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Summary record of the 148th meeting

Topic:
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liquet on the grounds of the silence or obscurity of international law or of the *compromis*."

That paragraph was adopted by 8 votes to none, with 3 abstentions.[8]

79. Mr. SCELLE said that, as a result of the foregoing decisions, he felt that articles 21 and 22 would require re-drafting. He would accordingly ask that their consideration be deferred until the next meeting to give him time to do so in consultation with Mr. Lauterpacht, who had submitted alternative texts.

It was so agreed.

The meeting rose at 1.5 p.m.

[8] Article 20, as tentatively adopted, read as follows:

" 1. Subject to any agreement between the parties on the law to be applied, the tribunal shall be guided by Article 38, paragraph 1, of the Statute of the International Court of Justice.

" 2. The tribunal may not bring in a finding of *non liquet* on the grounds of the silence or obscurity of international law or of the *compromis*."

148th MEETING

Monday, 23 June 1952, at 3 p.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. A. E. F. SANDSTRÖM, 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).

Date and place of the fifth session (item 7 of the agenda) (*resumed from the 143rd meeting*)

1. Mr. KERNO (Assistant Secretary-General), after recalling that the Commission had decided at its 143rd meeting[1] that the Secretariat should be requested to consult with the Secretary-General with a view to the Commission's fifth session being held in Geneva, beginning about 1 June 1953, said that he had been instructed by the Secretary-General to draw the serious attention of the Commission to the fact that the cost of holding its 1953 session in Geneva would be considerably higher than that of holding it in New York. The additional cost would amount to approximately 8,000 dollars for travel and per diem allowances, and a further 3,000 dollars for engaging the necessary additional interpreters from and into Russian.

2. The CHAIRMAN suggested that the Commission take note of the statement made by the Assistant Secretary-General and defer further consideration of the question until a subsequent meeting.

It was so agreed.

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 to 3) (*continued*)

3. The CHAIRMAN requested the Commission to resume its discussion of the Second Preliminary Draft on Arbitration Procedure annexed to the special rapporteur's second report on that subject (A/CN.4/46).

ARTICLES 21 AND 22 (*continued*)

4. Mr. SCELLE said that, quite apart from the question whether they constituted unwarranted reflections on the good faith of the parties, he felt that articles 21 and 22 might be deleted, since they were perhaps too detailed and complicated.

5. Mr. YEPES said that it was quite possible that the *compromis* would be drafted in such a way as to defeat the whole arbitration procedure. The cases referred to in articles 21 and 22 of Mr. Scelle's draft should therefore be covered, and he had prepared a text which would be circulated in due course.

6. The CHAIRMAN recalled that Mr. Lauterpacht had also proposed amendments to articles 21 and 22.[2]

7. Mr. LAUTERPACHT withdrew his amendments to articles 21 and 22, but agreed with Mr. Yepes that there might be good reasons for retaining the substance of those articles. The Commission had already adopted an article concerning gaps in the substantive law to be applied by the tribunal. A code on arbitration procedure should also contain provisions concerning possible gaps in the procedural sphere.

8. The CHAIRMAN suggested that further discussion of articles 21 and 22 be deferred until Mr. Yepes' amendment had been circulated.

It was so agreed.

[1] See summary record of the 143rd meeting, paras. 63—66.

[2] See summary record of the 147th meeting, para. 45.

ARTICLE 23 [3]

9. Mr. SCELLE said that it went almost without saying that the principle of the equality of the parties before the rules of procedure should be broadly observed. It seemed reasonable, however, to leave the tribunal free to assess the importance of irregularities of form.

10. Mr. YEPES felt that the wording proposed by Mr. Scelle would be inappropriate in a draft convention, and proposed that article 23 be amended to read:

"Any serious violation of the principle of equality of the parties before the rules of procedure may be invoked by the injured party as a reason for voiding the award. Purely formal irregularities of procedure shall not be considered as serious under this article."

11. Mr. SANDSTRÖM proposed that article 23 be deleted, not because he was opposed to the ideas contained in it, but because the first sentence was axiomatic and the second would more properly be included among the provisions relating to the right of appeal.

