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Summary record of the 443rd meeting

Topic:
Arbitral Procedure

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paragraph 2, would be dealt with later, in connexion with the articles relating to the award.

ARTICLE 14

60. Mr. SCELLE, Special Rapporteur, recalled Sir Gerald Fitzmaurice's suggestion (434th meeting, para. 54) that the provisions in the draft which related to questions of general principle should be removed from the body of the text. In Mr. Scelle's view, article 14 was one such provision and might well be placed in a preamble along with the first three paragraphs of article 1 and, possibly, a provision stating explicitly that all the succeeding rules were optional. There was, however, no reason why the Commission should not vote on the substance of article 14, on the understanding that its place in the draft would be decided later.

On that understanding, article 14 was adopted unanimously.

ARTICLE 15

61. Mr. SCELLE, Special Rapporteur, pointed out that articles 15 to 19 had been added in response to certain comments made in the Sixth Committee during the eighth session of the General Assembly, where a number of Governments had criticized the 1953 draft [2] on the ground that what purported to be a draft on arbitral procedure contained a great many provisions which did not relate to procedure at all and omitted much that had a direct bearing on procedural questions. Articles 15 to 19 related, however, for the most part, to points which the Commission had regarded as so self-evident or universally recognized as not to require mention. That being so, he hoped they would not give rise to much discussion.

62. Mr. VERDROSS proposed that in article 15 the word " sovereign " be replaced by the words " head of State ".

63. Mr. EL-ERIAN supported Mr. Verdross' proposal, which would be in accordance with what the Commission had decided at the ninth session in connexion with the draft on diplomatic intercourse and immunities.

64. Mr. BARTOS also supported the proposal. He doubted, however, whether it was in keeping with the modern view of the functions of the head of a State to make him solely responsible for settling the arbitral procedure in the event of his being chosen as arbitrator — unless, of course, it was so agreed in the *compromis*.

65. Mr. MATINE-DAFTARY said he also had doubts about the desirability of retaining article 15 but agreed that, if it was retained, the word " sovereign " should be replaced by the words " head of State ".

66. Mr. LIANG, Secretary to the Commission, thought it was extremely doubtful whether in cases where a sovereign had been chosen as arbitrator, the parties had retained no say at all in settling the arbitral procedure. If, on the other hand, all that article 15 meant was that in the absence of any agreement between the parties concerning the arbitral procedure, or if the rules laid down by them were insufficient, the sovereign or head of State should make his own rules of procedure or add to them as necessary, that situation appeared to be already covered by the text adopted for article 13, paragraph 1.

67. It was moreover an unquestionable fact that it was now rare for heads of State to be chosen as arbitrators in international proceedings.

68. Mr. TUNKIN said he doubted whether article 15 was compatible with the modern principles of international law, and in particular with the principle of the equality of States. Surely, the head of a third State could not be regarded as superior to the two States directly concerned in the dispute. Naturally they could leave it to him to settle the entire procedure if they wished, but that was a matter of courtesy and not of law.

69. Mr. PADILLA NERVO, Mr. ZOUREK and Mr. AGO agreed that article 15 should be deleted for the reasons given by previous speakers.

70. Mr. SCELLE, Special Rapporteur, said he had no objection to the deletion of article 15 if the majority of the Commission so desired but would merely point out that if there was any custom in international arbitration which was hallowed by long-established usage it was the custom that when a sovereign was chosen as arbitrator, it should be left to him to settle the arbitral procedure.

It was unanimously agreed to delete article 15.

The meeting rose at 1 p.m.

443rd MEETING

Wednesday, 14 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 16

Article 16 was adopted unanimously.

ARTICLE 17

1. Mr. SCELLE, Special Rapporteur, replying to questions by Mr. FRANÇOIS, Mr. MATINE-

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

DAFTARY and Mr. AGO, explained that all that was meant by the second sentence of paragraph 5 of article 17 was that neither the questions put nor the remarks made during the hearing were to be regarded as prejudging the way in which the members of the tribunal would vote at the time of the award ; that the reason why paragraph 3 referred only to oral submissions was that written submissions were dealt with in article 18 ; and that there was no danger of paragraph 3 being invoked by agents or counsel who wished to present further evidence after the proceedings had been declared closed, since it must be read in conjunction with the other relevant provisions in the draft.

