Agenda 19th May

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Nineteenth Meeting on Tuesday, 29 April 1975 at 10.00 am at Gavrelle House, 2-14 Bunhill Row, London EC1.

1. Consider the Report of the Eighteenth Meeting and matters arising

   (a) Protection of a trustee under a Deed of Arrangement (paragraph 16).

2. Secretary's Report

3. Choice of Law provisions (Memorandum No 4).

4. Effect of the bankruptcy on current contracts and in relation to set off (Memorandum No5).

5. Recognition and enforcement of judgments (Memorandum No 6).

6. Confirm date(s) of June meeting(s).

7. Agenda for the next meeting on 19 May.

T H Traylor
Secretary

Agenda 20th May

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Twentieth Meeting on Monday, 19 May 1975 at 10.00 am at Gavrelle House, 2-14 Bunhill Row, London EC1

1. Consider the Report of the Nineteenth Meeting and matters arising

   (a) Protection of a trustee under a Deed of Arrangement (paragraph 1).

   (b) Proceedings or action at risk of preferential creditors (paragraph 2). 4

2. Secretary's Report

3. Recognition and enforcement of judgments (Memorandum No 6)

4. The Uniform Law (Memorandum No 7).

5. Confirm dates of June and July meetings.

6. Agenda for the next meeting.

T H Traylor.

T H Traylor
Secretary

Accompanied by

(1) Law Soc of E. & W (Part 2: Scope) apols

(2) Bar Council

(3) Law Soc. of Scotland dats 28 — end 1 May 75

Report 19th Mtg

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Report of the Nineteenth Meeting, held at Gavrelle House on 29 April 1975

Present:
K R Cork (Chairman)
A E Anton
P H Armour
C L Dodd
D Graham (For M V S Hunter)
C J Jenkins (For P G H Avis)
T H Traylor (Secretary)
Miss G H Goodwin (Assistant Secretary)

In attendance:
G A Weiss

REPORT OF THE EIGHTEENTH MEETING AND MATTERS ARISING

Receivers now excluded by Insolvency Act: see 1 D Cee 16th mtg, para. 9.

1. Referring to paragraph 16, Mr Graham said that he would discuss the matter with Mr Muir Hunter with a view to having something ready for the next meeting if at all possible.

FINAL REPORT - SECTION ON JURISDICTION

2. In a general discussion on the form and content of the draft section, Mr Anton said that he was well content with the form and lay-out of the draft although he disagreed with some of the points which had been made. In his view, it was necessary to give the current UK law where applicable as a background for the reader. He considered that the style of the Report was a matter for the Secretariat and he agreed that when in doubt in preparing initial drafts, it was best to put in as much detail as possible; it would be fairly simple to delete paragraphs subsequently thought to be superfluous, but it would be difficult to put in matters which had been overlooked. Mr Armour expressed satisfaction with the draft section and hoped that drafts of the remaining sections would continue in the same way.

3. Mr Graham said that he went along with the general plan, but he was troubled about some of the statements regarding present law and thought these would need to be looked at with care; he thought that some might be misleading. He thought it would be an advantage if some of the arguments on which the Committee's decisions were based were put more forcefully. He agreed that setting out the present law was extremely helpful for the reader in giving him a starting point; he agreed with the general form of the draft but would like to see it tightened up. The Chairman said he was in agreement with the general principles of the draft; his only criticism was that the Committee's recommendations did not seem to come through clearly enough; he thought they should be stressed, perhaps by being put in a different type or perhaps in black type. He hoped that the lawyers on the Committee would ensure that no errors had crept into statements regarding the law. The Secretary recalled that two copies of the draft had been sent to each Member and he asked Members to assist him by returning one copy with their comments, criticisms, etc. noted thereon. He hoped it would then be possible to rehash the draft based on Members' comments and to then re-issue it for final agreement.

PROCEEDINGS OR ACTION AT THE RISK OF PREFERENTIAL CREDITORS

4. The Chairman recalled that problems arising from preferential creditors would become even more complex under EEC jurisdiction. At present, to his way of thinking, a liquidator first of all carried out the task of collecting in all the various assets and turned his attention to their distribution afterwards; to some extent the jobs went along in parallel, but basically, the first task was to collect in the assets, sometimes by means of legal action. With the exception of secured creditors, he had never thought it right to regard realisations to date as belonging to any particular section of the creditors. If he was advised that he had good grounds for an action, say, against the directors, which should result in further realisations, he did not feel inhibited because the funds in hand would only pay the preferential creditors. He also thought the same principle was applicable if an action was likely to result in funds becoming available with which to pay a return of capital, even though the funds at risk in fighting the action would otherwise be paid to the unsecured creditors. The Chairman said that his reason for raising this matter was in order to consider the principle in the light of the Convention. He could visualise foreign preferential creditors taking action against a liquidator to stop him from pursuing actions, or perhaps a Member State refusing to allow a liquidator to remove realisations from within that State until all its preferential claims had been settled. He wondered whether this was a matter which should be dealt with in the Convention.

5. Mr Armour said that he supported the Chairman in his views. Mr Anton recalled that the powers of the liquidator were set out in Article 28. It appeared to him that the Chairman was suggesting that that Article should be supplemented by a Uniform Law specifying the powers of the liquidator in a situation where he put at risk the rights of one class of creditors to get a totality for the whole body of creditors. Although he was in sympathy with the Chairman's views, he considered that this must be a matter for local law and he was hesitant about the practicability of persuading 8 other Member States to agree with it. The Chairman said that he would like Members to think about the problem and perhaps it could be discussed further at the next meeting.

SECRETARY'S REPORT

6. The Secretary said that comments on the Consultative Paper had been received from:

The British Bankers Association
The Institute of Chartered Accountants in England and Wales
The UK Insurance Brokers European Committee
The Association of Certified Accountants (A paper on Choice of Law)
Professor A D Lawton, Barrister

The paper by Professor Lawton had been prepared on the instructions of the Department of Commerce, Northern Ireland and at this stage only a shortened version had been issued to Members. The complete paper ran to 167 pages and the Secretary would make copies available to Members on request.

ARTICLE 18

7. Mr Anton suggested that as a recommendation we should say that Article 18 in principle is acceptable but we recognise that the rules for the opening of a bankruptcy require substantial harmonisation The N.L.Report had assumed that the conditions for the granting of a declaration of bankruptcy were very similar in the different Member States; this was not true when one looked at the law on contracts and Acts of Bankruptcy in English law. There was an imbalance when a person, who could normally be made bankrupt under English law, could no longer be made bankrupt here because his centre of administration was in another Member State. He thought it was necessary for the committee to say that, in order to prevent these anomalies, the rules to open a bankruptcy in different Member States should be substantially harmonised. The Committee agreed.

need to harmonize grounds for opening bankruptcy and liquidation and date starting period suspects

See my note on Deeds of Arrangement

ARTICLE 19

8. Mr Anton said that, in discussing Article 18, the N.L. Report at page 63 said that the expression "the law of the State where the Court having competence is situated", generally extends to the whole of the legislation of the State concerned, including, where appropriate, its system of private international law. As a result, it had been assumed, that wherever such an expression arose in the Convention, it was taken to include the State's private international law; unfortunately this was not the case and in particular was not so in Article 19. He suggested that we might have to make it clear that our acceptance of 19(2) was conditional on the fact that it must include the P.I.L. Following a discussion as to whether or not Article 19 was intended to include P.I.L., the Chairman suggested that the Committee's view should be that the article was acceptable but the implications of P.I.L. should be clarified.

ARTICLE 20

9. The Secretary recalled that the Committee's preliminary view was that Article 20 was acceptable. The differing effects on bankruptcy and liquidation in the UK, as regards vesting title to the assets, had been explained to the Brussels Panel, but after discussion, the Panel had thought it preferable not to alter the wording of the Article. The Chairman suggested that the Article should be amended to include a Clause referring to the cessation of the power of a company's directors and former officers to deal with its property. Mr Anton said that the ambit of the restriction appeared to be governed by the law of the State of the Bankruptcy; this was suggested by the N.L. Report but was not explicit in the terms of the Convention, and he suggested that we should draw attention to it. After discussion, the Committee did not think there was a problem but Mr Anton said he would look at the Article again.

ARTICLE 21

10. Referring to the Consultative Paper, Mr Anton said that he was concerned that this Article seemed to require creditors or the Court to refrain from action on the basis that a foreign bankruptcy had been pronounced, at a time when they may well have had no notice of the bankruptcy. He thought the Committee should propose that a community bankruptcy invalidated such measures retrospectively and, at the same time, we should suggest that people who had taken measures should be protected. Mr Graham noted that the Insolvency Practitioners Association had suggested there should be a provision as to costs to a creditor who had acted without notice. The Committee agreed to make such recommendations, noting that where necessary, the creditor should add the costs claimed to his proof of debt.

ARTICLE 22

11. Mr Anton referred to s.104 of the B.A. 1913 whereby a frustrated executioner had a preference out of the funds for expenses incurred by him in such execution. Mr Graham said that s.41 B.A. 1914 was similar, but the costs were a charge on the assets. Mr Dodd suggested that the word "abortive" should be deleted from recommendation (ii). The Committee were in general agreement with the two recommendations. Referring to paragraph 4.30 of the C.P., Mr Graham suggested that the 3rd line should be amended to read "operates to stay an enforcement in progress". He said there had been many problems in England in trying to decide whether a stay of execution was complete.

