

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CONF.26/SR.17
12 September 1958

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON INTERNATIONAL
COMMERCIAL ARBITRATION

SUMMARY RECORD OF THE SEVENTEENTH MEETING

Held at Headquarters, New York,
on Tuesday, 3 June 1958, at 2.45 p.m.

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Enforcement of Foreign Arbitral Awards (E/2704 and Corr.1;
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<u>President:</u>	Mr. SCHURMANN	Netherlands
<u>Executive Secretary:</u>	Mr. SCHACHTER	

CONSIDERATION OF THE DRAFT CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (E/2704 and Corr.1; E/CONF.26/L.31, L.37/Rev.1, L.43 and L.45 (continued))

Mr. de SYDOW (Sweden) said that Working Party No. 3 of which he was the chairman, requested him to present to the Conference an oral report on its work and to introduce the text of articles III, IV and V (document E/CONF.26/L.43) adopted by Working Party No. 3 at its last meeting. With two exceptions, the Working Party agreed on a single text to be recommended to the Conference for adoption. The two questions on which agreement had not been reached were, first, whether article IV, paragraph 1 (c) should contain a proviso embodying the principle of severability and, secondly, whether the fact that the award had not yet become binding on the parties or had been set aside had to be expressly invoked by the respondent or could be considered by the enforcement authority of its own motion.

The text of articles III, IV and V adopted by the Working Party represented a compromise arrived at after exhaustive consideration of the views advanced at the Conference and of the requirements of the various legal systems governing arbitration proceedings in different countries. Article III combined the provisions contained in the third and fifth article of the draft prepared by the Economic and Social Council's Ad Hoc Committee (E/2704). Taking into account the comments and amendments submitted by a number of delegations, article III was redrafted so as to require from the claimant only positive evidence that his application for enforcement was prima facie justified, leaving it to the party opposing enforcement to present such evidence as may be appropriate to rebut this claim. The substance of the provision contained in article III (b) of the draft prepared by the Council's Ad Hoc Committee, which would have required from the claimant negative evidence to prove that certain things did not occur, was therefore transferred to articles IV and V.

Working Party No. 3 also came to the conclusion that it would be more appropriate to divide article IV into two paragraphs, one containing the grounds for refusal which had to be invoked by the party opposing enforcement, and the other those grounds which the enforcement authority could take into account ex officio. It was felt that that would clarify and considerably facilitate the task of the enforcement authority which in practice may find it difficult, if not

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(Mr. de Sydow, Sweden)

impossible, to take into account some of the grounds for refusal unless their existence was first brought to its knowledge and substantiated by the party opposing enforcement.

Explaining the differences between the draft prepared by the Economic and Social Council's Ad Hoc Committee and the text of article IV submitted by the Working Party, he pointed out that under paragraph 1 (a) of the latter, the enforcement of the award could be refused if the agreement of the parties to submit to arbitration was not valid under the applicable law. In view of that added provision, the Working Party agreed that there was no need to subordinate the arbitral procedure chosen by the parties to the law of the country where arbitration took place, and proposed to amend paragraph 1 (d) of article IV accordingly. The text of paragraph 1 (e) of article IV was drafted with the aim of making the Convention acceptable to those States which considered an arbitral award to be enforceable only if it fulfilled certain formal requirements which alone made the award binding on the parties. The Working Party agreed that an award should not be enforced if under the applicable arbitral rules it was still subject to an appeal which had a suspensive effect, but at the same time felt that it would be unrealistic to delay the enforcement of an award until all the time limits provided for by the statutes of limitations had expired or until all possible means of recourse, including those which normally did not have a suspensive effect, had been exhausted and the award had become "final". The Working Party also agreed to avoid the use of the words "operative" or "capable of enforcement" which many delegations considered unacceptable because they could be interpreted as requiring the award to satisfy all conditions for its enforcement in the country where it was made. As regards paragraph 2 (b) of article IV, the Working Party felt that the provision allowing refusal of enforcement on grounds of public policy should not be given a broad scope of application. It therefore agreed to recommend the deletion of references to the subject matter of the award and to fundamental principles of the law.