2. Mr. LIANG, Secretary to the Commission, thought that the Drafting Committee should pay particular attention to the English text of article 17. For one thing, he was doubtful whether the part played by agents in the proceedings could be properly described as that of " intermediaries " between the tribunal and the parties.

3. More generally, he thought it would improve the structure of the model draft if the provisions which had figured in the 1953 draft [1] were kept together and the rules of a purely routine nature, which had been added in deference to the views of certain Governments, relegated to a separate part, if it was desired to insert them at all.

4. Mr. TUNKIN, quoting the French text, wondered whether there was not some repetition as between article 17, paragraph 4, and article 22.

5. Sir Gerald FITZMAURICE, referring to the English text, suggested that whereas article 22 dealt with incidental or additional claims or counter-claims, article 17, paragraph 4, clearly dealt with the main claim.

6. Mr. ZOUREK drew attention to a discrepancy between the two texts: whereas the French text referred to " *incidents* " in article 17, paragraph 4, and " *demandes incidentes* " in article 22, the English text referred to " points of law " in the former context and " incidental claims " in the latter.

7. Mr. MATINE-DAFTARY pointed out that the comma should be deleted after the word " *demandes* " in the French text of article 22, since *demandes incidentes* did not form a third category in addition to *demandes additionnelles* and *demandes reconventionnelles,* but was a general term embracing the other two.

Article 17 was adopted on the understanding that the Drafting Committee would pay close attention to the questions referred to, including the necessity of bringing the English text into line with the French.

ARTICLE 18

8. Mr. SCELLE, Special Rapporteur, introducing article 18, said that the last part of paragraph 2 meant that nothing which was not duly submitted to the tribunal could be taken into account by it in arriving at its award. It would be noted that paragraph 3, which gave the tribunal the power to set the *compromis* aside in order to arrive at a decision, was fully consistent with long-established practice.

9. Sir Gerald FITZMAURICE said the fact that certain Governments had suggested the inclusion of articles 15 to 19 was not in itself sufficient reason for including them, if the Commission had good grounds for not doing so. The Commission could simply state in the commentary that it had considered the arguments adduced in the General Assembly but still felt it was unnecessary to include provisions which related to what had become largely matters of common form and really went without saying. Moreover, much of the wording was taken from The Hague Convention of 1907 [2] and consequently had an old-fashioned ring and would look strangely out of place beside the remainder of the draft.

10. Mr. SANDSTRÖM said that Sir Gerald's last point could be clearly illustrated by comparing the wording used in article 18 with the text of Article 43 of the Statute of the International Court of Justice. He agreed that most of articles 15 to 19 might well be deleted but would be in favour of retaining paragraph 3 of article 18, thought it should be made clear that it did not apply to the time limit which the parties had fixed for the actual rendering of the award.

11. Mr. FRANÇOIS said he was inclined to favour the retention of articles 15 to 19 in order that the model draft might form a self-contained whole which States could use without having to refer to other instruments.

12. Mr. ZOUREK agreed that if the articles in question were deleted the draft would lose much of its value, since it would no longer fully meet the needs of the parties. There was, moreover, some force in the contention that a draft on arbitral procedure should not omit the accepted rules on procedural questions, even if they sometimes appeared self-evident. Provided that the Commission agreed on the substance, it could be left to the Drafting Committee to bring the language up to date, referring in that connexion to the corresponding provisions in the Statute and Rules of Court of the International Court of Justice.

13. Mr. BARTOS agreed that it would be sufficient if the Drafting Committee brought the language of articles 15 to 19 up to date.

14. With regard to the words " and, if necessary, of replies " in paragraph 2 of article 18, he inquired who was to be the judge of whether replies were necessary

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

[2] Convention for the Pacific Settlement of International Disputes, The Hague, 1907. See *The Reports to the Hague Conferences of 1899 and 1907,* James Brown Scott (ed.) (Oxford, Clarendon Press, 1917), pp. 292-309.

or not; the point was one which had given rise to some difficulty in the past.

