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July thru Nov. 1963

THIS FILE IS CLOSED.

PLEASE CONSULT VOLUME III

November 14, 1963

Dear Dr. Cobos:

I have received your letter of November 6, 1963.

The Bank has prepared a draft of a Convention on the Settlement of Investment Disputes for discussion at a series of meetings of legal experts designated by governments. We have made this document available only to governments and have not published it. I therefore called Dr. Joaquin Gutierrez Cano, the Executive Director of the Bank representing Spain and have told him of your interest. You may expect to hear from this gentleman shortly.

Sincerely yours,

(Signed) A. Broches

A. Broches
General Counsel

Dr. Eduardo Cobos
Avenida del Presidente Carmona, 13,7° A
Madrid, Spain

cc.: Dr. Gutierrez Cano

ABroches:ms

Arbitration

Seul

September 26, 1963

Dear Mr. Oakley,

As promised, I am sending you herewith a copy of the French Translation of our Convention on the Settlement of Investment Disputes which I handed to you yesterday. We look forward to receiving the English galley proofs tomorrow, and the French galley proofs as soon as possible thereafter. On completion of the latter you would, no doubt, be able to consider the question of pages laid out on the lines we discussed yesterday.

It was a great pleasure to meet you and your staff, and I am particularly grateful for the ride to the airport late last afternoon.

With kind regards,

I am,
Yours sincerely,

C. W. Pinto
Attorney, Legal Department

Mr. H. Wayne Oakley
The Pandick Press
22 Thames Street
New York, N.Y.

CWP:es

Arbitration

CONFIDENTIAL

SID/63-18

FROM: The Secretary

October 28, 1963

SETTLEMENT OF INVESTMENT DISPUTES

for enclosure see Arbitration meetings

The Working Paper for the regional consultative meetings of legal experts (English-French version) is attached hereto for information. Copies are being sent directly to member governments.

The Working Paper has been marked "Restricted - Not for Publication" so as to indicate its confidential character while leaving governments free to furnish copies to appropriate institutions or individuals.

Distribution:

Executive Directors and Alternates
President
Vice Presidents
Department Heads

Legal Department

CONFIDENTIAL

SID/63-17

FROM: The Secretary

September 24, 1963

SETTLEMENT OF INVESTMENT DISPUTES

The annotated text of the First Preliminary Draft of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States, revised in the light of the views expressed by the Executive Directors at their meeting on September 10, 1963, is circulated herewith. It is proposed to print this version of the document in English, French and Spanish as a Working Paper for the regional meetings of legal experts.

The Introductory Note, which is now in preparation, will explain the sponsorship of the envisaged Center by the Bank in the context of the Bank's own functions and objectives. It will also contain a statement that, while the Executive Directors have discussed the document informally at several meetings, the text has in no sense been adopted or approved by them.

The Working Paper will be marked "Restricted - Not for Publication" so as to indicate its confidential character while leaving governments free to furnish copies to appropriate institutions or individuals.

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INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

SETTLEMENT OF INVESTMENT DISPUTES

Preliminary Draft

of a

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

Annotated Text

September 23, 1963

Legal Department

TABLE OF CONTENTS

INTRODUCTORY NOTE

[In preparation]

PREAMBLE

The Contracting States

1. CONSIDERING the need for international cooperation for economic development, and the role of international investment therein;

2. BEARING IN MIND the possibility that from time to time disputes may arise in connection with such investment between Contracting States and the nationals of other Contracting States, and the desirability that such disputes be settled in a spirit of mutual confidence, with due respect for the principle of equal rights of States in the exercise of their sovereignty in accordance with international law;

3. RECOGNIZING that while such disputes would usually be subject to national legal processes (without prejudice to the right of any State to espouse a claim of one of its nationals in accordance with international law), international methods of settlement may be appropriate in certain cases;

4. ATTACHING PARTICULAR IMPORTANCE to the establishment of facilities for international conciliation or arbitration to which Contracting States and the nationals of other Contracting States may submit such disputes if they so desire;

5. RECOGNIZING an undertaking to submit such disputes to conciliation or to arbitration through such facilities as a legal obligation to be carried out in good faith, which requires

in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

6. DECLARING that no Contracting State shall by the mere fact of its ratification or acceptance of this Convention be required to have recourse to conciliation or arbitration in any particular case, in the absence of a specific undertaking to that effect,

HAVE AGREED as follows:

Comment

1. The Preamble contains a general statement of the aims and purposes of the Convention, and is, in addition, intended to be declaratory of the fundamental norms upon which the specific rules of the Convention are based. Paragraph 1 places the Convention in the context of the need for promoting economic development while paragraph 2 assures respect for the proper exercise of national sovereignty. The purpose for which conciliation and arbitration machinery is set up is limited in paragraph 2 to the settlement of investment disputes between Contracting States and the nationals of other Contracting States.

2. Paragraph 3 makes it clear that the procedures set forth in the Convention are in no way intended generally to supersede national legal processes or the existing rights of States under international law, but suggests that other methods of settlement of the disputes covered may be appropriate in certain cases. Paragraphs 4 and 6 emphasize that recourse to the Center is purely optional.

3. Finally, paragraph 5 recognizes as binding the obligations deriving from an undertaking to submit investment disputes to conciliation and arbitration under the auspices of the Center and represents an

adaptation of a generally accepted principle of international arbitration to the effect that "recourse to arbitration implies an engagement to submit in good faith to the award" (Article 37 of the Hague Convention of 1907).

ARTICLE I

The International Conciliation and Arbitration Center

Establishment and Organization

Section 1. There is hereby established the International Conciliation and Arbitration Center (hereinafter called the Center). The Center shall have full juridical personality.

Section 2. (1) The seat of the Center shall be at the headquarters of the International Bank for Reconstruction and Development (hereinafter called the Bank).

(2) The Center may make arrangements with the Bank for the use of the Bank's offices and administrative services and facilities.

(3) The Center may make similar arrangements with the Permanent Court of Arbitration and with such other public international institutions as the Administrative Council of the Center may from time to time designate by a two-thirds majority of the votes of all members.

Section 3. The Center shall have an Administrative Council, a Secretariat, a Panel of Conciliators and a Panel of Arbitrators (hereinafter sometimes referred to as Panels).

Comment

1. It is envisaged that the Center would be sponsored by the Bank, which might, in addition, provide it with purely administrative or "housekeeping" facilities and staff. By thus linking it to the Bank the Center

would be invested with the image of the Bank and its prestige and reputation for impartiality. On the other hand, the Bank would have no role to play, and could not exercise any influence whatever on the proceedings under the auspices of the Center. These proceedings would be the sole responsibility of conciliators and arbitrators appointed by the parties to a particular dispute or by an authority of their choice.

2. Section 2(1) states that the seat of the Center shall be at the headquarters of the Bank. Section 6(vi) of this article, however, empowers the Administrative Council to move the seat of the Center to some other location should circumstances so demand in the future.

3. As it would, in its initial stages, be impossible to predict the volume of business that would be brought to the Center, its machinery must be characterized by flexibility and economy. This is sought to be achieved in part through provision for use of the Bank's facilities. In this connection reference is also made to Sections 4(2), 5 and 7(2) of this article.

4. To the extent practicable, there would be cooperation with the Permanent Court of Arbitration. Under Article 47 of the Hague Convention of 1907 and decisions of the Administrative Council of the Court, the Bureau of that Court is authorized to make its offices and staff available for conciliation and arbitration proceedings between a State and a party other than a State, provided the State concerned is a party to the Convention. (Not all members of the Bank are parties to that Convention.) The arrangements contemplated by Section 2(3) are of a simple administrative nature, e.g. for the use of the Court's staff, facilities, offices and services such as translation, the keeping of records, as well as channelling of communications in cases where parties found it convenient to meet at The Hague rather than in Washington or elsewhere. (See also Section 9(2) of this article). The section also opens the possibility for similar arrangements with other public international institutions which might in the future establish machinery for the settlement of investment disputes.

5. The structure of the Center is conceived on the simplest lines and consists of a) an Administrative Council (with the exception provided for in Section 4,

the members of the Bank's Board of Governors would double in function), b) a small Secretariat (personnel of the Bank's staff doubling in function) headed by a Secretary-General, and c) the Panels.

The Administrative Council

Section 4. (1) The Administrative Council shall be composed of one representative and one alternate representative of each Contracting State. No alternate may vote except in the absence of his principal.

(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 the representative and alternate representative of that State.

Section 5. The President of the Bank shall be ex officio Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote except a deciding vote in case of an equal division. During the President's absence or inability to act and during any vacancy in the office of President of the Bank, the person who shall be the chief of the operating staff of the Bank shall act as Chairman.

Section 6. In addition to the powers granted to it by other provisions of this Convention, the Administrative Council shall have the following powers:

(i) To adopt such administrative rules and regulations, including financial regulations, as may be necessary or useful for the operation of the Center.

(ii) To approve the terms of service of the Secretary-General and of any Deputy Secretary-General.

(iii) To approve the annual budget of the Center.

(iv) To approve an annual report of the operation of the Center.

(v) To adopt Conciliation Rules and Arbitration Rules not inconsistent with any provision of this Convention by a two-thirds majority of the votes of all members.

(vi) To move the seat of the Center from the headquarters of the Bank by a two-thirds majority of the votes of all members.

Comment

6. The Convention would be open to all States whether or not members of the Bank, each State being represented on the Administrative Council. While Section 4(2) assumes that Contracting States members of the Bank would usually wish to designate their Governors and Alternate Governors to represent them on the Administrative Council, it provides that a member State which might feel it more appropriate to designate another person or persons in that capacity may do so.

7. The Administrative Council, as its name implies, will have purely administrative functions and the only rules which it may adopt with binding effect are those of an administrative nature envisaged in paragraph (i) of Section 6. The Conciliation and Arbitration Rules to be adopted pursuant to paragraph (v) of that section would become binding on the parties to a dispute only with their consent (see Section 4 of Article III and Section 5 of Article IV).

Section 7. (1) The Administrative Council shall hold an annual meeting and such other meetings as may be provided for by the Administrative Council or called by the Chairman. The Administrative

Council may by regulation establish a procedure whereby the Chairman may obtain a vote of the Administrative Council on a specific question without calling a meeting of the Administrative Council.

(2) The annual meeting of the Administrative Council shall be held in conjunction with the annual meeting of the Board of Governors of the Bank.

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

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

(5) Members of the Administrative Council and the Chairman shall serve as such without compensation from the Center.

Comment

8. The question of voting rights has been considered in the context of the functions of the Administrative Council. If the Council were to have dealt with important substantive or policy matters, it is possible that on certain issues there would have been a division between the capital-exporting and capital-importing countries. Thus, if the Council were to have elected the Panels, or if the Secretary-General - who is appointed by the Council - were to have been a quasi-judicial rather than an administrative official, the question of voting power might well have been of considerable significance. On that hypothesis, if each member of the Council had one vote and if all members of the Bank became parties to the Convention, the capital-importing countries would have had control over those matters. On the other hand, if the weighted voting system of the Bank were applied in the Council, the capital-exporting countries would have gained control. To avoid both

consequences, a system might have been devised requiring matters to be decided by the vote of a majority of the members representing a majority of the voting power determined in accordance with the Bank formula.

9. Whatever the merits of that double test, it does not appear to be appropriate in the present context, since the Contracting States (and the Chairman) would designate the members of the Panels, and the Secretary-General would have no judicial or quasi-judicial powers. Nor does it appear that there are any matters within the competence of the Council that could lead to major divisions between the capital-exporting and the capital-importing countries as groups. The text, therefore, proposes in Section 7(4) a simple one-member-one-vote formula.

The Secretariat

Section 8. The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

Section 9. (1) The Secretary-General and Deputy Secretaries-General shall be appointed by the Administrative Council upon the nomination of the Chairman.

(2) The office of Secretary-General or Deputy Secretary-General shall be incompatible with the exercise of any political function, and with any employment or occupation other than employment by the Bank or by the Permanent Court of Arbitration, except as the Administrative Council, with the concurrence of the Chairman, may otherwise decide.

Section 10. (1) The Secretary-General shall be the principal officer of the Center and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions

of this Convention and the rules and regulations adopted thereunder by the Administrative Council.

(2) During any absence or inability to act of the Secretary-General, 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 Secretary-General shall determine in what order they shall act as Secretary-General.

Comment

10. As indicated in Section 10(1) the Secretary-General would be the principal administrative officer of the Center. While he would have no influence whatever on the outcome of proceedings under the auspices of the Center he could, however, in practice perform a valuable task in promoting use of the Center's facilities and by giving informal assistance and advice to parties in connection with such proceedings. In addition it is contemplated that he would be asked by the Chairman to consult with parties in order to assist the Chairman in choosing conciliators (Art.III, Sec.3) and arbitrators (Art.IV, Sec.3). He would fix, within such limits as were set by the Administrative Council, charges payable by the parties for the use of the facilities of the Center (Art.VI, Sec.2), and might also be consulted regarding the fees and expenses of conciliators and arbitrators (Art.VI, Sec.3), as well as the location of any proceedings to take place outside Washington or The Hague (Art.VII, Sec.2). The proper performance of these various functions would seem to require that the office of Secretary-General be one of complete independence - independence of Contracting States as well as of the Administrative Council - hence the general rule in Section 9(2) that that office "shall be incompatible with the exercise of any political function, and with any [other] employment or occupation...."

11. If it could be expected with reasonable certainty that activities under the Convention would be such as to provide a full-time occupation for a Secretary-General

and one Deputy, it would be desirable to provide that they, or at least the Secretary-General himself, should not hold any other office or engage in any other occupation or activity. Since no such certainty exists, the text permits a degree of flexibility which would allow the Administrative Council and the Chairman, as nominating authority, to make exceptions to the rule and, in addition, specifically excludes from incompatibility concurrent employment by the Bank or by the Permanent Court of Arbitration.

12. As the Secretary-General in addition to his other functions would have to perform certain purely formal functions such as dealing with routine correspondence, dispatching notices, or making a finding that a certain period of time prescribed under the Convention had expired, it seemed desirable to provide for at least one Deputy who could assume those functions when necessary.

The Panels

Section 11. (1) The Panel of Conciliators shall consist of qualified persons, designated as hereafter provided, who are willing to serve as members of the Panel.

(2) Each Contracting State shall designate not more than [six] persons to serve on the Panel, who may, but need not, be its own nationals.

(3) The Chairman shall have the right to designate up to [twelve] persons to serve on the Panel.

Section 12. (1) The Panel of Arbitrators shall consist of qualified persons, designated as hereafter provided, who are willing to serve as members of the Panel.

(2) Each Contracting State shall designate not more than [six] persons to serve on the Panel, who may, but need not, be its own nationals.

(3) The Chairman shall have the right to designate up to [twelve] persons to serve on the Panel.

Section 13. (1) Panel members shall serve for four years.

(2) In case of death or resignation of a member of either Panel, the Contracting State or the Chairman, as the case may be, which or who had designated the member, shall have the right to designate another person to serve for the balance of that member's term.

Section 14. (1) Designation to serve on one Panel shall not preclude designation to serve on the other.

(2) If a person is designated to serve on a 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.

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

Section 15. (1) The Contracting States shall pay due regard to the importance of designating persons of high moral character and recognized competence in the fields of law, commerce, industry or finance. To that end, they shall seek such advice as they may deem appropriate from their highest courts of justice, schools of law, bar associations and such commercial, industrial and financial organizations as shall be considered representative of the professions they embrace.

(2) The Chairman shall, in designating members to the Panels, 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.

Comment

13. In view of the optional and flexible character of the Convention as a whole, and of access to the Center in particular, the Panels have limited significance. Parties to proceedings under the auspices of the Center are entirely free to agree to use conciliators and arbitrators who have not been designated to the Panels. On the other hand, as will be seen from Articles III and IV of the text, unless the parties otherwise agree, conciliators and arbitrators are to be selected by them, or by the Chairman when called upon to do so, from the respective Panels.

14. The composition of the Panels could be determined in a variety of ways. One method would be to have the Contracting States elect a certain number of Panel members from among candidates nominated by each Contracting State. While this method would have certain advantages, particularly in encouraging States to nominate candidates of high quality, it has the disadvantage of necessitating a somewhat complicated voting procedure in order to assure a balanced composition of the Panels as between candidates nominated by the capital-exporting and capital-importing countries respectively. In this connection reference is made to the comment to Section 7 of this article.

15. The method adopted in the present text largely follows the system of the Hague Conventions of 1899 and 1907, in leaving the composition of the Panels primarily to the Contracting States. The Panels are to consist not only of legal experts, but also of experts in other fields. They would be composed of a certain number of experts designated by each Contracting State while it is provided in addition, that the Chairman would have the right to designate a specified number of panel members in addition to those designated by the Contracting States. It might be desirable for the Chairman to exercise his right of designation after the States had made their designations, and with a view to achieving balanced representation on the Panels not only of different legal systems but also of different forms of economic activity.

16. With regard to cases of multiple designation referred to in Section 14(2), the Administrative Rules of the Center would, in implementation of that provision, indicate how prior designation is to be determined.

Financing the Center

Section 16. To the extent that expenditures of the Center cannot be met out of charges for the use of its facilities, or out of other receipts, it shall be borne by the 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.

Comment.

17. As some Contracting States might not be members of the Bank, it is provided that the Administrative Rules of the Center would specify the contribution of non-member States. The words "or out of other receipts" have been included in order to take account of the possibility that the Bank might finance the cost of the Center. Reference is also made to the comment to Article VI.

Privileges and Immunities

Section 17. The Center shall be immune from all legal process.

Section 18. (1) The Chairman, the members of the Administrative Council, and the officers and employees of the Secretariat

(i) shall be immune from legal process with respect to acts performed by them in their official capacity;

(ii) not being local nationals shall be accorded 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.

(2) Paragraph (1)(ii) of this Section shall also apply to persons acting as conciliators or arbitrators in proceedings pursuant to this Convention, and to persons appearing as parties, representatives of parties, agents, counsel, experts or witnesses in such proceedings, but only in connection with their travel to and from the seat of the Center or other location where the proceedings are held and their stay at such location for the purpose of such proceedings.

Section 19. (1) The archives of the Center shall be inviolable.

(2) The official communications of the Center shall be accorded by each Contracting State the same treatment as is accorded to the official communications of other Contracting States.

Section 20. (1) The Center, its assets, property and income, and its operations and transactions authorized by this Convention shall be immune from all taxation and customs duties. The Center shall also be immune from liability for the collection or payment of any taxes or customs duties.

(2) No tax shall be levied on or in respect of salaries or emoluments paid by the Center to the Chairman, members of the Administrative Council or officials or employees of the Secretariat who are not local citizens, local subjects or other local nationals.

(3) No tax shall be levied on or in respect of honoraria, fees or other income received by persons acting as conciliators or arbitrators in proceedings pursuant to this Convention for their services in such proceedings, if the sole jurisdictional basis for such tax shall be the location of the Center or the place where such proceedings are conducted or the place where such income is paid.

Comment

18. These provisions are in general patterned after the privileges and immunities of the Bank, except that the Center has been given full immunity from legal process, whereas the Bank in view of the nature of its dealings with capital markets, enjoys only limited immunity in that respect. Section 18(2) is desirable to ensure the proper functioning of proceedings under the auspices of the Center. It will be noted that Section 20(3) does not confer a tax exemption, but merely seeks to avoid taxation based solely on the location of the Center, the place where proceedings are held, or the place of payment. Similar restrictions on taxation of interest paid on the Bank's bonds are found in Article VII, Section 9(c), of the Bank's Articles of Agreement.

ARTICLE II

Jurisdiction of the Center

Section 1. The jurisdiction of the Center shall be limited to proceedings for conciliation and arbitration with respect to any existing or future investment dispute of a legal character between a Contracting State and a national of another Contracting State (or that State when subrogated in the rights of its national) and shall be based on the consent of the parties thereto.

Section 2. Consent to the jurisdiction of the Center by any party to a dispute may be evidenced by

(i) a prior written undertaking by such party to have recourse pursuant to the terms of this Convention, to conciliation or arbitration;

(ii) ad hoc submission of a dispute by such party to the Center; or

(iii) acceptance by such party of jurisdiction in respect of a dispute submitted to the Center by another party.

Section 3. (1) Any Conciliation Commission and any Arbitral Tribunal constituted pursuant to this Convention shall be the judge of its own competence.

(2) Any claim of a party to a dispute that the Commission or the Tribunal lacks competence on the ground that

(i) there is no dispute;

(ii) there is no valid consent to jurisdiction;

(iii) the dispute is not within the scope of the consent; or

(iv) a party to the dispute is not a national of a Contracting State,

shall be dealt with by the Commission or Tribunal, as the case may be, as a preliminary question.

