Document:-
A/CN.4/SR.138

Summary record of the 138th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1952 , **vol. I**

ments. He accordingly proposed that an additional sentence be added to article 1, reading:

"The undertaking to have recourse to arbitration must be in writing".

57. Mr. HUDSON said that the Commission should not prejudge its consideration of the Law of Treaties. He saw no need to specify details of how the undertaking was to be entered into. It would be sufficient if it could be proved that it had in fact been entered into.

58. Mr. el-KHOURI said that he had only been able to vote in favour of the wording suggested by Mr. Hudson because he could not imagine two States concluding in practice a verbal agreement to have recourse to arbitration.

Further discussion of article 1 was deferred.

The meeting rose at 1 p.m.

138th MEETING

Monday, 9 June 1952, at 3 p.m.

CONTENTS

Chairman: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: Mr. Ivan S. KERNO (Assistant Secretary-General in charge of the Legal Department), Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Welcome to members of the Commission newly present

1-5. The CHAIRMAN extended a welcome to Mr. F. I. Kozhevnikov and Mr. H. Lauterpacht, the newly elected members of the Commission, and also to Mr. J. Zourek, who was attending a session of the Commission for the first time.

Arbitral procedure (item 2 of the agenda) (A/CN.4/18, A/CN.4/46, A/CN.4/57) (*continued*)

6. The CHAIRMAN invited the Commission to continue its discussion of the Second Preliminary Draft on Arbitration Procedure (annex to document A/CN. 4/46) in the second report of the special rapporteur.

ARTICLE 1 (*continued*)

7. Mr. KOZHEVNIKOV said that closer acquaintance with the Second Report on Arbitration Procedure submitted to the Commission by the special rapporteur, which included the Second Preliminary Draft on Arbitration Procedure, had imbued him with the firm conviction that the fundamental theses and premises on which the specific proposals constituting the conclusions of that report were based were totally unacceptable from the standpoint of the generally accepted principles of current international law.

8. Even if the observation — on the substance of which he would express no opinion for the time being — that the elements of a code of arbitration procedure already existing in a number of international conventions were accepted, the Commission's task would merely consist, as was in fact made clear in the report, in harmonizing and developing those elements. In other words, the provisions of the special rapporteur's draft should have proceeded from the basis principles of international law relating to the inherent nature of arbitration as a recognized institution of that law.

9. The draft, however, went further, and in his view conflicted with the very essence of international arbitration, which essence the special rapporteur had himself endorsed to some extent. The special rapporteur pointed out that international arbitration differed from international jurisdiction in the proper sense of that term inasmuch as, *inter alia*, it was left to the discretion of the parties concerned to determine the questions in dispute and to select the arbitrators. He did not propose for the time being to go into the substance of the question of the so-called international judicial authority, but merely wished to draw attention to that definition of international arbitration. He wished also to point out that governments usually used different procedures to conclude the *compromis* and to appoint arbitrators respectively.

10. The report referred to the necessity for providing, in the absence of agreement between the parties, for intervention by an international authority whose decisions would be binding, and which, in the special rapporteur's opinion, might well be the International Court of Justice itself. That contention, which conflicted sharply with the basic principles of international arbitration, seemed to him (Mr. Kozhevnikov) to give rise to a somewhat curious situation.

11. The competence of the International Court of Justice was, as all knew, optional. But the report of the draft on arbitration procedure sought to confer on international arbitration in that respect a character that not even the International Court itself enjoyed. The draft further provided that the arbitral tribunal could be set up even before the conclusion of the *compromis*, which would give it very wide powers. It was clearly impossible to admit such contentions if the Commission wished to

abide by the generally accepted fundamental principles of international law.

12. Hence the texts before the Commission were unacceptable, since they ran counter to the essence of international arbitration — the free consent and independence of the parties in matters relating to the determination of the procedure — and laid down an inequitable principle in providing for possible intervention by the International Court of Justice.

13. The Commission should therefore reject the texts before it. Since it had already decided to deal with the codification of arbitration procedure (although in his view it was not essential to do so at the present juncture, least of all as a matter of first priority), the whole question of international arbitration should be studied afresh in the light of the generally accepted principles of international law relating to it, to which he had already referred.

