Document:-
A/CN.4/SR.420

Summary record of the 420th meeting

Topic:
Arbitral Procedure

Extract from the Yearbook of the International Law Commission:-
1957 , **vol. I**

whether it wished to submit the draft as a draft convention.

The question was decided in the negative, by 10 votes to 4 with 5 abstentions.

The meeting rose at 6.10 p.m.

420th MEETING

Tuesday, 18 June 1957, at 930 a.m.

Chairman: Mr. Jaroslav ZOUREK.

Arbitral procedure: General Assembly resolution 989(X) (A/CN.4/109) *(continued)*

[Agenda item 1]

1. The CHAIRMAN said that certain members of the Commission wished first to explain their votes on the question decided at the end of the previous meeting, namely, whether to submit the draft to the General Assembly in the form of a draft convention (419th meeting, para: 43).

2. Sir Gerald FITZMAURICE said that he had voted against the proposal because he considered it more advisable, in the circumstances, to submit it in the form of a technical contribution. It had been argued that such a course was wrong on the ground that the Commission was an international and not a technical body. In point of fact, exactly the opposite was true. The members of the Commission being experts appointed in their personal capacity and not representatives of governments, the Commission could not be described as an international body in that sense. He believed he was right in saying that the Commission was a technical commission of the General Assembly.

3. In connexion with remarks made by some speakers, that it was no longer professors but State practice which made international law, he would point out that theorists had never been directly responsible for making international law. It had always been made by the practice of States, but their debt to the professors was enormous. It had also been said in that connexion that Article 38, paragraph 1(*d*), of the Statute of the International Court of Justice placed teaching and case law in their proper perspective as subsidiary sources of international law. It was interesting to note, however, that the provision in question had been taken word for word from Article 38 of the Statute of the Permanent Court of International Justice. Even in the dark days of 1920, jurists had realized that it was States and not professors that made international law! However, admitted that States made international law, it must also be recognized that a very large part of their ideas came from professors and publicists.

4. Mr. MATINE-DAFTARY said that his abstention was sufficient answer to the allegation that those in favour of his proposal to discuss the substance of the crucial articles of the draft before deciding on its form were necessarily wedded to the idea of submitting it as a draft convention. Incidentally, article 1 of the draft, which the Commission was about to consider, would fit equally well into a draft convention or a model draft.

5. Mr. VERDROSS explained that, in voting against the proposal, he had had in mind a draft convention applicable only in the cases in which the parties had not stipulated other provisions, as in article 51 of the Convention for the Pacific Settlement of International Disputes, signed at The Hague in 1907: "unless other rules have been agreed on by the parties".[1]

DRAFT ON ARBITRAL PROCEDURE (A/CN.4/109, ANNEX)

ARTICLE 1

6. The CHAIRMAN invited the Special Rapporteur to introduce article 1 of his draft (A/CN.4/109, annex).

7. Mr. SCELLE, Special Rapporteur, quoted *in extenso* paragraphs 16 to 20 of his report (A/CN.4/109) and referred to article 37 of The Hague Convention for the Pacific Settlement of International Disputes of 1907, which described the object of international arbitration as "the settlement of disputes between States by judges of their own choice and on the basis of respect for law".[2] He added, in connexion with paragraph 20 of his report, that, prior to The Hague Convention of 1907, some writers had preferred arbitration to legal proceedings as a means of settlement, and had held that the arbitral award must be accepted as final even when not rendered in accordance with law.

8. Sir Gerald FITZMAURICE agreed with the views expressed by the Special Rapporteur. The suggestions made by various Governments regarding the exclusion of political disputes and matters within the domestic jurisdiction of States were beside the point. There was nothing in the draft to oblige any State to resort to arbitration at all, so that it lay entirely with the parties to decide which type of dispute they wished to submit to arbitration.

9. He agreed with the thesis that the undertaking to arbitrate derived from an arbitration agreement and not from the *compromis*. Though an undertaking to arbitrate was sometimes included in the *compromis*, the two things were quite distinct. The undertaking might exist before any dispute arose, but a *compromis* was only drawn up after a dispute had arisen.

10. He thought that it would be more logical in paragraph 3 to say "the undertaking results from a written instrument" rather than "shall result".

