Document:-
**A/CN.4/SR.433**

# Summary record of the 433rd meeting

Topic:
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-
**1958** , **vol. I**

35. The Commission had two suggestions before it which involved altering the existing order of items in the provisional agenda. Since, however, there was nothing inflexible about the order of items, he thought that the agenda might well be adopted as it stood, subject to any change that might subsequently prove desirable.

*It was so agreed.*

*The agenda (A/CN.4/112) was adopted.*

### Statement by Mr. Tunkin

36. Mr. TUNKIN said that he wished to call attention to a grave injustice inflicted on the People's Republic of China. The fact that a country of some 600 million people, which was actively engaged in creating a new socialist society and a new legal system, was not represented on the Commission was an affront to international law.

37. The CHAIRMAN said that the Commission took note of Mr. Tunkin's statement.

The meeting rose at 11.20 a.m.

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## 433rd MEETING

*Wednesday, 30 April 1958, at 9.45 a.m.*

*Chairman:* Mr. Radhabinod PAL.

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### Filling of casual vacancy in the Commission (article 11 of the Statute)

[Agenda item 1]

1. The CHAIRMAN announced that the Commission had elected Mr. Ricardo J. Alfaro of Panama, by a majority of votes at a private meeting, to fill the casual vacancy caused by the resignation of Mr. Jean Spiropoulos consequent upon his election to the International Court of Justice.

### Arbitral procedure: General Assembly resolution 989 (X) (A/CN.4/113)

[Agenda item 2]

GENERAL DEBATE

2. The CHAIRMAN recalled the work done on arbitral procedure by the Commission at its ninth session,[1] in the light of General Assembly resolution 989 (X) of 14 December 1955.

3. The Commission had decided [2] to submit the draft on arbitral procedure not as a convention, but as a set of rules to guide States in the drafting of provisions for inclusion in international treaties and special arbitration agreements. On that basis, the Commission had discussed certain of the key articles in the revised draft submitted by the Special Rapporteur in his report,[3] and had taken certain decisions.

4. The Special Rapporteur had prepared a new report which took into account the decisions taken at the Commission's ninth session.

5. Mr. SCELLE, Special Rapporteur, introduced his model draft and report on arbitral procedure (A/CN.4/113).

6. He fully understood the difficulties facing Governments with respect to arbitration agreements. Those difficulties were connected with the concessions of sovereignty which an undertaking to arbitrate might imply, and were at the root of much of the criticism voiced in the Sixth Committee of the General Assembly regarding the Commission's 1953 draft on arbitral procedure.[4]

7. The same difficulties would not, however, arise in the case of the current model draft on arbitral procedure. When that draft was approved in final form by the Commission and submitted to the General Assembly, it would not constitute an arbitration convention but merely a set of rules offered to States as guidance. States would remain free to make use of the model in whole or in part or to resort to other procedures.

8. In order to make that position clearer, the order of the articles had been changed. The article concerning the *compromis*, which in the 1953 draft had appeared as article 9, had been renumbered article 2, and now followed immediately after the article concerning the undertaking to arbitrate. The article dealing with the constitution of the tribunal (article 4) had been placed in a position of lesser prominence. Hence, in the new text the emphasis was on the conclusion of a *compromis* rather than on the constitution of the arbitral tribunal.

9. The article dealing with the arbitrability of disputes (article 3) had been amended to take into consideration the comments made by Governments and the observations made in the Sixth Committee. The majority of States had expressed a certain reluctance to submit the question of arbitrability to the International Court of Justice. The new provision therefore gave States the choice of submitting that question either to the Permanent Court of Arbitration or to the International Court of Justice.

10. The model draft on arbitral procedure represented a substantial concession to the views expressed by Governments when compared to the earlier drafts relating to the same subject approved by the International Law Commission, or to the General Act of

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[1] See *Official Records of the General Assembly, Twelfth Session, Supplement No. 9*, paras. 18 and 19.

