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UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION

SUMMARY RECORD OF THE NINETEENTH MEETING

Held at Headquarters, New York,
on Wednesday, 4 June 1958, at 2.50 p.m.

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Consideration of the draft Convention on the Recognition and
Enforcement of Foreign Arbitral Awards (E/2704 and Corr.1 and Add.1 to 6;
E/CONF.26/2, 26/3 and Add.1, 26/4, 26/7; E/CONF.26/L.16, L.28 and L.44)
(continued)

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 and Add.1 to 6; E/CONF.26/2, 26/3 and Add.1, 26/4, 26/7; E/CONF.26/L.16, L.28 and L.44) (continued)

Article VI (continued)

Mr. HERMENT (Belgium) wished to reverse the vote he had cast at the previous meeting in favour of article VI. When voting, he had been under the mistaken impression that his delegation's amendment (E/CONF.26/L.44) to the article, providing for the deletion of the words "or the treaties" in the penultimate line, had been adopted by the Conference. The question of principle raised in the amendment was one on which the Belgian Government's ratification of the Convention might well depend. His Government was a party to community agreements with neighbouring countries which included favourable conditions for the recognition and enforcement of foreign arbitral awards. Moreover, it might in future become a party to further agreements of that nature. It was inconceivable that a State not a party to those agreements should, under article VI of the Convention, benefit from those favourable conditions. He felt that the Central American States were in the same position. Inclusion of the words "or the treaties" in article VI might give a State the right to benefit from an agreement to which it was not a party. For the reasons given, he wished to change his delegation's vote on article VI to a negative vote.

Mr. ROGNLIEN (Norway) and Mr. WORTLEY (United Kingdom) said that their Governments would likewise have difficulty in accepting the provision in article VI if the Belgian representative's interpretation was correct.

The PRESIDENT suggested that the question should be dealt with again after the drafting Committee had submitted the final text of the Convention for adoption by the Conference. At that time the various articles would have to be voted upon once more.

It was so agreed.

Article VII

Mr. BECKER (United States of America) said that the question raised by the Polish amendment (E/CONF.26/7) to article VII was not new and had already been raised by the Soviet representative in the Committee on the Enforcement of

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(Mr. Becker, United States)

International Arbitral Awards which had met in March 1955. The Soviet proposal had been rejected by the Committee. The question had again been raised in the Soviet Union's comments on the report of the Committee, included in the Secretary-General's report on the subject to the twenty-first session of the Economic and Social Council. After a thorough discussion of the question at that session, the Council had adopted resolution 604 (XXI) on the basis of which the present Conference was being held. In operative paragraph 1 (b) of that resolution, the Council had decided to invite States Members of the United Nations or members of any of its specialized agencies, and also any other State which was a party to the Statute of the International Court of Justice, to participate in the Conference. Clearly the Council had intended that the Convention should be applicable only to such States. Adoption of the Polish amendment would be contrary to the view expressed by the Council.

There was another important reason why the United States delegation opposed the amendment. If it were adopted, the Secretary-General might be called upon to establish communications with political authorities outside the organized international community.

For the reasons given, he would vote against the Polish amendment. For the same reasons, his delegation was opposed to the inclusion of the following words at the end of article VII (1): "or any other State to which an invitation has been addressed by the General Assembly of the United Nations". He asked for a separate vote on that clause.

Mr. MACHOWSKI (Poland) said that the arguments he proposed to adduce in support of his amendment to article VII would also apply to the Polish amendment to article VIII. For nearly fifty years efforts had been made to promote international trade by the adoption of measures likely to facilitate the arbitration of international commercial disputes and the international enforcement of arbitral awards. These efforts could be successful only if the principle were accepted of the full universality of international provisions relating to the arbitration of international commercial disputes. Lack of such universality was one of the reasons why the 1923 Geneva Protocol and the 1927 Geneva Convention had, to some extent, failed to achieve their objectives.

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(Mr. Machowski, Poland)

A number of representatives, when referring in the general debate to international trade relations and, more particularly, to trade relations between the countries of the two different economic and social systems existing in the world, had emphasized that the Convention should be universal. The Polish delegation's amendments were a logical sequence to the hopes it had expressed in the general debate that trade relations between countries representing those two systems would be expanded.

