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UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION

SUMMARY RECORD OF THE SIXTEENTH MEETING

Held at Headquarters, New York,
on Tuesday, 3 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.1-6; E/CONF.26/2, 26/3 and Add.1, 26/4, 26/7; E/CONF.26/L.10/Rev.1, L.12, L.13, L.41, L.42) (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.1-6; E/CONF.26/2, 26/3 and Add.1, 26/4, 26/7; E/CONF.26/L.10/Rev.1, L.12, L.13, L.41, L.42)
(continued)

Article I (1)

Mr. MALOLES (Philippines) pointed out that the English expression "physical or legal persons" in the Working Party's text (E/CONF.26/L.42, paragraph 5) had no specific legal meaning and should be replaced by "natural or juridical persons". Moreover, paragraph 6 (b) of the Working Party's report might be completed by the addition of the words "and which are enforceable under the following articles". That paragraph would also be more appropriately placed in an annexed protocol than in the Convention itself.

Mr. MATTEUCCI (Italy) observed that the Conference was to take a conditional vote on article I (1) (E/CONF.26/L.42, paragraph 5), which would be subject to the adoption of reservations at a later stage.

The PRESIDENT, while recognizing the conditional nature of the vote to be taken, explained that the condition was the adoption of reservation clauses, irrespective of the contents of those clauses.

Mr. COHN (Israel) proposed the deletion of the phrase "and arising out of disputes or differences between physical or legal persons" (E/CONF.26/L.42, paragraph 5).

Mr. MAURtua (Peru) pointed out that many systems of law excluded from the scope of arbitration a number of questions to which the application of domestic law was mandatory. It would be better to redraft the second sentence of the Working Party's text to take that fact into account and to say, for example, that the Convention did not apply to arbitral awards considered to be exclusively within the domestic jurisdiction of the State where their recognition and enforcement were sought.

Mr. BEASAROVIC (Yugoslavia) thought that the text proposed by the Working Party (E/CONF.26/L.42, paragraph 5) was a compromise between the Committee's draft (E/2704 and Corr.1) and several amendments put forward during the discussion; it combined the territorial criterion with other criteria.

(Mr. Beasarovic, Yugoslavia)

He noted that the Working Party had not taken into account his own delegation's amendment (E/CONF.26/L.12), which stated the principle of personal reciprocity, which had already been endorsed by the Geneva Convention of 1927. That principle seemed to him to be essential and its omission would have undesirable and inequitable consequences. For instance, a Yugoslav undertaking and a French company might submit a dispute to an arbitral tribunal, which made its award in Switzerland. If France had signed the Convention but Yugoslavia had not, the Yugoslav undertaking could request enforcement of the award in France, whereas the French company would have no remedy in Yugoslavia. The Yugoslav draft was designed to prevent such anomalies. As an important point of substance was involved, the Conference should express an unequivocal opinion. He therefore formally requested that the text submitted by his delegation should be put to the vote.

Mr. PSCOLKA (Czechoslovakia) thought that paragraph 6 (b) of the report of the Working Party's text (E/CONF.26/L.42) was partly based on an amendment, of which his delegation was a co-sponsor (E/CONF.26/L.10/Rev.1). It was for the Conference to decide in which section of the Convention that provision should be included.

The PRESIDENT pointed out that the Conference had taken a decision on that point at its eighth plenary meeting (E/CONF.26/SR.8, page 8).

Mr. URABE (Japan) considered that the text prepared by the Working Party (E/CONF.26/L.42, paragraph 5) was a compromise between two broad trends which had developed during the discussion. His country preferred the territorial criterion to any other connecting factor, but he noted with satisfaction that the proposed text would have the effect of extending the scope of the Convention. His delegation could not support paragraphs (b), (c) and (d) of the reservations proposed by Italy (E/CONF.26/L.41), because they would have exactly the opposite effect. Those paragraphs might not only restrict the scope of the Convention, but would also lead to serious difficulties in its application.

Mr. ROGNLIEN (Norway) thought that the Working Party's text (E/CONF.26/L.42, paragraph 5) was not sufficiently clear and he therefore proposed the following amendment:

"This Convention shall apply to the recognition and enforcement of arbitral awards not considered as domestic awards in the State where their recognition or enforcement are sought and in any case to arbitral awards made in the territory of a State other than the State where the recognition or enforcement of such awards are sought."

The Conference could take a decision on that amendment, on the Working Party's text and on other texts such as that of Italy (E/CONF.26/L.13), which had the great merit of providing for the application of the Convention to arbitral awards made in accordance with a procedural law other than that of the State in which the award was relied upon. The concept of the application of procedural law might prove very useful when articles III and IV were under consideration.

Mr. BLASCHEK (Austria) supported the Israel representative's proposal to delete the words "and arising out of disputes or differences between physical or legal persons" in the Working Party's text for article I (1) (E/CONF.26/L.42, paragraph 5).

Mr. HERMENT (Belgium) approved in principle the text of Working Party No. 1, but suggested that the second sentence, to avoid repetition, should read as follows: "Nevertheless, it shall not apply to arbitral awards considered as domestic awards in the State where their recognition and enforcement are sought."