12. Mr. el-KHOURI associated himself with Mr. Sandström's proposal.

13. Mr. LAUTERPACHT also supported Mr. Sandström's proposal, for the reasons the latter had given, and also because the question of the admissibility of evidence was dealt with in article 24, which gave the tribunal entire discretion in the matter.

14. Mr. YEPES pointed out that article 23 also provided for a penalty in the event of non-observance of the principle of equality of the parties before the rules of procedure.

15. Mr. SCELLE said that he would only point out that the word used in the French text of the second sentence, namely "*productions*", covered more than evidence. He agreed that the first sentence was axiomatic, but did not agree that it would be inappropriate to include in a convention such statements of generally accepted principles which had, he would remind members of the Commission, been included in earlier instruments laying down arbitration procedure, such as the General Act of Arbitration.

16. Mr. KOZHEVNIKOV emphasized that the whole convention should proceed from the fundamental principles of international law. Accordingly, so important a principle of international law as the equality of the parties should be thoroughly discussed, and mention of it could not be deleted.

17. As to the second sentence of article 23, that could well be deleted in its entirety.

18. Mr. SCELLE pointed out that the main point of article 23 lay in the second sentence. The principle of equality of the parties before the rules of procedure was indeed so generally accepted that he knew of no case where it had been expressly laid down. The purpose of the article was therefore not so much to lay down the equality of the parties, as to give the tribunal a certain freedom of appreciation in that respect.

19. Mr. HUDSON felt that inclusion of a statement to the effect that failure to observe the principle of the equality of the parties before the rules of procedure might void the award would only encourage a party against whom an award was made to challenge the principle. He felt that the second part of the first sentence in Mr. Scelle's draft should be omitted, as should also the second sentence which, as Mr. Sandström had pointed out, was out of place.

20. He proposed, therefore, that article 23 be amended to read as follows:

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

21. The CHAIRMAN said that he would first put to the vote the proposal that article 23 be deleted.

The proposal was rejected by 6 votes to 3, with 3 abstentions.

Mr. Hudson's proposal was adopted by 8 votes to 1, with 3 abstentions.

ARTICLE 24 [4]

22. Mr. LAUTERPACHT felt that it was generally undesirable that the tribunal should be able to overrule the provisions of the *compromis*; in some cases the parties might find it useful to rule out certain kinds of evidence in advance. He therefore felt that the words "regardless of the provisions of the *compromis*" should be deleted.

23. The words "or other methods of proof" should be added at the end of the first paragraph proposed by Mr. Scelle, since the various types of evidence he had listed were not comprehensive.

24. With regard to the second paragraph, he felt that

[3] Article 23 read as follows:

"The equality of the parties before the rules of procedure is the underlying principle of any arbitral jurisdiction; failure to observe this principle may void the award. The tribunal is, however, free to assess the importance of irregularities of form only and is not bound in all cases to rule the preclusion or inadmissibility of the evidence submitted."

[4] Article 24 read as follows:

"Any party adducing a fact likely to be relevant to the decision of the case shall furnish at least the first elements of proof thereof. The tribunal shall be the judge of the admissibility and weight of evidence, regardless of the provisions of the *compromis* and regardless of whether the evidence consists of written papers or documents, depositions, affidavits, inquiries, expert opinions or inquiries *in situ*.

"The parties shall co-operate with one another and with the tribunal in the production of evidence and shall obey the measures ordered for this purpose. Refusal to co-operate shall constitute an unfavourable presumption against the party so refusing.

"The burden of proving the applicable rules of law, including rules of municipal law, does not rest exclusively on the parties; the tribunal may co-operate with them with a view to furnishing such proof."

refusal to co-operate with the other party and with the tribunal in the production of evidence should not necessarily constitute an unfavourable presumption against the party so refusing.

