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UNITED NATIONS CONFERENCE ON
INTERNATIONAL COMMERCIAL ARBITRATION

CONSIDERATION OF THE DRAFT CONVENTION ON THE RECOGNITION AND
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (ITEM 4 OF THE AGENDA)

Comparison of drafts relating to Articles III, IV and V

Note: Additional language is underlined; redrafts with substantially similar content are underscored by broken lines. Language contained in Netherlands redraft (E/CONF.26/L.17) but omitted in other drafts is indicated by square brackets and asterisks, e.g. ...have [* validly *] agreed ...

Article III, 1st paragraph

E/CONF.26/L.17 (Netherlands redraft)

"To obtain the recognition and enforcement mentioned in the preceding article, it will be necessary that the parties named in the award have validly agreed in writing, either by a special agreement or by an arbitral clause in a contract, to settle their differences by means of arbitration."

E/2704 (Committee draft)

"To obtain the recognition and enforcement mentioned in the preceding article, it will be necessary:

(a) That the parties named in the award have [* validly *] agreed in writing, either by a special agreement or by an arbitral clause in a contract, to settle their differences by means of arbitration;"

E/CONF.26/L.8 (Swedish amendment)

"To obtain the recognition and enforcement mentioned in the preceding article, it is necessary:

(a) That the award shall have been made pursuant to a special arbitral agreement or to an arbitral clause which is valid under the law applicable to it and which has been drawn up in writing by the parties named in the award;"

E/CONF.26/L.22 (United Kingdom amendment)

"To obtain the recognition and enforcement mentioned in the preceding article, it is necessary:

(a) That the award shall have been made pursuant to a valid [* special *] agreement to arbitrate in a specified or determinable territory arrived at after a dispute has arisen in relation to such agreement, or to an arbitral clause [* in a contract *] which is valid under the law applicable to it, and which has been drawn up in writing by the parties named in the award specifying the territory or making clear provision for the choice of territory in which the arbitration is to take place;

E/CONF.26/L.31 (Israeli amendment)

Proposes the deletion of this provision.

E/CONF.26/L.34 (amendment by Federal Republic of Germany)

Proposes the deletion of this provision.

Article III, second paragraph

E/CONF.26/L.17 (Netherlands redraft)

"Agreement in writing shall be held to include exchange of letters or telegrams."

E/2704 (Committee draft)

Does not contain such a provision.

Note: Amendments relating to the draft of Article III (b) as contained in E/2704 are referred to under Article IV (f) below.

Article IV, Preamble

E/CONF.26/L.17 (Netherlands redraft)

"Recognition and enforcement of the award may only be refused if" ...

E/2704 (Committee draft)

"Without prejudice to the provisions of article III, recognition and enforcement of the award may only be refused if the competent authority in the country where recognition or enforcement is sought is satisfied:"

/...

E/CONF.26/L.16 (Pakistan amendment)

"Without prejudice to the provisions of article III, recognition and enforcement of the award may [* only *] be refused if the competent authority in the country where recognition or enforcement is sought is satisfied:"

E/CONF.26/L.34 (German amendment)

Note: This amendment proposed to divide the matters dealt with in article IV of the Netherlands redraft (subject to modifications) in two articles. Article IV of the German amendment relates to the subjects dealt with in part in paragraphs (a), (d) (legal incapacity) and (e) of the Netherlands redraft (paragraphs (c), (d) and (h) of the draft article IV contained in E/2704) and has the following preamble:

"Recognition and enforcement of the award [* may only *] shall be refused if the competent authority in the country where the award is relied upon is satisfied:"

Article V of the German amendment relates to the subjects dealt with in part in paragraphs (c), (d) (lack of notice) and (f) (annulment) of the Netherlands draft (paragraphs (b), (e) and (g) of the draft of article IV contained in E/2704) and has the following preamble:

"Recognition and enforcement of the award [* may only *] shall be refused at the request of the party against whom it is invoked if that party furnishes proof:"

Article IV, sub-paragraph (a)

E/CONF.26/L.17 (Netherlands redraft)

"(a) the parties have not validly agreed in writing to submit to arbitration the matters dealt with in the award.

If part of the award deals with matters beyond the scope of the submission to arbitrate, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced, provided this part can be separated from the part relating to the matters not submitted."

