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INTERNATIONAL COMMERCIAL ARBITRATION

ACTIVITIES OF INTER-GOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS IN THE FIELD OF INTERNATIONAL COMMERCIAL ARBITRATION

Consolidated Report by the Secretary-General

Introduction

1. Under resolution 604 (XXI), the Economic and Social Council requested the Secretary-General (a) to ask the inter-governmental and non-governmental organizations active in the field of international commercial arbitration to submit brief reports on the progress of their activities on this subject, together with any comments or suggestions they may have; and (b) to submit to the United Nations Conference on International Commercial Arbitration a consolidated report, including the reports received from the above organizations, and any other information he may have gathered on the subject, together with such observations[1/] as he may have.

2. Accordingly, the Secretary-General requested the organizations concerned to submit a brief description of their purpose, composition and principal activities in the field of international commercial arbitration; to state their views regarding the major obstacles to the progress of arbitration as a means of settlement of private law disputes in international commercial matters; and to suggest possible remedial measures for increasing the effectiveness of international commercial arbitration. The Secretary-General also asked those organizations which had not as yet had the opportunity to do so, to submit comments on the Draft Convention prepared by the Committee on the Enforcement of International Arbitral Awards if they so desired.

1/ These observations are contained in two separate notes submitted by the Secretary-General to the Conference, documents E/CONF.26/2 (Comments on draft Convention on the recognition and enforcement of foreign arbitral awards) and E/CONF.26/6 (Consideration of other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes) which will be issued shortly.

3. The request for information referred to in the preceding paragraph was addressed to thirty-two inter-governmental or non-governmental organizations interested in international commercial arbitration. Included among them were chambers of commerce, arbitration associations or arbitration institutes in fourteen countries; commodity exchanges or trade associations providing facilities for arbitration in a particular branch of commerce; and organizations interested in the development of arbitration law and arbitral procedure. Information was also requested from the Council of Europe and the Organization of American States, both of which have concerned themselves with the development of arbitration. In addition to the material contained in the replies from the organizations directly consulted, information collected from governments and organizations by ECE[2/] and by ECAFE was also used in the preparation of this report.

4. In accordance with General Assembly resolution 1203 (XII) on limitation of documentation, the full texts of the replies received from the inter-governmental and non-governmental organizations consulted are not reproduced in this report. The contents of these replies, as well as the supplementary information obtained from other sources, are summarized under the following headings:

I. Nature and scope of existing institutional facilities for international commercial arbitration.

II. Arbitral procedures.

III. Activities aiming at the development or unification of arbitration law.

IV. Factors considered to stand in the way of the progress of arbitration and suggestions as to possible remedial measures for increasing the effectiveness of international commercial arbitration.

V. Comments on draft Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The replies received from the various organizations are available on file with the Secretariat.

I. Nature and scope of existing institutional facilities for international commercial arbitration

5. The organizations and institutions providing practical facilities for arbitration in international commercial matters can be broadly grouped in three categories:

(a) National institutions providing general arbitration facilities;

2/ ECE document TRADE/WP.1/15 and Addenda 1 to 7 contain a detailed analysis of the statutes and arbitral rules of national and international arbitration institutions in Europe and the United States of America.

(b) Organizations providing facilities for the settlement of disputes arising in specific branches of trade or out of specific types of contract; and

(c) International centres for general commercial arbitration.

(a) National institutions providing general arbitration facilities

6. General facilities for arbitration, available to the public with regard to commercial disputes of any kind, are provided in some forty countries by local chambers of commerce or similar associations of industrial and commercial enterprises, which do not specialize in arbitration but have a fairly wide and varied scope of activities. In a few countries, however, there exist special arbitration associations, courts of arbitration or arbitral institutions, the functions of which are exclusively oriented towards the provision of arbitration facilities and the improvement of commercial arbitration (e.g., the American Arbitration Association, the London Court of Arbitration, the Netherlands Arbitration Institute). In the countries of eastern Europe, special foreign trade arbitration commissions function in conjunction with the national chambers of commerce, or special arbitration courts are attached to the chambers of foreign trade; such arbitral institutions as a rule deal exclusively with disputes concerning international commerce.

7. Most of the national institutions providing facilities for general commercial arbitration compile lists of arbitrators and designate arbitrators where the parties so request or where they are unable to choose arbitrators by mutual agreement; prepare and recommend standard arbitration clauses and rules of arbitral procedure; and provide the administrative services for arbitral proceedings. Some of the national institutions also carry out educational activities, arrange for the publication of arbitral awards and of court decisions affecting arbitration, and perform other activities directed towards the improvement of arbitration facilities.

8. The facilities of the arbitration courts or commissions established in several countries of eastern Europe for dealing with disputes involving foreign trade can be used only if at least one of the contesting parties has its principal residence abroad. The national chambers of commerce or arbitral institutions in other areas are in the main concerned with domestic arbitration.

With a few exceptions, however, the facilities of these organizations are also available for the settlement of commercial disputes involving several national jurisdictions, and may be used by parties of nationalities other than that of the country to which the organization belongs.

(b) Organizations providing facilities for the settlement of disputes arising in specific branches of trade or out of specific types of contract

9. A number of commodity exchanges and trade associations serving the interests of particular industries maintain arbitration facilities for the settlement of disputes arising in their particular branch of commerce. Frequently, the standard contracts or general conditions of sale customary for commercial transactions relating to such industries or commodities contain a clause providing for arbitration of disputes through the facilities maintained by the industrial trade association or commodity exchange concerned. While some of these trade associations are primarily concerned with disputes arising out of domestic trade, a large proportion of the contracts which contain arbitration clauses providing for submission of disputes to commodity exchanges or to industrial associations, relates to the export-import trade and to maritime transport.

10. Such specialized arbitration facilities are, to the knowledge of the Secretariat, maintained by more than 120 trade associations or exchanges. They cover a great range of commodities and industries, but there are some notable exceptions, such as the machine tool and engineering trades. Nearly all such specialized arbitration centres are located in western Europe, in the United States of America or in countries of the British Commonwealth of Nations. While the arbitral tribunals maintained for special branches of industry or trade probably handle proportionately the greatest number of arbitrations, the problems involved in such cases tend to be less complex and revolve mostly around questions of fact rather than legal issues.3/

11. The arbitration facilities for specialized branches of trade are organized along the same lines as those provided by national chambers of commerce or arbitration institutes. The trade associations or exchanges as a rule recommend standard arbitration clauses and procedural rules, provide panels of impartial

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3/ For example, the London Jute Association handled during a five-year period 4,798 arbitrations, all of which completed within ten days from the date of submission.

arbitrators, appoint arbitrators, referees or umpires where the parties so request or where they cannot make the selection by mutual agreement, and furnish the necessary administrative facilities. In a few cases, commodity exchanges or trade associations maintain a permanent arbitration committee to which parties agree in advance to submit their differences with regard to the quality of goods supplied or to other specific questions of fact.

