316th Meeting

Monday, 10 June 1985, at 2.00 p.m.

Chairman: Mr. LOEWE (Austria)

The meeting was called to order at 2.10 p.m.

International commercial arbitration (*continued*)
(A/CN.9/246, annex; A/CN.9/263 and Add.1-2, A/CN.9/264)

Article 16. Competence to rule on own jurisdiction (continued)

1. Mr. GRIFFITH (Australia) said that his delegation was in favour of the reinstatement of article 17. In that case, the second point in article 16 (3) need not be considered.

2. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that the restoration of article 17 after its deletion by the Working Group would remove a substantial element of the compromise that had been arrived at. His delegation had accepted the decision to keep article 8 on the understanding that the whole compromise would be maintained. It should therefore be adhered to in respect of the other articles. Article 16 should be regarded as an indispensable element of the compromise in regard to the substantive question of the relationship between the arbitral tribunal and the court.

3. Mr. MTANGO (United Republic of Tanzania) said he strongly supported the restoring of article 17.

4. Mr. SZASZ (Hungary) was prepared to accede to giving more control to the courts than in the draft prepared by the Working Group. One way of doing so would be to restore article 17.

5. Mr. MOELLER (Observer for Finland) thought that article 17 should be restored. He was not sure that it had been the right course to treat article 16 separately.

6. Mr. GRAHAM (Observer for Canada) favoured restoring article 17, but as modified on the lines suggested by Austria and Norway.

7. Mr. PAES de BARROS LEAES (Brazil) thought that article 17 should be reconsidered as originally drafted.

8. Mr. HOLTZMANN (United States of America) said that his delegation's first preference was for the draft of the Working Group without article 17. It was prepared to consider as an alternative the proposal put forward in paragraph 14 of the secretariat's comments, in the form described by the observer for the International Council for Commercial Arbitration. If that solution was adopted, there would be a need for article 17 with regard to those situations in which there was an appeal to the court. The third and least acceptable solution would be on the lines suggested by Austria and endorsed by Canada. His delegation reserved the right to discuss the drafting suggestions made in respect of article 17 at a future stage.

9. His delegation also agreed with the Norwegian and other delegations which had suggested that challenges to jurisdiction, when made, should be regarded not simply as actions for setting aside but also as a form of defence in an enforcement action. Regarding the secretariat's comments in paragraphs 11 and 12 on the ruling by the arbitral tribunal and judicial control, he noted that jurisdictional questions were "more often" rather than "usually" ruled upon first, and that it was not particularly exceptional for an arbitral tribunal to include in an award on the merits a ruling to the effect that it had jurisdiction.

10. Mr. ROEHRICH (France) said that, in his delegation's view, the future of international commercial arbitration did not lie in continual recourse to the court of the place of arbitration. His delegation therefore had great difficulty in respect of article 17 but was nevertheless ready to try to find a compromise. It did not think, however, that the solution lay in giving the arbitrators discretionary power to decide whether there could be recourse to the court on the question of jurisdiction during the arbitral proceedings. The suggestion of the observer from the International Council for Commercial Arbitration was very dangerous. If some formula could be found for setting a time-limit, his delegation could accept it, in a spirit of compromise, but it could not accept that the decision should be left to the arbitral tribunal itself. Questions of competence should be dealt with only at the time of an action for setting aside an award. If there was to be continual recourse to the court of the place of arbitration, there was a great risk that arbitration would cease to exist in countries where it was all too easy to paralyse the proceedings by turning for one reason or another to the State courts.

11. The CHAIRMAN said that there seemed to be no clear majority either for reinstating article 17 as it stood or for deleting article 17 and keeping article 16 (3) unchanged. He suggested, as a possible compromise, a system in which the parties could require the arbitrators to rule on their own jurisdiction in a preliminary matter but in which that ruling could be the object of recourse to the court, though perhaps confined to a single level of jurisdiction in order to save time; in the meantime, the arbitrators would be able to continue their proceedings.

12. Mr. HOLTZMANN (United States of America) said that if the parties were empowered to demand that the question of jurisdiction should be settled as a preliminary matter, they would be able to dictate to the arbitrators the time when they would decide the issues before them and thereby infringe on their power to deal with the issues as they thought best. Arbitral tribunals operating under the UNCITRAL Arbitration Rules found it valuable to allow for the intertwining of the question of jurisdiction and the substantive issue.