Articles VII and VIII, as now worded, were contrary to the principle of universality and of broad international co-operation. All international instruments, particularly such important conventions as the one under consideration, should be open for signature to all States without exception. A precedent would not be established by the United Nations as such a provision had been included in the constitution of the World Health Organization, the Geneva conventions relating to the protection of civilian persons in time of war and the convention on the treatment of prisoners of war.

The Polish delegation was convinced that its amendments would cause the Convention to reflect more closely on the principle of universality, which was a fundamental principle of the United Nations.

With respect to the statement made by the United States representative, he felt that the Conference was master of its own decisions and would wish to discuss the important considerations advanced by the Polish delegation.

Mr. BAKHTOV (Union of Soviet Socialist Republics) said that article VII in its present form would reduce the effectiveness of the Convention by restricting its signature to States Members of the United Nations and of its specialized agencies and to States parties to the Statute of the International Court of Justice. The interests of international trade would be promoted by the inclusion of a clause in the Convention under which it would be open for signature and ratification on behalf of all States. He would therefore vote in favour of the Polish amendment.

Mr. TODOROV (Bulgaria) thought that the aim of the Convention, which was the speedy settlement of commercial disputes, could best be achieved by encouraging universal participation. Political considerations should not enter

(Mr. Todorov, Bulgaria)

into the matter. Furthermore, an invitation to all States to sign the instrument would in no way conflict with resolution 604 (XXI), as that text applied only to the Conference itself and not to the Convention which it had been called upon to conclude.

Mr. KANAKARATNE (Ceylon) recalled that his Government had always subscribed to the principle of universality. The preamble of the Charter clearly indicated that the United Nations should further the interests of "all peoples", and there could consequently be no justification whatsoever for preventing any State which wished to do so from becoming a party to the Convention. Article VII as drafted by the 1955 Committee was needlessly restrictive, while the United States representative's suggestion that it should be restricted even further through the elimination of the final phrase was wholly indefensible. He would consequently have no hesitation in supporting the Polish amendment.

Mr. WORTLEY (United Kingdom) observed that the adoption of the Polish amendment would merely raise many difficult problems. By contrast, the United States proposal that the last phrase of article VII should be put to the vote separately seemed perfectly logical.

Mr. SAVCHENKO (Ukrainian Soviet Socialist Republic) said that since the purpose of the Conference was to further international trade it would be unreasonable to restrict the number of States entitled to become parties to the Convention. His delegation thought that the subject matter of the Convention should evoke no political controversy and he would therefore support the Polish amendment.

Mr. PSCOLKA (Czechoslovakia) said that the formula in article VII was an old device designed to exclude certain States from participation in international life. The settlement of disputes arising out of international commercial transactions was a matter of universal concern, and he regretted that the United States representative, who had shown little practical interest in the work of the Conference, had assumed the role of the leading advocate of restriction. The Polish amendment afforded the Conference an opportunity of remedying a text which was manifestly unfair and prompted by political considerations. Moreover, the amendment was sound juridically, for the

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(Mr. Pscolka, Czechoslovakia)

Conference's decision that the Convention should supersede the 1927 Convention would be incomprehensible unless all the States that had been Parties to the old instrument were permitted to subscribe to the new one.

Mr. RENOUF (Australia) hoped that the eloquent appeals for universality would not be allowed to obscure the fundamental fact that a political entity became a State only when it fulfilled certain specified conditions. Certain such entities had been judged by the majority of Member States not to have fulfilled those conditions. If the Conference were to accept the Polish proposal, it would be leaving the task of deciding what constituted a sovereign State solely to the Secretary-General. Any decision on that point had to be taken by the General Assembly.

The last phrase of article VII (1) ("or any other State" etc.) seemed largely redundant and he would have no objection to its deletion, unless its retention would induce certain otherwise reluctant delegations to support the remainder of the article. The wording of that phrase should at least satisfy the representative of Ceylon, as it clearly implied that the provisions of the Charter would be strictly observed and that any interpretation thereof would be left to the General Assembly.

Mr. DAPHTRY (India) recalled that the Indian delegation had at all times favoured a wider version of article VII and in the 1955 Committee had supported a proposal very similar to the one made in the Polish amendment (E/2704 and Corr.1, para. 60).

