Folder Title:	Operational - Arbitration - General - Correspondence - Volume 1
Folder ID:	1070931
Series:	Operations policy and procedures
Dates:	04/15/1957 - 03/22/1965
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ARBITRATION - General

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ARBITRATION CLAUSES - ~~Oper. Files~~

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Burma	Port Project	Sir Alexander Gibb & Partners
Ceylon	Pipe Lines	Societe des Forges et Ateliers du Creusot; Preece Cardew & Rider (consulting engineers)
Colombia	Transmission Lines	Ingenieria y Construcciones Ltda.
	National Railways	Various subcontractors
Ecuador	Power	R. J. Tipton Associated Engineers
El Salvador	Littoral Highway	Knappen-Tippetts-Abbett-McCarthy
Guatemala	Part of Pacific Highway	Rodriguez y Hegel Compania
	Part of Atlantic Highway	Nello Leguy Teer
	Part of Pacific Highway	Ingeniero Jose Arias Dufourco (Compania Constructora el Aguila, S.A.)
Honduras	Re: Highway Program	Porter-Urquhart Asscciated
Haiti	Highway	Techint
India		Societe Generale pour l'Industrie, Conrad Zschokke Ltd., Monsieur
	Power	Tata & The Andhra Valley Power Supply Ltd.
	Steel Plant	Tata & Kaiser Engineers
Japan	Irrigation & Drainage	Erik Floor & Associates
Lebanon	Power & Irrigation	Societe d'Etudes
Pakistan		Siemens-Schuckertwerke A.G.
	Power	Handcock & Dykes and Brian Colquhoun & Partners
Peru	Port	Raymond Construction Co.
Rhodesia & Nyasaland	Power	Gibb Coyne Sogei
Thailand	Bar Channel	Raymond Concrete Pile Co., Morris Cumings Dredging Co., Daniel, Mann, Johnson & Mendenhall and H.C. Smith Construction Company
	Power & Irrigation	Westinghouse
	Chao Phya River Dam	Keir & Cawder Ltd.
Turkey	Seyhan Dam	KTAM
Uruguay	Power	Gruner Associates

Excerpt from "Board of Management for the Port of Rangoon - Development of Port of Rangoon - Contract No. 1 - Sule Pagoda Wharves Nos. 5, 6 and 7 - General Conditions of Contract - August, 1955"

Board of Management for the Port of Rangoon

Engineer: Sir Alexander Gibb & Partners
Consulting Engineers
London

"66. Settlement of Disputes - Arbitration

If any dispute or difference of any kind whatsoever shall arise between the Employer or the Engineer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (whether during the progress of the Works or after their completion and whether before or after the determination abandonment or breach of the Contract) it shall be referred to and settled by the Engineer who shall state his decision in writing and give notice of thesame to the Employer and the Contractor. Such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor until the completion of the work and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether notice of dissatisfaction is given by him or by the Employer as hereinafter provided or not. If the Engineer shall fail to give such decision for a period of three calendar months after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer then and in any such case either the Employer or the Contractor may within three calendar months after receiving notice of such decision or within three calendar months after the expiration of the said period of three months (as the case may be) require that the matter shall be referred to an arbitrator to be agreed upon between the parties or failing agreement one to be appointed by each party and the arbitrators so appointed shall appoint an umpire before proceeding with the arbitration and any such reference shall be deemed to be a submission to arbitration within the meaning of The Arbitration Act, 1944 (Burma Act No. IV of 1944) or any statutory re-enactment or amendment thereof for the time being in force. Such arbitrator shall have full power to open up review and revise any decision opinion direction certificate or valuation of the Engineer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Engineer for the purpose of obtaining his decision above referred to. The award of the arbitrator shall be final and binding on the parties. Such reference except as to the withholding by the Engineer of any certificate or the withholding of any portion of the retention money under Clause 60 hereof to which the Contractor claims to be entitled or as to the exercise of the Engineer's power to give a certificate under Clause 63(1) hereof shall not be opened until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor. Provided always:-

(i) that the giving of a Certificate of Completion under Clause 48 hereof shall not be a condition precedent to the opening of any such reference

(ii) that no decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.

From Op.Files: Burma Doc. 20

Excerpt from Form of Contract, Specification and Schedules entered into by the Government of Ceylon (the "Government" or "the Purchasers") of the one part and Societe des Forges et Ateliers du Creusot ("the Contractor") of the other part, March 5, 1955.

Re: Pipe Lines

Consulting Engineers: Preece, Cardew & Rider

"70. Arbitration

If during the continuance of this Contract or at any time after the termination thereof any difference or dispute shall arise between the parties hereto in regard to the interpretation of any of the provisions herein contained or any other matter or thing relating to this Agreement (other than any difference or dispute in respect of which a decision of the Deputy Secretary is declared to be final and binding on the parties hereto) such difference or dispute shall be forthwith referred to two arbitrators for arbitration in Ceylon, one to be appointed by each party with liberty to the arbitrators in case of difference or their failing to reach an agreement within one month of their appointment to appoint an umpire resident in Ceylon and the award made by the two arbitrators or umpire as the case may be shall be final and conclusive and binding on the parties hereto. If either party in difference fail or neglect to appoint an arbitrator for the space of thirty days after notice in writing to do so has been given by the other party or shall appoint an arbitrator who shall refuse to act, then the arbitrator appointed by the other party shall make a final decision alone and the making of any award in such reference shall be a condition precedent to any right of action against any of the parties hereto in respect of such difference."

The same clause is included in the Contract between the Government of Ceylon and Societa Anonima Elettrificazione, Italy. Re: Transmission Lines. Consulting Engineers: Preece, Cardew & Rider.

In a Tender for Construction of Transmission Lines, dated August 26, 1955 the following sentence was included: "The party who requests arbitration shall if so required by the Permanent Secretary to the Ministry of Transport and Works deposit with him prior to the appointment of arbitrators such sum as shall be fixed by him towards the cost of the arbitration."

Excerpt from: Contract for Construction of the Transmission Line

The Anchicaya River Hydroelectric Center, Ltd., and the Ingenieria y Construcciones Ltda.

"... Clause Sixteen - Article 45

Both parties name the city of Cali as their special legal domicile for any arbitration actions or proceedings which may arise from this contract. Article 46. The doubts or differences which may arise between the contracting parties in regard to this contract, about which it has not been possible to reach a direct agreement, shall be submitted to the decision of arbitration courts which will be composed of law graduates, each party appointing one and the two principal ones appointing a third, to that effect it shall be proceeded in accordance to law 2 of 1938, the arbitration will be performed in pursuance with the Colombian law and the decision will have legal effect. The arbitration court will perform in the city of Cali and the District Judge of that jurisdiction will be called in case any of the parties abstains from appointing the arbiter under the provisions of Article Five of said Law 2 of 1938.

PARAGRAPH. When purely technical matters are dealt with not involving any kind of differences of interpretation, performance or effects of the contract, and that therefore there is no matter for legal decision, as it may occur in the case of remarks of the Interventor* on works or part of works in progress or at the time of the checking or inspection of the materials, which remarks are not considered by THE CONTRACTORS as being well founded, there will be no arbitration as provided in this article and such difference will be settled by expert engineers, appointed one by each party and a third, in case of discrepancy, by the two principals; both parties can agree to submit the expert report to the opinion of a single expert, whether natural or legal person. Article 47. The differences that give rise to arbitration, according to the terms of article 46 of this Clause shall be submitted in writing to the arbiters, and while the decision is being reached the work shall not be suspended unless special circumstances make that advisable or the arbiters appointed for the purpose so decide, and in this event the terms of delivery shall be suspended."

* Government Supervisor

Ten files on Loan 68 CO - National Railways Project - contain several contracts and subcontracts for building bridges, etc. The majority of these contracts are in Spanish and include the following "Arbitration" clause:

"Differences - The differences of technical or administrative character that may occur between the Contractor and the Interventor or any other employee authorized by the Government, will be resolved by the Ministry of Public Works, whose decision will not be appealable.

Excerpt from: Contract between Empresa Electrica "Quito" S.A. and R.J. Tipton Associated Engineers, Inc.

Covering consulting engineering services in connection with the Cunucyacu Project

"... Differences in the Interpretation of the Contract

The Empresa and the Engineers are obliged to call to the attention of the World Bank all differences of opinion which may arise between the two parties with respect to the interpretation of anyone or more clauses of this contract. At the same time, the two parties accept the good offices of the World Bank in arriving at a solution of such differences, particularly with respect to matters of technical nature."

Excerpt from Translation of Contract between El Salvador and the firm of Knappen-Tippetts-Abbett-McCarthy re: the design and supervision of the construction work of the Littoral Highway.

"Clause Seventeen

Any controversy arising out of the present contract between the "Government" and "the Consulting Engineers" will be submitted to Arbitrators for decision, all to be done in conformance with the laws of El Salvador. In this case, each one of the parties to the controversy will name one arbitrator and will agree upon a third party who must be mutually agreeable to both parties who will be called upon in case of discord."

Excerpt from Translation of the Proposed Contract between the Government of Guatemala and "Rodriguez y Hegel Compania Limitada" "Ingenieros Contratistas Guatemaltecos" ("ICONGUA") for the construction of Project "OP - 350 of the Pacific Highway.

"Clause Eight: Arbitration

Both parties agree that in all questions or difference that may arise between them because of this contract, its interpretation, or the work agreed to in it, which might generate judicial action, shall be resolved directly between the two parties in a conciliatory manner. If the differences or questions cannot be settled directly, they shall be submitted to a Board of Arbitration formed by arbitrating arbitrators. Each party shall nominate an arbitrator and these shall immediately appoint a third one, acceptable to both parties, who shall intervene in case of disagreement between the first two. If the first two arbitrators fail to reach an agreement as to the appointment of a third, he shall be appointed by the President of the Judiciary ("Organismo Judicial") of Guatemala upon the request of either of the parties. Proceedings prior to the constitution of the Board of Arbitration, will be effected in the presence of a competent judge of the City of Guatemala, and this Capital shall be the seat of the Board of Arbitration. Written claims presented by one of the parties to the other shall be taken as demands, and as answers, the replies also in writing given to the claims. The official record of commitment shall incorporate these documents in order to determine the objectives of the arbitration. The arbitrators nominated by the parties shall declare the Board of Arbitration in force, and without further proceedings, shall indicate to both parties the term of thirty (30) days set to prove the facts. In the findings, the cost of the arbitration shall be determined by the judge. The findings shall always be definite and final and shall not allow protests of any kind against it, except in the extraordinary case of appeal to the Supreme Court for cancellation because of substantial violation of the proceeding."

Excerpt from Translation of Contract between "Enrique Salazar Liekens ... in his capacity as Under Secretary of Communications and Public Works, party of the first part; and Nello Leguy Teer ... in his capacity as President of the 'Nello L. Teer Company' registered in the State of Delaware, U.S.A. ..." for the construction of the Atlantic Highway, Project C.I.O. 90, Stretch from Trapichito to the Motagua River.

"Clause Eight: Arbitration

The two parties agree that in all questions or differences which may arise between them because of this contract, its interpretation or of the work agreed to in it, and which might give rise to judicial proceedings, will be resolved directly by them through conciliatory measures. If questions or disagreements cannot be resolved directly in this way, they will be submitted to appointed, disinterested arbitrators. Each party will name an arbitrator (Ex-aequo et bono) and these will immediately appoint a third who would be acceptable to both parties and who would intervene in case of disagreement between the two first. In case the two parties do not arrive at an agreement in regard to the appointment of the third, this person will be appointed by the President of the Judicial Organization in Guatemala upon request from either party. The proceedings previous to the formation of the Tribunal for Arbitration will be expounded before a competent judge of the City of Guatemala, and this Capital will be the seat of the Tribunal of Arbitration. All written communications from one party to the other and the replies will be admitted as claims before the Tribunal. The commitment documents to be presented will include these documents in order to define the objectives of the arbitration. The arbitrators named by the parties will declare the Tribunal in force and, without further proceedings, will indicate to both parties that the term of thirty (30) days is allowed in order to prove all facts. In the decision must be resolved the matter of payment of the costs of arbitration which shall be liquidated by the judge. The decisions shall always be definite and final and no protest against them will be allowed; except in the extraordinary case of appeal to the Supreme Court for annulment due to material violation of the rules governing this contract."

Excerpt from Contract between the Government of the Republic of Guatemala and Ingeniero Jose Arias Dufourco, representing "Compania Constructora el Aguila S.A. de C.V., for the construction of the highway, drainage and bridges of "project C.P. 300 and 350." Sections comprised between Taxisco and Chiquimulilla and Chiquimulilla to Pijije of the Pacific Highway ...

"Twelveth Clause: Authorization to Work, Subjection to the Laws of the Country and Arbitration

a) "Constructora el Aguila S.A. de C.V." and their subcontractors duly incorporated in accordance with the Specifications, are hereby expressly authorized to work in the Republic of Guatemala with the exclusive purpose to carry to completion the present Contract; b) "The Contractor" submits himself expressly to the laws and Legal Provisions of the Republic of Guatemala, and waives his right to recur to diplomatic channels in claim of any matter related to the present contract; c) The parties agree that in all questions and differences which may arise between them because of this contract, its interpretation or of the work contracted, and which may result in Judicial proceedings, will be resolved directly by the parties in a conciliatory manner. In case the differences or questions may not be resolved by means of direct conciliatory agreement, they will be referred to a Board of Arbitration. Each party shall name an Arbitrator and these will appoint immediately a third one, acceptable for both parties, who will intervene in case of any disagreement between the first two. In case the parties can not reach an agreement with regard to the appointment of the third one, he will be appointed by the President of the Judiciary of Guatemala, at the request of either one of the interested parties. The proceedings previous to the constitution of the Board of Arbitration shall be substantiated before a competent Judge of the city of Guatemala and this Capital City shall be the seat of the Board of Arbitration. The written claim or claims submitted by one of the parties shall be considered as the demand and as the reply the written responses given to the claims. The instrument of agreement shall incorporate these documents to define the purposes of the arbitration. The Arbitrators appointed by the parties will declare the Board, as constituted and without any further proceedings will make known to the parties the term of thirty working days to prove the facts. The payment of the costs of the Arbitration shall be resolved in the award which will be liquidated by the Judge. The decision shall be always final and no recourse will be permitted except because of substantial violation of the proceedings."

(The same type clause is included in the Contract between Guatemala and "Mr. Russell David Antisdel Thorsen in his double character with general power of attorney of the companies "Conticca International Corporation" and "Constructora Nacional de Tuneles y Carreteras Compania Anonima" for the construction of the pavement and base of Project C.I.O. 300 ...." Stamped at the top of this contract is the name "Tippetts-Abbett-McCarthy-Stratton of Panama, Inc. Gibbs & Hill, Inc.)

Excerpt from Contract between Ministry of Development of the Republic of Honduras and Upham, Porter-Urquhart Associated, re: Planning and carrying out an overall maintenance program; Reorganization of the entire Highway Department; Preparation of preliminary surveys for the improvement, new construction and reconstruction of the Northern and Western highways.

"K. Arbitration

Any dispute or controversy arising out of or in connection with this Contract shall be submitted to arbitration, to be held in Tegucigalpa, Honduras, and in accordance with the laws of the Republic of Honduras. The award of the arbitrators shall be final and binding, and the award may be filed in any court having jurisdiction. The arbitration shall be had before three arbitrators, one to be chosen by each of the parties and the third by the two so chosen, in the following manner. The party desiring such arbitration shall give to the other party written notice of its desire, specifying the question or questions to be arbitrated, and naming an arbitrator chosen by it. Within 20 calendar days thereafter the other party shall give written notice to the party desiring arbitration, specifying any additional question or questions to be arbitrated, and naming the arbitrator chosen by such other party. The two arbitrators so chosen shall select the third within 10 days after naming the second arbitrator. In the 10-day period above mentioned, the Court having jurisdiction may, upon application by either party, nominate such third arbitrator.

The arbitrators shall determine which party shall pay the expenses of such arbitration, or the proportion thereof which each party shall bear, and the arbitration expenses so allocated shall be paid accordingly."

Mr. Hathaway

Room 303

From a contract for the services of consulting engineers relative to ~~xxx~~ Haiti's highway development.

9. Arbitration Clause

All differences of opinion arising between the two parties relative to the interpretation or execution of this agreement shall be submitted, if no friendly arrangement intervenes, to an arbitration council constituted in accordance with the arbitration procedure provided for by the Haitian legislation with the following reservations:

committee
The arbitration/shall consist of two arbitrators one appointed by the plaintiff and the other by the defendent. If the arbitrators fail to come to an agreement they shall select a third arbitrator. If they fail to choose a third arbitrator, the latter shall be appointed by the president of the court of appeals.

The third arbitrator shall be neither a Haitian nor an Italian citizen.

The party which deems it necessary to resort to arbitration shall so notify the other party through legal channels or by registered letter. It shall at the same time appoint the arbitrator of his choice. Failure to appoint the arbitrator shall make the action null and void. If within two weeks from the receipt of this notification defendent does not appoint his arbitrator, he shall forfeit all his rights.

The arbitration council must, without recourse to ordinary jurisdiction, take its decisions by majority vote and give its decision ex aequo et bono. In the case that majority is not obtained the vote of the third arbitrator shall be final and shall not be liable to stay of execution.

Arbitration shall be granted a delay of two months. The interested parties may agree to extend this delay.

Neither of the parties may refuse to continue the fulfillment or refuse to continue to fulfill its obligations as defined in this agreement under the pretext that one or the other party has had recourse to arbitration.

The arbitration council shall sit in Haiti.

there are
If/only two arbitrators, each party shall pay the expenses of its own arbitrator.

If there are three arbitrators the third arbitrator shall decide which of the two interested parties must pay the arbitration expenses.

TRANSLATION SECTION

Translated From: Erench 6.20.57 By: AB.

Contract in Op Fil[illegible] HA - Admin. I

Excerpt from the Contract between The Governor of Bombay ("the Government") and Societe Generale pour l'Industrie, Geneva; Conrad Zschokke Limited, Geneva; and Monsieur Henri Gicot, Consulting Engineer, Fribourg ("the Consulting Engineers"):

"Any difference including the difference as to the interpretation of this contract or its clauses which cannot be settled between the parties hereto shall be settled by arbitration in India.

Upon a specific request indicating details of the difference of opinion in writing by either party each party shall appoint an arbitrator within 45 days of receiving the request. In case either party fails to appoint an arbitrator within the time specified above, then such arbitrator shall be appointed by the Chief Justice of the High Court of Bombay, India, at the request of either party. In the event of the arbitrators not being able to come to an agreement within 30 days of their appointment, the matter shall be decided by the award of a third arbitrator to be appointed by the mutual consent of the two arbitrators within one month from the date of their appointment. If the two arbitrators fail to appoint a mutually acceptable third arbitrator within a period of 30 days, the same shall be appointed by the President of the International Court of Justice in the Hague at the request of either party, and his decision shall be final and binding on both the parties. The provisions of the Indian Arbitration Act of 1940 and the rules thereunder and any statutory modifications thereof shall be deemed to apply in this behalf.

The expenses of the arbitration shall be allocated between the parties as the arbitration board may direct."

Excerpt from Final Draft Agreement between Burns and Roe, Inc. and Tata, Inc. acting as representative and agent for The Tata Hydroelectric Power Supply Ltd., The Andhra Valley Power Supply Ltd., and The Tata Power Company Ltd., hereinafter collectively called "Owner."

"Article VII - Audit

The Engineers shall keep accurate records and books of account showing all charges and all expenses incurred by the Engineers in the performance of the work hereunder. The Owner and Tata, Incorporated shall have the privilege of verifying at any time direct costs, expenses and disbursements made or incurred by the Engineers in connection with the work to be performed hereunder by means of examination of the Engineers' books and records relating thereto.

Article VIII - Termination

Should the Owner find it necessary to discontinue or postpone prosecution of the work to be performed hereunder, the Owner shall have the right to terminate the services of the Engineers and to cancel this Agreement forthwith. The Engineers shall be paid the amount earned or reimbursable to them hereunder to the time of such cancellation and all reasonable expenses incurred by the Engineers in terminating the work, under proper certification, and shall have no further claim against the Owner with respect thereto.

Article IX - Arbitration

Any dispute or difference arising out of this Agreement which cannot be settled or adjusted by mutual agreement, or the settlement of which is not otherwise provided for in the Agreement, shall be settled and finally determined by arbitration in the City of New York in the following manner: Each of the two parties concerned shall appoint an arbitrator. If the two arbitrators so appointed cannot agree within two weeks of the date of their appointment, they shall select a third arbitrator. The three arbitrators shall then meet and give an opportunity to each party to present its case and witnesses (if any) in the presence of the other party. The arbitrators shall then make their award. A decision in writing of the three arbitrators, or any two of them, shall be final and binding upon the parties, and judgment may be entered thereon in any court having jurisdiction. The decision of the arbitrators shall include the fixing of the expenses of the arbitration and the assessment of the same against either or both parties.

If either party shall fail to appoint its arbitrator within thirty (30) days after notice in writing from the other party requiring it to do so, the arbitrator appointed by the other party shall act for both, and his decision shall be final and binding upon both parties, as if he had been appointed by consent.

If, in an appropriate case, the arbitrators appointed by the parties shall fail to select a third arbitrator, a third arbitrator shall be selected in accordance with the then current rules and regulations of the American Arbitration Association."

Excerpt from: CONTRACT between THE TATA IRON AND STEEL COMPANY, LIMITED and KAISER ENGINEERS OVERSEAS CORP. Covering The EXPANSION of the JAMSHEDPUR STEEL PLANT.

"... Any dispute or difference as to interpretation, administration or execution of the terms of this contract including any difference arising under Article X, paragraph 3, shall be resolved by a Board of Arbitration to be established as follows:-

(i) Tata Steel shall appoint one person to such Board

(ii) Kaiser Overseas shall appoint one person to such Board

(iii) The two persons so appointed shall appoint a third and impartial person.

