

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-THIRD MEETING

held on Thursday, 10 April 1975 at 10.20 a.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 6 (Appointment of sole arbitrator) (continued)

Mr. SANDERS (Consultant to the UNCITRAL secretariat), introducing paragraph 2, said that sub-paragraphs (a), (b) and (c) were designed solely to place certain suggestions before the Commission; the latter could, of course, adopt any other formulation that it considered to be better.

The solution proposed in sub-paragraph (a) would not suffice in itself: there would always be a number of Governments which would not designate an appointing authority even if the General Assembly adopted a resolution inviting States to do so. As regards sub-paragraph (c), the Secretary-General of the Permanent Court of Arbitration at the Hague had been approached, and had said that he would be prepared to designate an appointing authority from among the arbitral institutions of States members of the Court.

With regard to paragraph 3, he said that the list-procedure was used in the Netherlands, and gave good results. Experience showed in fact that when the appointing authority proposed to the two parties an identical list of three names, the parties very frequently indicated a preference for the same name, with the result that indirectly they themselves selected the sole arbitrator.

In connexion with time-limits, he drew the Commission's attention to article 12 (Extension of terms for appointment; particulars of proposed arbitrators), which stated that the time-limits set for the appointment of arbitrators might at any time be extended by agreement of the parties. It was essential also to bear in mind article 25 (Waiver of rules). Under the terms of that article, if a party considered that paragraph 1 of article 6 (nationality of the arbitrator) was not being complied with, it had to object in writing, failing which it was deemed to have waived its right to object.

Mr. PIRRUNG (Federal Republic of Germany) said he approved of paragraph 3 of article 6. With regard to paragraph 2, he drew attention to the fact that in certain cases it was in the respondent's interest to refer the matter to the appointing authority. It was also unnecessarily complicated to fix two successive time-limits of 15 days. The third sub-paragraph of paragraph 2 might therefore be amended to say that on the expiry of a time-limit of 30 days, either party might apply to the appointing authority.

Lastly, he did not consider that it would be a good solution to refer the matter to an arbitral institution in the country of the respondent, as provided for in sub-paragraphs (a) and (b). He greatly preferred the solution under which application could be made to a neutral institution - for example, the Permanent

Court of Arbitration at the Hague (sub-paragraph (c)). Personally, he thought that the UNCITRAL secretariat might also act as appointing authority.

Mr. JENARD (Belgium) said he thought that the procedure described in paragraph 2 was excessively complicated and that it opened the way to delaying tactics. In his view, when the parties did not agree on the choice of the sole arbitrator, the claimant should be able to apply directly to the appointing authority. With regard to the problem of the selection of an appointing authority, the best course would perhaps be to designate the appointing authority in the country where the arbitration took place. If the parties did not agree on the place of arbitration, or if the country of the place of arbitration had not designated an appointing authority, the UNCITRAL secretariat might act as the appointing authority. If the UNCITRAL secretariat considered that it should not perform that function, a special committee - similar to that provided for in the ECE Arbitration Rules - might be set up for the purpose.

Mr. GORBANOV (Bulgaria) said he thought that additional provisions should be included in paragraph 3 to indicate how the appointing authority was to draw up the list of arbitrators. It might perhaps be stated that, once the appointing authority had been designated, the parties or the States should submit a list of arbitrators.

Mr. SUMULONG (Philippines) said that in cases where the parties had not been able to agree on the choice of a sole arbitrator it was quite pointless to ask them to agree on an arbitrator suggested by the appointing authority. As the representative of Singapore had already suggested (160th meeting), the United Nations should adopt a resolution authorizing UNCITRAL to create a panel of arbitrators. When the parties were unable to agree on the choice of an arbitrator, the claimant could apply to UNCITRAL and request it to designate an arbitrator from its panel.

Mr. RECZEI (Hungary) proposed that the second sub-paragraph of paragraph 2 should be deleted.

