The 1958 United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards Towards the Future

Possible pathways aligning with a digital economy and beyond

Professor Marike Paulsson
Secretary General, International Commercial Dispute Resolution Council, Kingdom of Bahrain
Strategic Advisor, Dispute Resolution & Prevention, Economic Development Board, Kingdom of Bahrain

United Nations

ECOSOC
United Nations

United Nations Headquarters

New York, 1958

UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
LIMITED

E/CONF.26/INF.1/Rev.2
2 June 1958

ORIGINAL: ENGLISH/FRENCH/SPANISH

UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION

LIST OF REPRESENTATIVES AND OBSERVERS

Country Pays País	Representatives Représentants Representantes	Alternates, Advisers, Experts Représentants suppléants, Conseillers, Experts Suplentes, asesores y expertos
ALBANIA	M. Nabi AGOLLI	
ARGENTINA	Sr. Constantino RAMOS	Sr. Raul QUIJANO Sr. Leopoldo TETTAMANTI
AUSTRALIA	Mr. Alan Philip RENOUF	
AUSTRIA	H.E. Dr. Franz MATSCH	Dr. Franz HARGMY Dr. Ladislaus BLASCHEK
BELGIUM	M. Albert HERMENT	M. Marcel ROUSEREZ
BRAZIL	M. Carlos S. GOMES PEREIRA	
BULGARIA	Mr. Assen GHEORGIEV	Mr. Mihail PASKALEV Mr. Bogomil D. TODOROV
BYELORUSSIAN SSR	Mr. Anatoli B. GURINOVICH	
CEYLON	H.E. Sir Claude COREA, K.B.E.	Mr. N.T.D. KANAKARATNE
COLOMBIA	H.E. Dr. Alberto ZULETA ANGEL	
CZECHOSLOVAKIA	Mr. Jaroslav PSCOLKA	Mr. Vlastimil DESORT Mr. Stanislav MYSLIL Dr. Dusan SPÁCIL
ECUADOR	Dr. Luis COLOMA SILVA	Sr. Luis YEPEZ
EL SALVADOR	H.E. Dr. Miguel R. URQUIA	Dr. Francisco R. LIMA

/...

Country Pays País	Representatives Représentants Representantes	Alternates, Advisers, Experts Représentants suppléants, Conseillers, Experts Suplentes, asesores y expertos
POLAND	Prof. Tadeusz LYCHOWSKI	Mr. Jacek MACHOWSKI Mr. Kazimierz SZABLEWSKI
SWEDEN	Mr. Gunnar de SYDOW	Mr. Sten RUDHOLM
SWITZERLAND	Mr. P.J. POINTET	Mr. Max VISCHER Mr. Ludwig MEIER
THAILAND	H.E. M.R. Tuaithep DEVAKUL	
TUNISIA	H.E. M. Mongi SLIM	M. Slakeddine GOULLE
TURKEY	Prof. Rabi KORAL	
UKRAINIAN SSR	Mr. V.M. SAVCHENKO	Mr. M.M. BELOUSOV
USSR	Mr. K.K. BAKHTOV	Mr. G.E. VILKOV Mr. A.A. ISHCHENKO Mr. G.A. MASLOV Mr. V.I. SOLOVEV Mr. A.P. KOROSTELEV
UNITED ARAB REPUBLIC	M. Ali MOHSEN MOUSTAFA	M. Ahmed OSMAN M. Mostafa RATEB
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	Prof. B.A. WORTLEY, O.B.E.	Mr. M.G.C. PEARSON, M.A. Mr. W.V.J. EVANS, M.B.E.
UNITED STATES OF AMERICA	Mr. W.T.M. BEALE, Jr.	Mr. Edmund F. BECKER Mr. John J. CZYZAK Mr. Seymour M. FINGER Mr. Charles H. SULLIVAN
YUGOSLAVIA	Dr. Mirko BESAROVIC	
	OBSERVERS OBSERVATEURS OBSERVADORES	
FEDERATION OF MALAYA	Tunku JA'AFAR	Tuan Syed ADAM HOOAN-SHAIDALI
INDONESIA	Mr. SUWARDI SUJUD	
MEXICO	H.E. Sr. Rafael de la COLINA	

/...

Opening Statement Chair Of The New York Convention Working Group

Opening Speech by Ambassador Schurmann

for the United Nations Conference

on

International Commercial Arbitration

on Tuesday 20 May, 1958

- - - - - - -

1. Before I ask the members of the Conference to turn their attention to the task that lies before us, I would give expression to my deep gratitude to my fellow delegates for the trust they have placed in me by electing me to preside over our debates. I know that in doing so they have wished to pay tribute to my country for its share in the development of private international law. If our Conference succeeds, some small progress towards the rule of law and the smooth settlement of international disputes in the realm of private law will have been achieved. To be allowed to contribute towards that aim is an honour and a responsibility and I should like to assure you all that I shall try my best to show myself worthy of your trust and to guide our activities in a harmonious atmosphere and an expeditious manner.

