

Document:-
A/CN.4/SR.173

Summary record of the 173rd meeting

Topic:
Arbitral Procedure

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

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

Statute offered other means of solving the problem, for example the appointment of an assistant rapporteur from among the members of the Commission, and he believed that that course had been adopted in the past. He proposed therefore that the Commission decide first the question of principle underlying Mr. Hudson's proposal, before going on to decide on its application in the present case.

64. The CHAIRMAN said that, in accordance with the wish expressed by Mr. Kozhevnikov, he would first put to the vote the question of principle, whether or not the Commission could appoint individuals to serve as experts on the Commission, in reliance on articles 16 (e) and 21 (l) of its Statute.

65. Mr. ZOUREK said that he would vote in the negative on that question of principle, since the whole of article 16 of the Statute was prefaced by the words: "When the General Assembly refers to the Commission a proposal for the progressive development of international law".

The question of principle was decided in the affirmative by 11 votes to 2.

66. Mr. KOZHEVNIKOV said that, in view of that decision, he wished to propose that, in the particular case under consideration, the Commission should appoint one of its members to act as assistant rapporteur.

Mr. Kozhevnikov's proposal was rejected by 11 votes to 2.

67. The CHAIRMAN then put to the vote the proposal submitted by Mr. Hudson.

Mr. Hudson's proposal was adopted by 11 votes to none, with 2 abstentions.

Programme of work (resumed from the 170th meeting)

68. The CHAIRMAN said that the Commission had next to consider the draft on arbitral procedure prepared by the Standing Drafting Committee, and the explanations prepared by the special rapporteur. It was his intention to take the articles one by one, first ascertaining whether there were any comments on the wording submitted by the Standing Drafting Committee, and then inviting observations on the explanation concerning the article.

69. Mr. KOZHEVNIKOV said that, in his view, a vote should be taken on each article, and a final vote on the draft as a whole.

70. Mr. SCELLE pointed out that the articles had already been discussed at length. Their substance had been approved by the Commission and had not been altered by the Standing Drafting Committee. In a few cases, which he had indicated in his explanations, there had been some doubt as to what the Commission's decision had been, and the Commission would therefore have to decide whether in such cases the text which the Standing Drafting Committee had submitted

accorded with the Commission's intentions. He presumed, however, that there was no question of reopening discussion of all the articles. It would, of course, be open to any member of the Commission to vote against the draft as a whole.

71. Mr. KOZHEVNIKOV agreed that there was no need to repeat the earlier discussions. Drafting questions could, however, conceal questions of substance, and the Commission was bound therefore to consider the whole draft carefully, article by article, in order to ascertain whether any such questions of substance arose.

72. Mr. SPIROPOULOS felt that there was no real difference of view between Mr. Kozhevnikov and Mr. Scelle. Clearly the Commission could not decide in advance whether articles submitted by the Standing Drafting Committee would give rise to questions of substance.

73. Mr. LAUTERPACHT, on a point of order, expressed the hope that it would be possible for the Commission to devote two or three meetings, preferably in private session, to consideration of the Commission's work programme and methods of work during the forthcoming year.

74. The CHAIRMAN pointed out that the remaining time at the Commission's disposal would probably be fully taken up with consideration of the draft on arbitral procedure, examination of the comments received from governments on the draft articles on the continental shelf and related subjects and discussion of further steps to be taken in connexion with the work on the régime of the high seas and approval of the Commission's report to the General Assembly.

75. Mr. SCELLE pointed out that the draft on arbitral procedure would form part of the Commission's report to the General Assembly. He presumed that when the Commission came to approve that report, it would not have to examine the draft on arbitral procedure a second time.

76. The CHAIRMAN confirmed that Mr. Scelle's presumption was correct.

The meeting rose at 1.10 p.m.

173rd MEETING

Monday, 28 July 1952, at 2.45 p.m.