Mr. GUEST (United Kingdom) said that he too thought that the procedure described in paragraphs 2 and 3 was too complex. In cases where the parties agreed on the choice of the appointing authority, the latter should be able to designate an arbitrator directly, without resorting to the list-procedure. In cases where they were unable to agree, the best solution was probably that contained in sub-paragraph (c). The solutions contained in sub-paragraphs (a) and (b) both had the same disadvantage, in that the appointing authority was designated in the country where the respondent had his principal place of business.

Mr. HOLTZMANN (United States of America) said that he too preferred the solution contained in sub-paragraph (c). The solution in sub-paragraph (a) presupposed the adoption of a resolution by the General Assembly, which presented some difficulties. Moreover, even if the Assembly adopted such a resolution, some Governments might not apply it. With regard to the solution contained in sub-paragraph (b), even although several countries had chambers of commerce with experience in appointing arbitrators, many others did not.

The representatives of the United Kingdom and the Federal Republic of Germany had drawn attention to the disadvantages of the solution in which the appointing authority was designated in the country of the respondent; and he shared their

at views. Such a system could, of course, function quite satisfactorily when a homogeneous group of countries was involved - as in the case, for example, of the CMEA countries. But it was likely to give rise to difficulties if applied on a world-wide scale. The solution contained in sub-paragraph (c) - applying to the appointing authority designated by the Permanent Court of Arbitration at the Hague - was certainly preferable. He was sorry that the UNCITRAL secretariat did not consider that it could itself designate appointing authorities, but he acknowledged the wisdom of such a decision. It was better for UNCITRAL to remain above the disputes of private litigants.

ty. A list-procedure along the lines of that provided for in paragraph 3 was used in the United States of America and gave good results: it should be used even if the parties agreed on the choice of the appointing authority.

d Lastly, the next version of the rules should state expressly that the Secretary-General of the Permanent Court of Arbitration at the Hague should designate a neutral appointing authority.

Mr. JAKUBOWSKI (Poland) said he did not think that sub-paragraph (c) provided an ideal solution, since the Permanent Court of Arbitration at the Hague was not sufficiently universal. It would be better for a United Nations organ (either the UNCITRAL secretariat or a regional organ like the special committee provided for by the ECE Arbitration Rules) to designate the appointing authority.

sk Mr. GUEIROS (Brazil) said he approved of the suggestion of the representative of Hungary that the second sub-paragraph of paragraph 2 should be deleted. As to the procedure for designating the appointing authority, he too considered that the best solution was the one provided for in sub-paragraph (c). Designation of appointing authorities would place too great a burden on the Commission's Secretariat. The Permanent Court of Arbitration at the Hague was sufficiently universal to perform that function.

ons Mr. ROGNLIEN (Norway) warned the Commission against the bureaucratic dilatoriness which might arise from over-centralization. In his view, there should be more than one organ empowered to designate the appointing authority.

ad Mr. RECZEI (Hungary) said he agreed with the United Kingdom representative's comments regarding the disadvantages of the solutions provided for in sub-paragraphs (a) and (b), and wished to make the following proposal: if the parties were agreed on the place of arbitration (and if the place were a country other than a country of the parties), the appointing authority would be designated by an arbitral institution of the country where the arbitration took place, or by a chamber of commerce in that country with experience in appointing arbitrators. Otherwise it would be designated by the Permanent Court of Arbitration at the Hague, or by a United Nations organ according to the procedure provided for in sub-paragraph (c).

ne Mr. BENNETT (Australia) said that he too considered that the procedure provided for in paragraph 2 was over-complicated.

Of the three solutions proposed, he preferred the solution contained in sub-paragraph (c), which simply provided that the Secretary-General of the Permanent Court of Arbitration should designate an appointing authority: he would not himself

appoint the arbitrators. The risks of delay, to which the representative of Norway had drawn attention, were therefore more apparent than real.

