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Twenty-seventh Session

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MEXICO CITY

CONTENTS

President: Mr. Daniel COSÍO VILLEGAS (Mexico).

Present:

Representatives of the following States: Afghanistan, Bulgaria, Chile, China, Costa Rica, Finland, France, Mexico, Netherlands, New Zealand, Pakistan, Poland, Spain, Sudan, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, nited States of America, Venezuela.

Observers for the following Member States: Argentina, Brazil, Colombia, Czechoslovakia, Greece, Hungary, India, Japan, Peru, Philippines, Romania, United Arab Republic, Yugoslavia.

Observers for the following non-member States: Federal Republic of Germany, Switzerland.

Representatives of the following specialized agencies: International Labour Organisation, Food and Agriculture Organization of the United Nations, World Health Organization.

AGENDA ITEM 8

International commercial arbitration (E/3211; E/L.823/Rev.1)

1. Mr. SCHURMANN (Netherlands) said that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[1] which had been signed by twenty-seven States and ratified or acceded to by three, would come into effect on 7 June 1959. Some countries, however, had not yet set up their arbitral tribunals, while in others the full recognition in domestic legislation which was necessary for the effective functioning of the Convention had not yet been granted. Following a resolution [2] adopted at the United Nations Conference on International Commercial Arbitration in 1958, the Secretary-General of the United Nations had issued a note (E/3211), in which he had pointed out that the need for concerted action appeared to be indicated mainly in the areas of wider diffusion of information on arbitral practices, laws and facilities, improvement of existing arbitration facilities, and the development of arbitral legislation.

2. With respect to diffusion of information on subjects connected with arbitration, there were at present two international publications: a review published by the International Chamber of Commerce and an important publication issued by the Union internationale des avocats. Both publications, however, suffered from a common defect in that they contained general descriptions and data but failed to give the texts of the laws they described. He would therefore suggest that the publication of facts, practices and summaries should remain in the capable hands of those who had already undertaken that task, but that the Secretariat should undertake to furnish them, and possibly other interested parties, with reliable translations of the texts of arbitration laws. Moreover, the Secretariat could act as a clearing house for information which could be made available to the specialized institutions working in the field of arbitration.

3. Valuable assistance in improving existing facilities could be obtained through the types of publications to which he had referred. Moreover, international co-operation was necessary. The Economic Commission for Europe (ECE) had already organized such co-operation at the regional level by appointing a working party to draft a European convention on arbitration, the principle purpose of which was to provide solutions for difficulties that had arisen in the practice of arbitration of disputes between subjects of western and eastern European States. If all the European States could agree to the convention, arbitration would be well on the way to practical application. Meanwhile, the Secretary-General might consider whether the Secretariat could be of assistance to Governments and institutions in facilitating arbitration where, for one reason or another, the parties did not wish to use existing facilities.

4. The development of arbitral legislation was a more ambitious project soon to be considered by the Council of Europe, which would discuss the possibility of uniform arbitration laws for all its member States.

5. The example set up by those European bodies should be followed in other regions of the world. There again the Secretariat could assist by keeping the Governments and organizations concerned informed of the work done by others, and perhaps by suggesting ways in which projects could be undertaken jointly and duplication avoided.

6. The Netherlands had found that well-organized arbitration could play an important part in providing a rapid, efficient and inexpensive method of settling

[1] United Nations Conference on International Commercial Arbitration, *Final Act and Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (United Nations publication, Sales No.: 58.V.6).

[2] *Ibid.*, para. 16.

minor commercial disputes that were likely to arise. The Netherlands Arbitration Institute had been in operation since 1952; it collaborated with many institutes in other countries, particularly with the American Arbitration Association in the United States. The vigorous development of arbitration in the Netherlands had been made possible by the fact that the country's laws permitted arbitration on any disputes except those concerning personnel status and other matters that could not be settled by private agreement.

