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**A/CN.4/SR.437**

**Summary record of the 437th meeting**

Topic:  
**Arbitral Procedure**

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parties was subject to the consent of the other, then the removal or replacement of the arbitrators would require the concurrence of both parties. It was, of course, self-understood that those provisions would only operate so long as the proceedings had not in fact begun.

47. To the extent of his remarks, therefore, he disagreed with the Special Rapporteur; he added, however, that he would not press for a vote on the clause in question.

48. Mr. AGO said that he was not altogether satisfied with paragraph 2 which might give some scope for dilatory tactics. He suggested that the provision contained in the second sentence of that paragraph should apply—in the same way as that in the first sentence—only to an arbitrator appointed by one of the parties; as drafted, the text appeared to suggest that any arbitrator could be replaced during the proceedings by agreement between the parties.

49. He suggested the deletion of the words “written or oral” in paragraph 3. Usually oral proceedings did not commence until after the written proceedings, and the wording used in the draft might therefore give rise to doubt about the exact moment to which it was intended to refer. The paragraph should simply state that the proceedings were deemed to have begun when the first order concerning procedure had been made.

50. Mr. SCELLE, Special Rapporteur, agreed to the deletion of the words “written or oral” from paragraph 3.

51. Mr. SANDSTRÖM said that it was necessary to make some provision to cover the case of an arbitrator appointed by both parties. Paragraph 2, particularly if amended in the manner suggested by Mr. Ago, would not make it clear whether it was possible for the parties to replace such an arbitrator by agreement and, if so, whether that right was limited to the period before the proceedings had begun.

52. Sir Gerald FITZMAURICE agreed that some provision had to be made to cover the case mentioned by Mr. Sandström. Perhaps the best course was to amend the second sentence of paragraph 2 in the manner suggested by Mr. Ago, and to draft a separate paragraph to deal with the question of arbitrators appointed jointly by both parties.

53. The CHAIRMAN said that the question could perhaps be dealt with by the Drafting Committee.

54. Mr. AMADO said that the points raised concerned questions of substance and should be disposed of by the Commission rather than by the Drafting Committee.

55. Mr. SCELLE, Special Rapporteur, said that he would consult with Mr. Ago and Sir Gerald Fitzmaurice and submit a revised text to the Commission.

The meeting rose at 6.15 p.m.

## 437th MEETING

Tuesday, 6 May 1958, at 9.45 a.m.

Chairman : Mr. Radhabinod PAL.

### Arbitral procedure : General Assembly resolution 989 (X) (A/CN.4/113) (continued)

[Agenda item 2]

#### CONSIDERATION OF THE MODEL DRAFT ON ARBITRAL PROCEDURE (A/CN.4/113, ANNEX) (continued)

##### ARTICLE 5 (continued)

1. Mr. SCELLE, Special Rapporteur, said that he and Mr. Ago had agreed on a redraft of article 5, in the light of the discussion at the 436th meeting. Paragraph 1 would remain unchanged and the remainder of the article would read :

“2. A party may, however, replace an arbitrator appointed by it, provided that the tribunal has not yet begun its proceedings. An arbitrator appointed by a party may not be replaced during the proceedings before the tribunal except by agreement between the parties.

“3. Umpires appointed by agreement between the parties may not be changed after the proceedings have begun, save in exceptional circumstances. Arbitrators appointed in the manner provided for in article 4, paragraph 2, may not be changed even by agreement between the parties.

“4. The proceedings are deemed to have begun when the president of the tribunal or the sole arbitrator has made the first order concerning procedure.”

2. Mr. SANDSTRÖM asked whether an order fixing the date and place of the first meeting of the tribunal would constitute a first order concerning procedure within the meaning of paragraph 4.

3. Mr. SCELLE, Special Rapporteur, answered in the affirmative.

4. Mr. FRANÇOIS said that the expression “save in exceptional circumstances” in paragraph 3 was somewhat vague.

5. Mr. SANDSTRÖM said that the phrase in question appeared to constitute a recommendation to the parties rather than a mandatory provision.