15. With regard to paragraph 3, he suggested that the words " on its own initiative or at the request of either party " be inserted after the words " the tribunal ".

16. Mr. SCELLE, Special Rapporteur, accepted that suggestion.

17. Referring to Mr. Bartos' question concerning paragraph 2, he said it was normal practice to permit the right of reply, but if the right was abused the tribunal should be able to insist that the oral proceedings commence without further delay.

18. Mr. AGO suggested that if the Commission wished to retain articles 15 to 19, as he thought it should, it should instruct the Drafting Committee not only to bring the language up to date but also to complete the text by ensuring that all the steps in the procedure were adequately covered, in order that States could use the draft as a whole, as Mr. François had suggested, without having to refer to other instruments.

19. Mr. MATINE-DAFTARY supported Mr. Ago's suggestion.

20. Mr. SCELLE, Special Rapporteur, thought that the Commission should at least take a decision regarding article 18, paragraph 3. In his view the tribunal should be free to refuse to extend the time limit for rendering the award, even if the parties agreed to extend it.

21. Mr. ZOUREK observed that that point was covered by article 28; as Mr. Sandström had pointed out, article 18, paragraph 3, referred only to the time limits fixed for the completion of the various stages in the procedure.

22. Mr. SCELLE, Special Rapporteur, thought that in that case paragraph 3 might perhaps be omitted altogether.

23. Sir Gerald FITZMAURICE disagreed, since the question of time limits in the various stages of the procedure gave rise to frequent difficulty and should be dealt with if the Commission was aiming at a complete set of rules.

24. Mr. AMADO, Mr. BARTOS and Mr. AGO agreed that article 18, paragraph 3, should be retained, the last-named adding that the text would have to be modified, however, since the time limit might be fixed not in the *compromis* but elsewhere.

The Commission decided to retain the substance of article 18, paragraph 3.

25. Mr. EL-ERIAN thought that, in addition to what Mr. AGO had previously suggested, the Drafting Committee might be authorized to omit such general provisions, for example article 18, paragraph 1, as in its opinion were not needed for the purposes of a complete code.

26. Mr. TUNKIN thought it would be sufficient to instruct the Drafting Committee to bring the text of articles 15 to 19 into line with current practice.

After further discussion, it was agreed to refer article 18 to the Drafting Committee for redrafting in the light of the discussion.

ARTICLE 19

27. Mr. SCELLE, Special Rapporteur, introducing article 19, said that the second sentence in paragraph 1 could equally well be put in another form: " It shall be public unless the tribunal, with the consent of the parties, decides otherwise ".

28. Mr. BARTOS suggested substituting the words " the secretary or secretaries " for the word " secretaries " in paragraph 2 of the article.

29. Mr. TUNKIN considered it unnecessary to retain paragraph 2 of the article. He suggested that the wording of the second sentence of paragraph 1 should be modelled on that of Article 46 of the Statute of the International Court of Justice.

30. Mr. SANDSTRÖM observed that, whereas it was in the interests of justice that court proceedings should be public, it was often advisable that the hearings of an arbitral tribunal should be held in private. Parties to a dispute often chose the course of arbitration precisely in order to avoid publicity.

Article 19 was adopted unanimously.

ARTICLE 20

31. Mr. BARTOS suggested that the Special Rapporteur and the Drafting Committee should consider inserting a provision based on article 48, paragraph 2, of the Rules of the International Court of Justice, which might read as follows: " The other party shall have an opportunity of commenting upon the new documents and of submitting documents in support of its comments ". It was not sufficient for the new documents simply to be " made known " to the other party.

32. Mr. AGO proposed that the word " written " be inserted before " pleadings " in the first line of the article.

It was so decided.

33. Mr. AMADO expressed approval of the article, which was closely modelled on articles 67 and 68 of The Hague Convention of 1907.

34. Sir Gerald FITZMAURICE said that it was most desirable that, save in quite exceptional circumstances, when the written proceedings were closed they should be finally closed. From his own experience it was most disconcerting if new material was produced just before the opening of the oral proceedings, leaving the other party scant time in which to check it and possibly produce counter-material.

