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## UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Ninth session

COMMITTEE OF THE WHOLE (II)

SUMMARY RECORD OF THE 18th MEETING

Held at Headquarters, New York,  
on Friday, 23 April 1976, at 10 a.m.Chairman: Mr. LOEWE (Austria)

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International commercial arbitration (continued)

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The meeting was called to order at 10.10 a.m.

INTERNATIONAL COMMERCIAL ARBITRATION (A/CN.9/112 and Add.1, A/CN.9/113, A/CN.9/114)  
(continued)

Draft UNCITRAL Arbitration Rules

Article 28 (A/CN.9/IX/C.2/CRP.32)

1. Mr. PIRRUNG (Federal Republic of Germany) said that he had discussed the wording of paragraph 3 of the text proposed in document A/CN.9/IX/C.2/CRP.32 with the United States representative, who had felt that the words "shall take into account the terms of the contract" might be used by United States lawyers as a basis for not applying the Rules. He therefore proposed that paragraph 3 should read: "In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."
2. Mr. GUEST (United Kingdom), Mrs. OYEKUNLE (Nigeria), Mr. GUEVARA (Philippines), Mr. TSEGAH (Ghana), Mr. TAKAKUWA (Japan), Mrs. BELEVA (Bulgaria) and Mr. JENARD (Belgium) supported that proposal.
3. Mr. MANTILLA-MOLINA (Mexico) opposed the proposal, since he felt that the previous wording gave the arbitrators more flexibility.
4. The Committee decided to retain the text of article 28 as contained in document A/CN.9/IX/C.2/CRP.32, as amended by the Federal Republic of Germany.

Model arbitration clause or separate arbitration agreement

5. The CHAIRMAN announced that in accordance with the views expressed at the previous meeting, the delegations of Nigeria, the United Kingdom and the United States had prepared for consideration by the Committee the following revised text of the model arbitration clause or separate arbitration agreement proposed in paragraph 20 of document A/CN.9/112:

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

"Note - the parties may wish to consider adding:

- "(a) The appointing authority shall be ... (name of institution or person);
- "(b) The number of arbitrators shall be ... (one or three);
- "(c) The place of arbitration shall be ... (town or country);
- "(d) The language(s) to be used in the arbitral proceedings shall be

...

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6. The Committee approved the revised text of the model arbitration clause or separate arbitration agreement proposed by Nigeria, the United Kingdom and the United States.

The meeting was suspended at 10.30 a.m. and resumed at 11.05 a.m.

Approval of the draft UNCITRAL Arbitration Rules (A/CN.9/IX/C.2/CRP.35 and Add.1-2)

7. The CHAIRMAN drew attention to document A/CN.9/IX/C.2/CRP.35 and Add.1-2, which contained the text of the draft UNCITRAL Arbitration Rules agreed on so far by the Committee. He pointed out that the articles had been given their original numbers, and would be renumbered consecutively after the Rules had been approved by the Committee.

8. The CHAIRMAN drew attention to the two alternative versions of article 1 appearing in document A/CN.9/IX/C.2/CRP.35 and invited the Committee to decide which one should be retained.

9. Mr. MANTILLA-MOLINA (Mexico) suggested that, in paragraph 2 of the variation of article 1, the word "national" should be inserted before the words "law applicable".

10. It was so decided.

11. The variation of article 1 was approved as amended.

### Article 3

12. Mr. PIRRUNG (Federal Republic of Germany) pointed out that the words "or if it is delivered" had been omitted from the first sentence of article 3, paragraph 1, after the words "delivered to the addressee".

13. Mr. JENARD (Belgium) suggested that the second sentence of paragraph 1, should be reworded, since delivery to the addressee was only one of the forms which delivery could take. He also suggested a slight drafting change to the French text.

14. The CHAIRMAN accordingly suggested that the second sentence of paragraph 1 should be amended to read: "Notice shall be deemed to have been received on the day it is so delivered."

