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ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS

Statement submitted by the International Chamber of Commerce,
a non-governmental organization having consultative status
in category A

Note by the Secretary-General

Subsequent to the issue of document E/C.2/373 the International Chamber of Commerce, under rule 10, paragraph 2, of the rules of procedure of the Economic and Social Council, proposed that an item Draft Convention on the Enforcement of International Arbitral Awards be added to the provisional agenda of the eighteenth session of the Council. The following statement submitted by the ICC explains the difference between the 1927 Geneva Convention and the ICC proposed Convention contained in document E/C.2/373, and gives the text of the 1927 Geneva Convention and a bibliography on the subject.

^{1/} Previously issued on 2 February 1954 as E/C.2/R.19 (restricted).

STATEMENT OF BASIC DIFFERENCES BETWEEN THE 1927 GENEVA CONVENTION
AND THE ICC PROPOSAL FOR THE ENFORCEMENT OF
INTERNATIONAL ARBITRAL AWARDS

The 1927 Geneva Convention originated in an ICC resolution requesting the League of Nations to study the question of the recognition of arbitral awards with respect to the private character of arbitration. (cf. League of Nations documents O.J.VIII, pp. 572, 582-583, 890-899; C103(2)M48(1), 1927 II; A.11.1927.II.)

The Geneva Convention was an important step forward since it recognized the voluntary submission of disputes to arbitration as a legal process. Moreover, a number of countries which were parties to the Convention introduced legislation permitting the enforcement of international awards by registration, instead of by ordinary court action. However, registration is only effective against the defendant within limitations, and certain difficulties arose from these limitations.

The Geneva Convention stipulated that to be enforceable an award must conform not only to the will of the parties, but to the law of the country. It is the reference to the latter which caused the difficulties. For example, in England a foreign award may be attacked, notwithstanding registration, on the ground that it is invalid under the law of the place where it was made. Since very often an arbitrator is of a nationality other than that of either party to the disagreement, and generally the place of arbitration is fixed at the residence of the arbitrator, difficult questions of foreign law can be raised by the defendant. Naturally, if the laws of the various countries relative to arbitration could be brought into line, these difficulties would be overcome.

Since such a process is slow, the ICC suggests a more limited reform, namely, that the automatic enforceability of arbitral awards based on the will of the parties be established. For an international award to obtain legal sanction, it should be sufficient for it to conform to the procedure laid down in the parties' contract. This is implied in the principle of freedom of contract. However, in the present state of law relative to arbitration in the various countries, it is not as a rule permissible to substitute a procedure based merely on the will of the parties, for proper legal procedure. Nonetheless there is valid justification for

discriminating between the submission of the parties to procedure established by the law of a particular country and their submission stipulating the application of rules of procedure agreed upon in the contract.

International awards should be recognized as valid in every country, if the procedure applied is in accordance with the rules agreed upon, irrespective of whether they are drawn up by the parties themselves or established through an arbitral body. Since the basic principle of the will of the parties was included in the Geneva Protocol on Arbitration Clauses of 1923 (cf. League of Nations document O.J.III, pp. 1410-1414), it should be possible to draw up a new diplomatic instrument which would expressly state this and simultaneously allow the prompt enforcement of international awards, subject to reservations relative to validity, fraud or infringement of principles of natural justice.

With this in mind the ICC drew up a Preliminary Draft Convention (cf. United Nations document E/C.2/373) to overcome the main defect of the Geneva Convention, namely, the enforcement of only those awards that were strictly in accordance with the rules of procedure laid down in the law of the country where the arbitration occurred, hence only national awards. The ICC believes there can be no progress without full recognition of the conception of international awards (i.e. independent of national laws), and, in fact, the development of international trade depends upon this concept.

The ICC proposal amends the Geneva Convention on only two important issues: (1) by stating that awards to which the future convention applies would relate to commercial disputes between persons subject to the jurisdiction of different States, or to disputes involving legal relationships on the territories of different States; and (2) since the finality of the awards rendered is essential to arbitration and in most cases resort to means of recourse is merely for delaying purposes, an international convention should not encourage such tactics by over-emphasizing the means available for opposing enforcement. Therefore, it did not seem advisable to retain the last paragraph of article 2 and all of article 3 of the Geneva Convention.

