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Summary record of the 187th meeting

Topic:
Arbitral Procedure

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82. He preferred to place his confidence in the good sense of the parties, and would again vote against paragraph 2.

83. Mr. KOZHEVNIKOV said that he would be prepared to accept paragraph 2 in the light of the fact that the provision relating to the choice of the arbitrators was circumscribed by the opening clause. The expression "due regard" was clear and far-reaching.

84. The CHAIRMAN agreed with Mr. Kozhevnikov, and considered that paragraph (3) of the Comment should be slightly modified, since the reference therein to the technical nature of the issues involved was somewhat restrictive, and would, by implication, exclude the choice of sovereigns as arbitrators.

Faris Bey el-Khouri's proposal that paragraph 2 be deleted was rejected by 6 votes to 2, with 4 abstentions.

85. Mr. YEPES proposed that the word "*des*" should be substituted for the word "*les*" in the second line of the French text; the second clause would accordingly read: "*... les arbitres devraient être choisis parmi des personnes ...*"

86. Mr. ALFARO considered that the word "should" must be rendered in French by the word "*doivent*". He also supported the United States suggestion that the word "however" (*toutefois*) be deleted.

Mr. Alfaro's proposal that the word "doivent" *be substituted for the word* "devraient" *was adopted by 4 votes to 3, with 5 abstentions.*

87. The CHAIRMAN *noted* that the Commission agreed to adopt the United States suggestion that the word "however" (*toutefois*) be deleted.

Paragraph 2 of article 4 was adopted, as amended, by 6 votes to 2, with 3 abstentions.

Article 4 was adopted as amended by 6 votes to 1, with 5 abstentions.

88. After some discussion on the comments appended to the text and the Commentary prepared by the Secretariat (A/CN.4/L.40),

It was agreed that further consideration of the question be deferred.

The meeting rose at 1.05 p.m.

187th MEETING

Friday, 5 June 1953, at 9.45 a.m.

CONTENTS

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. Radhabinod PAL, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Arbitral procedure (item 1 of the provisional agenda) (A/2163, A/CN.4/68 and Add.1, A/CN.4/L.40) (*continued*)

1. The CHAIRMAN said that, before asking the Commission to proceed with item 1 of the provisional agenda, he would suggest that it hold another private meeting after the plenary meeting on the afternoon of Monday, 8 June, in order to conclude its consideration of certain administrative matters.

It was so agreed.

2. The CHAIRMAN, continuing, informed the Commission that he would shortly submit a tentative time-table for the work of the fifth session, and would propose that, after considering that time-table the Commission adopt its provisional agenda (A/CN.4/62).[1]

3. So far the Commission had made but slow progress, and he would urge members not to re-open issues which had already been discussed two, if not three, times. It might be possible to conclude consideration of the draft on arbitral procedure in three or four meetings.

4. He invited members to take up article 5 of the draft on arbitral procedure.

ARTICLE 5

5. Mr. SCELLE (Special Rapporteur) said that in his view the United States Government's comment (A/CN.4/68, No. 9 or A/2456, Annex I, No. 10) was not acceptable, since it was contrary to the Commission's conception of the "immutability" of a tribunal once set up. According to the United States Government, an arbitrator might be replaced during the interval between the setting up of the tribunal and the beginning of the judicial proceedings. He would submit that once an arbitrator had been nominated, he represented the authority of the tribunal — he was, in other words, a *juge commun* — and must function as such from the time of his nomination until the rendering of the award.

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[1] See *supra*, 184th meeting, footnote 3.

6. Mr. KOZHEVNIKOV considered that a proposal based on the United States Government's comment could be accepted, and formally moved the adoption of such a proposal. If an amendment to that effect were rejected, however, he would be able to accept article 5 on the understanding that paragraph 1 thereof was not to be interpreted as mandatory, but simply as a *desideratum.*

7. Mr. YEPES associated himself with Mr. Kozhevnikov's point of view and added that an arbitral tribunal only really began to operate when the pleadings had been lodged with the registrar of the tribunal and the judicial proceedings had begun; until then its existence was little more than theoretical.

8. Mr. LAUTERPACHT supported Mr. Scelle, and considered that to amend article 5 in the sense of the United States Government's comment would unnecessarily complicate matters and necessitate consequential changes in subsequent articles. Since cases might easily occur where there were no oral arguments at all, no good purpose would be served by such an amendment. Furthermore, the whole issue of the replacement of arbitrators was dealt with in articles 6-8.

