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Summary record of the 434th meeting

Topic:
Arbitral Procedure

Extract from the Yearbook of the International Law Commission:-
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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.

might be agreed on in the course of proceedings, the articles of the model draft should serve as a *compromis*. If, on the other hand, they agreed to have recourse to arbitration and drew up a *compromis*, they could incorporate in that instrument whatever parts of the draft they saw fit.

7. Those two possible uses of the draft might be pointed out in a preamble or introductory paragraph, and in its discussion of the articles the Commission might take such an addition into account. As it stood, the draft was a mixture of statements of pure principle and of detailed provisions concerning procedure which normally figured in a *compromis*. The provisions concerning questions of principle should perhaps be grouped together. Article 1, paragraph 1 of article 4, paragraph 1 of article 5 and article 10, for example, were statements of pure principle, whereas article 2, paragraph 2 of article 4, and paragraphs 2 and 3 of article 5 related to points of procedure. The only part of the draft with which his suggestion would clash was article 9, paragraph 2, which stated that the tribunal itself should draw up the *compromis* if the parties failed to do so. Were his suggestion adopted, it would perhaps be better to state in article 9 that the parties should draw up a *compromis* or, failing that, might agree to regard the model draft as constituting the *compromis*.

8. Mr. EL-ERIAN remarked that Mr. García Amador's suggestion for the extension of the scope of the draft was an interesting one but, especially in view of the objections mentioned by Mr. François and Mr. Zourek, he doubted whether it would be feasible to adopt it at that stage. Since the draft was in its final stage, it would not be advisable, from a practical point of view, to embark on the consideration of a point which had not been studied before by the Special Rapporteur or the Commission, and on which the views of Governments had not been ascertained.

9. The suggestion also gave rise to difficulties of substance. As Mr. François had pointed out, the draft contained several provisions, such as those of articles 3, 37 and 39, which presupposed the application of the draft to disputes between States, because they referred to the International Court of Justice before which only States could appear. Disputes between States and private individuals or corporate bodies did not belong to the domain of international law and, therefore, should not be envisaged in a draft which dealt with relations between entities possessing international personality.

10. Mr. AGO, referring to Sir Gerald Fitzmaurice's suggestion concerning a model *compromis* to be appended to the draft, said that it would be a great advantage if parties to a dispute wishing to save themselves the labour of drawing up a *compromis* could simply include in their agreement to arbitrate a clause to the effect that they would use the model *compromis* annexed to the model draft. The draft would thus be in two parts, the first enunciating principles and outlining certain alternative courses and the second containing a model *compromis*. Parties to disputes could then accept the model *compromis* as a whole, subject to any variations later agreed upon, or select such of its provisions as they saw fit. The draft would undoubtedly have a much greater influence on international arbitral procedure if it offered a model *compromis* which the parties could simply render applicable to their mutual relations whenever they wished.

11. As for the suggestions for extending the scope of the draft, he thought that it would undoubtedly be most advantageous if it could apply to disputes between States and international organizations. Agreements of that kind were quite common and, in particular, agreements between international organizations and the States on whose territory they had their headquarters invariably contained an arbitration clause. There would be fewer occasions when the draft could be applied to disputes between international organizations, but that too was feasible.

12. On the other hand, he was entirely opposed to making the draft applicable to disputes between States and private persons or corporations. To do so might easily give rise to difficulties. Some of the private corporations with which States concluded agreements and to which they granted concessions were very powerful, and it was already difficult enough to bring them to realize that they were not States and consequently could not be subjects of international law. Such corporations, powerful though they were, always remained subjects of municipal law alone, and disputes relating to any agreements which they might conclude with States came within the scope of municipal law and not the law of nations. While arbitration might be a means of settling such disputes, it would not be international arbitration *stricto sensu*. International arbitration could apply only to disputes between subjects of international law.

13. On points of drafting, he would suggest that the term " arbitration *ad hoc* " (in article 1, paragraph 2) should rather be " *ad hoc* undertaking " since the actual arbitration came at a later stage. Again, since the article was proceeding from the specific to the general, it would be better if the order of the terms " arbitration treaties " and " arbitration clauses " were reversed.