14. Mr. SCELLE was sorry if he had failed to make it clear in his report that his draft was intended to be binding only on those States which accepted it, in the same way as, under Article 36, paragraph 2, of the Statute of the International Court of Justice, the Court's compulsory jurisdiction was binding only on those States which recognized it. The only aim of his draft was to make sure that States which entered into an undertaking to have recourse to arbitration accepted an effective procedure for carrying out the arbitration.

15. The CHAIRMAN felt that the Commission could not re-open the general debate on Mr. Scelle's report, the main lines of which it had already accepted. It must confine itself to considering his draft article by article, and he recalled that Article 1 had already been tentatively adopted with certain amendments, but that Mr. Yepes [1] and Mr. el-Khouri [2] had proposed additions to it. He therefore invited comments on the former's proposal, which was to add a sentence reading " The undertaking to have recourse to arbitration shall be made in writing ".

16. Mr. SCELLE thought that the texts adopted by the Commission at its present session should be regarded as final, subject only to any editorial changes that might be made by the Standing Drafting Committee which, it seemed to be agreed, was to be set up.

17. As had been pointed out at the very close of the preceding meeting,[3] the amendment proposed by Mr. Yepes related to the admissibility of evidence, and might therefore be considered to be out of place in a general introductory article. It might be usefully considered, however, in connexion with the provisions governing the arbitral tribunal's procedure. He would, however, accept the Commission's views as to where the amendment should be placed, but would merely suggest that, in order that there should be no doubt about the fact that it did not necessarily require a treaty, properly speaking, it should be re-worded as follows :

" The undertaking shall result from a written document."

18. Mr. YEPES accepted that wording.

19. Mr. HSU felt that the question raised by Mr. Yepes should be dealt with under the Law of Treaties, and that his amendment should not therefore be included in the draft convention on arbitral procedure.

20. Mr. LAUTERPACHT agreed. At present he could see no reason why arbitration agreements should necessarily be written instruments. The International Court of Justice had ruled, in a number of instances, that States could be bound otherwise than by written treaties. There might be reasons for that limitation imposed upon the method of bringing about the obligation to submit a dispute to arbitration, but the Commission should at any rate have time to consider Mr. Yepes' proposal further.

21. Mr. SCELLE said that he personally agreed with Mr. Lauterpacht, but that if a majority of the Commission agreed with Mr. Yepes that undertakings to have recourse to arbitration were so important that they should be committed to writing, the draft at present under consideration, and not the text the Commission was drawing up on the Law of Treaties, would be the proper place so to provide. An undertaking to have recourse to arbitration could arise from many instruments or agreements other than " formal treaties ", at any rate in the narrow sense in which he interpreted those words.

22. Mr. el-KHOURI recalled that at the third session the Commission had agreed that the words " formal treaties " should be understood in that narrow sense. As he had indicated at the preceding meeting,[4] he had accepted the amended text of article 1, without the addition proposed by Mr. Yepes, on the assumption that undertakings to have recourse to arbitration were so important that in practice States would never assume them verbally. If the Commission agreed that that was the only reasonable assumption, he thought Mr. Yepes' point would be adequately met.

23. Mr. LAUTERPACHT asked whether, in the event of the Security Council being seized of a dispute between two States and adopting a resolution recommending them to settle the dispute by arbitration, and in the event of the two States agreeing to that recommendation, the Security Council's resolution would constitute a written document under the terms of Mr. Yepes' amended proposal.

24. Mr. YEPES and Mr. SCELLE said that in such a case the Security Council's resolution would be regarded as such written document.

25. Mr. LAUTERPACHT said that in that event he had no further objection to Mr. Yepes' amended proposal.

[1] See summary record of the 137th meeting, para. 56.

[2] *Ibid.*, paras. 41 and 42.

[3] *Ibid.*, para. 57.

[4] *Ibid.*, para. 58.