The three persons named as above shall constitute the Board of Arbitration and the decision of any two thereof shall be binding upon both parties hereto and the costs of arbitration shall be paid in the manner such Board of Arbitration may decide.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly executed, as of the day and year first hereinabove set forth."

****

"Article X, paragraph 3:

Upon completion in accordance with approved plans and specifications of all work and services within the scope of the Project, and on completion of all performance tests as may be required under this contract Kaiser Overseas shall certify to Tata Steel final completion of the Project. Within 15 days thereafter Tata Steel shall either (i) give Kaiser Overseas in writing a final acceptance of the Project, or (ii) notify Kaiser Overseas in writing of any items of work which it considers incomplete or defective, specifying the extent and character of any work it considers to be requisite to final completion. In the latter event, if Kaiser Overseas does not agree with such specification or work required to be performed, the parties shall mutually agree and failing agreement the Board of Arbitration to be appointed under the provisions of Article XIX may fix on the work to be so performed and upon completion thereof, Tata Steel shall give Kaiser Overseas the abovementioned written final acceptance."

From Op. Files: Doc. 11, Loan 146 IN

Excerpt from the Draft Agreement between the Aichi Irrigation Public Corporation and Erik Floor & Associates, Inc. re: irrigation and drainage, etc.

"Article XII - Arbitration

Any dispute between the Public Corporation and E.F.A. as to the interpretation, administration or execution of the terms and conditions of this agreement shall be resolved by arbitration, and the parties agree to submit all disputes to arbitration. Arbitration shall be conducted in the following manner:

(a) Either party may initiate arbitration proceedings by notifying the second party in writing (registered mail) to this effect, giving the name of its appointed Arbitrator.

(b) Within twenty (20) days after receipt of such notice, the second party shall by written notice (registered mail), notify the first party of its appointed Arbitrator. In the event that the second party shall refuse or fail to appoint its Arbitrator as provided for in this paragraph (b) then the arbitration shall be proceeded with by the Arbitrator appointed by the first party whose decision shall be final and bindings upon the parties.

(c) Within twenty (20) days after the receipt by the first party of the notice provided for in (b) of the appointment of the second party's arbitrator, a third Arbitrator shall be chosen by these two or, in the event such third Arbitrator cannot be agreed upon by the first two Arbitrators within said period, then he shall be chosen by the then senior diplomatic representative of the Government of Switzerland, resident in Tokyo, Japan. This third Arbitrator shall not be connected with either party hereto in any manner whatsoever.

(d) The Arbitrators shall, during the period of arbitration, reside in Japan, but shall not necessarily be citizens of, or permanent residents in Japan.

(e) All matters concerning the subject to be arbitrated shall be submitted in Tokyo to the Arbitrators as rapidly as possible by both parties hereto, and the findings (delivered in writing) of a majority of the Arbitrators shall be accepted as final and binding upon the parties hereto.

(f) The arbitration expenses shall be paid in the manner decided by the Arbitrators.

(g) The Japanese code of civil procedure shall govern all arbitration proceedings.

Mr. Hathaway

Room 303

From: Contract between O.N.L. and the Société d'Etudes pour les Travaux de la Phase "A" du Litani.

- Chapter 10 -

10 - 4.- Arbitration

All controversies arising from the application of the present contract and not settled by the Commission provided for in article 3 - 6, must be submitted to an arbitration commission composed of two members, both parties appointing one member, the President being an expert designated by the Bureau of Claims of the U.S.A., who shall also fixe the respective fees.

The arbitration commission must give judgement within a period not exceeding 3 months; in the case that one of the two parties should fail to appoint its delegate, such delegate shall be appointed by the President of the arbitration commission.

All requests for arbitration, in order to be admitted, must be introduced prior to final settlement. The funds for expenses and fees of the President of the arbitration commission shall be advanced by plaintiff and paid in accordance with the distribution fixed by the President of the arbitration commission.

10 - 5.- If work is stopped before its completion, whatever be the reason therefor, the engineer shall accept payment for his studies and supervision on the basis of the distribution mentioned in article 9 - 4.

The fees relative to the preliminary and final completed studies shall be considered to be due and charged on the sums of the estimated amounts.

As regards the works, the fees shall be computed on the basis of the cash amount due to contractors.

TRANSLATION SECTION

Translated From: French 5.28.57 By: AB.

Excerpt from the Contract between the Government of Pakistan and Siemens-Schuckertwerke A.G.

"If at any time any question, dispute or difference whatsoever shall arise between the purchaser or the Consulting Engineers and the contractor upon, or in relation to, or in connection with the contract, either party may forthwith give to the other notice in writing of the existence of such question, dispute or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon in Pakistan. This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1940 or any statutory modification thereof.

The award of the arbitrator shall be final and binding on the parties. Upon every and any such reference the costs of an incidental to the reference and award respectively shall be in the discretion of the arbitrator, who may determine the amount thereof, or direct the same to be taxed as between solicitor and client, or as between party and shall direct by whom, to whom and in what manner the same shall be borne and paid.

Work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payments due to or payable by the purchaser shall be withheld on account of such proceedings unless they are the subject of the dispute.

Excerpt from Memorandum of Agreement between the Karachi Electric Supply Corporation, Ltd., of Karachi, Pakistan (hereinafter called "the Client") of the one part and the firms (Jointly and severally) of (1) Handcock & Dykes of London and (2) Brian Colquhoun and Partners of London ... (who and the survivers or survivor of whom are hereinafter called "the Consulting Engineers") of the other part.

(Re: Construction of Karachi "B" Steam Power Station)

"16. Arbitration. In case of difference or question arising at any time between the parties hereto as to the construction, meaning or effect of this Agreement or as to the rights, obligations or liabilities of either party hereto or as to the adjustment of any matter or thing to be agreed to or adjusted thereunder, such difference or question shall be referred to the arbitration of two arbitrators one to be nominated by each party. Such arbitration shall be governed by the provisions of the Arbitration Act in force in Pakistan at the time.

Excerpt from: Contract between the Callao Port Authority and the Raymond Construction Corporation relative to the Construction of Foundations for a Grain Elevator and Annexed Railroad Siding on the Grounds of the Callao Maritime Terminal

"... 9. The parties hereto agree that in case of a disagreement regarding the execution of the present contract they waive their right to the jurisdiction of the courts of their domicile, and to all diplomatic intervention, submitting themselves to the courts of the Republic of Peru."

(From Op.Files 57 PE - Supervision I)

Excerpt from: Contract covering the engineering and construction work of the second stage of the Rio Quiroz Irrigation Project in the Department of Piura, entered into by the Government of Peru and the Morrison-Knudsen Company, Inc.

"... Contract Laws

The Government and the Company declare that this contract and the effects thereof shall operate exclusively under the laws of the Republic of Peru, and the Company expressly agrees to submit to the national jurisdiction renouncing appeal to diplomatic intervention in case of the rescision of the contract or of any other difference which may arise during the life of the contract which it may not be possible to settle directly by the parties to this contract."

(From OP.Files 114 PE - Quiroz-Piura)

Excerpt from unsigned, undated Contract No. C.2 - Main Civil Engineering Contract between The Federal Power Board of Rhodesia and Nyasaland and Impresit Kariba (Pvt.) Ltd., re: The Kariba Hydroelectric Scheme. Engineer: Gibb Coyne Sogei

"66. Settlement of Disputes - Arbitration

If any dispute or difference of any kind whatsoever shall arise between the Employer or the Engineer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (whether during the progress of the Works or after their completion and whether before or after the determination abandonment or breach of the Contract) it shall be referred to and settled by the Engineer who shall state his decision in writing and give notice of the same to the Employer and the Contractor. Such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor until the completion of the work and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether notice of dissatisfaction is given by him or by the Employer as hereinafter provided or not. If the Engineer shall fail to give such decision for a period of three calendar months after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer then and in any such case either the Employer or the Contractor may within three calendar months after receiving notice of such decision or within three calendar months after the expiration of the said period of three months (as the case may be) require that the matter shall be referred to arbitration under the arbitration laws in force in Southern Rhodesia.

The arbitrator/umpire shall have full power to open up review and revise any decision opinion direction certificate or valuation of the Engineer and neither party shall be limited in the proceedings before such arbitrator/umpire to the evidence or arguments put before the Engineer for the purpose of obtaining his decision above referred to. The award of the arbitrator/umpire shall be final and binding on the parties. Such reference except as to the withholding by the Engineer of any certificate or the withholding of any portion of the retention money under Clause 60 hereof to which the Contractor claims to be entitled or as to the exercise of the Engineer's power to give a certificate under Clause 63(1) hereof shall not be opened until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor. Provided always:-

(i) that the giving of a Certificate of Completion under Clause 48 hereof shall not be a condition precedent to the opening of any such reference

(ii) that no decision given by the Engineer in accordance with the foregoing provisions shall disquality him from being called as a witness and giving evidence before the arbitrator/umpire on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator/umpire as aforesaid.

Excerpt from Contract between the Port Authority of Thailand (the "Authority") and Raymond Concrete Pile Company of Delaware, Morris and Cumings Dredging Company, Inc., Daniel, Mann, Johnson & Mendenhall, and H.C. Smith Construction Company (the "Contractor")... May 14, 1954

"Clause 56. Arbitration

(a) If any dispute shallarise in connection with the terms of the performance hereof which the Authority and the Contractor will be unable to settle between themselves, such dispute shall be referred to two arbitrators, one to be appointed by each the Authority and the Contractor within 15 days. The two arbitrators shall give a decision on the dispute in Bangkok within 90 days of their appointment.

(b) If the two arbitrators shall disagree so as to be unable to give a decision on the dispute, they shall appoint an umpire to decide the dispute. Should the arbitrators disagree for 15 days on the appointment of an umpire, a request for the appointment of an umpire may then be made to the Chief Justice of the Civil Court by either party. Should the Chief Justice be unable to appoint an umpire within 30 days from the date of such request either party may take the dispute to Court.

(c) The arbitrators or umpire or court shall decide the amount of remuneration to the damaged party, in addition to fees and expenses of arbitration, and these shall be paid by the party or parties to the dispute as ordered in the decision.

(d) The decision of the arbitrators or umpire or court, as the case may be, shall be final and the Authority and the Contractor shall abide by such decision.

(e) During the period of arbitration or pending action in the court the performance hereof shall be carried on without interruption in respect of points not in dispute."

Excerpt from Contract between the Royal Irrigation Department and Westinghouse Electric International Company - November 18, B.E. 2498 for Furnishing 480-volt Unit Substation, Distribution Board and Distribution Transformers for the Greater Chao Phya Project, Chainat, Thailand.

"Clause 11

If any dispute shall arise in connection with the performance hereby contracted which the parties shall be unable to settle among themselves, such dispute shall be referred to two arbitrators who shall give a decision on the dispute in Bangkok within 90 days from the date of their appointment.

The said arbitrators shall be appointed from persons resident in Thailand, each party to appoint one arbitrator. If the two arbitrators disagree and unable to give a decision on the dispute, they shall appoint an umpire to decide it. Should the arbitrators disagree on the appointment of the umpire, action shall be taken in the court in Thailand.

The arbitrators or umpire shall determine the amount of remunerations, fees, and expenses of arbitration and these shall be paid by the party or parties as ordered in the decision.

The decision of the arbitrators or umpire, as the case may be, shall be final and the parties hereby agree to abide by such decision.

During the period of arbitration or pending action in court the performance of this contract shall be carried on without interruption in respect of point not in dispute.

Excerpt from: Agreement - Chao Phya River Dam, Chainat, Thailand

Royal Thai Irrigation Department --- Messrs. Keir and Cawder, Ltd.

August, 1951

"... Any controversy between the Contractor and the Department arising under this Agreement which is not determined by agreement of the parties shall be submitted to two Arbitrators for arbitration. One Arbitrator shall be appointed by the Contractor, the other Arbitrator shall be appointed by the Department. Either party may institute an arbitration proceedings by appointing an Arbitrator and notifying the adverse party in writing of the former party's decision to arbitrate and of the name of the Arbitrator it has appointed. Within thirty days after the giving of such notice, the adverse party shall notify the party instituting the proceedings of the name of the Arbitrator appointed by such adverse party. If the adverse party shall fail so to appoint an Arbitrator, or if the Arbitrators fail to agree within sixty days of the appointment of the Arbitrator last appointed on a determination of the controversy, the controversy shall be determined by an Umpire appointed either by agreement of the parties, or, if they do not agree within such sixty days, by the President of the International Bank for Reconstruction and Development.

The decision of the Arbitrators or the Umpire, as the case may be, shall be final, and the parties hereto agree to abide by such decision."

Excerpt from unsigned, undated Contract between the Ministry of Public Works, Republic of Turkey, and Knappen Tippetts Abbett McCarthy Engineers of New York, U.S.A. for Consulting Engineering Services for "The Seyhan Dam and Power Project"

Article XIV: Disputes

All disputes and controversies of whatever nature arising under this contract that cannot be resolved by mutual agreement of the contracting parties will be settled by arbitration one of whom will be selected by the Owner, one by the Engineer and one by their mutual agreement. If the arbitrators selected by two parties cannot agree on the selection of third arbitrator, the Sayistay Baskani (President of General Accounting Office) will select the third arbitrator. Matters that cannot be settled by arbitration or agreement will be referred to the competent court of the Turkish Government in Ankara.

Excerpt from: A copy of the English Translation of the Contract between Cruner Associates and UTE*

"CONTRACT FOR THE SERVICES OF A CONSULTING ENGINEERING FIRM FOR THE BAYGORRIA PROJECT*

"... 1. In the event of a controversy the parties will undertake to submit such controversy to an expert named by mutual agreement.

2. If such agreement were not reached or if the expert's decision were not satisfactory, the parties would undertake to submit the controversy to arbitration.

3. In such an event each party will appoint an arbitrator within thirty days of receiving notice by registered mail or cable from the interested party.

The third arbitrator will be appointed by agreement of the parties. In the event that no agreement is reached, this appointment will be made by the President of the Supreme Court of Justice."

*UTE - Administracion General de las Usinas Electricas y los Telefonos del Estado

THIS FILE IS CLOSED AS OF

DECEMBER 1965.

FOR FURTHER CORRESPONDENCE SEE:

1966 - 1968.

RECORDS MANAGEMENT SECTION
February 1969

arbitration — Gen

IDA | IBRD | IFC

FORM NO. 92 (10-61)

CORRESPONDENCE RECORD FORM

FROM
MARPLES, RIDGWAY & RARTNERS
LTD. 5, Lower Belgrave St.
London, S.W.1.

DATED
Mar. 22, 1965

SUBJECT

Requesting Mr. Kruithof for a meeting in Addis Ababa with some Consulting Engineers to make decisions on the various deisputes, and then if either side wishes to contest their decision they could follow the Arbitration procedure as laid down in the contrac but preferably without right of appeal by either side to the Minister of Public Works.

REFERRED TO
Mr. Kruithof

DATE RECEIVED
Mar. 24, 1965

FORM NO. 59
(2-55)

CROSS REFERENCE SHEET

COMMUNICATION: Memo

DATED: Feb. 25, 1965

TO: Files

FROM: Mr. Schmidt

FILED UNDER: CHILE - Chile Government vs American Foreign Power

SUMMARY:

Re: Possibility of Bank acting as arbitrator.

Form No. 26
(2-62)

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

INCOMING WIRE

DATE OF WIRE: JANUARY 12, 1965

LOG NO.: TEX

TO: INTBAFRAD

FROM: PARIS

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

TEXT:

FOR SELLA

OU EN EST L'ARBITRATION CENTER? J'AIMERAIS LE VISER DANS DES CONTRATS QUI SE NEGOCIENT ACTUELLEMENT ENTRE DES SOCIETES PRIVEES ET DES GOUVERNEMENTS AFRICAINS. LES CONTRATS NE SERONT PAS SIGNES AVANT DEUX MOIS. PENSEZ VOUS QUE VOUS ACCOUCHEREZ D'UN TEXTE D'ICI LA. VOUS ECRIRAI PROCHAINEMENT HOMMAGES A DICKY ET AMITIES A LA RONDE

BENRUBI CLEARGO

NA

DUPLICATE

Arbitration - Gen.

January 19, 1965

Dr. Clive M. Schmitthoff
City of London College
Moorgate
London E.C. 2

Dear Dr. Schmitthoff,

It was very kind of you to send me a reprint of your article on "The Unification of the Law of International Trade" which I have read with great interest. You may, however, be interested to know, with reference to the ruling of a Council of Ministers of Saudi Arabia quoted on page 25, that several Latin American countries have similar reservations with respect to submitting their Government or Government agencies to foreign arbitration. In some cases, notably in Brazil, such a prohibitation is even included in the Constitution. It was due to this factor, inter alia, that many of the Latin American countries voiced an objection to the Convention on the Settlement of Investment Disputes which the Bank is promoting. I am forwarding this information to you because I think you might wish to have it in your possession in the event of a future reference on the subject. I will in due course forward to you a short note on the Convention as I promised in my last letter.

Thank you again for sending me the reprint.

With best wishes and warmest personal regards,

Yours sincerely,

DMS

David M. Sassoon

DMS/km

January 8, 1965

Jhr. Mr. L. H. Sandberg
Nieuwe Parklaan 7A
'S-Gravenhage, The Netherlands

not used in files

My dear Mr. Sandberg:

I hope you will accept my apologies for the very long delay in answering your letter of November 16. One of the reasons for this delay was the three week long meeting of the Legal Committee on Settlement of Investment Disputes at which 61 countries were represented, and the not inconsiderable aftermath of that meeting. Incidentally, Sudan was not represented but wrote that they were in agreement with the draft submitted to the Legal Committee.

I have gone over the list of countries from which arbitrators are to be chosen in the Sudan/Turriff arbitration. I have assumed that you were interested in names of persons about whom I could either express a personal judgment or could rely on the judgment of close associates.

I can recommend two U.S. citizens who are not only outstanding lawyers but also possess all the other qualities that one looks for in arbitrators. They are Davidson Sommers, formerly Vice President and General Counsel of the World Bank and now Senior Vice President and General Counsel of The Equitable Life Assurance Society of the United States, 1285 Avenue of the Americas, New York 19, New York; and Charles M. Spofford, a partner in the firm of Davis, Polk, Wardwell Sunderland & Kiendl, 1 Chase Manhattan Plaza, New York 5, New York. Mr Sommers was one of Mr. Black's advisers in the conciliation proceedings regarding the City of Tokyo bonds. Mr. Spofford recently represented Ghana in its negotiations with the Kaiser Aluminum group, the United States Government and the World Bank on the Volta River Scheme.

Australia. The Bank and its affiliates have been very much impressed with Mr. G. S. Reichenbach, of Allen, Allen & Hemsley, P. & O. Building, 55 Hunter Street, Sydney.

Canada. Ian Wahn, M.P., senior partner of Wahn, McAlpin, Mayer, Smith, Torrance & Stevenson, 44 King Street West, Toronto 1, Canada. We have known Mr. Wahn for many years and have the highest opinion of his ability and personality.

India. Sri Dhiren B. Mitra, Managing Director of Jessop & Co. Ltd.,

Dum Dum, Calcutta. He was formerly the senior legal adviser in the Ministry of Law and is now a director of a number of important companies. At the time of the difficulties in the nationalized life insurance company he was put in charge of the re-organization of some companies in which unfortunate investments had been made.

Sri J. D. Choksi, Director, Tata Industries Private Ltd., Bombay House, 24, Bruce Street, Fort, Bombay 1, India. Mr. Choksi, who was first a member of a prominent Bombay law firm, has for many years been in charge of all legal aspects of the Tata group.

Switzerland. Henri Guisan, Legal Adviser of the Bank for International Settlements, an exceptionally capable lawyer whom I have known for more than 15 years.

Denmark. Judge Jørgen Trolle, a member of the Danish Supreme Court. I am informed that members of the Supreme Court are permitted to act as arbitrators. I met Judge Trolle at the regional meeting in Geneva on settlement of investment disputes and if I am not mistaken he was Chairman of the Geneva Conference on East-West Arbitration.

Finland. Mr. Åke Roschier-Holmberg, Centralgatan 5A8, Helsinki, whom we know as our lawyer in Finland and who also represented Finland at the European regional meeting to which I referred above.

Belgium. Me Maurice Cornil, Bâtonnier de l'Ordre des Avocats près de la Cour d'Appel de Bruxelles. I do not personally know Me Cornil but his name was given to me by a source that I consider most reliable.

Egypt. Hassan Bagdadi, 1 Midan, Ismail, Garden City, Cairo. Mr. Bagdadi is a private lawyer who represented Egypt in the negotiations with the Suez Canal Company in which the World Bank acted as mediator (incidentally, Mr. Spofford at the time was representing the Suez Canal Company).

Ceylon. Mr. H. N. G. Fernando, Q.C., M.A., B.C.L., Puisne Justice, Judges' Chambers, Colombo 12, Ceylon.

Mr. George E. Chitty, Q.C., Advocate, "Raleigh", Bagatelle Road, Colombo 4, Ceylon.

Sincerely yours,

(Signed) A. Broches

A. Broches
General Counsel

ABroches:cml

arbitration

January 6, 1965

Dear Mr. Farley:

In response to your letter of December 31, I am sorry but so far the preliminary draft convention on the settlement of investment disputes is a confidential working paper and has been made available only to member governments. It is possible that we will be able to send you the text to be submitted to governments with the recommendations of the Executive Directors in the near future; we are holding your name on file and a copy will be forwarded to you automatically when the draft is released. In the meanwhile I am enclosing an address by our General Counsel in 1963 and the resolution adopted by the Board of Governors at the recent annual meeting in Tokyo.

Sincerely yours,

Lars J. Lind
Assistant Director of Information

Enclosures

Mr. Andrew N. Farley
747 Union Trust Building
Pittsburgh, Pa. 15219

LJL/ps

January 5, 1965

Dear Mr. Heth:

It was very kind of you to write. I have passed on your words of appreciation to my colleagues who so ably shared the burdens of the meeting.

I have only glanced at the book which you so kindly sent me but I am already convinced that it will make more fascinating reading than the corrected version of the Convention on which we are now working.

