SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-SECOND MEETING

held on Wednesday, 9 April 1975, at 3.20 p.m.

Chairman: Mr. LOEWE Austria

INTERNATIONAL COMMERCIAL ARBITRATION (agenda item 7)(continued)(A/CN.9/97 and Add.1-4)

Examination of the preliminary draft "International Commercial Arbitration Rules" (continued) (A/CN.9/97)

Article 3 (Notice of arbitration)

Mr. GUEIROS (Brazil) proposed that paragraph 2 should follow the formulation used in paragraph 2 bis of article 6 (Appointment of Sole Arbitrator) and that paragraph 3 should be deleted altogether, because of the Commission's decision concerning administered arbitration.

The CHAIRMAN pointed out that, although a majority of the members of the Commission appeared to take the view that the question of administered arbitration should not be dealt with, no decision had in fact been taken.

Mr. KOPAČ (Czechoslovakia) said that because of the provisions of the Convention on the Limitation Period in the International Sale of Goods, it was important to specify at what point arbitral proceedings would be deemed to have commenced.

Mr. ROGNLIEN (Norway) said that the Commission should endeavour to give clear guidelines to the inter-sessional committee or working group that was to be set up. Since it seem d clear that administered arbitration would not be dealt with, paragraph 3 should be deleted. With regard to paragraph 2(c), he proposed the insertion of the words "transaction or relationship" after the word "contract".

Mr. KRISPIS (Greece) agreed with the Czechoslovak representative on the importance of specifying the time at which arbitral proceedings would be deemed to have commenced. The time of commencement of proceedings also had an effect on the question of interest rates.

Mr. RÉCZEI (Hungary) drew attention to the relationship between article 3 and article 16 and suggested that it should be stated that the notice of arbitration might also incorporate the statement of claim. He also pointed out that, in pursuance of article 15, the right to determine the language to be used in the proceedings lay with the arbitrators after their appointment, and there was therefore no provision dealing with the question of the language of the notice of arbitration. He therefore proposed that a sentence along the following lines should be inserted in article 3: "In the absence of agreement between the parties concerning the language to be used in the arbitral proceedings, the notice of arbitration shall be written in the language of the contract or in the language used by the parties in their correspondence."

Mr. CHAFIK (Egypt) agreed with the representative of Brazil concerning the question of administered arbitration. He felt that no decision was needed at the present stage. He endorsed the Hungarian representative's remarks concerning article 3 and article 16, and thought that the notice of arbitration and statement of claim might be combined.

Mr. JAKUBOWSKI (Poland) agreed with the representative of Czechoslovakia that because of the provisions of the Convention on the Limitation Period in the International Sale of Goods the time of commencement of proceedings should be specified. He was not, however, in favour of combining the notice of arbitration with the statement of claim, because it was neither necessary nor perhaps practical for a claimant to draft a detailed statement of claim at the time when he wished to commence proceedings. Another reason for separating the two procedures was that the parties might still be negotiating with each other and it would be pointless to draft a long statement of claim when the possibility of reaching a settlement still existed. Proceedings might be deemed to have commenced at the moment of receipt of the notice of arbitration by the respondent, and since the notice was likely to be a very short document, he saw no need to regulate the question of its language, as the representative of Hungary had proposed.

Mr. SONO (Japan) drew the Commission's attention to article 14 of the Convention on the Limitation Period in the International Sale of Goods, which referred to the cessation of the limitation period when either party commenced arbitral proceedings. In his view, therefore, there was no need for the present rules to specify the time of commencement of proceedings for the purposes of prescription.

Mr. BENNETT (Australia) expressed his delegation's general agreement with article 3, but he was opposed to the proposal to combine the notice of arbitration with the statement of claim, on the ground that the preparation of a statement of claim might be a time-consuming process. Perhaps, however, the text could be amended so as to enable a party to combine the two procedures if he so wished.

The Australian delegation also proposed that paragraph 2 should contain only essential points. For instance, he did not think that sub-paragraph (e) was really necessary and it might operate to the disadvantage of a claimant by causing him to state prematurely the remedy desired. He therefore proposed the deletion of sub-paragraph (e) and suggested that the Secretariat should consider the other sub-paragraphs to see whether the contents of the notice could be reduced. If other members of the Commission felt that his proposal was too radical, he proposed that sub-paragraph (e) should be qualified by wording such as "a brief indication of ...".