Mr. Yepes' proposal, as amended by Mr. Scelle, was adopted by 4 votes to none, with 4 abstentions.[5]

26. Mr. el-KHOURI said that as the Commission was drafting a convention on arbitration procedure which would be submitted for approval to the General Assembly, it would be desirable to link it up with the relevant provisions of the Charter; for the Charter was far from silent on the subject of arbitration. Article 33 provided that: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution" by various alternative means, including arbitration, and that "The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means". Article 36 provided, *inter alia*, that the Security Council might recommend appropriate procedures or methods of adjustment for the pacific settlement of disputes of the nature referred to in Article 33. The action taken by the Security Council under Articles 33 and 36 clearly constituted decisions of the Security Council, and under Article 25 of the Charter the Members of the United Nations agreed "to accept and carry out the decisions of the Security Council in accordance with the present Charter". He therefore proposed that, in order to make the draft convention more complete and to contribute to the maintenance of international peace in accordance with the principles of the Charter, the following paragraph be added to Article 1:

> "The resolutions of the Security Council taken under the second paragraph of Article 33 of the Charter, calling upon the parties to arbitrate, or under the first paragraph of Article 36, recommending arbitration for the pacific settlement of any dispute or situation likely to endanger the maintenance of international peace and security, constitute an obligation on the parties to have recourse to that method of adjustment."

27. Mr. FRANÇOIS said that Mr. el-Khouri's proposal was extremely interesting, but that, as a proposal that sought to make arbitration compulsory, it was quite outside the field of arbitration procedure and could not therefore be discussed at the present time.

28. Mr. SCELLE agreed. The proposal was neither more nor less than a proposal to amend the United Nations Charter, for he had read a number of commentaries on Articles 33 and 36 of the Charter, and none of them went so far as to attribute obligatory force to the Security Council's recommendations, as did Mr. el-Khouri in his interpretation of those articles.

29. Mr. HSU agreed that the proposal could not be discussed in connexion with the item at present under consideration, though he was by no means sure that it was at variance with the existing text of the Charter.

30. Mr. ZOUREK did not think that it was the intention of the Charter that all decisions of the Security Council should be regarded as legally binding on States Members of the United Nations. Recommendations made under Articles 33 and 36 did not in his opinion fall within the category of binding decisions.

31. Mr. el-KHOURI could not agree that his proposal was in conflict with the text of the Charter, which in his view was perfectly clear. As his proposal had found no support, however, he would withdraw it, provided that it was mentioned in the summary records.

ARTICLE 2, PARAGRAPH 1 [6]

32. Mr. SCELLE recalled that article 2 had already been tentatively adopted by the Commission in the form in which it appeared in the second preliminary draft (A/CN.4/46). The procedure proposed therein constituted no innovation. It often happened that the parties disagreed as to whether a dispute fell within the scope of a prior undertaking to have recourse to arbitration, or whether or not that undertaking still applied as a consequence of the *rebus sic stantibus* clause coming into operation. In order that the matter might not rest there, a whole series of international agreements concluded between the United States of America and other countries had provided that such disagreements should be submitted to the commissions of inquiry referred to in the Conventions of 1899 and 1907 on the Pacific Settlement of International Disputes. In his view, it would be more appropriate for such differences to be referred to the highest judicial authority, namely, the International Court of Justice, although he proposed that, in order to avoid delay, the judgment be rendered by the Court's Chamber of Summary Procedure.

33. He would again point out to Mr. Kozhevnikov that the procedure laid down in article 2 would only be binding on those States which accepted the draft procedure under discussion when cast in the form of a convention.

---

[5] Article 1, as tentatively adopted, read as follows:

"1. An undertaking to have recourse to arbitration may apply to existing disputes or to disputes arising in the future. Whatever the instrument or agreement from which it results, the undertaking constitutes a legal obligation, which ought to be carried out in good faith.

"2. The undertaking shall result from a written document."

[6] Article 2 read as follows:

"If the parties disagree as to the existence of a dispute, or whether an existing dispute is within the scope of the obligation to have recourse to arbitration, this question may, in the absence of agreement between the parties upon another procedure for dealing with it, be brought before the Chamber of Summary Procedure of the International Court of Justice by a written application from either party and the judgment rendered by the Chamber of Summary Procedure shall be final and without appeal.

"The judgment given by the Chamber may also indicate the steps to be taken by the parties for the realization of the arbitration and for the protection of the interests of the parties pending a final arbitral award."