[2] *Yearbook of the International Law Commission, 1957*, vol. I (United Nations publication, Sales No.: 1957.V.5, vol.1), 419th meeting, para. 43.

[3] *Ibid.*, vol. II (United Nations publication, Sales No.: 1957.V.5, vol. II), document A/CN.4/109.

[4] *Official Records of the General Assembly, Eighth Session, Supplement No. 9*, para. 57.

1928.[5] He did not consider those concessions as in any sense improvements ; they had been introduced in order to make the model more readily acceptable to States.

11. There was no standard State practice in the matter of arbitral procedure. There was no uniformity even in the practice of a single State. The questions which Governments submitted to arbitration were so important that it was difficult for them to adhere to a standard form of arbitration applicable to all disputes.

12. Since there was no general custom governing the subject. the Commission's task could not be said to be that of codifying existing law regarding arbitration procedure. The Commision, however, could not ignore such valuable procedents as The Hague Convention for the Pacific Settlement of International Disputes of 1907, the General Act of 1928, the various arbitration treaties concluded by Switzerland with its neighbours in 1924 and in later years, and the Pact of Bogotá of 1948.

13. In his latest report (A/CN.4/113) he had therefore endeavoured to make use of those precedents. The Commission had the duty to contribute to the progressive development of international law, or at least to codify existing law. It should therefore avoid taking any action which could be construed as a retreat from existing arbitration systems.

14. The question had been asked whether the undertaking to arbitrate constituted a treaty. In his opinion, such an undertaking produced in law exactly the same effects as a treaty, and it was important to note, in that connexion, that article 1 of the new draft specified, as its predecessors had done, that the undertaking to arbitrate had to result from a written instrument.

15. Of course, in the carrying out of an undertaking to arbitrate, as in the application of any treaty, difficulties might arise. The question of the responsibility for the failure to carry out a treaty was always a question of fact.

16. He had endeavoured to prepare a coherent model draft, and he hoped that the Commission would not alter it substantially, since otherwise he would regretfully be unable to continue to be responsible for it.

17. Now that every trace of obligation had been eliminated from the draft, it could not possibly be open to any objection based on State sovereignty. Governments, and particularly the Governments of new States, were understandably concerned about State sovereignty. There was, however, nothing incompatible with that sovereignty in a draft which left States completely free to make use of some or all of its provisions in the arbitration of a dispute, when once they had agreed to the arbitration of that dispute.

18. Mr. GARCIA AMADOR said that the Commission, when it had decided to submit its draft on arbitral procedure as simply a set of rules, had already made a great concession to the views expressed in the General Assembly. In his opinion, it was not necessary to make any further concessions.

19. It had been stressed that the majority of the States represented in the General Assembly had commented adversely on the system proposed by the Commission for arbitral procedure. It was significant, however, that the United Nations Conference on the Law of the Sea had adopted a Convention on Fishing and Conservation of the Living Resources of the High Seas containing provisions on arbitration which followed the pattern proposed by the International Law Commission. It was true that the same Conference had not accepted the principle of compulsory judicial settlement of disputes concerning the articles on the continental shelf. But it was important to distinguish between the reluctance of Governments to accept a general arbitration clause, and their approach to the arbitration procedure formulated by the Commission. Where States had accepted the principle of arbitration, as in the case of the Convention on Fishing and Conservation of the Living Resources of the High Seas, they had found the procedure proposed by the Commission acceptable.

20. He recalled that, in the discussion on arbitral procedure during the Commission's ninth session, he had emphasized that States were not opposed to the system of arbitral procedure proposed by the Commission but rather to its general application.[6] That view had been borne out by developments in the Conference on the Law of the Sea, which constituted an encouragement to the Commission to go forward with its work.

21. Mr. SCELLE, Special Rapporteur, thanked Mr. García Amador for drawing the Commission's attention to a valuable precedent.

