

UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



Distr.  
GENERAL

E/CONF.26/SR.15  
12 September 1958  
ENGLISH  
ORIGINAL: FRENCH

UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION

SUMMARY RECORD OF THE FIFTEENTH MEETING

Held at Headquarters, New York,  
on Monday, 2 June 1958, at 11.50 a.m.

CONTENTS

Consideration of the draft Convention on the Recognition and  
Enforcement of Foreign Arbitral Awards (E/2704 and Corr.1,  
E/2822 and Add.1 to 6; E/CONF.26/2, 3 and Add.1, 4, 7;  
E/CONF.26/L.7, L.12, L.14, L.26 to L.29, L.41, L.42) (continued)

Question of reservations to the draft Convention

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 to 6; E/CONF.26/2, 3  
and Add.1, 4, 7; E/CONF.26/L.7, L.12, L.14, L.26 to L.29, L.41, L.42) (continued)  
QUESTION OF RESERVATIONS TO THE DRAFT CONVENTION

Mr. BAKHTOV (Union of Soviet Socialist Republics) recalled that at its ninth plenary meeting the Conference had decided, in connexion with the amendments submitted by Poland (E/CONF.26/7) and Sweden (E/CONF.26/L.8), to place the provisions relating to reservations in a protocol. The USSR delegation considered that in those circumstances the reservations would appear in a document that was linked to the Convention. Certain delegations, however, as for instance the Netherlands delegation, had felt that such a protocol should be independent of the Convention. It would be as well to settle that point.

The PRESIDENT said that the Conference had at the time decided to include only the first part of the Polish amendments (E/CONF.26/7) in the protocol and not the part relating to reservations - a question which it had not yet considered.

The first question that arose was whether reservations would be allowed, and if so, in what form. With regard to the final wording of the reservations clause, the Conference could either discuss that question or else refer it to a drafting committee.

Mr. HERMENT (Belgium) said that the sole task of Working Party No. 2 was to consider the validity of arbitral clauses. Article I, paragraph 2, of the draft Convention as drawn up by the Ad Hoc Committee (E/2704 and Corr.1) brought up the question of reciprocity, an item that was certainly not within the scope of Working Party No. 2

Mr. COHN (Israel) said that the question of reservations should be settled at a plenary meeting. The Israel delegation was prepared to accept the Italian amendment (E/CONF.26/L.41), but an extra paragraph should be added to it, reproducing the substance of the second sentence of article I, paragraph 2, of the Ad Hoc Committee's draft in order to take account of the difficulties which might arise for certain States.

Mr. MINOLI (Italy) had no objection to such an addition to his delegation's amendment.

Mr. KORAL (Turkey) said that, while he did not wish to take a stand on the substance of the four types of reservations proposed in the Italian amendment, he nonetheless believed that their very number would lessen the practical value of the Convention. Indeed, a list of that kind gave the impression that the plenipotentiaries had been unable to agree on the scope of the Convention which article I, paragraph 1, was intended to define. He therefore believed that the reservations allowed should be reduced to a minimum; if possible, the Italian delegation should redraft its amendment to include only a single reservation of a more general nature.

Mr. POINTET (Switzerland) agreed with the views expressed by the Turkish representative. In preparing a draft Convention, States could either be allowed to formulate a large number of reservations, as had been the case with the 1886 Convention for the Protection of Literary and Artistic Property - in order to ensure the greatest possible number of accessions - or else they must agree to limit the number of reservations allowed and thus progress towards the standardization of their separate national bodies of law. The second solution was more in keeping with modern trends.

He suggested that the question of reservations should be examined only at the last stage, so that the inclusion of only those reservations which seemed absolutely essential might be considered.

Mr. BEASAROVIC (Yugoslavia) agreed with those representatives who wished to maintain article I, paragraph 2, as drafted by the Ad Hoc Committee. Yugoslavia would in fact be able to apply the provisions of the Convention only to awards made in other contracting countries and connected with commercial disputes. He thought it unnecessary to stress the need for those two reservations as the reasons for them were clearly expressed in the Ad Hoc Committee's report and in the comments of various Governments.

Mr. WORTLEY (United Kingdom) was afraid that paragraphs (c) and (d) of the Italian text might lead to complications and thought that the Conference should reject them. Furthermore, he failed to see why countries which wished to distinguish between commercial and other disputes should be unable to formulate a reservation to that effect. Other Contracting States should then be able to reserve the right to apply that distinction to countries making such a resolution.