Please accept my thanks and my best wishes.

Sincerely yours,

(Signed) A. Broches

A. Broches
General Counsel

Mr. Meir Heth
Bank of Israel
Jerusalem, Israel

ABroches:cml

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type
December 31, 1964	Letter

Correspondents / Participants
From: Andrew N. Farley
To: International Finance Corporation

Subject / Title
Request for study of system of international conciliation and arbitration

Exception(s)
Information Provided by Member Countries or Third Parties in Confidence

Additional Comments

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

Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

arbitration

October 8, 1964

Dear Mr. Sammut:

In response to your letter of September 25, which has been forwarded by our New York office, we are unable to supply details of the plan you mention. At the annual meeting in Tokyo, the Executive Directors were directed to formulate a convention on settlement of investment disputes, assisted by a committee of legal experts designated by interested governments, and it is hoped that a final text will be submitted to governments early in 1965.

At this time, the best I can do is send you an address in 1963 by Mr. A. Broches, General Counsel of the International Bank on settlement of investment disputes, the Report of the Executive Directors of August 6, 1964, and the resolution which was adopted by the Board of Governors on September 10. The preliminary draft mentioned in the Report of the Executive Directors is a confidential working paper.

Sincerely yours,

(Mrs.) Doris R. Eliason
Office of Information

Enclosures

Mr. Joseph H. Sammut
"Joyce", St. Luke Road
Pieta,
MALTA

cc: European office

Note to Paris: Attached is the copy of Document 10 which I have had reproduced and am giving out; you will note that it varies slightly from the copy you received from the annual meeting in that the "Draft" was blocked out (Draft Resolution) and the parenthetical information was added on its adoption. This was cleared with Legal and the Secretary's office. For the forthcoming meetings, Legal suggested that I have Document 10 on hand in Spanish and French; I think it was done for the annual meeting but I don't have any copies here yet.

DRE/va

arbitration

FORM NO. 26
(2-62)

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

INCOMING WIRE

DATE OF WIRE: OCTOBER 6, 1964 1415

LOG NO.: RC 18

TO: INTBAFRAD BROCHES

FROM: BEYROUTH

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

TEXT:

KINDLY AIRMAIL FRENCH COPY PROCEEDINGS BANGKOK MEETING

HIMADEH

DUPLICATE

KS

FORM NO. 75
(2-60)

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE
CORPORATION

INTERNATIONAL DEVELOPMENT
ASSOCIATION

ROUTING SLIP	Date 10/7/64

NAME	ROOM NO.
Mr. Pinto	821

OK Carl

	To Handle		Note and File
	Appropriate Disposition		Note and Return
	Approval		Prepare Reply
	Comment		Per Our Conversation
	Full Report		Recommendation
	Information		Signature
	Initial		Send On

REMARKS

Do you think this reply will be all right. When he asks for "actual records of the debates and all proceedings regarding this proposal," he didn't specify Tokyo debates and proceedings, and he may have meant reports of discussions at Santiago, Geneva, etc. I don't know if these latter are available, but they might be. Mr. Broches' made speeches at these various meetings, but I only have file copies.

From

Doris R. Eliason

October 5, 1964

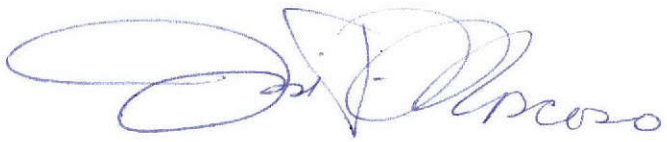
Dear Sirs,

I am a third-year student at the Yale Law School. At present I am in the process of writing a paper on expropiation disputes and international law. For this reason I am extremely interested in obtaining whatever information you may have regarding the proposed new international convention for the conciliation and arbitration of disputes arising from the expropiation of foreign private investment. This proposal came up at the fecent meeting of the Bank's governors in Tokyo, and according to the New York Times (Sept.11) it was rejected by the Latin American nations voting as a bloc.

I would be particularly grateful if you could send me the actual records of the debates and all proceedings regarding this proposal.

Thank you very much for your help.

Sincerely,



ack. oct 8 1964

October 5, 1964

Dear Sirs,

I am a third-year student at the Yale Law School. At present I am in the process of writing a paper on expropiation disputes and international law. For this reason I am extremely interested in obtaining whatever information you may have regarding the proposed new international convention for the conciliation and arbitration of disputes arising from the expropiation of foreign private investment. This proposal came up at the recent meeting of the Bank's governors in Tokyo, and according to the New York Times (Sept.11) it was rejected by the Latin American nations voting as a bloc.

I would be particularly grateful if you could send me the actual records of the debates and all proceedings regarding this proposal.

Thank you very much for your help.

Sincerely,

VIA AIR MAIL
CORREO AEREO

International Bank of Reconstruction and Development
Information Office
Washington, D.C.

PAR AVION

J. Moscoso
350 Elm St.
New Haven, Conn.

VIA AIR MAIL

arbitration

October 2, 1964

Mr. Roger J. Benrubi
Cleary, Gottlieb, Steen & Hamilton
41, Avenue de Friedland
Paris VIII^e
France

Dear Roger:

not sent to Files

Thanks for your letter of September 29 and the enclosed pages of the Socuma Establishment Convention.

I did not realize that Claude would be in Paris for only that short a time. I bet you a lunch that he will stay longer.

Sincerely yours,

Lester Nurick

LN:ajt

arbitration

September 25, 1964

Mr. Harry Conover
Executive Assistant to the President
Consejo Interamericano de Comercio y Produccion
399 Park Avenue
New York 22, New York

Dear Mr. Conover:

I am sending you a copy of the English version of Mr. Felix Ruiz speech at the annual meeting in Tokyo which he delivered on behalf of the Latin American countries. You will note, on page 4, the part of the speech concerning arbitration.

Sincerely yours,

Leopoldo Cancio

Enclosure

LC:mz Cancio

FORM NO. 75
(3-52)

...TERNATIONAL BANK FOR
...TRUCTION AND DEVELOPMENT

ROUTING SLIP

Date Oct. 5, 1964

NAME	ROOM NO.
Mrs. Doris R.Eliason	461

	Action		Note and File
	Approval		Note and Return
	Comment		Prepare Reply
	Full Report		Previous Papers
	Information		Recommendation
	Initial		Signature

Remarks

From R.E.Barnett

"Joyce", St Luke Road,
Pieta,
M A L T A .
25th September, 1964.

Dear Sir,

I have just read that a plan has been set up through which the World Bank will arbitrate in cases of expropriation of foreign-owned properties, at the recent Tokyo meeting of the World Bank.

I would like very much to receive full details of the plan. I am most interested in the manner in which application for arbitration may be made and the method the Bank intends adopting for arbitration.

Yours faithfully,

Joseph H. Sammut.

(JOSEPH H. SAMMUT)

The Propaganda Secretary,
The World Bank,
New York.

ack oct. 8 1964

BY AIR MAIL

PAR AVION

AIR LETTER

AEROGRAMME

The Propaganda Secretary,

The World Bank,

N E W Y O R K .

20 Exchange Pl

First fold here

Second fold here

Sender's name and address: (Mr) J.H.Sammut,
'Joyce', St Luke Rd,
Pieta - M A L T A .

AN AIR LETTER SHOULD NOT CONTAIN ANY ENCLOSURE:
IF IT DOES IT WILL BE SURCHARGED
OR SENT BY ORDINARY MAIL.

Form approved by the Postmaster General, No. 9

CHURCH STREET STATION 31

NEW YORK, N.Y. SEP 28 1964 P.M.

To open cut here

September 22, 1964

Mr. Richard W. Edwards, Jr.
Program Assistant
American Society of International Law
2223 Massachusetts Avenue, N.W.
Washington, D. C. 20008

Dear Mr. Edwards,

Please find enclosed a photostatic copy of the decision of the French Supreme Court regarding the validity of arbitral compacts in contracts between the French Government and foreign individuals or entities. The exact reference is: "Recueil Sirey 1964, 93". As you know, the French do not use volume numbers but only the year of the law review in which a case is published.

In checking for references to publications in English discussing this particular problem of French law, I found only two, both of which are rather elementary. These apply to the reference in my own "American French Private International Law", page 178, and to an article by Mr. Domke entitled "A Report of the 1961 Paris Arbitration Conference" 16 Arb. J.131 (1961) at page 139.

With best regards.

Sincerely yours,

Georges R. Delaume GRD

GRD:nn

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type
June 15, 1964	Letter and CV / Resumé

Correspondents / Participants
Laurent Sejour

Subject / Title
Curriculum Vitae

Exception(s)
Personal Information

Additional Comments

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

Withdrawn by	Date
Kim Brenner-Delp	August 17, 2023

FREDERICK B. HILL
Suite 330
1346 Connecticut Ave.
Washington 36, D.C.

DEcatur 2-7778
June 2, 1964.

Mr. Hendrik J. Van Helden
Chief
Transportation Division
Technical Operations Department
International Bank for Reconstruction
& Development
Washington, D.C.

Dear Mr. Van Helden:

After you delivered your paper at the recent I R F Second Regional Conference in Tokyo, I asked you to send me three copies - preferably of the original and not the abridged version.

You promised to do so but, no doubt, due to pressure of work have not got around to doing so yet.

Please consider this a reminder that I eagerly await hearing from you.

Thanks very much.

Very sincerely yours,

Frederick B. Hill

FORM No. 75
(2-60)

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE CORPORATION

INTERNATIONAL DEVELOPMENT ASSOCIATION

ROUTING SLIP	Date June 8, 1964

NAME	ROOM NO.
~~Mrs. Eliason~~	~~461~~
Files	229

	To Handle		Note and File
	Appropriate Disposition		Note and Return
	Approval		Prepare Reply
	Comment		Per Our Conversation
	Full Report		Recommendation
	Information		Signature
	Initial		Send On

REMARKS

No further action necessary. Mr. Broches spoke to Mr. Murray on the phone.

Connie

From

FORM No. 75
(2-60)

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE CORPORATION

INTERNATIONAL DEVELOPMENT ASSOCIATION

ROUTING SLIP

Date: 6/2/64

NAME	ROOM NO.
Legal	810

	To Handle		Note and File
	Appropriate Disposition		Note and Return
	Approval		Prepare Reply
	Comment		Per Our Conversation
	Full Report		Recommendation
	Information		Signature
	nitial		Send On

REMARKS

Shall I give him the usual answer that the preliminary draft of convention is a confidential working paper and made available only to governments? Perhaps there is a U.S. source he could ask.

From: Doris R. Eliason - 461

arbitration - gen.
x-Ref - alpha - Shearman

SHEARMAN & STERLING

20 EXCHANGE PLACE

NEW YORK 5

BOWLING GREEN 9-8500

CABLE:"NUMLATUS"

May 25, 1964

World Bank
1818 H. Street
Washington 25, D.C.

Dear Sir:

We are currently doing some work in the field of foreign expropriation of properties of United States citizens. We need, but have been unable to locate in the New York area, a copy of the World Bank Convention on Conciliation and Arbitration of Investment Disputes Between States and Nationals of Other States.

We would greatly appreciate it if you would send us a copy of this convention if it is available. If you cannot, perhaps you could suggest another source.

Thank you for your cooperation.

Very truly yours,

John Murray

John Murray

FORM NO. 59
(2-55)

CROSS REFERENCE SHEET

COMMUNICATION: Letter

DATED: April 22, 1964

TO: Mr. James Mark
H.M. Treasury
Treasury Chambers
Great George Street
London, S.W.1

FROM: Mr. Cargill

FILED UNDER: BURMA - General

SUMMARY:

Re: Possibility of Bank being asked to appoint arbitrators to settle the dispute arising out of the nationalization of British commercial banks by the Government of Burma.

Arbitration - Ben

December 17, 1963

Mr. M. Hanabusa
Planning Section
Economic Cooperation Bureau
Ministry of Foreign Affairs
Tokyo, Japan.

Dear Mr. Hanabusa:

At our recent meeting in Tokyo you asked about procedures for consideration and ratification of the proposal to establish facilities for the settlement of international investment disputes. I regret I cannot yet provide the answer to your question because the members of the IBRD legal staff associated with this proposal are at present attending a regional discussion of the matter in Addis Ababa. They will return in another week or so at which time I will obtain and send you the information you requested.

Would you also be kind enough to inform Mr. Oyake of the United Nations Bureau that the IBRD has not been contacted in connection with any proposal for the establishment of a regional financing institution in the Far East. Hence, no papers or studies have been prepared here on this matter.

Sincerely yours,

W.M. Gilmartin
Economic Adviser
Department of Operations - Far East

cc: Mr. E. Clark

WMG:cn
IBRD

November 14, 1963

Dear Sirs:

Thank you for your letter of November 8, 1963. It was a pleasure for us to exchange views with Mr. Harries and you may be assured that we are always ready to give you whatever assistance we are capable of.

Sincerely yours,

(Signed) A. Broches

A. Broches
General Counsel

Kreditanstalt fuer Wiederaufbau
6 Frankfurt am Main, Germany

ABroches:ms

Record Removal Notice

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File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type	
December 12, 1963	Memorandum	

Correspondents / Participants
To: Files
From: L. Nurick

Subject / Title
Concession agreement with Chinese Petroleum Corporation

Exception(s)
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Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

Arbitration

July 15, 1963

Dr. Herwig Grote
Kreditanstalt für Wiederaufbau
Lindenstrasse 27
Frankfurt am Main
Germany

Dear Dr. Grote:

Thank you for your letter of July 12, 1963 and enclosed copy of your arbitration agreement.

I also enjoyed very much having the opportunity to discuss with you some of the legal problems which confront us in the field of international financial agreements and also hope that we will continue to have the opportunity to exchange views from time to time.

Please do not hesitate to get in touch with me if for any reason you should find yourself in or around Washington.

My best personal regards.

Sincerely yours,

Roger A. Hornstein

L. F.

Dr. Herwig Grote

Kreditanstalt für Wiederaufbau

6 FRANKFURT AM MAIN, den LINDENSTRASSE 27
FERNSPRECH-SAMMEL-NR. 720681
DURCHWAHLNUMMER 7206 8 / . . .

July 12, 1963
Gro/Kp

Mr. Roger A.Hornstein
International Bank for
Reconstruction and Development
Washington, D.C.
U.S.A.

Ack July 17/63

Dear Mr. Hornstein:

I enjoyed very much talking with you the other day here at our offices in Frankfurt. I do hope that this exchange of thoughts and ideas about the legal aspects of extending credits to under-developed countries will continue in the future.

I take pleasure in sending you in the enclosure a copy of our standard arbitration agreement.

Sincerely yours,

H. Grote

Encl.

L. F.

Annex

8/62

ARBITRATION AGREEMENT

With reference to the provisions of paragraph (4) of Article X of the Loan Agreement between the

(hereinafter referred to as "the Borrower")

and the

KREDITANSTALT FÜR WIEDERAUFBAU, Frankfurt/Main,

(hereinafter referred to as "the Kreditanstalt"),

dated

the Borrower and the Kreditanstalt hereby agree on the following:

Article 1

All disputes arising from the Loan Agreement which cannot be settled amicably by the parties shall finally and exclusively be decided by an Arbitration Tribunal.

Article 2

The parties to such arbitration shall be the Borrower and the Kreditanstalt.

Article 3

(1) If the parties do not agree upon a single arbitrator the Arbitration Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by the Borrower, a second arbitrator by the Kreditanstalt; and a third arbitrator (hereinafter called "Chairman") shall be appointed by agreement of both parties or, if they shall not agree within 60 days after receipt of the request for arbitration by the defendant, on application of either party by the President of the International Chamber of Commerce or, failing appointment by him, by the Chairman of the Swiss National Committee of the International Chamber of Commerce. If either side shall fail to appoint an arbitrator such arbitrator shall be appointed by the Chairman.

(2) In case any arbitrator appointed pursuant to the foregoing provisions shall resign or become unable to act as arbitrator his successor shall be appointed in the same manner as the original arbitrator. The successor shall have all the powers and duties of such original arbitrator.

- 3 -

Article 4

(1) An arbitration proceeding may be instituted by the service of a written request for arbitration by one party on the other. Such request shall contain a statement setting forth the nature of the claim, the relief or compensation sought and the name of the arbitrator to be appointed by the claimant.

(2) Within 30 days after receipt of such request the defendant shall notify the claimant of the name of the arbitrator appointed by him.

Article 5

The Arbitration Tribunal shall convene at such time and, if the parties do not reach an agreement, at such place as shall be fixed by the Chairman.

Article 6

The Arbitration Tribunal shall decide all questions relating to its competence. It shall determine its procedure according to generally recognized rules of procedure. In any case, both parties shall be afforded an oral hearing in a regular sitting. The Arbitration Tribunal may reach a decision notwithstanding any failure to appear on the part of either party. All decisions of the Arbitration Tribunal shall require the approval of at least two arbitrators.

Article 7

The Arbitration Tribunal shall deliver its award together with its reasons therefor in writing. An award signed by at least two arbitrators shall constitute the award of such Tribunal. A signed counterpart of the award shall

be transmitted to each party. The award shall be binding and final. By signing this Agreement both parties simultaneously assume the obligation to comply with such award.

Article 8

(1) The parties shall fix the amount of remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceedings.

(2) If the parties shall not agree on such amount before the Arbitration Tribunal shall convene the Arbitration Tribunal shall fix a reasonable remuneration. Each party shall bear its own expenses involved in the arbitration proceedings. The costs of the Arbitration Tribunal shall be borne by the party against whom the award is given. If neither party obtains a full award the costs shall be borne proportionately by both parties.

(3) The Arbitration Tribunal shall finally decide on all questions concerning such costs.

(4) The parties shall be jointly and severally liable for the payment of the remuneration to the persons mentioned in paragraph (1) above.

Article 9

Any notice or request to be made or given in connection with the arbitration procedure by the parties and the Arbitration Tribunal shall be made or given in writing. Any such notice or request shall be deemed to have been duly made or given as soon as it has been delivered at the following addresses of the respective party:

For Kreditanstalt:

postal address: Kreditanstalt für Wiederaufbau
Lindenstrasse 27
6 Frankfurt/Main
(Federal Republic of Germany)

cable address: Kreditanstalt Frankfurt/Main.

For the Borrower:

postal address:

cable address:

DONE at ..... this .....
in quadruplicate two originals having been drafted in German and two in English.

---------- KREDITANSTALT FÜR WIEDERAUFBAU

....

Arbitration

FORM NO. 59
(2-55)

CROSS REFERENCE SHEET

COMMUNICATION: Memorandum

DATED: July 17, 1963

TO: Mr. Knapp

FROM: Mr. Larre

FILED UNDER: Contractors: General

SUMMARY: Arbitration clauses in contracts financed by the Bank

Form No. 26
(2-62)

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

INCOMING WIRE

DATE OF WIRE: JULY 11, 1963 1415

LOG NO.: RC 10

TO: INTBAFRAD

FROM: ROTTERDAM

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

TEXT:

FOR BROCHES

WILL BE WEDNESDAY NEXT IN WASHINGTON TO SEE FOR LUNCH

AMBASSADOR VANROYEN. HOPE TO SEE YOU AND DELAUME

VOSVANSTEENWIJK

rm

DUPLICATE

TYPED

GENERAL FILES
CORRESPONDENCE

JUL 11 10 43 AM 1963

WORLD BANK

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

1818 H STREET, N.W., WASHINGTON 25, D. C. TELEPHONE: EXECUTIVE 3-6360

Address by A. Broches,
General Counsel of the World Bank,
to the
World Conference on World Peace through Law,
June 30-July 6, 1963, Athens, Greece

"Conciliation and Arbitration of Investment Disputes"

FOR RELEASE TO A.M. PAPERS, JULY 3, 1963

I feel greatly honored to have been invited to attend the World Conference on World Peace through Law and to address this distinguished gathering on the subject of international investment. I accept this honor as a recognition of the role played in the field of international investment by the International Bank for Reconstruction and Development -- the World Bank.

The importance of the World Bank lies not in the circumstance that it has larger funds at its disposal than other investment institutions, or even in the fact that it is an international rather than a national bank. Its principal characteristic and merit is that it is not really a bank, but an institution concerned with the process of economic development rather than with the mere provision of funds for particular projects, and that its approach to the problem of economic development is professional and non-political.

The World Bank's activities consist necessarily in large part of the provision of finance, out of its own capital, out of funds it borrows in the financial markets, by encouraging private capital to participate with it, and

by organizing and coordinating the efforts of national and international sources of public finance to meet the development needs of its member countries in the less developed areas of the world. But much of the energy and resources of the World Bank are devoted to technical assistance and advice directed towards the promotion of conditions conducive to rapid economic growth -- to creation of a favorable investment climate in the broadest sense of the term. To this end, sound technical and administrative foundations are essential, but no less indispensable is the firm establishment of the Rule of Law.

In days past there may have been some justification for regarding international investment as a subject of interest chiefly to the capital-exporting nations and their citizens. Today it is universally recognized as a factor of crucial importance in the economic development of the less developed parts of the world. International investment has become one of the major features of the partnership between the richer and the poorer nations and its promotion a matter of urgent concern to capital-importing and capital-exporting countries alike. This is particularly true of private foreign investment which, if wisely conducted, can make great contributions to the development of the economies of the recipient countries.

Unfortunately, however, private capital is not now moving in sufficient volume to areas in need of capital. And there is no room for doubt that one of the most serious impediments to the flow of private capital is the fear of investors that their investment will be exposed to political risks, such as outright expropriation without adequate compensation, governmental interference short of expropriation which substantially deprives the investor of the control or the benefits of his investment, and non-observance by the host

government of contractual undertakings on the basis of which the investment was made.

Knowing this, we have been led to wonder whether the Bank, because of its reputation for integrity and its position of impartiality, could not help in removing this obstacle to international private investment. On a number of occasions we have been approached by governments and foreign investors who sought our assistance in settling investment disputes that had arisen between them, or wanted to assure themselves that our assistance would be available in the event that differences between them should arise in the future. And we have been further encouraged to bend our efforts in this direction by such events as the recent enactment by Ghana of foreign investment legislation which contemplates the settlement of certain investment disputes "through the agency of" the World Bank.