E/2704 (Committee draft)

[Article IV (d)]

"That the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or that it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;"

E/CONF.26/L.31 (Israeli amendment)

"the party against whom the award is sought to be enforced has not [* in writing *] validly submitted to the arbitration in the course or as a result of which the award was made, or the subject matter of the award was not within the terms of the submission to arbitration; for the purposes of this sub-clause, a submission to arbitration shall be held valid if valid either under the law of the State where it was made or under the law of the State where the award is sought to be enforced."

E/CONF.26/L.32 (French amendment)

"The parties have not validly agreed [* in writing *], in accordance the applicable law, to submit to arbitration the matters dealt with in the award. If part of the award deals with matters beyond the scope of the submission to arbitrate, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced, provided this part can be separated from the part relating to the matters not submitted."

E/CONF.26/L.34 (German amendment)

[Article IV (b)]

"That the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or that it contains decisions on matters beyond the scope of the submission to arbitration;"

Article IV, sub-paragraph (b)

E/CONF.26/L.17 (Netherlands redraft)

"(b) the subject matter of the award is not capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon,"

E/2704 (Committee draft)

"(a) that the subject matter of the award is not capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;"

E/CONF.26/L.32 (French amendment)

Proposes the deletion of this provision

E/CONF.26/L.34 (German amendment)

Does not contain such a provision in articles IV or V, but refers to the substance of this provision in article V quater (see below).

Article IV, sub-paragraph (c)

E/CONF.26/L.17 (Netherlands redraft)

"(c) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the written agreement of the parties or, failing such agreement with the applicable law,"

E/2704 (Committee draft)

"(g) that either 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 country where the arbitration took place, or, failing such agreement between the parties, in this respect, was not in accordance with the /* applicable */ law of the country where the arbitration took place;"

E/CONF.26/L.15/Rev.1 (Japanese amendment)

"That either the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement between the parties in this respect, was not in accordance with the /* applicable */ law of the country where the arbitration took place;"

E/CONF.26/L.32 (French amendment)

"(c) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement between the parties in this respect with the /* applicable */ law of the country where the arbitration took place."

E/CONF.26/L.34 (German amendment)

"That the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement between the parties in this respect, was not in accordance with the applicable law."

Article IV, sub-paragraph (d)

E/CONF.26/L.17 (Netherlands amendment)

"(d) the party against whom the award is invoked was not given notice of the appointment of the arbitrator or of the arbitration proceedings in sufficient time to enable him to present his case or, being under legal incapacity, was not properly represented,"

E/2704 (Committee draft)

"(b) that the party against whom the award is invoked was not given notice of the appointment of the arbitrator or of the arbitration proceedings in due form or in sufficient time to enable him to present his case; or

"(c) that the party against whom the award is invoked being under a legal incapacity, was not properly represented;"

E/CONF.26/L.34 (German amendment)

[Article IV (a)]

"That the party against whom the award is invoked being under a legal incapacity, was not properly represented;"

Note: In such instances, recognition and enforcement of the award shall be refused if the competent authority in the country where the award is relied upon is satisfied of the circumstance.

[Article V (a)]

"That he was not given notice of the appointment of the arbitrator or of the arbitration proceedings in due form or in sufficient time to enable him to present his case;"

Note: In such instances, recognition and enforcement of the award shall be refused at the request of the party against whom it is invoked if that party furnishes proof of this circumstance.

Article IV, sub-paragraph (e)

E/CONF.26/L.17 (Netherlands redraft)

"(e) The award would have the effect of compelling the parties to act in a manner contrary to public policy in the country of enforcement".

E/2704 (Committee draft)

"(h) That the recognition or enforcement of the award, or the subject matter thereof, would /*have the effect of compelling the parties to act in a manner contrary to*/ be clearly incompatible with public policy or with fundamental principles of law (ordre public) of the country where the award is sought to be relied upon."

E/CONF.26/L.15/Rev.1 (Japanese amendment)

"That the recognition or enforcement of the award would /*have the effect of compelling the parties to act in a manner contrary to*/ be clearly incompatible with public policy or the fundamental principles of the law (ordre public) of the country in which the award is sought to be relied upon."

