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Summary record of the 445th meeting

Topic:
Arbitral Procedure

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61. The CHAIRMAN put to the vote Mr. Yokota's proposal (para. 56 above) that the words " at the request of one of the parties " should be omitted from article 23.

The proposal was rejected by 12 votes to 1, with 2 abstentions.

62. The CHAIRMAN put to the vote Mr. Zourek's proposal (para. 60 above) that the words " or in case of urgency its president, subject to confirmation by the tribunal " should be deleted.

The proposal was rejected by 11 votes to 3, with 2 abstentions.

63. The CHAIRMAN put article 23 as a whole to the vote.

Article 23 was adopted by 12 votes to 3, with 2 abstentions.

The meeting rose at 1.5 p.m.

445th MEETING

Monday, 19 May 1958, at 3 p.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 24

1. The CHAIRMAN, in the absence of the Special Rapporteur, pointed out that there had been no comments on article 18 of the 1953 draft,[1] which corresponded to article 24, paragraph 1, of the model draft. Paragraph 2 was new, and related to the discovery of new evidence during the period after the proceedings had been closed but before the award had been rendered. An earlier article (article 20) dealt with the case of earlier discovery ; article 39 would deal with later discovery.

2. Mr. LIANG, Secretary to the Commission, referring to Sir Gerald Fitzmaurice's remarks (443rd meeting, para. 9) on the archaic nature of some of the wording taken over from The Hague Convention for the Pacific Settlement of International Disputes of 1907,[2] said he had certain doubts regarding the words " subject to the control of the tribunal " in paragraph 1 and feared they might give rise to misunderstanding. The purpose of those words was, he thought, to give the tribunal the power, if it so wished, not to declare the proceedings closed even if the agents and counsel had completed their presentation of the case ; but, in the English text at least, they failed to convey that meaning and all they seemed to mean was that the case should be presented in accordance with whatever directions were issued by the tribunal, which really went without saying.

3. Mr. FRANÇOIS thought the Commission's aim, in including the words in question, had been to prevent the agents or counsel from frustrating the proceedings by prolonging their presentation of the case unnecessarily. Some provision to that effect should be retained, even though it might be better expressed.

4. Mr. LIANG, Secretary to the Commission, agreed that some such provision might be desirable, but repeated that that was neither the apparent present meaning of paragraph 1 nor what he believed to be its real intention. The drafting committee might wish to consider whether the real intention would not be conveyed more clearly by adopting a wording similar to that used in article X, paragraph 6, of the rules of procedure of the United States-Mexican General Claims Commission, namely :

> " When a case has been heard in pursuance of the foregoing provisions, the proceedings before the Commission shall be deemed closed unless otherwise ordered by the Commission." [3]

5. Mr. AGO agreed with the Secretary in his criticism of paragraph 1. In connexion with what Mr. François had said, he felt that something more specific should be said about the oral proceedings than was said in article 18, paragraph 4. Normally the oral proceedings comprised a pleading, a counter-pleading, and possibly a reply and a counter-reply. If the Commission was silent on the matter, did that mean that in its view the parties could go on exchanging arguments indefinitely ?

6. The CHAIRMAN suggested that the Commission instruct the Drafting Committee to propose a wording to meet the point raised by Mr. François.

It was so agreed.

On that understanding, paragraph 1 was adopted, subject to any further drafting changes proposed by the Drafting Committee in the light of the discussion.

7. Mr. AGO (referring to the French text) said that in his view paragraph 2 gave a rather dangerous amount of latitude to the parties. It would be difficult in practice to prove that the new evidence it was desired to present had not been newly discovered or was not of such a nature as to have a decisive influence on the tribunal's decision.

8. In fact, only in extremely rare cases should the

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[1] *Official Records of the General Assembly, Eighth Session, Supplement No. 9,* para. 57.

[2] See *The Reports to The Hague Conferences of 1899 and 1907,* James Brown Scott (ed.) (Oxford, Clarendon Press, 1917), pp. 292-309.

[3] Quoted in the *Commentary on the Draft Convention on Arbitral Procedure adopted by the International Law Commission at its fifth session* (United Nations publication, Sales No. : 1955.V.1.), p. 75.

proceedings be allowed to be reopened once they had been formally declared closed.

9. Mr. TUNKIN pointed out that there was a discrepancy between the English and the French texts, the former referring simply to " new evidence " while the latter spoke of " newly discovered evidence ".

