



General Assembly

DIST.
A/CN.9/WG.II/WP.107

17 January 2000
ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW
Working Group on Arbitration
Thirty-second session
Vienna, 20-31 March 2000

PROVISIONAL AGENDA

1. Election of officers
2. Adoption of the agenda
3. Possible preparation of harmonized texts on: conciliation; interim measures of protection; and written form for arbitration agreements
4. Other business
5. Adoption of the report

Notes on the provisional agenda

1. The Commission, during its thirty-first session, held a special commemorative New York Convention Day on 10 June 1998 to celebrate the fortieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958). In addition to representatives of States members of the Commission and observers, some 300 invited persons participated in the event. The Secretary-General of the United Nations made the opening speech. In addition to speeches by former participants in the diplomatic conference that adopted the Convention, leading arbitration experts gave reports on matters such as the promotion of the Convention, its enactment and application. Reports were also given on matters beyond the Convention itself, such as the interplay between the Convention and other international legal texts

on international commercial arbitration and on practical difficulties that were encountered in practice but were not addressed in existing legislative or non-legislative texts on arbitration.¹

2. In reports presented at that commemorative conference, various suggestions were made for presenting to the Commission some of the problems identified in practice so as to enable it to consider whether any work by the Commission would be desirable and feasible.

3. The Commission, at its thirty-first session in 1998, with reference to the discussions at the New York Convention Day, considered that it would be useful to engage in a discussion of possible future work in the area of arbitration at its thirty-second session in 1999. It requested the Secretariat to prepare a note that would serve as a basis for the considerations of the Commission.²

4. At its thirty-second session, the Commission had before it the requested note entitled "Possible future work in the area of international commercial arbitration" (document A/CN.9/460). The note drew on ideas, suggestions and considerations expressed in different contexts, such as the New York Convention Day, the Congress of the International Council for Commercial Arbitration (Paris, 3-6 May 1998),³ and other international conferences and forums, such as the 1998 "Freshfields" lecture.⁴ The note discussed some of the issues and problems identified in arbitral practice in order to facilitate a discussion in the Commission as to whether it wished to put any of those issues on its work programme.

5. The Commission welcomed the note by the Secretariat and the opportunity to discuss the desirability and feasibility of further development of the law of international commercial arbitration. It was generally considered that the time had arrived to assess the extensive and favourable experience with national enactments of the UNCITRAL Model Law on International Commercial Arbitration (1985) as well as the use of the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules, and to evaluate in the universal forum of the Commission the acceptability of ideas and proposals for improvement of arbitration laws, rules and practices.

6. Possible work topics considered by the Commission were the following:

- (a) Conciliation (A/CN.9/460, paras. 8-19; A/54/17, paras. 340-343);
- (b) Requirement of written form (A/CN.9/460, paras. 20-31; A/54/17, paras. 344-350);
- (c) Arbitrability (A/CN.9/460, paras. 32-34; A/54/17, paras. 351-353);
- (d) Sovereign immunity (A/CN.9/460, paras. 35-50; A/54/17, paras. 354-355);

¹ *Enforcing Arbitration Awards under the New York Convention: Experience and Prospects* (United Nations publication, Sales No. E.99.V.2).

² *Official Records of the General Assembly, Fifty-third Session, Supplement No. 17* (A/53/17), para. 235.

³ *Improving the Efficiency of Arbitration Agreements and Awards: 40 Years of Application of the New York Convention*, International Council for Commercial Arbitration Congress Series No. 9, Kluwer Law International, 1999.

⁴ Gerold Herrmann, "Does the world need additional uniform legislation on arbitration?" *Arbitration International*, vol. 15 (1999), No. 3, page 211.