15. It was so decided.

16. Article 3 was approved as amended.

### Articles 4 and 5

17. Articles 4 and 5 were approved.

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Article 6

18. Mr. JENARD (Belgium) proposed that the words "of the claimant's" should be deleted.

19. It was so decided.

20. Article 6 was approved as amended.

Article 7

21. Mr. HOLTZMANN (United States of America) pointed out that, in article 7, paragraph 3, the words "at the request of one of the parties" had been omitted from the first sentence, after the words "The appointing authority shall". He proposed that they should be reinserted.

22. It was so decided.

23. Article 7 was approved as amended.

Article 8

24. Mr. ST. JOHN (Australia) pointed out that, in article 8, paragraph 3, the words "appointed in the same way as ... under article 7" were ambiguous and should be clarified.

25. Mr. HOLTZMANN (United States of America) felt that that point might be a valid one, and suggested that paragraph 3 should be left pending until delegations had had time to consider it.

26. It was so decided.

27. Article 8, paragraphs 1 and 2, were approved.

Article 8 bis

28. Article 8 bis was approved.

Article 9

29. Mr. MANTILLA-MOLINA (Mexico) pointed out that the words "quienes hagan averiguaciones" in the Spanish version of article 9, paragraph 3, were quite different in meaning from the corresponding English words "who approach him". He also felt that paragraph 3 should be transferred to article 7, since it dealt with the appointment of arbitrators. Finally, in the Spanish text, the words "circunstancias que probablemente den lugar a dudas justificadas acerca de su imparcialidad" should be toned down.

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30. The CHAIRMAN suggested that the language of paragraph 3 should be brought into line with that of article 9, paragraph 1, which was milder.

31. It was so decided.

32. Mr. JENARD (Belgium) suggested that article 9, paragraph 3, should constitute a separate article, article 8 ter, under the heading "Challenge of arbitrators".

33. It was so decided.

34. Article 9 was approved as amended.

#### Article 10

35. Mr. ROEHRICH (France), referring to the French text, pointed out that it would be better to say "nitifiée" rather than "communiquée" in the third line of article 10, paragraph 1, and that the word "acceptation" in paragraph 3 should be changed to "reconnaissance" the second time it was used since two different concepts were involved. Finally, he drew attention to a lack of conformity in the form of the French and English texts of paragraph 3.

36. The CHAIRMAN accordingly suggested that the French text of article 10, paragraph 3, should be amended to read:

"Lorsqu'un arbitre a été récusé par une partie, l'autre partie peut accepter la récusation. L'arbitre récusé peut également se déporter. Cette acceptation ou ce déport n'impliquent pas reconnaissance de la validité des motifs de la récusation. Dans ces deux cas, ... l'arbitre désigné."

37. It was so decided.

38. Paragraph 10 was approved as amended.

#### Article 11

39. Article 11 was approved.

#### Article 12

40. Mr. HOLTZMANN (United States of America) pointed out that the verb had been omitted at the end of article 12, paragraph 2, in both the French and English texts.

41. Mr. ST. JOHN (Australia), referring to the English text, questioned whether it was sufficient to refer to the procedure "applicable to the appointment or choice of an arbitrator as provided in the preceding articles".

42. Mr. BERGSTEN (Secretary of the Committee) suggested that the reference should be to "the procedure in articles 7 or 8 that was applicable to the appointment or choice of the arbitrator being replaced".

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43. Mr. PIRRUNG (Federal Republic of Germany) said that in that case reference should also be made to articles 8 bis and 8 ter.

44. It was so decided.

45. Article 12 was approved as amended.

46. Mr. LEBEDEV (Union of Soviet Socialist Republics) pointed out that, in order to be consistent, reference should be made to articles 8 bis and 8 ter also in article 11, paragraph 2.

47. It was so decided.

Article 12 bis

48. Article 12 bis was approved.

Articles 14 and 15

49. Articles 14 and 15 were approved.

Article 16

50. Mr. ST. JOHN (Australia) suggested that the word "should" in the last line of article 16, paragraph 1, should be deleted.

51. It was so decided.

52. Article 16 was approved as amended.

Article 17

53. Mr. ROEHRICH (France), referring to the French text of article 17, pointed out that the verb at the end of paragraph 1 should be in the singular, namely, "doit être jointe".

