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Form No. 27
(7-61)

INTERNATIONAL DEVELOPMENT ASSOCIATION	INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT	INTERNATIONAL FINANCE CORPORATION

OUTGOING WIRE

TO: SIMOND
INTBAFRAD
PARIS

DATE: JANUARY 27, 1964

CLASS OF SERVICE: ~~LT~~ TEX

WU

COUNTRY: FRANCE

TEXT:
Cable No.:

65 YURCAB JANUARY 26 BROCHES AGREES WITH CHANGES

SELLA

NOT TO BE TRANSMITTED

MESSAGE AUTHORIZED BY:

NAME Piero Sella

DEPT. Legal

SIGNATURE Piero Sella
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

PSella/lj

ORIGINAL (File Copy)

(IMPORTANT: See Secretaries Guide for preparing form)

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Form No. 27
(7-61)

INTERNATIONAL DEVELOPMENT ASSOCIATION | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

OUTGOING WIRE

TO: BROCHES
C/O GOVERNMENT HOUSE
NASSAU

DATE: JANUARY 26, 1965

CLASS OF SERVICE: FULL RATE

COUNTRY: BAHAMAS

TEXT:
Cable No.:

RECEIVED FOLLOWING FROM SIMOND QUOTE PATRONAT REQUESTED FIRST CONFERENCE FEBRUARY 3 TO BE HELD AT 10.00 AM INSTEAD OF 11.00 AM SECOND LUNCHEON TO BE ON FEBRUARY 4 INSTEAD OF FEBRUARY 3.STOP WE ACCEPTED PRESUMING YOU AGREE ON THESE CHANGES PLEASE CONFIRM UNQUOTE REGARDS

SELLA

NOT TO BE TRANSMITTED

MESSAGE AUTHORIZED BY:

NAME Piero Sella

DEPT. Legal

SIGNATURE Piero Sella
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

Sella/lj

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① Mr. Rosenstein
② Miss Georgion

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SecM65-52

FROM: The Secretary

February 26, 1965

NOTICE OF MEETING

The Committee of the Whole on Settlement of Investment Disputes will resume its discussion at 3:00 p.m., Thursday, March 4, 1965.

Distribution:

Members of the Committee of the Whole
President
Vice Presidents
Department Heads

Mr. A. Bogoev

February 25, 1965

Piero Sella

Settlement of Investment Disputes - Discussion on Substitution Provision

The question of substitution of a State for its national in proceedings before the Centre was discussed by the Legal Committee and a summary of those discussions appears in Document Z-15 (circulated to the Executive Directors under SID/65-1), in the summary proceedings for the meetings of November 27 - morning (SID/LC/SR/1, Page 1 to 7), December 2 - morning (SID/LC/SR/9, Page 4 to 8), December 2 - afternoon (SID/LC/SR/10, Page 1) and December 4 - afternoon (SID/LC/SR/13, Page 3 to 5).

PSella/ar

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SID/65-6

February 25, 1965

*Memorandum of Meeting of the Committee of the Whole on Settlement of Investment Disputes held on February 23, 1965 at 3:30 p. m.

1. There were present:

Chairman

George D. Woods, President

Executive Directors and Alternates acting as Executive Directors

Reignson C. Chen
John M. Garba
S.J. Handfield-Jones (Alternate)
Ali Akbar Khosropur (Alternate)
Pieter Lieftinck
Jean Malaplate (Alternate)
K.S.S. Rajan
Sumanang (Temporary Alternate)
Vilhjalmur Thor
A.J.J.van Vuuren (Alternate)
Otto Donner
J. Gutierrez Cano
R. Hirschtritt (Temporary Alternate)
M. N. Kochman
Luis Machado
Jorge Mejia-Palacio
M. San Miguel
Gengo Suzuki
Andre van Campenhout
S. Wright (Temporary Alternate)

Alternates not acting as Executive Directors

H. Abramowski
Said Mohamed Ali
A. Bogoev
S. O. Coleman
O. Haushofer
Eiji Ozaki

Officers and Staff Participating

A. Broches
M. M. Mendels
Christopher Pinto
Piero Sella
Donald D. Fowler

*This memorandum consists of staff notes of the discussion and is not an approved record.

Distribution:

Members of the Committee of the Whole
President
Vice Presidents
Department Heads

Legal Department

2. Mr. Woods welcomed Mr. Samang who was temporarily replacing Mr. Tazi.

Section 6 - Recognition and Enforcement of the Award.

3. Mr. Broches explained that Article 53 established the principle that the parties were bound to abide by and should comply with the terms of the award. Article 54 set forth the procedure for enforcement of the awards in the courts of the Contracting States, should a party fail to comply with Article 53, and finally Article 55, by way of explanation, noted that the principle of State immunity from execution which was accepted in many countries was not affected by the Convention.

4. Mr. Donner stated that the German authorities had great difficulties with the present text of Article 54. The German Ministry of Justice and other authorities were of the opinion that it would be impossible not to permit the domestic courts which are asked to enforce an arbitral award to check, before enforcement, whether the award was or was not in contradiction with the ordre public of their country. This point had been discussed thoroughly with Mr. Broches but no solution had been found. Mr. Donner wished to submit the following amendment, as an addition to paragraph (3) of Article 54, to indicate the kind of provision that would be acceptable to the German authorities: "recognition and enforcement of an arbitral award may be refused if the competent authority of the State in which recognition and enforcement are sought finds that such recognition or enforcement would be contrary to the ordre public of that State".

5. Mr. Broches said that he had great difficulty with the point raised by the German authorities which had also been discussed at length in the Legal Committee, because he could not think of, and had not been given, any examples of cases in which ordre public or public policy would make it reasonable not to enforce an arbitral award. The whole notion of ordre public is meaningful in fields of law which had nothing to do with investments, such as the law dealing with the status of persons, marriage and divorce, adoption, nationality, the coming of age etc. In those fields it is normal for a State to retain the right to refuse to recognize the law of another country or acts done in another country if they would violate its ordre public. In the case of investments, however, he could not imagine how a decision that a party owed to the other party a certain sum of money could have anything to do with ordre public. The proposed Convention provided remedies for attacking an award but once those remedies had been exhausted there ought to be an end to litigation, the parties should be under an obligation to carry out the award and the courts of the Contracting States should be under an obligation to enforce the award. He called the attention of the Committee to the fact that the Convention would deal with disputes where one of the parties would have the character of a private individual while the other would be a State. A State would normally comply with an award because of the international obligation to do so established by the Convention and enforcement through the courts would not be used. If some notion of ordre public were introduced in the case of enforcement of an award through the courts, however, the same notion might then be held to apply to the State party to the dispute which would claim the right to refuse compliance with the award if it determined that such compliance would be violating its own ordre public.

6. Mr. van Campenhout agreed fully with Mr. Broches and could not think of any case in which the notion of ordre public would apply in the kind of disputes that would come before the Centre. In his view, the best protection any State which was afraid of an award violating its own public policy, would be not to consent to go to arbitration in that case.

7. Mr. Donner in reply to Mr. van Campenhout's last comment, pointed out that normally a government could not forecast before proceedings were started whether the resulting award would or would not be in violation of its public policy.

8. Mr. Mejia-Palacio referring to paragraph (1) of Article 53 asked what was the meaning of the second sentence therein and the reference to federal courts.

9. Mr. Broches explained that that provision had been introduced to establish the standard of recognition to be given to awards in countries such as the United States, which had a dual system of courts. The standard was based on the treatment accorded to judgments of the courts of a constituent State of that country.

10. Mr. Mejia-Palacio said that he would like to know whether an investor in a federal State could bring a claim against the federal government or the government of a constituent state or both.

11. Mr. Broches replied that under Article 25 of the Convention, dealing with the jurisdiction of the Centre, a constituent subdivision of a federal State, for instance, a state of the United States, could enter into an arbitral agreement with a foreign investor with the approval of the federal government. If it did so and lost the case the award could be enforced in any country, including that federal State, as if it were the decision of a court in that State.

12. Mr. Woods, reverting to the point raised by Mr. Donner, inquired whether the question had been discussed in the Legal Committee and whether any vote had been taken among the members of the Legal Committee.

13. Mr. Broches stated that the matter had been discussed in the Legal Committee and that a draft provision, allowing a State which had not been a party to the proceedings and whose national had not been a party to the proceedings to refuse enforcement on the grounds of public policy, had been defeated by a vote of 25 to 9. The broader question of ordre public or public policy as a general ground for not enforcing an award had not come to a vote. He stressed the fact that Article 54 required a Contracting State to recognize and enforce an award in accordance with its laws on the execution of judgments; no State would be required to provide a type of execution which did not exist in respect of judgments of its own courts. Finally, he thought that perhaps the substitution of the words "enforce the pecuniary obligations imposed thereby" for the words "enforce it" in the first sentence of paragraph (1) of Article 54 might help to overcome the difficulties which the German authorities had with the present provision.

14. Mr. Woods asked Mr. Donner whether this suggestion would be helpful.

15. Mr. Donner replied that he would have to refer this proposal to his government.

16. Mr. Woods asked Mr. Donner whether he could obtain the views of his government in time for the meeting of the Committee on Thursday, February 25, on the understanding that the reaction of the German authorities did not imply an approval of the German government of the draft Convention.

17. Mr. Donner undertook to try to obtain his government's views on that basis.

18. Mr. Lieftinck expressed the view that any weakening of the provision on enforcement of awards would greatly reduce the usefulness of the Convention. The purpose of the Convention was to build up a procedure for finally settling disputes. If, after a decision had been reached, any Contracting State could still have the power to veto the enforcement of the award in its territories on the ground of "ordre public" which was not a clearly defined concept, the whole Convention would be undermined. In his view even the limitation of enforcement of awards to the pecuniary obligations established by the awards would weaken the Convention and would be difficult for him to accept.

19. Mr. van Campenhout shared Mr. Lieftinck's view that a clause accepting the notion of ordre public as a bar to enforcement would weaken the Convention.

20. Mr. Wright also thought that a provision along the lines suggested by Mr. Donner would weaken the usefulness of the Convention. The alternative suggestion by Mr. Broches seemed on its face to provide a useful way out of this problem.

21. Mr. Hirschtritt asked whether Mr. Broches' suggested amendment would imply that no awards could be rendered requiring a party to perform or not to perform a particular act.

22. Mr. Broches replied that an award could well order the performance or non-performance of certain acts but all that could be enforced would be the obligation to pay damages if the party did not comply with that order. In the kind of disputes that would come before the Centre payment of damages was all that ultimately the parties would expect in the absence of voluntary compliance.

23. Mr. Lieftinck inquired whether the suggested change meant that an order for restitution or for permitting an industry to be transferred from one location to another could not be enforced.

24. Mr. Broches replied that the cases Mr. Lieftinck had in mind were cases of obligations of the host State to perform certain actions within its own territory. In those cases, the host State was under a direct international obligation to carry out the award and the record of compliance of governments with international decisions was quite good. If, however, the host State did not comply with the award, it would be under an obligation to make good the damage resulting from its non-compliance.

25. Mr. Woods suggested that the Committee defer consideration of Article 54 until the next meeting so that Mr. Donner could obtain his government's views on Mr. Broches' suggestion.

26. Mr. Donner wanted to make it clear that his government had proposed the addition of a clause relating to ordre public - which other people seemed to find unacceptable - because the law on enforcement of judgments in Germany was so strict that the German authorities had no discretion in the enforcement of judgments while in other countries enforcement proceedings would allow the local courts some leeway. Therefore the possibility of resorting to a notion of ordre public was essential in the opinkon of the German authorities. He had used advisedly the French term "ordre public" because it is a well-known legal concept in international law which does not suggest any discretionary action on the part of governments.

Chapter V - Replacement and Disqualification of Conciliators and Arbitrators.

27. Mr. Woods asked for comments on Article 56.

28. Mr. Rajan referred to paragraph (3) of Article 56 and asked why in cases where a conciliator or an arbitrator appointed by a party resigns without the consent of the other conciliators or arbitrators, the party should be deprived in all cases of the opportunity of appointing another member of the commission or tribunal, at least in the first instance.

29. Mr. Broches replied that the purpose of the provision was to prevent the possibility of collusion between the party and the arbitrator appointed by him. If a party could prevail upon an arbitrator to resign in the course of the proceedings without cause he would be able to frustrate or slow down the proceedings. Obviously, if the resignation was for good cause, the other members of the tribunal would consent.

30. Mr. Rajan thought that a party should not lose the right to appoint an arbitrator or conciliator if that person had resigned for some reasons which were not acceptable to the others.

31. Mr. Gutierrez Cano agreed with Mr. Rajan and suggested that, in order to avoid any undue delays, the party be required to replace his arbitrator within a specified time; if he did not do it, then the Chairman would appoint the arbitrator. This right of the party should be reserved at least if the other party was in agreement.

32. Mr. Khosropur pointed out that, if there was a good cause or purpose for the resignation, the tribunal would undoubtedly consent. Therefore he was in favor of retaining the provision as it was.

33. Mr. Machado was also in favor of retaining the existing text. The purpose of this provision was to ensure that proceedings be conducted in good faith.

34. Mr. van Campenhout and Mr. van Vuuren also expressed themselves in favor of retaining the provision as it was.

35. Mr. Khosropur asked whether the reference to Section 2 of Chapter III and Section 2 of Chapter IV in Article 56 would apply also to assignments of conciliators or arbitrators by the Chairman under paragraph (3) of the same article.

36. Mr. Broches replied in the affirmative.

Article 57

37. Mr. Donner said that he had mentioned to Mr. Broches some difficulties which the German authorities had with the text of Article 57. As this point had not been fully discussed in the Legal Committee, he felt justified in raising it now.

38. Mr. Broches explained that the German authorities both in the Legal Committee and in later conversations had expressed the view that a provision on disqualification of conciliators or arbitrators along the lines of the provision contained in the Model Rules of the International Law Commission would be preferable. The Model Rules provide that a party may propose disqualification of an arbitrator but do not state the grounds on which he can be disqualified. In the course of his conversations with the German authorities he had become convinced that their principal concern was whether, under the present text, the lack of independence or the partiality of an arbitrator would be a ground for disqualification. In his opinion partiality or lack of independence was undoubtedly a lack of the qualities required under Article 14 paragraph (1) which requires inter alia that the arbitrators be persons who may be relied upon to exercise independent judgment.

39. Mr. Woods inquired whether this matter had been discussed in the Legal Committee and whether there had been a consensus on the present text.

40. Mr. Broches replied that the matter had been discussed and that the records showed that there had not been great support for a proposal made by the German expert to substitute a provision along the lines of the one contained in the Model Rules.

41. Mr. Woods asked whether any other Director wished to comment on Article 57. As none asked for the floor, he thought that the general view was that Article 57 should stand as it was.

42. Mr. Wright, referring to Article 58 pointed out that, in the fifth line, the second word ("of") should be deleted.

Chapter VI - Costs of Proceedings

43. Mr. Broches explained that these provisions were of a technical nature and had been discussed at length by legal experts who had eventually decided that in conciliation the costs should be borne by the parties and that in arbitration the tribunal should apportion the costs, unless the parties had otherwise agreed.

44. Mr. Handfield-Jones referring to paragraph (1) of Article 60 asked whether he could have any indication on how the guidelines to be followed by commissions and tribunals in determining their fees and expenses would be set up.

45. Mr. Broches replied that no work had yet been done by the staff on this subject. When the time came, the advice of other institutions in the field of arbitration, would undoubtedly be sought.

Chapter VIII - Disputes between Contracting States (Article 64)

46. Mr. Broches said that Article 64 was in common form and referred to the settlement of disputes between States concerning interpretation of the Convention through the International Court of Justice. He recalled that paragraph 46 of the draft Report of the Executive Directors had been included at the request of the Legal Committee to make clear that this Article was not intended to give the International Court of Justice the function of an appellate court in relation to awards by tribunals, but merely to deal with questions of interpretation between members otherwise than in connection with proceedings pending before the Centre e.g. a difference of opinion about the degree of immunity that the Convention required members to give to certain persons.

Chapter IX - Amendment (Articles 65 and 66)

47. Mr. Broches said that while there had been general agreement that some mechanism for amendment ought to be provided, some delegates to the Legal Committee had pointed out that their constitutions or constitutional practices in their countries made it difficult, if not impossible, to change the contents of an agreement of this type without the consent of Parliament. Article 66, therefore, provided that an amendment would enter into force only upon ratification or acceptance by all Contracting States.

48. Mr. Suzuki said that in the view of his government the amendment procedure was too strict. He would prefer it if Article 66 were to require ratification or acceptance of an amendment by a qualified majority of Contracting States, say two-thirds of their number.

49. Mr. Broches observed that it might have been possible to provide that an amendment would enter into force on ratification or acceptance by a qualified majority of States and bind only those States. However, this would give rise to two groups of countries with different sets of obligations, viz. those that had approved the amendment, and those that had not.

50. Mr. Woods observed that the strict requirements of the amendment procedure was one of the reasons why the Convention had been drafted in broad terms.

51. Mr. Rajan recalled that the corresponding provision in the draft of September 11, 1964 (Article 69) distinguished between amendments involving fundamental alteration in the nature or scope of the Convention which required unanimous acceptance by the Administrative Council, and other amendments which required acceptance by only a two-thirds majority of the Council. He would be in favor of a more flexible procedure for amendment than that provided in the present draft and urged reconsideration of the previous formula to which he had referred.

52. Mr. Broches said he was in complete agreement with Mr. Rajan and had himself hoped to convince the Legal Committee of the need to distinguish relatively important amendments, i.e. those which did change the rights and obligations of Contracting States, and unimportant ones that did not. However, a sub-committee of the Legal Committee, after studying a wide variety of alternatives, had recommended that the Legal Committee adopt the procedure in Article 66. Twenty-seven delegations had expressed support for the provision while none had opposed it.

53. Mr. Machado observed that Article 66 required not merely adoption of an amendment by two-thirds of the members of the Administrative Council but also subsequent ratification or acceptance by all Contracting States. This would make it practically impossible for the Convention to be amended. The Convention would not only be open to members of the Bank but to other States as well, and such a provision would enable any State, whether a member of the Bank or not, to block any change which might prove desirable in the light of experience in the future.

54. He would be in favor of a more flexible procedure, say, one which required adoption of an amendment by a high majority and subsequent ratification by a high number of countries, the amendment to be binding only among countries which had ratified it. It would always be open to a State which could not accept the amendment to withdraw from the Convention.

55. Mr. Broches said he had himself examined practically all possible amendment procedures. A procedure like that proposed by Mr. Machado had been considered at the regional meetings. Mr. Rajan had supported a procedure similar to the one he had proposed to the Legal Committee. Both procedures had met with substantial opposition. The issue seemed to be: should a country be faced with the choice of accepting the amendment or withdrawing from the Convention? The procedure for amendment was an essentially political point upon which the Directors might well wish to seek instructions before reaching a decision. While he was not personally in favor of the present procedure, he did not see any very great need for a more flexible one since the terms of the Convention were themselves flexible.

56. Mr. Woods said that one of the implications of Mr. Machado's proposal had appealed to him viz. that the procedure might require for entry into force of an amendment the concurrence of all Contracting States who were also members of the Bank. He would agree with Mr. Machado that it would be strange to have an amendment delayed for lack of action by a State which was not even a member of the Bank. Mr. Rajan had suggested a different procedure and had introduced the idea of amendment by a qualified majority which would bind the entire membership.

57. While it might be difficult to disregard the advice of the Legal Committee, this was a matter for the Executive Directors to decide, and he suggested that further thought should be given to both proposals before returning to the discussion on Thursday, February 25.

58. Mr. Broches recalled that the provisions on amendment in the draft of September 11, 1964 had called for adoption of amendments by the Administrative Council without any mechanism for ratification. One of the objections to this procedure had been that States would not wish to entrust their Ministers of Finance with making a decision to change an agreement. That had led to inclusion of provisions for ratification or acceptance.

59. Mr. Hirschtritt said he would have to seek instructions from his government on the question of an amendment procedure that did not require subsequent ratification. The adoption of such a procedure might hurt the Bank's aim of securing as wide an acceptance as possible for the Convention.

60. Mr. Rajan thought it would be useful in an amendment procedure which distinguished between fundamental changes and others, to list in the text, those articles the amendment of which required unanimous approval as well as those articles which could be changed by a simpler method.

61. Mr. Lieftinck said he would also prefer more liberal provisions on amendment of the Convention. At first sight it appeared that the bulk of Chapter I on the organization of the Centre might be subject to easier amendment procedures.

62. Mr. Woods said that Mr. Broches would by the next meeting have a list of articles suitable for amendment by less than the unanimous vote of the membership.

63. Mr. Malaplate referring to Article 66(2) said his government would like to see the text revised along the lines of the following draft:

> "No amendment shall affect the rights and obligations of any Contracting State or of any national of a Contracting State arising out of consent to the jurisdiction of the Centre given prior to the date of entry into force of the amendment."

This provision would keep alive rights and obligations arising out of the wider notion of consent to the jurisdiction of the Centre, and not merely those connected with proceedings before it.

Chapter X - Final Provisions

64. Mr. Broches referred the meeting to Document Z-13, the revised draft of the Convention dated December 11, 1964 which had been circulated under cover of Document R 64-153. The Legal Committee had not considered Chapter X, Final Provisions, which was now before the Directors. The term "Section" should be substituted for "Title" wherever it occurred to maintain consistently with the style adopted by the Legal Committee.

Section 1. Entry into Force (Article 67)

65. Mr. Broches, introducing Article 67 pointed out that it listed the States to which the Convention would be open, i.e. the States to which the invitation to sign was addressed. In form it followed the precedents of corresponding provisions in Conventions recently drafted under the auspices of the United Nations.

66. Mr. Gutierrez Cano asked whether the categories listed in Article 67 together covered all countries of the world.

67. Mr. Woods replied in the negative. Mainland China, for example, was clearly not included.

68. Mr. Mejia-Palacio said that attempts had been recently made to bring Mainland China into the specialized agencies of the United Nations and he was apprehensive that if this should happen Mainland China would become eligible to accede to the Convention. He would, therefore, omit reference to States members of the specialized agencies of the United Nations.

69. Mr. Machado said that Article 67 opened the Convention to all States whether or not they were in good faith and were known to comply with their international obligations. He would give only members of the Bank the right to join. Any State not a member of the Bank might be permitted to

join upon acceptance of its candidature by a vote of two-thirds of the members of the Administrative Council.

70. Mr. Lieftinck in principle favored an "open" Convention or one which was very liberal as to which States might join. However, he had two comments: first, he was somewhat hesitant about opening the Convention to all States members of the specialized agencies of the United Nations; and secondly, it would be a gracious gesture to a sister institution to mention the International Monetary Fund by name in Article 67.

71. Mr. Chen said his government took a serious view of Article 67. He recalled that the very first article of the Bank's Charter stated that the Bank was to "assist in the reconstruction and development of territories of members etc." By implication, any agency created by the Bank should extend its rights and privileges only to members of the Bank. He proposed that Article 67 be amended to read:

> "This Convention shall be open for signature on behalf of States members of the Bank."

If the majority of the Directors favored a provision along the lines of the existing text he would support Mr. Machado's proposal for a procedure limiting admission of States not members of the Bank to States members of the United Nations or parties to the Statute of the International Court of Justice approved for membership by a vote of two-thirds of the Executive Directors of the Bank or of the Administrative Council of the Centre.

72. Mr. Rajan was in favor of retaining the present text of Article 67 possibly with special mention of the International Monetary Fund.

73. Mr. Gutierrez Cano supported Mr. Chen's proposal to limit access to the Convention to States members of the Bank and/or the International Monetary Fund.

74. Mr. Wright asked what were the origins of the present text of Article 67 and whether it had been discussed by the Legal Committee.

75. Mr. Broches said that the corresponding provision in the Preliminary Draft of the Convention which had been discussed at the regional meetings had provided that the Convention would be open for signature to all sovereign States. That provision had been objected to by several countries on political grounds which were by now well known. Because of these objections the provision had been changed and now listed categories of States which, with some overlapping, covered all countries with the exception of those whose admission might create political problems for others. Categories now listed in Article 67 were substantially those listed in the corresponding provision (Article VIII) of the New York Convention of 1958 on recognition and enforcement of foreign arbitral awards.

76. In his opinion the wording of the present text had great advantages and very few disadvantages. He did not regard as serious the danger that certain countries might join which were undesirable or untrustworthy, or might attempt to frustrate the Convention or the working of the Administrative Council. If these countries were really of such a character it would be unlikely that anyone would invest there; nor would countries which were not interested in private investment wish to join the Convention.

77. Mr. Mejia-Palacio wished to support Mr. Lieftinck's suggestion that reference to members of the specialized agencies of the United Nations be deleted and replaced by a specific mention of the International Monetary Fund.

78. Mr. Lieftinck elaborating on his earlier proposal said he had hesitated on whether to refer to members of the specialized agencies of the United Nations because it was relatively easy to become a member of such an agency. Reference to the members of the Bank and of the Fund would, in his view, cover adequate ground although if pressed he might extend the field to members of the United Nations and States parties to the Statute of the International Court of Justice. He was not, however, in favor of establishing a mechanism for admission.

79. Mr. Machado reiterated his proposal to restrict membership of the Convention to members of the Bank and the Fund and possibly to other States admitted to membership by a qualified majority of the Administrative Council. To open the Convention without restriction to a wider group of States as had been suggested would be to let in States whose only interest was the destruction of the Convention.

80. Mr. Wright said that in his opinion Mr. Machado's proposal had a great deal of force. Several aspects of the matter needed consideration. In particular, it was their aim to set up a Convention which would be joined by as many States as possible which would make effective use of it. He would like to know whether the issue under discussion was one which would have any real bearing on the views of those States most likely to use the Convention.

81. Mr. Woods said that the opinions of the Directors seemed equally divided on whether to leave the text of Article 67 as it stood (with the possible insertion of an express reference to the Fund), or to limit access to the Convention in one or other of the ways that had been suggested. However, discussion would be postponed until Thursday, February 25.

82. The meeting adjourned at 5:40 p.m. o'clock.

(1) Mr. Rasmussen (2) Miss Georgiou

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SID/65-5

February 25, 1965

*Memorandum of Meeting of the Committee of the Whole on Settlement of Investment Disputes held on February 23, 1965 at 11:20 a.m.

1. There were present:

Chairman

George D. Woods, President

Executive Directors and Alternates acting as Executive Directors

Reignson C. Chen
John M. Garba
Joaquin Gutierrez Cano
R.Hirschtritt (Temporary Alternate)
M. N. Kochman
Luis Machado
Jorge Mejia-Palacio
M. San Miguel
Gengo Suzuki
Andre van Campenhout
Otto Donner
John M. Garland
S.J. Handfield-Jones (Alternate)
Ali Akbar Khosropur (Alternate)
Pieter Lieftinck
Jean Malaplate (Alternate)
K.S.S. Rajan
J. Stevens
Vilhjalmur Thor

Alternates not acting as Executive Directors

H. Abramowski
Said Mohamed Ali
A. Bogoev
Jose Camacho
S. O. Coleman
Rufino Gil
O. Haushofer
J. Haus-Solis
Odd Høkedal
Eiji Ozaki
A.J.J. van Vuuren
S. Wright (Temporary)

Officers and Staff Participating

A. Broches
M. M. Mendels
Piero Sella
Christopher Pinto
C. H. Davies

*This memorandum consists of staff notes of the discussion and is not an approved record.

Distribution:

Members of the Committee of the Whole
President
Vice Presidents
Department Heads

Legal Department

2. Mr. Woods recalled that when the Committee had adjourned on Thursday, February 18, 1965, it had been discussing Article 26(2). As some Directors might not have had sufficient time to study the Memorandum of the discussion at that meeting he would suggest postponement of further discussion of Article 26(2) and go on to consider Article 27.

Article 27

3. Mr. Gutierrez Cano said that Article 27 was quite acceptable to him. However, he would like to postpone final consideration of Article 27 until after the decision on Article 26(2).

4. Accordingly, final consideration of Article 27 was postponed.

CHAPTER III - CONCILIATION

Section 1. Request for Conciliation

5. Mr. Lieftinck said that the Israeli authorities had expressed the opinion that a request by an investor for conciliation or arbitration (Articles 28 and 36, respectively) should be subject to prior consent by his State. That was not, however, the position taken by any of the other governments he represented.

6. Mr. Broches observed that the point had been raised by the Israeli delegation in Bangkok but had not been reiterated in the Legal Committee. It had received no support probably for the reason that it would get the investor's State back into the picture, whereas the whole purpose of the Convention was to keep capital-exporting States out of the dispute. He himself would be opposed to the Israeli suggestion.

Section 2. Constitution of the Conciliation Commission

7. Mr. Rajan suggested that in Article 31(2) the word "qualifications" used in the draft of September 11, 1964 (Z-12) was to be preferred to the word "qualities" used in the present draft because "qualifications" was more precise when speaking of the attributes listed in Article 14(1).

8. Mr. Broches pointed out that the word "qualities" had been used in Article 57 in order to refer to all of the attributes listed in Article 14(1). When reviewing the draft they had had to choose one term to be used consistently and they had chosen "qualities" as being more appropriate than "qualifications" when used to cover different kinds of attributes including, for example, that of "high moral character".

9. Mr. Garba said that the word "qualities" was more comprehensive than "qualifications" and if the words "of high moral character" were to be retained in Article 14(1), there would be no option but to use the word "qualities".

10. Mr. Woods said that there did not seem to be much support for Mr. Rajan's proposal and that the word "qualities" recommended by the Legal Committee would be retained.

Section 3. Conciliation Proceedings

11. There was no comment on Section 3.

CHAPTER IV - ARBITRATION

Section 1. Request for Arbitration

12. There was no comment on Section 1.

Section 2. Constitution of the Tribunal

13. Mr. Broches observed that Section 2 was important as it dealt with the composition of arbitral tribunals which would be charged with rendering binding awards. There had been an overwhelming majority in favor of maintaining flexibility as to the composition of the tribunals. The Legal Committee had particularly wanted to enable parties to select arbitrators from outside the Panel of Arbitrators and that approach was now reflected in the text. Another important issue had been the extent to which an arbitral tribunal should be composed of persons of what might be called the "nationalities directly involved" i.e. nationals of the State party to the dispute and of the State whose national was a party to the dispute. The present text (unlike the draft of September 11, 1964) did not exclude entirely the nationalities directly involved. On the other hand, Article 39 required as a general rule that persons of these nationalities should not constitute the majority of the tribunals, subject to one exception viz. when the parties had agreed upon the very individuals who would serve on the tribunal.

14. Mr. Rajan observed that Article 39 modified as proposed by the staff would always apply so as to exclude the nationalities directly involved in the case where the parties had agreed that each of them would appoint one arbitrator and the Chairman of the Administrative Council would appoint the third, unless agreement was reached as contemplated in the proviso.

15. Mr. Broches said that Mr. Rajan was entirely right in his interpretation of Article 39. He believed that the provision accurately reflected the intention of the Legal Committee which was concerned to avoid a situation in which the third arbitrator, as the only one appointed by a neutral party, might find himself in the position of a sole arbitrator in having to maintain a balance between two other arbitrators who were more inclined to act as advocates for the parties appointing them.

16. There were both advantages and disadvantages in having "nationals" on the tribunal. Among the advantages was that their knowledge of local

conditions would be helpful. One obvious disadvantage was that "national" arbitrators might not be regarded as entirely impartial. On balance the best solution would be to have a five-man tribunal of whom two would be "national" arbitrators appointed by each party to the dispute. In this way while the tribunal would have the benefit of two of its members' familiarity with their respective local conditions there would be a majority not linked by nationality to either party. On the other hand, a five-man tribunal would be relatively expensive. Article 39 excluded a majority of "national" arbitrators unless the identity of each arbitrator was known and accepted by both parties.

Section 3. Powers and Functions of the Tribunal

17. Mr. Broches referring to Article 42 on the law applicable in a dispute explained that it proceeded on the initial assumption that the parties would themselves agree upon the law to be applied. Where the parties by an oversight, or because they could not agree, or because they felt that the tribunal was best qualified to decide the matter, did not reach agreement on the law applicable, the supplementary rule in Article 42(1) would require the tribunal to look to two sources, viz. in the first place, to national law and specifically to the law of the country where the investment had taken place; and secondly, to international law if international law should be applicable.

18. Mr. Donner said he understood the reference in Article 42(1) to "rules of international law" as including the rules of law set down in bilateral investment treaties between the State party to the dispute and the State whose national was a party to the dispute. In his opinion this had been clearer in the draft of September 11, 1964 which had specified that the term "international law" should be understood in the sense given to it by Article 38 of the Statute of the International Court of Justice. That provision had been eliminated and the substance of it transferred to paragraph 41 (and a footnote thereto) of the draft Report of the Executive Directors which would accompany the Convention. His authorities would have been better pleased with the earlier version referred to, since the present one seemed to them to give rise to doubts as to whether the rules of law set down in bilateral investment treaties would or would not be applicable to disputes under the terms of Article 42(1). Could Mr. Broches give an assurance that there was in fact no doubt on this point?

19. Mr. Broches said that there could be no doubt whatever that the term "international law" in Article 42(1) did in fact include rules set out in bilateral agreements between the States concerned. The fact that the interpretative clause in the original version of the Article had been transferred to the Report of the Executive Directors did not imply any change in the substance of the provision.

20. Mr. Mejia-Palacio supported by Mr. Machado referred to the phrase "the law of the Contracting State party to the dispute" in Article 42(1) and took the view that if Article 26(2) were retained there would in fact

be two States parties to the dispute and that this would create some ambiguity. In their view Article 26(2) should be deleted.

21. Mr. Rajan repeated his government's view, expressed in the Legal Committee, that no reference should be made to international law and that the only law which should be applied to the dispute was that of the Contracting State party to the dispute.

22. Mr. Broches recalled that in the Legal Committee the reference in Article 42(1) to the national law of the Contracting State party to the dispute had been adopted by a majority of 31 to 1. The reference to international law had been adopted by a majority of 24 to 6. The representative of India on the Legal Committee had envisaged recourse to the Centre only in cases where India would enter into special investment agreements with investors under which investors would have rights and obligations which they would not have had under general law. If such a special agreement were concluded, the agreement would itself be the law between the parties. He could see no conflict, however, between that view and the reference to international law in Article 42 which, in reality, comprised (apart from treaty law) only such principles as that of good faith and the principle that one ought to abide by agreements voluntarily made and ought to carry them out in good faith.

23. Mr. Suzuki said his government preferred the corresponding provision in the earlier draft which, in the absence of agreement between the parties, had left it to the tribunal to decide what law to apply. It could very well happen that the parties might designate the law of a third State as governing the dispute. If the host State then changed its mind thus creating a lack of agreement on the point, the tribunal might, under the present text, still be obliged to apply the law of the host State. The present provision might also be difficult to apply where domestic law was in conflict with international law.

24. Mr. Broches recalled that the corresponding article in the earlier draft had required the tribunal (in the absence of agreement between the parties) to decide the dispute in accordance with "such rules of national and international law as it shall determine to be applicable". In a transaction across the boundaries of States it was frequently necessary in the event of a dispute, for a court or arbitral tribunal to decide what law governed the relations between the parties. A body of rules, often referred to as the "conflict of laws", had developed around such situations and enabled one to determine the law applicable to a particular transaction or a particular aspect of a transaction. The choice contemplated under the earlier version of Article 42(1) was not so much between national and international law, but as between several national laws.

25. It had been urged strongly by one group of countries that the national law to be applied should be the law of the host State. This pre-occupation with application of the law of the host State could, in certain instances,

be traced to historical roots in the regime of so-called "capitulations". Such countries were apprehensive not so much of the application of international law to the transaction, but of the national law of some foreign State, a situation with which their governments would have great difficulty. For that reason they did not wish to give the tribunal too great a freedom in its choice of law. He had himself concluded that, in the normal case, the reference should be to the law of the host State, and that it would be reasonable so to provide in Article 42(1). Referring specifically to the case put by Mr. Suzuki, he felt that no problem could arise there, because the parties had themselves chosen the law of a specified third State and the tribunal would have no option but to apply it.

26. As to the issue national versus international law, the vote in the Legal Committee had been very clearly in favor of permitting the tribunal to apply international law particularly in order to take account of cases where a State changed its own law to the detriment of an ivestor and in violation of an agreement not to do so. In such a case international law would not question the power of the sovereign State to change its law, but could hold that State liable in damages to the investor whose rights it had violated through an act inconsistent with international law.

27. Article 42(1) had been the result of a long and thorough discussion in the Legal Committee and, speaking as the Bank's General Counsel, he found it satisfactory from the points of view both of capital-importing countries and capital-exporting countries.

28. Mr. Rajan said that he would not press this point any further but would only like to know whether the validity of the laws of the host State could be questioned before an arbitral tribunal.

29. Mr. Broches replied that the validity of the national laws would not be at issue but the dispute might be on the question whether a valid law of the host country was harmful to any country or its nationals and therefore would give rise to international responsibility of the host State.

30. Mr. Gutierrez Cano said that the wording of Article 42 might have given rise to some confusion as to the priority between the domestic law of the host State and international law and he would like to have this point clarified.