ARTICLE 23

12. The Committee agreed that this Article was acceptable.

ARTICLE 24

13. The Secretary drew attention to the amendment put forward by the Irish delegation in Brussels, to the effect that the period in the Article should be not less than 31 days. The Committee agreed that the Article was acceptable as amended by the Irish proposal.

ARTICLE 25

14. Mr Graham said he was concerned that the obligation to advertise was not more mandatory; it seemed to him that there was too much uncertainty. Mr Weiss said that the Article indicated that a liquidator must advertise if there were cross-frontier assets and in other cases, he might advertise if he so wished. He agreed that there could be some delay before a liquidator became aware of assets in other Member States and the Chairman suggested that such a problem could only be overcome by advertising all bankruptcies in the O.J.C. The Secretary said that the Belgian delegation had put forward such a proposal but the Chairman in Brussels had said that this would be too cumbersome and would prevent effective advertisement. The Chairman said that perhaps we should support Belgium and the Secretary said that this would probably become necessary with the passage of time. It was therefore decided to leave the recommendation that the principles of this Article were acceptable.

ARTICLE 26

15. The Committee were in agreement that the provisions of Article 26 were acceptable.

ARTICLE 27

16. The Secretary said that in the Consultative Paper we had asked consultees to comment on the ambit of the Article and to suggest the classes of property to which it should apply; several consultees had commented that the principles of the Article were acceptable and only the Scottish Chartered Accountants had provided a suggested list of classes of property. These classes were in fact already listed in the N. L. Report. Mr Anton said that the Article did not go far enough in that it did not make it clear that immoveable property should be dealt with by the lex situs. The Secretary said that we had already dealt with the question of immoveable property in the section on "Scope".

ARTICLE 28

17. Mr Anton said that Article 28 should be qualified so that a liquidator could not exercise the powers conferred upon him by the law of the State of the Bankruptcy in another Member State, where the exercise of those powers would be inconsistent with the public policy of that other Member State. The Committee agreed to accept this proposal and to accept the second recommendation.

Meaning ? how would this work?

ARTICLE 29

18. Following discussion, the Committee were in agreement that there had to be a redirection of mail and that it should be sent to the liquidator, and that there should be an initial time limit of 3 months. By a majority decision, the Committee agreed with the recommendation that the redirection order should be made by the Court of the State where the bankrupt was resident.

ARTICLE 30

19. The Chairman said that he favoured the informal procedure put forward in the Article; there should be no problem over bogus claims because supporting documents could be called for. In general, the Committee favoured a simple universal form if this could be provided.

Why not sworn?

ARTICLE 31

20. The Committee decided that no amendments were required to this Article but Mr Anton asked for it to be noted that he may like to comment further on this Article at a later date.

ARTICLE 32

21. The Committee agreed with the recommendations.

ARTICLE 33

22. Mr Graham suggested that the word "trust" was too narrow in this context as it might rule out situations where someone, such as an agent, was holding property in a fiduciary capacity. Mr Anton agreed that it was important to make this point clear in the Convention as other countries were not really aware of our system. The Committee agreed that the phrase should be "goods held in trust or in a fiduciary capacity for others". Referring to 33(2), Mr Graham said that this Clause showed the necessity for a proper definition of property, particularly in relation to Article 20.

ARTICLE 34

23. The Committee found all 3 recommendations acceptable.

ARTICLE 47

24. The Committee agreed with the recommendation.

AGENCIES (C.P.4.38)

25. The Committee were not in agreement with the proposal put forward by the British Insurers European Committee to the effect that the law applicable in the bankruptcy of an agent should be set out in a Uniform law.

ARTICLE 36

26. The Committee agreed with the recommendation that the Article should not differentiate between Member States and non-Member States.

ARTICLE 37

27. The Committee agreed that, in accepting 37(1), a reference should be made to the liquidator's right to disclaim onerous contracts and that this right should not be impaired. Following discussion, it was decided that Clauses 2 and 3 of the article should not be deleted.

ARTICLE 38

28. The Committee decided to propose that the law of the State of the Bankruptcy would apply unless the contract contained an express condition as to which law governed its terms.

ARTICLE 39

29. Mr Anton said that it was necessary to deal with this Article and Uniform Law Article 6 together. He thought it possible that the ability of the seller to reserve title in terms merely of a simple writing made before delivery and not in the complicated protective way envisaged by the Consumer Credit Act would open the way to bankruptcy frauds; only the first sentence of Clause 1 should be included and it should be amended

by the addition of the Choice of Law rules of Article 18(2). The Committee agreed that their recommendation should be consistent with their proposals for Article 38; namely, that the Law of the State of the Bankruptcy should be applicable unless the contract contained an express condition as to which law governed its terms.

DATE OF NEXT MEETING

30. The date of the next meeting was confirmed as Monday, 19 May. The Agenda would include the Recognition and Enforcement of Judgments (Memorandum No 6) and the Uniform Law (Memorandum No 7 to be prepared).

T H Traylor
Secretary

6(12)

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Report of the Twentieth Meeting, held at Gavrelle House on 19 May 1975.

Present:
K R Cork(Chairman)
A E Anton
P H Armour
P G H Avis
C L Dodd
M V S Hunter
T H Traylor (Secretary)

In attendance:
D Graham
G A Weiss

REPORT OF THE NINETEENTH MEETING AND MATTERS ARISING

1. The report of the meeting was accepted.

2. Mr Muir Hunter said that following discussions with Mr Graham, he had prepared a further Note on Deeds of Arrangement and the possible effects of Article 4 of the Uniform Law. Copies of the Note were issued to members and the Chairman suggested that it might form a useful annext to the Committee's Final report. Mr Anton agreed to report back on the extent to which the comments in the Note applied to Scotland.

X

3. Referring to proceedings or action at the risk of preferential creditors, the Secretary said that the Department's instructions to Official Receivers were quite specific: where assets were only sufficient to pay preferential debts they should not be put at risk in the attempted recovery of further assets without the consent of preferential creditors. The Secretary added that he had been unable to find legal support for this direction, but thought it might date from a time when low paid employees would have been destitute without their wages; he drew attention to Article 319 of the C.A. 1948 which required preferential creditors to be paid "forthwith". The Chairman said he did not agree with the Department's view. Mr Muir Hunter said that the Chairman's remarks raised the question of the extent to which foreign sub-groups of creditors might expect to be able to influence the liquidator in their own interest. The Chairman suggested that the matter should be referred back for discussion when the Committee was considering preferential and secured creditors.

4. Mr Muir Hunter enquired whether a Note was required on the position of receiverships and floating charges. At the Chairman's suggestion it was agreed that the matter should be considered by a sub-committee comprising Messrs Avis, Jenkins, Hunter and Graham and Mr Avis undertook to ask Mr Frank Ryder for his views.

Meeting being arranged

5. Referring to paragraph 7 of the Report, Mr Muir Hunter said it would be crucial to harmonise the event on which a bankruptcy was founded with the event on which the suspect period was founded. Mr Anton said this matter would require discussion when the Committee were dealing with Article 4 of the Uniform Law.

6. Referring to paragraph 8 of the Report and to the reference to Private International Law on page 63 of the Noel Lemontey Report, Mr Graham suggested that if there was a Uniform Law dealing with the avoidance of transactions during the suspect period, the question of P.I.L. should disappear because the law would be the same in all Member States. Mr Anton agreed that this was probably the intention of the draftsmen of the Convention but as yet, he was not persuaded that they had succeeded. In answer to an enquiry from Mr Muir Hunter, Mr Anton said there was a draft Obligations Convention concerning the P.I.L. of the Community but he understood that in its present form, it was largely unacceptable to the U.K.

SECRETARY'S REPORT

7. The Secretary said that comments on the Consultative Paper had been received from:

The General Council of the Bar

The Law Society (A paper on Scope)

The Law Society of Scotland (on Articles 28 to the end of the Convention)

The Institute of Chartered Accountants of Scotland (A paper on sections 5, 6 and 7 of the C.P.)

8. The Secretary said that many of the points raised in memoranda now being received from consultees had already been dealt with by the Committee. It was agreed that the Secretary should draw the Committee's attention to any view expressed on an important matter which conflicted with the Committee's decided view.

ARTICLE 49

9. Following discussion it was decided not to recommend that this article should be amended to include non-judicial decisions. As Mr Dodd pointed out, it did not appear right that procedural matters, such as dealing with proofs of debt, should be brought into Title V of the Convention.

ARTICLE 50

10. It was agreed to recommend that Article 50 should provide for uniform methods of authenticating judgments, other than those appointing a liquidator, and for their translation. The Committee recalled its previous objection to the change in translation from "liberty of the individual" to "freedom of the individual". The Chairman suggested that the Committee should report that it was assuming "freedom" was intended to mean "liberty"; otherwise it was not acceptable. Mr Anton said that the article was confined to civil and commercial judgments, which would not include a judgment relating to the freedom of the individual. Mr Muir Hunter suggested that we should report that it was essential for the categories of judgments covered by this section of the Convention to be defined. Mr Graham suggested that we should add that no judgment which resulted in imprisonment should be recognised under this article.

Haussmann's new "mandat d'arrêt"

ARTICLES 51 AND 52

11. The Committee agreed that these articles would only be acceptable if a procedure was available to enable a person faced with competing judgments to receive directions from the court. Further, that provision should be made for the protection of a person who had acted in good faith on a judgment subsequently rendered ineffective by the operation of these articles.