10. The CHAIRMAN suggested that the Drafting Committee be asked to work out a final text.

It was so agreed.

11. Mr. ZOUREK proposed that the scope of paragraph 2 be extended to cover the case where, after hearing all the evidence presented by the parties and declaring the proceedings closed, the tribunal wished to reopen them because it found, on closer examination, that it needed further evidence on particular points.

The proposal was adopted by 7 votes to 4, with 4 abstentions.

12. The CHAIRMAN called for a vote on paragraph 2, on the understanding that the Drafting Committee would make the changes required by the above-mentioned decisions.

On that understanding, paragraph 2 was adopted by 12 votes to 1, with 2 abstentions.

ARTICLE 25

13. The CHAIRMAN said that article 25 was identical with article 19 in the 1953 draft, except that in the English text the word " should " had been altered to " shall " in order to bring it into line with the French.

14. Mr. FRANÇOIS asked whether it was really the Commission's view that the tribunal should be prevented from sitting by the absence or illness of one of its members. Although the English text had been brought into line with the French, it would be noted that in its comments the Netherlands Government had proposed that the French be brought into line with the English by substituting the word " *devraient* " for the word " *doivent* " (A/CN.4/L.71, under article 17).

15. Mr. YOKOTA thought it was the duty of the arbitrators themselves to be present throughout the deliberations and of the president of the tribunal to ensure that the deliberations did not take place if any of them were absent. It would be going too far, however, to stipulate that the deliberations must not take place if any of the arbitrators were absent, for there would then be the danger — referred to in the commentary of the 1953 draft [4] — of one arbitrator absenting himself in bad faith, in order to wreck the proceedings ; various learned authors such as Mérignhac and Lord Phillimore had expressly stated that in such a case the tribunal should be able to proceed notwithstanding. Under the model draft, it would not be possible to replace an arbitrator who absented himself deliberately, since deliberate absence was not covered by the present wording of article 6, which referred only to death or incapacity.

16. Mr. MATINE-DAFTARY thought that the difficulty arose partly from the attempt to deal with two separate questions in the same sentence. He proposed that article 25 should state simply that the deliberations of the tribunal should remain secret ; the question of attendance should be dealt with in a separate article, the scope of which should be widened to cover also attendance at the earlier stages of the proceedings.

17. Mr. PADILLA NERVO said that in his view it was essential that all arbitrators should be present at least throughout the deliberations ; as was pointed out in the commentary on the 1953 draft,[4] failure to observe that rule might not only affect the weight of the award but also provoke a dissenting opinion which otherwise might not have occurred.

18. Mr. AGO agreed with Mr. Matine-Daftary that article 25 should deal exclusively with the secrecy of the tribunal's deliberations and suggested that it should be modelled on the terms of Article 54, paragraph 3, of the Statute of the International Court of Justice.

19. With regard to the question of attendance, he thought it essential to the whole structure of arbitration as the Commission conceived it that all the arbitrators should be present throughout the entire proceedings ; to allow the tribunal to function with one member absent would be contrary to all that had been said regarding the equality of the parties, the constitution of the tribunal, the manner of filling vacancies and so on. There was, of course, the danger to which Mr. Yokota had referred ; but that could be obviated by providing that in the event of prolonged and unwarranted absence, an arbitrator's post could be declared vacant and filled in the manner laid down in article 6.

20. The CHAIRMAN pointed out that under the second paragraph of article 2 the Commission had already agreed that the *compromis* could, if the parties so desired, include a provision fixing a quorum for the conduct of the proceedings. That implied that, if the parties so agreed, the proceedings could continue in the absence of one or even more arbitrators.

21. Mr. AGO agreed that if a quorum was provided for, the question was settled ; in that case, all that was required was the presence of a quorum. But where, as was more often the case, the arbitral tribunal was composed of three or five members, no quorum was provided for, and in such cases the attendance of all the arbitrators was required.

22. Sir Gerald FITZMAURICE agreed with Mr. Matine-Daftary that the two questions at present dealt with in article 25 should be dealt with separately. He also agreed that it was the duty of all members of the tribunal to be present throughout the deliberations at least. Whatever form of words was adopted should not be too rigid, however ; for the deliberations might last several weeks, and it seemed hardly practicable to insist that every arbitrator must be present at every

[4] *Ibid.*, p. 77.

meeting. Possibly the difficulty resided in the word " attended " ; in his view it would be sufficient to say something along the following lines : " All members of the tribunal shall participate in its deliberations and in the decision to be reached."

