Document:-
A/CN.4/SR.137

Summary record of the 137th meeting

Topic:
Arbitral Procedure

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

15. Mr. LIANG (Secretary to the Commission) said that Mr. Córdova had informed him that since the Commission's recommendation on the question of full-time membership had been settled for the time being by General Assembly resolution 600 (VI), he had not deemed it necessary to draw up a written report.

16. Mr. HSU supported Mr. Hudson's proposal. In his view, resolution 484 (V) was still operative.

17. Mr. SCELLE pointed out that the General Assembly had for the time being rejected the proposal that the Commission should be put on a full-time basis, but that it had not considered the question of ensuring some continuity of the Commission's work between one session and another. There was therefore no reason why the Commission could not consider that latter question further if it adopted Mr. Hudson's proposal, which he supported.

18. Mr. KERNO (Assistant Secretary-General) said that his interpretation of General Assembly resolution 600 (VI) was the same as that of Mr. Hudson.

19. Mr. el-KHOURI also supported Mr. Hudson's proposal.

It was agreed that the question of the review of the Statute of the Commission should be placed on the agenda for the present session.

Summary records of the Commission [2]

20. Mr. HUDSON said that he had had the unfortunate experience of having some extemporaneous remarks made by him in the course of the Commission's discussions quoted as though they were an *ex cathedra* pronouncement. If members of the Commission were to be held to every word they said, they would naturally have to weigh their remarks far more carefully in advance, and the liveliness of the Commission's debates would suffer. He understood that the Commission on Narcotic Drugs recorded only its decisions, and he suggested that the International Law Commission adopt the same practice, although prepared statements made by special rapporteurs might also be included in the records if the rapporteurs so requested.

21. Mr. SCELLE did not agree that the Commission's records should be limited to decisions. If the discussions which led up to those decisions were not recorded, there would be no indication of the reasons for which they had been taken. Many others shared his view, and it had even been suggested that the Commission's records should be printed. He agreed with Mr. Hudson that the snmmary records could at times appear to place undue emphasis on remarks thrown out at random in the course of a discussion. The Secretariat should therefore not be content with reproducing what was said, but should attempt the more difficult task of summarizing it. The summary records might, therefore, perhaps be made somewhat briefer, so that members would have time to check the provisional records thoroughly.

22. Mr. LIANG (Secretary to the Commission) said that the summary records had been warmly praised not only by members of the Commission, but also by outside sources. The late Miss Scheltema had devoted her full time to making them as accurate and complete as possible. The task was so time-consuming that, for a period during the third session, she had had to be assisted by another member of the Legal Department. Obviously, the length of the summary records would depend on the subject-matter with which they dealt. Procedural questions could be treated very briefly, but in the case of discussions on substance — the question of the continental shelf, for example — the records had to be relatively full if they were to be of value to scholars of international law. Moreover, if the Commission were to win widespread support for its work, it must bring it to the attention of a wider public than the legal profession alone, and a bare record of decisions would scarcely suffice for that purpose.

23. As Mr. Scelle had said, it was more difficult to summarize than to reproduce, and the Commission's Secretariat, the staff of which had already been reduced from eight to four, could not devote any more time to the summary records than it had done in the past. He wondered, therefore, whether the Commission could not agree that in future the summary records should, in general, be somewhat briefer than in the past, but that it should recognize that, for certain discussions, relatively full records would be necessary.

After some discussion, *Mr. Liang's suggestion was adopted.*

The meeting rose at 12.50 p.m.

137th MEETING

Friday, 6 June 1952, at 9.45 a.m.

CONTENTS

Chairman: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. J. M. YEPES.

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).

[2] See summary record of the 135th meeting, paras. 13—17.

Arbitral procedure (item 2 of the agenda) (A/CN.4/18, A/CN.4/46)

General debate

1-2. Mr. SCELLE, opening the discussion as special rapporteur on arbitral procedure, said that his second report (A/CN.4/46) [1] dealt with matters already discussed in connexion with his first report (A/CN.4/18).[2]

3. His point of departure was that undertakings to resort to arbitration were often not carried out, and that governments sometimes sought to evade obligations which they had entered into at an earlier stage. He had quoted a number of examples in his first report, and had indicated that it was impossible at present to oblige a recalcitrant government to honour its undertaking. Some had adduced that argument in respect of the stand taken by the Iranian Government, in its dispute with the Anglo Iranian Oil Company, in claiming that its commitments under the Agreement for a Concession of 29 April 1933 had no longer any force, as a result of its recent nationalization of the oil industry.