(3) In any proceedings in connection with paragraph (2)(iv) of this Section, a written affirmation of nationality signed by or on behalf of the Minister of Foreign Affairs of the State whose nationality is claimed by the party and issued for the purpose of those proceedings shall be conclusive proof of the facts stated therein.

Comment

1. The term "jurisdiction" is used in Section 1 and in the title of Article II in its broadest sense to denote the scope of the facilities made available by the Center. The terminology used follows the precedent of the Hague Convention of 1907 which speaks of the "jurisdiction of the Permanent Court" (see for example Article 47 of the Convention) even though that Court, like the proposed Center does not itself exercise judicial or quasi-judicial functions.

2. Section 1 of this article deals with the scope of the facilities available under the auspices of the Center in relation to (a) the type of proceedings, (b) the category of dispute, (c) the parties to the dispute and (d) the consensual nature of jurisdiction.

Type of Proceedings

3. Proceedings under the auspices of the Center are limited to conciliation and arbitration. Section 1 also permits the parties to a dispute, if they so agree, to have recourse to both procedures consecutively.

Category of Disputes

4. No detailed definition of the category of disputes in respect of which the facilities of the Center would be available has been included in the Convention.

Instead, the general understanding reflected in the Preamble, the use of the term "investment dispute", and the requirement that the dispute be of a legal character as distinct from political, economic or purely commercial disputes, were thought adequate to limit the scope of the Convention in this regard. Within those limits Contracting States would be free to determine in each particular case what disputes they would submit to the Center. To include a more precise definition would tend to open the door to frequent disagreements as to the applicability of the Convention to a particular undertaking, thus undermining the primary objective of this article viz., to give confidence that undertakings to have recourse to conciliation or arbitration will be carried out.

5. Consideration was given to fixing a lower limit for the value of the subject-matter of a dispute. It was, however, recognized that the parties would in practice be best qualified to decide whether, having regard to pertinent facts and circumstances including the value of the subject-matter, a dispute is one which ought to be submitted to the Center. The subject-matter of a dispute might be of insignificant pecuniary value, but might involve important questions of principle, thus justifying the bringing of a test case. In other instances the pecuniary value might not be readily ascertainable, as where a host government fails to implement a provision in an investment agreement conferring immunity from immigration restrictions on foreign personnel, or might not be ascertainable at all, as where an investor fails to implement an agreement with a host government to train local personnel.

The Parties to the Dispute

6. Section 1 indicates that the facilities of the Center would be available only in disputes between a Contracting State on the one hand and a national of another Contracting State on the other, with a view to ensuring reciprocal performance of obligations which arise out of the application of the Convention. The facilities would thus not be

available in a dispute involving a non-contracting State or a national of such State. Also excluded from jurisdiction are disputes (a) between private individuals, (b) between Governments (except where a Government had satisfied the claim of its national, e.g. under a scheme of investment insurance, and was thereby subrogated in the rights of that national in a dispute before the Center) and (c) between a Contracting State and one of its own nationals (unless that person possessed concurrently the nationality of another State which was a party to the Convention; see Article X, 2).

Consensual Nature of Jurisdiction

7. To the extent that the provisions of Article II constitute a development, rather than a mere codification of existing international law, it is to be expected that States would not wish its provisions to apply automatically to undertakings given in the past, nor to all undertakings to be given in the future. Section 2(i), therefore, limits the application of the Convention to cases where the parties have specifically undertaken to have recourse "pursuant to the terms of this Convention".

8. Section 1 *in fine* declares that the facilities can only be utilized if the parties to the dispute have consented to have recourse to the Center, while Section 2 specifies the manner in which consent may be given, i.e. by a prior undertaking in writing, or by *ad hoc* acceptance of jurisdiction. No particular form is prescribed for the prior written undertaking, which may be unilateral e.g. by enactment of legislation, bilateral or multilateral.

9. When entering into any undertaking pursuant to Section 2 a party would, of course, be free to include such limitations on the scope of the particular undertaking as may seem to it appropriate provided that those limitations were not inconsistent with its obligations deriving from the Convention as a whole.

Determination of Competence

10. The power of an arbitral tribunal to determine its competence is well established in international law. Section 3(1) confers that power alike on conciliation commissions and arbitral tribunals constituted pursuant

to the Convention, thus providing a safeguard against frustration of proceedings through unilateral determination of competence by a party.

Preliminary Questions

11. Section 3(2) lists four classes of objection to competence and declares that they shall be dealt with by the commission or tribunal as preliminary questions to be disposed of before entering upon the merits of the case. Thus, objections to conciliation on the grounds enumerated, while they would not prevent constitution of a commission or commencement of conciliation proceedings would be the subject of a preliminary non-binding recommendation to the parties. In the case of arbitration proceedings similar objections would, however, be the subject of a preliminary binding ruling by the tribunal.

Nationality

12. While preliminary questions based on nationality would be subject to the procedure prescribed for dealing with preliminary questions generally, Section 2(3) contains an additional rule relating to determination of nationality in a given case. This rule is based on the view that, in the circumstances envisaged, a question of a claim of nationality by a party ought in the first instance to be determined by the State whose nationality is claimed, the question being dealt with by the commission or tribunal only where that State failed to do so. Accordingly, it is provided that the written affirmation of nationality by a Minister of Foreign Affairs, or official of corresponding rank responsible for the conduct of that State's external affairs, issued for the purpose of the particular proceedings, shall be conclusive proof of the facts stated therein. The affirmation would relate to that party's nationality on the date on which he consented to the jurisdiction of the Center. (In this connection reference is made to the definition of "National of a Contracting State" and of "National of another Contracting State" in Article X). Where such affirmation is not introduced, other evidence of nationality satisfactory to the commission or tribunal must be produced.

ARTICLE III

Conciliation

Request for Conciliation

Section 1. Any dispute within the jurisdiction of the Center may be the subject of a request for conciliation by a Conciliation Commission (hereinafter called the Commission). The request may be made by either party to the dispute, shall be addressed to the Secretary-General in writing, and shall state that the other party has consented to the jurisdiction of the Center.

Constitution of the Commission

Section 2. (1) The Commission shall consist of a sole conciliator or several conciliators appointed as the parties shall agree.

(2) Where the parties have not so agreed, the Commission shall consist of three conciliators, one appointed by each party and the third appointed by agreement of the parties, all appointees to be selected from the Panel of Conciliators.

Section 3. (1) If the Commission shall not have been constituted within three months after the request referred to in Section 1, the Chairman shall, at the request of either party, appoint the conciliator or conciliators not appointed pursuant to Section 2. Before making any such appointment, the Chairman shall instruct the Secretary-General to consult with the parties and to report to him any information or views which might assist him in making the appointment.

(2) In making any appointment under this Section the Chairman shall select the appointee from the Panel of Conciliators.

Comment

1. The composition of the Commission, its precise terms of reference and the procedure applicable in proceedings before it are matters for agreement between the parties concerned. It is only in the absence of such agreement that the provisions of this article thereon would become operative.

2. In recognition of differences between the conciliation and arbitration process, Section 2(2), in contrast to the corresponding provision on appointment of arbitrators (see Section 2(2) of Article IV), does not preclude appointment of a conciliator on the ground that he is a national of a State party to the dispute, or of the State whose national is a party to the dispute.

3. As to the role of the Chairman as appointing authority under Section 3, reference is made to the comment on Sections 2 and 3 of Article IV.

Powers and Functions of the Commission

Section 4. Except as the parties and the Commission shall otherwise agree, the Commission shall conduct the conciliation proceedings in accordance with the Conciliation Rules adopted under this Convention and in effect on the date on which the consent to conciliation became effective.

Section 5. (1) It shall be the duty of the Commission to clarify the points in dispute between the parties and to endeavor 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.

(2) If the parties reach agreement, the Commission shall draw up a report noting the submission of the dispute, and recording that the parties have reached agreement. If, at any time, it appears to the Commission that there is no likelihood of agreement between the parties it may declare the proceedings closed, and shall, in that event, 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 so state in its report.

(3) Except as the parties shall otherwise agree, the reports referred to in paragraph (2) shall not contain terms of settlement recommended to or accepted by the parties.

Comment

4. Section 5(1) describes the duties of the Commission, and is based upon generally accepted concepts of the conciliation function. (See Article 15(1) of the General Act for the Pacific Settlement of International Disputes, 1928; Article XXII of the American Treaty on Pacific Settlement, 1948). The Commission is specifically empowered to make recommendations to the parties at any stage of the proceedings. In order to avoid any interpretation to the effect that after a recommendation made in the course of proceedings and before their termination, the Commission was functus officio, the words "and from time to time" have been inserted in the second sentence of Section 5(1).

Obligations of the Parties

Section 6. The parties shall give the Commission their full cooperation in order to enable the Commission to carry out its functions and shall give their most serious consideration to its recommendations. Except

as the parties to the dispute shall otherwise agree, the recommendations of the Commission shall not be binding upon them.

Section 7. Neither party to a conciliation proceeding shall be entitled in any later proceeding concerning the same dispute, 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 recommendations, if any, made by the Commission therein.

Comment

5. Section 6, in accordance with principle, declares that recommendations of the Commission shall not be binding, while leaving it open to the parties to agree to be bound by them. The requirement that the parties cooperate with the Commission and give serious consideration to its recommendations is a corollary of the fundamental principle of good faith.

6. Section 7 is intended to encourage the parties to seek agreement rather than maintain fixed positions out of the fear that a conciliatory attitude might prejudice their position in a possible later proceeding.

ARTICLE IV

Arbitration

Request for Arbitration

Section 1. Any dispute within the jurisdiction of the Center may be the subject of a request for arbitration by an Arbitral Tribunal (hereinafter called the Tribunal). The request may be made by either party to the dispute, shall be addressed to the Secretary-General in writing, and shall state that the other party has consented to the jurisdiction of the Center.

Constitution of the Tribunal

Section 2. (1) The Tribunal shall consist of a sole arbitrator or several arbitrators appointed as the parties shall agree. Where the parties have not so agreed, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third appointed by agreement of the parties.

(2) The arbitrators so appointed shall be selected from the Panel of Arbitrators. None of the arbitrators shall be a national of a State party to the dispute or of a State whose national is a party to the dispute, or shall have acted as a conciliator in the same dispute.

Section 3. If the Tribunal shall not have been constituted within three months after the request referred to in Section 1, the Chairman shall, at the request of either party, appoint the arbitrator or

arbitrators not appointed pursuant to Section 2. The provisions of paragraph 2 of Section 2 of this Article shall apply to the appointment of arbitrators by the Chairman. Before making any such appointment, the Chairman shall instruct the Secretary-General to consult with the parties and to report to him any information or views which might assist him in making the appointment.

Comment

1. The composition of the Tribunal, its terms of reference, and the procedure applicable in proceedings before it are, as in the case of conciliation, matters for agreement between the parties concerned, and the provisions of this article thereon would become operative only in the absence of such agreement (Sections 2 and 5). Section 2(1) adopts what is perhaps the most usual method for the constitution of an arbitral tribunal viz., each party appoints an arbitrator, and a third is appointed by agreement of the parties. However, Section 2(2) introduces a significant innovation by specifying that none of the arbitrators shall be nationals of the State party to the dispute, or of the State whose national is a party to the dispute, thus seeking to minimize as far as possible the danger, inherent in conventional systems, of appointment of partisan arbitrators.1/ This new principle applies also to appointments of arbitrators made by the Chairman under Section 3 of this article.

1/ One writer has said:

"It is a grave mistake to construct a tribunal out of two national members and one neutral member. Few men are capable of holding the balance between two contending national commissioners. If the governments do not object to the possibility of decision by compromise rather than by adjudication, they should provide for two national commissioners with an umpire in case of disagreement. Otherwise they should provide either for one, or better still three, neutral commissioners."

A. H. Feller, The Mexican Claims Commissions, 1923-1934 (New York, 1935) at p.317.

2. It is a necessary concomitant of the binding character of an undertaking to have recourse to arbitration that adequate provision should be made to prevent frustration of that undertaking by an unwilling party. That is the purpose of the appointment procedure laid down in Section 3. As in the case of conciliation (see Section 3 of Article III), the Chairman is appointing authority unless the parties have otherwise agreed. It may be noted that the Chairman would exercise his power of appointment even if he were of the same nationality as one of the parties. The basic consideration underlying these provisions is that the appointing authority is a person who, because of his office, may be conclusively presumed to be capable of acting impartially in the selection of conciliators or arbitrators under all circumstances. It may be noted that under the Bank's Loan Regulations an unrestricted power of appointment is conferred upon the President of the International Court of Justice and the Secretary-General of the United Nations regardless of their nationality.

Powers and Functions of the Tribunal

Section 4. (1) In the absence of agreement between the parties concerning the law to be applied, and unless the parties shall have given the Tribunal the power to decide ex aequo et bono, the Tribunal shall decide the dispute submitted to it in accordance with such rules of law, whether national or international, as it shall determine to be applicable.

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

Section 5. Except as the parties otherwise agree, any arbitration proceeding shall be conducted in accordance with the Arbitration Rules

adopted under this Convention and in effect on the date when the consent to arbitration became effective. If any question of procedure arises which is not covered by the applicable arbitration rules, the Arbitral Tribunal shall decide that question.

Section 6. All questions before the Tribunal shall be decided by majority vote.

Section 7. (1) An award signed by a majority of the Tribunal shall constitute the award of the Tribunal. The award shall be in writing and shall state the reasons upon which it is based.

(2) The award shall immediately be communicated to the parties.

Section 8. (1) Whenever one of the parties does not appear before the Tribunal, or fails to defend its case, the other party may call upon the Tribunal to decide in favor of its claim.

(2) In such case, the Tribunal may render an award if it is satisfied that it has jurisdiction and that the claim appears to be well-founded in fact and in law.

Section 9. Except as the parties otherwise agree, the Tribunal shall have the power to hear and determine incidental or additional claims or counter-claims arising directly out of the subject-matter of the dispute.

Section 10. Except as the parties otherwise agree, the Tribunal shall have the power to prescribe, at the request of either party, any provisional measures necessary for the protection of the rights of the parties.

Comment

3. Section 4(1) leaves the determination of the law to be applied in a particular case to the parties, and if they cannot agree thereon, to the tribunal. The parties may also give the Tribunal the power to decide ex aequo et bono, that is, in accordance with what is just and equitable in the circumstances, rather than by application of rules of law. Section 4(2) states that the Tribunal will not be excused from rendering an award on the ground that the law is not sufficiently clear.

4. The power conferred on the Tribunal by Section 8 to render an award upon the default of one party is a corollary of the binding character of the undertaking to have recourse to arbitration and is possessed by arbitration tribunals provided for in the Bank's Loan Regulations Nos. 3 and 4, Sections 7.03(h) and 7.04(h), respectively. (See also Article 53 of the Statute of the International Court of Justice.) Before an award can be rendered under this section, however, the Tribunal must be satisfied not only that it has jurisdiction but also that the claim on the merits appears to be well-founded.

5. Unless the parties to a dispute agree to restrict its competence to certain principal claims, the Tribunal will have the power to determine incidental and additional claims as well as counter-claims, provided that they arise directly out of the subject-matter of the dispute. In addition, unless the parties specifically preclude it from doing so, the Tribunal would have the power to prescribe provisional measures designed to preserve the status quo between the parties pending its final decision on the merits.

Interpretation, Revision and Annulment of the Award

Section 11. (1) Any dispute between the parties as to the meaning and scope of the award may, at the request of either party made within [three] months after the date of the award, be submitted to the Tribunal which rendered the award. Such a request shall stay the enforcement of the award pending the decision of the Tribunal.

(2) If for any reason it is impossible to submit the dispute to the Tribunal which rendered the award, a new Tribunal shall be constituted in accordance with the terms of the agreement, if any, between the parties regarding the constitution of the Tribunal which rendered the award, and otherwise pursuant to the provisions of this Article.

Section 12. (1) An application for revision of the award may be made by either party on the ground of the discovery of some fact of such a nature as to have a decisive influence on the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the party requesting revision and that such ignorance was not due to the negligence of the party requesting revision.

(2) The application for revision must be made within [six] months of the discovery of the new fact and in any case within [ten] years of the rendering of the award.

(3) The application 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 terms of the agreement, if any, between the parties regarding the constitution of the Tribunal which rendered the award, and otherwise pursuant to the provisions of this Article. The Tribunal to which the application is made may stay the enforcement of the award pending its decision.

Section 13. (1) The validity of an award may be challenged by either party on one or more of the following grounds:

(a) that the Tribunal has exceeded its powers;

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

(c) that there has been a serious departure from a fundamental rule of procedure, including failure to state the reasons for the award.

(2) An application pursuant to paragraph 1 of this Section shall be made in writing to the Chairman who shall forthwith appoint from the Panel of Arbitrators an ad hoc Committee of three persons which shall be competent to declare the nullity of the award or any part thereof on any of the grounds set forth in the preceding paragraph. None of the members of the Committee shall have been a member of the Tribunal which rendered the award, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, or shall have acted as a conciliator in the same dispute.

(3) The provisions of Sections 5, 6, 7 and 8 of this Article shall apply mutatis mutandis to proceedings before the Committee.

(4) In cases covered by sub-paragraphs (a) and (c) of paragraph (1), application must be made within sixty days of the rendering of the award, and in cases covered by sub-paragraph (b) of paragraph (1), within six months.

(5) The Committee shall have the power to stay enforcement of the award pending its decision and to recommend any provisional measures necessary for the protection of the rights of the parties.

(6) If the award is declared invalid the dispute shall, at the request of either party, be submitted to a new tribunal constituted by agreement between the parties or, failing such agreement in the manner specified in Sections 2 and 3 of this Article.

Enforcement of the Award

Section 14. The award shall be final and binding on the parties. Each party shall abide by and comply with the award immediately, unless the Tribunal shall have allowed a time limit for the carrying out of the award or any part thereof, or the enforcement of the award shall have been stayed pursuant to Sections 11, 12 or 13 of this Article.

Section 15. Each Contracting State shall recognize an award of the Tribunal as binding and enforce it within its territories as if it were a final judgment of the courts of that State.

Comment

6. It was recognized in the Preamble as a corollary of the principle that an undertaking must be implemented in good faith, that the award of a Tribunal must be complied with. As a general rule the award of the Tribunal is final, and there is no provision for appeal. Sections 11 and 12, however, provide for interpretation and revision of the award, respectively. In addition, where there has been some violation of the fundamental principles of law governing the Tribunal's proceedings such as are listed in Section 13, the aggrieved party may apply to the Chairman for a declaration that the award is invalid. Under that section the Chairman is required to refer the matter to a Committee of three persons which shall be competent to declare the nullity of the award. It may be noted that this is not a procedure by way of appeal requiring consideration of

the merits of the case, but one that merely calls for an affirmative or negative ruling based upon one or other of the three grounds listed in Section 13(1).

7. The award is binding on the parties to the dispute who are required to implement it forthwith. However, implementation of the award may be delayed in certain prescribed circumstances, viz.,

1) where the tribunal has, in rendering the award, expressly allowed a time limit for carrying it out (Section 14);

2) upon stay of enforcement by the Tribunal consequent upon

(a) a request for interpretation of the award (Section 11(1)); or
(b) an application for revision of the award (Section 12(3)); and

3) upon stay of enforcement by the Committee appointed pursuant to Section 13 pending its decision upon the validity of the award (Section 13(5)).

8. Section 15 requires each Contracting State, whether or not it or its national was a party to the proceedings, to recognize awards of tribunals pursuant to the Convention as binding and to enforce them as though they were final judgments of its own courts, irrespective of the treatment under its law of other arbitral awards.

Relationship of Arbitration to other Remedies

Section 16. Consent to have recourse to arbitration pursuant to this Convention shall, unless otherwise stated, be deemed consent to have recourse to such proceedings in lieu of any other remedy.

Comment

9. Section 16 states a rule of interpretation rather than of substance. The section leaves a party free to stipulate that notwithstanding its undertaking to submit a dispute to arbitration, it reserves the right to

have recourse to courts of law. Similarly, Section 16 leaves it open to a State to stipulate that its consent to have recourse to arbitration is subject to the condition that the foreign investor first exhaust his remedies in the State's national courts or administrative agencies. Section 16 merely provides that in the absence of any such stipulations consent to have recourse to arbitration will be regarded as excluding any other remedy.