BIBLIOGRAPHY

- BALLADORE-PALLIERI, Giorgio, "L'Arbitrage privé dans les Rapports internationaux"
In: RECUEIL DES COURS (Paris)
Tome 51, 1935. pp. 291-400
- BERNARD, Alfred, L'Arbitrage volontaire en Droit privé
Bruxelles, Etablissements Emile Bruylant, 1937. 616 p.
- BRACHET, Paul, "De l'Exécution Internationale des Sentences arbitrales"
In: COLLECTION D'ETUDES THEORIQUES ET PRATIQUES DE DROIT
ETRANGER, DE DROIT COMPARE ET DE DROIT INTERNATIONAL
(Paris) Tome X, 1928. pp. 1-233
- CLAXTON, Brooke, "Commercial Arbitration and the Law"
In: CANADIAN BAR REVIEW (Montreal)
Vol. 21, 1943. pp. 171-190
- COHN, Ernst J., "The Unification of the Law of Commercial Arbitration"
In: TRANSACTIONS OF THE GROTIUS SOCIETY (London)
Vol. 24, 1938. pp. 1-40
- COHN, Ernst J., "Foreign Awards and Exchange Restrictions under German Law"
In: THE JOURNAL OF COMPARATIVE LEGISLATION AND INTERNATIONAL
LAW (London) Vol. 21, 1939. pp. 75-82
- DAVID, René, "Rapport sur L'Arbitrage conventionnel en Droit privé"
In: INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT
PRIVE (Rome) U.D.P. Etudes III; S.D.N., 1932;
C.D. 1932. pp. 5-289
- DOMKE, Martin, "Arbitral Clauses and Awards: Recent Developments in
French Law"
In: TULANE LAW REVIEW (New Orleans, La., U.S.A.)
Vol. 17, 1943. pp. 447-455
- DOMKE, Martin, "The Enforcement of British Arbitration Awards in the U.S.A."
In: THE JOURNAL OF COMPARATIVE LEGISLATION AND INTERNATIONAL
LAW (London) Vol. 27, 1945. p. 109
- DOMKE, Martin, "On the Enforcement Abroad of American Arbitration Awards"
In: LAW AND CONTEMPORARY PROBLEMS (Durham, N.C., U.S.A.)
Vol. 17, 1952. pp. 545-566
- EDLER, Rudolf, "Zur Vollstreckung ausländischer Schiedssprüche nach dem
Genfer Abkommen in England"
In: ZEITSCHRIFT FÜR AUSLÄNDISCHES UND INTERNATIONALES
PRIVATRECHT (Berlin) Band 5, 1931. pp. 361-371

BIBLIOGRAPHY (cont'd)

- FARHI, Alberto y Alfredo, La Clausula Compromisoria
Buenos Aires, Valerio Abeledo, 1945. 102 p.
- GULDENER, Max, Das Internationale und Interkantonale Zivil-
Prozessrecht der Schweiz
Zurich, Schulthess and Co., 1951. 208 p.
- INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE, "Avant-projet d'une
Loi uniforme sur l'arbitrage dans les Rapports
internationaux en Droit privé et Rapport explicatif",
U.D.P. (Rome)
Project III, 1940. pp. 11-80
- INTERNATIONAL CHAMBER OF COMMERCE, Rules of Conciliation and Arbitration
CHAMBRE DE COMMERCE INTERNATIONALE, Règlement de Conciliation et d'Arbitrage
Paris, 1947. 19 p.
- INTERNATIONAL CHAMBER OF COMMERCE, Practical Hints on International Commercial
Arbitration
CHAMBRE DE COMMERCE INTERNATIONALE, Conseils pratiques pour l'Arbitrage
commercial international
Paris, 1948. 7 p.
- INTERNATIONAL CHAMBER OF COMMERCE, ICC Arbitration and National Law
CHAMBRE DE COMMERCE INTERNATIONALE, Les Arbitrages de la CCI et la loi nationale
Paris, 1949. 12 p.
- INTERNATIONAL CHAMBER OF COMMERCE, Commercial Arbitration and the Law throughout
the World
CHAMBRE DE COMMERCE INTERNATIONALE, L'Arbitrage commercial et la loi dans les
différents pays
Basel, Verlag für Recht und Gesellschaft AG, 1949.
(looseleaf)
- INTERNATIONAL CHAMBER OF COMMERCE, International Commercial Arbitration and
Freedom of Contract
CHAMBRE DE COMMERCE INTERNATIONALE, Arbitrage commercial international et liberté
contractuelle
Paris, 1951. 16 p.
- INTERNATIONAL CHAMBER OF COMMERCE, Enforcement of International Arbitral Awards
CHAMBRE DE COMMERCE INTERNATIONALE, L'exécution des sentences arbitrales
internationales
Paris, 1953. 14 p.