4. Arbitration was one source of international jurisprudence, and it was a field in which public opinion was an important factor. If the number of undertakings to resort to arbitration that were not honoured tended to increase, the whole system of arbitration would fall into disrepute, and international law would lose one of its means of enforcement. It was therefore incumbent upon the Commission to consider the obstacles to arbitral procedures, and to see what means for their removal were available.

5. One of the principal abstacles to applying a compromissory clause occurred when a party declared its undertaking to be no longer valid, or invoked the principle of *rebus sic stantibus*. For that reason he considered it necessary to entrust the preliminary issue of arbitrability, if it were in dispute, to some judicial organ of an international character, which he considered should be a Chamber of Summary Procedure of the International Court of Justice. Apart from giving judgement, the Chamber might also prescribe measures to protect the interests of the parties pending the final award. He had taken up that proposal in his first report, but the Commission had reached no definite decision, although it had viewed it favourably.

6. Another frequent cause of failure of arbitral procedure was the difficulties associated with the constitution of the tribunal. Each party was concerned about selection of arbitrators, and there again he believed that the intervention of an international authority would be valuable. He was therefore in favour of recourse being had to the procedure prescribed in article 23 of the Revised General Act for the Pacific Settlement of International Disputes,[3] in cases where the parties were themselves unable to agree on the constitution of the tribunal.

7. The procedures he had proposed both with regard to the arbitrability of a dispute and with regard to the constitution of the tribunal were thus not new.

8. He also wished to emphasize the immutability of the tribunal. Once the arbitrators had been appointed the composition of the tribunal must remain unchanged, unless a vacancy occurred for reasons beyond the control of the contending governments. The arbitrators, once appointed, would have to divest themselves of every national allegiance, and act as independent and impartial judges.

9. He supposed that his conclusions about the need for an international authority to decide the issue of arbitrability and to constitute the tribunal in cases of disagreement between the parties, and about the need to ensure that the tribunal would be in a position to pursue the case to the end and make an arbitral award which would be carried out in good faith, would be generally accepted. The only delicate aspect of the problem was the nature of the disputants, and there it must be remembered that the rules of law were as binding upon States as they were upon individuals. He had not proposed an authoritarian system that would violate the freedom of States, since they were free to resort to arbitration and to choose the arbitrators. He was proposing a procedure similar to that set forth in the so-called optional clause of the Statute of the International Court of Justice, namely, Article 36, paragraph 2.

10. Since the appearance of his second report (A/CN.4/46) he had sought to fill a gap in his documentation by submitting to the Commission a supplementary note (A/CN.4/57),[4] to which were annexed the rules of conciliation and arbitration of the International Chamber of Commerce, which showed that the problems met with in commercial disputes were analogous to those arising between States. The International Chamber of Commerce had found that many firms which had bound themselves to observe the rules laid down now claimed that their undertakings no longer had force. It had accordingly provided for a Court of Arbitration composed of eminent lawyers, which had much the same functions as would be laid upon the International Court of Justice under the proposals made in his report. Article 10 of the rules of the International Chamber of Commerce was particularly important, inasmuch as it laid down that, should the defendant refuse or fail to submit the dispute to arbitration, the Court of Arbitration would order that the arbitration proceed, such refusal or absence notwithstanding.

11. He suggested that in the light of the foregoing general considerations the Commission might discuss, article by article, the second preliminary draft on arbitral procedure which he had presented in the annex to his second report (A/CN.4/46).

12. Mr. HUDSON wondered why Mr. Scelle should

---

[1] See text in *Yearbook of the International Law Commission, 1951*, vol. II, pp. 110—120.

[2] See text in *Yearbook of the International Law Commisison, 1950*, vol. II, pp. 114—151.

[3] *United Nations Treaty Series*, vol. 71, pp. 102—126.