11. Mr. GARCÍA AMADOR observed that some comments of Governments appeared to be due to a misunderstanding of the scope of the article, which did not impose compulsory arbitration; the article was in accordance with the traditional system, recourse to arbitration being entirely at the discretion of the parties. Consequently, such considerations as the exclusion of political disputes, matters within the purview of regional agencies and the justiciability of disputes, were relevant not to article 1 but to the original agreement to have recourse to arbitration.

12. Perhaps the article would be less subject to misinterpretation if the statement in paragraph 17 of the Commission's report on its fifth session that "the obligation to arbitrate results from an undertaking voluntarily accepted by the parties"[3] were incorporated in paragraph 1.

[1] *The Hague Conventions and Declarations of 1899 and 1907*, 2nd ed., ed. James Brown Scott, Carnegie Endowment for International Peace (New York, Oxford University Press, 1915), p. 64.

[2] *Ibid.*, p. 55.

[3] *Official Records of the General Assembly, Eighth Session, Supplement No. 9.*

13. Paragraph 3 merely reflected established practice, while paragraph 4, which stated that the undertaking constituted a legal obligation which must be carried out in good faith, did no more than enunciate an elementary truth.

14. Mr. TUNKIN enquired whether the Special Rapporteur considered that there was any substantial difference between the provisions of his article 1 and those of Article 36 of the Statute of the International Court of Justice where jurisdiction was concerned.

15. Mr. SCELLE, Special Rapporteur, said that he could not see any essential difference as far as article 1 was concerned. There might, however, be a difference between Article 36 of the Statute and article 2 of his draft, which dealt with the question of the *compromis*. Parties might agree in the *compromis* to apply a certain law and to exclude other types of law.

16. Mr. PAL agreed with the Special Rapporteur and Sir Gerald Fitzmaurice on the question relating to political disputes. Since agreement to have recourse to arbitration was in any case optional, there was no reason whatever for ruling out the possibility of States' agreeing to submit any type of dispute, including political disputes, to arbitration.

17. As regards the question of the retroactivity of the articles, those Governments which had raised the question appeared to be under a misapprehension. The fact that it was left open to States parties to an undertaking to decide whether or not the undertaking should apply to disputes or circumstances arising prior to its conclusion, did not make the undertaking retrospective. The question of retroactivity would arise only if it were provided that the article would apply to undertakings already entered into before the acceptance of those articles by the State concerned.

18. Mr. MATINE-DAFTARY thought that the Special Rapporteur did not appear to have grasped Mr. Tunkin's point. Although the International Court of Justice was called a court, for all States which had not made a declaration of acceptance of its jurisdiction under Article 36, paragraph 2, of its Statute, it was merely an arbitral tribunal to which recourse could be had only by agreement between the parties to an international dispute.

19. He noted that paragraph 1 of the same Article 36 used the word "cases" and wondered whether it would not be preferable to substitute that word for the word "disputes" in article 1 of the draft.

20. Mr. SCELLE, Special Rapporteur, said that he had used the word "disputes" merely because many Governments appeared to desire it. He regarded the word "cases" as synonymous with it.

21. Mr. BARTOS said he had been asked by a scientific association of Yugoslav jurists what the position would be in the event of a dispute between two States which had accepted the jurisdiction of the International Court of Justice and had also signed an agreement containing a general arbitration clause. Which undertaking would prevail? It should, he thought, be made clear that in such cases either State would have the right to require the dispute to be brought before the International Court. In many instances, it might be in the State's interest for the matter to be dealt with by a public procedure.

22. Referring to paragraph 2 of the article, he pointed out that States were free not only to decide that an undertaking did not apply to past disputes, but to exclude any category of dispute that they saw fit. The article as a whole was clearer than the previous version, and more likely to secure the acceptance of States.

23. Mr. SPIROPOULOS said that much unnecessary misunderstanding had arisen regarding the implications of article 1. As far as paragraphs 3 and 4 were concerned, misunderstanding was practically impossible, paragraph 3 reflected established practice, while paragraph 4 simply enunciated the truism that legal obligations must be carried out in good faith.

24. It was chiefly in connexion with paragraph 1 that misunderstanding arose. It was clear that if States did not enter into an agreement to arbitrate, no obligation whatever arose out of the draft. The obligation to follow a certain procedure did not arise until States had, in another instrument, entered into an undertaking to arbitrate. There could not therefore by any contradiction between article 1 and Article 36 of the Statute of the International Court of Justice, for the latter dealt with the question of how States could enter into an undertaking to submit disputes to the jurisdiction of the Court. States which had made the declaration referred to in paragraph 2 of Article 36 must have recourse to the Court in any dispute covered by that paragraph, but under article 1 of the draft, States need only resort to arbitration when they specifically agreed to do so.