13. Mr. MATHANJUKI (Kenya) favoured reintroducing article 17. Regarding the Chairman's proposal, he said that article 16 (3) might be amended to ensure that the parties had the right to require a preliminary decision.

14. Mr. BARRERA GRAF (Mexico) said it needed to be made clear whether article 16 (3) applied to the plea that the arbitral tribunal was exceeding its authority as well as to the plea that it had no jurisdiction. Also, in respect of article 16 (3), his delegation felt that the problem of jurisdiction was so important that it should be decided by the arbitral tribunal as a preliminary question. The decision, however, should not prevent the continuation of the proceedings, unless otherwise provided for in the arbitration agreement. The question of the tribunal having exceeded the scope of its authority, as referred to in article 16 (2), could be

decided either as a preliminary question or jointly with an award on the merits. If article 16 (3) was redrafted, it should incorporate the terms of the deleted article 17, to the effect that a party could request the court to decide whether a valid arbitration agreement existed. Unlike article 17 (1), however, it would rest with the arbitration agreement whether the proceedings should continue or be suspended.

15. Mr. SZURSKI (Observer for Poland) supported the opinion that the question of the jurisdiction of the arbitral tribunal should be settled as soon as possible and that the parties should not be deprived of the possibility of objecting to the prolongation of the arbitral proceedings if they believed the tribunal lacked jurisdiction. There were occasions on which the arbitrators were interested in prolonging the proceedings for their own reasons, and the parties should be protected in cases where they were convinced that the arbitral tribunal had no jurisdiction. Article 16 (3) should therefore be amended in the way suggested by the Chairman: on the request of a party, the arbitral tribunal should be obliged to render a preliminary decision on the question of jurisdiction so that immediate recourse to the court would become possible. There should, however, be a time-limit so as to prevent abuse and dilatory tactics.

16. Sir Michael MUSTILL (United Kingdom) said that the Chairman's suggested solution seemed in essence to be the same as that of the representative of Austria. The parties would proceed in two stages: first, there would be a challenge before the tribunal, to be followed secondly by a rapid approach to the court, subject to the conditions laid down in article 13. If the two proposals were indeed the same, his delegation would be able to support the Chairman's suggestion. He noted in passing that, although article 16 (3) said that a ruling by the arbitral tribunal that it had jurisdiction could be contested in the court, none of the proposals so far had addressed a situation in which the arbitrators decided that they had no jurisdiction. Could the parties then claim that they did? He believed that article 13 operated in both directions and there seemed to be no logical reason why article 16 should not do the same.

17. The CHAIRMAN thought that there was a substantive reason, in that the arbitrators could not be forced to continue their arbitration if they believed that they had no jurisdiction. The arbitration proceedings would thus be terminated.

18. Sir Michael MUSTILL (United Kingdom) said that the party making the plea could then take the matter to the court. The question would then arise before the court whether the arbitration agreement was operative and whether the matter should then be stayed under article 8.

19. The CHAIRMAN said that, in his opinion, the arbitration proceedings were clearly terminated and the arbitration agreement could no longer be invoked before a court.

20. Mr. GOH (Singapore) said that his delegation supported the reintroduction of article 17. Since it might be abused for delaying purposes, however, he also saw merit in the Austrian proposal as amplified by the representative of the United Kingdom.

21. Mr. RAMADAN (Egypt) was in favour of maintaining article 16 (3) as it stood. If a party wished to dispute the arbitral tribunal's ruling that it had jurisdiction, it must wait until after the issuing of the award.

22. Mr. SEKHON (India) said that his delegation had originally preferred the revival of article 17 but could accept the compromise solution suggested by the Chairman. There had been some debate on whether the court would have jurisdiction to intervene in the case of an interlocutory order as well as in that of an interim award. His delegation believed that it was the substance of the order which mattered and not the form.

23. Mr. HOLTZMANN (United States of America) said that his delegation considered the question extremely serious from the point of view of the acceptability of the Model Law and of the whole future of the institution of arbitration. Given the potential for delay in the system suggested, he thought it unlikely that anyone would choose to go to arbitration at all. The suggested compromise incorporated some of the worst features of the possibilities for delay.