On the basis of our own experience and of our assessment of the possibility of securing widespread agreement at the present time, we have concluded that the most promising approach would be to attack the problem of the unfavorable investment climate from the procedural angle, by creating international machinery which would be available on a voluntary basis for the conciliation and arbitration of investment disputes. Some may think it desirable to go beyond this and attempt to achieve a substantive definition of the status of foreign property. There is no doubt in my mind that there is need for a meaningful understanding between capital-exporting and capital-importing nations on these matters. And it seems to me that the draft on Protection of Foreign Property, prepared in the Organization for Economic Cooperation and Development, might constitute a useful starting point for discussions between these two groups of countries.

But while this dialogue proceeds, there is need, we think, to pursue a parallel effort of more limited scope, represented by the proposals now being studied by the Executive Directors of the World Bank. These proposals contemplate the establishment by intergovernmental action of institutional facilities for the settlement through conciliation and arbitration of investment disputes between participating states and the nationals of other participating states. The institutional facilities would be linked in some way to the World Bank, but the Bank would not, of course, itself engage in conciliation or arbitration. This would be the task of Conciliation Commissions and Arbitral Tribunals established in accordance with rules which would leave the composition of these bodies, and the rules of law to be applied by them, to be determined primarily by the parties.

Use of these facilities for conciliation and arbitration would be entirely voluntary. No government and no investor would ever be under an obligation to go to conciliation or arbitration without having consented to do so. But once having consented they would be bound to carry out their undertaking and, in the case of arbitration, to abide by the award. For this scheme to be fully effective, it should be embodied in an international convention. Such a convention ought to contain the necessary provisions to prevent undertakings to submit to conciliation or arbitration from being frustrated, for instance by the refusal of one party to cooperate in the proceedings. The convention should also make arbitral awards enforceable in the territories of all participating states. Provision for the enforceability of the award in local jurisdictions may be especially important for host governments. They, as well as investors, may initiate arbitral proceedings and the obligation of the foreign investor to carry out the award,

unlike that of the government, needs to be transformed into local law to be effective.

These proposals contemplate that, given the consent of the host government, the investor would have direct access to the conciliation and arbitration facilities, without the intervention of his national government, thus giving further emphasis to the growing recognition of the individual as a subject of international law. As a concomitant of that recognition, it would seem desirable to provide that, once an investor and a host government have agreed to submit a dispute to arbitration, the investor should be deemed to have waived the right to seek the protection of his national government and his government would not be entitled to take up his case. This development of existing international law would have the great merit of helping to remove investment disputes from the intergovernmental political sphere.

In order to avoid misunderstanding I want to stress that none of the obligations of such an international convention would apply except where a government and a foreign investor had voluntarily agreed to use the facilities established by the convention for conciliation or arbitration, as the case may be. And the states which become parties to the convention would not by that fact alone be obliged to make use of the facilities in any specific case.

These, then, are some of the highlights of the proposals which are presently being studied in the World Bank. In addressing the Economic and Social Council of the United Nations in April of this year, Mr. George Woods, the President of the World Bank, said that this approach in his opinion "deserves the support of both capital-importing and capital-exporting nations and seems sufficiently promising to justify further constructive study and investigation in an attempt to reach a workable agreement." The proposals are modest

in the sense of being limited to procedure and because of their optional nature. But I have no doubt that their adoption would constitute a significant step forward towards the establishment of the Rule of Law in international investment.

June 26, 1963

Dear Mr. Reyre,

Thank you very much for your letter of June 19, 1963.

I think there may be some misunderstanding of what I would be willing to undertake. As Mr. Cardin has no doubt told you, I do not in fact intend to act as President of the Arbitral Tribunal. For that reason I would have preferred a provision under which the President of the Arbitral Tribunal would be designated by the President of the International Bank. However, I also told Mr. Cardin that, if Morocco should so desire, I would be willing to agree to a provision under which the President of the International Bank or a person designated by him would be the President of the Arbitral Tribunal, with the understanding that in practice I would designate another person rather than serve myself. I take it from your letter that the second alternative is the one preferred by Morocco as well as the three utility companies.

The wording you now propose for the arbitration clause might lead to misunderstanding by the use of the term "son représentant". The person whom I would designate would in no way be representing the President of the International Bank. I would therefore suggest that you substitute for the wording "son représentant" the words "une personne nommée par celui-ci". I hope that this will be satisfactory.

As you will realize, the Bank or its President can accept responsibilities in connection with arbitral proceedings only at the request of both parties. It would therefore be desirable that a formal request come to me from the Government of Morocco and from the three French companies involved. Since the agreements will run over a long period of time I think it is in the interest of all parties concerned to have the record entirely clear.

With my very best wishes,

Sincerely yours,

(Signed) George D. Woods

George D. Woods

Mr. J. Reyre
Vice President Director General
Banque de Paris et des Pays-Bas
Paris, France

ABroches/ms
cc. Messrs. Wilson, Knapp, Cope, Williams

COPY

BANQUE
DE PARIS & DES PAYS-BAS

Le Vice President - Directeur General

June 19, 1963

Mr. George Woods
Chairman
International Bank for Reconstruction
and Development
1818 H Street N.W.
Washington 25, D.C.

Dear Mr. Woods,

You were kind enough to tell Mr. Cardin that you could accept to become the Chairman of the Arbitration Committee arranged for in the Agreement concluded between the Maroccan Government and Maroccan Utility Companies, provided that the obligations of the assignment be slightly altered.

The Maroccan Government understood very well that it is impossible for you to take the engagement of going to Geneva with a 30 days notice and accepted that you could eventually send a representative. The exact wording of the amended text is: "Le President de la Banque International ou son Representant". I hope that it is agreeable to you.

I am very happy of the favorable outcome of this issue and I am most thankful to you for your acceptance. I am confident that the contribution of the World Bank as a highly regarded and uncontroverted arbitrator will be decisive in making a success of such a delicate venture.

I will be extremely happy to discuss with you this operation in further details during your next stay in Paris.

With warmest personal regards, I am,

Very truly yours,

/s/ J. REYRE

Mr. Broches.

This has just come in for Mr. Woods and I have had a copy made for you straight away. Could we ask you to review and prepare an appropriate reply for Mr. Woods to send. Thanks.

20 JUNE.

Conciliation &
Arbitration

June 17, 1963

Dear Mr. Snyder,

Thank you very much for your letter of June 5th and for keeping me informed of your activities in the field of the protection of private foreign investment.

As you say, the Bank has been engaged for some time in an active study of the possibility of establishing conciliation and arbitration facilities for the settlement of investment disputes. This study is conducted by the Board of Executive Directors and the staff. On the staff side, the work is directed by myself with the assistance of members of my department. After careful consideration we have decided that for the time being we would proceed entirely within the framework of our own organization. The experience of similar efforts undertaken elsewhere has indicated to us that premature publication of incomplete plans is not likely to further the cause which we are trying to serve.

We do not intend, therefore, to publish details of our ideas until they have taken a much firmer shape and after careful consultation with out member governments. I appreciate very much your interest and your kind offer of assistance but for the reasons stated there is at the present stage nothing that we could usefully ask you to do.

With kind regards,

Sincerely yours,

[Signed] A. Broches

A. Broches
General Counsel

Earl A. Snyder, Esq.
Headquarters 9th Air Force
Box 5024
Shaw Air Force Base
South Carolina

May 27, 1963

Dear Mr. Kutner:

Thank you for your letter of May 23 regarding your interest in the arbitration and conciliation procedures which the World Bank is at present considering and which were referred to in my recent address to the United Nations Economic and Social Council.

Mr. Aron Broches, the Bank's General Counsel, will be happy to discuss this matter with you further, if you would wish to do so. I suggest that sometime when you are to be in Washington you should give Mr. Broches a call on the telephone. His number is: DUdley 1-2087.

Sincerely,

(Signed) George D. Woods

George D. Woods

Mr. Luis Kutner
Commission for International Due
Process of Law
105 West Adams Street
Chicago 3, Illinois

GCWishart:cml

cc: Mr. Broches
cleared with

The Commission holds that WORLD HABEAS CORPUS *is premised on the concept that man, as the subject of International Law, should have his individual security completely guaranteed by an Internationally enforceable Rule of Law in every State on the face of the earth, without Sovereignty impairment of the State.*

Commission for International Due Process of Law

Incorporated, STATE OF ILLINOIS

105 West Adams Street, Chicago 3, Illinois, U.S.A.

TELEPHONE STATE 2-1946

MAY 24 REC'D

May 23, 1963

Dear Mr. Woods: The current letter from the AMERICAN SOCIETY OF INTERNATIONAL LAW refers to the bank's interests in establishing a tribunal to insure the sanctity of international investments.

To that end, I am enclosing a copy of a recent law journal article, "HABEAS PROPRIETATEM: AN INTERNATIONAL REMEDY FOR WRONGFUL SEIZURES OF PROPERTY."

I would be interested in pursuing it further and at your convenience.

Yours very truly,

LUIS KUTNER

LK:"cb

Enc.

Mr. George D. Woods
President of International Bank
for Reconstruction and Development
Washington, D.C.

Ack. May 27

*Partial list of those who have encouraged or are now aiding the expansion of the concept of WORLD HABEAS CORPUS.

UNIVERSITY
of
DETROIT

LAW JOURNAL

APRIL 1961

HABEAS PROPRIETATEM: AN INTERNATIONAL REMEDY FOR WRONGFUL SEIZURES OF PROPERTY

By

LUIS KUTNER

Reprinted from
Vol. 38, No. 4

To be cited as
38 U. DET. L.J. 419

HABEAS PROPRIETATEM: AN INTERNATIONAL REMEDY FOR WRONGFUL SEIZURES OF PROPERTY

LUIS KUTNER*

NECESSITY FOR THE WRIT OF HABEAS PROPRIETATEM

Rapid advancements in methods of destructive warfare have led peoples of the world to realize that sincere efforts must be made to establish the principle of international due process of law. Only upon the strength of that principle can we achieve individual security which will lead to world security and peace.[1]

The international responsibility of States for injuries to aliens was the subject of a convention at the Harvard Law School in May 1959. The draft convention was the suggestion of Dr. Yuen-li Liang, the Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat and Secretary of the International Law Commission.[2] Reflecting on the entire concept of the proposal of *habeas proprietatem,* the Harvard draft convention rested on the following basic principles of State responsibility:

> 1. A State is responsible for an act or omission which is attributable to that State, which is wrongful under international law, and which causes an injury to an alien.
>
> 2. If a State is responsible for such an act or omission, it has a duty to make reparation therefor to the injured alien or an alien claiming through him, or to the State entitled to present a claim on behalf of the individual claimant.
>
> 3. (a) An alien is entitled to present an international claim under this Convention only after he has exhausted the local remedies provided by the State against which the claim is made.
>
> (b) A State is entitled to present a claim under this Convention only on behalf of a person who is its national, and only if

* Member, Illinois Bar; President, Commission for International Due Process of Law. The author acknowledges the assistance of Fred Grant, J.D., University of Chicago Law School.

1. See generally, Kutner, *World Habeas Corpus for International Man: A Credo for International Due Process of Law,* 36 U. DET. L.J. 235 (1959); and Kutner, *The Case for an International Writ of Habeas Corpus: A Reply,* 37 U. DET. L.J. 605 (1960).

2. The text had been prepared by Professor Louis B. Sohn and Assistant Professor R. R. Baxter of the Law School of Harvard University, under the general supervision of Professor Milton Katz, Director of International Legal Studies. An assisting Advisory Committee consisted of Professor William W. Bishop, Jr., University of Michigan; Professor Herbert W. Briggs, Cornell University; Arthur Dean, Esq., of the New York Bar; Roger Fisher, Esq., of Harvard Law School; Alwyn V. Freeman, Esq., Deputy Representative of the International Atomic Energy Agency, United Nations; Professor Philip C. Jessup, Columbia University; Charles M. Spofford, Esq., of the New York Bar; I. N. P. Stokes, Esq., of the New York Bar; Professor Quincy Wright, Emeritus, University of Chicago; and until his death in 1958, Clyde Eagleton, Professor Emeritus, New York University.

the local remedies and any special international remedies provided by the State against which the claim is made have been exhausted.[3]

The Harvard draft convention, with remarkable farsightedness, and cognizant of the realities of dictatorships, asserted that the responsibility of a State is to be determined according to international law and that by so doing, a State cannot avoid international responsibility by invoking its municipal law.

1. The taking, under the authority of the State, of any property of an alien, or of the use thereof, for the State's own needs or for any other purpose is wrongful if not accompanied by prompt payment of compensation in accordance with the higher of the following standards:

(a) Compensation which is no less favorable than that granted to nationals of such State; or

(b) just compensation in terms of the fair market value of the property unaffected by this or other taking or, if no market value exists, in terms of the fair value of such property.

If a treaty requires a special standard of compensation, such special measure of compensation shall be paid in the manner specified in the treaty.

2. If property is taken by a State in furtherance of a general program of economic and social reform, the just compensation required by paragraph 1 of this Article may be paid over a reasonable period of years, provided that:

(a) the method and modalities of payment to aliens are no less favorable than those applicable to nationals;

(b) a reasonable part of the compensation due is paid promptly, taking into account the general financial situation of the alien concerned;

(c) bonds bearing a reasonable rate of interest are given to the injured alien and the interest is paid promptly; and

(d) the taking is not in violation of an express or implied undertaking by the State in reliance on which the property was acquired by the alien.

3. A measure directed toward depriving an alien of the use and enjoyment of his property, other than a taking under paragraph 1, is wrongful.[4]

Pursuant to article 10, article 32 of the draft convention has this to say:

1. Damages for the taking of property under paragraph 1 of Article 10 shall be equal to the difference between the amount, if any, actually paid for such property and the compensation required by that Article.

2. Damages for the wrongful deprivation of use or enjoyment

3. CONVENTION OF THE INTERNATIONAL RESPONSIBILITY OF STATES FOR INJURIES TO ALIENS, HARVARD LAW SCHOOL, art. 1 (1959).

4. *Id.*, art. 10.

> of property under paragraph 3 of Article 10 shall include payment for losses caused and gains denied as the result of such wrongful act or omission.[5]

The importance of the substitution of the rule of law for the rule of national force is recognized by all thoughtful men in an age in which man possesses the capacity to destroy the world. Laws must be formulated and enforced which can shape the future of mankind and insure the preservation of society. One such law must be designed to protect the individual's property rights against seizure by the State.[6] Such seizures lead to destruction of the individual's integrity and the security implicit in ownership of property.

> The right of property is that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. It consists in the free use, enjoyment, and disposal of all a person's acquisitions, without any control or diminution only by the laws of the land.[7]

This classic definition of the property right discloses the reasons why property ownership and individual security are so closely intertwined. The destruction of this security results in serious inter-State disputes—disputes which could instantly plunge the world into the holocaust of nuclear destruction.

The importance of security which results from the existence of property laws, tempered by justice, was expressed in 1909 by a world statesman:

> The vital processes of civilization require, and the combined interests of millions guarantee, the security of property. A society in which property was insecure would speedily degenerate into barbarism; a society in which property was absolutely secure, irrespective of all conceptions of justice in regard to the manner of its acquisition would degenerate, not into barbarism, but death.[8]

Today, in a shrinking world with a swelling population, security of property is more vital than ever. The realization of this fact led the writer to propose the adoption of an International Writ of Habeas Proprietatem, a summary

---

5. *Id.*, art. 32.

6. Throughout this paper the term "individual" will be used to refer to both the human individual and the property owning business firm. Protection against unlawful seizure is just as necessary when the property owner is a business firm rather than the individual person. Since all States today depend in varying degrees on inter-State business, large firms develop to carry on this business. Such firms will be more stable and more willing to expand in useful ways (as contrasted to exploitation of resources) if there exists a system of protecting property rights. If at any time in this paper a distinction should be drawn between the human and business individuals it will be done in the text.

7. BLACK, LAW DICTIONARY 1382 (4th ed. 1951).

8. Statement by Sir Winston Churchill, July 1909, cited in THE ELOQUENCE OF WINSTON CHURCHILL 21 (Czarnomski ed. 1957).

remedy that would help prevent and correct arbitrary confiscation, detention, requisition, or seizure of property.[9]

In the past, victims of State confiscations have been without legal remedy except through conciliatory and compromising negotiations carried on through diplomatic channels. Often these negotiations have resulted in serious inter-State disputes. Impartial, international relief against such seizures in the form of a writ of habeas proprietatem would provide a method of determining disputes without causing serious disturbances in diplomatic relations between the interested States.

Between the years 1927 and 1938 moderately sized property holdings of United States citizens valued in excess of ten million dollars were seized by the government of Mexico.[10] In 1938-1939 Mexico seized oil properties of seventeen British, American, and Dutch companies.[11] The companies claimed that the methods of seizure used by the government amounted to no less than confiscation. Bitter controversy developed between the parties involved, controversy which did not end even with the decision of the Supreme Court of Mexico holding the seizures valid. Political statements attributed to several justices of the Court and the apparent deliberate misapplication of the existing Mexican constitution and laws led to serious complaints that the court proceeding was a mere sham, designed to place a stamp of legality on unlawful government seizures.[12] The controversy raged between the United States and Mexican governments for several years. No reparations for former property holders were agreed upon until much inter-State tension had developed.[13] No settlement was reached between Britain and Mexico until 1947, nearly a decade after the property of British nationals had been seized.[14]

Comparable inter-State controversy was occasioned by the Anglo-Iranian oil seizure of 1951. No settlement was reached between Iran and Britain until 1954, and then settlement was only partial.[15]

Egypt's nationalization of the Suez Canal Company's concession in 1956 led to serious disputes which very nearly resulted in the extended use of armed force. Again, only partial settlement had been made by 1958.[16]

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9. The term and concept "habeas proprietatem" is new in the history of world legal literature. Having originated in the author's lectures, it is now detailed in his forthcoming book, WORLD MAN.

10. 3 HACKWORTH, INTERNATIONAL LAW 655-65 (1942), citing correspondence between Secretary of State Hull and the Mexican government.

11. 16 ENCYCLOPEDIA BRITANNICA 150-51 (1960). See also STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 220-22 (1958); STANDARD OIL COMPANY, DENIALS OF JUSTICE (1940).

12. STANDARD OIL COMPANY, DENIALS OF JUSTICE (1940).

13. See HACKWORTH, *op. cit. supra* note 10.

14. 16 ENCYCLOPEDIA BRITANNICA 150-51 (1960).

15. *Ibid.*

16. *Ibid.*

In addition to these well known cases, there have been mass seizures of property in the states of Bulgaria, Czechoslovakia, Hungary, Poland, Rumania, and Yugoslavia since World War II.[17] As to these seizures, the governments involved have had to answer legally to no one.

Further, in December 1958, the government of Indonesia nationalized all Dutch property in the islands. Payment of compensation was deferred to subsequent legislation. The seizure has been denounced as illegal according to standards of international law.[18]

Finally, diplomatic relations between Cuba and the United States have been severely strained by recent land policies of the Castro government. Reports estimated the value of American property in Cuba at eight hundred million dollars. At one time or another all of that property has been threatened with seizure.[19] The methods of seizure used to gain control of three hundred million dollars' worth of American owned agricultural land evoked strong United States protest. A note of January 11, 1960, sharply attacked the seizure program as illegal according to standards of international law.[20] But Castro did not stop with his agrarian reform program. He used the threat of seizure to influence the business operations of foreign property holders. Oil refineries were ordered to process Soviet crude oil. Three plants refused because of prior commitments to handle Venezuelan oil, and in retaliation the Castro government seized plants which represented United States, British, and Dutch interests valued in excess of one hundred million dollars.[21] Severe denunciations of this seizure were issued by the United States government.[22] News reports prophesied the "biggest international oil crisis since Iran's nationalization of the billion dollar holdings of the Anglo-Iranian Oil Company in 1951."[23] The power to create such a crisis lay in the hands of one man, whose threat of seizure was unchecked by an impartial judiciary body. Moreover, the threat of wholesale seizures was used to try to prevent action by the United States Congress which would give the President full authority to fix the size of the Cuban sugar quota. In retaliation to such congressional action Castro threatened to "take penny by penny American investments until nothing is left."[24] An entire American investment of nearly one billion dollars was thus threatened. And after the United States Congress did take the relevant action, the Cuban government

17. *Ibid.*

18. See *Foreign Seizure of Investments: Remedies and Protection*, 12 STAN. L. REV. 606 (1960).

19. U.S. News & World Report, June 20, 1960, p. 65.

20. N.Y. Times, Jan. 12, 1960, p. 11, col. 1; *id.* at p. 10, col. 4.

21. Chicago Daily Tribune, June 30, 1960, p. 1.

22. *Id.* at p. 8, col. 5.

23. New York Herald Tribune, June 12, 1960, p. 5.

24. Chicago Daily Tribune, June 30, 1960, p. 8, col. 5.

seized other American business plants, evoking further formal protest from the United States government.[25]

The contentions of the United States and Cuba in this dispute serve as good examples of the claims presented in each of the serious property disputes already mentioned. The United States claims that the Cuban actions amount to confiscation, while Cuba contends that the seizures are actions of expropriation for the welfare of the citizens of Cuba.[26] Confiscation is generally considered unlawful according to international law, while expropriation is recognized as lawful State action.[27]

Within the international void in the area of property security these inter-State disputes have in the past continued for years. But in today's restless world such disputes must be eliminated, or at least settled promptly. If the *habeas proprietatem* concept is adopted, an impartial judicial tribunal will be able to hear the contentions of the interested parties and then make a decision

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25. N.Y. Times, July 17, 1960, p. 1.

