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RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Memorandum by the Secretary-General

1. The Economic and Social Council, by resolution 570 (XIX), requested the Secretary-General to prepare a report containing the comments of Governments and non-governmental organization on the draft Convention on the Recognition and Enforcement of Foreign Arbitral Awards,^{1/} together with such observations as he may have. The comments received thus far have been circulated in documents E/282 Add.1 and Add.2. The present memorandum contains the Secretary-General's observations on this subject.

I

2. As indicated in documents E/2822, Add.1 and Add.2, sixteen Governments^{2/} have shown a positive attitude towards a conference to conclude a convention on the recognition and enforcement of foreign arbitral awards. Three other

^{1/} Official Records of the Economic and Social Council, nineteenth session, Annexes, agenda item 14, document E/2704 and Corr.1.

^{2/} Austria, Belgium, Brazil, Ceylon, Denmark, Federal Republic of Germany, France, Greece, India, Israel, Japan, Philippines, Republic of Korea, Sweden, Switzerland, Union of Soviet Socialist Republics.

Governments,^{3/} without indicating their position regarding a conference, have manifested interest in the subject by submitting substantive comments on the draft Convention. One Government^{4/} has expressed itself in favour of the draft Convention but not of calling a conference, and three Governments^{5/} have stated that if a conference is convened they would not expect to participate.

3. Various trade and legal organizations, such as the International Chamber of Commerce, the International Law Association and the Chamber of Commerce of Bruxelles, have advised the Secretary-General of their support for convening a conference to conclude a new Convention on the recognition and enforcement of foreign arbitral awards.

II

4. The Committee on the Enforcement of International Arbitral Awards sought to produce a draft Convention "which, while going further than the Geneva Convention of 1927 in facilitating the enforcement of foreign arbitral awards, would at the same time maintain generally recognized principles of justice and respect the sovereign rights of States".^{6/} In their comments, some Governments and non-governmental organizations have expressed the view that the draft Convention still contains too many limitations and restrictions,^{7/} while others

^{3/} China, Egypt, Mexico.

^{4/} Lebanon.

^{5/} Canada, Union of South Africa, United States of America.

^{6/} Official Records of the Economic and Social Council, nineteenth session, Annexes, agenda item 14, document E/2704 and Corr.1, paragraph 14.

^{7/} E/2822, see e.g., comments by Switzerland on Articles I, III and IV; France on Article III; the Federal Republic of Germany on Article IV. See also comments by the International Chamber of Commerce on Articles I, III and IV; Société de Législation Comparée on Articles III and IV; Société Belge d'Etudes et d'Expansion on Article I; International Law Association on Articles III and IV.

have indicated that in their opinion the draft Convention goes too far in some respects.^{8/} As these and other comments and suggestions made on the draft Convention are of a technical legal nature, it is believed that the Council should consider primarily the question of whether or not an international conference of states should be convened to conclude a Convention rather than the technical points raised. None of the Governments or non-governmental organizations which submitted comments have objected to the draft Convention as a whole, and eight Governments have expressly indicated their general approval.^{9/} Accordingly, if a conference is called pursuant to General Assembly resolution 366 (IV), the Council could prescribe that the conference should use the draft Convention as a working basis, taking into account the comments and suggestions made by Governments and non-governmental organizations.

III

5. The conclusion of a new Convention on more liberal terms than the Geneva Convention of 1927 is generally regarded as the most urgent task in the field of international commercial arbitration.^{10/} It should be noted, however, that the recognition and enforcement of foreign arbitral awards is but an aspect of international commercial arbitration. It has long been recognized that progress in the development of arbitration as a means to settle international commercial disputes between persons has been hampered mainly by the existing differences in the legislation of the various countries on the subject of arbitration procedures and the effect of arbitration, the lack of uniformity in the rules of arbitral tribunals, and the complications deriving from conflict of laws in this area. Thus, in addition to dealing with the recognition and enforcement of foreign arbitral awards, several public and private organizations interested in the increased use of arbitration in international trade have been actively

^{8/} E/2822, see e.g., comments by China, Egypt and Mexico on Article I.

^{9/} Brazil, Denmark, Federal Republic of Germany, France, Lebanon, Philippines, Sweden, Switzerland.

^{10/} The expression "international commercial arbitration" generally refers to arbitration in commercial disputes arising out of transactions between persons resident in different countries or otherwise involving legal relationships in different countries.

engaged in promoting the unification of arbitration laws, encouraging the conclusion of arbitration treaties and advocating the standardization or at least the co-ordination of the rules and procedures of existing arbitral bodies.