ARTICLE 53

12. It was agreed to recommend that the article should be extended to protect third parties. It was also decided that the article should indicate that the liquidator appointed by the court whose judgment prevails under the Convention should take the benefit of, and be bound by, acts performed by the other liquidator.

ARTICLE 54

13. It was agreed that this article was acceptable.

ARTICLES 55 AND 56

14. The Secretary observed that the General Council of the Bar disagreed with the first recommendation. In their view it was essential to exclude any possibility of challenge on the ground that the original court lacked jurisdiction, precisely because of the imprecise nature of the concept of the centre of administration. On the other hand the College of Justice in Scotland used the imprecise nature of the primary basis of jurisdiction as a reason for supporting the recommendation. The Committee concluded that Articles 51 and 52 could only be fully effective if there was some means of challenging the decision of another court. Mr Anton said that he had in mind Article 56, when he suggested acceptance of Articles 51 and 52, provided there was a procedure to enable a person faced with competing judgments to receive directions from the court. Mr Muir Hunter suggested that any challenge to the jurisdiction under Article 56(2) should be confined to cases arising under Article 51 or 52.

15. The Secretary said that the College of Justice in Scotland had suggested that it should be a specifically admitted ground of challenge that the judgment was obtained by fraud. This ground appears in s.4 of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, where public policy is treated as a ground of challenge distinct from fraud.

16. Mr Muir Hunter said that "L'ordre public" in France did not include fraud, which was a separate head of action; in England, "public policy" only covered a small section of frauds. Mr Anton said he also agreed with the proposal and he referred to Article 27 of the Judgments Convention where there was a similar omission. The Committee agreed to put forward the recommendation.

ARTICLE 57

17. The Secretary said that with one exception all consultees supported the recommendation that the courts to be specified in Article X of the Protocol should be the High Courts in England and Northern Ireland and the Court of Session in Scotland. The Chartered Accountants of Scotland considered that the Sheriff Courts should be added to the list to deal with decisions on minor matters. Mr Anton agreed there was some point to their argument, but he suggested that it was more important that the Bankruptcy Convention conformed to the Judgments Convention in such matters. The Committee agreed.

ARTICLE 58

Collins say new draft Jurisdiction Convention being prepared.

18. The recommendation was accepted. The Secretary said that the Brussels Panel had agreed to amend this article to enable the petitioning creditor to be joined in any action to challenge the bankruptcy. They also proposed to clarify 58(2) and to amend it to provide that the action to challenge the bankruptcy may not be brought later than 6 months after the opening of the bankruptcy, nor after the closure of the bankruptcy. The Committee found these amendments acceptable.

ARTICLE 59

19. The Committee's preliminary views were confirmed, in that the article was generally acceptable but clause 3 should also stipulate advertisement in the OJEC. Further, 59(3) should be clarified so as to ensure that one unsuccessful challenge was not exclusive of other persons' rights. It was thought that the last sentence of 59(4) should refer to acts performed by the liquidator "or a third party in good faith"....

ARTICLES 61 - 67

20. The Secretary said that at the request of the German, Belgian and Netherlands delegations, the Brussels Panel had discussed the necessity for these articles, which were similar to articles in the Judgments Convention and which related to matters dealt with under that Convention. The delegates from the original six agreed that the articles could be replaced by a reference to the fact that the Judgments Convention applied to such matters, but the delegates from the 3 new Member States reserved their position on this decision.

21. Mr Anton said the arguments were evenly balanced, but in his view it would be preferable to have parallel provisions in the two Conventions rather than to have a renvoi to the Judgments Convention. The articles should be identical as far as possible. If a particular article proved unsatisfactory in relation to bankruptcy, it could be amended in the Bankruptcy Convention without upsetting the Judgments Convention. Mr Muir Hunter agreed and added that in his view, attempts to legislate by reference were usually cumbersome and dangerous. The Committee agreed to support these views.

ARTICLE 76

22. Mr Anton recalled that when the Committee were considering Article 39 at the previous meeting, he had maintained that the ability of a seller to reserve title merely by simple writing made before delivery would open the way to fraud. He had suggested that only the first three lines of 59(1) were required, and the Chairman had added that it should then be consistent with the Committee's views on Article 38; this had been carried. Mr Anton suggested that it now remained for the Committee to say that, if its views on Article 39 were accepted then any reference to that article in Article 76 would become otiose. The Committee agreed.

German position

23. The Secretary said that some consultees had commented that 76(4) seemed unnecessary, but they probably did not appreciate that at least some of the provisions of U.L.3 to U.L.6 applied to certain continental analagous proceedings. He suggested that the clause was necessary but that it could be made more specific by stating that the provisions only applied to the extent allowed by the national law governing the particular proceeding.

24. Mr Muir Hunter said that the Uniform Law contained numerous references to the opening of the bankruptcy and in order to make those provisions applicable, it was essential to have something equivalent to "the opening of the bankruptcy" in a given analagous proceeding.

25. Mr Anton said this point was crucial. If, for example, U.L.4 was to be a complete substitution for our existing rules relating to gratuitous alienations and fraudulent preferences, then it must be remembered that in Scots law, these are struck at by the fact that there has been a notour bankruptcy, and in this case, any creditor has the right to challenge, not merely the general body of creditors. The whole scheme of U.L.4 related to the opening of the bankruptcy and not to cessation of payments.

26. Mr Muir Hunter said that in his view, the extent to which the provisions of the Uniform Law applied to particular analagous proceedings should be specified. It was essential to know how a U.L. which referred to the opening of the bankruptcy applied to something which was not a bankruptcy, and in particular, the time from which it took effect. Mr Anton said that he disliked the legislation by reference to the extent that those provisions are capable of applying thereto, but he thought this would be improved by the Secretary's suggestion.

27. The Committee agreed that the views in paragraphs 23-26 should be reflected in its Report.

28. It was agreed to recommend that Article 76(5) should be deleted, and that the provisions of the Uniform Law should be made generally acceptable to all Member States.

DATES OF FUTURE MEETINGS

29. The next meeting was fixed for Thursday 12 June 1975 and the following meeting for Wednesday, ~~2~~ July. Mr Graham asked if the dates of subsequent meetings should also be agreed, in view of the holiday period. The Secretary said that provisional dates were ~~22~~ July, 12 and 22 August. Mr Muir Hunter indicated that he would be out of the Country during August and the Chairman said he would be abroad on 22 July. It was agreed to retain the present system of fixing the next two meetings ahead.

new dates
8 Jul
21 Jul

30. The Chairman said he understood from the Inspector General that a timetable of future discussions by the Brussels Panel would shortly be made available. He observed that to some extent the Panel were already adopting some of our views in their proposed amendments to the Convention. It was unfortunate that the Advisory Committee could not be given a further 6 months to cogitate before submitting its Final report.

T. H. Traylor.

T H Traylor
Secretary

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Twenty-First Meeting on Thursday, 12 June 1975 at 10.00 am at Gavrelle House, 2-14 Bunhill Row, London EC1.

1. Consider the Report of the Twentieth Meeting and matters arising.

2. Secretary's Report.

3. Should Administration Orders under the County Courts Act 1959 be included in Protocol I (b)?

4. The Uniform Law (Memorandum No 7).

5. Confirm date of next meeting (2 July) and agree the date of the following meeting (Provisionally 22 July).

6. Agenda for the next meeting.

T H Traylor
Secretary

6(12)

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Report of the Twenty-first Meeting, held at Gavrelle House on 12 June 1975

Present:	M V S Hunter (Chairman) A E Anton P H Armour P G H Avis C L Dodd G A Weiss (for K R Cork) T H Traylor (Secretary)
In attendance:	D Graham C J Jenkins

REPORT OF THE TWENTIETH MEETING AND MATTERS ARISING

1. The report of the meeting was accepted.

2. Paragraph 4: Mr Avis said that the sub-committee on receiverships and floating charges had been unable to arrange a meeting to date, but the matter was in hand.

3. Paragraph 10: the Chairman said that "the freedom of the individual" was discussed at the recent meeting of the International Bar Association in Brussels. The view was taken that the phrase related to an "order relating to arrest" and that this was also the meaning of the German translation of Article 50. Such an order would not be enforceable under the Convention.

4. Paragraph 18: the Chairman said he understood from a Member of the Irish delegation in Brussels that a new draft Convention had been prepared incorporating amendments to date, resulting from decisions taken by the Brussels Panel. The Secretary said he did not think that a complete re-draft had been issued although it had been promised towards the end of last year. He knew that the I.G. had been asking for such a re-draft and had recently received a "provisional document" which gave proposed amendments and in particular, the views of the Governments of the original "Six", as at February 1975. The document was in French and the Secretary undertook to send copies to Members who required it (copies have been sent to Messrs. Anton, Graham and Hunter). Having regard to the Committee's terms of reference, it was agreed to continue with the present practice of considering the existing draft Convention, but at the same time to note any proposed changes which might enable the Committee to recommend acceptance of a particular article.

5. Paragraph 2: Mr Anton recalled that he was to report back on the extent to which the comments in the Note on Deeds of Arrangement prepared by Mr Muir Hunter applied to Scotland. He said that he could not comment in those terms because Deeds of Arrangement were not applicable in Scotland; however, his own views on the subject were contained in his correspondence with Mr Armstrong, copies of which had been passed to the Secretary.

SECRETARY'S REPORT

6. The Secretary said that only one Memorandum had been received from a Consultee since the last meeting; this was the final section from the Association of Certified Accountants and copies had already been issued to Members.