9. Mr. YEPES proposed that an additional paragraph (3) be added to article 5, reading:

> "*Pour les effets de cet article l'on entend que la procédure commence lorsque les plaidoyers écrits ont été déposés.*"
>
> ("For the purposes of this article the proceedings shall be deemed to begin when the written pleadings have been lodged.")

10. Mr. SCELLE opposed Mr. Yepes' amendment, which would have the effect of splitting the functions of the tribunal into administrative and judicial. Such a distinction was quite impossible, since it might, for instance, lead to argument whether the hearing of witnesses fell into the administrative or the judicial category of functions.

11. Mr. AMADO agreed with Mr. Scelle, and held that the term "the beginning of oral arguments" in the United States comment was open to different interpretations.

12. Mr. ZOUREK said that his views coincided with Mr. Kozhevnikov's not only for practical reasons, but also because the latter's views were in accordance with the traditional conception and practice of arbitral procedure. He was unable to accept Mr. Scelle's view that arbitrators represented the authority of the tribunal, acting, as he had put it, as *juges communs.* A number of arbitration treaties provided that the arbitrators nominated by the parties should nominate another arbitrator to act as a "super-arbitrator"—a practice which vitiated Mr. Scelle's premise. He (Mr. Zourek) failed to see why a party should be prevented from replacing the arbitrator nominated by it, and was accordingly prepared to accept an amendment based on the United States proposal.

13. The CHAIRMAN, answering Mr. LAUTERPACHT, said that he assumed that Mr. Kozhevnikov was taking over the United States proposal; he had accordingly submitted an amendment to the effect that a party might, after the "proceedings" had begun, replace an arbitrator designated by it. That amendment being furthest removed from the original text, he would put it to the vote before Mr. Yepes' amendment.

Mr. Kozhevnikov's amendment was rejected by 6 votes to 2, with 3 abstentions.

Mr. Yepes' amendment was rejected by 6 votes to 1, with 4 abstentions.

Article 5 was adopted by 9 votes to none, with 2 abstentions.

14. Mr. KOZHEVNIKOV explained that he had voted in favour of article 5 in the light of his interpretation of paragraph 1 thereof.[2]

ARTICLE 6

15. The CHAIRMAN said that there were no comments by governments on article 6.

16. At the request of Mr. KOZHEVNIKOV, he put article 6 to the vote.

Article 6 was adopted by 8 votes to 2, with 1 abstention.[3]

17. Mr. ALFARO, on a point of order, asked whether the Commission intended to put to the vote those articles which had been adopted at the fourth session and which had given rise to no comments by governments. Surely the Commission's task was not to review the draft, but to consider the comments of governments and take decisions thereon.

18. Mr. SCELLE supported Mr. Alfaro.

19. Mr. KOZHEVNIKOV held that the Commission was engaged on its final reconsideration of the draft, and must therefore make its views absolutely clear. Furthermore, he would remind members that the Commission had already decided at its 185th meeting[4] that the draft should be considered article by article.

20. Mr. ZOUREK agreed with Mr. Kozhevnikov, and pointed out that the comments made by governments might necessitate consequential changes in articles other than those to which they directly related.

21. Mr. LAUTERPACHT supported Mr. Kozhevnikov and Mr. Zourek, pointing out that article 7, which was unsatisfactory as it stood, probably required considerable alteration. Each article must be taken on its merits, and given the Commission's *imprimatur.*

22. Mr. HSU suggested that only those articles which were actually amended need be put to the vote.

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[2] For discussion of para. 3 of article 5, see *infra,* 194th meeting, paras. 23-43.

[3] For further discussion of article 6, see *infra,* 192nd meeting, para. 58.

[4] See *supra,* 185th meeting, para. 34.

23. Mr. PAL, Faris Bey el-KHOURI and Mr. AMADO supported Mr. Kozhevnikov.

24. Mr. YEPES, supporting Mr. Scelle, held that the Commission was at the present stage applying the procedure laid down in paragraph (*i*) of article 16 of its Statute.

25. Mr. SCELLE said that in supporting Mr. Alfaro he might have been too affirmative. His intention was to ensure that the essential structure of the final draft remained intact. It was impossible at that stage to re-open the discussion on fundamental principles. There were, however, very important changes that would have to be considered. He himself would be submitting two new texts, and the United Kingdom Government's comments on the possibility of revision or annulment of an arbitral award (A/CN.4/68, No. 8 or A/2456, Annex I, No. 9), being contrary to the Commission's decisions, would necessarily have to be carefully considered. But he would urge members to refrain from raising the question of the guiding principles of arbitral procedure in connexion with each article.

