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COMMITTEE ON THE ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS

SUMMARY RECORD OF THE FIRST MEETING

Held at Headquarters, New York
on Tuesday, 1 March 1955, at 11.15 a.m.

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55-07218

PRESENT:

Acting Chairman:	Mr. SCHACHTER	Director, General Legal Division
Chairman:	Mr. LOOMES	Australia
Members:	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
Observer from an inter-governmental organization:		
	Mr. HAZARD	International Institute for the Unification of Private Law
Representatives of non-governmental organizations:		
Category A:	Mr. ROSENTHAL	International Chamber of Commerce
Category B and Register:		
	Mr. KOPPERS	International Law Association
Secretariat:	Mr. CONTINI	Secretary of the Committee

OPENING STATEMENT BY REPRESENTATIVE OF THE SECRETARY-GENERAL

The ACTING CHAIRMAN, speaking as the representative of the Secretary-General, welcomed the Committee. He also welcomed the representatives of the International Chamber of Commerce, at those initiative the Economic and Social Council had taken up the question of the enforcement of international arbitral awards, and of the International Law Association and the International Association for the Unification of Private Law. The fact that the matter had been raised by an organization representing business throughout the world showed its practical importance. Arbitration had come increasingly to be relied on as an essential aid to businessmen having international dealings and it had long been apparent that better means of enforcing arbitral awards in commercial disputes between the citizens of different countries would serve the interests of business and promote international trade.

The Economic and Social Council was resuming the work begun by the League of Nations, which had resulted in the 1923 Geneva Protocol and the 1927 Convention. He also referred to inter-American multilateral instruments, notably the Bustamante Code of 1928, the Montevideo Treaty on International Procedural Law of 1889 and the Protocol of Montevideo of 1940 on the enforcement of judgments and arbitral awards. Within the United Nations, the Economic Commission for Europe had established a working group representing twenty Governments which was gathering information relating to arbitration facilities and considering problems concerning arbitral settlement in Europe. According to informal reports received, a number of delegations had expressed particular interest in the enforcement of foreign awards and in the Committee's work. A sub-committee of the Economic Commission for Asia and the Far East had recently completed a review of arbitration facilities in its region and reported that a new international convention for the enforcement of arbitral awards would be an important step forward.

The Secretariat would make relevant documentation available in addition to that before the Committee, in particular the ICC publication Commercial Arbitration and the Law throughout the World and the draft uniform law on arbitration prepared by the International Institute for the Unification of Private Law of Rome.

ELECTION OF OFFICERS

Mr. NISOT (Belgium) nominated Mr. Loomes (Australia) for the office of Chairman.

Mr. TRUJILLO (Ecuador) seconded the nomination.

Mr. Loomes (Australia) was elected Chairman by acclamation.

Mr. Loomes (Australia) took the Chair.

Mr. WORTLEY (United Kingdom) nominated Mr. Dennemark (Sweden) for the office of Vice-Chairman.

Mr. RAMADAN (Egypt) seconded the nomination.

Mr. Dennemark (Sweden) was elected Vice-Chairman by acclamation.

ADOPTION OF THE AGENDA (E/AC.42/3)

The agenda (E/AC.42/3) was adopted.

METHODS OF WORK

The CHAIRMAN said that, although the members of the Committee were Government representatives, they had, pursuant to Council resolution 520 (XVII), been designated by reason of their special qualifications. He therefore suggested that, in keeping the precedent set by similar bodies, the members of the Committee, in approaching their task, should regard themselves primarily as experts, with the understanding that the votes they cast and the conculsions they reached would not bind their respective Governments.

That suggestion was adopted.

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.42/1 and E/AC.42/2)

Mr. ROSENTHAL (International Chamber of Commerce) said that his organization wished to thank the Economic and Social Council for establishing the present Committee, and was confident that the Committee would do fruitful work.

Businessmen the world over felt that arbitration provided a fair, speedy, effective and economical method of settling the many disputes which arose over the interpretation of trade contracts between firms situated in different countries. As such disputes usually related to technical details, they were virtually unavoidable, even when every care was taken and there was good will on both sides.

