Document:-
A/CN.4/SR.145

Summary record of the 145th meeting

Topic:
Arbitral Procedure

Extract from the Yearbook of the International Law Commission:-
1952 , **vol. I**

37. The CHAIRMAN said that it might be possible for the Standing Drafting Committee to resolve satisfactorily the points raised by Mr. Lauterpacht and Mr. Hudson.

Paragraph (b) of text proposed by Mr. Yepes:

" The subject of the dispute, defined precisely and as clearly as possible,".

Paragraph (b) was adopted by 5 votes to 1, with 4 abstentions.

Paragraph (c) of text proposed by Mr. Yepes:

" The choice of judges and the constitution of the Tribunal, if they have not previously done so, or if the Tribunal has not already been constituted in accordance with the foregoing provisions ;".

38. Mr. YEPES pointed out that paragraph (c) of his proposals repeated Mr. Scelle's draft word for word.

39. Mr. ZOUREK suggested that the word " judges " be replaced by the word " arbitrators ", as used elsewhere in the text.

Mr. Zourek's suggestion was adopted by 8 votes to none, with 1 abstention.

40. Mr. ZOUREK also proposed that the words " in accordance with the foregoing provisions " be deleted.

41. Mr. KOZHEVNIKOV supported that proposal, and himself proposed that the words " by them " be inserted after the words " or if the tribunal has not already been constituted ".

42. Mr. SCELLE could not agree to those proposals, which would preclude constitution of the tribunal by the International Court of Justice or a third Power.

43. Mr. KERNO (Assistant Secretary-General) asked whether that objection did not apply only to Mr. Kozhevnikov's proposal.

44. Mr. SCELLE said that Mr. Zourek's proposal introduced at any rate an element of doubt on that point. For that reason, he could not support it.

Mr. Kozhevnikov's proposal was rejected by 6 votes to 2, with 2 abstentions.

Mr. Zourek's proposal that the words " in accordance with the foregoing provisions " be deleted was adopted by 7 votes to none, with 2 abstentions.

45. Mr. HUDSON proposed that the words " if they have not previously done so, or " be deleted, since that contingency was covered by the words " if the tribunal has not already been constituted."

Mr. Hudson's proposal was adopted by 5 votes to none, with 2 abstentions.

46. Mr. HUDSON also proposed the deletion of the words " and the constitution of the tribunal ".

Mr. Hudson's proposal was adopted by 6 votes to 1 with 2 abstentions.

47. Replying to a question by Mr. el-KHOURI, the CHAIRMAN stated that the phrase " the tribunal " was to be understood *passim* as including the case of a single arbitrator.

The meeting rose at 11.40 a.m.

145th MEETING

Wednesday, 18 June 1952, at 9.45 a.m.

CONTENTS

Chairman: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: Mr. Ivan S. KERNO (Assistant Secretary General in charge of the Legal Department), Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Arbitral procedure (item 2 of the agenda) (A/CN.4/18, A/CN.4/46, A/CN.4/57, A/CN.4/L.33, A/CN.4/L.33/Add.1) (*continued*)

1-3. The CHAIRMAN invited the Commission to continue its consideration of the Second Preliminary Draft on Arbitration Procedure (Annex to document A/CN.4/46) contained in the special rapporteur's Second Report.

ARTICLES 12 AND 13 (*continued*)

Amendments submitted by Mr. Yepes (continued)

Paragraph (d)

4. The CHAIRMAN recalled that the Commission had been discussing Mr. Yepes' amendment to articles 12 and 13 paragraph by paragraph, and invited comments on paragraph (*d*), reading:

" The procedure to be followed or the authority conferred on the tribunal to establish its own procedure."

5. That paragraph corresponded to the words " the rules of procedure they may think fit to agree upon " in Mr. Scelle's draft.

6. Mr. YEPES explained that he had thought it preferable to indicate clearly that the parties could confer authority on the tribunal to establish its own procedure, if they so wished.

Paragraph (d) of Mr. Yepes' amendment was adopted by 9 votes to none, with 1 abstention.