[4] See text in vol. II of the present *Yearbook*.

have referred to the dispute between the Iranian Government and the Anglo-Iranian Oil Company, as he (Mr. Hudson) had assumed that the Commission was dealing with international arbitration alone.

13. Mr. SCELLE agreed with Mr. Hudson that it was the Commission's business to consider international arbitration. He had merely quoted the example to which Mr. Hudson had objected in order to bring out the kind of difficulties to which compromissory clauses gave rise. The Iranian Government claimed that the Agreement for a Concession of 1933 was an instrument concluded between a government and a private company, whereas the United Kingdom Government affirmed that the agreement was of an inter-governmental character, similar to a treaty, having been concluded as the result of a settlement of a dispute between the two governments, in which the Council of the League of Nations had intervened. He had quoted that example with one object only, namely, to demonstrate the similarity of arbitration problems and procedure whatever the parties, be they States, private companies or individuals. He took no position with regard to the substance of the dispute. He believed that the technique of arbitration should be based on the same principles, regardless of whether it affected governments, individuals, or private companies, subject to the difference that it was easier to impose on individuals than on Governments the obligation to submit to arbitration.

14. Mr. HUDSON, observing that his question had not yet been answered, said that if Mr. Scelle's second preliminary draft on arbitration procedure contained in the annex to his second report (A/CN.4/46) was intended to apply to more than international disputes alone, he would have considerable difficulty in discussing it.

15. He agreed that international arbitration might have certain common features with other forms of arbitration. Nevertheless, it must be remembered that a dispute between private parties might be subject to legislation which differed from public international law.

16. Mr. SCELLE was in agreement with Mr. Hudson that the draft on arbitration procedure should be confined to international arbitration alone, as had been, indeed, his first report (A/CN.4/18), which had been based on the definition of arbitration contained in the 1907 Hague Convention for the Pacific Settlement of International Disputes. In studying the problem of arbitration he had recognized the extent to which the basic principles were generally applicable, regardless of the character of the parties. The methods of removing obstacles to international arbitration which the Commission should seek to formulate would thus be pertinent to other types of arbitration, though, of course, certain more drastic remedies which could be imposed in cases concerning private individuals would not be acceptable to States.

17. He had cited the provisions laid down by the International Chamber of Commerce because they obviously contained an international element.

18. Mr. YEPES, paying tribute to Mr. Scelle for his lucid and informative introductory statement, expressed pleasure that a jurist of his authority should have emphasized the important role which the Commission was called upon to play in the development of international law.

19. He agreed with Mr. Scelle as to the responsibilities which should be laid upon the International Court of Justice for determining the arbitrability of a dispute, and for constituting a tribunal in cases where the parties were unable to agree upon its composition. The International Court, with its profound sense of responsibility and unquestionably high competence, was clearly qualified to discharge those responsibilities.

20. He was gratified to see that Mr. Scelle had borrowed certain ideas from the Pact of Bogotá (American Treaty on Pacific Settlement) of 1948,[5] thus recognizing the important contribution that that Treaty had made to the development of international law in respect of the pacific settlement of disputes.

21. Mr. HUDSON asked that, to facilitate discussion, members of the Commission be supplied with copies of the texts of the 1907 Hague Convention for the Pacific Settlement of International Disputes, the Pact of Bogotá and the Revised General Act for the Pacific Settlement of International Disputes.

22. The CHAIRMAN said that he would ask the Secretariat to make the necessary arrangements to see that Mr. Hudson's wish was met.

23. Mr. HUDSON said that he had been struck by the second paragraph on page 11 of Mr. Scelle's second report, and asked where the relevant provision occurred in the draft on arbitration procedure.

24. Mr. SCELLE said that the provision in question was to be found in article 12 of his draft. It was a procedure which would become necessary if there was some obstacle to the parties signing at once a general *compromis* prescribing all the main problems to be settled in the dispute. If the classical arbitral procedure could be applied without hindrance, the first 11 articles of his draft would not come into play.

25. Article 12 was not new, but had been borrowed from the Hague Convention of 1907. He would like in that context to emphasize that the obligation to have recourse to arbitration did not necessarily lie in the *compromis*. Its source was the compromissory clause in the relevant instrument or agreement.