31. Mr. Broches replied that Article 42 intentionally referred to domestic law and international law since a tribunal might be called upon to determine whether standards set by both systems of law had been respected by the host State. As a practical matter, in the case of expropriation for instance, the expropriated investor might complain that the amount of compensation he actually received was insufficient under the host State's own laws or was insufficient under some minimum standard of international law, if such standard existed. Conceivably a claim of that kind could be submitted to the tribunal in an alternative form, the investor claiming that his compensation was insufficient under the domestic law of the host State and, if the tribunal did not so find, was insufficient under international law. Although it is impossible to foresee how the parties would plead their cases, Mr. Broches thought that, in general, one would have to start with the domestic law of the host State.

32. Mr. Khosropur asked whether a specific provision should not be made in Article 43 to empower an arbitral tribunal to seek "opinions of experts or accountants, if necessary", since expert advice would be particularly needed in the cases likely to come before the Centre.

33. Mr. Broches stated that in the Legal Committee it had been agreed that the word "evidence" would cover expert opinions. As to the question whether a specific provision should be inserted to empower the tribunal to obtain such expert opinions, he thought that any tribunal would have such power and that the rules for the exercise of such power could well be included in the Arbitration Rules.

34. There were no comments on Article 44.

35. Mr. Broches, introducing Article 45, pointed out that the text prepared by the Legal Committee had two purposes: one was to prevent frustration of the proceedings caused by the absence of one party and the other one was to avoid that failure of a party to appear be deemed to be an admission of the other party's assertions.

36. Mr. Chen stated with reference to Article 46 that his government preferred the original text of this Article as it had come out of the Legal Committee. Since, in the opinion of the Chinese legal expert, consent and jurisdiction were not the same, his government was against the change suggested by the General Counsel. Also the use of the word "otherwise" in the proposed change might give rise to some misunderstanding.

37. Mr. Broches replied that it was generally agreed that consent of the parties is a most essential element of the jurisdiction of the Centre. The original language might have cast some doubt on this principle while the language he had suggested emphasized that consent in the hardcore of jurisdiction while the other elements were secondary.

38. Mr. van Campenhout pointed out that the language suggested by the General Counsel stressed that although consent of the party would be an essential condition for the jurisdiction of the Centre, there might be other reasons why the parties might not have the right to have recourse to the jurisdiction of the Centre, in spite of their agreement. For instance, if the parties agreed to submit a dispute which had nothing to do with investments.

39. Mr. Chen said that on the basis of the explanation given by Mr. van Campenhout for the language suggested by the General Counsel he would be prepared to accept it.

40. Mr. Broches, commenting on Article 47, mentioned that originally it had been proposed that the tribunal should have far-reaching powers to impose provisional measures. As a result of the discussion in the Legal Committee these powers had been reduced to recommending such measures.

Section 4. The Award

41. Mr. Hanfield-Jones asked the reason for introducing paragraph (5) of Article 48 as suggested by the General Counsel.

42. Mr. Broches replied that this addition had been decided by the Legal Committee but had been overlooked by the Drafting Sub-Committee at its last meeting.

Section 5. Interpretation, Revision and Annulment of the Award

43. Mr. Broches explained that Articles 50-52 gave three methods by which the parties could obtain clarification of awards or attack them. Article 50 dealt with interpretation. Since compliance with an award may extend over a number of years, no time limit was imposed for requests for interpretation. On the other hand, the request for interpretation would not suspend the effects of the award, unless the tribunal otherwise ordered.

44. Mr. Broches explained that Article 51 referred to the case of revision because of discovery of facts which, if they had been known at the time the award was rendered, would have been of decisive influence on the award. He pointed out that the additional paragraph (4) would provide that a party asking for revision could ask for suspension of enforcement of the award in its request and enforcement would then be provisionally suspended until the tribunal had had an opportunity to decide on that point.

45. Mr. Chen said that his government was opposed to the addition contained in paragraph (4) because it made it mandatory for the tribunal to stay enforcement of the award if the applicant for revision so requested. It would be better to leave the power to stay enforcement to the tribunal which could still order a provisional stay pending its deliberations.

46. Mr. Broches explained that while in domestic courts when an appeal is made against a decision which is already enforceable there is always some judicial authority available to consider an urgent request to stay enforcement, in the case of awards under the Convention the arbitral tribunal, which would have to consider the application for revision and any request for a stay of execution of the award, would not be immediately available. It might take some time before the tribunal could be re-convened, particularly if some of its members had died or were unable to serve again on it. In those circumstances it was felt that, in fairness to the losing party, he ought to have an absolute right of suspension of execution until the tribunal could be re-assembled and rule on such suspension.

47. Mr. Broches explained that the procedure for annulment was similar to the one provided for revision except that an ad hoc committee would be appointed by the Chairman to take the place of the tribunal which had decided the case.

48. Mr. Mejia-Palacio asked why only 120 days, except in the case of corruption, were granted for filing an application for annulment while in the case of revision, two limits had been provided i.e. 90 days for discovery of the fact and 3 years after which an award had been rendered.

49. Mr. Broches replied that the reason for the different time limits was due to the fact that the ground for annulment, with the exception of corruption, are known to the parties at the very moment they read the award. The legal points involved, however, may be very complicated and for that reason a four-month period was provided. In the case of corruption, evidence of which may come only later, the same four-month period runs from the time of discovery of corruption subject to a final cut-off date of three years. In the case of revision, the three-month period runs from the date of discovery of the new fact on which the application for revision is based and is also subject to the same overall cut-off date of three years.

50. Mr. Chen stated that his government was against the proposed addition in paragraph (4) of an automatic stay of enforcement if the applicant requested it in his application for annulment, for the same reasons he had stated in connection with revision.

51. The meeting adjourned at 2.35 p.m. to reconvene at 3.30 p.m. on the same date.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SID/65-3

FROM: The Secretary

February 17, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached is the text of the amendments to the Revised Draft of Convention on the Settlement of Investment Disputes between States and Nationals of Other States (R64-153) which were proposed at the meeting of the Committee of the Whole on Settlement of Investment Disputes held on Tuesday, February 16, 1965.

Distribution:

Members of the Committee of the Whole
President
Vice Presidents
Department Heads

COMMITTEE OF THE WHOLE ON SETTLEMENT OF INVESTMENT DISPUTES
Meeting of February 16, 1965

Proposed Amendments to the Revised Draft of the Convention

Article 6

(1) . . . . . .

(f) adopt the annual budget of revenues and expenditures of the Centre;

. . . . . .

Article 7

(1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of five members or one-fourth of the members of the Council, whichever is less.

Article 10

(1) The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for re-election. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.

Legal Department
February 17, 1965

(1) Mrs. [illegible]
(2) ~~Miss Jorgen~~

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SID/65-2

February 17, 1965

*Memorandum of Meeting of the Committee of the Whole on Settlement of Investment Disputes held on February 16, 1965 at 10:45 a.m.

1. There were present:

Chairman

George D. Woods, President

Executive Directors and Alternates acting as Executive Directors

Reignson C. Chen
John M. Garba
S.J. Handfield-Jones (Alternate)
Ali Akbar Khosropur (Alternate)
Pieter Lieftinck
Jean Malaplate (Alternate)
A. Nikoi (Temporary Alternate)
K.S.S. Rajan
M. San Miguel
Andre van Campenhout
Otto Donner
Joaquin Gutierrez Cano
R. Hirschtritt (Temporary Alternate)
M. N. Kochman
Luis Machado
Jorge Mejia-Palacio
Eiji Ozaki (Alternate)
N.M.P. Reilly (Alternate)
Vilhjalmur Thor
A.J.J. van Vuuren (Alternate)

Alternates not acting as Executive Directors

Helmut Abramowski
Said Mohamed Ali
A. Bogoev
Jose Camacho
S. O. Coleman
O. Haushofer
J. Haus-Solis
Odd Høkedal

Officers and Staff Participating

A. Broches
M. M. Mendels
Christopher W. Pinto
Piero Sella
Henry G. Hilken

*This memorandum consists of staff notes of the discussion and is not an approved record.

Distribution:

Members of the Committee of the Whole
President
Vice Presidents
Department Heads

Legal Department

2. Mr. Woods reminded the meeting that the Committee would review in the first instance Docs. R64-153 and R65-6 which contain the draft Convention prepared by the Legal Committee and some changes suggested by the Bank's staff. After that review was completed the Committee would consider the draft report to the Executive Directors which would accompany the Convention when submitted to Governments (Doc. R65-11). He then asked Mr. Broches to introduce the documents under consideration.

3. Mr. Broches said that, in addition to the documents mentioned by the Chairman, a text of the draft prepared by the Legal Committee with the additional suggested changes written in had been circulated in English under R65-10 and in French and Spanish under R65-10/1. He thought that the work of the Committee would be facilitated if the members would use that document. He then suggested that the Committee consider the Draft Convention article by article starting with Chapter I. The Preamble could be considered after all the articles had been dealt with.

4. Mr. Mejia-Palacio asked whether the discussion in the Committee would deal with the three texts, i.e. the French, the Spanish and English texts or only with the English text at this point. The French and Spanish texts could be reviewed by the French-speaking and Spanish-speaking Directors respectively, and at that time any agreed changes in the English text could be introduced in the French and Spanish texts.

5. Mr. Broches replied that the suggestion of Mr. Mejia-Palacio would facilitate the work but stressed that it was the intention to have three equally authentic texts and not an English with French and Spanish translations.

6. Mr. Woods, in summing up, said that the Committee would deal in the first instance with the English text. After the first round of discussions on the English text had been completed and before the final round of discussions would start, the French and Spanish texts would be reviewed and made to conform with any modifications in the English text. If any discrepancies were to remain they could be discussed during the second round of discussions.

Section 1, Establishment and Organization of the Centre

Section 2, The Administrative Council

7. Mr. Broches asked for comments on Articles 1, 2 and 3 which were substantially in the form approved by the Legal Committee. There being no comments, Mr. Broches moved on to Section 2 (The Administrative Council), Articles 4 through 8, and pointed out that, with one minor exception, there were no changes from the text recommended by the Legal Committee.

8. Mr. Rajan recalled that his Government's representative had proposed that there should be some intermediate body, maybe an executive committee or something of that kind, for the administration of the Centre. The Administrative Council would meet only once a year and there might be matters which the

Chairman and the Secretary-General might in the meantime want to refer to a small committee. While the Legal Committee had not accepted this proposal it had introduced a provision in Article 6 (2) permitting the Administrative Council to appoint "such committees as it considers necessary". He strongly supported this provision.

9. Mr. Donner remarked that under Article 6 (1) (c), the Administrative Council will adopt the rules of procedure of the institution of conciliation and arbitration proceedings. He stressed that his Government considered it very important that Governments be given an opportunity to express their views on any proposed rules when the Administrative Council was called upon to deal with this matter.

10. Mr. Broches understood that in some countries there was a feeling that the Centre should avail itself of the experience gained by existing arbitral organizations such as the International Chamber of Commerce; the Administrative Council undoubtedly would want to take advantage of the experience of such organizations and the staff of the Centre in preparing drafts of those rules would certainly seek the advice of Governments and those organizations before submitting them to the Administrative Council.

11. Mr. Khosropur referring to paragraph (e) of Article 6 asked whether any period of service for the Secretary-General or the Deputy Secretary-General would be set forth in the Convention.

12. Mr. Broches replied that the Convention itself did not fix any period of service in order to ensure sufficient flexibility. The Administrative Council would determine all conditions of service of those officials including their term of office, and could at the beginning make interim arrangements.

13. Mr. Lieftinck referring to Article 6 (1) (f) asked what was meant by the term "annual budget of the Centre". Would this be a budget of revenues and expenditures or only a budget of expenditures? He would prefer the first type of budget and would like to see this spelt out in the Convention.

14. Mr. Broches agreed that it might be best to spell out what was intended since the term "budget" meant different things to different people in different countries.

15. Mr. Woods pointed out in practice the revenues of the Centre would be of two kinds: contributions from the Bank and fees payable by the users of the Centre. The second kind would be difficult to estimate in the budget.

16. Mr. Lieftinck replied that all he wanted to ensure was that the Centre would not operate with a deficit but that budgeted expenditures would be covered by expected revenues. Mr. Woods agreed with Mr. Lieftinck.

17. Mr. Riley pointed out that it could not be possible to estimate receipts from fees for arbitration and conciliation proceedings because nobody could guess how many cases would come to the Centre. Therefore all the budget could do was to estimate the administrative cost of running the Centre.

18. Mr. Broches pointed out that revenues from fees paid by the parties would cover the out-of-pocket costs of the particular proceedings so that these revenues would in practice off-set the added cost.

19. Mr. Malaplate said that he did not find it absolutely necessary to provide in the Convention that the budget of the Centre be annual; he would leave this matter to the administrative and financial regulations of the Centre. As for the Centre incurring a deficit, under Article 17 such deficit would have to be borne by the Contracting States in a pre-determined proportion. Therefore he did not think it would be necessary to stress that revenues would have to cover expenses in the Convention.

20. Mr. Broches commented that the addition of the words "of revenue and expenditure" after the word "budget" would be useful to call the attention of the Administrative Council to the amount of contribution, if any, which the Centre could expect from the Bank.

21. Mr. Woods concluded that the words "revenue and expenditure", should be added.

22. Mr. Hirschtritt referring to Article 7 (1) wondered whether it would not be preferable to use a provision similar to the Bank's by-laws which provides for a call of the meeting of the Board of Governors at the request of not less than five members or one-fourth of the voting power of its membership.

23. Mr. Broches agreed that a system similar to the one used in the Bank's by-laws would be preferable in view of the fact that, at least at the beginning, the number of the Contracting States might be rather low. At the request of Mr. Rajan and Mr. van Campenhout, Mr. Broches specified that what he had in mind was that a meeting of the Administrative Council would be called if it was requested by five members of the Council or one-fourth of its members whichever number was smaller.

24. Mr. Woods asked that language to that effect be prepared by the staff and circulated to the Committee by the next meeting. The Chairman then moved to Section 3 (Articles 9, 10 and 11) and asked for questions or comments.

Section 3; The Secretariat

25. Mr. Garba said that Article 9 left open the possibility of an unlimited number of Deputy Secretaries-General.

26. Mr. Broches replied that in the Legal Committee, after some discussion, it had been decided to leave the language as it is and to recommend that the report of the Executive Directors contain a statement to the effect that, in the opinion of the Directors, it was difficult to foresee any justification for a large staff. The draft report (Doc. R65-11) contained such a statement.

27. Mr. Garba referring to the statement in the draft report just mentioned by Mr. Broches wondered why the Convention itself did not limit the number of Deputy Secretaries-General to, say, two.

28. Mr. Broches replied that at the beginning two might not be necessary; in any case, the Executive Directors of the Bank, by controlling the Bank's contribution to the Centre, could prevent any proliferation of high officials.

29. Mr. van Campenhout asked whether the statement in the draft report was intended to indicate that at least one Deputy would be appointed in addition to the Secretary-General.

30. Mr. Broches replied that he thought that even at the beginning a Deputy Secretary-General would be required in order to perform administrative or ministerial acts during any absence of the Secretary-General but the Deputy need not be a full-time employee. Perhaps a Bank official could act as Deputy from time to time.

31. Mr. Kochman, in connection with Article 10, stressed that the questions of the term of office and re-eligibility of the Secretary-General were important questions which should be dealt with in the Convention itself.

32. Mr. Khosropur pointed out that, since the Convention could enter into force after ratification by twelve States, the Secretary-General and Deputy Secretary-General could be initially elected by only eight States and the Convention did not make any provision for a re-election after a larger number of States had acceded to the Convention.

33. Mr. Woods remarked that Mr. Khosropur's point was well taken and would confirm the need to maintain flexibility in the Convention.

34. Mr. Broches said that the Administrative Council would most likely act in a reasonable manner and initially appoint somebody for one or two years if a large number of States was expected to join the Convention soon.

35. Mr. van Campenhout suggested that the Report of the Executive Directors contain a statement on the lines just mentioned by Mr. Broches.

36. Mr. Lieftinck thought that flexibility could be maintained while ensuring that the initial members of the Administrative Council would not pre-empt the rights of the majority of a provision was added in the Convention to the effect that the Secretary-General and any Deputy Secretary-General would be elected for a term not longer than, say, six years and could be re-elected.

37. Mr. Broches remarked that in the International Court the term of office of the Registrar was fixed at seven years in the Regulations rather than the Statute of the Court. Similarly, in the Bank the term of office of the President was specified in the by-laws and not the Articles.

38. Mr. Rajan pointed out that even a ceiling of, say, six years on the term of office of the Secretary-General might not overcome the problem mentioned by Mr. Khosropur if the initial membership was very small. A much shorter maximum term of office would be required.

39. Mr. Woods concluded that the feeling of the meeting was in favor of imposing a ceiling on the term of office of the Secretary-General and his Deputy in the Convention and of stressing in the Report of the Executive Directors the need for a shorter term for the initial appointments. He asked Mr. Broches to draft some language for the consideration at the next meeting of the Committee.

40. Mr. Lieftinck asked whether some provisions should not be made for dismissal of the Secretary-General, perhaps by a two-third majority, when he had lost the confidence of the Council.

41. Mr. Broches said that this point could be covered either in the administrative regulations of the Centre or, as was the case in the Bank with respect to its President, in the employment contract.

Section 4, The Panels

42. Mr. Woods asked for comments on Section 4 (Articles 12 through 16).

43. Mr. Garba asked what was the origin of the expression "high moral character" as applied to members of the Panels.

44. Mr. Broches replied that it came from the Statute of the International Court of Justice.

45. Mr. Kochman asked what was the reason for the clause in paragraph (1) of Article 13 about the nationality of members of the Panels.

46. Mr. Broches replied that it was felt that some countries might not be able at the outset to find sufficiently eminent people willing to serve on the Panels and should be allowed to draw on nationals of other States with which they had some affinity.

47. Mr. Rajan, reverting to the words "high moral character", suggested that they be deleted, because under the provisions for challenge of arbitrators or annulment of awards, a party would be entitled to raise questions about an arbitrator's morality. This could lead to undesirable situations. The requirement of "high moral character" might be realistic for the selection of the relatively small number of judges of the International Court of Justice. On the other hand, the selection of some 400 Panel members on the same basis might prove difficult besides inviting controversy and uncertainty regarding effectiveness of awards.

48. Mr. Woods did not feel that to refer to qualified persons of "high moral character" was an unduly strict standard, or would cause difficulty in composing the Panels.

49. Mr. Broches pointed out that lack of high moral character was not a ground for annulment of an award; as Mr. Rajan had said, it might be used to challenge an arbitrator. For the latter purpose, it was not enough, however, to allege that the arbitrator was not of high moral character, but to establish facts indicating a manifest lack of that quality, and he did not think this a dangerous provision. Many experts at earlier meetings had urged the need to impress on States the desirability of appointing persons who possessed in a high degree three basic qualities, viz., competence, high moral character and independence of judgment.

50. Mr. Lieftinck suggested that as the concept of "high moral character" might vary in different parts of the world this standard might be replaced by that of "integrity", so that the text would read: "Persons ..... of integrity and recognized competence ..... who may be relied upon to exercise independent judgment."

51. Mr. Broches recalled that the standard of "high moral character" had been used in the Statute of the International Court of Justice although it had to be applied to persons from different cultures. The Legal Committee had felt that these were the right words and he would prefer to leave them unaltered.

52. Mr. Woods said that there was a substantial majority in favor of leaving the reference to "high moral character" as it stood.

Section 5, Financing the Centre

53. Mr. Broches said that the word "the" should be inserted as the second word in the paragraph so that the opening words of the article would read: "If the expenditure of the Centre cannot be met ....." While it had been agreed that, as a general rule, the Convention and the accompanying Report of the Executive Directors should be discussed separately, this Article should be considered together with the relevant paragraph of the Report (paragraph 16 of R65-11) in view of the importance of the Bank's role in assisting in financing the Centre foreseen in the phrase "or out of other receipts" in Article 17. Paragraph 16 of the Report would reflect a decision by the Executive Directors regarding the nature and extent of the Bank's financial assistance and that decision would in fact be taken through the Executive Directors' adoption of that paragraph of their Report.

54. Mr. Woods recalled that it had been the Bank's intention from the beginning that it would finance the Centre to a certain extent. The extent of financial assistance would be reviewed annually.

Section 6, Status, Immunities and Privileges

55. Mr. Broches in answer to Mr. Ozaki's request for clarification of the privileges and immunities of "parties" to a dispute explained that Article 21 gave the Chairman and members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, as well as officers and employees of the Secretariat, immunity from legal processes with respect to acts performed by them in the exercise of their functions. Article 22 extended that immunity to certain other groups, and after careful consideration the Legal Committee had agreed that "parties" to a dispute should be one such group thereby offering them a measure of protection if they had to appear in a country in which the atmosphere was unfriendly. While "parties" did not strictly perform "functions" the Legal Committee considered that the wording adequately conveyed the intended meaning viz., that parties would in fact be immune only in respect of acts done before the tribunal as parties to the dispute.

56. Mr. van Campenhout observed that the standard adopted in Article 21(b) viz. "immunities ..... accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States", might not be sufficiently comprehensive since there were some employees of States who, while being "of comparable rank," were not entitled to any privileges whatsoever. In his view it might be better to refer to the immunities accorded to "diplomatic agents".

57. Mr. Broches agreed that the provision might be difficult to apply. On the other hand a careful study of other recent conventions dealing with privileges and immunities had revealed no better solution, and the Legal Committee had taken the view that Contracting States could be relied upon to apply the provision reasonably and in good faith despite any uncertainty created by the wording.

58. Mr. Mejia asked what was meant by the term "international legal personality" in Article 18 and whether it had been used in other conventions.

59. Mr. Broches said that the concept of international legal personality had existed in international law for about 20 years and had recently been used in multilateral agreements. One such agreement was the Charter of the African Development Bank. The term "international legal personality" implied the capacity to act on the international level as distinguished from the capacity to act on the domestic, or national level. The Centre had international legal personality as well as the capacity to perform on the domestic level, the acts listed in Article 18.

60. Mr. Malaplate said his government felt that the immunities to be granted to parties, agents, counsel, advocates, witnesses and experts under Article 22(b) were inadequate in that their communications were not accorded special treatment as were those of the Centre itself.

61. Mr. Broches said there were two aspects to the question of communications. Special treatment in respect of communications, e.g. the right to use codes, was only accorded to the Centre itself, and he was not aware of any precedent for extending this privilege to others. On the other hand, the groups of persons Mr. Malaplate had in mind would, under Article 21(a) be immune for suit in respect of statements in communications say between them and the tribunal.

Chapter II - Jurisdiction of the Centre

Article 25, paragraph(1)

62. Mr. Broches recalled that the principal provisions of Article 25, i.e. paragraph (1), which represented a compromise between various points of view, had been adopted by the Legal Committee by a very substantial majority.

63. Mr. Lieftinck said he had been requested by the Israeli Government to express a strong preference for the "closed" approach which sought to limit the jurisdiction of the Centre by a more or less precise definition of the disputes which could come before it, over the "open" formula favored by the majority of the Legal Committee. The Netherlands and Yugoslavia, however, were more in favor of the "open" formula, the position which he himself would support.

64. Mr. Ozaki said that the Japanese Government preferred the "open" formula but would like to see included in the Report of the Executive Directors some examples of what was meant by the term "investment".

65. Mr. Broches said that the staff had prepared a definition of "investment" and had also brought to the attention of the Legal Committee a number of examples of definitions of that term taken from legislation and bilateral agreements. None of these had proved acceptable. The large majority had, moreover, agreed that while it might be difficult to define "investment," an investment was in fact readily recognizable. The Report would say that the Executive Directors did not think it necessary or desirable to attempt to define the term "investment" given the essential requirement of consent of the parties and the fact that Contracting States could make known in advance within what limits they would consider making use of the facilities of the Centre. Thus each Contracting State could, in effect, write its own definition.

66. Mr. Gutierrez Cano had been convinced by Mr. Broches' explanation. However, some of the countries he represented had, in the Legal Committee, maintained the position that the jurisdiction of the Centre ought to be closely defined. He thought some explanation or description should be given (not necessarily in the text of the Convention) indicating generally the kind of matters with which the Centre would deal.

67. Mr. Broches observed that Mr. Gutierrez Cano's point was slightly different from the narrower one raised by Mr. Ozaki. Mr. Ozaki was concerned with the definition of "investment", whereas the countries referred to by Mr. Gutierrez Cano and some Latin American countries were concerned with the definition of "investment disputes" assuming for the moment that the term "investment" itself needed no definition. The Report to the Executive Directors on the work of the Legal Committee (R64-155) contains some examples of investment disputes, e.g. the Centre could deal with disputes arising out of a unilateral change of the legislation of the host State to the detriment of the investor. He did not, however, think it would be desirable to do more in the Report than make it clear that the dispute had to be a "legal" dispute.

68. Mr. Mejia recalled that the Colombian Government was opposed to the use of the term "legal dispute" as being too wide, and would prefer a more precise expression. That government was also against the idea of a private

citizen being placed on the same plane as that of a State in a dispute.

There was no comment on paragraphs (2) and (3) of Article 25.

Article 25, paragraph (4)

69. Mr. Khosropur noted that if, as had been indicated in Document R65-6, page 3, the Secretary-General was to be given the function of transmitting notifications under paragraph (4) to Contracting States, a consequential change would be necessary in Article 75 which at present assigned that function to the Bank.

70. Mr. Rajan said that Article 25(4) was a very important provision and to some extent took care of the points raised by Messrs. Mejia and Gutierrez Cano, by India, and some other countries. He felt that one reason for the wide support Article 25 as a whole had received in the Legal Committee was the incorporation in it of this provision.

Article 26

71. Mr. Kochman asked whether in the second sentence of Article 26(1) the word "may" could not be replaced by a stronger one.

72. Mr. Broches said that the first sentence of Article 26(1) reflected the position supported by State practice, that when governments agreed to an arbitration clause they did not normally require in addition the prior exhaustion of other remedies. The second sentence of Article 26(1) had been added by the Legal Committee merely to make clear that the first sentence was not intended to cast any doubt on the right of States to require exhaustion of local remedies. The words "A Contracting State may require ...." left no doubt as to the right of the State in this regard.

73. Mr. Lieftinck said he had been requested by the Israeli Government to speak in favor of making the exhaustion of local remedies the rule and recourse to arbitration under the Convention, the exception. However, he would himself support the Netherlands position viz. that while they accepted the present text of Article 26(1) as a compromise, they felt that the second sentence was in fact superfluous.

74. Mr. Rajan said that while Article 26(1) as it stood was acceptable to his Government, he would like Mr. Broches to clarify whether a State's right to require exhaustion of local remedies was one which must have been embodied in an agreement between the State and the investor.

75. Mr. Broches said that when a State had entered into an agreement with an investor containing an arbitration clause unqualified by any reservation regarding prior exhaustion of local remedies, the State could not thereafter demand that the dispute be first submitted to the local courts.

76. Mr. Rajan thought that this point should be clarified in the Report of the Executive Directors.

77. Mr. Broches recalled that paragraph 31 of the Draft Report (R65-11) dealt with the matter. On the suggestion of Mr. Woods the question of whether that paragraph might be expanded or modified was postponed until discussion of the Report.

78. Mr. Malaplate wondered if paragraph (1) of Section 26 could not be simplified and be condensed to say that "consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed to exclude any other remedy." He also suggested that, in the French text, the term "recours" be used instead of "voies". Mr. Broches said that he would look into those two points.

79. Mr. Woods invited comments on paragraph (2) of Article 26.

80. Mr. Lieftinck suggested that the words "under an investment scheme" be deleted. What mattered was that the State had satisfied its national's claims, whether under an insurance scheme or otherwise.

81. Mr. Broches said that paragraph (2) had been accepted in the Legal Committee by a very slim majority and that there had been a very large minority opposed to the very idea of subrogation of the investor's State. Objections had been of two kinds: some delegates thought that, as the purpose of the Convention was to enable a private party and a State to settle their disputes, it would be contradictory to permit the substitution of the private investor by his State in the proceedings. Others felt that a developing State would be in a weaker position if it were confronted by the investor's State rather than the investor himself. A small majority had been found in favor of the present text because it clearly restricted the right of the investor's State to appear before the Centre to the cases in which that State would stand in the investor's shoes as it were and divest itself of its sovereign character. The purpose of the words "under an investment insurance scheme" was to allay the fears of some countries that investors might transfer claims to their State for the sole purpose of having a stronger position in the dispute.

82. Mr. Lieftinck felt that the limitation to investment insurance schemes would amount to a discrimination against the nationals of States which had no such schemes. As a result there would be pressure put on Governments to create such schemes if only to afford their nationals the benefits of paragraph (2). An investor could more easily convince his State to take over his claim if he could substitute the State in proceedings before the Centre.

83. Mr. Woods announced that the discussions would continue on the morning of Thursday, February 19, 1965, after the IFC Board meeting, and the Committee might also meet in the afternoon of that day.

84. The meeting adjourned at 12:50 o'clock p.m.

IDA | IBRD | IFC

FORM NO. 92 (10-61)

CORRESPONDENCE RECORD FORM

DATED: Feb. 8, 1965

FROM:
H. Struve Hensel
Washington, D.C.

SUBJECT:
Letter & Encl. draft of the Convention on the Settlement of Investment Disputes between states & nationals of other states

DATE RECEIVED: Feb. 9, 1965 ks

REFERRED TO:
Mr. Woods

CONFIDENTIAL

SID/65-1/1

FROM: The Assistant Secretary

February 5, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached is the final text in French and Spanish of the Summary Proceedings of the meetings of the Legal Committee held from November 23, 1964 through December 11, 1964.

Additional copies can be obtained from the Office of the Secretary (Extension 2158).

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

February 4, 1965

Mr. A. Broches

Piero Sella

S.I.D. - Final Text of Convention

Since in the course of proof-reading the English, French and Spanish texts of the Convention minor typographical errors and some grammatical errors have been found, and more will occur if the Executive Directors during their discussion in the Committee of the whole will introduce changes in the text of the Convention, I suggest that for the purpose of approval of the final text of the Convention by the Executive Directors sitting as such page proofs of the Convention be distributed in the three languages to the Executive Directors. The page proofs would be distributed in their final form ready for printing and whatever action the Executive Directors take would be based on the identical text that will be sent to the member governments.

I have not checked what the cost of providing about 250 page proofs of such text would be but it should not be extravagant and we could deduct that number of copies from the number of copies of the final text that will be printed.

cc: Mr. Fowler
Mr. Pinto

PSella/ar

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 3	1070933

Document Date	Document Type	
February 3, 1965	Memorandum	

Correspondents / Participants
To: Mr. A. Broches
From: Piero Sella

Subject / Title
S.I.D. - French text of Convention

Exception(s)
Attorney-Client Privilege

Additional Comments

The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.

Withdrawn by	Date
Kim Brenner-Delp	August 14, 2023

Mr. S.H. Rasmussen February 2, 1965

Piero Sella

Settlement of Investment Disputes - Translation - Dr. Bravo

On instructions of Mr. Broches, I have requested Dr. Leonardo Bravo to translate into Spanish the attached document R65-11 relating to the Settlement of Investment Disputes.

The translation, a copy of which is attached hereto, has been reviewed and approved by Mr. Cancio.

I shall be grateful if you will settle Dr. Bravo's compensation for this translation at the regular Bank rate.

Encl.

cc: Mr. Broches (o/r)
Mr. Cancio

PSella/ar

Legal Files

Piero Sella

February 1, 1965

Distribution of S.I.D. Documents to members of Legal Committee

The following documents were distributed to members of the Legal Committee as indicated:

1. Revised Draft of Convention on the Settlement of Investment Disputes (Doc. No. Z-13) - all delegates in English, French and Spanish in numbers requested by delegates.

2. Final Summary Proceedings SID/LC/SR 1 through 22 - all delegates in English, French and Spanish in numbers requested by delegates.

3. Under covering note dated January 11, 1965 the following documents were distributed to English-speaking delegates in English:

   (i) Letter of the Chairman of the Legal Committee to the Chairman of the Executive Directors dated December 28, 1964, with attached Report;

   (ii) Comparison of First and Revised Drafts of Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Bank Report No. Z-14) [this document has been issued in English only];

   (iii) Memorandum from the President to the Executive Directors of the Bank dated January 4, 1965 (Sec M65-3) on Settlement of Investment Disputes;

   (iv) Memorandum of the General Counsel of the Bank dated January 8, 1965.

4. Under covering note dated January 13, 1965 the following documents were distributed to French-speaking delegates in French:

   (i) Letter of the Chairman of the Legal Committee to the Chairman of the Executive Directors dated December 28, 1964, with attached Report;

   (ii) Memorandum from the President to the Executive Directors of the Bank dated January 4, 1965 (SecM65-3) on Settlement of Investment Disputes;

   (iii) Memorandum of the General Counsel of the Bank dated January 8, 1965.

5. Under covering note dated January 11, 1965 the following documents were distributed to Spanish-speaking delegates in Spanish:

(i) Letter of the Chairman of the Legal Committee to the Chairman of the Executive Directors dated December 28, 1964, with attached Report;

(ii) Memorandum from the President to the Executive Directors of the Bank dated January 4, 1965 (Sec M65-3) on Settlement of Investment Disputes;

(iii) Memorandum of the General Counsel of the Bank dated January 8, 1965.

PSella/ar

1112 · Rosenberg

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SID/65-1

FROM: The Assistant Secretary

February 1, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached is the final text in English of the Summary Proceedings of the meetings of the Legal Committee held from November 23, 1964 through December 11, 1964.

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

Mr. Rosenberg

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

FOR EXECUTIVE DIRECTORS' MEETING

CONFIDENTIAL

R65-11/1

FROM: The Assistant Secretary

February 1, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached hereto are the French and Spanish texts of the memorandum of the General Counsel on the above subject which was distributed in English on January 19, 1965 (R65-11).

Additional copies can be obtained from the Office of the Secretary (Extension 2158).

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

19 janvier 1965

MEMORANDUM DU GENERAL COUNSEL

Comme suite au mémorandum adressé au Président le 4 janvier 1965 (SecM65-3) on trouvera ci-joint un projet de Rapport aux Administrateurs devant accompagner la Convention pour le Règlement des Différends relatifs aux Investissements quand celle-ci sera soumise aux Gouvernements. Comme les Administrateurs le savent, le Président a déjà annoncé son intention de recommander que la Banque prenne à sa charge une partie des frais généraux du Centre. La recommandation du Président sur cette question figure au paragraphe 16 du Projet de Rapport.

Les paragraphes 17, 45 et 46 du Projet de Rapport qui traitent respectivement des Articles 9, 63 et 64 du Projet révisé de Convention, reflètent l'opinion du Comité Juridique sur ces Articles.

3. La décision des Administrateurs d'approuver le texte de la Convention a été précédée d'un important travail préparatoire dont les détails sont donnés aux paragraphes 5-7 ci-dessous. Les Administrateurs sont convaincus que la Convention, telle qu'ils l'ont approuvée, reflète l'opinion générale qui se dégage des vues exprimées par les gouvernements favorables au principe de l'établissement par voie d'accord intergouvernemental de mécanismes et de procédures pour le règlement des différends relatifs aux investissements que des Etats et investisseurs étrangers souhaiteraient soumettre à la conciliation ou à l'arbitrage. Ils sont aussi convaincus que la Convention constitue une base satisfaisante pour l'établissement de ces mécanismes et de ces procédures. En conséquence, les Administrateurs recommandent que les gouvernements des pays membres signent et ratifient ou acceptent cette Convention.

4. Les Administrateurs attirent l'attention sur les dispositions de l'Article 69 en vertu duquel aussitôt que la Convention aura été ratifiée ou acceptée par douze Etats, les Administrateurs de la Banque pourront, sur recommandation du Président, déclarer que la Convention doit entrer en vigueur. La Convention entrera en vigueur quatre-vingt dix jours après cette déclaration.

II

5. Le problème de l'utilité et de la possibilité d'établir, sous l'égide de la Banque, un mécanisme institutionnel pour le règlement par voie de conciliation et d'arbitrage des différends relatifs aux investissements entre Etats et investisseurs étrangers a été porté pour la première fois devant

le Conseil des Gouverneurs de la Banque lors de sa dix-septième Assemblée Annuelle, tenue à Washington, D.C. en septembre 1962. Lors de cette Assemblée, le Conseil des Gouverneurs a, par résolution No 174, adoptée le 18 septembre 1962, prié les Administrateurs de procéder à l'étude de la question.

6. Les Administrateurs ont commencé leur étude sur la base de documents de travail préparés par les services de la Banque. Après un certain nombre de discussions officieuses, les Administrateurs ont décidé que la Banque devrait organiser des réunions consultatives d'experts juridiques désignés par les gouvernements des pays membres pour examiner la question plus en détail. Les réunions consultatives se sont tenues à l'échelon régional à Addis-Abeba (16-20 décembre 1963), Santiago du Chili (3-7 février 1964), Genève (17-21 février 1964) et Bangkok (27 avril-1er mai 1964) avec le concours, sur le plan administratif, des Commissions Economiques des Nations Unies et du Bureau Européen des Nations Unies; elles ont pris comme base de discussion un Projet Préliminaire de Convention pour le Règlement des Différends relatifs aux Investissements entre Etats et nationaux d'autres Etats préparé par les Services de la Banque en fonction des vues exprimées par les Administrateurs au cours de leurs réunions et par les gouvernements. Les experts juridiques de 86 pays ont assisté à ces réunions qui non seulement se sont révélées utiles en ce qui concerne l'analyse et la solution des problèmes techniques, mais encore ont permis à la Banque d'être mieux informée de l'attitude des gouvernements.