24. Lord WILBERFORCE (Observer for the Chartered Institute of Arbitrators) said that a solution residing in the retaining article 16 (3) without article 17 would be totally unacceptable to the profession as it would place arbitrators in an impossible position. For example, a question raised as to the jurisdiction of an arbitral tribunal might involve many difficult points, including both elaborate questions of fact to be tried on evidence and difficult points of law. It was altogether unacceptable to force the arbitrators in these circumstances to go on with the proceedings and reach an award after a long and expensive hearing only to have the award challenged under articles 34 and 36. In his experience, far from resisting applications to the court, arbitrators were in favour of a court ruling. They would make their own ruling on a point of law to the best of their ability but they would not wish to proceed further until it had been decided whether that ruling was right or wrong. Some possibility of control by the court at an early stage was thus desirable. The arbitrators should certainly have the option, at their discretion, of joining the question of jurisdiction to the merits of the case, but they should also have the option of giving their best ruling on the legal question and then having it decided by the court. Since, according to the Chairman's suggestion, the arbitration would end if the arbitrators were to decide that they had no jurisdiction, they would almost certainly rule that they had, despite any doubts they might have, in the understanding that there would be a court decision on the matter at an early stage. His organization could therefore support an optional intermediate solution. Whether to go further and respect the wishes of the parties to force the arbitrators to go to the court depended on how far arbitrators were trusted. He concurred in the view of the observer for the International Council for Commercial Arbitration that, in general, arbitrators were to be trusted. The provisions of the Model Law ought to go further only if it was believed to be absolutely necessary in the interests of the parties.

25. Mr. SCHUMACHER (Federal Republic of Germany) supported the Austrian proposal. His main concern was that whatever solution was adopted, the arbitration procedure should not be stopped by an appeal to the court.

26. Mr. SCHUETZ (Austria), explaining his proposal, said that his delegation's basic idea had been that there should be court control as early as possible, but its position was a flexible one. If the arbitral tribunal made a ruling on jurisdiction in conjunction with the award on the merits, the decision on jurisdiction would be taken in the setting-aside procedure. If, however, the arbitral tribunal made a preliminary decision on jurisdiction, his delegation would propose a system similar to that set out in article 13 (3).

27. Mr. LOEFMARCK (Sweden) said he was in favour of retaining article 16 (3) as it stood and did not wish article 17 to

be reintroduced. If the arbitral tribunal found that it had no jurisdiction, then the competent body must be the court, according to the rules of general jurisdiction. No one could be prevented from bringing a dispute before a court unless there was a valid arbitration clause, but it was precisely that question which the court had to decide if the parties were not agreed. If article 17 was reintroduced, it might be possible for the court specified in article 6 to reach a different decision from the court which should properly take up the dispute. His delegation found that possibility quite unacceptable.

28. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that in the course of deliberations it had been pointed out that the arbitration proceedings might continue and that the arbitral tribunal might even take a decision on substance while the question of jurisdiction was still under consideration by the court. It should, however, be realized that in such a case the arbitral award would be deprived of legal significance pending the court decision on jurisdiction. It was impossible to set a limit on the time it might take for that matter to be decided by the court of first instance and even more so by the appeal court. In fact, the attempt to speed up proceedings might merely result in considerable delay. However, he had been impressed by the argument of the observer for the Chartered Institute of Arbitrators that in difficult cases the arbitrators themselves were interested in having the question of jurisdiction settled by the court. As a compromise, the Model Law might therefore cover the possibility of the arbitral tribunal taking, at its discretion, an interlocutory decision on jurisdiction in complex cases which could be appealed to the court. But at the same time, there should not be a rule making it possible in all cases without exception to resort to the court for a decision on the arbitrator's jurisdiction.

29. The CHAIRMAN said the majority appeared to favour allowing the question of the jurisdiction of the arbitral tribunal to be decided by a court at an earlier stage than the award. However, not many members of the Commission were in favour of the reintroduction of article 17. It would appear to be easiest to find a compromise on the basis of the Austrian proposal. It was true that it might be used for delaying tactics, but if the court proceedings on jurisdiction were sufficiently delayed, they could always be joined to the appeal proceedings against the award. He therefore suggested that the secretariat, with the assistance of the Austrian representative, should draft a text for further consideration by the Commission.

30. Mr. GRIFFITH (Australia) observed that both the United Kingdom delegation and his own delegation had associated themselves with the Austrian proposal if article 17 was not to be reintroduced. He suggested that the United Kingdom representative might assist the secretariat together with the Austrian representative.

31. The CHAIRMAN suggested that the Australian representative might also assist the secretariat.

32. Mr. MTANGO (United Republic of Tanzania) said that the possibility of resurrecting article 17 should be left open in case the Austrian proposal did not prove satisfactory.

