

-- Similarly it is absurd to prevent the settlement of a disagreement between states as to their legal rights -- which is embittering their relations -- because one of the parties to the dispute asserts that it is a political question or one of honour or vital interests and therefore not suitable for arbitration;

-- The commonsense of international arbitration is simply this -- if you have a quarrel with someone you can refer it for judgment by mutually acceptable arbitrators and so avoid the unpleasantness of prolonged dispute, rupture of relationships or even conflict.

Nor should it be forgotten that in the long history of international arbitration there are very few instances in which the award has not been carried out. Part of the reason for this undoubtedly lies in the fact that frequently a court of arbitration is the most flexible and most desirable tribunal for the settlement of international disputes since the arbitrators may be chosen for their special technical skill and the parties are free to determine the competence of the tribunal and the law which it is to apply.

The purpose of the Draft on Arbitral Procedure which has been prepared by the International Law Commission is not to force states to submit all their disputes to arbitration but rather to provide a uniform procedure to be followed by all states which agree to have recourse to arbitration. It seeks to fill the gaps in existing practice.

The following two provisions of the Draft illustrate this aim:

(1) Determination of Dispute:

Occasionally a deadlock may occur before an arbitral tribunal has been set up, simply because the parties disagree as to the existence of a dispute or as to whether it comes within the scope of the obligation to arbitrate. The Commission's Draft provides for the determination of these questions by the International Court of Justice where no arbitral tribunal is yet in existence.

(2) Validity of the Award:

Again, it may be that, after an arbitral award has been given one of the parties alleges that the tribunal exceeded the powers conferred upon it and that the award is therefore a nullity. In such a case, present international law does not provide any effective means of determining whether the allegation is or is not well founded. In this case the Draft on Arbitral Procedure would empower the International Court to determine the validity of the award.

This arbitral project contains many other interesting innovations and will require considerable study by governments before it can be made the subject of a convention. In the Canadian view, however, it is a valuable contribution towards the codification of