7. Sur la base des travaux préparatoires et des vues exprimées aux réunions consultatives, les Administrateurs ont soumis un rapport à la Dix-Neuvième Assemblée Annuelle du Conseil des Gouverneurs à Tokyo en septembre

1964, concluant qu'il serait souhaitable d'établir les mécanismes institutionnels en question, et ceci dans le cadre d'un accord intergouvernemental. Le Conseil des Gouverneurs a adopté la Résolution reproduite au paragraphe 1 du présent Rapport, et les Administrateurs ont entrepris en conséquence la rédaction de la présente Convention. Pour parvenir à un texte acceptable au plus grand nombre possible de gouvernements, la Banque a invité les pays membres à désigner des représentants comme membres d'un Comité Juridique chargé d'aider les Administrateurs dans leur tâche. Ce Comité s'est réuni à Washington du 23 novembre au 11 décembre 1964 et les Administrateurs tiennent à exprimer leurs remerciements pour l'aide appréciable fournie par les représentants des 61 pays membres ayant participé aux travaux du Comité.

III

8. En recommandant que la Convention ci-jointe soit signée par les Gouvernements, les Administrateurs sont mus par le désir de renforcer la collaboration des pays à la cause du développement économique. Ils estiment que la création d'une Institution destinée à faciliter le règlement des différends entre Etats et investisseurs étrangers serait une étape importante vers l'établissement du climat de confiance mutuelle qui conditionne le libre accès du capital étranger privé aux pays qui désirent l'attirer chez eux.

9. Les Administrateurs reconnaissent que les différends relatifs aux investissements devraient normalement être résolus en ayant recours aux procédures administratives, judiciaires ou arbitrales prévues par le droit du pays où l'investissement en cause est effectué. Cependant l'expérience montre qu'il existe des différends que les parties elles-mêmes ne considèrent pas comme susceptibles d'être résolus en vertu des procédures internes. De

nombreux accords d'investissement conclus récemment entre investisseurs et Etats démontrent en outre qu'il existe des cas où tant les Etats que les investisseurs estiment que leur intérêt mutuel est de prévoir des modes de règlement international.

10. La présente Convention mettrait à leur disposition des modes de règlement conçus en tenant compte de la nature particulière des différends en question, ainsi que du caractère des parties auxquelles elle serait applicable. Elle établirait des mécanismes de conciliation et d'arbitrage par des personnalités indépendantes particulièrement qualifiées, selon des règles connues et acceptées à l'avance par les parties intéressées. Ces mécanismes assureraient notamment qu'un gouvernement ou un investisseur ayant donné son accord au principe de la conciliation ou de l'arbitrage sous l'égide du Centre ne pourrait plus retirer son accord unilatéralement.

11. Les Administrateurs ne partagent pas et considèrent comme non fondées les craintes exprimées par certains que des investisseurs pourraient hésiter à investir dans des pays n'ayant pas adhéré à la Convention ou qui, bien qu'ayant adhéré, ne feraient pas usage des mécanismes du Centre. En revanche, il est évident que l'adhésion d'un pays à la Convention peut constituer un attrait additionnel pour les investisseurs étrangers. Le but immédiat de la présente Convention est de permettre aux pays d'offrir cet avantage.

12. Les Administrateurs attirent l'attention sur le fait que bien que l'objectif général de la Convention soit d'encourager l'investissement privé étranger, les dispositions de la Convention sont conçues en vue de maintenir l'équilibre entre les intérêts des investisseurs et ceux des Etats hôtes. En outre, la Convention permet tant aux Etats hôtes qu'aux investisseurs

d'entamer la procédure et les rédacteurs ont eu pour constante préoccupation de prévoir des dispositions qui répondent aux besoins des deux situations.

13. Bien que la plupart des dispositions de la Convention ci-jointe se suffisent à elles-mêmes, les Administrateurs estiment qu'un bref commentaire sur les principaux aspects de la Convention peut faciliter l'examen du texte par les gouvernements.

IV

Le Centre International pour le Règlement des Différends relatifs aux Investissements

Généralités

14. La Convention institue le Centre International pour le Règlement des Différends relatifs aux Investissements en tant qu'institution internationale autonome (Articles 18-24). L'objet du Centre est "d'offrir des moyens de conciliation et d'arbitrage pour régler les différends relatifs aux investissements * * *" (Article 1(2)). Le Centre ne remplira pas lui-même les fonctions de conciliateur ou d'arbitre. Ces fonctions appartiendront aux Commissions de Conciliation et aux Tribunaux Arbitraux constitués conformément aux dispositions de la Convention.

15. La Banque en tant que promotrice de l'Institution, fournira au Centre les locaux du siège (Article 2) et, dans le cadre d'arrangements à prendre par les deux institutions, tous autres services et installations administratifs (Article 6(d)).

16. En ce qui concerne le financement du Centre (Article 17), les Administrateurs ont décidé que la Banque serait prête à fournir gratuitement des bureaux au Centre tant que le siège de celui-ci coinciderait avec celui de

la Banque et à garantir, dans des limites raisonnables, le financement des principaux frais généraux du Centre pendant un nombre d'années à déterminer après sa création.

17. La structure du Centre se caractérise par un maximum de simplicité et d'économie compatible avec l'exercice efficace de ses fonctions. Les organes du Centre sont le Conseil Administratif (Articles 4-8) et le Secrétariat (Articles 9-11). Le Conseil Administratif est composé d'un représentant de chaque Etat contractant et ne recevant aucune rémunération du Centre. Chaque membre du Conseil dispose d'une voix et les décisions du Conseil sont prises à la majorité des voix, sauf quand une majorité différente est requise par la Convention. Le Président de la Banque assume d'office la Présidence du Conseil mais ne vote pas. Le Secrétariat est composé d'un Secrétaire Général, d'un ou de plusieurs Secrétaires Généraux Adjoints et du personnel. Pour permettre une certaine souplesse, la Convention prévoit la possibilité d'avoir plusieurs Secrétaires Généraux Adjoints, mais les Administrateurs n'envisagent pas pour l'instant la nécessité pour le Centre d'avoir plus de deux hauts fonctionnaires travaillant à plein temps. L'Article 10 prévoit que le Secrétaire Général et tout Secrétaire Général Adjoint sont élus, sur présentation par le Président, par le Conseil Administratif statuant à la majorité des deux tiers de ses membres; il limite également la possibilité pour ces fonctionnaires d'assumer d'autres tâches que leurs fonctions officielles.

Le Conseil Administratif

18. Les principales fonctions du Conseil Administratifs sont l'élection du Secrétaire Général et du ou des Secrétaires Généraux Adjoints, l'adoption

du budget du Centre et des règlements administratifs et financiers, ainsi que des règlements gouvernant l'introduction et le déroulement des procédures de conciliation et d'arbitrage. Toute décision en ces matières requiert la majorité des deux tiers des membres du Conseil.

Le Secrétaire Général

19. La Convention attribue au Secrétaire Général diverses fonctions administratives telles que celles de représentant, greffier et principal fonctionnaire du Centre (Articles 7(1), 11, 16(3), 28, 36, 49(1), 50(1), 51(1), 52(1), 52(4), 54(2), 59, 60(1), 63(b) et 65). En outre, le Secrétaire Général a le pouvoir de refuser l'enregistrement d'une demande en conciliation ou d'arbitrage et par conséquent de prévenir l'introduction des procédures en question s'il estime, sur la base des renseignements fournis par le demandeur, que le différend excède manifestement la compétence du Centre (Articles 28(3) et 36(3)). Ce pouvoir limité "d'opérer un tri" entre les demandes en conciliation ou d'arbitrage est conféré au Secrétaire Général dans le but d'éviter l'embarras qui pourrait résulter pour une partie (particulièrement un Etat) de l'introduction de procédures dirigées contre elle à l'occasion d'un différend qu'elle n'a pas accepté de soumettre au Centre, ainsi que la possibilité de faire jouer les mécanismes du Centre lorsque, pour d'autres raisons, le différend excède clairement la compétence du Centre, par exemple lorsque le demandeur ou l'autre partie n'ont pas qualité pour être parties aux procédures prévues par la Convention.

Les Listes

20. L'Article 3 oblige le Centre à tenir une liste de Conciliateurs et une liste d'Arbitres tandis que les Articles 12-16 décrivent le mode et les

conditions de désignation des personnes figurant sur ces listes. L'Article 14(1) en particulier a pour but de donner toutes assurances quant à la haute compétence des personnes inscrites sur ces listes et leur capacité d'exercer leurs fonctions en toute indépendance. En vue de conserver la plus grande souplesse aux mécanismes prévus, la Convention permet aux parties de désigner des conciliateurs et arbitres ne figurant pas sur les listes, mais exige (Articles 31(2) et 40(2)) que les personnes ainsi désignées aient les qualités prévues par l'Article 14(1). Quand, en vertu des Articles 30 ou 38, le Président est appelé à désigner un conciliateur ou un arbitre, son choix est limité aux personnes figurant sur les listes.

V

Compétence du Centre

21. L'expression "compétence du Centre" est utilisée dans la Convention pour désigner commodément les limites dans lesquelles les dispositions de la Convention s'appliquent et celles dans lesquelles les mécanismes du Centre peuvent être utilisés aux fins de procédures de conciliation et d'arbitrage. Le Chapitre II de la Convention (Articles 25-27) traite de la compétence du Centre.

Consentement

22. Le consentement des parties est la pierre angulaire de la compétence du Centre. Ce consentement doit être donné par écrit; une fois donné, il ne peut plus être retiré unilatéralement (Article 25(1)).

23. Le consentement des parties doit avoir été donné avant que le Centre ne soit saisi (Articles 28(3) et 36(3)), mais la Convention ne contient aucune précision quant à la date à laquelle le consentement doit être donné. Il peut

être donné, par exemple, dans une disposition d'un accord d'investissement prévoyant la soumission au Centre des différends auxquels il pourrait ultérieurement donner lieu, ou dans un compromis concernant un différend déjà né. La Convention n'exige pas que le consentement des deux parties soit exprimé dans le même acte juridique. C'est ainsi qu'un Etat hôte pourrait offrir, dans le cadre d'une législation destinée à promouvoir les investissements, de soumettre à la compétence du Centre les différends résultant de certaines catégories d'investissements, tandis que l'investisseur pourrait donner son consentement en acceptant l'offre par écrit.

24. Si le consentement des deux parties est une condition essentielle à la compétence du Centre, ce consentement ne suffit pas à lui seul pour qu'un différend tombe sous la compétence du Centre. Conformément au but de la Convention, la compétence du Centre est en outre limitée par la nature du différend et le caractère des parties intéressées.

Nature du différend

25. L'Article 25(1) prévoit que le différend doit être un "différend d'ordre juridique qui se rapporte directement à un investissement". L'expression "différend d'ordre juridique" a été utilisée pour montrer clairement que si les conflits de droit relèvent de la compétence du Centre, il n'en est pas de même des simples conflits d'intérêts. Le différend doit concerner soit l'existence ou l'étendue d'un droit ou d'une obligation juridique, soit la nature ou l'étendue des réparations dues pour rupture d'une obligation juridique.

26. Les Administrateurs n'ont pas jugé nécessaire ni souhaitable d'essayer de définir le terme "investissement", compte tenu du fait que le consentement

des parties constitue une condition essentielle et compte tenu du mécanisme par lequel les Etats contractants peuvent, s'ils le désirent, indiquer à l'avance les catégories de différends qu'ils seraient ou ne seraient pas prêts à soumettre au Centre (Article 25(4)).

Parties au différend

27. Pour qu'un différend relève de la compétence du Centre, il faut qu'une des parties soit un Etat contractant (ou une collectivité publique ou un organisme dépendant d'un Etat contractant) et que l'autre partie soit un "ressortissant d'un autre Etat contractant". Ce terme, qui est défini à l'alinéa (2) de l'Article 25, désigne aussi bien les personnes physiques que les personnes morales.

28. Il convient de noter qu'en vertu de la clause (a) de l'alinéa (2), une personne physique possédant la nationalité de l'Etat partie au différend ne sera pas admise à être partie aux procédures établies sous les auspices du Centre, même si elle possède en même temps la nationalité d'un autre Etat. Cette exclusion est absolue et ne peut être écartée même si l'Etat partie au différend y consent.

29. La clause (b) de l'alinéa (2) qui traite des personnes morales est plus souple. Une personne morale ayant la nationalité de l'Etat partie au différend peut être partie aux procédures établies sous les auspices du Centre si l'Etat en question accepte de la considérer comme ressortissante d'un autre Etat contractant en raison du contrôle exercé sur elle par des intérêts étrangers.

Notifications par les Etats contractants

30. Bien qu'aucune procédure de conciliation ou d'arbitrage ne puisse être intentée contre un Etat contractant sans son consentement et bien

qu'il n'existe aucune obligation pour un Etat contractant de donner son consentement à ces procédures, certains gouvernements ont estimé cependant que l'adhésion à la Convention pourrait être interprétée comme laissant entendre que les Etats contractants considéreraient favorablement les demandes d'investisseurs visant à soumettre un différend au Centre. Ces gouvernements ont fait remarquer qu'il pourrait y avoir des catégories de différends relatifs aux investissements qu'ils ne jugeraient pas susceptibles d'être soumis au Centre ou que leur loi nationale leur interdirait de soumettre au Centre. Pour éviter tout risque de malentendu sur ce point, l'Article 25(4) autorise expressément les Etats contractants à indiquer au Centre à l'avance, s'ils le désirent, les catégories de différends qu'ils envisageraient ou non de soumettre au Centre. Cette disposition précise que la déclaration par un Etat contractant qu'il envisagerait de soumettre une certaine catégorie de différends au Centre serait faite à titre d'information seulement et ne constituerait pas le consentement requis pour qu'un différend relève de la compétence du Centre. Bien entendu, une déclaration excluant certaines catégories de différends ne serait pas considérée comme une réserve apportée à la Convention par l'Etat intéressé.

De l'arbitrage comme mode exclusif de règlement

31. On peut présumer que quand un Etat et un investisseur s'entendent pour recourir à l'arbitrage et ne se réservent pas le droit de recourir à d'autres modes de règlement ou n'exigent pas l'épuisement préalable d'autres voies de recours, l'intention des parties est de recourir à l'arbitrage à l'exclusion de tout autre mode de règlement. Cette règle d'interprétation figure expressément dans la première phrase de l'Article 26(1). Pour qu'il

soit bien clair que l'intention n'est pas de modifier les règles de droit international concernant l'épuisement des recours internes, la deuxième phrase reconnaît expressément aux Etats le droit d'exiger l'épuisement préalable desdits recours.

Subrogation

32. Comme il a été déjà indiqué, l'Article 25 limite la compétence du Centre aux différends dans lesquels l'une des parties est un Etat (ou une collectivité publique ou un organisme dépendant d'un Etat) et l'autre un investisseur. Ainsi, les différends entre Etats devraient être exclus de la compétence du Centre, même si les Etats intéressés souhaitent les lui soumettre. Il a cependant paru souhaitable de prévoir une exception à cette règle quand un Etat hôte et un investisseur ont accepté de soumettre un différend au Centre et quand l'investisseur a assuré son investissement auprès de l'Etat dont il est le ressortissant. Dans ce cas, si l'Etat de l'investisseur l'a indemnisé et lui est subrogé dans ses droits quant à l'objet du différend, l'Article 26(2) autorise qu'aux fins de la procédure l'Etat se substitue à l'investisseur, mais seulement avec le consentement de l'Etat hôte. Comme l'objet de cette disposition est de permettre à l'Etat de l'investisseur d'être placé dans la situation de celui-ci, ledit Etat doit accepter d'être lié par les dispositions de la Convention de la même manière que l'investisseur et doit renoncer à recourir à tout autre mode de règlement tel que, par exemple, ceux dont il pourrait autrement disposer en vertu d'un accord bilatéral conclu avec l'Etat hôte.

33. Les dispositions de l'Article 25 empêcheraient également les institutions publiques internationales d'être parties à des procédures établies

sous les auspices du Centre. Cependant, en raison des projets récents tendant à la création d'institutions régionales ou internationales concernant l'assurance aux investissements, l'Article 26(2) a été rédigé de manière à permettre à de telles institutions de se substituer, aux fins des procédures établies sous les auspices du Centre, à un investisseur assuré par elles, dans des conditions identiques à celles qui s'appliquent à l'Etat dont l'investisseur est ressortissant.

Plaintes déposées par l'Etat de l'investisseur

34. Quand un Etat hôte accepte de soumettre au Centre un différend avec un investisseur et donne ainsi à l'investisseur accès direct à une instance internationale, l'investisseur ne devrait pas pouvoir demander à son Etat d'épouser sa cause et cet Etat ne devrait pas avoir le droit de le faire. En conséquence, l'Article 27 interdit expressément à un Etat contractant d'accorder la protection diplomatique ou de formuler une plainte fondée sur le droit international relative à un différend qu'un de ses ressortissants et un autre Etat contractant ont accepté de soumettre ou ont soumis à l'arbitrage dans le cadre de la Convention, à moins que l'Etat partie au différend ne refuse de se conformer à la sentence rendue en l'espèce.

VI

Procédures prévues par la Convention

Introduction des procédures

35. Les procédures sont intentées par une requête adressée au Secrétaire Général (Articles 28 et 36). Après enregistrement de la requête, la Commission de Conciliation ou, selon le cas, le Tribunal arbitral, est constitué (voir alinéa 19 ci-dessus quant au droit du Secrétaire Général de refuser l'enregistrement de la requête).

Constitution des Commissions de Conciliation et des Tribunaux Arbitraux

36. Si la Convention laisse aux parties une large discrétion quant à la constitution des Commissions et Tribunaux, elle s'attache néanmoins à empêcher que la procédure n'échoue par suite du défaut d'accord des parties ou du manque de coopération de l'une d'elles (Cf. respectivement les Articles 28-29 et les Articles 37-38).

37. Le fait que les parties sont libres de désigner des conciliateurs et des arbitres ne figurant pas sur les listes a déjà été mentionné (cf. alinéa 20 ci-dessus). Si la Convention ne limite pas ce choix des conciliateurs sur la base de leur nationalité, l'Article 39 pose néanmoins le principe que la majorité d'un Tribunal Arbitral ne doit pas être composée de ressortissants de l'Etat partie au différend ou de l'Etat dont un ressortissant est partie au différend. Ce principe aura vraisemblablement pour effet d'empêcher des personnes possédant les nationalités en question de faire partie de tout tribunal qui n'est pas composé de plus de trois membres. Toutefois cette règle ne s'appliquera pas au cas où tous les arbitres du Tribunal auront été désignés par accord entre les parties.

Procédures de conciliation; pouvoirs et fonctions des Tribunaux Arbitraux

38. D'une façon générale, les dispositions des Articles 28-35 se rapportant à la procédure de conciliation et celles des Articles 36-39 concernant les pouvoirs et fonctions des Tribunaux Arbitraux ainsi que les sentences rendues par ces Tribunaux s'expliquent d'elles-mêmes. Les différences entre les deux séries de dispositions reflètent la distinction fondamentale entre la procédure de conciliation dont le but consiste à essayer de rapprocher les parties et la procédure d'arbitrage dont l'objet est d'obtenir une décision du Tribunal s'imposant aux parties au différend.

39. L'Article 41 réaffirme le principe bien établi que les tribunaux internationaux doivent être juges de leur propre compétence et l'Article 32 applique le même principe aux Commissions de Conciliation. Il convient de noter à cet égard que le droit du Secrétaire Général de refuser l'enregistrement d'une requête en conciliation ou en arbitrage (cf. alinéa 19 ci-dessus) est défini très étroitement de façon à ne pas empiéter sur les prérogatives des Commissions et Tribunaux quant à la détermination de leur propre compétence, mais que l'enregistrement d'une requête par le Secrétaire Général n'empêche évidemment pas une Commission ou un Tribunal de décider que le différend ne relève pas de la compétence du Centre.

40. Etant donné le caractère consensuel des procédures prévues par la Convention, les parties à une procédure de conciliation ou d'arbitrage peuvent se mettre d'accord sur les règles de procédure à appliquer. Toutefois, le Règlement de Conciliation et le Règlement d'Arbitrage adoptés par le Conseil Administratif s'appliqueront dans la mesure où les parties n'en auraient pas convenu autrement (Articles 33 et 44).

41. En vertu de la Convention, un Tribunal Arbitral est tenu d'appliquer le droit désigné par les parties. A défaut d'accord, le Tribunal doit appliquer le droit de l'Etat partie au différend (sauf si le droit de cet Etat prévoit l'application d'un autre droit), et toute règle de droit international applicable en l'espèce. Le terme "droit international" doit ici être interprété au sens de l'Article 38(1) des Statuts de la Cour Internationale de Justice, compte tenu cependant du fait que cet Article 38 est

destiné à s'appliquer à des différends interétatiques.[1]

Reconnaissance et exécution des sentences arbitrales

42. L'Article 53 déclare que la sentence est obligatoire à l'égard des parties et ne peut être l'objet d'aucun appel ou autre recours à l'exception de ceux prévus par la Convention. Les recours prévus sont la révision (Article 51) et l'annulation (Article 52). En outre, une partie peut demander à un Tribunal qui aurait omis de se prononcer sur toute question qui lui aurait été soumise, de compléter sa sentence (Article 49(2)); elle peut également demander l'interprétation de la sentence (Article 50).

43. Sous réserve du cas de suspension à l'exécution conformément aux dispositions de la Convention et à l'occasion d'un des recours ci-dessus mentionnés, les parties sont tenues de donner effet à la sentence et l'Article 54 exige que tout Etat contractant reconnaisse le caractère obligatoire de la sentence et en assure l'exécution comme s'il s'agissait d'un jugement

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1) L'Article 38(1) des Statuts de la Cour Internationale de Justice est rédigé de la façon suivante:

"1. La Cour, dont la mission est de régler conformément au droit international les différends qui lui sont soumis, applique:

a) les conventions internationales, soit générales, soit spéciales, établissant des règles expressément reconnues par les Etats en litige;

b) la coutume internationale comme preuve d'une pratique générale acceptée comme étant le droit;

c) les principes généraux de droit reconnus par les nations civilisées;

d) sous réserve de la disposition de l'article 59, les décisions judiciaires et la doctrine des publicistes les plus qualifiés des différentes nations, comme moyen auxiliaire de détermination des règles de droit."

définitif d'un tribunal national. En raison des différences existant entre les techniques juridiques suivies dans les pays de "common law" et de "civil law", ainsi qu'en raison de celles existant entre les systèmes judiciaires des Etats unitaires, fédéraux ou autres Etats non-unitaires, l'Article 54 ne prescrit aucune règle particulière quant à sa mise en oeuvre à l'échelon national, mais impose à chaque Etat contractant de satisfaire aux conditions prévues audit article conformément à son système juridique national.

44. L'immunité d'exécution des Etats étrangers peut paralyser l'exécution forcée dans un Etat de jugements rendus contre des Etats étrangers ou contre l'Etat sur le territoire duquel l'exécution est demandée. L'Article 54 exige que les Etats contractants assimilent une sentence rendue dans le cadre de la Convention à un jugement définitif de leurs tribunaux nationaux. Cet Article ne demande pas que les Etats aillent plus loin et mettent à exécution des sentences rendues dans le cadre de la Convention lorsque des jugements définitifs ne pourraient faire l'objet de mesures d'exécution. Afin d'éviter tout malentendu à cet égard, l'Article 55 prévoit que l'Article 54 ne peut en aucune façon être interprété comme dérogeant au droit en vigueur dans un Etat contractant concernant l'immunité d'exécution de cet Etat ou d'un Etat étranger.

VII

Lieu des procédures

45. En ce qui concerne les procédures en dehors du Centre, l'Article 63 prévoit qu'elles peuvent se dérouler, si les parties en conviennent, au siège de la Cour Permanente d'Arbitrage ou de toute autre institution appropriée avec laquelle le Centre peut conclure tous arrangements à cet effet.

Il est vraisemblable que selon le type d'institution ces arrangements varieront de la simple mise à disposition de locaux pour les besoins de la procédure à la fourniture de services complets de secrétariat.

VIII

Différends entre Etats contractants

46. L'Article 64 donne à la Cour Internationale de Justice compétence pour connaître des différends entre Etats contractants concernant l'interprétation ou l'application de la Convention dans la mesure où ils ne sont pas réglés par voie de négociation ou tous autres modes de règlement convenus par les parties. Quoique cette disposition soit rédigée en termes généraux, elle doit être interprétée à la lumière de l'ensemble de la Convention. En particulier, cette disposition n'a pas pour but et, dans l'opinion des Administrateurs, n'a pas pour effet, de conférer à la Cour compétence pour réviser les décisions d'une Commission de Conciliation ou d'un Tribunal Arbitral relatives à leur propre compétence à l'occasion d'un différend qui leur est soumis. Elle n'autorise pas non plus un Etat à intenter une procédure devant la Cour au sujet d'un différend que l'un de ses ressortissants et un autre Etat contractant ont accepté de soumettre ou ont déjà soumis à l'arbitrage, étant donné qu'une telle procédure serait contraire à l'interdiction prévue à l'Article 27, à moins que l'autre Etat contractant n'ait pas donné effet à la sentence rendue en l'espèce.

IX

Entrée en vigueur

47. Conformément à une pratique coutumière au groupe des Nations Unies (cf. par exemple la Convention des Nations Unies sur la Reconnaissance et

l'Exécution des Sentences Arbitrales Etrangères), la Convention est ouverte aux membres des Nations Unies ou de toute institution spécialisée ainsi qu'aux Etats ayant adhéré au Statut de la Cour Internationale de Justice. Aucune limite de temps n'a été imposée pour la signature et cette signature est exigée non seulement des Etats adhérant avant l'entrée en vigueur de la Convention, mais également de ceux qui y adhéreraient postérieurement. La Convention est soumise à ratification ou acceptation par les Etats signataires conformément à leurs procédures constitutionnelles (Articles 70 et 71).

48. Les dispositions relatives à l'entrée en vigueur (Article 72) sortent quelque peu de l'ordinaire en ce qu'elles exigent non seulement un nombre déterminé de ratifications ou d'acceptations, mais en outre une déclaration des Administrateurs de la Banque. Comme la Convention touche essentiellement au domaine de la procédure, les précédents en la matière militeraient en faveur d'un nombre restreint de ratifications, voire limité à trois, pour permettre l'entrée en vigueur de la Convention. En revanche, la Convention crée une institution, le Centre, et cette caractéristique joue en faveur de l'exigence d'un plus grand nombre de ratifications. Enfin, il a paru désirable que la Convention, en raison de son objet -les différends entre Etats et investisseurs privés- ait, au moment de son entrée en vigueur, été ratifiée tant par des Etats qui seraient sans doute des Etats hôtes que par des Etats dont les ressortissants seraient vraisemblablement disposés à investir à l'étranger. Les Administrateurs ont conclu qu'il serait souhaitable d'exiger des ratifications ou acceptations par douze Etats au moins et, une fois ce nombre atteint, de décider, sur la recommandation du Président de la Banque, si la Convention doit être immédiatement déclarée en vigueur ou

d'attendre des ratifications ou acceptations assurant que les deux catégories d'Etats soient représentées parmi les Etats contractants lors de l'entrée en vigueur.

49. Le texte ci-joint de la Convention, en langues anglaise, française et espagnole, a été déposé aux archives de la Banque agissant en qualité de dépositaire et est ouvert à la signature à partir de la date du présent Rapport.

19 de enero de 1965

MEMORANDUM DEL CONSEJERO JURIDICO GENERAL

En relación con el memorandum del Presidente de 4 de enero de 1965 (SecM65-3), se acompaña un Proyecto de Informe de los Directores Ejecutivos para ser unido al Convenio sobre Arreglo de Diferencias Relativas a Inversiones cuando el mismo sea sometido a los gobiernos. Como recordarán los Directores Ejecutivos, el Presidente ha indicado con anterioridad que está en disposición de recomendar que el Banco haga una contribución para sufragar los gastos generales del Centro. La recomendación del Presidente en relación con este asunto se refleja en el párrafo 16 del Proyecto de Informe.

Los párrafos 17, 45 y 46 del Proyecto de Informe que se refieren a los Artículos 9, 63 y 64, respectivamente, del Proyecto Revisado de Convenio, reflejan las opiniones del Comité Legal sobre estos Artículos.

PROYECTO
Departamento Legal
19 de enero de 1965

Informe de los Directores Ejecutivos acerca del Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de otros Estados

I

1. La Resolución No. 214, adoptada por la Junta de Gobernadores del Banco Internacional de Reconstrucción y Fomento el 10 de septiembre de 1964, dispone lo siguiente:

"SE RESUELVE:

(a) Aprobar el informe de los Directores Ejecutivos sobre "Arreglo de Diferencias Relativas a Inversiones," de fecha 6 de agosto de 1964.

(b) Solicitar de los Directores Ejecutivos que formulen un convenio que establezca mecanismos y procedimientos de los cuales se pueda disponer con carácter voluntario, para el arreglo de diferencias relativas a inversiones entre Estados contratantes y Nacionales de otros Estados contratantes, mediante la conciliación y el arbitraje.

(c) Al formular tal convenio, los Directores Ejecutivos tendrán en cuenta las opiniones de los gobiernos miembros y deberán tener presente la conveniencia de lograr la adopción de un texto que pueda ser aceptado por el mayor número posible de gobiernos.

(d) Los Directores Ejecutivos someterán el texto de dicho convenio a la consideración de los gobiernos miembros con aquellas recomendaciones que estimen convenientes."

2. Los Directores Ejecutivos del Banco, actuando en cumplimiento de la Resolución que antecede, han formulado un Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de otros Estados y, el __ de marzo de 1965, aprobaron el texto del Convenio que se adjunta, para su presentación a los gobiernos miembros del Banco. La aprobación del

Convenio por parte de los Directores Ejecutivos para su presentación a los gobiernos no supone, desde luego, que los gobiernos estén obligados a tomar medidas en relación al Convenio.

3. La aprobación del texto del Convenio por los Directores Ejecutivos fue precedida de extensas labores preparatorias, acerca de las cuales se ofrecen detalles en los subsiguientes párrafos 5 al 7. Los Directores Ejecutivos creen firmemente que el Convenio, tal como ellos lo aprobaron, representa un amplio consenso de los puntos de vista de aquellos gobiernos que aceptan el principio de crear, mediante acuerdos intergubernamentales, mecanismos y procedimientos para el arreglo de diferencias relativas a inversiones que los Estados e inversionistas extranjeros deseen someter a conciliación o arbitraje. También están convencidos que el Convenio constituye una estructura satisfactoria para esos mecanismos y procedimientos. En consecuencia, los Directores Ejecutivos recomiendan que los gobiernos miembros firmen y ratifiquen o acepten el Convenio.

4. Los Directores Ejecutivos piden que se preste atención a las disposiciones del Artículo 69, conforme al cual, una vez que el Convenio haya sido ratificado o aceptado por doce Estados, los Directores Ejecutivos del Banco, actuando a propuesta del Presidente, pueden declarar que el Convenio debe entrar en vigor. El Convenio entrará en vigor noventa días después de dicha declaración.

II

5. La cuestión acerca de la conveniencia y practicabilidad de crear mecanismos institucionales auspiciados por el Banco para el arreglo, mediante la conciliación y el arbitraje, de diferencias relativas a inversiones entre Estados e inversionistas extranjeros, fue planteada por primera vez ante la

Junta de Gobernadores del Banco en su Décima Séptima Reunión Anual, celebrada en Washington, D. C., en septiembre de 1962. En esa Reunión, la Junta de Gobernadores, por la Resolución No. 174 adoptada el 18 de septiembre de 1962, pidió que los Directores Ejecutivos estudiaran el asunto.

6. Los Directores Ejecutivos iniciaron su estudio del asunto sobre la base de los documentos de trabajo preparados por el personal del Banco. Después de una serie de discusiones informales, los Directores Ejecutivos decidieron que el Banco debía convocar reuniones consultivas de juristas designados por los gobiernos miembros a fin de considerar más detalladamente el asunto. Las reuniones consultivas de carácter regional se celebraron en Addis-Abeba (diciembre 16 al 20 de 1963), Santiago de Chile (febrero 3 al 7 de 1964), Ginebra (febrero 17 al 21 de 1964) y Bangkok (abril 27 a mayo 1 de 1964), con la ayuda administrativa de las Comisiones Económicas de las Naciones Unidas y de la Oficina Europea de las Naciones Unidas, y las discusiones se basaron en un Proyecto Preliminar de Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de otros Estados, preparado por el personal del Banco teniendo en cuenta las deliberaciones de los Directores Ejecutivos y los puntos de vista de los gobiernos. A las reuniones asistieron juristas de 86 países y las mismas resultaron valiosas no sólo para precisar y dilucidar problemas técnicos, sino también para complementar la información del Banco respecto a la actitud de los gobiernos.

7. Teniendo en cuenta las labores preparatorias y las opiniones expresadas en las reuniones consultivas, los Directores Ejecutivos informaron a la Junta de Gobernadores en su Décima Novena Reunión Anual en Tokío, en septiembre de 1964, que convendría crear los mecanismos institucionales proyectados dentro de la estructura de un acuerdo intergubernamental. La Junta de

Gobernadores adoptó la Resolución cuyo texto se cita en el párrafo 1 de este Informe, y los Directores Ejecutivos emprendieron la tarea de redactar el presente Convenio. Con vista a lograr un texto que pudiera ser aceptado por el mayor número posible de gobiernos, el Banco invitó a sus miembros a que designaran representantes a un Comité Legal que ayudaría a los Directores Ejecutivos en su tarea. Este Comité se reunió en Washington del 23 de noviembre al 11 de diciembre de 1964, y los Directores Ejecutivos expresan su agradecimiento por la valiosa asistencia recibida de los representantes de los 61 países miembros que laboraron en el Comité.

III

8. Al recomendar a los gobiernos la firma del Convenio que se adjunta, los Directores Ejecutivos lo hacen movidos por el deseo de fortalecer la asociación de los países en la causa del desarrollo económico. Estiman que la creación de una institución destinada a facilitar el arreglo de diferencias relativas a inversiones entre Estados e inversionistas extranjeros constituye un paso importante hacia el establecimiento de un ambiente de confianza mutua, que es requisito previo para el libre flujo de capital privado extranjero hacia los países que desean atraerlo.

9. Los Directores Ejecutivos reconocen que las diferencias sobre inversiones pueden ser corrientemente resueltas a través de los procedimientos administrativos, judiciales o arbitrales disponibles al amparo de las leyes del país en que se haya realizado la inversión en cuestión. Sin embargo, la experiencia indica que surgen diferencias que las partes no consideran propias para ser resueltas mediante los procedimientos internos. Hay casos numerosos de convenios de inversión celebrados en los últimos años entre inversionistas y Estados receptores que también demuestran que, tanto los

Estados como los inversionistas, han decidido que resulta más conveniente a sus intereses mutuos acudir, mediante acuerdo, a métodos internacionales de arreglo.

10. El presente Convenio ofrecería métodos internacionales de arreglo destinados a tomar en consideración las características especiales de las diferencias que caerían dentro del mismo, así como las de las partes a que habrá de aplicarse. Facilitaría mecanismos para la conciliación y el arbitraje por personas particularmente calificadas y de criterio imparcial, que se tramitarían conforme a reglas conocidas y aceptadas de antemano por las partes interesadas. Específicamente, aseguraría que, una vez que un gobierno o un inversionista prestara su consentimiento a la conciliación o al arbitraje bajo los auspicios del Centro, tal consentimiento no podría ser revocado unilateralmente.

11. Los Directores Ejecutivos no comparten, y además consideran infundado, el temor expresado en ciertos sectores en el sentido de que los países que no firmaran el Convenio, o que, habiéndose adherido, no hicieren uso de los mecanismos del Centro, hallarían a los inversionistas renuentes a realizar inversiones en sus territorios. Por otra parte, es evidente que la adhesión de un país al Convenio podría proporcionar un incentivo adicional para las inversiones extranjeras en su territorio. El objetivo inmediato del presente Convenio es permitir que los países puedan ofrecer un incentivo de esa clase.

12. Los Directores Ejecutivos llaman la atención sobre el hecho que, aunque el objetivo general del Convenio es estimular las inversiones privadas extranjeras, sus disposiciones mantienen un cuidadoso equilibrio entre los intereses del inversionista y los de los Estados receptores. Además, el Convenio permite tanto a los Estados como a los inversionistas la incoación

de los procedimientos, y los redactores han tenido presente constantemente que las disposiciones del Convenio deben adaptarse igualmente a los requisitos de ambos casos.