Turning to article V, he explained that the Working Party recommended the adoption of that article in order to permit the enforcement authority to adjourn its decision if it was satisfied that an application for annulment of the award or for its suspension was made for a good reason in the country where the award

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(Mr. de Sydow, Sweden)

was given. At the same time, to prevent an abuse of that provision by the losing party which may have started annulment proceedings without a valid reason purely to delay or frustrate the enforcement of the award, the enforcement authority should in such a case have the right either to enforce the award forthwith or to adjourn its enforcement only on the condition that the party opposing enforcement deposits a suitable security.

The Working Party had tried to ensure that the proposed text reflected the greatest possible number of amendments submitted by the delegations. He hoped that the sponsors of the amendments which the Working Party had been unable to cover would not insist on the inclusion of their proposals, and that the new text of articles III, IV and V recommended by the Working Party for adoption would obtain the unanimous approval of the Conference.

Mr. KORAL (Turkey) welcomed the fact that the proposed new article III implicitly accepted the principle that the submission to arbitration had to be in writing. Another commendable feature of the text was the logical division of the grounds on which enforcement might be refused into those which had to be expressly invoked and those which the enforcing authority could examine ex officio. Equally sound reasoning had prompted the new version of article V, which would ensure that an award could not be enforced more easily in a foreign country than in the place of arbitration.

Such defects as the new text contained stemmed from the Working Party's excessive zeal to strengthen the position of the creditor. The Turkish delegation thought that, as a result, the debtor would be placed at too great a disadvantage. He would therefore propose certain changes designed to remedy that situation. His first proposal was that article III, paragraph 1, should contain an additional sub-paragraph (c), requiring the applicant to supply, in addition to the documents specified in sub-paragraphs (a) and (b), evidence of due compliance with any provision which might exist in the law of the country where the award had been made requiring the award to be deposited with a specified authority. Secondly, he proposed the insertion in article IV, paragraph 1 (d), after the words "was not in accordance with the agreement of the parties", of the words "to the extent that such agreement was lawful under the law applicable to the arbitration". His third proposal was that the word "binding" in article IV,

(Mr. Koral, Turkey)

paragraph 1 (e) should be replaced by the words "final, in the sense that it is still open to normal means of recourse". He would explain the purport of those proposals in greater detail at a later stage. He finally noted that the text did not lay down a firm principle on the law applicable to arbitration.

Mr. COHN (Israel) moved the closure of the general debate on the Working Party's text.

Mr. MALOLES (Philippines) opposed the Israel motion. Although the Working Party deserved commendation for its efforts, he was not prepared to admit that the draft it had produced was better than, or as good as, that of the Ad Hoc Committee so far as context was concerned. The Working Party had rearranged some of the elements of articles III, IV and V of the Committee's draft and had deleted others, thereby significantly altering the basic concepts of that draft.

Pointing to the changes that had been made, he said that more elucidation was necessary before the Conference could feel confident that the Working Party's draft really was an improvement. After further discussion the Conference might well decide that it would be better to retain the Ad Hoc Committee's draft with a few minor amendments.

Mr. KORAL (Turkey) suggested that the discussion should be closed after delegations had had an opportunity to make brief statements of their general views on the Working Party's paper.

The PRESIDENT put the Israel proposal to the vote.

The proposal was adopted by 29 votes to 2, with 4 abstentions.

Article III (E/CONF.26/L.43)

Mr. COHN (Israel) proposed that the word "and" in the expression "recognition and enforcement" in the first and second lines of the article should be replaced by the word "or".

The PRESIDENT observed that the amendment, if adopted, would have to be applied throughout the Convention.

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Mr. ROGNLIEN (Norway) noted that the Chairman of the Working Party had said that the question whether the submission to arbitration should be in writing was still undecided. He failed to see how, under paragraph 1 (b), a party would be able to supply the original arbitration agreement or arbitral clause, or copies thereof, if they were not in writing.