E/CONF.26/L.31 (Israeli amendment)

"The enforcement of or compliance with the award would involve the violation of any law of the State where enforcement is sought or be /*have the effect of compelling the parties to act in a manner*/ contrary to its public policy."

E/CONF.26/L.34 (German amendment)

"(c) That the recognition or enforcement of the award would /*have the effect of compelling the parties to act in a manner contrary to*/ be incompatible with public policy of the State in which the award is sought to be relied upon."

E/CONF.26/L.35 (Yugoslav amendment)

"That the recognition or enforcement of the award, or the subject matter thereof, would /*have the effect of compelling the parties to act in a manner contrary to*/ be clearly incompatible with public policy of the country where the award is sought to be relied upon."

Article IV, sub-paragraph (f)

E/CONF.26/L.17 (Netherlands redraft)

"(f) The award has been annulled in the country in which it was made or has not become final in the sense that it is still open to ordinary means of recourse".

E/2704 (Committee draft)

[Article IV (e) - ground for refusal of enforcement]

"That the award the recognition or enforcement of which is sought, has been annulled in the country in which it was made".

[Article III (b) - positive condition for granting enforcement]

"That, in the country where the award was made, the award has become final [* in the sense that it is (not) open to ordinary means of recourse *] and operative and, in particular, that its enforcement has not been suspended."

E/CONF.26/7 (Polish amendment) and E/CONF.26/L.25 (Austrian amendment)

[Article IV (e) - ground for refusal]

"That the award the recognition and enforcement of which is sought, has been annulled in the country in which it was made;

[Article III (b) - positive condition]

"That, in the country where the award was made, the award has become final [* in the sense that it is (not) open to ordinary means of recourse *] and operative."

E/CONF.26/L.8 (Swedish amendment)

[Article IV (e) - ground for refusal]

"That the award has been annulled in the country in which it was made;"

[Article III (b) - positive condition]

Same as E/2704.

E/CONF.26/L.16 (Pakistani amendment)

[Article IV (e) - ground for refusal]

Same as E/2704.

[Article III (b) - positive condition]

"That, in the country where the award was made, the award has become complete, final [* in the sense that it is (not) open to ordinary means of recourse *], and operative and, in particular, that its enforcement has not been suspended."

E/CONF.26/L.15/Rev.1 (Japanese amendment)

"(e) That either the period for appeal or other appellate remedy prescribed for by law of the country where the award was made, or a period of two months after the receipt of the award by the party against whom the award is invoked, whichever expires first, has not elapsed, or that legal proceedings for appellate measures under the law of the country where the award was made have been filed against the award prior to the expiration of the aforesaid periods, or that the award has been annulled or its enforcement has been, on grounds other than procedural irregularities, suspended in the country where the award was made."

E/CONF.26/L.22 and L.24 (United Kingdom amendments)

[Article III (b) - positive condition]

"That in the territory where the award was made [* (it) has (not) been annulled *] its enforcement has not been suspended"

[New paragraph to Article IV - positive condition]

"An award shall be deemed recognizable and enforceable for the purpose of Article III if at the expiration of sixty days after it has been given or, in the case of appeal, after it has been duly notified, no further steps have been taken to upset or appeal against the award."

E/CONF.26/L.30 (Swiss amendment)

"The award has been annulled or [* has not become final in the sense that it is still open to ordinary means of recourse *] its execution has not been suspended in the country in which it was made."

E/CONF.26/L.34 (German amendment)

[Article V (b) - grounds for refusal to be invoked and proven by defendant]

"That the award the recognition and enforcement of which is sought, has been annulled in [* the country in which it was made *] accordance with the applicable law [* or has not become final in the sense that it is still open to ordinary means of recourse *]"

Note: Under Article V bis of the German amendment, if the party against whom the award is invoked furnishes proof that he has applied for ordinary means of recourse against the award (or for annulment of the award in accordance with the applicable law), the competent authority of the State in which an award is relied upon shall have the power to postpone or stay its decision on a claim for recognition and enforcement of the award.

E/CONF.26/L.35 (Yugoslav amendment)

"That the award is not final [* in the sense that it is still open to ordinary means of recourse *] or has not become operative, either because it has been annulled or because its enforcement has been suspended in the country in which it was made."