6. Mr. SCELLE, Special Rapporteur, said that it was difficult to make the provision more definite. Some indication that the changes in question were generally undesirable was, however, appropriate.

7. The CHAIRMAN said that a decision on article 5 would be postponed until a later meeting so that members could study the new text.

ARTICLE 6 AND ADDITIONAL ARTICLE PROPOSED BY  
MR. AGO

8. Mr. SCELLE, Special Rapporteur, introduced article 6 dealing with vacancies caused in the tribunal by the death or incapacity of an arbitrator. A provision concerning such contingencies was contained in most of the texts setting forth rules of arbitral procedure.

9. Mr. FRANÇOIS said that the corresponding text approved by the Commission in 1953, at its fifth session,<sup>1</sup> was more comprehensive; it covered not only the case of death or incapacity but also that of the resignation of an arbitrator prior to the commencement of proceedings. There was a gap in the new model draft in that respect; article 7 only dealt with the case of the resignation of an arbitrator after the proceedings had begun.

10. Mr. SCELLE, Special Rapporteur, said that he had not considered it advisable to retain a reference to the resignation of an arbitrator in article 6. That article dealt with vacancies caused by events beyond the control of the parties to a dispute. The resignation of an arbitrator was unfortunately often the result of pressure by the arbitrator's Government.

11. In redrafting the provisions on the replacement of arbitrators, he had endeavoured to strike a balance between his desire to afford maximum freedom to the parties and his reluctance to see the arbitrators become mere representatives of the parties to a dispute.

12. It was unnecessary to make any reference to the resignation of an appointed arbitrator before the proceedings had begun, because it was obvious that, at that stage, the party which had appointed him could appoint another arbitrator to replace him.

13. Mr. AMADO said that the model draft constituted a structure based on the premise that the arbitrators were judges and not attorneys. In practice, arbitrators had always been regarded as the attorneys of the parties, and the whole system of arbitration had been based on agreement between the parties. The draft was designed to prevent an undertaking to arbitrate from being frustrated by the unwillingness of one of the parties to carry out all its obligations under that undertaking. Its object was to give arbitrators an increasingly judicial role.

14. Mr. SANDSTRÖM agreed with Mr. François that there was a gap in the model draft rules because no explicit provision was made for the case of the resignation of an arbitrator before the proceedings had begun. The new text of article 5 merely stated that arbitrators appointed in the manner provided for in paragraph 2 of article 4 could not be changed even by agreement between the parties; nothing was said regarding the manner in which a vacancy caused by the resignation of such an arbitrator was to be filled.

15. Mr. FRANÇOIS said that he saw no reason for omitting an explicit provision to the effect that, if an arbitrator appointed by one of the parties resigned before the proceedings had begun, the party in question had the right to appoint another arbitrator in his place. The text of article 6 approved by the Commission in 1953 was much clearer than the corresponding clause in the latest draft.

16. Sir Gerald FITZMAURICE said that he could not agree with Mr. Scelle's suggestion that the resignation of an arbitrator appointed by one of the parties was always the result of pressure by the Government of the arbitrator's country.

17. He, too, had some misgivings regarding the text of article 6. It did not make clear whether its provisions applied at all times or only before the proceedings had begun. He proposed that after the commencing word "If" the following words should be added between commas: "whether before or after the proceedings have begun".

18. Article 6 seemed to say that, if an arbitrator named by one of the parties resigned, then the party concerned would have to try and reach agreement with the other party in order to fill the vacancy, and that it was only in the absence of such agreement that the vacancy would be filled in accordance with the procedure prescribed for the original appointment. He proposed the deletion of the reference to an agreement between the litigants.