It was agreed to separate the two ideas dealt with in article 25.

23. The CHAIRMAN proposed that the first part of article 25 should read as follows : " The deliberations of the tribunal shall remain secret."

The proposal was adopted unanimously.

24. The CHAIRMAN, speaking as a member of the Commission, agreed with Sir Gerald Fitzmaurice that the draft should be reasonably flexible in the matter of attendance.

25. Mr. SANDSTRÖM said that, while occasional absences during the pleadings and hearings would hardly be objectionable, he did not think any absences could be permitted during the deliberations. Mr. Ago was correct in stressing the unity of the tribunal as a characteristic feature of the model draft ; but a no less characteristic feature of the draft was that it made it impossible for either party to frustrate the procedure in bad faith.

26. Mr. TUNKIN said that in his view it would probably be sufficient to provide that all the arbitrators must be present at the time the award was rendered.

27. Mr. AGO said that the *compromis* could contain, in accordance with article 2, paragraph 5, provisions concerning the quorum required for the proceedings of the arbitral tribunal. In the absence of such provisions, however, the tribunal should only sit if all its members were present. Moreover, in the case of the absence — even the temporary absence — of a member of an arbitral tribunal, the custom was to adjourn the meeting of the tribunal.

28. Provision would certainly have to be made to prevent one of the arbitrators from frustrating the arbitration by deliberate and prolonged absence. That was a very delicate question and the Commission had to consider it very carefully. Perhaps the best solution would be to permit that arbitrator to be replaced or, in certain cases, to enable the umpire to sit alone without both " national " arbitrators.

29. Mr. ZOUREK said that, failing a provision to the contrary in the *compromis,* the arbitral tribunal was not duly constituted unless all the members were present. Similarly, under the rules of procedure in force in many countries, an ordinary court could not function in the absence of one of the members of the bench.

30. He agreed with the views expressed by Mr. Ago and suggested that article 25 should provide that, in the absence of any provision in the *compromis* concerning a quorum, all the members of the arbitral tribunal should be present at its deliberations.

31. Mr. YOKOTA said that article 25 should lay down the duty of the members of the tribunal to attend its deliberations. It was, however, undesirable to provide that the proceedings would stop if one of the members was absent.

32. Sir Gerald FITZMAURICE said that article 25 should prescribe the duty of the members of the tribunal to attend its deliberations. It was, however, desirable that the article should not be too categorical on the subject of the consequences of non-attendance. If the proceedings were to be invalidated by the absence of one of the members of the arbitral tribunal, then it would be possible for one of the " national " arbitrators to obstruct the proceedings by deliberately absenting himself.

33. Mr. PADILLA NERVO said that, in the absence of any provision in the *compromis* regarding a quorum, it was to be presumed that the deliberations of the arbitral tribunal required the attendance of all its members.

34. The question of the deliberate absence of one of the arbitrators could perhaps be dealt with by treating such absence in the same manner as the incapacity of one of the members of the tribunal ; the resulting vacancy would be filled, as set out in article 6, in accordance with the procedure prescribed for the original appointments.

35. Sir Gerald FITZMAURICE said that he agreed in principle with Mr. Padilla Nervo's suggestion. It was desirable to include a provision to the effect that the persistent failure of one of the members of the tribunal to attend its deliberations would constitute grounds for his replacement.

36. If the matter of persistent failure to attend were thus kept separate, article 25 would only deal with the question of the duty to attend the deliberations of the arbitral tribunal. He suggested that the article in question should state that all the members of the tribunal were under a duty to attend its deliberations but that the occasional absence of a member, with the consent of the president of the tribunal, would not prevent the tribunal from continuing its deliberations, provided that all the members had participated in the deliberations leading to the decision.

37. Mr. GARCIA AMADOR said that the remedy proposed by Mr. Padilla Nervo was not likely to prove effective in practice. In most cases, the persistent failure of an arbitrator to attend the deliberations of the arbitral tribunal would be the result of pressure by that arbitrator's Government. It was not, therefore, practical to suggest that in that event the Government in question would be called upon to appoint a new arbitrator : the new arbitrator would be subject to the same influences as his predecessor.