25. Mr. BARTOS interjected that Mr. Spiropoulos was right on that point, provided no abstract undertaking to arbitrate had been entered into, and if the special agreement had been concluded only concerning arbitration *in concreto,* or if both parties had agreed, in the course of the procedure, to change the abstract clause into a clause *in concreto*. He agreed with Mr. Spiropoulos when Mr. Spiropolous had in mind the obligation to arbitrate *in concreto,* but that was not the question here because Mr. Scelle was of the view that *in abstracto* the obligation to arbitrate represented a sort of "blanco" arbitration clause which Mr. Bartos could support, in his capacity of university professor, as an ideal for the future, but was obliged not to recommend to States in his capacity of member of the International Law Commission, particularly after the discussion in the Sixth Committee of the General Assembly.

26. Mr. SPIROPOLOUS continued that the question of excluding political disputes concerned not the draft but the *compromis*.

27. The question of the retrospective effect of the draft did arise with respect to abstract or specific undertakings to arbitrate entered into by States prior to their acceptance of the draft. He understood Mr. François to be of opinion that the draft would have retrospective effect in that respect. The matter could be simply remedied by adding a stipulation that the draft applied only to matters arising subsequent to its acceptance.

28. Mr. VERDROSS said he was in favour of deleting paragraph 2, since it conveyed the false impression that States could exclude only past disputes from the scope of an undertaking to arbitrate, whereas in fact the undertaking covered only such disputes as they agreed to include.

29. Mr. SCELLE, Special Rapporteur, repeated that he saw no possibility of conflict between article 1 and Article 36 of the Statute of the International Court of

Justice. Parties to a dispute were always free to agree to resort to arbitration as a more flexible means of settlement than court proceedings.

30. The CHAIRMAN, speaking as a member of the Commission, thought it should be specified, either in the article or in the commentary, what exactly was meant by an undertaking to arbitrate. There had been cases where States had entered into an undertaking in principle to arbitrate, but had reserved the right to draw up a *compromis* setting up a tribunal or defining the dispute. It was difficult to regard such an undertaking as final.

31. He agreed with the Special Rapporteur that arbitration between States must, in the words of article 37 of The Hague Convention for the Pacific Settlement of International Disputes of 1907, be "by judges of their own choice".[4]

32. He likewise concurred with Mr. García Amador that it should be made quite clear in paragraph 1 that the obligation to arbitrate resulted from an undertaking voluntarily accepted by the parties. Such a stipulation would obviate much misunderstanding and criticism, and would be all the more necessary if the Commission envisaged making the article retrospective.

33. Mr. SPIROPOULOS, though appreciating the Chairman's first point, wondered how the distinction between the two types of undertaking could be made; it would be very difficult to find a clear wording. It was really a matter of interpreting the will of the parties; of ascertaining whether they had had the clear intention of submitting disputes to arbitration. One way to avoid the difficulty would be not to make the draft retrospective, and to rely on States to be more specific in future agreements.

34. Mr. LIANG (Secretary to the Commission) pointed out that, after the vote at the close of the preceding meeting, there could no longer be any question of the draft articles being presented as a draft convention, and submitted that the only fruitful course was to discuss them in terms of their suitability as a set of rules.

35. From that point of view it could be seen that article 1 was concerned with general questions of principle. He did not think it was possible to compare that article with Article 36 of the Statute of the International Court of Justice, as Mr. Tunkin had suggested, for its character was quite distinct from that of an arbitration treaty or an arbitration clause.

36. The question of the nature of the obligation which the Commission's draft would create, had given rise to much confusion in the General Assembly's discussions. Some delegations had appeared to think the draft was a kind of arbitration treaty; but that was not true any more than it was true of Article 33 of the United Nations Charter which only laid down a principle. Even if States had accepted the draft as binding, it would have had no force except where there was already a treaty or arbitration in existence. On the legal scope of such treaties there were two schools of thought in the Commission; one held that they were in themselves sufficient to establish an obligation to refer particular disputes to arbitration, while the other considered that they were no more than a joint declaration in principle, and that the obligation to refer particular disputes to arbitration could spring only from the arbitration clause, or the *compromis,* concluded in each case. That, however, was a question of interpreting treaties of arbitration; it did not affect the utility of the set of rules under consideration, from the point of view of the States which wanted to adopt them.