Paragraphs (e) and (f)

7. The CHAIRMAN invited comments on paragraph (*e*) of Mr. Yepes' amendment, reading :

" Where the tribunal has several members, the number of judges constituting the quorum required for the tribunal to deliberate and take a valid decision ;"

8. There was nothing corresponding to that paragraph in Mr. Scelle's draft.

9. Mr. YEPES recalled that Mr. el-Khouri had drawn attention, in connexion with article 9, to the question of what was to happen if one member of a tribunal of three was absent.[1] In his view, a question which could have such important consequences ought to be determined in the *compromis* itself. As had been pointed out, the whole process of arbitration frequently foundered on what might appear to be minor points of procedure.

10. Mr. LAUTERPACHT asked what was the connexion between paragraph (*e*) of Mr. Yepes' amendment and paragraph (*f*), which read :

" Whether the tribunal may hold a valid session in the absence of one or more of its members or in the absence of one of the parties ;"

11. Mr. YEPES said that, as paragraph (*f*) covered the question he had wished to settle under paragraph (*e*), the latter could be deleted.

12. Mr. SCELLE agreed that it might be difficult, in certain cases, such as when it was composed of only three arbitrators, to decide whether the tribunal should continue to sit in the absence of one of them. However, since the tribunal was being entrusted with responsibility for adjudicating on the substance of the dispute, confidence could surely be placed in it to decide the procedural questions referred to in paragraph (*e*) and (*f*) of Mr. Yepes' amendment.

13. Moreover, the Commission had already decided, in article 9, that in the event of the withdrawal of one arbitrator the remaining members of the tribunal should, at the request of one of the parties, be empowered to continue the proceedings and render the award. It would be contradictory to that provision to give the parties power to impose a different procedure in the *compromis*.

14. He therefore felt that both paragraph (*e*) and paragraph (*f*) should be deleted.

15. Mr. KOZHEVNIKOV said that, whatever might be their relation to articles already adopted by the Commission, paragraphs (*e*) and (*f*) of Mr. Yepes' amendment were perfectly in accordance with the basic principles of international law.

16. Mr. ZOUREK recalled that it had been made clear that the draft articles were intended to apply to cases where the obligation to have recourse to arbitration referred to a particular dispute (*arbitrage occasionnel*), as well as to cases where it resulted from a general agreement. In cases of the first kind, he could not imagine its being left to the tribunal to determine the important questions referred to in paragraphs (*e*) and (*f*) of Mr. Yepes' amendment. Those questions should be determined in the *compromis*.

17. Mr. LAUTERPACHT saw no connexion, and hence no possibility of conflict, between article 9 already adopted and paragraph (*e*) of Mr. Yepes' amendment, which dealt with the simple question of the quorum for the conduct of proceedings. A rule governing that question was a necessity for every formally constituted body. The only point at issue was whether such a rule should be included in the *compromis* or left to the tribunal itself to lay down.

18. After further discussion, Mr. HUDSON suggested that in any case paragraph (*e*) and (*f*) needed rearranging, since the question of a quorum for the ordinary day-to-day conduct of proceedings was quite distinct from that of the number of votes required for the rendering of an award by the tribunal. He therefore proposed that paragraphs (*e*) and (*f*) of Mr. Yepes' amendment be themselves amended to read as follows :

" (*e*) If the tribunal has several members, the number of members constituting a quorum for the conduct of the proceedings ;

" (*f*) The number of members constituting the majority required for a judgment of the tribunal ;"

19. Mr. LAUTERPACHT said that he could vote in favour of paragraph (*e*) as proposed by Mr. Hudson, but that he personally understood the words " conduct of the proceedings " to cover all stages of the proceedings, including the making of the award.

20. Mr. SCELLE agreed with Mr. Lauterpacht that the words " conduct of the proceedings " covered the making of the award. He would point out to the Commission, however, that if it adopted either of the paragraphs proposed by Mr. Hudson it would make it possible for one party to the dispute to bring about a breakdown of the arbitration procedure, notwithstanding all the elaborate precautions which had been taken in the previous articles to preclude that possibility. In other words, it would be giving legal sanction to the second advisory opinion — which he regarded as indefensible — of the International Court of Justice in the case of the interpretation of the peace treaties with Bulgaria, Hungary and Romania.[2]

21. Mr. LAUTERPACHT said that Mr. Scelle had drawn attention to an important and valid objection to the proposed clauses. On the other hand, the question of the quorum should, in his (Mr. Lauterpacht's) view, be settled in the *compromis*.

[1] See summary record of the 142nd meeting, para. 79.

[2] Interpretation of Peace Treaties (second phase), Advisory Opinion, *I.C.J. Reports 1950*, p. 221.