The PRESIDENT explained that if it was later decided that the submission to arbitration did not have to be in writing, consequential changes would have to be made in paragraph 1 (b).

Mr. MALOLES (Philippines) proposed the inclusion of the following text, based on article V (b) of the Ad Hoc Committee's draft, as a new sub-paragraph (c) of paragraph 1:

"(c) documentary or other evidence to prove that the conditions laid down in the following articles have been fulfilled."

Mr. MAURTUA (Peru) felt that the word "certified" as used in paragraphs 1 and 2 was too vague. Presumably it meant "legalized". Again, since consular agents were concerned with the authenticity of translations, the words "diplomatic or", near the end of paragraph 2, could be omitted.

Mr. HERMENT (Belgium) pointed out that the original documents required under paragraph 1 would not be of much value unless the signatures were duly authenticated. He proposed that paragraph 1 should be amended accordingly.

Mr. MALOLES (Philippines) proposed that the final words of paragraph 2 should be amended to read: "or authenticated by a diplomatic or consular agent".

Mr. de SYDOW (Sweden), Chairman of Working Party No. 3, said that the point raised by the Israel representative had been discussed in the Working Party where the consensus had been that there was no difference between "and" and "or" in the context of the article.

Mr. RAMOS (Argentina) disagreed. He felt that a question of substance was involved and that the text of the article as drafted was preferable.

The Israel amendment was rejected by 23 votes to 5, with 10 abstentions.

The PRESIDENT put to the vote the Belgian amendment to paragraph 1 (a) and (b).

Mr. COHN (Israel) asked for a separate vote. He had no objection to the authentication of the signature of the arbitrator, but he could see no need to authenticate the signature of the parties appearing before the court.

Mr. HERMENT (Belgium) explained, with respect to his amendment to sub-paragraph (b), that in Belgium the parties were not required to come before the court.

The Belgian amendment to sub-paragraph (a) was adopted by 22 votes to 9, with 8 abstentions.

Mr. DUBE (Monaco) proposed the addition of the words "by the consulate of the country where the award is relied upon" after the words "duly authenticated" proposed by Belgium.

The amendment of Monaco was rejected by 18 votes to 5, with 13 abstentions.

Mr. ARNAUD (France) felt that the provision of the original arbitration agreement should not be subjected to excessive requirements. In many cases, arbitration was based merely on an arbitral clause agreed to in an exchange of correspondence between the two parties.

The Belgian amendment to sub-paragraph (b) was rejected by 23 votes to 2, with 10 abstentions.

The Philippine amendment to add a new sub-paragraph (c) was rejected by 25 votes to 2, with 9 abstentions.

Mr. KORAL (Turkey), explaining the amendment he had introduced in an earlier statement, said that its purpose was to safeguard the rights of the party against which enforcement of an award was sought. In some countries, that party could not challenge an arbitral award before a court of law unless the latter had evidence of due compliance with a provision of the law of the country where the award had been made requiring the award to be deposited with a specified authority.

Mr. ZULETA ANGEL (Colombia) asked whether that requirement existed under Turkish law.

Mr. KORAL (Turkey) said that in Turkey an award had to be deposited with a court before the party against whom an award had been made could challenge it. That requirement did not affect the character of the award.

In reply to a question from Mr. ZULETA ANGEL (Colombia), Mr. ARNAUD (France) said that in his country a clear distinction was made between an arbitral award and the procedure for its enforcement. In most cases, an award was not deposited because its enforcement had been agreed upon by the parties concerned. However, if one of the parties wished to obtain enforcement of an award by a court, the award had to be deposited with the court, often at considerable expense since a charge was levied in proportion to the amount of the award.

With respect to the Turkish amendment, he felt that the rights of the party against which enforcement of an award was sought were adequately safeguarded under article IV.

