

UNCEITRAL WG.

New York, 10 Spring 2005

Chair Lomb to conclude IM

After a certain number of work. See: my
prepared draft of 17, 17B, 17 ter.
There was an "sp

~~in Feb last year.~~
~~Dec 13~~ W P 131 we analyzed 17, part 1-16.
and then we ~~was~~ went to Vienna last year and
we studied para 7 - which was controversial.
~~So~~ my chair, we couldn't reach a decision.

~~At last~~ ~~at last~~ In my opinion, this
time to take decision what we are going to
do with para 7 text.

At end of session the very possible concrete
proposal - at para 7. a no endorsement of
ex parte. - Then more on 17 ~~text~~
bis, if there is a compromise we
will not have to

Spain - We have always been in favor of a
"Yes" position - including implementation we
are flexible - we favor ~~131~~ 134 text
in principle favor - Ravelona et

②

has opted ex parte - ~~explicitly~~,
can adopt country

Swiss

A to 134 - continue with draft
we are in favor of "Yes".
2 groups - opt out, opt in -
~~States~~ - Don't need opt out for
States - Don't opt out for parties.

Finland - ~~for~~ has been for Yes - Sec. direct to
134

- For states neither opt in or opt out
- Opt-out. Opt-in not possible.
Variant A - slight preference over Variant B.

- For compromise or endorsement of interim
measure.

U.S.

We have from R being bored look
could prepare a complete package - including
ex parte and would include agreement
- We have intention, less so - Current draft
at 134 is a workable compromise.
- Also we can support R compromise -
- No opt-in, opt out for States.
- Or endorsement to have as workable

Compromise - we could not include elements
- But could learn from R & S, State do
include.

Tang
Tang

We agree with emergent chart has
prepared

We support inclusion of ~~of~~ element
provision.

We ~~also~~ no option - opt-out for
States.

Reason of ~~to~~ ~~the~~ compromise.

UIC.

Reward -

UIC. opt-out grants ex parte
order reform. Since R not nearly

DT, has conducted a wide
consultation - involving view of R & S,
number of principle, it is wrong to
have ex parte.

It is to be in compromise - UIC now
proposed - no element of a preliminary order.

Want opt-in on parties -

Compromise, on provision of R & S

opt-in on pro to parties

→

Germany is quite messy and let's
leave with opt-out.

Our view is that is a matter
of principle to have it. At the
least ~~not~~ 'arbitrarily' having to be in

opt-out for parties

Germany is saying - what we got was
"let's have it in" - necessary to have clear
but arbitrator has been here at least.

Nigeria

~~At para 7 in 134~~

~~but At OK we have some~~

We can see a compromise

no opt-in opt-out for parties

Principles seem to favor

Creation - current para 7^{in 134} is a good
reflection of principle ~~is~~ At a matter of
principle - ~~subsequent~~ we support
a matter

Opt-in - opt-out - Opt-in
by parties. Arbitrator's authority can include
~~it~~ opt-in it may well otherwise opt-out

11. better - Time & scope to reach

Austria - We could go under language -
suggested by UK is a good
solution.

Sweden - Report & we are in Yes Camp
Prepared to look at para. 7 - in 134 -
we would be happy in para 7
opt-out in para. 7.

France - Up to now we have ~~found~~
found a ex parte method but
today we favor Yes - continuing to
be here - support 134 - except we
propose if we want to give
exceptions - good to say in text that
preliminary orders cannot be taken unless
there is procedure to do
Openly make it clear in the
preliminary orders are procedural, not
substantive - Make a clear-cut
distinction between prelim. order &
interim measure - preliminary order should
not be an "award" - has to be

~ "or list" -

~> favors opt-in by parties -

Sordis - ~~the~~ favors opt-in by parties

Canada - he has consulted since even with
UK. - ex parte is unnecessary and
problematic. whether or not there is
enforce. ~~to~~

However he would be prepared
there is an opt-in -

Mexico -

Netherlands - opt-in.