26-27. After some further discussion, Mr. LAUTERPACHT moved that the Commission consider each article in the light both of the comments of governments and of those of members of the Commission and that a vote be taken on each article.

Mr. Lauterpacht's motion was adopted by 9 votes to none, with 2 abstentions.

Articles 7 and 8

28. Mr. SCELLE said that the comments of the Netherlands Government on article 7 (A/CN.4/68, No. 5 or A/2456, Annex I, No. 6) raised a number of difficult issues. The objections related mainly to paragraph 1, which stipulated that once the proceedings before the tribunal had begun, an arbitrator might not withdraw or be withdrawn by the government which had appointed him, save in exceptional circumstances and subject to the consent of the other members of the tribunal. Should, therefore, paragraph 1 be deleted, or should the last clause thereof — "and with the consent of the other members of the tribunal" — be replaced by a reference to the consent of the majority of the tribunal, or the consent of the other party? Provision was made in article 6 for filling vacancies which might occur normally. Article 7 was intended to cover the case of an arbitrator being withdrawn, without replacement, by the nominating government. What would be the position if that happened? Should the incomplete tribunal continue its proceedings, as provided for in paragraph 3?

29. Mr. LAUTERPACHT said that there might be excessive rigidity in a provision laying down that an arbitrator might never withdraw. He was aware of the concern felt by the special rapporteur about the possibility of an arbitrator's resigning under pressure from his government. However, paragraph 1 did not altogether forbid an arbitrator to withdraw. What it did forbid was resignation for insufficient reason, that was, resignation intended to frustrate the proceedings.

30. Otherwise, the Netherlands Government's objections to paragraphs 2 and 3 were well-founded. He agreed that it was inadmissible that the replacement of a member of the tribunal on wholly legitimate grounds should be made dependent on the unanimous concurrence of the other members. He was not sure of the precise meaning of the words "it [the tribunal] may decide ... to request his replacement." Would the request be addressed to the arbitrator, thus constituting an invitation to him to cease functioning, or to the governments concerned, with consequent uncertainty whether they would act on the request? What would be the position if the members of a tribunal composed of three arbitrators decided that one of them must withdraw, and then continued the proceedings and rendered the award upon the request of one of the parties? He doubted the wisdom of paragraph 2.

31. He believed that the appropriate solution would be to state that in the case of a withdrawal consented to by the tribunal, the vacancy should be filled in accordance with the provisions of article 6, that was, by the method laid down for the original appointment.

32. The CHAIRMAN, speaking as a Netherlands national, informed Mr. Scelle that the Netherlands Government was particularly anxious that an arbitrator's freedom to withdraw of his own free will should be safeguarded. The alternative — the case when an arbitrator was withdrawn by the government which had nominated him — was not a source of concern to the Netherlands Government, which would be satisfied by the deletion or amendment of the words "and with the consent of the other members of the tribunal", in paragraph 1.

33. Mr. SCELLE said that the possibility of a change in the composition of the tribunal by the will of one of the parties had been carefully studied by the Secretariat in its commentary to article 7 (A/CN.4/L.70), where a reference was made, *inter alia*, to the case of the *Hungarian Optants*. A truncated tribunal was not exceptional, but most of the precedents related to commissions which had been concerned with the interests and claims of individuals. In the case of the *Hungarian Optants*, in which the interests of States had been involved, the Council of the League of Nations had decided that, though it could not oblige the Hungarian Government to appoint a deputy arbitrator, it could itself appoint one. He would also refer to the advisory opinion of the International Court of Justice on the constitution of a tribunal of three arbitrators, when the Governments of Bulgaria, Hungary and Rumania had refused to appoint their representatives to the Treaty Commissions.[5]

34. He asked whether the Commission should provide that if an arbitrator withdrew, the tribunal could request his replacement and invite the International Court of Justice or its President to appoint another arbitrator in virtue of article 3 of the draft procedure. If it did so,

[5] *Interpretation of Peace Treaties, Advisory Opinion, I.C.J. Reports 1950*, p. 65.

however, the Commission would change the nature of the draft.

35. Mr. LAUTERPACHT agreed that when a government, regardless of the decision of the tribunal, withdrew the arbitrator it had appointed, the tribunal must continue to function.

