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UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION

SUMMARY RECORD OF THE TWENTIETH MEETING

Held at Headquarters, New York,
on Thursday, 5 June 1958, at 10.40 a.m.

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President:	Mr. SCHURMANN	Netherlands
Executive Secretary:	Mr. SCHACHTER	

CONSIDERATION OF THE DRAFT CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (E/2704 and Corr.1, E/2822 and Add.1 to 6; E/CONF.26/2, E/CONF.26/3 and Add.1, E/CONF.26/4, E/CONF.26/7; E/CONF.26/L.16, L.28, L.49 and L.52) (continued)

Article VII

Mr. TODOROV (Bulgaria) explained that his delegation had found it necessary to vote against article VII because paragraph 1 of that article deprived the Convention of its universal character.

Article VIII

Mr. MACHOWSKI (Poland) asked for a separate vote on the words "referred to in article VII" appearing at the end of paragraph I of article VIII.

The proposal was rejected by 20 votes to 8, with 3 abstentions.

The PRESIDENT put paragraph 5 of the Polish amendments (E/CONF.26/7) to the vote.

The amendment was rejected by 21 votes to 9, with 5 abstentions.

Mr. GURINOVICH (Byelorussian Soviet Socialist Republic) said that he was prepared to vote in favour of the second paragraph of article VIII; unless a separate vote were taken, however, he would be obliged to vote against the article as a whole.

Mr. PSCOLKA (Czechoslovakia) asked for a separate vote on each paragraph of article VIII.

Paragraph 1 of article VIII was adopted by 25 votes to 8, with 2 abstentions.

Paragraph 2 of article VIII was adopted by 35 votes to none.

Article VIII as a whole was adopted by 27 votes to 7, with 2 abstentions.

Article IX

Mr. WORTLEY (United Kingdom) said that he wished to explain why article IX was necessary.

It was the United Kingdom's policy to promote the advancement towards self-government of the territories for which it was responsible; that policy was in conformity with the provisions of the United Nations Charter. Many of those territories already enjoyed a large degree of self-government. It was therefore

(Mr. Wortley, United Kingdom)

necessary for the United Kingdom, which was still responsible for their foreign relations, to consult them and obtain their consent before acceding in their name to international conventions. Article IX would make it possible for the United Kingdom to accede to the Convention on behalf of each territory which agreed to do so. Without the article in question, it would be necessary for the United Kingdom to wait until all the territories had given their consent before acceding to the Convention and it was even probable, in those circumstances, that it would find it impossible to become a party to the Convention. Thus the deletion of the clause referring to a territorial application article, far from broadening the applicability of the Convention, would in practice have the opposite effect. Moreover, a similar clause was included in a number of international agreements negotiated under the auspices of the United Nations, such as the 1956 Slavery Convention and the 1957 Convention on the Nationality of Married Women.

Mr. RAMOS (Argentina) said that he had no comments to make on article IX but wished to make the following declaration on behalf of his Government, with the request that it should be included in the final Act. "If another Contracting Party extends the application of the Convention to territories which fall within the sovereignty of the Argentine Republic, the rights of the Argentine Republic shall in no way be affected by that extension."

Mr. KESTLER FARNES (Guatemala) made the following statement on behalf of the Republic of Guatemala: "The Guatemalan delegation will vote in favour of article IX of the Convention on the express understanding that it cannot affect or detract from the rights of Guatemala over Belize (improperly called British Honduras) if the Power occupying that part of Guatemala's national territory should at any time extend this Convention to that territory.

The Guatemalan delegation accepts the inclusion of this article with this express reservation, which it will make, if necessary, on signature of the Convention."

Mr. BAKHTOV (Union of Soviet Socialist Republics) said that the colonial clause in article IX made it possible for certain States not to apply the Convention to their colonies or dependencies, which was contrary to the directives which the General Assembly had given the Commission on Human Rights

(Mr. Bakhtov, USSR)

in 1950, in resolution 422 (V). His delegation would therefore vote against article IX.

Mr. HERMENT (Belgium) said that he would vote in favour of article IX for the reasons already given by the United Kingdom representative. The legal rules in force in Belgium were not automatically applicable to the overseas territories. Various Conventions signed by Belgium had later been extended to the overseas territories.