19. Mr. LIANG, Secretary to the Commission, said that it was essential, for the purposes of clarity, to insert a phrase along the lines of that proposed by Sir Gerald Fitzmaurice, so as to make it clear that the provisions of article 6 did not apply only to the case in which the proceedings before the tribunal had not yet begun, as was the case with the provisions of article 7.

20. Mr. AGO expressed his concern at the fact that article 6, speaking of the eventuality of an arbitrator's death or incapacity, merely provided for that person's replacement, regardless of the stage of the proceedings reached at the time the vacancy occurred. No attempt had been made to deal with the problem whether, in the event of the vacancy arising at an advanced stage, the proceedings should begin afresh or could continue as if nothing had happened. In fact, such an occurrence would raise difficult problems. In most municipal systems, the replacement of an arbitrator necessitated the recommencement of at least such oral proceedings as might already have started.

21. Mr. AMADO said that it was customary to recommence the oral proceedings whenever a new judge joined a court to replace one who had died.

22. The CHAIRMAN said that article 6 was only concerned with the question of the filling of vacancies. If it was desired to deal with the legal effects of the reconstitution of the tribunal on proceedings which had already begun, a separate provision would have to be introduced.

<sup>1</sup> *Official Records of the General Assembly, Eighth Session, Supplement No. 9, para. 57.*

23. Mr. SANDSTRÖM said that the question raised by Mr. Ago was relevant only in cases where the arbitrators were named in the *compromis*, and where it was clear that the agreement of the parties to arbitrate was conditional on the choice of the arbitrators.

24. Mr. AGO said that he did not agree with Mr. Sandström. The question he had raised was relevant also in the case of the death or incapacity of an arbitrator appointed by one of the parties. His replacement by a new arbitrator might in certain circumstances place that party at a serious disadvantage unless the oral proceedings were recommenced.

25. Mr. BARTOS agreed with Mr. Ago that if an arbitrator died or was incapacitated after the proceedings had begun, steps must be taken to restore strict equality between the parties. If, by analogy with the provisions of Austrian law concerning such contingencies, a provision was inserted to the effect that for each arbitrator there should be an alternate, it might not be necessary to recommence the proceedings *ab initio* in the event of the death or incapacity of the titular arbitrator, for the alternate would have followed the entire proceedings without the right to vote and hence would be ready to replace him.

26. Mr. SCALLE, Special Rapporteur, thought that Mr. Sandström's remarks raised the question whether the tribunal could be regarded as continuing in existence, and therefore capable of exercising its functions, in the event of the death or incapacity of one of its members. The view that it could was certainly in accordance with the general trend of his draft.

27. Mr. AGO said he was radically opposed to the idea that the tribunal could continue its proceedings in the absence of one arbitrator, since that would disturb its equilibrium and conflict with the principle of the equality of the parties.

28. The question he had raised, however, was different — namely, whether, if a new arbitrator were appointed, the proceedings could continue, as if nothing had happened, from the point they had reached at the time the vacancy occurred. He did not think so. In order to facilitate the procedure, however, the draft might provide that, where an arbitrator was replaced, the proceedings should continue from the point they had already reached unless the new arbitrator requested that the oral proceedings be recommenced *ab initio*.

29. Mr. SCALLE, Special Rapporteur, thought, with regard to the first question referred to, that Mr. Ago's point of view was based on the old concept of diplomatic arbitration, where strict equality between the parties was regarded as essential. If the Commission accepted the contrary view that the members of the arbitral tribunal were acting as impartial judges, it seemed less necessary to replace an arbitrator who had died or been incapacitated — and there were instances where no replacement had in fact been made — though, on balance, he was in favour of a replacement in those circumstances.

30. If a new arbitrator were appointed, however, he did not think that the proceedings should be recommenced, for the fundamental object of arbitration was the expeditious settlement of a dispute. On the other hand, so far as the point at which proceedings should recommence was concerned, he considered that they should either be recommenced altogether or not at all. At first sight Mr. Ago's compromise proposal seemed illogical.