Proposed additions to Article IV

E/CONF.26/L.8 and Corr.1 (Swedish amendment)

"The circumstances mentioned in article IV, paragraphs (b), (c), (e) and (g) [text contained in E/2704, corresponding to paragraphs (d), (f) and (c) of the Netherlands redraft in E/CONF.26/L.17] shall not bar the recognition or enforcement of an award unless the party against whom the award is made refers to them or makes an objection based on them."

E/CONF.26/L.33 (Italian amendment)

[additional ground for refusal]

"The arbitral award is incompatible with a judgement rendered between the same parties and on the same subject in the territory of the State where the arbitral award is sought to be relied upon."

Article V, paragraph 1

E/CONF.26/L.17 (Netherlands redraft)

"1. The party claiming the recognition of an award or its enforcement must supply:

(a) the original award or a duly authenticated copy thereof;

(b) the original written agreement to arbitrate or a duly authenticated copy thereof;

A duly certified translation of these documents into the official language of the country where the award is sought to be relied upon may be required."

E/2704 (Committee draft)

The party claiming the recognition of an award or its enforcement must supply:

(a) the original award [*/ and written agreement to arbitrate */] or a duly authenticated copy thereof;

(b) Documentary or other evidence to prove that the conditions laid down in articles I and III have been fulfilled.

A duly certified translation of the award and of the other documents mentioned in this article into an official language of the country where the award is sought to be relied upon may be required.

E/CONF.26/L.31 (Israeli amendment)

"The party claiming the recognition of an award or its enforcement must supply the original award [* and written agreement to arbitrate *] or a duly authenticated copy thereof. A duly certified translation of these documents into the official language of the country where the award is sought to be relied upon may be required."

E/CONF.26/L.34 (German amendment)

[Article V ter]

The party claiming the recognition or enforcement of an award must supply:

(a) The original award [* and written agreement to arbitrate *] or a duly authenticated copy thereof;

(b) Documentary or other evidence to prove that the award is based on an arbitral agreement.

If the claim for recognition or enforcement is not made in the official language of the State in which the award is relied upon, the party claiming recognition or enforcement of the award shall produce [* may be required *] a translation in the language of the claim and of the other evidence referred to. The translation shall be duly certified by a sworn translator of the State whose law is applicable to the award or of the State in which the award is relied upon or by a diplomatic or consular agent of one of the two States.
Article V, paragraph 2.

E/CONF.26/L.17 (Netherlands redraft)

"The party seeking recognition or enforcement of the award shall be deemed to have proved prima facie the existence of the award and of the agreement to arbitrate on which it was based by the supply of the documents mentioned under para. 1."

E/2704 (Committee draft)

Does not contain such a provision.

E/CONF.26/L.31 (Israeli amendment)

"The party seeking recognition or enforcement of the award shall have deemed to have proved prima facie the existence of the award /* and of the agreement to arbitrate on which it was based */ by the supply of the documents mentioned under para. 1."

Article V, paragraph 3

E/CONF.26/L.17 (Netherlands redraft)

"The party contesting the recognition or the enforcement of the award shall prove the facts or circumstances which give rise to the application of one or more of the grounds for refusal mentioned in Article IV, unless the competent authority in the country where recognition of enforcement is sought is satisfied, after ex officio investigation, of the presence of such facts or circumstances."

E/2704 (Committee draft)

Does not contain such provision.

E/CONF.26/L.34 (German amendment)

Note: In accordance with the preamble to article V of this amendment, the party against whom the award is invoked has the burden to furnish the proof of the existence of the grounds for refusal of enforcement referred to in paragraph (b), (e) and (g) of article IV as drafted by the ECOSOC Committee (E/2704). In accordance with Article V bis of the German amendment, the party against whom the award is invoked has also the burden of furnishing the proof that he has applied for ordinary means of recourse against the award and for annulment of the award.

Proposed additions to Article V

E/CONF.26/L.34 (German amendment)

Article V quater

When an award has been declared operative by the competent authority of one of the Contracting States, it shall become subject to enforcement in any of the said States.

Enforcement shall, however, be refused if the award is incompatible with public policy in the State in which enforcement is relied upon or if the award has been made in a matter which under the law of the State is not subject to arbitration.

