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COMMITTEE FOR TRADE, INDUSTRY AND  
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Item 17 of the provisional agenda

**REVISION OF  
THE 1961 EUROPEAN CONVENTION ON  
INTERNATIONAL COMMERCIAL ARBITRATION**

Note by the secretariat

This document contains an item for approval by the Committee as found in paragraph 10, the remainder of the document being for information only.

**Background**

1. The quality and effectiveness of available commercial dispute resolution mechanisms are an important aspect of a country's investment and business infrastructure. Because investment risks are often perceived to be higher in transition economies, access to dispute-resolution systems that investors believe to be efficient and impartial are particularly important. However, for various reasons, the court systems in these countries often do not provide prospective investors with sufficient confidence. In this context, commercial arbitration, which is the only internationally enforceable alternative to national court systems, takes on an even greater importance than in Western Europe and North America: two regions where arbitration is highly valued, but primarily because of its abilities to preserve confidentiality, speed up the process and reduce costs.
2. In addition, given the overall shortage of resources in many national judicial systems, commercial arbitration and mediation provide important opportunities because of their potential for reducing overall judicial system caseloads.
3. For the above reasons, the UN/ECE is interested in international commercial arbitration, both as a supporting factor to the growth of trade in its region and as the organization responsible for supporting the 1961 European Convention on International Commercial Arbitration.

### 1961 European Convention on International Commercial Arbitration

4. The 1961 European Convention on International Commercial Arbitration is one of the two or three most important conventions in the area of International Commercial Arbitration. It provides a minimum set of standards for arbitration in signatory countries. Examples of important provisions in the Convention include those on: the procedures for appointing arbitrators when the parties cannot come to an agreement, the procedures for determining arbitral jurisdiction and applicable law when these have not been specified in the contract, and the right to appoint foreign arbitrators.

5. While some of these provisions also exist in internationally used arbitration rules, such as those of the International Chamber of Commerce (ICC) and the United Nations Commission on International Trade Law (UNCITRAL), or in the UNCITRAL model law for national legislation on international commercial arbitration, the 1961 European Convention remains the only place where they have been codified within an international legal instrument. This is important because it allows international commercial arbitration to be used, in a consistent manner, even under contracts where, for example, no specification is made of: the arbitration rules to be used, the applicable law and/or the place of arbitration. Some countries also find the 1961 European Convention useful because the conditions under which arbitration awards can be set aside are more restrictive than those found in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

### The Arbitration Advisory Group

6. As a result of requests from some member states, in 1999 the Committee approved the establishment of an Arbitration Advisory Group to the Working Party on Legal and Commercial Practice with a mandate to:

*“(A) To review the 1961 European Convention in order to determine:*

- if it continues to be useful;*
- whether it provides any utility beyond that of existing conventions;*
- whether or not a revision of the existing convention would increase its utility for existing and potential new signatories.*

*(B) To determine which, if any, revisions should be made to the 1961 European Convention.*

*(C) To report on current problems in international arbitration and provide suggestions as to how those problems might be addressed.” (TRADE/1999/7)*

7. As part of its review of the 1961 European Convention on International Commercial Arbitration, the UN/ECE Advisory Group on International Commercial Arbitration held two meetings in 2000.

8. At its first meeting, in February 2000, the Advisory group concluded that the Convention:
- a) remains useful;
  - b) provides a utility beyond that of other, existing conventions, in particular as a common set of minimum standards to be observed in international arbitration;
  - c) could be made even more useful to both existing and potential new contracting states if it were updated.

These conclusions were supported by a survey undertaken by the secretariat, the results of which are summarized in document TRADE/WP.5/2000/8/Add.1.

9. At its second meeting in November 2000, the Advisory Group agreed upon their recommendations for modifications to be made to the Convention (see annex). They further agreed that these should be included in an optional protocol with an accompanying final act that would include explanatory material.

10. The Advisory Group therefore requests permission from the Committee to organize a formal, preparatory meeting, with nominated country representatives, to finalize the text and final act for an optional protocol revising the 1961 European Convention on International Commercial Arbitration.

11. The results from the formal preparatory meeting would then be submitted to the Bureau of the Committee<sup>1</sup> who, if they approved of the meeting's results, would then request the Economic Commission for Europe to call a meeting of plenipotentiaries for approval of the optional protocol.

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<sup>1</sup> The Advisory Group would prefer that the final text go to the Committee's Bureau, rather than the Committee, because the earliest that a decision for a meeting of plenipotentiaries could be made if the text were to be reviewed by a full session of the Committee would probably be mid to late September 2002. This in turn would imply that the actual meeting could not be planned for any earlier than the first half of 2003.

## ANNEX

### **Recommended Changes to the 1961 European Convention on International Commercial Arbitration for Inclusion in an Optional Protocol**

The Advisory Group has agreed upon revisions to articles IV, X and the text of the Annex. The overall purpose of these revisions is to assign to the Secretary General of the Permanent Arbitration Court at the Hague the responsibilities of the Special Committee in order to simplify the implementation of the provisions under the Convention and eliminate outdated mechanisms. The Secretary General of the Permanent Arbitration Court is in agreement with this proposal.

For the purpose of clarity, we have presented here the entire revised text of Articles IV, X and the Annex. These changes will then be incorporated into an optional protocol for later adoption.

The revised text for these parts of the Convention is shown below and the actual changes to the text have been highlighted.