Mr. MINOLI (Italy) said that the four paragraphs of the Italian amendment were designed to deal with the following questions: paragraph (a) was intended to facilitate accession by States which attached importance to the principle of territoriality; paragraph (b) ensured that States which considered certain arbitral awards to be national would not be obliged henceforward to consider them as foreign; paragraphs (c) and (d) took account of the position of those States which refused to recognize certain awards made abroad when there was no real connexion between the foreign law and the contents of the arbitral award. Some had maintained that too large a number of reservations should be avoided. The advantage of the Italian text, however, was that the reasons why a State made a reservation would be clear. Either a list must be made of legitimate grounds for reservations, or all Contracting States must be allowed simply to formulate such reservations as they wished.

Mr. ROGNLIEN (Norway) said that his delegation had submitted an amendment (E/CONF.26/L.27) similar to the Italian. He was therefore able to accept paragraphs (a), (b) and (c) of the Italian amendment; paragraph (d) also seemed acceptable, but in no way essential.

Sir Claude COREA (Ceylon) noted a certain tendency within the Conference to give consideration to the internal laws of various countries and to attempt to adapt the text of the Conference to them. Such a method was contrary to the very aim of the Convention, which should be to bring closer together the different national arbitration laws, thereby facilitating the

(Sir Claude Corea, Ceylon)

recognition and enforcement of foreign awards. It was therefore essential not to permit reservations corresponding to the special characteristics of particular legal systems.

He recalled that his delegation had also submitted an amendment on the question (E/CONF.26/L.14).

Mr. GEORGIEV (Bulgaria) said that he thought the Italian amendment required careful study. The four paragraphs of the amendment had a common denominator, for they all concerned the nationality of the award, in other words, cases in which the award could be considered foreign. In his opinion, the nationality of the award depended on the nationality of the parties, of the law that could be applied and of the territory in which the award was made. There certainly was no need to take into account the nationality of the arbitrators. Thus several possibilities might arise. In one case, a dispute between two nationals of the same country might be settled in accordance with that country's legislation, but in foreign territory. In another case, the circumstances might be the same except that a foreign law might be applied. In yet another case, the parties might be of different nationalities and the applicable law might be the law of the State of which one of the parties was a national or the law of any other State. A case might also arise in which one of the parties was a national of a State which had not acceded to the Convention and in which the arbitral award was made in a third country. In such a case it was not clear whether the national of a State not party to the Convention could obtain enforcement of the award. There did not appear to be any direct provision for such a case in the Italian amendment. Perhaps another reservation covering such a contingency should be added. It would be well to make provision in the Convention for all cases in which a State might make reservations so that there would be no room for misunderstanding. Each case should, moreover, be examined in detail.

Mr. MINOLI (Italy) stressed that his delegation had deliberately approached the problem of reservations empirically. It had confined itself to listing in its amendment (E/CONF.26/L.41) the reservations to which certain

(Mr. Minoli, Italy)

Governments attached particular importance, but the list was not meant to be exhaustive. If a representative thought that the addition of a further case would make it possible to obtain the signature of his Government, there was no reason why the reservations should not be supplemented to take such a case into account.

While it was true that the Convention should be directed towards encouraging greater uniformity of national legislations, to go too far in that direction would be to risk an appreciable reduction in the number of ratifications.

Mr. KORAL (Turkey) shared the view of the Ceylonese representative that the Convention need not conform to the domestic laws of States, but rather that those laws should be adapted to the principles laid down in the Convention.

The Italian representative had been logical in acknowledging the possibility of expanding the number of reservations provided for in his draft (E/CONF.26/L.41). That being the case, the principle on which the Italian proposal was based could be perfectly clearly defined: namely, that any State could limit the application of the Convention to awards considered foreign under its domestic law. If that principle was accepted there would be no need to determine, on the basis of objective criteria, the scope of application of the Convention, as was done in article I, paragraph 1. Paragraph 2 would therefore be inconsistent with paragraph 1 which had already been accepted.

Nevertheless, he was opposed to that solution. In accepting such broad reservations the Conference would be taking a step backward by comparison with the Geneva Convention. He would agree, however, to the two reservations set forth in the Committee's draft and would be prepared to agree to an additional clause making it possible to take into account the special case of a country like Italy, on the understanding that such a clause was not in conflict with the objective criterion laid down in paragraph 1.

