



**Economic and Social
Council**

Distr.
GENERAL

TRADE/WP.5/1999/12
9 November 1999

ENGLISH ONLY

ECONOMIC COMMISSION FOR EUROPE

**COMMITTEE FOR TRADE, INDUSTRY AND
ENTERPRISE DEVELOPMENT**

Working Party on International Legal
and Commercial Practice

Forty-eighth session

29 November-1 December 1999

Item 5(d) of the provisional agenda

**EXPERT ADVISORY GROUP TO CONSIDER POSSIBLE REVISIONS TO
THE EUROPEAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION OF
1961**

Report 1998/1999

1. During its third session in June 1999, the Committee for Trade, Industry and Enterprise Development approved the creation of an arbitration advisory group under the Working Group on International Legal and Commercial Practice (WP.5) to review the European Convention on International Commercial Arbitration of 1961; to recommend revisions (if appropriate), and to report on current problems in international arbitration and provide suggestions as to how those problems might be addressed.
2. The Bureau of the Working Party's arbitration advisory group: Mr. William Pissoort, Dr. Hannah Kodlova and Professor Sergei Lebedev met, together with the secretariat in Prague during June 1999.

During this meeting it was agreed to:

- ❖ develop a questionnaire on the European Convention on International Commercial Arbitration of 1961 in order to obtain information as to its current use;
 - ❖ analyse the results of this questionnaire; and then to
 - ❖ organize an advisory group meeting to discuss both the results of the questionnaire, review and recommend revisions, if appropriate, to the European Convention on International Commercial Arbitration of 1961 and to report on current problems in international arbitration and provide suggestions as to how those problems might be addressed.
3. An 11-page questionnaire containing 32 questions was finalized and mailed in October 1999 to all members of the Special Committee, as defined in article IV of the Convention, to all arbitration institutions nominated by signatory countries under article X of the Convention and to those institutions nominated by the missions of UN/ECE member States in Geneva (or to the mission itself in cases where no institution had been nominated). Copies of this questionnaire can be obtained from the UN/ECE secretariat.
 4. A meeting of the Bureau of the Working Party's arbitration advisory group to review the results from the questionnaire will be held on 25-26 November 1999 and an oral report on the results will be provided to the Working Party at its meeting of 30 November to 1 December 1999. .

Background

5. The 1961 European Convention on International Commercial Arbitration was originally developed to allow the use of arbitration between parties in countries with market economies and parties from countries with socialist economies, although it has also been applied in arbitration cases where both parties came from either a market or a socialist economy. Commercial parties and Governments wanted to have the possibility to use arbitration because of a lack of confidence in national court systems, as well as the reduced time and cost associated with arbitration.
6. Surprisingly, the need for this convention has become more acute during the last decade and, especially, during the last four to five years. Why? Because the number of companies and organizations participating in international trade from former socialist economies has greatly increased while, at the same time, commercial parties from market economies often hesitate to do business in or with these countries because they lack confidence in their national court systems. As a consequence, the use of arbitration and

arbitration agreements has also accelerated since arbitration is the only enforceable alternative to national courts for commercial dispute resolution. Further, this has resulted in an increase in exactly the problems covered by the 1961 European Convention on International Commercial Arbitration.

7. Examples of important provisions in the Convention include those on the procedures for appointing arbitrators, procedures for determining arbitral jurisdiction, procedures for determining the law under which the validity of an arbitration agreement can be ascertained and laying out restricted conditions for the annulment of awards. While many of these provisions also exist in internationally used arbitration rules, such as those of the International Chamber of Commerce and the United Nations Commission of International Trade Law (UNCITRAL) or in the UNCITRAL model law national legislation, this Convention remains the only place where they have been codified within an international legal instrument
 8. This is important because it allows these rules to cover contracts where, for example, no arbitration procedures are specified or the applicable law is not specified.
 9. However, it has come to the attention of the United Nations Economic Commission for Europe (UN/ECE), which is responsible for the Convention, that the use of the Special Committee, as outlined in article IV and the annex may have become outdated and that the last 38 years' experience have highlighted other problems in arbitration which need to be resolved.
 10. As a result, the Working Party on International Commercial and Legal Practice recommended the establishment of this advisory group during its forty-seventh session in 1998. It also appointed officers for this group which form its Bureau and it is the Bureau which presents this report
-