#### **Revised Articles IV, X and Annex Text**

##### **Article IV**

##### **Organization of the arbitration**

1. The parties to an arbitration agreement shall be free to submit their disputes:
  - (a) to a permanent arbitral institution; in this case, the arbitration proceedings shall be held in conformity with the rules of the said institution;
  - (b) to an ad hoc arbitral procedure; in this case, they shall be free inter alia
    - (i) to appoint arbitrators or to establish means for their appointment in the event of an actual dispute;
    - (ii) to determine the place of arbitration; and
    - (iii) to lay down the procedure to be followed by the arbitrators.
2. Where the parties have agreed to submit any disputes to an ad hoc arbitration, and where within thirty days of the notification of the request for arbitration to the respondent one of the parties fails to appoint his arbitrator, the latter shall, unless otherwise provided, be appointed at the request of the other party by the head of an institution appointed under the Convention by the country of the defaulting party's habitual place of residence or seat at the time of the introduction of the request for arbitration. This paragraph shall also apply to the replacement of the arbitrators appointed by one of the parties or by the head of an institution appointed under the Convention as above referred to.

3. Where the parties have agreed to submit any disputes to an ad hoc arbitration by one or more arbitrators and the arbitration agreement contains no indication regarding the organization of the arbitration, as mentioned in paragraph 1 of this article, the necessary steps shall be taken by the arbitrator(s) already appointed, unless the parties are able to agree thereon and without prejudice to the case referred to in paragraph 2 above. Where the parties cannot agree on the appointment of the sole arbitrator or where the arbitrators appointed cannot agree on the measures to be taken, the claimant shall apply for the necessary action, where the place of arbitration has been agreed upon by the parties, at his option to the head of an institution appointed under the Convention by the country of the place of arbitration agreed upon or to the head of an institution appointed under the Convention by the country of the respondent=s habitual place of residence or seat at the time of the introduction of the request for arbitration. Where such a place has not been agreed upon, the claimant shall be entitled at his option to apply for the necessary action either to the head of an institution appointed under the Convention by the country of the respondent=s habitual place of residence or seat at the time of the introduction of the request for arbitration, or to the Secretary General of the Permanent Court of Arbitration at the Hague, the procedures for the latter being specified in the Annex to this Convention. Where the claimant fails to exercise the rights given to him under this paragraph the respondent or the arbitrator(s) shall be entitled to do so.

4. When seized of a request the head of an institution appointed under the Convention or the Secretary General of the Permanent Court of Arbitration shall be entitled as need be:

- (a) to appoint the sole arbitrator, presiding arbitrator, umpire, or referee;
- (b) to replace the arbitrator(s) appointed under any procedure other than that referred to in paragraph 2 above;
- (c) to determine the place of arbitration, provided that the arbitrator(s) may fix another place of arbitration;
- (d) to establish directly or by reference to the rules and statutes of a permanent arbitral institution the rules of procedure to be followed by the arbitrator(s), provided that the arbitrator(s) have not established these rules themselves in the absence of any agreement thereon between the parties.

5. Where the parties have agreed to submit their disputes to a permanent arbitral institution without determining the institution in question and cannot agree thereon, the claimant may request the determination of such institution in conformity with the procedure referred to in paragraph 3 above.

6. Where the arbitration agreement does not specify the mode of arbitration (arbitration by a permanent arbitral institution or an ad hoc arbitration) to which the parties have agreed to submit their dispute, and where the parties cannot agree thereon, the claimant shall be entitled to have recourse in this case to the procedure referred to in paragraph 3 above to determine the question. The head of the competent institution appointed under the Convention or the Secretary General of the Permanent Court of Arbitration shall be entitled either to refer the parties to a permanent arbitral institution or to request the parties to appoint their arbitrators within such time-limits as the head of the competent institution appointed under the Convention or the Secretary General of the Permanent Court of Arbitration may have fixed and to agree within such time-limits on the necessary measures for the functioning of the arbitration. In the latter case, the provisions of paragraphs 2, 3 and 4 of this Article shall apply.

7. Where within a period of sixty days from the moment when he was requested to fulfil one of the functions set out in paragraphs 2, 3, 4, 5 and 6 of this Article, the head of the institution appointed under the Convention designated by virtue of these paragraphs has not fulfilled one of these functions, the party requesting shall be entitled to ask the Secretary General of the Permanent Court of Arbitration to do so.

## Article X

The above changes to article IV, require the following change to paragraph 6 of Article X:

6. When signing, ratifying or acceding to this Convention, the Contracting Parties shall communicate to the Secretary-General of the United Nations a list of the Chambers of Commerce or other institutions in their country who will exercise the functions conferred by virtue of Article IV of this Convention on heads of the competent institutions appointed under the Convention

## Annex

### **Procedures of the Secretary General of the Permanent Court of Arbitration at the Hague as referred to in Article IV of the Convention**

1. The reference to the Secretary General of the Permanent Court of Arbitration of one of the requests referred to in paragraphs 3 to 7 of the aforesaid Articles be addressed to the Executive Secretary of the Economic Commission for Europe. The Executive Secretary shall then lay the request before the Secretary General of the Permanent Court of Arbitration.

2. The expenses connected with the Secretary General of the Permanent Court of Arbitration=s action shall be advanced by the person requesting such action but shall be considered as costs in the cause.

Note: Paragraph 1 above is an edited version of the original paragraph 8 and paragraph 2 above is an edited version of the original paragraph 10. All other paragraphs have been deleted.

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