14. Mr. BARTOS fully agreed with Mr. Ago regarding Mr. García Amador's suggestion. There was a tendency for powerful corporations involved in disputes with a foreign State to claim rights that really belonged to their State of nationality. Generally, in such disputes a process of substitution occurred, by which the State, at some stage in the dispute, espoused the cause of its aggrieved national. He cited, for purposes of illustration, the dispute involving the Société anonyme Losinger et Cie,[3] in which the Swiss Government had taken up the case of its national, and the Brazilian Federal Loans case and the Serbian Loans case,[4] in which the Permanent Court of International Justice had not agreed

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

[4] *Idem, Collection of Judgments*, series A, Nos. 20/21.

to hear the plaintiff until after he had been appointed official counsel for his State of nationality, France. There was always a danger in such cases that the State unsuccessful in the litigation would have recourse to other remedies in private law, or apply for the annulment of the award on the plea that the State had not the right to substitute itself for its national. Preferably, therefore, the draft should apply only to disputes between States, between States and international organizations, and between international organizations. An interesting case in connexion with disputes between international organizations and States was that of the European Organization for Nuclear Research, under whose constitution it was possible for member States of the organization to bring an action against another member State on the ground of non-fulfilment of the undertakings into which it had entered on becoming a member.

15. As far as the terminology used in article 1 was concerned, he was likewise not in favour of using the term " arbitration *ad hoc* ", and thought it preferable to separate the term " arbitration treaties " from " arbitration clauses " by a semi-colon to make it clear that they were far from synonymous.

16. Mr. ZOUREK acknowledged the soundness of Mr. François' objection to making the draft applicable to disputes involving entities other than States. It was in fact because he (Mr. Zourek) had realized the impossibility of simply applying the draft to them as it stood that he had suggested the device of stating that it applied *mutatis mutandis* to disputes involving international organizations. On second thoughts, he considered that the best course might be to confine the scope of the draft to disputes between States, but to point out in a commentary that many of its provisions could be applied to disputes between States and international organizations or between international organizations.

17. Mr. SCELLE, Special Rapporteur, inquired whether, in view of the course taken by the discussion, Mr. García Amador wished to maintain his suggestion (433rd meeting, para. 60). Though he was in favour of granting certain private bodies personality in international law in future, he realized that they did not enjoy that status under existing international law and he would therefore be obliged to oppose the suggestion.

18. Mr. GARCÍA AMADOR said that his remarks at the previous meeting on the subject of the applicability of the draft to disputes between States and private persons or corporations had been in the nature of a suggestion and not a proposal. After hearing the discussion, he realized that, however advisable it might be at a later stage, such a move would be inexpedient at the moment, and he would not press his suggestion.

19. It was nonetheless interesting to note that the Iran-Consortium Agreement of 19-20 September 1954 [5] between the Government of Iran, a corporation organized under Iranian law and a number of foreign companies contained clauses similar to, and in some cases identical with, certain provisions of the draft. Under article 44 of the Agreement, for instance, the President of the International Court of Justice might be requested to appoint an umpire, if the parties failed to agree, or a single arbitrator if either party failed to appoint an arbitrator or to notify the other of the appointment. Such agreements were bound to recur, and it would be useful if the model draft could apply to them.

20. Mr. SCELLE, Special Rapporteur, thanked Mr. García Amador for withdrawing his suggestion regarding private persons and corporations. The draft should be conservative, for the inclusion of any reference to private persons could well jeopardize the draft when it came before the Assembly.

21. He agreed to delete, in accordance with Mr. Ago's suggestion, the phrases in parenthesis in article 1, paragraph 2. They were explanatory remarks and not essential to the text. In fact, the whole of paragraph 2 could be deleted because it merely stated the well-known fact that an undertaking to have recourse to arbitration could be either abstract and cover all future disputes, or concrete and refer to a specific dispute.

22. He did not agree with the remarks of Mr. François regarding international organizations. The International Court of Justice had jurisdiction over States ; it therefore also had jurisdiction over associations of States. He suggested, therefore, that international organizations should be covered, either by a separate provision expressly relating to them, or by an amendment of article 1, paragraph 1, having the effect of making the article refer to disputes the parties to which were States or international organizations having personality in public international law.

23. It was only in article 1, paragraph 1, that his draft referred to States. In all the other provisions, the reference was to the parties to a dispute, a term which could cover international organizations as well as States. For his part, he considered that the parties to a dispute were the Governments rather than the States, and he had no great liking for the notion of the juridical personality of States, a notion which he was only prepared to accept as a legal fiction.