He agreed with the representative of Poland that the organ responsible for designating the appointing authority should be as universal as possible. However, he did not consider that any United Nations organ - not even UNCITRAL - had the necessary experience and knowledge to carry out that task. Moreover, UNCITRAL comprised only a limited number of member States and was not universal either.

Mr. KHOO (Singapore) said he thought that the difficulties which had been mentioned in connexion with the possible role of a United Nations organ as the appointing authority were more apparent than real and would be resolved if the Commission were to offer some guidelines on the matter. The United Nations would be the author of the arbitration rules; it should therefore play a role in their application. It was difficult at the present stage to specify exactly which organ should act as appointing authority. Indeed, it might not necessarily be the UNCITRAL secretariat; any body designated in pursuance of a General Assembly resolution could act with assurance on behalf of the Secretary-General and could benefit, where necessary, from the advice of experts.

Mr. CHAFIK (Egypt) said that the two 15-day periods specified in paragraph 2 should rather be combined into a single period of 30 days, since that would simplify the procedure. The list-procedure mentioned in paragraph 3 might be dropped, since the appointing authority, once it had been designated, would have to appoint an arbitrator immediately. He wished to reserve his delegation's position with regard to the choice of the appointing authority; the Secretariat might consult the regional economic commissions to find out whether they would be prepared to act as appointing authorities and, if so, on what conditions.

Mr. GOKHALE (India) thought that the two-stage procedure described in paragraph 2 was unnecessary; it would be better to have a single provision. If the parties could not agree on the choice of a sole arbitrator, they should apply to the appointing authority. The choice of the appointing authority should be left to the discretion of the parties. His delegation preferred the procedures provided for in sub-paragraphs (a) and (c) to that suggested in sub-paragraph (b). It would also prefer the deletion of the words "by telegram or telex" in paragraph 2.

Mr. EYZAGUIRRE (Chile) agreed that the system suggested in paragraph 2 was unnecessarily complicated. The time-limits should be the same in all cases and should be 30 days rather than 15. With regard to the appointing authority, the procedure suggested in sub-paragraph (a) would be difficult to apply; he was not in favour of the procedure suggested in sub-paragraph (b); the solution proposed in sub-paragraph (c) was more to his liking, but he would prefer the appointing authority to have a more universal character. The ideal solution would be to find a competent organ within the United Nations which could designate an arbitrator; but no such organ existed and the Secretariat should not be given too many tasks. Nevertheless, a solution along those lines would be the most suitable.

Mr. JENARD (Belgium) said he hoped that recourse to a competent institution of the place of the arbitration would be retained as one of the possible solutions. Recourse to an authority such as the Secretary-General of the Permanent Court of Arbitration at the Hague or the secretariat of UNCITRAL would result in over-centralization. If the parties agreed on a place of arbitration

and if an institution existed, recourse to that institution should be possible; if not, the parties might apply to a central authority.

Mr. KEARNEY (United States of America) observed that the Commission had not considered the problems arising where the parties had agreed in advance on the choice of an appointing authority. In that case, the appointing authority would have to have some specific rules or instructions to comply with; he wondered whether it was supposed to follow the procedure set out in paragraph 3.

