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UNITED NATIONS CONFERENCE ON
INTERNATIONAL COMMERCIAL ARBITRATION

CONSIDERATION OF THE DRAFT CONVENTION ON THE
RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL
AWARDS (ITEM 4 OF THE AGENDA)

Report of Working Party No. 1 on article I, paragraph 1 and
article II of the draft Convention (E/2704 and Corr.1)

1. The United Nations Conference on International Commercial Arbitration, at its seventh meeting held on 23 May 1958, established Working Party No. 1, composed of the representatives of Colombia, Czechoslovakia, the Federal Republic of Germany, France, India, Israel, Italy, Turkey, the Union of Soviet Socialist Republics and the United Kingdom.
2. The Working Party elected Mr. C.K. Dhaptary of India as its Chairman, and held four meetings to consider the two items referred to it by the Conference, i.e. article I, paragraph 1 and article II of the draft Convention (E/2704 and Corr.1).

Article I, paragraph 1 (Scope of Application)

3. The Working Party had before it the following documents relating to the scope of application of the Convention:

E/CONF.26/7	Amendment proposed by Poland
E/CONF.26/L.6	Amendment proposed by Austria, Belgium, Federal Republic of Germany, France, Italy, Netherlands, Sweden and Switzerland
E/CONF.26/L.9, Rev.1	Amendment proposed by Turkey
E/CONF.26/L.10	Amendment proposed by Czechoslovakia
E/CONF.26/L.12	Amendment proposed by Yugoslavia
E/CONF.26/L.13	Principles submitted by Italy
E/CONF.26/L.16	Amendment proposed by Pakistan
E/CONF.26/L.26	Amendment proposed by Austria.

4. The Working Party noted that, with respect to the scope of application of the Convention, the views of Governments represented at the Conference fall mainly into two categories: (a) those favouring the principle of the place of arbitration, and (b) those favouring the principle of the nationality of the arbitral award.

5. In an attempt to reconcile these divergent views the Working Party submits the following proposed text of article I, paragraph 1 for consideration by the Conference:

"This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of disputes or differences between physical or legal persons. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought."

6. The foregoing text is presented on the understanding that:

- (a) the scope of application of the Convention may be qualified by such provisions as the Conference may adopt enabling Contracting States to exclude certain categories of arbitral awards from the application of the Convention;
- (b) the Convention will include a clause providing that it will apply not only to arbitral awards made by arbitral bodies appointed for each case but also to those made by permanent arbitral bodies to which the parties have voluntarily submitted (as decided by the Conference at its eighth meeting on 26 May 1958, E/CONF.26/SR.8).

Article II

7. The Working Party had before it the following documents:

E/CONF.26/L.11 Amendment proposed by the United Kingdom

E/CONF.26/L.21 Amendment proposed by Israel.

8. Having considered the proposed amendments and the opinions expressed by delegates at the Conference, the Working Party was unable to arrive at a single text reconciling the different views on this article. Accordingly, it suggests that the following alternative texts should be voted upon by the Conference:

A. Article II of the draft Convention (E/2704 and Corr.1)

"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."

- B. Article II of the draft Convention, with the following addition at the end:

..... "provided that substantially no more onerous conditions nor higher fees or charges shall be imposed on the recognition or enforcement of awards to which this Convention applies than are imposed on the recognition or enforcement of any other arbitral award."

- C. The following text in lieu of article II of the draft Convention:

"In any State to which the present Convention applies, an arbitral award shall, under the conditions laid down in the following articles, be recognized as binding and be enforced in accordance with rules of procedure not substantially more onerous than those applying to the enforcement of domestic arbitral awards and any fees or charges in connexion therewith shall not be greater than those demandable in respect of the enforcement of any other award."