Mr. BAKHTOV (Union of Soviet Socialist Republics) said that the broader the reservations the more difficult it was to apply a convention. It seemed to

(Mr. Bakhtov, USSR)

him appropriate, however, to leave States free to apply the Convention only to disputes arising out of commercial contracts, as provided for in article I, paragraph 2 of the Committee's draft. He did not think, on the other hand, that paragraphs (a), (b) and (c) of the Italian proposals (E/CONF.26/L.41) were necessary, for the cases to which they applied were provided for in article I, paragraph 1 of the text proposed by Working Party No. 1 (E/CONF.26/L.42, paragraphs 5 and 6).

In the circumstances he thought that it would expedite matters if a working party were appointed to study the question of reservations.

Mr. MAURTUA (Peru) said that the positions taken by the delegations were due to differing concepts of State sovereignty. While recognizing the need for reservations, his country was not in favour of including too many reservation clauses in the Convention. He recalled that in Latin America satisfactory provisions in the matter had been embodied both in the Montevideo Convention of 1889 and in the Convention on International Private Law adopted at the Sixth Conference at Havana.

It was essential to include a reservation regarding reciprocity inasmuch as the legislation of some States placed such broad matters as property laws, inheritances and civil status outside the scope of arbitration. The reciprocity clause would therefore appear to be a minimum condition which would have to be accepted if the Convention was to be realistic. The draft submitted by Italy (E/CONF.26/L.41) failed to take that problem into account. Neither did it make any provision concerning public policy or questions necessarily falling within the province of domestic law. Perhaps that omission could be remedied by an amendment to paragraph (b) whereby the phrase following the word "as" would be replaced by the words "being exclusively within its competence by the State making such declaration".

Mr. MINOLI (Italy) said he was in favour of referring the question of reservations to a working party, to which delegations should submit their proposals in the light of the conditions subject to which their Governments would be willing to sign the Convention.

Mr. de SYDOW (Sweden) observed that the delegations were divided into two groups favouring two main trends: some, including the Italian delegation, were of the opinion that grounds for reservations should be spelled out, while others wanted to limit reservations to a minimum. If the first group prevailed, a larger number of States would be able to ratify the Convention but the possibilities of its application would be greatly restricted. His delegation thought that the reservations should be kept to a minimum if the Convention was to facilitate international commercial relations.

Mr. GEORGIEV (Bulgaria) wished to make it clear that his earlier intervention had been intended primarily to emphasize the importance of the idea of reciprocity.

Sir Claude COREA (Ceylon) had no objection to the proposal to refer the question of reservations to a working party but did not think that such a group should take into account all the reservations which delegations might wish to put forward, as the Italian representative seemed to have suggested. Article I, paragraph 2, of the Committee's draft already included two reservations, the only logical one being that which referred to the condition of reciprocity. The Conference should take care not to multiply such clauses if it did not want the Convention to be ineffective.

Mr. RENOUF (Australia) remarked that the States of Australia did not distinguish between civil and commercial law. He therefore did not see the need for a clause limiting the application of the Convention to disputes arising out of commercial contracts. If such a clause was adopted, however, the States making reservations should at least define what they understood by "commercial contracts", so that the other Contracting States might know the exact extent of their obligations. His delegation would in any case favour a reciprocity clause such as that proposed by the United Kingdom.

Commenting on the draft submitted by Italy (E/CONF.26/L.41), he stated that the wording of paragraphs (c) and (d) appeared to him to be somewhat vague. It would be better not to include them in the Convention. At the present stage of the debate the question should be referred to a working party.

In conclusion, he emphasized that the Conference should, sooner or later, decide whether the article concerning reservations which would appear in the /...



(Mr. Renouf, Australia)

Convention was to cover all acceptable reservations or whether other reservations would be permitted. That point should not be left open to doubt.

The PRESIDENT suggested that the question of drawing up an article concerning reservations should be referred to Working Party No. 1. That body should consider the opinions expressed during the debate, should try to reach a compromise between the two main trends which had become apparent, and, in the event that a reconciliation proved impossible, should draw up one or more texts to be voted on by the full Conference.

It was so decided.

At the suggestion of Mr. URABE (Japan), the PRESIDENT invited Sir Claude Cowen (Ceylon) to take part in the work of Working Party No. 1.

The meeting rose at 1.10 p.m.