Mr. MAURTUA (Peru) thought that the Yugoslav proposal (E/CONF.26/L.12), which had so far not been considered, contained a fundamental principle on which the Conference should take a decision.

Mr. MALOLES (Philippines) associated himself with that remark.

Mr. HERMENT (Belgium) wondered whether the word "jurisdiction" in the Yugoslav amendment (E/CONF.26/L.12) served the author's purpose and whether the concept of nationality should not be introduced instead.

Mr. RENOUF (Australia) was a priori in favour of the Israel proposal. However, as that proposal had first been submitted to Working Party No. 1, he wished to know what objections the members of the Party had raised to it.

Mr. MATTEUCCI (Italy) had some doubts about the part of the article which referred to legal persons. He wondered whether the words "arising out of disputes... between ... legal persons" might not furnish grounds for invoking the Convention in a dispute between States submitted to the Permanent Court of Arbitration at The Hague.

The PRESIDENT thought that the Ad Hoc Committee had had no such intention when it had prepared the draft Convention (E/2704 and Corr.1).

Mr. ROGNLIEN (Norway) suggested that the Conference should first vote on his verbal amendment and should then decide whether the words "and arising out of disputes or differences between physical or legal persons" (E/CONF.26/L.42, paragraph 5) should be added.

The PRESIDENT approved of the suggestion.

Mr. COHN (Israel) said that before he voted on the Norwegian proposal, he wished to know the position of France and the Federal Republic of Germany. He believed they held that an award made abroad could be considered a domestic award and he was not sure that that view was compatible with Norway's.

Mr. KORAL (Turkey) supported those remarks.

Mr. DAPHTARY (India) stated that Working Party No. 1 had taken into account the difficulty to which the Israel representative had drawn attention.

Mr. KANAKARATNE (Ceylon) asked whether the Norwegian representative had introduced the words "in any case" deliberately. They altered the meaning of the text, and he hoped the Norwegian representative would withdraw them.

Mr. ROGNLIEN (Norway) said he attached no special importance to those words and was ready to delete them.

The PRESIDENT stated that the Norwegian representative had withdrawn the words "in any case" from his proposal.

The Norwegian verbal amendment was rejected by 14 votes to 5, with 7 abstentions.

The Israel proposal to delete the words "and arising out of disputes or differences between physical or legal persons" was rejected by 21 votes to 7, with 9 abstentions.

The PRESIDENT put to the vote the Yugoslav proposal (E/CONF.26/L.12).

The result of the vote was 16 in favour and 14 against, with 5 abstentions.

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

The PRESIDENT read out the verbal amendment submitted by the Belgian representative earlier in the meeting.

Mr. MAURTUA (Peru) pointed out that, under the Belgian amendment, the Convention would not apply to awards which a State, for any reason whatsoever, considered to be domestic.

Mr. HERMENT (Belgium) said that that was precisely the purpose of his amendment. He had simply wished to make the Working Party's intentions clear.

Mr. COHN (Israel) remarked that in practice the word "nevertheless" in the Belgian amendment would have the same effect as the words "in any case" to which he had objected in the original version of the Norwegian amendment. If the Belgian amendment was adopted, nothing would have been done to reconcile opposing views on the scope of application of the Convention and the second sentence of paragraph 1 would flatly contradict the first.

Mr. MATTEUCCI (Italy) said that the Working Party had wished to make the scope of the Convention broader than in the Ad Hoc Committee's text, which in itself was more liberal than the 1927 Convention. The Ad Hoc Committee had adhered to the territorial criterion; the Working Party had attempted to take into account other criteria to which some States attached importance. The Belgian amendment, on the other hand, was even more restrictive than the Ad Hoc Committee's draft, since it excluded even awards made abroad when they were regarded as domestic by the country in which enforcement was sought. Far from reflecting the Working Party's intentions, the Belgian amendment ran directly counter to them, and he would therefore be unable to support it.

/...

Mr. HERMENT (Belgium) stated that in that case he withdrew his amendment. He still felt, however, that the Working Party had not expressed its intentions clearly and he feared that its text might give rise to misinterpretations.

The PRESIDENT, recalling the votes already taken, put to the vote article I (1) as a whole, as set forth in paragraph 5 of the report of Working Party No. 1 (E/CONF.26/L.42).

Article I (1) as drafted by the Working Party was adopted by 35 votes to non with 3 abstentions, on the understanding that the final text would be prepared by a committee to be set up for that purpose.

The PRESIDENT invited the Conference to choose between the two texts submitted by the Working Party for article II of the Convention (E/CONF.26/L.42 and Corr.1, paragraph 8, sub-paragraphs A and B).

At the suggestion of Mr. KANAKARATNE (Ceylon), the PRESIDENT put sub-paragraph B to the vote first.

The provision contained in paragraph 8, sub-paragraph B of the Working Party's report (E/CONF.26/L.42 and Corr.1) was adopted by 25 votes to 5, with 8 abstentions.

The PRESIDENT put to the vote sub-paragraphs A and B jointly.

Article II of the Working Party's text was adopted by 30 votes to 3, with 4 abstentions.

The meeting rose at 12.55 p.m.