7. The Netherlands delegation, together with the delegations of Costa Rica, Pakistan and the United States, had introduced a draft resolution (E/L.823/Rev.1) setting forth the steps which should, in their view, be taken in the matter of international commercial arbitration. The sponsors hoped that the text would commend itself to the Council.

8. Mr. SEPULVEDA (Mexico) said that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards constituted a first step towards the solution of the many problems relating to international commercial arbitration, and its rapid acceptance by Governments should be actively promoted. Accession to the Convention should, however, be accompanied by an improvement in systems and methods of commercial arbitration, and by proper co-ordination between the different juridical structures of the various countries. Only thus could its effectiveness and continuity be guaranteed.

9. The principal additional measure for increasing the effectiveness of arbitration in the settlement of private law disputes, proposed in the resolution adopted by the United Nations Conference on International Commercial Arbitration, was the establishment of uniformity in the domestic arbitration legislation of the various States. Such uniform legislation was a necessary complement to the Convention, for it would remove differences arising from differing legal provisions, which were often exaggerated for political purposes. Two methods had been suggested for achieving that end: the system of multilateral conventions and that of model legislation.

10. The system of multilateral conventions had a number of disadvantages. The drafting of such conventions was a slow process: once a text had been agreed upon, it remained inoperative until the required number of accessions had been secured; reservations could weaken the original convention to a considerable degree and, if they were rejected beforehand, the number of contracting States might be seriously reduced. Moreover, even if a sufficient number of countries acceded to a convention, there remained the difficulty of adapting their internal legislation so as to render the convention applicable. Finally, since a multilateral convention was by nature a general statement of standards to be achieved, it might be interpreted differently by various countries and the domestic legislation deriving from it might prove to be far from uniform.

11. The development of international arbitral legislation appeared to be a more advisable method of achieving the objective sought. The drafting of such model legislation presented no difficulties: States could adopt it whenever their internal conditions permitted; it was less vulnerable to political contingencies and it could be amended, as necessary, with greater facility; finally, it would be more widely applicable and more uniform because it would not include a denunciation clause.

12. Private institutions had already done much of the preparatory work for the drafting of model legislation on commercial arbitration. That work should now receive the official endorsement of Governments. The draft uniform inter-American law on commercial arbitration prepared by the Inter-American Council of Lawyers in 1956 was a good precedent for the desired codification. Indeed, inter-governmental organizations had an important part to play in amalgamating all efforts towards the drafting of model legislation on commercial arbitration. While it might be premature to entrust that task to them, it might be appropriate for a body such as the International Law Commission to undertake it in the near future.

13. The joint draft resolution was generally acceptable to the Mexican delegation, but it represented only a partial step towards the unification of commercial arbitral legislation.

14. Mr. ORTIZ MARTÍN (Costa Rica), speaking as a sponsor of the joint draft resolution, stressed the importance of international commercial arbitration to the under-developed countries. It was essential for enterprises engaged in trade to enjoy full confidence that their transactions were legally protected. Conflicts between buyers and sellers with regard to sales contracts often resulted in inequitable situations in which the economically weaker party had no recourse. Arbitration should constitute a guarantee to both parties that disputes would be settled fairly and quickly. The joint draft resolution indicated a first step towards a solution of the problem. It should be converted into a practical measure under which all States would agree to include in all sales contracts a clause providing recourse to a recognized arbitration tribunal in the event of disputes.

15. Mr. CHA (China) emphasized the importance of arbitration in commercial disputes. Settlement by arbitration did not necessarily imply a legal defeat, as a legal decision did; the award of an arbitral tribunal was generally accepted willingly by the parties bacause it was in the nature of a compromise. The arbitrators chosen by the parties to the dispute were not necessarily members of the legal profession and were not bound by legal precepts. Obviously, in disputes arising out of international trade, or the transfer of funds across frontiers, or foreign investment, arbitration was the best means of effecting a settlement.

