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REPORT OF THE INTERNATIONAL LAW COMMISSION TO THE GENERAL ASSEMBLY

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Report of the International Law Commission covering the work of its fourth session, 4 June-8 August 1952

TABLE OF CONTENTS

Chapter I

INTRODUCTION

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947 and in accordance with the Statute of the Commission annexed thereto, held its fourth session at Geneva, Switzerland, from 4 June to 8 August 1952. The work of the Commission during this session is related in the present report which, being in the nature of a progress report, is submitted to the General Assembly for its information.

Officers

2. At its meeting on 4 June 1952, the Commission elected, for a term of one year, the following officers:

Chairman: Mr. Ricardo J. Alfaro;

First Vice-Chairman: Mr. J. P. A. François;

Second Vice-Chairman: Mr. Gilberto Amado;

Rapporteur: Mr. Jean Spiropoulos.

Filling of casual vacancies

3. The Commission took note of the casual vacancies in its membership arising from the resignation of three of its members—Mr. James Leslie Brierly, Mr. Vladimir M. Koretsky and Sir Benegal N. Rau. In pursuance of article 11 of its Statute, the Commission elected, on 5 June 1952, Mr. F. I. Kozhevnikov, a national of the Union of Soviet Socialist Republics and Mr. H. Lauterpacht, a national of the United Kingdom of Great Britain and Northern Ireland, to fill two of these vacancies.

Membership and attendance

4. Consequent upon the above-mentioned elections, the Commission consisted of the following members:

Name	*Nationality*
Mr. Ricardo J. Alfaro	Panama
Mr. Gilberto Amado	Brazil
Mr. Roberto Córdova	Mexico
Mr. J. P. A. François	Netherlands
Mr. Shuhsi Hsu	China
Mr. Manley O. Hudson	United States of America
Faris Bey el-Khouri	Syria
Mr. F. I. Kozhevnikov	Union of Soviet Socialist Republics
Mr. H. Lauterpacht	United Kingdom of Great Britain and Northern Ireland
Mr. A. E. F. Sandström	Sweden
Mr. Georges Scelle	France
Mr. Jean Spiropoulos	Greece
Mr. J. M. Yepes	Colombia
Mr. Jaroslav Zourek	Czechoslovakia

5. All the foregoing members were present at the fourth session, Messrs. Kozhevnikov, Lauterpacht and Zourek attended meetings of the Commission from

9 June, Mr. Amado from 10 June, Mr. Córdova from 30 June, and Mr. Spiropoulos from 4 July 1952. Mr. Sandström ceased to attend meetings after 20 July, and Mr. Amado after 25 July.

6. Mr. Ivan S. Kerno, Assistant Secretary-General for Legal Affairs, represented the Secretary-General. Mr. Yuen-li Liang, Director of the Division for the Development and Codification of International Law, acted as Secretary of the Commission.

7. At its meeting on 8 August 1952, the Commission elected Mr. Radhabinod Pal, a national of India, to fill the remaining casual vacancy in its membership.

AGENDA

8. The Commission adopted an agenda for the fourth session consisting of the following items:

(1) Filling of casual vacancies in the Commission;
(2) Arbitral procedure;
(3) Law of treaties;
(4) Régime of the high seas;
(5) Régime of territorial waters;
(6) Nationality including statelessness;
(7) Date and place of the fifth session;
(8) Review of the Statute of the Commission;
(9) Other business.

9. In the course of its fourth session, the Commission held forty-nine meetings. It considered all the items on the foregoing agenda, with the exception of the question of the review of its Statute (item 8). As to that question, the Commission, having regard to General Assembly resolution 600 (VI) adopted on 31 January 1952, deemed it inopportune to proceed with the consideration of it at the present session.

10. The work on the questions dealt with by the Commission is summarized in chapters II to VII of the present report.

Chapter II

ARBITRAL PROCEDURE

11. The International Law Commission, at its first session in 1949, selected arbitral procedure as one of the topics of international law for codification and gave it priority. It elected Mr. Georges Scelle as special rapporteur on the subject. In pursuance of Article 19, paragraph 2, of its Statute, the Commission also requested Governments to furnish it with the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents relevant to the subject.[1]

12. At the second session in 1950, Mr. Scelle, the special rapporteur, submitted to the Commission a "Report on Arbitration Procedure" (A/CN.4/18) in which he proposed a preliminary draft on arbitral procedure. The Commission also received replies from certain Governments to its afore-mentioned request (A/CN.4/19, part I, B). In addition, the Commission had before it a "Bibliography on Arbitral Procedure" (A/CN.4/29) and a "Memorandum on Arbitral Procedure" (A/CN.4/35), both submitted by the Secretariat. The Commission undertook a preliminary consideration of certain parts of the report of the Special Rapporteur and requested him to present a revised draft, taking into account the views expressed in the Commission.[2]

13. At the third session in 1951, the special rapporteur, Mr. Scelle, presented his "Second Report on Arbitration Procedure" (A/CN.4/46) in which was contained a "Second Preliminary Draft on Arbitration Procedure". This report was held over for consideration at the fourth session.[3]

14. In the course of its fourth session in 1952, the Commission, at its 137th to 156th, 173rd to 177th and 179th to 183rd meetings, considered the "Second Preliminary Draft on Arbitration Procedure" presented by Mr. Scelle, who had also submitted a "Supplementary Note to the Second Report on Arbitration Procedure" (A/CN.4/57). It adopted a "Draft on Arbitral Procedure", consisting of thirty-two articles, with comments, which is set out at the end of the present chapter.[4] In accordance with article 21, paragraph 2, of its Statute, the Commission decided to transmit, through the Secretary-General, this draft to Governments with the request that the latter should submit to it their comments on this document within a reasonable time. The Commission further decided, in pursuance of article 21, paragraph 1, of its Statute, to request the Secretary-General to issue the said draft as a Commission document and to give it all necessary publicity. The Commission will draw up a final draft on arbitral procedure at its next session and will submit it to the General Assembly, in conformity with article 22 of its Statute.

15. It was also decided that the final draft should be accompanied by a detailed commentary, as envisaged in Article 20 of the Statute, giving an account and an

[1] Report of the International Law Commission covering the work of its first session, see A/925, *Official Records of the General Assembly, Fourth Session, Supplement No. 10* (paragraphs 16, 20-22). Also in *Yearbook of the International Law Commission, 1949*, p. 281.

[2] Report of the International Law Commission covering the work of its second session, see A/1316, *Ibid., Fifth Session, Supplement No. 12* (part VI, chapter II). Also in *Yearbook of the International Law Commission, 1950*, vol. II, pp. 381-383.