34. Mr. FRANÇOIS agreed with the provisions of article 2 in principle, seeing that they would be binding only on States which accepted the convention, but doubted the wisdom of providing that disagreements as to the arbitrability of a dispute should be brought before the International Court's Chamber of Summary Procedure, whose standing in the legal world was by no means so high as the Court's, and to which no case had in practice been referred. Moreover, all legal systems were represented in the Court itself, whereas that was not the case with the Chamber of Summary Procedure. Neither had the Court itself so many cases on its hands that it would be unable to deal with the few extra cases of disagreement as to the arbitrability of a dispute. He therefore proposed that in article 2 the International Court of Justice be specified instead of its Chamber of Summary Procedure. If the parties to a dispute so desired, the question of its arbitrability could of course be referred to the latter organ instead of to the International Court itself even if his suggestion were adopted, by virtue of the words " in the absence of agreement between the parties upon another procedure for dealing with it ".

35. Mr. LAUTERPACHT said that he would not, at present, comment on article 2 as a whole, except to point out that it obviously constituted an important new departure, inasmuch as the normal procedure in the past had been for disagreements as to whether a dispute came within the scope of the obligation to have recourse to arbitration to be decided, at least in the first instance, by the arbitrators.

36. If the procedure proposed by Mr. Scelle was to be adopted, he would support the amendment suggested by Mr. François. For example, a decision whether the circumstances in which an undertaking to have recourse to arbitration had been entered into had altered so much as to make the undertaking no longer valid was obviously so important that it could properly only be taken by the International Court of Justice itself.

37. Mr. SCELLE said that Mr. Lauterpacht's substantive objection had already been raised when arbitral procedure had been under discussion at an earlier stage of the Commission's work ; but the difficulty was that the issue of whether or not there was an undertaking to have recourse to arbitration could not be referred to a tribunal which did not yet exist. He had therefore proposed that the issue be submitted to a permanent tribunal so as to prevent a party that denied the validity of its undertaking from frustrating the arbitral procedure by refusing to conclude a *compromis* or to designate arbitrators.

38. It had been the practice of the United States Government to meet such contingencies by providing for the establishment of a commission of inquiry to decide the issue of arbitrability, and a clause to that effect had been inserted in over one hundred treaties. He had decided, however, that such a method might lead to delay. He had accordingly proposed that if there was disagreement between the parties as to the existence of a dispute the question should be referred to the Chamber of Summary Procedure of the International Court of Justice.

39. Mr. François had argued that little confidence was felt in that Chamber, and that as the International Court was not overburdened with work it might itself deal with any such cases as might arise. It must be recognized, however, that if that procedure was followed much more work would fall to the International Court, since many States which had hitherto been unable to bring a case to arbitration would thereby be enabled to do so. But as he had no particularly strong views on the point he would be prepared to abide by the opinion of the majority.

40. Mr. YEPES supported Mr. François' amendment.

41. The CHAIRMAN put to the vote Mr. François' proposal that the words " the Chamber of Summary Procedure of " be deleted from the first paragraph of article 2.

Mr. François' proposal was adopted by 6 votes to 1.

42. Mr. KOZHEVNIKOV said the vote had been taken so rapidly that he had had no time to move the deletion of article 2 as a whole, which article, as he had already stated, appeared to him contrary to the whole principle of arbitration.

43. The CHAIRMAN observed that Mr. Kozhevnikov could vote against article 2 when it was put to the vote as a whole.

44. Mr. SCELLE said that Mr. Lauterpacht had indicated to him in private conversation that it was not entirely clear from the first paragraph of article 2 that recourse would only be had to the Court if no arbitral tribunal had been set up. He would have no objection if that point were met by the insertion of the words " prior to the establishment of an arbitral tribunal " after the word " If " at the beginning of the paragraph.

Mr. Scelle's amendment was adopted by 6 votes to none, with 2 abstentions.

Article 2, paragraph 2

45. Mr. FRANÇOIS considered that the words " pending a final arbitral award " went too far, since once a tribunal had been constituted it must be empowered to modify any interim measures indicated by the International Court of Justice.

46. He accordingly proposed that those words be replaced by the words " pending the constitution of the arbitral tribunal ".

47. Mr. SCELLE agreed with Mr. François' views, but explained that he had prepared the text of the second paragraph in conformity with the decision taken by the Commission at its second session. Furthermore, Mr. Hudson had then argued that the provisional measures must remain in force so long as it was necessary to prevent one party from altering the material

situation, and he himself wondered whether a tribunal was competent to modify a decision of the Court.[7]

48. Mr. LAUTERPACHT seconded Mr. François' amendment.

Mr. François' amendment was adopted by 6 votes to none, with 2 abstentions.