ICC - Support opt-in for parties in a
compromise here. - it's new
parties

~~And~~ Opt-in could be in
effect by rules - would be an
opt-in.

USA Castello

Chair - ~~in part~~ ~~opt-in~~

There is one support for "compromise"

~~at F~~

Cauro - ~~as~~ favors "opt-in" - in a
compromise.

Surrou Leons

134 text - state practice is
bounded in common law. My intent is to
ensure legality or violation of provisions in
arbitrary body to be of the other parties

Positive Discussion has not evolved w/ to bring
together 100% -

No doubt what need to include
17-par. 7. Suggest on concrete

Scenario - Look at 134 text, p. 3

a proposal after (h) favors
In. after (h)

Delete what is in 1st 2 sentences.
Delete ~~the~~ bits bracket from par 7g.

- Entered here & could include
- a) State could not include
 - b) State could change part opt-in
 - c) State could say don't apply is opt-out
 - d) State could establish

For the point a, state in order to

- (i) it puts opt-in
 - (ii) ~~State~~ State could not reduce
 - (iii) State could not reduce
 - (iv) State could not reduce
- the number of
- in regards.

Schneider Principle Part is Part later joining
 must be heard — courts can remove
 must be heard under according
 ex parte measures. Equality of
 principle of courts are constitutionally
 equal power.

Opt-in — ex parte measure on with a man
 animal. Opt-in implies ~~Part~~ would
 serve many purposes. implies Part

allocate outdoor water from

Finland - Provide an option would be a
step backward. Agree with U.P.
Russia reports Putin - not happy with
this solution, but it is best solution
we can do here.

Tony - Agree with U.P. opt-in is not
a compromise - it is a reverse
Lebrado has a good idea -
opposed to opt-in by Back.

AAA - State territory that there is a
real compromise reached - and in a real
context that state & individuals will go
off on their own in ways that
are

We have opt-in in AAP context. Policy
has not been used. - parties don't know of
it in negotiations. one needs more wisdom
knowledge. Opt-in choice does not feel
like a compromise - it is a decisive
blow to a previous model.

Art. 134 with opt out or

Spain Opt-in can be given to
state legislators.

Parent opt-in - At the parent
proposal - the proposal could be drafted
in detail.

Germany - opt-out is accepted we have
no opt-in in our law.

Parent opt-out

with opti or opt out for states

Singapore States in practice

opt-out -

or states can opt in or opt out

Other on list

- Oklahoma

- Utah

Crocker

NY city Per

Chair I'm concerned by progress that

we make solving the by

action is opt-in by

parents - Some see this as a

dangerous idea - it is not

done by a commission I asked

you to finish the job -
Arh class I have seen more people do
I find very difficult to allow people to
come up with appropriate class -
opt-in doesn't seem to be a
compromise - there is strong opposition to
opt-in.

Clear

Opt-in has considerable support
but not for us to insist

||

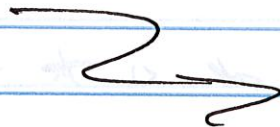
To arrive at a solution - neither opt-in or
opt-out will be acceptable - we must
conclude our work - and find
in private,

Don't Don't like a statute re opt-in opt-out
for / after.

→ Clearly in the 1st part of the
process

→

~~Clear~~



Charter's substitute

There is progress on both sides -

Opt-in / Opt-out is part of compromise.

JCC - Dispute Scheduler

Uta Speaker to Russian proposal -

fm. States could opt-in or opt-out -

States States could do so under parties

opt-in or opt-out - in any event a State

would give authority to State courts to

US respect that opt-in is not a compromise

Chen I no point do I say what is acceptable to me - I was rather strongly to

A to Russian suggestion - our Under I disagree R want make into Lebedev - one he is pretty thing is worthy.

Proprio - My attempt is to overcome B deadlock

Paragraph text of 134 is different from
English text.