2. In particular I wish to thank the distinguished representative of Belgium for having proposed my nomination and the distinguished representatives of Japan and Columbia for having seconded that proposal. Their words of praise, though hardly deserved, were treasured by me as evidence of their good will - an asset of which the president of any conference, if he is to avoid failure and confusion, stands in constant need.

3. The present Conference has been convened by the Secretary-General of the United Nations in pursuance of resolution 604 (XXI), adopted by the Economic and Social Council on the 3rd of May 1956, under the powers granted to it by the fourth paragraph of Article 62 of the Charter of the United Nations. It may not be without interest to recall briefly the developments which preceded the adoption of that resolution.

4. Although arbitration, as a means of settling disputes, has held its place beside the normal forensic procedure for many centuries, and although this device for circumventing the sometimes slow, cumbersome and costly actions available in the courts has been applied especially in respect of international commercial contracts, it was not until 1923 that an effort was made to give the stamp of official intergovernmental approval to this useful practice and to improve the international conditions under which it could operate.

On the 24th of September 1923, the Geneva Protocol on Arbitration Clauses was concluded under the auspices of the League of Nations. This Protocol provided for the recognition of the validity of arbitration agreements and for the exemption of disputes subject to such agreements from the normal jurisdiction of courts; it was ratified or acceded to by thirty States.

5. The Protocol on Arbitration Clauses gave recognition to the autonomy of the parties in choosing arbitration as a means of settlement of their disputes, but did not provide for any assistance to be given by state authorities in enforcing arbitral awards which were not carried out voluntarily. As a further step, therefore, 24 of the signatories to the Protocol on Arbitration Clauses concluded, on the 26th of September 1927, the Geneva Convention on the Execution of Foreign Arbitral Awards. This Convention provided for the enforcement of arbitral awards rendered in the territory of one of the Contracting Parties, in disputes between persons subject to the jurisdiction of one of them. It stipulated the conditions necessary to obtain the recognition or enforcement of such awards, the grounds on which enforcement could be refused, and the documentary or other evidence which a claimant seeking the enforcement of an arbitral award would be required to supply.

6. While the Geneva Convention constituted a considerable step forward in facilitating reliance on arbitration in the settlement of international commercial disputes, it had a limited territorial scope and did not apply to a large number of important trading areas of the world. Moreover, the continuing expansion of world trade and the acceleration of the commercial processes soon caused the business community to regard the provisions of this Convention as inadequate. In order to promote the finding of a remedy for some of the shortcomings of the existing situation the International Chamber of Commerce prepared, in 1953, a new draft for a "Convention on the Enforcement of International Arbitral Awards" and proposed that the consideration of this item be placed on the agenda of the Economic and Social Council of the United Nations.

7. On the 5th of April 1954 the Council, by its Resolution 520 (XVII), established a Committee on the Enforcement of International Arbitral Awards, composed of representatives of eight Member States, to study the matter and to submit to the Council such proposals as it might deem appropriate including, if it saw fit, a draft Convention. The Committee met in March 1955 and prepared for the consideration of the Council the draft Convention which this Conference has now before it. (The report of the Committee and the draft Convention are contained in document E/2704). The majority of the Committee also felt that it would be desirable if the Council were to examine ways and means to further the formulation of a set of rules governing proceedings which might be adopted by the various countries of the world. I may mention here that a draft for such a uniform law of arbitration had already been prepared by the International Institute for the Unification of Private Law in Rome and that the Consultative Assembly of the Council of Europe has recently recommended that a Committee of Experts should work out a European Convention on the subject, based on the draft of the Rome Institute.

8. The Economic and Social Council considered the report of the Committee and the draft Convention prepared by it, at its 19th session and requested the Secretary-General, in its Resolution 570 (XIX), to transmit these documents to governments and to interested organizations for their comment. (The comments and the relevant observations of the Secretary-General can be found in documents E/2822 and addenda 1 to 6, E/2840, E/CONF.26/2 and E/CONF.26/3 and addendum 1). It was on the basis of these comments, and after consultation with the Secretary-General, that the Economic and Social Council decided to call our present Conference, which has now before it the task of concluding a new Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and of considering, if time permits, other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes and to make recommendations thereon. The thorough preparatory work undertaken by the International Chamber of Commerce and by the Council and its Committee, as well as the comments and suggestions made by the governments and interested organizations, will undoubtedly be of great assistance in the performance of that task.

