

RECORD
NOTE BOOK
Pages

Howard M. Holtzman

Arbitration Mission to Peking

Commencing January 16, 1945

Thursday, Jan. 16, 1975

(I.)

✈ Flight 772 Ethiopian Airlines arrived 20 minutes early at about 6:30 a.m. We are met by

Mr. Sen Chien-hsing
Chief, Legal Dept., CCPIT
~~Secretary General,~~
~~Executive Secretary,~~ FTAC
(Some English)

Mr. Tang Hou-tse
Chief, Arbitration, Legal Dept. CCPIT
Member, FTAC Panel
(Excellent English, translates all technical and complex material for Mr. Sen)

Mr. C.C. Yeh
Liaison and Protocol, CCPIT

- All custom clearance dispensed with by our hosts.
- While waiting for transport,
 - (1) Mr. Tang said they had received our

(2) Mr. Jen said we had done "good work" in preparing for meeting.

(3) Both Sen and Tang expressed interest in Delhi Congress.

Later, in mini-bus which we all started on way to hotel:

(1) Great interest expressed in Congress. They said they wished us to tell them about it.

They expressed satisfaction when told that we had brought copy of Congress Resolutions for them.

Were interested to know that next meetings will be in Vienna (Interim) and Mexico (next Congress). Asked to know dates of these next meetings. Tang explained they were interested in "multilateral" as well as "bilateral" contacts.

(2) Tang emphasized their goal was "communication". We said we hoped to learn about mediation from them. They said we could learn from each other.

3

arbitration would contribute to friendship and help in development of U.-China trade.

- Mr. Yeh, who says Horowitz is his "good friend", will come at 3 p.m. to hotel to discuss our program.

- Mr. Jen says "see you tomorrow".

- Later, Horowitz arranged for meeting at U.S. Liaison office in "late afternoon". Also, arranged for us to see George Bush at that time.

Ask Horowitz - (i) What significance, if any, to dependency of customs?

- Sign in Hotel lobby: "We have friends all over the world".

(II.)

- Hotel Peking Castle address: 6531

Hotel Peking telephone : 558331

- Exchange rate at Hotel : ¥ 182.40 per \$100.

(III.)

- Mr. Yeh met us in our hotel very promptly at 3 p.m. He was accompanied by another member of the Liaison Dept. who will accompany the wives:

Mme Li Yu-tien (excellent English).

- Mr. Yeh advised as follows:

(1) There will be morning discussions with Mr. Jen every morning from 9 am to 11:30 am. He expects 4 to 5 meetings.

(2) Cadres will sign in am. OBI + HMIT will join them in afternoon.

(3) We will probably leave on Friday or Saturday - most likely by plane to Canton. We again requested train and were told the train is "very crowded". We also asked about Hangchow and Soochow, but were told weather there is cold.

(4) We asked to ~~see~~ visit
- Universities where arbitration ^{commercial} & law are taught and where we could meet colleagues interested in these

Subjects.

- Family planning people.
- Botanical gardens.

(1) We were told we would visit a factory - when asked what kind of factory, HMIT requested pharmaceutical ~~+~~ and/or steel. We were told we will also visit a commune.

(2) We will leave Peking next Friday or Saturday.

(3) ^{Mr.} ~~Mr.~~ Yeh took plane tickets and passports.

(IV.)

Program for Friday, Jan. 17 + Sunday, Jan. 19

(1) HMIT + O.B.S. will be picked up by car at 8:45 a.m. for 9:00 a.m. meeting in CCPIT

(2) Cadres will meet Mme. Li at 9 am in lobby. They will also be accompanied by Mme. Chin Kuang-Hua, a member of CCPIT Legal Dept. (who speaks little English)

(3) At 1:56 we will all meet in lobby to go to Imperial Palace for a tour of about 2 1/2 hours.

(4) At 5:55 he will be picked up by car - meet "someone" in lobby to go to Peking Duck restaurant for dinner given by:

Mr. Ciao Feng-chou
Chairman, FTAC
Vice Chairman, C.P.I.T.

(5) CCPIT has a telephone at hotel - manned during day - Room 2100

(6) On Sunday we will go to Great Wall and Ming tombs

(7) CCPIT offices work on Saturday.

(V.)

At 4:45 we all went by taxi to P. U.S. Liaison office.

We first met with
Herbert E. Horowitz

- He had received a copy of our memorandum from William Lincoln at the China Desk of the U.S. Dept. of State in Washington. He commented that it was "good ~~work~~ ^{carefully} ~~well~~ prepared" and felt it would help get discussion off to a good start. He said Chinese appreciated a "serious" approach.

- Horowitz stressed the value of discussion during informal sessions.

- He outlined, as Thoreau had in Washington, the usual pattern of morning meetings. He indicated that only in "hot" negotiations were afternoon sessions held.

- He appeared impressed that we had been met early in morning at airport by such a high-level group.