CONTENTS

	<i>Page</i>
Arbitral procedure (item 2 of the agenda) (A/CN.4/L.35) (resumed from the 156th meeting)	
Consideration of the draft articles submitted by the Standing Drafting Committee	192
Article 1 [1] *	193

* The number within brackets indicates the article number in the Special Rapporteur's Report (A/CN.4/46).

	<i>Page</i>
Article 2 [2]	193
Article 3 [3]	193
Article 4 [5 and 6]	194
Article 5 [7]	195
Articles 6, 7 and 8 [8, 9 and 11]	195
Article 9 [12]	195
Article 10 [14]	195
Article 11 [19]	195
Article 12 [20]	195
Article 13 [24, para. 5]	196
Article 14 [23]	196

Chairman : Mr. Ricardo J. ALFARO.

Rapporteur : Mr. Jean SPIROPOULOS.

Present :

Members : Mr. Roberto CORDOVA, 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/L.35) (resumed from the 156th meeting)

CONSIDERATION OF THE DRAFT ARTICLES SUBMITTED BY THE STANDING DRAFTING COMMITTEE

2.* The CHAIRMAN invited the Commission to consider the Draft on Arbitral Procedure (A/CN.4/L.35),¹ a document consisting of thirty-two articles submitted by the Standing Drafting Committee together with comments by the special rapporteur, Mr. Scelle.

3. Mr. YEPES suggested that those articles which had not been redrafted by the Standing Drafting Committee need not be discussed.

4. Mr. KOZHEVNIKOV said that the Standing Drafting Committee had altered very considerably the shape of the set of articles provisionally adopted by the Commission; certain articles had been combined, and the position of others transposed. It would therefore be advisable for the Commission to go through the present draft article by article.

5. Mr. ZOUREK reminded the Commission of his intention to submit an amendment to article 4.

6. The CHAIRMAN stated that, although substantive discussion of the articles had been concluded, members

could raise objections to any article in the text prepared by the Standing Drafting Committee if they thought that it did not conform with what had been decided by the Commission.

7. Mr. KOZHEVNIKOV asked whether each article was to be put to the vote separately during the second reading.

8. The CHAIRMAN replied that only the draft as a whole would be put to the vote. The Commission had already voted on each individual article.

9. Mr. KOZHEVNIKOV said that, as the new text was different from that provisionally adopted by the Commission, it was important to determine precisely the views of members on it. He therefore proposed that each article be put to the vote again.

Mr. Kozhevnikov's proposal was rejected by 8 votes to 2, with 2 abstentions.

10. Mr. el-KHOURI said that the voting during the first reading had often been extremely close and he accordingly proposed that the results should be given in the report.

11. Mr. SCELLE said that he had contemplated doing so but had decided against it, partly because the Secretariat had informed him that it would be a new departure, and partly because such information was liable to give a distorted impression of the general opinion. He had, however, been careful to indicate the occasions on which quasi-unanimity had been achieved.

12. Mr. KERNO (Assistant Secretary-General) confirmed that hitherto no text prepared by the Commission had been accompanied by a record of the voting. Such information could be obtained from the summary records and should not burden the Commission's reports.

13. Mr. ZOUREK considered that the comments on each article should not only indicate the results of the voting, but also reflect the views of the minority, which in several cases was a considerable one.

14. Mr. SCELLE said that it would be altogether impracticable to expect special rapporteurs to give a detailed analysis of minority opinions; such an analysis would inevitably double or triple the length of their reports. It was the weight of the arguments in favour of a text rather than the number of votes it secured which was important.

15. In reply to Mr. KOZHEVNIKOV, he said that wherever the Standing Drafting Committee had departed even in the slightest degree from the Commission's decision, the fact was clearly indicated.

16. Mr. LIANG (Secretary to the Commission) pointed out that the Commission had never indicated voting results on any of the texts adopted by it. He personally believed that it should continue to follow that practice.

17. Mr. CORDOVA agreed. It would merely weaken

* Para. 1 concerned the programme of work for the remaining meetings.