26. The International Chamber of Commerce, which had met with difficulties similar to those which occurred in disputes between States, had included a provision in its rules on arbitration, under which if both parties, or one of them, refused to sign a *compromis*, they would not thereby be exonerated from accepting arbitration and abiding by the decision reached.

---

[5] Pan American Union, *Law and Treaties Series* No. 24. Also in *United Nations Treaty Series*, vol. 30, pp. 55—116.

27. Mr. KERNO (Assistant Secretary-General) said that he had been most interested in Mr. Scelle's view, developed in the introduction to his second report (A/CN.4/46) — namely, that the task of the special rapporteur was to submit a text which had been scientifically studied, and not to confirm facile solutions which States would find it easy to accept merely because they entailed no commitment. The Commission's task consisted of both the codification and the development of international law.

28. Mr. HSU agreed with Mr. Scelle about the Commission's tasks, one of which was to recommend improvements in existing international law.

29. The general discussion on arbitration being concluded, the CHAIRMAN invited the Commission to proceed to the examination, article by article, of Mr. Scelle's Second Preliminary Draft on Arbitration Procedure (Annex to document A/CN.4/46).

ARTICLE 1 [6]

30. Mr. LIANG (Secretary to the Commission) observed that the phrase " may arise eventually " was not a correct translation of the French text, and might be replaced by the expression " may possibly arise ".

31. Mr. el-KHOURI suggested that the matter of drafting be referred to the Standing Drafting Committee which Mr. Hudson had suggested should be set up.

It was so agreed.

32. Mr. HUDSON asked whether the first sentence of article 1 served any useful purpose. He thought it was a self-evident statement of fact which need not be made.

33. Mr. el-KHOURI pointed out that the intention of article 1 was to make clear the compulsory character of compromissory clauses in international instruments.

34. Mr. YEPES pointed out that the first sentence of article 1 of Mr. Scelle's draft was similar to the first paragraph of article 39 of the 1907 Hague Convention for the Pacific Settlement of International Disputes.

35. Mr. SCELLE agreed with Mr. Yepes that the first sentence of article 1 was based on the wording of article 39 of the 1907 Convention which read as follows :

> " The arbitration convention is concluded for questions already existing or for questions which may arise eventually.
>
> " It may embrace any dispute or only disputes of a certain category."

The purpose of that provision was to indicate that the obligation to arbitrate derived from an undertaking contained in an instrument or agreement on which it was based, and not from the *compromis* alone. He agreed that it was a truism, but felt that it was one which needed to be stated.

36. Mr. HUDSON asked why Mr. Scelle had altered the wording of the Hague Convention, which placed " questions already existing " before " questions which may arise eventually ", an order which appeared more logical. Moreover, the words " compromissory clause or undertaking to have recourse to arbitration " seemed to suggest two different things ; in fact, they were surely one and the same. He suggested that the word " questions " should be replaced by the word " dispute ". He still saw no reason, however, why the first sentence should be included at all.

37. Mr. SCELLE said that article 1 must be read in connexion with article 2, which laid down the procedure in the event of disagreement as to the arbitrability of a dispute. Such disagreement would only arise if the undertaking to have recourse to arbitration applied to disputes which might arise in future, or, in other words, was abstract rather than concrete. For that reason — that was, because they were more important in connexion with what followed — he had referred to such disputes first ; but he would have no objection to reversing the order. In the second phrase mentioned by Mr. Hudson, the words following the conjunction " or " were descriptive of those preceding it, not alternative to them ; one and the same thing was meant, not two.

38. Mr. LIANG (Secretary to the Commission) referring to a previous remark made by Mr. Hudson, pointed out that the term " the arbitration convention " as used in article 39 of the 1907 Hague Convention for the Pacific Settlement of International Disputes obviously meant any arbitration convention to be concluded in the future. That term consequently corresponded to the term " compromissory clause " as used in article 1 of Mr. Scelle's draft. For the sake of clarity, he would suggest the use of the term " an arbitration convention " in place of the words " compromissory clause " in article 1, for the reason that they meant virtually the same thing. It would be desirable to obviate all confusion between the terms " compromissory clause " and " *compromis* ", as the latter was used in subsequent articles of Mr. Scelle's draft. Such confusion might not arise in the mind of a lawyer, but the general reader might not be able to grasp the difference.