26. Certain terms must be defined for the purposes of this paper and for an understanding of one of the questions which the International Court will face when it considers an international writ of *habeas proprietatem*. *Nationalization*—this is probably the broadest term used in relation to property acquisitions by the State. One authority defines it thus: "Nationalization is the taking of property which may be either confiscation of expropriation according to whether or not compensation is made. Nationalization resembles confiscation if, in the taking of property, compensation is refused or the compensation offered or granted is inadequate; nationalization resembles expropriation if the taking or use of property by public authority is accompanied by adequate compensation." Sipkov, *Postwar Nationalizations and Alien Property in Bulgaria*, 52 AM. J. INT'L L. 469, 470 (1958). So, "nationalization" may be said to be the broad term which applies to any "bringing of land, property, industries, etc., under the control of the nation." 7 THE OXFORD ENGLISH DICTIONARY 32 (1909).

Expropriation—that type of "nationalization" which provides for compensation. Sipkov, *supra;* 3 THE OXFORD ENGLISH DICTIONARY 449 (1897).

Confiscation—that type of nationalization which makes no provision for compensation. Sipkov, *supra*. It contains connotations of forfeiture or penalty. 1 THE OXFORD ENGLISH DICTIONARY 808 (1888). A somewhat related term is *Requisition*. This term is ordinarily used in time of war when a State requires that property be furnished for military use. 8 THE OXFORD ENGLISH DICTIONARY 501 (1914). But it may be used whenever the State calls into use any property (real or personal) for use in a matter of the State's interest. Usually in this connection the term is used when the State calls for goods which are to be consumed (such as food products) or which are to be operated only temporarily (such as a truck requisitioned for temporary hauling duty). Schubert, *Compensation Under New German Legislation On Expropriation*, 9 AM. J. COMP. L. 84 (1960). *Seizure* is used at various times to apply to either intervention, confiscation, or expropriation.

Since it is important from a legal standpoint to determine whether a seizure is confiscation or expropriation, it is submitted that the International Court should make that determination. After all, if confiscation is unlawful in international law, surely for a State to confiscate an individual's property is to deprive him of that property without international due process of law.

27. STARKE, *op. cit. supra* note 11, at 221; see also BISHOP, INTERNATIONAL LAW: CASES AND MATERIALS 485 (1953) where the editor points out, though not using the terms "confiscation" and "expropriation," that most international authorities agree that international law requires compensation for a seizure to be lawful. Thus, confiscation, by definition, would be unlawful.

to settle the question of legality immediately and effectively. Had the writ of habeas proprietatem been available to the United States property holders in 1938, to the Anglo-Iranian Oil Company in 1951, to the Suez Canal Company in 1956, to the Dutch land holders in 1958, and to the United States, British, and Dutch property owners in the early months of 1960, much inter-State tension could have been averted. In each case the International Court, applying standards of international due process of law, could have handed down a decision binding on all parties as to the legality of the State seizure. The controversy, under the proposed system, would not have to become an inter-State matter, because the property holder himself would have standing to petition for the writ. Such a system would produce far more effective results than does the present use of regular diplomatic channels to argue a point of law which should be decided by a tribunal of law.

The Fundamental Nature of Property Rights

1. *Documented Theory*

It is not difficult to understand why unlawful property seizures create so much bitter controversy when one realizes just how fundamental the right to own property really is. Property rights are imbedded deeply into the history of civilized man. In ancient times the Divine Law relating to property was handed down: "Thou Shalt Not Steal," and "Thou Shalt Not Covet."

In 1215 A.D. the Magna Charta provided that no free man should be disseized except by proper procedure under the law of the land.[28] This protection was reiterated in 1628 in the Petition of Rights.[29] Property rights were characterized in 1789 as "natural and imprescriptable" by the Declaration of the Rights of Man and of Citizens.[30] The United States Constitution provides that no individual shall be deprived of property "without due process of law," and that no private property shall be taken for the use of the public "without just compensation."[31]

Property rights, considered fundamental throughout the history of man, are no less important to the peoples of today's world. The recognition of property rights is universal, with eighty-two percent of today's national constitutions containing clauses respecting them.[32] As a result, the right to hold property free from arbitrary State seizure is recognized constitutionally only six percent less frequently than the right to enjoy individual liberty and fair legal process.[33]

28. See discussion in THACKERAY, THE LAND AND THE COMMUNITY 72 (1889).
29. *Ibid.*
30. *Ibid.*
31. U.S. CONST. amend. V.
32. 1 PEASLEE, CONSTITUTIONS OF NATIONS 7 (2d ed. 1956).
33. *Ibid.* See also 3 PEASLEE, *op. cit. supra* note 32, at 808. Of ninety-nine states con-

Further evidence of the international status of property rights is found in the Universal Declaration of Human Rights, a noble document designed to give substance to those "fundamental human rights" which all member States of the United Nations pledged to promote and encourage. Even though the Declaration never became law throughout the world, it indicates those rights which the member States considered "fundamental." Every voting member of the United Nations approved article 17 of the Declaration which provides, "1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property."[34] The signatories of the European Convention for the Protection of Human Rights and Fundamental Freedoms guaranteed to the peoples within their jurisdiction the right to hold property:

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.[35]

The right is also recognized in the American Declaration of the Rights and Duties of Man, a document drawn up by the Organization of American States,[36] and in the Economic Agreement of Bogotá.[37]

Arbitrary seizure of property in violation of such a well-recognized and fundamental international right is certain to give rise to bitter controversies between the deprived property owner and the seizing State. More important, and more dangerous to the existence of international peace, is the fact that such seizures lead to *inter-State* disputes and tension.[38] In order to avoid such controversies, impartial international protection of fundamental property rights must be established. Adoption of the international writ of habeas proprietatem would provide the necessary protection.

2. *In Actual Practice*

This country's belief that the right to own property is a fundamental human right was shown in the 85th Congress of the United States, when Senator Homer E. Capehart of Indiana inserted into the Record a statement made by Senator Olin D. Johnston of South Carolina, concerning the

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sidered, only nine had no constitutional protection of the property right: Bulgaria, Laos, Muscat, Poland, Rumania, Saudi Arabia, Switzerland, Vatican City, and Yugoslavia.

34. YEARBOOK OF THE UNITED NATIONS 1948-1949.

35. Robertson, *The European Court of Human Rights,* 9 AM. J. COMP. L. 1 (1960). Property protection was added by a protocol of March 22, 1952. It is gratifying for the writer to note that ideas which he has advanced since 1931 have been verified by the experience of the European Court of Human Rights.

36. Note, *Foreign Seizure of Investment: Remedies and Protection,* 12 STAN. L. REV. 606, 622-23 (1960).

37. *Ibid.*

38. See discussion, *supra,* of various seizures in the last thirty years; see also note 36 *supra.*

return of property seized from German and Japanese nationals during and following World War II. That statement emphasized the purpose of the Trading With The Enemy Act of October 6, 1917, under which the relevant property was seized:

> Its principal purpose was (a) to immobilize the properties of enemy nationals in World War I; (b) to prevent commercial transactions between the merchants of the United States and Germany and her allies; and (c) to hold the properties in trusteeship for the ultimate disposition of such assets by the Congress. *Confiscation of such properties was never in the mind of the Congress when the original statute was enacted.* (Emphasis added.)[39]

Yet, despite the fact that the act was aimed at aiding the United States' war effort, its terms were used to permit seizures of property of Japanese nationals up until April 28, 1952, and of that owned by German nationals up until April 17, 1953, long after the conclusion of the war. These seizures, and the long failure to return the property, were the objects of the bill introduced by Senator Johnston, a bill designed to return this property. The Senator's remarks present a convincing argument for return of the property, but more important, they present a concise, revealing view of the traditional American anti-confiscation policy. That policy was first internationally formalized by the Jay Treaty of 1794 which compensated for British Tory property confiscated by various of the colonies. It is a policy recognized by the Constitution, and practiced throughout the political history of our country. The senator urged that this is no time to change that policy by failing to compensate for and return properties seized from German and Japanese nationals. His remarks present the American view of the fundamental nature of the right to hold property. But they also point to the necessity of adopting the concept of *habeas proprietatem* which will place international force of law behind that fundamental right. For even in a great democracy such as ours the processes of freedom sometimes move slowly. Much needed, for the sake of fulfilling our own principles and for fortifying our position in the free world, is a plan which would permit those persons deprived of their property to petition for an international writ of habeas proprietatem. Had that process been available at the end of World War II the matter of property seized under the Trading With The Enemy Act could have been promptly settled by an impartial international court. As a result the United States would not have been placed in the embarrassing position of watching the Nasser government justify the seizure of the Suez Canal Company by a comparison of that action with American seizures of property belonging to German and Japanese nationals.[40]

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39. 103 CONG. REC. 11295 (1957).

40. This comparison is referred to in the Senator's remarks found in the *Congressional Record.*

Recent West German legislation further evidences the free world conscience in regard to property seizures and thus further points to the fundamental nature of the right to own property free of interference by the State.[41] That legislation lists the precise purposes for which property may be expropriated or requisitioned, and also stipulates the terms and conditions which must be met before the government can acquire title to the property. Perhaps most important are the provisions which require the payment of compensation or indemnification for all property expropriated or requisitioned.

The principles thus recognized in national history and in national legislation are universal principles, principles which must be backed up internationally by force of law. For mere national recognition of the principles will not secure them for all the peoples of the world. They must be internationally recognized and internationally enforced.

Implementation of the Property Rights

"The principle of law respecting individual rights by all persons, including the state itself, without sanction or effective implementation cannot be considered a legal principle."[42] Implementation of the right to hold property free from unlawful seizures should be placed in the hands of the International Court of Habeas Corpus already proposed by this author for the purpose of protecting the personal freedom of all individuals.[43]

The court system, as outlined in the Treaty-Statute submitted by the author to the American Bar Association in 1959, would consist of nine international circuit tribunals and one court of review.[44] Each circuit tribunal would have equal competence and jurisdiction, each operating within a fixed circuit, and each composed of jurists selected from the States making up the circuit. This circuit arrangement is desirable for several reasons. The first is jurisprudential in nature. Because of the varying social and economic traditions and circumstances existing throughout the world, it seems advisable to submit cases growing up in a certain region to a tribunal sitting in

41. Schubert, *Compensation Under New German Legislation on Expropriation*, 9 Am. J. Comp. L. 84 (1960).

42. Kutner, *supra note* 1, at 238, citing Letourneur and Drago, *The Rule of Law As Understood in France*, 7 Am. J. Comp. L. 147 (1958).

43. The basic principle upon which the two writs will rest, *i.e.*, international due process of law, makes possible the issuance of both writs by the Court of Habeas Corpus.

44. The Treaty-Statute was proposed at the meeting of the American Bar Association Section of International and Comparative Law held on August 25, 1959, at Miami Beach, Fla. The Treaty-Statute provided for seven circuits, but a subsequent article by the author has pointed out the desirability of increasing the number to nine. This will correspond to geographical considerations, diversities in legal traditions, culture, religion, and history. The nine proposed circuits are: 1. Communist-Orient; 2. U.S.S.R.-East Europe; 3. Western Europe (including Israel); 4. Islamic States; 5. Southern Africa; 6. Non-Communist Orient; 7. Austral-Oceania; 8. Latin America; 9. Anglo-American.

that region and composed of jurists familiar with the region and its problems. The second reason is practical or political in nature. To the State involved in a seizure case it will seem more advantageous to have its case heard and decided by a tribunal composed of jurists familiar with the state and its principles and problems. This will undoubtedly boost the prospects for voluntary acquiescence to the decision of the court.

The Court of Review would be composed of nine justices, one selected from each of the nine circuits. Thus, the widest possible range of judicial thought would be represented on the tribunal which will hear appeals from the circuit tribunals.

Another provision which would be attractive to the signatory States is that which will require exhaustion of local remedies. A petitioner must show that he has exhausted any available local remedies or that no such remedies exist before the court will consider his case. This will give the seizing State every opportunity to remedy any unlawful action without the petitioner having to seek international redress.

Once the international writ of habeas proprietatem has been issued and a hearing of the case set, the judges must have an international standard of due process of law by which to judge the State's actions. It is essential to the success of the writ that the substantive requirements of due process be set out, just as they have been set out in the Treaty-Statute designed to deal with personal security. The writ, by its very nature, would have effect only in case of *unlawful* seizure or detention of property, just as the writ of habeas corpus has effect only in cases of *unlawful* detention of the person. Unless international standards are set which are to be observed by all States the effect of the writ could be negated by national legislation or regional treaties making more and more types of seizure proceedings lawful. Therefore, certain well-recognized elements of international due process of law should be declared.[45] At least the following requirements should be set out: (1) A hearing should be held to determine the reasons for a seizure. (2) The individual should have the right to present reasons why his property should not be seized. (3) The individual should have the right to the aid of an interpreter, and, if not a citizen of the seizing State, the right to receive any aid provided by his home government. (4) Proper compensation should be made for any property otherwise lawfully expropriated.[46] If all member States were bound to conform to these standards, the individual's property rights would be cared for in good style.

The international writ of habeas proprietatem must be agreed to in a

45. Kutner, *supra* note 1, at 251.

46. See BISHOP, *op. cit. supra* note 27, at 485-86 where it is said that the requirement of compensation is generally accepted by authorities in international law.

treaty, outside the formal framework of the United Nations because it is essential that all States be permitted to participate in this system designed to protect property rights. Especially desirable would be the participation of Communist China which would bring millions of Orientals into the protective system. Of course this power of the Far East will be outside the scope of the plan if membership is limited to members of the United Nations. In fact, the non-membership of that communist State in the United Nations may be one reason why it would desire to participate in the movement to secure individual rights. Voluntary participation in the movement for international *habeas proprietatem* might very well boost the chances for membership of Mao's government in the United Nations. Such participation would present the Communist Chinese government a chance to prove to the world, especially to neutral Orientals, that it is willing to work in a cooperative world movement. This could lead to support for United Nations membership.

Within the system outlined by the author's Treaty-Statute the concept of *habeas proprietatem* would function and grow along with that of its companion concept of habeas corpus.

The Nature of the Writ of Habeas Proprietatem

1. *Scope of the Writ*

Technically, in a *habeas proprietatem* case the state would be ordered to show cause why the writ should not be issued, and upon issuance of the writ, to produce the property so that the court could decide whether it had been lawfully seized and detained. But, practically speaking, such production of property itself is impossible. So the International Court of Habeas Corpus, in a *habeas proprietatem* hearing, would be dealing with matters relating to title to the property involved. The State would be ordered to produce title or proof of title to the property, and the court then would determine whether the property represented by the title had been unlawfully seized. The International Court would not deal with matters of property value or dollar assessments of damages. The scope of the court's action in a *habeas proprietatem* hearing would be to determine whether the State acted lawfully according to international due process of law in seizing the petitioner's property and title to that property. The Court would thus be dealing with concepts of title.

As outlined, the acceptance of the *habeas proprietatem* concept would not deny to a State its right to expropriate or requisition property for the national welfare. What would be required of the State is that it fulfill the requirements of international due process of law in carrying out its nationalization program. This requirement gives substance to the protection of indi-

vidual security and integrity connected with property ownership. This relationship of the State to the individual is in accord with the demands which must be met if the rule of law is to be established throughout the world. For, implicit in the rule of law concept is the legal subservience of the State to any rights of the individual which are prior and superior to those of the State.[47] The fundamental nature of the right to hold property free from unlawful seizure makes it a right which is "prior and superior" to any supposed right of seizure resting with the State.

2. *Issuance of the Writ*

Any property holder whose property has been unlawfully seized by a State, or any person acting for such property holder, could petition for the international writ of habeas proprietatem in the circuit tribunal for the circuit in which the property has been seized. The petition should state: (1) that the petitioner's property has been unlawfully seized, giving the name of the seizing State and a precise description of the property involved; (2) the cause of the seizure (if known to the petitioner); and (3) that there has been an exhaustion of available remedies or that there are no such remedies.

When a legally sufficient petition is presented, the circuit court should issue a show cause order to the seizing State, ordering it to file its motion as to why the international writ of habeas proprietatem should not issue. The State's return should state: (1) whether the property in question was seized by the State and is under the State's control, (2) what method was used in seizing the property, (3) the cause of the seizure, and (4) the authority by which the seizure was made.[48] If the State fails to show cause within a ten day period, or if the court finds that the cause shown is not a legally sufficient one it would then issue the international writ of habeas proprietatem. Then the State must produce title to the property and the court will hold its hearing to decide the question of legality.

Providing the individual with the right to petition in his own name would have a very distinct advantage. The subsequent hearing and controversy would be more apt to be limited to the seizing State and the individual property owner. Under traditional views only the State representing an individual may appear before the international tribunal against the offending State. This tends to create an atmosphere of inter-State conflict which is not at all necessary.

The right of the individual to initiate international legal process is in

47. Kutner, *supra* note 1, at 238.

48. The reason, of course, for detailing the contents of the various documents in this paper is to show that the State will not be subjected to false claims. The International Court will be able to dismiss a petition as being legally insufficient.

accord with modern international legal thought which now recognizes the individual as a subject of international law.[49] No other position is really feasible now that the individual has been recognized by the United Nations Charter as a being endowed with fundamental human rights and freedoms. Article 55 of the Charter declares that the United Nations shall promote universal respect for, and observance of, human rights. And the member States pledged in article 56 to co-operate with the Organization of United Nations to achieve the purposes set forth in article 55, including the observance of human rights. So, to the extent that this instrument of international law recognizes the fundamental rights of the individual and imposes an obligation on the State to respect those rights, the Charter constitutes the individual a subject of international law.[50]

3. *Orders of the Court*

The International Court of Habeas Corpus must be able to issue three types of orders in a *habeas proprietatem* case. First, the court must be able to declare a seizure to have been unlawful and must be able to remand or return title to the individual. When this first type of order is issued the court should be able to place in the hands of an *ad hoc* international tribunal the task of requiring of the State an accounting for any rents or losses in use of the property during the time of its detention by the State.

Second, in order to deal with those instances of seizure in which the purposes of the State were lawful but the seizure itself was unlawful because of a failure to compensate, the court must be authorized to remand the case to a national court or to transfer it to an *ad hoc* international tribunal for the fixing of reparation or compensation.

Third, of course, the court must be able to declare the State action lawful according to the standards of international due process of law.

4. *Enforcement of the Court's Orders*

These orders can be made effective without a system of extrinsic enforcement. "International tribunals have traditionally secured compliance with their decisions without the aid of specific enforcement procedures other than court decree."[51] This has been the case with arbitral boards and special international courts, the old Permanent Court of International Justice, and the International Court of Justice.

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49. Kutner, *supra* note 1; Ross, A TEXT-BOOK OF INTERNATIONAL LAW 96, 27-28 (1947); Lauterpacht, *The Subjects of the Law of Nations*, 64 L.Q. REV. 97 (1948); ST. KOROWICZ, INTRODUCTION TO INTERNATIONAL LAW 385 (1959). These Citations contain complete lists of authorities relating to this position.

50. Lauterpacht, *supra* note 49.

51. Kutner, *supra* note 1, at p. 606.

The International Court of Habeas Corpus and the concept of *habeas proprietatem* would be established by treaty agreement of the member States. An authority in international law has declared that "treaties are more regularly and more honestly observed than violated . . . ." Another has said, "Seldom has a state refused to execute the decision of a court which it has recognized in a treaty. *The idea of law, in spite of everything, still seems stronger than the ideology of power.*"[52] (Emphasis supplied.)

In those few instances when the court's orders are not satisfied, the tremendous pressure of world opinion backing a system of law would be brought to bear on the hesitant State. Those signatories which are also members of the United Nations could also take steps in that organization to bring the sanctions provided in the Charter against the offending State as a violator of the obligation of all States to respect fundamental human rights.

Desirability of Protection Outweighs Problem of Sovereignty

The desirability to so many different groups of people of the implementation of the *habeas proprietatem* concept should lead to willing agreement by the States of the World.

The protection offered by this concept would be welcomed by alien property holders because it will provide them with a process to quicken the return of their seized property or the payment of compensation of seized property. At present they can act internationally only through their home government. The process has proven unwieldy and slow. With the availability of the proposed writ of habeas proprietatem the alien property holders can personally challenge the State's action in an impartial international tribunal.

But the protection offered by the international writ of habeas proprietatem would extend also to citizens of the seizing State. To these people acceptance of the concept will be extremely desirable because they at present have even less international protection against arbitrary seizures than do alien property holders.[53] It has long been thought that to extend the reach of any international proposal to the relationship between a State and the property of its own citizens would be an encroachment on that State's sovereign powers. The time has now come completely to review traditional

52. *Id.* at 607, citing Briggs, Law of Nations 20-21 (2d ed. 1952), and Kelsen, *Compulsory Adjudication of International Disputes*, 37 Am. J. Int'l L. 400 (1944).

53. Bishop, *op. cit. supra* note 27, at 476, citing correspondence between Secretary of State Hull and the Mexican government. This correspondence presents the States' views as to what is required of a government when it deals with aliens and citizens. See also Note, *Foreign Seizure of Investment: Remedies and Protection*, 12 Stan. L. Rev. 606, 622-23 (1960).

doctrines of sovereignty in light of the importance of individual security to the survival of man.

The creation long ago of the League of Nations and the Permanent Court of Justice, despite adherence to the concept of inviolability of sovereignty, ushered in the age of world organization. In this vital new age the traditional concepts of sovereignty have been doubted and challenged.[54] Perhaps the culmination of those challenges, thus far, is the obligation imposed upon all States by articles 55 and 56 of the United Nations Charter to preserve and protect human rights. This obligation is absolute, making no allowances for considerations of sovereignty. Today the traditional doctrines of sovereignty are obsolete. No leaders interested in the survival of society may permit their efforts or thoughts to be thwarted by ideas formulated for use in the past. The world changes rapidly; the law must change to keep pace. If the rule of law concept is to be established, the world must recognize that certain individual rights are prior and superior to any rights of the State. And the right to hold property, embodying the security and integrity of the individual, is one of these rights. For the sake of all mankind the right must be protected, for citizens of the seizing State as well as for alien property holders.