The CHAIRMAN, summing up the discussion on article 6, said that the members of the Commission were unanimous in believing that paragraph 2 was over-complicated. The two stages and two time-limits suggested were definitely unsatisfactory; agreement would probably be reached on a single time-limit of 30 days running from the date of the claimant's notice of arbitration to the date when the appointing authority received a request for the appointment of an arbitrator. Two or three representatives considered that there was no need to say that the claimant could propose the names of persons by telegram or telex, since he would have to act as quickly as possible. Another representative considered that in some cases it might be in the respondent's interest, in the event of disagreement, to apply to the appointing authority and request it to designate an arbitrator. Some doubts had been expressed with regard to the institutions responsible for appointing a sole arbitrator. Most representatives had expressed the view that the rule should be as simple as possible and that only one institution should be envisaged; but one or two delegations thought it would be better to leave it to the claimant to choose the appointing authority. Most delegations considered that the procedure suggested in sub-paragraph (a) would be difficult and complicated, first, because a General Assembly resolution would be required, and secondly, because the appointing authority would be designated by the Government of the country where the recipient had his principal place of business or habitual residence; and that would be incompatible with the principle of neutrality. Those delegations were not in favour, either, of the procedure suggested in sub-paragraph (b), both for the reasons referred to in connexion with sub-paragraph (a) and because the institutions mentioned might not exist in some countries. The procedure which found most favour was that described in sub-paragraph (c), even though it was not ideal because not all countries were represented on the Permanent Court of Arbitration at the Hague and an indirect procedure might give rise to delays. The possibility of recourse to an appointing authority of the place of the arbitration had also been mentioned. A large number of representatives had expressed a preference for the establishment of an institution within the United Nations, either an organ under the direction of the Commission's secretariat or, more generally, an organ of the United Nations system - possibly the regional economic commissions. Pending further discussion, the Commission should ask the Secretariat to make inquiries so that the working group to be set up would know whether any possibilities existed in that regard. There had been no particular comments on paragraph 2 bis. Opinions had been divided on paragraph 3, some delegations considering that the procedure it described was satisfactory, while others thought it was too complicated. It was also necessary to define the procedure to be followed by the appointing authority where the parties had agreed in advance on the choice of the authority.

Article 7 (Appointment of three arbitrators)

Mr. RECZEI (Hungary) said that the will of the parties and the decision of the arbitrators must be respected. The dividing line between trust and mistrust was

not a matter of nationality; the parties and the arbitrators must be able to trust the presiding arbitrator regardless of his nationality. The two parties must therefore approve of the choice of the presiding arbitrator by the other arbitrators; accordingly, the existing text of paragraph 2 should be replaced by the following:

"If the presiding arbitrator has the same nationality as any of the parties, the choice is valid only with the written approval of the claimant and the respondent".

The CHAIRMAN said that the secretariat of the Commission had noted the suggestion for the benefit of the working group.

Mr. GORBANOV (Bulgaria) observed that if the two arbitrators did not agree on the choice of a presiding arbitrator, the procedure to follow was that laid down in paragraph 5; the main consideration was, of course, the will of the parties. It was essential above all to recognize the right of the parties to reach agreement on the choice of the presiding arbitrator; if they were unable to do so, then the two arbitrators would make the choice.

Mr. GUEIROS (Brazil) said he was in favour of the deletion of paragraph 2. The second sentence of paragraph 4 was a repetition of the final sentence of paragraph 3. The first sentence of paragraph 7 should also be deleted, since its contents were self-evident from the preceding paragraphs.

Mr. SANDERS (Consultant to the UNCITRAL secretariat) said that he could see that paragraph 2 of article 7 gave rise to the same problems as paragraph 1 of article 6. The confusion was due to the fact that the text did not specify that the presiding arbitrator must be of a nationality different from that of the parties "unless the parties otherwise agree".

The CHAIRMAN observed that the comments on article 6 applied mutatis mutandis to article 7 and, with regard to the nationality of the arbitrator in particular, reference should be made to the comments on paragraph 1 of article 6. A wording slightly different from the present wording had been suggested for paragraph 2; other representatives were in favour of its deletion. According to the present wording, the parties and the arbitrators appointed by them might agree on the choice of the third arbitrator, and only an authority would be bound where an incompatibility relating to nationality arose.

Articles 8-10 (Challenge of arbitrators)

Article 8

Mr. SANDERS (Consultant to the UNCITRAL secretariat) said that there was an error in paragraph 1. The words "a party" should be replaced by the words "the other party".

Mr. GUEIROS (Brazil) said that he approved of paragraph 1 subject to that correction.

