



UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL



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COMMITTEE ON THE ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS

REPORT OF THE COMMITTEE ON THE ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS

A. RESOLUTION OF THE ECONOMIC AND SOCIAL COUNCIL ESTABLISHING THE COMMITTEE

1. The Committee was established by resolution 520 (VII) of the Economic and Social Council adopted on 6 April 1954 at the seventeenth session of the Council. The resolution reads as follows:

The Economic and Social Council,

Taking note of the draft convention on the enforcement of international arbitral awards submitted by the International Chamber of Commerce,

1. Establishes an Ad Hoc Committee composed of representatives of eight Member States, to be designated by the President of the Council;

2. Invites each of the Governments represented on the Ad Hoc Committee to designate as its representative a person having special qualifications in that field;

3. Instructs the Ad Hoc Committee to study the matter raised by the International Chamber of Commerce in the light of all the relevant considerations and to report its conclusions to the Council, submitting such proposals as it may deem appropriate, including, if it sees fit, a draft convention.

2. In accordance with paragraph 1 of this resolution the President of the Council designated the following Member States: Australia, Belgium, Ecuador, Egypt, India, Sweden, Union of Soviet Socialist Republics and the United Kingdom.

B. COMPOSITION, MEETINGS AND ORGANIZATION OF THE COMMITTEE

3. The States represented on the Committee designated as their representatives the following persons:

AUSTRALIA

Representative

Mr. A.H. Loomes

BELGIUM

Representative

Mr. J. Nisot

Alternate

Mr. P. Bihin

ECUADOR

Representative

H.E. Dr. José Vicente Trujillo

EGYPT

Representative

Dr. A.M. Ramadan

Alternate

Mr. Ahmed Osman

INDIA

Representative

Mr. M.B. Mehta

Alternate

Mr. S. Krishnamurti

SWEDEN

Representative

Mr. S. Dennemark

UNION OF SOVIET SOCIALIST REPUBLICS

Representative

Mr. Anatoly N. Nikolaev

Alternate

Mr. Nikolai V. Smirnov

UNITED KINGDOM

Representative

Professor B.A. Wortley, O.B.E.

Alternate

Mr. W.V.J. Evans

4. The Committee met at the Headquarters of the United Nations from 1 to 15 March 1955 and held thirteen public meetings. A drafting committee of the Committee also held a number of meetings.

5. The session of the Committee was opened by Mr. Oscar Schachter, Director of the General Legal Division of the United Nations Secretariat, who acted as the representative of the Secretary-General of the United Nations for the session. The Secretary of the Committee was Mr. Paolo Contini, Senior Legal Officer, and the Assistant Secretary was Mr. Constantino Ramos, Legal Officer, both in the General Legal Division.

6. At its first meeting the Committee elected the following officers:

Chairman	Mr. Loomes (Australia)
Vice Chairman	Mr. Dennemark (Sweden)

7. The International Monetary Fund was represented at one meeting of the Committee by Mr. Gordon Williams. The International Institute for the Unification of Private Law was represented during the Committee session by an observer, Professor John N. Hazard.

8. The following non-governmental organizations with consultative status were represented during the Committee session as follows:

International Chamber of Commerce (Category A)

Mr. Morris S. Rosenthal
Mrs. Roberta M. Lusardi

International Law Association (Category B)

Mr. Samuel Kopper

C: DOCUMENTS BEFORE THE COMMITTEE

9. The following documents were submitted for the consideration of the Committee:

(a) Report and Preliminary Draft Convention on the Enforcement of International Arbitral Awards submitted by the International Chamber of Commerce (Document E/C.2/373).

(b) Statement submitted by the International Chamber of Commerce explaining the difference between the 1927 Geneva Convention and the ICC proposed convention and giving the text of the 1927 Geneva Convention and a bibliography on the subject. (Document E/C.2/373/Add.1).

(c) Text of the Protocol on Arbitration Clauses signed at Geneva on 24 September 1923 (Document E/AC.42/2).

(d) Comments received from Governments regarding the ICC Draft Convention on the Enforcement of International Arbitral Awards (Document E/AC.42/1).

D. AGENDA

10. The Committee adopted the following agenda:

1. Opening statement by representative of the Secretary-General.
2. Election of officers.
3. Adoption of the agenda.
4. 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.
5. Proposals of the Committee.
6. Adoption of the report of the Committee to the Economic and Social Council.