Finally, the *habeas proprietatem* concept would appeal to international industry and commerce. The "progressive emergence of nationalistic economic programs in the 'capital-importing' nations of the world has created difficult problems for the investor in foreign economies."[55] Any presently existing forms of protection for foreign investors, or for companies operating plants in foreign States are completely inadequate to provide the type of security which is needed for healthy commercial growth.[56] The proposed protection would thus be extremely desirable to those engaged in international commerce and those who would like to become so engaged.

The United States Must Take the Lead

As a nation representative of freedom to all the world the United States must take the lead in offering the protection of *habeas proprietatem* to the world's peoples. We must take the lead in calling for all States to agree in the form of a legally binding treaty to offer protection of the individual's fundamental human rights.

Such action would do more than demonstrate to the world that we are a

54. Kutner, *supra* note 1. Franklin D. Roosevelt expressed these doubts and challenges in his fourth inaugural address on January 20, 1945, when he asserted, "We have learned that we cannot live alone . . . . We have learned to be citizens of the world, members of the human community." Cited in Barck & Blake, Since 1900, at 727 (1952).

55. 12 Stan. L. Rev. 607 (1960).

56. *Id.* at 613-16.

nation which believes in and works for the principles of freedom. It will protect the vast American investments in foreign lands, and will protect foreign property improvements made possible by our Mutual Security Program. Some of the latest available figures show that United States investments in Latin America alone amount to over six and one-half billion dollars, while investments in Africa amount to three-quarters of a billion dollars.[57] On these two continents, where the spark of nationalism is constantly being rekindled and fanned into flame, vast investments are presently insecure and in danger. The proposal for *habeas proprietatem* would leave the new-born States or governments in these areas the right to embark upon a plan of nationalization, but at the same time it would protect the fundamental rights of property holders.

This is the opportunity for the United States to take the lead in providing the machinery to make possible the world harvest of a property right.

Conclusion

In view of the serious inter-State disagreements which result from property seizures and long delays in settlement of reparations, the necessity for implementation of property rights is clear and demanding. Recent seizures by Castro's government and the critical international dispute which they touched off, pointedly indicate the danger which such actions pose to world peace. The availability of the international writ of *habeas proprietatem* in the International Court of Habeas Corpus would ease international tensions developing from property seizures by offering prompt, efficient settlement of legal problems existing between the property holder and the seizing State.

The protection offered by *habeas proprietatem* would be welcomed by millions of property holders throughout the world. It is a protection which must be offered in order to achieve that degree of individual security necessary for survival in this atomic world. The States of the world must see the importance of the protection offered, and must put aside ideas of sovereignty, replacing them with ideas of preserving human dignity and human rights. Sir Winston Churchill, speaking of the failure of the League of Nations, warned in 1946, "It failed because the governments of those days feared to face the facts, and act while time remained. This disaster must not be repeated."[58] The United States must today fearlessly face the facts and, while time remains, lead the world's peoples in a move which will result in acceptance of the International Court of Habeas Corpus and the writs of habeas corpus and habeas proprietatem.

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57. The Economic Almanac 455 (Gates ed. 1958).
58. The Eloquence of Winston Churchill 109 (Czarnomski ed. 1957).

The proposed International Court of Habeas Corpus would not only be a keeper of the world's conscience, but would be the keeper of the world's properties. Being basically a conscience court, it would assert its jurisdiction in cases of accepted and agreed upon standards of moral and legal wrongdoing which flaunt the conscience of mankind. As a court of conscience it would affirm the inherent competence of the human being as a member of an international community in having his existence and property recognized and protected by a procedure of basically applied, substantial justice and fair play.

Arbitration

April 9, 1963

Dear Walter,

I was glad to learn from your letter of April 5th that your "Arbitration Guide" has now been published.

While our Board has had a number of discussions concerning the Draft Convention, there is really nothing new to report for the time being.

You might be interested, however, in what Mr. Woods had to say on the subject in his annual address to the United Nations Economic and Social Council on April 5, 1963. Enclosed please find the relevant two pages from Mr. Woods' speech.

With kind regards,

Sincerely yours,

(Signed) A. Broches

A. Broches
General Counsel

Mr. Walter Hill
Secretary-General
International Chamber of Commerce
38, Cours Albert 1er
Paris, France

Arbitration

March 18, 1963

Dear Mr. Maktos,

As you probably know, I left Washington in the middle of February to visit a number of countries in Africa. Upon my return I found your letter of February 19, 1963 with the attached study on "Legal problems and policy concerning the acceptance by the American Republics of the Bank's Convention for the Resolution of Disputes between States and Nationals of Other States". I have in the meantime had an opportunity to read your study and I want to compliment you on a very thorough job.

Your Memorandum gives rise to only one question. You mention that recently the United States and Guatemala concluded an agreement concerning investment guaranties, making provisions for submission to an Arbitral Tribunal of United States claims growing out of such guaranties. You also mention that the agreement was concluded by an exchange of notes. In view of the provisions of Article 149 of the Constitution of Guatemala I wonder whether this type of agreement could validly be concluded in such an informal manner without the approval of Congress. I assume that this question must have been looked into by the State Department before the agreement was concluded and I would be interested to learn, if possible, whether the State Department was satisfied that the agreement constitutes a valid and binding obligation of Guatemala.

I have asked our Treasurer's Department to send you a check in payment of your fee.

With personal regards,

Sincerely yours,

(Signed) A. Broches

A. Broches
General Counsel

John Maktos, Esq.
3700 Massachusetts Avenue, N.W.
Suite 221
Washington 16, D. C.

Arbitration

(not for public use)

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

SID/63-1

FROM: The Acting Secretary

February 7, 1963

DRAFT CONVENTION ON THE PROTECTION OF FOREIGN PROPERTY

During the discussions of the Executive Directors on the subject of conciliation and arbitration of investment disputes, reference has been made from time to time to a convention on the protection of foreign property which was being drafted in the Organisation for Econmic Co-operation and Development.

The text of the draft convention has now been released and a copy thereof is attached for information. As noted in the introduction to the draft, the Council of the OECD has not yet taken a decision on the principle and content of the draft.

NOT AVAILABLE

Distribution:

Members of the Committee of the Whole
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Department Heads

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type
November 27, 1962	Letter

Correspondents / Participants
To: Walter Hill, Secretary-General, International Chamber of Commerce
From: A. Broches

Subject / Title
[World Bank's current study of conciliation and arbitration]

Exception(s)
Attorney-Client Privilege

Additional Comments

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

Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

Arbitration

October 25, 1962

Dear John,

I was very glad to receive your note of October 23 with the attached papers on the conciliation and arbitration question. They will certainly be most helpful to me and I can assure you that they will be treated as entirely informal and unofficial comments.

With best regards,

Sincerely yours,

A. Broches
General Counsel

Mr. John C. Bullitt
Acting Assistant Secretary
Treasury Department
Washington 25, D. C.

Arbitration

[Reply to a request for information as to what was said at the Annual Meeting concerning Conciliation & arbitration].

27 september 1962

Zeer geachte Heer Funke,

In antwoord op uw brief van 14 september 1962, deel ik U mede dat op de zojuist afgelopen jaarvergadering van de Bank de Board of Governors een resolutie heeft aangenomen van de volgende inhoud:

> RESOLVED:
> THAT the Executive Directors are requested to consider the desirability and practicability of establishing institutional facilities, sponsored by the Bank, for the settlement through conciliation and arbitration of investment disputes between governments and private parties and, if they conclude that such action would be advisable, to draft an agreement providing for such facilities for submission to governments.

In de rede van de Heer Black werden aan dit onderwerp enkele opmerkingen gewijd die ik hieronder letterlijk weergeef.

"The Bank staff has carried forward two special projects which I mentioned in Vienna. It has finished and made public a study of various proposals for setting up some kind of multilateral scheme for insuring international investments. It was not the purpose of the study to reach conclusions with respect to any such scheme, but rather to illuminate the issues involved. It has been given to governments and to the Development Assistance Committee of the OECD, which asked the Bank to undertake it.

De Weledelgestrenge Heer
Mr. A.P. Funke
Keizersgracht 391
Amsterdam-C, Nederland

../..

For some time, the Executive Directors of the Bank have been studying a second idea that also is aimed at increasing confidence in international private investment, namely, the establishment, under the sponsorship of the Bank, of some kind of machinery for the conciliation or arbitration of international disputes arising between governments and private parties. A working paper on the subject has been circulated, and we are now receiving comments from governments. I hope that you will agree with me that this approach is an interesting and promising one, and that you will approve the resolution on your agenda specifically authorizing the Directors to study the matter".

Met vriendelijke groeten,

Hoogachtend,

Mr. A. Broches
General Counsel

Gen. Files
Arbitration

September 4, 1962

Dear Lord McNair,

During our short conversation in Brussels you were kind enough to say that you would be willing to look at the working paper on settlement of investment disputes which we prepared in the Bank and which will be discussed by the Bank's Executive Directors during the coming months.

As the paper itself states, it is not to be regarded as a proposal. It is rather intended to highlight certain issues of principle and to furnish a basis for discussion. The paper has been circulated to all member governments of the Bank and I am sure that both the Treasury and the Foreign Office are aware of its existence. (Indeed we have asked for preliminary comments from governments by the end of this month).

It goes without saying that if you found the time to comment on the working paper I should be most pleased and grateful to learn your views.

Sincerely yours,

A. Broches
General Counsel

Enclosure

The Right Honourable Lord McNair
Lavender Cottage
25 Storey's Way
Cambridge, England

August 21, 1962

Dear Mr. Hynning:

This is to acknowledge with thanks your letter of August 14 and the attached resolution adopted by the House of Delegates of the American Bar Association on the conciliation and arbitration of investment disputes.

I read the resolution with great interest and I congratulate you and your Committee for having been such effective sponsors.

Sincerely yours,

Eugene R. Black

Mr. Clifford J. Hynning
Chairman, Committee on International
Unification of Private Law
American Bar Association
1821 Jefferson Place, N. W.
Washington 6, D. C.

LNurick:vv

AMERICAN BAR ASSOCIATION
ORGANIZED 1878
SECTION OF INTERNATIONAL AND COMPARATIVE LAW
1961-1962

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AUG 16 REC'D

Please address your reply to:
1821 Jefferson Place, N. W.
Washington 6, D. C.

August 14, 1962

Dear Mr. Black:

I am happy to advise you that the House of Delegates of the American Bar Association on Thursday, August 9, 1962, unanimously adopted the attached resolution on the conciliation and arbitration of investment disputes between governments and private investors under the auspices of the World Bank.

A copy of the resolution as it was adopted by the House of Delegates is attached.

Sincerely yours,

Clifford J. Hynning, Chairman
Committee on International Unification of Private Law

Mr. Eugene R. Black, President
World Bank
1818 H Street, N. W.
Washington, D. C.

Enclosure

ac Quarterly
send to ED
call AB Aug 21 62

AMERICAN BAR ASSOCIATION

The House of Delegates adopted on Thursday, August 9, 1962, the following resolution with respect to the establishment of international machinery for the conciliation and arbitration of international investment disputes, urging support of the establishment by an international agreement of such machinery in close conjunction with the World Bank (International Bank for Reconstruction and Development) and authorizing officers of the Section of International and Comparative Law to appear before the Departments of State, Treasury, and Commerce and before the Congress in support of the treaty and necessary enabling legislation:

Whereas, the international flow of private capital to the less developed areas of the world will be encouraged by more effective measures for the protection of the rights of private investors, this being a problem which has also received the attention of the organized bars of many countries adhering to the principle of the rule of law;

Whereas, the case-by-case growth of legal principles, characteristic of the common-law tradition, has proven to be one of the more effective methods of developing contemporary law, including the laws relating to the rights of private investors in foreign countries;

Whereas, President Eugene R. Black of the World Bank (International Bank for Reconstruction and Development) announced in Vienna in September, 1961, that the Bank would explore with other international institutions and with member governments the feasibility of establishing specific machinery for the conciliation and arbitration of disputes between governments and foreign private investors;

Whereas, the prompt settlement of international investment disputes would be promoted by affording private claimants direct access to conciliation and arbitral machinery without the necessity of formally securing governmental espousal or diplomatic protection of claims;

Whereas, a proposal limited to procedural machinery for the conciliation and arbitration of international investment disputes can be advanced independently of and without dependence upon

other current proposals for bilateral or multilateral treaties defining principles of law applicable to international investments or providing for insurance or other guaranties of international private investments;

Therefore, Be It Resolved, that the American Bar Association favor the establishment of machinery for the conciliation and arbitration of international investment disputes between governments and foreign private investors in accordance with principles of law applicable to the rights of investors and with provision for direct access to such machinery by private persons to the extent that the parties to the international investment dispute have consented thereto;

Further Resolved, that the Association favor in principle the negotiation and ratification of an international agreement for the establishment of such machinery for conciliation and arbitration in close conjunction with the World Bank;

Further Resolved, that copies of this resolution be sent to the Secretaries of State, Treasury, and Commerce and to the appropriate Committees of the Congress, and that the officers of the Section of International and Comparative Law be authorized to appear before said Departments and Committees in support of such an international agreement and necessary anabling legislation.

arbitration

July 12, 1962

Mr. Clifford J. Hynning
1821 Jefferson Place, N.W.
Washington 6, D.C.

Dear Cliff:

This is to confirm, pursuant to our conversation, that I hereby authorize you, on behalf of the Bank, to use the microfilm that we have lent you with a view to having photostatic copies made for your own account by Recordak Co.

Very sincerely yours,

Georges R. Delaume
Attorney

Gen. Files
Arbitration

Dear Dr. Reinhardt,

I have received your letter of May 28, 1962, with which you enclosed an outline of an international convention for the establishment of an arbitration institute. This draft will undoubtedly be of assistance to us in our own studies and I am glad that you sent it to me.

In your letter you make reference to my statement at the Vienna meeting of the Board of Governors, and to the possibility of establishing machinery for the settlement of international disputes which would be linked in some way to the World Bank. After informal discussions of this idea with the Executive Directors of the Bank, we have now prepared a working paper in the form of a draft convention which we recently circulated to the Executive Directors for comment.

Until we receive the comments of governments, it is difficult to forecast the further progress of the study. I have noted your kind offer of assistance and I may refer to it when the time is ripe.

With best regards,

Sincerely yours,

Eugene R. Black

Dr. E. Reinhardt
Association Internationale d'Etudes pour la
Promotion et la Protection des Investissements
Prives en Territoires Etrangers
92, rue du Rhone
Geneva, Switzerland

Gen. Pract
arbitration

May 31, 1962

Dear Mr. Hynning,

legal
Thank you very much for your letter of May 28 with which you sent me a copy of the Resolution on the settlement of investment disputes which will be presented to the House of Delegates at the Annual Meeting of the American Bar Association in San Francisco during the first week in August.

I also take this opportunity to thank you for sending me the ALI draft of the foreign relations law of the United States.

With best regards,

A. Broches
General Counsel

Mr. Clifford J. Hynning, Chairman
Committee on International
Unification of Private Law
1821 Jefferson Place, N.W.
Washington 6, D. C.

Arbitration

HECHT, HADFIELD, FARBACH & McALPIN
ELEVEN BROADWAY
NEW YORK 4, N.Y.

DAVID S. HECHT (1939-1959)
BARNABAS B. HADFIELD (1939-1961)
C. LANSING HAYS, JR.
CARL F. FARBACH
PAUL A. LANDSMAN
JOSEPH V. HEFFERNAN
TOWNSEND M. McALPIN
C. J. HEAD

WHITEHALL 4-8260
CABLE: HEADROIT

May 8, 1962

Lars Bengston, Esq.
International Bank for Reconstruction
and Development
1818 H Street, N.W.
Washington 25, D.C.

Dear Lars:

Many thanks for your letter of May 4, 1962. I hope you found my comments on the arbitration clause to be useful.

Incidentally, I shall gain a bit of experience with one of the clauses that I mentioned in my letter. One of our arbitrators has just died, so that I shall see how well the provision in the compromis as to the proceeding continuing will work.

There is nothing specific to do at this time. I shall be sure to look in on you again, however, the next time I am in Washington.

Very sincerely yours,

Carl

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type
May 7, 1962	Letter

Correspondents / Participants
To: Dr. C.W. van Santen, Raad Adviseur, Ministerie van Buitenlandse Zaken
From: A. Broches

Subject / Title
[Draft agreement]

Exception(s)
Attorney-Client Privilege

Additional Comments

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Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

Record Removal Notice

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File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type	
April 3, 1962	Memorandum	

Correspondents / Participants
To: Mr. Broches
From: Georges R. Delaume

Subject / Title
Arbitration - Enforcement of Foreign Awards under the Geneva Treaties and the New York Convention

Exception(s)
Attorney-Client Privilege

Additional Comments

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

Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

Arbitratie

Mr. Broches acknowledges receipt of "Rules of arbitration and conciliation for settlement of international disputes between two parties of which only one is a State" as adopted by the Administrative Council of the Permanent Court of Arbritation on March 26th, 1962.

2 mei 1962

Zeer Geachte Heer Sanders,

Hierbij bevestig ik gaarne de ontvangst van uw brief van 16 april 1962, met de daarbij ingesloten "Rules of arbitration and conciliation for settlement of international disputes between two parties of which only one is a State".

Ik was in de eerste week van april in Nederland, en heb toen het genoegen gehad met Prof. François van gedachten te wisselen over het probleem van de beslechting van zgn. "investment disputes". Ik heb toen ook nog getracht U te bereiken, maar vernam dat U in Luxemburg waart. Misschien doet zich binnenkort eens de gelegenheid voor U te ontmoeten.

Inmiddels verblijf ik met de meeste hoogachting,

A. Broches
General Counsel

De Hooggeleerde Heer
Prof. Mr. P. Sanders
Burgemeester Knappertlaan 134
Schiedam, Nederland

May 1, 1962

Dear Mr. Könz,

Thank you very much for your letter of April 18, 1962.

In the light of developments of the April meeting of the Committee for Invisible Transactions, I am glad that I did not stay over in Paris, although the weather may in the meantime have changed!

I promised to keep you informed of our activities in the field of arbitration of investment disputes. However, for the moment there is nothing to report.

With kind regards,

A. Broches
General Counsel

Mr. Peider Könz
Secretary of the Council and
Head of the Legal Service
Organisation for Economic
Co-operation and Development
2, rue André-Pascal
Paris-XVI, France

ANNEX I

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS - UNATIONS NEWYORK - ADRESSE TELEGRAPHIQUE

FILE NO.: EC 232/9 (3-2)

3 April 1962

Dear Miss Scalak,

With reference to the request you made by telephone on 2 April 1962, I am enclosing herewith an excerpt from the United Nations publication, "Status of Multilateral Conventions in respect of which the Secretary-General Acts as Depositary", containing the list of States which have signed, ratified or acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958, as well as other information relating to that Convention.

In so far as concerns the Convention for the Execution of Foreign Arbitral Awards, done at Geneva on 26 September 1927, I am enclosing an excerpt from the League of Nations publication, "Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the auspices of the League of Nations", Twenty-first List, which gives the status of the Convention as of 31 July 1946, the date when the Treaty Registration Service of the League of Nations Secretariat was wound up. Since then, the following States have signed the Convention and deposited their instruments of ratification with the Secretary-General of the United

Miss Rose Scalak
International Monetary Fund
19th and H Streets, N.W.
Washington 25, D.C.

Nations on the dates indicated:

State	Date of Signature	Date of Deposit of Instrument of Ratification
Israel	24 October 1951	27 February 1952
Japan	4 February 1952	11 July 1952
Ireland	29 November 1956	10 June 1957
Yugoslavia	13 March 1959	13 March 1959

Yours truly,

Emily Rounds

Emily Rounds
Treaty Section
Office of Legal Affairs

2 Execution of Foreign Arbitral Awards.

CONVENTION FOR THE EXECUTION OF FOREIGN ARBITRAL AWARDS.

Geneva, September 26th, 1927 [1]

In Force since July 25th, 1929 (Article 8).

1. Ratifications: 21.

Austria 18 July 1930

BELGIUM (April 27th, 1929)
Reserves the right to limit the obligation mentioned in Article 1 to contracts which are considered commercial under its national law.

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

GREAT BRITAIN AND NORTHERN IRELAND (July 2nd, 1930)

Newfoundland (January 7th, 1931 *a*)

Bahamas, British Guiana, British Honduras
Falkland Islands
Gibraltar, Gold Coast [(a) *Colony*, (b) *Ashanti*, (c) *Northern Territories*, (d) *Togoland under British Mandate*]
Jamaica (including Turks and Caicos Islands and Cayman Islands)
Kenya
Palestine (excluding Trans-Jordan)
Tanganyika Territory
Uganda Protectorate
Windward Islands (Grenada, St. Lucia, St. Vincent)
Zanzibar (May 20th, 1931 *a*)

Mauritius (July 13th, 1931 *a*)
Northern Rhodesia (July 13th, 1931 *a*)
Leeward Islands (Antigua, Dominica, Montserrat, St. Christopher-Nevis, Virgin Islands) (March 9th, 1932 *a*)

Malta (October 11th, 1934 *a*)
Burma (excluding the Karenni States under His Majesty's suzerainty) (October 19th, 1938 *a*)
His Majesty reserves the right to limit the obligations mentioned in Article 1 to contracts which are considered commercial under the law of Burma.

NEW ZEALAND (*Western Samoa* included) (April 9th, 1929)

INDIA (October 23rd, 1937)
Is not binding as regards the enforcement of the provisions of this Convention upon the territories in India of any Prince or Chief under the suzerainty of His Majesty.
India reserves the right to limit the obligation mentioned in Article 1 to contracts which are considered as commercial under its national law.

CZECHO-SLOVAKIA (September 18th, 1931)
The Czecho-Slovak Republic does not intend to invalidate in any way the bilateral treaties concluded by it with various States, which regulate the questions referred to in the present Convention by provisions going beyond the provisions of the Convention.

DENMARK (April 25th, 1929)
Under Danish law, arbitral awards made by an Arbitral Tribunal do not immediately become operative; it is necessary in each case, in order to make an award operative, to apply to the ordinary Courts of Law. In the course of the proceedings, however, the arbitral award will generally be accepted by such Courts without further examination as a basis for the final judgment in the affair.