- He was also impressed by the ~~possibility~~ plan for 4-5 days of meetings.

- He will be leaving for Tokyo on Sunday.

- Bill ~~not~~ Rose, his assistant, will be available during Horowitz's absence.

- There are relatively few visitors in town - may be due to National People's Congress being in session - or imminent.

- We then all went to Ambassador George Bush's residence where we spent an hour with him and his wife, Barbara. It was an informal gathering, over drinks. Bush told us of Moynihan's

- Bush and Horowitz confirmed that PRC consider itself a "developing country" and the leader of the third world. Some other developing countries, do not share that identity, ~~the~~ perceiving China to be relatively highly developed.
- Bush is leaving for Washington in next day or so.
- Mr. Bush invited Carol and Beth to lunch on Thursday, tentatively based on everyone's schedule.
- We came away with a gift of two bottles of bourbon. In return, we gave them our copy of last Tuesday's Paris "Tribune".

Friday - ~~Wed.~~ January 17, 1975

(I.)

- Mr. ~~Ren-~~ ^{Ren-} welcomed us on behalf of ETAC.
- Drawing room atmosphere - upholstered chairs. (no table).
- Present
 - Sen (Ren)
 - Tay (at front door awaiting us)
 - Ciao Shu - Ni-ching. member, ETAC. ^{economist}
 - ~~4 others to be indicated~~
 - Chow ~~Shao~~ - Mun-yi, member, ETAC. law expert.
 - Tung - Yo-can, working in ETAC.
 - Sung - Chay-lyi, working in ETAC.
 - Tung - Chan-chang, working in ETAC.
 - 1 - other -
- See corrected notes, later page

Ren
 - We have gone thru memorandum, we are quite satisfied with your presentation. I suggest we hear from your first. After this morning, we will introduce our side to you. (HMH query: Does this mean they will sidestep our questions and give their picture their own way?)

(II.)

- DAS. Reads his introductory statement.
- (Side-note: all drilled alike - except socks! socks)

Working in arbitration

Finally, I express our welcome to our U.S. friends to come to exchange views with us. We think it is a good time when new legislation is adopted and also as is being reported on work of Chinese - it is a good moment for American friends to be in Peking - particularly in Report by Clowson (I) he speaks of relations between China and U.S. This is last time for you to visit us - but we have known friends already. ~~For~~ develop Commerce and extension of friendship and development of trade between countries and friendly human contacts - we suggest we both should exert our common efforts.

DBJ - We would appreciate a brief meeting tomorrow. To review any relevant points to clarify our understanding.

Ray If you ^{teaching} say ^{teaching} frankly, we are ^{teaching} ^{teaching} each other - if you say ^{teaching} learning, we are ^{teaching} ^{teaching} learning from each other.

Thursday, morning, Sun. 23, 1975

Number refer to questions in HMH memo of questions - See memo for questions - which are not reported in following notes -

1. Yes, U.S. firms can do that. CCPIIT as a promoter of international trade, anything which can be done, we are always ready to do everything possible to push forward international trade.

~~An Am~~ (1) Amer. Corp may contact U.S. directly or through AAA - both are good (ii) P.S. will write to FTAC or Legal Affairs Dept. of CCPIIT - either is equally good. In architecture, Legal Affairs Dept. does routine work for FTAC. In case, American firms forget to address to Legal Affairs Dept - ^{A letter addressed to} ~~CCPIIT will~~ to CCPIIT will set to Legal Affairs Dept.

2. we agree - ^{FTAC} we shall do our respective work in this respect.

2. can't
we think it is our duty not only to look after complete cases, but also to do propaganda and educ. work among firms in both countries

3. omit - at DBI register.

Hunt - pt out that as to Zurich - it is not a system to international conventions which is described - but it has a number law. Hunt send copy of International Conventions in Eng. + French. Also, Oligo Law Dictionary

4. For example, arbitrator clause is specified locate in Sweden under Swedish Arbitration procedure. No expense yet in actual cases. DBI will exercise information on law on either of us get experience.

5. Sub Den: Substantive law? Hunt: YES
Four respects some yesterday are more important - Being law attendant law concern is governing law is still under study.

But, cost AAA expense Hunt says AAA suggests that govern national law should be stated in contract - Hunt prefers to have a specific country whose law will govern - See other lawyer prefer to state that governing law will be the law

Rev: Refer to 3 principles - (1) Independent keeping initiative (2) mutual benefit (3) introduction - when we say that we start from point of law (2) equality + mutual benefit - we start from pt. of policy (3) international practice - they start from pt. of practice - main purpose is to write these 3 principles as we and implement them in arb. work - to under the guidance, we are studying their guide right now. More concretely, we try combine these three principles - we are combining expert in law, expert in politics or policy, expert in trade. Draw them together to settle the problem.

