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Summary record of the 449th meeting

Topic:
Diplomatic intercourse and immunities

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449th MEETING

Friday, 23 May 1958, at 9.45 a.m.

Chairman: Mr. Radhabinod PAL.

Diplomatic intercourse and immunities (A/3623, A/CN.4/114 and Add.1-5, A/CN.4/116 and Add.1, A/CN.4/L.72) (continued)

DRAFT ARTICLES CONCERNING DIPLOMATIC INTERCOURSE AND IMMUNITIES (A/3623, PARA. 16; A/CN.4/116/ADD.1)

1. The CHAIRMAN invited the Commission to consider the draft articles and commentary it had provisionally adopted at its ninth session (A/3623, para. 16) in the light of the new proposals (A/CN.4/116/Add.1) which the Special Rapporteur had presented after considering the observations submitted by Governments (A/CN.4/114 and Add.1-5) and the views expressed in the Sixth Committee during the twelfth session of the General Assembly. He requested the Special Rapporteur also to draw attention, in connexion with each article, to the main points with regard to which he had found himself unable to accept the suggestions made by Governments in their written observations or in the Sixth Committee, in order that the members of the Commission might, if they wished, submit suitable proposals for the Commission's consideration.

2. The Commission had already disposed, for the moment, of the observations relating to the form of the codification, and he suggested that it now proceed to consider the articles themselves and that the other general observations summarized in the Special Rapporteur's new report (A/CN.4/116) be taken up in conjunction with the articles where the Special Rapporteur suggested that suitable changes might be made, if desired, in order to meet the views expressed.

It was so agreed.

DEFINITIONS CLAUSE

3. Mr. SANDSTRÖM, Special Rapporteur, drew attention to his proposal for an introductory article worded in the manner suggested by the Netherlands Government (A/CN.4/116) but with the words "including military, naval and air attachés and other specialized attachés" added to sub-paragraph (d), partly in response to an observation by the United States Government.

4. The United States Government had also suggested that clear distinctions should be made between officer and subordinate personnel, but in point of fact the draft articles did not use either of those terms.

5. Mr. YOKOTA agreed that a definitions clause was essential, and said that in general the text proposed by the Special Rapporteur was acceptable. In his view, however, it was particularly important that a clear distinction should be made between officer and

subordinate personnel, more especially in the matter of the privileges and immunities enjoyed by the two categories. The question of the privileges and immunities enjoyed by subordinate personnel was a source of disputes, and in that connexion he shared the view expressed by the Japanese Government that it would be necessary to go into greater detail with regard to the definition of "members of the diplomatic staff", "members of the administrative and technical staff", "members of the service staff" and "private servants", though it might be sufficient if that were done under sub-section C of section II, where personal privileges and immunities were dealt with.

6. Mr. TUNKIN said that he was not opposed in principle to an article on definitions. All definition was perilous, however, and he foresaw numerous practical difficulties in the text now proposed by the Special Rapporteur. For example, he asked what was meant in sub-paragraph (d) by "authorized by the sending State to engage in diplomatic activities proper". Likewise, the expression "administrative and technical service", in sub-paragraph (f), meant different things in different countries. It might be possible to overcome those difficulties and reach agreement on a satisfactory text, but only, he thought, after the other articles had been considered. He therefore proposed that further consideration of the proposed definitions clause be postponed until the Commission had completed its consideration of the other articles in the draft.

7. Mr. AGO and Mr. MATINE-DAFTARY supported Mr. Tunkin's proposal.

8. Mr. SANDSTRÖM, Special Rapporteur, said that he saw no objection to postponing consideration of the definitions clause.

Mr. Tunkin's proposal was adopted unanimously.

ARTICLE 1

9. Mr. SANDSTRÖM, Special Rapporteur, drew attention to the Czechoslovak Government's proposal that the draft express the principle that all States enjoy the right of legation, and to his comments thereon (A/CN.4/116).

10. Mr. ZOUREK said it seemed illogical not to mention the fundamental right of States on which the rights laid down in the draft articles were based. The Czechoslovak Government's proposal would be consistent with the normal practice followed in manuals of international law as well as with the text of article 1 of the Havana Convention.¹

11. He proposed that a provision reading as follows be added to the draft: "All sovereign States have the right of being represented by diplomatic agents". The provision could be inserted either as a new paragraph 1 in article 1 or as a separate article.

¹ Convention regarding Diplomatic Officers, signed at Havana on 20 February 1928. See League of Nations, *Treaty Series*, vol. CLV, 1934-1935, No. 3581.

