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Summary record of the 447th meeting

Topic:
Arbitral Procedure

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95. Mr. VERDROSS agreed that it was for the tribunal to determine its own competence, but pointed out that it could do so only on the basis of the *compromis* and such other instruments as were applicable. If it acted in an arbitrary manner, for example, if it rendered a decision *ex eaquo et bono* when the *compromis* explicitly debarred it from doing so, it could, he thought, hardly be denied that it had thereby exceeded its powers.

96. Mr. FRANÇOIS agreed with Sir Gerald Fitzmaurice that there was a danger of the parties abusing the right to challenge the validity of an award on the ground that the tribunal had exceeded its powers. In the model draft, however, that danger was minimized by the fact that the challenge was referred to the International Court of Justice. Deletion of sub-pragraph (*a*) from article 36 would not be acceptable to the great majority of States.

97. Mr. AGO thought that in principle Mr. François was undoubtedly correct. The fact remained, however, that sub-paragraph (*a*) might give rise to serious difficulties, since the expression *excès de pouvoir* meant widely different things in different legal systems.

98. He also had certain doubts regarding the wording of sub-paragraph (*b*). For example, much surely depended on the time at which the corruption was discovered, and he thought it advisable to make the text more explicit.

99. He also agreed that the references in sub-paragraph (*c*) to "a serious departure" and "a fundamental rule" introduced two subjective criteria, which would be bound to give rise to difficulties and disputes.

100. As the Special Rapporteur attached great importance to articles 36 and 37, however, he suggested that further consideration of both articles be deferred until Mr. Scelle's return.

It was so agreed.

The meeting rose at 1 p.m.

447th MEETING

Wednesday, 21 May 1958, at 9.45 a.m.

Chairman: Mr. Radhabinod PAL.

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

[Agenda item 2]

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

ARTICLE 38

1. The CHAIRMAN, in the continued absence of the Special Rapporteur, introduced article 38, which corresponded to and was almost identical with article 32 of the 1953 draft.[1]

Article 38 was adopted by 10 votes to 1, with 1 abstention.

ARTICLE 39

2. The CHAIRMAN introduced article 39, which corresponded to article 29 of the 1953 draft and followed it very closely except that two of the paragraphs had been broken up and the words "whenever possible" inserted in what had been the first sentence of paragraph 4 and a reference to the Permanent Court of Arbitration in what had been the second sentence.

3. Mr. YOKOTA noted that the time limits imposed in paragraph 2 were the same as those laid down in Article 61, paragraphs 4 and 5, of the Statute of the International Court of Justice. As was clear from the commentary on the 1958 draft,[2] in cases where an arbitral *compromis* had provided for revision, such as the *Pious Fund of the Californias* and the *North Atlantic Coast Fisheries* cases, the time limit for applications for revision had always been much shorter, in the cases cited eight days and five days respectively. The arbitral procedure which the Commission was engaged in formulating could not, of course, be compared to the procedure followed in such cases, but even in the case of arbitration based on an arbitration treaty such as the Pact of Bogotá[3] the time limit for applying for revision had been only one year. There was, in his view, good reason for the great discrepancy which existed in the matter as between the judicial procedure of the International Court of Justice, which was a permanent organ, even if its members changed, and arbitral procedure, where it would be exceedingly difficult to reconvene the tribunal after a lapse of years. Furthermore, arbitration depended essentially on the will of the parties and it was doubtful, to say the least, whether their will and their relations toward each other would remain unchanged for so long a period. In his view any question which arose as late as ten years after the rendering of the award should be regarded as a new dispute and should be submitted to a new tribunal. He therefore proposed that in paragraph 2 the words "within ten years" be replaced by, say, "within five years".

4. Sir Gerald FITZMAURICE drew attention to a discrepancy between the English text of article 39, paragraph 1, which referred to "some fact of such a nature as to have a decisive influence on the award" and the English text of Article 61, paragraph 1, of the Statute of the International Court of Justice, which

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[1] *Official Records of the General Assembly, Eighth Session, Supplement No. 9,* para. 57.

[2] *Commentary on the Draft Convention on Arbitral Procedure adopted by the International Law Commission at its fifth session* (United Nations Publication, Sales No.: 1955.V.1), p. 101.