Mr. PSCOLKA (Czechoslovakia) opposed the colonial clause in article IX. It was designed to prevent a large number of territories from benefiting from a multilateral agreement, such as the Convention, which should apply to the whole world.

Mr. SAVCHENKO (Ukrainian Soviet Socialist Republic) said that he too would vote against article IX, which enabled certain States arbitrarily to decide on the applicability of the Convention and which reflected the subjection of the colonies to the metropolitan countries.

Mr. MACHOWSKI (Poland) said that he too was unable to accept the wording of article IX. Although the Convention should represent a step forward with respect to previous treaties, an attempt was being made to include in it the colonial clause, an obsolete provision which took no account of the movement of peoples towards independence. Poland was all the more anxious that the new Convention should apply to the Non-Self-Governing Territories because it was developing its relations with those territories.

Mr. GEORGIEV (Bulgaria) associated himself with the delegations which had spoken against the colonial clause.

Mr. ARNAUD (France) said that he was in complete agreement with the United Kingdom representative.

Mr. GURINOVICH (Byelorussian Soviet Socialist Republic) said that he agreed with the delegations which considered that the provisions of article IX should not be included in the Convention. The article gave the colonial Powers the arbitrary right to apply or not apply the Convention to any territory. From what the United Kingdom representative had said it might appear that the

(Mr. Gurinovich, Byelorussian SSR)

colonies had more rights than the metropolitan country, but if that were so they would long since have attained independence.

Mr. AGOLLI (Albania) said he too would vote against article IX, which was unacceptable because it restricted the scope of application of the Convention without good reason and ran counter to General Assembly resolution 422 (V).

Article IX was adopted by 25 votes to 8, with 5 abstentions.

Article X

The PRESIDENT stated that the United Kingdom delegation had proposed the addition of the following clause to article X, paragraph 2:

"and the Convention need only be enforced for the benefit of States bound by the Protocol signed at Geneva on 24 September 1923, or by the Protocol annexed to this Convention."

Mr. MATTEUCCI (Italy) thought that the federal clause as set forth in article X marked some progress over those included in earlier conventions. Under the proposed text, a federal State would undertake to recommend the Convention favourably to its constituent units and would thus to some extent facilitate the acceptance of the instrument. His delegation would therefore vote in favour of article X.

Mr. MACHOWSKI (Poland) felt, on the contrary, that article X was not acceptable, because it contradicted the principle of the equality of the parties. It placed federal States in a privileged position by permitting them to evade some of the obligations imposed by the Convention. While he understood the constitutional difficulties of the federal States, he did not think that the insertion of a federal clause was the right answer. Experience showed that a federal State was perfectly capable of reconciling the different views of its constituent units regarding an international convention.

Mr. URABE (Japan) proposed that, in order to avoid any misunderstanding, the words "within the meaning of paragraph 1 of this article" should be added after the words "A Contracting State" in article X, paragraph 2.

Mr. RENOUF (Australia) was strongly in favour of maintaining article X. In Australia, a federal State, arbitration was within the exclusive competence of the constituent States. Although his delegation had already declared that the Ad Hoc Committee's draft (E/2704 and Corr.1) was generally acceptable to the Australian States, the draft had been substantially amended and it was impossible to predict the reactions of the Australian States. By way of example, he pointed out that the word "vague" which had appeared in article IV, sub-paragraph (f) and had been deleted, had been regarded as essential by one of those States. Without a federal clause Australia would, at best, be able to ratify the Convention only after a long delay and, at worst, not at all.

He agreed with the Italian representative that article X was an improvement on earlier conventions. The provisions of the article were fair, since paragraph 2 provided for reciprocity.

Mr. PSCOLKA (Czechoslovakia) shared the Polish representative's view that the adoption of article X would result in a situation of inequality, inasmuch as unitary States would be accepting an absolute obligation while federal States would be bound only under certain conditions. He recalled that the Commisson on Human Rights had rejected the federal clause when it had prepared the draft International Covenants on Human Rights.

Mr. ROGNLIEN (Norway) said that he failed to see why a special reciprocity clause should be included in article X, paragraph 2, when there was no such clause in any of the other articles. He recalled that his delegation had submitted an amendment (E/CONF.26/L.28) proposing the delegation of article X, paragraph 2, and its reintroduction as a separate article, applying to all the provisions of the Convention.