12. The CHAIRMAN recalled that the Commission had discussed the question at length at its ninth session and had finally adopted unanimously a proposal omitting mention of the right of legation.² There was, he suggested, no need to reopen that discussion.

13. Mr. TUNKIN thought that what the Commission had agreed to do was to omit a particular form of words which had been suggested by the Special Rapporteur but had not been found entirely satisfactory. That did not really dispose of the problem, however, and he agreed that it would be desirable to insert a new paragraph in article 1, as suggested by Mr. Zourek. As a subject of international law, every State had the right of legation, even if it did not choose to assert it.

14. Sir Gerald FITZMAURICE said the proposal raised considerable difficulties. On analysis, the right of legation seemed to amount to the obligation which rested on other States to receive diplomatic representatives of the sending State; that at once raised the difficulty of defining the entities in respect of which such an obligation existed. It had been suggested that the Commission should refer to "all sovereign States", but then it would be necessary to define "sovereign"; in any case, there were instances where non-sovereign States had engaged in diplomatic intercourse.

15. The proposal would also inevitably raise the whole very difficult problem of recognition.

16. It might be possible to overcome those difficulties, but to do so would require an elaborate formula and very lengthy discussion. That being so, he suggested that the wisest course would be to leave the matter on one side, for it had not given rise to any difficulties in practice.

17. Mr. ZOUREK pointed out that the right of legation did not automatically create an obligation on the part of other States. It was, in fact, stated explicitly in the present article 1 that the establishment of diplomatic relations between States took place by mutual consent.

18. Sir Gerald FITZMAURICE suggested that for that very reason it was clearly unnecessary to define the entities which possessed the right of legation.

19. Mr. GARCIA AMADOR thought that the right of legation was not a complete right but an imperfect right, for the exercise of which the fulfilment of some other condition was required. He thought the Commission should adopt a similar course to that followed by the recent United Nations Conference on the Law of the Sea in such cases, and speak of complete rights only.

20. Reference had been made to article 1 of the Havana Convention; however, that provision had not proved very satisfactory in practice.

21. Mr. ZOUREK said he could not agree with Mr. García Amador. In his view the active and passive

right of legation, like the right to conclude treaties, was a general right, belonging to all States, though its exercise in specific cases depended on the agreement of the other States concerned.

22. Mr. EL-ERIAN said that, though in principle he agreed with Mr. Zourek, the proposal again raised the conflict between the theory of natural law and positivist theories and in particular the complex question of imperfect rights; he personally very much doubted whether there was such a thing as an imperfect right. In his view the so-called right of legation was really a capacity.

23. The discussion at the ninth session had also related to the question whether the Commission should attempt to define States.³ It had, he thought, been agreed that in the draft articles the word "States" was used in the same sense as it was used in Articles 3 and 4 of the Charter of the United Nations and in the Draft Declaration on the Rights and Duties of States.⁴

24. The CHAIRMAN put to the vote the proposal that a provision regarding the right of legation should be added.

The proposal was rejected by 8 votes to 4, with 4 abstentions.

Article 1 was adopted unanimously.

ARTICLE 2

25. Mr. SANDSTRÖM, Special Rapporteur, drew attention to his proposal that the words "the Government of" should be deleted in article 2, sub-paragraphs (a), (c) and (d), or at least in (a), as suggested by the Australian Government.

26. Mr. YOKOTA said he was in favour of deleting the words "the Government of" in sub-paragraph (a) but thought they should be retained in sub-paragraphs (c) and (d).

27. Mr. VERDROSS agreed with Mr. Yokota. He was also in favour of the addition of a new paragraph, as suggested by the Governments of Czechoslovakia and the United Kingdom, regarding the promotion of friendly relations and the development of cultural activities.

28. Mr. SANDSTRÖM, Special Rapporteur, said that the Government of Chile had suggested that the provisions of article 2, sub-paragraph (b), should operate only after the normal remedies had been exhausted (see A/CN.4/114/Add.1).⁴ He did not consider an amendment along those lines advisable, since sub-paragraph (b) was couched in general terms and did not refer exclusively to cases where diplomatic protection was invoked following the exhaustion of local remedies.

² *Yearbook of the International Law Commission, 1957, vol. I* (United Nations publication, Sales No.: 1957.V.5, vol. I), pp. 9-12.

³ See *Official Records of the General Assembly, Fourth Session, Supplement No. 10, part II*.