Delete the two bracketed versions by
(a) - Delete unless otherwise by R power
(b) if expressly by R power

Insert

Version A Note R's construction is likely
we are free to set up in R rules as well as
provisions we are free to agree on other
provisions.

Version B Insert R's editing
explain "like R provisions" possible
and R sub of par. 4 option of
p. 3 - to cover version
Paragraph is intended to define
R procedure it would not be
containing it a State that not to
include this paragraph (i) to provide
text for or applicable (iii)
opt-out. (iv)



Footnote - include

Version I

(i) the arbitrator, arbitrator are free to set up in their own way on all on parties are well on parties are free to agree to other provisions.

Version II

Par. 17 is intended to define P procedure applicable to arbit. order
It would not be contrary to P harmonization to be achieved by the model law if a state decides

(i) not to include this part,

(ii) to provide that this part is

applicable only where R party has

no need, (iii) to provide that this

part is not applicable where R

parties have agreed otherwise, or

(iv) to establish law chosen by the

parties when no choice is

made.

Creation - Opt-17 are in the
way to it Opt-12 & 14
Compress - Opt-out

Include year 7 in text, but exclude
In. Put here - a state could
leave out -

For other two portfolios

States with plan 7, + opt out - all

States or the RX states can leave out,

Review made to pushback R ~~proposed~~ 12 draft
of a universal program and avoid

LCIA -

ICC -

Favor Review - like RX sh.

Schneider - Process practice

It allows states not to adopt it -

Does not have

Chair - I will make a proposal and
ask if anyone objects.

Accept proposal as drafted with
opt-out process. When proposal is
signed it is clearly stated that
provisional orders are proposed or drafted,
in 1/2 hr we would not have process for
relation to court and a list of
provisional orders. Any objections would be
in Report - except they are in
provisional view.

UK - Accepts proposal but France - holds to
opt-in - Supports ECR in 129-

Chair - As a result of clarification I
didn't say anyone was in agreement but
the ~~pro~~ provisional view was that we had
a provisional

Conor - We have a problem with the
I have drawn a consensus and they
the only possible solution. These
deliberations with reservations will have to be
reflected in

↳ Footnote - opt-out would be for
policy - enforcement of system necessary
except

Netherlands - 7(e) two variants -
could agree it has variant A -
7(e) is a integrated element

Austria - Don't agree to opt-out.
Don't think it has a
majority.

Chartered Institute -
Opt. - 17 -

Spain agrees with char - opt-out
non-enforcement of prior order -
There are more delays in ~~the~~ process
of opt-out - It's not a US
process - text is final
Positive solution is Char - suggestion -
add ex fn. for opt-in - by States.

Poland agrees with opt-out and
Char process.

Finalist we support your compromise
proposed -

Report will indicate
Preliminary view with amendment ~~interest~~
~~interest~~ ~~pro.~~ orders are procedural - not
direct to court review.

3 drafts and 1 obtained without for
objection - I believe - letter will
~~needed~~ ~~can~~ ~~ex~~ like with few ~~and~~
concern with our deliberations. I think
But in text or interim measure ~~are~~ an
important process

Lack of unanimity we need to consider
to understand countries that have
inflexible instructions. I urge you to
There will still be a significant number
of negotiators

There was acceptance of the solution -

Finance - supports opt-in - we agree are
now ready willing to agree text itself

should opt-out but Tine should be a
footnote when talking about countries who
won't opt-in can do so.

Ukr. Canada. Supports France.

China - EU

Ukr. Agree with Canada. Opt-in in a
situation to ~~get~~ more funds.
EU. Column on 17th article ~~also~~ do
opt-in ~~in~~ 17(7).

Chair. per 6 of 17 by would delete it.

→ still opt-in EU would require a
debate. → Try to accept in 17 - and
not re-open discussion.

Netherlands - Supports 134 as essential
object to opt-in in text or EU.

Belgium - Supports France. opposes opt-out.