Mr. RÉCZEI (Hungary) explained his own proposal for combining the notice of arbitration with the statement of claim, which was misunderstood, and expressed his support for the proposal made by the representative of Australia. He felt, however, that a decision would have to be taken on the question of language.

Mr. SAM (Ghana) agreed with the representative of Hungary concerning the question of the relationship between article 3 and article 16. He also agreed with the representative of Australia that it would be more logical to include sub-paragraph (e) in the statement of claim rather than in the notice of arbitration. He felt that time would be gained by separating the two procedures.

He agreed with those delegations who believed that it was necessary to specify when the proceedings should be deemed to have commenced, and he thanked the representative of Japan for drawing attention to article 14 of the Convention on the Limitation Period in the International Sale of Goods, the language of which might be followed in the Rules. With regard to the introductory clause of paragraph 2, he suggested that because of differences in national legislation, it might be appropriate to insert the words "inter alia" after the word "contain".

Mr. JENARD (Belgium) expressed general support for article 3. In his view, it should be made clear that notice must be given by registered post. There was no need to refer separately to an arbitration clause and an arbitration agreement. He had no objection to sub-paragraphs (a) to (f).

Mr. GUEST (United Kingdom) expressed his support for the remarks made by the representative of Australia. However, he did not see the need to specify the time of commencement of proceedings, because the question of prescription was one of substantive law which could not be affected by the UNCITRAL arbitration rules.

The CHAIRMAN, summarizing the discussion on article 3, said that the Commission appeared to agree that no special rules should be prepared to cover administered arbitration at the present time. Some representatives felt that article 3 should specify at what point arbitral proceedings would be deemed to have started. Others felt that such an addition was unnecessary, because neither agreement between the parties nor the UNCITRAL rules could override the provisions of the Convention on the Limitation Period in the International Sale of Goods. With regard to the idea of combining the notice of arbitration with the statement of claim, the general feeling seemed to be that a party should have the right to combine the two procedures if he so wished. If they were combined, the question of language would arise, but that would be settled in article 16 rather than in article 3. In any event, the notice of arbitration would be brief. He suggested that the question could be taken up by the working group. Some representatives felt that the contents of the notice should be restricted to a minimum and that sub-paragraph (e) should be deleted. One delegation had said it was important that the working group should deal with the question of the type of notice. Another delegation had expressed the need for harmonizing the language of article 3 and article 16, giving preference to the language of the latter.

Article 4 (Representation and Communications)

Mr. ROGNLIEN (Norway) said that in paragraph 3 the period of five days allowed for the receipt of a communication by airmail was insufficient. He proposed that the words "five days" should be replaced by the words "seven working days". It would have to be decided how to make allowance for holidays, both in the country of the sender and in the country of the recipient. A model could be found in the rules of calculation of time limits in the 1974 Convention on the Limitation Period in the International Sale of Goods.

Mr. PIRRUNG (Federal Republic of Germany) thought that paragraph 3 could be deleted altogether, because the Post Office receipt would provide the necessary evidence.

Mr. GUEIROS (Brazil) expressed general support for the text but agreed with the representative of Norway that five days was too short a period for receipt of a communication by inter-continental airmail, which often took as much as 10 to 15 days. He felt that the point would be best covered under paragraph 2.

Mr. JAKUBOWSKI (Poland) disliked the element of presumption contained in paragraph 3 and agreed with the proposal by the representative of the Federal Republic of Germany that it be deleted. If other members felt that the paragraph should be retained, he would propose a longer period of up to 15 days in the case of airmail. With regard to the second sentence of paragraph 1, he did not agree that a communication alone should be considered adequate evidence that a counsel or agent had a proper power of attorney.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) agreed with representatives who advocated the deletion of paragraph 3.

Mr. RÉCZEI (Hungary) also favoured the deletion of paragraph 3. With regard to the second sentence of paragraph 1, he proposed that the word "deemed" should be replaced by the word "considered".