⁴ See also *Official Records of the General Assembly, Twelfth Session, Sixth Committee, 509th meeting, para. 9*.

29. Mr. VERDROSS said that the observations of the Government of Chile, as well as those of the Governments of Colombia and Uruguay, proceeded from a misunderstanding. Those Governments obviously wished to prevent any formal diplomatic complaint from being made before local remedies had been exhausted, whereas the Commission, in drafting article 2 (b), had had in mind friendly *démarches* which could be undertaken in the absence of any judicial proceedings. The Commission's intention could be stated in the commentary.

30. Mr. GARCIA AMADOR said that the question of non-intervention raised by the Government of Colombia⁵ did not require to be dealt with in the commentary. The principle of non-intervention was the subject of article 33 of the draft; there could therefore be no conflict between article 2 and that principle.

31. The remarks made by the Governments of Chile and Uruguay were applicable to diplomatic protection in the narrow sense. Article 2 (b), however, covered a much wider field; a diplomatic mission could protect the interests of its nationals by means of steps both formal and informal, which did not amount to diplomatic protection.

32. He proposed that a sentence be included in the commentary to the effect that the provisions of article 2 (b) were without prejudice to the principles of international law governing diplomatic protection.

33. Sir Gerald FITZMAURICE said that the inclusion in the commentary of a sentence along the lines proposed by Mr. Garcia Amador should give every satisfaction to the Governments of Chile and Uruguay. The question of the exhaustion of local remedies and that of denial of justice were connected with the subject of State responsibility rather than with that of diplomatic functions.

34. Article 2 (b) could only mean that a diplomatic mission could protect the interests of the nationals of the sending State to the extent that international law permitted.

35. Mr. PADILLA NERVO supported the proposal made by Mr. Garcia Amador. Article 2 (b) was concerned with the everyday assistance and general protection which a diplomatic mission afforded to its nationals, and not exclusively with matters which gave rise to litigation.

36. Mr. SANDSTRÖM, Special Rapporteur, said that the Governments of Czechoslovakia (see A/CN.4/114/Add.1), the Philippines⁶ and Yugoslavia (see A/CN.4/114/Add.5) had advanced a more detailed formulation of the functions of a diplomatic mission. In particular, it had been suggested that reference should be made to the promotion of friendly relations between the sending State and the receiving State as well as to cultural relations.

37. Since article 2 was not meant to give an exhaustive

list of the functions of a diplomatic mission, he considered it unnecessary to make a specific reference to functions other than those which were set forth in subparagraphs (a), (b), (c) and (d) and which constituted the essential functions of a diplomatic mission. The United Kingdom Government in its observations had expressed a view similar to his own (see A/CN.4/114/Add.1).

38. Mr. ZOUREK proposed that a new sub-paragraph along the following lines should be inserted:

“(e) Promoting friendly relations between the sending State and the receiving State, in particular by developing their economic, cultural and scientific relations.”

39. In addition, he proposed that a provision should be included to the effect that the establishment of diplomatic relations implied the establishment of consular relations, since nowadays the diplomatic function included, as a general rule, the consular function. According to current practice, consular functions were exercised by a special section of the diplomatic mission and under the supervision of the chief of that mission, except where special arrangements for the establishment of a separate consulate were made by the two Governments concerned.

40. Mr. GARCIA AMADOR supported the first of the proposals made by Mr. Zourek. Since, however, that proposal was concerned with the duty to promote friendly relations among States, it should be placed in a separate paragraph, instead of in a sub-paragraph (e). Sub-paragraph (a) to (d) set forth rights rather than duties.

41. Mr. FRANÇOIS said that he saw no advantage in the adoption of the second proposal made by Mr. Zourek. It was true that in certain cases consular functions were exercised by a special section of the diplomatic mission, but that was not by any means a universal practice. The important fact, however, was that the diplomatic and consular services were two distinct services, even if they were housed under the same roof.

42. A general statement to the effect that the diplomatic function included the consular function would be very misleading. Consular services were subject to special rules and should not be confused with diplomatic services.

43. Mr. VERDROSS said that he was in favour of the first proposal made by Mr. Zourek. The introduction of a reference to cultural relations would be a recognition of the progress made in international relations in that respect.

44. Sir Gerald FITZMAURICE said that he had no objection to the inclusion of a paragraph concerning economic, scientific and cultural relations, although he was inclined to share the view of the Special Rapporteur that it was not strictly necessary to add anything to the list of functions contained in article 2.

