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OFFICIAL REPORT
of the
UNITED STATES DELEGATION
to the
UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION
United Nations Headquarters, New York

May 20 - June 10, 1958

Submitted to the SECRETARY OF STATE

W.T.M. Beale
Chairman of the Delegation

August 15, 1958

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I. INTRODUCTION AND SUMMARY

The United Nations Conference on International Commercial Arbitration was held at United Nations Headquarters, New York, from May 20 to June 10, 1958.

The movement for a conference of governments on commercial arbitration originated with the International Chamber of Commerce, a non-governmental organization having consultative status with the Economic and Social Council. In 1953 the ICC prepared a draft convention on the enforcement of international arbitral awards as a replacement for the most effective existing multilateral convention on this subject, the Convention on the Execution of Foreign Arbitral Awards signed at Geneva September 26, 1927. The ICC proposals embodied advanced concepts of arbitration law. In particular, the ICC postulated the idea of a supranational law of arbitration which would free arbitral awards entirely from control by national laws. Under this concept the award would be subject only to the will of the parties as expressed in the agreement to arbitrate and to the canons or standards for enforcement provided by multilateral convention.

In 1954 ECOSOC established an ad hoc committee of experts to study the question of the enforcement of foreign arbitral awards, as presented by the ICC. The United States voted in favor of establishment of the committee of experts as a gesture of support for arbitration generally but it did not seek representation on the committee. The ad hoc committee, which was composed of representatives of Australia, Belgium, Ecuador, Egypt, India, Sweden, The Union of Soviet Socialist Republics, and The United Kingdom, met in March 1955. After detailed consideration of the ICC proposals, it formulated a draft convention of its own, which differed in material respects from that sponsored by the ICC and represented much less of a departure from the substantive principles of the Geneva Convention.

ECOSOC thereupon sought the views of governments as to the desirability of calling an international conference to conclude a convention along the lines of the draft prepared by the committee of experts. When a reasonable number of governments expressed approval, ECOSOC, by Resolution 604(XXI), adopted May 3, 1956, formally decided to summon a conference to consider such a convention, and, also, "other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes". The United States abstained from voting on this resolution.

The Conference devoted the bulk of its time and attention to the framing of a convention on the recognition and enforcement of foreign arbitral awards. Although based upon the ECOSOC draft, the new convention goes substantially beyond it in a number of particulars. The most important is the addition of provisions for recognition of the validity of contracts or agreements for submission of existing and future disputes to arbitration.

The Conference also gave brief and rather sketchy consideration to other possible measures for the more effective use of arbitration in the settlement of private law disputes. The only tangible result of this

phase of its work was adoption of a formal resolution recommending post-Conference study of such measures through appropriate organs of the United Nations and other qualified bodies.

In accordance with its instructions, the United States Delegation participated in the Conference in a limited way. It did not attempt to exert a strong influence on the content of the convention, confining itself to exposition of its views on matters of basic principle and emphasizing the value of the pragmatic as opposed to the multilateral convention approach to progress in arbitration. It was most active in the discussion of other measures and was largely responsible for adoption of the resolution favoring post-Conference study of such measures.

As a result of its participation in the Conference and its review and consideration of the work of the Conference, the Delegation recommends, for reasons set forth in detail in this Report, that: (1) the United States not sign or adhere to the convention, and (2) that it give serious study to the possibility of taking the initiative with respect to implementing the resolution on other measures.

The reasons for the Delegation's recommendation with respect to the convention may be summarized as follows:

1. The convention, if accepted on a basis that avoids conflict with State laws and judicial procedures, will confer no meaningful advantages on the United States.
2. The convention, if accepted on a basis that assures such advantages, will override the arbitration laws of a substantial number of States and entail changes in State and possibly Federal court procedures.
3. The United States lacks a sufficient domestic legal basis for acceptance of an advanced international convention on this subject matter.
4. The convention embodies principles of arbitration law which it would not be desirable for the United States to endorse.

II. AGENDA

The agenda was adopted unanimously on the opening day of the Conference. It consisted of the following items:

1. Election of the president and other officers.
2. Adoption of the agenda.
3. Adoption of the rules of procedure.
4. Consideration of the Draft Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
5. Consideration of other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes.
6. Adoption and signature of the Final Act and Convention.

III. PARTICIPATION

45 countries were represented at the Conference by official delegations:

Albania	Japan
Argentina	Jordan
Australia	Laos
Austria	Monaco
Belgium	Netherlands
Brazil	Norway
Bulgaria	Pakistan
Byelorussian SSR	Panama
Ceylon	Peru
Colombia	Philippines
Costa Rica	Poland
Czechoslovakia	Sweden
Ecuador	Switzerland
El Salvador	Thailand
Finland	Tunisia
France	Turkey
Federal Republic of Germany	Ukrainian SSR
Guatemala	Union of Soviet Socialist Republics
Holy See	United Arab Republic
India	United Kingdom
Iran	United States
Israel	Yugoslavia
Italy	

Three countries were represented by observer delegations:

Federation of Malaya
Indonesia
Mexico

Three inter-governmental organizations were represented:

Hague Conference on Private International Law
International Institute for the Unification of Private Law
Organization of American States

Ten non-governmental organizations were represented:

American Foreign Insurance Association
Chamber of Commerce of the United States
Consejo Inter-Americano de Comercio y Produccion
International Association of Legal Science
International Bar Association
International Chamber of Commerce
International Federation of Women Lawyers
International Law Association
Junior Chamber International
Societe de Legislation Comparee

IV. UNITED STATES DELEGATION

The members of the United States Delegation were:

United States Representative & Chairman of the Delegation:

W.T.M. Beale, Jr., Deputy Assistant Secretary of State
for Economic Affairs.

