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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 Yugoslavia 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 Add.1, 2, 3, 4 and 5.

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

ANNEX

YugoslaviaGeneral Observations

"The Government of the Federal People's Republic of Yugoslavia welcomes the idea of summoning the conference on the recognition and enforcement of foreign arbitral awards, stressing that the summoning of an international conference on the subject, on a wide international scale, is necessary for the further development of international co-operation in general and particularly of commercial and other economic relations amongst countries, in the way the Charter of the United Nations Organization suggests. However, so as to enable this co-operation to achieve the development of friendly relations and the security of exchange, which are going on among countries, it is necessary that the respects for the other basic principles of international relations contained in the Charter be ensured by the Convention. The Yugoslav Government is of the opinion that the present draft of the Convention does not provide sufficient assurance that these principles and especially the principle of the equality of countries and of their public order will be observed.

In the present stadium of the preparatory work of drafting the Convention the Yugoslav Government confines itself only to the general remark that by the draft of the Convention set by the Special Committee of the Economic and Social Council the principle of the reciprocity and the equality of countries is not sufficiently assured.

Title

The Yugoslav Government is of the opinion that the title, as suggested by the Special Committee, is more appropriate to the matter treated by the Convention, than the title suggested by the International Chamber of Commerce. The expression 'foreign arbitral awards' although it will not always fit, is more adequate for this Convention than the expression 'international arbitral awards'. Therefore the Yugoslav Government can accept without reserve the title of the draft suggested by the Special Committee.

Article I

The Yugoslav Government could accept the provisions of this article although principles of strict reciprocity are not represented. This is due to the second part of this article, according to which every member may declare its reserve concerning the reciprocity. The Yugoslav Government would like to say that it would probably avail itself of this reserve.

Article IV

Aside from the stated cases on account of which the recognition and enforcement of the award may be refused, the following case should be added: 'if an Arbitral Court has unjustifiably refused the request for exemption of a judge or without reason overlooked the demand of exclusion of a judge'.

Article VII

It is considered that this article should be formulated so as to permit acceptance by all States. Such a provision, according to the opinion of the Yugoslav Government would reflect more closely the principles of the universality of this Convention, and therefore the Yugoslav Government is of the opinion that the possibility of accession to the Convention should be made without any restriction.

Article IX

The provisions of this article contain the so-called colonial clause which the Yugoslav Government has always opposed in principle and does not agree that it should be stipulated in any form whatsoever. Therefore, the Yugoslav Government cannot accept this article of the draft, and suggests that this article be replaced by a provision which will contain the rule that States are bound to extend the provisions of this Convention to all territories which they represent in international relations.

Article X

The Yugoslav Government may accept this article if paragraph 2 has the meaning that a Federal State cannot request of members of the Convention more

than it is willing to grant to them. Since the wording of the text in the present draft is not clear in that respect, it should be precisely expressed.

Article XII

The Yugoslav Government is of the opinion that paragraph 2 of this article should be eliminated, for reasons stated for article IX.

Suggested Additional Articles

Besides the comments on certain articles of the draft of the Special Committee, the Yugoslav Government makes two further suggestions for adding new articles or paragraphs in the draft, in appropriate places, as follows:

(1) To add a new article which would read:

'Any dispute between the Parties as to the meaning and scope of the award shall be, at the request of either Party, within one month of the day of the pronouncement of the award, submitted to the Tribunal which rendered the award, in order to make additional decisions. Request for the clarification suspends the execution of the award until the request is complied with.'

(2) That in the draft of the Convention a provision is to be added, in some form, by which international agreements concluded by Chambers of Commerce of certain countries, commercial organizations or commercial organizations of arbitration are to be recognized, provided that these organizations have obtained the approval of the Government concerned for the text of such agreements."