12. In some branches of industry, the arbitration facilities of trade associations on the national level are supplemented by arrangements made by their international organization (e.g., in the potato wholesale trade, the hides and leather trades or the seed trade). The arbitration facilities of the international association can either be used as a forum of first instance in disputes arising between members of the trade associations in different countries, or as an appeal forum against arbitral awards rendered by an arbitration body established by a national trade association. Some of the commodity exchanges provide for appeals to an arbitral tribunal set up under the rules of a corresponding exchange in another country (e.g., from the Gdynia Cotton Exchange to the Le Havre Cotton Exchange).

(c) International centres for general commercial arbitration

13. While a number of organizations providing arbitration facilities on the national level or for special branches of trade are well equipped to handle arbitration in disputes arising out of international commercial transactions or between nationals of different countries, there are still some areas (both geographically and commodity- or trade-wise) where such facilities have not yet been adequately developed. Moreover, in many instances the parties may find it desirable not to have the arbitration of their dispute administered by an organization belonging to a country of which one of the parties is a national or resident. A third consideration which may lead to the use of international arbitration centres is the circumstance that some countries, because of their legal systems, are not considered to be a suitable place to carry out the arbitration of disputes affecting international trade.

14. The Court of Arbitration of the International Chamber of Commerce, with headquarters in Paris, is composed of officers and technical advisers appointed by the Council of the International Chamber of Commerce, and of members appointed by each of the National Committees of the ICC. The ICC Court of Arbitration does

not handle nearly as many cases as some of the national or industry-wide arbitration centres: during the last two years, only about 100 requests for assistance in the settlement of disputes were submitted to it. Nearly all of these disputes, however, involved issues of law or other problems of some complexity, rather than a simple determination of a question of fact. The majority of cases handled by the ICC Court of Arbitration during the last two years concerned disputes between nationals of west European countries, but some of the parties were also from the Western Hemisphere (23), Asia (10) and Africa (8). Resort to enforcement procedures was necessary in only nine cases, all the others having been settled either through amicable consent or through voluntary compliance with the arbitral award.

15. The function of the ICC Court of Arbitration, as stated in its statutes, is "to ensure the application of the Rules of Conciliation and Arbitration of the International Chamber of Commerce". The Court confirms the nomination of arbitrators chosen by mutual agreement of the parties and appoints arbitrators if the parties fail to do so within a stipulated time limit, but does not itself settle disputes referred to it. Sole arbitrators, as well as umpires, referees or arbitrators presiding over the arbitration tribunal, are always chosen from among nationals of countries other than those of the parties. Unless the place of arbitration has been selected in advance by mutual agreement of the parties, the ICC Court of Arbitration also chooses a neutral ground where arbitration proceedings are to be held. The choice most frequently followed by the ICC Court of Arbitration has been the domicile of the sole arbitrator or of the neutral umpire, but due care has been taken not to select as a place of arbitration countries where the laws do not leave the parties the freedom to decide on an arbitral procedure of their choice (e.g., Spain). Arbitration proceedings between nationals of countries which have acceded to the Geneva Convention of 1927 have always been held in the territory of one of the Parties to that Convention.

16. In addition to the direct assistance to parties who request its help in arranging for an arbitration of their dispute, the ICC provides a variety of other services directed towards increasing the effectiveness of international commercial arbitration. Among them may be mentioned the preparation of standard

arbitration clauses and of rules of arbitral procedure; the collection and publication of national laws relating to arbitration; co-operation with the International Institute for the Unification of Private Law of Rome and with other organizations in endeavours to bring about an improvement of arbitral legislation; the convening in 1946 of the Paris Conference on International Commercial Arbitration in which the principal national arbitration centres participated; and the establishment of the Bangkok Office to assist, in co-operation with ECAFE, in the efforts to promote better arbitration facilities in that region.

17. Another international arbitration centre, for the settlement of commercial disputes arising between nationals of countries in the Western Hemisphere, was created in 1934 on the initiative of the Seventh International Conference of American States. In accordance with a resolution adopted by this Conference, the responsibility for establishing and maintaining an Inter-America system of arbitration was entrusted to the Inter-American Commercial Arbitration Commission with headquarters in New York. Provisions were made for establishing in each of the twenty-one American Republics a National Committee affiliated with the Commission, for co-operation with the important commercial associations in the different American republics, and for their representation on the Commission or on its Advisory Committee.

18. It is understood that the Inter-American Commercial Arbitration Commission has been hindered by a lack of adequate arbitration legislation,[4/] in developing fully its programme of activities which provided for the establishment and administration of commercial arbitration tribunals covering the principal cities of all the American Republics. The Commission has, however, established an inter-American panel of arbitrators, appointed from nominations made by national committees affiliated with the Commission. It recommends three standard forms of arbitration clauses and has adopted standard rules of arbitration procedure prepared with a view to assure their applicability under the laws of the countries in which the Commission operates. Of the approximately 2,000 controversies submitted to the Commission, the majority was adjusted without formal arbitration proceedings, by means of negotiated settlements through the good offices of the Commission or of its Business Relations Committee.

19. The Inter-American Commercial Arbitration Commission co-operates closely with the American Arbitration Association and with the Canadian-American Commercial

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4/ See paragraphs 40 and 41 below.

Arbitration Commission, which together constitute the Western Hemisphere system of commercial arbitration. The three organizations co-ordinate their rules of arbitral procedure and recommend the use of a joint standard arbitration clause. This clause provides that disputes shall be settled by arbitration in accordance with the rules of the American Arbitration Association, but that if any of the parties to the dispute are domiciled in one of the Republics of Latin America or in Canada, the rules of the Inter-American Commercial Arbitration Commission or the Canadian-American Commercial Arbitration Commission, respectively, shall apply; and that if any question should arise as to which rules are applicable, a joint arbitration committee established by these three organizations shall decide.