¹ Mimeographed document only. It was incorporated, with drafting changes, in the "Report" of the Commission as Chapter II (see vol. II of the present publication). Drafting changes are given in the present summary records.

the authority of the Commission's decisions, which were taken by a majority vote, if the size of the majority were indicated. Such information was available in the summary records.

Mr. el-Khoury's proposal was rejected by 8 votes to 2, with 2 abstentions.

18. The CHAIRMAN suggested that the Commission examine the draft article by article and take up the comments afterwards, since they had only recently been circulated to members.

It was so agreed.

Article 1 [1]

No observations.

Article 2 [2]

Paragraph 1

No observations.

Paragraph 2

19. Mr. SCALLE explained that the Standing Drafting Committee had recommended the deletion of the words "for the completion of the arbitration proceedings and" after the words "measures to be taken" in paragraph 2, on the ground that their meaning was obscure and that they might confer far wider powers on the tribunal than had been intended by the Commission.

It was agreed, by 8 votes to none with 3 abstentions, to delete the words "for the completion of the arbitration proceedings and" in paragraph 2.

20. Mr. LAUTERPACHT suggested that the last sentence in article 16: "Each party is under a duty to take the measures indicated to it" should be inserted also in paragraph 2 of article 2.

21. Mr. HUDSON pointed out that article 2 related to provisional measures prescribed by the International Court of Justice, whereas article 16 concerned provisional measures indicated by the arbitral tribunal.

22. Mr. SCALLE observed that in the French text the word used in both cases was "*prescrire*", which left no doubt as to the obligatory nature of the provisional measures. The last sentence in article 16 was therefore almost redundant and should be deleted therefrom rather than added to article 2. Perhaps Mr. Lauterpacht's preoccupation would be removed if the English and French texts of article 16 were brought into line by the substitution of the word "prescribe" for the word "indicate" in the former.

23. Mr. LAUTERPACHT agreed that the substitution of the word "prescribe" for the word "indicate" in article 16 would render the last sentence unnecessary.

It was agreed to defer further consideration of the point raised by Mr. Lauterpacht until article 16 was taken up.

Article 3 [3]

Paragraph 1

24. Mr. HSU proposed the substitution of the word "a" for the word "the" before the word "compromis" in paragraph 1, since it was the first time the "compromis" had been mentioned.

25. Mr. SCALLE thought the original text should stand, since, as was indicated in the comment on article 1, "the compromis" was that referred to in article 9.

26. Mr. LIANG (Secretary to the Commission) suggested that there was some force in Mr. Hsu's argument. It should be made clear in paragraph 1 that "the compromis" was that referred to in article 9.

27. Mr. SCALLE proposed the insertion of the words "referred to in article 9" after the words "in the *compromis*" in paragraph 1.

Mr. Scalle's amendment was accepted.

28. Mr. ZOUREK reminded the Commission of the objections he had raised at the 140th meeting² to the method of appointment of members of the arbitral tribunal, as envisaged in article 4 of the draft presented by the special rapporteur in his second report (A/CN.4/46). On that occasion he had not been in a position to present a definite alternative, but had been informed by the Chairman that it was open to all members of the Commission to propose the reconsideration of any article at a later stage. He accordingly took the present opportunity to submit the following as an alternative to paragraphs 2, 3 and 4 of article 3:

"1. If the appointment of the members of the arbitral tribunal is not made within three months from the date of the request for constitution of the tribunal, each of the Parties to the dispute shall designate a commissioner who must not be a national of one of the Parties or habitually resident in its territory. Appointments shall be made jointly by the commissioners thus designated.

"2. If no agreement is reached on the matter within three months from the date on which the commissioners referred to in paragraph 1 were designated, each of the national groups nominated by the Parties to the dispute in accordance with article 4 of the Statute of the International Court of Justice shall designate two persons who must not be nationals of one of the Parties or habitually resident in its territory. The persons thus designated shall form a commission which shall make the necessary appointments by a majority vote."