22. The question of compulsory arbitration did not arise in the Commission's discussion of the subject of arbitral procedure. The Commission was concerned with determining the most satisfactory procedure in those cases in which States agreed to submit their disputes to arbitration.

23. All the objections made to the Commission's earlier draft on the grounds that it represented a trend towards compulsory arbitration had no validity whatsoever.

24. Mr. ZOUREK said that by the terms of General Assembly resolution 989 (X) the Commission was unquestionably obliged to reconsider its draft in the light of the comments of Governments and the discussions in the Sixth Committee. Moreover, the Commission had already taken a decision to do so at its ninth session.[7] For that purpose the best procedure might be, as had been suggested at the previous session, for the Commission itself to discuss the crucial articles (such as articles 1, 2, 3, 4 and 9) and refer the others to a committee ; as it was unlikely, however, that the

[5] General Act for the Pacific Settlement of International Disputes. See League of Nations, *Treaty Series*, vol. XCIII, p. 343.

[6] *Yearbook of the International Law Commission, 1957*, vol. I (United Nations publication, Sales No. : 1957.V.5, vol. I), 422nd meeting.

[7] *Ibid.*, 418th meeting, para. 38.

majority of the articles would give rise to much discussion, he would see no objection to the entire draft being reconsidered in plenary if the Commission could do it fairly quickly.

25. He could not subscribe to Mr. García Amador's view that the decisions of the recent Conference on the Law of the Sea indicated a change in the attitude of Governments to the question of compulsory arbitration ; for the articles in which provision had been made for compulsory arbitration were those relating to the conservation of the living resources of the sea, which a number of States had been unwilling to accept unless a system of compulsory arbitration was introduced. To that extent, therefore, those articles constituted a special case, and it could not be said that the Conference had revealed any general trend towards the acceptance of compulsory arbitration as part of international law.

26. Mr. SCELLE, Special Rapporteur, said that his draft formed a whole, and that one article could not be regarded as more important than any other. In his view, all the articles should be reviewed by the Commission itself ; to refer any of them to a committee would only lead to duplication of work.

27. Sir Gerald FITZMAURICE thought there was no doubt that in recent years States had been increasingly reluctant to accept provisions for compulsory arbitration. In the years preceding the Second World War there had at least been greater willingness to include arbitration clauses in particular conventions, and seldom or never had objection been made to their inclusion. Now the situation was vastly different, and he agreed with Mr. Zourek that the recent Conference had not revealed any general trend in the opposite direction. Certainly the comments which Governments had made on the Commission's draft on arbitral procedure contained constant references to the supposed incompatibility of the draft articles with the sovereignty of States. In his view, those criticisms were wide of the mark, for no State would have been obliged to sign a convention containing the draft articles prepared by the Commission any more than it was obliged to sign any other convention which involved recourse to compulsory arbitration. What was now envisaged, however, was not even a convention the signature of which would involve recourse to compulsory arbitration ; it was not in fact a convention at all, but only a set of model rules. While therefore he agreed with Mr. Zourek that the Commission should examine the comments of Governments, he believed it would find that in view of the changed nature of the draft many of them had become irrevelant, even if they had not been so before.

28. He entirely agreed with the Special Rapporteur's fundamental premise that any agreement to have recourse to arbitration was equivalent to a treaty and so gave rise to international obligations, and fully supported his basic aim which was to suggest a way in which two States which seriously intended to arbitrate could ensure that their intentions were not frustrated through circumstances arising in the course of the proceedings.

29. Finally, he suggested that in submitting the draft articles to the General Assembly, the Commission might help to make their real nature and purpose clear by annexing to them a specimen *compromis* drawn up in accordance with them.