31. Sir Gerald FITZMAURICE said the second of the two views referred to by the Special Rapporteur as regards the nature of arbitration was hardly in accordance with the realities of modern practice. It would, moreover, be difficult to reconcile with article 14, which stated that "The parties shall be equal in any proceedings before the tribunal". Such equality was clearly impossible if one party was represented by fewer national arbitrators than the other. It was also impossible if one of its national arbitrators had sat for only a part of the proceedings. For while it was true that national arbitrators should, and in general did, adopt an impartial attitude, they were unlikely to agree to serve on the tribunal if they thought their Government was definitely in the wrong; hence they inevitably approached the proceedings, if not with a prejudice, at least with a predisposition in favour of their Government.

32. On the other hand, the inequality between the parties that might result from the replacement of an arbitrator after the proceedings had begun was perhaps less than Mr. Ago believed. The newly appointed arbitrator would be able to study the written proceedings, and provided that a transcript had been made of the oral proceedings he could study that as well, though admittedly the reading of the text would not be as satisfactory as actually hearing the pleadings. For practical reasons Sir Gerald would therefore be opposed to recommencing the entire proceedings, though it might sometimes be necessary to recommence the oral proceedings; the practical objections to recommencement were greater than in the case of domestic proceedings, since international proceedings tended to be longer and more complicated.

33. Mr. AGO pointed out that circumstances would differ so much from case to case that it was essential that any rule the Commission might lay down in the matter should be flexible. He proposed that a new article be inserted after article 8, reading as follows:

"Where a vacancy has been filled after the proceedings have begun, the proceedings shall continue from the point they had reached at the time the vacancy occurred. The newly appointed arbitrator may, however, require the oral proceedings to be recommenced from the beginning, should they already have started."

34. Mr. BARTOS said he was in favour of some such provision, for it would ensure that all the arbitrators were on an equal footing and safeguard the principle that judicial decisions should in general be based on direct oral testimony rather than on written evidence.

For those reasons it was only right that the newly appointed arbitrator — unless, as alternate, he had himself followed the proceedings and been entitled to ask for explanations, as was sometimes the case — should be able to require the oral proceedings to be recommenced from the beginning or to revert to some point that had arisen in their course if it seemed to him to require examination.

35. Mr. VERDROSS said he supported Mr. Ago's proposed text, not only because it restored equilibrium between the parties but also because it ensured the objectivity of the award; for the new arbitrator might reasonably claim that he could not judge the case objectively unless he was in possession of all the evidence that had been offered.

36. Mr. YOKOTA agreed that a provision of the kind proposed by Mr. Ago should be inserted after article 8, but considered that even though the request for recommencement of the oral proceedings came from the newly appointed arbitrator, it should be for the tribunal itself to decide whether his request was justified.

37. Mr. EDMONDS agreed that some provision of the kind was necessary, but thought that it should not be left entirely to the newly appointed arbitrator, or even to the tribunal itself, to decide whether the oral proceedings should be recommenced. In his view the parties should be given some say in the matter. For example, the newly appointed arbitrator might say in all good faith that it was unnecessary for the oral proceedings to be recommenced, yet the result might be to make him less than fair to one of the parties.

38. Mr. LIANG, Secretary to the Commission, suggested that the question raised by Mr. Ago might be more appropriately dealt with elsewhere in the draft, for example, in connexion with article 14, which laid down that the parties should be equal in any proceedings before the tribunal.

39. He added that it was perhaps regrettable that the Special Rapporteur should have omitted any section headings in the new draft, as they had made the draft adopted at the fifth session much easier to refer to and comprehend.

40. Mr. AGO said he would have no objection to placing the proposed article elsewhere, though in that case a cross-reference should perhaps be included in article 6. He recalled, however, that the whole question of the final arrangement of the draft articles had been deferred (434th meeting, para. 56), pending consideration of a suggestion by Sir Gerald Fitzmaurice. The question of where to place the article therefore seemed to be of secondary importance at the current stage of the discussion.