Mr. ROGNLIEN (Norway) said that the Commission would have to consider all the provisions on communications and time-limits contained in the rules in relation to each other. The propriety and necessity of the provision in paragraph 2 of article 4 should be considered separately in respect of each time-limit established in the rules. That provision was acceptable (although unnecessary) in relation to articles 5, 6 and 7, but hardly in respect of article 9. In his view, time should start running on receipt of a notification and the recipient should be regarded as having acted in time provided that he sent his reply in an appropriate manner within the specified period.

Mr. MELIS (Austria) favoured the retention of paragraph 3, because if a party refused altogether to react to a notice of arbitration, it would make things very difficult for the arbitrators. However, the words "or telex" could be omitted because all telex messages had the date of transmission clearly marked.

Mr. KRISPIS (Greece) agreed with the representatives of Norway and Poland concerning paragraph 3, and thought that the paragraph should be deleted. With regard to the refusal of an addressee to react to a notice, he considered that the national legislation of the country concerned would cover the situation.

Mr. GOKHALE (India) said he agreed that paragraph 3 of article 4 should be deleted. The provision in that paragraph was of the nature of a rule of evidence, and paragraph 5 of article 21 (Hearings, evidence) specifically stated: "Conformity to legal rules of evidence shall not be necessary".

Mr. BENNETT (Australia) said he favoured the retention of paragraph 3, for the reasons given by the Austrian representative, but with an increased time span.

Mr. SAM (Ghana) said he agreed with several speakers who considered that paragraph 3 should be retained but that the number of days specified should be increased. In particular, he thought it would be better to refer to "working days".

He was not certain that paragraph 2 was needed. The working group might consider the possibility of deleting it.

Mr. SONO (Japan) said he shared the concern of the representative of Greece with regard to the situation that might arise if a party refused to receive or acknowledge a communication. In that connexion, paragraph 2 of article 14 of the Convention on the Limitation Period in the International Sale of Goods was worthy of note: it provided inter alia, that the limitation period commenced to run when a request that the claim in dispute be referred to arbitration was "delivered at" the place of business of the other party. 9/ He emphasized the importance of adopting the same approach in paragraph 2 of article 4 of the rules. In his opinion the change would also make possible the deletion of paragraph 3.

The CHAIRMAN said that, with regard to paragraph 1, two questions had arisen: first, was a communication alone sufficient evidence that a counsel or agent had power of attorney, or would the powers of the counsel or agent require authentication; and secondly, was the word "deemed" appropriate or should it be replaced by "considered"?

Although some representatives were in favour of deleting paragraph 2, the majority seemed to be in favour of retaining it, although one representative wished to harmonize its language with that of the corresponding text in the Convention on the Limitation Period in International Sales.

Views concerning paragraph 3 were very varied. Some representatives thought it dangerous to retain it; those who were in favour of retaining it had proposed changes in its wording. In particular, the period of "five days" was considered inadequate. A time span of 15 days had been mentioned by a number of representatives. Some had also stated that the paragraph should contain some form of explanation as to how the time span was to be calculated, such as the inclusion of the words "working days". One representative had said that the reference to telex communications was unnecessary, since a telex message included the date of transmission.

Article 5 (Number of arbitrators)

Mr. CHAFIK (Egypt) said that while, in principle, he had no objection to article 5, he was somewhat concerned at the presumption it included. If the parties were unable to agree on a number of arbitrators, three arbitrators were to be appointed. Arbitration was a very expensive business and three arbitrators cost considerably more than one. It was stated in the commentary on article 5 that:

9/ See A/CONF.63/15.

"In arbitrations concerning international trade matters usually three arbitrators are appointed and the appointment of a sole arbitrator may be regarded as exceptional." That might well be so, but his delegation thought that, in the draft arbitration rules, a sole arbitrator should be regarded as normal and three arbitrators as exceptional.

Mr. SUMULONG (Philippines) said that the logic of the provision contained in article 5 was rather dubious. If the claimant proposed that there should be three arbitrators and the respondent failed to object within eight days, three arbitrators would be appointed. There was nothing unreasonable about this. On the other hand, if the claimant proposed one arbitrator and the respondent lodged no objection, it seemed totally illogical that three arbitrators should be appointed.