While arbitration was not a new way of settling such disputes, recourse to it had become much more frequent in the past fifty years. In different world markets, a number of organizations had been formed which had panels of arbitrators and definite rules of procedure, enabling merchants to settle their differences quickly and in a friendly manner. Those organizations included the London Court of Arbitration, the International Chamber of Commerce and the American Arbitration Association. In addition, many individual trade and commodity organizations, particularly in the trading centres of the maritime nations, dealt with a great number of disputes. Merchants generally preferred arbitration to litigation, because it permitted them to avoid various inconveniences, such as the delays occasioned by the congestion in the courts, the expense of retaining counsel in a foreign country and the possibly prejudiced attitude of a jury.

In the view of the ICC, the time had come to make the arbitration of commercial disputes more general and more practical. Since the First World War, the patterns of trade had shifted, and the producing and the consuming countries tended more and more to trade directly. As a result, a much greater number of individuals and private firms than ever before participated in international trade, with a corresponding increase in the number of technical disagreements which,

(Mr. Rosenthal, ICC)

if not rapidly settled, could become a barrier to the international flow of goods. The ICC hoped that Governments would take steps to eliminate all such barriers, and it would, in particular, welcome concerted Government action to enable merchants to resort to arbitration with greater ease and confidence. For that purpose, the voluntary inclusion by merchants of arbitration clauses in contracts should be given legal recognition, so that, once included, the clause would be legally binding; where needed, legislation should be enacted to enforce the payment of an arbitral award by the loser. The preliminary draft convention proposed by the ICC covered both points. Furthermore, to ensure that arbitration remained fair at all times, article IV of the draft provided for the refusal of recognition and enforcement of the award in certain specified circumstances. The ICC felt that the adoption of a convention along those lines would be a constructive step towards facilitating international trade, and ultimately towards higher standards of living and so towards general peace and prosperity.

Mr. MEHTA (India) said that his Government generally supported the draft convention proposed by the ICC. Nevertheless, he had some preliminary comments to make on certain respects in which the draft might be improved.

A large part of international trade was conducted on the basis of exchanges of correspondence or telegrams instead of formal contracts. It seemed to him that where the factum of the contract was in dispute, an arbitral clause could not apply unless that factum was decided in a court of law, preferably in the country where the contract was to be performed.

He was puzzled by the phrase "persons... involving legal relationships arising on the territories of different States" in article I of the ICC draft convention, and asked for enlightenment.

He was not wholly satisfied with article III (b), which provided that, in the absence of agreement between the parties, the composition of the arbitral authority and the arbitral procedure must have complied with the law of the country where arbitration had taken place. Perhaps in an annex to the draft convention, a standard set of arbitral rules should be laid down which would apply in the absence of agreement between the parties.

(Mr. Mehta, India)

In article IV he would include, as additional grounds on which a competent authority could refuse to recognize and enforce an award, (1) the fact that it related to a contract that was illegal, void, not enforceable, contrary to public policy, against public morality or otherwise suffered from a material flaw; and (2) the fact that the award was so indefinite as to be incapable of enforcement. On the other hand, with respect to paragraph (d) of the same article, he did not think that recognition and enforcement of the total award should be refused if the extraneous matter on which the arbitrators had ruled could be separated. He also wondered if, in a case where the arbitrator's conduct had been improper, the award should nevertheless be enforced. He would welcome the views of his colleagues on that point.

Mr. NISOT (Belgium) suggested that the purpose of the proposed convention would be made clearer if the title was amended to read: "convention concerning the recognition and enforcement of arbitral awards made abroad".

Mr. DENNEMARK (Sweden) remarked that he was not sure that the ICC's statement (E/C.2/373/Add.1, p.3) that the Geneva Convention dealt only with the enforcement of national awards was correct. Nussbaum (Harvard Law Review, 1942-43, p.232) reported a case in which an award on a debtor's default had been made by the ICC arbitral court under its own rules of procedure and had been held by a Belgian court to be enforceable without an examination of the merits.

Mr. WORTLEY (United Kingdom) said that his Government was in favour of anything that was likely to improve international trade. He would, however, have a number of points to raise in connexion with the ICC draft. His Government held that some law should regulate the entire arbitral procedure.

Mr. NISOT (Belgium) suggested that specific proposals or amendments to the ICC's draft should be submitted in writing.

The CHAIRMAN agreed with that suggestion.

Mr. TRUJILLO (Ecuador), supported by Mr. NIKOLAEV (Union of Soviet Socialist Republics), moved the adjournment of the meeting.

The motion was adopted.

The meeting rose at 12.05 p.m.