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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Ninth session

COMMITTEE OF THE WHOLE (II)

SUMMARY RECORD OF THE 8th MEETING

Held at Headquarters, New York,  
on Friday, 16 April 1976, at 10 p.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 18, paragraph 4

1. Mr. SANDERS (Special Consultant to the UNCITRAL secretariat) expressed reservations with regard to the United Kingdom proposal to include in article 18, paragraph 4, a provision giving the respondent a right to change his statement of defence. Such a measure would constitute an innovation. The respondent should be required to answer the claim completely at the outset. In that respect there was no question of the respondent being on an equal footing with the claimant.
2. Mr. GUEST (United Kingdom) said that, in common law countries, the respondent was usually given the opportunity to change his defence. The respondent should be accorded the same rights as the claimant in that respect. His delegation found it difficult to accept the view that the respondent could not change his position in appropriate circumstances, subject to the control of the arbitrators.
3. The CHAIRMAN said that, if no specific provision regarding the respondent's right to change his defence was inserted in article 18, paragraph 4, the question could be considered as falling within the general discretion of the arbitrators, as provided for in article 14. He wondered whether the inclusion of a specific provision in article 18, paragraph 4, might not enable the respondent to prolong the arbitration procedure unduly.
4. Mr. JENARD (Belgium) said that, although he understood the reasoning behind the United Kingdom proposal, he felt that the inclusion of such a specific provision might encourage abuse of the arbitral proceedings. Consequently, it might be appropriate to make the Rules a little more stringent.
5. Mrs. OYEKUNLE (Nigeria) supported the views expressed by the representative of the United Kingdom. Referring to the observations made by the Special Consultant, she said that the Committee's main concern should not be to avoid innovation but to ensure that the Rules were as useful and as clear as possible.
6. Mr. HOLTZMANN (United States of America) said that, while he agreed with the representative of the United Kingdom that the Rules should not preclude the right of a respondent to change his defence in good faith, he shared the concern that had been expressed with regard to the possible misuse of such a right. Consequently, he proposed that the Rules should permit a change of defence, but make it quite clear that the arbitrators should permit such a change only if it was demonstrated that it was being made for legitimate reasons.

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