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UNITED NATIONS CONFERENCE ON INTERNATIONAL
COMMERCIAL ARBITRATION
Working Party No. 2

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

Text of Additional Protocol on the Validity of Arbitration
Agreements Submitted by Working Party No. 2

ARTICLE I

1. Each Contracting State shall recognize as valid any agreement in writing - arbitration agreement or arbitral clause - under which the parties to a contract undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of such contract, in so far as that agreement in writing is such as to lead to an arbitral award capable of recognition and enforcement by virtue of this Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York on 10 June 1958.
2. The expression "agreement in writing" shall mean an arbitration agreement or an arbitral clause in a contract signed by the parties, or an exchange of letters or telegrams between those parties.
3. Each Contracting State reserves the right to limit the commitment referred to above to contracts which are deemed to be commercial under its domestic law.*

* The Working Party submits this provisional text of paragraph 3 on the understanding that its final formulation will be the same as the reservation relating to commercial contracts which may be included in the Convention. If the Conference decides not to include in the Convention a reservation of this type, this paragraph of the protocol would be deleted. The Working Party further understands that if other reservations are included in the Convention, corresponding provisions would be added to the text of the protocol.

ARTICLE II

[The arbitral procedure, including the composition of the arbitral tribunal, shall be decided by agreement between the parties and, failing such agreement by the parties in this matter, by the law of the country on whose territory the arbitration took place.] *

ARTICLE III

1. The courts of the Contracting States Parties to this Protocol, if seized of an action relating to a contract which includes an arbitration agreement valid under article I and capable of execution shall, at the request of one of the parties, refer the parties concerned to arbitrators for decision.

2. Such action shall not prejudice the competence of the courts if, for any reason, the arbitration agreement, arbitral clause or arbitration has become null and void or inoperative.

[The Working Party does not at this time propose any provision on final clauses as they include matters which should be decided by the Conference.]

* The Working Party was unable to reach agreement on this article.