45. With regard to the second proposal made by

⁵ See *Official Records of the General Assembly, Twelfth Session, Sixth Committee*, 509th meeting, para. 38.

⁶ *Ibid.*, para. 43.

Mr. Zourek, he wished to emphasize that consular functions were quite distinct from diplomatic functions even if they were exercised by the same person. He questioned whether a diplomatic mission could assume, as of right, consular functions without the prior consent of the receiving State. Consular functions could be, and, indeed, often were exercised under the same roof as diplomatic functions, frequently by the same person, but the receiving State had in that case the right to require an *exequatur* to be obtained by any member of the diplomatic mission exercising consular functions.

46. Mr. TUNKIN expressed support for the first of Mr. Zourek's proposals, which was fully consistent with the principles of the Charter of the United Nations regarding relations between States.

47. With regard to Mr. Zourek's second proposal, he said that there was certainly some link between the establishment of diplomatic relations and that of consular relations. In practice, if diplomatic relations were established, no specific action was required to enable diplomatic missions to exercise consular functions through a special officer entrusted with consular duties.

48. He recognized, however, that there were some practical difficulties involved in the introduction of a provision along the lines proposed by Mr. Zourek.

49. Mr. AMADO said that he supported Mr. Zourek's first proposal and the suggestion of Mr. García Amador with regard to the form which the proposed provision should take.

50. He could not support Mr. Zourek's second proposal. In particular, he pointed out that if a diplomatic officer was entrusted with consular duties, the receiving State granted the *exequatur* to that officer personally and not to the chief of the diplomatic mission; in that way the distinction between diplomatic and consular functions was emphasized.

51. Mr. PADILLA NERVO said that he favoured Mr. Zourek's first proposal in so far as it referred to the promotion of friendly relations between the sending State and the receiving State. He did not think, however, that it was necessary to make any reference to the development of economic, cultural and scientific relations because those relations would undoubtedly be the subject of negotiations conducted by the competent attachés of the diplomatic mission as provided in article 2(c).

52. Mr. HSU, while not in favour of extending a list that did not aspire to be exhaustive, thought that if any new item should be added it was a reference to the promotion of friendly relations among States and to the development of their economic, cultural and scientific relations.

53. Though he would not press for the inclusion of a reference to consular functions in article 2, he tended to agree with Mr. Zourek that the diplomatic function embraced the consular function. A number of other duties performed by diplomatic officers such as military attachés were not diplomatic *stricto sensu* although they

went under that name. The distinction between diplomatic and consular functions was largely of historical origin.

54. Mr. ZOUREK, replying to Sir Gerald Fitzmaurice, said that many diplomatic missions established consular sections without applying for an *exequatur*; it was a general practice in his own country, for instance. The diplomatic function necessarily included the consular function, and there was no sharp division, though the services were generally distinct. There was, however, no need to settle the question at that stage of the debate; it could be discussed more fully in connexion with article 1 of his draft on consular intercourse and immunities (A/CN.4/108).

55. Sir Gerald FITZMAURICE fully agreed with Mr. Zourek that diplomatic and consular services were often amalgamated and that there was no reason why the diplomatic and the consular function should not be exercised by one and the same person in the same mission. The two functions were nevertheless distinct. If no *exequatur* was applied for by diplomatic missions with a consular section, it was merely because the local Government did not object. It would, however, always be within its rights in requiring an *exequatur* to be sought. He would, therefore, be firmly opposed to any suggestion in the draft that a diplomatic mission could automatically and as of right exercise the consular function. He agreed with Mr. Zourek that the matter would best be discussed in connexion with the draft on consular intercourse and immunities.

56. The CHAIRMAN said that he regarded Mr. Zourek's proposal concerning consular activities as having been withdrawn.

57. Replying to Mr. García Amador, he said that the question of the exact position of the proposed new item in article 2 could be left to the Drafting Committee.

58. He put to the vote Mr. Zourek's proposal (para. 38 above) that the words

"Promoting friendly relations between the sending State and the receiving State, in particular by developing their economic, cultural and scientific relations"

should be added at an appropriate point in article 2.

The proposal was adopted by 14 votes to none, with 2 abstentions.

59. The CHAIRMAN put to the vote the proposal (see para. 25 above) that the words "the Government of" in sub-paragraph (a) should be deleted.

The proposal was adopted by 12 votes to none, with 3 abstentions.

It was decided that the words "the Government of" in sub-paragraphs (c) and (d) would stand.