30. Mr. AMADO, referring to the text of General Assembly resolution 989 (X), said that paragraph 2 of the resolution was not meant to question the intrinsic value of the Commission's earlier draft — which could hardly be questioned — but it did cast some doubt on the acceptability of the draft to States. In that respect, the Commission's task was now much easier, for the idea of a convention had been superseded by that of a set of model rules. The model draft which Mr. Scelle had prepared formed, as the author himself had said, a single whole ; what was more, it was a text which could hardly be bettered. He would therefore be in favour of submitting it to the General Assembly as it stood and leaving it to individual States to make whatever use of it they thought fit ; he was opposed to referring it to a committee, where it would only be needlessly tampered with.

31. Finally, he agreed with the Special Rapporteur that the question of compulsory arbitration did not arise at all in connexion with his draft.

32. Mr. AGO thought it might be more correct to refer to the Special Rapporteur's draft as a " draft model " or " draft model rules " rather than as a " model draft ". Otherwise, he had no general criticisms of the draft itself. In his view, the Special Rapporteur had done right to make it as inherently satisfactory as he could, without worrying unduly as to whether or not it was likely to meet the present views of the great majority of States. As had already been pointed out, the Commission was now doing no more than suggesting model rules which State were free to adopt, in whole or in part, in their agreements.

33. Mr. FRANÇOIS congratulated the Special Rapporteur on his new draft, which should certainly prove more acceptable to States than the previous draft. The Commission should harbour no illusions, however, about the welcome its proposals were likely to get, even in their new attenuated form, from a considerable number of States and from the General Assembly. He agreed, of course, that no State would be obliged to sign any instrument containing the draft articles. Yet the fact remained that many States, and particularly the newer States, believed that compulsory arbitration was incompatible with their sovereignty, and, in many cases, at variance with their constitutional provisions. It was therefore understandable that they should be unwilling to support a draft which aimed at regularizing compulsory arbitration and thus extending its influence, even though the draft itself contained nothing which compelled them to have recourse to arbitration against their wish.

34. He also agreed that once arbitral proceedings had begun it was essential that they should continue until an award was rendered. It must be borne in mind,

however, that one of the main advantages of arbitral procedure lay in its flexibility ; the value which States placed on a flexible procedure was shown by their increasing recourse to the still more flexible procedure of conciliation. It was to be foreseen that several States would hesitate to throw away one of the main advantages which arbitral procedure offered for the sake of the rigidity which characterized the draft in certain places, in particular in the provisions relating to the appointment of the members of the arbitral tribunal.

35. In conclusion, he agreed that it would not help matters to refer the draft to a committee.

36. Mr. YOKOTA agreed with Mr. Zourek that the Commission should not derive undue satisfaction from the fact that the recent Conference on the Law of the Sea had agreed to compulsory recourse to arbitration in one particular case. What was more encouraging was that the articles which the Conference had adopted in that respect provided that the arbitral procedure, once begun, could not be broken off until an award had actually been rendered, as that was precisely the point which the Commission was seeking to safeguard in its draft.

37. He entirely agreed with Sir Gerald Fitzmaurice that many of the objections to the draft articles prepared by the Commission at its fifth session, and particularly the objections based on the principle of sovereignty, betokened a complete misunderstanding of the true purpose of the articles. He was hopeful that once those misunderstandings had been removed many of the objections would be withdrawn.

38. Mr. SANDSTRÖM said that the sole aim of the draft articles prepared at the fifth session had been to ensure that once an obligation to have recourse to arbitration existed it should be possible to make it effective, regardless of circumstances. He had supported the draft articles and regretted that the Commission should have had to lower its sights and substitute a so-called " model draft ". As far as it went, however, the model draft should prove helpful, and, though his decision would necessarily depend upon the final form of the draft, he would probably be able to support it.

39. Mr. BARTOS remarked that the Conference on the Law of the Sea had adopted the principle of compulsory arbitration on one specific subject only, considering it preferable for the points at issue in disputes on conservation measures to be submitted to arbitration, since they were technical rather than legal points. For all other matters, in which the issues would be largely of a legal nature, the Conference had followed the general system for the pacific settlement of disputes prescribed in the Charter of the United Nations, including possible acceptance of the compulsory jurisdiction of the International Court of Justice.