Alternate United States Representative:

Edmund F. Becker, Deputy Director, Office of
Trade Promotion, Department of Commerce.

Advisers:

John J. Czyzak, Office of Assistant Legal Adviser
for Economic Affairs, Department of State.

Seymour M. Finger, United States Mission to the
United Nations.

Charles H. Sullivan, Trade Agreements and Treaties
Division, Department of State.

V. ORGANIZATION OF THE CONFERENCE

A. Officers:

On the opening day, C.W.A. Schurmann, Netherlands Ambassador to the United Nations, was unanimously elected President of the Conference. Three Vice Presidents also were unanimously elected at the same time. They were: C. K. Daphtary of India, Constantino Ramos of Argentina, and Jaroslav Pscolka of Czechoslovakia.

Oscar Schachter, Director of the General Legal Division of the Legal Office of the United Nations, acted as Executive Secretary of the Conference, Vladimir Fabry of the General Legal Division as Deputy Executive Secretary and Paolo Contini as Senior Legal Officer.

B. Committees:

The Conference elected to do the greater part of its work in plenary sessions rather than divide it among committees. This decision recognized that almost every delegation was interested in several of the topics that might appropriately be assigned to committees and that extensive use of the committee method of procedure accordingly would work a hardship on the smaller delegations. It was agreed, however, that where discussion of particular provisions of the draft convention in plenary meetings revealed serious divergences of view, ad hoc working parties would be formed to seek to resolve the difficulties and recommend possible solutions. Accordingly, six committees and working parties were established by the Conference:

1. A Credentials Committee was set up pursuant to Rule 2 of the Rules of Procedure, as amended pursuant to a United States proposal and adopted at the second plenary meeting. The members of this Committee were: Australia (chairman), Belgium, Ceylon, Colombia, Italy, Peru, Tunisia, USSR, and United States. Mr. Finger served as the United States representative on this committee.

2. A Committee on Other Measures was set up to consider matters coming within the scope of Agenda Item 5 and make appropriate recommendations to the Conference. Membership on this Committee was open, and representatives of the following 21 delegations attended the Committee's sessions; Argentina (chairman), Australia, Belgium, Bulgaria, Ceylon, Federal Republic of Germany, France, Italy, Japan (vice chairman), Laos, Netherlands, Norway, Panama, Philippines, Sweden, Switzerland, Ukrainian SSR, USSR, United Kingdom, United States and Yugoslavia. Mr. Becker acted as United States representative on this Committee and was its Rapporteur.

3. Working Party I was formed on an ad hoc basis to consider problems involving Article I, paragraph 1, on the scope of the convention, particularly the definition of awards to be covered by the convention and the nature and extent of reservations, and to make recommendations to the Conference. Members of the Working Party were: Colombia, Czechoslovakia, France, Federal Republic of Germany, India (chairman), Israel, Italy, Turkey, USSR, and United Kingdom. In accordance with the general tenor of its instructions the United States Delegation did not seek representation on this Working Party.

4. Working Party II was set up to make recommendations with respect to inclusion in the convention of provisions for recognition of the validity of arbitration agreements. Members of the Working Party were: Belgium, Federal Republic of Germany, Poland, Sweden, Turkey, USSR, and United Kingdom. The United States Delegation did not seek representation on this Working Party.

5. Working Party III was set up to resolve various differences with respect to Articles III, IV and V of the draft convention, dealing with the conditions and standards applicable to the enforcement of foreign arbitral awards, and to recommend a new or revised version of these Articles to the Conference. Members of this Working Party were: Czechoslovakia, El Salvador, France, Federal Republic of Germany, Guatemala, Italy, Japan, Netherlands, Pakistan, Sweden, Switzerland, Tunisia, USSR, and United Kingdom. The United States Delegation did not seek representation on this Working Party.

6. A Drafting Committee was established to put the text of the convention in final form. Members of the Committee were: Argentina (chairman), Czechoslovakia, France, Israel, Netherlands, USSR, and United Kingdom. The United States Delegation did not seek representation on this Committee.

VI. WORK OF THE COMMITTEES

The Credentials Committee held a single meeting, on May 9, and approved the credentials of 44 delegations. It found that the credentials of the delegation of Albania had not been issued by the head of state or foreign minister, as required by Rule 2 of the Rules of Procedure. While expressing the belief that under the circumstances the Albanian credentials

