

(3) If either side fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the President of the International Court of Justice, or, if he is prevented from acting or is of the same nationality as a disputant, the Vice-President, or, if he is prevented from acting or is of the same nationality as a disputant, the senior judge who is not of the same nationality as any disputant, may at the request of either disputant, appoint an arbitrator or arbitrators as the case requires.

(4) The third arbitrator shall act as president of the tribunal.

(5) The tribunal is constituted as soon as the president is selected.

Article 4

(1) If a vacancy occurs in the tribunal for any reason which the president or the remaining members of the tribunal decide is beyond the control of the disputants, or is compatible with the proper conduct of the arbitration proceedings, the vacancy shall be filled in accordance with the following provisions:

(a) If the vacancy occurs as a result of the withdrawal of a member appointed by a side to the dispute, then that side shall select a replacement within ten days after the vacancy occurs.

(b) If the vacancy occurs as a result of the withdrawal of the president or of a member appointed pursuant to Article 3(3), a replacement shall be selected in the manner described in paragraph (2) or (3), respectively, of Article 3.

(2) If a vacancy occurs for any other reason, or if a vacancy occurring pursuant to paragraph (1) is not filled, the remainder of the tribunal shall have the power, notwithstanding Article 1, upon request of one side, to continue the proceedings and give the final decision of the tribunal.

Article 5

(1) The tribunal shall decide the date and place of its meetings.

(2) The proceedings shall be held in private and all material presented to the tribunal shall be confidential. However, the Organization and any Party which has designated a Signatory which is a disputant in the proceedings shall have the right to be present and shall have access to the material presented. When the Organization is a disputant in the proceedings, all Parties and all Signatories shall have the right to be present and shall have access to the material presented.

(3) In the event of a dispute over the competence of the tribunal, the tribunal shall deal with that question first.

(4) The proceedings shall be conducted in writing, and each side shall have the right to submit written evidence in support of its allegations of fact and law. However, oral arguments and testimony may be given if the tribunal considers it appropriate.