
UNITED NATIONS CONFERENCE ON ROAD AND MOTOR TRANSPORT
COMMITTEE I ON LEGAL AND GENERAL MATTERS AND DOCUMENTS

SUMMARY RECORD OF THE NINTH MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 September 1949, at 10.15 a.m.

CHAIRMAN: Mr. MIKAOUTI (Lebanon)

SECRETARY: Mr. HOSTIE

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1. PROGRAMME OF WORK

The Committee agreed to defer discussion of the question whether Annex 2 should be incorporated in Article 4 of the draft Convention.

2. CONSIDERATION OF DRAFT PROVISIONS FOR INSERTION IN A CONVENTION ON ROAD AND MOTOR TRANSPORT PREPARED BY THE ECONOMIC COMMISSION FOR EUROPE (Item 4 of the Conference Agenda) (Documents E/CONF.8/3 and Addenda, E/CONF.8/21, E/CONF.8/25, E/CONF.8/29, and E/CONF.8/38) (continued).

Draft general and formal Provisions.

The CHAIRMAN, opening the discussion on the general and formal provisions for inclusion in the Convention, pointed out that the Committee had before it a large number of documents relating to that subject, namely: the draft general articles submitted by the Secretariat (Document E/CONF.8/21), which might be taken as the basis for discussion; the drafts proposed by the United Kingdom and United States delegations (Documents E/CONF.8/25 and E/CONF.8/29); and the amendments submitted by the Czechoslovak delegation to the United Kingdom draft (Document E/CONF.8/38). There was a further proposal submitted by the Lebanese delegation relating to the question of national security. The Netherlands delegation had, furthermore, requested that the question of the relations between adjacent States be examined in connection with the United States amendment to Article 3, paragraph 1(b) of the ECE draft (Document E/CONF.8/25).

After some discussion, the Committee unanimously decided to entrust the Working Group with the drafting of the general articles, in the light of the decisions to be taken by the Committee and such reservations expressed by various delegations.

The Committee unanimously adopted a proposal by the CHAIRMAN, to appoint to the Working Group representatives of Sweden and the Dominican Republic.

/The CHAIRMAN

The CHAIRMAN pointed out that, although it would be impossible for all delegations to be represented on the Working Group, delegations not represented would be enabled to put their views before it at the appropriate moment.

He invited representatives to express their views on Article A of the Secretariat draft general Articles.

Mr. HUBERT (France), having suggested certain textual emendations to the French version, proposed that Article A should appear at the end of the General Articles, and not at the beginning. He also felt some misgivings about the inclusion of the vague phrase "if any dispute cannot be settled satisfactorily by other means". Such a wording might imply that the International Court of Justice might become a kind of general Court of Appeal. On the other hand, if the Contracting States were free to set up special courts of arbitration to interpret the Convention, that situation would lead to discrepancies in the judicial interpretation of the articles of the Convention. He considered that all disputes which could not be settled by amicable negotiation between the parties concerned, should be referred to the International Court of Justice, and proposed, therefore, that the phrase "satisfactorily by other means" ("de manière satisfaisante par un autre moyen") be replaced by the phrase "by amicable negotiation" ("par voie amiable").

Mr. GOTTRET (Switzerland) suggested that, as had been the general rule with previous Conventions on Transport, it might be possible to insert a provision requiring an advisory opinion to be obtained from the Secretariat of the United Nations before any dispute was referred to the International Court of Justice.

Mr. HUBERT (France) considered such a provision in no way incompatible with the amendment he had proposed.

The SECRETARY explained that the 1921 Convention had made preliminary conciliation obligatory in the event of a dispute, whereas the 1926 Convention had merely made it optional. Under the provisions of the earlier Convention, any dispute had first to be submitted to an organ designated by the Council of the League of Nations. If conciliation proved impossible, the organ had then to submit to the Council a report on the legal and factual aspects of the matter.

By analogy, disputes arising out of the new Convention should be referred to an organ designated by the Economic and Social Council rather than to the Secretariat. Such an organ could be of regional or world-wide character, according to circumstances.

Mr. SCHAEPMAN (Netherlands) enquired whether there was not a similar provision in the International Maritime Convention which might shed light on the problem.

The SECRETARY said that the organ designated by the Council of the League under Article 5 of the Convention of 1926 had been the Advisory and Technical Commission for Transit and Communications.

With regard to the enquiry made by the Netherlands representative, Article 55 of the Convention on the Inter-governmental Maritime Consultative Organization provided for reference of disputes concerning the interpretation of the Convention to the Assembly of the Organization, and Article 56 stipulated that any legal question which could not be settled by the Assembly should be referred to the International Court of Justice.

Mr. FOLEY (United States of America) pointed out that Article 9 of the draft Convention on Freedom of Information made provision for the settlement of disputes which read as follows:

"Any dispute between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiations shall be referred to the International Court of Justice for decision unless the Contracting States agree to another mode of settlement".

In his opinion, that draft would meet the objections raised by the French representative more satisfactorily than would the provisions of the Secretariat draft.

Mr. HUBERT (France) agreed.

Mr. GOTTRET (Switzerland) said that the solution suggested by the Secretary corresponded exactly to what he had had in mind when referring to the Secretariat of the United Nations.

Mr. AZKOUL (Lebanon) pointed out that certain States had already concluded regional agreements which made provision for arbitration. It would be undesirable for the Convention under consideration to impose on such States the obligation of denouncing existing agreements.

Since the Article in the Secretariat draft (Document E/CONF.8/21) appeared in similar form in other conventions, he was in favour of retaining it as it stood.

Mr. BEST (United Kingdom) was in general agreement with the representatives of the United States of America and of Lebanon. The provision should be kept as simple as possible.