24. He had no objection to Mr. Zourek's suggestion that paragraph 4 should become a preamble or introductory provision.

25. With regard to Sir Gerald Fitzmaurice's suggestions, he said he would like some time for reflection.

26. Mr. SANDSTRÖM said that there was some advantage in making the draft applicable to international organizations, but the Statute of the International Court of Justice gave the Court jurisdiction in disputes between States only. The objection was not disposed of by the argument that the Court was qualified to give advisory opinions to international organizations ; those opinions were given by virtue of a specific provision of the Charter. There was no provision either in the

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

Charter or in the Statute of the Court that gave the Court jurisdiction in disputes involving international organizations.

27. He suggested that the drafting of article 1, paragraph 2, could be improved by replacing the plural " disputes " by the singular " dispute ".

28. Mr. LIANG, Secretary to the Commission, said that the question whether international organizations could avail themselves of the set of rules on arbitral procedure was a purely theoretical one. By contrast, if the draft had taken the form of a convention, the question whether it would be available to States only would have been of practical importance.

29. In fact, the Commission had agreed that its draft would constitute a set of rules or model to guide States. It was clear that any international organization could make use of that model in planning and carrying out arbitration arrangements. Some organizations had already made use of the International Law Commission's work on arbitration. In connexion with the problems arising out of the creation of the United Nations Tribunal in Libya, the General Assembly had been called upon to recommend a method of settlement and it had drawn inspiration from the Commission's earlier draft on arbitral procedure.

30. The suggested use of the term " parties " would involve some difficulties. Firstly, in certain cases it was difficult to determine who were the parties to a dispute. Secondly, the term " parties " was ambiguous because it could refer to the parties to a treaty or to the parties to a dispute.

31. Lastly, he pointed out that, if it was intended to impose an obligation to carry out the undertaking to arbitrate, that undertaking had to be carried out by States as entities in international law. He thought that the provisions of article 1, paragraph 1, should be maintained.

32. Mr. AGO said that while the drafting of article 1, paragraph 2, might well be improved, it would not be advisable to delete the text, as the Special Rapporteur was apparently now prepared to do. The paragraph expressed a very well known notion, but it had its place in the general structure of the draft.

33. He agreed with Mr. François that not all the provisions of the draft could apply to cases of arbitration involving international organizations. The articles providing for action by the President of the International Court of Justice in his personal capacity would not create any serious problems, but stipulations such as article 2, paragraph 1, and article 39, paragraph 6, which provided for recourse to the International Court of Justice itself, could not apply to international organizations because under its Statute the International Court only had jurisdiction in matters affecting States.

34. One possible solution might be to add a provision to the effect that international organizations could avail themselves of the draft with the exception of the provisions which related to the jurisdiction of the International Court of Justice.

35. Despite those minor difficulties, he was still of the opinion, in principle, that international organizations should be authorized to avail themselves of the draft. In that connexion, he had noted with interest that the agreement between Switzerland and the European Organization for Nuclear Research contained arbitration provisions not unlike those of the International Law Commission's earlier draft.

36. Lastly, he favoured a rearrangement of the articles which would facilitate the use of the draft by States in the conclusion of agreements.

37. The CHAIRMAN said that the Commission appeared to be in agreement that the set of rules would only apply to disputes between States.

38. There appeared to be no objection to the substance of article 1, and most of the suggestions which had been made were of a drafting character. He suggested that the question of the arrangement of the articles should be dealt with by the Commission at a later stage.

39. Mr. SCELLE, Special Rapporteur, said that he was still convinced that there was no basis in law for a narrow interpretation of the Statute of the International Court of Justice which would deny international organizations access to the Court. The Court was unlikely to disclaim jurisdiction over a dispute in which one of the parties was a confederation of States which did not constitute a super-State. The only difference between such a confederation and an international organization was that an international organization was specialized in character.

40. He therefore saw no difficulty in amending article 1, paragraph 1, in such a way that the draft would apply to international organizations, or in including a separate article to the same effect. If a separate article was to be included, he did not consider that any reservation regarding the jurisdiction of the International Court of Justice was justified, because, in his opinion, that Court had jurisdiction in cases involving international organizations.