40. Turning to the model draft itself, he said that, after consulting eminent Yugoslav jurists, as was his custom before the sessions of the Commission, he had been led to change his attitude towards the draft. He wished to withdraw his previous general reservation, and thought that it might be preferable to have such a model, even though certain of its provisions were somewhat rigid.

41. One point raised by the Yugoslav jurists was that of the constitutionality of the model draft in the light of the provisions defining the competence of the International Court of Justice. According to its Statute, the functions of the Court were to decide or give advisory opinions on points of law. Some parts of the model draft however, article 4, for instance, made the Court part of the hierarchic procedural machinery, giving it functions belonging to what was known in German as *Justizverwaltung*. He was afraid that, even with the agreement of the parties to the dispute, the Court would not be able to undertake such functions as the appointment of arbitrators until its Statute had been revised. And a revision of the Statute of the Court would, in effect, involve a revision of the Charter. He hoped that the Special Rapporteur could find some way out of that difficulty.

42. Mr. SCELLE, Special Rapporteur, pointed out that the Court would not be asked to decide preliminary questions unless the parties to the dispute had previously agreed to refer such questions to the Court. By virtue of Article 36 of its Statute, the Court was fully competent to decide questions referred to it in those circumstances. Requests to the President of the International Court of Justice, on the other hand, would be addressed not to the Court itself, or to the President as a member of the Court, but to the President in his capacity as an eminent jurist.

43. Mr. BARTOS said that his concern was not with the competence of the Court under Article 36 of its Statute but with the auxiliary services which the Court might be called upon to render under the model draft. The President could, it was true, be absolved from following the normal procedure by the provision, in Article 38 of the Statute, allowing the Court to decide a case *ex aequo et bono*.

44. Since the revision of the Statute of the Court with a view to increasing the number of judges was already being mooted, a question which entailed, after all, only a minor extension of the powers of the Court might also be raised.

45. Mr. VERDROSS considered that the point mentioned by Mr. Bartos was covered by Article 36, paragraph 1, of the Statute of the Court. If the parties to the dispute, having concluded an arbitration treaty, disagreed on the interpretation of the treaty or the existence of a dispute, the Court was competent to decide the question under that provision.

46. Mr. BARTOS agreed. He was, however, merely concerned with the other functions of an administrative nature which the Court might, under the model draft, be called upon to perform on behalf of the parties to the dispute. He was not entirely opposed to the provisions in question, but merely regarded them as somewhat doubtful.

47. Mr. AGO pointed out that arbitration treaties frequently made provision for a third or fifth arbitrator to be appointed by some neutral person or body. In particular they could provide for a nomination by the President of the Court, but the function which the President was called upon to fulfil in such a case was not of the type for which provision was or could be made in the Statute of the Court. When the President of the Court was requested to appoint arbitrators he was not carrying out a statutory function: he was acting in his individual capacity, as a person regarded as the highest legal authority in the world. He might, of course, refuse, but no remedy could be found to that difficulty by revising the Statute of the Court. On the whole, the problem struck him as more theoretical than real. He could not recall any case in which the application of an arbitration treaty had been hampered by difficulties of the nature described by Mr. Bartos.

48. Mr. SCELLE said that Mr. Ago had admirably explained the situation. In the circumstances contemplated in article 4 of the draft, the President of the Court would be acting *ex officio*.