[3] Report of the International Law Commission covering the work of the third session, see A/1858, *Ibid., Sixth Session, Supplement No. 9* (paragraph 7). Also in *Yearbook of the International Law Commission, 1951*, vol. II, p. 124.

[4] Mr. Hudson declared that he had voted against the adoption of the draft as a whole. Mr. Kozhevnikov stated that he had voted against the draft as a whole and also against the comments. Mr. Zourek stated that he had voted against the draft as a whole and against the comments, for reasons which he had had occasion to explain during the discussions (see, in particular, the summary records of the 140th, 147th, 149th, 151st and 177th meetings).

analysis of the relevant practice, including arbitration treaties and compromissory clauses, arbitral decisions and the literature on the subject. That commentary, to be prepared by the Secretariat under the direction of and in consultation with the Special Rapporteur, should be available to the Commission at the next session.

16. In preparing the " Draft on Arbitral Procedure ", the Commission, in conformity with its Statute, had to bear in mind the distinction between the codification of existing practice and the development of international law on the subject. On the other hand, the Commission realized that the draft as a whole could not be based on the exclusive adoption of either method. Accordingly, while with regard to some aspects of arbitral law and procedure the present draft gives expression to what the Commission considers to represent the preponderant practice of governments and arbitral tribunals, with regard to other aspects of the subject the draft has taken into account both the lessons of experience and the requirements of international justice as a basis for provisions which are *de lege ferenda*. The comments which follow the Articles of the draft indicate the character of the solution adopted in each case. However, it is deemed convenient, in these introductory observations, to draw attention to certain general features of the draft.

17. In the first instance, the Commission considered that it was doing no more than codify the existing practice, dating from the end of the eighteenth century, inasmuch as it based the draft on the principle that arbitration is a method of settling disputes between States in accordance with law, as distinguished from the political and diplomatic procedures of mediation and conciliation. That principle has found expression not only in Article 12 of the draft relating to the law to be applied by the arbitral tribunal, but also in other articles.

18. In the light of experience, moreover, the Commission considered it necessary to take certain steps to render the undertaking to arbitrate and the whole procedure as effective as possible. The Commission took into account the fact that the difficulties arising in the selection of arbitrators and the drafting of a *compromis* might deprive the original undertaking to arbitrate of any real force. It therefore thought it necessary to provide for recourse to a court which could give a binding decision on the " arbitrability " of the dispute; to bring about the constitution of the arbitral tribunal, if necessary before the drafting of the *compromis*; and, finally, to empower the arbitral tribunal, once constitued, to draft the *compromis* itself, in case of disagreement between the parties. The purpose of the articles contained in the first two chapters of the draft is to resolve those difficulties.

19. Similarly, having regard both to the legal nature of arbitration and to past experience in the functioning of international tribunals, it has been considered desirable to safeguard the effectiveness of the process of arbitration and the independent standing of arbitral tribunals in their capacity as international organs, by provisions relating to what may be described as the continuity of arbitral tribunals once they have been constituted. These principles intended to ensure the continued functioning and the independence of the tribunal notwithstanding the attitude of any one of the parties bound by the undertaking to arbitrate, are expressed mainly in the articles of the draft bearing on the replacement and withdrawal of arbitrators.

20. In giving formal expression to the principle that the arbitral tribunal has the legal power to determine its jurisdiction in conformity with the instrument creating the obligation to arbitrate and that the tribunal decides on the procedure before it and the manner and weight of the evidence submitted to it, the Commission has, in its opinion, followed the preponderant existing practice and the generally recognized principles of law on the subject. However, it has been considered that the effectiveness of the process of arbitration requires some more detailed elaboration, as done in chapter IV of the draft, of the law on this subject.

21. For the same reason, while adopting the principle that arbitral awards are final and without appeal, the Commission has deemed it essential to include, in the draft, articles concerning revision and annulment of the award. The Commission hopes, in particular, that the adoption by governments of the legal procedures prescribed in the draft as regards action *ultra vires* will remedy what in the past has frequently been a considerable defect in arbitral procedure which may be highly prejudicial both to the authority of arbitration and to international law in general. It is only by this means that a solution can be found for the otherwise insoluble conflicts between the principle that the instrument establishing the tribunal is the source of its competence and the no less important principle that any dispute on the extent of that competence should be settled, in the first instance, by the tribunal itself.

22. With regard to the machinery for solving conflicts of this nature, as well as in some other matters, the present draft is based on the view that, in the absence of other machinery agreed upon by the parties, the International Court of Justice is the most suitable agency for safeguarding the effectiveness of the undertaking to arbitrate and the independence and the authority of arbitral procedure in general.

23. The Commission considers that it is in accordance with the nature of arbitral procedure that the parties should be in a position to adapt the details of that procedure to the requirements of any particular dispute. For that reason, many of the provisions of the draft are qualified by the recognition of the admissibility of alternative solutions agreed upon by the parties. On the other hand, it follows from the character of arbitration conceived as a judicial process and distinct from the methods of political adjustment and conciliation that some provisions of the draft, such as those relating to revision and annulment of the award, must be cast in a form which is essentially mandatory. The Commission has endeavoured to strike a balance between these two sets of considerations.

24. Two currents of opinion were represented in the Commission. The first followed the conception of arbitration according to which the agreement of the parties

is the essential condition not only of the original obligation to have recourse to arbitration, but also of the continuation and the effectiveness of arbitration proceedings at every stage. The second conception, which prevailed in the draft as adopted and which may be described as judicial arbitration, was based on the necessity of provision being made for safeguarding the efficacy of the obligation to arbitrate in all cases in which, after the conclusion of the arbitration agreement, the attitude of the parties threatens to render nugatory the original undertaking.

DRAFT ON ARBITRAL PROCEDURE

CHAPTER I

The Undertaking to Arbitrate

Article 1

1. An undertaking to have recourse to arbitration may apply to existing disputes or to disputes arising in the future.

2. The undertaking shall result from a written instrument.

3. The undertaking constitutes a legal obligation which must be carried out in good faith, whatever the nature of the agreement from which it results.

Comment

(1) This article, which is based on article 39 of The Hague Convention for the Pacific Settlement of International Disputes of 1907, is not purely declaratory. Its purpose is to affirm the binding force of the undertaking to arbitrate, even when unaccompanied by any provision on procedure. The term *clause compromissoire* (arbitration clause) which is sometimes used in French as equivalent to *engagement arbitral* (undertaking to arbitrate) has not been adopted by the Commission, as it might be confused with the *compromis* referred to in Article 9.