13. Aunque la mayoría de los preceptos del Convenio adjunto se explica por sí sola, los Directores Ejecutivos estiman que un breve comentario acerca de algunas de sus características principales puede ser de utilidad a los gobiernos miembros en su consideración del Convenio.

IV

El Centro Internacional de Arreglo de Diferencias Relativas a Inversiones

Disposiciones Generales

14. El Convenio establece el Centro Internacional de Arreglo de Diferencias Relativas a Inversiones como una institución internacional autónoma (Artículos 18 al 24). La finalidad del Centro es "facilitar la sumisión a un procedimiento de conciliación y arbitraje de las diferencias relativas a inversiones . . ." (Artículo 1(2)). El Centro en sí no se dedicará a actividades de conciliación o arbitraje. Esta será la tarea de las Comisiones de Conciliación y de los Tribunales de Arbitraje que se constituirán de conformidad con las disposiciones del Convenio.

15. Como patrocinador de la institución, el Banco facilitará al Centro el local para su sede (Artículo 2) así como, conforme a los arreglos que se celebren entre las dos instituciones, otros servicios administrativos e instalaciones (Artículo 6(d)).

16. Respecto a la financiación del Centro (Artículo 17), los Directores Ejecutivos han decidido que el Banco debe estar en disposición de facilitar al Centro un local para sus oficinas en forma gratuita mientras el Centro tenga su sede en las oficinas principales del Banco, así como sufragar,

dentro de límites razonables, los gastos generales básicos del Centro durante un período de años que se determinará una vez que el Centro esté establecido.

17. La estructura del Centro se caracteriza por un máximo de sencillez y economía compatible con el eficaz cumplimiento de sus funciones. Los órganos del Centro son el Consejo Administrativo (Artículos 4 al 8) y el Secretariado (Artículos 9 al 11). El Consejo Administrativo se compondrá de un representante de cada uno de los Estados Contratantes, los que desempeñarán sus funciones sin remuneración por parte del Centro. Cada miembro del Consejo tendrá un voto y los asuntos que se presenten ante el Consejo se decidirán por mayoría de votos emitidos, salvo que el Convenio exija una mayoría distinta. El Presidente del Banco será ex officio Presidente del Consejo pero sin derecho a voto. El Secretariado estará constituido por un Secretario General, por uno o más Secretarios Generales Adjuntos y por el personal. En aras de la flexibilidad el Convenio dispone que puede haber más de un Secretario General Adjunto, pero los Directores Ejecutivos estiman que no habrá necesidad de utilizar en el Centro más de uno o dos funcionarios permanentes de alto rango. El Artículo 10, que dispone que el Secretario General y cualquier Secretario General Adjunto serán elegidos, a propuesta del Presidente, por el Consejo Administrativo con mayoría de dos tercios de sus miembros, también limita los casos en que estos funcionarios pueden dedicarse a actividades distintas de sus funciones oficiales.

El Consejo Administrativo

18. Las funciones principales del Consejo Administrativo son la elección del Secretario General y de los Secretarios Generales Adjuntos, la adopción del presupuesto anual del Centro y la adopción de los reglamentos administrativos y financieros, de las reglas a seguir para el inicio de los proce-

dimientos y de las reglas procesales aplicables a la conciliación y al arbitraje. Para la aprobación de todas estas cuestiones se requiere una mayoría de dos tercios de los miembros del Consejo.

El Secretario General

19. El Convenio dispone que el Secretario General desempeñe diversas funciones administrativas como representante legal, registrador y funcionario principal del Centro (Artículos 7(1), 11, 16(3), 28, 36, 49(1), 50(1), 51(1), 52(1), 52(4), 54(2), 59, 60(1), 63(b) y 65). Además, al Secretario General se le conceden facultades para negar el registro de una petición de conciliación o arbitraje, a fin de evitar en esta forma la incoación de dichos procedimientos si, de acuerdo con la información ofrecida por el solicitante, encuentra que la diferencia se halla manifiestamente fuera de la jurisdicción del Centro (Artículos 28(3) y 36(3)). Esta facultad limitada de "entresacar" las solicitudes de conciliación o de arbitraje se le otorga al Secretario General para evitar lo enojoso que pudiera resultar para una de las partes (particularmente un Estado) el inicio de un procedimiento contra la misma en una controversia respecto a la cual dicha parte no hubiere consentido en someter a la jurisdicción del Centro, así como para prevenir la posibilidad de que se ponga en movimiento el mecanismo del Centro en casos que, por otras razones, caen indudablemente fuera de la jurisdicción del Centro, como, por ejemplo, que el solicitante o la otra parte no reúna los requisitos necesarios para ser parte en los procedimientos conforme al Convenio.

Las Listas

20. El Artículo 3 dispone que el Centro mantenga una Lista de Conciliadores y una Lista de Arbitros, y los Artículos 12 al 16 establecen los términos y

condiciones de la designación de los integrantes de las Listas. El Artículo 14(1) trata específicamente de asegurar que los integrantes de las Listas tengan reconocida competencia y sean capaces de expresar criterios imparciales. En concordancia con la índole esencialmente flexible de los procedimientos, el Convenio permite a las partes nombrar conciliadores y árbitros a personas que no figuren en las Listas, pero exige (Artículos 31(2) y 40(2)) que las personas así designadas reúnan las cualidades expresadas en el Artículo 14(1). En los casos en que, conforme al Artículo 30 o al 38, corresponde al Presidente la designación de conciliadores o árbitros, éste sólo puede nombrar personas que figuren en las Listas.

V

Jurisdicción del Centro

21. El término "jurisdicción del Centro" se usa en el Convenio como una expresión conveniente para indicar los límites dentro de los cuales se aplicarán las disposiciones del Convenio y se facilitarán los servicios del Centro para procedimientos de conciliación y arbitraje. La jurisdicción del Centro es tratada en el Capítulo II del Convenio (Artículos 25 al 27).

Consentimiento

22. El consentimiento de las partes es la piedra angular en que descansa la jurisdicción del Centro. El consentimiento a la jurisdicción debe darse por escrito y una vez prestado no puede ser revocado unilateralmente (Artículo 25(1)).

23. El consentimiento de las partes debe existir en el momento en que el Centro ejercite su jurisdicción (Artículos 28(3) y 36(3)), pero el Convenio no especifica en forma alguna el momento en que debe prestarse el consentimiento. El consentimiento puede prestarse, por ejemplo, en las cláusulas de

un contrato de inversión, que disponga la sumisión al Centro de las diferencias futuras surgidas de ese contrato, o en compromiso entre partes respecto a una diferencia que ya haya surgido. El Convenio tampoco exige que el consentimiento de ambas partes se haga constar en un mismo instrumento. Así, un Estado anfitrión pudiera ofrecer en su legislación sobre promoción de inversiones, que se someterán a la jurisdicción del Centro las diferencias producidas con motivo de ciertas clases de inversiones, y el inversionista puede prestar su consentimiento mediante aceptación por escrito de la oferta.

24. Aunque el consentimiento de las partes constituye un requisito previo esencial para la jurisdicción del Centro, el mero consentimiento no es suficiente para someter a su jurisdicción una diferencia. En concordancia con la finalidad del Convenio, la jurisdicción del Centro resulta además limitada por la naturaleza de la diferencia y de las partes.

Naturaleza de la diferencia

25. El Artículo 25(1) exige que la diferencia sea una "diferencia de naturaleza jurídica que surja directamente de una inversión". La expresión "diferencia de naturaleza jurídica" se ha utilizado para dejar aclarado que están comprendidos dentro de la jurisdicción del Centro los conflictos sobre derechos, pero no los simples conflictos de intereses. La diferencia debe referirse a la existencia o el alcance de un derecho u obligación de orden legal, o a la naturaleza o el alcance de la indemnización a que dé lugar la violación de una obligación de orden legal.

26. Los Directores Ejecutivos no creyeron necesario ni conveniente tratar de definir el término "inversión", teniendo en cuenta el requisito esencial del consentimiento de las partes y el mecanismo mediante el cual los Estados

Contratantes pueden dar a conocer de antemano, si así lo desean, las clases de diferencias que estarán o no dispuestos a someter a la jurisdicción del Centro (Artículo 25(4)).

Las partes en la diferencia

27. Para que una diferencia resulte comprendida dentro de la jurisdicción del Centro es necesario que una de las partes sea un Estado Contratante (o una subdivisión política u organismo público de un Estado Contratante) y que la otra parte sea un "nacional de otro Estado Contratante". Esta última expresión, tal como se define en el apartado (2) del Artículo 25, comprende tanto a las personas naturales como a las jurídicas.

28. Puede observarse que bajo la letra (a) del apartado (2) del Artículo 25, la persona natural que poseyere la nacionalidad de un Estado que sea parte en la diferencia no puede ser parte en los procedimientos que se tramiten bajo los auspicios del Centro, ni aun cuando al propio tiempo tuviere la nacionalidad de otro Estado. Esta incapacidad es absoluta y no puede ser subsanada ni siquiera en los casos en que el Estado que sea parte en la diferencia hubiere dado su consentimiento.

29. La letra (b) del apartado (2) del Artículo 25, que trata de las personas jurídicas, es más flexible. La persona jurídica que poseyere la nacionalidad de un Estado que sea parte en la diferencia puede ser parte en los procedimientos que se tramiten bajo los auspicios del Centro si ese Estado hubiere convenido en atribuirle el carácter de nacional de otro Estado Contratante por razón de encontrarse sometida a control extranjero.

Notificaciones por parte de los Estados Contratantes

30. Aunque no se pueden iniciar procedimientos de conciliación o arbitraje contra un Estado Contratante sin su consentimiento, y a pesar de que ningún

Estado Contratante está bajo obligación alguna de prestar su consentimiento a dichos procedimientos, algunos gobiernos, sin embargo, han estimado que la adhesión al Convenio pudiera ser interpretada en el sentido de entrañar una expectativa de que los Estados Contratantes considerarían favorablemente las solicitudes de los inversionistas encaminadas a someter diferencias a la jurisdicción del Centro. Estos gobiernos señalaron que pudieran existir ciertas clases de diferencias que ellos considerarían impropias para ser sometidas al Centro o que, conforme a su propia legislación, les estuviera prohibido someter al Centro. A fin de evitar el peligro de cualquier mala interpretación en este aspecto, el Artículo 25(4) permite expresamente a los Estados Contratantes notificar de antemano al Centro, si así lo desean, las clases de diferencias que aceptarían someter o no a la jurisdicción del Centro. El precepto deja aclarado que la declaración del Estado Contratante en el sentido de que aceptaría someter cierta clase de diferencias a la jurisdicción del Centro, es sólo de carácter informativo y no constituye el consentimiento necesario para otorgarle jurisdicción al Centro. Desde luego, una declaración que excluya la consideración de ciertas clases de diferencias no constituiría una reserva al Convenio.

El arbitraje como procedimiento exclusivo

31. Se puede presumir que cuando un Estado y un inversionista acuerdan acudir al arbitraje y no se reservan el derecho de acudir a otras vías, o de exigir el agotamiento previo de otras vías, la intención de las partes es acudir al arbitraje con exclusión de cualquier otro procedimiento. Esta regla de interpretación está contenida en la primera oración del Artículo 26(1). A fin de dejar aclarado que la misma no intenta modificar las normas de derecho internacional relativas al agotamiento de las vías locales, la

segunda oración reconoce en forma explícita el derecho del Estado a exigir que se agoten previamente las vías internas.

La subrogación

32. Como se ha expresado, el Artículo 25 limita la jurisdicción del Centro a las diferencias en que una de las partes sea un Estado (o una subdivisión política u organismo público de un Estado) y la otra un inversionista. Las diferencias entre Estados resultan en esta forma excluidas de la jurisdicción del Centro aun cuando los Estados interesados desearen someter dichas diferencias al Centro. Sin embargo, pareció conveniente permitir una excepción a esta norma en el caso en que un Estado anfitrión y un inversionista hubieren consentido en someter la diferencia a la jurisdicción del Centro y el inversionista hubiere obtenido un seguro de inversión de su Estado. En tal caso, si el Estado del inversionista hubiere indemnizado a este último y se subrogare en sus derechos respecto a las cuestiones controvertidas, el Artículo 26(2) permite la substitución en el procedimiento del inversionista por su Estado, pero sólo con el consentimiento del Estado anfitrión. Dado que la finalidad de este precepto es permitir que el Estado del inversionista se coloque en el lugar y grado de éste, a dicho Estado se le exige que consienta en someterse a las disposiciones del Convenio al igual que el inversionista, y que renuncie a acudir a cualquier otra vía, como, por ejemplo, cualquier recurso a que pudiera acogerse al amparo de un acuerdo bilateral con el Estado anfitrión.

33. Las disposiciones del Artículo 25 excluyen también como partes en los procedimientos que se tramiten bajo los auspicios del Centro a los organismos públicos internacionales. No obstante, en vista de la recién propuesta creación de instituciones regionales o internacionales de seguros de inversio-

nes, el Artículo 26(2) ha sido redactado en forma que permita a una institución de ese tipo substituir al inversionista asegurado por ella en los procedimientos que se tramiten ante el Centro, bajo condiciones idénticas a las que son aplicables al Estado del inversionista.

Reclamaciones por parte del Estado del inversionista

34. Cuando un Estado anfitrión consiente en someter al Centro la diferencia con un inversionista, otorgando así al inversionista acceso directo a una jurisdicción de carácter internacional, dicho inversionista no debe quedar en posición de pedir a su Estado que respealde su caso ni se debe permitir a éste que lo haga. En consecuencia, el Artículo 27 prohibe expresamente al Estado Contratante la concesión de protección diplomática o la promoción de una reclamación internacional respecto a cualquier diferencia que uno de sus nacionales y otro Estado Contratante hayan consentido someter, o hayan sometido, a arbitraje conforme al Convenio, a menos que el Estado que es parte en la diferencia no haya acatado el laudo dictado en tal diferencia.

VI

Procedimientos al amparo del Convenio

35. Los procedimientos se inician mediante una solicitud dirigida al Secretario General (Artículos 28 y 36). Una vez registrada la solicitud, se constituirá la Comisión de Conciliación o el Tribunal de Arbitraje, según sea el caso. Se hace referencia al párrafo 19 de este Informe en cuanto a la facultad del Secretario General para negar el registro de la solicitud.

Constitución de las Comisiones de Conciliación y de los Tribunales de Arbitraje

36. Aunque el Convenio concede a las partes amplia libertad respecto a

la constitución de las Comisiones y Tribunales, garantiza que la falta de acuerdo entre las partes sobre ello o la renuencia de una de las partes a cooperar no frustre el procedimiento (Artículos 28-29 y 37-38, respectivamente).

37. Con anterioridad se ha hecho mención a que las partes están en libertad de nombrar como conciliadores y árbitros a personas que no figuren en las Listas (véase el párrafo 20 de este Informe). Aunque el Convenio no restringe la designación de conciliadores atendiendo a su nacionalidad, el Artículo 39 establece una norma en el sentido de que la mayoría de los miembros de un Tribunal de Arbitraje no deben ser nacionales ni del Estado que sea parte en la diferencia ni del Estado cuyo nacional sea parte en la diferencia. Es probable que esta norma produzca el efecto de excluir a las personas que posean estas nacionalidades de la integración de un Tribunal que se componga de no más de tres miembros. Sin embargo, la regla no se aplicará cuando todos y cada uno de los árbitros hayan sido nombrados por mutuo acuerdo de las partes.

El procedimiento de conciliación;
facultades y funciones de los Tribunales de Arbitraje

38. En general, las disposiciones de los Artículos 28 al 35, que tratan del procedimiento de conciliación, y de los Artículos 36 al 49, que tratan de las facultades y funciones de los Tribunales de Arbitraje y de los laudos dictados por dichos Tribunales, se explican por sí solas. Las diferencias entre los dos grupos de disposiciones reflejan la distinción básica entre el proceso conciliatorio, que persigue poner de acuerdo a las partes, y el de arbitraje, que se encamina a una decisión obligatoria de la diferencia por parte del Tribunal.

39. El Artículo 41 reitera el bien reconocido principio de que los tribu-

nales internacionales son los llamados a resolver sobre su propia competencia, y el Artículo 32 aplica el mismo principio a las Comisiones de Conciliación. En relación a esto, se debe hacer notar que la facultad del Secretario General para rehusar el registro de una solicitud de conciliación o de arbitraje (véase el párrafo 19 de este Informe) se define en forma tan limitada que no interfiera con la prerrogativa de las Comisiones y Tribunales de determinar su propia competencia y, por otra parte, dicho registro de la solicitud por el Secretario General no impide, desde luego, que la Comisión o el Tribunal decida que la diferencia cae fuera de la jurisdicción del Centro.

40. En concordancia con el carácter consensual de los procedimientos que autoriza el Convenio, las partes en los procedimientos de conciliación o arbitraje pueden acordar las reglas procesales que habrán de aplicarse a dichos procedimientos. No obstante, a falta de acuerdo o en aquello en que las partes no hayan llegado a acuerdo, se aplicarán las Reglas de Conciliación y las Reglas de Arbitraje que adopte el Consejo Administrativo (Artículos 33 y 44).

41. Conforme al Convenio, el Tribunal de Arbitraje deberá aplicar las leyes que las partes acuerden. A falta de acuerdo, el Tribunal aplicará las leyes del Estado que sea parte en la diferencia (salvo que estas leyes exijan la aplicación de otras leyes), así como las normas de derecho internacional que resulten aplicables. El término "derecho internacional", cuando se use en este contexto, se entenderá en el sentido que le atribuye el Artículo 38(1) del Estatuto de la Corte Internacional de Justicia, si bien teniendo en cuenta que el expresado Artículo 38 está destinado a

aplicarse a diferencias entre Estados.[1)]

Reconocimiento y ejecución de los laudos arbitrales

42. El Artículo 53 declara que el laudo será obligatorio para las partes y que no podrá ser objeto de apelación o de cualquier otro recurso, excepto los que establece el Convenio. Los recursos autorizados son el de revisión (Artículo 51) y el de anulación (Artículo 52). Además, la parte puede pedir al Tribunal que hubiere omitido resolver cualquier extremo sometido a su conocimiento, que complemente el laudo (Artículo 49(2)), y puede también solicitar la aclaración del laudo (Artículo 50).

43. Sin perjuicio de cualquier suspensión de la ejecución relacionada con alguno de los procedimientos antes expresados y efectuada de conformidad con las disposiciones del Convenio, las partes están obligadas a acatar y cumplir el laudo, y el Artículo 54 exige a todos los Estados Contratantes

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1) El Artículo 38(1) del Estatuto de la Corte Internacional de Justicia expresa literalmente lo siguiente:

"1. La Corte, cuya función es decidir de conformidad con el derecho internacional las diferencias que se le sometan, aplicará:

a. los convenios internacionales, sean generales o especiales, estableciendo reglas que sean aceptadas expresamente por los estados litigantes;

b. la costumbre internacional, evidenciada por una práctica general aceptada como ley;

c. los principios generales de derecho reconocidos por las naciones civilizadas;

d. sujetas a las disposiciones del Artículo 59, las decisiones judiciales y las enseñanzas de los publicistas más calificados de las diversas naciones, como medios subsidiarios para la determinación de las normas de derecho."

que reconozcan el carácter obligatorio del laudo y que lo hagan ejecutar como si se tratase de una sentencia firme de uno de sus tribunales locales. Debido a las distintas técnicas procesales seguidas en las jurisdicciones del llamado "common law" y las que se inspiran en el derecho civil de tradición romana, así como a los distintos sistemas judiciales existentes en los Estados unitarios y en los federales u otros no unitarios, el Artículo 54 no establece ningún método especial para lograr su cumplimiento interno, sino que exige a cada Estado Contratante que cumpla las disposiciones del Artículo de conformidad con su propio sistema.

44. La doctrina de la inmunidad del Estado puede impedir la ejecución forzosa en un Estado de sentencias obtenidas contra Estados extranjeros o contra el Estado en el cual se persigue la ejecución. El Artículo 54 dispone que los Estados Contratantes deberán dar el mismo valor al laudo que se dicte conforme al Convenio que tiene la sentencia firme de sus propios tribunales. No les exige que traspasen esos límites y se comprometan a la ejecución forzosa de laudos dictados conforme al Convenio en los casos en que las sentencias firmes no pudieran ejecutarse. A fin de no dejar lugar a dudas sobre este punto, el Artículo 55 dispone que nada de lo dicho en el Artículo 54 se interpretará como derogatorio de las leyes vigentes en los Estados Contratantes relativas a la inmunidad en materia de ejecución perseguible contra dicho Estado u otro Estado extranjero.

VII

Lugar del Procedimiento

45. Al tratar de los procedimientos que se tramiten fuera de la sede del Centro, el Artículo 63 dispone que los procedimientos podrán verificarse, si las partes así lo acuerdan, en la sede de la Corte Permanente de Arbitraje

o en la de cualquier otra institución apropiada con la que el Centro hubiere llegado a un acuerdo a tal efecto. Es probable que estos acuerdos difieran según el tipo de institución y varíen desde la simple facilitación de local para los actos procesales hasta el suministro de servicios completos de secretaría.

VIII

Diferencias entre Estados Contratantes

46. El Artículo 64 confiere a la Corte Internacional de Justicia jurisdicción sobre las diferencias entre Estados Contratantes en relación con la interpretación o aplicación del Convenio y que no sean resueltas mediante negociación, a no ser que las partes hayan acordado acudir a otro modo de arreglo. Aunque la disposición está redactada en términos generales, debe entenderse de acuerdo con el contexto global del Convenio. Específicamente, el precepto no se propone conferir jurisdicción a la Corte, y a juicio de los Directores Ejecutivos no lo hace, para que la misma revise la decisión de una Comisión de Conciliación o de un Tribunal de Arbitraje en cuanto a la competencia de éstos para decidir las diferencias de que conozcan. Ni tampoco faculta a un Estado a promover un procedimiento ante la Corte respecto a una diferencia que uno de sus nacionales y otro Estado Contratante hayan consentido en someter a arbitraje, ya que tal procedimiento violaría la prohibición establecida en el Artículo 27, a menos que el otro Estado Contratante hubiere dejado de acatar y cumplir el laudo dictado en relación con tal diferencia.

IX

Entrada en Vigor

47. Conforme a la práctica usual en la familia de las Naciones Unidas

(véase, por ejemplo, el Convenio sobre Reconocimiento y Ejecución de Laudos Arbitrales Extranjeros de la O.N.U.), el Convenio queda abierto a los miembros de las Naciones Unidas o de cualquiera de sus organismos especializados y a los Estados signatarios del Estatuto de la Corte Internacional de Justicia. No se ha fijado término para la firma y ésta se exige tanto de los Estados que se adhieran antes de que el Convenio entre en vigor como de los que se adhieran después. El Convenio está sujeto a ratificación a aceptación por parte de los Estados signatarios de acuerdo con sus respectivas normas constitucionales (Artículos 70 y 71).

48. El precepto que regula la entrada en vigor (Artículo 72) resulta algo extraordinario al requerir no sólo un número determinado de ratificaciones o aceptaciones sino, además, una declaración de los Directores Ejecutivos del Banco. Dado que el Convenio es fundamentalmente de carácter procesal, los precedentes indicaban que fuese suficiente un pequeño número de ratificaciones, posiblemente sólo tres, para que entrase en vigor el Convenio. Por otra parte, el Convenio da vida a un organismo, el Centro, y esta característica del Convenio constituía un argumento a favor de la exigencia de un mayor número de ratificaciones. Finalmente, la materia objeto del Convenio, las diferencias entre Estados e inversionistas extranjeros, aconsejaba la conveniencia de que al momento de entrar en vigor el Convenio hubiere sido ratificado tanto por Estados que tuvieran la probabilidad de ser Estados receptores de inversiones como por Estados cuyos nacionales estuvieran en condiciones de efectuar inversiones en el extranjero. Los Directores Ejecutivos llegaron a la conclusión de que era conveniente exigir las ratificaciones o aceptaciones de no menos de 12 Estados y, una vez alcanzada esa cifra, decidir, por recomendación del Presidente

del Banco, si ha de declararse que el Convenio entre en vigor inmediatamente o si ha de esperarse a que se produzcan nuevas ratificaciones o aceptaciones garantizando así que ambos grupos de Estados estén representados entre los Estados Contratantes al momento de entrar en vigor el Convenio.

49. El adjunto texto del Convenio en los idiomas inglés, francés y español, ha quedado depositado en los archivos del Banco, como depositario, y se encuentra abierto para firmas a partir de la fecha de este Informe.

Mr. Rasmussen

January 29, 1965

Georges R. Delaume

SID Translations

This is to confirm our conversation regarding the translation of Document R65-11 and the English draft of a speech to be made by Mr. Broches in Europe into French. Due to the urgency of these translations, it was agreed between us that we would use the services of Madame de la Renaudière.

You will find attached hereto the original English texts together with copies of the translations made by Madame de la Renaudière and revised by my colleague Jean-David Roulet and myself.

On behalf of Mr. Broches, I would appreciate it if you would make the necessary financial arrangements for payment to Madame de la Renaudière for her services.

GRDelaume/cl

29 de enero de 1965

Sr. D.
José Antonio González Bueno
Instituto de Estudios Fiscales
Ministerio de Hacienda
Alcalá 11, Madrid
España

Muy estimado amigo:

Acuso recibo de su atenta carta de fecha 4 de los corrientes adjuntándome una copia del proyecto revisado de Convenio sobre conciliación y arbitraje con los cambios que Ud. sugiere en el texto castellano.

Excuso decirle que mucho le agradecemos su ayuda en este asunto y que utilizaremos sus sugerencias en las próximas ediciones de ese documento.

Con un afectuoso saludo para Ud. y para don Antonio, quedo, su afmo. amigo,

Leopoldo Cancio

LC:mu

cc: Mr. Sella

Mr. Rosenneil

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

FOR EXECUTIVE DIRECTORS' MEETING

CONFIDENTIAL

R65-10/2

FROM: The Assistant Secretary

January 25, 1965

SETTLEMENT OF INVESTMENT DISPUTES

The attached should replace page 10a (facing page 10) of document R65-10/ which is incomplete.

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

(2) ~~For the purpose of this Convention~~ "National of another Contracting State" means:

(a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered ~~in accordance with the provisions~~ pursuant to paragraph (3) of Article ~~29~~ 28 or paragraph (3) of Article ~~37~~ 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and

(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

FOR EXECUTIVE DIRECTORS' MEETING

CONFIDENTIAL

R65-6/1

FROM: The Secretary

January 19, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached hereto is a memorandum from the General Counsel in French and Spanish concerning proposed changes in the French and Spanish texts of the Revised Draft Convention on the Settlement of Investment Disputes.

The corresponding memorandum in English was distributed on January 8, 1965 (R65-6).

Additional copies are available on request from the Secretary's Office (Extension 2158).

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

8 janvier 1965

NOTE DU GENERAL COUNSEL

Il est fait référence au mémoire du Président en date du 4 janvier 1965 (SecM65-3). On trouvera ci-joint une liste des modifications proposées aux Chapitres I à IX du texte français du projet révisé de Convention pour le Règlement des Différends Relatifs aux Investissements (R 64-153).

Les séances plénières du Comité juridique ayant continué jusqu'à la fin de la session, le 11 décembre 1964, le Sous-comité de rédaction s'est trouvé dans l'impossibilité de tenir compte de certaines décisions de fond prises par le Comité juridique et le temps lui a fait défaut pour reviser la portion du texte examiné par le Sous-comité au cours des différentes phases de la session. Après nouvelle lecture du texte, un certain nombre de modifications d'ordre technique sont apparues désirables. Lorsque cela s'avère nécessaire, une brève explication des changements figure dans l'annexe ci-jointe. La plupart des modifications sont des modifications de style et, à mon avis, aucune d'elles ne soulève des questions de principe.

Une liste des modifications correspondantes, lorsqu'elles ont apparu nécessaires dans les textes anglais et espagnol du projet révisé de Convention, a été distribuée.

CHAPITRE I

Article 21

Troisième ligne. La référence doit s'appliquer à "l'alinéa (3) de l'Article 52" et non à l'alinéa (2) dudit Article.

Article 24, alinéa (3)

Troisième ligne. La référence doit s'appliquer à "l'alinéa (3) de l'Article 52" et non à l'alinéa (2) dudit Article.

CHAPITRE II

Article 25, Nouvel alinéa (2)

L'Article 30 du premier projet de Convention (Z-12) définissait les termes "investissement", "différend d'ordre juridique" et "ressortissant d'un autre Etat contractant". Le projet révisé contient seulement la définition de "ressortissant d'un autre Etat contractant" qui figure à l'Article 28. Cette définition, sous réserve de quelques légères modifications de style, pourrait avantageusement trouver sa place dans un nouvel alinéa (2) de l'Article 25 qui se lirait ainsi:

(2) ~~Aux fins de la présente Convention~~, "Ressortissant d'un autre Etat contractant" signifie:

(a) toute personne physique qui possède la nationalité d'un Etat contractant autre que l'Etat partie au différend à la date à laquelle les parties ont consenti à soumettre le différend à la conciliation ou à l'arbitrage ainsi qu'à la date à laquelle la requête a été enregistrée conformément à l'Article ~~29~~ 28, alinéa (3) ou à l'Article ~~37~~ 36, alinéa (3), à l'exclusion de toute personne qui, à l'une ou à l'autre de ces dates, possède également la nationalité de l'Etat contractant partie au différend;

(b) toute personne morale qui possède la nationalité d'un Etat contractant autre que l'Etat partie au différend à la date à laquelle les parties ont consenti à soumettre le différend à la conciliation ou à l'arbitrage et toute personne morale qui possède la nationalité de l'Etat contractant partie au différend à la même date et que les parties sont convenues, aux fins de la présente Convention, de considérer comme "ressortissant d'un autre Etat contractant" en raison du contrôle exercé sur elle par des intérêts étrangers.

Article 25, alinéa (2)

Doit être renuméroté comme alinéa (3).

Article 25, alinéa (3)

Doit être renuméroté comme alinéa (4) et remanié afin de prévoir la transmission des notifications aux Etats contractants. Ceci implique la modification suivante:

Cinquième ligne. "Le Secrétaire Général transmet immédiatement la notification à tous les Etats contractants".

Article 26, alinéa (2)

Neuvième ligne. Remplacer le point virgule par un point. Cette division du texte en deux phrases rend la lecture plus facile.

Article 27, alinéa (1)

Quatrième ligne. Remplacer les mots "prévu par" par les mots"dans le cadre de".

Article 28

Cet Article doit être abrogé puisque son contenu figure maintenant à l'alinéa (2) de l'Article 25.

CHAPITRE III

Article 29(A renuméroter comme Article 28)

Alinéa (3) . Afin de mieux traduire les vues exprimées par le Comité juridique d'après lesquelles la décision du Secrétaire Général concernant la possibilité d'enregistrer ou non une requête aux fins de conciliation devrait être basée seulement sur les informations fournies aux termes de l'alinéa (2) dudit Article, il convient d'insérer dans la deuxième ligne de l'alinéa (3) après le mot "estime": "au vu des informations contenues dans la requête,".

Article 30 (A renuméroter comme Article 29)

Alinéa (1), troisième ligne. La référence à "l'Article 29" doit s'appliquer maintenant à "l'Article 28".

Article 31 (à renuméroter comme Article 30)

Troisième ligne. La référence doit s'appliquer à "l'Article 28, alinéa (3)".

Article 32 (à renuméroter comme Article 31)

Alinéa (1), deuxième ligne. La référence à "l'Article 31" doit s'appliquer maintenant à "l'Article 30".

Article 33 (à renuméroter comme Article 32)

Alinéa (2). Puisque l'alinéa (1) de l'Article 30 du projet révisé dispose que la Commission doit être constituée dès que possible après enregistrement de la requête en conciliation, la première condition posée par l'alinéa en question apparaît superflue et peut être omise. En ce qui concerne les motifs du déclinatoire, l'intention des rédacteurs était de couvrir tout motif concernant la compétence de la Commission, y compris ceux relatifs à la compétence du Centre. Cette idée peut être exprimée avec plus de clarté.

Etant donné ce qui précède, l'alinéa en cause peut être remplacé par la disposition suivante:

> "(2) Tout déclinatoire de compétence soulevé par l'une des parties et fondé sur le motif que le différend n'est pas de la compétence du Centre ou, pour toute autre raison, de celle de la Commission doit être examiné par la Commission qui décide s'il doit être traité comme une question préjudicielle ou si son examen doit être joint à celui des questions de fond."

Article 34 (à renuméroter comme Article 33)

Troisième ligne. Les mots "le consentement à la conciliation a été donné" dans la première phrase devraient être remplacés par "elles ont consenti à la conciliation", afin de rendre parfaitement clair que la date en question est la date à laquelle les deux parties ont donné leur consentement.

Article 35 (à renuméroter comme Article 34)

Article 36 (à renuméroter comme Article 35)

Article 37 (à renuméroter comme Article 36)

Alinéa (3), deuxième ligne. Insérer après le mot "estime" les mots "au vu des informations contenues dans la requête". Voir la note relative à l'Article 29, alinéa (3) ci-dessus.

Article 38 (à renuméroter comme Article 37)

Alinéa (1), troisième ligne. La référence à "l'Article 37" doit s'appliquer à "l'Article 36".

Article 39 (à renuméroter comme Article 38)

Troisième ligne. La référence à "l'Article 37" doit s'appliquer à "l'Article 36"

Sixième ligne. Insérer après le mot "nommés" les mots "par le Président".

Article 40 (à renuméroter comme Article 39)

Alinéa (1). Le Comité juridique a accepté le principe selon lequel la majorité des membres du Tribunal ne doivent pas être des arbitres "nationaux", c'est-à-dire des personnes qui sont les ressortissants d'un Etat partie au différend ou de l'Etat dont un ressortissant est partie au différend. Toutefois, le Comité a cherché à apporter une exception au principe dans le cas où les membres du Tribunal sont nommés par accord des parties. Aux termes de cette exception, telle qu'elle figure à l'alinéa (1) dans sa rédaction actuelle, le principe serait inapplicable même si un arbitre, parmi trois ou cinq arbitres, était nommé par accord des parties. Ceci ne correspond pas à l'intention du Comité juridique. En conséquence, on propose que cette exception soit remaniée et se lise comme suit:

> "étant entendu néanmoins que cette disposition ne s'applique pas si, d'un commun accord, les parties désignent l'arbitre unique ou chacun des membres du Tribunal."

Alinéas (2) et (3)

Les alinéas (2) et (3) du présent Article, qui se rapportent à l'utilisation des listes pour le choix des arbitres, devraient logiquement constituer un article distinct renuméroté comme Article 40. Le texte de ces alinéas, après léger remaniement, se lit comme suit:

> Article 40
>
> (1) Les arbitres peuvent être pris hors de la liste des arbitres ~~dans le cas~~ au cas de nomination par le Président prévu à l'Article 37 38.

(2) Les arbitres nommés hors de la liste des arbitres doivent posséder les qualifications prévues à l'Article 14, alinéa (1).

Article 41, alinéa (2)

Cet alinéa devrait être rédigé comme suit:

"(2) Tout déclinatoire de compétence soulevé par l'une des parties et fondé sur le motif que le différend n'est pas de la compétence du Centre ou, pour toute autre raison, de celle du Tribunal doit être examiné par le Tribunal qui décide s'il doit être traité comme question préjudicielle ou si son examen doit être joint à celui des questions de fond."

Voir la note relative à l'Article 33.

Article 44

Troisième ligne. Les mots de la première phrase devraient être remplacés par "elles ont consenti à l'arbitrage". Voir la note relative à l'Article 34.

Article 46

Cet Article permet au Tribunal d'examiner certaines demandes incidentes pour autant qu'elles "relèvent de la compétence du Centre et qu'elles soient visées par le consentement des parties". Cette rédaction peut donner l'impression erronée que le consentement des parties et la compétence du Centre soient des sujets séparés et distincts. Il serait donc préférable de remanier le texte de l'Article 46 (quatrième ligne) de la manière suivante:

"à condition que ces demandes soient visées par le consentement des parties et qu'elles relèvent par ailleurs de la compétence du Centre."

Article 48, nouvel alinéa (5)

Le Comité juridique, en examinant les formalités relatives à la sentence, a décidé qu'un nouvel alinéa concernant la publicité des sentences par le Centre devrait être ajouté au présent Article. Cette décision n'apparaît pas dans le texte de la Convention reproduit dans le document Z-13. On se propose d'ajouter, comme alinéa (5) au présent Article, le texte suivant:

"(5) Le Centre ne publie aucune sentence sans le consentement des parties."

Article 49, alinéa (2)

Par souci de clarté, le texte peut peut être modifié comme suit:

(2) Sur requête d'une des parties, à présenter dans les 45 jours de la sentence, le Tribunal peut, après notification à l'autre partie, statuer sur toute question sur laquelle il aurait omis de se prononcer dans la sentence~~, . auquel cas, les délais prévus à l'Article 51, alinéa (2) et à l'Article 52, alinéa (2) courent à partir de la date de sa décision~~ et corriger toute erreur matérielle contenue dans la sentence. Sa décision fait partie intégrante de la sentence et est notifiée aux parties dans les mêmes formes que celle-ci. Les délais prévus à l'Article 51, alinéa (2) et à l'Article 52, alinéa (2) courent à partir de la date de la décision.