25. He therefore proposed that the second sentence of the first paragraph of article 24 be amended to read as follows:

"The tribunal shall be the judge of the admissibility and weight of evidence regardless of whether it consists of written documents, depositions, affidavits, testimony of witnesses, inquiries by and opinions of experts, visits to the place (*descentes sur les lieux*) or other methods of proof."

and that the second sentence of the second paragraph be amended to read as follows:

"The tribunal shall duly take note of the failure of any party to comply with the obligations of this article."

26. The third paragraph of Mr. Scelle's draft was also unsatisfactory. The first part appeared to lay down the principle that the tribunal should be partly responsible for proving the applicable rules of law; the second part appeared to make that an optional task for the tribunal. He therefore proposed that the third paragraph be deleted. A paragraph should, however, be added, stating:

"The tribunal shall have the power at any stage of the proceedings to call for such evidence as it may deem necessary."

27. Mr. SANDSTRÖM agreed with the amendments proposed by Mr. Lauterpacht, but also felt that the first sentence of the first paragraph should be deleted, first, because it was unnecessary, and secondly, because the first elements of proof could sometimes be dispensed with.

28. Mr. FRANÇOIS agreed with Mr. Sandström concerning the first sentence of article 24; no proof was required, for example, of well-known facts which might be adduced as evidence.

29. He also agreed in general with Mr. Lauterpacht's amendments, although he thought that the phrase "regardless of... other methods of proof" could be deleted. Nor did he understand what was meant by stating that the parties should "co-operate with one another" in the production of evidence. Finally, he suggested that the wording proposed by the special rapporteur for the second sentence of the second paragraph was unnecessarily cumbersome, and that the wording used in Article 49 of the Statute of the International Court of Justice should be used instead.

30. Mr. HUDSON agreed with the criticisms levelled against the third paragraph of article 24, and suggested that the article as a whole be replaced by the following text:

"1. The tribunal shall be the judge of the admissibility and weight of any evidence presented to it.

"2. The parties shall co-operate with one another and with the tribunal in the production of evidence.

"3. The tribunal shall have power at any stage of the proceedings to call for the production of evidence deemed to be required."

31. Mr. LIANG (Secretary to the Commission) wondered whether it was really necessary to provide that the tribunal shall be the judge of the admissibility and weight of the evidence presented to it. Surely that went without saying. No such provision was to be found in the Statute of the International Court of Justice.

32. Mr. SCELLE said that the whole point of the second sentence of the first paragraph was contained in the words "regardless of the provisions of the *compromis*". If those words were deleted, he agreed that the whole sentence could be deleted. In his view, however, the tribunal should be able to set aside the provisions of the *compromis* if they made it impossible for it to render an award which would constitute a true settlement of the dispute in its integrality.

33. He agreed with Mr. François that the words "with one another and" could be deleted from the second paragraph. What he had had in mind was that the parties and the tribunal should jointly discuss the admissibility of evidence furnished.

34. With regard to the third paragraph, he pointed out that it had been stated in a number of cases that rules of municipal law did not have to be proved; in his view, that was not so, but the tribunal should co-operate with a view to furnishing such proof.

35. Mr. LAUTERPACHT agreed that the enumeration of the various types of evidence should be deleted from the first paragraph. On the other hand, he greatly hoped that the Commission would retain the words "The tribunal shall be the judge of the admissibility and weight of evidence", since the tribunal's right in that respect had been questioned in some cases. The Statute of the International Court of Justice also contained a similar provision, namely, Article 52, which left it to the Court's discretion whether to accept evidence submitted after the time-limit specified for the submission of evidence had expired.

36. He also hoped that the words "with one another and" would be retained. In the United Kingdom and the United States of America, at any rate, the parties were obliged to co-operate with one another in preparing the evidence, and also, in some cases, to produce certain kinds of evidence which was in their possession even if it was damaging to their case.

37. With regard to the third paragraph, it was open to question whether the tribunal should be presumed to be cognizant of rules of municipal law. The International Court of Justice had ruled that it was under no obligation to be cognizant of such rules or to take official notice of them, but that it could do so if it so desired. The questions which the paragraph raised were so controversial that he felt that it should be deleted, and replaced by the paragraph which he himself had proposed.