7. The Secretary said that he had completed the preliminary draft of the Section of the Final Report relating to the Scope of the Convention and copies should be received by Members within a day or two. He hoped Members would let him have their comments and criticisms as soon as convenient to enable a re-draft to be prepared and circulated.

ADMINISTRATION ORDERS

8. Following discussion, the Committee agreed to recommend that Administration Orders under the County Courts Act, 1959, should not come under the Bankruptcy Convention and therefore should not be listed in Article I (b) of the Protocol.

UNIFORM LAW ARTICLE 1

9. The Secretary said that the Committee's preliminary views were reflected in the first four recommendations on page 2 of Memorandum No 7; in addition it was thought that the word "wrongfully" should be omitted from Clauses 1 (b) and 1(c). Mr Anton noted that the Brussels Panel had under consideration an amended Clause 1 which appeared to be an improvement. He translated:

> "Any person who has in fact or in law, openly or secretly, directed or managed a company, firm or legal person which has been declared bankrupt and it is established that he carried on activities for his own account under the cover of the company, firm or legal person, and he has either
>
> (a) wrongfully dealt with the property or
>
> (b) wrongfully carried on the business for his own personal benefit..."

Mr Anton said that the rest of the Clause was as before and therefore unacceptable because it implied automatic bankruptcy.

10. The Chairman said that his first impression of U.L.1. was that it strongly resembled the fraudulent trading sections of the Companies Act, but the new version appeared to be dependant upon proof that the person had carried on business of a personal interest under the cover of the company; this seemed to be a very restrictive definition. The Chairman continued that at a recent meeting of Insolvency Practitioners which he attended in Brussels, Mr Armstein of Belgium said that it was intended to introduce the text of the uniform laws verbatim into national laws and this view was shared by other members present. If this undermined our misfeasance law then clearly we would have to make a reservation. The Secretary said that verbatim reproduction was not required according to the N-L Report and so far as he was aware, this had not been changed by any decision on the part of the Brussels Panel. The Chairman suggested that it would be as well to refer to this matter in the Committee's final report and to say that if verbatim reproduction was required, then the Uniform Laws would require very careful and specific redrafting.

11. Mr Anton said it appeared that the Brussels Panel were proposing to delete Clause 2. He thought this was sensible because the bankruptcy of the company and the bankruptcy of the individual should be considered as separate proceedings. Mr Avis was concerned that without a date of cessation of payments it might be difficult to assess a claim but the Chairman likened the position to a criminal bankruptcy order; ie the court found the person liable and quantified the liability. If the person then failed to pay, he could be made bankrupt. Mr Dodd agreed that there should not be a period of relation-back; the relevant date should be the date of the individual's own bankruptcy, otherwise it could be an impossible situation in so far as the individual's personal affairs were concerned.

12. Mr Anton proposed that the committee should recommend that any proposal by the Brussels Panel to delete Clause 2 should be supported. Alternatively, the U.K. should recommend its deletion on the following grounds:

(a) It might impose greater hardship on personal creditors of the individual by relating-back toofar;

(b) If the relation-back went back too far, it might be that transactions by the individual ceased to be impeachable under U.L.4;

(c) Cessation of payments is in most cases an overt act committed by a debtor of which one might have some notice. An act by the company might not necessarily be a cessation of payments by the individual, so people might be unaware of it. The committee agreed with this proposal.

13. Mr Anton drew attention to the comments of the Bar Council that the formulation of rules governing the liability of individuals for the debts of a legal entity were the function of the consitutional law regulating the affairs of the entity and that therefore, U.L.1. should be regarded as being outside the scope of the Bankruptcy Convention. He suggested that the proper place for this Article was in the Company Law. Mr Graham tended to agree and suggested that, in regard to the revised version of U.L.1.(1) there might be no requirement to add to the existing Companies Act. However, Mr Avis recalled that we had agreed to accept the U.L. if it did not undermine existing law but added to it; in his opinion it added to it. The Chairman recalled that the Article was included to give effect to French law and to enable them to deal with directors who were regarded as non-traders; its inclusion was the price paid by Germany for the recognition of German reservation of title. The committee endorsed Recommendation (V).

14. Mr Anton proposed a redraft of U.L.1 as follows which would also replace U.L.2:

"1. Where a person who, in fact or in law, openly or secretly, has directed or managed a company, a firm or entity which has been declared bankrupt and it is established that he has carried on activities for his own account under cover of the company, firm or entity and either

(1) has (wrongfully) dealt with the property of that company, firm or entity as if it were his own; or

(2) has (wrongfully) carried on a business at a loss for his own personal benefit,

and those activities have led or contributed to the bankruptcy of the company, the court may declare that person liable to pay all or such part of the debts of that company, firm or entity as it (the court) thinks fit.

2. Where any person has been found liable to pay the whole or any part of the debts of a company, firm or entity under paragraph 1 of this Article, or on other grounds has been found liable to pay compensation to a company, firm or entity which has been declared bankrupt, and fails to do so that person may himself be declared bankrupt.

Delete Article 2."

15. Mr Graham thought that 1(1) was unnecessary because a director was accountable to a company for any mis-use of its property; it was a breach of trust and he was liable to compensate the company and not to pay its debts. Mr Dodd said that he was not keen on the committee re-writing the Article and would prefer to keep the committee's recommended amendments to a minimum. After further discussion the committee agreed to put forward its objections and proposed amendments to the existing draft of U.L.1 and to add the Anton draft as a reconstruction of the sense of what was proposed, as distinct from a draft amendment of the text.

UNIFORM LAW ARTICLE 2

16. The Chairman recalled that in provisionally accepting this Article, the Committee had noted the wider meaning of "personne morale" than the English version. It was agreed that this should be referred to in the final report in connection with the requirement for a list of definitions. Mr Dodd said that the Committee could suggest that the effects of U.L.1 and U.L.2 could be combined into a single Article.

UNIFORM LAW ARTICLE 3

17. The Committee had no further comments to make on this Article.

CESSATION OF PAYMENTS

18. Mr Anton said that his difficulty with U.L.4 based on the cessation of payments was its total inconsistency with the theory of Scots Law; it became effective only following the opening of a bankruptcy, whereas Scots rules operated in favour of creditors as from notour bankruptcy. He thought the difficulty might be overcome by carefully defining cessation of payments; in his view 'relation-back' should always be from the point of cessation of payments and not from the opening of the bankruptcy, otherwise the rules apertaining to fraud could not operate unless there was a bankruptcy situation.

19. The Secretary asked the Committee to consider whether a uniform definition of cessation of payments was really essential. Two of the original Six Member States, Holland and Italy, had reserved the right not to refer to cessation of payments when introducing the provisions of the Uniform Law into their respective legislations. This would seem to imply that they were content with their ability to operate the Uniform Laws of relation-back and set-off without it. The Secretary pointed out that a number of consultees disagreed with the definition proposed in the Consultative Paper; in particular, the Scottish Chartered Accountants prefer the definition of notour bankruptcy, but go on to suggest that the condition relating to cessation of payments should be deleted from Clauses B, C and D of U.L.4. The Law Society of Scotland is also strongly opposed to its inclusion in Clause B, sees no reason for its inclusion in C(2) and considers it irrelevant to Clause D. The only other Clause which refers to the cessation of payments appeared to be U.L.5 (4) and it should be possible to redraft that Clause so as to omit the reference. The Secretary continued, alternatively, if the reference to cessation of payments was vital as regards some Member States, would it not be acceptable to include an Article in the Protocol setting out briefly the implications of cessation of payments in each State? As regards the U.K. we could simply say that in Scotland it related to notour bankruptcy and in England, Wales and Northern Ireland it related to the first available act of bankruptcy. This would mean amending and probably adding to the existing acts of bankruptcy but this was not impossible and in fact the Bar Council had suggested some suitable amendments (see Comment 7 on page 6 of Memorandum 7). As regards companies, the decision in Eros Films Limited would probably enable equivalent acts of bankruptcy to be applied by analogy.

20. The Chairman asked the Committee to consider whether a definition was required and if so, whether it should be a uniform one translated into all languages or whether it should relate to an event in the law of each State so as to suit that State's requirements. Mr Dodd said that a uniform definition would present difficulties to those countries who did not want to introduce cessation of payments and Mr Graham inclined to the view that a definition was required but that it should be as loose as possible with a view to getting maximum agreement. He thought that without a uniform meaning, there would be the risk of some transactions being impeachable in some Member States and unimpeachable in others. The Chairman said that it would be useful to know how Holland and Italy proposed to operate the uniform law without a form of cessation of payments.

21. Mr Anton considered that a definition of cessation of payments having absolute clarity was essential; Mr Armour agreed. Mr Graham saw difficulties for a liquidator endeavouring to prove to a Court that a creditor had disregarded what a reasonable man would have taken as a sign of cessation of payments. Mr Anton said that he regarded the cessation of payments as being when there was public notice of the insolvency of a person; notice must be related to events of a public nature and the Court would in the end exercise discretion.

22. Mr Dodd was not convinced that universal agreement was possible on a precise definition. He therefore proposed that all that was necessary for the purposes of the Convention was to state that the cessation of payments should have the meaning attributed to it by the law of the State of the bankruptcy. Mr Anton opposed this on the grounds of the disparity between the existing rules in Member States. He thought it was essential to achieve as far as possible an agreed definition of this important concept and thought that we had got as far as was possible with the definition in the Consultative Paper. He was supported by Mr Armour, whereas Messrs. Avis, Graham and Weiss supported Mr Dodd. At the Chairman's suggestion, the Committee agreed to recommend that in the first place, efforts should be made to agree on a definition similar to that in paragraph 7.21 of the Consultative Paper but secondly, if such an international definition was not acceptable, then an obligation for a national definition as proposed by Mr Dodd was essential.