BIBLIOGRAPHY (cont'd)

- INTERNATIONAL LAW ASSOCIATION, Report of the 39th Conference (Paris, 1936)
London, 1936. pp. 92-110
- INTERNATIONAL YEARBOOK ON CIVIL AND COMMERCIAL ARBITRATION, Vol. 1, Oxford
University Press, New York, 1928. 418 p.
- JOHNSON, Walter Seely, The Clause Compromissoire: Its Validity in Quebec
Montreal, 1945. 166 p.
- LANDAU, B.A., "Arbitration in Connection with Contracts with Foreign Firms"
In: ECONOMIC SURVEY OF THE USSR CHAMBER OF COMMERCE
(Moscow)
Vol. 8, No. 6, June 1936. pp. 11-12
- LANDRAU Marguerite, L'Arbitrage dans le Droit anglais et francais comparés
Paris, Rousseau et Cie, 1932. 301 p.
- LORENZEN, Ernest G., "Commercial Arbitration - Enforcement of Foreign Awards"
In: YALE LAW JOURNAL (New Haven, Conn., U.S.A.)
Vol. 45, 1935. pp. 39-68
- MACASSEY, Sir Lynden, "International Commercial Arbitration: Its Origin,
Development and Importance"
In: TRANSACTIONS OF THE GROTIUS SOCIETY (London)
Vol. 24, 1938. pp. 179-202
- MEDINA, Alvaro Herran, Del Arbitraje Comercial Internacional
Bogota, Escuelas Graficas Salesianas, 1944. 240 p.
- NUSSBAUM, Arthur, "Treaties on Commercial Arbitration - A test of International
Private Law Legislation"
In: HARVARD LAW REVIEW (Cambridge, Mass., U.S.A.)
Vol. 56, 1942. pp. 219-244
- NUSSBAUM, Arthur, Internationales Jahrbuch für Schiedsgerichtswesen in Zivil-und
Handelssachen
Berlin, Carl Heymanns Verlag, Band I (1926. 375 p.);
Band II (1928, 406 p.); Band III (1931. 450 p.);
Band IV (1934. 180 p.)
- RAMZAITSEV, D.F., Vneshnetorgovy Arbitrazh v. S.S.S.R.
Moscow, 1952. 142 p.

BIBLIOGRAPHY (cont'd)