Mr. GEORGIEV (Bulgaria) associated himself with the objections of the Polish and Czechoslovak representatives to the so-called federal clause. He agreed with the Norwegian representative that article X, paragraph 2, should become a separate article, the final drafting of which had yet to be considered.

Mr. HERMENT (Belgium) said that he would vote in favour of the Norwegian amendment. He pointed out that various recent conventions included an article along the lines of that proposed by Norway.

Mr. COHN (Israel) thought that article X, paragraph 2, in its present form could be interpreted as applying to all the provisions of the Convention and not only to article X. If the Conference agreed upon that interpretation, it would be better, for the sake of clarity, to adopt a separate article as proposed by the Norwegian representative. The United Kingdom amendment went further still, since it broadened the scope of paragraph 2 to include also the Protocol supplementing the Convention. If the Conference decided to adopt a separate Protocol, that would imply that the States parties to the Convention would be free to accede or not to accede to the Protocol, and, conversely, that States parties to the Protocol would be free to accede or not to accede to the Convention. The United Kingdom amendment failed to take that into account but regarded all the Contracting States as being bound both by the Convention and by the Protocol; if the amendment was adopted, there would be no reason to provide two separate instruments.

With reference to the Norwegian amendment, he pointed out that the Ad Hoc Committee's idea had been that the States parties to the Convention should not be able to take advantage of the reservations made by other States. That was not in conformity with current practice but in the case of arbitration there were sound reasons for departing from custom. If a State made a reservation because of the special features of its domestic legislation - for example, because it regarded certain awards made abroad as domestic - other States were obviously not compelled to adopt those special features. The Ad Hoc Committee had therefore been quite right in not basing the draft Convention on the idea of reciprocity, at least with regard to the possible reservations. His delegation felt that reciprocity should apply only to the federal clause; it would therefore vote against the United Kingdom and Norwegian amendments.

Lastly, he noted that paragraph 3 (b) of the text prepared by Working Party No. 1 (E/CONF.26/L.49) stipulated that if a State declared that it would not apply the Convention to awards considered as domestic under its law, it must at the same time transmit to the Secretary-General of the United Nations the necessary information regarding the meaning of the expression "domestic arbitral awards" under its law. Article X, paragraph 1 (c), similarly provided that federal States must, upon request, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of the

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(Mr. Cohn, Israel)

Convention. The two provisions served analogous purposes and it might be better to include them in a single article to be placed at the end of the Convention.

Mr. WORTLEY (United Kingdom) supported the Australian representative's remarks on the need for a federal clause. With regard to paragraph 2, taking into account the points made by the Japanese, Norwegian and Israel representatives, it would certainly be preferable to consider all the reservations together. The Conference might suspend its discussion on article X and proceed to consider the report of the Working Party No. 1 (E/CONF.26/L.49).

Mr. MALOLES (Philippines) did not think such a procedure was called for.

Mr. COHN (Israel) supported the United Kingdom representative's proposal but suggested that article X, paragraph 1, should be put to the vote forthwith and that the Conference should next consider articles XI to XV of the draft Convention, then the question of reservations, and lastly article X, paragraph 2.

Mr. RENOUF (Australia) thought that some States would prefer to know whether paragraph 2 was to be maintained or deleted before they gave their views on the principle of the federal clause.

Mr. LIMA (El Salvador) said that in principle his delegation had no objection to the federal clause, which merely took into account the internal structure of certain States. Nevertheless, paragraph 1 (b) of the article raised a problem. If one of the constituent States of a federation, on the recommendation of the federal Government, adopted provisions similar to those in the Convention, what would be the effect of an arbitral award made in that State and how could its enforcement be obtained in the territory of a State party to the Convention? Would the constituent State in question be regarded as bound by the Convention? His delegation would be unable to vote in favour of the Norwegian amendment unless it was interpreted in that manner. Another solution would be to add to paragraph 1 (b) a statement to the effect that the Government of a federal State could request the enforcement abroad of an arbitral award rendered in a constituent State, province or canton which had adopted provisions similar to those in the Convention.

Mr. MALOLES (Philippines) noted that sub-paragraph 1 (b) seemed to attach legal significance to the fact that a federal government brought the articles of the Convention to the notice of local authorities. He pointed out that a constitutent unit of a federal State could not be considered really bound by the Convention unless the federal Government deposited an instrument of ratification which was valid for all states, cantons or provinces which were members of the Federation.