16. He endorsed the Secretary-General's suggestions amplifying the additional measures proposed in the resolution of the United Nations Conference on International Commercial Arbitration, as also the joint draft resolution. He was particularly favourable to the proposal in operative paragraph 1 that arbitral associations should give particular attention to educational activities, especially among business and professional groups, to the establishment of new arbitration facilities or improvement of existing ones, and to facilitating international

private law arbitrations. With the accelerated flow of public and private capital into the under-developed countries, disputes were apt to arise between the parties to trade and business transactions. The resolution to be adopted by the Council on the question of arbitration should be fully applicable to such conflicts.

17. The PRESIDENT invited the representative of the International Chamber of Commerce (ICC) to address the Council.

18. Mr. HAIGHT (International Chamber of Commerce) said that the resolution adopted by the United Nations Conference on International Commercial Arbitration had the full support of the International Chamber of Commerce. The ICC welcomed the Secretary-General's assurance that the Secretariat could be of assistance in publishing a compilation of information on arbitration laws and facilities. The ICC had edited a handbook containing a summary of rules relating to arbitration agreements, procedures and arbitral awards, and the enforcement of awards in fifty-six different countries. It had also co-operated with the Union internationale des avocats in the publication of a collection of monographs on various laws, and with ECE and the Economic Commission for Asia and the Far East (ECAFE) in their studies. Duplication in that work should be avoided, but every effort should be made to assemble the fullest information possible, not only with regard to existing legal provisions but also with regard to procedures, interpretations of the law and the effect given by tribunals to statutory regulations. There might be varying interpretations of the same statutory provisions and applicable procedures, particularly where the law was rudimentary or in the process of rapid change. The ICC would continue to co-operate with all organizations and groups in publishing information on the subject and in securing experts.

19. National committees of the ICC were available to provide assistance to Governments and local chambers of commerce in creating new arbitration centres and in improving existing facilities. Such facilities were essential in order to develop the use of arbitration generally as a means for settling disputes, both among private parties and between private parties and Governments.

20. He went on to describe the arbitration facilities of the ICC, and to emphasize the need for international or trans-national facilities to serve small business concerns whose limited resources rendered them especially dependent on the protection of the law. It was difficult for private parties to accept a tribunal which was part of the Government with which they had contracted and which might be their adversary in a dispute; that difficulty might be a real deterrent to the flow of private capital, particularly in countries where judicial systems were in an early stage of development. It was to be hoped that Governments would become more willing to accept neutral arbitration as a means for the settlement of differences with foreign investors and business men. In any event, agreeement between States, or between States and aliens, upon an international tribunal for the adjudication of disputes with private parties should avoid problems of intervention by the alien's own Government. The free flow of private capital and trade might be stimulated by more extensive recourse to the ICC " court ". The ICC was not merely an instrument of private business: it provided for the appointment of whatever neutral arbitrator might be most appropriate in a given dispute, and government parties were free to nominate arbitrators of their choice.

21. It might be useful to give further study to the publishing of panels of arbitrators, as was done by the Permanent Court of Arbitration at The Hague. In one case the facilities of the Court had been used for the adjudication of a dispute betewen a Government and aliens, with the co-operation of the Government concerned. There were, however, difficulties in utilizing the Court's facilities in disputes between States and private parties: the persons chosen for the panels of the Court were experts in public international law; for commercial and investment disputes, experts in private law, commodity specialists or business men might be more appropriate. The ICC was studying the possibility of publishing regional panels of experts and business men willing to serve as arbitrators, in the hope that publication of such panels would encourage Governments and private parties to have recourse to neutral arbitration. Much remained to be done in the field of education, and the ICC was prepared to assist Governments and local organizations in providing information and technical advice on arbitration.

22. The work of the ICC in promoting reforms in national legislation and developing uniform arbitration laws was proceeding slowly, but the ICC was continuing to support the efforts of other bodies towards that end.