- (e) Consolidation of cases before arbitral tribunals (A/CN.9/460, paras. 51-60; A/54/17, paras. 356-357);
- (f) Confidentiality of information in arbitral proceedings (A/CN.9/460, paras. 62-71; A/54/17, paras. 358-359);
- (g) Raising claims for the purpose of set-off (A/CN.9/460, paras. 72-79; A/54/17, paras. 360-361);
- (h) Decisions by “truncated” arbitral tribunals (A/CN.9/460, paras. 80-91; A/54/17, paras. 362-363);
- (i) Liability of arbitrators (A/CN.9/460, paras. 92-100; A/54/17, paras. 364-366);
- (j) Power by the arbitral tribunal to award interest (A/CN.9/460, paras. 101-106; A/54/17, paras. 367-369);
- (k) Costs of arbitral proceedings (A/CN.9/460, paras. 107-114; A/54/17, para. 370);
- (l) Enforceability of interim measures of protection (A/CN.9/460, paras. 115-127; A/54/17, paras. 371-373);
- (m) Possible enforceability of an award that has been set aside in the State of origin (A/CN.9/460, paras. 128-144; A/54/17, paras. 374-376).

7. At various stages of the discussion, several other topics, in addition to those contained in document A/CN.9/460, were mentioned as potentially worthy of being taken up by the Commission at an appropriate future time (A/54/17, para. 339).

8. In its considerations the Commission kept an open mind as to the ultimate form that future work of the Commission might take. It was agreed that decisions as to the form should be taken later as the substance of proposed solutions became clearer. Uniform provisions might, for example, take the form of a legislative text (such as model legislative provisions or a treaty) or a non-legislative text (such as a model contractual rule or a practice guide). It was stressed that, even if an international treaty were to be considered, it was not intended to be a modification of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). It was thought that, even if ultimately no new uniform text would be prepared, an in-depth discussion by delegates from all major legal, social and economic systems represented in the Commission, possibly with suggestions for uniform interpretation, would be a useful contribution to the practice of international commercial arbitration. The considerations of the Commission on those issues are reflected in document A/54/17 (paras. 337-376 and para. 380).

9. After concluding the discussion on its future work in the area of international commercial arbitration, it was agreed that the priority items for the working group should be conciliation (A/54/17, paras. 340-343), requirement of written form for the arbitration agreement (A/54/17, paras. 344-350), enforceability of interim measures of protection (A/54/17, paras. 371-373) and possible enforceability of an award that had been set aside in the State of origin (A/54/17, paras. 374-375). It was expected that the Secretariat would prepare the necessary documentation for the first session of the Working Group for at least two, and possibly three, of those four topics. As to the other topics discussed in document A/CN.9/460, as well as topics for possible future work suggested at the thirty-second session of the Commission (A/54/17, para. 339), which were accorded lower priority, the Working Group was to decide on the time and manner of dealing with them.

10. The Commission entrusted the work to a working group to be named “Working Group on Arbitration”, authorized it to meet from 20 to 31 March 2000 and requested the Secretariat to prepare the necessary documentation for the meeting.

11. The Working Group is composed of all States members of the Commission. These are:

Algeria, Australia, Austria, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, China, Colombia, Egypt, Fiji, Finland, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Nigeria, Paraguay, Romania, Russian Federation, Singapore, Spain, Sudan, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

Item 1. Election of officers

12. The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 3. Possible preparation of harmonized texts on: conciliation; interim measures of protection; and written form for arbitration agreements

13. The Working Group will have before it, and may wish to use as a basis for its deliberations, the following document:

Possible uniform rules on certain issues concerning settlement of commercial disputes: conciliation, interim measures of protection, written form for arbitration agreement: Report of the Secretary-General (A/CN.9/WG.II/WP.108 and Add.1).

Item 5. Adoption of the report

14. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-third session of the Commission (to be held from 12 June to 7 July 2000, in New York).

Meetings

15. The session of the Working Group on Arbitration will take place from 20 to 31 March 2000 at the Vienna International Centre.*

16. There will be 8 working days available for consideration of the report of the Secretary-General. No meeting will be scheduled for Thursday, 30 March, in order to allow for the preparation of the draft report of the session, which will be adopted on Friday, 31 March. Meeting hours will be from 9.30 to 12:30 and from 14:00 to 17:00, except on Monday, 20 March 2000, when the session will commence at 10:00 a.m.

* This will be the thirty-second session of the Working Group, previously named "Working Group on International Contract Practices". Exceptionally, the session will take place in Vienna (rather than in New York as the regular alternating pattern of sessions would call for) because, as a result of construction works, no conference facilities were available at Headquarters in New York at the time the Working Group is scheduled to meet.