36. Mr. YEPES proposed that the final clause in paragraph 1 — "and with the consent of the other members of the tribunal" — should be replaced by the following passage:

> "*Dans le cas de déport ou de retrait d'un arbitre, le tribunal doit être complété conformément aux dispositions de l'article 3, alinéa 2.*"
>
> ("Should an arbitrator withdraw or be withdrawn, the tribunal must be completed in accordance with the provisions of article 3, paragraph 2.")

37. Mr. SCELLE pointed out that that amendment would prejudge paragraphs 2 and 3.

38. Mr. AMADO expressed doubts about the possible interpretation of the words "in exceptional cases" in paragraph 1. How were such cases to be determined?

39. Mr. LIANG (Secretary to the Commission) said that three possibilities were envisaged in articles 5, 6 and 7: resignation, which was covered by article 6; withdrawal by the arbitrator himself; and withdrawal of the arbitrator by the designating government. The last issue was covered by article 7, and in part by article 5 as well. Paragraphs 1 and 2 of article 7 emphasized that it was inadmissible for a government to withdraw its arbitrator, but also referred by implication to voluntary withdrawal. It would seem to him to be more consistent with the general structure of the draft procedure to limit article 7 to enunciation of the principle laid down in paragraph 3 thereof, paragraphs 1 and 2 being either deleted or placed elsewhere.

40. Mr. PAL was prepared to accept Mr. Yepes' amendment.

41. Mr. LAUTERPACHT feared that that amendment would open the door to continuous sabotage on the part of a government which, having once withdrawn its arbitrator, would be free to designate another in accordance with article 3, and then withdraw him too. That was the very contingency that Mr. Scelle wished to avoid.

42. Mr. SCELLE pointed out that article 5, which was based on the principle of the "immutability" of the tribunal, must be kept in mind. According to paragraph 1 of article 3, the parties to an undertaking to arbitrate could only appoint arbitrators by mutual agreement. How, then, was it possible to concede that a government should impose its nominee on the tribunal?

43. Mr. LAUTERPACHT submitted that, according to the terms of article 3, each party was free to appoint its own arbitrator; mutual consent was required only for the appointment of the umpire.

44. Mr. SCELLE wished to emphasize the fact that the words "by mutual agreement" in paragraph 1 of article 3 meant that once the arbitrators had been designated they became arbitrators on behalf of both parties (*juges communs des parties*). He was aware that Mr. Amado was opposed to that view, but it was the one which had been incorporated in the draft procedures. Indeed, it represented one of the innovations in the draft.

45. Mr. ZOUREK could not agree with Mr. Scelle's view that the arbitrators must be appointed by agreement between the parties. Such a view was at variance both with the normal concept of arbitration and with precedent.

46. Mr. LAUTERPACHT asked how Mr. Scelle reconciled his view that the arbitrators were not appointed by the parties individually with the statement in article 7, paragraph 1, that: "Once the proceedings before the tribunal had begun, the arbitrator may not withdraw, or be withdrawn by the government which has appointed him. . . ." Once the arbitrators had been appointed they became what Mr. Scelle had described as *juges communs*. It would, however, be quite revolutionary and unnecessary to say that the arbitrators had not originally been appointed by the governments.

47. Mr. SCELLE asked whether Mr. Lauterpacht would maintain that arbitrators appointed by the International Court of Justice under article 3, paragraph 4, or by a third State, could be withdrawn at the will of the parties.

48. Mr. ZOUREK observed that article 5 covered the case of one of the parties replacing an arbitrator.

49. Mr. SCELLE observed that article 5 had been drafted in very categorical terms precisely because it formed part of a system based on the theory that the arbitrators could only be nominated by agreement between parties. The purpose of article 7 was to prevent one of the parties from arresting the proceedings by withdrawing an arbitrator on the grounds that it was free to do so in virtue of the fact that it had nominated him.

50. Mr. AMADO said that if the membership of a tribunal was incomplete, it ceased to be a tribunal.

51. Mr. SCELLE said that Mr. Amado's view evidently differed from that of the International Court of Justice in its advisory opinion on the interpretation of peace treaties with Bulgaria, Hungary and Rumania.

52. Mr. AMADO emphasized that an arbitral tribunal must be constituted in accordance with the will of the parties. The Commission was engaged, not in an academic exercise, but in the elaboration of a text capable of serving as the basis for a convention which would be acceptable to States and an effective instrument for international use. He could not therefore subscribe to Mr. Scelle's views.