[3] American Treaty on Pacific Settlement (Pact of Bogotá), signed at Bogotá on 30 April 1948. See United Nations, *Treaty Series,* vol. 30, 1949, No. 449, p. 55.

spoke of "some fact of such a nature as to be a decisive factor". In his view the wording used in the Court's Statute was preferable and should be employed in the model draft, since the question whether the fact was of a nature to have a decisive influence on the award was precisely the question which the tribunal would have to consider in the proceedings for revision.

5. He also felt that article 39 should contain some reference to the question of stay of execution; such a provision might well be along the same lines as that which the Commission had adopted in the case of article 35 (446th meeting, para. 84).

6. Finally, he agreed with Mr. Yokota that three years, or at most five, was an ample time limit for applications for revision.

7. Mr. MATINE-DAFTARY pointed out that a provision fixing a time limit of ten years meant only that applications for revision would be barred after the expiry of that period. To fix any shorter period was, in his view, unacceptable.

8. Mr. ZOUREK said that a particularly large number of Governments had criticized article 29 of the 1953 draft (see A/CN.4/L.71). Many of them had expressed the view that the article was inconsistent with the principle of the finality of the award. He remained nonetheless convinced that the Commission must not exclude all possibility of revising the award, although it might be desirable, as had been suggested by a number of Governments, to include a provision enabling the parties to agree in advance that the award should be final.

9. Many Governments had also criticized the proposed recourse to the International Court of Justice as contrary to the fundamental principles of international arbitration. In his view, the provision in question was undesirable for the further reason that it would only encourage the losing party to apply for revision. In his view, the discovery of any new fact of such a nature as to have a decisive influence on the award should be regarded as creating a new dispute, which should be settled by any of the means of peaceful settlement which the parties had at their disposal or by the application of the rules contained in the model draft which had been accepted by the parties in an express agreement.

10. Although he agreed with Mr. Yokota that the period within which applications for revision must be submitted should not be too long, it should not be too short either, since it was quite impossible to foresee all the circumstances which might lead to the discovery of the new fact.

11. Mr. AMADO said that if the Commission had been engaged in drafting a convention, he would have voted against article 39, as he had voted against article 29 in the 1953 draft, and for the same reasons. There was in Europe, largely under the influence of the mixed arbitral tribunals, a tendency to move away from the traditional view of arbitration as a speedy and effective procedure for the definitive settlement of international disputes, without any possibility of revision or appeal. In inserting in its model draft a provision concerning appeals and revision procedures, the Commission would be acting at direct variance with what all the authorities had said on the subject.

12. Mr. SANDSTRÖM said that he had the same doubts about article 39 as Mr. Amado. If the majority of the members of the Commission were in favour of retaining the article, he thought they should at least accept Mr. Zourek's suggestion (para. 8 above) that a provision be inserted enabling the parties to agree in advance that the tribunal's award should be final.

13. Sir Gerald FITZMAURICE said that he was largely in agreement with Mr. Amado's remarks but felt there could be little harm in retaining article 39 since the occasions on which it could be invoked would, in his opinion, be exceedingly rare. Before a dispute was ever referred to arbitration, there would be a fairly lengthy process of discussion between the parties on the facts of the case, and the arbitral proceedings themselves would take considerable time; it therefore seemed most unlikely that any crucial new fact would come to light after the award.

14. Mr. VERDROSS, referring to Mr. Zourek's suggestion, said that The Hague Conventions of 1899 and 1907[4] approached the question of revision from the opposite standpoint. The first paragraph of article 83 of the latter instrument read:

> "The parties can reserve in the *compromis* the right to demand the revision of the award."

15. Mr. LIANG, Secretary to the Commission, said that, particularly in view of the changed nature of the draft, he thought it would be inadvisable to insert anything which might suggest that the Commission was in favour of a revision procedure if, in fact, it was not; owing to the Commission's high standing and repute the draft would undoubtedly exert a great influence on the parties when they came to prepare the *compromis*, and it would be unfortunate if one party could point to a provision which appeared to sanction or even encourage a practice to which the majority of the Commission were, in fact, opposed. If the majority of the members of the Commission were in favour of a revision procedure, however, Mr. Zourek's suggestion might afford an acceptable solution.

16. M. YOKOTA thought it would be undesirable to insert at the beginning of article 39 any words such as "Unless the parties agree otherwise", for the reasons indicated during discussion of a similar point which had arisen in connexion with article 34 (446th meeting, paras. 56-76). He understood that it would in any case be stated explicitly in the preamble that the parties were at liberty to include in the *compromis* any other provisions they chose.