Article 50, alinéa (2)

Troisième ligne. Remplacer toute la ligne par les mots "à la Section 2 du présent Chapitre".

Article 51

Quoique l'alinéa (3) du présent Article autorise le Tribunal, lorsqu'il examine une demande en révision d'une sentence à suspendre l'exécution de la sentence jusqu'à ce qu'il se soit prononcé sur la demande en révision, le texte est muet en ce qui concerne la mise à exécution de la sentence dans l'intervalle suivant le dépôt d'une demande en révision et la date à laquelle le Tribunal est en mesure de prendre une décision. Cette question peut être résolue au mieux en supprimant la dernière phrase de l'alinéa (3) et en ajoutant le nouvel alinéa (4) au présent Article.

(4) Le Tribunal peut, s'il estime que les circonstances l'exigent, décider de suspendre l'exécution de la sentence jusqu'à ce qu'il se soit prononcé sur la demande en révision. Si dans sa demande, la partie en cause requiert qu'il soit sursis à l'exécution de la sentence ladite exécution est provisoirement suspendue jusqu'à ce que le Tribunal ait statué sur ladite requête.

Troisième ligne. Remplacer les mots "l'Article 38, alinéa (2) et des Articles 39 et 40" par les mots "la Section 2 du présent Chapitre".

Article 52, alinéa (5)

Pour des motifs analogues à ceux justifiant les modifications aux dispositions de l'Article 51 concernant la suspension de l'exécution d'une sentence, il convient d'ajouter au présent Article à l'alinéa (5) la phrase suivante:

> Si, dans sa demande, la partie en cause requiert qu'il soit sursis à l'exécution de la sentence, ladite exécution est provisoirement suspendue jusqu'à ce que le Comité ait statué sur ladite requête.

Article 52, alinéa (6)

Troisième ligne. Remplacer les mots "l'Article 38, alinéa (2) et des Articles 39 et 40" par les mots "la Section 2 du présent Chapitre".

CHAPITRE V

Article 56, alinéa (2)

A la réflexion, il est apparu que l'Article 56 devrait viser expressément la situation d'un conciliateur ou d'un arbitre dont le nom, pour une raison quelconque, aurait cessé de figurer sur la liste en cause. On propose d'insérer le nouvel alinéa suivant:

> "(2) Tout membre d'une Commission ou d'un Tribunal continue à remplir ses fonctions en cette qualité nonobstant le fait que son nom n'apparaisse plus sur la liste."

Article 56, alinéa (2)

Renuméroter comme alinéa (3).

Article 57

Deuxième ligne. Remplacer "conciliateur ou d'un arbitre" par les mots "de ses membres".

Deux dernières lignes. Remplacer "l'Article 40, alinéa (1) par "la Section 2 du Chapitre IV".

Article 58

Deuxième ligne. Ajouter à la fin de la première phrase les mots "d'un conciliateur ou d'un arbitre".

CHAPITRE VI

Article 61, alinéa (1)

Première ligne. Insérer au début de l'alinéa les mots "Dans le cas d'une procédure de conciliation" afin de marquer dès le début l'objet de l'alinéa.

Article 61, alinéa (2)

Première ligne. Par souci de clarification et d'homogénéité, remanier l'alinéa comme suit:

> "(2) Dans le cas d'une procédure d'arbitrage ~~sauf accord contraire des parties~~, le Tribunal fixe, sauf accord contraire des parties, le montant des dépenses..."

CHAPITRE VIII

Article 64

Quatrième ligne. Remplacer les mots "l'une ou l'autre des parties" par les mots "toute partie".

Cinquième et sixième lignes. Remplacer les mots "d'un autre mode" par les mots "d'une autre méthode".

CHAPITRE IX

Article 65

Puisque cet Article dispose que le Conseil Administratif doit, comme première phase de la procédure, examiner toute proposition d'amendement, le Secrétaire Général devrait transmettre la proposition aux membres du Conseil et non, comme il est prévu par le texte actuel de l'Article 65, aux Etats contractants. Les mots "Etats contractants" figurant à la fin de l'alinéa devraient en conséquence être remplacés par les mots "membres du Conseil Administratif".

Article 66, alinéa (1)

Aucune disposition n'avait été prévue jusqu'à présent concernant la désignation d'un dépositaire chargé de recevoir les instruments de ratification ou d'acceptation des amendements. Il paraît logique que la Banque, qui assumerait ce rôle de dépositaire en ce qui concerne la Convention même, agisse également en cette qualité pour recevoir le dépôt des

instruments de ratification ou d'acceptation des amendements. On propose dès lors d'insérer entre la première et la deuxième phrases du texte actuel de cet alinéa la phrase suivante:

> "Les instruments de ratification ou d'acceptation seront déposés auprès de la Banque".

Quatrième ligne. Remplacer "le Secrétaire Général" par "la Banque", la Banque en tant que dépositaire étant d'autorité qualifiéepour notifier les Etats contractants.

Article 66, alinéa (2)

Par souci de clarté et d'homogénéité, les modifications suivantes devraient être effectuées:

Quatrième ligne. Remplacer les mots "se déroulant en vertu de consentement à" par "concernant un différend que les parties avaient consenti à soumettre à".

Cinquième ligne. Supprimer le mot "donnés".

8 de enero de 1965

MEMORANDUM DEL CONSEJERO JURIDICO GENERAL

Con referencia al memorandum del Presidente fechado 4 de enero de 1965 (SecM65-3), se adjunta al presente una lista de cambios propuestos en los Capítulos I a IX del texto español del Proyecto Revisado de Convenio sobre Arreglo de Diferencias Relativas a Inversiones (R 64-153).

Puesto que las sesiones plenarias del Comité Legal continuaron hasta la clausura de la Reunión el 11 de diciembre de 1964, el Subcomité de Estilo no pudo tratar algunas de las resoluciones de fondo adoptadas por el Comité Legal, y le faltó tiempo para estudiar aquella parte del texto que había tratado en sucesivas etapas durante la Reunión. Al estudiar el texto, se encontró que un cierto número de pequeños cambios técnicos sería deseable. Cuando es necesario, una breve explicación de los cambios se da en el documento adjunto. La mayoría son solamente cambios de redacción, y en mi opinión ninguno de los cambios afecta cuestiones de fondo.

Una lista de los cambios correspondientes en los textos francés e inglés del Proyecto Revisado ya ha sido distribuida.

CAPITULO I

Artículo 21, párrafo introductorio

Línea 3. Debe hacerse referencia al "apartado (3) del Artículo 52" en vez de al apartado (2) de dicho Artículo.

Artículo 24, apartado (3)

Línea 4. Debe hacerse referencia al "apartado (3) del Artículo 52" en vez de al apartado (2) de dicho Artículo.

CAPITULO II

Artículo 25, nuevo apartado (2)

El Artículo 30 del Primer Proyecto de Convenio (Z-12) contenía definiciones de los términos "inversión", "disputa de orden legal" y "nacional de otro Estado Contratante". El Proyecto Revisado ha retenido solamente la definición de "nacional de otro Estado Contratante" en el Artículo 28. Esa definición, con pequeños cambios de redacción, podría incluirse como un nuevo apartado (2) del Artículo 25, y quedaría como sigue:

"(2) ~~A los efectos de este Convenio,~~ Se entenderá por "nacional de otro Estado Contratante"~~, se entenderá~~:

(a) toda persona natural que, en las fechas en que las partes consintieron someter la diferencia a conciliación o arbitraje y en que fue registrada la solicitud prevista en el apartado (3) del Artículo ~~29~~ 28 o en el apartado (3) del Artículo ~~37~~ 36, posea la nacionalidad de un Estado Contratante distinto del Estado, parte en la diferencia, pero en ningún caso comprenderá las personas que, en cualquiera de ambas fechas, también poseían la nacionalidad del Estado, parte en la diferencia; y

(b) toda persona jurídica que, en la fecha en que las partes prestaron su consentimiento a la jurisdicción del Centro para la diferencia en cuestión, posea la nacionalidad de un Estado Contratante distinto del Estado, parte en la diferencia, y las que, poseyendo en la referida fecha, la nacionalidad del Estado, parte en la diferencia, las partes hubieren acordado atribuirle tal carácter, a los efectos de este Convenio, por razón de encontrarse sometidas a control extranjero."

Artículo 25, apartado (2)

Se convierte en apartado (3).

Artículo 25, apartado (3)

Se convierte en apartado (4).

Línea 2. Agréguense después de la palabra "notificar" las palabras "al Centro".

Línea 5. Agréguese una nueva oración: "El Secretario General transmitirá inmediatamente dicha notificación a todos los Estados Contratantes."

Artículo 26, apartado (2)

Línea 9. Para mayor claridad, suprímanse las palabras "No obstante lo anterior,", comenzando la oración siguiente con la palabra "Dicho".

Artículo 28

Debe ser suprimido puesto que su contenido ha sido incorporado al nuevo apartado (2) del Artículo 25.

CAPITULO III

Artículo 29 (Se convierte en Artículo 28)

Apartado (3). A efectos de reflejar más precisamente la intención del Comité Legal de que sea el Secretario General el que determine si una solicitud de un procedimiento de conciliación puede registrarse y de que deba fundarse su decisión solamente en la información que se le suministre de acuerdo al apartado (2) de este Artículo, agréguense en la línea 1 del apartado (3), antes de la palabra "encuentre" las palabras ", de la información contenida en la solicitud,".

Artículo 30 (Se convierte en Artículo 29)

Apartado (1), línea 1. La referencia debe ser al "Artículo 28" en vez de al "Artículo 29".

Artículo 31 (Se convierte en Artículo 30)

Línea 4. Debe hacerse referencia al "Artículo 28".

Artículo 32 (Se convierte en Artículo 31)

Apartado (1), línea 2. Debe hacerse referencia al "Artículo 30" en vez de al "Artículo 31".

Artículo 33 (Se convierte en Artículo 32)

Apartado (2). Puesto que el apartado (1) del Artículo 30 del Proyecto Revisado exige que la Comisión se constituya lo más pronto posible después del registro de la solicitud de conciliación, el primer requisito de este apartado parece supérfluo y puede ser suprimido. Con respecto a las clases de objeciones contempladas, se intentaba incluir cualquier objeción a la competencia de la Comisión (incluyendo objeciones a la jurisdicción del Centro) por falta de uno o más de los elementos esenciales especificados en el Artículo 25; y esta idea debería expresarse con mayor claridad.

En vista de ello, este apartado debe sustituirse por el siguiente:

> "(2) Toda alegación de una parte que la diferencia cae fuera de los límites de la jurisdicción del Centro, o que por otras razones la Comisión no es competente para oírla, se someterá a la consideración de la Comisión, quien determinará si ha de resolverla como cuestión previa o conjuntamente con el fondo de la cuestión."

Artículo 34 (Se convierte en Artículo 33)

Líneas 3 - 4. Las palabras "se prestó el" deben sustituirse por "las partes prestaron su", a efectos de precisar que la fecha en cuestión es la fecha en que se completó el consentimiento de ambas partes.

Artículo 35

Se convierte en Artículo 34.

Artículo 36

Se convierte en Artículo 35.

Artículo 37 (Se convierte en Artículo 36)

Apartado (3), línea 1. Antes de la palabra "encuentre" agréguese lo siguiente: ", de la información contenida en la solicitud,". Véase la nota anterior sobre el apartado (3) del Artículo 29.

Artículo 38 (Se convierte en Artículo 37)

Apartado (1), línea 1. Debe hacerse referencia al "Artículo 36" en vez de al "Artículo 37".

Artículo 39 (Se convierte en Artículo 38)

Línea 4. Debe hacerse referencia al "Artículo 36" en vez de al "Artículo 37".

Línea 7. Después de la palabra "nombrados" agréguese "por el Presidente".

Artículo 40 (Se convierte en Artículo 39)

Apartado (1). El Comité Legal adoptó una regla que requiere que la mayoría de los miembros del tribunal no sea compuesta de árbitros "nacionales", esto es, de personas que son nacionales del Estado parte en la diferencia o del Estado cuyo nacional es parte en la diferencia, pero trató de establecer una excepción a esta regla en los casos en que los miembros del tribunal hayan sido nombrados por acuerdo entre las partes. De acuerdo al apartado (1) de este Artículo, tal como está redactado, la regla sería inaplicable inclusive si solamente uno entre los tres o cinco árbitros fuese nombrado por acuerdo entre las partes, lo que no era la intención del Comité Legal. Por consiguiente, se sugiere que esta frase se redacte del modo siguiente:

> "La limitación anterior no será aplicable cuando ambas partes, de común acuerdo, designen el árbitro único o cada uno de los miembros del Tribunal."

Apartados (2) y (3)

Los apartados (2) y (3) de este Artículo, que se refieren al uso de las Listas en la selección de árbitros, deberían lógicamente formar parte de un artículo separado denominado "Artículo 40". El texto de estos apartados quedaría, con pequeños cambios, como sigue:

> "Artículo 40
>
> (1) Los árbitros nombrados podrán no pertenecer a la Lista de Arbitros, salvo en ~~los supuestos del~~ el caso de que los nombre el Presidente conforme al Artículo ~~39~~ 38.
>
> (2) Todo árbitro que no sea nombrado de la Lista de Arbitros deberá poseer las cualidades expresadas en el apartado (1) del Artículo 14."

Artículo 41, apartado (2)

Este apartado debe redactarse como sigue:

> "(2) Toda alegación de una parte que la diferencia cae fuera de los límites de la jurisdicción del Centro, o que por otras razones el Tribunal no es competente para oírla, se someterá a la consideración del Tribunal, quien determinará si ha de resolverla como cuestión previa o conjuntamente con el fondo de la cuestión."

Véase la nota al Artículo 33.

Artículo 44

Líneas 3 - 4. Las palabras "se prestó el" deben ser reemplazadas por "las partes prestaron su". Véase la nota al Artículo 34.

Artículo 46

Este Artículo permite que el Tribunal considere ciertas demandas incidentales, siempre que "caigan dentro de la jurisdicción del Centro y de los límites del consentimiento prestado por las partes." Esta formulación puede dar la errónea impresión de que el consentimiento de las partes y la jurisdicción del Centro son factores separados y distintos. Por consiguiente, sería preferible modificar dicho lenguaje del Artículo 46 en la siguiente forma:

> "siempre que estén dentro de los límites del consentimiento prestado por las partes y caigan además dentro de la jurisdicción del Centro."

Artículo 48, nuevo apartado (5)

El Comité Legal, al discutir las formalidades relacionadas con el laudo, decidió que se agregara a este Artículo un nuevo apartado que trate de la publicación de los laudos por el Centro. Esta decisión no se refleja en el texto del Convenio reproducido en el documento Z-13. Por consiguiente, se propone agregar como apartado (5) del presente Artículo el texto siguiente:

> "(5) El Centro no publicará los laudos sin consentimiento de las partes."

Artículo 50, apartado (2)

Líneas 3 - 4. Las palabras "el apartado (2) del Artículo 38 y en los

Artículos 39 y 40" deben ser reemplazadas por las palabras "la Sección 2 de este Capítulo".

Artículo 51

A pesar de que el apartado (3) de este Artículo faculta al Tribunal que considera una solicitud de revisión de un laudo a suspender la ejecución del mismo hasta que decida sobre tal solicitud, nada se dice con respecto a la ejecutabilidad del laudo inmediatemente después de la presentación de la solicitud de revisión y antes que el Tribunal haya actuado. Esta cuestión puede resolverse suprimiendo la última oración del apartado (3) y agregando un nuevo apartado (4) a este Artículo en la forma siguiente:

> "(4) Si las circunstancias lo exigieren, el Tribunal podrá suspender la ejecución del laudo hasta que decida sobre la revisión. Si la parte pidiere la suspensión de la ejecución del laudo en su solicitud, la ejecución se suspenderá provisionalmente hasta que el Tribunal dé su decisión respecto a tal petición."

Líneas 3 - 4. Las palabras "el apartado (2) del Artículo 38 y en los Artículos 39 y 40" deben ser reemplazadas por las palabras "la Sección 2 de este Capítulo".

Artículo 52, apartado (5)

Línea 1. Debe hacerse referencia a "la Comisión" en vez de a "el Tribunal".

Por razones similares a las que se dieron respecto a los cambios en el Artículo 51 sobre suspensión de la ejecución, agréguese la siguiente oración al apartado (5):

> "Si la parte pidiere la suspensión de la ejecución del laudo en su solicitud, la ejecución se suspenderá provisionalmente hasta que la Comisión dé su decisión respecto a tal petición."

Artículo 52, apartado (6)

Líneas 3 - 4. Las palabras "el apartado (2) del Artículo 38 y en los Artículos 39 y 40" deben ser reemplazadas por las palabras "la Sección 2 de este Capítulo".

Artículo 53, apartado (1)

Líneas 4 - 5. La redacción de la excepción a la regla establecida en este apartado parece algo ambigua. Podría ser redactada del modo siguiente:

"salvo en la medida en que se suspenda su ejecución, de acuerdo con lo establecido en las correspondientes cláusulas de este Convenio".

Artículo 54, apartado (1)

En vez de "Estados que lo integran" léase "estados que lo integran".

CAPITULO V

Artículo 56, nuevo apartado (2)

Parece deseable que el Artículo 56 trate explícitamente de la posición de un conciliador o árbitro que por alguna razón haya cesado de ser miembro de la Lista correspondiente. Se propone agregar un nuevo apartado (2) que diga lo siguiente:

"(2) Los miembros de una Comisión o Tribunal continuarán en sus funciones aunque hayan dejado de figurar en las Listas."

Artículo 56, apartado (2)

Se convierte en apartado (3).

Artículo 57

Línea 2. Las palabras "un conciliador o árbitro" se reemplazan por "cualquiera de sus miembros".

Línea 5. Las palabras "el apartado (1) del Artículo 40" se reemplazan por "la Sección 2 del Capítulo IV".

Artículo 58

Línea 1. Las palabras "una recusación" se reemplazan por "la recusación de un conciliador o árbitro".

CAPITULO VI

Artículo 61, apartado (1)

Línea 1. Para dar una indicación inicial del contenido de este apartado, agréguese al principio del mismo las palabras "En el caso de procedimientos de conciliación".

Línea 2. Léase "la Comisión" en vez de "las Comisiones".

Artículo 61, apartado (2)

Líneas 1 - 2. Para mayor claridad y coherencia, la primera parte de este apartado debe decir lo siguiente:

> "(2) En el caso de procedimientos de arbitraje ~~Salvo acuerdo contrario de las partes,~~ el Tribunal determinará, salvo acuerdo contrario de las partes, los gastos...."

CAPITULO IX

Artículo 65

Como este Artículo establece que el Consejo Administrativo considerará cualquier propuesta de enmienda como la primera etapa en el proceso de enmienda, el Secretario General debería transmitir la propuesta a los miembros del Consejo y no a los Estados Contratantes, tal como se estipula en la actual redacción del Artículo 65. Las palabras "Estados Contratantes" al final de dicho apartado deberán, por consiguiente, ser reemplazadas por las palabras "los miembros del Consejo Administrativo."

Artículo 66, apartado (1)

No se había previsto hasta ahora un depositario de los instrumentos de ratificación o aceptación de enmiendas. Parece lógico que el Banco, que asumirá la función de depositario en relación con el Convenio, debería también actuar como depositario de los instrumentos que ratifiquen o acepten enmiendas. Por consiguiente se propone agregar entre la primera y la segunda oración de este apartado la siguiente oración:

> "Los instrumentos de ratificación o aceptación se depositarán en el Banco."

Línea 4. Las palabras "Secretario General" se reemplazan por la palabra "Banco", ya que éste, como depositario, sería la autoridad apropiada para notificar a los Estados Contratantes.

Artículo 66, apartado (2)

Para mayor claridad y coherencia, se sugiere el siguiente cambio:

Línea 5. Las palabras "consentimiento prestado" se reemplazan por "una diferencia que las partes hayan consentido someter a la jurisdicción del Centro".

January 19, 1965

Mr. Harry Conover
Executive Assistant
to the President
Inter-American Council
for Commerce and Production
399 Park Avenue
New York, N. Y.

Dear Mr. Conover:

As you will remember, the Legal Committee on Settlement of Investment Disputes, which sat from November 23 to December 11, 1964, met for the purpose of considering the first draft of a Convention, a copy of which I sent you some time ago.

The Legal Committee made numerous changes in the first draft and I am now sending you herewith the revised draft Convention (document no. Z-13), as modified by the Committee. I am also sending you a document (no. Z-14) containing a comparison between the first draft and the revised draft.

Hoping that you will find those documents of interest, I remain,

Sincerely yours,

Leopoldo Cancio

encs.

LC:mu

cc: Mr. Sella

January 19, 1965

Dear Mr. Grant:

Thank you for your letter of December 22, 1964 which reached me only now.

The meeting of the Legal Committee was quite successful and I was pleased to have Mr. Rattray's written comments. I assume that the Canadian Executive Director who represents Jamaica on our Board has forwarded the Revised Draft that came out of the discussions of the Legal Committee to the Government of Jamaica. However, I am sending you herewith a copy of the Revised Draft as well as of my Report to the Executive Directors.

With kindest regards,

Yours sincerely,

(Signed) A. Broches

A. Broches
General Counsel

The Honorable
V. B. Grant, Q.C.
Attorney General
Attorney General's Chambers
P.O. Box 456
Kingston, Jamaica

ABroches:cml
Enclosures

FOR EXECUTIVE DIRECTORS' MEETING

CONFIDENTIAL

R 65-11

FROM: The Secretary

January 19, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached hereto is a memorandum from the General Counsel on the above subject for consideration by the Committee of the Whole on Settlement of Investment Disputes during the week beginning February 15, 1965.

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

January 19, 1965

MEMORANDUM FROM THE GENERAL COUNSEL

With reference to the President's memorandum of January 4, 1965 (SecM65-3), there is attached hereto a Draft Report of the Executive Directors to accompany the Convention on Settlement of Investment Disputes when it will be submitted to governments. As the Executive Directors will recall, the President has indicated in the past that he would recommend that the Bank make a contribution toward the overhead of the Centre. The President's recommendation on this subject is reflected in paragraph 16 of the Draft Report.

Paragraphs 17, 45 and 46 of the Draft Report dealing with Articles 9, 63 and 64 respectively, of the Revised Draft Convention, reflect the views of the Legal Committee on these Articles.

The French and Spanish texts of the Draft Report will be distributed shortly.

DRAFT
Legal Department
January 19, 1965

Report of the Executive Directors on the Convention on Settlement of Investment Disputes between States and Nationals of Other States

I

1. Resolution No. 214, adopted by the Board of Governors of the International Bank for Reconstruction and Development on September 10, 1964, provides as follows:

> "RESOLVED:
>
> (a) The report of the Executive Directors on "Settlement of Investment Disputes," dated August 6, 1964, is hereby approved.
>
> (b) The Executive Directors are requested to formulate a convention establishing facilities and procedures which would be available on a voluntary basis for the settlement of investment disputes between contracting States and Nationals of other contracting States through conciliation and arbitration.
>
> (c) In formulating such a convention, the Executive Directors shall take into account the views of member governments and shall keep in mind the desirability of arriving at a text which could be accepted by the largest possible number of governments.
>
> (d) The Executive Directors shall submit the text of such a convention to member governments with such recommendations as they shall deem appropriate."

2. The Executive Directors of the Bank, acting pursuant to the foregoing Resolution, have formulated a Convention on Settlement of Investment Disputes between States and Nationals of Other States and, on March __, 1965, approved the text of the Convention, as attached hereto, for submission to member governments of the Bank. The Executive Directors' approval of the Convention for submission to governments does not, of course, imply that governments are committed to take action on the Convention.

3. The action by the Executive Directors approving the text of the Convention was preceded by extensive preparatory work, details of which are given in paragraphs 5-7 below. The Executive Directors are satisfied that the Convention in the form approved by them represents a broad consensus of the views of those governments which accept the principle of establishing by intergovernmental agreement facilities and procedures for the settlement of investment disputes which States and foreign investors wish to submit to conciliation or arbitration. They are also satisfied that the Convention constitutes a satisfactory framework for such facilities and procedures. Accordingly, the Executive Directors recommend the Convention to member governments for signature and ratification or acceptance.

4. The Executive Directors invite attention to the provisions of Article 69 pursuant to which at any time after the Convention shall have been ratified or accepted by twelve States, the Executive Directors of the Bank, acting on the recommendation of the President, may declare that the Convention shall enter into force. The Convention will enter into force ninety days after such declaration.

II

5. The question of the desirability and practicability of establishing institutional facilities, sponsored by the Bank, for the settlement through conciliation and arbitration of investment disputes between States and foreign investors was first placed before the Board of Governors of the Bank at its Seventeenth Annual Meeting, held in Washington, D. C. in September 1962. At that Meeting the Board of Governors, by Resolution No. 174, adopted on September 18, 1962, requested the Executive Directors to study the question.

6. The Executive Directors began their study of the subject on the basis of working papers prepared by the staff of the Bank. After a series of informal discussions the Executive Directors decided that the Bank should convene consultative meetings of legal experts designated by member governments to consider the subject in greater detail. The consultative meetings were held on a regional basis in Addis Ababa (December 16-20, 1963), Santiago de Chile (February 3-7, 1964), Geneva (February 17-21, 1964) and Bangkok (April 27-May 1, 1964), with the administrative assistance of the United Nations Economic Commissions and the European Office of the United Nations, and took as the basis for discussion a Preliminary Draft of a Convention on Settlement of Investment Disputes between States and Nationals of Other States prepared by the staff of the Bank in the light of the discussions of the Executive Directors and the views of governments. The meetings were attended by legal experts from 86 countries and proved valuable not only in identifying and elucidating technical problems but also in supplementing the Bank's information regarding the attitudes of governments.

7. In the light of the preparatory work and of the views expressed at the consultative meetings, the Executive Directors reported to the Board of Governors at its Nineteenth Annual Meeting in Tokyo, in September 1964, that it would be desirable to establish the institutional facilities envisaged, and to do so within the framework of an intergovernmental agreement. The Board of Governors adopted the Resolution set forth in paragraph 1 of this Report, whereupon the Executive Directors undertook the formulation of the present Convention. With a view to arriving at a text which could be accepted by the largest possible number of governments, the Bank invited its members to

designate representatives to a Legal Committee which would assist the Executive Directors in their task. This Committee met in Washington from November 23 through December 11, 1964, and the Executive Directors gratefully acknowledge the valuable advice they received from the representatives of the 61 member countries who served on the Committee.

III

8. In recommending the attached Convention to governments for signature, the Executive Directors are prompted by the desire to strengthen the partnership between countries in the cause of economic development. They believe the creation of an institution designed to facilitate the settlement of disputes between States and foreign investors to be a major step toward bringing about the atmosphere of mutual confidence which is a prerequisite for the free flow of private foreign capital into those countries which wish to attract it.

9. The Executive Directors recognize that investment disputes would usually be settled through administrative, judicial or arbitral procedures available under the laws of the country in which the investment concerned is made. However, experience shows that disputes arise which the parties do not consider suitable for settlement through domestic procedures. Numerous investment agreements entered into between investors and host States in recent years further demonstrate that there are cases in which both States and investors decide that it is in their mutual interest to agree to resort to international methods of settlement.

10. The present Convention would offer international methods of settlement designed to take account of the special characteristics of the disputes

covered, as well as of the parties to whom it would apply. It would provide facilities for conciliation and arbitration by specially qualified persons of independent judgment carried out according to rules known and accepted in advance by the parties concerned. In particular, it would ensure that once a government or investor had given consent to conciliation or arbitration under the auspices of the Centre, such consent could not be unilaterally withdrawn.

11. The Executive Directors do not share, and regard as unfounded, the fear expressed in some quarters that countries which did not become parties to the Convention or, having joined, did not make use of the facilities of the Centre, might find investors unwilling to make investments in their territories. It is evident, on the other hand, that adherence to the Convention by a country may provide an additional inducement for foreign investment in its territories. To enable countries to offer such an inducement is the immediate purpose of this Convention.

12. The Executive Directors draw attention to the fact that while the broad objective of the Convention is the encouragement of private foreign investment, the provisions of the Convention maintain a careful balance between the interests of investors and those of host States. Moreover, the Convention permits the institution of proceedings by host States as well as by investors and the drafters have constantly had in mind that the provisions of the Convention should be equally adapted to the requirements of both cases.

13. While the provisions of the attached Convention are for the most part self-explanatory, the Executive Directors believe that brief comment on a few principal features may be useful to member governments in their consideration of the Convention.

IV

The International Centre for Settlement of Investment Disputes

General

14. The Convention establishes the International Centre for Settlement of Investment Disputes as an autonomous international institution (Articles 18-24). The purpose of the Centre is "to provide facilities for conciliation and arbitration of investment disputes * * *" (Article 1(2)). The Centre will not itself engage in conciliation or arbitration activities. This will be the task of Conciliation Commissions and Arbitral Tribunals constituted in accordance with the provisions of the Convention.

15. As sponsor of the institution the Bank will provide the Centre with premises for its seat (Article 2) and, pursuant to arrangements between the two institutions, with other administrative facilities and services (Article 6(d)).

16. With respect to the financing of the Centre (Article 17), the Executive Directors have decided that the Bank should be prepared to provide the Centre with office accommodation free of charge as long as the Centre has its seat at the Bank's headquarters and to underwrite, within reasonable limits, the basic overhead expenditure of the Centre for a period of years to be determined after the Centre is established.

17. The structure of the Centre is characterized by the maximum of simplicity and economy compatible with the efficient discharge of the Centre's functions. The organs of the Centre are the Administrative Council (Articles 4-8) and the Secretariat (Articles 9-11). The Administrative Council will be composed of one representative of each Contracting State, serving without remuneration from the Centre. Each member of the Council casts one vote and matters before

the Council are decided by a majority of the votes cast unless a different majority is required by the Convention. The President of the Bank will serve ex officio as the Council's Chairman but will have no vote. The Secretariat will consist of a Secretary-General, one or more Deputy Secretaries-General and staff. In the interest of flexibility the Convention provides for the possibility of there being more than one Deputy Secretary-General, but the Executive Directors do not now foresee a need for more than one or two full time high officials of the Centre. Article 10, which requires that the Secretary-General and any Deputy Secretary-General be elected by the Administrative Council by a majority of two-thirds of its members, on the nomination of the Chairman, also limits the extent to which these officers may engage in activities other than their official functions.

The Administrative Council

18. The principal functions of the Administrative Council are the election of the Secretary-General and any Deputy Secretary-General, the adoption of the budget of the Centre and the adoption of administrative and financial regulations, rules governing the institution of proceedings and rules of procedure for conciliation and arbitration proceedings. Action on all these matters requires a majority of two-thirds of the members of the Council.

The Secretary-General

19. The Convention requires the Secretary-General to perform a variety of administrative functions as legal representative, registrar and principal officer of the Centre (Articles 7(1), 11, 16(3), 28, 36, 49(1), 50(1), 51(1), 52(1), 52(4), 54(2), 59, 60(1), 63(b) and 65). In addition, the Secretary-General is given the power to refuse registration of a request for conciliation

proceedings or arbitration proceedings, and thereby to prevent the institution of such proceedings if on the basis of the information furnished by the applicant he finds that the dispute is manifestly outside the jurisdiction of the Centre (Articles 28(3) and 36(3)). The Secretary-General is given this limited power to "screen" requests for conciliation or arbitration proceedings with a view to avoiding the embarrassment to a party (particularly a State) which might result from the institution of proceedings against it in a dispute which it had not consented to submit to the Centre as well as the possibility that the machinery of the Centre would be set in motion in cases which for other reasons were obviously outside the jurisdiction of the Centre e.g., because either the applicant or the other party was not eligible to be a party in proceedings under the Convention.

The Panels

20. Article 3 requires the Centre to maintain a Panel of Conciliators and a Panel of Arbitrators, while Articles 12-16 outline the manner and terms of designation of Panel members. In particular, Article 14(1) seeks to ensure that Panel members will possess a high degree of competence and be capable of exercising independent judgment. In keeping with the essentially flexible character of the proceedings, the Convention permits the parties to appoint conciliators and arbitrators from outside the Panels but requires (Articles 31(2) and 40(2)) that such appointees possess the qualities stated in Article 14(1). The Chairman, when called upon to appoint a conciliator or arbitrator pursuant to Article 30 or 38, is restricted in his choice to Panel members.

V

Jurisdiction of the Centre

21. The term "jurisdiction of the Centre" is used in the Convention as a convenient expression to mean the limits within which the provisions of the Convention will apply and the facilities of the Centre will be available for conciliation and arbitration proceedings. The jurisdiction of the Centre is dealt with in Chapter II of the Convention (Articles 25-27).

Consent

22. Consent of the parties is the cornerstone of the jurisdiction of the Centre. Consent to jurisdiction must be in writing and once given cannot be withdrawn unilaterally (Article 25(1)).

23. Consent of the parties must exist when the Centre is seized (Articles 28(3) and 36(3)) but the Convention does not otherwise specify the time at which consent should be given. Consent may be given, for example, in a clause included in an investment agreement, providing for the submission to the Centre of future disputes arising out of that agreement, or in a compromis regarding a dispute which has already arisen. Nor does the Convention require that the consent of both parties be expressed in a single instrument. Thus, a host State might in its investment promotion legislation offer to submit disputes arising out of certain classes of investments to the jurisdiction of the Centre, and the investor might give his consent by accepting the offer in writing.

24. While consent of the parties is an essential prerequisite for the jurisdiction of the Centre, consent alone will not suffice to bring a dispute within its jurisdiction. In keeping with the purpose of the Convention, the jurisdiction of the Centre is further limited by reference to the nature of

the dispute and the parties thereto.

Nature of the dispute

25. Article 25(1) requires that the dispute must be a "legal dispute, arising directly out of an investment". The expression "legal dispute" has been used to make clear that while conflicts of rights are within the jurisdiction of the Centre, mere conflicts of interests are not. The dispute must concern the existence or scope of a legal right or obligation, or the nature or extent of the reparation to be made for breach of a legal obligation.

26. The Executive Directors did not think it necessary or desirable to attempt to define the term "investment", given the essential requirement of consent by the parties, and the mechanism through which Contracting States can make known in advance, if they so desire, the classes of disputes which they would or would not consider submitting to the Centre (Article 25(4)).

Parties to the dispute

27. For a dispute to be within the jurisdiction of the Centre one of the parties must be a Contracting State (or a constituent subdivision or agency of a Contracting State) and the other party must be a "national of another Contracting State". The latter term as defined in paragraph (2) of Article 25 covers both natural persons and juridical persons.

28. It should be noted that under clause (a) of paragraph (2) a natural person who was a national of the State party to the dispute would not be eligible to be a party in proceedings under the auspices of the Centre, even if at the same time he had the nationality of another State. This ineligibility is absolute and cannot be cured even if the State party to the dispute had given its consent.

29. Clause (b) of paragraph (2), which deals with juridical persons, is more flexible. A juridical person which had the nationality of the State party to the dispute would be eligible to be a party to proceedings under the auspices of the Centre if that State had agreed to treat it as a national of another Contracting State because of foreign control.

Notifications by Contracting States

30. While no conciliation or arbitration proceedings could be brought against a Contracting State without its consent and while no Contracting State is under any obligation to give its consent to such proceedings, some governments nevertheless felt that adherence to the Convention might be interpreted as holding out an expectation that Contracting States would give favorable consideration to requests by investors for the submission of a dispute to the Centre. These governments pointed out that there might be classes of investment disputes which they would consider unsuitable for submission to the Centre or which, under their own law, they were not permitted to submit to the Centre. In order to avoid any risk of misunderstanding on this score, Article 25(4) expressly permits Contracting States to make known to the Centre in advance, if they so desire, the classes of disputes which they would or would not consider submitting to the Centre. The provision makes clear that a statement by a Contracting State that it would consider submitting a certain class of dispute to the Centre would serve for purposes of information only and would not constitute the consent required to give the Centre jurisdiction. Of course, a statement excluding certain classes of disputes from consideration would not constitute a reservation to the Convention.

Arbitration as exclusive remedy

31. It may be presumed that when a State and an investor agree to have recourse to arbitration, and do not reserve the right to have recourse to other remedies or require the prior exhaustion of other remedies, the intention of the parties is to have recourse to arbitration to the exclusion of any other remedy. This rule of interpretation is embodied in the first sentence of Article 26(1). In order to make clear that it was not intended thereby to modify the rules of international law regarding the exhaustion of local remedies, the second sentence explicitly recognizes the right of a State to require the prior exhaustion of local remedies.