Sir Claude COREA (Ceylon) agreed that article X introduced an element of inequality. Nevertheless, allowance should be made for the fact that without the article federal States would not be able to accede to the Convention or could do so only after a certain time and with difficulty. His delegation would therefore vote in favour of article X despite the misgivings it felt in the matter.

As regards article X, paragraph 2, he thought that those who had drafted it had meant it to apply only to the federal clause. There was therefore no question of any reservation on the scope of the Convention and there were no obstacles in the way of an immediate vote. To remove all ambiguity paragraph 2 could be worded in such a way as to make it clear that it referred to the States referred to in the provisions of paragraph 1.

Moreover, his delegation was in favour of an article containing similar provisions to those in paragraph 2, but applying to the Convention as a whole.

Mr. WORTLEY (United Kingdom) agreed with the representative of Ceylon and proposed that article X should be put to the vote.

Mr. AGOLLI (Albania) pointed out that he would vote against the adoption of article X for the reasons which had been expressed by various delegations.

The PRESIDENT put article X, paragraph 1, to the vote, it being understood that the drafting Committee would be able to adopt the Israel representative's proposal regarding section sub-paragraph 1 (c).

Article X, paragraph 1, was adopted by 29 votes to 8, with 2 abstentions.

Mr. POINTET (Switzerland) pointed out in reply to a question put by Mr. MALOLES (Philippines) that in the Swiss Confederation questions of procedure

(Mr. Pointet, Switzerland)

came within the competence of the cantons. The Federal Government could nevertheless enter into any contract that it thought necessary on an international plane; it was then a matter for the cantons to adjust their legislation to the provisions of the international instruments to which Switzerland was a party.

Mr. WORTLEY (United Kingdom) felt that paragraph 2 of article X should be made clearer. But whatever decision was taken on the point, the Conference should not omit to discuss thoroughly the general question of reciprocity.

Mr. MALOLES (Philippines) thought that if the problem of reciprocity was taken up again later on, there would be no objection to limiting the scope of application of paragraph 2 to the federal or non-unitary States.

The PRESIDENT proposed that the representatives of Japan and Ceylon should combine the amendments which they had submitted verbally.

Mr. URABE (Japan) and Sir Claude COREA (Ceylon) accepted the President's proposal.

The PRESIDENT invited the Conference to take a decision on the joint amendment of Ceylon and Japan limiting the scope of article X, paragraph 2, to States mentioned in paragraph 1 of the same article, on the understanding that the drafting Committee would produce final draft.

The amendment of Ceylon and Japan to article X, paragraph 2, was adopted by 31 votes to none, with 5 abstentions.

Mr. ROGNLIEN (Norway) proposed that the words "(or a constituent State, a province or a canton)" in brackets should be added after the words "A Contracting State" in the first line of article X, paragraph 2.

Sir Claude COREA (Ceylon), supported by Mr. URABE (Japan), pointed out that it would be inappropriate in a multilateral convention to mention juridical entities which would not be responsible at the international level.

Mr. RAMOS (Argentina) shared the opinion of the representatives of Ceylon and Japan. He pointed out, furthermore, that article X simply made allowance for the constitutional difficulties met with by certain States.

(Mr. Ramos, Argentina)

However, the obligations stated in the Convention lay solely on the Contracting States themselves. There was no need, therefore, to make special mention of the constituent units.

Mr. ROGNLIEN (Norway) withdrew his amendment.

Article X, paragraph 2, as amended, was adopted by 33 votes to none, with 4 abstentions.

Article X as a whole, as amended, was adopted by 30 votes to 8, with 1 abstention.

Mr. ROGNLIEN (Norway) said he had abstained in the vote on article X as a whole because the words "states, provinces or cantons" had been kept in sub-paragraph 1 (b). He hoped that the drafting Committee would be able to bring the various parts of the text into line.

Mr. GEORGIEV (Bulgaria) pointed out that he had voted against paragraph 1. He had voted in favour of paragraph 2 because it solved the problem of reciprocity. He had voted against article X as a whole.

Mr. PSCOLKA (Czechoslovakia) had voted in favour of paragraph 2 for the same reason as the Bulgarian representative.