35. It was not clear from the words " new papers and documents " whether the material was new simply because the party had not seen fit to produce it before or because it had only just come to light. The paragraph

should be more strictly worded so as to prohibit the production by a party after the pleadings had closed of material known to it before. On the other hand, if the material had just come to light, there might be a strong case for allowing it to be produced. He suggested adding the words " In exceptional circumstances " at the beginning of the second sentence in paragraph 1 and a proviso at the end of the paragraph stipulating that it must have been impossible for the parties to produce the documents before the closure of the pleadings.

36. Such provisions would place no real hardship on the party concerned since it would be perfectly at liberty to refer to the new material and even quote from the documents during the oral proceedings.

37. Mr. SCELLE, Special Rapporteur, suggested that the Drafting Committee should be asked to consider how the very delicate question raised by Sir Gerald Fitzmaurice could best be dealt with in the article. The adjective " new " could be replaced by the expression " not produced for the tribunal ".

38. Mr. AMADO thought that the proviso that the " new " documents must have been made known to the other party was an adequate safeguard.

39. The CHAIRMAN pointed out that it would be in conformity with the practice in the legal systems of many countries to limit the term " new papers and documents " to mean papers and documents not available for earlier production, as Sir Gerald Fitzmaurice had suggested. There would be difficulty, however, with regard to the use during oral proceedings of the contents of documents which had not been produced. Many systems prohibited such use.

40. Mr. MATINE-DAFTARY agreed with Sir Gerald Fitzmaurice. Parties must not be allowed to produce trump cards from their sleeves at the last moment.

41. Mr. AGO thought that the Drafting Committee should be asked to find a wording that would restrict the possibilities open to the parties in the matter of producing new material after the written proceedings were closed. Such occurrences were far too common.

42. He would also prefer a more precise expression than " new papers and documents " which would exclude, for example, legal or scientific opinions. To produce scientific opinions, which were often very lengthy, after the written proceedings were closed, and sometimes immediately before the opening of the oral proceedings, could only be described as an indirect means of unlawfully prolonging the written proceedings.

43. Mr. BARTOS, referring to article 48 of the Rules of the International Court of Justice, said that it was designed to avoid the danger of a party's applying for a revision of a judgement on the ground that it had been unable to produce relevant evidence. Under that article, if the other party did not object to the production of the new document it was held to have given its consent. If that party declined to consent, it was for the Court to decide, and that provided an opportunity of checking whether the material really could not have been produced before. However, in the three cases with which he had been recently connected, the other party had not objected.

44. He was generally in favour of article 20, always provided that the other party was given an opportunity of commenting on the new document and producing counter-material.

45. Sir Gerald FITZMAURICE said that the provision that the other party might object to the production of the new material was in practice no safeguard whatsoever. Such documents were deposited with the registrar, and the tribunal, which had the right to see every document connected with the case, was practically bound to see them. Once the members had seen them, however, it would be extremely difficult for them to shut out of their minds evidence of which they had knowledge but which had not been allowed. That was the chief reason why parties so rarely objected to the production of new material by the other party. However reluctant they might be to accept it, they realized that their opposition would make little practical difference and would only put them in a bad light.

46. That did not mean that the production of new material should therefore be permitted. Written proceedings lasted from several months to as much as two years and there was adequate time for either party to produce all the material that was relevant. The late submission of material, incidentally, was not always deliberate ; parties were sometimes rather remiss in sifting all the documentary evidence at their disposal.

47. He did not propose that paragraph 1 should be entirely redrafted but thought it should be reinforced on the lines he had previously suggested.

48. Mr. YOKOTA said that it was necessary to place some restriction on the submission of new documents. There was a certain similarity between that case and the one covered by article 39, dealing with an application for the revision of an award on the ground of the discovery of some new fact, although the provisions were naturally more strict in the latter case.

49. Mr. SCELLE, Special Rapporteur, said that there was no similarity between articles 20 and 39. Article 20 called for the production of all documents before the pleadings were declared closed and the award was rendered ; article 39 concerned the revision of an award.

50. Mr. EDMONDS said that the discussion related to a subject which had attracted the attention of lawyers throughout the world. In many countries, efforts were being made to simplify judicial procedure and to avoid an unnecessary accumulation of documents, sa that courts could reach their decisions more speedily.