29. Mr. SCALLE observed that Mr. Zourek's amendment was one of substance, since it would result in an entirely different system of appointment from that laid down in paragraphs 2, 3 and 4 of article 3.

² See summary record of the 140th meeting.

The CHAIRMAN ruled Mr. Zourek's amendment out of order.

Article 4 [5 and 6]

Paragraph 1 [5]

30. Mr. HSU suggested that the drafting of paragraph 1 was ambiguous. It was first stated that the parties could act in whatever manner they deemed most appropriate, and then one method of proceeding, and one only, was mentioned. If there were others, they should also be mentioned.

31. Mr. HUDSON said that, for much the same reasons as had prompted Mr. Hsu's comment, he had in the Standing Drafting Committee proposed the deletion of the words "may act in whatever manner they deem most appropriate and".

32. Mr. SCELLE said that, although strictly speaking Mr. Hudson and Mr. Hsu had made a legitimate criticism of the text, it was sometimes necessary to violate the rules of logic a little. The phrase to which Mr. Hudson had objected stated a general principle and was not entirely redundant.

33. Mr. CORDOVA suggested it should be made clear that the words "may refer the dispute to a tribunal etc." represented one method which the parties might adopt. That could be done by placing a full stop after the word "appropriate" and substituting the word "They" for the word "and".

34. Mr. HUDSON accepted Mr. Córdova's amendment.

35. The CHAIRMAN, speaking as a member of the Commission, suggested that that amendment might convey the erroneous impression that paragraph 1 dealt with two separate things.

36. Mr. LAUTERPACHT suggested that the Chairman's point would be met if a semicolon were placed after the word "appropriate" and not a full stop.

Mr. Lauterpacht's suggestion was accepted.

Paragraph 2 [6]

37. Mr. LAUTERPACHT explained that the Standing Drafting Committee had recommended the deletion of the words "of high moral character and" after the words "among persons" from paragraph 2, on the grounds that that was an obvious requirement when selecting arbitrators and that an express provision on the subject was somewhat pedantic.

38. Mr. el-KHOURI failed to see any good reason for such an omission, since it was far more difficult to find persons of recognized competence in international law than persons of high moral character.

39. Mr. CORDOVA observed that the two qualities did not necessarily go together but, at all events, high

moral character was of greater importance than competence in international law.

40. Mr. YEPES said he was in favour of the Standing Drafting Committee's recommendation, since the retention of the words "of high moral character" in paragraph 2 might suggest that in other cases it was not a necessary qualification.

It was agreed, by 6 votes to 4, with 2 abstentions, to delete the words "of high moral character and" in paragraph 2.

41. Mr. SPIROPOULOS said he had voted in favour of the deletion of the words since in his view the less said in legal instruments about morality the better and, furthermore, the requirement was obvious.

42. Mr. HSU said he had voted in favour of the Standing Drafting Committee's recommendation because the proviso at the beginning of paragraph 2: "With due regard to the circumstances of the case" might be interpreted to mean that it was possible to choose as arbitrators persons who were not of high moral character.

43. Mr. SCELLE said that the Standing Drafting Committee had recommended the deletion of the words "The sole arbitrator or the majority of the arbitrators shall be chosen from among nationals of States having no special interest in the case" because, as Mr. Hudson had contended, such a provision would preclude the appointment of national arbitrators, particularly where the tribunal consisted of two persons.

The Standing Drafting Committee's recommendation was adopted unanimously.

44. Mr. FRANÇOIS asked why the Standing Drafting Committee should have dropped the words "Nevertheless, generally speaking", which had figured in article 6 of the original text in the special rapporteur's second report (A/CN.4/46), and which were useful in allowing for the appointment of the head of a State as arbitrator.

45. Mr. SCELLE replied that those words had been deleted because they were too vague. The third paragraph of the comment on article 4 made it clear that, although most members of the Commission were against the appointment of important political personages or heads of States, they did not wish to prohibit it.

