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UNITED NATIONS CONFERENCE ON
INTERNATIONAL COMMERCIAL ARBITRATION

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Comments by Governments on the draft Convention on the Recognition
and Enforcement of Foreign Arbitral Awards

The Secretary-General transmits herewith the comments received from New Zealand 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 to 6.

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

New Zealand

General Observations

"The New Zealand Government has given careful study to the draft Convention on this subject, which contains provisions designed to improve, in several respects, the existing treaty arrangements to which New Zealand is a party. As a result of their perusal of the text the New Zealand authorities formulated a number of comments; and a memorandum of these is attached in case they should be of assistance.

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Title

The expression 'foreign' arbitral awards is, it is considered, more appropriate than the term 'international' awards, the latter being likely to lead to confusion with awards rendered in inter-State arbitration.

Article IV

Among the grounds upon which recognition or enforcement of an award may be refused are that notice was not given 'in due form' (paragraph (b)), and that the party against whom the award is invoked was 'under a legal incapacity' and 'not properly represented'. It is considered that the draft does not specify clearly by what law these criteria are to be interpreted, and that it should be expressly provided that the law of the place where the award was made should apply to them.

Paragraph (d) contains a further ground for refusal, namely, that the award deals with matters outside the scope of the submission to arbitration; the proviso, however, saves awards where the matters outside the scope of the submission are severable from those within its scope. Although, according to the Committee's report there was some criticism of the proviso, it is considered that it has considerable countervailing advantages and should be retained.

In paragraph (g) a further ground provided is that certain matters were 'not in accordance with the agreement of the parties to the extent that such agreement was lawful...'; failing 'such agreement', however, the law of the country of arbitration is to apply to these matters. It is felt that the use, for a second time, of the phrase 'such agreement' may lead to confusion. As they

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stand, the words 'such agreement' in the fourth line of the cyclostyled text appear to mean only the agreement between the parties, whereas they are clearly intended to refer to 'the agreement... to the extent that [it] was lawful'. It is suggested that the words 'a valid agreement' be substituted for these words.

In the Committee's report, it is stated that the inclusion of the word 'fundamental' in paragraph (h) was opposed by the representatives of Australia, India and the United Kingdom. It is considered, however, that the word would be sufficiently well understood and could usefully be retained.

Article V

According to the report the Committee considered that a considerable latitude should be given to the tribunal, before whom recognition or enforcement is sought, to determine what would be accepted as authentication of an award, or as a certificate of its translation. It is considered that the words 'duly authenticated' and 'duly certified' do not make it clear that the enforcing tribunal has in fact been given this discretion, and that an express provision should be included to this effect."