49. Mr. LIANG (Secretary to the Commission) asked whether he was right in thinking that the phrase " pending a final arbitral award " referred both to the phrase " the realization of the arbitration " and to the phrase " for the protection of the interests of the parties ". The English text did not appear clear on that point.

50. Mr. SCELLE replied that the Secretary's supposition was correct.

51. Mr. LIANG (Secretary to the Commission) asked for an explanation of the precise meaning of the words " *la réalisation de l'arbitrage* ". He presumed that they referred merely to the carrying-out of the process of arbitration.

52. Mr. LAUTERPACHT was also uncertain whether the phrase referred only to bringing about arbitration proceedings, and whether it did not include giving effect to the final arbitral award.

53. Mr. SCELLE said that the words in question were intended to refer to arbitral proceedings up to the moment when the final award was made. In order to make that clear, he would be ready to substitute for that phrase the words " the completion of the arbitration proceedings ".

54. Mr. LAUTERPACHT realized that article 41 of the Statute of the International Court of Justice was the source of the word " indicate ", but it was well known that that term had given rise to controversy, since it had been interpreted as meaning that provisional measures laid down by the Court were not obligatory.

55. Mr. Hudson, in the second edition of his book " The Permanent Court of International Justice ",[8] had changed his previous opinion on the subject and expressed the view that there was a legal obligation on parties to comply with the measures indicated by that Court.

56. In view of the element of uncertainty to which the word " indicate " had given rise, perhaps the special rapporteur might consider an alternative for it.

57. Mr. KERNO (Assistant Secretary-General) said that Mr. Scelle had used the word *prévoir* in the French text of article 2, and not the word *indiquer* as used in the French text of the Statute of the International Court. He presumed that that change had been made deliberately.

58. Mr. SCELLE confirmed that he had used the word *prévoir* in the sense that the measures decided upon by the Court were obligatory, but he would be prepared to make his meaning clearer by substituting the word " *prescrire* ", which should be rendered by the word " prescribe " in the English text.

59. The CHAIRMAN said there seemed to be general agreement that the second paragraph be amended to read as follows :

> " The judgment given by the Court may also prescribe the measures to be taken by the parties for the completion of the arbitration proceedings and for the protection of the interests of the parties, pending the constitution of the arbitral tribunal."

60. He suggested that that text be adopted, subject to review by the Standing Drafting Committee to be set up.

It was so agreed.

Article 2 as amended, was adopted by 6 votes to 2.[9]

61. Mr. ZOUREK said that article 2 embodied a procedure entirely different form that laid down in the 1907 Hague Convention for the Pacific Settlement of International Disputes, which provided for an obligatory *compromis*. He would like to know what the relation between the two systems would be.

62. The CHAIRMAN observed that the purpose of article 2 had been fully discussed by the Commission in the course of the latter's examination of the special rapporteur's first report (A/CN.4/18), after which the present text had been prepared by Mr. Scelle. He did not consider that the whole question could now be re-opened.

63. Mr. YEPES, raising the question of method, suggested that it would be more logical for the Commission to take up article 12 before articles 3 to 11, since in most cases the *compromis* provided for the constitution of the tribunal.

64. Mr. SCELLE regretted that Mr. Yepes should have made that suggestion, from which it appeared that one of the main principles upon which the Second Preliminary Draft on Arbitration Procedure was based, namely, that arbitration should take place even if there was no *compromis* agreed upon by the parties, had not been fully understood. As he had already had occasion

---

[7] See summary record of the 70th meeting, para. 49. *Yearbook of the International Law Commission, 1950*, p. 245.

[8] *The Permanent Court of International Justice 1920—1942* (New York, The McMillan Company, 1943).

[9] Article 2, as tentatively adopted, read as follows :

" 1. If, prior to the establishment of an arbitral tribunal, the parties disagree as to the existence of a dispute, or whether an existing dispute is within the scope of the obligation to have recourse to arbitration, this question may, in the absence of agreement between the parties upon another procedure for dealing with it, be brought before the International Court of Justice by a written application from either party and the judgment rendered by the Court shall be final and without appeal.