51. The Special Rapporteur or the Drafting Committee could perhaps give expression in the draft to the

general principle that no new document should be produced at a late stage of the proceedings without sufficient reason for the delay and that if a document was presented in those circumstances by one of the parties, the other party should have the right to submit its answer.

52. The CHAIRMAN said that a problem of substance had arisen concerning the interpretation of the word " new " in the second sentence of article 20, paragraph 1. He put to the vote the interpretation according to which a new document was a document not available for production before the closure of the pleadings.

That interpretation was rejected by 8 votes to 7, with 3 abstentions.

53. The CHAIRMAN said that the term " new papers and documents " would therefore be construed to mean material not in fact produced, even though it could have been produced, before the close of the pleadings.

54. Sir Gerald FITZMAURICE said that, in view of the Commission's decision, the word " new " should be replaced by the word " further ".

55. The CHAIRMAN said that Sir Gerald's suggestion would be considered by the Drafting Committee.

56. Mr. AMADO said that the provisions of article 20 could be traced back to The Hague Convention of 1907 ; they had not given rise to any practical difficulties.

57. Mr. LIANG, Secretary to the Commission, said that, notwithstanding their origin, the provisions of article 20, paragraph 1, required careful consideration. The two sentences of that paragraph appeared inconsistent. The first sentence gave the tribunal the right to reject new papers and documents in certain circumstances. The second sentence gave the tribunal powers to take into consideration new papers and documents. The tribunal, however, would already appear to have those powers under the first sentence, which did not make it imperative for it to reject all new papers and documents.

58. Mr. AMADO said that the two sentences of article 20, paragraph 1, did not refer to the same case. The first sentence referred to the submission of new papers and documents by one of the parties without the consent of the other. The second sentence referred to new papers and documents which were brought to the notice of the tribunal by one of the parties and which had been made known to the other party.

59. Sir Gerald FITZMAURICE said that the objection was not so much to the actual production of new documents as to the time and the manner of their submission.

60. If the party which made the last written statement at that late stage produced new material, including perhaps consultations, the other party, which had to make the first oral statement, might well not have enough time to prepare an adequate reply to the new material in question. That situation frequently occurred in practice and it was desirable to prevent it.

61. Since it had not been possible to define the documents that could be produced by one of the parties at a late stage in the proceedings, he proposed that a provision should be inserted along the following lines : " In such cases, the other party shall have the right to require a further extension of the written pleadings so as to be able to give a reply in writing ". It was not sufficient to make the new material known to the other party. That party had to be given enough time to conduct the necessary research in order to prepare a written reply.

62. Mr. AGO said that Sir Gerald Fitzmaurice had drawn attention to the crux of the matter.

63. In practice, if one of the parties produced a new document, however late in the proceedings, the other party felt obliged to refrain from objecting, for fear of appearing to be uncertain of its case. It was therefore essential to give that party the necessary time to prepare an adequate reply to the new material, if the equality of the parties was to be preserved.

64. Mr. SCELLE, Special Rapporteur, said that the right expressed in Sir Gerald Fitzmaurice's proposal was self-evident. He would not, however, oppose the insertion of the proposed provision.

65. Mr. ZOUREK said that the introduction of the provision proposed by Sir Gerald Fitzmaurice would discourage the undesirable practice of producing new documents at a late stage of the proceedings.

66. The CHAIRMAN put to the vote Sir Gerald Fitzmaurice's proposal (para. 61 above), subject to drafting changes.

The proposal was adopted by 16 votes to none, with 2 abstentions.

Article 20, as a whole, as amended, was adopted by 17 votes to none, with 1 abstention, subject to drafting changes.

ARTICLE 21

67. Mr. SCELLE, Special Rapporteur, introduced article 21 of the model draft. In the French text of paragraph 1, the word " *maître* " would be replaced by the word " *juge* ", for the sake of concordance with the Commission's decision concerning article 10.

68. Mr. EDMONDS said that article 21, paragraph 4, appeared to make the decision to visit the scene of the case conditional on the request of one of the parties. He asked the Special Rapporteur whether there was any reason for not permitting the tribunal to do so of its own motion.