Mr. ZULETA ANGEL (Colombia) said that the point raised in the Turkish amendment would not arise in connexion with a Colombian award, for under Colombian legislation an arbitral award had the same force as a judgement. In other countries, however, the position was very different. Some learned authorities had suggested that an award lacked executive force until it had been duly sanctioned by a judicial authority. In States which required any such formality, the defendant might be precluded from entering an appeal until the deposit had been effected. Consequently, the Turkish amendment would afford a valuable safeguard.

Mr. KORAL (Turkey) observed that as the draft empowered the enforcing authority to refuse recognition and enforcement if the award had been set aside it was only reasonable to ensure that the defendant had been in a position to institute the necessary proceedings. Under certain systems, however, he could not do so until the plaintiff had filed the award with a court or other body. His amendment was therefore only designed to give the debtor a guarantee of due process.

The Turkish amendment was rejected by 25 votes to 6, with 7 abstentions.

The PRESIDENT put to the vote the Philippine amendment to paragraph 2, under which the word "authenticated" would be inserted before the words "by a diplomatic or consular agent".

The Philippine amendment was rejected by 17 votes to 9, with 11 abstentions.

Article III, as amended, was adopted by 38 votes to none, with 1 abstention.

The meeting was suspended at 4.35 p.m. and resumed at 4.55 p.m.

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Article IV

Mr. COHN (Israel) recalled his earlier proposal (E/CONF.26/L.31) that the text should not merely refer to the applicable law but should specify what that law was. Having heard the views of the representatives of Sweden and France he would reluctantly withdraw his earlier suggestion, but he hoped that the entire question of the applicable law would be settled on the international level in the relatively near future.

Mr. ROGNLIEN (Norway) said that since the Conference had decided to delete from sub-paragraph 1 (b) the express reference to a respondent under a legal incapacity, on the grounds that such cases seldom arose in practice, the sub-paragraph should provide for that remote contingency at least implicitly. He therefore proposed the insertion of the word "proper" before the word "notice".

Mr. COHN (Israel) thought that sub-paragraph 1 (c), which reproduced article IV (d) proposed by the 1955 Committee, was unduly long and complex. The Conference should therefore vote only on the principles involved and request the Drafting Committee to simplify the general structure of the text.

Mr. HERMENT (Belgium) proposed the deletion of the proviso. A court having to apply the principle of severability would inevitably have to look into the substance of the award.

Mr. BAKHTOV (Union of Soviet Socialist Republics) agreed that the complexity of the proviso could only give rise to confusion.

Mr. DAPHTARY (India) said that, in a commercial arbitration, the extraneous matter introduced by the arbitrator into the award might be of a very incidental nature. If the enforcing court was not authorized to sever that matter from the remainder of the award and was obliged to refuse enforcement altogether merely because a small detail fell outside the scope of the arbitral agreement, the applicant might suffer unjustified hardship. He consequently thought that the proviso should be retained.

Mr. MATTEUCCI (Italy) agreed that it would be unfair to refuse enforcement solely because some secondary particulars in the award went beyond the scope of the submission to arbitration. If the proviso was deleted, the

(Mr. Matteucci, Italy)

award might be invalidated even by a very minor defect, for example, if the arbitrator had made an unauthorized order as to costs.

Mr. GEORGIEV (Bulgaria) also agreed that the deletion of the proviso might often operate to the detriment of a perfectly bona fide applicant.

Mr. RAMOS (Argentina) thought that the proviso rendered the whole article more flexible and an excessively rigid text could prove dangerous.

Mr. BEASAROVIC (Yugoslavia), submitting his delegation's amendment (E/CONF.26/L.45) to sub-paragraph 1 (d), pointed out that the same text had originally been proposed by the 1955 Committee in article IV (g). The considerations which had prompted the adoption of that text were fully set out in the Committee's report (E/2704 and Corr.1, paragraphs 43 to 45). The Turkish amendment to the sub-paragraph, although somewhat differently worded, was designed to achieve much the same object.