23. The essential task, in the interest of international co-operation for the solution of economic problems and of closer economic integration of States, old and new, was to demonstrate to private parties and Governments that arbitration was an effective, rapid and economical method of settling their differences. Arbitration institutions should be properly staffed, they should have access to professional skills of the highest calibre, and the awards rendered should be accepted as wholly fair. Contacts and interchange of ideas between government personnel and the business community and arbitration experts should be promoted and encouraged. The Secretary-General might sponsor further meetings of representatives of those groups. The ICC hoped that the authority conferred upon the Secretary-General by the joint draft resolution would lead to greater use of neutral arbitration in the settlement of differences between States and their organs, on the one hand, and private foreign traders, investors and contractors, on the other. By endorsing recourse to neutral arbitration for the settlement of disputes between private parties and Governments and their organs, the Council might encourage Governments in their contracts with foreign private parties to adopt that method of adjudication.

24. Mr. PHILLIPS (United States of America), speaking as a sponsor of the joint draft resolution, said that its purpose was to encourage the adoption of practical measures for the more effective use of arbitration. By practical measures he meant the sum total of what

might be called arbitration technology: namely, the wide range of non-legal activities that made up the actual practice of arbitration. As examples he suggested the provision of arbitration facilities, including panels of arbitrators and administrative staff; the formation of new arbitration institutions and the expansion of existing ones; and the devising of proper arbitral clauses to be included by business men in their contracts and the development of simple, workable rules and procedures for them to follow. He might also mention educational programmes to develop greater appreciation by business men and lawyers of the advantages of arbitration. The sponsors felt that practical measures should be given the same attention and effort as legal measures, since the best laws in the world were useless without adequate facilities for their application. While they did not wish to suggest that legal measures had been unduly emphasized in the past, they felt that there had been a tendency to neglect practical measures. There was so much to be done in the way of introducing practical measures that arbitral associations, Governments, intergovernmental and non-governmental organizations and the United Nations could all play a part in that endeavour. There was also an opportunity for specialization, and the draft resolution suggested some of the ways in which the relevant activities might be shared or divided. The application of practical measures required both proper direction, which meant technical advice and assistance, and proper co-ordination, which meant the provision of firm and sensible guiding lines with a view to avoiding duplication, obtaining maximum results and keeping within budgetary limitations. Those were areas in which the United Nations and its organs were well equipped to provide leadership.

25. The joint draft resolution, which constituted a plan of action, complemented the resolution adopted by the United Nations Conference on International Commercial Arbitration, which had been rather in the nature of an expression of intent. By adopting the draft resolution, the Council would be giving formal endorsement to the basic ideas of the Conference resolution with regard to the value of practical measures, and would be identifying certain categories of practical measures for particular attention. Similarly, it would be laying down guiding lines for further activity by all institutions and organizations interested in commercial arbitration. As a result, there would be greater recourse to arbitration, the domestic basis of arbitration would be improved, and better international arbitration would follow. Finally, the institutional and operational development of international commercial arbitration would be kept abreast of its legal development, a consideration which was especially important for countries where arbitration was not yet a common business practice.

26. Mr. PAZHWAK (Afghanistan) said that his delegation wished to associate itself with the views of the United Nations Conference on International Commercial Arbitration concerning the need for further study of measures to increase the effectiveness of arbitration in the settlement of private law disputes. It also welcomed the suggestion that any such steps should be taken in a manner that would ensure proper co-ordination of effort, avoidance of duplication and due observance of budgetary considerations. His Government considered arbitration one of the most important institutions of international law and one of the most effective means for the settlement of disputes. Indeed, arbitration provisions were included in a number of its contracts with foreign companies, and it had given its support to the International Law Commission's work on the preparation of the model rules on arbitral procedure [3] submitted to the General Assembly at its thirteenth session. It favoured the suggestions set forth in paragraph 7 of the Secretary-General's note (E/3211), which were in conformity with the views of the Conference, and drew attention in particular to the suggestions in paragraph 7 (*c*) (iii) concerning the sharing of experience gained in that field, a task in which the Secretary-General could play a useful part. The problem of increasing the effective use of arbitration was one to which the Council should continue to give its attention.