20. The Inter-American Commercial Arbitration Commission also concluded an agreement with the International Chamber of Commerce to establish a link between the two arbitration systems. Accordingly, in contracts concerning international commercial transactions, the two organizations recommend the inclusion of a clause providing that disputes will be settled pursuant to the rules of the Inter-American Commission if arbitration takes place in the Western Hemisphere, and according to the rules of the International Chamber of Commerce if arbitration takes place on any other continent; should the parties be unable to agree on the place of arbitration, it will be chosen by a Joint Arbitration Committee, composed of one representative of each of the two organizations and a neutral Chairman chosen by the two other members.

21. Agreements providing for a reciprocal application of arbitration rules and recommending "joint standard arbitration clauses" were also concluded between the American Arbitration Association on one side, and the International Chamber of Commerce[5/] as well as the national arbitration centres of Australia, India, Japan, the Netherlands, South Africa and the United Kingdom on the other. Some of these agreements provide that if the place of arbitration cannot be chosen by mutual agreement of the parties, it will be decided by a Joint Arbitration Committee composed of representatives of the two organizations and a neutral chairman, while others leave the choice of the place of arbitration to an impartial

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5/ For views of the International Chamber of Commerce regarding the effectiveness of such agreements, see paragraph 57 below.

third body, such as the International Law Association (agreements with the United Kingdom, Australian and South African arbitration centres), or the Netherlands Chamber of Cmmmerce in the United States of America (agreement with Netherlands Arbitration Institute). Similar agreements were also entered into by the Japan Commercial Arbitration Association with arbitration institutions in India, Pakistan and the United States of America, as well as in Czechoslovakia, Poland, Romania and the USSR; the latter four agreements differ however somewhat from the preceding ones inasmuch as they do not provide for a choice of the place of arbitration by the parties or by a neutral body, but stipulate that arbitration shall always be held through the arbitration centre of the country to which the defendant belongs.

II. Arbitral procedures

22. The measure and manner in which the parties to a dispute can avail themselves of the existing institutional facilities for arbitration is reflected to a large excent in the different statutes and rules of procedure adopted by the various arbitration centres. While it would exceed the scope of this report to analyse these provisions in detail, it may be of interest to indicate briefly some of the typical procedural rules and the range of solutions adopted with regard to the main problems involved in arbitration proceedings. 6/

(a) Composition of arbitral tribunals

23. Most frequently, arbitration tribunals are composed of three members. A few important arbitration institutions (e.g., American Arbitration Association, Netherlands Arbitration Institute, London Court of Arbitration), however, provide normally for the appointment of a sole arbitrator, while in many other cases a sole arbitrator may be appointed if the parties so desire or if the dispute involves only a small amount. Arbitration tribunals of five or even more members are sometimes established at the request of the parties, in instances where three arbitrators are unable to make a unanimous award, or to hear appeals from arbitral awards.

6/ A detailed analysis of the procedural rules applied by the arbitration institutions in Europe and the United States of America is contained in ECE documents TRADE/WP.1/15 and addenda 1 to 7, and TRADE/WP.1/22.

24. Arbitration tribunals of several members normally form a collegium presided by a chairman, which makes its decisions either unanimously or by majority vote. Some rules provide, however, that the Chairman of an arbitration tribunal shall act as a "referee" with the sole authority to cast the decisive vote in case of disagreement; or that he shall act as an "umpire" authorized to give an independent ruling as a sole arbitrator if the other members of the tribunal disagree on the merits of the dispute. The rules of some organizations permit legal assessors or experts to have a seat on the arbitration tribunal without the right to vote.

(b) Appointment of arbitrators

25. Most arbitral institutions leave the appointment of a sole arbitrator in the first place to the mutual agreement of the parties; in many such cases the parties can choose as arbitrator only a person listed on a panel drawn up by the arbitral institution. If, however, the parties cannot agree on the choice of the arbitrator within a specific time-limit, or if they so request, the arbitrator is appointed by the arbitral institution. Some organisations (for instance the American Arbitration Association) give to each party separately the opportunity to state its order of preference for arbitrators listed on a panel drawn up by the arbitral institution, and the arbitrator is then chosen by the institution from among persons concurrently selected by both parties.

26. Where the rules provide for the appointment of arbitral tribunals of three or more members, each party as a rule selects an equal number of arbitrators who in turn select the Chairman; if within certain time-limits the party so entitled fails to choose an arbitrator or the arbitrators cannot agree on their choice of a Chairman, the right of appointment devolves on the arbitral institution. The arbitral institution is normally also responsible for replacing arbitrators challenged by one of the parties, sometimes only after the lapse of a period during which the party who designated the challenged arbitrator has the opportunity to nominate a substitute. Only a few instances are known where arbitral rules provide for the submission of disputes to a permanent or ad hoc arbitration body sppointed by the arbitral institution, without giving the parties first an opportunity to choose their arbitrators by mutual agreement; such procedure is used mainly by institutions specializing in quality arbitrations where the speed of arbitral proceedings is an essential factor.

27. The laws of some countries (e.g., Italy) do not permit arbitrators to be of a foreign nationality. In other countries where such a prohibition does not apply, the rules of some arbitration centres make express provision for inclusion of arbitrators of foreign nationality on their panels or for the possibility of appointing as arbitrators foreign nationals whose names are not on their regular panels. The rules of the Court of Arbitration of the International Chamber of Commerce, of the Inter-American Commercial Arbitration Commission and of the American Arbitration Association provide that if the parties are of different nationality or reside in different countries, one of them may request that a national of a third country be appointed as the sole arbitrator or as chairman of the arbitration tribunal.

(c) Hearing procedures

28. With very few exceptions, the rules of arbitral institutions require a written presentation of the claim submitted to arbitration, of any supporting evidence, of the statements made in defence and of any counterclaims. On the other hand, there are rules which do not prescribe the holding of any oral hearings during the arbitration proceedings, and authorize the arbitrators to make the award solely on the basis of documentary evidence. A few arbitral institutions specifically permit the presentation of documentation in foreign languages, or make provision for choosing the language in which the arbitration proceedings shall be held. Most rules favour the privacy of arbitration proceedings, and some permit the parties to use numbers or letters instead of their names so as not to divulge their identity even to the arbitrators.

29. In the few cases where the rules contain any provisions on this point, such rules usually stipulate that arbitral proceedings shall be held in the city or country where the arbitral institution is situated, but some of the rules give the parties or the arbitrators discretion to choose a different place of arbitration. The rules of the national arbitration centres of some of the East European countries state explicitly that arbitration may take place abroad if the parties so request, while the rules of at least one trade association provide that the arbitration tribunal shall meet in the respondent's country. Special provisions for the choice of the place of arbitration in disputes concerning

international commercial transactions are made by some organizations which entered into agreements concerning the adoption of the so-called Joint Standard Arbitration Clause (see paragraphs 20 and 21 above).

