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UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION

SUMMARY RECORD OF THE EIGHTEENTH MEETING

Held at Headquarters, New York,  
on Wednesday, 4 June 1958, at 11.45 a.m.

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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, 26/3 and Add.1, 26/4, 26/7; E/CONF.26/L.16, L.23, 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, E/2822 and Add.1 to 6; E/CONF.26/2, 26/3 and Add.1, 26/4, 26/7; E/CONF.26/L.16, L.23, L.44) (continued)

#### Article VI

Mr. MACHOWSKI (Poland) pointed out that the Convention was intended to replace two other multilateral instruments relating to arbitration - the 1923 Protocol and the Geneva Convention of 1927. It was accordingly necessary to define the position of the States signatories to the new Convention with regard to those two instruments. That was why the Polish delegation had submitted its amendment (E/CONF.26/7, paragraph 6). But it might be desirable to place that amendment, not after article K, as Poland had originally suggested, but after the existing article VI. The Polish clause would then constitute an exception to the provisions of that article.

Mr. HERMENT (Belgium) saw no reason why a State signatory to the Convention should no longer be bound by the 1923 Protocol, as that instrument related to the validity of arbitration clauses, not to the recognition and enforcement of arbitral awards. On the other hand, he would admit that the 1927 Convention would no longer apply to States which signed the new Convention.

Mr. PSCOLKA (Czechoslovakia) agreed with the representative of Poland on the need to define the relationship between the new Convention on the one hand and the 1923 Protocol and the 1927 Convention on the other. The Polish amendment (E/CONF.26/7, paragraph 6) did, however, not seem to take all aspects of the question into account. It did not cover the question of relations between two States, both signatories to the 1923 Protocol and the 1927 Convention, only one of which had acceded to the new Convention. It should be specified that those relations could not be governed by that Convention. The Polish text also failed to give any indication of the manner in which signatory States, already bound by bilateral or multilateral agreements, were to reconcile their various commitments. Moreover, it did not take into account the position of a signatory State which might subsequently enter into bilateral or multilateral agreements. It was open to question whether as Switzerland had suggested in its comments (E/2822, page 9), that agreements might be relied on in so far as they stipulated

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more liberal conditions, but could not be relied on if they stipulated more stringent conditions.

At all events, it should be made clear that the 1923 Protocol and the 1927 Convention would continue to apply except to the relations between States signatories to the new Convention. That idea might be conveyed by a slight amendment to the Polish amendment, consisting in the replacement of the word "to" in the last line but one by the word "among".

Mr. MAURTUA (Peru) pointed out that article VI of the Committee's draft (E/2704 and Corr.1), the Polish amendment (E/CONF.26/7, paragraph 6) and the Pakistan amendment (E/CONF.26/L.16, paragraph 5), made no reference to any of the agreements by which many Latin American countries were bound. In particular, there was no reference in any of those texts to the Montevideo Convention of 1889 and the 1928 Convention on Private International Law.

Mr. MACHOWSKI (Poland), taking into account the suggestion made by the representative of Czechoslovakia, proposed to modify his own amendment by replacing the phrase "become automatically extinct to the Contracting Parties of this Convention" by the phrase "will not be valid between the Contracting Parties of this Convention".

Mr. SANDERS (Netherlands) thought that the 1927 Convention and the new Convention could exist side by side. He was prepared to accept article VI of the draft Convention (E/2704 and Corr.1) on condition that the words "or the treaties" were deleted, as the Belgian representative had proposed. If the Conference adopted the Belgian amendment, the United Kingdom amendment (E/CONF.26/L.23) would no longer be necessary.

Mr. MATTEUCCI (Italy) shared the Netherlands representative's view that the 1927 Convention could exist side by side with the new Convention, but would gradually be replaced by the latter Convention as it was ratified by the States signatories to the former. In those circumstances, it might be advisable to add the phrase "in so far as they are not incompatible with this Convention" after the words "arbitral awards".

Mr. WORTLEY (United Kingdom) agreed that it would be enough to say at the end of article VI: "in the manner and to the extent allowed by the law of the country where such award is sought to be relied upon," omitting the words "or the treaties", as the representative of Belgium had proposed. He also agreed that if the Belgian amendment was adopted, he would have to withdraw his own. On the other hand, he did not understand the difficulties to which the Italian representative had referred. In practice, States would indicate whether they wished to follow the old Convention or the new.

Mr. LIMA (El Salvador) was not sure whether article VI should be included in the new Convention. That Convention would not automatically revoke multilateral or bilateral agreements and article VI could only have the effect of confusing the question of the conflicts which might arise between the various agreements. Generally speaking, those conflicts would be settled in accordance with the legislation of the various countries, and the first part of article VI should not therefore be included in the Convention. The last part of the article, from the words "nor deprive", would enable a party to avail itself either of the new Convention or of an earlier instrument, and would also prove a source of difficulty.

Mr. POINTEET (Switzerland) thought that the Conference should so far as possible safeguard existing agreements which stipulated more liberal conditions than the new Convention. The Swiss Government had expressed that view in its written comments on page 9 of document E/2822.