22. Mr. FRANÇOIS proposed that the words " without prejudice to the provisions of article 9, paragraph 3," be inserted at the beginning both of paragraph (*e*) and of paragraph (*f*) as proposed by Mr. Hudson.

Mr. François' proposal was adopted by 6 votes to 5.

Paragraph (e) of Mr. Yepes' amendment, in the form proposed by Mr. Hudson, was adopted, as amended, by 7 votes to 3, with 1 abstention.

Paragraph (f) of Mr. Yepes' amendment, in the form proposed by Mr. Hudson, was adopted, as amended, by 6 votes to 2, with 1 abstention.

Paragraph (g)

23. The CHAIRMAN invited comments on paragraph (*g*) of Mr. Yepes' amendment, which read :

" The law and principles by which the decisions of the tribunal must be guided : whether it is strictly bound by existing law or whether, on the contrary, it may adjudicate *ex aequo et bono* or as an *amiable compositeur* ;".

24. Mr. Hudson had submitted to the Chair an alternative proposal to the effect that paragraph (*g*) should simply read :

" The principles of law to be applied by the tribunal ;".

25. Mr. SCELLE withdrew the wording he had used in his original draft in favour of that proposed by Mr. Yepes.

26. Mr. LAUTERPACHT recalled that at the 143rd meeting he had explained in some detail his objections to the text proposed by Mr. Scelle.[3] Much the same objections applied to the wording proposed by Mr. Yepes. His main objection was to providing that the parties could ask the tribunal to act as an *amiable compositeur,* which was a purely political way of settling a dispute. On the other hand, it seemed reasonable to permit them to ask the tribunal to adjudicate *ex aequo et bono :* that would be in accordance with prevailing practice ; moreover, there seemed no reason why the tribunal should in that respect be placed in a position different from that of the International Court of Justice. The parties should, however, also be permitted, if they so wished, to request the tribunal to make recommendations, in addition to the binding award based on law, for settlement of the dispute. Recommendations by the arbitral tribunal had greatly contributed, for example, to the satisfactory and statesmanlike settlement of the Behring Sea Fisheries dispute and to that of the North Atlantic Fisheries Case between Great Britain and the United States.[4]

27. He therefore proposed that paragraph (*g*) be amended to read :

" The law to be applied by the tribunal and the power, if any, to adjudicate *ex aequo et bono* and to make recommendations ;".

28. Mr. HUDSON said that he would have no objection to mentioning the power to adjudicate *ex aequo et bono,* if that was thought necessary, although it seemed to him that it was covered by the wording he himself had proposed. He agreed with Mr. Lauterpacht that it should not be possible for the parties to request the tribunal to act as an *amiable compositeur,* but felt that the question of recommendations should preferably be dealt with in paragraph (*i*).

29. Mr. LAUTERPACHT agreed that the question of recommendations should be dealt with in paragraph (*i*), and therefore withdrew the last four words of the text he had proposed.

30. Mr. KOZHEVNIKOV pointed out that pargraph (*i*) dealt with the form of the judgment ; the question of recommendations would be better dealt with in paragraph (*g*). Unlike Mr. Lauterpacht, he considered that the parties should be able to request the tribunal to act as an *amiable compositeur.*

31. The CHAIRMAN pointed out that Mr. Lauterpacht had already agreed to delete any reference to recommendations from his proposed text.

32. Mr. HUDSON said that he could accept Mr. Lauterpacht's proposal provided the words " the principles of law " were substituted for the words " the law ". In the " Alabama " Claims case, for example, the principles of law to be applied by the tribunal had been specified in the *compromis.*[5]

33. Mr. SCELLE pointed out that article 20 of his draft provided that if the *compromis* contained no relevant provision, the tribunal, in its decision, should apply the substantive rules set forth in Article 38 of the Statute of the International Court of Justice. On further consideration, and in the light of private discussion with other members of the Commission, especially Mr. Lauterpacht, he now felt that those rules should be applied in every case. It was not the rôle of the tribunal or of the parties to make the law. The " Alabama " Claims case had been quite exceptional and in his opinion did not constitute a precedent.