Article V quinter

The foregoing provisions shall apply mutatis mutandis to settlements arrived at before an arbitral authority for the termination of pending proceedings.

Table of Proposals

E/CONF.26/L.17 (Netherlands)	E/2704 (ECCSOC Cttee)	E/CONF.26/L.34 (Fed.Republic of Germany)	Proposed deletion	Substantially differing proposals	Drafting changes
Article III, para. 1	Articles III, preamble and para. (a)	Omitted	E/CONF.26/L.31 (Israel) E/CONF.26/L.34 (Fed.Rep.of Germany)	E/CONF.26/L.8 (Sweden) E/CONF.26/L.22 (United Kingdom)	
Article III, para. 2	Omitted	Omitted			
Article IV, preamble	Article IV, preamble	Article IV, preamble Article V, preamble Article V bis, preamble		E/2704 E/CONF.26/L.16 (Pakistan) E/CONF.26/L.34 (Fed.Rep.of Germany)	
Article IV (a)	Article IV (d)	Article IV (b)		E/CONF.26/L.31 (Israel) E/CONF.26/L.32 (France)	E/2704 (ECOSOC Committee) E/CONF.26/L.34 (Fed.Rep.of Germany)
Article IV (b)	Article IV (a)	[Article V, quarter]	E/CONF.26/L.32 (France) E/CONF.26/L.34 (Fed.Rep.of Germany)	E/CONF.26/L.34 (Fed.Rep.of Germany)	

E/CONF.26/L.17 (Netherlands)	E/2704 (ECOSOC Cttee)	E/CONF.26/L.34 (Fed. Republic of Germany)	Proposed deletion	Substantially differing proposals	Drafting changes
Article IV (c)	Article IV (g)	Article V (c)		E/2704 (ECOSOC Committee) E/CONF.26/L.15/ Rev.1 (Japan) 1/ E/CONF.26/L.32 (France) 1/	
Article IV (d)	Article IV (b) and (c)	Articles IV (a) and V (a)		E/2704 (ECOSOC Committee) E/CONF.26/L.34 (Fed. Rep. of Germany)	
Article IV (e)	Article IV (b)	Article IV (c) [also Article V quarter]		E/2704 (ECOSOC Committee) E/CONF.26/L.15 (Japan) E/CONF.26/L.31 (Israel) E/CONF.26/L.34 (Fed. Rep. of Germany) E/CONF.26/L.35 (Yugoslavia)	

Footnotes 1/, 2/ refer to identical proposals.

E/CONF.26/L.17 (Netherlands)	E/2704 (ECOSOC Cttee)	E/CONF.26/L.34 (Fed. Republic of Germany)	Proposed deletion	Substantially differing proposals	Drafting changes
Article IV (f)	Article III (b) and Article IV (e)	Article V (b)		E/2704 (ECOSOC Committee) E/CONF.26/L.7 2/ (Poland) and E/CONF.26/L.75 (Austria) E/CONF.26/L.8 (Sweden) E/CONF.26/L.16 (Pakistan) E/CONF.26/L.15/ Rev.1 (Japan) E/CONF.26/L.22 and L.24 (United Kingdom) E/CONF.26/L.30 (Switzerland) E/CONF.26/L.34 (Fed. Rep. of Germany)	
Article V, para. 1	Article V ter	Article V		E/2704 (ECOSOC Committee) E/CONF.26/L.31 (Israel)	

Footnotes 1/, 2/ refer to identical proposals.

/...

E/CONF.26/L.17 (Netherlands)	E/2704 (ECOSOC Cttee)	E/CONF.26/L.34 (Fed. Republic of Germany)	Proposed deletion	Substantially differing proposals	Drafting changes
Article V, para. 2 Article V, para. 3	Omitted Omitted	Omitted Article IV, preamble and Article V preamble		E/CONF.26/L.31 (Israel)	
Omitted	Article IV (f)	Omitted	E/CONF.26/L.15/ Rev.1 (Japan)		
Omitted	Omitted	Article V bis Article V quarter Article V quinter			
Omitted	Omitted	Omitted		E/CONF.26/L.6 and Corr.1 (Sweden) E/CONF.26/L.38 (Italy)	