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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 Greece on the draft Convention on the Recognition and Enforcement of International Arbitral Awards.<sup>1/</sup> Comments previously received from Governments and non-governmental organizations were circulated in documents E/2822 and Add.1.
2. In submitting its comments the Greek Government has stated that it will be prepared to participate in a conference called for the purpose of examining the draft Convention.

<sup>1/</sup> Official Records of the Economic and Social Council, Nineteenth Session, Annexes, agenda item 14, document E/2704 and Corr.1.

ANNEX I

GENERAL OBSERVATIONS

Greece

"The Greek Government considers that the draft Convention should expressly state that the compromis or arbitral clause excludes the jurisdiction of local courts. The arbitration agreement or arbitral clause should also state whether the arbitration will take place abroad.

"Since, despite past efforts to introduce uniform legislation concerning arbitration in a number of countries, this object is not likely to be accomplished in the near future, the Greek Government considers that, in the meantime, an international convention might lay down what law should govern the fundamental questions of the validity of the compromis or arbitral clause."

ARTICLE I

Greece

"Scope of the application of the Convention.

"Under article I, paragraph 2, of the draft Convention, any Contracting State may declare that it will apply the Convention only to disputes arising out of contracts which are considered as commercial under its national law. The Greek Government considers that it would be advisable to mention, in addition to disputes arising out of commercial contracts, disputes arising out of commercial obligations ex delictu and quasi ex delictu (such as unlawful competition, collisions at sea, etc.).

"Apart from these comments and the comments transmitted to the Secretary-General in this delegation's note No.689 of 2 August 1954<sup>1/</sup>, the Greek Government considers that the Convention should not apply:

- (1) to arbitral awards made abroad but adjudicating disputes arising out of contracts between Greek nationals which are to be performed in Greece;
- (2) to awards made in countries not bound by the Convention".

<sup>1/</sup> See document E/AC.42/1, page 3.

### ARTICLE III

#### Greece

#### "Conditions governing the recognition of awards.

The text of article III (a) refers to 'the parties named in the award'; these words might be construed to mean that arbitral awards are not recognized in cases in which the legal relationship in dispute has passed to third parties, on the grounds that the parties named in the award are not the parties who agreed to settle their differences by means of arbitration, but their successors. In order to avoid the possibility of a misconstruction the Greek Government proposes the following text: '..... it will be necessary: (a) that the parties to the dispute have bound themselves in writing to settle their differences by means of arbitration''

### ARTICLE IV

#### Greece

#### "Reasons for refusing recognition of the award

The Greek Government considers that the clause in article IV of the draft Convention providing that recognition of foreign arbitral awards may be refused if 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 might be worded in such a way that the fact that a foreign award was incompatible with fundamental principles of the law (ordre public) would be sufficient grounds for refusing recognition.

"With regard to the clause in the same article providing that recognition of a foreign award may be refused if the award has been annulled in the country in which it was made, the Greek Government considers that it might be worded in such a way as to make it clear that a foreign award cannot be recognized unless it is irrevocable and enforceable at the time of the application for recognition.

"The Greek Government also considers that article IV (g), under which the recognition of a foreign award may be refused if the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or with the law of the country where the arbitration took place, should merely state that recognition may be refused if the arbitral authority was not properly constituted or if the award exceeds the terms of the comproamis or arbitral clause.

"It might be advisable to add, as a further ground for denying recognition to a foreign award, the circumstance, that the award is in conflict with court orders or arbitral awards made in the country in which recognition is being sought."

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