(2) In view of the fundamental importance of the undertaking to arbitrate, paragraph 2 of this article implies that the undertaking may not be based on a mere verbal agreement. The paragraph does not mean, however, that the undertaking to arbitrate requires the conclusion of a convention or intentional treaty in the strict sense of those terms. For instance, it would be sufficient for the parties concerned to accept a resolution of the Security Council recommending them to have recourse to arbitration for the settlement of a specific dispute. In such a case the official records of the United Nations would provide the authentic text of the undertaking.

Article 2

1. If, prior to the constitution of an arbitral tribunal, the parties to an undertaking to arbitrate disagree as to the existence of a dispute, or as to whether an existing dispute is within the scope of the obligation to have recourse to arbitration, the question may, in the absence of agreement between the parties upon another procedure, be brought before the International Court of Justice on an application by either party. The judgment rendered by the Court shall be final.

2. In its judgment on the question, the Court may prescribe the provisional measures to be taken for the protection of the respective interests of the parties pending the constitution of the arbitral tribunal.

Comment

(1) This article constitutes an important innovation. It deals with the " arbitrability " of the dispute and is designed to ensure the effectiveness of the undertaking to arbitrate. It provides, in case of disagreement between the parties as to the existence of a dispute or as to whether a dispute between them is covered by a prior undertaking to arbitrate, for the intervention of an international organ competent to decide the question, whose decision shall be final. In accordance with the traditional nature of arbitration, the parties may themselves agree on the body to be called upon to decide the question of arbitrability. Only if they fail to reach agreement on this point does the International Court of Justice become competent to decide the question of arbitrability.

(2) This provision is not without precedents. The practice of the United States has provided for recourse to the constitution of commissions of inquiry for the same purpose, namely, to ensure the effectiveness of general arbitration treaties, but it has required a quasi-unanimous decision on arbitrability by the commissioners. The provision is calculated to remove the most frequent obstacle to the effectiveness of an original arbitration clause, an obstacle that has, in the past, proved difficult to overcome. In the view of the Commission, unless otherwise agreed by the parties, the International Court of Justice, and not the Chamber of Summary Procedure of that Court, is the suitable organ to decide this important matter.

(3) In paragraph 1 of this article, it is assumed that the dispute on arbitrability has arisen between the parties before they have constituted an arbitral tribunal. Otherwise, it is the tribunal which will be responsible for deciding the question of arbitrability.

(4) Paragraph 2 provides that, in its judgment, the Court may also prescribe the provisional measures to be taken for the protection of the respective interests of the parties pending the constitution of the arbitral tribunal.

CHAPTER II

Constitution of the Tribunal

Article 3

1. Within three months from the date of the request made for the submission of a dispute to arbitration, or from the date of the decision of the International Court of Justice in conformity with article 2, paragraph 1, the parties to an undertaking to arbitrate shall constitute an arbitral tribunal by mutual agreement. This may be done either in the *compromis* referred to in article 9, or in a special instrument.

2. If the appointment of the members of the tribunal is not made by the parties within the period of three months as provided in the preceding paragraph, the parties shall request a third State to make the necessary appointments.

3. If the parties are unable to agree on the selection of the third State within three months, each party shall designate a State, and the necessary appointments shall be made by the two States thus designated.

4. If either party fails to designate a State under the preceding paragraph within three months, or if the Governments of the two States designated fail to reach an agreement within three months, the necessary appointments shall be made by the President of the International Court of Justice at the request of either party. If the President is prevented from acting or is a national of one of the parties, the appointments shall be made by the Vice-President. If the Vice-President is prevented from acting or is a national of one of the parties, the appointments shall be made by the oldest member of the Court who is not a national of either party.

Comment

(1) The first paragraph of Article 3 deals with the second major difficulty that may arise when the undertaking to arbitrate has to be carried out. The choice of arbitrators rests with the parties and this is one of the essential features of arbitration which distinguishes it from proceedings in a court of law; but when it comes to choosing the arbitrators, governments, concerned as they are about the defence of their interests, sometimes hesitate, because they have doubts about the legal views or the personal character of the prospective nominees. Nevertheless, the choice of a single arbitrator or of an arbitral tribunal must be made. It is necessary if the international dispute is to be settled. Following the precedent of Article 23 of the Revised General Act for the Pacific Settlement of International Disputes, the Commission feels that where the choice is made by the parties, the tribunal should be constituted within a very short time, i.e., three months from the date when there is no further doubt as to the arbitrability of the dispute. The constitution of the tribunal may be provided for in a *compromis* or in a special immediate agreement between the parties. In either case it is a judicial body of the international community, constituted by the States parties to the dispute.

(2) The next question which arises is how the tribunal is to be constituted if the parties are unable to reach agreement. This is dealt with in paragraphs 2, 3 and 4. The time limits thus prescribed amount to a total of nine months, not including any period required for the intervention of the President, the Vice-President, or a member of the International Court of Justice.

Article 4

1. The parties having recourse to arbitration may act in whatever manner they deem most appropriate; they may refer the dispute to a tribunal consisting of a sole arbitrator or of two or more arbitrators as they think fit.

2. With due regard to the circumstances of the case, however, the sole arbitrator or the arbitrators should be chosen from among persons of recognized competence in international law.

Comment

(1) This article is generally applicable, whether the undertaking to have recourse to arbitration derives from the *compromis* or is anterior thereto.

(2) Paragraph 1 affirms the freedom of the parties in the composition of an arbitral tribunal. Thus an arbitral tribunal, sometimes referred to in this draft merely as " tribunal ", means either a single arbitrator or a body of several arbitrators.

(3) Paragraph 2 stipulates that the arbitrators should be persons of recognized competence in international law. This, however, is not an inflexible rule. The Commission does not wish to exclude cases in which the technical nature of the issues involved might lead the parties to choose arbitrators not exactly fulfilling that requirement. This is the sense of the words " with due regard to the circumstances of the case ".

(4) Similarly, the Commission does not wish to preclude the possibility of the appointment, as arbitrators, of heads of State or important political personages, although this practice is sometimes hardly calculated to enhance the judicial nature of arbitration.

(5) The article does not exclude the possibility of the arbitrators or the majority of the arbitrators being nationals of the parties to the dispute. The Commission does not wish to preclude the constitution of a tribunal consisting of two national arbitrators or of two national arbitrators and an umpire.