A much more reasonable provision would establish that, if the respondent failed to lodge an objection within eight days, the number of arbitrators proposed by the claimant would be appointed.

Mr. JAKUBOWSKI (Poland) said that his delegation supported article 5 as it stood. In major international arbitration cases, it provided both a reasonable and a realistic solution. It was true that, in minor cases involving comparatively small sums, the provision might be rather expensive. He suggested, therefore, that the working group should establish a special régime for disputes involving small amounts - say, not more than $1,000.

Mr. RÉCZEI (Hungary) said that the provision was a good one. Either party was entitled to initiate the procedure for appointing one arbitrator.

Nevertheless, the eight-day time span was a very short one for reaching agreement, since acceptance of a sole arbitrator would frequently depend on the person nominated. The parties should be given more time. In that connexion, he wished to draw the Commission's attention to the suggestion by the Hungarian Chamber of Commerce (A/CN.9/97/Add.3, annex II) that the period should be increased to 30 days, or at the very least to 15 days.

Mr. GUEIROS (Brazil) said he agreed with the Hungarian representative that the time span was too short. A period of 15 days appeared to be reasonable.

He did not think that the wording of the article had the meaning attributed to it by the representative of the Philippines. The words "the parties have not agreed" seemed to indicate a negative response rather than complete silence.

Mr. HOLTZMANN (United States of America) said that his delegation supported the presumption in article 5 that, if there was no agreement, three arbitrators should be appointed.

Since the draft arbitration rules had been circulated, his delegation had had the opportunity of discussing them in detail with United States business circles. In particular, article 5 had been considered at great length. The consensus that had emerged was that three arbitrators should be appointed in the case of disagreement. The typical situation in international arbitration was that each

party appointed an arbitrator of his own nationality and a third arbitrator - a kind of umpire - was appointed from a neutral country. That was a very useful procedure in that the umpire learnt a great deal about customs and traditions in the countries of the two parties, as a result of hearing the two other arbitrators.

Nevertheless, he agreed with the Polish representative that three arbitrators were not warranted in small cases. He thought, however, that the appointment of a sole arbitrator could reasonably be left to the good sense of the parties. It was true that eight days seemed to be rather too short a time span, for communication reasons, but he did not agree with the Hungarian representative that article 5 required that the parties agree on the person of the arbitrator within that time-limit. Article 5 required only that they agree on the number of arbitrators within the time-limit.

Mr. PIRRUNG (Federal Republic of Germany) said that his delegation preferred a time-limit of 15 days rather than the eight days specified in the existing text.

Mr. MELIS (Austria) said he supported the proposals that the time span should be extended to 14 or 15 days.

The presumption in favour of three arbitrators in the case of non-agreement was difficult to accept. There were many small cases - involving sums of less than about $50,000 - which were submitted for arbitration. On the whole, his delegation would prefer the presumption to be in favour of a sole arbitrator, but he liked the suggestion by the Polish representative that a value limit should be included. If that were done, it could be specified that the presumption in favour of three arbitrators would hold good if the value of the sum involved in cases referred for arbitration exceeded a certain figure.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) said he agreed with the representative of the United States of America that the appointment of three arbitrators was in line with practical international trade realities. It was a common solution in all forms of international law.

His delegation would not be opposed to a longer time-limit than that specified in the existing text, if the majority of the representatives deemed it necessary.

It would be inequitable to determine the number of arbitrators on the basis of the sum of money involved. It was not unknown for cases involving points of principle to be brought in relation to comparatively small sums of money.

Mr. EYZAGUIRRE (Chile) said he thought that the time-limit was too short. The minimum time-limit should be 10 working days.

His delegation considered that the presumption should be in favour of a sole arbitrator, unless the parties agreed that there should be three arbitrators.

Mr. KHOO (Singapore) said his delegation would prefer a presumption in favour of one arbitrator. If the normal presumption was that three arbitrators would be appointed, that would discourage businessmen from the developing countries from resorting to arbitration with respect to comparatively small sums of money.

Mr. BENNETT (Australia) said he agreed with the existing text of the article to the effect that, in the absence of agreement that there should be only one arbitrator, three arbitrators should be appointed. It should be made clear, however, that the parties could later agree on a sole arbitrator and would not be precluded from doing so by the default clause.