39. Mr. SCELLE agreed that the words " compromissory clause or " might be deleted from article 1.

It was so decided.

40. After some further discussion of drafting points concerning the first sentence of article 1, Mr. HUDSON said that as his proposal that that sentence be deleted had found no support, he would withdraw it. He would, however, suggest that the sentence be amended to read :

[6] Article 1 read as follows : " The compromissory clause or undertaking to have recourse to arbitration may apply to questions which may arise eventually or to questions already existing. Whatever the instrument or agreement on which it is based, the clause is strictly obligatory and must be implemented in good faith."

" An undertaking to have recourse to arbitration may apply to existing disputes or to disputes arising in the future."

Mr. Hudson's suggestion was adopted, subject to any further drafting amendments made by the Standing Drafting Committee which it had been proposed should be set up.

41. Mr. el-KHOURI, referring to the second sentence of article 1, said that, in accordance with Articles 33 and 36 of the Charter of the United Nations, recourse to arbitration should also be made obligatory when the General Assembly or the Security Council recommended the parties to a dispute to settle it by arbitration. He proposed that a sentence to that effect be added to article 1.

42. The CHAIRMAN suggested that consideration of that proposal be deferred until the Commission had completed its consideration of the existing text of article 1.

It was so agreed.

43. Mr. YEPES said that he had understood it to be Mr. Scelle's view that the agreement from which an undertaking to have recourse to arbitration resulted could be verbal in nature. In his view, it would be extremely dangerous to endeavour to make verbal agreements between States legally binding, and he could not accept the present wording of article 1. He accordingly proposed that it be amended in such a way as to make it clear that the agreement referred to must be a written instrument.

44. Mr. SCELLE confirmed that it was his view that if the agreement could be proved it should be legally binding, even if it did not exist in writing. He again drew attention to the connexion between articles 1 and 2; if the existence of a verbal agreement to have recourse to arbitration was contested by one of the parties, it would be the responsibility of the Chamber of Summary Procedure of the International Court of Justice to render judgment on the existence of the agreement, and hence on the arbitrability of the dispute.

45. Although he had not in mind any specific examples of verbal agreements between States to have recourse to arbitration, agreements on other questions between States were often verbal, and if Mr. Yepes's reasoning were followed to its logical conclusion it could be argued that such agreements should only be accepted as valid if they were ratified. He recalled that in the *Legal Status of Eastern Greenland* case, the Permanent Court of International Justice had held an oral declaration (the Ihlen declaration) by the Norwegian Minister for Foreign Affairs, made on behalf of his Government in respect of a question falling within his province, to constitute an undertaking which was binding upon the country to which the Minister belonged. [7] He urged the Commission not to be too formalistic in its approach.

[7] See Publications of the Permanent Court of International Justice, *Judgments, Orders and Advisory Opinions*, Series A/B, No. 53, pp. 69—73.

46. Mr. YEPES pointed out that Article 102 of the Charter provided that " . . . every international agreement entered into by any Member of the United Nations . . . shall as soon as possible be registered with the Secretariat and published by it ", which showed that by " agreement " a written agreement was meant.

47. Mr. SANDSTRÖM suggested that the words " Whatever the instrument or agreement on which it is based " be deleted, so as to leave the question of the form of agreement entirely open.

48. Mr. YEPES said that he could accept Mr. Sandström's suggestion.

49. Mr. SCELLE felt that the words which it was suggested should be deleted were an essential part of article 1. As the Commission was only considering arbitration between States, however, and as he had already indicated that the rules governing arbitration between States could reasonably be made stricter than those governing arbitration in which one or both of the parties were individuals, he would agree to adding to article 1 some such phrase as:

" provided that at least the basis of proof (*commencement de preuve*) can be produced in writing."

50. Clearly the International Court of Justice would require formal proof in important disputes, but he saw no reason why it should not be left to its discretion to accept, for example, an exchange of letters between administrations in disputes of lesser importance.

51. Mr. SANDSTRÖM and Mr. YEPES feared that it would be going much too far to introduce the French-law concept of " basis of proof " (*commencement de preuve*) in a document governing relations between States.