9. At this point I should perhaps say a few words on the procedure which the Conference might wish to adopt in dealing with the items before it. Since the views on major points have already been presented by the Governments, it may not be necessary to have a general debate in the usual sense. However, some delegations may wish to have an opportunity to express their views on the draft Convention as a whole and on other business before the Conference. I would suggest that such discussion take place before the Conference enters into an article by article consideration of the draft Convention, and that in these preliminary statements the delegations do not concern themselves with the specific provisions of the draft upon which they will comment later.

10. When the Conference takes up the various Articles of the Draft Convention it may be necessary, if agreement is not reached in the Plenary Session, to refer the Article and the proposed amendments to a small working group to prepare a draft text or alternative texts to be voted on by the Plenary Session. Such working groups could be set up as necessary for various Articles of the Draft Convention in the course of the work of the Conference. After the Conference will have adopted the Draft Convention on its first reading it would then seem desirable to refer the entire text to a small drafting committee which will examine the text from a technical and linguistic standpoint before it is finally submitted to the Conference. This procedure has been generally used, not without some success, in other similar United Nations Conferences.

11. It may also be useful to establish, at an early stage of the Conference, another Committee to explore the nature and scope of the work that the Conference could undertake under item 5 of the agenda. Some material that could be considered under this item is included in the "Consolidated Report on Activities of inter-Governmental and non-Governmental Organizations in the field of International Commercial Arbitration" (E/CONF.26/4) and in a Note prepared by the Secretary-General (E/CONF.26/6), but this material covers a rather wide range of subjects. It might save the time of the Conference if some preparatory work on this item were first done by a smaller group so that the Conference could then concentrate its attention on selected issues which had already been explored in a preliminary way.

12. May I say in conclusion that the work we have to do is intricate and extensive whereas the time allotted to us is comparatively short. In order that we should gain our award it is desirable that we should recognize and enforce the rules of cordial cooperation and abstain from arbitrariness.

* * * * *

Vienna Convention on the Law of Treaties 1969 (VCLT)

Article 2

1. For the purposes of the present Convention: (a) “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

…

Gerold Herrmann observed:

“While a-national (or “free-floating”) awards are more common in the imaginative world of radical de-localizers than in the real world, we may wish to anticipate future space awards, rendered in cyberspace (virtual “CYBITRATION©” awards by seatless online arbitration centers) or in outer space (“ORBITRATION©” By the “Galactic Arbitration Center”).”

VCLT Article 31 - General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

   (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

   (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

   (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

   (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

   (c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

VCLT Article 40 - Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.
2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:
   a) the decision as to the action to be taken in regard to such proposal;
   b) the negotiation and conclusion of any agreement for the amendment of the treaty.
3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.
4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4 (b), applies in relation to such State.
5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

   (a) be considered as a party to the treaty as amended, and

   (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

Article I of the NYC

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

…

Article II of the NYC

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III of the NYC

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV of the NYC

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

The New York Convention's Drafting History: Summary Records

(Mr. Maloles, Philippines)

arbitration procedure was still little used in the Philippines and Philippine courts had so far had to deal with only two arbitral awards.

Mr. KESTLER FARNES (Guatemala) said that his delegation was participating in the present Conference because it was convinced that the latter was of great importance for the development of international trade. In the present state of international relations, it was necessary to adopt common standards for the settlement of commercial disputes. The recognition and enforcement of foreign arbitral awards raised complex problems. That explained why some provisions of the draft Convention were drawn up in rather general terms, whereas others contained some restrictions. That should not, moreover, be regarded as a defect but rather as a virtue, since it showed that its authors had tried to adapt it to reality. The variety of legal systems made it necessary to establish common standards which would state universally recognized principles, while respecting the sovereign rights of States and the principles on which their municipal law or public policy were based.

Guatemala recognized the validity of arbitration proceedings and had participated in the work of inter-American conferences on the question. The Guatemalan delegation found the draft Convention acceptable as a whole, although it would have to make reservations concerning certain articles. It reserved the right to speak again during the discussion of individual articles.

Mr. KAISER (Pakistan) said that the development of international trade had revealed the inadequacy of the Geneva Convention and that it would be well to re-examine the procedure for enforcing arbitral awards in the light of present circumstances. Arbitration was an economic method of settling disputes which arose out of international trade relations; since some of its merit lay in its simplicity, a leading role in the proceedings should be left to the parties. That factor should not be forgotten in examining the draft Convention.