(6) For the same reason, the Commission does not consider it necessary to follow the precedent of article 22 of the Revised General Act for the Pacific Settlement of International Disputes, which requires the constitution of an arbitral tribunal of five members.

(7) Although precedence is given to the principle of full freedom of the parties in the choice of arbitrators, the Commission does not overlook the importance of emphasizing the judicial character of arbitration. It endeavours to pursue this object in many articles of the draft, such as Articles 5, 7 and 8 on the immutability of the tribunal; Articles 11, 12, 13, 17 and 21 on the powers of the tribunal; and finally in chapters VI and VII on revision and annulment.

Article 5

1. Once the tribunal has been constituted, its composition shall remain unchanged until the award has been rendered.

2. A party may, however, replace an arbitrator appointed by it, provided that the tribunal has not yet begun its proceedings. An arbitrator may not be replaced during the proceedings before the tribunal except by agreement between the parties.

Comment

(1) This article is based on the principle of " immutability " of the tribunal once it has been set up; this is a

corollary of the principle of judicial arbitration as distinguished from diplomatic or political arbitration.

(2) The principle laid down in paragraph 1 is, in fact, that once the dispute has been submitted to the tribunal, the composition of the latter should remain unchanged until the award has been rendered, so that the parties cannot, in view of the course taken by the proceedings, influence the final decision by changing the composition of the tribunal. Moreover, this precaution is linked with the concept of the arbitral tribunal as a common organ of the parties, that is, a judicial organ of the international community constituted by them.

(3) Paragraph 2, nevertheless, allows either party freely to replace an arbitrator appointed by it provided that the proceedings before the tribunal have not yet begun. Once the proceedings have begun, replacement of an arbitrator appointed by one party requires the consent of the other. Moreover, it is implicit in the text, although not actually stated, that an arbitrator appointed by an international authority, such as the International Court of Justice or its President, may in no circumstance be replaced either by one of the parties or by agreement between them.

(4) Nevertheless, where a tribunal is set up to settle not one but several disputes, this paragraph will permit adaptation of its composition to suit the technical requirements of each case.

(5) Where there is a single arbitrator, the parties remain free to appoint another up to the time the proceedings have begun, provided that the first arbitrator was appointed by them.

Article 6

Should a vacancy occur for reasons beyond the control of the parties, it shall be filled by the method laid down for the original appointment.

Comment

This article requires no comment.

Article 7

1. Once the proceedings before the tribunal have begun, an arbitrator may not withdraw, or be withdrawn by the government which has appointed him, save in exceptional cases and with the consent of the other members of the tribunal.

2. If, for any reason such as previous participation in the case, a member of the tribunal considers that he cannot take part in the proceedings, or if any doubt arises in this connexion within the tribunal, it may decide, on the unanimous vote of the other members, to request his replacement.

3. Should the withdrawal take place, the remaining members shall have power, upon the request of one of the parties, to continue the proceedings and render the award.

Comment

(1) This article reaffirms and supplements the principle of immutability of the tribunal. Paragraph 1 recalls the rule laid down in Article 5, but permits an exception to it by stating that in exceptional cases an arbitrator may withdraw or be withdrawn by the government which has appointed him, but that the unanimous consent of the other members of the tribunal is then required.

(2) Among the exceptional cases contemplated, paragraph 2 mentions withdrawal of an arbitrator owing to previous participation in the case. If any doubt arises in this connexion within the tribunal, the latter may decide to request his replacement. It may also decide, upon the request of one of the parties, to continue the proceedings and render the award with a reduced number of members.

Article 8

1. A party may propose the disqualification of one of the arbitrators on account of a fact arising subsequently to the constitution of the tribunal; it may propose the disqualification of one of the arbitrators on account of a fact arising prior to the constitution of the tribunal only if it can show that it was unaware of the fact or has been a victim of fraud. In either case, the decision shall be taken by the other members of the tribunal.

2. In the case of a sole arbitrator, the decision shall rest with the International Court of Justice.

Comment

(1) The composition of the tribunal may also be changed by disqualification of a member on the proposal of one of the parties. This is the object of article 8.

(2) These provisions are logically necessary. The arbitrators are jointly appointed by the two parties as a result of agreement between them. It is the duty of each of the parties to make sure that the conditions of appointment are fulfilled at the time when the tribunal is constituted. Hence, they cannot propose disqualification on account of a fact arising prior to such constitution, except in case of fraud or justifiable ignorance. Here, and in the case of disqualification proposed on account of a fact arising subsequently to the constitution of the tribunal, the decision rests with the other members of the tribunal.

(3) In the case of a single arbitrator, it is again necessary to appeal to a higher judicial body, namely, the International Court of Justice.

CHAPTER III

The Compromis

Article 9

Unless there are prior provisions on arbitration which suffice for the purpose, the parties having recourse to arbitration shall conclude a *compromis* which shall specify, in particular :

(*a*) The subject of the dispute, defined as precisely and as clearly as possible;

(*b*) The selection of arbitrators, in case the tribunal has not already been constituted;

(*c*) The appointment of agents and counsel;

(*d*) The procedure to be followed, or provisions for the tribunal to establish its own procedure;

(*e*) Without prejudice to the provisions of article 7, paragraph 3, if the tribunal has several members, the number of members constituting a quorum for the conduct of the proceedings;

(*f*) Without prejudice to the provisions of article 7, paragraph 3, the number of members constituting the majority required for an award of the tribunal;

(*g*) The law to be applied by the tribunal and the power, if any, to adjudicate *ex aequo et bono*;

(*h*) The time limit within which the award shall be rendered; the form of the award, any power of the tribunal to make recommendations to the parties; and any special provisions concerning the procedure for revision of the award and other legal remedies;

(*i*) The place where the tribunal shall meet, and the date of its first meeting;

(*j*) The languages to be employed in the proceedings before the tribunal;

(*k*) The manner in which the costs and expenses shall be divided.

Comment

(1) In the arrangement of chapter III, which begins with article 9, this draft is closer to the traditional concept of a code of arbitral procedure than it is in the preceding articles. Article 9 deals with the drafting of the *compromis* needed to give effect to any undertaking to arbitrate. This undertaking may constitute the basis and the main provisions of the *compromis*. It should be pointed out that the reason why this article is not inserted earlier than in chapter III, as at present, is that it is advisable to remove all the preliminary obstacles which might prevent the conclusion of the *compromis*. Its conclusion is now ensured, since if the parties fail to agree on the provisions to be included, the *compromis* may be drawn up by the tribunal itself.

(2) The eleven paragraphs of article 9 list the matters which in principle should be governed by the *compromis*. Obviously the parties are at liberty to introduce any number of others.