Mr. MATTEUCCI (Italy) said that the text of sub-paragraph 1 (d) prepared by the Working Party, although similar to the proposal originally submitted by the International Chamber of Commerce, had been inserted on the understanding that the parties enjoyed discretion only to the extent that they could select the national law applicable in the matter. Consequently, the Working Party's text should not be interpreted to mean that the parties could agree to disregard all national laws and determine some special procedure applicable to their case alone. He hoped that the Drafting Committee would make that point clear.

Mr. ROGNLIEN (Norway) supported those representatives who favoured a more specific wording. Perhaps the point might be met by the use of the words: "in the country under whose law the arbitration took place".

Mr. WORTLEY (United Kingdom) recalled that as a member of the Ad Hoc Committee he had originally put forward the text embodied in the Yugoslav amendment. However, it was now incompatible with the terms of paragraph 1 (a) and he could therefore not support the Yugoslav amendment.

Mr. KORAL (Turkey) pointed out that his amendment differed from the Yugoslav amendment in that it referred both to the law of the country where the arbitration took place and to the law applicable to the arbitration. He had no objection to reversing the order of the two criteria.

Mr. ARNAUD (France) said that the amendments would serve no practical purpose. He had never encountered a case in which the procedure desired by the parties was in conflict with the law applicable thereto.

Mr. KORAL (Turkey) pointed out that French courts considered the will of the parties to be paramount. That was not the case in many countries, and those countries would find it difficult to accept paragraph 1 (d), which placed the will of the parties above the law.

Mr. RAMOS (Argentina) supported the view of the French representative. The amendments might have the effect of unduly complicating the procedure of recognition and enforcement by encouraging the unnecessary examination of the lawfulness of the composition of the arbitral authority or of the arbitral procedure.

Mr. ROGNLIEN (Norway) said with reference to paragraph 1 (c) that the draft of articles III, IV and V presented by the Working Party did not mention many matters which might affect the validity of an award, such as the relationship of an arbitrator to one of the parties. The only remedy left to the losing party would be to have the award set aside. Paragraph 1 (e) might deprive him of even that remedy, for the courts of the country in which the award was made might consider it to be a foreign award and refuse to hear an appeal.

He therefore proposed that the end of paragraph 1 (e) should be amended to read:

"or has been set aside in the country under the law of which it was made".

Mr. KESTLER FARNES (Guatemala) said that there had been considerable discussion concerning which party should bear the burden of proof in the matters of suspension, annulment and finality of the award. It had been agreed that the enforcing authority would not be able easily to determine whether an award had been suspended or set aside without hearing the party against whom the award

(Mr. Kestler Farnes, Guatemala)

was invoked, and that therefore the provision relating to suspension and amendment should appear in paragraph 1.

On the other hand, there had been disagreement in the Working Party on the question of which party should bear the burden of proving that the award was final and operative. That disagreement had been resolved by a compromise under which the provision relating to the finality of the award would be placed in paragraph 2, thereby empowering the enforcing authority to determine ex officio whether the award was final or not, if it could do so on the basis of the documents submitted, without prejudice to the right of the parties to furnish proof in that connexion.

In view of that compromise, he could not understand why in document E/CONF.26/L.43 the elements of finality and annulment had been put together in one provision, and the element of suspension had been placed in article V. He felt that the compromise reached in the Working Party should be respected in order to avoid a lengthy debate.

As to the word "binding", he had accepted it on the understanding that it meant "final" in the sense that no legal remedy remained to prevent enforcement.

Mr. COHN (Israel) pointed out that the first question before the Conference was whether the provision under discussion should be placed in paragraph 1 or paragraph 2; in other words, whether the defending party should have to prove that the award had not yet become binding on the parties or had been set aside, or whether the authority before which enforcement was sought should be empowered to consider those matters of its own motion. He was in favour of paragraph 1, not only because he represented a country whose system of law was the adversary, and not the inquisitorial, system, but also for a more cogent reason.