33. Mr. HOLTZMANN (United States of America) said that no one had spoken against the Norwegian proposal to the effect that a challenge to jurisdiction should not only be regarded as an action to set aside an award but also as a defence to a court action for recognition and enforcement of an award. The Austrian representative's draft might include that point.

34. The CHAIRMAN suggested that matter would be more appropriately discussed in conjunction with article 36.

35. *It was so agreed.*

Article 18. Power of arbitral tribunal to order interim measures

36. Mr. SEKHON (India) said that article 18 appeared to overlap with article 9 as far as the subject-matter of the dispute was concerned. Both the court and the arbitral tribunal had power to order interim measures. In the event of contradictory orders, presumably the court order would prevail on penalty of contempt of court. Would an order by the arbitral tribunal be enforceable?

37. Mr. HERRMANN (International Trade Law Branch) said the question had been raised before. The main consideration was whether the Commission wished to deal with the matter in the Model Law. The two articles, as far as purpose was concerned, were not in conflict. Article 9, as the Commission had already agreed, dealt merely with the question of compatibility between the agreement of the parties to arbitrate and the request to a court for interim measures or the decision of that court to grant such measures. It did not relate to the question of which measures might be available under a given legal system. In that context, it was his understanding that the Commission had wished article 9 to have a global scope of application. The court, if it wished to grant an interim measure, ought not to be precluded from doing so by the existence of an arbitration agreement, irrespective of where the arbitration was taking place, and the request to a court of whatever country was compatible with, and did not constitute a waiver of, an arbitration agreement governed by the Model Law.

38. Article 18 merely stated that the arbitral tribunal had an implied power to order certain interim measures, unless otherwise agreed by the parties. Since under some national legislations an arbitral tribunal did not have such powers, that point should be clarified. If properly analysed, the articles in themselves did not create a conflict, but there was always the possibility that a conflict might arise, bearing in mind the global scope of article 9, which covered the possibility for a party to request a decision from a court in a country other than that under consideration.

39. Mr. BARRERA GRAF (Mexico) noted that in the comments by Governments, Austria had suggested the deletion of article 18 (A/CN.9/263, p. 31, para. 1). In any case, the powers of the arbitral tribunal under that article would have to be restricted. However, article 18 was probably not required at all in view of the clarification on the scope of article 9 just given by the secretariat. If, however, it was retained, it should be amended, as Mexico had already suggested, so as to provide that the security which the arbitral tribunal might require from a party should cover possible damage suffered by the other party as well as the costs of the interim measure itself.

40. Mr. HOELLERING (United States of America) suggested that, as previously agreed with regard to interim measures available from a court, the record of the discussion on article 18 should also reflect that, under appropriate circumstances, the arbitral tribunal would be entitled to order the protection of trade secrets and proprietary information.

41. Lord WILBERFORCE (Observer for the Chartered Institute of Arbitrators), referring to the Mexican proposal,

pointed out that the secretariat commentary on article 18 stated that the security required by the arbitral tribunal "may also cover any possible damages" (A/CN.9/264, p. 43, para. 5). It was not clear whether that was intended to mean that the present wording of article 18 covered that contingency or to recommend that it should be extended to do so. He would be in favour of the inclusion of a provision on damages.

42. Mr. ILLESCAS ORTIZ (Spain) said he was disposed to support the Mexican proposal regarding damages; the damages might also cover loss of profit by the affected party. It would not, however, be an easy matter to assess the cost of either the interim measure or the necessary cover for damages.

43. The CHAIRMAN said that it would be better not to enter into detail but to refer to "reasonable security", leaving it to the arbitrators to determine what was reasonable for the purpose.

44. Mr. HOLTZMANN (United States of America) drew attention to article 26 (2) of the UNCITRAL Arbitration Rules, which contained language nearly identical to the present draft. In the absence of any strong reason for thinking that those Rules were inadequate, they should be retained, in order to minimize confusion.

45. Mr. TANG Houzhi (China) said it was his understanding that under articles 9 and 18, a party might submit a request for interim measures either to the court or to the arbitral tribunal. Under the Chinese legal system, a party had to submit such a request to the arbitral tribunal, which, if it deemed the request receivable, referred it to the court for a ruling. He asked whether it was possible to submit a request for interim measures both to the court and to the arbitral tribunal.

