

But once that free election is made then it is important that the parties carry out the undertaking it has voluntarily assumed. Consequently once a government has agreed to arbitrate a dispute, it should not be permitted, for reasons of its own, to unilaterally prevent the arbitration at a later stage. We therefore fail to understand the legal logic of the objection advanced by the Polish and Byelorussian delegations.

... at its Fourth Session in 1952, the International Law Commission adopted a draft on arbitral procedure which was accompanied by a commentary of the Commission. This draft was transmitted through the Secretary-General to all governments, members of the United Nations, with the request that they should submit their comments. When the Fifth Session of the International Law Commission commenced on June 1 of this year, comments had been received from only ten governments. In its last report the International Law Commission emphasized the value which it attached to those comments in the light of which considerable revision was made to the draft articles. The articles we are now considering, therefore, represent extensive revision and in some instances substantial changes from the articles on which governments were invited to comment in 1952. This is an important factor which my delegation feels should not be overlooked by this Committee. I think that all delegations will agree that a convention as important as one on international arbitral procedure, in order to be most effective, should be accepted by as many states in the world as possible and that anything which would militate against such universal acceptance should be avoided as much as possible.

At this point, I should like to make a few comments on behalf of my Government concerning the principles contained in the draft articles before us. My Government, in accordance with existing international practice and on the basis of its own experience in international arbitration, accepts the legal power of an arbitral tribunal, once constituted, to decide any question concerning whether the dispute comes within the scope of the obligation to arbitrate. The proposed Article 2 of the final draft goes beyond existing customary law and practice by providing for the determination of this question in cases where there is not yet in existence a tribunal constituted by the parties. This is a progressive step since it would prevent any party to an undertaking to have recourse to arbitration, from claiming the right to decide unilaterally the question whether a dispute exists or whether the dispute is within the scope of the obligation to have recourse to arbitration. Canada acknowledges the jurisdiction of the International Court of Justice in legal disputes involving questions of international law and considers that reference of such questions for decision by the International Court is sound. Moreover, in the interim period pending the constitution of the tribunal, it is logical and necessary to vest the Court with power to prescribe the provisional measures to be taken to safeguard the interests of either or both parties.

With reference to the "compromis" mentioned in Chapter 2 of the final draft, my Government considers that in some cases it may be preferable to submit the matter in dispute, by a complaint on the part of one of the parties which would then be answered by the