30. Most of the rules provide that if one of the parties fails to plead or to appear, the arbitration proceedings shall continue and the arbitrators may make their award on the basis of evidence supplied by the party which is not in default. The rules of some arbitral institutions apply, however, such a solution only to cases where the respondent fails to appear or to plead, and provide that the failure to plead or appear on the part of the claimant puts an end to the arbitration proceedings.

(d) Arbitral awards

31. The rules of procedure adopted by some chambers of commerce and other arbitration centres provide that the arbitrators may render an award only after they have endeavoured to conciliate the parties and the conciliation procedure has failed. Other organizations leave preliminary conciliation proceedings to the discretion of arbitrators without making them mandatory, or permit arbitrators to draft their award on terms agreed between the parties. The Paris Chamber of Arbitration and some of the trade associations authorize the arbitrators to deliver a draft award which becomes final after a certain time if one of the parties so requests.

32. The Rules of Conciliation and Arbitration of the International Chamber of Commerce provide that no award shall be issued by arbitrators until approved as to its form by the Court of Arbitration; the Court also reserves the right to draw, if need be, the attention of the arbitrator "even to points connected with the merits of the case, but with due regard to the arbitrator's liberty of decision". On the other hand, the rules of the Arbitration Court of the Czechoslovak Chamber of Commerce require the arbitrators to comply with the Court's rulings. A number of organizations provide that the arbitrators shall include in the award a statement of reasons for their decision, but such a motivation of the award is not expressly required by the rules of several important arbitral

institutions, such as the American Arbitration Association, the London Court of Arbitration or the Federation of Indian Chambers of Commerce and Industry.7/

(e) Applicable law

53. Under the statutes and rules of procedure of most arbitral institutions, the arbitrators are authorized to determine themselves the procedure to be followed on questions which are not dealt with by the statutes or rules. Some institutions provide, however, that the law of the country to which the arbitral institution belongs shall be applied to procedural questions which are not covered in the rules adopted by the institution. The rules of the Court of Arbitration of the International Chamber of Commerce stipulate that in the absence of a provision in the Court's rules, the procedure shall be governed by the procedural law chosen by the parties, or, if they fail to choose the applicable law, by the law of the country in which the arbitration takes place.

54. As regards the law applicable to the substance of the dispute, most of the rules which contain any provision on the subject reflect the relevant requirements of the laws of the country to which the institution belongs. The rules of arbitral institutions in the United Kingdom, in some Commonwealth countries and in a few other areas stipulate that the arbitrators shall apply to the dispute the national law of the country of the arbitral institution, including the provisions relating to the conflict of laws. Some other arbitral institutions dispense arbitrators either entirely or partially from applying a national law and authorize them to base their awards on trade practices as reflected in standard contracts, or on commercial usage, good faith and natural justice. Arbitral institutions in several civil law countries provide expressly in their rules of procedure that the arbitrators shall act as amiables compositeurs and settle disputes on the basis of simple equity. The International Chamber of Commerce rules provide that arbitrators may act as amiable compositeurs only if their can do so without prejudice to the legal enforement of the award.

7/ These differences in the rules generally reflect the fact that the practice of stating reasons for an arbitral award is compulsory under the laws of some countries but not required in others.

35. The rules of arbitral organizations in the United Kingdom and a few other common law countries authorize arbitrators to refer questions of law arising during the arbitration proceedings for decision to the competent law courts (so-called "special case" procedure). The rules of some of the commodity exchanges concerned mainly with quality arbitrations permit their Board of Directors to refer the whole dispute to law courts if they deem the question at issue to be solely one of law or find a judicial enquiry to be desirable.

(f) Appeals and enforcement

36. Several arbitral institutions stipulate that arbitral awards rendered under their auspices are final and not subject to any appeal, and require the parties who wish to avail themselves of their arbitration facilities to waive in advance their right to any form of appeal from the arbitral award to regular courts. The rules of other arbitral institutions state explicitly that arbitral awards may be appealed either to the regular courts having jurisdiction over the dispute, or through an arbitration machinery for appeals provided for by the institution itself. In the latter case, appeals may be submitted either to another arbitration tribunal established in the same manner as the tribunal of first instance but usually composed of a larger number of arbitrators, or to a special appeals committee appointed by the institution itself or by its parent organization. At least one institution known to the Secretariat (the Bremen Cotton Exchange) has established three appeal instances within the framework of its arbitration facilities.

37. Many arbitral institutions make provision in their rules for steps which would facilitate the enforcement of the award should the losing party fail to execute it voluntarily. In some countries, where a court exequatur is a condition for the validity of the award, provision is made for depositing a copy of the award with the Registrar of the competent court, either automatically or at the request of one of the parties. Other organizations rely on moral pressure to assure compliance with awards, and provide for giving publicity to non-execution of the award, for debarment of the party which has failed to comply with an award from using the facilities of the institution in the future, or in some cases for the expulsion of the party in default from the organization. A few organizations

(e.g., the Federation of Indian Chambers of Commerce and Industry) provide in their rules that if a party fails to comply with an award directing it to do a certain act, the other party may ask the arbitration tribunal to assess the amount of damages or compensation payable to it by reason of such non-compliance.

III. Activities Aiming at the Development or Unification of Arbitration Law

(a) Preparation of model legislation

38. Some activities of organizations engaged in promoting the improvement of arbitral legislation were mentioned briefly in the Memorandum on Recognition and Enforcement of Foreign Arbitral Awards submitted by the Secretary-General to the Economic and Social Council on 22 March 1956.[8/] Included in this memorandum was a reference to the draft Uniform Law on Arbitration prepared by the International Institute for the Unification of Private Law of Rome, and to a study undertaken by the Council of Europe with a view to determining the extent to which the arbitration laws of its Members could be unified.

39. On 17 January 1958, after considering the results of this study, the Consultative Assembly of the Council of Europe recommended that a committee of governmental experts be appointed to draw up a European Convention on Arbitration in Respect of International Relations of Private Law, using as a basis for its work the project for a Uniform Law on Arbitration prepared by the Rome Institute. While the competent organs of the Council of Europe took due note of the forthcoming United Nations Conference on International Commercial Arbitration and of the desirability to avoid any duplication of work between the organs of the United Nations and the Council of Europe, they nevertheless recommended that the draft of the European Convention on Arbitration to be prepared by the Council's committee of experts should include provisions on enforcement of foreign awards. The reasons underlying this decision were, first, that it would not be practical to divorce the question of enforcement from the question of internal arbitral procedures and second, that more liberal and far-reaching provisions for enforcement of foreign arbitral awards may be put into effect within the

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8/ Official Records, Economic and Social Council, 21st session, agenda item 8, annexes, document E/2840, paragraphs 5 to 7.

narrower European area than in a convention encompassing, on a worldwide basis, areas in which there are far greater differences in the development of internal arbitration law.