38. Mr. SANDSTRÖM said that provision could perhaps be made for the new arbitrator to be appointed by the President of the International Court of Justice.

39. Mr. BARTOS said that in principle he agreed with Mr. Ago ; if one of the members of the arbitral tribunal was absent, the tribunal could not properly sit.

40. There were three separate questions before the Commission. Firstly, the duty of the members of the arbitral tribunal to attend its deliberations had to be laid down ; on that question, there had been no disagreement. Secondly, some provision would have to be made for the necessary quorum where the *compromis* contained no provisions concerning the quorum. Lastly, the Commission had to examine the delicate question of the repeated absence of an arbitrator which had the effect of delaying or obstructing the proceedings. That problem had actually arisen in practice. The Commission would have to decide whether the arbitral tribunal should be allowed to render an award notwithstanding the absence of the member who was endeavouring to obstruct the proceedings.

41. In view of the importance of the question and the absence of the Special Rapporteur, he proposed that the consideration of the question be adjourned.

It was so decided.

42. The CHAIRMAN said that the Commission would resume consideration of article 25 when it had before it more concrete proposals regarding the question whether the persistent absence of a member of an arbitral tribunal should constitute grounds for his replacement.

ARTICLE 26

43. The CHAIRMAN said that there had been no comments by Governments on article 26, which corresponded to article 21 of the 1953 draft.

44. Mr. VERDROSS said that if article 26 was intended to cover the case where the claimant ceased to continue to prosecute his case before the tribunal, then the text as drafted was satisfactory. If, however, it was meant to refer to the case where the claimant renounced his claim, then the position was quite different, for in that event there would be nothing left for the tribunal on which to adjudicate. A distinction should be made between the two situations.

45. Mr. BARTOS said that perhaps the drafting committee could introduce a distinction between the discontinuance of the proceedings and the renunciation of the right on which the claim was based.

46. Sir Gerald FITZMAURICE said that paragraph 1 of article 26 would appear to be unnecessary. The failure of the claimant party to prosecute its case could be covered by introducing the words " or to prosecute " after the words " failed to defend " in article 29, paragraph 1. If, however, the claimant party decided not to proceed and abandoned its claim altogether, then clearly the proceedings would necessarily have to come to an end.

47. Mr. SANDSTRÖM said that if the claimant party abandoned its claim, the respondent should have the right to require an authoritative decision from the tribunal bringing the dispute to an end.

48. Mr. LIANG, Secretary to the Commission, thought that there was a clear distinction between the discontinuance of proceedings by the claimant party and the failure of the claimant party to appear, which was covered by article 29, paragraph 1.

49. As pointed out in the commentary on the 1953 draft,[5] provisions corresponding to article 26 and stipulating that there must be consent by the other party to justify discontinuance were to be found in most national codes of civil procedure.

50. A case relevant to the question was that of the *Denunciation of the Treaty of 2 November, 1865, between China and Belgium* [6] where, after it had been settled out of court, the Permanent Court of Arbitration decided to remove the case from its list on the unilateral withdrawal of Belgium, in view of the fact that China had never taken any step in the proceeding before the Court.[7]

51. Mr. VERDROSS repeated that, if one party renounced its rights, the tribunal no longer had a dispute before it and could not continue to adjudicate. There was no need to continue the proceedings merely for the sake of apportioning costs ; they could be apportioned as provided in the *compromis*.

52. Mr. ZOUREK said that article 26 covered only one eventuality, that of *désistement d'instance*, or withdrawal of the complaint by the claimant party, which was a clearly defined concept in French procedure. In such a case, it was clearly necessary to protect the interests of the other party, for, quite apart from the question of the apportionment of costs, there was always the possibility that the claimant might reassert his rights. There might also be instances, however, of *désistement d'action*, by which the claimant renounced his rights. That form of withdrawal did not require the consent of the opposing party unless he had entered a counter-claim.

53. The CHAIRMAN, speaking as a member of the Commission, drew an analogy between the provisions of the article and " withdrawal with the leave of the court " and " withdrawal without the leave of the court " in Indian civil procedure. The first course was taken when the claimant wished to bring his suit on the same cause of action again later. In the second case, withdrawal anounted to dismissal of the suit. Costs were generally awarded to the defendant in such a case.