Paragraph 2 dealt with matters of which the enforcing court, knowing its own country's law, would have judicial notice, whereas the provision under discussion concerned a foreign law, with which the court would not be too familiar.

As to the text of the provision, he suggested that the Drafting Committee should delete the words "recognition and enforcement of which is sought". They were not used in other sub-paragraphs of paragraph 1 and would be unnecessary in sub-paragraph (e). He agreed that the word "binding" would be open to different

(Mr. Cohn, Israel)

interpretations. What it meant was that the award should be enforceable. The word "final" was equally objectionable and he suggested that the Drafting Committee should be asked to find a more suitable term.

Finally, he proposed the insertion of the words "or suspended" after the words "set aside". The fact of suspension should entail the refusal of enforcement, not merely the adjournment of the decision on enforcement as provided in article V (1). If his amendment was adopted, article V (1) would be deleted.

Mr. KORAL (Turkey) said that the defending party should not be required to furnish proof that the award was not yet final or that it had been suspended or set aside. Those questions should be within the purview of the enforcing court, and the provision under consideration should therefore be placed in paragraph 2. He did not agree with the representative of Israel that the court would have to study the municipal law of another country. All it would have to do would be to determine whether the award had become final.

He agreed with the objections to the word "binding". Although the word "final" had caused some problems in the past, it was preferable to the word "binding". All awards were binding once they had been made.

Mr. HERMENT (Belgium) felt that the word "binding" was open to misinterpretation and should be replaced by another term.

Mr. MATTEUCCI (Italy) said that in the Working Party the term "binding" had been taken to mean that the award would not be open to ordinary means of recourse. He supported the Norwegian amendment as an essential clarification.

Mr. GEORGIEV (Bulgaria) drew attention to the important considerations advanced by the Guatemalan representative, who had said that the text of the sub-paragraph was a compromise. Accordingly, it would be unwise to accept the Norwegian amendment.

Mr. GOMES PEREIRA (Brazil) said that the amendment he had proposed in document E/CONF.26/L.37/Rev.1 should be to article IV 2 (b) or (c) depending upon the action taken with respect to the present sub-paragraph (c), rather than to paragraph 1 as stated in the document. He asked that the amendment should be put to the vote because, unless it was adopted, he doubted that his Government could ratify the Convention without reservations.

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Mr. COHN (Israel) proposed that, to obviate the difficulty to which the Norwegian amendment would give rise, the words "by a competent authority" should be used instead of "in the country in which it was made".

He felt that the Turkish amendment would be difficult to reconcile with the law of common law countries. In that connexion, the Working Party had wisely refrained from using the term "normal means of recourse". He agreed with the Italian representative's interpretation of the word "binding". However, a more acceptable term might be found by the Drafting Committee.

Mr. KESTLER FARNES (Guatemala) said that the compromise with respect to sub-paragraph (c) of paragraph 2 related only to the finality and enforceability, of the award and not to the question of its being set aside or suspended, which should be dealt with in sub-paragraph (e) of paragraph 1. He could not agree with the Italian representative's interpretation of the word "binding". An award would not become binding until all means of recourse, both ordinary and extraordinary, had been exhausted and all formalities completed.

The Norwegian proposal to insert the word "proper" before "notice" in sub-paragraph (b) was adopted by 25 votes to 3, with 7 abstentions.

The Belgian proposal to delete the clause between square brackets in sub-paragraph (c) was rejected by 17 votes to 15, with 6 abstentions.

Mr. KORAL (Turkey) withdrew his amendment to sub-paragraph (d) in favour of the Yugoslav amendment (E/CONF.26/L.45) on the understanding that the principle of the superiority of the law over the agreement of the parties was maintained.

The Yugoslav amendment (E/CONF.26/L.45) was rejected by 20 votes to 12, with 2 abstentions.

The Conference decided, by 30 votes to 2, with 5 abstentions, that paragraph 1 (e) should be retained and paragraph 2 (c) deleted.