E. GENERAL CONSIDERATIONS

11. In view of the technical nature of the subject matter, the members of the Committee while being aware that they had been appointed as Government representatives, considered themselves as acting essentially as technical experts with the understanding that the views expressed by them in the course of the Committee's deliberations would not necessarily constitute the position of their respective Governments.

12. The Committee noted the view of the International Chamber of Commerce expressed by its representative that in the interest of developing international trade it is important to further means to obtain the enforcement in one country of arbitral awards rendered in another country in settlement of commercial disputes. It was also aware that within the United Nations, the Economic Commission for Europe and the Economic Commission for Asia and the Far East recently have been giving considerable attention to the development of arbitration facilities, including the enforcement of arbitral awards. Furthermore, the Committee noted the interest of other inter-governmental organizations on this subject, as indicated for example by the "Draft of a Uniform Law on Arbitration in Respect of International Relations of Private Law" prepared by the International Institute for the Unification of Private Law in Rome.

13. Two multilateral conventions specifically dealing with commercial arbitration were concluded under the auspices of the League of Nations. The Protocol on Arbitration Clauses of 24 September 1923 (ratified by thirty States) and the Convention on the Execution of Foreign Arbitral Awards of 26 September 1927 (ratified by twenty-four States) which supplemented and expanded the scope of the 1923 Protocol. The International Chamber of Commerce expressed the view (E/C.2/373, page 7) that the system established by the Geneva Convention of 1927 no longer met the requirements of international trade. For this reason, the International Chamber of Commerce prepared a Preliminary Draft Convention which was before the Committee (E/C.2/373).

14. Having considered the general aspects of the question, the Committee concluded that it would be desirable to establish a new convention which while going further than the Geneva Convention 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.

15. Although the Committee differed in several respects with the proposals made by the International Chamber of Commerce, it decided to use the ICC Preliminary Draft as a working paper for its deliberations.

16. At its 13th meeting of 15 March 1955 the Committee adopted by a vote of seven in favour, none against and one abstention, a Draft Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the text of which is reproduced in the Annex to this report.

F. THE DRAFT CONVENTION

Title

17. The Committee considered that the expression "International Arbitral Awards" used by the International Chamber of Commerce (E/C.2/373) normally referred to arbitration between States. Since this Draft Convention does not deal with arbitration between States, but deals with the recognition and enforcement in one country of arbitral awards made in another country, the Committee adopted the title "Draft Convention on the Recognition and Enforcement of Foreign Arbitral Awards" which reflects more accurately the object of the Convention.

Article Proposed but not Adopted Concerning the Validity of Arbitration Agreements

18. The Representative of Sweden had proposed that the first Article should reproduce essentially Paragraph (1) of the Protocol on Arbitration Clauses of 1923, and provide that Contracting States would undertake to recognize the validity of written agreements between the parties to submit their differences to arbitration. Thus the Draft Convention, in addition to providing for the recognition and enforcement of arbitral awards, would make it clear that the parties are prevented from challenging, at any stage, the validity of an arbitration agreement.

19. The Committee decided not to adopt the Swedish proposal. The Representatives of India and the United Kingdom voted in favour of the proposed Article because they considered that the inclusion of that clause was necessary to fulfil the object of the Convention. The Representative of Ecuador thought it was implicit in the Draft Convention that Contracting States will recognize the validity of arbitration agreements concluded between the parties. The Representative of Egypt opposed the Swedish proposal as going beyond the scope of the Convention. The Representative of Belgium voted against the proposal and said that it was imprecise and superfluous, and that it could only result in uncertainty and confusion.

Article I

20. This Article defines the scope and limit of the application of the Draft Convention. The Committee carefully noted the differences between Article I of the ICC Draft and the corresponding provisions of the Geneva Convention of 1927 (Article I, 1st paragraph). The latter applies to arbitral awards which are made (i) in the territory of a Contracting State, and (ii) between persons subject to the jurisdiction of one of the Contracting States. The ICC Draft, on the other hand, would apply to arbitral awards which are made (i) in disputes between persons subject to the jurisdiction of different States, or (ii) involving legal relationships arising on the territory of different States.