He would, therefore, suggest that the Committee agree in principle to Article A, and leave it to the Working Group to determine the final wording in the light of the views expressed, and taking into consideration the Article of the Draft Convention on Freedom of Information quoted by the United States representative.

The Committee unanimously agreed to adopt Article A in principle and to refer it to the Working Group for final drafting.

Mr. BUZZI-QUATRINI (Austria) observed that, in the absence of definite instructions from his Government, he could not give his final approval to the proposed general provisions. He reserved his right to raise the point again at a plenary meeting of the Conference.

The CHAIRMAN invited the views of representatives on Article B.

Mr. HUBERT (France) said that there were certain emendations of a purely verbal character which he would like to refer to the Working Group.

With regard to the actual substance of Article B, he considered that the third sentence of paragraph 1, which ran: "The Secretary-General may invite to the conference such States other than Contracting States whose participation would in his opinion be desirable", gave the Secretary-General powers which were somewhat arbitrary and might even prove embarrassing.

Mr. LUKAC, Executive Secretary of the Conference, explained that the provision referred to by the French representative had been included in order to anticipate two problems, namely: that of inviting States who might have become Members of the United Nations after the ratification of the Convention; and that of inviting those States which had not ratified the Convention, because of their inability to accept some particular clause, to attend a fresh conference and there submit the amendments they desired.

On formal grounds, the objection of the French representative was well founded; it could however be met by substituting the words "Economic and Social Council" for the word "Secretary-General".

Mr. AZKUL (Lebanon) suggested that the list of States eligible for invitation to the Conference now in progress could be used as a basis for a list which might be inserted in the Convention as a guide to the Secretary-General when considering what additional States should be invited to future conferences. He hesitated to place that responsibility on the already over-burdened Economic and Social Council.

Mr. FOLEY (United States of America) pointed out that such a list could make no provision for any new States that might come into existence. He thought that the proposal of the Executive Secretary admirably met the objection of the French representative.

Mr. FRANCO (Dominican Republic), Mr. HUBERT (France) and Mr. AZKUL (Lebanon) agreed.

Mr. SCHAEPMAN (Netherlands) also agreed with the proposal, but asked why the minimum number of requests required for convening a conference to consider any proposed amendment had been fixed at one-third of the total number of Contracting States.

Mr. LUKAC, Executive Secretary of the Conference, explained that the proportion could not in effect be made any greater without implicitly providing that no amendment could be put forward which was not assured in advance of adoption. The question of adopting a lower minimum could be considered if the Netherlands representative wished.

Mr. SCHAEPMAN (Netherlands) said he would prefer "one-quarter" to "one-third".

Mr. BEST (United Kingdom) was in general agreement with Article B, though there might be some points on which his delegation would have to reserve its position until further instructions had been received from his Government. He was in favour of substituting the words "Economic and Social Council" for the word "Secretary-General".

Mr. DVORAK (Czechoslovakia) considered Articles B, C and D to be similar in spirit to those contained in the United Kingdom proposal (Document E/CONF.8/25) to which his delegation had put forward certain objections (Document E/CONF.8/38). Paragraph 3 of Article B, in particular, was contrary to normal practice of international law. International Conventions could not be amended by majority decision, and those who find the Convention inapplicable should denounce it, unless they were able to secure the consent of all the other signatories.

Mr. FOLEY (United States of America) agreed with the amendment proposed by the Netherlands representative.

Mr. BEST (United Kingdom) was in favour of retaining the words "one-third".

Mr. A'KOU' (Lebanon) pointed out that the Committee, when it came to discuss Article H, would have to decide on the minimum number of ratifications required before the Convention could come into force. It would be better, therefore, for the Committee to insert in Article B a figure related to that contained in Article H, rather than to adopt a purely arbitrary fraction such as one-third or one-quarter. He accordingly proposed that a decision on the second sentence of paragraph 1 of Article B be deferred until Article H had been dealt with.

Mr. BANERJI (India) supported the Lebanese proposal.

In order to ensure respect of the principle of unanimity, defended by the Czechoslovak representative, the Committee should fix the number of requests required for the summoning of a conference as high as possible.

Mr. SCHAEPMAN (Netherlands) explained that his proposal had been based on the consideration that possible regional developments might justify the calling of a conference, although only a few of the Contracting States would be closely concerned.

The Committee unanimously agreed to adopt paragraphs 1 and 2 of Article B in principle, on the understanding that the minimum number of States required to request a conference would be decided in the light of its decisions on Article H.

Mr. HUBERT (France) did not understand why Sovereign States would not themselves limit their sovereignty by deciding in a Convention that its provisions could be amended by majority decision. He enquired whether there were any precedents for such a provision in International Conventions.

Mr. LUKAC, Executive Secretary of the Conference, quoted Article 52 of the Convention on the Intergovernmental Maritime Consultative Organization, which contained an identical provision. Other examples could be found in the Statutes of certain specialized agencies.

Mr. FRANCO (Dominican Republic) agreed with the views expressed by the French representative. The Committee should take decisions calculated to enable the Convention to grow in strength, rather than ones which favoured denunciation. If a sufficient number of Contracting States were in favour of an amendment to the Convention, it would be wiser to accept it.

The CHAIRMAN announced that Article B had been adopted in principle by the Committee, with the provisos already mentioned, and subject to the reservation entered by the Czechoslovak representative.

Mr. DVORAK (Czechoslovakia) declared that he would not insist at that stage on his delegation's point of view, but that he reserved his right to raise the point again in plenary.

The CHAIRMAN, replying to a suggestion by Mr. A'KOUL (Lebanon), stated that the wording of both Articles A and B would be the responsibility of the Working Group.

The meeting rose at 12.45 p.m.
