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COMMITTEE ON THE ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS

First Session

SUMMARY RECORD OF THE THIRD MEETING

Held at Headquarters, New York,  
on Wednesday, 2 March 1955, at 3 p.m.

CONTENTS

Consideration of the question of the enforcement of international  
arbitral awards and, in particular, of the preliminary draft convention  
on the enforcement of international arbitral awards prepared by the  
International Chamber of Commerce (E/C.2/373 and Add.1, E/AC.42/L.1,  
L.2, L.4) (continued)

PRESENT:

<u>Chairman:</u>	Mr. LOOMES	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mr. TRUJILLO	Ecuador
	Mr. RAMADAN	Egypt
	Mr. MEHTA	India
	Mr. DENNEMARK	Sweden
	Mr. NIKOLAEV	Union of Soviet Socialist Republics
	Mr. WORTLEY	United Kingdom of Great Britain and Northern Ireland

Representative of a specialized agency:

Mr. WILLIAMS	International Monetary Fund
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Representative of a non-governmental organization:

<u>Category A:</u> Mr. ROSENTHAL	International Chamber of Commerce
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<u>Secretariat:</u> Mr. SCHACHTER	Director, General Legal Division
Mr. CONTINI	Secretary of the Committee

CONSIDERATION OF THE QUESTION OF THE ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS AND, IN PARTICULAR, OF THE PRELIMINARY DRAFT CONVENTION ON THE ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS PREPARED BY THE INTERNATIONAL CHAMBER OF COMMERCE (E/C.2/373 and Add.1, E/AC.42/L.1, L.2, L.4) (continued)

The CHAIRMAN stated that the Swedish representative had submitted a preliminary text of article I (E/AC.42/L.4) which took into account the exchange of views at the preceding meeting.

At the request of Mr. NISOT (Belgium), Mr. DENNEMARK (Sweden) agreed to replace the words "recognition and enforcement" in the second paragraph of his text by "recognition or enforcement".

At the request of the United Kingdom representative, he agreed to replace the words "State" and "Contracting State" by "High Contracting Party".

The CHAIRMAN, noting that the Committee approved the principles set forth in the Swedish text, proposed that it should be referred to the future drafting sub-committee.

It was so decided.

Article I of the preliminary draft convention prepared by the International Chamber of Commerce

The CHAIRMAN invited discussion on article I of the draft convention (E/C.2/373) and on the amendments thereto proposed by Belgium (E/AC.42/L.1) and the USSR (E/AC.42/L.2).

Mr. MEHTA (India) had no objection to an explicit statement, as in the Belgian amendment, to the effect that "persons" meant both individuals and bodies corporate.

Mr. NISOT (Belgium) said he would be satisfied if the Committee's report specified that the word "persons" had that meaning.

(Mr. Nisot, Belgium)

The question whether the convention should apply to arbitral bodies instituted by States, mentioned in point 2 of the USSR amendment, could be left to the drafting sub-committee; it might consider whether explicit reference should be made to the matter in the convention itself or merely in the report.

Mr. DENNEMARK (Sweden) said he would prefer the latter solution.

Mr. WORTLEY (United Kingdom) thought that it would be better to keep the word "persons" in the convention and to give the necessary explanations in the report. With reference to the other point raised by the Belgian representative, the bodies to which the convention would apply should be clearly stated so that the Parties might know the exact extent of their obligations; in particular, it should be made clear whether semi-State agencies would be able to claim immunity.

Mr. MEHTA (India) shared that view.

Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that the use of the term commerçants, which had no exact equivalent in the USSR, should be avoided. He preferred the expression "individuals or bodies corporate". He did not think that the second paragraph of the Belgian amendment should be included in article I. Lastly, he agreed with the United Kingdom representative that the categories of persons to which the article applied should be enumerated both in article I and in the Committee's report.

The CHAIRMAN said there was probably no need to state that the convention would apply to awards made by permanent arbitral bodies, for their awards were no different from those made by specially appointed arbitrators.

Mr. WORTLEY (United Kingdom) maintained that the matter should be dealt with in the report.

Mr. NIKOLAEV (Union of Soviet Socialist Republics) emphasized that the members of the Committee were in agreement on the substance of the question. He wished to maintain point 2 of his amendment.

Mr. NISOT (Belgium) had no objection to the USSR proposal, provided that it was clearly understood that recourse to arbitration depended on the will of the parties.

Mr. NIKOLAEV (Union of Soviet Socialist Republics) explained that the permanent arbitral body operating in the USSR was not a governmental body, but an independent agency, and that the decisions which it rendered were indeed arbitral awards and not judicial decisions.