10. To illustrate the foregoing by an example: An investment agreement between a State and a foreign investor provides without qualification that "any controversy arising between the parties concerning the interpretation or application of this agreement shall be submitted to arbitration in accordance with the provisions of the Convention [etc.]". A dispute arises with respect to the tax exemption provisions of the investment agreement. If either the foreign investor or the State were to bring this dispute before the Tax Court of the State rather than submit it to the Center, the other party could object, in which event the Tax Court would have to dismiss the claim. If the investor were to bring the dispute before the Center, the State could not object on the ground that the investor had not exhausted his remedies in the Tax Court.

11. As stated in paragraph 9 of the Comment to this section, States are free to qualify their consent to have recourse to arbitration, as by inclusion of a stipulation in an undertaking that local remedies must be exhausted. However, if a State were to include an unqualified arbitration clause in an agreement with a foreign investor, it would seem to run counter to normal rules of interpretation to read into that clause a requirement of the prior exhaustion of local remedies. All that Section 16 does is to assure that effect will be given to the expressed intention of the parties.

Section 17. (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 this Convention, except on the ground that the other Contracting State has failed to perform its obligations under this Convention with respect to that dispute.

(2) Nothing in this Section shall be construed as precluding a Contracting State from founding an international claim against another Contracting State upon the facts of a dispute which one of these Contracting States and a national of the other shall have consented to submit or shall have submitted to arbitration pursuant to this Convention, where those facts also give rise to a dispute concerning the interpretation or application of an agreement between the States concerned; without prejudice, however, to the finality and binding character of any arbitral award rendered pursuant to this Convention as between the parties to the arbitral proceedings.

Comment

12. Unlike Section 16, which gives merely a rule of interpretation, Section 17 lays down a rule of substantive law. It should be noted that this section constitutes a significant innovation.

13. The proposed Convention would recognize the right of an investor, within specified limits, to proceed in his own name against a foreign State before an arbitral tribunal constituted pursuant to the Convention instead of seeking the diplomatic protection of his State or having that State bring an international claim. It would seem to be a reasonable concomitant of the recognition of the investor's right of direct access to an international jurisdiction, to exclude action by his national State in cases in which such

direct access has been availed of by, or is available to, the investor, whether as plaintiff or defendant, under the Convention. Since the exclusion of the national State rests on the premise that the other Contracting State party to the dispute will abide by the provisions of the Convention, the rule of exclusion is subject to an exception in the event that that premise falls away. In such a case rights of providing diplomatic protection and of bringing an international claim remain unaffected.

14. Section 17(2) preserves the right of the national State of the investor to bring an international claim where the same facts give rise not only to a dispute covered by the Convention but also to a breach of some other international agreement between the States concerned. That section does, however, maintain the finality and binding character of an award rendered by a tribunal under the Convention as regards the parties to which it relates. For example, the dispute covered by the Convention may involve a claim for damages for an alleged breach of an investment agreement and the facts alleged may at the same time constitute a breach of a bilateral agreement between the host State and the investor's national State. Whether the investor, in an action before the Center, is successful or unsuccessful, his national State would be free to have recourse to such procedures as may have been provided in the bilateral agreement. The outcome of the proceedings between the two States under the bilateral agreement would not, however, affect the award rendered by the tribunal constituted under the Convention. Thus, if the investor had been unsuccessful before the Center, even though his national State may prevail in the proceedings under the bilateral agreement, the investor could not benefit thereby.

ARTICLE V

Replacement and Disqualification of Conciliators and Arbitrators

Section 1. After a Conciliation Commission or an Arbitral Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled by the method used for the original appointment, except that 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, or consequent upon a decision to disqualify him pursuant to Section 2(2) of this Article, the resulting vacancy shall be filled by the Chairman.

Section 2. (1) (a) A party may propose the disqualification of a conciliator or arbitrator appointed pursuant to Article III, Section 2, or Article IV, Section 2, respectively, on account of any fact whether antecedent or subsequent to the constitution of the Commission or Tribunal.

(b) A party may propose the disqualification of a conciliator or arbitrator appointed by the Chairman pursuant to Article III, Section 3, or Article IV, Section 3, on account of any fact arising subsequent to the constitution of the Commission or Tribunal. It may propose disqualification of such conciliator or arbitrator on account of any fact which arose prior to the constitution of the

Commission or Tribunal only if it can show that the appointment was made without knowledge of that fact or as a result of fraud.

(2) The decision on any proposed disqualification 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 single conciliator or arbitrator, 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 resign, and the resulting vacancy shall be filled in the manner provided for in Section 1 of this Article.

Comment

1. Section 1 incorporates what has been called the "principle of immutability" and is intended to preclude the replacement of conciliators and arbitrators by the parties during proceedings with a view to influencing the outcome of those proceedings, as well as their resignation under pressure.

2. Section 2 relates to disqualification of a conciliator or an arbitrator. Section 2(1)(a) covers the case of a conciliator or an arbitrator appointed by a party to the dispute, and is to the effect that a party may at any time propose their disqualification. Such proposal may be based upon any fact, such as general unfitness, personal prejudice, misconduct or interest in the subject-matter, and regardless of whether that fact arose before or after constitution of the Commission or Tribunal.

3. While, under Section 2(1)(b), a party may at any time propose the disqualification of a conciliator or arbitrator appointed by the Chairman, as a rule such proposal must be founded upon facts which arose after constitution of the Commission or Tribunal as the

Chairman must be deemed to have passed conclusively on the qualifications of his nominee. A proposal to disqualify under this section may be founded on a fact which existed prior to the constitution of the Commission or Tribunal only if it can be shown that the Chairman made the appointment in question without knowledge of that fact, or was induced to do so as a result of fraud.

ARTICLE VI

Apportionment of Costs of Proceedings

Section 1. Except as the parties shall otherwise agree,

(a) each party to a conciliation or arbitration proceeding shall bear its own expenses in connection therewith, and

(b) charges payable for the use of the facilities of the Center, as well as the fees and expenses of members of the Commission or Tribunal as the case may be, shall be borne equally by the parties;

provided, however, that if a Commission or Tribunal determines that a party has instituted proceedings frivolously or in bad faith, it may assess any part or all of such expenses, fees and charges against that party.

Section 2. The charges payable by the parties for the use of the facilities of the Center shall be fixed by the Secretary-General within the limits approved from time to time by the Administrative Council.

Section 3. The fees and expenses of conciliators and arbitrators shall, in the absence of agreement between them and the parties, be fixed by the Commission or Tribunal concerned after consultation with the Secretary-General.

Comment

This article contemplates that the parties may be called upon to make certain payments to the Center for the use of its services. It is intended that "charges" should cover the out-of-pocket costs or other clearly identifiable costs incurred by the Center in connection with a proceeding, such as hiring of translators and interpreters, engagement of additional secretarial or clerical staff and the like.

ARTICLE VII

Place of Proceedings

Section 1. Conciliation and arbitration proceedings shall be held either at the seat of the Center or, pursuant to any arrangements made under Article I, Section 2(3), at the seat of the Permanent Court of Arbitration or other public international institution, as the parties may agree. If the parties do not so agree the Secretary-General shall, after consultation with the parties and with the Conciliation Commission or the Arbitral Tribunal, as the case may be, determine the place of the proceedings.

Section 2. Notwithstanding the provisions of Section 1, proceedings may be held elsewhere, if the parties so agree and if the Conciliation Commission or Arbitral Tribunal, as the case may be, so approves after consultation with the Secretary-General.

ARTICLE VIII

Interpretation

Any question or dispute arising between Contracting States conerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice, unless the States concerned agree to another mode of settlement.

Comment

The text of this article follows in general the pattern of similar clauses in the constituent instruments of international organizations within the United Nations family. While it leaves the Contracting States free to decide upon the mode of settlement of questions or disputes regarding interpretation of the Convention, it provides for adjudication by the International Court of Justice in the event of their being unable to agree on the mode of settlement.

ARTICLE IX

Amendment

Section 1. Any Contracting State may propose amendment of this Convention. The text of such proposed amendment shall be communicated to the Chairman of the Administrative Council not less than [three] months prior to the meeting of the Council at which such amendment is to be considered and shall forthwith be transmitted by him to all Contracting States.

Section 2. Amendments shall be adopted by a majority of [four-fifths] of the members of the Council. [Twelve] months after its adoption each amendment shall become effective for all Contracting States; provided, however, that such amendment shall not 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 Center given prior to the effective date of the amendment.

Comment

In the absence of a provision for amendment, the Convention could only be changed by a new international agreement. In order to avoid this difficulty the text proposes an amendment procedure. The Administrative Council is designated as the authority competent to decide upon proposals for amendment. Such proposals are required to be transmitted to it through the Chairman well in advance of the meeting of the Council at which such amendment is to be considered so as

to enable members to consult with the authorities within Contracting States and take their views into account during a discussion of the issues involved. The support of a substantial majority - four-fifths is tentatively suggested - of the members of the Council would be required for adoption of a proposed amendment, which would come into effect for all the members after a period of say 12 months after such adoption. No provision is made regarding States which oppose the amendment after its adoption. It would, however, always be open to a State to declare its withdrawal from the Convention under Section 5 of Article XI. The period specified for effectiveness of the denunciation could be made to conform to the period required for effectiveness of the amendment adopted, thus permitting a State which wished to denounce the treaty to do so immediately following adoption of the amendment and thereby avoid becoming subject to the Convention as amended. The proviso in Section 2 ensures that amendments will not have retroactive effect.

ARTICLE X

Definitions

1. "National of a Contracting State" means a person natural or juridical possessing the nationality of any Contracting State on the date on which that person's consent to the jurisdiction of the Center pursuant to Section 2 of Article II became effective, and includes (a) any company which under the domestic law of that State is its national, and (b) any company in which the nationals of that State have a controlling interest. "Company" includes any association of natural or juridical persons, whether or not such association is recognized by the domestic law of the Contracting State concerned as having juridical personality.

2. "National of Another Contracting State" means any national of a Contracting State other than the State party to the dispute, notwithstanding that such person may possess concurrently the nationality of a State not party to this Convention or of the State party to the dispute.

[Other definitions may be added if necessary]

Comment

1. The definitions have been broadly drawn. "Nationals" include both natural and juridical persons as well as associations of such persons. It will be noted that the term "national" is not restricted to privately-owned companies, thus permitting a wholly or partially government-owned company to be a party to proceedings brought by or against a foreign State.

2. Under the definition of "National of a Contracting State" a company may be a national of a given State either because it has that nationality under the State's domestic law, or because it is controlled by nationals of that State.

3. The question of dual nationality is dealt with in this sense, that a person is recognized as a "national of another Contracting State", if he has the nationality of that State even though he may at the same time be a national of the State party to the dispute or of a State which is not a party to the Convention.

4. Nationality is determined as of the date when consent to have recourse to conciliation or arbitration became effective.

ARTICLE XI

Final Provisions

[Final provisions have been inserted in the present draft tentatively and to provide some indication of formal legal items with which it will be necessary to deal. In general, they follow the pattern set by multilateral agreements in the past.]

Entry into Force

Section 1. This Convention shall be open for signature on behalf of States members of the Bank and all other sovereign States.

Section 2. This Convention shall be subject to ratification or acceptance by the signatory States in accordance with their respective constitutional procedures. The instruments of ratification or acceptance shall be deposited with the Bank and shall declare that the State concerned has taken all steps necessary to enable it to carry out all of its obligations under this Convention.

Section 3. This Convention shall enter into force when it has been ratified or accepted by [.....] States.

Comment

1. By Section 2 ratification or acceptance (either of which must be preceded by signature) is to be accompanied by a declaration that the "State concerned has taken all steps necessary to enable it to carry out all of its obligations under this Convention", a requirement also found in the Articles of Agreement of the Bank and its affiliates. When a State ratifies, therefore, other States would be entitled to rely on

the implicit assurance of that State that adequate facilities exist - whether created by legislative or other means - to give full effect within its territories to the provisions of the Convention. Thus, for instance, it would be assumed that the obligations of private parties deriving from undertakings to have recourse to arbitration pursuant to the Convention would be fully enforceable against them under the local law, and that the award of an arbitral tribunal could be enforced as if it were a final judgment of a local court of competent jurisdiction.

Territorial Application

Section 4. By its signature of this Convention, each State accepts it both on its own behalf and in respect of all territories for whose international relations such State is responsible except those which are excluded by such State by written notice to the Bank.

Comment

2. By this section a signatory State agrees to the application of the Convention in respect of all territories for whose international relations such State is responsible, e.g. dependent or protected States. It would, however, be open to a State to exclude such application, if it so desires, by written notice to the Bank at the time of signature or at any time thereafter. This section is in substance identical with Section 3 of Article XI of the Articles of Agreement of the International Development Association.

Denunciation

Section 5. (1) Any Contracting State may denounce this Convention by notice to the Bank.

(2) The denunciation shall take effect [twelve] months after receipt by the Bank of such notice; provided that the obligations of the State concerned arising out of undertakings given prior to the date of such notice shall remain in full force and effect.

Comment

3. In keeping with a practice followed in several multilateral agreements, the right of a State under general international law to denounce the Convention is recognized in Section 5. However, Section 5(2) provides for lapse of a period of time - tentatively fixed at 12 months - before such denunciation could become effective. The general obligations of the denouncing State under the Convention would remain intact during that period, while its obligations arising out of undertakings given prior to the date of such notice are declared to remain in full force and effect regardless of the denunciation. In this connection reference is also made to the comment to Article IX (Amendment).

Inauguration of the Center

Section 6. Promptly upon the entry into force of this Convention, the President of the Bank shall convene the inaugural meeting of the Administrative Council.

Registration

Section 7. The Bank is authorized to register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Comment

4. This section which authorizes registration of the Convention by the Bank, as depository, with the United Nations, is in substance identical with Section 5 of Article XI of the Articles of Agreement of the International Development Association.

DONE at _____, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to act as depository of this Convention, to register this Convention with the Secretariat of the United Nations and to notify all signatory States of the date on which this Convention shall have entered into force.

Comment

5. The concluding formula adopted is in substance identical with that contained in the Articles of Agreement of the International Development Association.

CONFIDENTIAL

SID/63-16

September 20, 1963

*Memorandum of Discussion of Settlement of Investment Disputes at Regular Meeting of the Executive Directors held on September 10, 1963

1. There were present:

Chairman	Management
George D. Woods	Geoffrey M. Wilson

Executive Directors and Alternates acting as Executive Directors	Alternates not acting as Executive Directors
A. Bogoev (Alternate)	Helmut Abramowski
Alice Brun	Lempira E. Bonilla
John C. Bullitt	C. Brignone
Reignson C. Chen	Jose Camacho
Otto Donner	A. K. Ghosh
John M. Garland	M. Kumashiro
Joaquin Gutierrez Cano	Eino Suomela
L. Denis Hudon (Alternate)	A.J.J. van Vuuren
Fernando Illanes	
Ismail Khelil (Alternate)	
Ali Akbar Khosropur (Alternate)	
Luis Machado	
Jorge Mejia-Palacio	
F. Oellerer (Alternate)	
K.S.S. Rajan	
N.M.P. Reilly	
Gengo Suzuki	
J. Waitzenegger (Alternate)	

Staff

M. M. Mendels
A. Broches
C. W. Pinto
Carlos Fligler
C. H. Davies

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

Distribution: Executive Directors and Alternates
President
Vice Presidents
Department Heads

Legal Department

2. Mr. Woods said that the purpose of the meeting was to receive comments on the First Preliminary Draft of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Document SID/63-15. Discussions would again be informal and not for the purpose of taking any decisions. The text of the Draft Convention would be further amended where appropriate in the light of the discussion, and the amended text would be circulated to member governments to serve as working document for the regional consultative meetings of legal experts. He recalled that he had announced at the meeting on May 28 that consideration was being given to organizing these meetings at the headquarters of the Regional Commissions of the United Nations. Since then that program had been discussed with the United Nations Secretariat, which had offered its full cooperation, as had the Executive Secretaries of the four Commissions. It had been made clear to them that these would be Bank meetings, and that the Commissions would not be responsible or assume any sponsorship for the proposals to be discussed. It had also been indicated to them that the Bank would expect to assume the expenses which the Commissions would incur in making available their administrative facilities.

3. The Executive Secretary of ECLA, while he had explained that the facilities of his Commission would not be adequate, expressed his willingness to assist in making arrangements for holding the Western Hemisphere meeting at an hotel in Santiago. While no date had as yet been fixed for that meeting, the first week of February 1964 had been proposed. With regard to the other three regions, the scheduled program was as follows: Africa - Addis Ababa, December 16-21, 1963; Europe - Geneva, February 17-22, 1964; Asia - Bangkok, April 27-May 2, 1964. Although details of the meetings had not yet been worked out, he would like to mention some of the main points. The Bank would issue invitations only to its member countries, to countries that had applied for membership, and to Switzerland with which the Bank maintained a special relationship. As to the distribution of these countries among the four meetings, he had in mind the following: (a) countries that were members of a Regional Commission would normally be invited to the meeting held at the headquarters of that Commission; (b) countries that were members of more than one Regional Commission (e.g. the United States, Britain and France) would be invited to the meeting held in the region to which they primarily belonged; and (c) in the case of countries that did not belong to any Regional Commission or did not actively participate in the work of such Commission, the Bank would agree with each country upon the meeting to which it would be invited. While the Bank would not impose a limit on the size of delegations, it would be suggested that two delegates per country would be the desirable number. It would also be made clear that, while the

delegates would be legal experts and would not bind their governments, it would be helpful if they were familiar with government policy in this general field.

4. The substantive side of the meetings would be conducted by Mr. Broches with the assistance of a few members of his staff. The administrative side would be handled by the staffs of the Commissions, although interpreters and translators would probably have to be imported as was usual on such occasions. While an estimate of the costs and a proposed budget item would be presented in due course, he would for the present take up only one item of expense which had to be settled before invitations were issued viz., the question of payment of travel and subsistence expenses of the legal experts. He proposed that the Bank reimburse member countries for transportation costs of not more than two experts and make a flat contribution of $150 per person towards their subsistence costs. On the basis of maximum attendance it was estimated that that would involve a cost to the Bank of around $125,000 for the four meetings. The expenses involved in attending the ever increasing number of international meetings constituted a heavy burden, especially for the smaller countries, and since it was most important that the meetings should be well attended, he felt that the Bank would be justified in assuming those costs. He planned to announce the regional meetings in his speech to the Governors, and official invitations should be dispatched at that time.

5. Mr. Bullitt thought that the Chairman had proposed an excellent and reasonable schedule and that his proposal for paying the travel expenses and living allowances of two delegates from each country was a very helpful one.

6. Mr. Machado thought that in assuming the travel and subsistence cost of delegates as proposed the Bank could render a great service. That would be a well justified expense, particularly in view of the desirability of securing good attendance at the meetings. He supported the proposal that invitations be confined to countries in each region which were members of the Bank or had applied for membership as those would probably be the only countries with an interest in the matter.

7. Mr. Mejia emphasized the importance of making it clear, as Mr. Woods had done, that these were essentially Bank meetings, and that the facilities of the United Nations or of its Regional Commissions would be made available merely as assistance to the Bank.

8. Mr. Oellerer requested clarification of certain provisions of the text of the Draft Convention, viz., responsibility for "overhead" costs of the Center and expenses connected with a

proceeding, and the enforcement of arbitral awards made by tribunals constituted under the Convention. As for the first, he had three specific questions: (1) Was it possible to estimate the "overhead" cost of the Center which, by Section 16 of Article I was to be borne by Contracting States? (2) How would the rule in that section that expenditures of the Center shall be borne "in proportion to [the Contracting States'] respective subscriptions to the capital stock of the Bank" operate if, say, only 20 members representing a total of 30% of the capital stock adhered to the Convention? (3) As the rule in Article VI that a party to a dispute would bear its own expenses, and charges for use of the facilities of the Center would be borne equally by the parties might present a problem for smaller countries, would it be possible instead to incorporate a rule whereby all such expenses and charges could be assessed against the unsuccessful party? As to enforcement of awards, Mr. Oellerer asked whether it was certain that all awards under the Convention would be enforceable in all Contracting States, particularly awards made against a government.

9. Mr. Broches, replying to Mr. Oellerer's question regarding the "overhead" cost of the Center said it would not be possible at the present time to estimate the cost of the Center, as that figure would, in part, depend on the amount of business the Center would do. As for the initial or starting-up costs, those could be quite low if, for instance, it was decided to begin by having a part-time Secretary-General and, as was envisaged, the administrative staff of the Center were to be provided by the Bank. At the maximum there would be a full-time Secretary-General and possibly one or two clerical or secretarial employees.

10. Mr. Woods pointed out that when the time came for a final decision it would be essential to have an estimate of the expenditure involved. For the present, however, the project was in an exploratory stage and he would prefer to leave the question of the cost of the Center until the time of taking a final decision - perhaps in the third quarter of 1964.