54. Mr. SANDSTRÖM, after expressing general agreement with Mr. Zourek, said that the dispute between Belgium and China cited by the Secretary showed to what extent the need for the respondent's consent to the discontinuance of proceedings varied according to

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[5] See *Commentary on the Draft Convention on Arbitral Procedure adopted by the International Law Commission at its fifth session* (United Nations publication, Sales No. : 1955.V.1), pp. 80-81.

[6] *Publications of the Permanent Court of International Justice, Collection of Judgments*, series A, No. 18, p. 5.

[7] *Ibid.*, p. 82.

the stage at which the move was made. If the claimant sought to withdraw before the respondent had replied, it was less necessary to have the latter's consent. Once, however, the respondent had defined his attitude, there was strong ground for the provision made in paragraph 1 of article 26.

55. Mr. AGO said that he did not think that the Special Rapporteur had had in mind, when drafting the article, the case of a claimant renouncing his basis claim, since it was highly improbable that in such an event the respondent party would wish the proceedings to continue. The article seemed rather to envisage cases where, because the proceedings were not going in his favour, the claimant merely wished to withdraw his complaint to aviod a decision by the tribunal. In those circumstances it would probably be precisely the object of the withdrawal of the complaint to forestall a decision at that point, so that the claimant might safeguard his basic claim and reassert it later. The article therefore served a useful purpose and should be retained.

56. Mr. VERDROSS agreed that there were two possible cases to be considered. If the claimant did not renounce his rights, the respondent clearly had the right to refuse to discontinue the proceedings. The solution might be to retain the article but to make clear in the commentary what was meant by discontinuance of proceedings.

57. Sir Gerald FITZMAURICE said that the same result could be obtained by making a drafting change in the article so as to except cases where the claimant recognized the soundness of the respondent's claim. He proposed inserting the words " unless accompanied by the recognition that the respondent's claim is well founded " at an appropriate point in paragraph 1 of the article.

58. Mr. TUNKIN pointed out that it might sometimes be more a matter of the claimant's renouncing his claim than of his recognizing that the claim of the other party was well founded.

59. The CHAIRMAN proposed that the article be adopted subject to drafting changes in the light of the remarks made by Sir Gerald Fitzmaurice and Mr. Tunkin.

It was so decided.

ARTICLE 27

60. The CHAIRMAN pointed out that the corresponding article in the Commission's 1953 draft (article 22) had been divided into two separate sentences and did not contain the words " if it thinks fit ", which had been inserted later in response to comments by certain Governments.

61. Mr. VERDROSS expressed grave doubts concerning the second part of article 27. Once a settlement was reached there was no longer any dispute and the tribunal could not judge, nor could it, therefore, render an award. In his opinion, the article should state simply that the tribunal might take note of the settlement reached by the parties.

62. Mr. ZOUREK agreed with Mr. Verdross. The second part of the article seemed to conflict with the provision in article 31 that " The award shall state the reasons on which it is based for every point on which it rules ". Settlements out of court were generally made *ex aequo et bono* and each party consulted its own interests without insisting on establishing its legal case. That being so, he could not see how the tribunal could possibly embody a settlement in a properly reasoned award.

63. Mr. BARTOS was in favour of omitting the words " if it thinks fit ", though a similar proviso admittedly figured in many codes of civil procedure. That was quite understandable, however, as it was customary for municipal courts to ratify settlements, thereby giving them the force of judgements. Judges were bound to refuse to countenance a settlement which was contrary to public policy or morality. In some matters, in fact, settlements out of court were explicitly forbidden. The position was entirely different in international arbitration where such a proviso might be said to conflict with the principle that the will of the parties must predominate.

64. He fully agreed with Mr. Zourek's criticism of the second part of the article.

65. Mr. TUNKIN agreed with the previous three speakers. An arbitral tribunal was not a supra-national institution but a body created by States to deal with a dispute or disputes. Once the case was settled by the parties, the tribunal could do no more than take note of the settlement. He was consequently in favour of retaining only the first clause of the article, subject to the omission of the words " if it thinks fit " which really related to the provision regarding the embodying of the settlement in an award.

66. Sir Gerald FITZMAURICE agreed that the words " if it thinks fit " should be omitted since the word " may " already showed that the tribunal enjoyed discretion.

67. The article as a whole, however, was a useful one and he did not think that the second provision in it could do any harm. There might well be cases where it would be useful for the settlement to be given additional status by being embodied in an award. Since such a step could only be taken " at the request of the parties ", he saw no objection to it, apart from that raised by Mr. Zourek, which could be easily overcome by inserting the words " Except in the cases envisaged by article 27 " at the beginning of article 31.