41. Mr. BARTOS said that he agreed with Mr. Ago on the necessity of retaining article 1, paragraph 2.

42. He agreed with those members of the Commission who considered that the competence of the Court to give advisory opinions to international organizations was not a decisive argument in favour of its jurisdiction in disputes involving such organizations. If, therefore, a provision was to be included extending the application of the draft to international organizations, it would be necessary to find some substitute for the International Court of Justice so as to cover the possibility of that Court's disclaiming jurisdiction.

43. He did not think it was advisable to make any provision for the use of the model by private persons and corporations, although it was true that there were some interesting new trends affecting their status in international law. He drew attention in that respect to the practice of the United States Department of State concerning agreements relating to certain investments of United States capital. It was also interesting to note

that the Soviet Union, in its agreements concerning technical and economic assistance to other countries, specified that, although the agreements constituted contracts with certain specialized entities, any dispute arising out of those agreements would be treated as a matter involving the relations between States, and would be settled by diplomatic negotiations. In the case of Yugoslavia, all the difficulties which had arisen with the Soviet Union with regard to such agreements had been settled satisfactorily by negotiation ; no provision had, however, been made for the case in which negotiations might be unduly prolonged. Those interesting developments arising out of the new conceptions regarding social and economic organization and the status of aliens had not, however, reached a stage which would warrant the inclusion in the draft of a provision dealing with interests other than those of States.

44. Mr. FRANÇOIS said it was perfectly clear from Article 34 of the Statute of the International Court of Justice, as well as from Article 96 of the Charter, that international organizations could not be parties in cases before the Court. He was quite convinced that the Court would never accept the view that they could be assimilated to States for that purpose.

45. Mr. Ago's suggestion that mention of the International Court of Justice be replaced by mention of the Permanent Court of Arbitration could be further considered when the Commission took up the relevant articles. For the present he would merely point out that, even if recourse were had to the Permanent Court of Arbitration, it would still be necessary to set up an arbitral tribunal, so that the difficulties which the Commission was seeking to obviate would again arise. Disputes between States and international organizations or private interests could be referred to the Permanent Court of Arbitration, but the States in question had to be members of the Permanent Court of Arbitration.

46. Mr. YOKOTA said that, though he was in principle in favour of extending the scope of the Commission's draft to disputes between States and international organizations or between international organizations themselves, certain provisions of the draft — for example, article 3, paragraph 1 — were not in their present form applicable to such disputes, for the reasons already indicated. He therefore agreed that for the moment the Commission should confine itself to laying down a form of arbitral procedure applicable to disputes between States.

47. Mr. AGO agreed that for the present the Commission had virtually no choice but to confine itself to disputes between States. However, that was no reason why it should not at a later stage in its work consider how the scope of the draft could best be extended to cover disputes concerning international organizations, as desired by most of its members.

48. Mr. GARCÍA AMADOR also agreed that the Commission should continue with its consideration of the draft articles, while bearing in mind that the majority of members were in favour of making them applicable to international organizations, in a manner which would have to be settled later.

49. Mr. AMADO thought that in prevailing circumstances, when it was difficult enough to get States to submit disputes between themselves to arbitration, it was quite unrealistic to consider extending the scope of the Commission's draft to disputes between them and international organizations. He agreed, however, that the question could be left aside for future consideration.

50. The CHAIRMAN asked whether it was then agreed that in considering the draft articles the Commission should for the time being confine itself to disputes between States, on the understanding that it could subsequently revert to the question of extending their scope, if so desired.

It was so agreed.

51. Mr. PADILLA NERVO pointed out that the Commission must at some stage decide whether members were to be free to submit whatever amendments they liked to the draft articles, or whether they should confine themselves to examining the comments submitted by Governments and the various points made during the discussions in the Sixth Committee and modifying the draft articles accordingly wherever it seemed desirable to do so. In his view it would shorten the discussion considerably if the second course were adopted.

52. The CHAIRMAN pointed out that no amendments had in fact been proposed to paragraphs 1, 2 and 3 of article 1, which might therefore be referred to the Drafting Committee. On the other hand Sir Gerald Fitzmaurice and Mr. Zourek had both made suggestions affecting paragraph 4.

53. Mr. AMADO said that though he was still opposed to any unnecessary revision of the Special Rapporteur's model draft, he agreed it would be an improvement to remove paragraph 4 and any other provisions which were in the nature of statements of principle from the body of the text, and group those provisions in a preamble.