6. The non-governmental organizations actively engaged in the study of international commercial arbitration include the International Chamber of Commerce, which prepared the preliminary draft Convention^{11/} used as a working paper by the Committee on the Enforcement of Arbitral Awards, the International Law Association, the American Arbitration Association, the Union Internationale des Avocats and others. Reference should also be made to an International Meeting for the Reform of Arbitration held under the auspices of the Italian Government in June 1954 at Cadenabbia, Italy, with the participation of experts from eighteen countries. The Meeting discussed the question of the possibility of unification of arbitration laws and the recognition and enforcement of foreign arbitral awards.^{12/}

7. As regards inter-governmental organizations, the International Institute for the Unification of Private Law of Rome has dealt with the subject of the unification of arbitration laws for many years. A draft uniform law on arbitration prepared earlier by the Institute was last revised in 1954.^{13/} This draft is being used as a working basis by a Committee established in the Council of Europe for the purpose of studying the possibility of drawing up a uniform law on arbitration procedure. In the Western Hemisphere, efforts in the same direction have been made for about twenty-five years at several conferences of American States and by the Pan-American Union. The latest action on this

^{11/} E/C.2/373.

^{12/} Atti del Convegno Internazionale per la riforma dell'arbitrato, Milan, June 1954.

^{13/} Draft of a Uniform Law on Arbitration in respect of international relations of private law and explanatory report, Rome, UNIDROIT, U.P.L.1954, Draft III (3).

subject was a resolution of the Inter-American Council of Jurists at its third meeting in Mexico City in January 1956, recommending the adoption by the American Republics of a Draft Uniform Law on International Commercial Arbitration prepared by the Judicial Committee of the Council.^{14/}

8. Within the United Nations, the Economic Commission for Europe has set up an Ad hoc Working Group on Arbitration which is engaged in the collection of national laws and treaties relating to commercial arbitration and in the preparation of a handbook of national and international institutions active in the field of international commercial arbitration. It has also been studying different aspects of arbitration, such as the question of the exclusion of the jurisdiction of ordinary courts when there is a valid arbitration agreement, problems relating to the applicable law, the relation between the rules of arbitration institutions and national laws, and others. The Working Group will hold its third session in August 1956. The Economic Commission for Asia and the Far East has also been dealing with the subject of commercial arbitration facilities.

9. The attention of the Council is also drawn to the following sentence in the report of the Committee on the Enforcement of International Arbitral Awards: "The majority of the Committee felt that it would be desirable if the Economic and Social Council would examine ways and means to further the formulation of a set of rules governing arbitration proceedings which might be adopted by the various countries of the world."^{15/} The International Institute for the Unification of Private Law has offered its assistance if the Council decides to follow the Committee's suggestion.^{16/} The importance of standardizing the rules of arbitral procedure was stressed in the comments on the draft Convention made by Austria^{17/} and the Société d'Etudes et d'Expansion.^{18/}

^{14/} The text of the Draft Uniform Law is reproduced in the Final Act of the Third Meeting of the Inter-American Council of Jurists, Mexico, D.F., 1956.

^{15/} Official Records of the Economic and Social Council, nineteenth session, Annexes, agenda item 14, document E/2704, paragraph 69.

^{16/} E/2822/Add.3.

^{17/} E/2822, page 4 of Annex I.

^{18/} Ibid., page 3 of Annex II.

10. As there is a widespread interest and desire in furthering international commercial arbitration, it is suggested that the United Nations conference - if the Council decides to convene it - should consider not only the proposed draft Convention but also other possible measures for increasing the effectiveness of international commercial arbitration. The conference could make such recommendations as it might deem desirable to Governments, and where appropriate, to international organizations.

11. If a conference is called, the Secretary-General submits the following suggestions:

(1) The terms of reference of the conference should be along the following lines:

(a) To conclude a Convention on the recognition and enforcement of foreign arbitral awards on the basis of the draft Convention prepared by the Committee on the Enforcement of International Arbitral Awards, taking into account the comments and suggestions made by Governments and non-governmental organizations, as well as the discussion at the twenty-first session of the Economic and Social Council;

(b) To consider other possible measures for increasing the effectiveness of arbitration in the settlement of international commercial disputes and to make such recommendations as it may deem desirable.

(2) The Secretary-General should be requested: (i) to ask the inter-governmental and non-governmental organizations active in the field of international commercial arbitration to submit brief reports on the progress of their activities on this subject together with any comments or suggestions as they may have; (ii) to submit a consolidated report to the conference, including the reports received from the above organizations, and any other information as he may have gathered on the subject, together with such observations as he may have.