(3) Paragraphs (*a*), (*b*) and (*c*) require no explanation.

(4) Paragraph (*d*) allows the parties to settle the procedure or limit the competence of the tribunal on this point.

(5) Paragraphs (*e*) and (*f*) refer to article 7, paragraph 3, concerning the principle of immutability, and give otherwise the parties the right to fix the quorum and majority for decisions to be taken by the tribunal, including the final award.

(6) Paragraph (*g*) affirms that the parties may specify the rules of law to be applied by the tribunal, or empower it to adjudicate *ex aequo et bono*.

(7) Paragraph (*h*) gives the parties the power of fixing the time limit within which the award shall be rendered, even if the tribunal does not consider itself fully enlightened within that time.

(8) As regards the power to adjudicate *ex aequo et bono*, the text grants the tribunal this power only if the parties agree, as provided in Article 38 of the Statute of the International Court of Justice. The Commission takes the view that the arbitral tribunal is always entitled to adjudicate on the basis of general principles of law considered to be rules of positive law, but is not entitled to act as *amiable compositeur*, that is, to judge *contra legem*, without the consent of the parties. Strictly speaking, the latter procedure is not so much arbitration as conciliation or mediation, except that the settlement remains obligatory.

(9) As regards the provisions concerning the procedure for revision and annulment, the parties are bound by the general provisions of articles 29 to 32. Their freedom of action, provided for in paragraph (*h*), refers only to the procedures of revision and annulment.

Article 10

1. If the parties cannot agree on the contents of the *compromis*, they may request the good offices of a third State which shall appoint a person, or a body of persons, to draw up the *compromis*.

2. If the parties are bound by an undertaking to arbitrate, and when the tribunal has been constituted, then, in the event of the failure of the above procedure for drawing up the *compromis*, the tribunal shall draw up the *compromis* within a reasonable time which it shall itself determine.

Comment

This article deals with the case of an obligatory undertaking to arbitrate, when the parties cannot reach agreement on all or part of the contents of the *compromis*. Such a case has traditionally been provided for and been known as the " obligatory *compromis* ", from the adoption of the 1907 Hague Convention for the Pacific Settlement of International Disputes (articles 53 and 54) till the time of the Pact of Bogotá of 1948 (article 43). Since, under article 3, the tribunal may be constituted before the *compromis* is drawn up, there in no further obstacle to the application of the article.

CHAPTER IV

Powers of the Tribunal

Article 11

The tribunal, as the judge of its own competence, possesses the widest powers to interpret the *compromis*.

Comment

This article, which lays down a general principle, calls for no comment.

Article 12

1. In the absence of any agreement between the parties concerning the law to be applied, the tribunal shall be guided by Article 38, paragraph 1, of the Statute of the International Court of Justice.

2. The tribunal may not bring in a finding of *non liquet* on the ground of the silence or obscurity of international law or of the *compromis*.

Comment

(1) The effect of this article, in so far as it adopts the substance of paragraph 1 of Article 38 of the Statute of the International Court of Justice as the basis of the law to be applied by the arbitral tribunal, is to exclude the possibility of a *non liquet*.

(2) Paragraph 2 contains one of the most important stipulations in the whole draft. It corresponds to the general rule of law recognized in a large number of the juridical systems of the world according to which a judge may not refuse judgment on the ground of the silence or obscurity of the law. The Commission considers that the adoption of this principle would mark a great advance in the development of judicial arbitration.

Article 13

In the absence of any agreement between the parties concerning the procedure of the tribunal, the tribunal shall be competent to formulate its rules of procedure.

Comment

This article is a statement of a general principle, to apply where there is no agreement between the parties as to the procedure to be followed.

Article 14

The parties are equal in any proceedings before the tribunal.

Comment

The rule embodied in this article is deemed to be important enough to be made the subject of a separate article. It is a fundamental rule of procedure, non-observance of which would, under Article 30, paragraph (*c*), justify an application for the annulment of the award.

Article 15

1. The tribunal shall be the judge of the admissibility and the weight of the evidence presented to it.

2. The parties shall co-operate with one another and with the tribunal in the production of evidence and shall comply with the measures ordered by the tribunal for this purpose. The tribunal shall take note of the failure of any party to comply with its obligations under this paragraph.

3. The tribunal shall have the power at any stage of the proceedings to call for such evidence as it may deem necessary.

4. At the request of the parties, the tribunal may visit the scene with which the case before it is connected.

Comment

(1) Paragraph 1 affirms an incontrovertible principle of customary law.

(2) Paragraph 2 lays down essential powers of the tribunal. A party has no right to refuse to produce evidence in its possession when this is requested by the other party and ordered by the tribunal. The tribunal itself may take any action, with a view to the production of evidence, including steps to determine the meaning and scope of a rule of municipal law.

Article 16

For the purpose of securing a complete settlement of the dispute, the tribunal shall decide on any counter-claims or additional or incidental claims arising out of the subject-matter of the dispute.

Comment

The provision on counter-claims and additional or incidental claims is designed to enable the tribunal to rule on all questions bearing on the subject-matter of the dispute.

Article 17

The tribunal, or in case of urgency its president subject to confirmation by the tribunal, shall have the power to prescribe, if it considers that circumstances so require, any provisional measures to be taken for the protection of the respective interests of the parties.

Comment

The Commission considers that competence to prescribe provisional measures should be accorded not only to the tribunal itself, but, in cases of urgency, to its president subject to confirmation by the tribunal. The word " prescribe " implies an obligation on the parties to take the measures prescribed.

Article 18

When, subject to the control of the tribunal, the agents and counsel have completed their presentation of the case, the proceedings shall be formally declared closed.

Comment

This article requires no comment.

Article 19

1. The deliberations of the tribunal, which should be attended by all of its members, shall remain secret.

2. All questions shall be decided by a majority of the tribunal.

Comment

This article requires no comment.

Article 20

1. Whenever one of the parties does not appear before the tribunal, or fails to defend its case, the other party may call upon the tribunal to decide in favour of its claim.

2. In such case, the tribunal may give an award if it is satisfied that it has jurisdiction and that the claim is well founded in fact and in law.

Comment

The power of the tribunal to render an award by default was accepted by the Commission on analogy with Article 53 of the Statute of the International Court of Justice. The purpose of paragraph 2 is to ensure that no decisive importance would be attached by the tribunal to the fact of default and that the award must be based on a full examination of the jurisdiction of the tribunal and of the merits of the case. The adoption of the article would represent a step forward in the law of arbitral procedure.