34. Mr. LAUTERPACHT said that the question under consideration was fundamental. He would therefore deplore its being disposed of hastily. He did not understand how Mr. Hudson could argue from the *compromis* in the " Alabama " Claims case that the expression " the principles of law " should be used in preference to " the law ". The provisions in the *compromis* to which Mr. Hudson had referred were usually known as the Three Rules of Washington ; they were not principles, but rules of law.

35. Mr. YEPES said that, in referring to " principles " in the text which he had himself proposed, he too had had in mind the Three Rules of Washington. He was convinced that it was necessary to state in the

[3] See summary record of the 143rd meeting, paras. 40 to 44.

[4] Award of 17 December 1897; award of 7 September 1910.

[5] " Alabama " claims between Great Britain and the United States; award of 8 May 1871.

compromis the principles of law by which the tribunal was to be guided. The aim of arbitration was the settlement of disputes on the basis of respect for law. But the question arose, which law ? In his view, the law which was to be applied could be law not yet existing. For that reason it was essential that the *compromis* should state the principles of law which were to apply.

36. Mr. SCELLE said that the practice followed in the " Alabama " Claims case had been absolutely extra-juridical. For, had the dispute been between two other States, the Three Rules of Washington would have been quite different. He could not agree that international law should vary with the nationality of the parties ; in his view, it must be supra-national in character. If it were to be resticted merely to what the parties to each dispute could accept, the Commission's work would have no meaning.

37. The CHAIRMAN said that he would put Mr. Hudson's proposal to the vote first.

Mr. Hudson's proposal was rejected by 6 votes to 2, with 3 abstentions.

Mr. Lauterpacht's proposal, as amended by himself, was adopted by 9 votes to 1, with 1 abstention.

Paragraph (h)

38. The CHAIRMAN invited the Commission to consider paragraph (*h*) of Mr. Yepes' amendment, which read :

" whether the tribunal may impose such provisional or conservatory measures as are required by the circumstances ".

39. Mr. HUDSON proposed an alternative text, to read :

" whether the tribunal may indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of the parties ".

40. The Commission would note that he had borrowed the operative part of that wording from Article 41, paragraph 1, of the Statute of the International Court of Justice, but had substituted the words : " the parties " for the words " either party ".

41. Mr. SCELLE explained that he had not inserted such a provision at that point in his draft, but had related it to the procedure of the tribunal, as he considered it to be self-evident that it was the inherent right of a tribunal to indicate provisional measures. That was something that was entirely independent of the will of the parties, and therefore had no place whatsoever in the *compromis*.

42. Mr. LAUTERPACHT agreed with Mr. Scelle and proposed that paragraph (*h*) be deleted. The imposition of interim measures was solely within the competence of the tribunal, and was dealt with in article 26 of the special rapporteur's draft. By using the word " prescribe ", and not the word " indicate ", in Article 2, paragraph 2, already adopted, the Commission had already endorsed Mr. Hudson's view expressed in the second edition of his book " The Permanent Court of International Justice " that, when the Permanent Court indicated interim measures, those measures imposed a legal obligation on the parties.

43. Mr. YEPES suggested that Mr. Scelle's argument was equally applicable to article 26 in the draft arbitration procedure, the only difference being that he (Mr. Yepes) wished the provision to be included in the article on the *compromis*, since if that were not done the parties might contest the right of the tribunal to impose such measures.

44. Mr. AMADO pointed out that if the tribunal's power to indicate interim measures was as self-evident as Mr. Scelle thought, Article 41 of the Statute of the Court must be redundant.

45. Mr. SCELLE said that it was sometimes necessary to state the obvious, but that must be done in the right place. To make the power of the tribunal to indicate interim measures dependent on the parties would be tantamount to allowing them to withdraw the case during the proceedings, which was, of course, unthinkable.

46. Mr. AMADO could not subscribe to Mr. Scelle's general tendency to regard the parties as suspect, and the arbitrators as paragons of virtue and honesty.

47. Mr. SCELLE said that it was a natural tendency for parties to a dispute to be more concerned with protecting their interests than with maintaining the law.

48. Mr. AMADO pointed out that arbitration had a very honourable history.

49. Mr. SCELLE said that he would only be prepared to meet Mr. Yepes' view if a provision was inserted in article 12 stating that the parties must always recognize in the *compromis* the right of an arbitral tribunal to impose interim measures.

50. The CHAIRMAN put to the vote Mr. Lauterpacht's proposal that paragraph (*h*) be deleted.

Mr. Lauterpacht's proposal was adopted by 6 votes to 5.