40. In paragraph 17 above, mention was made of the role played by the Organization of American States in initiating the establishment of the Inter-American Commercial Arbitration Commission. Concurrently with its endeavours to provide practical facilities for arbitration in the Western Hemisphere, the Organization of American States also attempted to eliminate the obstacles to the use of arbitration caused by the absence of adequate arbitration laws or by their diversity. Some general provisions concerning the execution of foreign judgements and awards were included in the Montevideo Treaties and in the Bustamente Code adopted at the Sixth International Conference of American States, and the Seventh Conference recommended to the participating American Republics to incorporate in their legal systems certain legislative standards providing, inter alia, for the validity of arbitration clauses, the right of the parties to designate arbitrators of their choice, the authority of arbitral institutions to adopt rules of arbitral procedure and to challenge or remove arbitrators, and the possibility for the parties to waive or limit their right of appeal from the award. As far as could be ascertained, only one State (Colombia) has enacted legislation in accordance with these recommendations, while at least one other country (Brazil) adopted a new arbitration law without taking the recommended legislative standards fully into account.

41. A project aiming at the preparation of a uniform law on international commercial arbitration for the Western Hemisphere was initiated by the Inter-American Council of Jurists in 1950. At its third meeting in 1956, the Council adopted a draft Uniform Law on Inter-American Commercial Arbitration prepared by the Council's Juridical Committee on the basis of comments and observations made by a number of American States, and recommended that the provisions of this Uniform Law be adopted by the American Republics in their respective legislations. Up to the date of the preparation of this report, no information is available on such action having been taken by any of the States of the Western Hemisphere.

(b) Studies of arbitration law and of arbitral procedures[9/]

42. A number of non-governmental organizations included among the subjects of their work activities aiming at the improvement of arbitration legislation or at a greater measure of uniformity in arbitral procedures. Particular mention should be made in this connexion of the International Law Association, the International Association of Legal Sciences, the Society of Comparative Legislation and the Union Internationale des Avocats.

43. The International Law Association considered the question of unification of arbitration law at its conferences in Vienna (1926), Warsaw (1928), New York (1930), and Budapest (1934) where a model standard arbitration clause was drawn up and recommended for adoption. Work on a draft of standard procedural rules for international commercial arbitration began at the Paris Conference in 1936 and led to the preparation of the so-called Copenhagen Rules in 1950. The International Law Association established and maintains a standing Committee on International Commercial Arbitration which, among other work, submitted in 1938 to members of the Association a detailed questionnaire to serve as a basis for a study and report on the practice of commercial arbitration in various States.

44. The International Association of Legal Science, established in 1949 under the auspices of UNESCO, considered the problems of international commercial arbitration at a Round-table Conference on the Legal Aspects of Trade between Free and Planned Economies held in Rome in February 1958. Particular attention was paid to the advantages of arbitration in commercial transactions between such areas, to problems arising in the execution of arbitral clauses and enforcement of awards, and to the trend of decisions made in disputes arising in connexion with trade between planned and free economies.

45. The Union Internationale des Avocats has studied problems relating to international commercial arbitration in its congresses and commissions attended mainly by practising lawyers. It has prepared and published in 1956 a manual analysing the laws and judicial practice of sixteen European countries and the United States and is preparing the publication of a second volume containing

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9/ Studies and other activities undertaken by United Nations organs such as ECE and ECAFE are not described in this report. A brief reference to these activities is contained in document E/2840.

information on arbitration laws of other countries, particularly those of the Western Hemisphere, as well as on procedural rules adopted by arbitration centres of recognized standing.

46. In addition to the work carried out by organizations primarily interested in the development of international private law and in comparative law studies, the practical aspects of arbitration law and the improvement of arbitral procedures were also the subject of studies undertaken by several of the organizations providing practical facilities for arbitration, such as the International Chamber of Commerce (see paragraph 16 above), the American Arbitration Association, the Netherlands Arbitration Institute and other arbitral institutions referred to in Section I of this report. Some of the national arbitration centres, such as the American Arbitration Association and the Comité Français de l'Arbitrage, publish periodicals which contain studies and valuable source material on problems of arbitration law and arbitral procedure.

IV. Factors considered to stand in the way of the progress of arbitration and suggestions as to possible remedial measures for increasing the effectiveness of international commercial arbitration

47. In paragraph 2 above, reference is made to the invitation addressed by the Secretary-General to a number of organizations active in the field of international commercial arbitration to state, among other things, their views regarding the major obstacles to the progress of arbitration as a means of settlement of private law disputes in international commercial matters. By way of example, and to facilitate the preparation of the answers the Secretary-General listed in this connexion the following circumstances which might possibly be considered to constitute such obstacles:

(a) Differences in national laws with respect to arbitration procedures;

(b) Uncertainty regarding the exclusion of the Court's jurisdiction where there is an arbitration agreement;

(c) Difficulties in determining the law applicable to the validity of an arbitration agreement, the arbitration procedure and the determination of the issue;

(d) Uncertainty regarding the powers of the arbitral tribunal to decide on such matters, as:

(i) its own competence with respect to the matter in dispute, and in particular, its competence to determine whether the issue is arbitrable;

(ii) the extent to which it may decide ex aequo et bono rather than on the basis of a given law;

(e) Requirements in some countries as to the nationality of arbitrators;

(f) Difficulty of enforcement of foreign arbitral awards;

(g) Uncertainty as to whether and to what extent the courts have the power to review the validity of arbitral awards for alleged incompetence of the arbitral tribunal or for other reasons;

(h) Lack of uniformity in the rules of arbitral tribunals;

(i) Lack of a standard arbitration clause or inadequacy of arbitration clauses generally used in dealing with such problems as the procedure to be followed where the parties are unable to agree on the designation of the arbitral tribunal or the fixing of the place of arbitration;

(j) Insufficient arbitration facilities;

(k) Obstacles to the transfer of currency for the payment of arbitral awards and costs.