Article 21

1. Discontinuance of proceedings by the claimant may not be accepted by the tribunal without the respondent's consent.

2. If the case is discontinued by agreement between the parties, the tribunal shall take note of the fact.

Article 22

The tribunal may take note of the conclusion of a settlement reached by the parties. At the request of the parties, it may embody the settlement in an award.

Comment

(1) Articles 21 and 22 are closely connected. Obviously the claimant cannot be allowed to dispose of the case and, by improperly discontinuing the proceedings, prevent its settlement, to the detriment of the respondent's interests. The case may be withdrawn only by agreement between the parties with a view, in particular, to adopting some other method of settlement.

(2) The parties may request the tribunal to record any settlement reached between them, in order to give it the authority of *res judicata*. In French procedure, this is know as a *jugement d'expédient* (settlement out of court). The use of the word " may " in article 22 is important, as it leaves the tribunal free to embody the settlement reached in an award or not. It is, in fact, necessary that the tribunal should be able to verify the legality and effective scope of the settlement. It cannot be compelled, even by an agreement between the parties, to give binding force to an illegal or a purely fictitious settlement.

CHAPTER V

The Award

Article 23

1. The award shall be rendered within the period fixed by the *compromis*, unless the parties consent to an extension of that period.

2. In case of disagreement between the parties on such an extension of the period, the tribunal may refrain from rendering an award.

Comment

(1) This article reaffirms the provision of article 9 that the time limit within which the award shall be rendered is fixed by the parties. It may be extended by them alone.

(2) Paragraph 2 provides that if the tribunal does not consider that it can render its award within this time limit, it may refrain from doing so. This second paragraph cannot, of course, be regarded as at variance with article 12, paragraph 2, which prohibits a finding of *non liquet*, since it does not refer to a refusal to render an award on the ground of silence or obscurity of the law.

Article 24

1. The award shall be drawn up in writing, and communicated to the parties. It shall be read in open court, the agents of the parties being present or duly summoned to appear.

2. The award shall include a full statement of reasons.

3. The award shall contain the names of the arbitrators and shall be signed by the president and the registrar or secretary of the tribunal.

Comment

This article is in conformity with traditional practice in the matter and its three paragraphs specify the essential requirements as to the content and form of the award.

Article 25

Subject to any contrary provision in the *compromis*, any member of the tribunal may attach his separate or dissenting opinion to the award.

Comment

This article is in accord with the traditional practice of the International Court of Justice, but permits the parties nevertheless to adopt the contrary system in the *compromis*.

Article 26

As long as the time limit set in the *compromis* has not expired, the tribunal shall be entitled to rectify mere typographical errors or mistakes in calculation in the award.

Comment

This article refers to mere typographical and arithmetical corrections which will not alter the meaning and scope of the award. It will be observed, however, that the Commission has implicitly decided the question whether the powers of the tribunal come to an end when the award is rendered or can be regarded as continuing until the expiry of the time limit for rendering the award set in the *compromis*. It follows, *e contrario*, that when this time limit has expired, such corrections are no longer permitted.

Article 27

The award is binding upon the parties when it is rendered, and it must be carried out in good faith.

Comment

(1) The Commission thought it necessary to specify that the award is binding when it is rendered and to assert that it must be carried out in good faith and forthwith.

(2) The award is binding only upon the parties. The Commission decided not to include in the draft any provisions concerning intervention — such as those in article 84 of the Convention of 1907 for the Pacific Settlement of International Disputes and in Articles 62 and 63 of the Statute of the International Court of Justice — according to which the intervention of a third party may in some cases result in the award becoming binding upon the intervening State.

Article 28

1. Unless the parties agree otherwise, any dispute between the parties as to the meaning and scope of the award may, at the request of either party, be submitted to the tribunal which rendered the award.

2. If, for any reason, it is impossible to submit the dispute to the tribunal which rendered the award, and if the parties have not agreed otherwise, the dispute may be referred to the International Court of Justice at the request of either party.

Comment

(1) This article incidentally raises the question of when the powers of the tribunal finally expire. If an application is made for interpretation, they are automatically prolonged beyond the period fixed for rendering the award. The Commission considers that if the tribunal could not be reconstituted in its original form when an application for interpretation is made, it is necessary to provide for recourse to the International Court of Justice, unless the parties should agree otherwise.

(2) The article provides no time limit for an application for interpretation.

CHAPTER VI

Revision

Article 29

1. An application for the revision of the award may be made by either party on the ground of the discovery of some fact of such a nature as to have a decisive influence on the award, provided that when the award was rendered that fact was unknown to the tribunal and to the party requesting revision and that such ignorance was not due to the negligence of the party requesting revision.

2. The application for revision must be made within six months of the discovery of the new fact.

3. The proceedings for revision shall be opened by a judgment of the tribunal recording the existence of such a new fact and ruling upon the admissibility of the application. The tribunal shall then proceed to revise the award.

4. The application for revision shall be made to the tribunal which rendered the award. If, for any reason, it is not possible to address the application to that tribunal, the application may, unless the parties agree otherwise, be made to the International Court of Justice.

Comment

(1) With regard to the remedies against the award, the Commission is in favour of allowing the award to be revised or an application to be made for its annulment (*cassation*), but rules out appeals on the ground of misapplication of the law. The Commission thus follows the traditional practice that an arbitral award should be final, subject, however, to the possibility of its revision or annulment.

(2) Revision, as laid down in Article 61 of the Statute of the International Court of Justice, is considered essential by the Commission. The sense of the Commission is that, with regard to both the revision and the annulment of the award, the provisions of this draft on the subject are of such importance as to prevent the parties from excluding recourse to these remedies, notwithstanding the discretion which article 9 (*h*) leaves to them in the matter of procedure for revision and annulment.

(3) The definition of " new fact ", which by now has become classic, has been inserted in paragraph 1.

(4) The application for revision must be made to the tribunal which rendered the original award, since revision does not imply any suggestion of wrong judgment. Here again, the Commission feels that if the tribunal could not be reconstituted with its original membership, recourse should be had to the International Court of Justice.

CHAPTER VII

Annulment of the Award

Article 30

The validity of an award may be challenged by either party on one or more of the following grounds :

(*a*) That the tribunal has exceeded its powers;

(*b*) That there was corruption on the part of a member of the tribunal;

(*c*) That there has been a serious departure from a fundamental rule of procedure.