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[4] Convention for the Pacific Settlement of International Disputes, signed at The Hague on 29 July 1899, and Convention for the Pacific Settlement of International Disputes, signed at The Hague on 18 October 1907. See *Reports to the Hague Conferences of 1899 and 1907*, James Brown Scott (ed.) (Oxford, Clarendon Press, 1917), pp. 32 ff. and 292 ff.

17. Sir Gerald FITZMAURICE agreed with Mr. Yokota that Mr. Zourek's suggestion should be taken into account not by means of a specific proviso in article 39, but by a general proviso applying to the whole draft.

18. As the Special Rapporteur apparently attached great importance to article 39, he thought it would be undesirable to adopt the alternative approach suggested by Mr. Verdross without hearing Mr. Scelle's views.

19. Mr. VERDROSS pointed out that he had made no suggestion, but had merely drawn attention to the provisions of The Hague conventions.

20. Mr. SANDSTRÖM said that one way of taking Mr. Zourek's suggestion into account would be to add a suitable passage in the second part of article 2.

21. The CHAIRMAN put to the vote the principle that the parties could by prior agreement stipulate that applications for the revision of the award would not be admissible.

The principle was adopted by 15 votes to none, with 1 abstention.

22. The CHAIRMAN put to the vote Sir Gerald Fitzmaurice's proposal (para. 4 above) that the words "to have a decisive influence on the award" should be replaced by the words "to be a decisive factor" used in Article 61, paragraph 1, of the Statute of the International Court of Justice.

The proposal was adopted by 14 votes to 1.

After some discussion in which it was pointed out that the French and English texts of Article 61, paragraph 1, of the Statute of the Court did not exactly correspond, it was agreed that the expression "exercer une influence décisive" *in the French text of article 39, paragraph 1, would remain unchanged.*

Paragraph 1 was adopted by 14 votes to none, with 1 abstention.

23. The CHAIRMAN put to the vote Mr. Yokota's proposal (para. 3 above) that the words "five years" should be substituted for "ten years" in paragraph 2 of the article.

The proposal was rejected by 7 votes to 5, with 3 abstentions.

Paragraph 3 was adopted by 14 votes to none, with 2 abstentions.

Paragraph 3 was adopted by 15 votes to none, with 1 abstention.

Paragraph 4 was adopted by 15 votes to none, with 1 abstention.

Paragraph 5 was adopted by 13 votes to none, with 2 abstentions.

24. Mr. AGO, referring to the words "that tribunal, as reconstituted," in paragraph 6, pointed out that the tribunal might be a permanent one, in which case it would not have to be reconstituted. He proposed that the Drafting Committee should consider replacing the phrase by the words "the tribunal which rendered the award", used in paragraph 5.

It was so decided.

25. Mr. VERDROSS, referring to paragraph 6, said that it was impossible for an application to be made by a single party to the Permanent Court of Arbitration at The Hague. The Permanent Court was merely a panel of judges from which an arbitral tribunal could be selected only by agreement between both parties. He suggested the deletion of the words "by either party".

26. Mr. ZOUREK observed that the clause was a model for possible inclusion in arbitration agreements. If the parties were agreed on its inclusion, then application to the Permanent Court of Arbitration could be made by one party.

27. The CHAIRMAN recalled that the Commission had deleted the reference to the Permanent Court of Arbitration from article 3.

28. Mr. EL-ERIAN, agreeing with Mr. Verdross, added that the words "by either party either, and preferably" were clumsy in English. He would prefer the wording of article 29, paragraph 4, of the Commission's 1953 draft.

29. Sir Gerald FITZMAURICE was also in favour of omitting all reference to the Permanent Court of Arbitration from the paragraph. It was to be noted that there was no reference to that court in article 35, paragraph 2, which dealt with a similar subject (disputes concerning the interpretation of the award).

30. He therefore proposed that the words "either, and preferably," and the words "or to the Permanent Court of Arbitration at The Hague" should be deleted from paragraph 6.

The proposal was adopted by 11 votes to 3, with 3 abstentions.

Paragraph 6, as amended, was adopted by 13 votes to 4.

31. Mr. BARTOS said that he had taken no part in the discussion on article 39 and, though he had no objection to many of the provisions on strictly technical grounds, had abstained from voting on various paragraphs on theoretical grounds and because he was as yet undecided whether the tendency to provide for the revision of arbitral awards was to be opposed.