48. Nearly all the organizations which submitted their views regarding obstacles to the progress of arbitration stated that the factors enumerated in the preceding paragraph did in fact, to a greater or lesser extent, stand in the way of an increase in the use and effectiveness of international commercial arbitration. Among the items listed in the Secretary-General's letter, the following were singled out as constituting major impediments: differences in municipal legislation governing arbitration procedures and the validity of arbitration agreements; difficulties in enforcing foreign arbitral awards; lack of uniformity in the rules of arbitral tribunals and in the use of sufficiently precise standard arbitration clauses; and the insufficiency of existing arbitration facilities. Legislation prohibiting the appointment of foreign nationals as arbitrators and laws authorizing courts to review the merits of arbitral awards were also mentioned as having serious adverse effect on international commercial arbitration, though limited to the few countries in which such legislation is still in force.

49. Some organizations also emphasized the importance of the following obstacles to the progress of arbitration to which no reference was made in the Secretary-General's letter: the lack of knowledge among business about the existing arbitration facilities and procedures, and their lack of confidence in the possibility of a successful enforcement of arbitral awards in foreign countries (Federation of Indian Chambers of Commerce and Industry); limitations placed in certain countries upon the validity of arbitration clauses in contracts to which one of the parties is a government or a public agency (Society of Comparative Legislation); and restrictions placed under the laws of certain countries on the freedom of the parties to determine the applicable rules of arbitral procedure (Netherlands Arbitration Institute, International Chamber of Commerce).

50. While all the organizations which submitted comments on this point agreed that the attainment of a larger measure of uniformity in the laws governing arbitration is desirable and indeed essential to the progress of arbitration as a means of settlement of international commercial disputes, they differed on the methods by which this aim could best be obtained. The International Institute for the Unification of Private Law of Rome stressed the need for the adoption of a model Uniform Law on Arbitration which would provide in each State for identical regulation of matters such as validity of arbitration agreements, competence of arbitrators, applicable rules of arbitral procedure, formal requirements of arbitral awards, execution of arbitral awards and judicial control over arbitral awards. In the opinion of the Rome Institute, a universal adoption of such model legislation could have a more far-reaching effect in eliminating conflicts of law and in facilitating enforcement of arbitral awards than could be achieved through multilateral conventions.

51. The Society of Comparative Legislation thought that the enactment of a Uniform Law on Arbitration in a sufficiently important number of countries would encounter considerable practical difficulties and take too long a time. It favoured therefore, as an alternative, measures aiming at a general recognition of the freedom of the parties to choose themselves the applicable law and procedural rules which would govern the arbitration proceedings. As a first step in this direction, the new Convention on Recognition and Enforcement of Foreign Arbitral Awards should stipulate clearly that the law of the country where

arbitration takes place shall only apply as a subsidiary or supplementary law in cases where the parties themselves have not expressly provided for their own choice of applicable rules.

52. The Foreign Trade Arbitration Commission of the USSR All-Union Chamber of Commerce expressed the view that the conclusion of an international Convention on the enforcement of foreign arbitral awards might not entirely remove the obstacles created by differences in domestic legislation, as in many cases these differences would still enable the losing party to delay the enforcement of awards on purely formal grounds. The Commission therefore thought it desirable to institute, by means of an international agreement, a uniform and simplified arbitral procedure providing at the same time for the necessary guarantees of the validity of the awards enforced. Similarly, the Indian Federation of Chambers of Commerce and Industry proposed that the Economic and Social Council should formulate a set of rules which would be applicable to arbitral proceedings between nationals of different countries; such rules might be adopted by the various countries when they become a Party to the new Convention.

53. A still different view was advocated by the International Law Association and by some of the national arbitration centres (e.g., the American Arbitration Association and Japan Commercial Arbitration Association). They considered that rather than to engage in the difficult and time-consuming method of unifying arbitral procedures through amending national laws or by international conventions, a world-wide uniformity of arbitration rules should first be obtained on a non-governmental level, and that as a first step the various arbitration centres should agree on the adoption of a uniform set of rules of arbitral procedure.

54. Most organizations which replied to the Secretary-General's letter stressed the need for further studies aiming at the solution of existing difficulties in the progress of arbitration. In this connexion, the American Arbitration Association recommended that the following questions should in particular be examined:

(a) the adequacy for international commercial arbitration of present arbitration facilities which were established mostly for the purpose of settling domestic disputes; and the extent to which nationals of different countries would be represented on existing panels of arbitrators.

(b) the availability of existing arbitration facilities to non-members of the arbitral institution concerned or to residents of foreign countries.

(c) the existing provisions for publicity of awards, requirements as to stating reasons for awards, and facilities for appeals from arbitral awards.

(d) the extent to which existing standard arbitration clauses have obtained general acceptance, and any changes that may be necessary in such clauses to meet specific requirements.

55. Several organizations referred to the usefulness of the work carried out by the ECE and ECAFE in the field of arbitration studies, and expressed their hope that these activities could be continued and extended. The Rome Institute mentioned the studies now conducted by the Council of Europe (see paragraph 39 above), and also offered its assistance to the United Nations should the Conference decide to make any recommendations relating to the development and unification of arbitration law.

56. Nearly all organizations favoured an intensification of the educational programmes on arbitration through training groups and seminars, and through increased co-operation of arbitration institutions with leading associations of the business community and of the legal profession. In particular with regard to areas where the use of arbitration is not yet fully developed, the need was felt to arrange for educational programmes which on one hand would promote the knowledge about arbitration among businessmen and on the other would give to arbitrators a better understanding of their tasks. Opinions were, however, divided on the question of publicity to be given to arbitral awards. While several organizations favoured a systematic publication of awards, relevant judicial decisions and other matters of interest to arbitration, others expressed the apprehension that giving publicity to awards might deter some business from submitting their disputes to arbitration.

57. There was general agreement on the need for increasing the co-ordination between arbitration bodies. One organization stressed that better co-ordination in the activities of national arbitration associations and greater co-operation among them would also go a long way in reducing the cost of arbitration. Several organizations recommended a wider use of the Joint Standard Arbitration Clause

providing for the choice of the place of arbitration and of the applicable rules of procedure in cases where each party to a dispute wishes to arbitrate through a different institution. The International Chamber of Commerce, however, stated that its experience with such inter-organization agreements for applying the Joint Standard Arbitration Clause had not proved to be successful. It preferred other forms of co-operation (such as the establishment of liaison offices to co-ordinate on an international level the activities of arbitration centres) which would leave the parties the free choice to use such arbitration institute as was best suited to their needs.