Comment

The Commission recognizes only three causes justifying annulment : action *ultra vires*, corruption on the part of an arbitrator, and violation of a fundamental rule of procedure. However, since the draft deals solely with arbitral procedure, the Commission does not attempt to define what these various grounds of annulment might cover. Hence, the International Court of Justice is left with complete latitude in regard to the decision to be taken.

Article 31

1. The International Court of Justice shall be competent, on the application of either party, to declare the nullity of the award on any of the grounds set out in the preceding article.

2. In cases covered by paragraphs (*a*) and (*c*) of article 30, the application must be made within sixty days of the rendering of the award.

3. The application shall stay execution unless otherwise decided by the Court.

Article 32

If the award is declared invalid by the International Court of Justice, the dispute shall be submitted to a new tribunal to be constituted by agreement of the parties, or, failing such agreement, in the manner provided in article 3.

Comment

(1) The Commission is in favour of making the period of application by either party for annulment of the award a very short one. This very short period should, however, apply only to applications made on grounds stated in paragraphs (*a*) and (*c*) of article 30. Consequently, no time limit is prescribed for an application for annulment on the ground of corruption on the part of an arbitrator.

(2) It is the sense of the Commission that the parties would at all times be free, provided they are in agreement, not to proceed with the execution of the award.

Chapter III

NATIONALITY INCLUDING STATELESSNESS

25. The International Law Commission, at its first session in 1949, included " nationality including statelessness " in its list of topics of international law provisionally selected for codification.[5]

26. During its second session in 1950, the Commission was apprised of resolution 304 D (XI) of the Economic and Social Council, adopted on 17 July 1950, in which the Council :

" *Noting* the recommendation of the Commission on the Status of Women (fourth session) in regard to the nationality of married women (document E/1712, paragraph 37). . . .

" *Proposes* to the International Law Commission that it undertake as soon as possible the drafting of a convention to embody the principles recommended by the Commission on the Status of Women. . . ."

The International Law Commission, after considering the above-quoted resolution, adopted a decision declaring that it :

" *Deems* it appropriate to entertain the proposal of the Economic and Social Council in connexion with its contemplated work on the subject of nationality including statelessness.

" *Proposes* to initiate that work as soon as possible."

27. At its third session in 1951, the Commission was notified of another resolution of the Economic and Social Council, resolution 319 B III (XI) of 11 August 1950, in which the Council requested the Commission to :

" . . . prepare at the earliest possible date the necessary draft international convention or conventions for the elimination of statelessness."

This matter was deemed by the Commission to lie ' within the framework of the topic of ' nationality including statelessness ' ".[7]

28. At the same session, the Commission decided to initiate work on the topic of nationality including statelessness. It appointed one of its members, Mr. Manley O. Hudson, special rapporteur on this subject.[8]

29. The special rapporteur submitted a " Report on Nationality including Statelessness " (A/CN.4/50) to the Commission at its fourth session. Several documents prepared by the Secretariat were also made available to the Commission, including a consolidated report by the Secretary-General entitled " The Problem of Statelessness " (A/CN.4/56), " Nationality of Married Women " (E/CN.6/126/Rev.1 and E/CN.6/129/Rev.1) and " A Study of Statelessness " (E/1112 and Add.1). The Commission considered the topic at its 155th to 163rd, 172nd, 178th, 179th, 181st and 183rd meetings.

30. In his report, the special rapporteur made a survey of the subject of nationality in general (annex I) and presented two working papers for the consideration of the Commission. The first of these (annex II) contained a draft of a convention on nationality of married persons, which followed very closely the terms proposed by the Commission on the Status of Women and approved by the Economic and Social Council. The special rapporteur suggested that the International Law Commission should comply with the request to draft a convention embodying those terms, without expressing its own views. The Commission was of the opinion that the question of nationality of married women could not but be considered in the context, and as an integral part, of the whole subject of nationality including statelessness. Furthermore, it did not see fit to confine itself to the drafting of a text of a convention to embody principles which it had not itself studied and approved.

31. The second working paper (Annex III) dealt with statelessness. It listed nineteen points for discussion, under the rubrics of elimination of statelessness, reduction of presently existing statelessness, and reduction of statelessness arising in the future. The Commission took the view that a draft convention on elimination of statelessness and one or more draft conventions on the reduction of future statelessness should be prepared for consideration at its next session. The Commission also considered various suggestions as to the content of the

[5] A/925 (paragraph 16).
[6] A/1316 (paragraphs 19 and 20).
[7] A/1858 (paragraph 85).
[8] *Ibid.*

draft convention envisaged, and gave general directions to guide the work of the special rapporteur.[9]

32. The Commission, in accordance with article 16 (*e*) and article 21, paragraph 1, of its Statute, decided, at its meeting on 25 July 1952, to invite Dr. Ivan S. Kerno to serve, after his separation from the Secretariat of the United Nations, as an individual expert of the Commission charged with work on the question of elimination or reduction of statelessness, under the general direction of the Chairman of the Commission.

33. On 1 August 1952, the Commission was apprised of the request of Mr. Manley O. Hudson to be relieved of his responsibility as special rapporteur on the topic of nationality including statelessness. The Commission decided, with regret, at a meeting held on 4 August 1952, to accept Mr. Hudson's resignation.

34. On 8 August 1952, the Commission elected Mr. Roberto Córdova special rapporteur on the topic of nationality including statelessness, to succeed Mr. Hudson.

[9] Faris Bey el-Khouri declared that, as indicated in the summary records of the Commission, he was opposed to these general directions.

Mr. Kozhevnikov declared that he had voted against the general directions as an effective basis for the preparation of draft conventions for the elimination of statelessness and the reduction of future statelessness.

Mr. Zourek pointed out that he had voted for the proposal to request the special rapporteur to submit to the Commission at its next session a detailed report on the basis of which a decision could be taken as to the possibility of preparing a draft convention on the elimination or reduction of statelessness. That proposal having been rejected, he had voted against the general directions to the special rapporteur on the subject.

Chapter IV

RÉGIME OF THE TERRITORIAL SEA

35. At its third session in 1951, the International Law Commission decided to initiate work on the topic " régime of territorial waters ", which it had previously selected for codification, and to which it had given priority in pursuance of a recommendation contained in General Assembly resolution 374 (IV) of 6 December 1950. Mr. J. P. A. François was appointed special rapporteur on the topic.[10]

36. At the fourth session, Mr. François submitted a " Report on the Régime of the Territorial Sea " (A/CN.4/53) which contained a " Draft Regulation " consisting of twenty-three articles, together with comments.