37. There did not therefore seem to be much point in considering paragraph 2 any further. If two States were concluding an arbitration treaty they were naturally free to decide that it should not apply to many different types of dispute other than the two referred to—but that was a matter relating to arbitration treaties, not to arbitral procedure as such.

38. Paragraph 4 could of course also be deleted on the ground that it stated a self-evident truth; the fact remained that the authors of The Hague Convention of 1907 had decided to retain it.

39. Mr. YOKOTA pointed out that some treaties of arbitration and judicial settlement provided that certain types of dispute should be submitted either to arbitration or to judicial settlement. Some others, of more recent date, further laid down that if the two parties did not agree within a given period whether the dispute should be submitted to arbitration or to judicial settlement, it should, at the request of either party, be submitted to the International Court of Justice. In the case of treaties of the former kind, there might be a doubt whether and when the draft set of rules under consideration would be applied. He felt it would be desirable to define precisely "an undertaking to have recourse to arbitration" at the beginning of paragraph 1 in such a way as to take treaties of that kind into account.

40. Mr. TUNKIN said that the only purpose of his question to the Special Rapporteur had been to find out whether compulsory arbitration was contemplated in article 1. From that point of view it was surely legitimate to compare the article with Article 36 of the Statute of the International Court of Justice.

41. He fully agreed with Mr. García Amador that the Commission should make it clear that it did not have any form of compulsory arbitration in mind, and that the obligation to arbitrate could only result from specific agreements, whatever their nature. In accordance with its decision at the close of the previous meeting, however, the Commission should also make it clear that, even where there was an obligation to arbitrate, the rules did not apply unless the parties to the dispute specifically agreed to accept them. States should be left free to choose the procedure they preferred; in certain cases they might prefer that established by the 1907 Convention.

42. Mr. AMADO pointed out that, by virtue of the decision taken at the previous meeting, the Special Rapporteur's draft would now be nothing more nor less than a reference document that might be consulted by Governments or by jurists in their efforts to avoid the difficulties that frequently arose in arbitral proceedings. Considering it from that angle, he thought all members—whose views on the draft would in any case be on record in the Commission's Yearbook—could appreciate the desirability of preserving its organic unity: once they began to tamper with it they would inevitably end by destroying the whole fabric which had been so

[4] *The Hague Conventions and Declarations of 1899 and 1907,* 2nd ed., ed. James Brown Scott, Carnegie Endowment for International Peace (New York, Oxford University Press, 1915), p. 55.

carefully and skillfully woven by the Special Rapporteur. He would even be in favour of retaining article 1, paragraph 4; though it was a truism, it was a venerated one, and, as had been pointed out, the authors of other instruments had deemed it worth repeating.

43. The CHAIRMAN, speaking as a member of the Commission, welcomed the emphasis which Mr. Spiropoulos and the Secretary had placed on the fact that the draft was not itself a treaty of arbitration, but a set of rules which presupposed the existence of such a treaty. If that were agreed, it followed that paragraph 2 must be deleted, since arbitration treaties could contain all kinds of clauses excluding various types of dispute from their scope. In his view, it also followed that there could be no objection to an addition such as was proposed by Mr. Tunkin and Mr. García Amador.

44. Regarding the comments made on his previous statement, he pointed out that it was not always true that a prior undertaking to have recourse to arbitration was the basis of the arbitral proceedings; in cases of *ad hoc* arbitration, the only possible basis for the proceedings was frequently the *compromis,* since there was no prior instrument.

45. Mr. BARTOS said that if Mr. Verdross's proposal for the deletion of paragraph 2 were not accepted, he would propose the insertion after the words "apply to" of the words "certain types of dispute such as".

46. He also felt that if a prior undertaking to arbitrate (an undertaking *in abstracto*) laid down that any dispute should be submitted to arbitration, and the same States had also accepted the obligatory jurisdiction of the International Court of Justice on the basis of Article 36, paragraph 2, of the Court's Statute, it was necessary to clarify the relationship between the two obligations, the former being based on the obligation to arbitrate *in abstracto,* and the latter on the provisions of the United Nations Charter. In his view, the latter obligation should prevail. If that was generally agreed, he would be content if it were so indicated in the summary record.