38. The CHAIRMAN pointed out that Mr. Hudson's proposal entailed the deletion of the first sentence of

the first paragraph from Mr. Scelle's draft. He would, therefore, put that sentence to the vote first.

The first sentence of Mr. Scelle's draft was rejected by 5 votes to 4, with 2 abstentions.

Paragraph 1 of Mr. Hudson's proposal was adopted by 10 votes to none, with 2 abstentions.

39. The CHAIRMAN pointed out that the proposal that the words "with one another and" be deleted, would apply equally to paragraph 2 of Mr. Hudson's proposal.

40. Mr. SCELLE and Mr. el-KHOURI felt that to meet the point made by Mr. Lauterpacht in that respect all that was necessary was to provide that the parties should co-operate with the tribunal.

41. Mr. AMADO pointed out that Article 52 of the Statute of the International Court of Justice provided that, after expiry of the time-limit laid down, the Court could refuse to accept any further evidence that one party might desire to present, unless the other party consented. If more than such consent, was meant by the reference to the parties co-operating with one another he must oppose its inclusion.

42. Mr. SANDSTRÖM felt that the words "with one another and" should be retained, since, in the case of recognition of a known fact, for example, it would be preferable to have recognition by both parties.

43. Mr. FRANÇOIS pointed out that, as worded, the paragraph imposed a quite unqualified obligation on the parties to co-operate with one another in the production of evidence. Such a provision might have some meaning in the particular case referred to by Mr. Sandström, but in general he could see no justification for it.

44. Mr. YEPES felt that the words in question should be retained. As Mr. Lauterpacht had pointed out, one party might be in possession of a piece of evidence which was vital to the other's case.

The proposal to delete the words "with one another and" was rejected by 5 votes to 4, with 3 abstentions.

45. Mr. SCELLE, opposing paragraph 2 of Mr. Hudson's proposal, said that, if the Commission were to retain article 26, which provided that the parties were bound to comply with interim measures of protection indicated by the tribunal, it should *a fortiori* retain the words "and shall obey the measures ordered for this purpose" in article 24.

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

46. Mr. AMADO asked whether Mr. Lauterpacht could agree to delete the word "duly" from his amendment to the second sentence of the second paragraph of Mr. Scelle's draft of article 24.

47. Mr. LAUTERPACHT agreed to do so, but pointed out that Article 49 of the Statute of the International Court of Justice provided that "*Formal* note shall be taken of any refusal" to produce any document or supply any explanations.

48. Mr. el-KHOURI said that he would prefer the second sentence of the second paragraph to be deleted altogether. The question should be left to the discretion of the tribunal, which might well accept the reasons advanced by a party for refusing to produce any particular piece of evidence.

Subject to deletion of the word "duly", and the substitution of the word "paragraph" for the word "article", Mr. Lauterpacht's amendment to the second sentence of the second paragraph of article 24 was adopted by 7 votes to 1, with 4 abstentions.

The second paragraph of article 24 was adopted, as amended and as a whole, by 6 votes to 1, with 5 abstentions.

49. The CHAIRMAN then put to the vote Mr. Lauterpacht's amendment to paragraph 3 of article 24, which amendment was substantially included in paragraph 3 of Mr. Hudson's proposal.

50. Mr. SCELLE expressed his support for Mr. Lauterpacht's amendment.

Mr. Lauterpacht's amendment to the third paragraph of article 24 was adopted by 8 votes to none, with 4 abstentions.

51. Mr. HUDSON stated that his experience at the International Court of Justice had shown him that it was sometimes useful for the tribunal to visit the scene involved in a case before it. Such visits must, however, be made at the request of the parties, since they involved additional expenditure. He therefore proposed the addition of the following paragraph to article 24:

> "The tribunal may visit the scene involved in a case before it, at the request of the parties."

52. Mr. SCELLE and Mr. el-KHOURI felt that the tribunal should be able to visit the scene involved even if the parties did not so request.

53. Mr. KERNO (Assistant Secretary-General) wondered whether it was necessary to include such a provision at all, if visits were to be made subject to the request of both parties.