21. Thus, while the Geneva Convention is based upon the principle of reciprocity, the ICC Draft would provide for the enforcement in the territory of a Contracting State of arbitral awards made abroad, regardless of whether or not they were made in the territory of another Contracting State.

22. Having regard to the object of the Draft Convention, the Committee thought it would not be desirable to establish a strict requirement of reciprocity. At the same time the Committee was aware that the adoption of the solution proposed by the ICC would make the Convention unacceptable to States willing to adhere to it only on condition of reciprocity. Accordingly, in Article I the Committee adopted a formulation which would permit any Contracting State to declare that it will apply the Convention only to arbitral awards rendered in the territory of another Contracting State (Article I, paragraph 2). On the other hand, a Contracting State not making such declaration would undertake to apply the Convention to arbitral awards rendered in any other country (Article I, paragraph 1).

23. The Committee did not include in the Draft Convention the other requirement of the Geneva Convention that the arbitral award must have been made between persons who are subject to the jurisdiction of one of the Contracting States. This expression being rather vague and ambiguous, might be subject to different interpretations in different countries.

24. Article I provides that the Convention would apply to arbitral awards arising out of differences "between persons, whether physical or legal". The Representative of Belgium had proposed that the article should expressly provide that public enterprises and public utilities should be deemed to be legal persons for purposes of this article if their activities were governed by private law. The Committee was of the opinion that such a provision would be superfluous and that a reference in the present report would suffice.

25. The expression "arbitral awards" was understood by the Committee to include awards made by arbitral bodies appointed for each case (whether selected by the parties or by an organization), as well as awards made by permanent arbitral bodies, established in accordance with the law of a Contracting State. The Committee considered it unnecessary to include a provision to this effect in the text of the Convention (as proposed by the Representative of the USSR), and decided that a reference in the report would suffice.

26. The Committee considered whether the Convention should be limited to arbitral awards arising out of commercial disputes, as was envisaged in the ICC draft (Article I). While in some countries the word "commercial" and "commerçant" has a clear legal meaning, the law of other countries does not specifically differentiate between civil and commercial matters. For this reason the Committee decided not to include any qualification in paragraph 1 of Article I. However, paragraph 2 would enable any Contracting State to declare that it would apply the Convention only to disputes arising out of contracts considered as commercial under the law of that State. A similar provision is contained in the 1923 Protocol on Arbitration Clauses.

Article II

27. This article is the same as Article II of the ICC draft. A similar provision is contained in Article 1 of the Geneva Convention.

28. The Committee agreed that the words "territory where the award is relied upon" in this article (as well as similar words used in subsequent articles) are intended to apply both to the recognition and to the enforcement of an arbitral award.

Article III

29. This article establishes the basic conditions which must be met in order to obtain the recognition and enforcement of arbitral awards under the Convention. The onus of proving that these conditions have been fulfilled lies on the party invoking the award.

Sub-paragraph (a)

30. The provision that the parties must have "agreed in writing either by a special agreement or by an arbitral clause in a contract" was intended to cover all the possible ways in which the parties may enter into a written agreement to arbitrate their differences. The Committee was aware that in the practice of international trade an agreement to arbitrate may be made by exchange of letters or telegrams. So long as the agreement is genuine and has been reduced to written form, the Committee thought it should be considered valid for the purposes of this paragraph. Similarly, the Committee did not intend to exclude common form submissions ("contracts type") and other standard forms.

31. The formulation used in this paragraph ("either by special agreement or an arbitral clause in a contract") was intended to cover cases where a dispute is settled by arbitration in accordance with an arbitral clause in a contract, as well as cases where there is a specific agreement ("compromis") containing the terms of the dispute submitted to arbitration.

Sub-paragraph (b)

32. The ICC Draft had omitted from the conditions of enforcement the condition that an arbitral award must be final. In order to properly safeguard the rights of the losing party, the Committee decided to reintroduce the requirement of finality which had been included in the Geneva Convention (Article 1 (1)).

33. This provision prescribes that in the country where the award was made, the award must be "final and operative" and in particular, that its enforcement must not have been suspended. The expression "final and operative" was intended by the Committee to mean that an award must be a definitive adjudication of all matters at issue, and must have full legal force and effect.