" 2. The judgment given by the Court may also prescribe the measures to be taken by the parties for the completion of the arbitration proceedings and for the protection of the interests of the parties, pending the constitution of the arbitral tribunal."

to emphasize, it was a fundamental error to suppose that the undertaking to have recourse to arbitration always had its origin in the *compromis*. Article 3 of his draft made the immediate constitution of a tribunal obligatory. Without such a provision no progress whatsoever could be made, since a recalcitrant party might refuse to designate arbitrators. If the constitution of a tribunal were imposed upon such a party it would be for that tribunal to prepare the *compromis* in the face of the opposition of one of the parties. His proposal in no way implied a violation of sovereignty, since it was intended to form part of a convention to which any State would be free to adhere or not as it chose. However, once a State had entered into such an obligation it would have to carry it out in good faith.

65. What he was proposing was no innovation, and was consonant with article 23 of the Revised General Act for the Pacific Settlement of International Disputes adopted by the General Assembly on 28 April 1949.[10] According to that article, if agreement could not be reached on the constitution of the arbitral tribunal within a period of three months the necessary appointments were to be made by the President of the International Court of Justice. He himself had, at the 137th meeting of the Commission, referred to the arbitration procedure of the International Chamber of Commerce [11] precisely because that procedure laid down that even if agreement were not reached on a *compromis* arbitration must still take place.

66. He could not stress too strongly the importance of preventing States from frustrating arbitral proceedings and evading their legal obligations by invoking procedural arguments.

67. Mr. YEPES entirely agreed with Mr. Scelle's views. His proposal merely related to the Commission's method of work.

68. The CHAIRMAN suggested that the question of the order of the articles should be left to the Standing Drafting Committee which it was proposed to set up. In the meantime, it might be preferable to follow the order in the special rapporteur's text.

It was so agreed.

The meeting rose at 6.5 p.m.

[10] *United Nations Treaty Series*, vol. 71, p. 115.

[11] See summary record of the 137th meeting, para. 10.

139th MEETING

Tuesday, 10 June 1952, at 9.45 a.m.

CONTENTS

Chairman: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: Mr. Ivan S. KERNO (Assistant Secretary-General in charge of the Legal Department), Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Arbitral procedure (item 2 of the agenda) (A/CN.4/18, A/CN.4/46, A/CN.4/57) (*continued*)

1. The CHAIRMAN, after welcoming Mr. Gilberto Amado, Second Vice-Chairman of the Commission, who had been unable to attend the earlier meetings of the session, invited the Commission to continue its discussion of the Second Preliminary Draft on Arbitration Procedure contained in the special rapporteur's second report (annex to document A/CN.4/46).

ARTICLE 3 [1]

2. Mr. SCELLE recalled that in his proposed preliminary draft text he had not specified a period within which the tribunal had necessarily to be constituted, but had merely provided for " a reasonable time " [2] (A/CN.4/18, p. 93). However, as certain members of the Commission had felt that that expression was too vague, he had now specified a period of six months.

3. Mr. LIANG (Secretary to the Commission) said that the words " within six months after recognition by the parties . . . of the arbitrable nature of the dispute " raised the question whether some special act or procedure of recognition was envisaged, for if not it might sometimes be difficult to determine exactly from what date the period would start to run. If some special act or procedure of recognition was in fact envisaged, should it not be provided for expressly in the text?

4. Mr. SCELLE said that the period of six months would start to run from the time when the parties agreed

[1] Article 3 read as follows:

" If the dispute is of the kind referred to in the undertaking to resort to arbitration, the parties shall, within six months after recognition by the parties or by the International Court of Justice of the arbitrable nature of the dispute, constitute an arbitral tribunal or appoint a sole arbitrator by mutual agreement. This may be done either by means of a clause to that effect in the arbitral *compromis*, if the parties agree to accept the various stipulations thereof, or in a special conventional instrument relating solely to the constitution of the tribunal. The tribunal shall, in any case, be constituted within the period of six months specified above."

[2] A/CN.4/18, p. 93 (mimeographed English text). See *Yearbook of the International Law Commission, 1950*, vol. II, p. 148, for printed French text.