11. Mr. Broches, replying to the second question raised by Mr. Oellerer, said that the proportionate contributions by Contracting States - assuming that all were members of the Bank - would be based on their capital subscriptions. If, however, only members of the Bank representing 30% of the capital were to join, and would be the ones who for a fiscal year would bear these expenses, then the cost of the Center would be distributed among them in proportion to their share in that 30%. Mr. Oellerer's third question related to Article VI of the Draft Convention in which was stated the general rule that the charges for the use of the Center's facilities as well as the fees and expenses of members of a commission or tribunal were to be borne equally by the parties. It had been left open to what

extent the parties would be charged for use of the Center, but if such charges were made they would be borne equally by the parties. While he was aware that in court procedures the court costs were generally assessed against the unsuccessful party, and that in some countries even lawyers' fees of the successful party were charged to the unsuccessful party, he thought it was more customary in arbitration - which was not only a less formal but also a friendlier proceeding - to provide for equal sharing of costs. The Draft itself, however, provided for one exception viz., in cases of proceedings instituted by a party frivolously or in bad faith the tribunal could assess all or any part of the expenses, fees or other charges against that party. While it was, of course, possible for the parties to agree on a different division of costs, it seemed that, as a general rule, equal division of costs was most consonant with the whole character of the Draft.

12. The question of enforcement of awards had not been covered specifically in the Working Paper, R 62-1(SD), which had hitherto been the basis of discussion. He had pointed out in earlier discussions that it would be desirable to have a very clear provision on that matter and such a provision was now included as Section 15 of Article IV which required that each Contracting State recognize an award of a tribunal as binding and enforce it within its territories as if that award were a final judgment of the courts of that State. That was quite a step forward in the recognition of international arbitral awards when compared with the general law in most countries. As to whether forced execution following upon an award could be obtained against a government, that would depend on the force of a final judgment in the country in which enforcement was sought. In general it would not be possible to enforce a judgment against the State in the sense of seizing its property and selling it in forced execution. But this did not seem to present a major problem. The problem had been that there was doubt as to whether States would accept an award as valid and binding. There were hardly any cases in which there had been difficulty in obtaining compliance with an award once its binding character was clearly established. One such exceptional case in the international field was the Corfu Channel Case (Britain v. Albania).

13. Mr. Garland asked whether the costs of solicitors employed by one party would come within the definition of costs chargeable to that party alone.

14. Mr. Broches said that solicitors fees and, where necessary, travel costs would be part of a party's own expenses which under Section 1 of Article VI would be borne by that party alone.

15. Mr. Bullitt asked whether it was contemplated that the text of the Draft Convention, which still appeared as a restricted document, would at some point be made available for general circulation. It was, of course, available to all member governments of the Bank, but he wondered if it might not be made available to some of the other international organizations as well as to some interested private organizations.

16. Mr. Broches said that when a document was marked "Restricted" it meant that it should not be released to the press, to the public or to anyone except persons to whom the Bank chose to release it. In fact, the United Nations, OECD and the Organization of American States had copies of the Draft. The Bank had not given it to any private organizations although some governments, in the course of their consideration of the proposals, might have done so. He would be in favor of continuing to leave it to the discretion of governments whether to give it to certain persons whose advice they sought, until such time as the Bank actually released the document for general circulation.

17. Mr. Woods thought it might be advisable to declassify the document when the Directors as a group had no further comment to make, but felt that a discussion of the matter could be postponed. If the document were declassified it would be made clear, however, that the Directors themselves were not "approving" the Draft. They would merely be saying that they understood what the document contained, and that if the staff wished to pursue the matter in the manner proposed they could do so.

18. Replying to a question from Mr. Bullitt as to whether the document for the regional meetings would eventually be issued (with suitable indication that publication was prohibited) in printed or in mimeographed form, Mr. Broches said that that would depend on the related question of the extent of the distribution contemplated. As long as it was intended to retain the official posture that it was not a document for general distribution, he thought it should continue to be issued in mimeographed form. Such documents were generally dealt with more discreetly than printed documents.

19. Mr. Donner pointed out that since many governments had not yet taken a position regarding the Draft Convention, he could imagine that some of them might feel opposed to giving too much publicity to the document or, at any rate, to the document in a form that could give rise to the assumption that it had already reached a stage farther advanced than was actually the case. On the other hand there were many persons in his country who were interested in the Draft, and he had felt free to give copies of it to them.

20. Mr. Garland was also against wide publicity at this stage. If copies of the document were made available, it should be left to the Governments concerned to distribute them within their own territories as they saw fit.

21. Mr. Hudon felt that, as this was basically a document for discussion among governments, it should be left to them to distribute it to parties which had an interest in it. He was not in favor of having it printed and making it generally available.

22. Mr. Mejia was in favor of a broad public discussion of the document, and therefore, of its wide distribution.

23. Mr. Rajan agreed with Mr. Hudon. He was against wide publicity at this stage of a document primarily intended for consideration by member states. If any government wanted to give it to any particular person or group, there would be no objection to it doing so.

24. Mr. Broches said that he appreciated the need for a broad discussion of the Draft. On the other hand the regional meetings were intended to elicit comments of a technical nature which would in turn undoubtedly lead to changes in the text. He recalled that the OECD Convention had never been published in the newspapers, while in speeches it had been referred to as being under consideration by governments. While that institution and the governments concerned had given it to selected persons they felt they could trust, the document was treated with great discretion until the point where it was officially printed and distributed.

25. Mr. Woods asked that further thought be given to the question of when to declassify the document, as well as to the form in which it should be issued at the present stage. The meeting should now proceed to a discussion of the substance of the document.

26. Mr. Machado thought that, in view of the fact that the first of the regional meetings would take place in less than three months, the Directors should circulate the Draft among their governments so as to stir up interest and elicit comment, so that delegates to the regional meetings could come with certain viewpoints from their governments.

27. As to the substance of the document he would first like to express his admiration and compliment Mr. Broches on a magnificent piece of constructive work in which he had tried to reconcile views which were often widely divergent. He felt that, as a whole, the document was approaching the point where the Directors could get

their governments to support it. In Latin America where a traditional dislike for arbitration would have to be overcome, the present document would find more sympathy than had the earlier version of the text. He had one specific comment, and that related to Section 3 of Article XI (page 43) of the Convention. That section was to the effect that the Convention would enter into force when it had been ratified or accepted by a specific number of States listed in Part I of Schedule A of the Articles of Agreement of the International Development Association, and a specific number of other States.

28. While he realized that the intention was to find a practical way of bringing into being an institution which would have the support of both capital-importing and capital-exporting countries, he would prefer to delete reference to that classification of states which had been accepted for various reasons when the Articles of Agreement of the International Development Association were drafted. Such a classification would not be favored by countries which cherished the principle of equality of sovereign states. The original IDA classification might change in time, and he would like to point out that some Part II countries were now beginning to invest in other Part II countries. He would himself prefer a provision on entry into force which would merely require ratification or acceptance by a fixed number of states without further qualification.

29. Mr. Broches pointed out that the intention had been, far from that of discriminating against the Part II countries, to give them an assurance that the institution would not be brought into being unless it had some support among both groups of states. Such a provision could be of considerable importance also to the capital-exporting countries which would not want an institution to come into being if there were no capital-importing countries that were willing to adhere. The proposed provision had been precise in specifying the minimal requirement of interest by both groups which would bring the institution into being. It was not intended to be discriminatory and he had not realized that it might be politically offensive. He would, however, think about an alternative provision regarding the Convention's entry into force.

30. Mr. Woods said he had sympathy for Mr. Machado's point of view. Classification of countries into Part I and Part II was related to IDA and had been introduced there for a clear and obvious reason. It ought not, however, to become part of the general philosophy of the Bank.

31. Mr. Bullitt, referring to Mr. Broches' remarks, said he was not sure whether the Part I countries would not want this Convention to come into effect unless it was adhered to by a substantial number of Part II countries. However, he had doubts as to the importance of that distinction in the first instance.

32. Mr. Broches agreed that further thought should be given to providing merely for ratification or acceptance by a specified minimum number of countries without reference to any classification of those countries.

33. Mr. Woods felt that that would be the best course, the actual number being left open for the time being.

34. Mr. Donner enquired why, under Section 2(3) of Article I, it was made simpler for the Center to make arrangements with the Permanent Court of Arbitration than with other "public international institutions" which had first to be designated by a majority of two-thirds of all members of the Council. The requirement of a two-third majority, generally reserved for unusual decisions like that of moving the seat of the Center (Section 6(vi) of Article I), seemed to give a particularly negative aspect to the possibility of arrangements with those other institutions.

35. Mr. Broches, replying to Mr. Donner, recalled that the previous version of the text had provided only for arrangements with the Permanent Court. At the suggestion of Mr. Donner and some other Directors, provision had been made for arrangements with other institutions of a similar character which might come into being. It was doubtful whether there would in fact be institutions of a similar character in the field of investment, and as a link with an as yet unknown organization was a matter for serious consideration, it required, in common with other such matters (like the relocation of the Center), that a decision be taken by a special majority. Specific reference to the Permanent Court had given rise to the need to mention "other public international institutions" so as not to exclude the possibility of similar arrangements with the latter in the future. Those arrangements would be of a simple nature covering the use of a building and possibly staff and a library. As far as Europe was concerned, it would be sufficient to make arrangements for the use of one institution i.e. the Permanent Court. Should an institution of a similar character be created in say, Asia, Africa or Latin America, it might prove to be desirable to ensure the availability of facilities in those areas through the arrangements contemplated. Apart from that aspect of the matter there was no particular merit in working together with other institutions. The Center would merely be an administrative framework, and would not itself

engage in conciliation or arbitration nor would it pursue a policy of any kind which might need to be coordinated with policies of other institutions.

36. Replying to a question from Mr. Donner as to why it had not been considered desirable to facilitate arrangements with the institution which might come into being under the OECD Convention, Mr. Broches pointed out that it would be inappropriate for the Center to be linked with that institution because, if it came into being, it would be an institution of a character entirely different from that of the Center. It would be a policing organization for the enforcement of certain substantive rules, whereas the Center would merely perform administrative functions and make its facilities available to parties to a dispute at their request. From an administrative point of view there would be no need for such a link with an institution located in Europe since arrangements could be made for the use of the facilities of the Permanent Court.

37. Mr. Reilly associated himself with Mr. Machado's expression of admiration for the Draft Convention and for the very clear commentary. He would like to suggest, however, that the provisions of Section 17(2) of Article IV might be drafted more clearly. While the comment made its meaning plain the text itself might bear some revision.

38. Mr. Woods said that the text of the Convention would be further revised in the light of the discussion and that the revised text would be circulated to member governments to serve as the working document for the regional consultative meetings. In particular, the text of Section 17(2) of Article IV would be redrafted, and the requirement or ratification by specific members of Part I and Part II countries (Section 3 of Article XI) would be substituted by some other procedure. Consideration would also be given to the question of declassification and distribution of the Draft Convention. Directors who had further comments or suggestions might find it convenient to get in touch with Mr. Broches personally.

39. Mr. Bogoev said that the Government of the Netherlands was, in general, in full agreement with the proposals in the document which, in its opinion, was a very good one. A few remarks of a technical nature had already been passed on to Mr. Broches. He had not yet received any comments on the document from the other countries he represented.

40. Mr. Khosropur, referring to the power conferred on the Administrative Council in Section 6(v) of Article I to adopt conciliation and arbitration rules, enquired whether consideration had been given to providing for consultation with the Panels whose members would, in practice, apply those rules.

41. Mr. Broches, replying to Mr. Khosropur, pointed out that the size of the Panels would make this difficult. In any event, there was no lack of sources to which reference could be made when formulating the rules, e.g. the rules of the International Chamber of Commerce, the model rules of the International Law Commission. Other institutions with experience in the field would, of course, be consulted.

42. Mr. Rajan recalled that, as had been indicated by his predecessor, the Government of India had some reservations with regard to an agreement of the kind proposed. While India had entered into many agreements with foreign investors - many of them containing clauses providing for reference, in the event of a dispute, to the President of the International Chamber of Commerce, or similar body - no dispute had so far arisen. He would, however, take the opportunity to make a comment of a technical nature. With reference to paragraph 3 of the Comment to Article II (page 17) he would like to suggest that it might be desirable to incorporate the ideas expressed therein concerning definition of the type of dispute within the scope of the Convention in the Articles themselves. While he could agree with those ideas, he felt that they should be given greater emphasis through introduction into the text of the Convention.

43. Mr. Broches said he would like to see whether it would be possible to meet Mr. Rajan's point.

44. Mr. Donner said that the comments he expected from his authorities had not yet reached him, but that he would discuss these comments with Mr. Broches.

45. The meeting adjourned at 12:25 o'clock p.m.

Record Removal Notice

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File Title	Barcode No.
Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 2	30354835

Document Date	Document Type	
September 12, 1963	Board Record	

Correspondents / Participants

Subject / Title
SecM63-211 Meeting of Executive Directors September 10, 1963 - Settlement of Investment Disputes - Statement by Chairman

Exception(s)

Additional Comments
Declassification review of this record may be initiated upon request.

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

S/D

Form No. 57 | INTERNATIONAL DEVEL ASSOCIATION | INT | INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT | INTERNATIONAL FINANCE CORPORATION

OFFICE MEMORANDUM

TO: Mr. George D. Woods

DATE: September 4, 1963

SEP 9 REC'D

FROM: A. Broches

SUBJECT: Conciliation and Arbitration - The French Position

A few weeks ago Mr. Waizenegger came to see me and told me that he expected the French position at our next meeting of the Committee of the Whole to be once again cautious. The French, according to him, still have hopes of getting somewhere with the OECD Convention and would therefore prefer to see us progress very slowly. Once the OECD Convention appears unlikely to be realized in the near future, the French Government would fully support our proposals. I told him that the French would not have to take a firm position for or against until after the regional meetings, i.e. in the spring of 1964.

Mr. Moussa has the feeling that the present French attitude is that of Mr. Delattre and his staff and thinks that it would be useful to talk to other parts of the Ministry of Finance. The Annual Meeting may provide an opportunity for him and me to have such conversations. What is important at the moment is not to convert the French to our view, but to avoid that they transmit their lack of enthusiasm to the French-speaking African countries which will be invited to the December meeting in Addis Ababa. Some of these countries at least are likely to ask the French Government for information or advice in this matter, and I feel that we should try to get assurances that the French Government will advise them to take a positive attitude.

You may want to include this point in your meeting with the French Delegation.

cc. Mr. Knapp
Mr. Wilson
Mr. Moussa
Mr. Pinto

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SID/63-15

(For consideration in September, 1963, at a meeting to be announced)

FROM: The Secretary

August 9, 1963

SETTLEMENT OF INVESTMENT DISPUTES

An annotated version of the First Preliminary Draft of a Convention on the Settlement of Investment Disputes between States and the Nationals of other States is circulated herewith. As previously indicated, this document will be considered in September at a meeting to be announced.

Distribution:

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

Legal Department

CONFIDENTIAL

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

SETTLEMENT OF INVESTMENT DISPUTES

First Preliminary Draft

of a

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

Annotated Text

August 9, 1963

Legal Department

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INTRODUCTORY NOTE

1. The question of the settlement of investment disputes was discussed at a series of informal meetings of the Executive Directors, sitting as a Committee of the Whole, during December 1962 and May and June 1963. Staff notes of the discussions at these meetings have been circulated as documents SID/62-1 (December 28, 1962), SID/62-2 (January 7, 1963), SID/63-8 (June 5, 1963), SID/63-10 (June 13, 1963), SID 63-11 (June 19, 1963) and SID/63-12 (June 21, 1963). The "Working Paper in the form of a Draft Convention for the Resolution of Disputes between States and Nationals of other States," document R 62-1(SD), and a Memorandum by General Counsel (SID/63-2, February 15/18, 1963) served as the basis for discussion at those meetings which dealt principally with the subjects covered by Articles I, II and III of the Working Paper.

2. This annotated version of the First Preliminary Draft of a Convention on the Settlement of Investment Disputes between States and the Nationals of other States replaces the Working Paper referred to above. To facilitate comparison of the provisions of the First Preliminary Draft with those set forth in the Working Paper, marginal notes have been included indicating the corresponding provisions of the Working Paper.

3. The present text of the Convention is identical with that contained in document SID 63-13 of July 11, 1963 as corrected by document SID/63-14 of August 8, 1963.

PREAMBLE

New, incorporating elements from:

The Contracting States

1. CONSIDERING the need for international cooperation for economic development, and the role of foreign investment therein;

2. BEARING IN MIND the possibility that disputes may arise from time to time in connection with such investment between Contracting States and the nationals of other Contracting States, and the need for settlement thereof in a spirit of mutual confidence, with due respect for the principle of equal rights of States in the exercise of their sovereignty in accordance with international law;

3. RECOGNIZING that while such disputes would usually be subject to national legal processes (without prejudice to the right of any State to espouse a claim of one of its nationals in accordance with international law), other methods of settlement of such disputes may be appropriate in certain cases;

Art.I

4. ATTACHING PARTICULAR IMPORTANCE to the establishment of facilities for international conciliation or arbitration to which Contracting States and the nationals of other Contracting States may submit such disputes if they so desire;

Art.II, Secs. 2-3

5. RECOGNIZING an undertaking to submit such disputes to conciliation or to arbitration through such facilities as may be established as a legal obligation to be carried out in good faith, which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

Art.II, Sec. 6

6. DECLARING that no Contracting State shall by the mere fact of its acceptance of this Convention be required to have recourse to conciliation or arbitration in any particular case, in the absence of a specific undertaking to that effect,

HAVE AGREED as follows:

Comment

1. The Preamble contains a general statement of the aims and purposes of the Convention, and is, in addition, intended to be declaratory of the fundamental norms upon which the specific rules of the Convention are based. Paragraph 1 places the Convention in the context of the need for promoting economic development while paragraph 2 assures respect for the legitimate exercise of national sovereignty. The purpose for which conciliation and arbitration machinery is set up is limited in paragraph 2 to the settlement of investment disputes between Contracting States and the nationals of other Contracting States.

2. Paragraph 3 makes it clear that the procedures set forth in the Convention are in no way intended generally to supersede national legal processes or the existing rights of States under international law, but suggests that other methods of settlement of the disputes covered may be appropriate in certain cases. Paragraphs 4 and 6 emphasize that recourse to the Center is purely optional.

3. Finally, paragraph 5 recognizes as binding the obligations deriving from an undertaking to submit investment disputes to conciliation and arbitration under the auspices of the Center and represents an adaptation of a generally accepted principle of international arbitration to the effect that "recourse to arbitration implies an engagement to submit in good faith to the award" (Article 37 of The Hague Convention of 1907).

Article III

ARTICLE I

The International Conciliation and Arbitration Center

Establishment and Organization

Sec. 1 Section 1. There is hereby established the International Conciliation and Arbitration Center (hereinafter called the Center). The Center shall have full juridical personality.

Sec. 2(1) Section 2. (1) The seat of the Center shall be at the headquarters of the International Bank for Reconstruction and Development (hereinafter called the Bank).

Sec. 2(2), modified (2) The Center may make arrangements with the Bank for the use of the Bank's offices and administrative services and facilities.

Sec. 2(3), modified (3) The Center may make similar arrangements with the Permanent Court of Arbitration and with such other public international institutions as the Administrative Council of the Center may from time to time designate by a two-thirds majority of the votes of all members.

Sec. 3, modified Section 3. The Center shall have an Administrative Council, a Secretariat, a Panel of Conciliators and a Panel of Arbitrators (hereinafter sometimes referred to as Panels).

Note: Provision for a President of the Center deleted.

Comment

1. It is envisaged that the Center would be sponsored by the Bank, which might, in addition, provide it with purely administrative or "housekeeping" facilities and staff. By thus linking it to the Bank the Center would be invested with the image of the Bank and its prestige and reputation for impartiality. On the other hand, the Bank would have no influence whatever on the proceedings under the auspices of the Center. These proceedings would be the sole responsibility of conciliators and arbitrators appointed by the parties to a particular dispute or by an authority of their choice.

2. Section 2(1) states that the seat of the Center shall be at the headquarters of the Bank. Several Executive Directors felt that some provision should be made for the possibility of moving the seat of the Center to some other location should circumstances so demand in the future, and in the light of those views the present text grants the power to do so to the Administrative Council in Section 6(vi) of this Article.

3. As it would, in its initial stages, be impossible to predict the volume of business that would be brought to the Center, its machinery must be characterized by flexibility and economy. This is sought to be achieved in part through provision for use of the Bank's facilities. In this connection reference is also made to Sections 4(2), 5 and 7(2) of this Article.