51. Mr. el-KHOURI explained that he had voted for the deletion of paragraph (*h*) because he favoured the subject-matter being dealt with in article 26 of the special rapporteur's draft.

Paragraph (i)

52. The CHAIRMAN invited the Commission to consider paragraph (*i*) of Mr. Yepes text, which read :

" the form and time-limits in which the judgment must be delivered, provisions regarding the enforcement of the judgment and possible appeals against it ".

53. Mr. HUDSON proposed an alternative text for paragraph (*i*), to read :

" the form of the judgment to be given by the tribunal and any recommendations which it may present to the parties ".

54. Mr. LAUTERPACHT did not clearly understand what Mr. Hudson meant by " the form of the judgment " or what Mr. Yepes meant by " the enforcement of the judgment ".

55. He attached importance to the *compromis* stipulating time-limits within which the judgment was to be delivered, and also to the inclusion of provisions in article 12 relating to appeal and revision. The latter two questions had been troubling international legal opinion for the last twenty years, ever since the case of the Hungarian Optants.

56. Mr. YEPES explained that he had included the clause on the enforcement of the judgment to ensure that the tribunal indicated how the award was to be carried out.

57. Mr. SCELLE observed that the last two chapters of his draft procedure dealt with revision and remedies. He queried whether such provisions should rightly find their place in an article on the *compromis,* since they were not matter for the parties to decide. As to the question of enforcement, he would point out to Mr. Yepes that an international arbitral award was never executory in nature.

58. Paragraph (*i*) seemed to confer upon the parties rights which properly belonged to the tribunal. He could not therefore support it.

59. Mr. LAUTERPACHT said that it was not entirely clear whether the special rapporteur was in favour of retaining certain elements from paragraph (*i*).

60. It was the problems of appeal and revision which, in the light of experience, gave the entire question of arbitral procedure its topical and urgent character, and the Commission must take the greatest care when considering paragraph (*i*) to avoid any decision which might obstruct development in that respect.

61. Mr. SCELLE agreed with Mr. Lauterpacht about the importance of appeal and revision, but re-affirmed his conviction that provisions relating to either could not be made contingent on the will of the parties. He accordingly proposed the deletion of the whole of paragraph (*i*).

62. Mr. Hudson's amendment was interesting, but would find its true place farther on in the draft, as it had no relation whatsoever to the *compromis.*

63. Mr. LAUTERPACHT then proposed an alternative text for paragraph (*i*) to read :

" the time limits within which the award must be rendered, the form of the award and any power given to the tribunal to make recommendations and, subject to articles 38 to 41, any special provisions in the matter of appeal and revision ".

64. Mr. LIANG (Secretary to the Commission) also found difficulty in comprehending what exactly was meant by " the form of the judgment ".

65. Mr. YEPES referred the Secretary to paragraph 16, section (8) of the memorandum on arbitral procedure prepared by the Secretariat (A/CN.4/35).[6]

66. Mr. LIANG (Secretary to the Commission) pointed out that, as a draft convention would not contain the explanations given in the paragraph mentioned by Mr. Yepes, something more precise was needed.

67. Mr. HUDSON observed that in two recent cases submitted to arbitration, one judgment had been couched in the form of a conclusion and the other had been accompanied by carefully reasoned arguments. That was the sort of thing he had in mind when he spoke of the form of a judgment.

68. As to time-limits, they had in the past been more often disregarded than observed and had given rise to great difficulties.

69. Mr. SCELLE, referring to the second paragraph of article 13 in his draft, which stipulated that the arbitrator or the tribunal should be bound by the procedural provisions of the *compromis* only in so far as they proved compatible with the proper exercise of his or its function, pointed to the danger of including in the *compromis* provisions with which the tribunal might find it impossible to comply. It would be appropriate for certain conditions concerning the form of the judgment to be imposed on the tribunal in a general instrument such as that contemplated by the Commission, but it would be quite inappropriate for the parties to prescribe that imposition.

70. Referring to Mr. Lauterpacht's amendment, he asked whether there was any need to empower a tribunal to make recommendations. A tribunal was always free to do so.

71. Mr. LAUTERPACHT pointed out that it was not the normal function of an arbitral tribunal to make recommendations.

72. Mr. SCELLE observed that if a tribunal could not make an award it would be bound to put forward recommendations.

73. The CHAIRMAN put to the vote Mr. Scelle's proposal that paragraph (*i*) be deleted in its entirety.

Mr. Scelle's proposal was rejected by 7 votes to 2, with 2 abstentions.