58. Some organizations were in favour of taking measures for increasing the use of arbitration in international trade contracts between private concerns on one side and governmental agencies on the other.10/ The Netherlands Arbitration Institute pointed out in this connexion that disputes arising out of such contracts may be submitted to the Permanent Court of Arbitration at The Hague, which since 1939 has made its facilities available for arbitration between governments and private enterprises. The International Law Association referred to the resolution adopted at its Copehagen Conference in 1950, recommending the use of arbitration in disputes between governments or government-controlled corporations and private persons of different countries.

59. Among the measures suggested to increase and facilitate the use of arbitration, particular emphasis was laid on the need to create national arbitration institutes in countries where such facilities are still lacking. The Indian Federation of Chambers of Commerce and Industry recommended that the assistance of governments and of trade and industrial organizations should be invited in order to encourage the establishment of new arbitration centres. The Society for Comparative Legislation also favoured greater efforts by chambers of commerce and trade associations to supplement the existing network of arbitration facilities; it pointed out that an increase in the number of arbitration centres would not only provide more opportunities to use arbitration in the settlement of disputes, but also would accelerate the movement towards an improvement of arbitration rules.

10/ See also paragraph 44 above concerning the Round Table Conference on the Legal Aspects of Trade Between Free and Planned Economies.

In addition to creating new facilities for international commercial arbitration, it was also strongly recommended that a more widespread use be made of the practice of including on the panels of arbitrators nationals of countries other than that in which the arbitration centre is located.

V. Comments on Draft Convention on the Recognition and Enforcement of Foreign Arbitral Awards

General Observations

60. General agreement with the draft Convention prepared by the Economic and Social Council's Committee on the Recognition and Enforcement of Foreign Arbitral Awards was expressed, subject to some comments on specific provisions, by the Federation of Indian Chambers of Commerce and Industry, the Japan Commercial Arbitration Association, the Bremen Cotton Exchange and the International Chamber of Commerce.

61. The International Chamber of Commerce considered that the draft makes "a new contribution towards facilitating recourse to arbitration in international commercial relations" and that, provided certain amendments were made to it, the new Convention may encourage "a considerable increase in the number of countries, at present limited, on the territory of which a foreign arbitral award could be recognized and enforced". While the International Chamber of Commerce would not insist on the changes proposed by it with regard to the title and to Article I, paragraph 1, of the draft Convention, it emphasized the need for adopting the other amendments suggested in its previously submitted comments,[11/] notably those relating to Article I, paragraph 2, Article III (b) and Article IV (g). In the opinion of the International Chamber of Commerce, "it is the very system recommended by the ECOSOC experts which demands those particular amendments of the text".

62. The Bremen Cotton Exchange expressed preference for the draft recommended by the ECOSOC Committee over the draft originally proposed by the International Chamber of Commerce. It did not consider the idea of an international arbitral award and an international arbitration procedure as yet feasible, as "there exist

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11/ Official Records, Economic and Social Council, twenty-first session, agenda item 8, annexes, document E/2822, Annex II, pp. 10 to 15 and 17.

at present only domestic and foreign arbitration procedures and arbitration awards, that is to say, only national arbitration procedures and awards".

63. On the other hand, in the opinion of the Polish Chamber of Foreign Trade the Convention should be based on the recognition that international arbitral awards, as understood in the Convention, do not have the nationality of any State, and in particular not of the State in whose territory they were made. Such international awards, independent from the laws of particular countries, would not require a duplication of judicial control both in countries where arbitration took place and where the award is to be performed or enforced. The title of the Convention should therefore read "Convention on the Recognition and Enforcement of International Awards in Private (Commercial) Law."

64. The Society of Comparative Legislation also favoured the concept of international arbitral awards and thought that this concept should be reflected in the title of the Convention. It considered that the development of international commercial arbitration presupposes its liberation to the greatest possible extent from the fetters of national legislations so as to better assure enforcement. This may be achieved through bilateral and multilateral agreements or, still better, by creating within the framework of the United Nations an international machinery for registering international awards, examining their regularity and issuing a certification of their validity which would serve as a basis for the recognition of the award in the country of enforcement; enforcement of awards so certified could then be refused only on specific grounds admitted by the Convention.

65. Several organizations favoured the inclusion in the Convention of a provision recognizing the validity of arbitration agreements, so as to avoid their challenge at the time when the award is sought to be relied upon. The Polish Chamber of Foreign Trade suggested that "the Convention ought to begin with a provision that the states participating in the Convention recognize the validity of the arbitration clauses concluded between the physical persons resident in different states, and legal persons whose either main or subsidiary domicile is in different states, and to contain provisions as to the Protocol of 1923". The Federation of Indian Chambers of Commerce and Industry suggested the following addition to Article I of the Convention:

"Each of the contracting states recognizes the validity of a written agreement whether relating to existing or future differences by which the parties agree to submit to arbitration all or any differences that may arise between them in connexion with any matter capable of settlement by arbitration".

The Japan Commercial Arbitration Association also favoured adding to the Convention a reference to the recognition of validity of arbitration agreements.

Article I

66. The Society of Comparative Legislation saw an advantage in extending the scope of the applicability of the Convention to all disputes which may arise (a) between nationals which have their usual residence or their principal establishment in different countries; or (b) out of contracts which may have an effect in territories other than those in which the parties have their domicile. The Society of Comparative Legislation opposed restricting the application of the Convention to arbitral awards rendered in the territory of one of the Parties to the Convention (which would be the case if the Parties availed themselves of the reservation provided for in Article I, paragraph 2), because in its opinion such a restriction would tend to limit unduly the activities of international arbitration centres.

67. The Polish Chamber of Foreign Trade suggested that Article I, paragraph 1 of the Convention should not refer to "arbitral awards made in the territory of a state other than the state in which such awards are relied upon", but to "arbitral awards which according to the law of the place of action (lex fori) are not domestic awards", because the nationality of the award may in some cases differ from the State in which it is made. The Polish Chamber of Foreign Trade also thought it advisable to include provisions extending the application of the Convention to disputes arising out of commercial obligations ex delicto and ex quasi delicto, such as torts, collisions at sea, etc., and to the recognition and enforcement of amicable settlements concluded in international arbitration.

68. The Foreign Trade Arbitration Commission of the All-Union Chamber of Commerce of the USSR proposed to include in Article I a statement to the effect that "the Convention is applicable both to arbitral awards made by an arbitral tribunal established by the parties for the specific purpose of settling a dispute between them and to arbitral awards made by permanent arbitral bodies."

