



Twenty-first session
Item 8

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Comments by Governments on the Draft Convention on the Recognition
and Enforcement of Foreign Arbitral Awards

1. The Secretary-General transmits herewith the comments received from Egypt and Sweden on the draft Convention on the Recognition and Enforcement of International Arbitral Awards.^{1/} Comments previously received from Governments and non-governmental organizations were circulated in document E/2822.
2. In submitting its comments the Swedish Government has expressed itself in favour of convening a conference, and has stated that it will be prepared to participate if a conference is called. The Egyptian Government has not expressed any view regarding the desirability of convening a conference, or its participation.

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

ANNEX I

GENERAL OBSERVATIONS

Sweden

"Broadly speaking, the draft seems to provide a basis for a convention on this subject. Nevertheless, some modifications and additions appear to be indicated."

"In accordance with the proposal made by the representative of Sweden on the Committee (see paragraph 18 of the report), a clause should be inserted in the convention whereby the contracting States would expressly undertake, in principle, to recognize the validity of written agreements between the parties to submit their differences to arbitration. It might of course be argued that a clause of this nature was implicit in the draft Convention. But there was a divergence of opinion on that point in the Committee (see the views expressed by the representatives of Egypt and the USSR) and it is desirable that the situation should be made quite clear. Otherwise, the following situation might arise: If two parties to a contract, one a national of State A and the other a national of State B, had agreed in writing to settle their possible disputes relating to the contract by arbitration in State B, the party who is a national of State A might sabotage the arbitration agreement, before an arbitral award had been given or any case before arbitral procedure had begun, by bringing the dispute before a court in State A having jurisdiction, for example, because the defendant's property was situated in that country. In other words, if a formal rule is not established to supplement the 1923 Protocol on Arbitration Clauses, it is not certain that an arbitration agreement - although undoubtedly valid - would exclude in State A the jurisdiction of such courts. The problem assumes another aspect if the party who is a national of State A challenges before the court the existence of an arbitration agreement between the two parties; 1/ in that case the dispute will have to be examined separately on the basis of the national law applicable according to international private law in State A."

1/ See under article III.

ARTICLE I

Egypt

"As regards article I, paragraph 2, the text should give Contracting States in more explicit terms the right to enforce an arbitral award, as provided in the draft Convention only for the benefit of those States which are parties to the Convention."

ARTICLE III

Sweden

"The terms of article III (a) of the draft, which prescribes the written form for arbitral agreements might give the erroneous impression that the question of the validity of an arbitral agreement is thus completely settled. In practice, however, it very often happens that there has been no arbitral agreement signed by the two parties or, in the case of the party which has not taken the initiative of the arbitration clause, no formal approval of the draft presented by the other party on the subject. On the other hand, one of the parties often inserts an arbitration clause among the general conditions of the contract, and the other party neglects to protest against the inclusion of such a clause. If, at a later date, a dispute occurs as to whether a valid arbitral agreement has in fact been concluded, this question must be decided according to a specific national law. In principle, that law should be that indicated by the international private law which is to be applied by the arbitrators or the competent courts. This reasoning is the basis of the text of article 1 (a) of the 1927 Convention. Since that article does not appear to have caused practical difficulties (cf. E/AC.42/SR.4, pp. 7 and 8), it should in principle be maintained. The condition of a contract in written form could be added to the earlier text."

ARTICLE IV

Sweden

"Sub-paragraph (f) of article IV should be omitted."

"The words 'or the subject matter thereof' in article IV (h) should be omitted."

"Article IV should include - as the representative of Sweden suggested (see paragraph 52 of the report) - a statement in the following terms:

"The circumstances mentioned in article IV, paragraphs (b), (c), (e) or (g), 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."

ARTICLE VI

Egypt

"As regards article VI, the words 'of a judicial decision or' should be added between the words 'of the right to avail himself' and 'of an arbitral award'. Article VI would then read as follows:

'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 a judicial decision or 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.'