74. Mr. KOZHEVNIKOV said that as Mr. Lauterpacht's text was of some complexity, he would like to have an opportunity of studying it carefully before pronouncing upon it. He accordingly requested that the text be translated into Russian for him and that in the meantime the vote thereon be deferred.

75. The CHAIRMAN acceded to Mr. Kozhevnikov's request.

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[6] It read as follows : " 16. A *compromis* should include certain items : ... (8) The form in which the award should be presented, the method by which it is determined, and the extent of its obligation (e.g. as to revision, if any) should be stated, and provision, if any, as to its execution ; ".

Paragraph (j)

76. The CHAIRMAN invited the Commission to consider paragraph (*j*) of Mr. Yepes' amendment, which read :

" finally, the place where the tribunal shall meet, the date of its installation and the language to be used ".

77. Mr. HUDSON proposed two alternative clauses to replace paragraph (*j*), to read :

" (*j*) the place where the tribunal shall meet and the date of its first meeting.

" (*k*) the languages to be employed in the proceedings before the tribunal."

Mr. Hudson's texts were adopted unanimously.

78. Mr. ZOUREK asked whether article 12 should not include a provision relating to costs.

79. Mr. SCELLE said that he would have no objection, since it was clearly a matter for the decision of the parties.

80. Mr. HUDSON considered that a provision on the functions of the umpire might also be included in the article relating to the *compromis*. The question was how far an umpire could participate in the proceedings, and how far he could go in establishing whether there was a difference of view between two national arbitrators.

81. The CHAIRMAN invited the preceding speakers to consult together and prepare texts on those two points for possible inclusion in article 12.

The meeting rose at 1.5 p.m.

146th MEETING

Thursday, 19 June 1952, at 9.45 a.m.

CONTENTS

Chairman : Mr. Ricardo J. ALFARO.

Present :

Members : Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat : Mr. Ivan S. KERNO (Assistant Secretary General in charge of the Legal Department), Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Arbitral procedure (item 2 of the agenda) (A/CN.4/18, A/CN.4/46, A/CN.4/57, A/CN.4/L. 33 and Add. 1 and 2) (*continued*)

ARTICLE 12 (*continued*)

Mr. Zourek's proposal for an additional paragraph

1. The CHAIRMAN announced that, in accordance with his suggestion at the preceding meeting,[1] Mr. Zourek had submitted a proposal for an additional paragraph to article 12, to read :

" the way in which costs and expenses shall be divided ".

2. Mr. SCELLE supported Mr. Zourek's proposal.

Mr. Zourek's proposal was adopted unanimously.

Amendment to paragraph (i) of Mr. Yepes' text for article 12 (resumed from the previous meeting)

3. The CHAIRMAN invited the Commission to resume its consideration of Mr. Lauterpacht's amendment to paragraph (*i*) of Mr. Yepes' text, a decision on which had been deferred at the request of Mr. Kozhevnikov to enable a Russian translation to be prepared.[2]

4. Mr. KOZHEVNIKOV said that the words " subject to articles 38 to 41 " seemed to suggest that those articles had already been adopted, whereas in fact they had not yet been discussed. He would therefore propose that they be deleted pending the decision on the articles in question.

5. Mr. HSU said that the adoption of Mr. Lauterpacht's text as it stood would not give rise to any difficulty, since there was nothing to prevent the Commission from making a consequential amendment to it should articles 38 to 41 not be adopted.

6. Mr. SCELLE said that, as he had already explained, he was not greatly in favour of Mr. Lauterpacht's amendment, since it would require the parties to take decisions on matters which were not within their discretion. For example, a tribunal should not be compelled to observe the time-limits laid down in the *compromis*, as there might be very good reasons for its being unable to do so. He would accordingly suggest that the word " must " be replaced by the words " ought to ", after the word " award ".

7. Again, appeal and revision did not depend solely on the will of the two parties, and it would be impossible to argue that it was open to them to prohibit both of the two processes in the *compromis*. The possibility of revision was inherent in any judicial settlement.

[1] See summary record of 145th meeting, para. 78.

[2] *Ibid*, paras. 52—75. For Mr. Lauterpacht's text, see para. 63.