4. To the extent practicable, there would be cooperation with the Permanent Court of Arbitration. Under Article 47 of The Hague Convention of 1907 and decisions of the Administrative Council of the Court, the Bureau of that Court is authorized to make its offices and staff available for conciliation and arbitration proceedings between a State and a party other than a State, provided the State concerned is a party to the Convention. (Some 25 members of the Bank are not parties to that Convention.) The arrangements contemplated by Section 2(3) are of a simple administrative nature, e.g. for the use of the Court's staff, facilities, offices and services such as translation, the keeping of records, as well as channelling of communications in cases where parties found it convenient to meet at The Hague rather than in Washington or elsewhere. (See also Section 9(2) of this Article).

5. Section 2(3) of Article III of the Working Paper which corresponds to Section 2(3) of this Article provided only for arrangements with the Permanent Court of Arbitration. The present text takes into account the views expressed by several Executive Directors who felt that the possibility should be opened for similar arrangements with other public

international institutions which might in the future establish machinery for the settlement of investment disputes.

6. The structure of the Center is conceived on the simplest lines and consists of a) an Administrative Council (with the exception provided for in Section 4, the members of the Bank's Board of Governors would double in function), b) a small Secretariat (personnel of the Bank's staff doubling in function) headed by a Secretary-General, and c) the Panels.

Art.III — The Administrative Council

Sec. 7 — Section 4. (1) The Administrative Council shall be composed of one representative and one alternate representative of each Contracting State. No alternate may vote except in the absence of his principal.

New — (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 the representative and alternate representative of that State.

New, incorporating elements from Secs. 4 and 5 — Section 5. The President of the Bank shall be ex officio Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote except a deciding vote in case of an equal division. During any absence or inability to act of the President of the Bank, and during any vacancy in the office of President of the Bank, the person who shall be the chief of the operating staff of the Bank shall act as Chairman.

New, incorporating elements from Sec.8 Note: Provision on delegation by Council of its powers deleted — Section 6. In addition to the powers granted to it by other provisions of this Convention, the Administrative Council shall have the following powers.

(i) To adopt such administrative rules and regulations, including financial regulations, as may be necessary or useful for the operation of the Center.

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(ii) To approve the terms of service of the Secretary-General and of any Deputy Secretary-General.

(iii) To approve the annual budget of the Center.

(iv) To approve an annual report of the operation of the Center.

(v) To adopt Conciliation Rules and Arbitration Rules not inconsistent with any provision of this Convention by a two-thirds majority of the votes of all members.

(vi) To move the seat of the Center from the headquarters of the Bank by a two-thirds majority of the votes of all members.

Comment

7. The Executive Directors expressed general support for the view that access to the facilities of the Center should not be limited to members of the Bank, so that the Administrative Council will be composed of representatives of members as well as non-members. While Section 4(2) assumes that Contracting States members of the Bank would usually wish to designate their Governors and Alternate Governors to represent them on the Administrative Council, it provides that a State which might feel it more appropriate to designate another person or persons in that capacity may do so.

8. Section 5 declares that the President of the Bank will ex officio be Chairman of the Administrative Council. The present text does not contain the equivalent of Section 4 of Article III of the Working Paper which provided that the President of the Bank, in addition to being Chairman of the Administrative Council, would be "President of the Center." Some Executive Directors saw no need for the office of "President of the Center" and feared that the latter provision might be interpreted as placing the Secretary-General in a subordinate position. The present text makes it clear that it is envisaged that, in regard to the Center, the President of the Bank would act as Chairman of the Council and only with its advice and consent. Cases in which he would be called upon to exercise a discretionary power such as that

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of designating persons to the Panel of Conciliators (Section 11(3)) or to the Panel of Arbitrators (Section 12(3)) or in appointing a member of a Conciliation Commission (Section 3 of Article III) or of an Arbitral Tribunal (Section 3 of Article IV) would, of course, be exceptions to that rule.

9. The view was expressed that Section 8 of Article III of the Working Paper which authorized the Council to delegate its powers (with one exception) to the President, was too wide. In the light of that view, that Section has been deleted. It was also thought desirable to enumerate the powers of the Administrative Council, and this has been done in Section 6. The Administrative Council, as its name implies, will have purely administrative functions and the only rules which it may adopt with binding effect are those of an administrative nature envisaged in paragraph (i) of Section 6. The Conciliation and Arbitration Rules to be adopted pursuant to paragraph (v) of that Section could be made binding on the parties to a dispute only with their consent (see Section 4 of Article III and Section 5 of Article IV.)

Sec.9(1) Section 7. (1) The Administrative Council shall hold an annual meeting and such other meetings as may be provided for by the Administrative Council or called by the Chairman. The Administrative Council may by regulation establish a procedure whereby the Chairman may obtain a vote of the Administrative Council on a specific question without calling a meeting of the Administrative Council.

Sec.9(2) (2) The annual meeting of the Administrative Council shall be held in conjunction with the annual meeting of the Board of Governors of the Bank.

Sec.9(3) (3) A quorum for any meeting of the Administrative Council shall be a majority of the members.

Sec.9(4), modified (4) Each member of the Administrative Council shall cast one vote and, except as otherwise provided, all matters before the Council shall be decided by a majority of the votes cast.

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Sec. 9(5) (5) Members of the Administrative Council and the Chairman shall serve as such without compensation from the Center.

Comment

10. The question of voting rights has been considered in the context of the functions of the Administrative Council. If the Council was to have dealt with important substantive or policy matters, it is possible that on certain issues there would have been a clear split between the capital-exporting and capital-importing countries. Thus, if the Council was to have elected the Panels, or if the Secretary-General - who is appointed by the Council - was to have been a quasi-judicial rather than an administrative official, the question of voting power might well have been of considerable significance. On that hypothesis, if each member of the Council had one vote and if all members of the Bank became parties to the Convention, the capital-importing countries would have had control over those matters. On the other hand, if the weighted voting system of the Bank were applied in the Council, the capital-exporting countries would have gained control. In order to avoid either alternative, a system might have been devised whereby a majority vote in the Council would require the vote of a majority of the members representing a majority of the voting power determined in accordance with the Bank formula.

11. Whatever the merits of that double test, it does not appear to be appropriate in the present context, since the Panels would be composed of persons designated by the respective Contracting States (and, in addition, some persons designated by the Chairman) and the Secretary-General would have no judicial or quasi-judicial powers. Nor does it appear that there are any other matters within the competence of the Council that could lead to major controversies between the capital-exporting and the capital-importing countries as groups. The present text, therefore, retains in Section 7 (4) the simple one-member-one-vote formula adopted in Section 9(4) of Article III of the Working Paper.

The Secretariat

Sec. 10 Section 8. The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

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Sec. 11 Section 9. (1) The Secretary-General and Deputy Secretaries-General shall be appointed by the Administrative Council upon the nomination of the Chairman.

Sec.11(2) (2) The office of Secretary-General or Deputy Secretary-General shall be incompatible with the exercise of any political function, and with any employment or occupation other than employment by the Bank or by the Permanent Court of Arbitration, except as the Administrative Council, with the concurrence of the Chairman, may otherwise decide.

Sec.12(1) with drafting change Section 10.(1) The Secretary-General shall be the principal officer of the Center and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules and regulations adopted thereunder by the Administrative Council.

Sec. 12(2) (2) During any absence or inability to act of the Secretary-General, 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 Secretary-General shall determine in what order they shall act as Secretary-General.

Comment

12. As indicated in Section 10(1) the Secretary-General would be the principal administrative officer of the Center. While he would have no influence whatever on the outcome of proceedings under the auspices of the Center he could, however, in practice perform a valuable task in promoting use of the Center's facilities and by giving informal assistance and advice to parties in connection with such proceedings. In addition he would be instructed by the Chairman to consult with parties in order to assist the

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Chairman in choosing conciliators (Art.III, Sec.3) and arbitrators (Art.IV, Sec.3) when that task had been entrusted to the Chairman. He would fix, within such limits as were set by the Administrative Council, the fees and expenses of the Center which might be charged to the parties (Art.VI, Sec.2), and might also be consulted regarding the fees and expenses of conciliators and arbitrators (Art.VI, Sec.3), as well as the place of proceedings when they were to take place outside Washington or The Hague (Art.VII, Sec.2). The proper performance of these various functions would seem to require that the office of Secretary-General be one of complete independence-independence of Contracting States as well as of the Administrative Council - hence the general rule in Section 9(2) that that office "shall be incompatible with the exercise of any political function, and with any employment or occupation....."

13. If it could be expected with reasonable certainty that activities under the Convention would be such as to provide a full-time occupation for a Secretary-General and one Deputy, it would be desirable to provide that they, or at least the Secretary-General himself, may not hold any other office or engage in any other occupation or activity. Since no such certainty exists, the text permits a degree of flexibility which would allow the Administrative Council and the Chairman, as nominating authority, to make exceptions to the rule and, in addition, specifically excludes from incompatibility concurrent employment by the Bank or by the Permanent Court of Arbitration.

14. As the Secretary-General in addition to his other functions would have to perform certain purely formal functions such as dealing with routine correspondence, dispatching notices, or making a finding that a certain period of time prescribed under the Convention had expired, it seemed desirable to provide for at least one Deputy who could assume those functions when necessary.

The Panels

Sec. 13(1)

Section 11. (1) The Panel of Conciliators shall consist of qualified persons, designated as hereafter provided, who are willing to serve as members of the Panel.

Sec. 13(2) Tentative number suggested

(2) Each Contracting State shall designate not more than [six] persons to serve on the Panel, who may, but need not, be its own nationals.

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Sec. 13(3) Tentative number suggested

(3) The Chairman shall have the right to designate up to [twelve] persons to serve on the Panel

Section 14(1) Section 12. (1) The Panel of Arbitrators shall consist of qualified persons, designated as hereafter provided, who are willing to serve as members of the Panel.

Sec. 14(2) Tentative number suggested

(2) Each Contracting State shall designate not more than [six] persons to serve on the Panel, who may, but need not, be its own nationals.

Sec. 14(3) Tentative number suggested

(3) The Chairman shall have the right to designate up to [twelve] persons to serve on the Panel.

Sec. 15 Section 13. (1) Panel members shall serve for four years.

(2) In case of death or resignation of a member of either Panel, the Contracting State or the Chairman, as the case may be, which or who had designated the member, shall have the right to designate another person to serve for the balance of that member's term.

Sec. 16 Section 14. (1) The same person may be designated to serve on both Panels.

(2) If a person is designated to serve on a 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.

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

Sec. 17 Section 15. (1) The Contracting States shall pay due regard to the importance of designating to the Panels persons of high moral character and recognized competence in the fields of law, commerce, industry or finance and, to that end, shall, before designation, seek such advice as they may deem appropriate from their highest courts of justice, schools of law, bar associations and such commercial, industrial and financial organizations as shall be considered representative of the professions they embrace.

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

Comment

15. In view of the optional and flexible character of the Convention as a whole, and of access to the Center in particular, the Panels have limited significance. Parties to proceedings under the auspices of the Center are entirely free to agree to use conciliators and arbitrators who have not been designated to the Panels. On the other hand, as will be seen from Articles III and IV of the text, unless the parties otherwise agree, conciliators and arbitrators are to be selected by them, or by the Chairman when called upon to do so, from the respective Panels.

16. The composition of the Panels could be determined in a variety of ways. One method would be to have the Contracting States elect a certain number of Panel members from among candidates nominated by each Contracting State. While this method would have certain advantages, particularly in encouraging States to nominate candidates of high quality, it has the disadvantage of necessitating a somewhat complicated voting procedure in order to assure a balanced composition of the Panels as between candidates nominated by the capital-exporting and capital-importing countries respectively. In this connection reference is made to the comment to Section 7 of this Article.

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17. The method adopted in the present text largely follows the system of The Hague Conventions of 1899 and 1907, in leaving the composition of the Panels primarily to the Contracting States. The Panels are to consist not only of legal experts, but also of experts in other fields. They would be composed of a certain number of experts designated by each Contracting State while it is provided in addition, that the Chairman would have the right to designate a specified number of panel members in addition to those designated by the Contracting States, the numbers indicated in square brackets being intended merely as bases for discussion. It might be desirable for the Chairman to exercise his right of designation after the States had made their designations, and with a view to achieving balanced representation on the Panels not only of different legal systems but also of different forms of economic activity.

18. With regard to cases of multiple designation referred to in Section 14(2), the Administrative Rules of the Center would, in implementation of that provision, indicate how prior designation is to be determined.

Financing the Cost of the Center

Sec. 18, with drafting change

Section 16. To the extent that the cost of the Center cannot be met out of fees and other charges for the use of its facilities, or out of other receipts, it shall be borne by the 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.

Comment

19. Section 16 has reference to the "overhead" cost of maintaining the Center, and not to the cost of proceedings under its auspices - the latter being borne by the parties as provided in Article VI. As some Contracting States might not be members of the Bank, it is provided that the Administrative Rules of the Center would specify the contribution of non-member States. The words "or out of other receipts" have been included in order to take account of the possibility that the Bank might finance the cost of the Center. Reference is also made to the comment to Article VI.

Art. III — Privileges and Immunities

Sec. 19 — Section 17. The Center shall be immune from all legal process.

Sec. 20 — Section 18. (1) The Chairman, the members of the Administrative Council, and the officers and employees of the Secretariat

(i) shall be immune from legal process with respect to acts performed by them in their official capacity;

(ii) not being local nationals shall be accorded 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.

(2) Paragraph (1) (ii) of this Section shall also apply to persons acting as conciliators or arbitrators in proceedings pursuant to this Convention, and to persons appearing as parties, representatives of parties, agents, counsel, experts or witnesses in such proceedings, but only in connection with their travel to and from the seat of the Center or other location where the proceedings are held and their stay at such location for the purpose of such proceedings.

Sec.21 — Section 19. (1) The archives of the Center shall be inviolable.

(2) The official communications of the Center shall be accorded by each Contracting State the same treatment as is accorded to the official communications of other Contracting States.

Sec.22 — Section 20. (1) The Center, its assets, property and income, and its operations and transactions authorized by this Convention, shall be immune from all taxation and customs duties. The Center shall also

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be immune from liability for the collection or payment of any taxes or customs duties.

(2) No tax shall be levied on or in respect of salaries or emoluments paid by the Center to the Chairman, members of the Administrative Council or officials or employees of the Secretariat who are not local citizens, local subjects or other local nationals.

(3) No tax shall be levied on or in respect of honoraria, fees or other income received by persons acting as conciliators or arbitrators in proceedings pursuant to this Convention for their services in such proceedings, if the sole jurisdictional basis for such tax shall be the location of the Center or the place where such proceedings are conducted or the place where such income is paid.

Comment

20. These provisions are in general patterned after the privileges and immunities of the Bretton Woods institutions and their affiliates. Section 18(2) is desirable to ensure the proper functioning of proceedings under the auspices of the Center. It will be noted that Section 20(3) does not confer a tax exemption, but merely seeks to avoid taxation based solely on the location of the Center, the place where proceedings are held, or the place of payment. Similar restrictions on taxation of interest paid on the Bank's bonds are found in Article VII, Section 9(c), of the Bank's Articles of Agreement.

ARTICLE II

Jurisdiction of the Center

New, incorporating elements from Art.II, Sec. 1 and Art. IV, Sec. 1

Section 1. The jurisdiction of the Center shall be limited to proceedings for conciliation and arbitration with respect to any existing or future investment dispute of a legal character between a Contracting State and a national of another Contracting State (or that State when subrogated in the rights of its national) and shall be based on the consent of the parties thereto.

New, incorporating elements from Art.II, Sec. 1 and Art. IV, Sec. 2. Note: Art.IV, Sec. 3 deleted

Section 2. The consent of any party to a dispute to the jurisdiction of the Center may be evidenced by

(i) a prior written undertaking of such party which provides that there shall be recourse, pursuant to the terms of this Convention, to conciliation or arbitration (hereinafter referred to as an undertaking);

(ii) submission of a dispute by such party to the Center; or

(iii) acceptance by such party of jurisdiction in respect of a dispute submitted to the Center by another party.

Art. IV, Sec. 5, modified

Section 3. (1) Any Conciliation Commission and any Arbitral Tribunal constituted pursuant to this Convention shall be the judge of its own competence.

New, incorporating elements of Art. IV, Secs. 2 and 3 replacing Sec.4

(2) Any claim of a party to a dispute that the Commission or the Tribunal lacks competence on the ground that

(i) there is no dispute;

(ii) the dispute is not within the scope of the undertaking;

(iii) the undertaking is invalid; or

(iv) a party to the dispute is not a national of a Contracting State,

shall be dealt with by the Commission or Tribunal, as the case may be, as a preliminary question.

(3) In any proceedings in connection with paragraph (2) (iv), a written affirmation of nationality signed by or on behalf of the Minister of Foreign Affairs of the State whose nationality is claimed by the party, shall be conclusive evidence of the facts stated therein.

Comment

1. Section 1 of this Article deals with the scope of the facilities available under the auspices of the Center in relation to (a) the type of proceedings, (b) the category of dispute, (c) the parties to the dispute and (d) the consensual nature of jurisdiction.

Type of Proceedings

2. Proceedings under the auspices of the Center are limited to conciliation and arbitration. Section 1 also permits the parties to a dispute, if they so agree, to have recourse to both procedures consecutively.

Category of Disputes

3. No detailed definition of the category of disputes in respect of which the facilities of the Center would be available has been included in the Convention. Instead, the general understanding reflected in the Preamble, the use of the term "investment dispute", and the requirement that the dispute be of a legal character as distinct from political, economic or purely commercial disputes, were thought adequate to limit the scope of the Convention in this regard. Within those limits Contracting States would be free to determine in advance in each particular case what disputes they would submit to the Center. To include a more precise definition would tend to open the door to frequent disagreements as to the applicability of the Convention to a particular undertaking, thus undermining the primary objective of this Article viz.,to give confidence that undertakings to have recourse to conciliation or arbitration will be carried out.

4. It may be noted that the present text prescribes no lower limit for the value of the subject-matter of a dispute

as was done in Section 1(3) of Article IV of the Working Paper. It may be recognized that the parties would in practice be best qualified to decide whether, having regard to pertinent facts and circumstances including the value of the subject-matter, a dispute is one which ought to be submitted to the Center. The subject-matter of a dispute might be of insignificant pecuniary value, but might involve important questions of principle, thus justifying the bringing of a test case. In other instances the pecuniary value might not be readily ascertainable, as where a host government fails to implement a provision in an investment agreement conferring immunity from immigration restrictions on foreign personnel, or might not be ascertainable at all, as where an investor fails to implement an agreement with a host government to train local personnel.

The Parties to the Dispute

5. Section 1 indicates that the facilities of the Center would be available only in disputes between a Contracting State on the one hand and a national of another Contracting State on the other, with a view to ensuring reciprocal performance of obligations which arise out of the application of the Convention. The facilities would thus not be available in a dispute involving a non-contracting State or a national of such State. Also excluded from jurisdiction are disputes (a) between private individuals, (b) between Governments (except where a Government had satisfied the claim of its national, e.g. under a scheme of investment insurance, and was thereby subrogated in the rights of that national in a dispute before the Center) and (c) between a Contracting State and one of its own nationals (unless that person possessed concurrently the nationality of another State which was a party to the Convention; see Article X, 2).

Consensual Nature of Jurisdiction

6. To the extent that the provisions of Article II constitute a development, rather than a mere codification of existing international law, it is to be expected that States would not wish its provisions to apply automatically to undertakings given in the past, nor to all undertakings to be given in the future. Section 2(i), therefore, limits the application of the Convention to cases where the parties have specifically undertaken to have recourse "pursuant to the terms of this Convention".

7. Section 1 *in fine* declares that the facilities can only be utilized if the parties to the dispute have consented to have recourse to the Center, while Section 2 specifies the manner in which consent may be given, i.e. by a prior undertaking in writing, or by *ad hoc* acceptance of jurisdiction. No particular form is prescribed for the prior written undertaking, which may be unilateral, bilateral or multilateral.

8. When entering into any undertaking pursuant to Section 2 a party would be free to include such limitations as may seem to it appropriate on the scope of the particular undertaking, provided that they are not inconsistent with its obligations deriving from the Convention as a whole. As this privilege is self-evident it was thought superfluous to provide for it expressly as was done in Section 6(c) of Article II of the Working Paper; moreover, as was pointed out by several Executive Directors, the latter provision went too far in permitting a party to contract out of its obligations under the Convention.