68. Mr. SANDSTRÖM fully agreed with Sir Gerald Fitzmaurice that the words " at the request of the parties " provided an adequate safeguard. In the Egyptian Mixed Courts on which he had served, it had been quite customary for settlements to be confirmed

by the court, and he did not see why a similar procedure should not be followed in international law.

69. Mr. EL-ERIAN proposed that in addition to omitting the words " if it thinks fit " the Commission should also change the verb " may " to " shall ". If a settlement were reached, there was no other course open to the tribunal but to take note of it. It enjoyed discretion only with regard to embodying the settlement in an award.

70. Mr. VERDROSS fully agreed with Mr. El-Erian.

71. Mr. LIANG, Secretary to the Commission, drew attention to paragraph 44 of the Commission's report covering the work of its fifth session [8] in which it stated its reasons for using the word " may " instead of " shall ".

72. Mr. EL-ERIAN observed that the reasons given appeared to refer to the question of embodying the settlement in an award and not to the tribunal's taking note of the settlement.

73. Mr. ZOUREK pointed out that confirmation of a settlement by a court was not equivalent to embodying it in a court judgement. A procedure could be provided in international law for the confirmation of settlements but it would probably prove of little practical value, for any settlement before an international tribunal would necessarily have to be embodied in an international agreement.

74. The reason quoted by the Secretary merely confirmed his doubts concerning the second part of the article. The tribunal must refuse to embody in an award a settlement which it considered to have been reached in an improper manner.

75. Mr. TUNKIN expressed approval of the amendments proposed by Sir Gerald Fitzmaurice and Mr. El-Erian.

76. Mr. BARTOS said that he was opposed to any confirmation of a settlement by an arbitral tribunal, for such a procedure, as followed in the Egyptian Mixed Courts, implied approval of the settlement and gave it executory force. He noted that the International Court of Justice, under article 68 of the Rules of Court, merely recorded the conclusion of a settlement without committing itself on the points of law covered by it. He was firmly convinced of the inadvisability of basing the article on an analogy with national civil procedure. It should end with the words " settlement reached by the parties ".

77. He agreed with Mr. El-Erian on the desirability of replacing the word " may " by " shall ". If the tribunal declined to take note of a settlement, the inference could be that it disapproved of the settlement, and it would be guilty of discourtesy to both parties.

78. Mr. YOKOTA, quoting the Special Rapporteur's own comment on his article (see A/CN.4/113, para. 21), said that it appeared to refer to the second part of the article and thus tended to support Mr. El-Erian's amendment. He suggested that the words " if it thinks fit " should be moved to the end of the article.

79. Mr. AGO said that it seemed to be generally agreed that it was the tribunal's duty to take note of a settlement and he, himself, was at one with Sir Gerald Fitzmaurice in considering that the second half of the article could do no harm.

80. He was also inclined to accept Mr. Yokota's suggestion but proposed that in any case the two different provisions in the article should be put in separate sentences. He suggested a text on the following lines :

> " If the parties reach a settlement, it shall be taken note of by the tribunal. At the request of the parties, the tribunal may, if it thinks fit, embody the settlement in an award."

81. The CHAIRMAN pointed out that " may, if it thinks fit ", meant no more than " may ".

82. He put to the vote Mr. Ago's proposal that the two provisions in the article should be expressed in separate sentences.

The proposal was adopted by 14 votes to none, with 1 abstention.

83. The CHAIRMAN put to the vote Mr. El-Erian's proposal (para. 69 above) that the word " may " in the first sentence should be replaced by " shall ".

The proposal was adopted by 14 votes to none, with 1 abstention.

84. The CHAIRMAN put to the vote Sir Gerald Fitzmaurice's proposal that the second sentence of the article be retained.

The proposal was adopted by 13 votes to 1, with 1 abstention.

85. The CHAIRMAN put article 27, as amended, to the vote.

Article 27, as amended, was adopted by 13 votes to none, with 2 abstentions.

Composition of the Drafting Committee

86. The CHAIRMAN proposed that, since Mr. Ago's collaboration was required in connexion with a number of articles, he should be appointed a member of the Drafting Committee.

It was so decided.

The meeting rose at 6 p.m.

[8] *Official Records of the General Assembly, Eighth Session, Supplement No. 9.*