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He thought that paragraph 2 should be deleted, because the list of circumstances which might constitute grounds for a challenge was not exhaustive and might cause some controversy. In accordance with normal legal practice, it would be better not to mention those circumstances.

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Under the terms of paragraph 3, the arbitrator would be obliged to disclose such circumstances in two stages: first, when he was merely approached in connexion with his possible appointment, and secondly, when he had been appointed. The first step was unnecessary; the second would be sufficient.

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Mr. PIRRUNG (Federal Republic of Germany) said he was not sure that it was necessary to include the words "including an arbitrator nominated directly by the other party" in paragraph 1. In fact, the Commission's task was to decide between two possibilities - namely, must the arbitrator nominated directly by a party give proof of complete neutrality, or would a lesser degree of impartiality on his part be implicitly acceptable?

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In any case, it would be necessary to inform the parties that the provisions of articles 8 to 10 might not be entirely in keeping with those of internal law. In some countries, such as his own, the final decision on a challenge was taken by a national judge.

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If the Commission decided to adopt a provision along the lines proposed in paragraph 2, it might not be necessary to mention "commercial ties" as a circumstance which might give rise to grounds for a challenge because, as practice showed, such ties often existed between the arbitrator and one of the parties or the party's counsel or agent. Paragraph 2 should therefore read: "The circumstances mentioned in paragraph 1 include any financial, commercial or personal interest in the outcome of the arbitration or any family tie with either party ...".

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Mr. PAREJA (Argentina) said that he was of the same opinion as the representative of the Federal Republic of Germany and considered that the right to challenge in no way guaranteed the neutrality of the arbitral tribunal. Moreover, practice showed that a party could also challenge the presiding arbitrator. The right of challenge could therefore not be restricted to a sole arbitrator.

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Mr. HOLTZMANN (United States of America) said that the question of the impartiality expected of an arbitrator nominated by a party had never been given a definitive answer. In his country there was no neutrality requirement and he found that regrettable. Internal law varied on that point; but in a set of rules which UNCITRAL intended to be of world-wide use, it would be desirable to make the impartiality of the arbitrator compulsory as a guideline for the parties because, as the internal law of many countries contained the neutrality requirement, it was essential to make it clear to the parties that they would be well advised not to waive the neutrality requirement so that they would not later find that, in some countries, the award was not enforceable.

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Referring to "commercial ties", he considered that such ties were indeed grounds for challenge. Of course, in some specialized trade sectors, merchants belonging to the sector in question were generally appointed as arbitrators, but cases of that kind were infrequent. In paragraph 2, it would therefore be necessary to retain the reference to commercial ties as one of the relevant circumstances. He would go even further and say that any past commercial ties should be grounds for a challenge.

Like the representative of the Federal Republic of Germany, he considered that it should be made clear to the parties that the national law relating to circumstances which might give rise to justifiable doubts as to the impartiality or independence of the arbitrators varied from one country to another. That clarification might be included in the commentary, or even in the provisions themselves, if it was feared that the commentary would not be taken sufficiently into account.

Mr. SUMULONG (Philippines) said that the provisions of paragraph 1 were quite unrealistic, because experience had made it abundantly clear that an arbitrator nominated by a party favoured that party. It was, moreover, precisely for that reason that most arbitration rules gave each party the right to appoint an arbitrator, with the result that any inequality was eliminated by reciprocity. The only arbitrator whose neutrality could not be questioned was the presiding arbitrator nominated by the two other arbitrators. The provisions of paragraph 1 should, therefore, be restricted to the presiding arbitrator.

In paragraph 2, the words "financial or personal interest" covered "commercial ties", so that it would be enough for that paragraph to refer merely to financial or personal interests and to family ties, provided that the latter were clearly defined. Family ties could not have any real importance if they were very loose and it would therefore suffice to make them grounds for a challenge only when they extended as far as the fifth degree of consanguinity or affinity, but not beyond.