46. Mr. CORDOVA suggested that the text of the article should be amplified in order to make that clear.

47. Mr. SCELLE observed that the text should not be read separately from the commentary.

48. Mr. LAUTERPACHT and Mr. YEPES considered that the words "With due regard to the circumstances of the case" covered the contingency satisfactorily.

49. Mr. el-KHOURI also considered that the opening phrase in paragraph 2 made it plain that recognized

competence in international law was not a *sine qua non* in choosing arbitrators.

50. Mr. HUDSON observed that the use of the word "should" rather than the word "shall", after the words "or the arbitrators" in paragraph 2, further strengthened the proviso in the opening phrase.

51. Mr. ZOUREK observed that the French text should be brought into line with the English by substituting the word "*devraient*" for the word "*devront*" in paragraph 2.

It was so agreed.

Article 5 [7]

Paragraph 1

No observations.

Paragraph 2

52. Mr. LIANG (Secretary to the Commission) pointed out that there might be an interval between the time when the tribunal began to function and the time when the proceedings, properly speaking, began.

53. Mr. LAUTERPACHT suggested that, in order to meet the point raised by the Secretary, the words: "provided that the tribunal has not yet begun to function" be replaced by the words: "provided that the tribunal has not yet begun its proceedings".

It was so agreed.

Articles 6, 7 and 8 [8, 9 and 11]

No observations.

Article 9 [12]

54. Mr. SCELLE pointed out that it was very rare in practice for an arbitration treaty itself to specify all the points listed in the eleven sub-paragraphs of article 9. It was for that reason that he suggested that the words: "Unless there is a treaty of arbitration which suffices for the purpose" be replaced by the broader wording: "Unless there are prior provisions on arbitration which suffice for the purpose".

55. Mr. YEPES supported Mr. Scelle's suggestion.

56. Mr. LAUTERPACHT also supported Mr. Scelle's suggestion, which had the advantage over the text proposed by the Standing Drafting Committee that it would cover clauses, or a chapter, dealing with arbitration in a general treaty. He moved its adoption on the understanding that a more elegant English rendering of the phrase suggested by Mr. Scelle would be submitted to the Commission for approval at its next meeting.

On that understanding Mr. Scelle's suggestion was adopted.

Article 10 [14]

Paragraph 1

No observations.

Paragraph 2

57. Mr. SCELLE pointed out, with regard to paragraph 2, that if the parties were bound by an undertaking to arbitrate, the tribunal would be constituted, by virtue of the provisions of article 3, even if no *compromis* had been drawn up. In order to remove any doubt on that point, which was vital to the whole purpose of the draft, he suggested that the phrase "and if the tribunal has already been constituted" be replaced by the phrase "and when the tribunal has been constituted".

Mr. Scelle's suggestion was adopted by 9 votes to none with 2 abstentions.

58. Mr. YEPES suggested that in the French text, the word "et" be deleted from the phrase "*dans un délai raisonnable et qu'il fixera lui-même*".

59. Mr. SCELLE pointed out that the phrase had been omitted in error from the English text.

Mr. Yepes' suggestion was adopted by 5 votes to none with 3 abstentions.

60. The CHAIRMAN said that, in view of the changes made to it, he would put to the vote the text of paragraph 2 of article 10, as amended.

Paragraph 2 as amended was approved by 7 votes to none with 2 abstentions.

Article 11 [19]

No observations.

Article 12 [20]

Paragraph 1³

No observations.

Paragraph 2

61. Mr. ZOUREK felt that paragraph 2 of article 12 conflicted with article 9 (g), which provided that the parties should conclude a *compromis* specifying "the law to be applied by the tribunal and the power, if any, to adjudicate *ex aequo et bono*". If the parties did not give the tribunal the power to adjudicate *ex aequo et bono*, it would have no option, if international law were silent, but to bring in a finding of *non liquet*.

62. Mr. LAUTERPACHT thought the Commission had agreed, after lengthy discussion, that it was impossible for international law to be completely silent on any question which could be submitted to arbitration.

