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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Ninth session

COMMITTEE OF THE WHOLE (II)

SUMMARY RECORD OF THE 10th MEETING

Held at Headquarters, New York,
on Monday, 19 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 10.05 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 25, paragraph 1

1. Mr. GUEVARA (Philippines) suggested that the word "discontinuance" should be replaced by the word "termination" or "dismissal", in order to avoid implying that the proceedings could be resumed.
2. Mr. MANTILLA-MOLINA (Mexico) said that the paragraph seemed to be redundant in the light of article 21. However, if the paragraph was to be retained, it should be made clear whether or not the proceedings could be resumed. There were differences in meaning between the terms used in the English, French and Spanish texts.
3. The CHAIRMAN said that the paragraph was intended to indicate that proceedings could not be resumed. That intention was expressed quite clearly in the French text. He assumed that, if the arbitrators decided to terminate the proceedings in the absence of a claim, the claimant would be responsible for any costs incurred. Neither article 25 nor article 29 contained any provision to that effect.

Article 25, paragraph 2

4. Mr. TSEGAH (Ghana) noted that the paragraph made no provision for the granting of a further period of time in which the respondent could communicate his statement of defence. He proposed, therefore, that paragraph 2 should be redrafted along the lines of paragraph 1 to afford the respondent the same rights as the claimant.
5. Mr. MANTILLA-MOLINA (Mexico) agreed with the views expressed by the representative of Ghana. There should be a harmony between article 21 and paragraphs 1 and 2 of article 25. Furthermore, it should be made clear in paragraph 2 that failure to communicate a statement of defence within the appropriate period of time would be taken as an admission of the allegations contained in the statement of claim.
6. Mrs. OYEKUNLE (Nigeria) said that the existing text was sufficiently flexible in that it allowed the arbitrators to exercise their discretion. The existing wording should therefore be retained.
7. Mr. DEY (India) said that paragraph 2 was superfluous in the light of the provisions of paragraphs 3 and 4, and should therefore be deleted.
8. Mr. SZASZ (Hungary) said that, although there might be grounds for deleting paragraph 2 in the light of other provisions of the draft rules, the Committee

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