32. The whole purpose of arbitration being to settle disputes, awards should be final and it was theoretically inconceivable that they could be reviewable. The possibility of their being challenged in the light of new facts as long as ten years after they had been rendered created uncertainty and was at variance with the true purpose of arbitration. If doubt was cast on the substantive truth of the facts on which an award was based, there would in effect be a new dispute and the parties should take steps to have that new dispute settled. The assimilation of arbitral procedure to national civil procedure and to the procedure of the International Court of Justice in the matter of revision of

judgements was conceivable only in the case of permanent arbitration machinery established under arbitration treaties or clauses, but not in the case of *ad hoc* arbitration.

33. He had voted against paragraph 6 because he could not see how an application for revision could be brought before a tribunal which had ceased to exist. And if it were made to a new jurisdiction, the decision of that jurisdiction, according to established legal doctrine, constituted a new award.

34. Mr. AMADO said that since article 39 was merely part of a model draft he would not oppose its adoption. There were, however, some very singular features in the article and particularly in paragraph 6. It was, for instance, by virtue of an arbitral award that large areas had been adjudged part of the territory of Brazil. Yet, according to the article, so momentous a decision would still be subject to revision as much as ten years after the award had been made. The idea, too, of making an application for revision to the same tribunal ten years later was particularly unrealistic; surely, the tribunal would have dispersed and some of its members might even be dead.

35. Mr. ZOUREK, explaining his vote on paragraph 6, said that the idea of preserving continuity between the jurisdiction making the award and the jurisdiction considering the application for its revision was entirely unrealistic. Even permanent tribunals changed their membership over the years. In any case the procedure of revision of an award was so exceptional that it seemed inappropriate to specify what institutions were to deal with the matter. Advance provision for a body competent to revise the arbitral award would make it easy for the losing party to have recourse — even if only in order to satisfy public opinion — to the procedure provided for. That would be contrary to the nature of arbitration, which should be final.

36. Sir Gerald FITZMAURICE said that the possibility of the award being revised raised automatically the question of stay of execution. He wished, therefore, to propose the addition to the article of a seventh paragraph worded on the lines of the provision adopted by the Commission as part of article 35 (446th meeting, para. 84): "It will be for the tribunal to decide whether, and if so to what extent, execution shall be stayed."

37. The CHAIRMAN drew attention to a similar proposal made in the comments of the Netherlands Government on article 29 of the 1953 draft (see A/CN.4/L.71).

38. Mr. SANDSTRÖM pointed out that a proviso would be necessary to cover the case where execution would already have taken place by the time the application for revision was made.

39. Mr. AMADO said that it was the essence of an arbitral award that it was binding on the parties and should be carried out forthwith. He failed to see how there could be any question of stay of execution ten years after the award had been rendered.

40. Mr. AGO did not think that there was any close analogy between the situations covered by article 35 and by article 39. In the first case, it might be quite logical to provide for a stay of execution of the award since there was some doubt concerning the meaning of the award. In the siutation envisaged in article 39, however, no such doubt existed, and as a rule the sentence should be executed so long as no revision had taken place. In exceptional cases it would always be open to the tribunal to prescribe a stay of execution as a provisional measure under article 23, if the circumstances so required.

41. Sir Gerald FITZMAURICE said that he did not think that his proposal raised any serious difficulty. Although those who had spoken against it generally assumed that the application for revision would not be made until ten years after the award had been rendered, in point of fact it was most likely that such application would be made very soon after the rendering of the award. In deference to Mr. Sandström's objection, the additional paragraph might begin with the words "Except in cases where the award has already been executed,". He did not, however, wish to press his proposal.

42. Mr. SANDSTRÖM pointed out that Article 61, paragraph 3, of the Statute of the International Court of Justice provided the exact opposite of Sir Gerald's proposal; it provided that the Court might require previous compliance with the terms of the judgement before admitting proceedings in revision. He thought if preferable not to include the paragraph proposed by Sir Gerald Fitzmaurice.

43. Mr. EL-ERIAN said that the Commission's text, being a model draft, should be as complete as possible. The possibility of the revision of an award undoubtedly raised the problem of stay of execution, and some provision for that eventuality should therefore be made in the draft.

44. The CHAIRMAN pointed out that, Sir Gerald Fitzmaurice having, in effect, withdrawn his proposal, the matter was no longer under discussion.

Article 39 as a whole, as amended, was adopted by 13 votes to 1, with 3 abstentions.

45. Mr. TUNKIN, explaining his vote on article 39, said that he was substantially in agreement with Mr. Amado and Mr. Zourek.