- RASHBA, Evsey S., "Settlement of Disputes in Commercial Dealings with the Soviet Union"
In: COLUMBIA LAW REVIEW (New York)
Vol. 45, 1945. pp. 530-556
- RIEZLER, Erwin, Internationales Zivilprozessrecht und prozessuales Fremdenrecht
Berlin, de Gruyter, 1949. 710 p.
- ROSENTHAL, Morris S., "Arbitration in the Settlement of International Trade Disputes"
In: LAW AND CONTEMPORARY PROBLEMS (Durham, N.C., U.S.A.)
Vol. XI, 1946. pp. 808-834
- ROSENTHAL, Morris S., "The Promotion of International Commercial Arbitration"
In: THE ARBITRATION JOURNAL (New York)
Vol. 6 (New Series), 1951. pp. 223-232
(Note: Circulated to participants only as United Nations document TRADE/66 at the ECAFE Conference on Trade Promotion, Singapore, 1951)
- ROSENTHAL, Morris S., "Voluntary International Arbitration Tribunals"
In: THE ARBITRATION JOURNAL (New York)
Vol. 6 (New Series), 1951. pp. 21-26
(Note: Circulated to participants only as United Nations document TRADE/9 at the ECAFE Conference on Trade Promotion, Singapore, 1951)
- RUSSELL, Francis, On the Law of Arbitration (15th Edition by T.A. Blanco White)
London, 1952. 412 p.
- SCHONKE, Adolf, Die Schiedsgerichtsbarkeit in Zivil-und-Handelssachen in Europa
Berlin, Carl Heymanns Verlag, Band I (1944, 507 p.);
Band II (1948. 312 p.)
- UNITED NATIONS, Economic Commission for Asia and the Far East, Committee on Industry and Trade
- NATIONS UNIES, Commission économique pour l'Asie et l'Extrême-Orient, Comité de l'Industrie et du Commerce,
"Report of the ECAFE Conference on Trade Promotion",
9-18 October 1951, held at Singapore (document E/CN.11/I and T/59, 1 November 1951, pp. 52-54)
"Rapport de la Conférence de la CEAEEO sur le Développement commercial", tenue à Singapour du 9 au 18 octobre 1951 (document E/CN.11/I and T/59, 1 Nov. 1951, pp. 60-62).

BIBLIOGRAPHY (cont'd)

- VINGRADOV, P.P., "Fifth Anniversary of the Maritime Arbitration Commission"
In: ECONOMIC SURVEY OF THE USSR CHAMBER OF COMMERCE
(Moscow)
Vol. 8, No. 6, June 1936. pp. 8-11
- VOLKMAR, Dr., "Das Genfer Abkommen über die Vollstreckung ausländischer
Schiedssprüche vom 26 September 1947"
In: INTERNATIONALES JAHRBUCH FÜR SCHIEDSGERICHTSWESSEN
(Berlin)
Band II (1928). Heymanns Verlag, pp. 125-144
- VULLIEMIN, Robert, De l'Arbitrage commercial particulièrement en Matière
internationale, Paris. A. Rousseau, 1931. 247 p.
- WORTLEY, Ben Atkinson, "Proposed Preliminary Draft Uniform Law on Arbitration"
In: CANADIAN BAR REVIEW (Montreal)
Vol. 14, 1936. pp. 326-341

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS

Geneva, 26 September 1927

Article 1

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on 24 September 1923, shall be recognized as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary:

- (a) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
- (b) That the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
- (c) That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- (d) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition, appel or pourvoi en cassation (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
- (e) That the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2

Even if the conditions laid down in article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:

- (a) That the award has been annulled in the country in which it was made;
- (b) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it think fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in article 1 (a) and (c), and article 2 (b) and (c), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Article 4

The party relying upon an award or claiming its enforcement must supply, in particular:

- (1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;
- (2) Documentary or other evidence to prove that the award has become final, in the sense defined in article 1 (d), in the country in which it was made;
- (3) When necessary, documentary or other evidence to prove that the conditions laid down in article 1, paragraph 1 and paragraph 2 (a) and (c), have been fulfilled:

A translation of the award and of the other documents mentioned in this article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5

The provisions of the above articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6

The present Convention applies only to arbitral awards made after the coming-into-force of the Protocol on Arbitration Clauses, opened at Geneva on 24 September 1923.

Article 7

The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, ipso facto, the denunciation of the present Convention.

Article 10

The present Convention does not apply to the Colonies, Protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on 24 September 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

Article 11

A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member, of the League of Nations and to every non-Member State which signs the same.

In faith whereof of the above-named Plenipotentiaries have signed the present Convention.

DONE at Geneva, on the twenty-sixth day of September one thousand nine hundred and twenty-seven, in a single copy, of which the English and French texts are both authentic, and which will be kept in the archives of the League of Nations.

IN FORCE since 25 July 1929 (article 8)

1. RATIFICATIONS: 24

AUSTRIA (18 July 1930)

BELGIUM (27 April 1929)

Reserves the right to limit the obligation mentioned in article 1 to contracts which are considered commercial under its national law.