41. Mr. SCELLE, Special Rapporteur, said he had now had time to consider that suggestion, and in his view article 14 was in fact one of those which might most suitably be transferred to a preamble in which the general principles of arbitration were laid down. It

seemed to him, therefore, that the text proposed by Mr. Ago, which admittedly related to a very important point, and one not covered by previous conventions, should be inserted after the articles relating to the replacement and disqualification of arbitrators.

42. Mr. YOKOTA admitted the force of Mr. Edmonds' remarks and accordingly proposed that the additional article should read as follows:

"In case a vacancy has been filled after the proceedings have begun, the tribunal shall decide, at the request of the newly appointed arbitrator or one of the parties, the procedure to be followed thereafter."

43. Mr. SANDSTRÖM and Mr. AMADO said they could not accept Mr. Yokota's proposal as they believed the question was one which only the newly appointed arbitrator himself could decide.

44. Mr. BARTOS said that no one arbitrator but only the tribunal as a whole was competent to make the decision in question.

45. The CHAIRMAN observed that the members of the Commission appeared to be generally in favour of stipulating that vacancies should be filled regardless of whether they occurred before or after the proceedings had commenced. He presumed, therefore, that the Commission agreed to the following text for article 6, which took into account the amendments proposed by Sir Gerald Fitzmaurice:

"If, whether before or after the proceedings have begun, a vacancy should occur on account of the death or the incapacity of an arbitrator, the vacancy shall be filled in accordance with the procedure prescribed for the original appointments."

*It was so agreed.*

46. The CHAIRMAN said that since it appeared to be the wish of the Commission to indicate the effect of the filling of a vacancy upon the course of the arbitral proceedings, it would be necessary to decide whether the proceedings should continue uninterrupted or commence afresh, and also whether the provision on that point should form part of article 6 or be placed at the end of the group of article 6, 7 and 8.

47. Mr. AGO suggested that the point raised by Mr. Edmonds could be met by adding the words "or one of the parties" to the text of the proposed new article.

48. As for the position of the new provision, he proposed that it be tentatively placed at the end of the group of articles dealing with the filling of vacancies, without prejudice to a possible rearrangement of the draft.

49. The CHAIRMAN put to the vote Mr. Ago's proposal that any provision regarding the filling of vacancies on the course of proceedings be tentatively placed at the end of the group of articles dealing with vacancies.

*The proposal was adopted by 10 votes to none, with 4 abstentions.*

50. The CHAIRMAN said that a decision on Mr. Ago's proposed new article would be deferred until the following meeting.

#### ARTICLE 7

51. Mr. SCELLE, Special Rapporteur, introduced the text of article 7, pointing out that paragraph 1 was directed against resignations on specious grounds.

52. Sir Gerald FITZMAURICE said that he had misgivings regarding the provision that an arbitrator might withdraw or resign only with the consent of the tribunal. In practice, it would be quite impossible to prevent an arbitrator from resigning or to compel him to take part in proceedings from which he had every intention of withdrawing. Indeed, the impossibility of doing so was clearly recognized in paragraph 2, which began "If the withdrawal should take place without the consent of the tribunal". Paragraph 1 was clearly inspired by the desire to prevent the resignation of arbitrators for some improper reason, such as pressure from their State of nationality. Though arbitrators sometimes resigned for such reasons, it would be wrong to assume that they always did. It was in fact more usual, and he could recall cases in support of that view, for arbitrators to wish to resign for personal reasons having nothing to do with the case, or because the course taken by the proceedings made them personally unwilling to continue to be associated with them. Perhaps the Special Rapporteur's object could be achieved by a provision in paragraph 1 stating that "an arbitrator may resign only after consultation with the president of the tribunal".

53. Mr. EDMONDS agreed with Sir Gerald Fitzmaurice's remarks on the inconsistency of paragraphs 1 and 2 of the article. In his opinion, paragraph 1 could be omitted entirely.