Article IX

34. This article lays down the grounds on which the competent authorities in the countries where the recognition or enforcement is sought, may refuse to grant such recognition or enforcement. The expression "Without prejudice to Article III" indicates that the conditions laid down in Article III must be fulfilled in all cases. However, even if these conditions are met, the recognition or enforcement of an arbitral award may be denied if it fails to meet the requirements of Article IV. The word "only" makes it clear that where the conditions of Article III are met, no other grounds except those included in this article may be invoked as a defence.

Sub-paragraph (a)

35. This provision is the same as Article IV (b) of the ICC Draft, and may be found also in Article 1 (c) of the Geneva Convention.

Sub-paragraph (b)

36. This sub-paragraph substantially reproduces a clause contained in Article IV(c) of the ICC Draft and Article 2(b) of the Geneva Convention. However, both the ICC Draft and the Geneva Convention prescribed only that notice of the arbitration proceedings must have been given in sufficient time. The Committee considered that the party against whom the award is invoked must have been given adequate notice not only of the proceedings but also of the appointment of the arbitrator. Furthermore such notice must have been given "in due form".

37. The Representative of Belgium had proposed that this sub-paragraph should begin with the words "that the rights of the defence have been respected and, particularly". He explained that this would make more certain that the rights of the defence are respected. The Committee felt that if the basic rights of the defence had been violated, recognition and enforcement could be refused on grounds of public policy or violation of fundamental principles of law, as provided in sub-paragraph (h) of this Article.

Sub-paragraph (c)

38. This clause is substantially the same as a provision contained in Article IV (c) of the ICC Draft and Article 2 (b) of the Geneva Convention.

Sub-paragraph (d)

39. The first half of this clause reproduces Article 2 (c) of the Geneva Convention, and is similar to Article IV (d) of the ICC Draft. The expression "submission to arbitration" was used in a broad sense, and was intended to include not only an arbitration clause in a contract, but also a specific "compromise".

40. The Committee decided to adopt a proposal of the Representative of India to add the words "provided that if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced". The Representatives of Belgium and Ecuador expressed doubts as to the wisdom of the Indian proposal on the grounds that an arbitral award is a whole and it might be dangerous to give a court the right to separate fundamentally interrelated elements.

Sub-paragraph (e)

41. This clause reproduces Article IV (e) of the ICC Draft and is substantially the same as Article 2 (a) of the Geneva Convention.

Sub-paragraph (f)

42. This clause was adopted by the Committee on the proposal of the Representative of India who explained that since recognition and enforcement could be denied only on the grounds specified in Articles III and IV, there should be a provision enabling a court to refuse it if the award is so vague and indefinite as to be incapable of recognition and enforcement. The representatives of Belgium, Sweden and the USSR, however, opposed the inclusion of this additional ground for denying recognition and enforcement because it was deemed superfluous and might be used as a pretext for refusing the recognition or enforcement of an arbitral award.

Sub-paragraph (g)

43. Article III (b) of the ICC Draft provided that as a condition for recognition and enforcement, it will be necessary "that the composition of the arbitral authority and the arbitral procedure shall have been in accordance with the agreement of the parties or, failing agreement between the parties in this respect, in accordance with the law of the country where arbitration took place". This was perhaps the most far-reaching departure of the ICC Draft from the Geneva Convention which prescribed that the award must have been made in accordance with the agreement of the parties and in conformity with the law governing the arbitration procedure (Article 1 (c)).

44. The Committee gave careful consideration to this question. On the one hand it was recognized that where the parties have agreed regarding the arbitral procedure, it might be unnecessary and perhaps cumbersome to prescribe that the composition of the arbitral authority and the arbitral procedure should follow in all details the requirements of national laws. On the other hand, the Committee was reluctant to accept the idea put forward by the ICC that "international" awards should be "completely independent of national laws" (E/C.2/373, p.7). In particular, the Representatives of Australia, India and the United Kingdom

objected to this concept on the ground that it might well involve ousting the jurisdiction of the courts of the country where arbitration took place. This was unacceptable as the exclusion of any control by national courts might lead to injustice and abuse.

45. The Committee finally agreed on a text (Article IV, sub-paragraph (g)) which would prescribe that recognition or enforcement may be refused if "either the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties to the extent that such agreement was lawful in the country where the arbitration took place". Thus the agreement of the parties would be valid even though the arbitral procedure set forth therein might not follow in all respects the provisions of the law of the country where arbitration takes place as is applicable to national awards, provided, however, that such agreement is lawful in that country.