UNIFORM LAW ARTICLE 4 A

23. The Chairman recalled that 4 of the original 6 Member States had made reservations to introduce periods of relation-back varying from 6 months to 2 years in relation to acts done without valuable consideration, or 6 months to a year in the case of acts done for valuable consideration. Recommendation (i) proposed that the period quoted in U.L.4 A should be 2 years and not one year. Mr Anton said he could agree to a 2 year period provided 4A(1) was a sensible provision, but he could see no reason for striking down a 2 year old transaction if the debtor had been solvent at that time; the Article gave no discretion but said the transaction would be void.

24. The Secretary referred to the Committee's previous discussions on this Article (M.R. 7 page 11 and M.R.8 page 3) when it became apparent that some compromise would be necessary. It was for this reason that he put forward the suggestions in Comment 6 on page 7 of Memorandum No 7, namely, that the Committee might agree the principles of the Clause were acceptable but that redrafting was necessary to clarify some of the existing phrases, such as "unusual circumstances" and "moral obligation". He also suggested that the donor's solvency might be made a factor, but the onus of proof should be on the donee. The Chairman asked if it was envisaged that s.42 B.A. 1914 would be reduced in any way in any future Insolvency Act. The Secretary said he was not aware of any such proposal and did not think that the Blagden Report contained one. Presumably, s.42 would have to be amended if it did not accord with the provisions of the Uniform Law. The Chairman observed that most consultees preferred 2 years to one year.

25. The Chairman said that safeguards should be included for the protection of innocent third parties. Messrs Anton and Graham agreed; the latter pointed out that a bona fide purchaser had good title against the trustee in England. Mr Anton said the phrase used in the Uniform Law was "void against the general body of creditors" and not "void absolutely". This should protect such as bona fide purchasers in this country. But there was a difficulty on the continent through the system of positive prescription of right to moveable property after a certain period of time. He suggested that we should propose that the position of bona fide purchasers should be clarified and that we should draw attention to the provisions in certain other Member States which protect persons who acquire a possessory title or have held one for a period of years. Doweries were discussed and the Secretary recalled that the Committee had previously agreed to accept the reference to doweries provided it was not intended to include marriage contracts. Mr Anton said that if some continental States had problems with doweries being abused and wanted them deemed to be dispositions without valuable consideration, we should agree to their inclusion. However, it was essential that the donee had the opportunity of proving the debtor's solvency.

26. Mr Graham asked if it was clear that settlements after a divorce order would not be caught and suggested that this could be covered by extending the "however" Clause in Clause A(1) with the words "or pursuant to a Court order". Mr Anton agreed. Mr Weiss drew attention to s.39 of the Matrimonial Causes Act, 1973 which stated that the fact that such settlements were in compliance with a property adjustment order should not prevent the application of s.42 (1) of the B.A. 1914 to that settlement.

27. The Committee agreed to recommend that the period in U.L.4 A should be 2 years and that Clause 1 was acceptable, subject to the provision of certain safeguards.

28. Referring to Clause 2 of U.L. 4 A, the Chairman said this dealt with disproportionate contracts and Mr Graham said that in England it was represented by fraudulent consideration. Mr Anton did not think it a feasible provision. He could not see how a Bank or financier could know in advance that a transaction he proposed entering into would be valid or not under this Clause. He thought the Clause introduced an element of uncertainty and asked for his objection to be noted and that he would consider the matter further on reading the relevant part of the draft final report.

UNIFORM LAW ARTICLE 4 B (1)

29. The Secretary said that the provisos quoted in the recommendation were taken from the Committee's preliminary views. Mr Anton said that a transaction might be made after the cessation of payments and be beneficial to the debtor and perhaps to the creditors, but it would be struck down by Clause B 1 (a) in its present form. Mr Avis said that banks usually included a clause relating to a pre-payment fee in loan agreements. The Chairman suggested that the Committee would like to see the Clause redrafted so as to catch fraudulent or suspect transactions but to allow bona fide transactions.

UNIFORM LAW ARTICLE 4 B (2)

30. Mr Anton drew attention to the objections to this Clause raised by the College of Justice in Scotland: that it was unacceptable in view of the different meanings of cessation of payments as between different States and that there was no saving for securities granted under prior subsisting obligations; that on the face of it, the Clause seemed to exclude nova debita - where a new transaction was entered into where the security was the counterpart of the benefit conferred. The Chairman said that in England the subject matter would be a fraudulent preference but without the requirement for proof of intent to prefer. Mr Anton agreed that the problem of nova debita did not really arise and it was agreed that the Clause was acceptable.

DATES OF FUTURE MEETINGS

31. The next meeting was fixed for Tuesday 8 July and the following meeting for Monday 21 July. The Chairman enquired as to the likely availability of Members during August. The Secretary said that assuming the Uniform Law was completed at the next meeting and a start made on preferential and secured creditors, the latter should be completed on 21 July. Meetings would then be required (a) to deal with general remarks, the principles of the Convention, etc and (b) to agree coordination of the final report. Messrs. Avis, Dodd, Anton and Weiss said they would be available in August and Mr Armour said he was certainly available for the first meeting which had been provisionally arranged for the 12th of August, and Mr Graham said he would try to be available.

FINAL REPORT

32. Mr Graham reminded the Chairman about a proposed meeting between Mr Anton and their two selves which was tentatively agreed for 18/19 July, when it was hoped that they would go through the final report. The Chairman recalled that he was not present at the 19th Meeting and asked if he was correct in understanding that they would take the Secretary's draft as amplified by the Committee's views and produce a final draft. The Secretary said that the only thing of which he was aware was the remark made by Mr Cork as Chairman of the 19th Meeting, that he hoped the lawyers on the Committee would ensure that no errors had crept into statements regarding the law in the final report. Mr Dodd confirmed this.

33. Mr Anton said Members should assist the Secretary as much as possible in the preparation of the Final Report. In his view this could be done most effectively by submitting to the Secretary as soon as possible observations on sections which had been drafted. He did not think that there would be a case by mid-July for looking at the coordination of the various sections.

T H Traylor
Secretary

6(12)

EEC BANKRUPTCY CONVENTION

INTER-DEPARTMENTAL WORKING PARTY

Report of the Seventeenth Meeting held at Gavrelle House on 20 June 1975

Present:

C A Taylor (Chairman)
W Armstrong (D of T)
J A Sell (D of T)
D Graham (Solicitor, DTI)
J S Doig (Scottish Courts Administration)
E Scott Robertson (Solicitor, Scottish Office)
J M Hunter (Bankruptcy Registrar, N Ireland)
R B Logan (Official Assignee, N Ireland)
R B Rowe (Lord Chancellor's Office)
D J Lawday (Inland Revenue)
D R Titchener (DHSS)
T A Ryan (Customs & Excise)
T H Traylor (Secretary)

MATTERS ARISING FROM THE SIXTEENTH MEETING

1. Referring to paragraph 1, concerning the relationship between the Bankruptcy Convention and other treaties and conventions on the recognition and enforcement of judgments, to which the U.K. was a party, the Chairman said that preliminary discussions had been held with the Lord Chancellor's Office. It had become clear that the matter needed further enquiries and discussion with both the Lord Chancellor's Office and the Foreign Office. Therefore it was preferable that the Working Party left the matter for discussion until later this year.

2. Referring to paragraph 7 concerning administration orders under the County Courts Act, 1959, the Secretary said that the recommendation of the Advisory Committee, decided at its last meeting, was that Administration Orders should not be included in the scope of the Convention and therefore, should not be listed in article I (b) of the Protocol.

3. In reply to a question from Mr Titchener, the Chairman said that the timetable for the Insolveny Bill, like a lot of other parliamentary business at the present time, was in a state of flux. A "print" of the Bill had been prepared but its issue was at present restricted.

4. Referring to the pending negotiations on the Bankruptcy Convention with other Member States, the Chairman said he had submitted a memorand to the Secretary of State for Trade, indicating that there were 6 major item which would require ministerial approval. These were :-

(a) Jurisdiction to declare bankrupt the members of a firm or persons who had directed or managed a company or other legal entity, following the bankruptcy of the concern, and the proposed associated Uniform Laws (articles 10, 11 and 12 and U.L.1 and U.L.2)

(b) Preferential and secured creditors, particularly the principle whereby a creditor had the right to claim the highest rate of preference allowed by any Member State in which there were assets. This was a problem on which further ideas would be welcomed.

(c) The recovery of foreign fiscal and analogous debts. The Customs & Excise and the Inland Revenue had already written to the Lord Chancellor's Office on this matter which was one requiring further discussion and careful consideration.

(d) The relationship of the Bankruptcy Con vention to other conventions and treaties to which the U.K. was already a party (articles 71 - 73).

(e) The territorial scope of the Convention (on article 74).

(f) The concept of Cessation of Payments in connection with Uniform Laws 4 and 5. There was no ready equivalent to this concept in the systems of the Anglo-Saxon countries.

The Chairman asked Members to let him know if there were other matters which they considered should be added to the above list.