46. He had voted in favour of paragraphs 1 to 5 because those paragraphs contained some technical rules which in themselves were unobjectionable and which could be accepted by States if they chose to make some provision regarding revision. It was understood that the interested parties could decide that no revision was possible.

47. He had voted against paragraph 6 because that paragraph contained elements drawn from both arbitral and judicial procedure, which it was advisable to keep

separate. That paragraph had the additional defect of introducing indirectly the compulsory jurisdiction of the International Court of Justice. Lastly, like some other provisions of the model draft, the paragraph in question tended to make the International Court of Justice an appeal court to which the arbitral tribunal would be subordinated.

48. In view of his objections to paragraph 6, he had abstained when article 39 as a whole was put to the vote.

49. Mr. EL-ERIAN proposed that the Drafting Committee should be requested to consider the question of including in the draft a provision dealing with the stay of execution in cases of proceedings in revision.

50. Mr. YOKOTA said that he could see no reason why a provision similar to that adopted for article 35 should not be included in connexion with the parallel case of proceedings in revision. He supported Mr. El-Erian's proposal.

Mr. El-Erian's proposal was adopted by 9 votes to 5, with 2 abstentions.

51. Mr. MATINE-DAFTARY said that the decision could not simply be passed on to the Drafting Committee in that form, without any guidance. The provision to be drafted should, for instance, state that an application for revision would not *per se* operate to suspend execution; some action by the tribunal would be required for that purpose. To admit that execution could be stayed by a mere application for revision would be a grave blow to the authority of the *res judicata.*

52. The CHAIRMAN said that, Sir Gerald Fitzmaurice's proposal (paras. 37 and 42 above) having been withdrawn, he assumed, by implication, that the Drafting Committee would work on the basis of the proposal by the Netherlands Government.

53. Mr. AGO said that the content of the provision was still undecided; there had been no question of approving the Netherlands proposal.

54. Mr. EL-ERIAN said that his proposal had merely been that the Drafting Committee should discuss the question and report on how it thought it should best be dealt with. He had an open mind on the content of the text and on its place in the draft. A provision on the subject could, for instance, figure in the *compromis,* in which case the proper place for the text would be in article 2.

55. The CHAIRMAN said that any such provision could obviously refer only to stay of execution of the executable and unexecuted portion of the award. The Drafting Committee must, however, have something on which to work, since it only had the power to give more precise expression to ideas already accepted by the Commission.

56. Mr. AGO said that the Commission had decided in principle to include a provision concerning a stay of execution in cases where revision was applied for. It still had to consider, however, the content of that provision.

57. He thought the Commission would be treading on dangerous ground if it inserted a provision which enabled a party to obtain a stay of execution of the award by merely making an application for its revision.

58. Mr. AMADO said that, in admitting the concept of the revision of the award in its draft, the Commission had made a concession to certain modern trends and had departed from the traditional view of arbitration. According to that traditional view, arbitral awards were never executory; they were binding on the parties, but execution was a matter of good faith.

59. When two parties agreed to submit a dispute to arbitration, it had to be assumed that they wished to bring the dispute to an end in good faith.

60. Mr. YOKOTA agreed with Mr. Ago that the Commission had still to decide on the content of the provision regarding stay of execution in cases where the revision of an award was applied for.

61. The language suggested by the Netherlands Government was too broad: it would mean that execution would be stopped as soon as an application for revision was submitted. He preferred, for his part, a provision along the lines of Article 61, paragraph 3, of the Statute of the International Court of Justice.

62. Sir Gerald FITZMAURICE said that he did not favour the language of Article 61, paragraph 3, of the Statute of the International Court of Justice. It did not seem reasonable for a tribunal to require previous compliance with the terms of an award when that tribunal was about to admit proceedings in revision.

63. If, at the time of an application for revision, the award had already been executed, the question of a stay of execution did not, of course, arise. If, however, the award had not been executed, there appeared to be no objection to allowing the applicant to put the matter to the tribunal; it would then be for the tribunal to decide whether to grant a stay of execution or not.

64. He therefore suggested that the provision should be drafted along the following lines:

> "Unless the award has already been executed, it will be for the tribunal to decide whether, and if so to what extent, a stay of execution shall be granted."

65. Mr. AGO said that it would be better not to make any reference to the case of an award already executed. Such a reference would almost seem an invitation to a dissatisfied party not to execute the award, so that, by making an application for revision, it could obtain from the tribunal a stay of execution.