The scope of paragraph 3 should be restricted as he had proposed in the case of paragraph 1.

Mr. JENARD (Belgium) said that the challenge should not be restricted only to one arbitrator. A party should also be able to challenge the arbitrator it had appointed when a circumstance giving rise to grounds for a challenge had been disclosed after the appointment of the arbitrator. Like the representative of the Federal Republic of Germany, he considered that the UNCITRAL rules should take account of the disparity between various national laws.

He had thought that the list of grounds for a challenge given in paragraph 2 was exhaustive, but the commentary on the paragraph stated that it was not. The necessary clarification should therefore be incorporated in the provision itself.

Mr. CHAFIK (Egypt) said he also was of the opinion that paragraph 1 of article 8 should be amended, because practice showed that it was very difficult for an arbitrator who was nominated by a party to be strictly impartial and independent. The challenge should be restricted to the presiding arbitrator.

In paragraph 2, commercial ties should not be mentioned among the circumstances justifying a challenge because arbitrators were usually businessmen who knew the parties and their secrets, and in many cases they had or would have commercial ties with the parties.

Mr. GUEIROS (Brazil) said that he could agree that paragraph 2 should be retained if the set of rules was published with the commentary, which specified that the list of situations in which partiality could occur was non-exclusive. In any case, it should not be stated that commercial ties were grounds for a challenge because that would make commercial arbitration too difficult.

Mr. BENNETT (Australia) noted that, in the opinion of the representative of the United States of America, neutrality must be mandatory for all arbitrators because the parties might wrongly be tempted to waive the impartiality requirement. He wished to point out that a party could not be deemed to have waived the right to invoke grounds for a challenge if the grounds had not been disclosed by the arbitrator or if the grounds were disclosed after the award had been rendered. In Australia such a situation would enable the court to order the cancellation of the arbitral award at any time, and the court would not hesitate to invalidate the award if it was satisfied that the intention of the arbitration rules was that all arbitrators should be neutral.

Mr. ROGNLIEN (Norway) said that it was difficult to decide whether or not an arbitrator appointed by a party should be neutral and independent. He had, in fact, been impressed by the arguments of the United States representative and thought that, in some cases, the parties might agree not to require the arbitrators to prove that they were impartial. Article 8 must nevertheless contain clear rules on that matter. Referring to commercial ties, he said that they should not automatically constitute grounds for a challenge and that family or personal ties should not necessarily in themselves be decisive either. One might distinguish between absolute and relative grounds for challenge. The first category should include only direct financial or personal interest in the case and certain specified close ties with a party.

It had been suggested that paragraphs 1 and 2 should be combined in a single paragraph and that account should be taken only of the circumstances mentioned in paragraph 2. His delegation hesitated to support that proposal because paragraph 2 did not list all the possible circumstances. For example, there was no direct reference to personal ties or friendship with a party; the words "personal interest" used in that provision did not mean the same as "personal ties". If it was decided to combine those two paragraphs in a single paragraph, it would be necessary to list more circumstances and to specify what was meant by the words "family ties". He considered that unspecified family ties constituted grounds for a challenge only if they were likely to give rise to justifiable doubts as to the impartiality or independence of an arbitrator; and he thought it would be necessary to envisage even more remote ties of consanguinity than those between cousins as possible relative grounds for challenge.

Mr. KRISPIS (Greece) said that he approved of the present wording of article 8, but thought that the article should state that a party could challenge an arbitrator whom it had nominated. Moreover, in his opinion, an arbitrator was a judge who should dissociate himself from the party who had nominated him. For example, he had heard of an instance where an arbitrator had voted against the party who had appointed him and had been praised for that act of independence.

Article 8 was acceptable on the whole, although the first sentence of paragraph 3 was of no particular value since, at the present stage, the rules were not applicable to arbitrators. Nevertheless, his delegation had no objection to the retention of that sentence.