The Israel amendment to insert the words "or suspended" after "set aside" in sub-paragraph (e) was adopted by 12 votes to 5, with 16 abstentions.

The Israel proposal to substitute the words "by a competent authority" for "in the country in which it was made" in sub-paragraph (e) was adopted by 14 votes to 7, with 12 abstentions.

Article IV 2 (a) and (b)

Mr. MATTEUCCI (Italy) observed that in the Working Party he had withdrawn his proposal to the effect that recognition and enforcement of an arbitral award might also be refused if the competent authority in the country where recognition and enforcement were sought considered that the arbitral award was incompatible with a judgement applying to the same parties and the same subject matter rendered in the territory of the State where the sentence was relied upon, on the understanding that it was covered by the term "public policy" in sub-paragraph (b).

Mr. COHN (Israel) asked whether the principle of res judicata, deemed to have been covered by the term "public policy", also applied to violations of a country's criminal law.

Mr. MATTEUCCI (Italy) said that "public policy" was a matter within the discretionary power of each country.

Mr. MAURTUA (Peru) felt that a mere reference to "public policy" was inadequate. The words "or with the fundamental principles of the law" should be added.

Mr. ADAMIYAT (Iran) agreed.

Mr. HERMENT (Belgium) proposed that the order of paragraphs 1 and 2 of article IV should be reversed since the action taken under paragraph 2 (a) and (b) preceded that taken under paragraph 1.

Mr. COHN (Israel) proposed that the words "illegal or" should be inserted before "incompatible" in sub-paragraph (b).

Mr. POINTET (Switzerland), Mr. RAMOS (Argentina) and Mr. PSCOLKA (Czechoslovakia) said that they could not vote for the Israel proposal.

Mr. COHN (Israel) explained that his amendment did not purport to prevent recognition or enforcement of an award because it was not in accordance with the civil law of the country in which the award was sought to be relied upon but only when it involved violation of the criminal law.

Mr. GOMES PEREIRA (Brazil) proposed that the words "or with fundamental principles of the law" (ordre public) should be inserted after "public policy" in sub-paragraph (b).

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The PRESIDENT said that the Brazilian amendment in document E/CONF.26/L.37/Rev.1 would constitute a new sub-paragraph (c) of paragraph 2.

Mr. KESTLER FARNES (Guatemala) was not aware that the previous sub-paragraph (c) had been deleted following a vote. He had been under the impression that the term "binding" in that sub-paragraph was to be discussed in the Drafting Committee and that the matter would be taken up again in the Conference. If he was mistaken, he wished to state that his vote on sub-paragraph (e) of paragraph 1 should be recorded as an abstention.

The PRESIDENT suggested that the Conference should vote on the Israel proposal to insert the words "illegal or" subject to a possible decision by the Drafting Committee to choose another term.

The Israel proposal was rejected by 27 votes to 8, with 4 abstentions.

The Brazilian proposal to insert the words "or with fundamental principles of the law" (ordre public) after "public policy" in sub-paragraph (b) was rejected by 21 votes to 12, with 4 abstentions.

The Brazilian amendment in document E/CONF.26/L.37/Rev.1 was rejected by 26 votes to 9, with 4 abstentions.

The Belgian proposal to reverse the order of paragraphs 1 and 2 of article IV was rejected by 14 votes to 10, with 10 abstentions.

Article IV, as amended, was adopted by 32 votes to 1, with 4 abstentions.

Article V

The PRESIDENT pointed out that article V now consisted of a single paragraph, the question of the suspension of an award dealt with in paragraph 1 having already been disposed of in sub-paragraph (e) of article IV (1).

Mr. MATTEUCCI (Italy) proposed that the words "to the competent authority" should be substituted for "in the country where the award was given" in line with a previous decision on the same matter. The word "competent" in the second line of the original text should be deleted as it was redundant.

The proposal was adopted.

Article V, as amended, was adopted by 35 votes to none, with 3 abstentions.