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

ESTONIA (May 16th, 1929)
Reserves the right to limit the obligation mentioned in Article 1 to contracts which are considered commercial under its national law.

FINLAND (July 30th, 1931)

FRANCE (May 13th, 1931)
Reserves the right to limit the obligation mentioned in Article 1 to contracts which are considered commercial under its national law.

GERMANY (September 1st, 1930)

GREECE (January 15th, 1932)
The Hellenic Government reserves the right to limit the obligation mentioned in Article 1 to contracts which are considered as commercial under its national law.

ITALY (November 12th, 1930)

LUXEMBURG (September 15th, 1930)
Reserves the right to limit the obligation mentioned in Article 1 to contracts which are considered as commercial under its national law.

(*Continued*

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[1] Registered No. 2096. See *Treaty Series of the League of Nations*, Vol. 92, p. 301.
Ratifications and accessions subsequent to registration: Vol. 96, p. 205; Vol. 100, p. 259; Vol. 104, p. 526; Vol. 107, p. 528; Vol. 111, p. 414; Vol. 117, p. 303; Vol. 130, p. 457; Vol. 146, p. 210; Vol. 181, p. 389; Vol. 185, p. 391; and Vol. 193, p. 269.

Continued]

THE NETHERLANDS (for the Kingdom in Europe) (August 12th, 1931)
Netherlands Indies, Surinam and *Curaçao* (January 28th, 1933 *a*)

PORTUGAL (December 10th, 1930)
(1) The Portuguese Government reserves the right to limit the obligation mentioned in Article 1 to contracts which are considered commercial under its national law.
(2) The Portuguese Government declares, according to the terms of Article 10, that the present Convention does not apply to its Colonies.

ROUMANIA (June 22nd, 1931)
Reserves the right to limit the obligation mentioned in Article 1 to contracts which are considered commercial under its national law.

SPAIN (January 15th, 1930)

SWEDEN (August 8th, 1929)

SWITZERLAND (September 25th, 1930)

THAILAND July 7th, 1931)

2. Signatures not yet perfected by Ratification:

BOLIVIA — NICARAGUA — PERU

3. Open to Signature by:

ALBANIA
BRAZIL
CHILE
IRAQ
JAPAN
LATVIA
LIECHTENSTEIN
LITHUANIA
MONACO
NORWAY
PANAMA
PARAGUAY
POLAND
SALVADOR
URUGUAY
And all the other States which may sign the Protocol of September 24th, 1923.

1. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (in force since 7 June 1959)

State	*Date of signature*	*Date of receipt of instrument of ratification or accession (a)*	*Territorial Application*[1]	*Declarations and Reservations*[2]
Afghanistan				
Albania				
Argentina	26 August 1958			x
Australia				
Austria		2 May 1961a		
Belgium	10 June 1958			
Bolivia				
Brazil				
Bulgaria	17 December 1958	10 October 1961		x
Burma				
Byelorussian SSR	29 December 1958	15 November 1960		x
Cambodia		5 January 1960 *a*		
Cameroun				
Canada				
Central African Republic				
Ceylon	30 December 1958			
Chad				
Chile				
China				
Colombia				
Congo (Brazzaville)				
Congo (Leopoldville)				
Costa Rica	10 June 1958			
Cuba				
Cyprus				
Czechoslovakia	3 October 1958	10 July 1959		x
Dahomey				
Denmark				
Dominican Republic				
Ecuador	17 December 1958	3 January 1962		x
El Salvador	10 June 1958			
Ethiopia				
Federal Republic of Germany[3]	10 June 1958	30 June 1961		x
Federation of Malaya				
Finland	29 December 1958	19 January 1962		
France	25 November 1958	26 June 1959	x	x
Gabon				

[1] For the list of territories to which the Convention was extended, see page XXII-7.

[2] For the text of declarations and reservations, see page XXII-8-10.

[3] Applicable to Land Berlin (notification made on ratification).

State	Date of signature	Date of receipt of instrument of ratification or accession (a)	Territorial Application[1]	Declarations and Reservations[2]
Ghana				
Greece				
Guatemala				
Guinea				
Haiti				
Holy See (Vatican City)				
Honduras				
Hungary		5 March 1962a		x
Iceland				
India	10 June 1958	13 July 1960		x
Indonesia				
Iran				
Iraq				
Ireland				
Israel	10 June 1958	5 January 1959		
Italy				
Ivory Coast				
Japan		20 June 1961a		x
Jordan	10 June 1958			
Laos				
Lebanon				
Liberia				
Libya				
Liechtenstein				
Luxembourg	11 November 1958			
Madagascar				
Mali				
Mexico				
Monaco	31 December 1958			
Morocco		12 February 1959 a		x
Nepal				
Netherlands	10 June 1958			
New Zealand				
Nicaragua				
Niger				
Nigeria				
Norway		14 March 1961a		x
Pakistan	30 December 1958			
Panama				
Paraguay				
Peru				
Philippines	10 June 1958			x
Poland	10 June 1958	3 October 1961		x
Portugal				
Republic of Korea				

[1] For the list of territories to which the Convention was extended, see page XXII-7.
[2] For the text of declarations and reservations, see page XXII-8-10

State	Date of signature	Date of receipt of instrument of ratification or accession (a)	Territorial Application[1]	Declarations and Reservations[2]
Republic of Viet-Nam				
Romania		13 September 1961a		x
San Marino				
Saudi Arabia				
Senegal				
Somalia				
Spain				
Sudan				
Sweden	23 December 1958			
Switzerland	29 December 1958			
Thailand		21 December 1959 a		
Togo				
Tunisia				
Turkey				
Ukrainian SSR	29 December 1958	10 October 1960		x
Union of South Africa				
Union of Soviet Socialist Republics	29 December 1958	24 August 1960		x
United Arab Republic		9 March 1959 a		
United Kingdom				
United States of America				
Upper Volta				
Uruguay				
Venezuela				
Yemen				
Yugoslavia				

[1] For the list of territories to which the Convention was extended, see page XXII-7.
[2] For the text of declarations and reservations, see page XXII-8.–10

1. Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Territorial application

Notification by:	*Date of receipt of notification*	*Extension to:*
France	26 June 1959	All the territories of the French Republic.

1. Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Declarations and Reservations

ARGENTINA

"If another Contracting Party extends the application of the Convention to territories which fall within the sovereignty of the Argentine Republic, the rights of the Argentine Republic shall in no way be affected by that extension."

BULGARIA

"Bulgaria will apply the Convention to recognition and enforcement of awards made in the territory of another contracting State. With regard to awards made in the territory of non-contracting States it will apply the Convention only to the exent to which these States grant reciprocal treatment."

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

"The Byelorussian Soviet Socialist Republic will apply the provisions of this Convention in respect to arbitral awards made in the territories of non-contracting States only to the extent to which they grant reciprocal treatment".[1]

CZECHOSLOVAKIA

"Czechoslovakia will apply the Convention to recognition and enforcement of awards made in the territory of another contracting State. With regard to awards made in the territory of non-contracting States it will apply the Convention only to the extent to which these States grant reciprocal treatment."

ECUADOR

Ecuador, on a basis of reciprocity, will apply the Convention to the recognition and enforcement of arbitral awards made in the territory of another contracting State only if such awards have been made with respect to differences arising out of legal relationships which are regarded as commercial under Ecuadorian law.[1]

FEDERAL REPUBLIC OF GERMANY (see below)

FRANCE

Referring to the possibility offered by paragraph 3 of Article I of the Convention, France declares that it will apply the Convention on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another contracting State; it further declares that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its national law.[1]

FEDERAL REPUBLIC OF GERMANY

"With respect to paragraph 1 of article I, and in accordance with paragraph 3 of article I of the Convention, the Federal Republic of Germany will apply the Convention only to the recognition and enforcement of awards made in the territory of another Contracting State."

HUNGARY (see page XXII-10)

[1] Translation by the Secretariat.

INDIA

"In accordance with Article I of the Convention, the Government of India declare that they will apply the Convention to the recognition and enforcement of awards made only in the territory of a State, party to this Convention. They further declare that they will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the Law of India."

JAPAN (see below)

MOROCCO

The Government of His Majesty the King of Morocco will only apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting State.[1]

NORWAY (see below)

PHILIPPINES

"The Philippines delegation signs *ad referendum* this Convention with the reservation that it does so on the basis of reciprocity and declares that the Philippines will apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting State pursuant to Article I, paragraph 3 of the Convention."

POLAND

"With reservation as mentioned in Article I, par. 3."

ROMANIA (see page XXII-10)

UKRAINIAN SOVIET SOCIALIST REPUBLIC

The Ukrainian Soviet Socialist Republic will apply the provisions of this Convention in respect to arbitral awards made in the territories of non-contracting States only to the extent to which they grant reciprocal treatment.[1]

UNION OF SOVIET SOCIALIST REPUBLICS

The Union of Soviet Socialist Republics will apply the provisions of this Convention in respect to arbitral awards made in the territories of non-contracting States only to the extent to which they grant reciprocal treatment.[1]

JAPAN

"... it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State."

NORWAY

"1. We will apply the Convention only to the recognition and enforcement of awards made in the territory of one of the Contracting States."

"2. We will not apply the Convention to differences where the subject matter of the proceedings is immovable property situated in Norway, or a right in or to such property."

[1] Translation by the Secretariat.

(The next page is page XII-10)

ROMANIA

The Romanian People's Republic will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its legislation.

The Romanian People's Republic will apply the Convention to the recognition and enforcement of awards made in the territory of another Contracting State. As regards awards made in the territory of certain non-contracting States, the Romanian People's Republic will apply the Convention only on the basis of reciprocity established by joint agreement between the parties.[1]

HUNGARY

"... the Hungarian People's Republic shall apply the Convention to the recognition and enforcement of such awards only as have been made in the territory of one of the other Contracting States and are dealing with differences arising in respect of a legal relationship considered by the Hungarian law as a commercial relationship."

[1] Translation by the Secretariat

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type	
March 5, 1962	Letter	

Correspondents / Participants
To: Dr. R. Brinckmann, Brinckmann, Wirtz & Co., Germany
From: A. Broches, General Counsel

Subject / Title
[Arbitration and tribunal]

Exception(s)
Attorney-Client Privilege

Additional Comments

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Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

Arbitration

BRINCKMANN, WIRTZ & CO.

Dr. R. BRINCKMANN

FEB 12 REC'D

HAMBURG 1, FERDINANDSTRASSE 75
FERNSPRECHER 32 10 05

February 7, 1962

Dear Mr.Black:

I received your letter of January 31, and thank you for sending me the memorandum on the proposed arbitration machinery which I read with great interest.

Certainly there is a lack of specific machinery for conciliation and arbitration with respect to the position of private investors vis-à-vis the government of those countries in which the investments are made. The fact that such machinery would exist and would have been acknowledged in the form of an international agreement by the individual government would give a certain inducement to make use of it in the actual case, although the respective government would not be bound to do so.

Perhaps you are already informed of the fact that certain doubts have been expressed whether an arbitration machinery in the form of a list of personalities from which the arbitrators have to be selected would be sufficient for a uniforme protection of investments in foreign countries. This question was dealt with at the last Conference of the International Law Association in Hamburg in 1960 by a Comittee on "Property Protection", and I am enclosing a photostatic copy of the observations of the German Branch of the International Law Association on this subject. The arguments in Section 13, and the draft of an arbitration agreement will perhaps be of interest to you.

./.

It was indeed a great pleasure to see you again, and this time in Hamburg and I am most grateful to you that you will give my son Rudolf the privilege of paying you his respects.

Hoping to meet you again in a not too distant future, I remain with best regards,

Sincerely yours,

A. Brinckmann

ack: 3/5/62

Mr.Eugene R.Black, President
International Bank for Reconstruction and Development
Washington 25, D.C.

January 8, 1962

Mr. G.W. Haight
One Rockefeller Plaza
New York 20, New York

Dear Win:

Thank you for your letter of January 4. I noted with interest your suggestion to have a discussion of the O.E.C.D. project at the Headquarters of the American Society of International Law. I expect to be in Washington in the beginning of February and I have tentatively blocked off Friday afternoon, February 9.

Thank you for your good wishes which I heartily reciprocate.

Sincerely yours,

A. Broches

ABroches:ea

December 26, 1961

Dear Lord Shawcross:

Thank you very much for your letter of November 21, 1961. Your letter reached me only just before the start of the meetings of the O.E.C.D. Committee dealing with the proposed investment convention. I understand, however, that one or two American members of A.P.P.I. had an opportunity to discuss the convention with Messrs. Rusk and Ball in Washington.

I was glad to learn that you believe that the establishment of an international arbitration system under the aegis of the Bank would be a constructive step. We are working on an elaboration of the ideas which I formulated in Vienna and I hope that we shall get a favorable response from governments.

With best regards,

Sincerely yours,

(Signed) Eugene R. Black

Eugene R. Black

ABroches/amk

The Right Honorable Lord Shawcross, Q.C.
St. Helen's Court
Great St. Helen's
London, E.C. 3, England

Arbitration

December 4, 1961

Shabtai Rosenne, Esq.
Delegation of Israel
to the United Nations
11 East 70th Street
New York 21, New York

with Legal

Dear Mr. Rosenne:

In reply to your letter of November 24, 1961 I can tell you that to the extent of my knowledge we have never considered the possibility of invoking the advisory competence of the International Court. One reason for this is probably that the Articles of Agreement of the Bank contain a provision under which any questions of interpretation of the Articles are determined by the Executive Directors, subject only to appeal to the Board of Governors. Similar provisions occur in the Charters of the International Finance Corporation, the International Development Association and the International Monetary Fund.

I do remember one instance in which a member country which had a dispute with foreign creditors suggested that we might try and seek an advisory opinion from the International Court as to their proper conduct in the circumstances of that case. It was, however, clear that this would be outside the scope of our access to the Court under our agreement with the United Nations.

I trust that this answers your question and I remain,

Sincerely yours,

A. Broches
General Counsel

NOV 24 REC'D

FROM THE RIGHT HON^BLE LORD SHAWCROSS.

TELEPHONE:
AVENUE 4321.

ST. HELEN'S COURT,
GREAT ST. HELEN'S,
LONDON, E.C.3.

21st November, 1961.

Ack: Dec 26/61

Dear Mr. Black:

The real point of this letter is to refer to your excellent speech at Vienna, but may I first mention the talks which, as you may remember, we have had from time to time about the protection of foreign investment, and in particular, the possibility of establishing a Multilateral Convention laying down one or two elementary principles of international law and securing the right of submission to some international tribunal in the event of dispute.

I am glad to say that this particular project is going fairly well. A draft of such a Convention, differing a little but not significantly from the one prepared under the auspices of Abs and myself, has been prepared by the Secretariat of the OECD. It looks as if most of the OECD countries will support the idea that such a Convention, which contains provision for adherence by countries outside Europe, i.e. the developing capital importing countries, should be concluded. The British Government is giving it warm support and the Council of European Industrial Federations has passed a resolution strongly commending it. Indeed, the only significant obstacle in the way is the unfortunate fact that the United States Government still appears to be opposed to the idea preferring its own system of bilateral conventions. And this is indeed most unfortunate, especially as the initiative in the OECD was largely the result of a letter which Douglas Dillon sent me some years ago in which he expressed the view that a Multilateral Convention concluded by like-minded Nations in an organisation like the OEEC (as it then was) would form a useful precedent. Moreover, there seems little prospect of any useful extension of the bilateral system at the present time. If you were able to give the project any support with the State Department it would be of tremendous advantage. Various organisations in the United States, such as the American Bar Association, are now pursuing the matter and I think that Arthur Dean and Chuck Spofford, who are on the Committee of the international group called APPI, will do what they can with the State Department, as will Leo Welch.

I read with very great interest the admirable speech you made at Vienna. It is a very clear and comprehensive survey of some of the issues confronting neutral and other investors at the present time. I thought Oliver made a useful contribution at the San Francisco meeting.

/We here were.....

Eugene R. Black, Esq.,
International Bank for Reconstruction and Development,
Washington, 25, D.C.,
U.S.A.

We here were particularly interested in what you said on the subject of settling financial disputes, involving private parties. As you very well know, there are many foreign investors, small as well as large, in the less developed countries who find great difficulty in securing proper settlement of the disputes which they may have with the Governments of these countries. These disputes frequently involve political considerations or have political repercussions and public officials are consequently loath to submit them to adjudication. Again, as has happened too often recently, investors may find themselves forced to deal with revolutionary regimes determined to repudiate agreements their predecessors may have made in order to secure the flow of foreign capital. In the absence of a water-tight contractual provision for the submission of disputes to neutral arbitration, investors in these cases have no remedy other than the usually inadequate one of securing support for their claims by their own Governments through diplomatic channels.

Although I have myself supported the establishment of a Multilateral Convention re-affirming the most elementary rules of international law, such as that there should be no expropriation without compensation and that specific undertakings should not be broken, I have always thought that by far the most important thing would be to secure an arrangement under which private investors and Governments could submit their disputes to neutral arbitration. If a system of submission to neutral arbitration existed, one could rely on difficulties of the kind I have indicated being settled in a fair and reasonable way. Investors cannot really ask for much more. The problem is how to persuade Governments of the capital importing countries to accept procedures of this kind. I very much hope that the lead which you are so helpfully taking in this matter may result in a wide acceptance of the principle of neutral adjudication. If the World Bank, as an institution commanding the greatest respect and having wide influence amongst the development countries, were to establish appropriate arbitration facilities, either in the form of a permanent arbitration court or a panel of arbitrators whose procedures could be set in motion on application to the Bank, I have no doubt that the task of persuading Governments to accept neutral arbitration clauses in the contracts they make with foreign investors would be very greatly facilitated.

The APPI organisation to which Arthur Dean, Spofford, Leo Welch, Abs, Wallenberg and various other European bankers and industrialists belong, will be only too happy to lend you and your colleagues every possible assistance in the study or implementation of these ideas which you canvassed in your Vienna speech. We have, in fact, been doing a good deal of work on the problem of international arbitration and if there is any help which you think we could give, I hope you will let me or our American Secretary, Win Haight, know. I am sure that the need is becoming increasingly urgent. If you could obtain support from

/member.....

member Governments of the World Bank organisation for the establishment of some international arbitration system under the aegis of the Bank, there would be enthusiastic and widespread support from private investors in all of the countries in which private capital is available for export to the less developed countries.

Arbitration

Files

November 20, 1961

A. Broches

Arbitration - U.K. Position

Last Friday afternoon I had a visit from Mr. Goldman who had been informed by London that the Treasury had been very much interested in the passage in Mr. Black's speech dealing with arbitration. The Treasury welcomed Mr. Black's initiative and wondered what further steps were going to be taken. I told Mr. Goldman that the Management was considering that question and that a decision would be taken very soon. Mr. Goldman said that the Treasury would welcome a study by the Bank of this problem. In reply to a question by me Mr. Goldman said that the Treasury might be prepared to support study of specific proposals but that, as far as he knew, they had not gone beyond thinking in terms of a more general study.

AB/amk

cc. Mr. Eugene R. Black
Sir William Iliff
Mr. J. Burke Knapp

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type	
November 6, 1961	Memorandum	

Correspondents / Participants
To: General Files
From: A. Broches

Subject / Title
Arbitration - Proposals of Messrs. Hynning and Haight

Exception(s)
Attorney-Client Privilege

Additional Comments

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

Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

Arbitration

October 26, 1961

Dear Spruille:

Thank you very much for your letter of October 13 and the enclosed letter and memorandum of the Director General of the Inter-American Commercial Arbitration Commission.

I am fully aware of the important role played by the Commission, as well as by the American Arbitration Association, in the field of commercial arbitration. Indeed, I feel that these institutions, along with the International Chamber of Commerce and some more specialized arbitral organizations, have been and are providing fully adequate facilities for the adjustment of commercial disputes between businessmen in international trade. I also understand that in some cases the facilities of the organizations have been used for the adjustments of disputes, one of the parties to which was a government or governmental organization. Nevertheless, our own experience here in the Bank has indicated reluctance on the part of governments to submit disputes between them and private parties to presently available channels for arbitration, especially where the dispute is not of a purely commercial character, as for instance in the case of so-called investment disputes. It was this problem to which I addressed myself in my Vienna speech.

We would certainly be interested in getting your views and those of the Director General of your Commission. To that end I suggest that, if agreeable to you, Mr. Marquez Sterling get in touch with the General Counsel of our Bank, Mr. A. Broches.

With best wishes,

Sincerely yours,

/s/ Gene

Eugene R. Black

ABroches/amk

Spruille Braden, Esq.
320 East 72nd Street
New York 21, New York

INTER-AMERICAN COMMERCIAL ARBITRATION COMMISSION

(Established by Resolution of the VII Conference of American States, Montevideo, 1933)

Mr Brooks: Please prepare reply for me. ERS

October 13, 1961

The Honorable Eugene R. Black, President
International Bank for Reconstruction and Development
33 Liberty Street
New York City

Ack: Oct 26/61

Dear Gene:

As perhaps you may recall, I was instrumental in getting through the Resolution creating the Inter-American Commercial Arbitration Commission at the Seventh International Conference of American States held at Montevideo, Uruguay in 1933.

I served as Chairman of the Commission for a few years until my diplomatic duties prevented my continuing in the post. I then became Honorary Chairman and was succeeded by our old and late-lamented friend, Tom Watson.

The Director General of the Commission is The Honorable Carlos Marquez Sterling, who was President of the Cuban Constitutional Convention in 1940, and candidate for the presidency against Batista's man in 1958. Carlos is a distinguished statesman, lawyer, and author. He has served in both the House and Senate, and several times was a cabinet officer and Ambassador.

I showed him your recent speech which enthused him greatly as to the possibilities for cooperation between the International Bank and the Inter-American Commercial Arbitration Commission. To this end, I enclose herewith copy of letter and memorandum I have received from Mr. Marquez Sterling. I would appreciate your giving this your earnest consideration and advising me as to what collaboration might be established.