Mr. JENARD (Belgium) said his delegation favoured a time-limit of 15 days and a presumption in favour of three arbitrators.

The CHAIRMAN said that representatives appeared to be in agreement that an eight-day time-limit was too short. A number of representatives had suggested 15 days and no-one had objected to that figure.

With regard to the presumption in the case of absence of agreement, there was a slight majority in favour of a sole arbitrator. A special régime for cases involving small sums had been advocated by two representatives. Other representatives had objected to that suggestion - first, because it was difficult to decide what constituted a minor case, and secondly, because a case involving a comparatively small sum of money might nevertheless constitute a test case.

Article 6 (Appointment of Sole Arbitrator)

The CHAIRMAN invited representatives to express their views first on paragraph 1 of article 6.

Mr. MATTEUCCI (International Institute for the Unification of Private Law), speaking at the invitation of the Chairman, said that UNIDROIT had some doubts concerning paragraph 1. The use of the words "shall be" appeared to make the paragraph an imperative instruction, and that was quite incompatible with the nature of the draft arbitration rules.

However that might be, the provision was manifestly unfair. If parties were able to agree on a sole arbitrator, there was no reason why questions of nationality should enter into the matter.

The CHAIRMAN, speaking as the representative of Austria, said that if the rules were not limited to international arbitrators, the provision would be extremely difficult to apply. However, if they related solely to international arbitration then, by definition, two separate countries were involved. The Commission should bear in mind, however, that two companies might well be of the same nationality, even if one of the places of business involved was in another country.

Mr. KRISPIS (Greece) said his comments would apply not only to paragraph 1 of article 6 but also to paragraph 2 of article 7 (Appointment of three arbitrators).

The principles underlying paragraph 1 were acceptable to his delegation, but the question of nationality was rather a complicated one. The arbitrator's nationality could easily be determined, since he was a physical person. The situation was different with regard to the parties to the dispute. They might,

of course, be physical persons and no problems would arise. More frequently, however, they would be legal persons, namely companies. The question of determining the nationality of a company was an extremely intricate one, and the rules for doing so varied from country to country. In most countries of continental Europe, the criterion was the address of the company's headquarters, but in common law countries the criterion was that of the legal jursidiction in which the entity had been granted legal personality, i.e. had been incorporated. He felt that those practical difficulties should be reflected in the commentary on the article.

Mr. JAKUBOWSKI (Poland) supported the observations made by the representative of Hungary and the observer for UNIDROIT: it would be unrealistic to limit the possibility of nominating a sole arbitrator by specifying that such arbitrator should be of a nationality other than the nationality of the parties. Such a provision could be adopted, but only as a directive for the appointing authority.

Mr. RÉCZEI (Hungary) supported the observations made by the observer for UNIDROIT. There was, however, one question which would have to be solved: how was nationality to be determined in the case of multinational companies?

He proposed that paragraph 1 should be redrafted: it should comprise the first sentence of paragraph 2 followed by the existing paragraph 1, in which the words "by an appointing authority" should be inserted after the word "appointed".

Mr. GUEIROS (Brazil) suggested that it might be possible to reconcile the points raised by the representative of Greece concerning the nationality of the parties and by the representative of Hungary concerning the freedom of the parties to choose a sole arbitrator. On the question of multinational companies, it must be remembered that the centre of decision was not necessarily in the country where such companies had legal personality.

He did not agree with the Hungarian representative's suggestion that the first sentence of paragraph 2 should be included in paragraph 1. On the other hand, he was inclined to support the observations made by the observer for UNIDROIT on the question of nationality.

In connexion with the first and second sub-paragraphs of paragraph 2, it would be preferable to mention other means of communication in addition to telegram and telex.

Mr. BURGUCHEV (Union of Soviet Socialist Republics) considered that the misgivings expressed by some representatives on the question of nationality and especially the nationality of the sole arbitrator, were not really justified. Under paragraph 1 of article 1 of the draft rules, modifications might be agreed upon by the parties. Consequently, paragraph 1 of article 6 should be left unchanged, on the understanding that the nationality of a sole arbitrator might, in accordance with paragraph 1 of article 1, be other than as provided for in paragraph 1 of article 6.