46. The CHAIRMAN said that in theory the answer was in the affirmative, but it would be a matter of court procedure whether the court was competent to consider a request for interim measures while a request for such measures was pending with the arbitral tribunal. An affirmation of the UNCITRAL Arbitration Rules would imply that parties might address themselves to one or to the other body.

47. Mr. ROEHRICH (France) said that his delegation had no objection to the suggestion made by the representative of Mexico but thought that the amount of the damages should be indicated in the text. He did not agree with the representative of the United States that the Commission must use the UNCITRAL Arbitration Rules as its ultimate authority in drafting the Model Law. These Rules covered certain specific situations, and the Commission was not necessarily bound by them, especially if it could arrive at a better formulation more relevant to the specific purpose which the Model Law was intended to serve.

48. Mr. HOLTZMANN (United States of America) said that the term "reasonable security" or "appropriate security" was acceptable because the UNCITRAL Arbitration Rules were quite broad and allowed recovery of all damages that resulted.

49. After a procedural discussion in which Mr. ROEHRICH (France), Mr. HOLTZMANN (United States of America) and the CHAIRMAN took part, the CHAIRMAN noted that during the Commission's discussions, it had been suggested that the formulation of the final sentence of article 18 would be slightly improved if "reasonable" were inserted before "security". If there were no objection, he would take it that the Commission agreed to keep article 18 with that improvement.

50. *It was so agreed.*

Article 19. Determination of rules of procedure

Article 19 (1)

51. Mr. HOLTZMANN (United States of America) said that the freedom of the parties to agree on arbitral proceedings should be clearly acknowledged to be a continuing right and not one to be exercised only during the period preceding the arbitration.

52. Mr. BONELL (Italy) said that in its written observations, Italy had suggested that the text should stipulate that the freedom of the parties to agree on whatever procedure they desired ended with the start of the proceedings, unless the arbitrators themselves agreed to the proposed modification. After having been given certain terms of reference, the arbitrators should not be obliged to adopt an entirely different procedure. Since the Model Law did not define the contractual relations between the arbitrators and the parties, it must at least specify that changes could be made only with the consent of the arbitrators.

53. Mr. BROCHES (Observer for the International Council for Commercial Arbitration) said that when the Working Group had discussed the issue, the majority had favoured granting the parties a continuing right to decide on the procedure. The comment made by the representative of Italy was, however, a very valid one.

54. Mr. HERRMANN (International Trade Law Branch) added that in its discussion of article 26 on the appointment of experts by the arbitral tribunal, the Working Group had concluded that an agreement on such appointment should be recognized only if it was made before the arbitration began. In general, however, the Working Group had favoured the more flexible approach of enabling the parties to change the rules of procedure at any stage.

55. The CHAIRMAN said that arbitration entailed a contractual relationship not only between the parties but also between the parties on the one hand and the arbitrators on the other; that second aspect involved the mandate and remuneration of the arbitrators. The points made by the representatives of the United States and Italy raised the issue of what an arbitrator could and should be expected to do in all fairness. If the arbitrators objected to being asked to change their procedure after the proceedings had begun, they could always demand to be released from their responsibilities and be paid accordingly.

56. Mr. LAVINA (Philippines) said that although the parties could be expected to be reasonable regarding changes in the arbitral procedure, there was no way of ensuring that they would be. For that reason, the United States proposal could cause extensive complications, whereas the Italian proposal would result in an overly rigid régime. His delegation favoured the text as it stood.

57. Mr. BONELL (Italy) said that his country's proposal was intended to make it clear that the parties were permitted to change the procedure to be followed, subject to the agreement of the arbitrators. The Chairman had noted that arbitration was based on a contractual relationship between the parties and the arbitrators: it was a general principle of contractual law that the content of a contract could not be changed unilaterally. Flexibility in arbitration proceedings was a universally recognized principle, but the parties must at some point take a final stand.

58. Mr. AYLING (United Kingdom) said that the comments made by the representative of Italy had great merit. It should be acknowledged in the Model Law that the arbitrators had a contractual interest in the terms of the arbitral proceedings and that they should be able to consent to or to reject those terms.

59. The CHAIRMAN pointed out that if that were the case, the parties could terminate the mandate of the arbitrators at any time. Although he personally did not endorse the Italian proposal, it seemed that many members of the Commission did.

60. Mr. MTANGO (United Republic of Tanzania) said that he endorsed the Italian proposal.

61. In reply to a question by Mr. de HOYOS GUTIERREZ (Cuba), the CHAIRMAN said that if the parties agreed on institutional arbitration, they thereby also agreed to abide by the rules of procedure of the institution in question.