27. Lastly, while his delegation was in agreement with the provisions of paragraph 14 of the Final Act of the Conference, he wished to make it clear that his Government recognized in principle such reservations as States might consider essential for the preservation of their rights in cases where political differences in connexion with territories were involved.

28. Mr. ERROCK (United Kingdom) said that his Government, having supported the resolution adopted by the United Nations Conference on International Commercial Arbitration, was on the whole in favour of the joint draft resolution. One point to which his delegation attached considerable importance was that dealt with in sub-paragraph 4 of the first operative paragraph of the Conference resolution: namely, the need to avoid duplication and ensure economy of effort and resources; the first preambular paragraph of the joint draft resolution implicitly endorsed that view. He would like to suggest, however, that the addition of the words " if necessary " between the words " establishment " and " of new arbitration facilities " in operative paragraph 1 of the draft resolution would lend a shade more emphasis to that implicit endorsement. He also requested a separate vote on paragraph 3 inasmuch as his Government found it difficult, for technical reasons, to accept the words " and procedures ". As the sponsors appeared, however, to attach particular importance to those words he would not propose their deletion. His abstention on those two words would not prevent him from voting in favour of the draft resolution as a whole.

29. Mr. ARKADEV (Union of Soviet Socialist Republics) stated that, as his Government was in favour of the adoption within an international framework of co-ordinated measures designed to eliminate obstacles to the expansion of international trade, it considered that a generally accepted system of international commercial arbitration was desirable. It had therefore acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards prepared by the United Nations

[3] See *Official Records of the General Assembly, Thirteenth Session, Supplement No. 9*, chap. II.

Conference on International Commercial Arbitration, and had voted in favour of the Conference resolution. The USSR recognized arbitration as one of the means of settling international disputes, and its trade organizations were using it for that purpose.

30. The Conference had been successful in reconciling conflicting viewpoints; hence its achievements should be safeguarded and all the decisions it had taken should be put into effect. The Council should express its satisfaction with the results of the Conference, particularly the preparation and opening for signature of the Convention, and should endorse its views on the desirability of additional measures to be taken in the field of commercial arbitration, as indicated in the first preambular paragraph of the Conference resolution. The joint draft resolution, however, represented an attempt to contravene the decisions unanimously adopted by the Conference. Again, any resolution adopted by the Council should stress that the Convention, which had already been signed by many Governments and had now entered into force, represented the most important achievement of the Conference, the resolution being only secondary. Yet the draft resolution did not even mention the Convention. Further, the second and fourth preambular paragraphs made a gratuitous reference to the continued development of investment. Although it could be argued that there was a connexion between investment and the settlement of private law disputes, to include the development of investment as a major goal of arbitration would be to risk opening up a lengthy discussion of the importance of national and international investments, which was not properly the subject of the draft resolution. Indeed, the insistence of the United States on emphasizing the controversial matter of investments in the Council's resolutions often made it impossible for some delegations to vote in favour of proposals which were otherwise entirely acceptable to them. In the present instance many countries which were willing to participate in a system of international commercial arbitration would be unable to do so if extraneous issues were introduced. Moreover, the Conference had made no effort to link the issue of investment with the issue of commercial arbitration. The operative paragraphs of the draft resolution were to a large extent simply a redrafting of corresponding parts of the Conference resolution; it seemed to him presumptuous for the eighteen-member Council to take it upon itself to redraft a resolution unanimously adopted by the forty-five plenipotentiaries who had taken part in the Conference.

31. The hard-won unanimity of the Conference should not be jeopardized by a draft resolution which would offer States an opportunity to depart from the decisions taken on that occasion.

The meeting rose at 1.5 p.m.

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