46. This sub-paragraph provides also that the composition of the arbitral authority or the arbitral procedure must be in accordance with the law of the country where the arbitration took place if the parties have not agreed in this respect. Therefore recognition or enforcement of the award would be refused if, in the absence of such agreement, the composition of the arbitral authority or the arbitral procedure was not in accordance with the law of that country.

47. The substance of this sub-paragraph was contained in Article III (b) of the ICC Draft. The Committee decided to transfer this clause from Article III to Article IV in order to make certain that in this matter the burden of the proof lies in the defendant.

Sub-paragraph (h)

48. This clause is a modified version of Article 1 (c) of the Geneva Convention and Article IV (a) of the ICC Draft. The former provided that the recognition or enforcement of the award must not be "contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon". The ICC Draft omitted the reference to the "principles of the law".

49. The Committee adopted the expression "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". By using the words "clearly" and "fundamental", the Committee intended to limit the application of this clause to cases in which the recognition or enforcement of a foreign arbitral award would be distinctly contrary to the basic principles of the legal system of the country where the award is invoked. The Representatives of Australia, India and the United Kingdom opposed the inclusion of the word "fundamental" on the ground that, as used in this clause, it has no clear legal meaning under the laws of their countries.

50. The words "or the subject matter thereof" were adopted by a majority of the Committee on a proposal by the Indian delegation. The Representatives of Belgium, Sweden and the USSR opposed their inclusion as superfluous.

Additional Paragraph Proposed but not Adopted

51. Article IV of the ICC Draft contains in the last paragraph a provision according to which certain circumstances enumerated in this article, those of paragraphs (c), (d) and (e), may only be invoked by the party against whom the recognition or enforcement is sought.

52. The Committee, at the request of the Representative of Sweden, considered the possibility of including an additional paragraph to Article IV of the draft Convention on the following lines:

"The circumstances mentioned in Article IV, paragraphs (b), (c), (d) or (e) shall not bar the recognition or enforcement of an award unless the party against whom the award is made refers to them or makes an objection based on them."

53. The Committee did not adopt this proposal, deeming it preferable to leave it to the competent authorities to refuse recognition and enforcement when they were "satisfied" that any of the circumstances in Article IV warranted such refusal. The Committee considered it unnecessary to specify that recognition or enforcement may be denied by the competent authority "ex officio" or at the request of the interested party". The Committee also considered it

unnecessary to include in Article IV a clause along the lines of Article 3 of the Geneva Convention of 1927 providing that if the losing party proves that, under the law governing the arbitration procedure, there are grounds, other than those specified in the Convention, entitling him to contest the validity of the award, the Court may either refuse recognition or enforcement of the award or adjourn the consideration thereof.

Article V

54. This Article requires the furnishing of certain documents or other evidence in a manner similar to that of Article 4 of the Geneva Convention of 1927. The Committee felt that the party claiming the recognition or enforcement should be required to prove that the conditions of Articles I and III have been met. Conditions such as might be the object of reservations by the Contracting States under Article I might have to be proved, and it was proper that the burden of such proof should fall on the party claiming recognition or enforcement of a foreign award. The situation was the same with the conditions of Article III. On the other hand it was not thought necessary to include a reference to Article II in the paragraph under consideration.

55. Article 4 of the Geneva Convention of 1927 provides that the original award or a copy thereof to be supplied by the party claiming its enforcement must be authenticated according to the requirements of the law of the country in which it was made. The Committee thought it was preferable to allow a greater latitude with regard to this question to the tribunal of the country in which the recognition or enforcement was being requested. It was agreed that the term "duly authenticated" would make this possible.

56. Article 4 of the Geneva Convention of 1927 provides that translation of documents may be demanded into the official language of the country where the award is sought to be relied upon. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon. The Committee thought that this was too cumbersome and it could give rise to unnecessary difficulties. It was therefore prescribed that only a duly certified translator into an official language of the country where the award is invoked may be required.

Article VI

57. The Committee decided to incorporate in this article a provision not expressly included in Article 5 of the Geneva Convention of 1927 to the effect that the provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements entered into by the Contracting States. Article VI also includes the provision of Article 5 of the Geneva Convention of 1927 granting to interested parties the right to avail themselves of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where the award is invoked.