52. Mr. KERNO (Assistant Secretary-General) suggested that the question of proof might be more appropriately dealt with in article 2.

53. Mr. SCELLE agreed.

54. Mr. HUDSON asked whether Mr. Scelle could agree to the second sentence of article 1 being amended to read:

" Whatever the instrument or agreement from which it results, the undertaking constitutes a legal obligation, which ought to be carried out in good faith ".

55. Mr. SCELLE accepted that wording.

Mr. Sandström's proposal that the words " Whatever the instrument or agreement on which it is based " be deleted having been put to the vote, 4 votes were cast in favour and 4 against. The proposal was accordingly rejected.

The wording suggested by Mr. Hudson was adopted by 6 votes to none, with 1 abstention.

56. Mr. YEPES explained that he had abstained because that wording did not preclude verbal agree-

ments. He accordingly proposed that an additional sentence be added to article 1, reading:

"The undertaking to have recourse to arbitration must be in writing".

57. Mr. HUDSON said that the Commission should not prejudge its consideration of the Law of Treaties. He saw no need to specify details of how the undertaking was to be entered into. It would be sufficient if it could be proved that it had in fact been entered into.

58. Mr. el-KHOURI said that he had only been able to vote in favour of the wording suggested by Mr. Hudson because he could not imagine two States concluding in practice a verbal agreement to have recourse to arbitration.

Further discussion of article 1 was deferred.

The meeting rose at 1 p.m.

138th MEETING

Monday, 9 June 1952, at 3 p.m.

CONTENTS

Chairman: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, 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).

Welcome to members of the Commission newly present

1-5. The CHAIRMAN extended a welcome to Mr. F. I. Kozhevnikov and Mr. H. Lauterpacht, the newly elected members of the Commission, and also to Mr. J. Zourek, who was attending a session of the Commission for the first time.

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

6. The CHAIRMAN invited the Commission to continue its discussion of the Second Preliminary Draft on Arbitration Procedure (annex to document A/CN. 4/46) in the second report of the special rapporteur.

ARTICLE 1 (*continued*)

7. Mr. KOZHEVNIKOV said that closer acquaintance with the Second Report on Arbitration Procedure submitted to the Commission by the special rapporteur, which included the Second Preliminary Draft on Arbitration Procedure, had imbued him with the firm conviction that the fundamental theses and premises on which the specific proposals constituting the conclusions of that report were based were totally unacceptable from the standpoint of the generally accepted principles of current international law.

8. Even if the observation — on the substance of which he would express no opinion for the time being — that the elements of a code of arbitration procedure already existing in a number of international conventions were accepted, the Commission's task would merely consist, as was in fact made clear in the report, in harmonizing and developing those elements. In other words, the provisions of the special rapporteur's draft should have proceeded from the basis principles of international law relating to the inherent nature of arbitration as a recognized institution of that law.

9. The draft, however, went further, and in his view conflicted with the very essence of international arbitration, which essence the special rapporteur had himself endorsed to some extent. The special rapporteur pointed out that international arbitration differed from international jurisdiction in the proper sense of that term inasmuch as, *inter alia*, it was left to the discretion of the parties concerned to determine the questions in dispute and to select the arbitrators. He did not propose for the time being to go into the substance of the question of the so-called international judicial authority, but merely wished to draw attention to that definition of international arbitration. He wished also to point out that governments usually used different procedures to conclude the *compromis* and to appoint arbitrators respectively.

10. The report referred to the necessity for providing, in the absence of agreement between the parties, for intervention by an international authority whose decisions would be binding, and which, in the special rapporteur's opinion, might well be the International Court of Justice itself. That contention, which conflicted sharply with the basic principles of international arbitration, seemed to him (Mr. Kozhevnikov) to give rise to a somewhat curious situation.

11. The competence of the International Court of Justice was, as all knew, optional. But the report of the draft on arbitration procedure sought to confer on international arbitration in that respect a character that not even the International Court itself enjoyed. The draft further provided that the arbitral tribunal could be set up even before the conclusion of the *compromis*, which would give it very wide powers. It was clearly impossible to admit such contentions if the Commission wished to