Mr. MELIS (Austria) said it was essential to retain the provisions concerning the neutrality of all arbitrators. In some countries, such as his own, all arbitrators were regarded as neutral, and he endorsed the view expressed by the Belgian representative to the effect that it should be possible to challenge any arbitrator.

Also, like the Belgian representative, he thought it was essential to specify that the list in paragraph 2 was not exhaustive, and he suggested inserting the words "inter alia" in the paragraph.

Lastly, the wording of the second sentence of paragraph 3 should be changed. It could be regarded as normal that a party, before appointing an arbitrator, should ask him whether he agreed to be a member of an arbitral tribunal; but as worded at present, the second sentence of paragraph 3 applied only to the case where, after the arbitrator had been appointed, a fresh situation arose which would justify his being challenged. That did not accord with his own views on the matter.

Mr. GORBANOV (Bulgaria) said he thought it would be preferable to provide in article 8 for less stringent conditions for challenging arbitrators, so as to reverse the present trend, which was for an arbitrator to be transformed into the party's counsel. On that point, he fully concurred with the view expressed by the Greek representative. Once appointed, an arbitrator should cease to be the confidant of the party who had nominated him, and should display the same independence as a judge.

Mr. GUEST (United Kingdom) said that he, too, favoured the principle of the impartiality and independence of an arbitrator, who should not plead for the party who had appointed him. In fact, it would be extremely difficult to enforce the arbitral award if that principle was not observed.

In his opinion, any financial or personal interest in the outcome of the arbitration should automatically constitute grounds for a challenge. Similarly, any family or commercial tie should likewise constitute grounds for a challenge if it was likely to give rise to justifiable doubts as to the impartiality or independence of an arbitrator.

Mr. EYZAGUIRRE (Chile) expressed himself in favour of the existing wording of paragraph 1 of article 8. Also, he strongly supported the principle of the neutrality of arbitrators, failing which it might not be possible to enforce the arbitral award.

His delegation, too, considered that the article should state that the parties should be able to challenge any arbitrator, irrespective of the authority which had appointed him.

In paragraph 2 of article 8, the Chilean delegation proposed that the phrase "any financial or personal interest in the outcome of the arbitration or any family or commercial tie with either party or with a party's counsel or agent" should be replaced by the phrase "any financial, commercial or personal interest in the outcome of the arbitration and any direct family tie with either party or with a party's counsel or agent". If that text was adopted, it would be necessary to determine the degree of relationship or connexion. The expression "any family or commercial tie" was too vague and was liable to cause delays and hold up the arbitration procedure, thereby jeopardizing the objective in view, which was to encourage the solution of trade disputes through arbitration.

Lastly, if the grounds for a challenge were made a little less strict, the principle of neutrality would become more flexible and thus acceptable.

Mr. JAKUBOWSKI (Poland) said he shared the view expressed by the majority of the members of the Commission that all arbitrators should be impartial. Furthermore, he considered that the wording of article 8 was satisfactory and that it was unnecessary to add the words "inter alia" in paragraph 2, as the list given in that paragraph was obviously not exhaustive. He also agreed that a party who had nominated an arbitrator should be able to challenge that arbitrator in the circumstances referred to in article 8.

Mr. RECZEI (Hungary) said that he thought that articles 8, 9 and 10 should have been considered simultaneously since they all dealt with procedural rules. Also, he was afraid that by introducing procedural rules into the arbitration rules, the Commission might establish provisions which conflicted with the internal law of the States in which the arbitral awards would have to be enforced. Such rules should therefore be drafted with sufficient flexibility to enable all countries to adopt them. He proposed that all the time-limits fixed in the articles in question should be deleted and replaced by the expression "within a reasonable period" or by the word "immediately", as the case might be, since it would be better not to establish any precise rule. Furthermore, the grounds for challenge should correspond to the rules in force in the countries where the arbitral awards were enforced. It was questionable, therefore, whether it was necessary to list the conditions and circumstances. His own delegation thought it would be enough to refer to cases which were likely to give rise to justifiable doubts as to the impartiality or independence of an arbitrator, whom any party, moreover, should be able to challenge. Lastly, he was in favour of combining the three articles in a single article, so as to simplify the procedural rules.