62. Mr. JARVIN (International Chamber of Commerce) said that in its written comments, his organization had proposed that where the parties had referred to the rules of procedure of a given institution, they should be deemed to have agreed that the arbitration would be conducted in accordance with those rules. Article 19 (1) seemed to require that the parties make an express agreement at the start of the arbitration.

63. Mr. SAWADA (Japan) said that the Working Group had produced its text after extensive negotiations and that it would be inadvisable to depart from that text.

64. Mr. LOEFMARCK (Sweden) said that he supported the Italian proposal but felt that the proper time for agreement to be reached between the parties and the arbitrators was at the start of the proceedings, not when the arbitrators had already accepted their duties.

65. Mr. SZASZ (Hungary) said that the text should be retained as it stood; the Commission's discussion, which was really an interpretation of the text, would be reflected in the summary record.

66. Mr. BROCHES (Observer for the International Council for Commercial Arbitration) said that the text provided that the parties had a continuing right to change the procedure, but that the arbitrators did not have to accept anything they had not specifically agreed to and would consequently have the last word regarding the procedure. The Commission's discussion proved that the general formulation used in the text was more appropriate than a more precise wording, which would only lead to difficulties and confusion.

67. The CHAIRMAN said that, after all, the time-frame allowed for changing the procedure to be followed could be settled by contract between the parties and the arbitrators. If he heard no objection, he would take it that the Commission wished to leave the text of article 19 (1) as it stood.

68. *It was so agreed.*

Article 19 (2)

69. Mr. BONELL (Italy) said that the second sentence would create difficulties in respect of Italian law, since the admissibility, relevance, materiality and weight of evidence fell within the scope of Italian substantive law.

70. Mr. HERRMANN (International Trade Law Branch) said that one or the other of the subjects mentioned in the final sentence might be regarded in some legal systems as relating to substantive law. Nevertheless, it was not inappropriate for a Model Law on arbitration to deal with the procedure of taking and weighing evidence. Regarding the compatibility within the Model Law itself between article 19 (2) and article 28, it was the secretariat's view that if the Model Law was adopted as it stood, admissibility and the other issues mentioned in article 19 (2) would be decided upon at the discretion of the arbitral tribunal, unless otherwise agreed by the parties, and would not be affected by the choice of substantive law to be made under article 28.

71. Mr. BONELL (Italy) said that he agreed with Mr. Herrmann that there was a major difference between article 19, in which the word "Law" was used, and article 28, which referred to "rules of law". His delegation would prefer article 19 (2) to be amended to conform to the wording of article 28, which was broader. With that amendment, the text would clearly show that a strictly nationalistic approach must not be taken in respect of substantive law. The arbitrators would clearly have the power to decide for themselves questions of admissibility, relevance, materiality and weight of evidence, as they would no longer be bound by the application of a specific national law. If the final sentence was not amended along those lines, his delegation proposed that it should be deleted.

72. The CHAIRMAN suggested that another option might be to add, at the end of the final sentence, the phrase "subject to the binding provisions of the applicable law".

73. Mr. PELICHET (Observer for the The Hague Conference on Private International Law) said that he did not understand the Italian delegation's problem with the text. As he read it, the final sentence simply indicated the powers of the arbitrators in respect of admissibility of evidence but did not dictate which national law, whether substantive or procedural, they would use in their judgement on admissibility.

74. Mr. HOLTZMANN (United States of America) said that in its written observations, the International Chamber of Commerce had proposed an addition to article 7 referring specifically to arbitration administered by a permanent institution (A/CN.9/263/Add.1, p. 7, para. 8). His delegation believed that the Model Law should not refer to the rules of a permanent institution but that where the parties had agreed to refer any dispute to arbitration under specific procedural rules, the arbitration must be conducted in accordance with those rules, in so far as they did not conflict with the mandatory provisions of the Model Law. He therefore suggested that article 19 (2) should be amended to include a reference to the observance of such procedural rules.

75. Mr. MTANGO (United Republic of Tanzania) requested that the text of the amendment the representative of the United States had in mind be distributed to members of the Commission.

76. The CHAIRMAN suggested that, if the Commission agreed, it should resume its discussion of article 19 (2) following completion of the discussion of article 28.

77. *It was so agreed.*

The meeting rose at 5.15 p.m.