Article XI

Mr. MATTEUCCI (Italy) recalled that a convention could be called multilateral only if at least three States were parties to it. The entry into force of the Convention should therefore be made conditional on the deposit of at least three instruments of ratification or accession.

Mr. HERMENT (Belgium) thought that three ratifications or accessions were not enough; at least six should be required.

Mr. GEORGIEV (Bulgaria) said that he did not attach very much importance to the number of ratifications required for the entry into force. As the Convention was open to many States, it would become multilateral even if it was not so at the outset.

Mr. URABE (Japan) asked whether there was any purpose in retaining t words "or accession" at the end of paragraph 1, in view of the United Kingdom representative's comment on that point (E/2822/Add.4, paragraph 12).

Mr. WORTLEY (United Kingdom) thought that the formula could be slightly expanded. The drafting Committee might perhaps undertake that task.

Mr. BEASAROVIC (Yugoslavia) pointed out that in its draft the Committee had not made it clear to what foreign arbitral awards the Convention was to apply. Would it apply only to those which had become operative after the entry into force or also to those which had become operative before? It would be desirable for the Convention to apply only in the former case, for that would encourage the accession of a larger number of States. His delegation was prepared to submit a proposal to that effect.

Mr. HERMENT (Belgium) agreed that the point should be clarified, as it was in similar conventions.

Mr. RENOUF (Australia) stressed the importance of the problem raised by the Yugoslav representative.

The PRESIDENT proposed that the Conference should defer a decision on article XI, pending the distribution of the Yugoslav text.

It was so decided.

Article XII

The PRESIDENT recalled that the Conference had before it a Pakistan amendment (E/CONF.26/L.16, paragraph 6) on that article.

Mr. POINTET (Switzerland) noted that the Convention made no provision regarding the status of enforcement proceedings pending at the time when a denunciation took effect. It should be made clear that the Convention would be applicable to arbitral awards in respect of which enforcement proceedings had been instituted before a denunciation took effect.

The PRESIDENT pointed out that the Swiss representative's proposal and the Pakistan amendment both expressed the same idea. A single vote might therefore be taken on both of them together.

Mr. LIMA (El Salvador) suggested that reference should be made to recognition proceedings and not only to enforcement proceedings.

Mr. POINTET (Switzerland) accepted the Salvadorian representative's suggestion.

The amendment proposed by Switzerland and Pakistan to article XII, paragraph 1, was adopted by 33 votes to none, with 4 abstentions.

Mr. PSCOLKA (Czechoslovakia) asked for a separate vote on article XII, paragraphs 1 and 2.

Article XII, paragraph 1, as amended, was adopted by 37 votes to none.

Article XII, paragraph 2, was adopted by 31 votes to 7, with 1 abstention.

Mr. URABE (Japan) said that he had abstained in the vote on the amendment submitted by Switzerland and Pakistan.

Mr. ROGNLIEN (Norway) said he would like it to be understood that the recognition or enforcement proceedings referred to in the Swiss and Pakistan amendment were proceedings instituted before the entry into force of a denunciation in the country which had denounced the Convention. The Drafting Committee might take that interpretation into account in the final text to be submitted to the Conference.

Mr. RAMOS (Argentina) thought the interpretation proposed by Norway was likely to lead to some confusion. It was for the courts of the country in which enforcement was sought to say whether proceedings should have been instituted in the country denouncing the Convention or in any other country.

Mr. GEORGIEV (Bulgaria) endorsed the Argentine representative's comments. If the Norwegian interpretation were correct, enforcement might be sought in a country, even if the claimant was a national of a country which had denounced the Convention. That would be incompatible with the principle of reciprocity.

Mr. POINTET (Switzerland) thought that the adoption of the Norwegian interpretation would unduly restrict the scope of the Swiss and Pakistan amendment. The judge of the place of enforcement should rule on that question.

Mr. ROGNLIEN (Norway) stressed that his proposal was intended to determine precisely what commitments States would be assuming.

The PRESIDENT said that the Drafting Committee would decide whether the Norwegian interpretation should be taken into account in the text of article XII.

Article XII as a whole, as amended, was adopted by 28 votes to none, with 8 abstentions.

The meeting rose at 1.10 p.m.