54. Mr. AGO agreed with Sir Gerald Fitzmaurice that an arbitrator might well resign for reasons that were not improper. Reference had been made to cases where the reasons for resignation might have seemed suspicious; but there had also been cases of arbitrators or even the president of a tribunal having resigned because they had found the conduct of the other members of the tribunal suspicious. He proposed that the entire article 7 should be deleted, and that the words "on account of the death or the incapacity of an arbitrator" in article 6 should be amended to read "on account of the death, incapacity or resignation of an arbitrator".

55. Mr. SCELLE, Special Rapporteur, said that he would have no objection to Mr. Ago's proposals, since it was in accordance with his own original conception.

56. Mr. FRANÇOIS expressed surprise at the concession made by the Special Rapporteur. In previous years, the Commission had taken the view that safeguards must be provided against the exercise of

pressure on arbitrators by their Governments, and the Special Rapporteur himself had always been concerned at the possibility of an arbitrator being compelled to resign against his wish.<sup>2</sup>

57. Mr. SCELLE, Special Rapporteur, said that he had since become convinced of the impossibility of preventing such resignations. He had also accepted the necessity of making concessions to the views of Governments.

58. Mr. AMADO noted with pleasure the tendency to return to a text on the lines of article 59 of The Hague Convention of 1907<sup>3</sup> and article XV of the Convention for the Establishment of an International Central American Tribunal.<sup>4</sup>

59. Mr. EL-ERIAN said that he shared the misgivings of Sir Gerald Fitzmaurice and other speakers with regard to the provisions of article 7. One way of providing for cases of resignation without establishing too rigid a provision would be to stipulate that once the proceedings before the tribunal had begun resignations would be tendered only after consultation with the tribunal.

60. Mr. PADILLA NERVO expressed agreement with Mr. Ago's proposal as accepted by the Special Rapporteur. The whole purpose of article 7 had been to provide safeguards against improper conduct by the State of nationality of an arbitrator. An arbitrator's resignation might, however, be due either to an act of his State of nationality or to cause quite unconnected with that State. The Commission must assume, until it were proved otherwise, that States would act in a proper manner.

61. Mr. BARTOS said that, though he would not oppose the Special Rapporteur's withdrawal of article 7, he would have preferred to see such an article retained on various grounds, namely, that of the freedom of the individual and of the need to expedite the tribunal's proceedings and ensure sound judgement. Arbitrators quite frequently resigned after proceedings had been going on for a long time, not so much on the orders of their Government as in response to strong national feeling. Arbitrators could not be prevented from resigning, but if they resigned they might be liable for non-performance of contract, if the other members of the tribunal considered that the grounds for resignation were unreasonable. He would, therefore, have preferred a text distinguishing between resignations accepted by the tribunal and those tendered on specious grounds.

<sup>2</sup> *Official Records of the General Assembly, Fifth Session, Supplement No. 12*, para. 180, and *ibid.*, *Seventh Session, Supplement No. 9*, para. 19.

<sup>3</sup> *Convention for the Pacific Settlement of International Disputes*, The Hague, 1907. See *The Reports to the Hague Conferences of 1899 and 1907*, James Brown Scott (ed.) (Oxford, Clarendon Press, 1917), p. 303.

<sup>4</sup> Signed at Washington on 7 February 1923. See *Supplement to The American Journal of International Law*, vol. 17 (1923), p. 89.

62. Mr. AMADO quoted from the *Commentary on the Draft Convention on Arbitral procedure*,<sup>5</sup> to show that practice was somewhat uncertain concerning the effect of the withdrawal of an arbitrator, and that the opinions of writers also indicated a lack of unanimity. It was impossible to allow for all contingencies in a model draft. The proper place for provisions on the resignation of arbitrators was in the *compromis*.