Article III

69. The Society of Comparative Legislation opposed the provision of Article III (b) that an award must become final and operative in the country where it had been rendered before its recognition and enforcement abroad can be obtained; it considered that there is no justification for such a provision which would only foster delaying tactics incompatible with the aims that the Convention seeks to achieve. If the enforcement of the award was made dependent on the sometimes conflicting procedural provisions in the country of arbitration, separate actions for enforcement might be required both in the country where the award was rendered and in the country where it is to be relied upon, with all the difficulties and delays that such a duplication of proceedings entails. Moreover, the laws of some countries allowed practically unlimited periods during which the losing party could take action for setting aside the award. The Convention should therefore be based on the principle that an arbitral award constitutes a prima facie title for enforcement which should be refused only if a summary examination of the award by the judicial authorities of the country where it is being relied upon discloses the existence of any of the grounds stipulated in Article IV of the Convention.

70. The position that arbitral awards should be rendered more independent from the law of the country where arbitration took place was also taken by the International Institute for the Unification of Private Law at Rome. It expressed the view that the enforcement of foreign awards should be refused only for a limited number of reasons: either on grounds which are concurrently applicable under both the laws of the country where the award was rendered and where it is to be enforced, or solely on the grounds stipulated in the Convention without further reference to the laws of the country where arbitration took place.

71. The Polish Chamber of Foreign Trade favoured the concentration of the judicial control of awards in the country where they are to be performed or enforced, in order to avoid the need of examining the award in the country of arbitration which may have been chosen by mere chance. The method of review of awards should be uniform in all countries and should not concern the proper application of the law of merits to the substance of the award.

72. The Polish Chamber of Foreign Trade also suggested transferring the words "and in particular that the enforcement has not been suspended" from Article III (b) to

Article IV (e) so as to relieve the person seeking enforcement of an award from the burden of proving a negative fact. The Netherlands Arbitration Institute favoured an outright deletion of this provision not only because it would be difficult to prove that something is not the case but also because the non-enforcement of a suspended award is covered by other provisions of the Convention.

Article IV

73. The Netherlands Arbitration Institute did not deem the present draft of the Convention to constitute a considerable step forward when compared with the 1927 Geneva Convention. While some double control over arbitral awards seemed inevitable as long as arbitral awards were still connected with some nationality and the concept of international awards was not generally accepted, the control of the awards in the State where enforcement is sought should be limited as far as possible. In the opinion of the Institute, out of the eight grounds for refusing enforcement provided in Article IV of the draft Convention, only the last one, incompatibility with public policy, should be retained. No state would accept to enforce an award which was against its public policy, but in all other cases it should suffice for the authorities of the country of enforcement that the award is operative (but not final and operative as Article III prescribes) in the country where the award was made and that leave for execution in that country had been given. The sanction on the control of the country of enforcement should only be a refusal of enforcement, not annulment.

74. The Japan Commercial Arbitration Association proposed the deletion of sub-paragraph (f) of Article IV. It considered that this provision was superfluous, that it may cause difficulties of interpretation and that it may lead to a refusal of enforcement without real justification. The Association also thought that the words "arbitral authority" at the beginning of sub-paragraph (g) of Article IV should be more clearly defined.

75. The Society of Comparative Legislation voiced strong objections against providing in sub-paragraph (g) of Article IV that enforcement of an award should be refused if the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties "to the extent that such agreement was lawful in the countries where the arbitration took place". The

Society thought that such a provision would only give an undue advantage to a party acting in bad faith, as any well-founded objections against the arbitration procedure agreed upon by the parties could be taken into account under other provisions of the Convention without the need to introduce a reference to municipal law. Such a reference to the procedural laws of the country of arbitration is in particular dangerous as their interpretation would be left to foreign judges who are not familiar with such laws. The requirement that the arbitration agreement should be in accordance with the procedural laws of the country of arbitration would therefore only complicate the task of the enforcement authorities without adding any corresponding safeguards.

76. The Federation of Indian Chambers of Commerce and Industry pointed out that the words "fundamental" principles of law (ordre public) in sub-paragraph (h) of Article IV had no clear legal meaning under the laws of many countries. The Federation suggested that this expression be deleted, as its inclusion would make the clause ambiguous and may lead to different interpretations in different countries.

Article V

77. The Polish Chamber of Foreign Trade considered the expressions "duly authenticated" and "duly certified" in Article V to be less precise than the corresponding provisions of Article IV of the 1927 Geneva Convention, and expressed the apprehension lest the word "duly" be interpreted as being equivalent to the requirements of the lex fori.

Article VI

78. In the opinion of the Japan Commercial Arbitration Association, Article VI should define more clearly the relationship between the proposed Convention and the Geneva Convention of 1927. If the proposed Convention was intended to be a separate and independent instrument, it would be desirable to clarify which Convention would be applied by the signatories to both the 1927 Convention and the new Convention. The Polish Chamber of Foreign Trade suggested that there should be express provision to the effect that the 1927 Geneva Convention and the 1923 Protocol became extinct as regards the States which ratified or acceded to the new Convention.

79. The Society of Comparative Legislation considered that Article VI of the Convention should be interpreted as applying only to instances where the law or treaties in force in the country of enforcement contain provisions more favourable to the execution of awards.

Article VII

80. The Polish Chamber of Foreign Trade and the Foreign Trade Commission of the All-Union Chamber of Commerce of the USSR considered that the provisions of Article VII might unduly restrict the scope of application of the Convention, and proposed to amend this Article so that any State could become a party to the Convention. The Japan Commercial Arbitration Association and the Federation of Indian Chambers of Commerce and Industry also favoured the opening of the Convention to the signature of all states. The Federation of Indian Chambers of Commerce and Industry further suggested that, should objections be raised to a provision opening the Convention to all States, the present text of Article VII, paragraph 1, could be retained with the addition of the words "at the request of one-fourth or more of the countries which have acceded to the Convention". The addition of these words would lay down a definite procedure for invitations to be addressed by the United Nations General Assembly and also make it possible that the wishes of a significant number of the signatories to the Convention may be carried out.

Article X

81. The Japan Commercial Arbitration Association considered paragraph 2 of Article X to be superfluous and self-evident.

Article XIII

82. The Japan Commercial Arbitration Association deemed it desirable to provide that all disputes referred to in this Article not settled by negotiation or another agreed mode of settlement should be referred to the International Court of Justice for decision, and therefore favoured the deletion of paragraph 2 of Article XIII.