49. The CHAIRMAN, speaking as a member of the Commission, observed that the Governments which objected to the original draft on the ground that it made arbitration compulsory appeared to be labouring under some misunderstanding. Arbitration was compulsory only in the sense that there was an attempt to attach a certain amount of sanctity to the undertaking to arbitrate of the States parties by seeking to make the undertaking effective — by seeking to subdue the potential anarchy of forces and so-called interests into a tolerable harmony. In the present form of the draft, however, even that amount of compulsion was absent: there was only an invitation to recognize in advance a rule voluntarily accepted. The principle underlying such recognition in advance was accepted in Article 36, paragraph 2, of the Statute of the Court. In the current draft that principle was less objectionable to States, being less general in nature. It was certainly not one of the implications of sovereignty that States were not bound to honour their undertakings. It was his firm belief that in the case of the majority of States the preservation of their sovereignty depended not on the physical power of States to defend themselves but on the prevalence of a certain degree of rule of law. Any doctrine which, in relations between States, postulated the individual interest of the single State as the ultimate standard of values amounted to a negation of such rule of law.

50. The point raised by Mr. Bartos had been well answered by the Special Rapporteur and Mr. Ago. The designation of a person who was to appoint arbitrators in certain circumstances was quite a common feature of the domestic legal systems of various countries. The point was, in any case, a matter of detail which could be raised in connexion with the relevant articles.

51. Speaking as Chairman, he declared the general debate closed.

CONSIDERATION OF THE MODEL DRAFT ON ARBITRAL PROCEDURE (A/CN.4/113, ANNEX)

52. The CHAIRMAN presumed that, so far as procedure was concerned, the Commission wished to adhere to its previous decision that the draft on arbitral procedure should take the form of a set of model rules. He proposed that the Commission itself consider the various articles of the model draft one by one, since experience had shown the inadvisability of referring texts to a committee for prior consideration. Questions of drafting might, however, be referred to a drafting committee, provided that it was given explicit instructions.

*It was so agreed.*

ARTICLE 1

53. Mr. SCELLE, Special Rapporteur, introduced article 1 of the model draft.

54. Replying to a question by Mr. AMADO on the meaning of the words " or in some other undertaking " in paragraph 4 of the article, he said that States might well agree in some document other than the *compromis* (in an arbitration treaty, for instance) to have recourse to certain procedures. If, for example, nothing had been decided regarding the law applicable, the parties to a dispute might agree in a special undertaking to accept article 11 of the draft, or, in other words, to be guided by Article 38, paragraph 1 of the Statute of the International Court of Justice.

55. Mr. BARTOS said that, after consulting eminent Yugoslav jurists, he had come to the conclusion that the words " a dispute between States " in article 1, paragraph 1, were too restrictive. Perhaps the Special Rapporteur would consider extending the scope of the article and of the draft to cover disputes between international organizations, and disputes between an international organization and a State, for such disputes were not infrequent.

56. Again, although Yugoslav jurists were not opposed to the application of an undertaking to arbitrate to " disputes arising in the future ", they thought it very difficult to state that the undertaking would apply to all future disputes of any nature whatsoever. He suggested that the Special Rapporteur might consider including a qualifying phrase such as " in so far as it has been agreed that they should be submitted to arbitration ".

57. Mr. AMADO inquired whether, in view of the reference in paragraph 4 of the article to matters agreed " in the *compromis* or in some other undertaking ", article 10 should not therefore read ". . . possesses the widest powers to interpret the *compromis* or other undertaking."

58. Mr. SCELLE, Special Rapporteur, replying to Mr. Bartos, said that he had no objection to making paragraph 1 of the article apply to disputes in which one or more of the parties was an international organization. Perhaps the members of the Commission

would reflect on the form which the addendum should take.

59. Commenting on the suggestion that the reference to future disputes should be limited to specific cases, he said that, since the procedures offered by the draft applied only to disputes specified in the *compromis*, the rather timid qualifying phrase was hardly necessary.

60. Mr. GARCÍA AMADOR supported Mr. Bartos' suggested additional provision extending the scope of the draft to disputes between States and international organizations. If the Commission agreed to the addition, he would ask it also to consider the advisability of extending the draft to cover disputes between States and individuals or bodies corporate concerning agreements or contracts containing an arbitration clause. Two agreements of that type, namely, that involving the Government of Yugoslavia and the Société anonyme Losinger et Cie [8] and the Convention between the Government of Greece and the Société commerciale de Belgique,[9] had figured in cases dealt with by the former Permanent Court of International Justice. A more recent example of such an agreement was the Iran-Consortium Agreement of 19-20 September 1954.[10]

The meeting rose at 1 p.m.