Mr. MELIS (Austria) supported the observation made by the USSR representative. To make matters even clearer, the words "unless the parties agree otherwise" should be inserted at the beginning of paragraph 1.

Mr. KOPAČ (Czechoslovakia) supported the observations made by the representatives of the USSR and Austria: if the parties agreed on a different procedure from that provided for in paragraph 1, their decision must prevail. The best course would be to insert the first sentence of paragraph 2 before the wording proposed by the Austrian representative. It was true that if might be difficult to determine the nationality of legal persons, not only in the case of multinational companies but also as a result of the different qualifications that must be fulfilled under private international law in the various countries.

Mr. GORBANOV (Bulgaria) supported the observation made by the USSR representative. The provisions of paragraph 1 would operate only if the parties failed to agree on the nationality of a sole arbitrator.

Mr. PIRRUNG (Federal Republic of Germany) agreed that paragraph 1 should be construed in the light of paragraph 1 of article 1. Greater emphasis should be placed on the freedom of the parties in matters of arbitration procedure. If the parties agreed on an arbitrator of a nationality other than that provided for in paragraph 1 of article 6, the question of the value of that appointment then arose. In his opinion, the value of the appointment should depend on the agreement of the parties.

The question of the nationality of a party or arbitrator was a very difficult one for certain States. It would be preferable to stipulate that a sole arbitrator "should" rather than "shall" be of a nationality other than the nationality of the parties, since such a provision should not be mandatory. The important point was to endeavour to appoint a neutral arbitrator, a fact which could be made clear in the commentary. Doubtful cases should be regulated under the procedure provided for in article 11.

Mr. EYZAGUIRRE (Chile) said that article 6 was unsatisfactory because it might allow a foreign arbitrator to be imposed on parties of the same nationality. As the representative of Greece had suggested, article 6 should be made more precise: the nationality of the parties should be mentioned in some way, particularly in the case of companies, although the problem was admittedly more complicated in the case of multinational companies. The parties should have the right to choose the arbitrator they considered best. Only if they were unable to reach agreement should it be stipulated that an appointing authority should designate an arbitrator of a nationality other than a nationality of the parties.

Mr. ROGNLIEN (Norway), noting that paragraph 1 was a dispositive provision, said that there was no need to repeat paragraph 1 of article 1 in article 6. Paragraph 1 of article 6 constituted a useful directive to the appointing authority. There were many ways of dealing with the problem of the nationality of companies. What the paragraph lacked, however, was a reference to the place of business of the parties, a factor which was as important as nationality.

Mr. RECZEI (Hungary) said that he disagreed with the observation made by the USSR representative and supported the points made by the representative of the Federal Republic of Germany. The view expressed by the USSR representative constituted a very doubtful answer to the question as to when partie could modify the rules and what constituted a modification. It would be preferable to stipulate in article 6 that the freedom of choice of the parties should not be limited.

Mr. CHAFIK (Egypt) said that, as worded at present, paragraph 1 gave the impression that it was a binding rule. That would not be the case, however, if it were interpreted in the light of paragraph 1 of article 1. In his opinion, the present text of paragraph 1 of article 6 should be maintained, but it should be stated in the commentary that the parties might agree on another course.

Mr. GUEST (United Kingdom) considered that paragraph 1 should not be maintained: the question of the nationality of a sole arbitrator was of very minor importance in comparison with his expertise and skill. Consequently, the parties should be free to choose a sole arbitrator of any nationality. If the parties were unable to agree on the choice of a sole arbitrator, a designated appointing authority should be free to appoint - if it considered such a course desirable - an arbitrator of the nationality of one of the parties. If the parties were unable to agree on the choice of a sole arbitrator and no appointing authority had been designated, what might be termed the "catchment provisions" would come into operation. In that situation, there might be a case for appointing an arbitrator of a nationality other than the nationality of the parties. However, in view of all the other difficulties, the inclusion of a provision to cover such an eventuality would make the paragraph unduly complicated, and the omission of such a provision would make it unduly vague. The important point was to impose no limit on the nationality of a sole arbitrator.

Mr. JENARD (Belgium), Mr. SONO (Japan) and Mr. BENNETT (Australia) supported the views expressed by the respresentative of the United Kingdom.