Article 2 as a whole, as amended, was adopted unanimously, subject to drafting changes.

60. Mr. YOKOTA drew attention to the comment of the Netherlands Government (A/CN.4/114/Add.1) concerning the position of foreign trade missions. The

question was of considerable importance. During the negotiation of the recent Treaty of Commerce and Navigation between Japan and the Soviet Union, one of the most difficult questions had been whether the trade representatives of the Soviet Union in Japan were to be regarded as part of the diplomatic mission and to enjoy diplomatic privileges and immunities. Japan held that they should not, although it was prepared to accord some privileges and immunities by bilateral agreement. In his opinion, the principle was that trade missions did not form part of a diplomatic mission and that their staff was not automatically entitled to diplomatic privileges and immunities, though they might be accorded similar privileges and immunities by virtue of bilateral agreement. Since the Special Rapporteur stated in his conclusions (A/CN.4/116) that he had no objection to the Netherlands proposal, he (Mr. Yokota) urged that a statement on the subject be included in the commentary on the article.

61. Mr. SANDSTRÖM, Special Rapporteur, said that the question whether trade representatives formed part of a diplomatic mission or not was of sufficient interest to justify a reference in the commentary.

62. Mr. AMADO said that the Commission was not obliged to put in a commentary everything that a Government suggested. It must consider whether in the general arrangement of the draft a comment would add to the clarity of a provision.

63. Mr. MATINE-DAFTARY thought that the recently adopted reference to "economic relations" covered commercial relations. There was, however, a clear distinction between commercial attachés and the permanent trade representatives of countries where foreign trade was a State monopoly. Whereas the function of commercial attachés was to protect their countries' trade relations, trade representatives actively engaged in commercial transactions. They did not, therefore, come within the scope of a multilateral convention on diplomatic privileges and immunities and their position should be regulated by bilateral agreement.

64. Mr. LIANG, Secretary to the Commission, said that Mr. Amado's remarks raised an important point: whether matter which the Commission had not included in an article should appear in the commentary as supplementary material. The observation of the representative of China during the discussion of the Commission's report in the Sixth Committee at the twelfth session of the General Assembly⁷ provided food for reflection on that point. After noting that the commentaries on some articles of the draft on diplomatic intercourse and immunities, such as paragraph 3 of the commentary on article 27 and the commentary on article 31, contained supplementary rules or exceptions to rules enunciated in the articles, the said representative had suggested that such material should be incorporated in the articles themselves.

65. Although in most commentaries it had not been the Commission's intention that the remarks should constitute supplementary articles or rules, the impression might be conveyed that they did. The statute of the Commission contained certain criteria for determining the contents of commentaries but they had not always been followed. Since there appeared to be a certain amount of inconsistency in practice, the Commission might, at some appropriate time, take a decision on the exact nature of commentaries and whether or not they should contain supplementary rules or exceptions. Alternatively, it might be made clear that the commentaries did not contain rules but merely served to clarify the text.

66. Mr. AMADO said that he did not wish it to be thought that he was hostile to the observations of Governments. There was, however, a danger that some commentaries might weaken the force of rules enunciated in the article. Referring to the comments of the Netherlands Government, he said that the last part of the text, with its implication that some sending States acted dishonestly, would hardly tend to promote friendly relations between States. The Commission should beware of approving the addition of comments that might give rise to confusion.

67. Sir Gerald FITZMAURICE agreed with Mr. Yokota that the point raised by the Netherlands Government was an important one which should be dealt with under article 2, especially in view of the decision to include a reference to commercial functions in the article. It need not, however, be dealt with exactly on the lines indicated in the Netherlands comment. There was a clear distinction between members of diplomatic missions concerned with commercial questions, such as commercial and financial attachés, and trade representatives, though, as Mr. Matine-Daftary had pointed out, the latter might enjoy certain privileges and immunities on the basis of bilateral agreements. Perhaps the Special Rapporteur would find a better form of words.

68. Mr. SANDSTRÖM, Special Rapporteur, agreed with the Secretary that it was not desirable to include precise rules in the commentaries on articles. The Netherlands Government was, in fact, one of the staunchest supporters of that view. It had not been his intention, nor, he thought, that of the Netherlands Government, that the comment made by that Government should be inserted as it stood. He did, however, agree with the previous speakers on the importance of drawing attention to the problem.

69. Mr. TUNKIN said that he would not urge that a comment on the problem should be included in the report of the Commission. Indeed, it would probably be very difficult to frame such a comment in the absence of any reference to the question of trade missions in the article itself.