37. Taking this report as a basis of discussion, the Commission considered, at its 164th to 172nd meetings, certain aspects of the régime of the territorial sea. The Commission first of all decided, in accordance with a suggestion of the special rapporteur, to use the term " territorial sea " in lieu of " territorial waters ", as the latter expression had sometimes been taken to include also inland waters.

38. The Commission further considered the questions of the juridical status of the territorial sea, of its bed and subsoil, and of the air space above it; the breadth of the territorial sea; base line; and bays. It expressed some tentative views on some of those questions for the guidance of the special rapporteur.

39. With regard to the question of the delimitation of the territorial sea of two adjacent States, it was decided to request governments to furnish the Commission with information on their practice and to submit any observations they might wish to make in that regard. The Commission further decided that a special rapporteur might make contact with experts in order to seek clarification of certain technical aspects of the problem, and that the Secretary-General should be requested to provide the necessary expenses for any such consultation.

40. The special rapporteur was requested to present to the Commission, at its fifth session, a further report, with a revised draft and commentary, taking into account the views expressed at the fourth session.

[10] A/1858 (paragraph 86).

Chapter V

RÉGIME OF THE HIGH SEAS

41. The régime of the high seas was one of the topics of international law which the International Law Commission, at its first session in 1949, selected for codification and to which the Commission gave priority. Mr. J. P. A. François was elected special rapporteur on the subject.[11]

42. The subject was considered by the Commission at its second (1950) and third (1951) sessions on the basis, respectively, of the first (A/CN.4/17) and second (A/CN.4/42) reports of the special rapporteur.[12]

43. At the third session, the Commission prepared a set of " Draft Articles on the Continental Shelf and Related Subjects " [13] and, in accordance with article 16, paragraphs (*g*) and (*h*), of its Statute, decided to give it publicity and to invite governments to submit their comments on the draft articles within a reasonable time. The Commission also considered various other subject matters in the régime of the high seas and gave certain indications for the guidance of the special rapporteur, who was requested to submit a further report to the Commission.

[11] A/925 (paragraphs 16, 20 and 21).

[12] A/1316 (part VI, chapter III); A/1858 (chapter VII).

[13] A/1858 (annex).

44. At its fourth session, the Commission had before it the third report of the special rapporteur (A/CN.4/51). In addition, the Commission received comments on its " Draft Articles on the Continental Shelf and Related Subjects " from a number of governments (A/CN.4/55 and Adds. 1, 2, 3 and 4).

45. The Commission deferred consideration of the afore-mentioned report of the special rapporteur on the régime of the high seas until its fifth session.

46. With regard to the " Draft Articles on the Continental Shelf and Related Subjects ", the Commission decided to invite those governments which had not yet submitted their comments thereon to do so within a reasonable time. The special rapporteur was invited to study all replies from governments as well as comments brought about by the publication of the draft articles, and to submit to the Commission, at its fifth session, a final report on the continental shelf and related subjects, so that the Commission might, after considering and modifying it so far as may be deemed necessary, adopt it with a view to submission to the General Assembly.

Chapter VI

LAW OF TREATIES

47. The law of treaties was one of the topics of international law which the International Law Commission, at its first session in 1949, selected for codification and to which the Commission gave priority. Mr. James L. Brierly was elected special rapporteur on the subject. [14]

48. The Commission gave consideration to the topic at its second (1950) and third (1951) sessions, on the basis, respectively, of the first (A/CN.4/23) and second (A/CN.4/43) reports submitted by the special rapporteur. Tentative texts of articles on certain aspects of the law of treaties were provisionally adopted and referred to the special rapporteur, who was requested to present a final draft to the Commission at its fourth session.[15]

49. In the interval between the third and fourth sessions of the Commission, Mr. Brierly resigned from membership in the Commission, an event regretted by all the members.

50. Before his resignation, Mr. Brierly presented to the Commission a " Third Report on the Law of Treaties " (A/CN.4/54), which was laid before the Commission at its fourth session. In the absence of its author, however, the Commission did not deem it expedient to discuss this report.

51. In the course of its fourth session, the Commission, at its meeting on 4 August 1952, elected Mr. H. Lauterpacht, special rapporteur on the law of treaties, to succeed Mr. Brierly. Mr. Lauterpacht was requested to take into account the work that had been done by the Commission, as well as that by Mr. Brierly, on the subject entrusted to him, and to present, in any manner he might deem fit, a report to the Commission at its fifth session.

[14] A/925 (paragraphs 16, 20 and 21).
[15] A/1316 (part VI, chapter I); A/1858 (chapter VI).

Chapter VII

OTHER DECISIONS

Development of a twenty-year programme for achieving peace through the United Nations

52. The International Law Commission took note of General Assembly resolution 608 (VI) of 31 January 1952, communicated to it by the Secretary-General under cover of letter dated 19 May 1952 and, in particular, of point 10 of the " Memorandum of points for consideration in the development of a twenty-year programme for achieving peace through the United Nations ". The Commission, in compliance with paragraph 2 of the said resolution, decided to inform the General Assembly at its seventh session, through the Secretary-General, that the Commission has been making every effort to expedite its work for the progressive development and codification of international law and, as related in the present report, has made progress since its last report in 1951.

Resolutions adopted by the General Assembly at its sixth session

53. In addition to resolution 600 (VI) relating to the review of its Statute referred to in paragraph 9 above, the Commission also took note of several other resolutions adopted by the General Assembly during its sixth session on or in connexion with the reports of the Commission, namely, resolution 596 (VI) on the draft Declaration on Rights and Duties of States, resolution 598 (VI) on reservations to multilateral conventions, resolution 599 (VI) on the question of defining aggression, resolution 601 (VI) on the report of the International Law Commission covering the work of its third session (chapters VI, VII and VIII (and resolution 602 (VI) on ways and means for making the evidence of customary international law more readily available.

Representation at the General Assembly

54. The Commission decided that it should be represented, at the seventh session of the General Assembly, by its Chairman, Mr. Ricardo J. Alfaro, for purposes of consultation.

Date and place of the fifth session of the Commission

55. The Commission considered the question of the date and place of its fifth session (item 7 of the agenda). In view of the fact that this session of the Commission will be the last during the tenure of office of its present membership, the Commission was anxious that sufficient time should be made available for the session in order that as much as possible of the unfinished work remaining on its agenda might be undertaken. It was accordingly decided that this session should last twelve weeks, to begin on about 1 June 1953, the exact date being left to the discretion of the Chairman of the Commission, in consultation with the Secretary-General. The Commission further decided, after consultation with the Secretary-General in accordance with article 12 of its Statute, to hold the session at Geneva, Switzerland.