Belgian Congo, Territory of Ruanda-Urundi (5 June 1930 a)

GREAT BRITAIN AND NORTHERN IRELAND (2 July 1930)

Newfoundland (7 January 1931 a)

Bahamas, British Guiana, British Honduras

Falkland Islands

Gibraltar, Gold Coast / (a) Colony, (b) Ashanti, (c) Northern Territories,
(d) Togoland under British Mandate /

Jamaica (including Turks and Caicos Islands and Cayman Islands)

Kenya

Palestine (excluding Trans-Jordan)

Tanganyika Territory

Uganda Protectorate

Windward Islands (Grenada, St. Lucia, St. Vincent)

Zanzibar

Mauritius (13 July 1931 a)

Northern Rhodesia (13 July 1931 a)

Leeward Islands (Antigua, Dominica, Montserrat, St. Christopher-Nevis,
Virgin Islands) (9 March 1932 a)

Malta (11 October 1934 a)

Burma (excluding the Karenni States under His Majesty's suzerainty)
(19 October 1938 a)

His Majesty reserves the right to limit the obligations mentioned in article 1 to contracts which are considered commercial under the law of Burma.

NEW ZEALAND (Western Samoa included) (9 April 1929)

INDIA (23 October 1937)

Is not binding as regards the enforcement of the provisions of this Convention upon the territories in India of any Prince or Chief under the suzerainty of His Majesty.

India reserves the right to limit the obligation mentioned in article 1 to contracts which are considered as commercial under its national law.

CZECHOSLOVAKIA (18 September 1931)

The Czechoslovak Republic does not intend to invalidate in any way the bilateral treaties concluded by it with various States, which regulate the questions referred to in the present Convention by provisions going beyond the provisions of the Convention.

DENMARK (25 April 1929)

Under Danish law, arbitral awards made by an Arbitral Tribunal do not immediately become operative; it is necessary in each case, in order to make an award operative, to apply to the ordinary Courts of Law. In the course of the proceedings, however, the arbitral award will generally be accepted by such Courts without further examination as a basis for the final judgment in the affair.

FREE CITY OF DANZIG (through the intermediary of Poland) (26 April 1938)

ESTONIA (16 May 1929)

Reserves the right to limit the obligation mentioned in article 1 to contracts which are considered commercial under its national law.

FINLAND (30 July 1931)

FRANCE (13 May 1931)

Reserves the right to limit the obligation mentioned in article 1 to contracts which are considered commercial under its national law.

GERMANY (1 September 1930)

GREECE (15 January 1932)

The Hellenic Government reserves the right to limit the obligation mentioned in article 1 to contracts which are considered as commercial under its national law.

ITALY (12 November 1930)

LUXEMBOURG (15 September 1930)

Reserves the right to limit the obligation mentioned in article 1 to contracts which are considered as commercial under its national law.

THE NETHERLANDS (for the Kingdom in Europe) (12 August 1931)

Netherlands Indies, Surinam and Curaçao (28 January 1933 a)

PORTUGAL (10 December 1930)

(1) The Portuguese Government reserves the right to limit the obligation mentioned in article 1 to contracts which are considered commercial under its national law.

(2) The Portuguese Government declares, according to the terms of article 10, that the present Convention does not apply to its Colonies.

ROMANIA (22 June 1931)

Reserves the right to limit the obligation mentioned in article 1 to contracts which are considered commercial under its national law.

SPAIN (15 January 1930)

SWEDEN (8 August 1929)

SWITZERLAND (25 September 1930)

THAILAND (7 July 1931)

ISRAEL (27 February 1952)

JAPAN (11 July 1952)

2. SIGNATURES NOT YET PERFECTED BY RATIFICATION: 3

BOLIVIA

NICARAGUA

PERU

3. OPEN TO SIGNATURE BY:

ALBANIA

LITHUANIA

URUGUAY

BRAZIL

MONACO

And all the other States which

CHILE

NORWAY

may sign the Protocol of

IRAQ

PANAMA

24 September 1923.

JAPAN

PARAGUAY

LATVIA

POLAND

LIECHTENSTEIN

SALVADOR