

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/2822/Add.5
13 April 1956

ORIGINAL: ENGLISH

Twenty-first session
Item 8

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 Hungary and Norway on the draft convention on the recognition and enforcement of foreign arbitral awards.^{1/} Comments previously received have been circulated in document E/2822 and Adds. 1, 2, 3 and 4.
2. In submitting its comments, the Hungarian Government has stated that if a conference is convened on the enforcement of foreign arbitral awards, it is ready to participate. The Norwegian Government has stated that it is in principle in favour of the conclusion of a convention, and that it considers it desirable that a conference should be convened, provided a sufficient number of other States should take the same positive attitude.

^{1/} Official Records of the Economic and Social Council, Nineteenth Session, Annexes, agenda item 14, document E/2704 and Corr. 1.

ANNEX

Hungary

Article I, paragraph 2

"This paragraph of the Draft Convention leaves the Contracting States free to declare that they will apply the Convention only to foreign arbitral awards made in the territory of another Contracting State, and not to all foreign arbitral awards. The establishment, however, of the seat of the arbitral authority, and, thus, of the country where the arbitral award is made, depends on the decision of the Parties involved in the dispute. This makes it possible for physical and/or legal persons of States, not signatories to the Convention, to have differences, which have arisen between them, decided by arbitral awards made in the territory of one of the Contracting States. The real aim of the Convention, i.e. the promotion of economic relations between Contracting States, is not furthered, however, in the least by the enforcement of such arbitral awards as defined in the foregoing.

For this reason, and contrary to the statement contained in point 23 of the Committee's report, the point should be reconsidered whether, in compliance with the provisions of the Geneva Convention of 1927, the validity of the Convention should be restricted to arbitral awards on differences between persons coming under the jurisdiction of one or the other of the Contracting States, or whether at least the Contracting States should be accorded the right under the Convention to apply the provisions of the same only to arbitral awards of such a nature. If the present meaning of the word 'jurisdiction' - as stated in the Committee's report - is rather vague and ambiguous, there is no reason why it should not be defined more precisely.

Article III, paragraph a

According to the provisions specified in this paragraph, it is necessary for the parties - in order to obtain the recognition and enforcement of arbitral awards - to agree in writing to settle their differences by means of arbitration. This expression being rather vague, might be subject to different interpretations in different States. Thus, point 30 of the Committee's report mentions, for instance, that in some States the exchange of telegrams may be considered as an

agreement in writing, while this is not the case in other countries. It appears, therefore, necessary to define the expression 'in writing' more precisely in order to avoid misunderstandings.

Article IV, paragraph a

The text of this paragraph should be completed by a further provision couched as follows: 'or that the arbitral agreement was concluded by someone not empowered to do so for personal reasons' (ex ratione personae).

Article IV, paragraph e

It would appear justified to state that, apart from the reason given in this paragraph, the recognition or enforcement of the award can equally be denied if the award relied upon has in the meantime been amended, or if, in the country in which its recognition or enforcement is sought, an award legally valid and of earlier date already decided the dispute.

Article IV

The question should be considered of the addition of a new point (1) providing that the recognition or enforcement of the award can equally be denied if there is no motivation in the award to be recognized or enforced. It is namely the motivation of the award, the reasons stated in the same, which reveal whether the arbitral award was or was not made on a question coming under the jurisdiction of the arbitral authority, whether the award was or was not made under conditions which leave open the possibility to refuse recognition and enforcement of the same.

Article VII

The aim of the Convention is to promote economic relations between countries. The development of economic relations furthers the co-operation between the States not only if such relations are evolved and expanded between Members of the United Nations, but also between States which are at present not members of the United Nations. The Ministry for Foreign Affairs of the Hungarian People's Republic is, therefore, of the opinion that the restrictions contained in Article VII, paragraph 1, should be annulled and it should be enacted that all countries, irrespective of whether they are or are not members of the United Nations or a specialized agency of the United Nations, may become a Party to the Convention."

NorwayGeneral observations

The Norwegian Government is in principle in favour¹ of the conclusion of a multilateral convention on the recognition and enforcement of foreign arbitral awards. It considers it desirable that a conference should be convened with a view to the conclusion of a convention on the subject, provided a sufficient number of other States should take the same positive attitude.

Before proceeding to specific comments relating to the articles of the draft, the Norwegian Government would like to make it clear that the existing Norwegian legislation does not authorize the enforcement of foreign arbitral awards. Norwegian adherence to a convention of this kind would therefore necessitate legislative action.

Article I, paragraph 1

The Norwegian Government agrees with the proposal made by the Swedish representative in the Special Committee to the effect that a clause should be inserted in article I, reproducing in essence paragraph (1) of the Protocol on Arbitration Clauses of 1923, and containing an express provision whereby the Contracting States would undertake to recognize the validity of written agreements providing for the submission of differences to arbitration.

As far as the definition of the scope of the convention is concerned, the Norwegian Government agrees with the Special Committee (see paragraph 23 of the Report) that the requirement of the Geneva Convention of 1927 (article I, first paragraph), to the effect that the arbitral award must have been made "between persons who are subject to the jurisdiction of one of the High Contracting Parties", is too vague and ambiguous. The scope of the present draft seems on the other hand to be unreasonably comprehensive. As now formulated, the convention would apply even if both the parties to the arbitral award are nationals of the State where enforcement is sought as well as in cases where none of them is a national of a Contracting State.

Agreements providing for arbitration of non-legal differences are invalid under Norwegian law. It is possible that sub-paragraph (a) of article IV would absolve Contracting Parties in this situation from enforcing arbitral awards relating to such disputes. This should be made clearer and more explicit.

Under Norwegian Law an arbitral agreement concerning future differences must be related to a specified legal relationship in order to be valid. It would be appreciated if the text of the convention could be clarified or amended so as not to impose any absolute obligation which would be incompatible with the Norwegian law on this point.

Paragraph 2

It is presumed that this paragraph is to be liberally construed so as to leave the Contracting States a wide margin for the definition of "commercial contracts". The word "commercial" has no fixed and clear significance in Norwegian law.

Article IV

There does not seem to be any provision which enables a Contracting State to refuse recognition or enforcement of an award which has been rendered by an arbitrator who under its law would have been disqualified, e.g. by reason of interest in the cause or kinship to one of the parties. It would be difficult for the Norwegian Government to adhere to the convention unless the text is amended to include a proviso in this sense.

Sub-paragraph (d)

The provision set out in the last three lines of this sub-paragraph would seem to give rise to difficult problems of interpretation. In view of the fact that it does not impose an obligation (see the expression: "may be") on the Contracting Parties, it would probably be better to leave it out altogether.

Sub-paragraph (e)

It is difficult to see why this provision should be necessary beside the similar and more comprehensive provision in Article III (b).

Article X, paragraph 2

The meaning of this provision is not clear. The context seems to indicate that its only purpose is to consecrate the principle of reciprocity in the contractual relationship between federal States and other Contracting Parties.

The literal import of paragraph 2, read in isolation, seems to be considerably more far-reaching. The Norwegian Government would, for its part, favour a general application of the principle of reciprocity. But the provision would have to be more elaborately drafted and removed from its immediate context if it is to serve this broader purpose.