53. Mr. SCELLE said that the Commission must not shirk the issue. The choice lay between allowing the tribunal to go on functioning even in the absence of

one or more of it members, or of stipulating that any vacancy must be filled either by agreement between the parties or by the procedure laid down in article 3.

54. The CHAIRMAN suggested that, as the Commission had no written amendment before it, further consideration of articles 7 and 8 be deferred until those members who wished to submit amendments had done so.

It was so agreed.

55. Mr. ZOUREK said that, as he had confined himself in the foregoing discussion to paragraph 1 of article 7, he wished to comment on paragraph 3. He could not regard an incomplete tribunal as a tribunal, and his view was confirmed by the International Court's advisory opinion on the interpretation of peace treaties with Bulgaria, Hungary and Rumania. Any other view, moreover, would be contrary to the entire theory of arbitration.

56. Mr. KOZHEVNIKOV said that the views expressed by Mr. Lauterpacht and Mr. Amado confirmed his opinion that the Commission would be unable to avoid discussing certain basic issues of principle.

57. Paragraph 1 of article 7 clearly demonstrated that, by departing too far from the traditional concept of arbitration, the Commission had run into an impasse. The General Assembly would find itself in a similar predicament.[6]

ARTICLE 9

58. Mr. SCELLE said that, as the Commission had decided to defer consideration of the text he had prepared for inclusion in article 3, dealing with cases when no *compromis* was needed, he would not take up the United Kingdom Government's comment on article 9 (A/CN.4/68, No. 8 or A/2456, Annex I, No. 9) at the present stage.

59. Taking the other comments in turn, he said that he was not in favour of the Netherlands proposal concerning the addition after sub-paragraph (*d*) of a clause reading: "The nature and the way of administering evidence to be offered to the tribunal", because that would repeat the provisions of article 15 and might give rise to confusion. On the other hand, he could accept that Government's suggestion that the words "a decision" be sustituted for the words "an award" in sub-paragraph (*f*).

60. The Brazilian Government had criticized sub-paragraph (*g*), implying that the word "law" was not broad enough and should be replaced by the words "principles and rules". He did not regard that criticism as justified, since the sub-paragraph in question referred to adjudication *ex aequo et bono*. The clause had been drafted in the most comprehensive terms.

61. Referring to sub-paragraph (*h*), he considered as valid the United States argument that it might be impractical in many instances for the parties to fix in advance a period within which awards must be rendered, and therefore suggested that the words "The time limit within which the award shall be rendered" should be deleted. That amendment was all the more necessary in view of the provisions of article 23, which might place the tribunal at the mercy of one of the parties if it failed to render the award within the period laid down in the *compromis*.

62. On his own behalf, he proposed the deletion from sub-paragraph (*i*) of the words "and the date of its first meeting", since that decision would have to be based on certain practical and administrative considerations, all of which might not be known at the time when the *compromis* was concluded.

The amendments accepted and proposed by the Special Rapporteur were approved.

63. Mr. LAUTERPACHT observed that, despite the rejection of the Netherlands proposal concerning the addition of a new clause after sub-paragraph (*d*), the parties would not be precluded from laying down certain stipulations about rules of evidence in the *compromis*.

64. Mr. AMADO agreed with the Special Rapporteur about the Brazilian Government's comment on sub-paragraph (*g*). However, he must point out that the scope of the tribunal's powers when judging in equity was open to question.

65. Mr. LIANG (Secretary to the Commission) said that the sub-paragraphs in article 9 dealt with matters of varying degrees of importance. It might be well to distinguish between the compulsory and the optional elements in a *compromis*.

66. Mr. SCELLE said that he would prefer article 9 to deal only with the obligatory elements in a *compromis*; otherwise one of the parties might succeed in indefinitely postponing the conclusion of a *compromis* by demanding agreement on additional points.

67. Replying to Mr. Amado's remarks about sub-paragraph (*g*), he said that if the parties could not agree as to the law to be applied in the case, the tribunal would be guided by Article 38, paragraph 1, of the Statute of the International Court of Justice.

68. Mr. AMADO considered the Secretary's observation to be extremely pertinent.

69. In general, he considered that to specify in detail what matters should be dealt with in the *compromis* would give rise to difficulties. It would have been preferable, therefore, to model article 9 upon article 25 of the General Act of 1928. He did not intend, however, to make a formal proposal to that effect.