63. Mr. ZOUREK did not agree that the Commission had considered the prior question of principle, whether international law could be silent on a question submitted to arbitration. It had only weighed the merits

³ In document A/CN.4/L.35, paragraph 1 read as follows:

"Subject to any provision in the *compromis* concerning the law to be applied, the tribunal shall be guided by Article 38, paragraph 1, of the Statute of the International Court of Justice."

of the various concrete proposals which had been made. In his view questions could be submitted to arbitration on which international law was silent, either because they fell solely within the province of municipal law, or because they had not been the subject of international regulation.

64. Mr. SCELLE said that it was his view that, by referring a dispute to arbitration, the parties to the dispute manifested their desire for it to be settled, and therefore implicitly gave the arbitral tribunal the power to adjudicate *ex aequo et bono* in the event of the silence or obscurity of international law. In other words, unless the parties stated explicitly in the *compromis* that it should not have that power, the arbitral tribunal had the power to adjudicate *ex aequo et bono*, if necessary.

65. Mr. LAUTERPACHT felt that after lengthy discussion the view had prevailed that the tribunal did not possess the power to adjudicate *ex aequo et bono*, unless such power were explicitly conferred on it by the parties. He hoped therefore that the opposing view, just voiced by Mr. Scelle, would not find a place in the comment.

66. Mr. SCELLE said that if the view propounded by Mr. Lauterpacht was accepted, Mr. Zourek's objection was perfectly valid.

67. After further discussion, the CHAIRMAN put to the vote the question whether there was a contradiction between paragraph 2 of article 12 and article 9 (g).

The question was decided in the negative by 8 votes to 1 with 1 abstention.

Article 13 [24, para. 5]

68. Mr. LIANG, Secretary to the Commission, suggested, on the principle that two different words should not be used to denote one and the same thing, that article 13 be amended to read as follows:

"Subject to any provision in the *compromis* concerning the procedure of the tribunal, the tribunal shall be competent to formulate its own rules of procedure."⁴

It was so agreed.

Article 14 [23]⁵

69. Mr. SCELLE said that the Standing Drafting Committee had been of the opinion that article 23 of his second draft (A/CN.4/46) should be deleted, despite the fact that it had been tentatively adopted, with amendments, by the Commission.

⁴ In document A/CN.4/L.35 this article read as follows:

"Subject to any provision in the *compromis* concerning the procedure to be followed by the tribunal, the tribunal shall be competent to formulate the rules of procedure to be applied."

See summary record of the 183rd meeting for additional change.

⁵ In document A/CN.4/L.35 this article was unnumbered and was not followed by a comment.

70. Mr. ZOUREK recalled that a proposal to delete article 23 of Mr. Scelle's second draft had already been made and rejected.⁶ In his view that article should therefore be retained, the more so since it had an importance in the text as a whole.

71. The CHAIRMAN said that Mr. Zourek was correct in stating that a proposal to delete the article had already been rejected. Personally, he felt that it should be retained.

72. Mr. SCELLE said that his personal opinion, too, was that the article should be retained.

73. Mr. LAUTERPACHT said that he could not agree that the Commission was irrevocably bound by its previous decisions. It had already approved a number of changes made by the Standing Drafting Committee to the texts it had provisionally adopted. The Standing Drafting Committee's reason for proposing the deletion of the article under consideration was that it stated a principle which was so obvious that it did not need to be stated.

74. Mr. KOZHEVNIKOV recalled that the Commission had agreed that it would not alter its previous decisions so far as the substance was concerned, but only with regard to questions of form and drafting. The present question raised considerations of substance, and the Commission's previous decision should therefore be maintained.

75. The CHAIRMAN agreed with Mr. Kozhevnikov that the Commission could not reopen a discussion on questions of substance. He felt, however, that the question at present under discussion was mainly one of form.

76. Mr. YEPES pointed out that, under article 30 (c), an award could be contested by one of the parties on the ground that there had been a serious departure from a fundamental rule of procedure. He agreed therefore that the original article 23 should be retained because it laid down that the equality of the parties was a fundamental rule of procedure.