Determination of Competence

9. The power of an arbitral tribunal to determine its jurisdiction is well established in international law. Section 3 (1) confers that power alike on conciliation commissions and arbitral tribunals constituted pursuant to the Convention, thus providing a safeguard against unilateral determination by a party of a commission's or tribunal's jurisdiction which may frustrate the proceedings.

Preliminary Questions

10. Section 3(2) lists four classes of objection to jurisdiction and declares that they shall be dealt with by the commission or tribunal as preliminary questions to be disposed of before entering upon the merits of the case.

11. This text differs from that of the Working Paper in that the latter provided in Section 2 of Article IV that preliminary objections to the jurisdiction of a conciliation commission would be submitted to arbitration under the Convention as though the parties had specifically consented to that procedure. The present text proposes an alternative procedure which takes into account that the parties may have, in choosing the method of conciliation, wished to avoid at any stage a quasi-judicial procedure, like that of arbitration, which would lead to a binding decision. Thus, objections to conciliation on the grounds enumerated, while they would not prevent constitution of a commission or commencement of conciliation proceedings would be the subject of a preliminary non-binding recommendation to the parties. In the case of arbitration proceedings, however, similar objections would, as was equally contemplated in Section 3 of Article IV of the Working Paper, be the subject of a preliminary binding ruling by the tribunal.

Nationality

12. Section 4 of Article IV of the Working Paper prescribed a special procedure for dealing with preliminary questions as to nationality. These questions were not submitted to the Conciliation Commission or Arbitral Tribunal, but were

left to be decided in the last instance by the International Court of Justice.

13. On reflection this procedure seemed unduly cumbersome and there appeared to be no compelling reason why the determination of nationality could not be left primarily to the State whose nationality is claimed and, if that State does not make such a determination, to the Conciliation Commission or Arbitral Tribunal. Accordingly, the text treats objections to jurisdiction based on nationality in the same manner as other preliminary questions, with the proviso that a written affirmation of nationality signed by the Minister of Foreign Affairs of the State whose nationality is claimed and issued for the purpose of a proceeding pursuant to the Convention , shall be conclusive. Where the affirmation referred to is not introduced, other evidence of nationality satisfactory to the commission or tribunal must be produced. Reference is also made to the definitions of "National of a Contracting State" and of "National of another Contracting State" in Article X.

ARTICLE III

Art. V

Conciliation

Request for Conciliation

Sec. 1 Section 1. Any dispute within the jurisdiction of the Center may be the subject of a request for conciliation by a Conciliation Commission (hereinafter called the Commission).

Constitution of the Commission

Sec. 2 Section 2. The Commission shall consist of a sole conciliator or several conciliators appointed as the parties may have agreed. Unless otherwise agreed, the Commission shall consist of three conciliators, one appointed by each party and the third appointed by agreement of the parties, all appointees to be selected from the Panel of Conciliators.

Sec. 3 Section 3. (1) If the Commission shall not have been constituted within three months after the request referred to in Section 1, the Chairman shall, at the request of either party, appoint the conciliator or conciliators not appointed pursuant to Section 2. Before making any such appointment, the Chairman shall instruct the Secretary-General to consult with the parties and to report to him any information or views which may assist him in making the appointment.

(2) In making any appointment under this section the Chairman shall select the appointee from the Panel of Conciliators.

Comment

1. The composition of the Commission, its precise terms of reference and the procedure applicable in proceedings before it

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are matters for agreement between the parties concerned. It is only in the absence of such agreement that the provisions of this Article thereon would become operative.

2. As to the role of the Chairman as appointing authority under Section 3, reference is made to the comment on Sections 2 and 3 of Article IV.

Powers and Functions of the Commission

Sec.4(1), modified incorporating substance of Sec.8

Section 4. Except as the parties and the Commission shall otherwise agree, the Commission shall conduct the conciliation proceedings in accordance with the Conciliation Rules adopted under this Convention and in effect on the date on which the consent to conciliation became effective.

New

Section 5. (1) It shall be the duty of the Commission to clarify the points in dispute between the parties and to endeavour to bring about an agreement between them upon mutually acceptable terms.

Sec.4(2) with drafting change

(2) The Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. If the parties shall reach agreement, the Commission shall draw up a report noting the submission of the dispute and recording that the parties have reached agreement. Except as the parties shall otherwise agree, the report shall not contain the terms of settlement accepted by the parties.

Sec. 5 with drafting change

(3) If at any time it appears to the Commission that there is no likelihood of agreement between the parties, the Commission may declare the proceedings closed. The Commission shall in that event draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. Unless the parties otherwise agree, the report shall not contain the terms of settlement,

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if any, recommended to the parties by the Commission.

Comment

3. Section 5(1) describes the duties of the Commission, and is based upon generally accepted concepts of the conciliation function. (See Article 15(1) of the General Act for the Pacific Settlement of International Disputes, 1928; Article XXII of the American Treaty on Pacific Settlement, 1948). The Commission is specifically empowered to make recommendations to the parties at any stage of the proceedings. In order to avoid any interpretation to the effect that after a recommendation made in the course of proceedings and before their termination, the Commission was functus officio, the words "and from time to time" have been inserted in the first sentence of Section 5(2).

Obligations of the Parties

New, incorporating elements from Secs. 6 and 7(1)

Section 6. The parties shall give the Commission their full cooperation in order to enable the Commission to carry out its task. The recommendations of the Commission shall not be binding on the parties who shall, however, give them their most serious consideration.

Section 7. Neither party to a conciliation proceeding shall be entitled in any later proceeding concerning the same dispute, 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 recommendations, if any, made by the Commission therein.

Comment

4. Section 6, in accordance with principle, declares that recommendations of the Commission shall not be binding. Nevertheless, as a corollary of the fundamental principle of good faith the parties accept the obligation to cooperate fully with the Commission and to give to its recommendations their most serious consideration.

5. Section 7 is intended to encourage the parties to seek agreement rather than maintain fixed positions out of the fear that a conciliatory attitude might prejudice their position in a later proceeding if the conciliation effort were to fail.

ARTICLE IV

Arbitration

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Request for Arbitration

Sec. 1 Section 1. Any dispute within the jurisdiction of the Center may be the subject of a request for arbitration by an Arbitral Tribunal (hereinafter called the Tribunal)

Constitution of the Tribunal

Sec. 2, modified Section 2. (1) The Tribunal shall consist of a sole arbitrator or several arbitrators appointed as the parties may have agreed.

(2) Where the parties have not so agreed, the Tribunal shall consist of three arbitrators who shall not be nationals of a State party to the dispute, or of a State whose national is a party to the dispute. Each party shall appoint one arbitrator and the third arbitrator shall be appointed by agreement of the parties. The arbitrators so appointed shall be selected from the Panel of Arbitrators.

Sec. 3 modified Section 3. If the Tribunal shall not have been constituted within three months after the request referred to in Section 1, the Chairman shall, at the request of either party, appoint the arbitrator or arbitrators not appointed pursuant to Section 2. The arbitrator or arbitrators so appointed shall not be nationals of a State party to the dispute, or of a State whose national is a party to the dispute, and shall be selected from the Panel of Arbitrators. Before making any such appointment, the Chairman shall instruct the Secretary-General to consult with the parties and to report to him any information or views which may assist him in making the appointment.

Art. VI

Comment

1. The composition of the Tribunal, its terms of reference, and the procedure applicable in proceedings before it are, as in the case of conciliation, matters for agreement between the parties concerned, and the provisions of this Article thereon would become operative only in the absence of such agreement (Sections 2 and 5). Section 2(2) adopts what is perhaps the most usual method for the constitution of an arbitral tribunal viz., each party appoints an arbitrator, and a third is appointed by agreement of the parties. However, that Section introduces a significant innovation by specifying that none of the arbitrators shall be nationals of the State party to the dispute, or of the State whose national is a party to the dispute, thus seeking to minimize as far as possible the danger, inherent in conventional systems, of appointment of partisan arbitrators.1/ This new principle applies also to appointments of arbitrators made by the Chairman under Section 3 of this Article.

2. It is a necessary concomitant of the binding character of an undertaking to have recourse to arbitration that adequate provision should be made to prevent frustration of that undertaking by an unwilling party. That is the purpose of the appointment procedure laid down in Section 3. As in the case of conciliation (see Section 3 of Article III), the Chairman is appointing authority unless the parties have otherwise agreed. Beyond the requirement that the appointee must be selected from a Panel, and the restriction as to his nationality, the Chairman is left free in his choice of a conciliator or arbitrator. It may be noted that the Chairman would exercise his power of appointment even if he were of the same nationality as one of the parties. The basic consideration underlying these provisions is that the appointing authority is a person who, because of his office, may be conclusively presumed to be capable of showing impartiality in the selection of conciliators or arbitrators under all circumstances. Under the Bank's Loan Regulations an unrestricted power of appointment is conferred upon the President of the International Court of Justice and the Secretary-General of the United Nations.

1/ One writer has said:

> "It is a grave mistake to construct a tribunal out of two national members and one neutral member. Few men are capable of holding the balance between two contending national commissioners. If the governments do not object to the possibility of decision by compromise rather than by adjudication, they should provide for two national commissioners with an umpire in case of disagreement. Otherwise they should provide either for one, or better still three, neutral commissioners."
> A.H. Feller, The Mexican Claims Commissions, 1923-1934 (New York 1935) at p.317.

Art. VI — Powers and Functions of the Tribunal

Sec. 5 — Section 4. (1) In the absence of agreement between the parties concerning the law to be applied, and unless the parties shall have given the Tribunal the power to decide ex aequo et bono, the Tribunal shall decide the dispute submitted to it in accordance with such rules of law, whether national or international, as it shall determine to be applicable.

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

Sec. 4, modified — Section 5. Except as the parties otherwise agree, any arbitration proceeding shall be conducted in accordance with the Arbitration Rules adopted under this Convention and in effect on the date when the consent to arbitration became effective. If any question of procedure arises which is not covered by the applicable arbitration rules, the Arbitral Tribunal shall decide that question.

Sec. 8 — Section 6. All questions before the Tribunal shall be decided by majority vote.

Sec.9(1), modified — Section 7. (1) An award signed by a majority of the Tribunal shall constitute the award of the Tribunal. The award shall be in writing and shall state the reasons upon which it is based.

(2) The award shall immediately be communicated to the parties.

Sec.9(2), elaborated — Section 8. (1) Whenever one of the parties does not appear before the Tribunal, or fails to defend its case, the other party may call upon the Tribunal to decide in favor of its claim.

(2) In such case, the Tribunal may render an award if it is satisfied that it has jurisdiction and that the claim appears to be well-founded in fact and in law.

Art. VI

Sec. 7, modified — Section 9. Except as the parties otherwise agree, the Tribunal shall have the power to hear and determine incidental or additional claims or counter-claims arising directly out of the subject-matter of the dispute.

Sec. 6 — Section 10. Except as the parties otherwise agree, the Tribunal shall have the power to prescribe, at the request of either party, any provisional measures necessary for the protection of the rights of the parties.

Comment

3. Section 5(1) leaves the determination of the law to be applied in a particular case to the parties, and if they cannot agree thereon, to the tribunal. The parties may also give the tribunal the power to decide ex aequo et bono, that is, in accordance with what is just and equitable in the circumstances, rather than by application of rules of law. Section 5(2) states that the tribunal will not be excused from rendering an award on the ground that the law is not sufficiently clear.

4. The power conferred on the tribunal by Section 8 to render an award upon the default of one party is a corollary of the binding character of the undertaking to have recourse to arbitration and is possessed by arbitration tribunals provided for in the Bank's Loan Regulations Nos. 3 and 4, Sections 7.03(h) and 7.04(h), respectively. (See also Article 53 of the Statute of the International Court of Justice.) Before an award can be rendered under this Section, however, the tribunal must be satisfied not only that it has jurisdiction but also that the claim on the merits appears to be well-founded.

5. Unless the parties to a dispute agree to restrict its competence to certain principal claims, the tribunal will have the power to determine incidental and additional claims as well as counter-claims, provided that they arise directly out of the subject-matter of the dispute. In addition, unless the parties specifically preclude it from doing so, the tribunal would have the power to prescribe provisional measures designed to preserve the status quo between the parties pending its final decision on the merits.

Art. VI — Interpretation, Revision and Annulment of the Award

Sec. 11 Tentative period suggested

Section 11. (1) Any dispute between the parties as to the meaning and scope of the award may, at the request of either party made within [three] months after the date of the award, be submitted to the Tribunal which rendered the award. Such a request shall stay the enforcement of the award pending the decision of the Tribunal.

(2) If for any reason it is impossible to submit the dispute to the Tribunal which rendered the award, a new Tribunal shall be constituted in accordance with the terms of the agreement, if any, between the parties regarding the constitution of the Tribunal which rendered the award, and otherwise pursuant to the provisions of this Article.

Sec.12(1)

Section 12. (1) An application for revision of the award may be made by either party on the ground of the discovery of some fact of such a nature as to have a decisive influence on the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the party requesting revision and that such ignorance was not due to the negligence of the party requesting revision.

Sec.12(2)

(2) The application for revision must be made within [six] months of the discovery of the new fact and in any case within [ten] years of the rendering of the award.

Sec.12(3), modified

(3) The application 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 terms of the agreement, if any, between the parties regarding the constitution of the Tribunal which rendered the award, and otherwise pursuant to the provisions of this Article. The Tribunal to which the application is made may stay the enforcement of the award pending its decision.

Art. VI

New

Section 13. (1) Either party may apply to the Chairman for a declaration that the award is invalid on one or more of the following grounds.

(a) that the Tribunal has exceeded its powers;

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

(c) that there has been a serious departure from a fundamental rule of procedure, including failure to state the reasons for the award.

(2) On receipt of that application the Chairman shall forthwith appoint from the Panel of Arbitrators a Committee of three persons, not being members of the Tribunal which rendered the award, which shall, by majority decision declare the validity or otherwise of the award or any part thereof on any of the grounds set forth in the preceding paragraph.

(3) In cases covered by subparagraphs (a) and (c) of paragraph (1), application must be made within sixty days of the rendering of the award, and in cases covered by subparagraph (b) of paragraph (1), within six months.

(4) The Committee shall have the power to stay enforcement of the award pending its decision and to recommend any provisional measures necessary for the protection of the rights of the parties.

(5) If the award is declared invalid the dispute shall be submitted to a new tribunal constituted by agreement between the parties or, failing such agreement, in the manner provided in Sections 3 and 4 of this Article.

Enforcement of the Award

Art. VI Sec. 10, modified

Section 14. The award shall be final and binding on the parties. Each party shall abide by and comply with the award immediately, unless the Tribunal shall have allowed a time limit for the carrying out of the award or any part thereof, or the enforcement of the award shall have been stayed pursuant to Sections 11, 12 or 13 of this Article.

New. Subject-matter foreseen in Art. VIII

Section 15. Each Contracting State shall recognize an award of the Tribunal as binding and enforce it within its territories as if it were a final judgment of the courts of that State.

Comment

6. It was recognized in the Preamble as a corollary of the principle that an undertaking must be implemented in good faith, that the award of a tribunal must be complied with. As a general rule the award of the tribunal is final, and there is no provision for appeal. However, where there has been some violation of the fundamental principles of law governing the tribunal's proceedings such as are listed in Section 13, the aggrieved party may apply to the Chairman for a declaration that the award is invalid. Under that Section the Chairman is required to refer the matter to a Committee of three persons - none of them members of the tribunal that rendered the award - for a decision upon the validity or otherwise of the award. It may be noted that this is not a procedure by way of appeal requiring consideration of the merits of the case, but one that merely calls for an affirmative or negative ruling based upon one or other of the three grounds listed in Section 13(1). The text also provides for interpretation and revision of the award (Sections 11 and 12).

7. The award is binding on the parties to the dispute who are required to implement it forthwith. However, implementation of the award may be delayed in certain prescribed circumstances, viz.,

1) where the tribunal has, in rendering the award, expressly allowed a time limit for carrying it out (Section 14);

2) upon stay of enforcement by the tribunal consequent upon

(a) a request for interpretation of the award (Section 11(1)); or
(b) an application for revision of the award (Section 12(3)); and

3) upon stay of enforcement by the Committee appointed pursuant to Section 13 pending its decision upon the validity of the award (Section 13(4)).

8. Section 15 requires each Contracting State, whether or not it or its national was a party to the proceedings, to recognize awards of tribunals pursuant to the Convention as binding and to enforce them as though they were final judgments of its own courts, irrespective of the treatment under its law of other arbitral awards.

Relationship of Arbitration to other Remedies

Art. II, Sec. 4 with drafting change

Section 16. An undertaking to have recourse to arbitration shall, unless otherwise stated therein, be deemed to be an undertaking to have recourse to arbitration in lieu of any other remedy.

Comment

9. Section 16 states a rule of interpretation rather than of substance. The Section leaves a party free to stipulate that notwithstanding its undertaking to submit a dispute to arbitration, it reserves the right to have recourse to courts of law. Similarly, Section 16 leaves it open to a State to stipulate that its undertaking to have recourse to arbitration is subject to the condition that the foreign investor first exhaust his remedies in the State's national courts or administrative agencies. Section 16 merely provides that in the absence of such stipulations an undertaking to have recourse to arbitration will be regarded as excluding any other remedy.

10. To illustrate the foregoing by an example: An investment agreement between a State and a foreign investor provides without qualification that "any controversy arising between the parties concerning the interpretation or application of this agreement shall be submitted to arbitration in accordance with the provisions of the Convention [etc.]". A dispute arises with respect to the tax exemption provisions of the investment

agreement. If either the foreign investor or the State were to bring this dispute before the Tax Court of the State rather than submit it to the Center, the other party could object, in which event the Tax Court would have to dismiss the claim. If the investor were to bring the dispute before the Center, the State could not object on the ground that the investor had not exhausted his remedies in the Tax Court.

11. The Section was extensively discussed by the Executive Directors and some Directors expressed the view that investors should not have access to the Center until they had exhausted their local remedies. As stated above, Section 16 would leave States entirely free so to stipulate in their agreements with foreign investors. But if a State included an unqualified arbitration clause in an agreement with a foreign investor, it would seem to run counter to normal rules of interpretation to read into this clause a requirement of the prior exhaustion of local remedies. All that Section 16 does is to give effect to the expressed intention of the parties.

New, incorporating elements from Art. II, Sec. 5

Section 17. (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 undertaken to submit, or shall have submitted to arbitration pursuant to this Convention, except on the ground that the other Contracting State has failed to perform its obligations under this Convention with respect to that dispute.

(2) Nothing in this Section shall affect the right of a Contracting State to bring an international claim against another Contracting State where such right accrues through breach of any other international agreement arising out of the facts of such dispute between a national of the Contracting State and the other Contracting State, without prejudice, however, to the finality and binding character of the award in that dispute as between the parties thereto.

Comment

12. Unlike Section 16, which gives merely a rule of interpretation, Section 17 lays down a rule of substantive law. It should be noted that this Section constitutes a significant innovation.

13. The proposed Convention would recognize the right of an investor, within specified limits, to proceed in his own name against a foreign State before an arbitral tribunal constituted pursuant to the Convention instead of seeking the diplomatic protection of his State or having that State bring an international claim. It would seem to be a natural concomitant of the recognition of the investor's right of direct access to an international jurisdiction, to exclude action by his national State in cases in which such direct access has been availed of by, or is available to, the investor, whether as plaintiff or defendant, under the Convention. Since the exclusion of the national State rests on the premise that the other Contracting State party to the dispute will abide by the provisions of the Convention, the rule of exclusion is subject to an exception in the event that that premise falls away. In such a case rights of providing diplomatic protection and of bringing an international claim remain unaffected.

14. Section 17(2) preserves the right of the national State of the investor to bring an international claim where the same facts give rise to a dispute covered by the Convention as well as to a breach of some other international agreement between the States concerned. That Section does, however, maintain the finality and binding character of an award rendered by a tribunal under the Convention as regards the parties to which it relates. For example, the dispute covered by the Convention may involve a claim for damages for an alleged breach of an investment agreement and the facts alleged may at the same time constitute a breach of a bilateral agreement between the host State and the investor's national State. Where the investor under the Convention brings the dispute before the Center and is unsuccessful, his national State would be free to have recourse to such procedures as may have been provided in the bilateral agreement. The outcome of the proceedings between the two States under the bilateral agreement would not, however, affect the award rendered by the tribunal constituted under the Convention. Thus, even though the investor's national State may prevail in the proceedings, the investor could not benefit thereby.

ARTICLE V

Art. VII — Replacement and Disqualification of Conciliators and Arbitrators

Sec.5 with drafting change

Section 1. After a Conciliation Commission or an Arbitral Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or arbitrator shall die or become incapacitated, or shall have resigned, the resulting vacancy shall be filled by the method used for the original appointment, except that 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, or consequent upon a decision to disqualify him pursuant to Section 2(2) of this Article, the resulting vacancy shall be filled by the Chairman.