58. The Committee also considered a proposal to include in the scope of this article not only interested parties but the Contracting States themselves, but it concluded that it would be superfluous to spell out expressly this right of Contracting States.

Articles VII and VIII

59. These Articles deal with signature, ratification and accessions to the Convention and provide that the Convention shall be opened not only to Members of the United Nations, but also any other State which is a member of any Specialized Agency or party to the Statute of the International Court of Justice, or to which an invitation has been addressed by the General Assembly.

60. The Representative of the USSR proposed the adoption of the text of Article VII of the ICC Draft according to which the Convention would be open to all States. He opposed the adoption of an article in the present form on the ground that it would restrict the number of participants in the Convention, which would be contrary to the purpose of the Convention itself. The Representative of India supported the views of the Representative of the USSR. The majority of the Committee considered, however, that it was desirable to have a more detailed formula in this respect and consequently favoured the text adopted.

Articles IX and X

61. These Articles are substantially the same as Article 40 and 41 of the Convention relating to the Status of Refugees of 1951. Article IX provides for the extension of the Convention by a State to all or any of the territories for the international relations of which it is responsible. Article X applies to

federal or non-unitary States and contains special provisions with respect to those Articles of the Convention that might not be within the legislative jurisdiction of the federal legislative authority. This Article also states that a Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is bound by the Convention. The majority of the members of the Committee considered that Articles IX and X were desirable to take account of special problems faced by States with responsibility for Non-Self-Governing Territories and States under whose constitution authority is reserved to constituent states, provinces or cantons. The Representative of the USSR stated his objections in principle to both these Articles and desired that it be noted that he did not participate in their drafting, although he was a member of the Drafting Committee. The Representative of India abstained from voting on Article IX.

Article XI

62. This Article provides for the entry into force of the Convention when two States shall have become parties to it. It also provides that, in respect of each State subsequently ratifying or acceding to the Convention, it shall enter into force on the 90th day after the deposit by such State of its instrument of ratification or accession.

Article XII

63. This Article, which deals with denunciation, provides that any denunciation shall take effect one year after the date of its receipt by the Secretary-General.

Article XIII

64. Paragraph (1) of this Article provides that any dispute which may arise between contracting States concerning the interpretation or application of the Convention shall be referred to the International Court of Justice at the request of any one of the parties to the dispute, unless the parties agree to another mode of settlement. It was noted by the Committee that this provision is substantially the same as articles on settlement of disputes customarily included in conventions adopted by or under the auspices of the United Nations.

The Representative of the USSR opposed the adoption of this article on the grounds that it would mean (1) a violation of the sovereign rights of States with

respect to the principle of voluntary recognition of the binding character of the jurisdiction of the International Court of Justice, and (2) a limitation of the sovereign rights of States to make reservations on any article of the Convention.

65. The Committee also decided to include a second paragraph to this Article which provides that any State may, at the time of signature, ratification or accession, declare that this Article shall not apply to it.

Articles XIV and XV

66. These Articles are the usual final clauses concerning the obligations of the Secretary-General with regard to notifications and providing for the authentic text, deposit and certification of the Convention. The Representative of the USSR objected to these Articles because they contained reference to Articles unacceptable to the USSR (Articles VII, IX and X).

Consideration of general article on reservations

67. The majority of the Committee took account of the fact that provision for reservations had been made in Articles I and XIII and considered, therefore, that a general reservations article should not be included.

68. The Representative of Egypt said, in this connexion, that he wished to reserve the position of his Government in regard to a reservation clause. The Representative of the USSR said that States, in accordance with the principle of sovereignty, may make reservations in regard to any Article of the Convention.

G. SUGGESTION CONCERNING RULES OF ARBITRATION

69. 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. In this connexion, the Committee wishes to draw the attention of the Council to the work done on this subject by the International Institute for the Unification of Private Law, and in particular to the "Draft of a Uniform Law on Arbitration in Respect of International Relations of Private Law" which will be considered by the Governing Council of the Institute at its forthcoming meeting.