Mr. MALOLES (Philippines) said that his Government had always believed that the principle of universality was qualified by express provisions of the Charter such as Article 4. The fact that the Convention would apply to commercial transactions and not to political relations did not authorize any departure from the juridical regime which the Charter imposed. No State should therefore be entitled to the benefits of the Convention unless it first established its reputable standing in the international community.

Mr. AGOLLI (Albania) agreed with earlier speakers who had stressed that artificial political limitations would be wholly out of place in an instrument designed to promote commercial relations. Any State which approved of the principles embodied in the Convention should not be excluded merely because it was not a Member of the United Nations or of a specialized agency or a party to the Statute of the International Court. He would therefore support the Polish amendment, which would in fact merely restore the text originally proposed by the International Chamber of Commerce.

Mr. MAURTUA (Peru) said that the Conference had been convened by the United Nations for the purpose of making a United Nations contribution to international private law. The Conference could not look upon the States of the world as so many disjointed units. It had to take into account their organic relationships based on the ideological concepts of the United Nations, and it was only right to require that the States parties to the Convention should have some connexion with the United Nations family.

Mr. KANAKARATNE (Ceylon) did not think that the Australian representative had been quite right in suggesting that the General Assembly had taken a decision on the question under discussion. While it had refused to certain political entities admission to the United Nations, it had never declared that those political entities were not qualified to sign or ratify an international commercial convention.

Mr. GURINOVICH (Byelorussian Soviet Socialist Republic) supported the Polish amendment to article VII and a consequential change in article VIII. The draft prepared by the Ad Hoc Committee artificially limited the scope of the Convention. The Conference had been called for the purpose of improving the Geneva instruments of 1923 and 1927. However, accession to those instruments had been open to all States, and the limitation in article VII was not an improvement but a step backwards. The principle of universality had also been embodied in the draft Convention prepared by the International Chamber of Commerce, which had recognized it as a principle that was in the interests of businessmen.

The Polish amendment (E/CONF.26/7, paragraph 4) was rejected by 19 votes to 11, with 6 abstentions.

Mr. de SYDOW (Sweden) pointed out that no time limit for signature of the Convention was specified in paragraph 1. Without such a time limit there would be no clear distinction between signature and ratification on the one hand, and accession, mentioned in article VIII, on the other. He proposed that there should be a time limit for signature and that it should be specified as 31 December 1958.

Mr. MATTEUCCI (Italy), Mr. KANAKARATNE (Ceylon) and Mr. HERMENT (Belgium) supported the Swedish amendment.

The Swedish amendment was adopted.

Mr. TODOROV (Bulgaria) requested a separate vote, in accordance with rule 26 of the rules of procedure, on the second part of paragraph 1, beginning with the words "which is or hereafter becomes".

The PRESIDENT observed that the effect of the Bulgarian representative's request would be to reintroduce the Polish amendment, which had just been rejected.

Mr. COHN (Israel), under rule 26 of the rules of procedure, formally objected to the Bulgarian representative's request.

Mr. GURINOVICH (Byelorussian Soviet Socialist Republic) supported the Bulgarian representative's request. He pointed out that in United Nations bodies such requests were accepted as a matter of courtesy.

Mr. TODOROV (Bulgaria) said that his request would not prevent those who had voted against the Polish amendment from voting for the second part of paragraph 1. The effect of his request would be to enable the Conference to express its real will.

The Bulgarian motion was rejected by 21 votes to 9, with 4 abstentions.

The PRESIDENT put to the vote, in accordance with the request of the United States representative, the first part of paragraph 1 up to and including the words "International Court of Justice".

The first part of paragraph 1, as amended, was adopted by 25 votes to 7, with 2 abstentions.

The remaining part of paragraph 1 was adopted by 28 votes to 4, with 3 abstentions.

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Paragraph 2 was adopted by 33 votes to none.

Article VII as a whole, as amended, was adopted by 29 votes to 7.

Appointment of a Drafting Committee

The PRESIDENT, after consultation, suggested the establishment of a drafting Committee consisting of the representatives of Argentina, Czechoslovakia, France, Israel, Netherlands, Union of Soviet Socialist Republics and the United Kingdom.

It was so agreed.

The meeting rose at 4.15 p.m.