THE MAY MEETING IN BRUSSELS

5. The Chairman said there had been some lively discussions on a number of important matters but few decisions were reached. It was agreed that the winding-up of direct insurance companies should remain excluded from the Bankruptcy Convention and be covered by a Directive. The Directive would be completely self-contained, importing from the Bankruptcy Convention such provisions as were intended to be common to all liquidations. The lists of assimilated procedures were considered and we asked for the position regarding Administration Orders to be left open.

6. The next meeting in Brussels is from 30 June to 4 July. Mr Armstong said that the Agenda included:-

(a) General preferences and methods of calculation;

(b) discussion on artid es 10, 11 and 12 and U. L. 1 and U. L. 2; this was a French requirement which was strongly opposed by the Dutc h and the Germans, so we could maintain a fairly neutral position for the time being;

(c) the association of the Convention with Maritime Law, Aviation Law and Rivers & Waterways Law. This part of the meeting would be attended by experts in those laws;

(d) the final provisions of the Convention.

CESSATION OF PAYMENTS

7. The Chairman said that French, Belgium and Luxembourg law linked the voidability of transactions effected by a bankrupt with a concept of his cessation of payments. The Uniform Laws dealing with what we would call "relation-back" and "set-off" were based on this principle. In Scotland, there was a system of notour bankruptcy and in the rest of the U.K. we related such matters to the first available Act of Bankruptcy.

8. Mr Scott Robertson said that the law relating to notour bankruptcy was set out in s. 5 of the Bankruptcy (Scotland) Act, 1913. It could be constituted either by sequestration or the issuing of a Receiving Order in Engl and or N. Ireland, or by insolvency. Such insolvency would be presumed where a debtor had failed to pay a debt within a given period stipulated in a court order. The Chairman noted that this was similar to our bankruptcy notice, failure to pay being an act of bankruptcy. In answer to Mr Registrar Hunter, Mr Scott Robertson agreed that this was separate from notice levying execution and that it was foun ded on a decree. Mr Armstrong said a difference between our systems was that once the decree was obtained, notour bankruptcy followed automatically whereas having a judgment or a decree, we had to obtain a further Order.

9. Mr Scott Robertson continued that notour bankruptcy also arose where there was seizure of the debtor's goods for non-payment of rates or taxes, or execution wh ich was called "poinding"; also where there was an adjudication or attachment of his immoveable property - a charging order on land. Notour bankruptcy would also arise where there had been a sale of the debtor's effects under a sequestration for arrears of rent.

10. Mr Doig said that he was not happy with the system of notour bankruptcy; its defect was that there was no definite date and as he understood it, this was the aim of cessation of payments - a definite date fixed by the court.

11. The Chairman drew attention to the views of consultees submitted to the Advisory Committee, as set out in item (g) of Memorandum No 7. The Secretary said some additional comments had been received as follows:

> The Law Society of Scotland rejected the proposition that the date of cessation of payments should be relevant to fraudulent preference and set-off but at the same time, considered a uniform definition of the expression must be agreed among Member States before the provisions of the Uniform Law could be incorporated into various national laws. They strongly opposed transactions dealt with under U.L. 4 (B)(1) being referable to the date of cessation of payments; they saw no reason for linking the principle in U.L. 4(C)(2) with that date and considered it irrelevant to U.L. 4(D).
>
> The Scottish Chartered Accountants also agreed with the necessity for a single definition of cessation of payments, but disliked the proposal in the Consultative Paper prefering the definition of notour bankruptcy. However, they added that the condition relating to cessation of payments should be deleted from paragraphs B, C and D of U.L. 4. If this was done the condition would seem only to apply to the provisions regarding set-off in U.L. 5 (4).

12. The Chairman referred to the differences between notour bankruptcy and Acts of bankruptcy, particularly as regards time limits and said that in his view the provisions pertaining within the U.K. should certainly be brought into line so that the average trader understood the position. He noted the proposals of the Bar Council regarding an up-to-date version of Acts of bankruptcy and wondered if something was possible along those lines. In reply to Mr Rowe he said that the usual acts employed were failure to comply with a bankruptcy notice and an execution on the goods of the debtor.

13. Mr Armstrong said that referring to the earliest available Act of bankruptcy was to impose a time limit of 3 months within which was determined the starting date; the various suspect periods dated back from that date, being either 2 years or 10 years (s.42 B.A.1913). The system of cessation of payments was the exact reverse; the date was fixed and the suspect period dated forwards from that time. So, in the Uniform Law one found two dates mentioned - such as in U.L. 4 (B)(2) "after the date of cessation of payments and less than one year before the bankruptcy". The Secretary said that in Germany the date of cessation of payments was not fixed prior to bankruptcy or upon adjudication, but it was fixed by the court separately on the merits of each case brought before it; so in one bankruptcy there could be several dates of cessation of payment. Holland had reserved

not F.P.

the right to omit any reference to the date of cessation of payments when incorporating the Uniform Laws into her national legislation. This seemed to imply that Holland was satisfied that U.L.4 and U.L.5 could operate without such a reference.

14. The Chairman said it should be possible to combine the two systems and whether one worked backwards from a clearly defined date or forwards from another defined date should not matter too much provided the resulting period was the same. He asked the Secretary for the views of the Advisory Committee. The Secretary said that the Advisory Committee had discussed the matter at some length at their last meeting. Their conclusion, taking into account the submissions from consultees, was that a uniform definition of cessation of payments was most desirable and efforts should be made during negotiations to achieve this, which should then appear in the Uniform Law. A proposed definition was set out in paragraph 7.21 of the Consultative Paper. However, they appreciated the difficulties and in the alternative would be proposing that at the least there should be included in the Convention an article stating that cessation of payments should have the meaning attributed to it by the law of the State of the bankruptcy. Each State would then be required to incorporate its own definition of cessation of payments into its national law and summaries of these should be listed in the Protocol. Mr Armstrong said that the latter proposition sounded reasonable but it was not a Uniform Law. The Secretary agreed but pointed out that at the moment, there was no Uniform Law on cessation of payments; not even between those countries using such a principle.

15. In reply to a question from the Chairman, Mr Registrar Hunter said he would go along with a system working from the first available Act of bankruptcy if we could get other countries to agree. In discussion it was thought that the Republic of Ireland and possibly Denmark and Holland would give support. The Chairman asked Members to consider the matter further to see what difficulties such a scheme might present. Mr Armstrong still felt it impossible to have two systems, one going forwards and one going backwards. He said the weak link in our bargaining power was that we already had a system working forwards in the case of notour bankruptcy. The Secretary pointed out that the definition in paragraph 7.21 of the Consultative Paper was in line with the concept on the continent. Mr Rowe said reservations should not be allowed in this matter and Mr Titchener said it seemed that whatever was decided, someone would have to change the basic principles of their law on this matter. The Chairman agreed.

ARTICLE 76

16. Referring to 76(1), the Chairman said that Germany was still insisting on the inclusion of article 39 as a Uniform Law relating to contracts of sale with reservation of title and he enquired as to the views of the Advisory Committee. The Secretary said that first of all, in regard to article 38, the Advisory Committee were of the opinion that it was wrong to have special rules applying in relation to contracts of sale in the event of bankruptcy and they considered that the law of the State of the bankruptcy should apply, unless the contract contained an express condition as to which law governed its terms. With regard to article 39, the Advisory Committee

considered that their proposals should be consistent with those for article 38; namely, that the law of the State of the bankruptcy should be applicable unless the contract contained an express condition as to which law governed its terms. In the circumstances, the Advisory Committee could see no reason for considering article 39 to be a Uniform Law and if their recommendation was followed, references to article 39 should be deleted from article 76. Mr Armstrong thought this was sensible; such judgments would normally conform under the Judgments Convention and there seemed no reason for any alteration, simply because a bankruptcy intervened. The Chairman asked Members to consider this matter. It was agreed that article 76(2) was not applicable in the U.K. because our laws did not include the presumption referred to in article 34(1).

17. Referring to article 76(3), the Secretary said that if Creditors voluntary liquidations were listed in article I (b) of the Protocol this paragraph would apply to them and they should be listed also in article XIII of the Protocol. Referring to 76(4), Mr Registrar Hunter drew attention to the Secretary's suggestion in Memorandum No 7, that the provisions should only apply to the extent allowed by the national law governing the particular proceeding. He thought this was necessary and should be in addition to the existing clause. Referring back to articles 38 and 39, the Chairman said it would be essential to check that whatever was decided was compatible with the Sale of Goods Act and this should be looked at again. The Secretary referred to the remarks of M. Lemontey at the Brussels Symposium last December, when in regard to Article 39, he said that it only related to simple reservations guaranteeing payment of the price. Other "extended" or "transferred" types of claim, known particularly in German law were excluded; ie, reservation clauses applicable in the case of transfer or resale or guaranteeing debts other than those of the price; any validity of these as against the general body of creditors would depend on bankruptcy law. Mr Rowe said that if it was intended to retain article 39 as a Uniform Law, then clarification of its intended extent was vital so that we could draft our internal legislation accordingly.

18. Referring to article 76(5), the Secretary said that it was the hope of the Advisory Committee that this clause would be deleted and that the provisions of the Uniform Law would be made generally acceptable to all Member States.

INTERPRETATION

19. Mr Rowe said that the only reference to the Court of Justice of European Communities was contained in the Joint Declaration. It only commented that Member States declared themselves ready to consider the matter. He thought it was acceptable to go thus far but he was concerned at the extent to which it might be intended to involve the European Court. The matter was left for further discussion.