77. Mr. KERNO (Assistant Secretary-General) pointed out that there were other fundamental rules of procedure which were not mentioned in the draft.

78. Mr. el-KHOURI and Mr. SCELLE felt that the significance of the provision under consideration would be enhanced if it were made the first paragraph of article 14.

79. Mr. HUDSON agreed that the provision in question should be included in another article, but suggested that it be made a second paragraph of article 13, reading as follows:

"Such rules of procedure shall in no case violate the principle of the equality of the parties before the tribunal."

⁶ See summary record of the 148th meeting, para. 21.

80. Mr. LAUTERPACHT still considered the provision unnecessary. However, if some members of the Commission felt it desirable to retain it, it should be retained. Properly, the question of equality of the parties arose in connexion not only with procedure but also with evidence and with the application of substantive law. In order to simplify discussion, however, he would support Mr. Hudson's suggestion.

81. Mr. YEPES and Mr. ZOUREK thought that the discussion showed that the provision in question was of sufficient importance to warrant its being retained and placed in an article by itself.

82. Mr. LIANG (Secretary to the Commission) suggested that if the provision were retained, it should be differently worded, since a declaration of principle appeared somewhat out of place among detailed provisions regarding the powers of the tribunal.

83. The CHAIRMAN put to the vote the question whether the substance of the provision should be included in the final draft.

Its inclusion was decided in the affirmative by 10 votes to none with 1 abstention.

84. Mr. YEPES proposed that the provision be retained as a separate article to read as follows:

"The parties are equal in any proceedings before the tribunal."⁷

Mr. Yepes' proposal was adopted by 6 votes to 3 with 3 abstentions.

85. Mr. SCELLE pointed out that the Commission had still to decide where the article was to be placed. He proposed that it be placed immediately after article 13, to which, as Mr. Hudson had pointed out, it was in fact complementary.

86. Mr. YEPES proposed that the article be made the first article of Chapter IV, as the principle enunciated in it governed all questions of the tribunal's procedure.

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

Mr. Scelle's proposal was rejected by 6 votes to 4 with 1 abstention.

88. The CHAIRMAN said that he would next put Mr. Yepes' proposal to the vote.

89. Mr. SCELLE said that he merely wished to point out that, if the article were placed where Mr. Yepes proposed, it would govern article 11, dealing with interpretation of the *compromis*, and article 12, concerning the law to be applied and *non liquet* findings, all of them questions with which it was totally unconnected.

⁷ In document A/CN.4/L.35 this article which was unnumbered read as follows:

"The equality of the parties before the tribunal is an underlying principle of the law of arbitration."

Five votes were cast in favour of Mr. Yepes' proposal, and 5 against; the proposal was accordingly rejected.

The meeting rose at 6.25 p.m.

174th MEETING

Tuesday, 29 July 1952, at 9.45 a.m.

CONTENTS

	Page
Arbitral procedure (item 2 of the agenda) (A/CN.4/L.35) (<i>continued</i>)	197
Consideration of the draft articles submitted by the Standing Drafting Committee (<i>continued</i>)	
Article 14 [23] * (<i>continued</i>)	198
Article 15 [24]	198
Article 16 [27]	198
Article 17 [26]	200
Article 18 [29]	200
Article 19 [30]	200
Article 20 [28]	200
Article 21 [16 and 17]	200
Article 22 [18]	200
Article 23 [31]	200
Article 24 [32]	200
Article 25 [34]	201
Article 26	201
Article 27 [35]	201
Article 28 [37]	201
Article 29 [38, 39 and 40]	201
Article 30 [42]	201
Article 31 [43]	201
Article 32 [44]	202

Chairman: Mr. Ricardo J. ALFARO.

Rapporteur: Mr. Jean SPIROPOULOS.

Present:

Members: Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shushi 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/L.35) (*continued*)

1. The CHAIRMAN invited the Commission to con-

* The number within brackets indicates the article number in the Special Rapporteur's Report (A/CN.4/46).