Subrogation

32. As has been noted, Article 25 limits the jurisdiction of the Centre to disputes in which one of the parties is a State (or a constituent subdivision or agency of a State) and the other an investor. Disputes between States would thus be excluded from the jurisdiction of the Centre even if the States concerned wished to submit such disputes to it. It appeared desirable, however, to permit an exception to this rule where a host State and an investor have consented to submit a dispute to the Centre and the investor has obtained investment insurance from his State. In such a case, if the investor's State has indemnified the investor and become subrogated to his rights with respect to the matters in dispute, Article 26(2) permits the substitution of the investor by his State in the proceeding, but only with the consent of the host State. Since the purpose of the provision is to permit the investor's State to stand in the shoes of the investor, that State is required to agree to be bound by the provisions of the Convention

in the same manner as the investor and to waive recourse to any other remedy as, for example, remedies which might otherwise be available to it under a bilateral agreement with the host State.

33. The provisions of Article 25 would also exclude public international institutions as parties to proceedings under the auspices of the Centre. However, in view of recent proposals for the creation of regional or international investment insurance institutions, Article 26(2) has been worded so as to permit such an institution to be substituted for an investor insured by it in proceedings before the Centre under the same conditions as are applicable to the investor's State.

Claims by the investor's State

34. When a host State consents to the submission of a dispute with an investor to the Centre, thereby giving the investor direct access to an international jurisdiction, the investor should not be in a position to ask his State to espouse his case and that State should not be permitted to do so. Accordingly, Article 27 expressly prohibits a Contracting State from giving diplomatic protection or bringing an international claim in respect of a dispute which one of its nationals and another Contracting State have consented to submit, or have submitted, to arbitration under the Convention, unless the State party to the dispute fails to honor the award rendered in that dispute.

VI

Proceedings under the Convention

Institution of proceedings

35. Proceedings are instituted by means of a request addressed to the Secretary-General (Articles 28 and 36). After registration of the request

the Conciliation Commission or Arbitral Tribunal, as the case may be, will be constituted. Reference is made to paragraph 19 above for the power of the Secretary-General to refuse registration.

Constitution of Conciliation Commissions and Arbitral Tribunals

36. Although the Convention leaves the parties a large measure of freedom as regards the constitution of Commissions and Tribunals, it assures that a lack of agreement between the parties on these matters or the unwillingness of a party to cooperate will not frustrate proceedings (Articles 28-29 and 37-38, respectively).

37. Mention has already been made of the fact that the parties are free to appoint conciliators and arbitrators from outside the Panels (see paragraph 20 above). While the Convention does not restrict the appointment of conciliators with reference to nationality, Article 39 lays down the rule that the majority of the members of an Arbitral Tribunal should not be nationals either of the State party to the dispute or of the State whose national is a party to the dispute. This rule is likely to have the effect of excluding persons having these nationalities from serving on a Tribunal composed of not more than three members. However, the rule will not apply where each and every arbitrator on the Tribunal has been appointed by agreement of the parties.

Conciliation proceedings; powers and functions of Arbitral Tribunals

38. In general, the provisions of Articles 28-35 dealing with conciliation proceedings and of Articles 36-49, dealing with the powers and functions of Arbitral Tribunals and awards rendered by such Tribunals, are self-explanatory. The differences between the two sets of provisions reflect the

basic distinction between the process of conciliation which seeks to bring the parties to agreement and that of arbitration which aims at a binding determination of the dispute by the Tribunal.

39. Article 41 reiterates the well-established principle that international tribunals are to be the judges of their own competence and Article 32 applies the same principle to Conciliation Commissions. It is to be noted in this connection that the power of the Secretary-General to refuse registration of a request for conciliation or arbitration (see paragraph 19 above) is so narrowly defined as not to encroach on the prerogative of Commissions and Tribunals to determine their own competence and, on the other hand, that registration of a request by the Secretary-General does not, of course, preclude a Commission or Tribunal from finding that the dispute is outside the jurisdiction of the Centre.

40. In keeping with the consensual character of proceedings under the Convention, the parties to conciliation or arbitration proceedings may agree on the rules of procedure which will apply in those proceedings. However, if or to the extent that they have not so agreed the Conciliation Rules and Arbitration Rules adopted by the Administrative Council will apply (Articles 33 and 44).

41. Under the Convention an Arbitral Tribunal is required to apply the law agreed by the parties. Failing such agreement, the Tribunal must apply the law of the State party to the dispute (unless that law calls for the application of some other law), as well as such rules of international law as may be applicable. The term "international law" as used in this context should be understood in the sense given to it by Article 38(1) of the Statute of

the International Court of Justice, allowance being made for the fact that Article 38 was designed to apply to inter-State disputes.[1)]

Recognition and enforcement of arbitral awards

42. Article 53 declares that the parties are bound by the award and that it shall not be subject to appeal or to any other remedy except those provided for in the Convention. The remedies provided for are revision (Article 51) and annulment (Article 52). In addition, a party may ask a Tribunal which had omitted to decide any question submitted to it, to supplement its award (Article 49(2)) and may request interpretation of the award (Article 50).

43. Subject to any stay of enforcement in connection with any of the above proceedings in accordance with the provisions of the Convention, the parties are obliged to abide by and comply with the award and Article 54 requires every Contracting State to recognize the award as binding and to enforce it

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1) Article 38(1) of the Statute of the International Court of Justice reads as follows:

"1. The Court, whose function it is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

as if it were a final decision of a domestic court. Because of the different legal techniques followed in common law and civil law jurisdictions and the different judicial systems found in unitary and federal or other non-unitary States, Article 54 does not prescribe any particular method to be followed in its domestic implementation, but requires each Contracting State to meet the requirements of the Article in accordance with its own legal system.

44. The doctrine of sovereign immunity may prevent the forced execution in a State of judgments obtained against foreign States or against the State in which execution is sought. Article 54 requires Contracting States to equate an award rendered pursuant to the Convention with a final judgment of its own courts. It does not require them to go beyond that and to undertake forcible execution of awards rendered pursuant to the Convention in cases in which final judgments could not be executed. In order to leave no doubt on this point Article 55 provides that nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

VII

Place of Proceedings

45. In dealing with proceedings away from the Centre, Article 63 provides that proceedings may be held, if the parties so agree, at the seat of the Permanent Court of Arbitration or of any other appropriate institution with which the Centre may enter into arrangements for that purpose. These arrangements are likely to vary with the type of institution and to range from merely making premises available for the proceedings to the provision of complete secretariat services.

VIII

Disputes Between Contracting States

46. Article 64 confers on the International Court of Justice jurisdiction over disputes between Contracting States regarding the interpretation or application of the Convention which are not settled by negotiation and which the parties do not agree to settle by other methods. While the provision is couched in general terms, it must be read in the context of the Convention as a whole. Specifically, the provision is not intended to, and in the opinion of the Executive Directors does not, confer jurisdiction on the Court to review the decision of a Conciliation Commission or Arbitral Tribunal as to its competence with respect to any dispute before it. Nor does it empower a State to institute proceedings before the Court in respect of a dispute which one of its nationals and another Contracting State have consented to submit or have submitted to arbitration, since such proceedings would contravene the prohibition laid down in Article 27, unless the other Contracting State had failed to abide by and comply with the award rendered in that dispute.

IX

Entry into Force

47. In accordance with customary practice in the United Nations family (see, for example, the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards), the Convention is open to members of the United Nations or any of its specialized agencies and States parties to the Statute of the International Court of Justice. No time limit has been prescribed for signature and that signature is required both of States joining before the

Convention entered into force and those joining thereafter. The Convention is subject to ratification or acceptance by the signatory States in accordance with their constitutional procedures (Articles 70 and 71).

48. The provision on entry into force (Article 72) is somewhat unusual in requiring not only a specified number of ratifications or acceptances but, in addition, a declaration by the Executive Directors of the Bank. Since the Convention is mainly of a procedural character, precedent suggested that a small number of ratifications, possibly as few as three, should suffice to bring the Convention into force. On the other hand, the Convention creates an institution, the Centre, and this feature of the Convention argued in favor of requiring a larger number of ratifications. Finally, the subject-matter of the Convention, disputes between States and foreign investors, made it appear desirable that at the time of entry into force the Convention should have been ratified both by States which are likely to be host States and by States whose nationals are likely to be making foreign investments. The Executive Directors concluded that it would be appropriate to require ratifications or acceptances by at least 12 States and, after that number had been reached, to decide, on the recommendation of the President of the Bank, whether to declare immediately that the Convention will enter into force, or to await additional ratifications or acceptances if this would ensure that both groups of States were represented among the Contracting States at the time of entry into force.

49. The attached text of the Convention in the English, French and Spanish languages has been deposited in the archives of the Bank, as depositary, and is open for signature from the date of this Report.

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FOR EXECUTIVE DIRECTORS' MEETING

CONFIDENTIAL

R65-10

FROM: The Secretary

January 18, 1965

SETTLEMENT OF INVESTMENT DISPUTES

In order to facilitate study of the Revised Draft Convention (Z-13) and of the proposed changes in Chapters I - IX thereof (R65-6), the attached reproduces the English text of those Chapters with the proposed changes which have been inserted by hand.

Similar documents indicating the changes in the French and Spanish texts will shortly be available on request from the Secretary's Office (Extension 2158).

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

REVISED DRAFT OF CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES

TEXT OF CHAPTERS

I - IX

indicating the proposed changes listed in the Memorandum of January 8, 1965 from the General Counsel circulated with document R65-6 of the same date.

January 18, 1965

Legal Department

CHAPTER I

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Section 1

Establishment and Organisation

Article 1

(1) There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre).

(2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

Article 2

The seat of the Centre shall be at the principal office of the International Bank for Reconstruction and Development (hereinafter called the Bank). The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

Article 3

The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

Section 2

The Administrative Council

Article 4

(1) The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.

(2) In the absence of a contrary designation, each governor and alternate governor of the Bank appointed by a Contracting State shall be ex officio its representative and its alternate respectively.

Article 5

The President of the Bank shall be ex officio Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.

Article 6

(1) Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall

(a) adopt the administrative and financial regulations of the Centre;

(b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;

(c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);

(d) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;

(e) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;

(f) adopt the annual budget of the Centre;

(g) approve the annual report on the operation of the Centre.

The decisions referred to in sub-paragraphs (a), (b), (c) and (f) above shall be adopted by a majority of two-thirds of the members of the Administrative Council.

(2) The Administrative Council may appoint such committees as it considers necessary.

(3) The Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of this Convention.

Article 7

(1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than one-tenth of the members of the Council.

(2) Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast.

(3) A quorum for any meeting of the Administrative Council shall be a majority of its members.

(4) The Administrative Council may establish, by a two-thirds majority of its members, a procedure whereby the Chairman may seek a vote of the Council without convening a meeting of the Council. The vote shall be considered valid only if the majority of the members of the Council cast their votes within the time limit fixed by the said procedure.

Article 8

Members of the Administrative Council and the Chairman shall serve without remuneration from the Centre.

Section 3

The Secretariat

Article 9

The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

Article 10

(1) The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.

(2) The offices of Secretary-General and Deputy Secretary-General shall be incompatible with the exercise of any political function. Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Administrative Council.

(3) During the Secretary-General's absence or inability to act, and during any vacancy of the office of Secretary-General, the Deputy Secretary-General shall act as Secretary-General. If there shall be more than one Deputy Secretary-General, the Administrative Council shall determine in advance the order in which they shall act as Secretary-General.

Article 11

The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to ~~in accordance with the provisions of~~ this Convention, and to certify copies thereof.

Section 4

The Panels

Article 12

The Panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

Article 13

(1) Each Contracting State may designate to each Panel four persons who may but need not be its nationals.

(2) The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

Article 14

(1) Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.

(2) The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

Article 15

(1) Panel members shall serve for renewable periods of six years.

(2) In case of death or resignation of a member of a Panel, the authority which designated the member shall have the right to designate another person to serve for the remainder of that member's term.

(3) Panel members shall continue in office until their successors have been designated.

Article 16

(1) A person may serve on both Panels.

(2) If a person shall have been designated to serve on the same Panel by more than one Contracting State, or by one or more Contracting States and the Chairman, he shall be deemed to have been designated by the authority which first designated him or, if one such authority is the State of which he is a national, by that State.

(3) All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received.

Section 5

Financing the Centre

Article 17

If expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

Section 6

Status, Immunities and Privileges

Article 18

The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity

(a) to contract;

(b) to acquire and dispose of movable and immovable property;

(c) to institute legal proceedings.

Article 19

To enable the Centre to fulfil its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section.

Article 20

The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity.

Article 21

The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed ~~in accordance with the provisions of~~ pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat

(a) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;

(b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

Article 22

The provisions of Article 21 shall apply to persons appearing in proceedings ~~in accordance with the provisions of~~ under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

Article 23

(1) The archives of the Centre shall be inviolable, wherever they may be.

(2) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favourable than that accorded to other international organisations.

Article 24

(1) The Centre, its assets, property and income, and its operations and transactions authorised by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.

(2) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Centre to the Chairman or members of the Administrative Council, or on or in respect of salaries, expense allowances or other emoluments paid by the Centre to officials or employees of the Secretariat.

(3) No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed ~~in accordance with~~ pursuant to paragraph (~~4~~) of Article 52, in proceedings ~~pursuant to~~ this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place where such proceedings are conducted or the place where such fees or allowances are paid.

3

under

[FORMERLY ARTICLE 28]

(2) ~~For the purpose of this Convention~~ "National of another Contracting State" means:

(a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered ~~in accordance with the provisions~~ pursuant to paragraph (3) of Article ~~27~~ 28 or paragraph (3) of Article ~~37~~ 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and

(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and

CHAPTER II

JURISDICTION OF THE CENTRE

Article 25

(1) The jurisdiction of the Centre shall extend to any legal dispute ~~of a legal character,~~ arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

(2) – see opposite, page 10.a

3 (2) Consent by a constituent subdivision or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required.

4 (3) Any Contracting State may, at the time of ratification or acceptance of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. Such notification shall not constitute the consent required by paragraph (1).

The Secretary-General shall forthwith transmit such notification to all Contracting States.

Article 26

(1) Consent of the parties to arbitration ~~pursuant to~~ under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration ~~pursuant to~~ under this Convention.

(2) Notwithstanding the provisions of paragraph (1) of Article 25, a Contracting State which has consented to submit to the Centre a dispute with a national of another Contracting State may, at the time of such consent or at any time thereafter, consent to the substitution for such national, in proceedings in accordance with the provisions of this Convention, of the State of which he is a national or of a public international institution if such State or institution, having satisfied the claim of such national under an investment insurance scheme, is subrogated to the rights of such national. ~~provided, however, that~~ Such consent may be withdrawn at any time before the State or institution shall have notified to the other State in respect of such dispute its written undertaking (a) to be bound by the provisions of this Convention in the same manner as such national and (b) to waive recourse to any other remedy to which it might otherwise be entitled.

Article 27

(1) No Contracting State shall give diplomatic protection or bring an international claim in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration ~~pursuant to~~ under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

(2) Diplomatic protection, for the purposes of paragraph (1), shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

CHAPTER III

CONCILIATION

Section 1

Request for Conciliation

Article ~~29~~ 28

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

Section 2

Constitution of the Conciliation Commission

Article ~~30~~ 29

(1) The Conciliation Commission (hereinafter called the Commission) shall be constituted as soon as possible after registration of a request ~~in accordance with the provisions of~~ pursuant to Article ~~29~~ 28.

(2) (a) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the president of the Commission, appointed by agreement of the parties.

Article ~~29~~ 30

If the Commission shall not have been constituted within 90 days 2/ after notice of registration of the request has been dispatched by the Secretary-General in accordance with the provisions of paragraph (3) of Article ~~28~~ 28, or such other period as the parties may agree, the Chairman shall, at the request of either party, and, after consulting both parties as far as possible, appoint the conciliator or conciliators not yet appointed.

Article ~~30~~ 31

(1) Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments ~~in accordance with the provisions of~~ pursuant to Article ~~29~~ 30.

(2) Conciliators appointed from outside the Panel of Conciliators shall possess the ~~qualifications~~ qualities stated in paragraph (1) of Article 14.

Section 3

Conciliation Proceedings

Article ~~31~~ 32

(1) The Commission shall be the judge of its own competence.

(2) ~~The Commission shall be constituted notwithstanding~~ Any objection by a party to the dispute that that dispute is not ~~one in respect of which conciliation proceedings can be instituted pursuant to this Convention, or is not within the scope of its consent to such proceedings. Such objection~~ shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

within the jurisdiction of the Centre or for other reasons is not within the competence of the Commission,

Article ~~32~~ 33

Any conciliation proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Conciliation Rules in effect on the date on which the ~~consent to conciliation was given~~ parties consented to conciliation. If any question of procedure arises which is not covered by this Section or the Conciliation Rules or any rules agreed by the parties, the Commission shall decide the question.

2/ Formerly "three months". Changed by the Secretariat to maintain consistency.

Article 34

(1) It shall be the duty of the Commission to clarify the issues in dispute between the parties and to endeavour to bring about agreement between them upon mutually acceptable terms. To that end, the Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.

(2) If the parties reach agreement, the Commission shall draw up a report noting the issues in dispute and recording that the parties have reached agreement. If, at any stage of the proceedings, it appears to the Commission that there is no likelihood of agreement between the parties, it shall close the proceedings and shall draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. If one party fails to appear or participate in the proceedings, the Commission shall close the proceedings and shall draw up a report noting that party's failure to appear or participate.

Article 35

Except as the parties to the dispute shall otherwise agree, neither party to a conciliation proceeding shall be entitled in any other proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

CHAPTER IV

ARBITRATION

Section 1

Request for Arbitration

Article 36

(1) Any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

Section 2

Constitution of the Tribunal

Article 37

(1) The Arbitral Tribunal (hereinafter called the Tribunal) shall be constituted as soon as possible after registration of a request pursuant to Article 36.

(2) (a) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

38
Article ~~39~~

If the Tribunal shall not have been constituted within 90 days 3/ after notice of registration of the request has been dispatched by the Secretary-General in accordance with ~~the provisions of~~ paragraph (3) of (36 Article ~~37~~, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. Arbitrators appointed pursuant to this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute. 4/

by the Chairman

39
Article ~~40~~

(1) The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this ~~paragraph shall not apply if the parties, by agreement, appoint one or more nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute,~~

Article 40

1 ~~(2)~~ Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments ~~in accordance with the provisions of~~ Article ~~38~~ 38.

by the Chairman pursuant to

2 ~~(3)~~ Arbitrators appointed from outside the Panel of Arbitrators shall possess the ~~qualifications~~ qualities stated in paragraph (1) of Article 14.

Section 3

Powers and Functions of the Tribunal

within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal,

Article 41

(1) The Tribunal shall be the judge of its own competence.

(2) ~~The Tribunal shall be constituted notwithstanding~~ Any objection by a party to the dispute that that dispute is not ~~one in respect of which arbitration proceedings can be instituted in accordance with the provisions of this Convention, or is not within the scope of its consent to such proceedings. Such objection~~ shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

3/ Formerly "three months". Changed by the Secretariat to maintain consistency.

4/ The last sentence of Article 39 was not included in the text approved by the Drafting Sub-Committee.

Article 42

(1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.

(2) The Tribunal may not bring in a finding of non liquet on the ground of silence or obscurity of the law.

(3) The provisions of paragraph (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute ex aequo et bono if the parties so agree.

Article 43

Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings,

(a) call upon the parties to produce documents or other evidence, and

(b) visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate.

Article 44

parties consented to arbitration.

Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the ~~consent to arbitration was given~~. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.

Article 45

(1) Failure of a party to appear or to present his case shall not be deemed an admission of the otner party's assertions.

(2) If a party fails to appear or to present his case at any stage of the proceedings the other party may request the Tribunal to deal with the questions submitted to it and to render an award. Before rendering an award, the Tribunal shall notify, and grant a period of grace to, the party failing to appear or to present its case, unless it is satisfied that that party does not intend to do so.

Article 46

Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counter-claims arising directly out of the subject-matter of the dispute provided that they are within the ~~jurisdiction of the Centre and within~~ the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.

Article 47

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

Section 4

The Award

Article 48

(1) The Tribunal shall decide questions by a majority of the votes of all its members.

(2) The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it.

(3) The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.

(4) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

(5) The Centre shall not publish the award without the consent of the parties.

Article 49

(1) The Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

(2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, ~~in which case the periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which such decision is rendered~~ and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

(4) The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

Section 5

Interpretation, Revision and Annulment of the Award

Article 50

(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.

(2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with ~~the provisions of paragraph (2) of Article 38 and Articles 39 and 40~~. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. Section 2 of this Chapter.

Article 51

(1) Either party may request revision of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence.

(2) The application shall be made within 90 days 5/ after the discovery of such fact and in any event within three years after the date on which the award was rendered.

(3) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with ~~the provisions of paragraph (2) of Article 38 and Articles 39 and 40. The Tribunal may, if it considers that the circumstances so require, stay the enforcement of the award pending its decision.~~ Section 2 of this Chapter.

(4) See opposite, page 19.a

Article 52

(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:

(a) that the Tribunal was not properly constituted;

5/ Formerly "three months". Changed by the Secretariat to maintain consistency.

(b) that the Tribunal has manifestly exceeded its powers;

(c) that there was corruption on the part of a member of the Tribunal;

(d) that there has been a serious departure from a fundamental rule of procedure; or

(e) that the award has failed to state the reasons on which it is based.

(2) The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered.

(3) On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an ad hoc Committee of three persons. None of the members of the Committee shall have been a member of the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the Panel of Arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (1).

(4) The provisions of Articles 41-45, 48, 49, 53 and 54, and of Chapters VI and VII 6/ shall apply mutatis mutandis to proceedings before the Committee. If the applicant requests a stay of enforcement of

(5) The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

(6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with ~~the provisions of paragraph (2) of Article 38 and Articles 39 and 40,~~ Section 2 of this Chapter.

6/ The words "and of Chapters VI and VII" were added by decision of the Legal Committee.

The award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

Section 6

Recognition and Enforcement of the Award

Article 53

(1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except ~~during any stay of enforcement in accordance with the provisions of this Convention~~ to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.

(2) For the purposes of this Section, "award" shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

Article 54

(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce it within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent State.

(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.

Article 55 7/

Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

7/ Adopted by the Legal Committee but not considered by the Drafting Sub-Committee.

(2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.

CHAPTER V

REPLACEMENT AND DISQUALIFICATION OF CONCILIATORS AND ARBITRATORS

Article 56

(1) After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

(2) See opposite, page 23.a.

3 ~~(2)~~ If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy.

Article 57

A party may propose to a Commission or Tribunal the disqualification of ~~a conciliator or an arbitrator~~ any of its members on account of any fact indicating a manifest lack of the qualities required by Article 14(1). A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal ~~in accordance with the provisions of paragraph (1) of Article 40~~ under Section 2 of Chapter IV.

Article 58

The decision on any ~~proposed disqualification~~ proposal to disqualify a conciliator or arbitrator shall be taken by the other members of the Commission or Tribunal as the case may be, provided that where those members are equally divided, or in the case of a ~~proposed disqualification of~~ a sole conciliator or arbitrator, or of a majority of the conciliators or arbitrators, the Chairman shall take that decision. If it is decided that the proposal is well-founded, the conciliator or arbitrator to whom the decision relates shall be replaced in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

proposal to disqualify

CHAPTER VI

COST OF PROCEEDINGS

Article 59

The charges payable by the parties for the use of the facilities of the Centre shall be determined by the Secretary-General in accordance with the ~~rules or~~ regulations adopted by the Administrative Council.

Article 60

(1) Each Commission and each Tribunal shall determine the fees and expenses of its members within limits established from time to time by the Administrative Council and after consultation with the Secretary-General.

(2) Nothing in paragraph (1) of this Article shall preclude the parties from agreeing in advance with the Commission or Tribunal concerned upon the fees and expenses of its members.

Article 61 7a/

(1) In the case of conciliation proceedings, the fees and expenses of members of the Commission as well as the charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceedings.

(2) In the case of arbitration proceedings, except as the parties ~~shall~~ otherwise agree, the Tribunal shall assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

7a/ The order in which items of the cost of proceedings are mentioned has been changed by the Secretariat so that the introductory words in each paragraph of this Article make it clear that their provisions apply to conciliation proceedings and to arbitration proceedings respectively.

CHAPTER VII

PLACE OF PROCEEDINGS

Article 62

Conciliation and arbitration proceedings shall be held at the seat of the Centre except as hereinafter provided.

Article 63

Conciliation and arbitration proceedings may be held, if the parties so agree,

(a) at the seat of the Permanent Court of Arbitration or of any other appropriate institution, whether private or public, with which the Centre may ~~enter into~~ make arrangements for that purpose; or

(b) at any other place approved by the Commission or Tribunal after consultation with the Secretary-General.

CHAPTER VIII 8/

DISPUTES BETWEEN CONTRACTING STATES

Article 64

Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of ~~either~~ any party to such dispute, unless the States concerned agree to another ~~mode~~ method of settlement.

8/ Adopted by the Legal Committee but not considered by the Drafting Sub-Committee.

CHAPTER IX 9/

AMENDMENT

Article 65

Any Contracting State may propose amendment of this Convention. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days 10/ prior to the meeting of the Administrative Council at which such amendment is to be considered and shall forthwith be transmitted by him to all ~~Contracting States~~ the members of the Administrative Council.

Article 66

(1) If the Administrative Council shall so decide by a majority of two-thirds of its members, the proposed amendment shall be circulated to all Contracting States for ratification or acceptance. Each amendment shall ~~come~~ enter into force 60 days after dispatch by the ~~Secretary General~~ Bank of a notification to Contracting States that all Contracting States have ratified or accepted the amendment.

Instruments of ratification or acceptance shall be deposited with the Bank.

(2) No amendment shall affect the rights and obligations of any Contracting State or of any national of a Contracting State under this Convention with respect to or arising out of proceedings for conciliation or arbitration ~~pursuant to consent~~ to the jurisdiction of the Centre ~~given prior to~~ before the date of entry into force of the amendment. 11/

of a dispute which the parties had consented to submit

9/ Adopted by the Legal Committee but not considered by the Drafting Sub-Committee.

10/ Formerly "three months". Changed by the Secretariat to maintain consistency.

11/ Paragraph (2) of Article 66 is in substance identical with the proviso in paragraph (3) of Article 69 on pp. 40-41 of document Z-12. The opening phrase "such amendment shall not affect" has, however, been altered by the Secretariat to "No amendment shall affect", and in the last line, the phrase "effective date" has been changed to "date of entry into force".

January 15, 1965

Mr. Emmanuel Meyer
General Director
Swiss Aluminium Limited
Feldeggstrasse 4
Zürich 8, Switzerland

Dear Mr. Meyer:

I am enclosing herewith a copy of the latest draft of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States for your information. Of course, in order to make use of the Centre in connection with the Burfell Agreements, it would be necessary for both Switzerland and Iceland to ratify the Convention. In any event, as we discussed in Zurich, I think you might find this document helpful.

I should like to take this opportunity again to thank you and your colleagues for your kind hospitality during our recent visit to Zürich. I look forward to seeing you at our next round of meetings.

My best wishes for the New Year.

Sincerely yours,

Roger A. Hornstein

enclosure

cc Messrs. Broches, Fontein

RAH:la

Settlement of Investment Disputes

FORM NO. 26
(2-62)

INTERNATIONAL DEVELOPMENT ASSOCIATION | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

INCOMING WIRE

DATE OF WIRE: JANUARY 14, 1965

LOG NO.: TEX

TO: INTBAFRAD

FROM: PARIS

ROUTING	
ACTION COPY:	MR. SELLA
INFORMATION COPY:	
DECODED BY:	

TEXT:

SELLA

COULD THE FOLLOWING CLAUSE BE PROPOSED TO MY CONTRACTANT:

ARBITRAGE TOUT DIFFEREND ENTRE LES PARTIES A PROPOS DE L'INTERPRETATION LA SIGNIFICATION ET L'EFFET DU PRESENT CONTRAT OU DES DROITS OU OBLIGATIONS DES CONTRACTANTS EN DECOULANT OU TOUT AUTRE PROBLEME TROUVANT SES ORIGINES DANS CE CONTRAT OU S'Y RATTACHANT SERA ARBITRE A GENEVE, CONFEDERATION HELVETIQUE EN CONFORMITE AVEC LA "CONVENTION POUR LA SOLUTION DES DIFFERENDS TOUCHANT A UN INVESTISSEMENT ENTRE GOUVERNEMENTS ET PERSONNES PRIVEES" ADOPTEE PAR LES ADMINISTRATEURS DE LA BANQUE INTERNATIONALE POUR LA RECONSTRUCTION ET LE DEVELOPPEMENT LE----------MARS 1965. LE TRIBUNAL ARBITRAL DECIDERA DU MERITE DES PRETENTIONS RESPECTIVES DES PARTIES EX AEQUO ET BONO. LE GOUVERNEMENT DE LA REPUBLIQUE ALGERIENNE DEMOCRATIQUE ET POPULAIRE S'ENGAGE A RATIFIER PROMPTEMENT LADITE CONVENTION ET LES PARTIES S'OBLIGENT A EXECUTER LA SENTENCE DU TRIBUNAL ARBITRAL QUI SERA SANS APPEL ET QUI SERA EXECUTEE IMMEDIATEMENT A MOINS QUE LE TRIBUNAL ARBITRAL N'EN DECIDE AUTREMENT.

J'ESPERE QUE RONNY M'ACCORDERA AUDIENCE, SI POSSIBLE GASTRONOMIQUE, LE 3 FEVRIER. QUE NE L'ACCOMPAGNEZ VOUS PAS? AMITIES

BENRUBI CLEARGO

NA

DUPLICATE

Form No. 27
(7-61)

INTERNATIONAL DEVELOPMENT ASSOCIATION	INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT	INTERNATIONAL FINANCE CORPORATION

OUTGOING WIRE

TO: CLEARGO
PARIS

DATE: JANUARY 14, 1965

CLASS OF SERVICE: NLT

COUNTRY: FRANCE

TEXT:

Cable No.:

FOR BENRUBI HAVE AIRMAILED YOU LATEST DRAFT PROPOSED CONVENTION FOR YOUR CONFIDENTIAL USE STOP YOU WILL NOTICE CONVENTION WOULD APPLY TO LEGAL DISPUTES ARISING DIRECTLY OUT OF AN INVESTMENT BETWEEN A CONTRACTING STATE AND A NATIONAL OF ANOTHER CONTRACTING STATE STOP BROCHES WILL BE GLAD SEE YOU PARIS AND WILL CONTACT YOU DIRECTLY MEILLEURS AMITIES

PIERO

NOT TO BE TRANSMITTED

MESSAGE AUTHORIZED BY:

NAME Piero Sella

DEPT. Legal

SIGNATURE Piero Sella
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

CLEARANCES AND COPY DISTRIBUTION:

cc: Mr. Broches

For Use by Archives Division

ORIGINAL (File Copy)

(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: _____

JAN 14 6 09 PM 1965

January 14, 1965

Mr. A. Samin Bilgen
Chief Legal Advisor and Director
General of Disputed Claims
Ministry of Finance
Ankara
TURKEY

Dear Mr. Bilgen:

I wish to thank you for your letter of December 28, 1964.

The omission which you kindly brought to my attention has now been corrected in the final text of the summary proceedings of the Committee's meeting. Copy of the final text should reach you any time.

With kindest regards,

Sincerely yours,

P Sella

Piero Sella
Secretary
Legal Committee on Settlement
of Investment Disputes

PSella/ar

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 3	1070933

Document Date	Document Type	
January 13, 1965	Letter	

Correspondents / Participants
To: Robert F. Skillings, Assistant Director of Operations, International Finance Corporation
From: H.T. Parekh, General Manager, Industrial Credit and Investment Corporation of India Ltd.

Subject / Title
Acknowledgment of letter and revised draft of the Convention of Investment Disputes

Exception(s)
Information Provided by Member Countries or Third Parties in Confidence

Additional Comments

The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.

Withdrawn by	Date
Kim Brenner-Delp	August 14, 2023

Form No. 27
(7-61)

INTERNATIONAL DEVELOPMENT ASSOCIATION	INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT	INTERNATIONAL FINANCE CORPORATION

OUTGOING WIRE

TO: CLEARGO
PARIS

DATE: JANUARY 12, 1965

CLASS OF SERVICE: NLT

COUNTRY: FRANCE

TEXT:
Cable No.:

FOR BENRUBI BANK DIRECTORS EXPECTED TO APPROVE EARLY MARCH
FINAL TEXT OF CONVENTION ON SETTLEMENT INVESTMENT DISPUTES AND
RECOMMEND ITS ACCEPTANCE BY GOVERNMENTS STOP TIME OF ENTRY INTO
FORCE WILL DEPEND ON SPEED OF GOVERNMENTS ACTION STOP FOR FURTHER
INFORMATION YOU MAY WANT TO CONTACT BROCHES IN PARIS FEBRUARY THREE
STOP REGARDS TO MONIQUE AND ALL

PIERO

NOT TO BE TRANSMITTED

MESSAGE AUTHORIZED BY:

NAME Piero Sella

DEPT. Legal

SIGNATURE Piero Sella
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

CLEARANCES AND COPY DISTRIBUTION:

cc: Mr. Broches

For Use by Archives Division

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(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: _____

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COMMUNICATIONS

JAN 12 4 59 PM 1965

FOR EXECUTIVE DIRECTORS' MEETING

CONFIDENTIAL

R65-6

FROM: The Secretary

January 8, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached hereto is a memorandum from the General Counsel on the above subject for consideration by the Committee of the Whole on Settlement of Investment Disputes during the week beginning February 15, 1965.

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

January 8, 1965

MEMORANDUM FROM THE GENERAL COUNSEL

With reference to the President's memorandum of January 4, 1965 (SecM65-3), there is attached hereto a list of proposed changes in Chapters I through IX of the English text of the Revised Draft Convention on the Settlement of Investment Disputes (R 64-153).

Since the plenary sessions of the Legal Committee continued until the adjournment of the Meeting on December 11, 1964, the Drafting Sub-Committee was unable to deal with some of the decisions on substance taken by the Legal Committee and lacked the time to review that portion of the text with which the Sub-Committee had dealt at successive stages during the Meeting. On a review of the text a number of minor technical changes were found to be desirable. Where necessary a short explanation of the changes is given in the attachment. Most of the changes are drafting changes only and in my opinion none of the changes raise issues of policy.

A list of corresponding changes, where appropriate, in the French and Spanish texts of the Revised Draft Convention will be distributed shortly.

CHAPTER I

Title and Article 1

Delete the word "the" from the name of the Centre, which would then read in the title of Chapter I and in Article 1: "International Centre for Settlement of Investment Disputes".

Article 4, paragraph (2)

Line 2. The reference should be to "each governor and alternate governor of the Bank ...." and not to "each governor or alternate governor..."

Article 11

Penultimate line. Replace the phrase "in accordance with the provisions of" by "pursuant to". 1/

Article 21, preambular paragraph

Line 3. The reference should be to "paragraph (3) of Article 52", and not to paragraph (2) of that Article.

Article 22

Line 2. Replace the phrase "in accordance with the provisions of" by the word "under". 2/

Article 24, paragraph (3)

Line 4. The reference should be to "paragraph (3) of Article 52", and not to paragraph (2) of that Article.

1/ Similar changes should be made in the following Articles: Article 21, preambular paragraph, line 3; Article 24, paragraph (3), line 3; Article 30 (to be re-numbered Article 29), paragraph (1), line 3; Article 32 (to be re-numbered Article 31), paragraph (1), lines 2 - 3; Article 38 (to be re-numbered Article 37), paragraph (1), lines 2 - 3.

2/ A similar change should be made in Article 57, penultimate line.

Line 4. Replace the phrase "pursuant to" by the word "under". 3/

CHAPTER II

Article 25, paragraph (1)

Lines 1-2. Replace the phrase "dispute of a legal character" by "legal dispute". The latter phrase is used in the English text of paragraph (2) of Article 36 of the Statute of the International Court of Justice, and corresponds to "différend d'ordre juridique" in French and "diferencia de naturaleza juridica" in Spanish, which terms are used in the French and Spanish texts of the Convention.

Article 25, new paragraph (2)

Article 30 of the First Draft of the Convention (Z-12) contained definitions of the terms "investment", "legal dispute" and "national of another Contracting State". The Revised Draft has retained only the definition of "national of another Contracting State" in Article 28. That definition, with a few minor drafting changes, could now conveniently be made a new paragraph (2) of Article 25 and read as follows:

> (2) ~~For the purpose of this Convention~~ "National of another Contracting State" means:
>
> (a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered ~~in accordance with the provisions~~ pursuant to paragraph (3) of Article ~~29~~ 28 or paragraph (3) of Article ~~37~~ 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and
>
> (b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and

---

3/ Similar changes should be made in the following Articles: Article 26, paragraph (1), line 1 and last line; Article 27, paragraph (1), line 4.

which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

Article 25, paragraph (2).

To be re-numbered paragraph (3).

Article 25, paragraph (3).

To be re-numbered paragraph (4), and to be re-drafted so as to provide for the circulation of notifications to Contracting States. This involves the following change:

Line 4. After the end of the first sentence insert: "The Secretary-General shall forthwith transmit such notification to all Contracting States."

Article 26, paragraph (2).

Line 9. Replace the semi-colon by a full stop. Delete the words "provided, however, that" and commence a new sentence: "Such consent may be withdrawn ...", the remainder of the text being unchanged. This division of the text into two sentences makes for easier reading.