Mr. HERMENT (Belgium) said that the provisions of article VI appeared in many conventions and hardly called for any discussion. With regard to the Swiss proposal, the question whether one agreement stipulated more liberal conditions than another would be a matter for the judgement of the person seeking to rely upon the arbitral award in each individual case. He accordingly thought that article VI, with the omission of words "or the treaties", should be retained, and he thanked the representative of the United Kingdom and the Netherlands for their support.

With regard to the comments made by the representative of El Salvador, he pointed out that Belgium granted the exequatur even when the country in which

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the award had been made had not concluded any agreement with Belgium. He thought that that was the kind of situation which the article was intending to cover.

Mr. MALOLES (Philippines) saw no advantage in retaining article VI as it stood. If two conventions conflicted, one should replace the other. Switzerland proposed that the provisions of existing bilateral or multilateral agreements should be retained in so far as they were more liberal than those of the new Convention. That proposal, if adopted, would cause very great confusion, since, even after a large number of States had ratified the Convention, it would still be necessary to refer to bilateral or multilateral agreements of all kinds and to determine whether one was more liberal than another, a process which would raise a host of problems. Any incompatible provision in a previous agreement should therefore be regarded as automatically revoked.

Mr. MAURTUA (Peru) also opposed the Swiss proposal. Whether a treaty was more liberal or less so did not constitute a legal criterion, since, as the representative of Belgium had pointed out, it was a matter of personal judgement. The Swiss proposal would not make it possible to resolve conflicts between different agreements.

Mr. HERMENT (Belgium) favoured the addition to article VI of a paragraph providing that the new Convention abrogated that of 1927. He thought that the other agreements should be maintained.

Mr. MATTEUCCI (Italy) supported the Belgian proposals and said that, if they were adopted, the Italian oral amendment would become superfluous. It might be advisable to state in the Protocol that the purpose of the Convention was to replace the Geneva Convention.

Mr. BAKHTOV (Union of Soviet Socialist Republics) was satisfied with the text of article VI drafted by the Committee (E/2704 and Corr.1). Several delegations had proposed that the first part of the article should be deleted, but he was in favour of retaining it. A country like the Soviet Union had concluded a great many commercial agreements, the provisions of which occasionally differed from those of the new Convention. The clause recognizing the validity of existing bilateral or multilateral agreements should therefore be retained.

/...

The PRESIDENT read out the Polish proposal that the Protocol of 1923 and the Convention of 1927 should automatically become extinct to the Contracting Parties of the new Convention.

Mr. MAURTUA (Peru) did not see why a Convention of world-wide scope like the one the Conference was drafting should mention the Convention of 1927 but not other conventions of equal importance.

Mr. HERMENT (Belgium) wondered how the Polish proposal was related to the draft Protocol.

Mr. de SYDOW (Sweden) said he would also like information on that point. He felt that, at the present stage, the provision recognizing the validity of the arbitration clauses should be included in the Protocol and not in the Convention.

Mr. MACHOWSKI (Poland), replying to the representative of Peru, pointed out that his proposal constituted an exception to the principle stated in article VI. If the Polish delegation mentioned the Protocol of 1923 and the Convention of 1927 to the exclusion of other international instruments, it was because Poland felt that they were of broader scope.

The Polish proposal would form a second paragraph of article VI.

Mr. PSCOLKA (Czechoslovakia) suggested that, in order to take account of the Swedish and Belgian representatives' remarks, the Polish delegation should amend its proposal to omit any reference to the Protocol of 1923.

Mr. MACHOWSKI (Poland) accepted the Czechoslovak suggestion.

The PRESIDENT pointed out that the Polish proposal, thus amended, greatly resembled that of Pakistan (E/CONF.26/L.16, paragraph 5).

Mr. MAURTUA (Peru) still had misgivings about the Polish proposal. If the terms of reference of the Conference had been to revise the Geneva Convention, many States would have had no reason to take part in it.

Mr. POINTET (Switzerland) suggested that, in order to meet the point made by the representative of Peru, the Polish proposal should be embodied in a Protocol annexed to the Convention, which would be open to signature only by

(Mr. Pointet, Switzerland)

States which were parties to the Geneva Convention. Thus, countries not parties to that Convention would not be required to sign a provision which did not affect them.

Mr. MACHOWSKI (Poland) felt that the drafting of a Protocol would complicate the new Convention.

Replying to the representative of Peru, he said that the purpose of the Polish proposal (E/CONF.26/7, paragraph 6) was not to revise the Geneva Convention but to regulate the relationship between the two Conventions.

The revised Polish proposal (referring only to the Convention of 1927) was adopted by 14 votes to 7, with 18 abstentions.

The Italian proposal to insert in article VI the words "in so far as they are not incompatible with this Convention" was rejected by 14 votes to 8, with 14 abstentions.

The PRESIDENT put to the vote the Belgian proposal to delete the words "or the treaties" in article VI.

The result of the vote was 16 in favour and 12 against, with 9 abstentions.

The Belgian proposal was not adopted, having failed to obtain the required two-thirds majority.

The Swiss proposal (E/2822, page 9) was rejected by 22 votes to 2, with 11 abstentions.

Article VI as a whole, as amended by the Polish proposal, was adopted by 32 votes to none, with 5 abstentions.

The meeting rose at 1.10 p.m.