Mr. GORBANOV (Bulgaria), referring to the point made by the representative of Egypt, said that it would be preferable to maintain paragraph 1 as a binding provision.

Mr. KEARNEY (United States of America) disagreed with the observations made by the United Kingdom representative and favoured the insertion of the words "by an appointing authority" in paragraph 1, as suggested by the representative of Hungary.

Mr. SAM (Ghana) supported the suggestion by the representative of Austria. If, however, that proved unacceptable to the working group, the Hungarian representative's suggestion might be adopted.

The CHAIRMAN summarizing the discussion on paragraph 1, said there appeared to be almost unanimous agreement among the members of the Commission that paragraph 1 should not be maintained in its present form, unless it was construed in the light of paragraph 1 of article 1. It was generally considered that the parties should be free to appoint the arbitrator of their choice,

without regard to nationality, place of residence and so on. If the parties were unable to agree on the choice of an arbitrator, more precise provisions would have to be established. In general, the Commission felt that in such a case the appointment should be left to an appointing authority. Some representatives, however, considered that such an authority should be obliged to appoint an arbitrator of a nationality other than the nationality of the parties. Other representatives wished to make only a recommendation to that effect as opposed to establishing a binding provision. In addition, some representatives considered that the rules should also apply to disputes between nationals of the same State.

He invited the Commission to consider paragraphs 2 and 3 of article 6.

Mr. ROGNLIEN (Norway) proposed that the words "by telegram or telex" in the first and second sub-paragraphs of paragraph 2 should be deleted.

Mr. SANDERS (Consultant to the UNCITRAL secretariat) pointed out that those words had been included in an effort to expedite proceedings.

Mr. JAKUBOWSKI (Poland) considered that the time-limits provided for in paragraph 2 were too short: the period of "15 days" should be increased to "30 days". In addition, he questioned the desirability of including so many references to appointing authorities. There was a danger that the Permanent Court of Arbitration at The Hague - referred to in sub-paragraph (c) of paragraph 2 - which dealt with intergovernmental disputes, might not be familiar with disputes between commercial companies.

Mr. GUEIROS (Brazil) said that sub-paragraph (a) of paragraph 2 was unacceptable to his delegation because it entrusted to Governments the responsibility of designating an appointing authority. It was possible that Governments might try to help respondents through bureaucratic procrastination.

Mr. MELIS (Austria) agreed with the Norwegian representative that the means of communication between the parties should not be limited to telegram and telex.

It was doubtful whether parties which were unable to agree on the choice of an arbitrator would agree on the choice of an appointing authority. The only solution would be to leave matters to a specific appointing authority, and in that connexion he agreed with the Polish representative that the Permanent Court of Arbitration at The Hague would appear to be inappropriate. He proposed that the provision that the parties might agree on an appointing authority should be deleted. If the parties were unable to agree on an appointing authority, that authority, which might be the UNICTRAL Secretariat, for example, should be expressly named in the Convention.

Mr. KEARNEY (United States of America) said that he would welcome an explanation of the considerations underlying sub-paragraphs (a) and (c) of paragraph 2.

Mr. SANDERS (Consultant to the UNCITRAL secretariat) observed that the article under discussion was the most difficult in the draft rules. In drafting paragraph 2, he had endeavoured to provide for a single appointing authority, as had been suggested by the representative of Austria. The UNCITRAL Secretariat had been mentioned as a possible appointing authority, but the Commission had said that it was unlikely that the Secretariat would be prepared to perform that role. Consequently, various solutions were mentioned in sub-paragraphs (a), (b) and (c) in order that the Commission might have a full discussion on them. An appointing authority designated under sub-paragraph (a) would be designated by a General Assembly resolution. Although some representatives had said that their Governments would find it difficult to comply with that provision, other Governments would find it less difficult. As far as sub-paragraph (c) was concerned, the Secretary-General of the Permanent Court of Arbitration at The Hague had been asked whether he would be prepared to designate appointing authorities and had in principle agreed to accept that responsibility. It was true that the Permanent Court of Arbitration usually dealt with disputes between States, but there had been cases in which one of the parties had been a private company.

The meeting rose at 6.5 p.m.