Article 28

To be deleted since its contents have been included in new paragraph (2) of Article 25.

CHAPTER III

Article 29 (To be re-numbered Article 28)

Paragraph (3). In order to reflect more adequately the sense of the Legal Committee that the Secretary-General's finding regarding the registrability or otherwise of a request for conciliation proceedings should be based solely upon the information furnished to him under paragraph (2) of this Article, insert in line 2 of paragraph (3) after the word "finds": ", on the basis of the information contained in the request,".

Article 30 (To be re-numbered Article 29)

Paragraph (1), line 3. The reference to "Article 29" should be to "Article 28".

Article 31 (To be re-numbered Article 30)

Line 4. The reference should be to "paragraph (3) of Article 28".

Article 32 (To be re-numbered Article 31)

Paragraph (1), line 3. The reference to "Article 31" should be to "Article 30".

Paragraph (2), line 2. Replace the word "qualifications" by "qualities" which more accurately covers the various attributes listed in paragraph (1) of Article 14.

Article 33 (To be re-numbered Article 32)

Paragraph (2). Since paragraph (1) of Article 30 of the Revised Draft requires the Commission to be constituted as soon as possible after registration of the request for conciliation proceedings, the first requirement of the present paragraph appears superfluous and may be omitted. As to the classes of objection contemplated, the intention was to cover any objection to the competence of the Commission, including objections to the jurisdiction of the Centre, and this idea could be expressed with greater clarity.

In view of the foregoing the present paragraph should be replaced by the following:

> "(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute."

Article 34 (to be re-numbered Article 33)

Line 4. The words "date on which the consent to conciliation was given" in the first sentence should be replaced by "date on which the parties consented to conciliation.", in order to make it clear that the date in question is the date by which both parties had given their consent.

Article 35

To be re-numbered Article 34.

Article 36

To be re-numbered Article 35.

Article 37 (To be re-numbered Article 36)

Paragraph (3), line 2. After the word "finds", insert the following: ", on the basis of the information contained in the request,". See note on paragraph (3) of Article 29 above.

Article 38 (To be re-numbered Article 37)

Paragraph 1, line 3. The reference to "Article 37" should be to "Article 36".

Article 39 (To be re-numbered Article 38)

Line 3. Delete the words "the provisions of".

Line 4. The reference to "Article 37" should be to "Article 36".

Line 5. Delete the second and third commas.

Line 7. After the word "appointed" insert "by the Chairman".

Article 40 (To be re-numbered Article 39)

Paragraph 1. The Legal Committee adopted a rule requiring that the majority of the members of a tribunal should not be "national" arbitrators, i.e. persons who are nationals of the State party to the dispute or of the State whose national is a party to the dispute, but sought to make an exception to this rule in the case where the members of the Tribunal had been appointed by agreement of the parties. Under the proviso to paragraph (1) of this Article as drafted, the rule would be inapplicable if even one arbitrator out of three or five were appointed by agreement of the parties, which was not the intention of the Legal Committee. It is therefore suggested that the proviso be redrafted as follows:

> "provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties."

Paragraphs (2) and (3)

Paragraphs (2) and (3) of the present Article, which relate to the use of the Panels in the selection of arbitrators, should logically form a separate article to be numbered Article 40 . The text of these paragraphs would, after minor changes, read as follows:

Article 40

(1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman ~~in accordance with~~ pursuant to Article ~~39~~ 38.

(2) Arbitrators appointed from outside the Panel of Arbitrators shall possess the ~~qualifications~~ qualities stated in paragraph (1) of Article 14.

Article 41, paragraph (2)

This paragraph should be re-drafted as follows:

"(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute".

See note on Article 33.

Article 44.

Line 4. The last words of the first sentence should be replaced by "on which the parties consented to arbitration". See note on Article 34.

Article 46

This Article permits consideration by the Tribunal of certain ancillary claims provided that they are "within the jurisdiction of the Centre and within the scope of the consent of the parties". This formulation may give the erroneous impression that the consent of the parties and the jurisdiction of the Centre are separate and distinct factors. It would, therefore, be preferable to re-phrase the proviso to Article 46 (last two lines) in the following way:

"provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre."

Article 48, new paragraph (5)

The Legal Committee, when discussing the formalities connected with an award, decided that a new paragraph dealing with publication of awards by the Centre should be added to the present Article. This decision is not reflected in the text of the Convention reproduced in document Z-13. It is now proposed to add as paragraph (5) of the present Article the following text:

> "(5) The Centre shall not publish the award without the consent of the parties".

Article 49, paragraph (2)

For the sake of clarity, the text may be recast as follows:

> (2) The Tribunal, upon the request of a party made within 45 days after the date on which the award was rendered, may, after notice to the other party, decide any question which it had omitted to decide in the award, ~~in which case the periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which such decision was rendered,~~ and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

Article 50, paragraph (2)

Lines 3 - 4. Replace "the provisions of paragraph (2) of Article 38 and Articles 39 and 40" by the words "Section 2 of this Chapter".

Article 51

While paragraph (3) of this Article empowers the Tribunal which considers a request for revision of an award to stay enforcement of the award pending its decision on the request, nothing is said regarding enforceability of the award immediately following an application for revision and before the Tribunal has been able to act. This question might best be resolved by deleting the last sentence of paragraph (3) and adding the following new paragraph (4) to this Article:

> (4) The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

Lines 3-4. Replace "the provisions of paragraph (2) of Article 38 and Articles 39 and 40" by "Section 2 of this Chapter".

Article 52, paragraph (5)

For reasons similar to those given for the changes in the provisions on stay of enforcement in Article 51, add the following sentence to paragraph (5):

> If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

Article 52, paragraph (6)

Line 3. Replace the words "the provisions of paragraph (2) of Article 38 and Articles 39 and 40" by"Section 2 of this Chapter".

Article 53, paragraph (1).

Lines 4-5. The wording of the exception to the rule stated in the present paragraph seemed slightly ambiguous. It might be re-worded (making the necessary changes to maintain consistency as well) as follows:

> "except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention".

Article 54

Last line. For "constituent State" read "constituent state".

CHAPTER V

Article 56, new paragraph (2)

On reflection is seemed desirable that Article 56 should deal explicitly with the position of a conciliator or an arbitrator who had for some reason ceased to be a member of the relevant Panel. It is proposed to introduce a new paragraph (2) reading as follows:

> "(2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel".

Article 56, paragraph (2)

To be re-numbered as paragraph (3).

Article 57

Line 2. Replace "a conciliator or an arbitrator" by "any of its members".

Line 3. For "qualifies" read "qualities".

Penultimate and last lines. Replace the words "paragraph (1) of Article 40" by "Section 2 of Chapter IV".

Article 58

Line 1. Replace the words "proposed disqualification" by "proposal to disqualify a conciliator or arbitrator".

Line 4. Replace the words "proposed disqualification of" by the phrase "proposal to disqualify".

CHAPTER VI

Article 59

Line 3. Delete the words "rules and" to maintain consistency with paragraph (1)(a) of Article 6.

Article 61, paragraph (1)

Line 1. At the beginning of the paragraph insert the words "In the case of conciliation proceedings" to give an initial indication of the content of the paragraph. For "a Commission" read "the Commission".

Article 61, paragraph (2)

Lines 1-2. For greater clarity and consistency, re-draft the first part of the paragraph as follows:

"(2) In the case of arbitration proceedings ~~Except as the parties shall otherwise agree a~~ the Tribunal shall, except as the parties otherwise agree, assess the expenses...."

Line 3. For "these expenses" read "those expenses".

CHAPTER VII

Article 63, sub-paragraph (a)

Line 3. For "enter into" read "make".

CHAPTER VIII

Article 64

Line 4. Replace the word "either" by "any".

Last line. Replace the word "mode" by "method".

CHAPTER IX

Article 65

Since this Article provides that the Administrative Council shall consider any proposed amendment as a first stage in the amendment procedure the Secretary-General should transmit the proposal to members of the Council and not, as is required by the present wording of Article 65, to Contracting States. The words "Contracting States" at the end of the paragraph should therefore be replaced by "the members of the Administrative Council".

Article 66, paragraph (1)

No provision had hitherto been made for a depository of instruments of ratification or acceptance of amendments. It seems logical that the Bank, which would assume the role of depository in relation to the Convention as a whole, should also act as depository of instruments ratifying or accepting amendments and it is therefore proposed to insert after the first sentence and before the second sentence of this paragraph as it stands, the following sentence:

> "Instruments of ratification or acceptance shall be deposited with the Bank".

Line 4. For "come" read "enter". Replace "Secretary-General" by "Bank", the Bank as depository being the proper authority to notify Contracting States.

Article 66, paragraph (2)

In the interests of clarity and consistency, the following changes should be made:

Line 4. Replace the phrase "pursuant to consent" by "of a dispute which the parties had consented to submit".

Penultimate line. Replace "given prior to" by "before".

January 7, 1965

Dr. Antonio Melchor de las Heras
Plaza de la Independencia, 2
Madrid 1
SPAIN

Dear Dr. Melchor:

I understand from Mr. Broches that on December 30, 1964, you had not yet received the revised draft Convention which had been mailed to you around the middle of December.

I therefore enclose herewith the English, French and Spanish texts of the revised draft Convention; should you want additional copies, please let me know.

With best regards,

Sincerely yours,

Piero Sella
Secretary
Legal Committee on Settlement of
Investment Disputes

Encl.

cc: Mr. Broches

PSella/ar

January 6, 1965

Dear Dr. Grothe:

In connection with the visit of the General Counsel of the World Bank, Mr. Aron Broches, to Frankfurt, we have sent you under separate cover five copies each of the Draft Convention of Investment Disputes Between States and Nationals of Other States, both in the earlier version (Z-12, September 1964) and the slightly amended version following the meeting of the Legal Committee which met here in November/December (Z-13, December 1964).

The name of the participant from the Federal Republic of Germany at the regional meeting in Geneva on this question was Dr. Bertram of the Ministry of Justice. Mr. Broches would like one or more representatives of the German section of the International Chamber of Commerce to be invited to the lecture.

Yours sincerely,

Lars J. Lind
Assistant Director of Information

Dr. H. Grothe
Kreditanstalt Fur Wiederaufbau
Lindenstrasse 27
Frankfurt/Main
Federal Republic of Germany

LJL/jsw

cc: Messrs. Broches
Christensen

January 6, 1965

Dear Dr. Oroche:

In connection with the visit of the General Counsel of the World Bank, Mr. Aron Broches, to Frankfurt, we have sent you under separate cover five copies each of the Draft Convention of Investment Disputes Between States and Nationals of Other States, both in the earlier version (E-12, September 1964) and the slightly amended version following the meeting of the Legal Committee which met here in November/December (E-13, December 1964).

The name of the participant from the Federal Republic of Germany at the regional meeting in Geneva on this question was Dr. Bertram of the Ministry of Justice. Dr. Broches would like one or more representatives of the German section of the International Chamber of Commerce to be invited to the lecture.

Yours sincerely,

Lars V. Lind
Assistant Director of Information

Dr. H. Oroche
Bundesministerium für Wiederaufbau
Ludwigstrasse 27
Frankfurt/Main
Federal Republic of Germany

LVL/jw

cc: Messrs. Broches
Christensen

4 de enero de 1965

Instituto Americano de
Derecho Internacional
Secretaría General
Caracas, Venezuela

Atención: Sr. Secretario General Adjunto

Muy señores míos:

El Sr. Broches, Director del Departamento Legal del Banco Internacional de Reconstrucción y Fomento, me pide les indique que ha llegado a sus manos su atenta carta de fecha 30 de noviembre de 1964 dirigida al Fondo Monetario Internacional, solicitando información respecto al proyecto de Convenio sobre Arreglo de Diferencias Relativas a Inversiones auspiciado por este Banco.

Puedo informarles que últimamente se celebró en esta ciudad la reunión del Comité Legal compuesto de representantes de gran número de los países miembros del Banco que estudió la redacción de dicho convenio. El Comité Legal se reunió en cumplimiento de la resolución de la Junta de Gobernadores del Banco aprobada en Tokío el pasado septiembre, y cuya copia tengo el gusto de adjuntarles. También les mando copia del informe de los Directores Ejecutivos del Banco a la Junta de Gobernadores que quedó aprobado en virtud de la mencionada resolución.

Hasta el momento no tenemos disponible el texto del proyecto de convenio, pero tan pronto se pueda publicar, con mucho gusto les enviaremos un ejemplar.

Muy atentamente,

Leopoldo Cancio
Abogado

LC:mu

cc: Mr. Broches
Mr. Sella

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SecM65-3

FROM: The President

January 4, 1965

SETTLEMENT OF INVESTMENT DISPUTES

1. There have been circulated to the Executive Directors

(a) Revised Draft of Convention on the Settlement of Investment Disputes between States and Nationals of Other States, dated December 11, 1964 (R64-153); and

(b) Report of the Chairman of the Legal Committee, dated December 28, 1964 (R64-155).

2. The General Counsel has informed me that after a review of that portion of the Convention which was dealt with by the Legal Committee he recommends that the Executive Directors accept the advice of the Legal Committee, subject only to minor changes of a technical character. A memorandum listing these changes will be circulated shortly.

3. There is now being prepared for circulation to the Executive Directors a draft of a Report to accompany the Convention when the latter is submitted to governments.

4. As the Executive Directors know, the Legal Committee was unable to deal with the Preamble and Chapter X (Final Provisions) of the Convention. The staff is reviewing those portions of the Convention in the light of written comments submitted by governments. I urge those Executive Directors who have comments or suggestions with respect to the Preamble and Chapter X to give them to Mr. Broches as soon as possible.

5. In order to give the Executive Directors ample time to consider the documents already circulated and those still to follow, I propose that the various documents be discussed by the Executive Directors sitting as the "Committee of the Whole on Settlement of Investment Disputes" during the week starting February 15, 1965 and I would hope that Committee deliberations could be concluded during that week. I would then expect final action by the Executive Directors to be taken in the first week of March after which the Convention would be submitted to member governments.

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

December 30, 1964

Dear Mr. Elias:

I assume that by this time Mr. Agoro has returned to Lagos and has reported to you on the proceedings of the Legal Committee on the Settlement of Investment Disputes. Taking into account the great variety of legal, economic and political backgrounds represented among the 61 delegations, I think that we achieved a quite satisfactory degree of consensus on nearly all issues. I am sending you herewith a copy of the Revised Draft (i.e. the document as it came out of the Legal Committee) as well as a marked up copy of the September 11 draft showing the deletions and additions made by the Legal Committee. You will also receive from time to time the definitive version of the Summary Records of the meetings of the Legal Committee as they are completed.

I take this opportunity to send you my very best wishes for the New Year.

Sincerely yours,

[Signed] A. Broches

A. Broches
General Counsel

Mr. T. O. Elias
Minister of Justice of the
Federation of Nigeria
Lagos, Nigeria

Enclosures

ABroches:cml

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 3	1070933

Document Date	Document Type	
December 29, 1964	Letter	

Correspondents / Participants

To: H.T. Parekh, General Manager, Industrial Credit and Investment Corporation of India Ltd.

From: Robert F. Skillings, Assistant Director of Operations, Development Finance Companies, International Finance Corporation

Subject / Title

Notification of revised draft of the Convention of Investment Disputes

Exception(s)

Information Provided by Member Countries or Third Parties in Confidence

Additional Comments

The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.

Withdrawn by	Date
Kim Brenner-Delp	August 14, 2023

December 29, 1964

Dr. S. Rosenne
Delegation of Israel to the
United Nations
11 East 70th Street
New York 21, N.Y.

not read in files

Dear Dr. Rosenne:

Mr. Broches has referred to me the corrections to the provisional summary proceedings of the Legal Committee's meeting of November 26, 1964 p.m., attached to your letter of December 21, 1964.

Unfortunately, the final text of those summary proceedings has already been issued and distributed to all delegates. If, however, you believe that your statement in the proceedings cannot stand without correction, I shall be glad to issue and circulate a corrigendum.

I enclose herewith Documents SID/LC/SR/22 (Provisional) and SID/LC/65. No further conference documents have been issued, except for the final texts of the summary proceedings which are being mailed to you as they become available.

With best wishes for the New Year,

Sincerely yours,

Piero Sella
Secretary
Legal Committee on the Settlement
of Investment Disputes

Encl.

cc: Mr. Broches

PSella/ar

December 23, 1964

Mr. Abdeslam Tadlaoui
First Secretary
Embassy of Morocco
Washington, D.C.

Dear Mr. Tadlaoui: / not read in files

In reply to your letter of December 15, 1964, I have the pleasure of enclosing herewith two sets (in French) of the conference documents issued during the meetings of the Legal Committee on Settlement of Investment Disputes as well as two copies of the Final Draft (in French) prepared by the Drafting Sub-Committee.

Copies of the final text of the summary proceedings will be mailed to you as they become available.

With kindest regards,

Sincerely yours,

Piero Sella
Secretary
Legal Committee on Settlement
of Investment Disputes

Encl.

PSella/ar

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

FOR EXECUTIVE DIRECTORS' MEETING

R 64-153

(for consideration at a meeting to be held in the second part of January 1965)

FROM: The Secretary

December 21, 1964

SETTLEMENT OF INVESTMENT DISPUTES

Attached is the revised text in English of the Draft Convention on Settlement of Investment Disputes between States and Nationals of Other States.

Copies of the revised text in French and Spanish can be obtained from the Secretary's Office (Extension 2158).

Attachment

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

Official Documents
Rm. 229

December 18, 1964

Dear Mr. Burrows:

I am writing to you in connection with your request that we substitute the phrase "in accordance with" for "pursuant to" throughout the text of our Draft Convention on Settlement of Investment Disputes between States and Nationals of Other States. If I remember correctly, your reason for wanting this change was that, as in your view the meanings of both phrases were identical, we should be consistent in the use of one or the other, your own preference being for the form "in accordance with".

In the version you will receive shortly under separate cover this change has not been made. We felt it necessary to send the complete draft to delegates and to the Executive Directors with the least possible delay, and these changes (and the corresponding changes in the French and Spanish texts, which also use two separate phrases in view of what we believed to be a difference in meaning) would have held this up.

However, I would like to assure you that we will check the draft very carefully for consistency in all respects after the Executive Directors have seen and approved it, and when doing so will bear in mind your views on this point.

It was a great pleasure to meet and work with you on the Drafting Committee and I look forward to meeting you again soon.

With best personal regards,

I am,

Yours sincerely,

C.W. Pinto

Mr. F. Burrows,
Assistant Legal Adviser,
Foreign Office,
London, S.W.1,
England.

CWP:sb

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 3	1070933

Document Date	Document Type	
December 15, 1964	Letter	

Correspondents / Participants
To: Louis B. Sohn, Professor of International Law, Law School of Harvard University
From: A. Broches, General Counsel

Subject / Title
[Comments on draft Convention on the Settlement of Investment Disputes]

Exception(s)
Attorney-Client Privilege

Additional Comments

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Kim Brenner-Delp	August 14, 2023

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File Title	Barcode No.
Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 3	1070933

Document Date	Document Type	
December 4, 1964	Letter	

Correspondents / Participants

To: Mr. Robert F. Skillings, Assistant Director of Operations, Development Finance Companies, International Finance Corporation

From: H.T. Parekh, General Manager, Industrial Credit and Investment Corporation of India Ltd.

Subject / Title

Status of Draft Convention on the Settlement of Investment Disputes

Exception(s)

Information Provided by Member Countries or Third Parties in Confidence

Additional Comments

The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.

Withdrawn by	Date
Kim Brenner-Delp	August 14, 2023

Arbitration

November 5, 1964

Dear Henry:

On my return from Europe I found your letter of October 2nd with which you enclosed your opinion on Brazilian law and remedies in expropriation. I found your opinion most informative on a number of points that I had heard discussed in a vague way. I had not realized the great number of safeguards provided by Brazilian law. On the other hand, I was somewhat dismayed at the "errors" committed in the few cases you discussed. If the judges err impartially in cases involving citizens and foreigners alike, there must be a terrific and profitable appellate practice. Seriously, though, I would like sometime to discuss with you the Brazilian and possibly some other Latin American legal situations in this field.

As you may know, we are working on a proposal to establish facilities for international conciliation and for arbitration of investment disputes. I am enclosing for your private information a document which presents our latest thinking on the subject. This document will be the working paper for meetings of our Executive Directors who were instructed by the Board of Governors at Tokyo to formulate the text of a Convention. The Latin American countries - foolishly in my opinion - opposed this decision of the Board of Governors, even though it merely called for a text to be submitted to governments, and in no way approved or even recommended any particular draft.

It may interest you that in a memorandum submitted by Brazil on an earlier occasion we were told in all seriousness that a proposal of this type would be unconstitutional because of the provisions of Article 141 (4) of the Constitution. As we say in Holland: "lust U nog peultjes?"

I am quite aware of the fact that the proposed Convention in some ways goes against Latin American traditions, but it is too bad that it is so difficult to have even a rational discussion of differences of opinion.

Sincerely yours,

A. Broches

Mr. Henry P. de Vries
Professor of Inter-American Law
Columbia University
New York 27, N.Y.

ABroches:cml

November 5, 1964

Dear Henry:

On my return from Europe I found your letter of October 2nd with which you enclosed your opinion on Brazilian law and remedies in expropriation. I found your opinion most informative on a number of points that I had heard discussed in a vague way. I had not realized the great number of safeguards provided by Brazilian law. On the other hand, I was somewhat dismayed at the "errors" committed in the few cases you discussed. If the judges err importantly in cases involving citizens and foreigners alike, there must be a terrific and profitable appellate practice. Seriously, though, I would like sometime to discuss with you the Brazilian and possibly some other Latin American legal situations in this field.

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I am quite aware of the fact that the proposed Convention in some ways goes against Latin American traditions, but it is too bad that it is so difficult to have even a rational discussion of differences of opinion.

Sincerely yours,

A. Broches

Mr. Henry P. de Vries
Professor of Inter-American Law
Columbia University
New York 27, N.Y.

ABroches:cmj

November 2, 1964

Mr. S. Aquarone
Deputy Registrar
International Court of Justice
The Hague, Holland

not sent to files

Dear Mr. Aquarone:

Thank you for your letter of October 20, 1964. I have also only just returned from leave and want to thank you for the text of the Court's Judgment in the Barcelona Traction case.

Since I last wrote to you on August 6th the Board of Governors at its Tokyo meeting has decided to authorize the Executive Directors of the Bank to formulate the text of a convention on the settlement of investment disputes for submission to member governments. The decision was taken without a roll call vote, but after the proposal had been declared adopted Bolivia, speaking on behalf of the Latin American nations and the Philippines, requested that these countries be recorded as opposed. Iraq then made a similar request.

In anticipation of the Governors' decision, the Executive Directors had decided that they would wish to be assisted by a committee of legal representatives of member governments in case they were called upon to formulate a final text. After the decision of the Board of Governors the Bank invited member governments to send legal representatives for a meeting of a "legal committee" to convene November 23, 1964 for a period not to exceed three weeks. At the same time the Bank circulated to its member governments a revised draft which is to serve as the working paper for the legal committee. I am sending you under separate cover two sets of the revised draft in English, French and Spanish.

Yours sincerely,

(Signed) A. Broches

A. Broches
General Counsel

ABroches:cml

November 2, 1964

Dr. Wellington V. K. Koo
Hotel Olcott
27 W. 72nd Street
New York, N. Y.

Dear Dr. Koo:

It was most kind of you to send me, through our mutual friend Y. L. Chang, the text of the Judgment of the International Court of Justice in the Barcelona Traction case. I happened to be in The Hague for a few hours on one of the many days on which the Court heard oral arguments. I attended part of one hearing but had to leave before the end and thus was unable to call on you.

You may possibly have heard that the International Bank has been engaged for some time in the study of a proposal to establish facilities for the settlement of investment disputes between states and national of other states through conciliation and arbitration. The Executive Directors of the Bank have now been asked by the Board of Governors to formulate the text of a convention for submission to governments. I take the liberty to enclose herewith a draft prepared by the staff of the Bank which will serve as the working paper for the further consideration of this matter by the Executive Directors and a legal committee consisting of representatives of member governments. It may interest you to know that Mr. Paul Chung-Tseng Tsai will serve on the legal committee representing the Republic of China.

May I ask you to remember me to Madame Koo.

Sincerely yours,

(Signed) A. Broches

A. Broches
General Counsel

Enclosure

ABroches:cml
cc: Mr. Y. L. Chang

November 2, 1964

Dear Mr. Gonon:

As I promised you during our conversation, I am sending you herewith for your confidential information a copy of the draft convention on the settlement of investment disputes. I will also send a number of copies to Mr. Paillère of the Patronat who had expressed an interest in the subject matter to our Paris Office.

With kind regards,

Sincerely yours,

(Signed) A. Broches

A. Broches
General Counsel

Mr. René Gonon
Président-Directeur Général
de la Société des Grands Travaux
de Marseille
25, Rue de Courcelles
Paris, France

Enclosure

ABroches:cml

November 2, 1964

Dear Mr. Donon:

As I promised you during our conversation, I am sending you herewith for your confidential information a copy of the draft convention on the settlement of investment disputes. I will also send a number of copies to Mr. Paillère of the Patronat who had expressed an interest in the subject matter to our Paris Office.

With kind regards,

Sincerely yours,

(Signed) A. Broches

A. Broches
General Counsel

Mr. René Donon
Président-Directeur Général
de la Société des Grands Travaux
de Marseille
25, Rue de Courcelles
Paris, France

Enclosure

October 30, 1964

Dear Mr. Edwards:

I would like to refer to your proposal to publish the resolution of the Bank's Board of Governors relating to the settlement of investment disputes and extracts from a statement made thereon by the Honorable Felix Ruiz, and to your request for information concerning the "voting" on this resolution for inclusion in a footnote.

The resolution referred to was adopted by the Board of Governors, without a formal vote. We would like to suggest, therefore, that the footnote in question might read:

> "Adopted by the Board of Governors of the International Bank for Reconstruction and Development on September 10, 1964, Governors of /list of countries/number of countries/ description of countries by geographical area/etc/ asking to be recorded as opposed".

Yours sincerely,

Harold N. Graves, Jr.
Director of Information

Mr. Richard Edwards
American Society of International Law
2223 Massachusetts Avenue, N.W.
Washington, D.C.

ELIASON/PINTO/va

FORM NO. 75
(2.60)

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE
CORPORATION

INTERNATIONAL DEVELOPMENT
ASSOCIATION

ROUTING SLIP

Date: 10.29.64

NAME	ROOM NO.
Mrs. Eliason	461

	To Handle		Note and File
	Appropriate Disposition		Note and Return
	Approval		Prepare Reply
	Comment		Per Our Conversation
	Full Report		Recommendation
	Information		Signature
	Initial		Send On

REMARKS

Suggested re-wording

From: C.W. Pinto

D R A F T

October 29, 1964

Dear Mr. Edwards:

I would like to refer to your proposal to publish the resolution of the Bank's Board of Governors relating to the settlement of investment disputes and extracts from a statement made thereon by the Honorable Felix Ruiz, and to your request for information concerning the "voting" on this resolution for inclusion in a footnote.

The resolution referred to was adopted by the Board of Governors, without a formal vote. We would like to suggest, therefore, that the footnote in question might read:

> "Adopted by the Board of Governors of the International Bank for Reconstruction and Development on September 10, 1964, Governors of [list of countries/number of countries/description of countries by geographical area/etc] asking to be recorded as opposed".

Yours sincerely,

Mr. Richard Edwards
American Society of International Law
2223 Massachusetts Avenue, N.W.
Washington, D.C.

DRAFT - DRELIASON - Oct. 28, 1964

Dear Mr. Edwards:

This is in response to your telephone call asking for information on voting for a footnote to be included with your publication of the resolution on settlement of investment disputes, and extracts from the statement by the Honorable Felix Ruiz concerning the resolution. Since there was no formal vote, our Legal Department has suggested that the footnote might read: "Adopted by the Board of Governors of the International Bank for Reconstruction and Development on September 10, 1964. Certain countries asked to be recorded as opposed."

Sincerely yours,

Mr. Richard Edwards
American Society of International Law
2223 Massachusetts Avenue, N. W.
Washington, D. C.

arbitration

October 28, 1964

Dear Mr. Brandon:

Many thanks for your letter of October 24, 1964. May I say, for my part, how glad I was of the opportunity to meet you however briefly.

In response to your request I am sending under separate cover a further six copies of the revised draft of the Convention. I would like, however, to add the usual word of caution: these documents are being sent to you on a personal basis and are to be treated as confidential.

I look forward to seeing you again when you are next in Washington.

With best personal regards,

Yours sincerely,

Mr. M. Brandon,
Secretary,
A.P.P.I.,
92 rue du Rhone,
Geneva, Switzerland.

arbitration

October 28, 1964

Dear Mr. Ferrante:

I would like to acknowledge your letter of October 21, 1964, addressed to Mr. Broches requesting copies of the revised text of the draft Convention on the Settlement of Investment Disputes between States and Nationals of Other States, and to express our appreciation for your organization's interest in this project.

The revised draft - copies of which are being sent to you under separate cover - is, however, a staff document and has not yet been approved by the Bank's Executive Directors. At the recent annual meeting of the Bank's Board of Governors in Tokyo, the Governors requested the Executive Directors to proceed to formulate a Convention establishing facilities and procedures which would be available on a voluntary basis for the settlement of investment disputes between contracting States and nationals of other contracting States. In implementation of this request the Executive Directors have decided to convene a Legal Committee consisting of representatives of all member States of the Bank, whose task will be to advise the Directors in their formulation of the Convention. The revised draft text sent to you will be the principal basis for discussion when the Legal Committee meets here in November.

I would like to emphasize that, having regard to the present status of this project, the revised draft is a "restricted" document. We would therefore appreciate your treating it as confidential.

Yours sincerely,

C.W. Pinto
Attorney

Mr. Mauro Ferrante,
Secretary General,
Camera di Commercio Internazionale,
Sezione Italiana,
Via Quintino Sella, 69,
Rome, Italy.

c.c. Messrs. Broches, Sella

arbitration

October 26, 1964

PERSONAL

My dear Sir:

You may have heard from time to time of the initiative that the World Bank has taken over the past two years in sponsoring the establishment of an international Center for the settlement of investment disputes between States and private investors. This initiative derives from the Bank's primary role as a development institution, and is conceived as a means of promoting the flow of private capital through affording protection of foreign investments from non-commercial risks (e.g. that of nationalization).

A preliminary draft of a Convention setting up the Center was discussed earlier this year at a series of regional meetings of legal experts designated by member States of the Bank. Finland was represented at our Geneva meeting by Mr. Ake-Roschier-Holmberg, a lawyer, and Mr. Pertti Tammivuori, the Secretary of the Bank of Finland.

In the light of the discussions at this series of meetings, the Legal Staff of the Bank have prepared a revised draft of the Convention. That document is now to be discussed by a Legal Committee consisting of lawyers designated by member States of the Bank whose function it will be to assist the Executive Directors of the Bank in preparing a final text which would then be circulated to Member States for ratification without the usual formal step of convening a diplomatic conference.

../..

The Hon. E.J. Manner,
Vice-Chancellor of Justice,
Kartanontie 9 A 21,
Munkkiniemi,
Helsinki, Finland.

The Legal Committee is to meet in Washington from November 23 for approximately three weeks, and does in a sense represent a device mid-way between an expert group and a full diplomatic conference. Unlike at the series of regional meetings, members will act not only in their capacity as experts, but also as representatives of governments.

I have been wondering whether you yourself might be designated by your government to attend the meeting and whether we shall thus have the pleasure of welcoming you to Washington. As you know, I accepted a post with the World Bank after our stay in Vienna, and my wife and I have now spent about a year and a half in the United States. As you might wish to pursue this matter further and learn more of this project (which breaks new ground in international law) I am sending under separate cover one copy of each of the following documents: Preliminary Draft of a Convention on the settlement of Investment Disputes between States and Nationals of Other States, Summary Record of the Geneva Consultative Meeting, February 1964, and Revised Draft of the Convention. These are "restricted" documents. I am sending them to you on a personal basis and would appreciate it if you would treat them as confidential.

I look forward to hearing from you soon. Meanwhile, our warm regards to Mrs. Manner and yourself.

Yours sincerely,

Christopher Pinto

Mr. Frank WF

Mr. Donald D. Fowler

October 23, 1964

Margaret L. Carter

Meeting of Legal Committee on
Settlement of Investment Disputes

With reference to your memorandum of October 20, 1964, this is to advise you of certain changes in staff which we plan to make.

There will be three translators rather than four. Two of the translators will be paid at the rate of $37.50 per work day. The remaining translator will be paid at the rate of $50 a day on a calendar basis. The total cost for fees for the above translators will therefore be about $2,500.

Instead of two bilingual typists, there will be one bilingual typist only and two bilingual stenographers. $25 per day should be allowed for the bilingual stenographers.

cc: Mr. Johnston
Mr. Broches
Mr. Mendels
Mr. Goodman

Mr. Arnold F. Johnston

October 21, 1964

Donald D. Fowler

Addendum to Memorandum of October 20, 1964, on "Budget estimates - Meeting of Legal Committee on Settlement of Investment Disputes."

The following should be included in paragraph 4. of the above-mentioned memorandum:

3 verbatim reporters	$350 - per day for the group

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 3	1070933

Document Date	Document Type	
October 20, 1964	Memorandum	

Correspondents / Participants
To: Arnold F. Johnston
From: Donald F. Fowler

Subject / Title
Budget estimates - Meeting of Legal Committee on Settlement of Investment Disputes

Exception(s)
Personal Information

Additional Comments

The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.

Withdrawn by	Date
Kim Brenner-Delp	August 14, 2023

October 14, 1964

Mr. A. Broches
c/o Mr. & Mrs. Pothast
Eemnesserweg 23, Laren, N.H.
The Netherlands

Dear Ronnie,

Please find enclosed for your information the French draft of the rules concerning the Institution of Proceedings, the rules concerning Arbitration Proceedings and the rules concerning Conciliation Proceedings which I just finished.

Tenley Jones is working on the translation of the French draft into English. I presume that he will be through with the translation of the rules concerning Arbitration Proceedings tomorrow.

All this is, of course, purely tentative and there is no doubt that there will be plenty of changes in the rules but we have now at least something to work from.

I have sent a set of rules to Paris where you may have already found it.

Best regards,

Georges R. Delaume

arbitration

le 12 octobre 1964

Monsieur Gilles Gozard
Président Honoraire de la Caisse d'Amortissement
de la Dette Publique
5, avenue Bosquet
Paris 7, France

Monsieur le Président,

En réponse à votre lettre du 29 septembre 1964 adressée à Mr. Woods, je tiens à vous remercier de l'intérêt que vous portez aux efforts de la Banque Internationale pour la Reconstruction et le Développement de mettre sur pied une convention pour le règlement des différends en matière d'investissements entre Etats et nationaux d'autres Etats.

Malheureusement, nous ne sommes actuellement pas en mesure de vous remettre un exemplaire du projet de Convention en question, étant donné que le texte se trouve encore en voie de préparation et n'a pas encore été rendu public. Lors de l'Assemblée annuelle du Conseil des Gouverneurs de la Banque tenue à Tokyo du 7 au 11 septembre 1964, seul le document No. 10 B a été publié à cet égard, lequel comprend un bref rapport des Administrateurs de la Banque en date du 6 août 1964 et le texte de la résolution adoptée le 10 septembre 1964 par le Conseil des Gouverneurs. Dans l'espoir que ce document pourra vous être utile, je vous en remets ci-joint un exemplaire, malheureusement en version anglaise seulement étant donné que la traduction française est actuellement épuisée.

Tout en regrettant sincèrement de ne pouvoir vous être de plus grande utilité, je vous prie de croire, Monsieur le Président, à l'expression de mes sentiments distingués.

J.-D. Roulet
Attorney

Annexe

cc: Mr. Broches
Legal Files

JDRoulet/al

arbitration

Form No. 26
(2-62)

INTERNATIONAL DEVELOPMENT ASSOCIATION | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

INCOMING WIRE

DATE OF WIRE: OCTOBER 9, 1964

LOG NO.: TEX

TO: INTBAFRAD

FROM: PARIS

ROUTING	
ACTION COPY:	MR. MENDELS
INFORMATION COPY:	
DECODED BY:	

TEXT:

✓

490 FOR MENDELS

✓ oct 7

YOUR 530 IN MY OPINION NO NEED TO SEND FOLLOWUP. AFTER LOST WEEKEND WILL TAKE STOCK AND IF NECESSARY CABLE THROUGH EXECUTIVE DIRECTORS

BROCHES

DUPLICATE

KS

arbitration

FORM NO. 26
(2-62)

INTERNATIONAL DEVELOPMENT ASSOCIATION | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

INCOMING WIRE

DATE OF WIRE: OCTOBER 8, 1964 1743

LOG NO.: RC 15

TO: INTBAFRAD MENDELS

FROM: PARIS

ROUTING	
ACTION COPY:	MR. MENDELS
INFORMATION COPY:	
DECODED BY:	

TEXT:

✓

487

UNABLE CONTACT BROCHES BEFORE MONDAY HAVE

LEFT URGENT MESSAGE FOR ARRIVAL

SEBERT

DUPLICATE

SE

arbitration.

