



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)

Comparison of drafts relating to articles III, IV and V before the Conference

Article III, first paragraph

E/CONF.26/L.17 (Netherlands redraft)

"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."

E/2704 (Committee draft)

"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;"

E/CONF.26/L.8 (Swedish amendment)

"To obtain the recognition and enforcement mentioned in the preceding article, it is necessary:

(a) That the award shall have been made pursuant to a special arbitral agreement or to an arbitral clause which is valid under the law applicable to it and which has been drawn up in writing by the parties named in the award;"

E/CONF.26/L.22 (United Kingdom amendment)

"To obtain the recognition and enforcement mentioned in the preceding article, it is necessary:

(a) That the award shall have been made pursuant to a valid agreement to arbitrate in a specified or determinable territory arrived at after a dispute has arisen in relation to such agreement, or to an arbitral clause which is valid under the law applicable to it, and which has been drawn up in writing by the parties named in the award specifying the territory or making clear provision for the choice of territory in which the arbitration is to take place;"

E/CONF.26/L.31 (Israeli amendment)

Proposed deletion of this provision.

Article III, second paragraph

E/CONF.26/L.17 (Netherlands redraft)

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

No amendments have been addressed to this provision, but a proposal to define the words "in writing" has been made in connexion with the proposed new Article on the validity of arbitration agreements (E/CONF.26/L.19).

"The words 'in writing' mentioned in the preceding paragraph may also mean that one of the parties has agreed in written form and the other party has consented, or that one of the two parties has confirmed an oral agreement and the other party has not contradicted."

Article IV, Preamble

E/CONF.26/L.17 (Netherlands redraft)

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

E/2704 (Committee draft)

"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 or enforcement is sought is satisfied;"

E/CONF.26/L.16 (Pakistan amendment)

"Without prejudice to the provisions of article III, recognition and enforcement of the award may be refused if the competent authority in the country where recognition or enforcement is sought is satisfied;"

Article IV, sub-paragraph (a)

E/CONF.26/L.17 (Netherlands redraft)

"(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 ~~x~~ this part can be separated from the part relating to the matters not submitted."

E/2/04 (Committee draft)

"(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;"  
[sub-paragraph (d)]

E/CONF.26/L.31 (Israeli amendment)

"the party against whom the award is sought to be enforced, has not validly submitted to the arbitration in the course or as a result of which the award was made, or the subject matter of the award was not within the terms of the submission to arbitration; for the purposes of this sub-clause, a submission to arbitration shall be held valid if valid either under the law of the State where it was made or under the law of the State where the award is sought to be enforced."

E/CONF.27/L.32 (French amendment)

"The parties have not made an agreement, valid under the applicable law, 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."

[to be continued]

Note: additional language is underlined; redrafts with substantially similar content are underscored by broken lines.