The CHAIRMAN said that although it was true that there was a close link between articles 8, 9 and 10, it would have been difficult to summarize the statements of members of the Commission if they had considered those three articles together.

Mr. ROEHRICH (France) said that the principle of impartiality was one of the essential elements of the right of challenge, and he was opposed to the inclusion in paragraph 2 of article 8 of a non-exclusive list of circumstances which were likely to give rise to justifiable doubts as to the impartiality of arbitrators. Such a course would seem to him to be dangerous, since the impartiality of an arbitrator could be interpreted in many different ways. If, therefore, there was to be a list, it must be exhaustive, in order to eliminate any doubts. On that point, the statements concerning commercial ties had been

significant. The appreciation of the circumstances referred to in paragraph 1 of article 8 should be left either to the other party, when it accepted the challenge, or to the competent authority, or to the tribunal itself if there was no possibility of agreement. Lastly, he subscribed to the idea expressed by the Belgian representative that a party should be able to challenge its own arbitrator.

Mr. KHOO (Singapore) said that he was in favour of maintaining article 8 in principle, and he agreed with other delegations that it should be possible for a party to challenge an arbitrator whom it had nominated. Nevertheless, it was essential also to bear in mind the case in which a party might abuse that right by deliberately nominating an arbitrator who, to its knowledge, was liable to be challenged. It was therefore necessary to ensure that a party would never be able to nominate such an arbitrator, since it might subsequently take advantage of the challenge machinery, thereby causing regrettable delays in the arbitration procedure.

The CHAIRMAN, summarizing the statements of members of the Commission on article 8, said that on the whole, that article had been favourably received. On the question as to which arbitrator could be challenged, some representatives had suggested that there should be a single institution for the sole arbitrator or for a presiding arbitrator. A clear majority had emerged in favour of enabling the parties to challenge any arbitrator. Some representatives had taken the view that a party should be able to challenge an arbitrator whom it had nominated, but one representative had drawn attention to the danger of abuse inherent in that possibility. In general, representatives had indicated that it would be better not to mention in detail the circumstances in which arbitrators could be challenged; but the majority had been in favour of retaining paragraph 2. Several representatives wished to know whether or not that paragraph was exhaustive, and what were its connexions with paragraph 1. Some had declared that the circumstances referred to in paragraph 1 constituted grounds for a challenge only in cases where there were doubts as to the impartiality of an arbitrator, while others had taken the view that the circumstances mentioned in paragraph 2 should automatically be regarded as justifying those doubts.

Members of the Commission had also voiced their uncertainty on the question of commercial ties, on the grounds that that term might refer to past, present or future ties, and some had proposed that the term should be deleted on the understanding that the situation envisaged could be covered by paragraph 1. Several representatives had also suggested that the expression "family tie" should be clarified by indicating the degree of relationship or connexion to be taken into consideration.

Few representatives had spoken on paragraph 3, but some had said that it was unnecessary to have two institutions and that the arbitrator should simply be subject to the obligation to disclose the relevant circumstances. According to one representative, the second sentence of paragraph 3 referred to a new situation.

Mr. ROGNLIEN (Norway) said he would like to add that a distinction should be made, in paragraph 2, between absolute grounds and relative grounds for a challenge.

The CHAIRMAN concluded by saying that several representatives had drawn the attention of the Commission to the need to state the grounds and describe the procedures for a challenge in such a way that the parties would not be taken unawares if a State court, in the course of challenge, enforcement or cancellation proceedings, took a position which was far more rigid than the approach provided for in the UNCITRAL rules.

The meeting rose at 12.50 p.m.