DATE OF NEXT MEETING

20. The next meeting was fixed for Friday, 8 August at 10.00.

T H Traylor
Secretary

6(12)

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Agenda for the Twenty-Second Meeting on Tuesday, 8 July 1975 at 10.00 am at Gavrelle House, 2-14 Bunhill Row, London EC1.

1. Consider the Report of the Twenty-first meeting and matters arising.

2. Secretary's Report.

3. Uniform Law Article 4, clauses "C" to "F" (Memorandum No 7, sections (k) to (n)).

4. Uniform Law Article 5 (Memorandum No 7(p)).

5. Uniform Law Article 6.

6. Fiscal and quasi-fiscal debts (Memorandum No 8).

7. Civil and commercial general preferences (Memorandum No 9).

8. Secured rights and possessory liens (Memorandum No 10).

9. Confirm date of next meeting (21 July) and agree dates of August meetings.

10. Agenda for the next meeting.

T H Traylor
Secretary

2(3)(a)

Graham

EEC BANKRUPTCY CONVENTION ADVISORY COMMITTEE

Report of the Twenty-first Meeting, held at Gavrelle House on 12 June 1975

Present:

M V S Hunter (Chairman)
A E Anton
P H Armour
P G H Avis
C L Dodd
G A Weiss (for K R Cork)
T H Traylor (Secretary)

In attendance:

D Graham
C J Jenkins

REPORT OF THE TWENTIETH MEETING AND MATTERS ARISING

1. The report of the meeting was accepted.

2. Paragraph 4: Mr Avis said that the sub-committee on receiverships and floating charges had been unable to arrange a meeting to date, but the matter was in hand.

3. Paragraph 10: the Chairman said that "the freedom of the individual" was discussed at the recent meeting of the International Bar Association in Brussels. The view was taken that the phrase related to an "order relating to arrest" and that this was also the meaning of the German translation of Article 50. Such an order would not be enforceable under the Convention.

4. Paragraph 18: the Chairman said he understood from a Member of the Irish delegation in Brussels that a new draft Convention had been prepared incorporating amendments to date, resulting from decisions taken by the Brussels Panel. The Secretary said he did not think that a complete re-draft had been issued although it had been promised towards the end of last year. He knew that the I.G. had been asking for such a re-draft and had recently received a "provisional document" which gave proposed amendments and in particular, the views of the Governments of the original "Six", as at February 1975. The document was in French and the Secretary undertook to send copies to Members who required it (copies have been sent to Messrs. Anton, Graham and Hunter). Having regard to the Committee's terms of reference, it was agreed to continue with the present practice of considering the existing draft Convention, but at the same time to note any proposed changes which might enable the Committee to recommend acceptance of a particular article.

5. Paragraph 2: Mr Anton recalled that he was to report back on the extent to which the comments in the Note on Deeds of Arrangement prepared by Mr Muir Hunter applied to Scotland. He said that he could not comment in those terms because Deeds of Arrangement were not applicable in Scotland; however, his own views on the subject were contained in his correspondence with Mr Armstrong, copies of which had been passed to the Secretary.

SECRETARY'S REPORT

6. The Secretary said that only one Memorandum had been received from a Consultee since the last meeting; this was the final section from the Association of Certified Accountants and copies had already been issued to Members.

7. The Secretary said that he had completed the preliminary draft of the Section of the Final Report relating to the Scope of the Convention and copies should be received by Members within a day or two. He hoped Members would let him have their comments and criticisms as soon as convenient to enable a re-draft to be prepared and circulated.

ADMINISTRATION ORDERS

8. Following discussion, the Committee agreed to recommend that Administration Orders under the County Courts Act, 1959, should not come under the Bankruptcy Convention and therefore should not be listed in Article I (b) of the Protocol.

UNIFORM LAW ARTICLE 1

9. The Secretary said that the Committee's preliminary views were reflected in the first four recommendations on page 2 of Memorandum No 7; in addition it was thought that the word "wrongfully" should be omitted from Clauses 1 (b) and 1(c). Mr Anton noted that the Brussels Panel had under consideration an amended Clause 1 which appeared to be an improvement. He translated:

> "Any person who has in fact or in law, openly or secretly, directed or managed a company, firm or legal person which has been declared bankrupt and it is established that he carried on activities for his own account under the cover of the company, firm or legal person, and he has either
>
> (a) wrongfully dealt with the property or
>
> (b) wrongfully carried on the business for his own personal benefit..."

Mr Anton said that the rest of the Clause was as before and therefore unacceptable because it implied automatic bankruptcy.

10. The Chairman said that his first impression of U.L.1. was that it strongly resembled the fraudulent trading sections of the Companies Act, but the new version appeared to be dependant upon proof that the person had carried on business of a personal interest under the cover of the company; this seemed to be a very restrictive definition. The Chairman continued that at a recent meeting of Insolvency Practitioners which he attended in Brussels, Mr Armstein of Belgium said that it was intended to introduce the text of the uniform laws verbatim into national laws and this view was shared by other members present. If this undermined our misfeasance law then clearly we would have to make a reservation. The Secretary said that verbatim reproduction was not required according to the N-L Report and so far as he was aware, this had not been changed by any decision on the part of the Brussels Panel. The Chairman suggested that it would be as well to refer to this matter in the Committee's final report and to say that if verbatim reproduction was required, then the Uniform Laws would require very careful and specific redrafting.

11. Mr Anton said it appeared that the Brussels Panel were proposing to delete Clause 2. He thought this was sensible because the bankruptcy of the company and the bankruptcy of the individual should be considered as separate proceedings. Mr Avis was concerned that without a date of cessation of payments it might be difficult to assess a claim but the Chairman likened the position to a criminal bankruptcy order; ie the court found the person liable and quantified the liability. If the person then failed to pay, he could be made bankrupt. Mr Dodd agreed that there should not be a period of relation-back; the relevant date should be the date of the individual's own bankruptcy, otherwise it could be an impossible situation in so far as the individual's personal affairs were concerned.

12. Mr Anton proposed that the committee should recommend that any proposal by the Brussels Panel to delete Clause 2 should be supported. Alternatively, the U.K. should recommend its deletion on the following grounds:

(a) It might impose greater hardship on personal creditors of the individual by relating-back toofar;

(b) If the relation-back went back too far, it might be that transactions by the individual ceased to be impeachable under U.L.4;

(c) Cessation of payments is in most cases an overt act committed by a debtor of which one might have some notice. An act by the company might not necessarily be a cessation of payments by the individual, so people might be unaware of it. The committee agreed with this proposal.

13. Mr Anton drew attention to the comments of the Bar Council that the formulation of rules governing the liability of individuals for the debts of a legal entity were the function of the consitutional law regulating the affairs of the entity and that therefore, U.L.1. should be regarded as being outside the scope of the Bankruptcy Convention. He suggested that the proper place for this Article was in the Company Law. Mr Graham tended to agree and suggested that, in regard to the revised version of U.L.1.(1) there might be no requirement to add to the existing Companies Act. However, Mr Avis recalled that we had agreed to accept the U.L. if it did not undermine existing law but added to it; in his opinion it added to it. The Chairman recalled that the Article was included to give effect to French law and to enable them to deal with directors who were regarded as non-traders; its inclusion was the price paid by Germany for the recognition of German reservation of title. The committee endorsed Recommendation (V).

14. Mr Anton proposed a redraft of U.L.1 as follows which would also replace U.L.2:

"1. Where a person who, in fact or in law, openly or secretly, has directed or managed a company, a firm or entity which has been declared bankrupt and it is established that he has carried on activities for his own account under cover of the company, firm or entity and either

(1) has (wrongfully) dealt with the property of that company, firm or entity as if it were his own; or

(2) has (wrongfully) carried on a business at a loss for his own personal benefit,

and those activities have led or contributed to the bankruptcy of the company, the court may declare that person liable to pay all or such part of the debts of that company, firm or entity as it (the court) thinks fit.

2. Where any person has been found liable to pay the whole or any part of the debts of a company, firm or entity under paragraph 1 of this Article, or on other grounds has been found liable to pay compensation to a company, firm or entity which has been declared bankrupt, and fails to do so that person may himself be declared bankrupt.

Delete Article 2."

15. Mr Graham thought that 1(1) was unnecessary because a director was accountable to a company for any mis-use of its property; it was a breach of trust and he was liable to compensate the company and not to pay its debts. Mr Dodd said that he was not keen on the committee re-writing the Article and would prefer to keep the committee's recommended amendments to a minimum. After further discussion the committee agreed to put forward its objections and proposed amendments to the existing draft of U.L.1 and to add the Anton draft as a reconstruction of the sense of what was proposed, as distinct from a draft amendment of the text.

UNIFORM LAW ARTICLE 2

16. The Chairman recalled that in provisionally accepting this Article, the Committee had noted the wider meaning of "personne morale" than the English version. It was agreed that this should be referred to in the final report in connection with the requirement for a list of definitions. Mr Dodd said that the Committee could suggest that the effects of U.L.1 and U.L.2 could be combined into a single Article.

UNIFORM LAW ARTICLE 3

17. The Committee had no further comments to make on this Article.

CESSATION OF PAYMENTS

18. Mr Anton said that his difficulty with U.L.4 based on the cessation of payments was its total inconsistency with the theory of Scots Law; it became effective only following the opening of a bankruptcy, whereas Scots rules operated in favour of creditors as from notour bankruptcy. He thought the difficulty might be overcome by carefully defining cessation of payments; in his view 'relation-back' should always be from the point of cessation of payments and not from the opening of the bankruptcy, otherwise the rules apertaining to fraud could not operate unless there was a bankruptcy situation.