54. Sir Gerald FITZMAURICE said that his suggestion — which the Special Rapporteur had promised to consider — did not directly affect the wording of any of the draft's provisions, but related to the arrangement of the draft as a whole. He therefore saw no reason why the Commission should not proceed with its consideration of the draft articles and revert to his suggestion later. The point he wished to make was that under its present arrangement the draft fell between two stools. Originally intended as a formulation of the fundamental principles governing arbitration, such as might form the basis of a convention, it had now been recast as a set of model rules, but still contained certain statements of principle which would not normally be included in a *compromis* ; and the retention of such statement was, he thought, at least partly responsible

for the unfounded suspicion that the draft somehow provided for a system of compulsory arbitration. If the provisions in question were removed from the body of the text and made to form an introductory statement of the basic law of arbitration, the purpose of the draft might be clarified and certain current misunderstandings cleared up.

55. Mr. ZOUREK recalled that the Special Rapporteur had accepted his suggestion that paragraph 4 be removed from the body of the text and placed in a kind of introduction. It seemed therefore that paragraph 4 could also be referred to the Drafting Committee on the understanding that that would be done.

56. The CHAIRMAN proposed that article 1 be referred to the Drafting Committee on that understanding, and on the understanding that the arrangement of the articles as a whole would be further considered in the light of Sir Gerald Fitzmaurice 's suggestion.

It was so agreed.

ARTICLE 2

57. The CHAIRMAN recalled that the Commission had already adopted article 2 at its ninth session.[6]

The meeting rose at 1 p.m.

[6] See *Yearbook of the International Law Commission, 1957*, vol. I (United Nations publication, Sales No.: 1957.V.5, vol. I), 422nd meeting, para. 20.

435th MEETING

Friday, 2 May 1958, at 9.45 a.m.

Chairman : Mr. Radhabinod PAL.

Communications from Mr. Khoman and Faris Bey El-Khouri

1. Mr. LIANG, Secretary to the Commission, said that Mr. Khoman had written expressing his deep regret that urgent duties in Washington would prevent him from attending the current session before the second half of May. A letter had also been received from Faris Bey El-Khouri, in which he expressed his regret that ill-health temporarily delayed his arrival in Geneva.

Statement by Mr. Hsu

2. Mr. HSU asked to have placed on record his regret that at the 432nd meeting Mr. Tunkin should have again introduced into the Commission's discussions a political question, namely, that of the representation of China.

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

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

[Agenda item 2]

ARTICLE 3

3. The CHAIRMAN invited the Commission to take up article 3.

4. Mr. SCELLE, Special Rapporteur, said that article 3 dealt with the delicate but vital question of what he had called arbitrability. A State which wished to escape from its obligation to arbitrate, for reasons which might be legitimate but which were inconsistent with that obligation, could argue that the dispute did not come within the scope of the obligation. That question, which was a purely legal question, must clearly be settled before the arbitral procedure could be set in motion, and could be settled only by an independent legal body. In his view, the International Court of Justice was the most appropriate body for that purpose, and in its previous text [1] the Commission had proposed that, in the absence of agreement between the parties upon another procedure, the question of arbitrability, if raised, should be brought before the International Court of Justice. That provision had been strongly criticised in the General Assembly, however. Accordingly, he now proposed that it be left open to the parties, if they preferred, to refer the question to the Permanent Court of Arbitration.

5. Mr. VERDROSS pointed out that if the parties agreed to refer the question of arbitrability to the Permanent Court of Arbitration, they would still have to choose arbitrators from the panel, which was all that the Court in fact comprised. If one party refused to do so, an impasse would result. He therefore suggested that it be made clear in paragraph 1 of article 3 that, if the parties agreed to refer the question to the Permanent Court of Arbitration and either party then refused to nominate arbitrators, the other party should have the right to bring it before the International Court of Justice.

6. Mr. SCELLE, Special Rapporteur, said he would be quite prepared to add some provision of that kind, in order to meet the perfectly valid point which Mr. Verdross had made. He would only point out that a large proportion of the General Assembly had been opposed to any suggestion of compulsory recourse to the International Court of Justice, and that if Mr. Verdross's suggestion were adopted the same objection might arise again despite the changed nature of the draft.

7. Mr. YOKOTA pointed out that there was also the possibility of an impasse if the parties failed to agree whether to bring the question of arbitrability before the

[1] Article 2 of the 1953 draft. See *Official Records of the General Assembly, Eighth Session, Supplement No. 9*, para. 57.