

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
LIMITED

E/CONF.26/L.17
26 May 1958

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON INTERNATIONAL
COMMERCIAL ARBITRATION

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

Netherlands: amendments to the Draft Convention

Replace articles III, IV and V by the following text:

Article III

"To obtain the recognition and enforcement mentioned in the preceding article, it will be necessary that the parties named in the award have validly agreed in writing, either by a special agreement or by an arbitral clause in a contract, to settle their differences by means of arbitration.

Agreement in writing shall be held to include exchange of letters or telegrams."

Article IV

"Recognition and enforcement of the award may only be refused if

(a) the parties have not validly agreed in writing to submit to arbitration the matters dealt with in the award.

If part of the award deals with matters beyond the scope of the submission to arbitrate, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced, provided this part can be separated from the part relating to the matters not submitted.

or

(b) 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

(c) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the written agreement of the parties or, failing such agreement, with the applicable law,

or

(d) the party against whom the award is invoked was not given notice of the appointment of the arbitrator or of the arbitration proceedings in sufficient time to enable him to present his case or, being under legal incapacity, was not properly represented,

or

(e) the award would have the effect of compelling the parties to act in a manner contrary to public policy in the country of enforcement,

or

(f) the award has been annulled in the country in which it was made or has not become final in the sense that it is still open to ordinary means of recourse."

Article V

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

- (a) the original award or a duly authenticated copy thereof;
- (b) the original written agreement to arbitrate or a duly authenticated copy thereof;

A duly certified translation of these documents into the official language of the country where the award is sought to be relied upon may be required.

2. The party seeking recognition or enforcement of the award shall be deemed to have proved prima facie the existence of the award and of the agreement to arbitrate on which it was based by the supply of the documents mentioned under para. 1.

3. The party contesting the recognition or the enforcement of the award shall prove the facts or circumstances which give rise to the application of one or more of the grounds for refusal mentioned in article IV, unless the competent authority in the country where recognition or enforcement is sought is satisfied, after ex officio investigation, of the presence of such facts or circumstances."