform Law has not prevailed.

Article 16 is excluded from the ambit of this article because it specifically deals with the problem for which this article makes general provision.

The creditor can obtain the advantage given by Article 29 only if he takes the steps mentioned in the article.

The article appears only to operate as between creditor and debtor, e.g.

A sues B in State X (a contracting State) on a contract on which B and C are jointly liable. A gives C notice as required by Article 17.1, and it is clear that the limitation period will cease to run against C in State X. However, Article 29 will not operate as C is not a "debtor" — "a party against whom a creditor asserts a claim" — Article 1.3 (c). Therefore A's acts may not be given effect to against C in other contracting States.

It may be considered whether this article should be amended so that the operation of Article 17.1 as against C is given international effect. The article is designed to have a two-fold effect :

- (1) That the other contracting States recognize the effect in the State, where they take place, of the acts or circumstances in question.

- (2) That the other contracting States recognize that the acts or circumstances have identical legal effect in their own legal systems.

Some difficulties involved in the application of this article may be considered : Firstly, it sometimes requires for its application the investigation by the courts of one State of the municipal law of another State (e.g. was the act performed by a creditor recognized as commencing judicial proceedings? — Article 12; did an act performed by a creditor have the effect of recommencing the period of limitation? — Article 18). This is often a difficult procedure. Secondly, the phrases "reasonable steps" and "as soon as possible" in the proviso may create some uncertainty. The specification of a time-limit may be considered.

The exclusion of the circumstances mentioned in Article 20 (i.e. '*force majeure*') from the ambit of Article 29 is reasonable, because even if a creditor is prevented by the circumstances mentioned in Article 20 from causing the limitation period to cease to run in one contracting State, there is nothing to prevent him from causing the limitation period to cease to run in another contracting State. Thereupon, Article 29 will come into operation and make the period cease to run in the contracting State where he was prevented from causing the limitation period to cease to run. In any event as regards that State Article 20 will have its own protective effect. It is highly unlikely that circumstances will occur preventing a creditor from causing the limitation period to cease to run in all contracting States.

The exclusion of Article 19 is more debatable. It is not clear that, taken by itself, an acknowledgment under Article 19 has 'international effect'. If this is intended, it can perhaps be made explicit.