

Opening Speech by Ambassador Schurmann  
for the United Nations Conference  
on  
International Commercial Arbitration  
on Tuesday 20 May, 1958

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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 inter-governmental 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.

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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/CCNF.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.

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