47. Mr. MATINE-DAFTARY said he shared the view of those members who wished to make it very clear that the Commission had no intention of providing for compulsory arbitration.

48. He hoped the Special Rapporteur could agree that paragraph 4 went without saying. The principle *pacta sunt servanda* was after all the very basis of all international law.

49. The words in parenthesis in paragraph 1: "(arbitration treaty—arbitration clause)" should, in his view, be placed at the end of paragraph 3.

50. The Special Rapporteur had distinguished between two types of arbitration treaty: the abstract, prior type and the specific, *ad hoc* type. As regards the former he felt it was essential to reserve the sovereign rights of States over matters which were essentially within their domestic jurisdiction; the following words should therefore be added at the end of paragraph 1: "except in the cases referred to in Article 2, paragraph 7, of the United Nations Charter".

51. Mr. HSU agreed that it was vital to make a clear distinction between an obligation to arbitrate and an obligation to abide by the rules the Commission was laying down. If the General Assembly had had that distinction more clearly in mind, he did not think it would have been so hostile to the Commission's draft.

52. He was inclined to support Mr. Tunkin's proposal that the Commission should make it plain that its rules would only apply in cases where the parties specifically so agreed, for there was no reason why it should seek to discard the traditional forms of arbitration. It must, however, guard against the proposed proviso being used by either party as a loophole through which to escape from its obligations.

53. Mr. SPIROPOULOS said that most of the various points that had been made might have been justified if the Commission had been drafting a convention, but fell to the ground once it was borne in mind that the Commission was only drafting a set of rules to be used by States as they thought fit. It was, in his view, incorrect to speak of States "accepting" the set of rules, as Mr. Tunkin had done. For on each separate occasion on which they had to determine the procedure to be followed in carrying out an undertaking to arbitrate, they would be entirely free to make whatever use of the rules they wished. Even if they had followed them on ninety-nine previous occasions, they would be under no obligation to follow them on the hundredth; conversely, the fact that they had ignored them on ninety-nine previous occasions did not mean that they might not find some good reason to follow them on the hundredth.

54. Mr. AGO felt that, although the Commission had abandoned the idea of a draft convention, it was still labouring under the misapprehensions provoked by the use of the word "model" to designate the alternative form on which it had now agreed. The word "model" suggested that the draft was itself, in the opinion of the Commission, a model of an arbitration treaty which could be accepted and put into force as it was, whereas the Commission clearly wished it to be regarded purely as a collection of suggestions aimed at helping States in drafting the clauses of such treaties as they might freely conclude amongst themselves. As Mr. Spiropoulos had said, there was no question of States being asked to accept it; it was simply being made available to them in order that they might refer to it and draw on it, to the extent that they desired, whenever they had occasion to lay down the procedure to be followed in referring disputes to arbitration. That being the case, the question of retrospectivity did not arise; the draft clearly could not affect arbitration treaties that had already been concluded.

55. As regards the last point raised by Mr. Matine-Daftary, it was not in the set of rules that the State's exclusive competence in matters within its domestic jurisdiction should be reserved, but in the *compromis* or the arbitration treaty itself.

56. The CHAIRMAN observed that the Commission had never explicitly excluded the possibility of the draft as a whole being taken by individual States as the basis for an arbitration treaty between them. That possibility therefore remained.

57. Mr. AGO thought that possibility had not been envisaged by the Commission.

58. Mr. TUNKIN, in reply to Mr. Spiropoulos and Mr. Ago, said that, even if States were free to decide in each case whether to accept the draft or not, that was no reason why the Commission should recommend what was unreasonable. It should weigh every provision as carefully as if the draft was going to be a legally

binding convention. Even if it did not commit States, it certainly committed the body which was presenting it to the General Assembly.

59. Mr. SCELLE, Special Rapporteur, said that in the main he associated himself with what Sir Gerald Fitzmaurice, Mr. Spiropoulos and Mr. Ago had said in reply to the various points that had been raised. In particular, he could not share the fears expressed by the Chairman and Mr. Tunkin; for, in the unlikely event of two States agreeing to take the draft as a whole as the basis for an arbitration treaty, they would do so by means of a *compromis* relating to the specific types of dispute which they agreed to refer to arbitration. Some at least of Mr. Tunkin's objections appeared to relate rather to article 3.