Sec. 6, modified

Section 2. (1) (a) A party may propose the disqualification of a conciliator or arbitrator appointed pursuant to Article III, Section 2, or Article IV, Section 3, respectively, on account of any fact whether antecedent or subsequent to the constitution of the Commission or Tribunal.

(b) A party may propose the disqualification of a conciliator or arbitrator appointed by the Chairman pursuant to Article III, Section 3, or Article IV, Section 4, on account of a fact arising subsequent to the constitution of the Commission or Tribunal. It may propose disqualification of such conciliator or arbitrator on account of a fact which arose prior to the constitution of the Commission or Tribunal only if it can show that the appointment was made without knowledge of that fact or as a result of fraud.

Art. VII

(2) The decision on any proposed disqualification 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 as to the decision, or in the case of a single conciliator or arbitrator, 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 resign, and the resulting vacancy shall be filled in the manner provided for in Section 1 of this Article.

Comment

1. Section 1 incorporates what has been called the "principle of immutability" and is intended to preclude the replacement of conciliators and arbitrators by the parties during proceedings with a view to influencing the outcome of those proceedings, as well as their resignation under pressure.

2. Section 2, which relates to disqualification of a conciliator or an arbitrator, is of wider scope than Section 6 of Article VII of the Working Paper. Section 2(1)(a) deals with conciliators and arbitrators appointed by the parties, and is to the effect that a party may at any time propose their disqualification. Such proposal may be based upon any fact, such as general unfitness, personal prejudice, misconduct or interest in the subject-matter, and regardless of whether that fact arose before or after constitution of the Commission or Tribunal.

3. While, under Section 2(1)(b), a party may at any time propose the disqualification of a conciliator or arbitrator appointed by the Chairman, as a rule such proposal must be founded upon facts which arose after constitution of the Commission or Tribunal as the Chairman must be deemed to have passed conclusively on the qualifications of his nominee. A proposal to disqualify under this section may be founded on a fact which existed prior to the constitution of the Commission or Tribunal only if it can be shown that the Chairman made the appointment in question without knowledge of that fact, or was induced to do so as a result of fraud.

ARTICLE VI

Art. VII — Apportionment of Costs of Proceedings

Sec. 1 — Section 1. Except as otherwise agreed by the parties, each party to a conciliation or arbitration proceeding shall bear its own expenses, and any fees and expenses of the Center and of conciliators and arbitrators shall be divided between and borne equally by the parties; provided, however, that if a Conciliation Commission or Arbitral Tribunal determines that a party has instituted the proceedings frivolously or in bad faith, it may assess any part or all of such fees and expenses against that party.

Sec. 2 — Section 2. The fees and expenses of the Center to be charged to the parties shall be fixed by the Secretary-General within the limits approved from time to time by the Administrative Council.

Sec. 3 — Section 3. The fees and expenses of conciliators and arbitrators shall, in the absence of agreement between them and the parties, be fixed by the Commission or Tribunal concerned after consultation with the Secretary-General.

Comment

This Article contemplates that the parties may be called upon to make certain payments to the Center for the use of its services. "Fees" would constitute a contribution to the "overhead" of the Center, whereas "expenses" would refer to the out-of-pocket costs or other clearly identifiable costs incurred by the Center in connection with a proceeding, such as hiring of translators and interpreters, engagement of additional secretarial or clerical staff and the like. Conflicting views were expressed by Executive Directors as to the desirability of letting the parties to a proceeding bear the costs of the Center (as distinguished from the fees and expenses of conciliators and arbitrators.) It is to be noted that the text leaves the matter to be decided by the Administrative Council. However, if costs are charged to the parties, they will be borne equally by them, except in the case of frivolous or mala fide institution of proceedings.

ARTICLE VII

Art.VII

Place of Proceedings

Sec. 4(1) with drafting change

Section 1. Conciliation and arbitration proceedings shall be held either at the seat of the Center or, if permitted under any arrangements made pursuant to Article I, Section 2(3), at the seat of the Permanent Court of Arbitration, as the parties may agree. If the parties do not so agree the Secretary-General shall, after consultation with the parties and with the Conciliation Commission or the Arbitral Tribunal, as the case may be, determine the place of the proceedings.

Sec. 4(2), with drafting change

Section 2. Notwithstanding the provisions of Section 1, proceedings may be held elsewhere, if the parties so agree and if the Conciliation Commission or Arbitral Tribunal, as the case may be, so approves after consultation with the Secretary-General.

Comment

Section 1 is based on the assumption that the Contracting States would favor close cooperation between the Center and the Permanent Court of Arbitration. (See also in this connection Sections 2(3) and 9(2) of Article I).

ARTICLE VIII

Interpretation

New. Foreseen in proposal by Art. IX

Any question or 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, unless the States concerned agree to another mode of settlement.

Comment

The text of this Article follows in general the pattern of similar clauses in the constituent instruments of international organizations within the United Nations family. While it leaves the parties free to decide upon the mode of settlement of questions or disputes regarding interpretation of the Convention, it provides for adjudication by the International Court of Justice in the event of their being unable to agree.

ARTICLE IX

Amendment

New

Section 1. Any Contracting State may propose amendment of this Convention. The text of such proposed amendment shall be communicated to the Chairman of the Administrative Council not less than [three] months prior to the next succeeding annual meeting of the Council and shall forthwith be transmitted by him to all Contracting States.

Section 2. Amendments shall be adopted by a majority of [four-fifths] of the members of the Council. [Twelve] months after its adoption each amendment shall come into force for all Contracting States.

Comment

In the absence of a provision for amendment, the Convention could only be changed by a new international agreement. In order to avoid this difficulty the text proposes an amendment procedure. The Administrative Council is designated as the authority competent to decide upon proposals for amendment. Such proposals are required to be transmitted to it through the Chairman well in advance of its annual meeting so as to enable members to consult with the authorities within Contracting States and take their views into account during a discussion of the issues involved. The support of a substantial majority - four-fifths is tentatively suggested - of the members of the Council would be required for adoption of a proposed amendment, which would come into effect for all the members after a period of say 12 months after such adoption. No provision is made regarding States which oppose the amendment after its adoption. It would, however, always be open to a State to denounce the Convention under Section 5 of Article XI. The period specified for effectiveness of the denunciation could be made to conform to the period required for effectiveness of the amendment adopted, thus permitting a State which wished to denounce the treaty to do so immediately following adoption of the amendment and thereby avoid becoming subject to the Convention as amended.

ARTICLE X

Definitions

New

1. "National of a Contracting State" means a person natural or juridical possessing the nationality of any Contracting State on the effective date of an undertaking within the meaning of Section 2 of Article II, and includes (a) any company which under the domestic law of that State is its national, and (b) any company in which the nationals of that State have a controlling interest. "Company" includes any association of natural or juridical persons, whether or not such association is recognized by the domestic law of the Contracting State concerned as having juridical personality.

2. "National of Another Contracting State" means any national of a Contracting State other than the State party to the dispute, notwithstanding that such person may possess concurrently the nationality of a State not party to this Convention or of the State party to the dispute.

[Other definitions may be added if necessary]

Comment

1. The definitions have been broadly drawn. "Nationals" include both natural and juridical persons as well as associations of such persons. It will be noted that the term "national" is not restricted to privately owned companies, thus permitting a wholly or partially government-owned company to be a party to proceedings brought by or against a foreign State.

2. Under the definition of "National of a Contracting State" a company may be a national of a given State either because it has that nationality under the State's domestic law, or because it is controlled by nationals of that State.

3. The question of dual nationality is dealt with in this sense, that a person is recognized as a "national of another Contracting State", if he has the nationality of that State even though he may at the same time be a national of the State party to the dispute or of a State which is not a party to the Convention.

4. Nationality is determined as of the date when the undertaking to have recourse to conciliation or arbitration becomes effective.

ARTICLE XI

New

Final Provisions

[Final provisions have been inserted in the present draft tentatively and to provide bases of discussion as well as some indication of formal legal items with which it will be necessary to deal. In general, they follow the pattern set by multilateral agreements in the past.]

Entry into Force

Section 1. This Convention shall be open for signature on behalf of States members of the Bank and all other sovereign States.

Section 2. This Convention shall be subject to ratification or acceptance by the signatory States in accordance with their respective constitutional procedures. The instruments of ratification or acceptance shall be deposited with the Bank and shall declare that the State concerned has taken all steps necessary to enable it to carry out all of its obligations under this Convention.

Section 3. This Convention shall enter into force when it has been ratified or accepted by [ ] of the States listed in Part I of Schedule A of the Articles of Agreement of the International Development Association, and [ ] other States.

Comment

1. By Section 2 ratification or acceptance must be accompanied by a declaration that the "State concerned has taken all steps necessary to enable it to carry out all of its obligations under this Convention", a requirement also found in the Articles of Agreement of the Bank and its affiliates. When a State ratifies, therefore, other States would be entitled to rely on the implicit assurance of that State that adequate facilities exist - whether created by legislative or other means - to give full effect within its territories to the provisions of the Convention. Thus, for instance, it would be assumed that the obligations of private parties deriving from undertakings to have recourse to arbitration

pursuant to the Convention would be fully enforceable against them under the local law, and that the award of an arbitral tribunal could be enforced as if it were a final judgment of a local court of competent jurisdiction.

2. In recognition of the fact that the utility of this Convention would best be realized through participation of appropriate numbers of both capital-exporting and capital-importing countries, Section 3 of this Article proposes that the effectiveness of the Convention be predicated upon its ratification or acceptance by a specified number in each of those categories tentatively defined by reference to Schedule A of the Articles of Agreement of the International Development Association.

Territorial Application

Section 4. By its signature of this Convention, each State accepts it both on its own behalf and in respect of all territories for whose international relations such State is responsible except those which are excluded by such State by written notice to the Bank.

Comment

3. By this Section a signatory State agrees to the application of the Convention in respect of all territories for whose international relations such State is responsible, e.g. dependent or protected States. It would, however, be open to a signatory to exclude such application, if it so desires, by written notice to the Bank at the time of signature or at any time thereafter. This Section is in substance identical with Section 3 of Article XI of the Articles of Agreement of the International Development Association.

Denunciation

Section 5. (1) Any Contracting State may denounce this Convention by notice to the Bank.

(2) The denunciation shall take effect [twelve] months after receipt by the Bank of such notice; provided that the obligations of the State concerned arising out of undertakings given prior to the date of such notice shall remain in full force and effect.

Comment

4. In keeping with a practice followed in several multilateral agreements, the right of a State under general international law to denounce the Convention is recognized in Section 5. However, Section 5(2) provides for lapse of a period of time - tentatively fixed at 12 months - before such denunciation could become effective. The general obligations of the denouncing State under the Convention would remain intact during that period, while its obligations arising out of undertakings given prior to the date of such notice are declared to remain in full force and effect regardless of the denunciation. In this connection reference is also made to the comment to Article IX (Amendment).

Inauguration of the Center

Section 6. After this Convention has entered into force, the President of the Bank shall convene the inaugural meeting of the Administrative Council.

Registration

Section 7. The Bank is authorized to register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Comment

5. This Section which authorizes registration of the Convention by the Bank, as depository, with the United Nations, is in substance identical with Section 5 of Article XI of the Articles of Agreement of the International Development Association.

DONE at _____, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement

to act as depository of this Convention, to register this Convention with the Secretariat of the United Nations and to notify all signatory States of the date on which this Convention shall have entered into force.

Comment

6. The concluding formula adopted is in substance identical with that contained in the Articles of Agreement of the International Development Association.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SID 63-14

(For consideration in September, 1963 at a meeting to be announced)

FROM: The Secretary

August 8, 1963

SETTLEMENT OF INVESTMENT DISPUTES

Reference is made to document SID 63-13 of July 11, 1963, containing a first preliminary draft of a Convention on the Settlement of Investment Disputes which is to be considered by the Executive Directors in September 1963.

The following alterations should be made in the text:

Page 10. Article I, Section 19(2), line 2, after the word "accorded" insert "by each Contracting State"

Page 16. Article IV, Section 2(2). At end of first sentence, for "of the parties" substitute: "of a State party to the dispute, or of a State whose national is a party to the dispute.".

Page 16. Article IV, Section 3, line 5, for "of the parties" substitute: "of a State party to the dispute, or of a State whose national is a party to the dispute".

Page 17. Article IV, Section 4(1), line 1, delete: "any".

Page 17. Article IV, Section 5, second sentence, for "Arbitration Rules" read: "arbitration rules".

Page 19. Article IV, Section 13(1), paragraph (b). After the semi-colon, for "and" substitute "or".

Distribution:

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

Page 20. Article IV, Section 13(2), line 2, after "appoint" insert: "from the Panel of Arbitrators".

Page 22. Article V, Section 1, penultimate line, for "Section 2(3)" read: "Section 2(2)".

Page 29. Article XI, Section 2, line 2, after "their" insert: "respective".

Legal Department
August 8, 1963

FOR EXECUTIVE DIRECTORS' MEETING

CONFIDENTIAL

SID 63-13

(For consideration in September, 1963, at a meeting to be announced)

FROM: The Acting Secretary

July 11, 1963

SETTLEMENT OF INVESTMENT DISPUTES

At the meeting of the Committee of the Whole on May 28, 1963, the President announced that a first preliminary draft of an agreement on the settlement of investment disputes would be prepared by General Counsel early in July with a view to its discussion in September 1963. That draft is circulated herewith, and will be considered in September at a meeting to be announced.

Distribution:

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

Legal Department

CONFIDENTIAL

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

SETTLEMENT OF INVESTMENT DISPUTES

First Preliminary Draft

of a

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

July 10, 1963

Legal Department

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INTRODUCTORY NOTE

This First Preliminary Draft of a Convention on the Settlement of Investment Disputes between States and the Nationals of other States replaces the "Working Paper in the form of a Draft Convention for the Resolution of Disputes between States and Nationals of other States", document R 62-1(SD). The text is being issued provisionally without a commentary. An annotated version is now in preparation and will be distributed as early as possible.

The question of the settlement of investment disputes was discussed at a series of informal meetings of the Executive Directors, sitting as a Committee of the Whole, during December 1962 and May and June 1963. Staff notes of the discussions at these meetings have been circulated as documents SID/62-1 (December 28, 1962), SID/62-2 (January 7, 1963), SID/63-8 (June 5, 1963), SID/63-10 (June 13, 1963), SID 63-11 (June 19, 1963) and SID/63-12 (June 21, 1963).

The Working Paper above referred to and a Memorandum by General Counsel (SID/63-2, February 15/18, 1963) served as the basis for discussion at those meetings which dealt principally with the subjects covered by Articles I, II and III of the Working Paper.

To facilitate comparison of the provisions of the First Preliminary Draft with those set forth in the Working Paper, marginal notes have been included indicating the corresponding provisions of the Working Paper.

The following provisions of the First Preliminary Draft deserve special mention:

The Preamble, which describes the purpose of the Convention, indicates the type of dispute with which it is intended to deal and incorporates elements from provisions of Article II of the Working Paper.

Article I (corresponding to Article III of the Working Paper) which incorporates a number of suggestions made by Executive Directors.

Article II, Section 1, which defines the disputes with which the Center may deal as "investment disputes of a legal character".

Article IV, Section 15, which provides that awards shall be enforceable in the territories of all Contracting States.

Articles VIII (Interpretation), IX (Amendment), X (Definitions), and XI (Final Provisions). These subjects had not been covered in the Working Paper and the suggested provisions are presented as a basis for discussion.

PREAMBLE

New, incorporating elements from:

The Contracting States

CONSIDERING the need for international cooperation for economic development, and the role of foreign investment therein;

BEARING IN MIND the possibility that disputes may arise from time to time in connection with such investment between Contracting States and the nationals of other Contracting States, and the need for settlement thereof in a spirit of mutual confidence, with due respect for the principle of equal rights of States in the exercise of their sovereignty in accordance with international law;

RECOGNIZING that while such disputes would usually be subject to national legal processes (without prejudice to the right of any State to espouse a claim of one of its nationals in accordance with international law), other methods of settlement of such disputes may be appropriate in certain cases;

Art. I

ATTACHING PARTICULAR IMPORTANCE to the establishment of facilities for international conciliation or arbitration to which Contracting States and the nationals of other Contracting States may submit such disputes if they so desire;

Art. II, Secs. 2-3

RECOGNIZING an undertaking to submit such disputes to conciliation or to arbitration through such facilities as may be established as a legal obligation to be carried out in good faith, which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

Art. II, Sec. 6

DECLARING that no Contracting State shall by the mere fact of its acceptance of this Convention be required to have recourse to conciliation or arbitration in any particular case, in the absence of a specific undertaking to that effect,

HAVE AGREED as follows:

Article III

ARTICLE I

The International Conciliation and Arbitration Center

Establishment and Organization

Sec. 1

Section 1. There is hereby established the International Conciliation and Arbitration Center (hereinafter called the Center). The Center shall have full juridical personality.

Sec. 2(1)

Section 2. (1) The seat of the Center shall be at the headquarters of the International Bank for Reconstruction and Development (hereinafter called the Bank).

Sec. 2(2), modified

(2) The Center may make arrangements with the Bank for the use of the Bank's offices and administrative services and facilities.

Sec. 2(3), modified

(3) The Center may make similar arrangements with the Permanent Court of Arbitration and with such other public international institutions as the Administrative Council of the Center may from time to time designate by a two-thirds majority of the votes of all members.

Sec. 3, modified

Section 3. The Center shall have an Administrative Council, a Secretariat, a Panel of Conciliators and a Panel of Arbitrators (hereinafter sometimes referred to as Panels).

Note: Provision for a President of the Center deleted.

Art. III — The Administrative Council

Sec. 7 — Section 4. (1) The Administrative Council shall be composed of one representative and one alternate representative of each Contracting State. No alternate may vote except in the absence of his principal.

New — (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 the representative and alternate representative of that State.

New, incorporating elements from Secs. 4 and 5 — Section 5. The President of the Bank shall be ex officio Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote except a deciding vote in case of an equal division. During any absence or inability to act of the President of the Bank, and during any vacancy in the office of President of the Bank, the person who shall be the chief of the operating staff of the Bank shall act as Chairman.

New, incorporating elements from Sec. 8. Note: Provision on delegation by Council of its powers deleted — Section 6. In addition to the powers granted to it by other provisions of this Convention, the Administrative Council shall have the following powers:

(i) To adopt such administrative rules and regulations, including financial regulations, as may be necessary or useful for the operation of the Center.

(ii) To approve the terms of service of the Secretary-General and of any Deputy Secretary-General.

(iii) To approve the annual budget of the Center.

Art. III

(iv) To approve an annual report of the operation of the Center.

(v) To adopt Conciliation Rules and Arbitration Rules not inconsistent with any provision of this Convention by a two-thirds majority of the votes of all members.

(vi) To move the seat of the Center from the headquarters of the Bank by a two-thirds majority of the votes of all members.

Sec. 9(1)

Section 7. (1) The Administrative Council shall hold an annual meeting and such other meetings as may be provided for by the Administrative Council or called by the Chairman. The Administrative Council may by regulation establish a procedure whereby the Chairman may obtain a vote of the Administrative Council on a specific question without calling a meeting of the Administrative Council.

Sec. 9(2)

(2) The annual meeting of the Administrative Council shall be held in conjunction with the annual meeting of the Board of Governors of the Bank.

Sec. 9(3)

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

Sec. 9(4), modified

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

Sec. 9(5)

(5) Members of the Administrative Council and the Chairman shall serve as such without compensation from the Center.

Art. III — The Secretariat

Sec. 10 — Section 8. The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

Sec. 11 — Section 9. (1) The Secretary-General and Deputy Secretaries-General shall be appointed by the Administrative Council upon the nomination of the Chairman.

Sec. 11(2) — (2) The office of Secretary-General or Deputy Secretary-General shall be incompatible with the exercise of any political function, and with any employment or occupation other than employment by the Bank or by the Permanent Court of Arbitration, except as the Administrative Council, with the concurrence of the Chairman, may otherwise decide.

Sec. 12(1) with drafting change — Section 10. (1) The Secretary-General shall be the principal officer of the Center and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules and regulations adopted thereunder by the Administrative Council.

Sec. 12(2) — (2) During any absence or inability to act of the Secretary-General, 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 Secretary-General shall determine in what order they shall act as Secretary-General.

Art. III — The Panels

Sec. 13(1)

Section 11. (1) The Panel of Conciliators shall consist of qualified persons, designated as hereafter provided, who are willing to serve as members of the Panel.