54. Article 17 was approved, subject to that drafting change.

Articles 18 and 18 bis

55. Articles 18 and 18 bis were approved.

Articles 19 and 20

56. Mr. JENARD (Belgium), referring to the French text of article 19, paragraph 1, and article 20, said that since the Committee had decided to use the term "tribunal arbitral" rather than "arbitres", the relevant pronouns must be changed to the singular. Some had been overlooked.

57. Articles 19 and 20 were approved, subject to drafting changes to the French text.

The meeting was suspended at 12 noon and resumed at 12.20 p.m.

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Articles 20 bis to 25

58. Articles 20 bis to 25 were approved.

Article 25 bis

59. Mr. JENARD (Belgium) pointed out that in the French text of article 25 bis, paragraph 3, the phrase should be "en raison de circonstances exceptionnelles" rather than "en raison des ...".

60. Mr. BERGSTEN (Secretary of the Committee), referring to paragraph 1, said that the words "and if there be none" had been suggested as a rendering of the French "faute desquels".

61. It was so decided.

62. Article 25 bis was approved as amended.

Article 26

63. Article 26 was approved.

Article 26 bis

64. Mr. ROEHRICH (France), referring to the French text of article 26 bis, paragraph 1, said that the expression should be "à la majorité" rather than "par la majorité".

65. Mr. GUEST (United Kingdom), referring to the English text, suggested that the last part of paragraph 2 should be amended to read "subject to revision, if any, by the arbitral tribunal".

66. It was so decided.

67. Mr. LEBEDEV (Union of Soviet Socialist Republics) proposed that the words "award or other" should be inserted after the word "any" in paragraph 1.

68. It was so decided.

69. Article 26 bis was approved as amended.

Articles 27 and 28

70. Articles 27 and 28 were approved.

Article 29

71. Mr. MANTILLA-MOLINA (Mexico) said that the final sentence of article 29, paragraph 1 bis, should be reworded to indicate quite clearly that any objections by a party must be well founded in order to prevent termination of the proceedings.

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72. Mr. PIRRUNG (Federal Republic of Germany) accordingly proposed that the word "objects" should be replaced by the words "puts forward founded objections".

73. It was so decided.

74. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that the words article 27, paragraph 7", in the last line of article 29, paragraph 3, should be replaced by "article 27, paragraphs 2 and 4 to 7" since all those paragraphs were applicable.

75. It was so decided.

76. Article 29 was approved as amended.

#### Articles 30 and 31

77. Articles 30 and 31 were approved.

#### Article 32

78. Mr. MANTILLA-MOLINA (Mexico) suggested that, in the Spanish text of article 32, paragraph 2, the word "rectificarse" should be replaced by "subsanarse".

79. It was so decided.

80. Article 32 was approved as amended.

#### Article 33

81. Mr. PIRRUNG (Federal Republic of Germany) said that there were a number of instances in article 33 where the word "arbitrators" should be replaced by the words "arbitral tribunal".

82. The CHAIRMAN said that the Secretariat would make the appropriate changes in all the articles.

83. Mr. MANTILLA-MOLINA (Mexico), referring to article 33, paragraph 1 (d), said that provision should be made for the compensation of witnesses for loss of earnings, as well as for travel and per diem expenses.

84. Mr. MELIS (Austria) proposed that paragraph 1 (d) should read: "The travel and other expenses and compensation to the extent such expenses are approved by the arbitral tribunal".

85. Mr. HOLTZMANN (United States of America) proposed that paragraph 1 (d) should read "The travel and other expenses and compensation to the extent approved by the arbitral tribunal".

86. Mrs. OYEKUNLE (Nigeria) objected to the use of the word "compensation", which was too broad.

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87. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed that the words "per diem" should be replaced by the word "other".

88. It was so decided.

89. Mr. JENARD (Belgium) proposed that, in view of the length of article 33, it might be better to divide it into three separate articles, with paragraph 1 constituting article 33, paragraph 1 bis constituting article 33 bis, and paragraphs 2 to 5 constituting article 33 ter.

90. It was so decided.

91. Article 33 was approved as amended.

Article 34

92. Article 34 was approved.

The meeting rose at 1.15 p.m.