60. In his view, the only valid point that had been made was Mr. Verdross's criticism of paragraph 2. He had only inserted that paragraph in order to try to meet the views of certain Governments, who were anxious to remove any doubts as to the draft's retrospective effect; he realised that if it was to be retained it would be necessary to expand it considerably, and so willingly agreed to its deletion.

61. If the Commission so desired, he would also be willing to delete paragraph 4, but would prefer to retain it.

62. The CHAIRMAN asked Mr. Tunkin how he would formulate his proposed addition to article 1.

63. After some discussion between Mr. TUNKIN and Mr. SCELLE, Mr. VERDROSS proposed that it be stated at the beginning of article 1 that "the following rules are only applicable when incorporated in whole or in part, in an arbitration treaty or a *compromis.*"

The proposal was adopted by 18 votes to none, with 1 abstention.

64. Referring to a point raised earlier by Mr. Bartos (para. 46 above), Sir Gerald FITZMAURICE observed that two States which had accepted the compulsory jurisdiction of the International Court of Justice by virtue of the optional clause in the Court's Statute were always free to conclude a separate agreement, stipulating that particular types of dispute should not be submitted to the Court but must be referred to arbitration. In such a case the special agreement would prevail over the general agreement. The point, therefore, appeared to require further consideration.

The meeting rose at 1.15 p.m.

421st MEETING

Wednesday, 19 June 1957, at 9.30 a.m.

Chairman: Mr. Jaroslav ZOUREK.

Arbitral procedure: General Assembly resolution 989(X) (A/CN.4/109) *(continued)*

[Agenda item 1]

DRAFT ON ARBITRAL PROCEDURE (A/CN.4/109, ANNEX) *(continued)*

ARTICLE 1 *(continued)*

1. Mr. VERDROSS, recalling the decision that had been taken at his suggestion (420th meeting, para. 63) just before the close of the previous meeting, said that on consideration it seemed necessary to refer not only to "an arbitration treaty or a *compromis*" but also to "another international treaty"; for the rules, or some of them, might well be incorporated in instruments, like the Convention for the Pacific Settlement of International Disputes (The Hague, 1907), which were neither *compromis* nor, strictly speaking, arbitration treaties at all.

2. Mr. Verdross's proposal, therefore, would insert the following clause at the beginning of article 1: "the following rules are only applicable when incorporated, in whole or in part, in an arbitration treaty, a *compromis* or another international treaty."

3. Also, arbitration treaties proper were of two kinds. Most of those concluded since the First World War laid down the manner in which the tribunal was to be constituted and gave the parties the right to have direct recourse to it. Those concluded before the First World War, on the other hand, had, for the most part, confined themselves to saying that if a dispute arose which came within the scope of the obligation to go to arbitration, the parties should conclude a *compromis* laying down the manner in which the tribunal was to be constituted and other related matters. The Commission should not leave the latter type out of account just because it was no longer fashionable.

4. He therefore suggested that the Commission insert the following clause in article 1:

> "The arbitration treaty may leave the question of the establishment of the arbitral tribunal and other points in the arbitral procedure open, to be determined in the *compromis.*"

5. Mr. GARCIA AMADOR wondered how the Commission could insert in a set of rules whose whole purpose was to limit the parties' freedom of action and establish an automatic procedure which might even continue to operate against their wishes, a provision which appeared to be an open invitation to revert to the old system where everything depended on the will of the parties at every stage of the procedure.

6. The CHAIRMAN thought that, since there were treaties in existence which relegated the establishment of the tribunal and such matters to the *compromis,* Mr. Verdross had been perfectly right to raise the matter, as long as the question of the draft's retrospective effect had not been settled.

7. He could not agree with Mr. García Amador—nor, he thought, could the Special Rapporteur—that the purpose of the draft was to substitute an automatic procedure for one depending on the will of the parties. The consent of both parties was essential before recourse was had to arbitration; the sole purpose of the draft was to ensure that once that step had been taken, arbitration should be continued until a decision was reached.

8. Mr. VERDROSS, agreeing, maintained that his amendment was in complete harmony with the Special Rapporteur's draft, in which everything depended on the initial willingness of the parties to have recourse to arbitration, and the aim was simply to ensure that, granted such willingness, the procedure was continued to its end.

9. Mr. SCELLE, Special Rapporteur, said he gladly accepted Mr. Verdross's first suggestion (para. 2 above), which filled an obvious gap. Thus supplemented, the provision that had been agreed on at the previous meeting