69. Mr. BARTOS said that he agreed with Mr. Edmonds. It was undesirable to limit the powers of the tribunal in that respect.

70. Mr. LIANG, Secretary to the Commission, said that article 15, paragraph 4, of the 1953 draft [3] made a visit to the scene conditional on the requesting party's offering to pay the resulting costs. It was therefore logical to specify that the visit would be ordered " at the request of either party ". In the present draft, the reference to costs having been dropped, there appeared to be no reason to require such a request.

71. Mr. SCELLE, Special Rapporteur, said that there appeared to be no objection to the deletion of the words " At the request of either party ".

72. Mr. MATINE-DAFTARY said that he could not vote in favour of article 21 in its present form.

73. Paragraph 1 provided that the tribunal would be the judge of the admissibility of the evidence presented to it. That provision gave excessive powers to the tribunal and should be deleted; it was sufficient to make the tribunal the judge of the weight of the evidence placed before it.

74. Paragraph 2 appeared to give the tribunal the unusual power to order the parties to produce evidence.

75. Lastly, he could not understand why a particular type of evidence was singled out for reference in paragraph 4. He wondered why the text did not deal also with the other types of evidence, or with evidence in general.

76. Mr. ZOUREK said that a special reference to the procedure envisaged in article 21, paragraph 4, was understandable in the 1953 draft because of the special problem of costs.

77. On the whole, the corresponding text of the 1953 draft was preferable to the present text of article 21, paragraph 4.

78. Mr. SCELLE, Special Rapporteur, said that the question of costs had to be decided ultimately by the tribunal in its award. It was undesirable, from the point of view of the equality of the parties, that a party requesting a specific measure for obtaining evidence should have to bear the costs which that measure involved.

79. In reply to Mr. Matine-Daftary, he said that the question of the admissibility of evidence could only be decided by the tribunal. The tribunal could state that a particular item of evidence was inadmissible or irrelevant to the case. As to article 21, paragraph 2, its provisions did not empower the tribunal to oblige parties to produce evidence; they simply stated that, if one of the parties failed to make evidence available, the tribunal would take note of that failure.

The meeting rose at 1.5 p.m.

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

444th MEETING

Friday, 16 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 21 *(continued)*

1. Mr. ZOUREK said that his doubts concerning the omission of a reference to the question of costs in paragraph 4 of article 21 had not been dispelled. He also still felt that it was necessary to maintain a reference to the decision of the tribunal being made at the request of either party. If, however, the Special Rapporteur did not agree to his suggestions, he would make no formal proposal.

2. Mr. TUNKIN said that, in accordance with article 2, the parties could lay down in the *compromis* rules concerning the admissibility of evidence. In order, therefore, to bring the provisions of paragraph 1 of article 21 into line with those of article 2, he suggested that, at the beginning of that paragraph, a phrase along the following lines should be inserted: " Unless otherwise agreed by the parties in the *compromis* . . ."

3. Article 21, paragraph 3, gave the tribunal the power to call for any type of evidence it might deem necessary. That provision was much too broad; he suggested that the language of Article 49 of the Statute of the International Court of Justice should be used instead. That article empowered the Court to call upon the parties " to produce any document or to supply any explanations ". Similar language was used in article 68 of The Hague Convention of 1907.[1]

4. He agreed with Mr. Zourek's remarks on paragraph 4.

5. Sir Gerald FITZMAURICE said that the reference in article 21, paragraph 1, to the admissibility of evidence was necessary. There was a clear distinction between the admissibility and the weight of the evidence submitted to a court and that distinction was well known both to international and to domestic procedure. There were circumstances in which it was desirable to rule out the submission of certain evidence altogether.

6. Paragraph 3 did not appear to add much to the provisions of paragraph 2, which covered both applications of the parties to submit evidence and measures ordered by the tribunal and connected with the production of evidence. The redundancy could

[1] Convention for the Pacific Settlement of International Disputes, The Hague, 1907. See *The Reports to the Hague Conference of 1899 and 1907*, James Brown Scott (ed.) (Oxford, Clarendon Press, 1917), p. 304.