54. Mr. SANDSTRÖM supported Mr. Hudson's proposal, and felt that the cost of such visits made it necessary to stipulate that they should be carried out only at the request of the parties.

55. Mr. ZOUREK agreed that such visits should be made only at the request of the parties, both for the reason adduced by Mr. Hudson and Mr. Sandström and also because the Commission had already provided in paragraph (*h*) of article 12 that the meeting-place of the tribunal should be specified by the parties in the *compromis*.

56. Mr. KOZHEVNIKOV also supported the wording proposed by Mr. Hudson, which was in accordance with the principles of international law.

57. Mr. LAUTERPACHT, supported by Mr. YEPES, proposed the deletion of the words "at the request of the parties".

58. The CHAIRMAN put Mr. Lauterpacht's proposal to the vote.

Six votes were cast in favour of the proposal and 6 against. The proposal was accordingly rejected.

Mr. Hudson's proposal was adopted by 8 votes to 3.

59. Mr. LAUTERPACHT said that he had voted in favour of Mr. Hudson's proposal because he thought it was better to have such a provision, even with the clause to which he had taken exception, than to have no such provision at all.

60. Mr. HUDSON proposed a further additional paragraph to article 24 to read:

"Subject to any agreement between the parties on the procedure to be followed by the tribunal, the tribunal shall be competent to formulate the rules of procedure to be applied."

61. Mr. SANDSTRÖM suggested that, if Mr. Hudson's proposed additional provision was of a general character, its place was elsewhere in the draft.

62. Mr. HUDSON agreed, but thought that that was a matter which might be left to the Standing Drafting Committee.

63. Mr. SCELLE said that he could support Mr. Hudson's proposal provided it meant that, if there were disagreement between the parties, the tribunal could itself formulate its rules of procedure. If that were the case, the purpose of the proposal would correspond to what he had had in mind in drafting his text for articles 21 and 22.

64. Mr. HUDSON said the purpose of his proposal was to provide for the contingency of the parties either failing to stipulate in the *compromis* the rules of procedure to be applied, or making inadequate provision in that respect.

65. Mr. YEPES suggested that the matter was already covered by paragraph (*c*) of article 12, all provisions of which were obligatory.

66. Mr. SCELLE asked whether the words "Subject to any agreement" in Mr. Hudson's proposal meant in the absence of any agreement.

67. Mr. HUDSON replied in the affirmative.

68. Mr. LAUTERPACHT maintained that the opening words of Mr. Hudson's proposal were slightly ambiguous. The meaning would be clearer if the words "In the absence of agreement between the parties" were substituted.

69. Mr. YEPES proposed that the opening words of Mr. Hudson's proposal be amended to read:

"If contrary to the provisions of article 12 (*c*) above the parties fail to establish the procedure to be followed by the tribunal, the tribunal shall be competent..."

70. Mr. HUDSON considered Mr. Yepes' amendment to be unnecessary, as his point was already met in the wording as it stood. It was important, on the other hand, to enable the tribunal to formulate rules of procedure additional to those laid down in the *compromis*.

71. Furthermore, he would point out that Mr. Yepes had not suggested any mention of article 12 in the provisions relating to the law to be applied.

72. The CHAIRMAN pointed out to Mr. Yepes that it would be one of the duties of the Standing Drafting Committee to ensure that there was no contradiction between any of the articles.

Mr. Hudson's proposal was adopted by 10 votes to none, with 2 abstentions.

Article 24, as amended, was adopted as a whole by 9 votes to none, with 2 abstentions.[5]

Article 25 [6]

73. Mr. LAUTERPACHT proposed alternative wording for article 25 to read:

"Presumptions shall be left to the appreciation of the tribunal."

74. Mr. HUDSON proposed the deletion of article 25. As it stood, he was unable to divine its meaning.

75. Mr. LAUTERPACHT said that, in so far as a presumption was an assertion which did not require proof, it was already covered by article 24, which laid down that the tribunal should be the judge of the admissibility and weight of evidence.