70. Mr. SCELLE said that the Secretary's point might be met by substituting in the French text of the opening sentence, the words "doit spécifier" for the word "spécifie". No change would be required in the English text. He also proposed to adopt the Netherlands suggestions to say in sub-paragraph (*f*) "décisions" instead

[6] For further discussion of articles 7 and 8, see *infra*, 192nd meeting, paras. 61-88.

of "*jugements*" (A/CN.4/68, No. 5 or A/2456, Annex I, No. 6).

Those amendments were approved.

71. Mr. YEPES suggested that there was a contradiction between sub-paragraph (*h*), which left the parties free to make any special provisions concerning the procedure for revision of the award, and article 29, which established an obligatory procedure in the matter. If he were correct, the words "and any special provisions... and other legal remedies" should be deleted from the end of sub-paragraph (*h*).

72. Mr. SCELLE, accepting the amendment, drew Mr. Yepes' attention to paragraph (9) of the comment on article 9.

Mr. Yepes' amendment was adopted.

73. The CHAIRMAN put to the vote article 9 as a whole, and as amended.

Article 9, as a whole and as amended, was adopted by 10 votes tot 1.[7]

74. Faris Bey el-KHOURI explained that he had voted against article 9 because of the inclusion in sub-paragraph (*e*) of the words "Without prejudice to the provisions of article 7, paragraph 3", which would empower the tribunal to render an award in the absence of one of its members.

Article 10

75. Mr. SCELLE said that the provisions of article 10 were so imprecise as to be virtually meaningless. He therefore felt that a provision should be inserted in article 3 authorizing the tribunal to impose on the parties a time-limit for the conclusion of the *compromis,* if they had previously failed to reach agreement.

76. The CHAIRMAN suggested that consideration of article 10 might be deferred until article 3 was taken up.

77. Mr. LAUTERPACHT thought that unnecessary. The objections to article 10 could be disposed of forthwith by substituting in paragraph 2 the words "after a reasonable time draw up the *compromis*" for the words "draw up the *compromis* within a reasonable time which it shall itself determine".

78. Mr. SCELLE pointed out that Mr. Lauterpacht's amendment would not entirely remove the difficulty, since it would still not be known when the tribunal was to act.

79. Mr. LAUTERPACHT then suggested an alternative wording for his amendment, namely: "after fixing a time-limit for the purpose, draw up a *compromis*".

80. Mr. LIANG (Secretary to the Commission) said that it should surely be made clear that the tribunal could only draw up the *compromis* it the procedure laid down in paragraph 1 had failed.

81. Mr. AMADO observed that the expression "within a reasonable time" meant nothing to him.

82. Mr. SCELLE said that the Commission could specify a time-limit, for instance, three months, for the conclusion of the *compromis.* It would, however, be preferable to leave the decision to the tribunal, which would be in a position to evaluate the particular circumstances attendant upon each case. Sometimes a *compromis* could be concluded expeditiously. In other instances, more time was needed. Such a solution would also be more in conformity with normal judicial procedure, and in line, therefore, with his general aim.

83. Mr. LAUTERPACHT pointed out that article 10 must stipulate the period to be allowed to the parties for concluding a *compromis,* and the time when the tribunal was to act.

84. Mr. LIANG (Secretary to the Commission) suggested that article 43 of the Pact of Bogotá of 1948 might offer a solution.

85. Mr. PAL considered that it would be sufficient to redraft the final phrase of paragraph 2 to read:

> "then, in the event of the failure of the above procedure for drawing up the *compromis within a reasonable time,* the tribunal shall draw up *the compromis*"

That would leave enough latitude to the tribunal to decide according to the merits of the case what was a reasonable time.

86. Mr. KOZHEVNIKOV said that, as he had already explained, he could not support a provision that would allow the tribunal to draw up the *compromis,* which would be an entirely unjustified departure from the normal concept of arbitration.

87. Mr. SCELLE, referring to Mr. Pal's suggestion, said that he was in favour of the Commission specifying the time-limit whithin which the parties, and in case of their failure to do so, the tribunal, were to draw up the *compromis.*

88. Mr. ALFARO said that, for article 10 to be truly effective, the time-limits at every stage of the procedure must be clearly defined. Otherwise, it would be possible for one party to prolong the process interminably. He undertook to present a new text for article 10.[8]

The meeting rose at 1.5 p.m.

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[7] For further discussion of article 9, see *infra,* 192nd meeting, para. 89. See also *infra,* 193rd meeting, para. 42.

[8] For further discussion of article 10, see *infra,* 193rd meeting, para. 77.