70. Under a practice established for decades, bilateral treaties of trade and commerce concluded by the Soviet Union with other countries included a more or less standard provision to the effect that its trade

⁷ See *Official Records of the General Assembly, Twelfth Session, Sixth Committee*, 511th meeting, para. 20.

representation formed part of its diplomatic mission. He knew of no such treaty that stipulated otherwise.

71. It was likewise the practice to regulate the question of the privileges and immunities enjoyed by trade representatives in the same bilateral treaties. He was not sure whether any great difficulty on that point had arisen during the negotiation of the treaty of commerce between the Soviet Union and Japan and did not think that the matter had presented any problem in recent years.

72. Mr. ZOUREK considered that the Commission should avoid conveying the impression that trade was entirely divorced from the diplomatic function. For decades quite the opposite had been true; economic and trade matters formed the very essence of the activities of diplomatic missions, as evidenced by the appointment of commercial attachés often assisted by a large number of officials. The question whether a State wished its trade officials to form part of its diplomatic mission was, he thought, a matter of the internal organization of the mission.

73. Mr. PADILLA NERVO said there appeared to be some confusion, for it was not clear what the Netherlands Government meant by "a trade representation". If the reference was to activities promoting trade relations performed by a member of the embassy staff or by the embassy itself, there was no difficulty. If the Netherlands Government had in mind *ad hoc* commercial missions, the matter would have to be treated under the heading of *ad hoc* diplomacy. If, on the other hand, it meant a permanent office set up for the purpose of engaging in trading activities, the status of that office and its staff should be regulated by prior agreement between the two States concerned.

74. Mr. BARTOS remarked that in many countries "trade representation" was a technical term describing an office through which a State in which foreign trade was a government monopoly conducted its trade operations in another State through agents who were permanently domiciled in the other State. Such agents thus combined the functions of commercial attaché and business man. In the United States of America most of the cases of that kind that had arisen had been regulated by special treaty in which the agents were accorded a mixture of diplomatic and non-diplomatic status. In the Treaty of Commerce and Navigation of 1940 between Yugoslavia and the Soviet Union, the head of the trade mission and his two deputies had been accorded diplomatic privileges and immunities but the office had been accorded no diplomatic protection and the premises and goods therein were not immune from attachment or execution. A trade mission was thus an institution *sui generis* not corresponding to the institution of commercial attaché.

75. Some countries tended to merge the functions of commercial attaché and trade representative, conducting trade operations through their commercial attaché, under the seal and title of the embassy. In Yugoslavia, however, all such transactions were void under commercial law in any case in which they were effected on

behalf of foreign private firms. There was a clear and absolute distinction between commercial attachés who were the advisers to the diplomatic mission on commercial affairs and representatives engaging in trading operations on behalf of foreign private firms. The former enjoyed diplomatic status but trade representatives did not, although they were accorded some privileges and immunities by special treaty. The whole question was, however, rather vague and practice differed somewhat from State to State.

76. Mr. AMADO considered that the question of extending privileges and immunities to permanent trade missions should be dealt with in the draft in an appropriate article. Temporary trade missions should, however, be dealt with under the heading of *ad hoc* diplomacy.

77. The CHAIRMAN proposed that the Special Rapporteur should be asked to submit a text on the subject for consideration by the Commission.

It was so agreed.

The meeting rose at 1.5 p.m.

450th MEETING

Tuesday, 27 May 1958, at 3 p.m.

Chairman: Mr. Radhabinod PAL.

Arbitral procedure: General Assembly resolution 989 (X) (A/CN.4/113) (continued)¹

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

ARTICLE 36

1. Mr. SCELLE, Special Rapporteur, introducing article 36, said that the problem of the annulment of awards was one of the most difficult in international law. The Commission had accordingly refrained at its previous sessions from going into detail on the matter, contending itself with listing three general grounds on which the validity of an award might be challenged. Experience in a recent case showed that the reference to corruption in sub-paragraph (b) was by no means superfluous. With regard to sub-paragraph (c), he said that failure to state the reasons for the award was but one example of a serious departure from a fundamental rule of procedure. He added that it might be better to reverse the order of grounds (b) and (c).

2. Mr. SANDSTRÖM said that he would prefer the existing order. He approved of the article, apart from what he considered the rather excessive emphasis placed on total or partial failure to state the reasons for the award. After all, in the United Kingdom it was

¹ Resumed from 448th meeting.