Mr. DENNEMARK (Sweden) believed that a reference in the report would suffice to meet the USSR representative's point.

Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that he would prefer the point to be settled by an express provision in the convention.

Mr. WORTLEY (United Kingdom) added that a reference in the convention would not preclude explanations in the report.

In reply to Mr. NISOT (Belgium), Mr. NIKOLAEV (Union of Soviet Socialist Republics) explained that arbitration as it existed in the USSR did not differ from arbitration in many other States.

Mr. MEHTA (India) thought that the important point was not who made the arbitral award, but whether it was valid.

The CHAIRMAN pointed out that the question of the award's validity was dealt with in article III of the draft convention.

Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that the amplification in the USSR amendment had been intended to draw attention to the existence of permanent arbitral bodies. Those bodies should be mentioned in the text of the article itself, with the understanding that additional explanations would be given in the report.

Mr. NISOT (Belgium) said that arbitration meant a system of private jurisdiction, in contrast to the judicial system of the State. He asked whether the USSR representative had in mind private or State judicial bodies.

Mr. DENNEMARK (Sweden) thought that the proposed convention could deal with all arbitral awards, including awards made by a body instituted by the State, provided that the parties agreed in advance to accept the decision made by a body of that kind.

Mr. NISOT (Belgium) said that the real question was whether the jurisdiction of the arbitral bodies referred to by the USSR representative was mandatory or whether the parties were free to submit or not to submit their disputes to those bodies.

Mr. DENNEMARK (Sweden) thought that it would not be an arbitration procedure unless the parties were given such discretion; the decision given would be a judgment, not an arbitral award.

Mr. NIKOLAEV (Union of Soviet Socialist Republics) explained that his delegation's amendment was intended to mean that there must be previous agreement between the parties for the bodies mentioned to be able to hear a dispute.

Mr. NISOT (Belgium) said that he was satisfied with that assurance.

Mr. WORTLEY (United Kingdom) explained that the existence of a general arbitration agreement between the parties was enough to constitute the previous agreement referred to; there was no need for an ad hoc agreement in each case.

Mr. NISOT (Belgium) agreed with the United Kingdom representative on that point.

The CHAIRMAN noted that all members of the Committee agreed on the substance, and proposed that the drafting sub-committee should settle the final wording of article I.

It was so decided.

Mr. RAMADAN (Egypt) observed that the Egyptian Commercial Code provided for the enforcement of arbitral awards made abroad, subject to a proviso for reciprocity. He would like to see a similar proviso in article I.

The CHAIRMAN thought that the second paragraph of the Swedish text (E/AC.42/L.4) would meet the Egyptian representative's point, as its wording implied the existence of reciprocity.

## Article II

The CHAIRMAN read out article II of the draft prepared by the International Chamber of Commerce.

Mr. NISOT (Belgium) thought that in the French text the word auxquelles referred in fact to territoires relevant des Hautes Parties Contractantes and should be replaced by auxquels.

The CHAIRMAN agreed and said that he would draw the drafting sub-committee's attention to that point.

Mr. NIKOLAEV (Union of Soviet Socialist Republics) asked whether in the phrase, "the territory where the award is relied upon" (article II) the word "territory" referred to that in which the party concerned requested the application of the award, and whether, if so, it really meant that the law of that territory was to be taken into consideration in the enforcement of the award.

The CHAIRMAN said that was so.

Mr. NISOT (Belgium) pointed out that article II dealt not only with the enforcement of awards but also with their recognition, and that it was quite correct that the words "relied upon" should be used, as they had a broader meaning than the words "applied" or "enforced".

In that connexion he stressed that the phrase "under the conditions laid down in the following articles" referred both to the recognition and to the enforcement of awards. In Belgium, for example, a valid arbitral award removed the dispute from the jurisdiction of the courts, and for that reason the Code of Civil Procedure presented the conditions which had to be fulfilled before an award could be recognized. Perhaps article II should bring out more clearly that the two notions were connected.

Mr. DENNEMARK (Sweden) said that he did not think that the words "under the conditions..." referred to the recognition of awards, but, in any case, he saw no need for amending article II which, in his opinion, was clear enough.

After an exchange of views between Mr. NISOT (Belgium) and Mr. DENNEMARK (Sweden), the CHAIRMAN said that the consensus seemed to be that the original drafting of article II should be retained for the time being, and that it should be submitted to the drafting sub-committee.

Membership of drafting sub-committee

The CHAIRMAN proposed that a drafting sub-committee should be appointed, to consist of the Vice-Chairman, the representatives of Belgium, the Union of Soviet Socialist Republics and the United Kingdom and himself.

It was so decided.

The meeting rose at 4.20 p.m.