76. Mr. SCELLE observed that presumption and proof were not the same. Presumption was not always a question of evidence. Furthermore, presumption in international law was not parallel to presumption in municipal law, as there were no absolute presumptions in international law. Presumptions must therefore be left to the discretion of the tribunal.

77. Mr. LIANG (Secretary to the Commission) said that the definitions of presumption in French and Anglo-Saxon law respectively were clearly quite different. To the best of his knowledge, according to

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[5] Article 24, as tentatively adopted, read as follows:

"1. The tribunal shall be the judge of the admissibility and weight of any evidence presented to it.

"2. The parties shall co-operate with one another and with the tribunal in the production of evidence and shall obey the measures ordered for this purpose. The tribunal shall take note of the failure of any party to comply with the obligations of this paragraph.

"3. The tribunal shall have the power at any stage of the proceedings to call for such evidence as it may deem necessary.

"4. The tribunal may visit the scene involved in a case before it at the request of the parties.

"5. Subject to any agreement between the parties on the procedure to be followed by the tribunal, the tribunal shall be competent to formulate the rules of procedure to be applied."

[6] Article 25 read as follows:

"Generally speaking, presumptions shall be left to the learning and discretion of the tribunal."

United States law of evidence presumption was an assumption until rebutted.

78. As it stood at present, the English text of article 25 seemed to him devoid of meaning.

79. Mr. YEPES considered that article 25 was necessary. He could support either the special rapporteur's text or that proposed by Mr. Lauterpacht.

80. Mr. KOZHEVNIKOV said that in view of the different definitions of presumption and the unlikelihood of reaching agreement on a generally acceptable formula, the article should be deleted.

Mr. Scelle withdrew article 25.

The meeting rose at 5.50 p.m.

149th MEETING

Tuesday, 24 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. A. E. F. SANDSTRÖM, 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 to 3) (*continued*)

1. 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 21 AND 22 (*resumed from the 148th meeting*)

2. The CHAIRMAN recalled that discussion of Articles 21 and 22 had been deferred until such time as an amendment submitted by Mr. Yepes had been distributed.[1] That amendment was now available and read as follows:

> "If the *compromis* cannot be interpreted in a sense permitting fulfilment of the obligation to arbitrate, or if failure to comply with its procedural orders prevents the tribunal from performing its functions, the tribunal shall call upon the parties to modify the *compromis,* to obey the orders of the tribunal or explicitly to discontinue the proceedings. If the parties do not accept any of these proposals, the tribunal shall be free to proceed."

3. Mr. FRANÇOIS said that he would prefer the deletion of articles 21 and 22, since the cases they envisaged would arise so rarely as to make it unnecessary to provide for them. In any event, he did not see how the two articles could be combined. In the case of failure to comply with procedural orders, it might be impossible for the tribunal to proceed with its work regardless.

4. Mr. LAUTERPACHT said that the issue of *non liquet* was already fully covered by articles 19 and 20 already tentatively adopted by the Commission. Mr. Yepes' proposal was also designed to cover cases where the *compromis* rendered fulfilment of the tribunal's functions impossible. But it should be generally accepted that the arbitral tribunal had no powers other than those assigned to it in the *compromis.* Its power derived solely from the will of the parties. He was therefore unable to support Mr. Yepes' proposal.

5. Mr. SCELLE pointed out that his own text was more complicated than that proposed by Mr. Yepes. The point he had in mind was likewise more complicated. In fact, it was so complicated that he had already agreed to withdraw articles 21 and 22. He would, however, be prepared to accept Mr. Yepes' text, although it went rather farther along a slightly different road from his own.

6. Mr. KOZHEVNIKOV said that, before discussing the substance of Mr. Yepes' proposal, the Commission should decide whether it wished to delete or retain the substance of articles 21 and 22.

7. The CHAIRMAN put to the vote the issue whether the subject-matter of articles 21 and 22 of Mr. Scelle's draft should be omitted.

The issue was decided in the affirmative by 7 votes to 1, with 3 abstentions.

[1] See summmary record of the 148th meeting, para. 8.