That document was an improvement on the 1927 Convention. Nevertheless, it was open to certain reservations. To keep within the bounds of generalities, it might be pointed out, among other things, that the draft did not contain any definition of the most important key terms and phrases to be found in it. It would therefore be advisable to draft an additional article which would define, among other things, arbitral awards, arbitration proceedings, persons whether

/...

Mr. KANAKARATNE (Ceylon) felt there was little difference between either the Netherlands draft (E/CONF.26/L.17) or that of the German Federal Republic (E/CONF.26/L.34) and the Committee's draft. The viewpoints of the United Kingdom (E/CONF.26/L.22) and Switzerland (E/CONF.26/L.30) also seemed to be close to that of the Netherlands.

He supported the Netherlands amendments; in particular he was in favour of deleting article III (b), and he found the wording proposed for article IV (f) excellent. His delegation failed to understand why the Netherlands amendments had led to such a long discussion and thought that the differences of opinion were mainly concerned with points of detail. He supported the suggestion made by the United Kingdom representative that the work should be speeded up, and he was convinced that the Conference could complete its mission satisfactorily.

Mr. URABE (Japan) thought that the amendment to articles III, IV and V could be referred to the working group and that the Conference could begin consideration of article VI and those which followed.

Mr. VAN HOOGSTRATEN (Hague Conference on Private International Law) drew the attention of the Conference to the fact that it was not customary in international commerce to have documents signed by the two parties, even in very important transactions. An agreement which required a clause in writing would no meet present-day needs and would not be acceptable in international commerce.

The CHAIRMAN pointed out that as the time left was very short, the Conference might perhaps provisionally close the discussion on articles III, IV and V and leave it to the working group to submit one or more drafts on 2 June.

Mr. MATTEUCCI (Italy) favoured that course. A number of delegations, including his own, would have to report to their Governments on the essential points, i.e. on the first five articles, and could not sign the Convention without the approval of their Governments.

Mr. COHN (Israel) pointed out that the discussion of the articles was not finished. No one had commented on the German Federal Republic's draft (E/CONF.26/L.34) and its author had not stated to what extent he was prepared to accept the Netherlands proposal (E/CONF.26/L.17). Other questions concerning

Federal Republic of Germany

"Article III, clause (b) should stipulate only that the award must be final. In procedure, however, this description has no significance except in the sense that the award must possess a kind of formal legal validity (force of res judicata); it cannot, as stated in the report of the Committee on the Enforcement of International Arbitral Awards (E/2704, page 9, paragraph 33) mean that the arbitral award must have settled all matters at issue between the parties. The additional stipulation that the award must be 'operative' may prove misleading; it also appears redundant."

France

"It is stated in article III (a) of the draft that, to obtain the recognition and enforcement of foreign arbitral awards, the parties must have agreed, in writing, either by a special agreement or by an arbitral clause in a contract, to settle their differences by means of arbitration.

"This provision would seem to restrict considerably the scope and importance of the Convention. It is a not unusual practice in international trade to conclude an arbitration agreement by an exchange of letters or telegrams.

"It would therefore be better to stipulate simply that evidence in writing is required which proves the will of the two parties to settle their differences by means of arbitration."

Mexico

"The Mexican Government approves of the provisions in the draft (articles III and IV) stipulating that the award must have become final and operative in the country in which it was made and that recognition and enforcement of the award may be refused if:

"(a) the subject matter of the award is not capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon; or

"(b) the recognition or enforcement of the award, or the subject matter thereof, would be clearly incompatible with public policy or with fundamental principles of the law (ordre public) of the country in which the award is sought to be relied upon."

A telegram "Baby Baptized"

268274
268281

nnnn
x
zczc mtr104 via itt dax1086
nlax hl uijb 114
newyork 114/104 15 1831 1/57/54 mm cnt qts

lt
pieter sanders
burg knappertlaan 134
schiedamnetherlands

baby babtized today. resolution approving uncitral
arbitration rules was adopted by consensus without debate and
with no opposing views expressed. resolution formally adopted
is identical to text previously mailed except for the following
minor changes:
1. in paragraph beginning ''bearing in mind'' and also in
paragraph

col 134 1.

dax1086 lt pie 2/53/50
no. 1 strike ''uncitral'' and insert after
''arbitration rules'' '' of the united nations commission on
internatonal trade law''.
2. in paragraph beginning ''nothing'' and also in
paragraph 2 strike ''uncitral''.
3. in paragraph beginning ''noting'' delete (1976).
congratulatons and warmest regards
howard holtzmann

col 1 2. 2 3. 1976

16/12 0252

1976 DEC 16 01 05

CIAL-0

Pieter Sanders with Albert Jan van den Berg and Marike Paulsson
" Celebrating the New York Convention"

“International law perhaps has not achieved much, but it is good that it is there.”

Fali Nariman

India