66. Mr. EL-ERIAN proposed that the provision under discussion should be drafted along the following lines:

> "The tribunal or the Court may, at the request of the interested party, grant a stay of execution pending the final decision on the application for revision if circumstances so require."

Mr. El-Erian's proposal was adopted by 13 votes to 1, with 3 abstentions, subject to drafting changes.

ADDITIONAL ARTICLE PROPOSED BY MR. BARTOS

67. Mr. BARTOS said that according to current practice all the documents relating to an arbitral tribunal's proceedings remained with the president of the tribunal. That practice could give rise to difficulties. In the first place, those documents might be required later for the purpose of an application for the annulment or for the revision of the award. In the second place, the records of the proceedings were of interest to the international community and to jurists.

68. He therefore proposed that an additional article be introduced relating to the deposit of the documents relating to the tribunal's proceedings. Subject to final drafting by the Drafting Committee, he proposed that the new article should be drafted along the following lines.

69. A first paragraph would state that if, after the expiry of the time-limit prescribed in article 35, paragraph 1, the arbitral tribunal had not received a request for interpretation, or, having received such a request, had given a decision thereon, the said tribunal would deposit all its documents with the Permanent Court of Arbitration, except where the parties had by agreement designated another depositary.

70. A second paragraph would state that the president of the tribunal would be responsible for carrying out the provisions of the previous paragraph.

71. Lastly, provision could also be made for the agreement of the parties concerning the disclosure or non-diclosure of the proceedings to third parties.

72. Sir Gerald FITZMAURICE said that the proposal made by Mr. Bartos was in principle an excellent one. It was also desirable that arbitration proceedings should be accessible to persons who might wish to inspect them for purposes of study. There might, however, be cases in which the parties wished to keep the proceedings private and it was therefore desirable to include some provision to cover that situation.

73. Mr. FRANÇOIS said that the fact that the documents relating to arbitral proceedings were deposited with the archives of the Permanent Court of Arbitration did not in any way imply that they would be made available to persons wishing to inspect them. In fact, whenever in his capacity as Secretary-General of that Court he received a request for the inspection of arbitral proceedings kept in those archives, he would transmit the request to the president of the arbitral tribunal concerned or to the parties.

74. The parties to a dispute were, of course, free to agree that the documents relating to the arbitration should remain secret after they had been deposited with the Permanent Court of Arbitration, and the Court would naturally respect the agreement of the parties in that regard.

75. Mr. LIANG, Secretary to the Commission, said that if the parties agreed to deposit the documents relating to the proceedings with the Permanent Court of Arbitration, it was desirable to make those documents available for publication. The publication of contemporary awards would help to enrich the contents of the *Reports of International Arbitral Awards*, the first six volumes of which had already been published by the United Nations. The seventh volume was being printed.

76. With regard to the additional article proposed by Mr. Bartos, he said it was perhaps desirable that it should be drafted in terms which did not suggest that there was any obligation to deposit the documents with the Permanent Court of Arbitration, or indeed with any third party. The parties to a case might feel that the documents relating to it were of an absolutely confidential character and hence might not wish to deposit them with a third party at all.

77. Mr. SANDSTRÖM said that the proper context for the article proposed by Mr. Bartos might be the second, or optional, part of article 2, where it could be stated that the parties could, if they so desired, include a provision in the *compromis* referring to the deposit of the documents relating to the proceedings and their publication or non-publication.

78. Mr. BARTOS said that he would submit at the next meeting a formal proposal taking into consideration the suggestions made by Sir Gerald Fitzmaurice and the Secretary to the Commission. His only purpose was to include a provision concerning the custody of the documents relating to arbitral proceedings.

The meeting rose at 1 p.m.

448th MEETING

Thursday, 22 May 1958, at 9.45 a.m.

Chairman: Mr. Radhabinod PAL.

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

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

ADDITIONAL ARTICLE PROPOSED BY MR. BARTOS *(continued)*

1. Mr. BARTOS introduced the following draft of the additional article proposed by him (447th meeting, paras. 68-72):

> "If, after the expiry of the time limit prescribed in article 35, paragraph 1, the arbitral tribunal has not received a request for interpretation, or, having received such a request, has given a decision thereon, the said tribunal shall, with the consent of the parties, deposit all its documents with the registry of the Permanent Court of Arbitration, unless the parties have by agreement designated another depositary.