19. The Secretary asked the Committee to consider whether a uniform definition of cessation of payments was really essential. Two of the original Six Member States, Holland and Italy, had reserved the right not to refer to cessation of payments when introducing the provisions of the Uniform Law into their respective legislations. This would seem to imply that they were content with their ability to operate the Uniform Laws of relation-back and set-off without it. The Secretary pointed out that a number of consultees disagreed with the definition proposed in the Consultative Paper; in particular, the Scottish Chartered Accountants prefer the definition of notour bankruptcy, but go on to suggest that the condition relating to cessation of payments should be deleted from Clauses B, C and D of U.L.4. The Law Society of Scotland is also strongly opposed to its inclusion in Clause B, sees no reason for its inclusion in C(2) and considers it irrelevant to Clause D. The only other Clause which refers to the cessation of payments appeared to be U.L.5 (4) and it should be possible to redraft that Clause so as to omit the reference. The Secretary continued, alternatively, if the reference to cessation of payments was vital as regards some Member States, would it not be acceptable to include an Article in the Protocol setting out briefly the implications of cessation of payments in each State? As regards the U.K. we could simply say that in Scotland it related to notour bankruptcy and in England, Wales and Northern Ireland it related to the first available act of bankruptcy. This would mean amending and probably adding to the existing acts of bankruptcy but this was not impossible and in fact the Bar Council had suggested some suitable amendments (see Comment 7 on page 6 of Memorandum 7). As regards companies, the decision in Eros Films Limited would probably enable equivalent acts of bankruptcy to be applied by analogy.

20. The Chairman asked the Committee to consider whether a definition was required and if so, whether it should be a uniform one translated into all languages or whether it should relate to an event in the law of each State so as to suit that State's requirements. Mr Dodd said that a uniform definition would present difficulties to those countries who did not want to introduce cessation of payments and Mr Graham inclined to the view that a definition was required but that it should be as loose as possible with a view to getting maximum agreement. He thought that without a uniform meaning, there would be the risk of some transactions being impeachable in some Member States and unimpeachable in others. The Chairman said that it would be useful to know how Holland and Italy proposed to operate the uniform law without a form of cessation of payments.

21. Mr Anton considered that a definition of cessation of payments having absolute clarity was essential; Mr Armour agreed. Mr Graham saw difficulties for a liquidator endeavouring to prove to a Court that a creditor had disregarded what a reasonable man would have taken as a sign of cessation of payments. Mr Anton said that he regarded the cessation of payments as being when there was public notice of the insolvency of a person; notice must be related to events of a public nature and the Court would in the end exercise discretion.

22. Mr Dodd was not convinced that universal agreement was possible on a precise definition. He therefore proposed that all that was necessary for the purposes of the Convention was to state that the cessation of payments should have the meaning attributed to it by the law of the State of the bankruptcy. Mr Anton opposed this on the grounds of the disparity between the existing rules in Member States. He thought it was essential to achieve as far as possible an agreed definition of this important concept and thought that we had got as far as was possible with the definition in the Consultative Paper. He was supported by Mr Armour, whereas Messrs. Avis, Graham and Weiss supported Mr Dodd. At the Chairman's suggestion, the Committee agreed to recommend that in the first place, efforts should be made to agree on a definition similar to that in paragraph 7.21 of the Consultative Paper but secondly, if such an international definition was not acceptable, then an obligation for a national definition as proposed by Mr Dodd was essential.

UNIFORM LAW ARTICLE 4 A

23. The Chairman recalled that 4 of the original 6 Member States had made reservations to introduce periods of relation-back varying from 6 months to 2 years in relation to acts done without valuable consideration, or 6 months to a year in the case of acts done for valuable consideration. Recommendation (i) proposed that the period quoted in U.L.4 A should be 2 years and not one year. Mr Anton said he could agree to a 2 year period provided 4A(1) was a sensible provision, but he could see no reason for striking down a 2 year old transaction if the debtor had been solvent at that time; the Article gave no discretion but said the transaction would be void.

24. The Secretary referred to the Committee's previous discussions on this Article (M.R. 7 page 11 and M.R. 8 page 3) when it became apparent that some compromise would be necessary. It was for this reason that he put forward the suggestions in Comment 6 on page 7 of Memorandum No 7, namely, that the Committee might agree the principles of the Clause were acceptable but that redrafting was necessary to clarify some of the existing phrases, such as "unusual circumstances" and "moral obligation". He also suggested that the donor's solvency might be made a factor, but the onus of proof should be on the donee. The Chairman asked if it was envisaged that s. 42 B.A. 1914 would be reduced in any way in any future Insolvency Act. The Secretary said he was not aware of any such proposal and did not think that the Blagden Report contained one. Presumably, s. 42 would have to be amended if it did not accord with the provisions of the Uniform Law. The Chairman observed that most consultees preferred 2 years to one year.

25. The Chairman said that safeguards should be included for the protection of innocent third parties. Messrs Anton and Graham agreed; the latter pointed out that a bona fide purchaser had good title against the trustee in England. Mr Anton said the phrase used in the Uniform Law was "void against the general body of creditors" and not "void absolutely". This should protect such as bona fide purchasers in this country. But there was a difficulty on the continent through the system of positive prescription of right to moveable property after a certain period of time. He suggested that we should propose that the position of bona fide purchasers should be clarified and that we should draw attention to the provisions in certain other Member States which protect persons who acquire a possessory title or have held one for a period of years. Doweries were discussed and the Secretary recalled that the Committee had previously agreed to accept the reference to doweries provided it was not intended to include marriage contracts. Mr Anton said that if some continental States had problems with doweries being abused and wanted them deemed to be dispositions without valuable consideration, we should agree to their inclusion. However, it was essential that the donee had the opportunity of proving the debtor's solvency.

26. Mr Graham asked if it was clear that settlements after a divorce order would not be caught and suggested that this could be covered by extending the "however" Clause in Clause A(1) with the words "or pursuant to a Court order". Mr Anton agreed. Mr Weiss drew attention to s. 39 of the Matrimonial Causes Act, 1973 which stated that the fact that such settlements were in compliance with a property adjustment order should not prevent the application of s. 42 (1) of the B.A. 1914 to that settlement.

27. The Committee agreed to recommend that the period in U.L.4 A should be 2 years and that Clause 1 was acceptable, subject to the provision of certain safeguards.

28. Referring to Clause 2 of U.L. 4 A, the Chairman said this dealt with disproportionate contracts and Mr Graham said that in England it was represented by fraudulent consideration. Mr Anton did not think it a feasible provision. He could not see how a Bank or financier could know in advance that a transaction he proposed entering into would be valid or not under this Clause. He thought the Clause introduced an element of uncertainty and asked for his objection to be noted and that he would consider the matter further on reading the relevant part of the draft final report.

UNIFORM LAW ARTICLE 4 B (1)

29. The Secretary said that the provisos quoted in the recommendation were taken from the Committee's preliminary views. Mr Anton said that a transaction might be made after the cessation of payments and be beneficial to the debtor and perhaps to the creditors, but it would be struck down by Clause B 1 (a) in its present form. Mr Avis said that banks usually included a clause relating to a pre-payment fee in loan agreements. The Chairman suggested that the Committee would like to see the Clause redrafted so as to catch fraudulent or suspect transactions but to allow bona fide transactions.

UNIFORM LAW ARTICLE 4 B (2)

30. Mr Anton drew attention to the objections to this Clause raised by the College of Justice in Scotland: that it was unacceptable in view of the different meanings of cessation of payments as between different States and that there was no saving for securities granted under prior subsisting obligations; that on the face of it, the Clause seemed to exclude nova debita - where a new transaction was entered into where the security was the counterpart of the benefit conferred. The Chairman said that in England the subject matter would be a fraudulent preference but without the requirement for proof of intent to prefer. Mr Anton agreed that the problem of nova debita did not really arise and it was agreed that the Clause was acceptable.

DATES OF FUTURE MEETINGS

31. The next meeting was fixed for Tuesday 8 July and the following meeting for Monday 21 July. The Chairman enquired as to the likely availability of Members during August. The Secretary said that assuming the Uniform Law was completed at the next meeting and a start made on preferential and secured creditors, the latter should be completed on 21 July. Meetings would then be required (a) to deal with general remarks, the principles of the Convention, etc and (b) to agree coordination of the final report. Messrs. Avis, Dodd, Anton and Weiss said they would be available in August and Mr Armour said he was certainly available for the first meeting which had been provisionally arranged for the 12th of August, and Mr Graham said he would try to be available.

FINAL REPORT

32. Mr Graham reminded the Chairman about a proposed meeting between Mr Anton and their two selves which was tentatively agreed for 18/19 July, when it was hoped that they would go through the final report. The Chairman recalled that he was not present at the 19th Meeting and asked if he was correct in understanding that they would take the Secretary's draft as amplified by the Committee's views and produce a final draft. The Secretary said that the only thing of which he was aware was the remark made by Mr Cork as Chairman of the 19th Meeting, that he hoped the lawyers on the Committee would ensure that no errors had crept into statements regarding the law in the final report. Mr Dodd confirmed this.

33. Mr Anton said Members should assist the Secretary as much as possible in the preparation of the Final Report. In his view this could be done most effectively by submitting to the Secretary as soon as possible observations on sections which had been drafted. He did not think that there would be a case by mid-July for looking at the coordination of the various sections.

T H Traylor
Secretary