63. Mr. VERDROSS, referring to Mr. Bartos' remark concerning remedies in case of the improper withdrawal of an arbitrator, suggested that the best remedy in cases of withdrawal of an arbitrator under pressure from his State of nationality would be to stipulate that if an arbitrator withdrew without the consent of the tribunal, the tribunal's proceedings would continue without him.

64. The CHAIRMAN pointed out that the Special Rapporteur had withdrawn article 7 and that no member of the Commission had proposed its restoration. The article was therefore to be regarded as deleted. It merely remained to agree on any possible addendum to article 6.

#### ARTICLE 6 (*continued*)

65. Mr. EL-ERIAN suggested the following new paragraph to be added to article 6 :

"If, however, an arbitrator should wish to resign, he shall consult with the president of the tribunal before tendering his resignation."

66. Mr. AGO remarked that the suggested addendum should read "with the president or members of the tribunal", since the president himself might wish to resign.

67. Mr. SCELLE, Special Rapporteur, did not think it possible to provide for a remedy along the lines suggested. He understood the Commission to be generally opposed to the idea that the proceedings before the tribunal should continue despite the withdrawal of an arbitrator.

68. Mr. FRANÇOIS said that he could not see the point of Mr. EL-Erian's suggestion. The Commission's object had been to protect an arbitrator against pressure from his State of nationality. To stipulate that he must consult the other members of the tribunal would provide no such safeguard. He must be able to tell his Government that it was impossible for him to resign. An effective remedy against improper resignation would be to fill the vacancy thus created in a manner unfavourable to the State of nationality of the resigning arbitrator, namely by requesting the President of the International Court of Justice to appoint a new arbitrator.

69. Mr. EL-ERIAN, replying to the CHAIRMAN, said that he did not wish to press his suggestion.

70. The CHAIRMAN put to the vote the proposal (para. 54 above) that the words "on account of the death or the incapacity of an arbitrator" should be

amended to read "on account of the death, incapacity or resignation of an arbitrator".

*The proposal was adopted by 12 votes to none, with 2 abstentions.*

The meeting rose at 1 p.m.

### 438th MEETING

*Wednesday, 7 May 1958, at 9.45 a.m.*

*Chairman : Mr. Radhabinod PAL.*

#### Communication from the Secretary-General (A/CN.4/L.74)

1. Mr. LIANG, Secretary to the Commission, drew attention to the communication dated 2 May 1958 from the Secretary-General of the United Nations to the Chairman of the Commission, regarding the establishment of the United Arab Republic (A/CN.4/L.74).

*The Commission took note of the communication.*

#### Arbitral procedure : General Assembly resolution 989 (X) (A/CN.4/113) (*continued*)

[Agenda item 2]

#### CONSIDERATION OF THE MODEL DRAFT ON ARBITRAL PROCEDURE (A/CN.4/113, ANNEX) (*continued*)

#### ARTICLE 5 (*continued*)

2. Mr. SCELLE, Special Rapporteur, read out the revised text of article 5 (see 437th meeting, para. 1).

3. Article 5 assumed that the arbitral tribunal had already been constituted in accordance with article 4, and he hoped that no difficulty would arise from the fact that the decision on article 4 had been deferred. The matters dealt with in paragraph 3 had not been fully discussed, but he believed that the article as a whole was acceptable to the Commission.

4. The CHAIRMAN observed that, since there had been no objection during the previous discussion to paragraph 1, the first sentence of paragraph 2 and paragraph 4 of the article, as revised by the Special Rapporteur, he assumed that the Commission was disposed to adopt them.

*It was so agreed.*

5. Mr. AMADO said that he was not in favour of the words "save in exceptional circumstances" in paragraph 3 of the article. Though he realized that the draft was merely a model and not a convention, he still found the phrase altogether too subjective. In the absence of any indication of what was meant by "exceptional", the phrase had little meaning in law.

6. Mr. EDMONDS considered that the second sentence of paragraph 2 was inconsistent with article 6 as

<sup>5</sup> United Nations publication, Sales No.: 1955.V.1., pp. 28-30.