[8] Publications of the Permanent Court of International Justice, *Pleadings, Oral Statements and Documents*, series C, No. 78.

[9] *Ibid.*, No. 87.

[10] J. C. Hurewitz, *Diplomacy in the Near and Middle East*, vol. II, *A Documentary Record: 1914-1956*, pp. 348 ff.

## 434th MEETING

*Thursday, 1 May 1958, at 9.45 a.m.*

*Chairman:* Mr. Radhabinod PAL.

### Arbitral procedure: General Assembly resolution 989 (X) (A/CN.4/113) *(continued)*

[Agenda item 2]

CONSIDERATION OF THE MODEL DRAFT ON ARBITRAL PROCEDURE (A/CN./113, ANNEX) *(continued)*

ARTICLE 1 *(continued)*

1. Mr. ZOUREK, viewing the article from the standpoint of the decision to present the draft in the form of a model set of rules, observed that, whereas the first three paragraphs of the article enunciated a rule or principle, paragraph 4 was more of an explanation concerning the nature of the draft. Perhaps the Special Rapporteur would consider the possibility of detaching the paragraph and making it an introduction to the whole draft.

2. He commented on the suggestions made at the previous meeting that the scope of the draft should be extended to cover disputes to which international organizations were parties. He agreed that, in so far as such bodies had the right, under their constitutions, to enter into international agreements, questions of interpretation and application were bound to arise, and the organizations might find it necessary to have recourse to arbitration. However, the draft could not be applied as it was to disputes arising from those agreements. If the draft was to deal with the matter, the best way of indicating the applicability of the draft to disputes between States and international organizations might be to add an article at the end of the text stating that it could apply *mutatis mutandis* to such disputes.

3. The disputes between States and private persons or corporations mentioned by Mr. García Amador (433nd meeting, para. 60) were, however, outside the scope of the draft. Though agreements between large corporations and Governments were quite frequent, the arbitration of disputes arising out of such agreements belonged to the domain not of public international law but of private international law. It was commercial arbitration which would be governed either by the Protocol on Arbitration Clauses of 1923 [1] or the Convention on the Execution of Foreign Arbitral Awards of 1927,[2] which was to be revised at a conference to be held in New York in May 1958.

4. The model *compromis* which Sir Gerald Fitzmaurice had offered to prepare would be a welcome addition to the draft. The Commission should, however, bear constantly in mind that the practice of recourse to arbitration could be fostered only if States had confidence in the arbitral tribunal, and their confidence would be all the greater if the draft did not place too rigid restrictions on the free exercise of the will of the parties, which was the basis of arbitration.

5. Mr. FRANÇOIS pointed out that there was a very serious objection to extending the scope of the draft to include disputes involving international organizations. Articles 3, 37 and 39 assigned certain functions to the International Court of Justice. But the competence of the Court was confined by its Statute to disputes between States. All reference to disputes involving international organizations and *a fortiori* to those involving private persons or corporations should therefore be omitted.

6. Sir Gerald FITZMAURICE said that he had only a few minor amendments to suggest to the wording of the draft. The model draft could be of real assistance to Governments in two ways. If two Governments decided to submit disputes to arbitration and were able to define the nature of the disputes in the arbitration agreement, they might find it difficult or be unwilling to draw up a detailed *compromis*. In that case they could include in the arbitration agreement a general provision stipulating that, subject to any variations that

[1] League of Nations, *Treaty Series*, vol. XXVII, 1924, No. 678.

[2] League of Nations, *Treaty Series*, vol. XCII, 1929-1930, No. 2096.