DBI - what does "retain initiative" mean? we use it for three principles. we mean, first of all we have to take into consideration our law

Hunt says that understand it means mean that a party can agree to law of another country

agreement and in ~~his own self-interest~~
the interest of his own trade.

Ren says: You think ideas independently
without excepts any force from outside.

Ren would like to see ~~an~~ explanation
which has both philosophical meaning and
practical nature. He observes that
principle to reach end that we can
combine the principle with flexibility -
[ie. not constitute balance between

"International trade is international trade,
~~you can~~ it impossible to think of ~~your~~
your own interests only - but if you only
think of other it is not appropriate -
so you ~~take~~ take into consideration our
laws, but at the same time we take
into consideration international practice to
insure better transactions - on one hand, it
is consistent in compliance with our laws
and on other hand it is consistent with
international practice."

I think it's out this balance is

consistent with U/Supreme Court in Atke
Clarke v. Alberto Culver - "we cannot be
international commerce only on our own terms".
Mean we must be settle our own law and
international law in balance - and similarly
UK Const. Art. 5, par. 2. balances international
law and local law (i.e. need may refer
to enforce on ground of public policy) -
You arrive at this from dialectic of
Marx-Mao - we arrive at it ^{another} ~~from another~~
point of view - but they # 1)
similar.

Hull points out Ren principle are ~~one~~ a
helpful way of analyzing ~~some~~ law
problem. From point of view of law,
a stipulation of a specific country is best.
From point of view of trade, ~~the~~ stipulation
of "~~principles of~~ international trade"
conflicts with it is a way for traders to
get over a difficult problem without
having to argue about it at the contract
is written.

6. Ben accordingly to ~~be~~ our money up to now, "no".

DD/ in few cases you have had, what law did apply? ^{Ben} - All cases administered by us were in accordance with three principles just mentioned. It is difficult to combine these three principles in practice, but as a matter of fact we have been doing our best to reach that end and to do it better - not perfect yet.

Frederic At Hunt said, trends, whether to be broad point of view, but as an arbitrator, I think we should deal with problems

seriously and look from eyes of the three principles. Only in this way can we reach that end of not to be

credulous and protect interest of your own country and your own ~~factories~~ ^{factories}

that means parties should be on even footing.

Last April, Ben participated in CMI (International Maritime Com. Code) in Hamburg, as friend from a North Europe country told him a story - Re USSR is very much

interested and active in setting up

arbitration institute within CMI, friend from North European country - do you know what is secret why USSR is so interested in setting up this CMI - Ben says he does not know secret - what is it?

Friend said, ~~that~~ USSR, USSR North Am. Comm had a bad name ~~in~~ in world, ~~but~~ because most of cases submitted to USSR MAC have resulted in least side always

was, so many outside were reluctant to speaking USSR MAC, and, on other hand, the Soviet maritime corps do not wish to go to other countries because of "great nation clauses"

Perhaps USSR wanted a way out in C.M.I. Ben stresses it is very important to ~~do~~ ^{do} some principle of dealing with international cases in a fair and reasonable way.

8. Ben says we should prefer to attend hearings and know experience - we will consider your request - but we have to consult with parties before.

Must respect possibility of ~~the~~ ^{the} ~~type~~ ^{type} of summary which preserve confidentiality of parties, yet is helpful to ~~reach~~ ^{reach} ~~quicker~~ ^{quicker}.

we will consider that. we will see if we can make a comprehensive summary to tell both parties. If so we

ready to exchange with you.

DB/1 - points out we can't exchange - leave our awards don't be open.

^{Run}
 we are all working in one direction. So we'll exchange what we have and can exchange.

9. ~~Some~~ we have some experience outside China and are right now summarizing it.

Hunt points out he raised this question because of misunderstanding by ^{many} ~~many~~ Americans that Chinese ~~look~~ ~~with~~ ~~for~~ support only

friendly negotiations and feel that if they commence arbitrator it would be considered an antagonistic act. Ben we don't think it

is ~~not~~ ^{not} appropriate to attempt to arbitrate in a third country.

Ben: we don't think it ^{commune} ~~unwisely~~ do that in arbitrator outside China.

The terms of the contract, ~~arbitration~~ clauses are to settle by both parties, but ~~it~~ should do this in accordance of agreement.

Tang: now you are are all it?

10.

(a) + of course, ^{not} it works by both due

(b) before long. But, in case Ben are quite able to be called By ^{with} ~~some~~ ~~be~~ can be called. ^{At} ~~the~~ ~~case~~ ~~are~~

arbitrator, Tribunal is in clear - all persons can put questions.

Not to discuss. We sit down in the room. To "study" the problem, as we say in China - But

and center is the tribunal.

In doing arbitrator, you have to think over problem from all directions and "be very careful and clear and you should hear not only

positive comments but also negative comments, even sometimes comments from

minority - even things from minority. Records do not express majority are

~~not~~ frequently come, but sometimes ~~minority~~ minority, right - minority = minority heard

can't be intended.