Austria - Supports France.

Holland - Support ~~French~~ - Check -
EU will not help.

USA - Prefer French - previous statement
concerned EU that was
we do not finally object to compromise

Germany - we accept proposal without
any changes - we do not go
further against EU.

Spain - Don't make any changes in your
proposal - if there are further
revisions just to bring in our proposal.

Ireland - Support French. Like other
of EU.

Synopsis - ~~Just~~ Don't add EU.

Russian - See for reasons just above by
Sum - we support your proposal with
my minor modifications - no EU.
we support the report of the
report but a number of details

include in text of report

Thori - Support chit - update Ru - need
opt in - if so

Revised Timeline - ~~if~~ Mention in Report -
no En.

Cracker - Accept process of put
forward yesterday - agent En.
log st. This is a Ru. in context
to pr. 6 in En.

~~Cracker~~ Chartered Institute -

Support US, Cracker + Swiss -
~~will not~~ Support no En. opt out,
no En. delete pr. 6 of

Schmidt - Contents should be in report - no
En.

Chair

Support ~~draft text~~ of

Support companion process - Area will
be held - Change direction does not
not like it - but we would accept
it.

Chair - Clear at all - From
prepare it. re opt-in - Adapt down,
to process -

#

Doc. 134

Chair - Issue a delete bracket on
"unless agreed by parties" - delete
it expressly agreed by parties.

Take large in brackets in (d)

←

Chair - U.S. ~~to~~ If no objection -

#

Final - Supports U.S.

Bayan - support U.I.

Chir. we on dot U.I.

US. (b) suggests adder cardy-

No objections.

Clear (a) Adapt U.I. proposal -

(b) Adapt id of proposal -

(c) 'reasonable' from last

French. - To meet delete "on board"

Chir - meeting "reasonable" - see page 134 -

(d) Cotton exchange - change "in draft" -

to "agent in the Republic of the Republic"

LCIA -

it'

LCIA

Uk. - The papers were re notice -

Chair. Obligation to give notice upon the
arbitral tribunal.

Secr. will re draft - obligation to give
notice shall be upon the tribunal.

Secrete

→ Should we have a package of interim
measures + written from at same time.

- It seem the decision that measures are
interim measures - text by 6 to be circulated
widely to guarantee that could reject we
should not do it in 2005.

Wednesday

Chair

Subj. Liked Castro obvious.
yf by is an important idea -

Chair - There was support -

ICC - I, too, found Cairo "interesting" -

Cairo - At the earliest possible opportunity
and if at all practicable within 48 hr
after notice of receipt or such longer
period of time as is required by the
party against whom the order ~~is~~
has been made

APP - Case of "such longer period of time
as is practicable" might seem appropriate.

U.S. - Two working days - not 48 hr

China - speaks of "days" not "working days"

Canada - reports Cairo -
like 48-hr. "target" -

- Name Guide to Research

- Who prepared it.

- Appendix or interested.

#

Expanded Explanatory Note "Index" ←
to Guide to Research and "11"

17 B17

Ex. note under the name - who
prepared it. 17 B17 is the
reference.

Search - did you see anything?

ICC

Check - see if it is already in the
index. 17 B17 is the name for
17 B17

→ To clarify the compression and why 136
network fecr. add concept that
17 bit is not applicable to protocol order
as defined in ~~Annex~~ prev. 7.

ICC is a good mistake, but it may not
go far enough. There is a link
between 17 and 17 bit.

If we add previous clear mistake
we should add ~~just~~ but just prev. 7. any
ex parte measure from anywhere is not
admissible. Clear - After rec. to 136

Clear
Ex parte ~~independent~~ manner - ~~rule 7~~
ex parte under ~~the~~ prev. 7 or from
elsewhere

Section - did need ICC ~~law~~

ICC -

Clear Clear - we can explain by ~~rule~~
- ~~excludes~~ ~~the~~ ex parte manner ~~to~~
→ 17 bit