Sec. 13(2) Tentative number suggested

(2) Each Contracting State shall designate not more than [six] persons to serve on the Panel, who may, but need not, be its own nationals.

Sec. 13(3) Tentative number suggested

(3) The Chairman shall have the right to designate up to [twelve] persons to serve on the Panel.

Sec. 14(1)

Section 12. (1) The Panel of Arbitrators shall consist of qualified persons, designated as hereafter provided, who are willing to serve as members of the Panel.

Sec. 14(2) Tentative number suggested

(2) Each Contracting State shall designate not more than [six] persons to serve on the Panel, who may, but need not, be its own nationals.

Sec. 14(3) Tentative number suggested

(3) The Chairman shall have the right to designate up to [twelve] persons to serve on the Panel.

Sec. 15

Section 13. (1) Panel members shall serve for four years.

(2) In case of death or resignation of a member of either Panel, the Contracting State or the Chairman, as the case may be, which or who had designated the member, shall have the right to designate another person to serve for the balance of that member's term.

Art. III

Sec. 16 Section 14. (1) The same person may be designated to serve on both Panels.

(2) If a person is designated to serve on a 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.

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

Sec. 17 Section 15. (1) The Contracting States shall pay due regard to the importance of designating to the Panels persons of high moral character and recognized competence in the fields of law, commerce, industry or finance and, to that end, shall, before designation, seek such advice as they may deem appropriate from their highest courts of justice, schools of law, bar associations and such commercial, industrial and financial organizations as shall be considered representative of the professions they embrace.

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

Art. III

Financing the Cost of the Center

Sec. 18, with drafting change

Section 16. To the extent that the cost of the Center cannot be met out of fees and other charges for the use of its facilities, or out of other receipts, it shall be borne by the 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.

Privileges and Immunities

Sec. 19

Section 17. The Center shall be immune from all legal process.

Sec. 20

Section 18. (1) The Chairman, the members of the Administrative Council, and the officers and employees of the Secretariat

(i) shall be immune from legal process with respect to acts performed by them in their official capacity;

(ii) not being local nationals shall be accorded 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.

Art. III

(2) Paragraph (1) (ii) of this Section shall also apply to persons acting as conciliators or arbitrators in proceedings pursuant to this Convention, and to persons appearing as parties, representatives of parties, agents, counsel, experts or witnesses in such proceedings, but only in connection with their travel to and from the seat of the Center or other location where the proceedings are held and their stay at such location for the purpose of such proceedings.

Sec. 21

Section 19. (1) The archives of the Center shall be inviolable.

(2) The official communications of the Center shall be accorded the same treatment as is accorded to the official communications of other Contracting States.

Sec. 22

Section 20. (1) The Center, its assets, property and income, and its operations and transactions authorized by this Convention, shall be immune from all taxation and customs duties. The Center shall also be immune from liability for the collection or payment of any taxes or customs duties.

(2) No tax shall be levied on or in respect of salaries or emoluments paid by the Center to the Chairman, members of the Administrative Council or officials or employees of the Secretariat who are not local citizens, local subjects or other local nationals.

(3) No tax shall be levied on or in respect of honoraria, fees or other income received by persons acting as conciliators or arbitrators in proceedings pursuant to this Convention for their services in such proceedings, if the sole jurisdictional basis for such tax shall be the location of the Center or the place where such proceedings are conducted or the place where such income is paid.

ARTICLE II

Jurisdiction of the Center

New, incorporating elements from Art. II, Sec. 1 and Art. IV, Sec. 1

Section 1. The jurisdiction of the Center shall be limited to proceedings for conciliation and arbitration with respect to any existing or future investment dispute of a legal character between a Contracting State and a national of another Contracting State (or that State when subrogated in the rights of its national) and shall be based on the consent of the parties thereto.

New, incorporating elements from Art. II, Sec. 1 and Art. IV, Sec. 2. Note: Art. IV, Sec. 3 deleted

Section 2. The consent of any party to a dispute to the jurisdiction of the Center may be evidenced by

(i) a prior written undertaking of such party which provides that there shall be recourse, pursuant to the terms of this Convention, to conciliation or arbitration (hereinafter referred to as an undertaking);

(ii) submission of a dispute by such party to the Center; or

(iii) acceptance by such party of jurisdiction in respect of a dispute submitted to the Center by another party.

Art. IV, Sec. 5, modified

Section 3. (1) Any conciliation Commission and any Arbitral Tribunal constituted pursuant to this Convention shall be the judge of its own competence.

New, incorporating elements of Art. IV, Secs. 2 and 3, replacing Sec. 4

(2) Any claim of a party to a dispute that the Commission or the Tribunal lacks competence on the ground that

(i) there is no dispute;

(ii) the dispute is not within the scope of the undertaking;

(iii) the undertaking is invalid; or

(iv) a party to the dispute is not a national of a Contracting State,

shall be dealt with by the Commission or Tribunal, as the case may be, as a preliminary question.

(3) In any proceedings in connection with paragraph (2) (iv), a written affirmation of nationality signed by or on behalf of the Minister of Foreign Affairs of the State whose nationality is claimed by the party, shall be conclusive evidence of the facts stated therein.

ARTICLE III

Article V

Conciliation

Request for Conciliation

Sec. 1

Section 1. Any dispute within the jurisdiction of the Center may be the subject of a request for conciliation by a Conciliation Commission (hereinafter called the Commission).

Constitution of the Commission

Sec. 2

Section 2. The Commission shall consist of a sole conciliator or several conciliators appointed as the parties may have agreed. Unless otherwise agreed, the Commission shall consist of three conciliators, one appointed by each party and the third appointed by agreement of the parties, all appointees to be selected from the Panel of Conciliators.

Sec. 3

Section 3. (1) If the Commission shall not have been constituted within three months after the request referred to in Section 1, the Chairman shall, at the request of either party, appoint the conciliator or conciliators not appointed pursuant to Section 2. Before making any such appointment, the Chairman shall instruct the Secretary-General to consult with the parties and to report to him any information or views which may assist him in making the appointment.

(2) In making any appointment under this section the Chairman shall select the appointee from the Panel of Conciliators.

Art. V — Powers and Functions of the Commission

Sec. 4(1), modified incorporating substance of Sec. 8

Section 4. Except as the parties and the Commission shall otherwise agree, the Commission shall conduct the conciliation proceedings in accordance with the Conciliation Rules adopted under this Convention and in effect on the date on which the consent to conciliation became effective.

New

Section 5. (1) It shall be the duty of the Commission to clarify the points in dispute between the parties and to endeavor to bring about an agreement between them upon mutually acceptable terms.

Sec. 4(2) with drafting change

(2) The Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. If the parties shall reach agreement, the Commission shall draw up a report noting the submission of the dispute and recording that the parties have reached agreement. Except as the parties shall otherwise agree, the report shall not contain the terms of settlement accepted by the parties.

Sec. 5 with drafting change

(3) If at any time it appears to the Commission that there is no likelihood of agreement between the parties, the Commission may declare the proceedings closed. The Commission shall in that event draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. Unless the parties otherwise agree, the report shall not contain the terms of settlement, if any, recommended to the parties by the Commission.

Art. V

Obligations of the Parties

New, incorporating elements from Secs. 6 and 7(1)

Section 6. The parties shall give the Commission their full cooperation in order to enable the Commission to carry out its task. The recommendations of the Commission shall not be binding on the parties who shall, however, give them their most serious consideration.

Section 7. Neither party to a conciliation proceeding shall be entitled in any later proceeding concerning the same dispute, 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 recommendations, if any, made by the Commission therein.

ARTICLE IV

Arbitration

Article VI — Request for Arbitration

Sec. 1 — Section 1. Any dispute within the jurisdiction of the Center may be the subject of a request for arbitration by an Arbitral Tribunal (hereinafter called the Tribunal).

Constitution of the Tribunal

Sec. 2, modified — Section 2. (1) The Tribunal shall consist of a sole arbitrator or several arbitrators appointed as the parties may have agreed.

(2) Where the parties have not so agreed, the Tribunal shall consist of three arbitrators who shall not be nationals of the parties. Each party shall appoint one arbitrator and the third arbitrator shall be appointed by agreement of the parties. The arbitrators so appointed shall be selected from the Panel of Arbitrators.

Sec. 3, modified — Section 3. If the Tribunal shall not have been constituted within three months after the request referred to in Section 1, the Chairman shall, at the request of either party, appoint the arbitrator or arbitrators not appointed pursuant to Section 2. The arbitrator or arbitrators so appointed shall not be nationals of the parties and shall be selected from the Panel of Arbitrators. Before making any such appointment, the Chairman shall instruct the Secretary-General to consult with the parties and to report to him any information or views which may assist him in making the appointment.

Art. VI — Powers and Functions of the Tribunal

Sec. 5 — Section 4. (1) In the absence of any agreement between the parties concerning the law to be applied, and unless the parties shall have given the Tribunal the power to decide ex aequo et bono, the Tribunal shall decide the dispute submitted to it in accordance with such rules of law, whether national or international, as it shall determine to be applicable.

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

Sec. 4, modified — Section 5. Except as the parties otherwise agree, any arbitration proceeding shall be conducted in accordance with the Arbitration Rules adopted under this Convention and in effect on the date when the consent to arbitration became effective. If any question of procedure arises which is not covered by the applicable Arbitration Rules, the Arbitral Tribunal shall decide that question.

Sec. 8 — Section 6. All questions before the Tribunal shall be decided by majority vote.

Sec. 9(1), modified — Section 7. (1) An award signed by a majority of the Tribunal shall constitute the award of the Tribunal. The award shall be in writing and shall state the reasons upon which it is based.

(2) The award shall immediately be communicated to the parties.

Art. VI

Sec. 9(2), elaborated

Section 8. (1) Whenever one of the parties does not appear before the Tribunal, or fails to defend its case, the other party may call upon the Tribunal to decide in favor of its claim.

(2) In such case, the Tribunal may render an award if it is satisfied that it has jurisdiction and that the claim appears to be well founded in fact and in law.

Sec. 7, modified

Section 9. Except as the parties otherwise agree, the Tribunal shall have the power to hear and determine incidental or additional claims or counter-claims arising directly out of the subject-matter of the dispute.

Sec. 6

Section 10. Except as the parties otherwise agree, the Tribunal shall have the power to prescribe, at the request of either party, any provisional measures necessary for the protection of the rights of the parties.

Interpretation, Revision and Annulment of the Award

Sec. 11 Tentative period suggested

Section 11. (1) Any dispute between the parties as to the meaning and scope of the award may, at the request of either party made within [three] months after the date of the award, be submitted to the Tribunal which rendered the award. Such a request shall stay the enforcement of the award pending the decision of the Tribunal.

(2) If for any reason it is impossible to submit the dispute to the Tribunal which rendered the award, a new Tribunal shall be constituted in accordance with the terms of the agreement, if any, between the parties regarding the constitution of the Tribunal which rendered the award, and otherwise pursuant to the provisions of this Article.

Art. VI

Sec. 12(1) Section 12. (1) An application for revision of the award may be made by either party on the ground of the discovery of some fact of such a nature as to have a decisive influence on the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the party requesting revision and that such ignorance was not due to the negligence of the party requesting revision.

Sec. 12(2) (2) The application for revision must be made within [six] months of the discovery of the new fact and in any case within [ten] years of the rendering of the award.

Sec. 12(3), modified (3) The application 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 terms of the agreement, if any, between the parties regarding the constitution of the Tribunal which rendered the award, and otherwise pursuant to the provisions of this Article. The Tribunal to which the application is made may stay the enforcement of the award pending its decision.

New Section 13. (1) Either party may apply to the Chairman for a declaration that the award is invalid on one or more of the following grounds:

(a) that the Tribunal has exceeded its powers;

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

(c) that there has been a serious departure from a fundamental rule of procedure, including failure to state the reasons for the award.

Art. VI

(2) On receipt of that application the Chairman shall forthwith appoint a Committee of three persons, not being members of the Tribunal which rendered the award, which shall, by majority decision declare the validity or otherwise of the award or any part thereof on any of the grounds set forth in the preceding paragraph.

(3) In cases covered by subparagraphs (a) and (c) of paragraph (1), application must be made within sixty days of the rendering of the award, and in cases covered by subparagraph (b) of paragraph (1), within six months.

(4) The Committee shall have the power to stay enforcement of the award pending its decision and to recommend any provisional measures necessary for the protection of the rights of the parties.

(5) If the award is declared invalid the dispute shall be submitted to a new tribunal constituted by agreement between the parties or, failing such agreement, in the manner provided in Sections 3 and 4 of this Article.

Enforcement of the Award

Sec. 10, modified

Section 14. The award shall be final and binding on the parties. Each party shall abide by and comply with the award immediately, unless the Tribunal shall have allowed a time limit for the carrying out of the award or any part thereof, or the enforcement of the award shall have been stayed pursuant to Sections 11, 12 or 13 of this Article.

New. Subject-matter foreseen in Art. VIII

Section 15. Each Contracting State shall recognize an award of the Tribunal as binding and enforce it within its territories as if it were a final judgment of the courts of that State.

Relationship of Arbitration to other Remedies

Art. II, Sec. 4 with drafting change

Section 16. An undertaking to have recourse to arbitration shall, unless otherwise stated therein, be deemed to be an undertaking to have recourse to arbitration in lieu of any other remedy.

New, incorporating elements from Art. II, Sec. 5

Section 17. (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 undertaken to submit, or shall have submitted to arbitration pursuant to this Convention, except on the ground that the other Contracting State has failed to perform its obligations under this Convention with respect to that dispute.

(2) Nothing in this Section shall affect the right of a Contracting State to bring an international claim against another Contracting State where such right accrues through breach of any other international agreement arising out of the facts of such dispute between a national of the Contracting State and the other Contracting State, without prejudice, however, to the finality and binding character of the award in that dispute as between the parties thereto.

ARTICLE V

Article VII — Replacement and Disqualification of Conciliators and Arbitrators

Sec. 5 with drafting change

Section 1. After a Conciliation Commission or an Arbitral Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or arbitrator shall die or become incapacitated, or shall have resigned, the resulting vacancy shall be filled by the method used for the original appointment, except that 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, or consequent upon a decision to disqualify him pursuant to Section 2(3) of this Article, the resulting vacancy shall be filled by the Chairman.

Sec. 6, modified

Section 2. (1) (a) A party may propose the disqualification of a conciliator or arbitrator appointed pursuant to Article III, Section 2, or Article IV, Section 3, respectively, on account of any fact whether antecedent or subsequent to the constitution of the Commission or Tribunal.

(b) A party may propose the disqualification of a conciliator or arbitrator appointed by the Chairman pursuant to Article III, Section 3, or Article IV, Section 4, on account of a fact arising subsequent to the constitution of the Commission or Tribunal. It may propose disqualification of such conciliator or arbitrator on account of a fact which arose prior to the constitution

of the Commission or Tribunal only if it can show that the appointment was made without knowledge of that fact or as a result of fraud.

(2) The decision on any proposed disqualification 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 as to the decision, or in the case of a single conciliator or arbitrator, 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 resign, and the resulting vacancy shall be filled in the manner provided for in Section 1 of this Article.

ARTICLE VI

Article VII — Apportionment of Costs of Proceedings

Sec. 1 Section 1. Except as otherwise agreed by the parties, each party to a conciliation or arbitration proceeding shall bear its own expenses, and any fees and expenses of the Center and of conciliators and arbitrators shall be divided between and borne equally by the parties; provided, however, that if a Conciliation Commission or Arbitral Tribunal determines that a party has instituted the proceedings frivolously or in bad faith, it may assess any part or all of such fees and expenses against that party.

Sec. 2 Section 2. The fees and expenses of the Center to be charged to the parties shall be fixed by the Secretary-General within the limits approved from time to time by the Administrative Council.

Sec. 3 Section 3. The fees and expenses of conciliators and arbitrators shall, in the absence of agreement between them and the parties, be fixed by the Commission or Tribunal concerned after consultation with the Secretary-General.

ARTICLE VII

Article VII — Place of Proceedings

Sec. 4(1), with drafting change

Section 1. Conciliation and arbitration proceedings shall be held either at the seat of the Center or, if permitted under any arrangements made pursuant to Article I, Section 2(3), at the seat of the Permanent Court of Arbitration, as the parties may agree. If the parties do not so agree the Secretary-General shall, after consultation with the parties and with the Conciliation Commission or the Arbitral Tribunal, as the case may be, determine the place of the proceedings.

Sec. 4(2), with drafting change

Section 2. Notwithstanding the provisions of Section 1, proceedings may be held elsewhere, if the parties so agree and if the Conciliation Commission or Arbitral Tribunal, as the case may be, so approves after consultation with the Secretary-General.

ARTICLE VIII

Interpretation

New. Foreseen in proposal for Art. IX

Any question or 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, unless the States concerned agree to another mode of settlement.

ARTICLE IX

Amendment

New

Section 1. Any Contracting State may propose amendment of this Convention. The text of such proposed amendment shall be communicated to the Chairman of the Administrative Council not less than [three] months prior to the next succeeding annual meeting of the Council and shall forthwith be transmitted by him to all Contracting States.

Section 2. Amendments shall be adopted by a majority of [four-fifths] of the members of the Council. [Twelve] months after its adoption each amendment shall come into force for all Contracting States.

ARTICLE X

Definitions

New

1. "National of a Contracting State" means a person natural or juridical possessing the nationality of any Contracting State on the effective date of an undertaking within the meaning of Section 2 of Article II, and includes (a) any company which under the domestic law of that State is its national, and (b) any company in which the nationals of that State have a controlling interest. "Company" includes any association of natural or juridical persons, whether or not such association is recognized by the domestic law of the Contracting State concerned as having juridical personality.

2. "National of Another Contracting State" means any national of a Contracting State other than the State party to the dispute, notwithstanding that such person may possess concurrently the nationality of a State not party to this Convention or of the State party to the dispute.

[Other definitions may be added if necessary]

ARTICLE XI

Final Provisions

Entry into Force

New

Section 1. This Convention shall be open for signature on behalf of States members of the Bank and all other sovereign States.

Section 2. This Convention shall be subject to ratification or acceptance by the signatory States in accordance with their constitutional peocedures. The instruments of ratification or acceptance shall be deposited with the Bank and shall declare that the State concerned has taken all steps necessary to enable it to carry out all of its obligations under this Convention.

Section 3. This Convention shall enter into force when it has been ratified or accepted by [ ] of the States listed in Part I of Schedule A of the Articles of Agreement of the International Development Association, and [ ] other States.

Territorial Application

Section 4. By its signature of this Convention, each State accepts it both on its own behalf and in respect of all territories for whose international relations such State is responsible except those which are excluded by such State by written notice to the Bank.

Denunciation

Section 5. (1) Any Contracting State may denounce this Convention by notice to the Bank.

(2) The denunciation shall take effect [twelve] months after receipt by the Bank of such notice; provided that the obligations of the State concerned arising out of undertakings given prior to the date of such notice shall remain in full force and effect.

Inauguration of the Center

Section 6. After this Convention has entered into force, the President of the Bank shall convene the inaugural meeting of the Administrative Council.

Registration

Section 7. The Bank is authorized to register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

DONE at Washington, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to act as depository of this Convention, to register this Convention with the Secretariat of the United Nations and to notify all signatory States of the date on which this Convention shall have entered into force.

FORM NO. 26
(2-62)

Arbitration

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

INCOMING WIRE

DATE OF WIRE: JULY 4, 1963 0945

LOG NO.: RC 2

TO: INTBAFRAD

FROM: ATHINAI

ROUTING	
ACTION COPY:	MR. CLARK
INFORMATION COPY:	
DECODED BY:	

TEXT:

PLEASE MAKE FOLLOWING CHANGES. PAGE SIX SECTION SIXTEEN LINE THREE AFTER STATES INSERT WHICH ARE MEMBERS OF THE BANK. PAGE NINE LINE TWELVE OMIT A BETWEEN SUCH AND PARTY. PAGE TWELVE SECTION SIX LAST LINE INSERT THEIR BETWEEN THEM AND MOST. PAGE FIFTEEN INSERT TOPIC HEADING BEFORE SECTION ELEVEN. PAGE SEVENTEEN REPLACE SIXTEENTH THROUGH TWENTYFOURTH WORDS BY QUOTE WITHIN ITS TERRITORIES UNQUOTE AND LAST WORD OF SECTION FIFTEEN BY QUOTE STATE UNQUOTE. PAGE EIGHTEEN EIGHTH LINE FROM BOTTOM FOURTH WORD SHOULD BE OR FULLSTOP

BROCHES

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DUPLICATE