H. RECOMMENDATIONS OF THE COMMITTEE IN RESPECT OF THE DRAFT CONVENTION

70. Following the adoption of the Draft Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Committee agreed upon the following resolution containing its recommendations to the Economic and Social Council:

The Committee on the Enforcement of International Arbitral Awards,

Having studied the preliminary Draft Convention on the Enforcement of International Arbitral Awards submitted by the International Chamber of Commerce,

Having prepared a draft convention on the "Recognition and Enforcement of Foreign Arbitral Awards" (Annex to Report),

Considering that it is desirable to give Governments an opportunity to make a full study of the Draft Convention prepared by the Committee,

Recommends to the Economic and Social Council

1. That the Draft Convention and the Report of the Committee be transmitted to Governments of Member and non-member States for their consideration and comments with respect to the text of the Convention and the desirability of convening a conference to conclude a convention;
2. That the Draft Convention and the Report of the Committee be sent for comment to the International Chamber of Commerce and to such other Non-Governmental Organizations in consultative status with the Economic and Social Council as may be interested in international commercial arbitration, and be sent for information to the International Institute for the Unification of Private Law;
3. That the Secretary-General prepare a report containing the comments of the Governments and Non-Governmental Organizations together with such observations as he may have for submission to Council at its 21st session.

ANNEX

DRAFT CONVENTION ON THE RECOGNITION AND ENFORCEMENT
OF FOREIGN ARBITRAL AWARDS

Article I

1. Subject to paragraph 2 of this Article, this Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State in which such awards are relied upon, and arising out of differences between persons whether physical or legal.

2. Any Contracting State may, upon signing, ratifying or acceding to this Convention, declare that it will apply the Convention only to the recognition and enforcement of arbitral awards made in the territory of another Contracting State. Similarly, any Contracting State may declare that it will apply the Convention only to disputes arising out of contracts which are considered as commercial under the national law of the Contracting State making such declaration.

Article II

In the territories of any Contracting State to which the present Convention applies, an arbitral award shall be recognized as binding and shall be enforced 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.

Article III

To obtain the recognition and enforcement mentioned in the preceding article it will be necessary:

- (a) that the parties named in the award 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;
- (b) that in the country where the award was made, the award has become final and operative, and in particular, that its enforcement has not been suspended.

Article IV

Without prejudice to the provisions of Article III, recognition and enforcement of the award may only be refused if the competent authority in the country where recognition of enforcement is sought, is satisfied:

- (a) that 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) that the party against whom the award is invoked was not given notice of the appointment of the arbitrator or of the arbitration proceedings in due form or in sufficient time to enable him to present his case; or
- (c) that the party against whom the award is invoked, being under a legal incapacity, was not properly represented; or
- (d) that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration, provided that if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (e) that the award the recognition or enforcement of which is sought, has been annulled in the country in which it was made; or
- (f) that the award is so vague and indefinite as to be incapable of recognition or enforcement; or
- (g) that either the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties to the extent that such agreement was lawful in the country where the arbitration took place, or, failing such agreement between the parties in this respect, was not in accordance with the law of the country where the arbitration took place; or
- (h) that 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.

Article V

The party claiming the recognition of an award or its enforcement must supply:

- (a) the original award or a duly authenticated copy thereof;
- (b) documentary or other evidence to prove that the conditions laid down in Articles I and III have been fulfilled.

A duly certified translation of the award and of the other documents mentioned in this article into an official language of the country where the award is sought to be relied upon may be required.

Article VI

The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of the right to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article VII

1. This Convention shall be open for signature and ratification on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a Party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article VIII

1. This Convention shall be open for accession to all States referred to in Article VII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article IX

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the Territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article X

1. In the case of a Federal or non-unitary State, the following provisions shall apply:
 - (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

2. A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is bound by the Convention.

Article XI

1. This Convention shall come into force on the ninetieth day following the date of deposit of the second instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification or accession the Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under Article IX may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

Article XIII

1. Any dispute which may arise between any two or more Contracting States concerning the interpretation or application of this Convention, which is not settled by negotiation, shall at the request of any one of the parties to the dispute be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.
2. Any State may at the time of signature, ratification or accession declare that this Article shall not apply to it.

Article XIV

The Secretary-General of the United Nations shall notify the States contemplated in Article VII of the following:

- (a) signatures and ratifications in accordance with Article VII;
- (b) accessions in accordance with Article VIII;
- (c) declarations and ccdifications in accordance with Articles IX and X;
- (d) the date upon which this Convention enters into force in accordance with Article XI;
- (e) denunciations in accordance with Article XII.

Article XV

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.
 2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in Article VII.
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