October 8, 1964

Dear Mr. Moscoso:

In reply to your letter of October 5, we do not yet have the proposed convention on "Settlement of Investment Disputes," which the Executive Directors were asked to formulate at the annual meeting in Tokyo for submission to governments, probably early in 1965. An earlier preliminary draft was a confidential working paper, and only made available to member governments, Nor do we have the actual records of debates and proceedings in Tokyo regarding the proposal.

I am able to send you the enclosed Report of the Executive Directors, the Resolution approved by the Board of Governors, and the statement by the Honorable Felix Ruiz on behalf of the Latin American members, Haiti, and the Philippines, at the annual discussions. Also enclosed is an address made in 1963 on settlement of investment disputes by Mr. A. Broches, our General Counsel, before the World Conference on World Peace through Law.

Sincerely yours,

(Mrs.) Doris R. Eliason
Office of Information

Mr. J. Moscoso
350 Elm Street
New Haven, Connecticut

DRE/va

October 7, 1964

Dear Mr. Shailes:

Further to our recent conversation on the documentation for the forthcoming meeting of the Legal Committee on Settlement of Investment Disputes, I am sending you herewith as promised a copy of the English/French version of the Preliminary Draft of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States. This, as you will no doubt recall, was the working document discussed at our four regional consultative meetings, and formed the basis for the revised text which I handed to you the other day.

I would appreciate it if you would let me know as soon as you receive some word as to the representation of New Zealand on the Legal Committee.

With kind regards,

I am,

Yours sincerely,

C.W. Pinto
Attorney

Mr. A.C. Shailes,
First Secretary,
New Zealand Embassy,
19 Observatory Circle, N.W.
Washington, D.C.

arbitration

Form No. 27
(7-61)
INTERNATIONAL DEVELOPMENT ASSOCIATION | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

OUTGOING WIRE

TO: INTBAFRAD
PARIS

DATE: OCTOBER 7, 1964

CLASS OF SERVICE: LT

COUNTRY: FRANCE

TEXT:
Cable No.: 530

FOR BROCHES RE CONCILIATION LETTER TO MEMBERS COMMA ONLY THREE REPLIES INCLUDING NOMINATION TWO LAWYERS THUS FAR RECEIVED STOP PROPOSE SEND FOLLOW-UP NOW UNLESS YOU DEEM UNDESIRABLE STOP CABLE REPLY

MENDELS
~~INTBAFRAD~~

ack. oct. 9, 1964

NOT TO BE TRANSMITTED

MESSAGE AUTHORIZED BY:

NAME M.M. Mendels

DEPT. Office of the Secretary

SIGNATURE _____
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

CLEARANCES AND COPY DISTRIBUTION:

cc: Mr. E.E. Clark

For Use by Archives Division

Checked for Dispatch: _____

ORIGINAL (File Copy)

(IMPORTANT: See guide for preparing form)

Arbitration

October 6, 1964

Dear Dr. Rua:

In Mr. Broches' absence I would like to acknowledge your letter to him of September 21, 1964, requesting details of the Bank's proposal to establish international machinery, which would be available on a voluntary basis, for the settlement of investment disputes between States and nationals of other States.

As you know, a draft of a Convention which dealt with the legal aspects of this proposal was discussed at four regional meetings of legal experts convened by the Bank between December 1963 and May 1964. One such meeting was held in Santiago de Chile. In the light of the views expressed at those meetings a new draft of the Convention has been prepared by the Staff of the Bank.

As the proposal has received broad support from the Bank's member countries (with certain notable exceptions) the Board of Governors at its recent Annual Meeting in Tokyo decided to continue work on this project by convening in Washington next month a Committee of legal experts representing member governments. Their task would be to advise the Executive Directors in formulating the final text of a Convention for submission to governments. The Committee would have before it, as its principal working document, the revised draft Convention referred to above.

I am sending you under separate cover the following documents:

Preliminary Draft of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States (English/Spanish)

Dr. Julio Cueto Rua,
Corrientes 456, 4° piso,
Buenos Aires,
Argentina.

.../...

One copy in English and one in Spanish of the Revised Draft of the Convention.

One copy of the Summary Records of each of the four Regional Consultative meetings: Addis Ababa (English), Santiago de Chile (Spanish), Geneva (English), Bangkok (English).

These are "restricted" documents and have for the time being been sent only to member States of the Bank for study. I am sending them to you on a personal basis and shall appreciate it if you would treat them as confidential.

Yours sincerely,

C.W. Pinto
Attorney

c.c. Messrs. Broches,
Sella

October 5, 1964

Dear Mr. Quigley:

In response to your recent telephone inquiry I am sending you herewith documents containing:

1) the resolution on the settlement of investment disputes adopted by the Board of Governors of the Bank at its Annual Meeting held in September, and,

2) the statement made at the Annual Meeting by the Governor for Chile which purports to reflect the views of certain Latin American countries on the recommendation of the Executive Directors that the Bank continue to work towards establishing international machinery for the settlement of investment disputes.

I hope these documents will prove useful.

Yours sincerely,

C.W. Pinto
Attorney

Mr. Leonard B. Quigley,
1 Chase Manhattan Plaza,
New York, 5, N.Y.

Enclosures

Arbitration

October 5, 1964

Dear Mr. de Seynes:

In response to a request received from Mr. Karol Krcmery of your office I am sending you under separate cover copies in English, French and Spanish respectively of the revised draft of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

As you will note from the legend on the cover, this is a restricted document at present under study by the Executive Directors of the Bank. I would therefore appreciate it if you would treat it as confidential.

Yours sincerely,

C.W. Pinto
Attorney

Mr. Philippe de Seynes,
Under-Secretary for Economic and Social Affairs,
United Nations,
New York, N.Y.

c.c. Mr. Karol Krcmery

arbitrality
Ops Files

Mr. A. Broches

October 3, 1964

Georges R. Delaume

We have had a series of meetings during which we reviewed the draft rules that we sent you earlier. We have made a number of changes and it has been agreed that I would prepare a new draft in the next few days.

This, I propose to do in two stages, first by preparing an overall draft in amending the French and English texts and secondly by translating the French part into English so as to have a working set in one language.

I am giving Connie a set of the first rules so that she may be able to transcribe your comments (if any!) and bring them to me on Tuesday.

Without entering into details, I may already indicate that we have taken a few sections out of the rules concerning the introduction of proceedings and have removed them to the arbitral rules in order to give them greater flexibility. I am marking up a copy so that you see the extent of the removal.

I plan to stay as close as possible to my office on Monday so that should you wish to call me I would be available.

Best regards,

GRD:nn

arbitration

October 1, 1964

Mr. Alwyn V. Freeman
3965 Valley Meadow Road
Encino, California 91316

Dear Al:

I am enclosing herewith a copy of a report dated August 6, 1964 of the Executive Directors concerning the Arbitration Proposal and the Resolution adopted by the Board of Governors on September 10, together with a copy of a speech made by Mr. Ruiz of Chile at the Tokyo meeting.

So far as the draft of the Convention itself is concerned, we are now working on one. There will be a meeting during the latter part of November of various governmental representatives to consider a draft. I think for your purposes you ought to wait and see what happens as a result of that November meeting.

I would like very much to see you for lunch but unless you come to Lagos I think it would be difficult to arrange. I am leaving for Nigeria next week and expect to be gone for about a month. Hope you will be here sometime later.

With best regards.

Sincerely yours,

Lester Nurick

Enclosures

CC to Mr. Sella

LN:ajt

arbitration

October 1, 1964

Mr. F. V. García-Amador
Director
Department of Legal Affairs
Pan American Union
Washington 6, D. C.

Dear Mr. García-Amador:

I am writing in the absence of Mr. Broches, who is out of the country, to acknowledge with thanks your two letters of September 3, 1964 regarding the Draft Convention on the Settlement of Investment Disputes and the Seminar held by the Inter-American Institute of International Legal Studies.

I will call your letters to Mr. Broches' attention when he returns at the end of this month.

Sincerely yours,

Lester Nurick
Assistant General Counsel

cc to Messrs. Fligler and Broches

LN:ajt

CWP/sb September 30, 1964

Dear Mr. Claudy:

In Mr. Broches'/absence I would like to acknowledge your letter to him of August 28, 1964, requesting copies of the Draft Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

I am sending you under separate cover a copy of the Preliminary Draft of the Convention and a copy of the revised version which will form the basis of the Executive Directors' further work on this project now scheduled for November of this year. In doing so I would like to emphasize the confidential nature of these documents which are for your personal information alone.

We have had no indication up to the present time that the provisions of the Convention have been included or referred to in contractual undertakings between States and foreign investors. I might mention, however, that the Ghana Capital Investments Act of 1963 (which is designed to encourage investment of foreign capital) provides in Section 8(3) that disputes as to the amount of compensation payable upon expropriation of investments are to be referred in certain circumstances to arbitration "through the agency of the International Bank for Reconstruction and Development".

Yours sincerely,

C.W. Pinto
Attorney

Mr. Donald E. Claudy,
The Firestone Tire & Rubber Company,
Akron,
Ohio 44317.

September 30, 1964

Mr. Harry Conover
Executive Assistant to the President
Consejo Interamericano de Comercio y Producción
399 Park Avenue
New York 22, N. Y.

Dear Mr. Conover:

I am sending you herewith another copy of the Resolution that was adopted in Tokyo on the matter of Settlement of Investment Disputes.

Sincerely yours,

Leopoldo Cancio

Enclosure

LCancio:mu

cc: Mr. Nurick

September 29, 1964

Dear Mr. Roberts:

Thank you for your letter of September 7, 1964 requesting such information as may be available with respect to the establishment, under the auspices of the Bank, of a Center for arbitration of investment disputes.

This project has been under study by the Executive Directors of the Bank, for some three years, and the final phase of the work will be reached in November of this year when a meeting of legal experts representing member States of the Bank will convene in Washington to advise the Executive Directors in their preparation of a draft Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Documentation for the meeting is for the time being confidential and has been sent only to member States of the Bank. I am, however, taking the liberty of enclosing herewith a copy of a speech delivered by Mr. Broches, General Counsel of the Bank, at the World Conference on World Peace through Law in Athens last year. This will, I hope, give you a broad outline of the project while placing it in the general context of the promotion of private investment in less developed countries. Material on the Convention will probably become public in the spring of next year.

The draft Convention in its present form would establish an international Center for the conciliation and arbitration of investment disputes between States and foreign investors. The jurisdiction of the Center, which is based on consent, is restricted to "legal disputes" relating to "investments" as therein defined.

Mr. Sidney I. Roberts,
Roberts & Holland,
The Chrysler Building,
405 Lexington Avenue,
New York, N.Y. 10017

.../...

The provisions of the Convention could certainly be applied to tax disputes, provided, however, that they were otherwise within the jurisdiction of the Center.

Yours sincerely,

C.W. Pinto
Attorney.

CWP/sb

c.c. Messrs. Broches
Sella

Arbitration

CWP:sb

September 28, 1964

Dear Mr. Karasz:

In Mr. Broches' absence I would like to acknowledge your letter of September 21, 1964 in connection with the request of the Fédération Bancaire de la Communauté Economique Européenne for information on the Bank's proposal to establish an international Center for the settlement of investment disputes.

In view of your suggestion that it would be a good idea to let them have this information, I am sending you under separate cover a copy of the preliminary draft of the Convention (English-French text), and one copy each of the English and French texts of the revised draft of the Convention. The revised draft will serve as the principal basis of discussion at the meeting of legal experts which, as you know, is to be convened here in November.

When passing these documents on to the F.B.C.E.E., I would appreciate it if you would be kind enough to emphasize their confidential nature, and invite attention to the prohibition appearing on the cover.

Yours sincerely,

C.W. Pinto
Attorney

Mr. A. Karasz,
International Bank for Reconstruction and Development,
European Office,
4 Avenue d'Iéna,
Paris 16e, France.

c.c. Messrs. Broches,
Sella.

Arbitration

September 24, 1964

Mr. A. Broches
c/o Mr. & Mrs. Pothast
Eemnesserweg 23
Laren (N.H.)

Dear Ronnie:

Please find enclosed: 1) a copy of the Rules concerning the institution of proceedings and of the procedural rules for arbitration in French (my share), and in English (Piero's share) and a set of Administrative Rules drafted by David; 2) a photostatic copy of the Rules of Arbitration prepared by Kopelmenas and published in the last issue of the Revue de l'Arbitrage; 3) a photostatic copy of a memo that Hynnings has just given me, commenting on the draft Convention; and 4) a photostatic copy of a memo and a letter regarding the Congo-Léo.

Re Arbitration. Piero, Chris, David and I will meet tomorrow to take stock of what has been, and what remains to be, done. Clearly, we will have to revise extensively our respective drafts to make them fit together, fill lacunas and advance drafting.

In connection with my own draft, I should mention that I have not provided for two situations, namely, intervention and the plurality of parties. Personally, I feel that intervention is a concept foreign to arbitration. The only way in which I would think it possible to admit intervention would be with the express consent of the parties at the time of an actual dispute. Should we wish to cover the topic we might, of course, draft a provision saying in substance that if the parties so agree, other parties could be allowed to intervene, or be joined in the proceedings.

A similar remark applies to the plurality of parties. The diversity of conceivable situations is such that a reference in the rules to possible disputes amongst several parties would have to be cast in the most general terms. In fact, the provision would probably boil down to stating that if there is a number of parties, they will have to agree upon such matters as the number of arbitrators, the manner of the appointment, time limits, etc.

Notwithstanding the foregoing, I realize that some class actions might be identified and require specific treatment. I am thinking for example of actions falling within certain classes of disputes included in the consent given by a Contracting State pursuant to Article 29 of the Convention. Another practical case might be that of actions involving a group of bondholders. These are matters which may be worth exploring

GAD

further. I would appreciate it if you gave me your views on these and other points that you may wish me to cover.

Also in connection with arbitration, I want to make two more points. The first is to inform you that the Cour de Cassation in a judgment dated April 14, 1964, has finally upheld the validity of arbitral compacts in contracts between the French Government and foreign individuals or entities. This puts an end to the conflict of law aspect of the problem. As you know there remains, however, outstanding the question whether the French Government can get out of its commitments by invoking the lack of authority of its agents.

Secondly, you may recall that when I came back from Brussels last June, I told you that van den Houten was somewhat hurt that he had not received from us a draft of the Convention which he had nevertheless secured from The Hague. I wonder whether it would not be appropriate for us to send him copies of the revised draft but I do not want to do so until you give me your OK.

Re Congo. De La Renaudière told me that the letter from Tshombe was delivered to Moussa in Tokyo. He was not sure that it had been shown to you. Clearly, the letter is utterly wrong. Clearly also, there is some feet dragging in Brussels. We will have to wait for the developments.

Aside from Bank business, I am happy to report that the proposal for an international school is catching the imagination of people. I have a feeling that the road to success is open. So far we have managed, with the help of van Houtte, the founding father of the European schools who came over to Washington at the Bank's expense, to clarify our thoughts and to prepare a "selling prospectus" sufficiently precise to invite serious consideration by Governments and our management. The response from the staff following a meeting in the auditorium has been most encouraging and I am now afraid that if, as we plan, the school opens next fall, we may have an excess of pupils. Two weeks ago we convened a meeting of cultural attaches from leading European countries, including the Six, the United Kingdom and the Scandinavian countries; India, Pakistan and some Latin-American and African countries. They were all enthusiastic, except, of course, for my compatriots who used our language for its nuisance value rather than for constructive thoughts. Nevertheless, after subsequent talks with Embassy people and Larre who is on our side, I have a feeling that the French are now realizing that they have to join the bandwagon. All this is most challenging though, as you can imagine, it is also a lot of work.

Hoping that you and Kitty are enjoying your vacation, I remain as always,

GRD:nn

G. R. Delaume

arbitration

September 23, 1964

Mr. Harry Conover
Executive Assistant to the President
Consejo Interamericano de Comercio y Produccion
399 Park Avenue
New York 22, New York

Dear Mr. Conover:

As I promised you on the telephone, I am sending you herewith a copy of the report on Settlement of Investment Disputes, and of the Resolution that was adopted in Tokyo on this matter.

Sincerely yours,

Leopoldo Cancio

Enclosure

LC:mz

Le 21 septembre 1964

Monsieur Jörg Käser
Banque Européenne d'Investissement
11 Mont des Arts
Bruxelles, Belgique

Cher Monsieur,

Votre lettre du 15 septembre vient de me parvenir et je tiens à vous en remercier.

Comme vous le pensez, elle est d'un grand intérêt, non seulement pour moi, mais pour mes collègues du Fonds Monétaire International qui collectionnent tous les jugements concernant l'application des statuts du Fonds Monétaire. Je vais leur transmettre copie de votre lettre et de ses annexes.

Voudriez-vous être assez aimable pour dire à notre ami Xavier que je vais incessamment répondre à sa lettre du 4 septembre. Il ne s'agit plus que d'obtenir dans nos archives deux informations concernant les pays qui l'intéressent. Le temps m'a fait défaut jusqu'à présent pour les receuillir mais j'espère pouvoir combler cette lacune cette semaine.

Je vous prie de croire, cher Monsieur, à mes sentiments les meilleurs.

Georges R. Delaume

GRD:nn

September 21, 1964

Mr. Reinhard Matzel
Koln-Marienburg
Goethestr. 4
Western Germany

Dear Mr. Matzel:

In Mr. Broches' absence your letter to him, dated September 9, 1964, has been referred to me.

Your date of arrival, October 8, 1964, will be entirely convenient to us, although Mr. Broches himself will not return to Washington until toward the end of the month of October.

If you should have questions about your studies before you arrive you might get in touch with me and I will do my best to help. When you arrive I shall be glad to assist.

Sincerely yours,

Ellsworth E. Clark
Assistant General Counsel

cc: Mr. Broches
Legal Files
Op. Files

September 21, 1961

Mr. Reinhard Matzel
Koln-Marienburg
Goethestr. 4
Western Germany

Dear Mr. Matzel:

In Mr. Brookes' absence your letter to him, dated September 9, 1961, has been referred to me.

Your date of arrival, October 8, 1961, will be entirely convenient to us, although Mr. Brookes himself will not return to Washington until toward the end of the month of October.

If you should have questions about your studies before you arrive you might get in touch with me and I will do my best to help. When you arrive I shall be glad to assist.

Sincerely yours,

Ellsworth E. Clark
Assistant General Counsel

cc: Mr. Brookes
Legal Files
Op. Files

arbitration

September 21, 1964

not received in Libya

Dear Mr. Schachter:

In Mr. Broches' absence on leave, I would like to acknowledge your letter to him of September 17, 1964.

At the Bank's Annual Meeting in Tokyo earlier this month the Board of Governors adopted without a vote a resolution outlining further work on the proposal to set up an international Center for the conciliation and arbitration of investment disputes. It is now proposed to convene here, commencing November 23, a meeting of lawyers from all member countries with a view to having them advise the Executive Directors in the preparation of a final text which the Bank could then submit to member States for ratification or acceptance. Unlike at our regional meeting, the delegates to the November meeting will act not only as legal experts but also as official representatives of their countries.

I am sending you under separate cover one copy each of the English, French and Spanish texts of our revised draft of a Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. This document will be the principal working paper when the legal experts meet here in November. I am also sending you one more set of the summary records of the regional meetings as well as a copy of the Preliminary Draft of the Convention.

Mr. O. Schachter,
Director,
General Legal Division,
Office of Legal Affairs,
United Nations,
New York, N.Y.

.../...

I shall, of course, bring your letter to Mr. Broches' attention when he returns to office towards the end of October. Meanwhile, we would appreciate receiving any available documents and information regarding the U.N. conference on arbitration scheduled to take place in Bangkok in January, 1965.

Yours sincerely,

C.W. Pinto
Attorney

c.c. Messrs. Sella
Broches

arbitration

14 september 1964

Mr. M.P. Bloemsma
Koninginnegracht 27
's-Gravenhage
Netherlands

Zeer geachte Heer Bloemsma,

Voordat de heer Broches eind augustus naar Tokio vertrok heeft hij mij opgedragen U een copy te doen toekomen van de "Draft Convention on the Settlement of Investment Disputes between States and Nationals of Other States," waar U in Uw brief van 6 augustus om vroeg. Dit rapport is zojuist verschenen, wij dachten er beter aan te doen hier even op te wachten en U het nieuwe rapport te zenden.

Hoogachtend,

L.E. Jansse
Secretaresse van de
Heer Broches

cc.: Legal Files
Operational Files

September 14, 1964
Rough translation of letter to Mr. Bloemsma

Mr. Broches told me to mail Mr. Bloemsma a copy of the new "Draft on the Settlement of Investment Disputes", which Mr. Bloemsma had requested in his letter of August 6, 1964.

Form No. 26
(2-62)

INTERNATIONAL DEVELOPMENT ASSOCIATION | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

INCOMING WIRE

DATE OF WIRE: SEPTEMBER 12, 1964 2024

LOG NO.: RC 14

TO: INTBAFRAD

FROM: TOKYO

ROUTING	
ACTION COPY:	MR. SELLA
INFORMATION COPY:	
DECODED BY:	

TEXT:

FOR SELLA

PLEASE AIRMAIL UNCLE MPANJO ADDITIONAL COPY FRENCH GENEVA SUMMARY RECORD. PLEASE SEND ME TO HOLLAND ENGLISH AND FRENCH TEXTS OUR NEW DRAFT

BROCHES

MR. SELLA TELEPHONED DURING WEEKEND

DUPLICATE KS

SID - Arbitration

Form No. 26
(2-62)

INTERNATIONAL DEVELOPMENT ASSOCIATION | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

INCOMING WIRE

DATE OF WIRE: SEPTEMBER 10, 1964 1945

LOG NO.: ACR 6

TO: INTBAFRAD

FROM: TOKYO

ROUTING	
ACTION COPY:	MR. PINTO
INFORMATION COPY:	
DECODED BY:	

TEXT:

FOR PINTO.

SID RESOLUTION ADOPTED WITHOUT ROLL CALL VOTE BUT WITH LATIN AMERICAN COUNTRIES PHILIPPINES AND IRAQ ASKING TO BE RECORDED AS OPPOSED.

PLEASE HAVE LETTERS AND DRAFTS DISPATCHED AS ARRANGED REGARDS

BROCHES

NA

DUPLICATE

arbitration - SID

FORM NO. 26
(2-62)

INTERNATIONAL DEVELOPMENT ASSOCIATION | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

INCOMING WIRE

DATE OF WIRE: SEPTEMBER 10, 1964 1945

LOG NO.: RC 18

TO: INTBAFRAD

FROM: TOKYO

ROUTING	
ACTION COPY:	MR. HILKEN
INFORMATION COPY:	
DECODED BY:	

TEXT:

FOR HILKEN.

FURTHER MY EARLIER CABLE TODAY IRAQ ALSO VOTED AGAINST SID. RE IDA AND IFC PROPOSALS RICHARDS SPEAKING NURICK BY TELEPHONE ABOUT DESPATCH OF MEMBER LETTERS. RE SID, MEMBER LETTERS SHOULD NOW BE MAILED

MENDELS

NA

DUPLICATE

Form No. 26
(2-62)

INTERNATIONAL DEVELOPMENT ASSOCIATION | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

INCOMING WIRE

DATE OF WIRE: SEPTEMBER 10, 1964 1945

LOG NO.: RC 21

TO: INTBAFRAD

FROM: TOKYO

ROUTING	
ACTION COPY:	MR. HILKEN
INFORMATION COPY:	
DECODED BY:	

TEXT:

FOR HILKEN.

28 GOVERNORS SPOKE AT BANK DISCUSSIONS ON WEDNESDAY AND 12 SCHEDULED FOR TODAY. INFORM DOUCET NO REPORTS OR SECRETARY MEMORANDA ISSUED IN TOKYO. EXECUTIVE DIRECTORS NOMINATIONS INCLUDE SAN MIGUEL FROM ARGENTINA, THOR ICELAND AND KOCHMAN MAURITANIA. OTHERS UNCHANGED

MENDELS

NA

DUPLICATE

SID arbitration

FORM NO. 26
(2-62)

INTERNATIONAL DEVELOPMENT ASSOCIATION | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

INCOMING WIRE

DATE OF WIRE: SEPTEMBER 10, 1964 1945

LOG NO.: RC 19

TO: HILKEN INTRAFRAD

FROM: TOKYO

ROUTING	
ACTION COPY:	MR. HILKEN
INFORMATION COPY:	
DECODED BY:	

TEXT:

BANK, IDA AND IFC PROPOSALS APPROVED BY GOVERNORS WITH PHILIPPINES AND LATIN AMERICAN COUNTRIES VOTING AGAINST SID. EXECUTIVE DIRECTORS ELECTED PER NOMINATIONS. GOVERNORS OF FUND APPROVED A RESOLUTION DIRECTING FUND EXECUTIVE DIRECTORS TO CONSIDER QUESTION OF ADJUSTMENT OF QUOTAS AND MAKE APPROPRIATE PROPOSALS TO BOARD OF GOVERNORS

MENDELS INTERMEET

NA

DUPLICATE

July 14, 1964

Mr. Walter H. Glass
Counsel - Supporting Operations
International General Electric Company
159 Madison Avenue
New York 16, New York

Dear Walter,

I was glad to get your letter and to hear about your new job.

The text of the Convention has not yet been made public, but I am enclosing a copy of an address by Mr. Broches, General Counsel of the Bank, which will give you a brief statement on the nature of the proposals. As you probably know, there have been four regional conferences and as a result of those conferences a revised text of the Convention is being prepared. The Executive Directors of the Bank will soon be considering the future steps to be taken and until that decision is made there is really little more I can say.

I would be happy to meet with you and your associates any time you like. Perhaps when you come down I will be able to tell you more about the state of the Convention.

Sincerely yours,

/s/ L. Nurick

Lester Nurick
Assistant General Counsel

LNurick:vv

cc: Mr. Broches

arbitration

July 2, 1964

Mr. S. Renborg
Head of Economic Division
Secretariat-General
Council of Europe
Strasbourg, France

with A. Karasz

Dear Mr. Renborg:

Your letter dated June 22 was forwarded to me to Washington.

Enclosed please find two copies of our Preliminary Draft of a Convention on the Settlement of Investment Disputes. Please note that the matter is still in draft form and therefore I would ask you to treat it as strictly confidential.

I shall be back in Paris next week and hope to have the pleasure of meeting with you soon.

Sincerely yours,

Arthur Karasz

Encls. 2

AK:mo
cc: Mr. Broches
Mr. Miller
Mr. Viggo Christensen

224

arbitration

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL DEVELOPMENT ASSOCIATION

FOR EXECUTIVE DIRECTORS' MEETING

CONFIDENTIAL

R 64-101

(for consideration on August 6, 1964)

FROM: The Secretary

July 28, 1964

SETTLEMENT OF INVESTMENT DISPUTES

Pursuant to the discussion at the meeting on July 23, 1964, of the Committee of the Whole on the Settlement of Investment Disputes, the attached draft Report of the Executive Directors to the Board of Governors and draft Resolution will be considered by the Executive Directors on August 6, 1964.

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

(DRAFT)

REPORT OF THE EXECUTIVE DIRECTORS

Settlement of Investment Disputes

1. At its Seventeenth Annual Meeting in September 1962 the Board of Governors adopted the following Resolution:

> "RESOLVED:
>
> THAT the Executive Directors are requested to consider the desirability and practicability of establishing institutional facilities, sponsored by the Bank, for the settlement through conciliation and arbitration of investment disputes between governments and private parties and, if they conclude that such action would be advisable, to draft an agreement providing for such facilities for submission to governments."

2. During 1962-63 the Executive Directors studied the subject-matter on the basis of a staff paper in the form of a convention for the settlement of investment disputes. At the end of that fiscal year the Executive Directors, on the recommendation of the President, decided to convene consultative meetings of legal experts designated by member countries, to consider the subject-matter in more detail. The working document for these meetings was a Preliminary Draft of a Convention for the Settlement of Investment Disputes between States and Nationals of Other States, prepared by the Bank's staff in the light of the discussions of the Executive Directors during 1962-63 and the views of governments. The consultative meetings were held on a regional basis in Addis Ababa (December 16-20, 1963), Santiago de Chile (February 3-7, 1964), Geneva (February 17-21, 1964) and Bangkok (April 27-May 1, 1964) with the administrative support and assistance of the United Nations Economic Commissions and the European Office of the United Nations. They were attended by legal experts designated by 86 countries and proved valuable not only in identifying and elucidating technical problems but also in supplementing the Bank's information regarding the attitudes of governments.

3. Reviewing the results of the work done over the past two years, the Executive Directors have concluded that it would be desirable

(a) to establish institutional facilities, sponsored by the Bank, for the settlement through voluntary conciliation and arbitration of investment disputes between governments and foreign investors; and

(b) to provide for such facilities within the framework of an inter-governmental agreement.

4. The Executive Directors are further of the opinion that as a result of the discussions and consultations which have taken place over the past two years, the issues of policy as well as the technical problems arising in connection with such an agreement have been adequately identified and elucidated and that the time has come to seek to resolve these issues and problems with a view to arriving at a broad consensus.

5. In that connection the Executive Directors have concluded that it would be advisable at this time for the Executive Directors to undertake the formulation of a convention on the settlement of investment disputes between States and nationals of other States, assisted in this task by legal experts representing member governments which wish to participate in the preparation of a text.

6. In recommending that such a convention be formulated by the Executive Directors and submitted to governments, it is the understanding of the Executive Directors that the formulation and submission to governments, of a convention would be an act of the Executive Directors which would not commit governments and that governments would be free to take such action as they may deem appropriate.

7. The Executive Directors recommend that the Board of Governors approve this report and adopt the attached draft resolution.

July 28, 1964
Legal Department

(DRAFT)

Settlement of Investment Disputes

RESOLVED:

(a) The report of the Executive Directors on "Settlement of Investment Disputes", dated _____, 1964 is hereby approved.

(b) The Executive Directors are requested to formulate a convention establishing facilities and procedures which would be available on a voluntary basis for the settlement of investment disputes between States and nationals of other States through conciliation and arbitration.

(c) In formulating such a convention, the Executive Directors shall take into account the views of member governments and shall keep in mind the desirability of arriving at a text which could be accepted by the largest possible number of governments.

(d) The Executive Directors shall submit the text of such a convention to member governments with such recommendations as they shall deem appropriate.

July 28, 1964
Legal Department

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SID/64-3

FROM: The Secretary

June 10, 1964

SETTLEMENT OF INVESTMENT DISPUTES

The attached memorandum from the President will be considered at a meeting of the Committee of the Whole on Settlement of Investment Disputes to be held on a date to be announced.

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

From: The President June 10, 1964

SETTLEMENT OF INVESTMENT DISPUTES

1. Now that the series of regional consultative meetings regarding the draft Convention on Settlement of Investment Disputes has been concluded, I propose that the Executive Directors resume their study of the proposal and consider what further action should be taken.

2. The Summary Records of the Addis Ababa and Geneva meetings were circulated to the Executive Directors on May 14, 1964 (SID 64-1) and June 2, 1964 (SID 64-2) respectively. The Summary Record of the Santiago meeting is being reproduced and will be circulated shortly. The Bangkok Summary Record is still being prepared. There is also being prepared for circulation to the Executive Directors a report summarizing the principal points raised at the four meetings. I would not expect the Executive Directors to reach any conclusions before they and their governments have received, and have had an opportunity to study, that report as well as the four Summary Records. Several Directors, however, have expressed the wish to be informed as soon as possible of my own views on the matter. I am therefore setting them out in this memorandum.

3. As the Executive Directors will recall, the purpose of the consultative meetings was twofold. First, as an exchange of views between the Bank staff and legal experts from member countries. This educational effort we hoped would be useful for both sides. Second, as a method of gauging the reactions and opinions of those countries which had formed at least a preliminary opinion on the proposal, either at the technical or political level. On the basis of the reports which I have received from Mr. Broches, I have no hesitation in saying that the meetings have served both ends well and have been extremely valuable. In my invitation to the governments I stressed that the meetings would have an informal character and that the participants would not be regarded as committing their governments. Nevertheless, quite a few of the participants were in a position to give us, in greater or lesser detail, views of their governments on the proposal.

4. The four meetings were attended by experts from 86 countries. While it is difficult because of the nature of the meetings to make a precise estimate of the attitudes of the countries which had sent delegations, I think I can state that only a relatively small minority had objections of principle to the basic idea of establishing facilities for international conciliation and arbitration through inter-governmental agreement. Opinions among the large majority which found the basic idea acceptable

ranged from strong support for the draft as it stood, subject only to technical amendments, to more or less strongly felt reservations about one or more substantive features of the draft. On an analysis of what was said at the four meetings, Mr. Broches feels that the differences of opinion expressed are negotiable and he is confident that the text of an agreement can be worked out which would both accomplish the purpose sought to be achieved, and meet the reservations of all countries but those which have fundamental objections to any form of international conciliation and arbitration proceedings directly between States and foreign investors.

5. It would seem that the regional meetings have broadly confirmed the preliminary assessment which could be made on the basis of the meetings of the Executive Directors sitting as a Committee of the Whole. It is my view that the Executive Directors can now conclude that there is adequate support for the basic features of the proposal and that steps should be taken to formulate an inter-governmental agreement providing for the establishment of institutional facilities sponsored by the Bank for the settlement through conciliation and arbitration of investment disputes between States and foreign investors.

6. At the 1962 Annual Meeting the Board of Governors adopted the following resolution:

> "That the Executive Directors are requested to consider the desirability and practicability of establishing institutional facilities, sponsored by the Bank, for the settlement through conciliation and arbitration of investment disputes between governments and private parties and, if they conclude that such action would be advisable, to draft an agreement providing for such facilities for submission to governments."

7. If the Executive Directors share my view, they would report to the Board of Governors that they are satisfied as to the desirability and practicability of the proposed institutional facilities. The Board of Governors resolution further asks them to consider whether it would be advisable to draft an inter-governmental agreement for submission to governments and, if so, to draft such an agreement. The language of the resolution of the Board of Governors leaves open the question whether the draft agreement to be prepared by the Executive Directors would be submitted to governments for signature or for further discussion. I am of the opinion that the Bank should follow the example of what it did in connection with the establishment of IFC and IDA and that the Executive

Directors, assisted in this case by legal experts in the manner indicated below, should constitute themselves both a negotiating and drafting body which would prepare a draft in final form. This draft would then be transmitted to governments for signature and ratification or acceptance. As in the case of IFC and IDA, the approval of the text of the Convention by the Executive Directors would be an action of the Bank and would not commit the governments they represent. The text would therefore be transmitted to governments ad referendum.

8. In expressing this opinion I am aware of alternative suggestions which have been made at some of the regional meetings. A number of experts, some of them speaking personally, others representing governmental views, felt that an inter-governmental agreement of the kind involved here should be prepared by a diplomatic or inter-governmental conference convened for the purpose and that the Executive Directors should do no more than prepare a draft which would form the basis of discussion at such a conference. The principal arguments in support of this view were that the subject matter of the Convention was outside the particular expertise of the Executive Directors as a body, and that it would be important for the success of the Convention to make certain that differences in governmental views, especially as between the capital-importing and capital-exporting countries, should be aired in direct confrontation. I do not think that either of those arguments is persuasive. Moreover, I think that such a conference might unnecessarily delay and impede progress toward an objective which has broad support in the Bank's membership.

9. It is clear that the proposal raises broad political and economic issues as well as legal issues of both a theoretical and practical nature. It appears to me that the Executive Directors are eminently qualified to deal with the broad policy questions and that the composition of the Board is such as to permit the "confrontation" of the views of capital importers and exporters. While it may be admitted that the Executive Directors, as a body at least, are not particularly equipped to deal with some of the legal issues raised by the proposals, these issues would in any event require consideration by technical experts. It would seem to me that the Executive Directors might obtain the necessary technical guidance and advice through the establishment of a legal subcommittee on which each Executive Director might appoint legal experts from as many of the countries represented by him as wished to be more directly associated with the preparatory work on the Convention.

10. It is true that the 102 members of the Bank are represented by only 19 Executive Directors, and that some Executive Directors represent

a number of countries not all of which may have the same views on the proposals, but I believe that the disadvantage of not giving every member country an opportunity to participate directly in the final process of formulating the text of the Convention can easily be overestimated. Moreover, it could be largely overcome by the presence of the legal experts who, to the extent desired by their governments, could act on their instructions and would be available to express their governments' views on policy issues as well. This, together with the very full documentation on the views expressed at the regional consultative meetings and the record of earlier discussions in the Committee of the Whole of the Executive Directors, would serve most if not all of the purposes of an inter-governmental meeting.

11. It seems to me, therefore, that the Executive Directors, assisted by legal experts in the manner indicated above, would be a particularly suitable forum for the study and discussion of the proposal and for the formulation of the final text of a Convention for submission to governments. If this view is accepted, as I think it should be, it would be appropriate for the Executive Directors to recommend to the Board of Governors that the Board instruct the Executive Directors to proceed on this basis.

George D. Woods
President