With all best wishes.

Faithfully and cordially yours,

Spruille

enc.

INTER-AMERICAN COMMERCIAL ARBITRATION COMMISSION

(Established by Resolution of the VII Conference of American States, Montevideo, 1933)

October 6, 1961

Hon. Spruille Braden
320 East 72nd St.
New York 21, N.Y.

Dear Spruille:

I have had occasion to read the speech that Mr. Eugene R. Black, President of the International Bank for Reconstruction and Development addressed to the Board of Governors in Vienna, Austria on September 19, 1961.

In this important address, I notice an especially interesting paragraph on arbitration, on which I should like to comment.

As I bear in mind Mr. Black's speech, it would be good to remind him, as he already must know, that the American Arbitration Association, an institution that has been functioning for years quite successfully, has as its affiliate the Inter-American Commercial Arbitration Commission, created by Resolution XII of the Conference of American States in Montevideo, Uruguay, at which you were present, and that through your personal endeavors, ever beneficial to building good relations between the Americas, approval was given to the Resolution and subsequent functioning of the Commission.

At this time, Mr. Braden, you are enlisting your best efforts toward the reorganization of the Commission to render better service to all who wish to avail themselves of arbitration and, actually with the thought in mind as expressed by Mr. Black, "whether something might not be done to promote the establishment of a machinery of this kind."

In the belief that perhaps Mr. Black's speech may offer us the opportunity to make known to him these aims, I am writing a memorandum. If you consider it appropriate, could you have it sent to him, preparing the way for the International Bank for Reconstruction and Development to contribute, in line with its program, to fortifying and developing the Inter-American Commercial Arbitration Commission. I understand that at this time when a noble course of action is being taken with Latin America because of the world situation, the strengthening and financial support of the Commission will be of great value to all.

I should be very glad, Mr. Braden, if you would find these ideas opportune and practicable. You know how I appreciate your suggestions.

Cordially yours,

Carlos Marquez Sterling
Director General

INTER-AMERICAN COMMERCIAL ARBITRATION COMMISSION

(Established by Resolution of the VII Conference of American States, Montevideo, 1933)

M E M O R A N D U M

The use of arbitration and the approval of uniform arbitration laws in the Americas has, over a long period of time, been of great interest to the Pan-American Union, the member nations of the Organization of American States and even the United Nations.

This interest was first displayed at the Pan American Financial Conference of 1915 and at the Fourth Pan-American Commercial Conference of 1931. The latter established a basis for the conduct of an investigation of commercial arbitration in the American republics. The Seventh International Conference of American States approved Resolution XLI in Montevideo in 1933, creating an agency "to represent the commercial interests of all the republics and, to assume, as one of its most important functions, the responsibility of establishing an inter-American system of arbitration."

Under authorization of the Pan American Union, on April 14, 1934, the Inter-American Commercial Arbitration Commission was created as a private organization, non-profit and "wholly independent of official control." This year marks the twenty-seventh anniversary of the Commission's inception.

The I-ACAC constitution and statutes, approved by the Pan-American Union, establish the Commission as an organized body of businessmen, lawyers and professionals from all the 21 countries, with a national committee appointed in each republic.

Ambassador Spruille Braden was the first chairman of the Commission. He played an important role in the Seventh Conference of American States, where Resolution XLI, creating the Commission, was adopted. The late Thomas J. Watson succeeded him.

The present officers of the Commission are: Honorary Chairman: Spruille Braden. Vice Chairmen: Ernesto Barros Jarpa (Chile), Dr. Angel F. Brice (Venezuela), Enrique Garcia Sayan (Peru), Paul M. Herzog (United States), Brasilio Machado Neto (Brazil), Jorge Mantilla Ortega (Ecuador), Ezequiel Padilla (Mexico), Eduardo Zuleta Angel (Colombia), Director General: Carlos Marquez Sterling.

The Inter-American Commercial Arbitration Commission has developed and provided facilities for the conciliation, adjustment and arbitration of many commercial claims growing out of inter-American industrial and commercial enterprise. More than 2,000 cases of this type have been handled since 1934, the majority at headquarters in New York, but many by national committees in Latin America.

The Commission has established Rules of administration. It has assumed the exploration of arbitration laws within the 21 republics, educational programs on arbitration in commercial institutions and has rendered service to lawyers and businessmen throughout the Western Hemisphere. Publication and distribution of the Rules, periodic bulletins, and other pamphlets and folders have been made in English, Spanish and Portuguese. A few examples are attached hereto.

At the moment, a project is being prepared calling for the convocation of a Commercial Congress by the Secretariat of the Organization of American States. Commercial arbitration will be one of the principal topics on the agenda. The project also includes a program of technical assistance to be developed by the Inter-American Commercial Arbitration Commission with the financial support of the institutions that consider it convenient.

Arbitration

October 20, 1961
(September 25, 1961)

Mr. Aron Broches - Room 1004

C. E. Webb

Re Settlement of Disputes between
Governments and Private Parties

Apropos of the memorandum entitled "Settlements of Disputes between Governments and Private Parties (SecM 61-192)" and the discussion of arbitration machinery by Mr. Black at Vienna, you may be interested in the excerpt below from The Economist. It is taken from a special article by Walter Levy in the August 19, 1961 issue of The Economist. The excerpt reads:

"But if sovereign power is imposed against the companies' contractural rights to the point at which essential management prerogatives are eroded, the results will defeat the purposes of the producing countries themselves. Consideration might perhaps be given to a new approach for the settlement of major issues that may go unresolved through protracted negotiation over long-term concessionary arrangements. In such instances, and where relations between companies and government may be seriously disturbed by inability to arrive at a modus vivendi, it might be possible to agree on independent arbitration arrangements. The intent would be to arrive at a reasonable balance of inherent merits, taking account of the respective legal rights under the concession and also of other compelling circumstances.

"There would be both limitations and difficulties in such an approach. Certain issues, involving most fundamental interests of either company or government, might not be arbitrable. On the other hand, negotiation of outstanding issues might become more difficult -- demands more peremptory, agreements more reluctant -- if recourse to independent arbitration were available. However, the critical state to which industry-government relations may be brought, and the far-reaching consequences of a breakdown in confidence, suggest that the possibility of arbitration on a much broader scale than is usually conceived warrants serious consideration." (Page 727)

CEW:ajt

FORM NO. 59
(2-55)

CROSS REFERENCE SHEET

COMMUNICATION: Memorandum

DATED: September 29, 1961

TO: Mr. Demuth, Mr. Broches

FROM: J. Burke Knapp

FILED UNDER: INVESTMENT: Promotion and Protection of Private and Foreign Investment

SUMMARY:

Text.

With reference to the attached letter, Mr. Merillat is an old friend of mine and I talked to him on the telephone yesterday. I explained what the Bank was doing in the field of international guarantees for for foreign investment beziehungsweise international arbitration procedures. I told him that both of you were involved in this work and said that I would arrange to introduce him to you after your return.

June 12, 1961

Mr. Ralph I. Straus
331 Madison Avenue
New York 17, New York

Dear Ralph:

In accordance with your telephone request of last week, I am enclosing a reference to the question of "Arbitration" as found in the Articles of Agreement for the Bank and a copy of Loan Regulations No. 4 where the subject of arbitration is covered in Article 7.

I hope this information serves the purposes for which you wanted it.

Sincerely yours,

Kenneth R. Iverson
Assistant Director
Technical Assistance and Planning Staff

KRI:mo
Encls.
cc: Central files

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

ARTICLES OF AGREEMENT

ARTICLE IX

INTERPRETATION

"(c) Whenever a disagreement arises between the Bank and a country which has ceased to be a member, or between the Bank and any member during the permanent suspension of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators, one appointed by the Bank, another by the country involved and an umpire who, unless the parties otherwise agree, shall be appointed by the President of the Permanent Court of International Justice or such other authority as may have been prescribed by regulation adopted by the Bank. The umpire shall have full power to settle all questions of procedure in any case where the parties are in disagreement with respect thereto."

(not for public use)

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CONFIDENTIAL

SecM 61-192

FROM: The Secretary

August 28, 1961

SETTLEMENT OF DISPUTES BETWEEN GOVERNMENTS AND PRIVATE PARTIES

When the Executive Directors recently considered the request of the Colombian Government for mediation by the Bank in a dispute between the Government and a private company, questions were asked about the availability of international machinery for the adjustments of such disputes. The Executive Directors may therefore be interested in the attached note, prepared by the General Counsel, discussing in general terms the problem of settlement of financial and economic disputes between governments and private parties.

Distribution:

Executive Directors & Alternates
President
Vice Presidents
Department Heads

Settlement of Financial and Economic Disputes between Governments and Private Individuals or Corporations

1. The many studies which have been undertaken in recent years concerning ways and means to promote private foreign investment have almost invariably discussed the problem of the settlement of disputes between foreign private investors or entrepreneurs and the Government of the country where the investment is made. In many cases these studies have recommended the establishment of international arbitration and/or conciliation machinery.

2. The nature of the problem may be briefly described as follows:

(a) In the absence of an agreement to the contrary between the foreign investor and the host Government, the investment is subject to the laws of that Government (local law) and the redress of grievances which the investor may seek by direct access to that Government is equally determined by local law.

(b) If the investor feels aggrieved by actions of the host Government he may invoke the diplomatic protection of his national State or he may request his national State to espouse his case and bring a claim before an international tribunal. It is to be noted, of course, first, that in some countries the foreign investor may, as a condition of entry, be required to waive diplomatic protection and, second, that even if the national State is willing to espouse the investor's case, it may find that the host Government is unwilling to submit to the jurisdiction of an international tribunal. However, even in the absence of these obstacles, the present situation may be regarded as unsatisfactory because of the investor's inability to proceed with an international claim directly against the host Government. The necessity of espousal of his case by his national Government before an international claim can be lodged, introduces a political element. An investor may well find that his national Government refuses to espouse a meritorious case because it fears that to do so would be regarded as an unfriendly act by the host Government. And this consideration is even more likely to cause the national Government to refrain from acting if the merits of the investor's case are not wholly clear in its view, thus withholding from the investor an opportunity to have his case judged by an impartial tribunal.

(c) In an attempt to overcome these difficulties, some investors, mostly large corporations especially in the field of extractive industry, have been able to negotiate arbitration agreements with host Governments, providing for detailed rules regarding the selection of arbitrators, the arbitral procedure and, in some cases, the law to be applied by the arbitral tribunal. It is quite clear that only a few investors can be in a position to negotiate such agreements. Moreover, the validity of such agreements is sometimes questioned. If the Government refused to proceed

with the arbitration, the investor's remedy would once again be either a request to his national State for diplomatic intervention or for an espousal of his case before an international tribunal.

(d) The absence of adequate machinery for international conciliation and arbitration often frustrates attempts to agree on an appropriate mode of settlement of disputes. Tribunals set up by private organizations such as the International Chamber of Commerce are frequently unacceptable to governments and the only public international arbitral tribunal, the Permanent Court of Arbitration, is not open to private claimants.

3. The nature of the problem, as outlined above, suggests a solution along the following lines:

(a) a recognition by States of the possibility of direct access by private individuals and corporations to an international tribunal in the field of financial and economic disputes with Governments;

(b) a recognition by States that agreements made by them with private individuals and corporations to submit such disputes to arbitration are binding international undertakings;

(c) the provision of international machinery for the conduct of arbitration, including the availability of arbitrators, methods for their selection and rules for the conduct of the arbitral proceeding;

(d) provision for conciliation as an alternative to arbitration.

4. With respect to 3(a), this recognition would be best evidenced by inter-governmental action in creating international arbitral machinery to which private individuals and corporations might have direct access. The jurisdiction of such a tribunal would be based on consent, whether in the form of an advance undertaking to submit any specific dispute that might arise, (or a defined group of disputes) to the tribunal, or by an ad hoc submission in respect of a dispute which has already arisen. In other words, the tribunal would have no compulsory jurisdiction, and access to it would be voluntary. Nor need the establishment of such machinery interfere with the customary principle of international law pursuant to which claims cannot be brought before an international tribunal until local remedies (whether administrative or judicial) have been exhausted. This rule could be left intact, although it would, of course, be open to any government to agree that the procedure before the international arbitral tribunal would be in lieu of whatever local procedures or remedies may be available. In other words, the existence of an international arbitral tribunal to which private individuals and corporations could have access would provide an international jurisdiction to private claimants with substantially the same access as States-claimants have to the International Court of Justice or other international tribunals.

5. With respect to 3(b), it was noted earlier in this memorandum that the binding force of agreements by governments to arbitrate disputes with private parties is sometimes questioned. It would, therefore, be essential to have the binding force of such agreements, properly entered into, recognized in a treaty among states.

6. With respect to 3(c) (the provision of international machinery for the conduct of arbitration), a number of ways are open. On one end of the scale would be the creation of a permanent tribunal staffed by arbitrators, elected or appointed for a fixed period and operating under established rules of procedure. At the other end would be a panel of names, either submitted by the States-parties to the tribunal or designated by some other authority, from which the arbitrators would be selected. What would be needed, in addition, as a minimum, would be standard rules of procedure which would apply unless the parties agreed otherwise.

7. With respect to 3(d) (provision for conciliation as an alternative to arbitration), it may be noted that the Bank's own experience, among others, has indicated the value of conciliation which is less formal and politically more palatable than arbitration. As in the case of arbitration, recourse to this method of settlement would be facilitated and promoted if machinery therefor were available, based on an international agreement. The machinery might follow the general lines of any machinery established for arbitration.

Arbitration

June 6, 1961

Mr. Georges R. Delaume
c/o World Bank
4 Avenue d'Iena
Paris 16, France

Dear Georges:

I do not want to bother you with business while you are on home leave, especially since you have so much "unfinished work" (as I learned from your postcard to Mr. Broches). I just want to let you know that Mr. Broches yesterday asked me to have lunch with him and Messrs. Hynning and Haight and that we gave them two copies of your draft statute of the International Conciliation and Arbitration Center. They have been requested to keep this draft confidential. The conversation during lunch touched many subjects, but nothing that would be of particular interest to you. Messrs. Hynning and Haight are studying your draft now and will let us know their views.

I do hope you have a good time at home. Please give my best wishes to Anne. I am looking forward to seeing you again here in Washington.

Cordially,

M. H. Wiehen

cc: Mr. A. Broches

MHWiehen/rc

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type	
May 2, 1961	Memorandum	

Correspondents / Participants
To: A. Broches
From: Georges R. Delaume

Subject / Title
Permanent Court of Arbitration. Panel of arbitrators

Exception(s)
Attorney-Client Privilege

Additional Comments

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

Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

Arbitration

April 20, 1961

Mr. G. W. Haight
One Rockefeller Plaza
New York 20, N.Y.

Legal

Dear Mr. Haight:

Thank you very much for your letter of April 18, your article on American Foreign Trade and Investment Disputes and the decision of the Guatemalan Court of July 28, 1960.

I had read your article in the Arbitration Journal and I am very pleased to have a personal copy for my own library. I am sure that Mr. Broches and Mr. Wiehen will be as interested as I in reading the Guatemalan decision.

With best regards.

Very sincerely yours,

Georges R. Delaume

GRDelaume/cl

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type	
April 17, 1961	Memorandum	

Correspondents / Participants
To: A. Broches
From: Georges R. Delaume

Subject / Title
Arbitration of Investment Disputes. Proposed Arbitral Tribunal

Exception(s)
Attorney-Client Privilege

Additional Comments

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

Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

April 10, 1961

Mr. Philippe de Seynes
Under-Secretary
Department of Economic and Social Affairs
United Nations
New York, New York

Dear Mr. de Seynes:

I am writing in reply to your letter of February 28, 1961, EC 223/2(4).

In your letter you ask for up to date information and documentation on any relevant experience which the Bank and the International Finance Corporation may have had in the field of arbitration.

The Bank has made an extensive use of arbitration clauses. The Bank's loan and guarantee agreements provide for arbitration as the exclusive method for the settlement of disputes. The most recent standard clauses employed by the Bank in its loan and guarantee agreements are set forth in the Bank's Loan Regulations Nos. 3 and 4, dated February 15, 1961, which are enclosed herewith as Annexes 1 and 2. In practice variations of these standard clauses are necessary from time to time. A brief statement concerning some of these variations is enclosed as Annex 3. I must add that there have been no instances in which arbitration clauses have been invoked by any of the parties to the agreements. The Bank, therefore, has no experience of their operation in practice. Since your request for information is made within the context of a study of measures to facilitate the adjustment of disputes related to private investments, I feel that I should point out that the Bank's loans are either made directly to member governments or, if the borrower is not a government, carry a government guarantee.

Unlike the Bank, the International Finance Corporation invests only in private enterprises and neither requires nor accepts a government guarantee. However, IFC does not include arbitration provisions in its investment documents.

In Annex 1 to your letter the question is asked whether the expansion and institutionalization of arbitration or conciliation of investment disputes is likely to add substantially to the security of foreign investments. In my opinion this question must be answered in the affirmative. I may recall in this connection two instances in which the Bank

itself has been instrumental in arriving at a solution of what might be termed investment disputes, namely the question of compensation for the nationalization of the Suez Canal and the question of the French tranche of the City of Tokyo Loan of 1912. I understand that the agreements arrived at in the first matter were transmitted to the Secretary-General by the Government of the United Arab Republic. In the matter of the City of Tokyo Loan I was asked to act as a conciliator. A copy of my recommendations is enclosed herewith as Annex 4.

The Bank's experience in these two cases has confirmed my conviction as to the value of conciliation and arbitration as methods for settling investment disputes. A wider use of these methods would help in creating an atmosphere of confidence which in turn would be likely to encourage the flow of investment capital. This would be particularly true if there were a greater recourse to arbitration or conciliation provisions in agreements between governments and private investors and the adoption of such provisions might be facilitated if international arbitration and conciliation machinery were provided.

The United Nations can undoubtedly play a useful role in this connection by promoting recourse to existing arbitral machinery and by assisting in the implementation of arbitral procedures. It may be noted that the Bank's arbitration clauses provide for the appointment of an umpire by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations.

In my opinion the time is ripe for the discussion and establishment of international arbitration and conciliation machinery to which parties may resort for the adjustment of investment disputes. The choice of an appropriate forum for such a discussion is an important matter and deserves careful consideration.

Since I have not reviewed this matter with the Directors of the Bank and the Corporation you will understand that the views I express are those of the managements of the two institutions.

Sincerely yours,

(signed) Eugene R. Black

Eugene R. Black

Enclosures

April 7, 1961

Mr. G. W. Haight
Asiatic Petroleum Company
1 Rockefeller Plaza
New York 20, N.Y.

Dear Mr. Haight:

Please find enclosed a set of arbitration clauses extracted from our files which may be of interest to you. I do not know to what extent they have to be treated as confidential. I would therefore appreciate it if you consider them as strictly for your own information. I am also sending a set to Mr. Hynning with the same caveat.

May I take this opportunity to thank you again for the most pleasant evening I spent in your company last Monday.

Looking forward to seeing you in the near future, I remain

Very truly yours,

Georges R. Delaume

Enclosure

Arbitration

April 7, 1961

Mr. Clifford J. Hynning
1821 Jefferson Place, N.W.
Washington 6, D.C.

Dear Mr. Hynning:

Please find enclosed a set of arbitration clauses extracted from our files, which I had mentioned to you yesterday, and which may be of interest to you. I do not know to what extent they have to be treated as confidential. I would therefore appreciate it if you consider them as strictly for your own information. I am also sending a set to Mr. Haight with the same caveat.

Since we have a common interest in writing, I take advantage of this letter to send you also some of my publications regarding international loan problems. I was hoping that I could send you a reprint of a short article on arbitration of loan disputes under French law which I had written some years ago for the Arbitration Journal (Vol. 10 NS, p. 185, 1955), but I realize that unfortunately I have no more reprint available. I intend to ask our print shop to make a photostat copy of the article which I will send you in the near future.

May I thank you again for the extremely pleasant lunch I had with you yesterday.

With best regards.

Very sincerely yours,

Georges R. Delaume

Enclosures

Arbitration

March 17, 1961

Mr. Clifford J. Hynning
1821 Jefferson Place, N.W.
Washington 6, D.C.

Dear Mr. Hynning:

Please find enclosed for your information a photostat copy of an article written by Professor Donner, President of the Court of Justice of the European Communities, which I assume will be of interest to you.

I have digested two judgments of the Swiss Supreme Court dealing with sovereign immunity from jurisdiction and execution, which I also enclose.

I am also fiddling with a redraft of paragraph 2 of Article VI regarding the applicable law. I hope to be able to send you a proposal some time next week.

Hoping that I shall have the pleasure of seeing you again in the near future, I remain

Very sincerely yours,

Georges R. Delaume
Attorney

Attachments

March 17, 1961

Mr. G. W. Haight
Asiatic Petroleum Company
1 Rockefeller Plaza
New York 20, N.Y.

Dear Mr. Haight:

Please find enclosed for your information a photostat copy of an article written by Professor Donner, President of the Court of Justice of the European Communities, which I assume will be of interest to you.

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Hoping that I shall have the pleasure of seeing you again in the near future, I remain

Very sincerely yours,

Georges R. Delaume
Attorney

Attachments

March 21, 1961

Mr. Clifford Hynning
1821 Jefferson Place, N.W.
Washington, D.C.

Dear Mr. Hynning:

Enclosed please find a copy of our notes on the meeting of March 6, 1961.

Mr. Broches asked me to thank you for giving us a copy of your notes and also for the two copies of the Abs-Shawcross Draft. As to your memorandum, I just want to point out that voting for the members of the tribunal will be done by the Board of Governors, not by the Executive Directors, of the Bank, as you stated in your memorandum.

Let me take this opportunity to thank you again for the very pleasant lunch invitation which I appreciated very much.

Sincerely yours,

Michael H. Wiehen

Enclosure

cc: Mr. Broches
Mr. Delaume

MHWiehen/rc

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type	
March 16, March 21, 1961	Memorandum	

Correspondents / Participants
To: A. Broches
From: Georges R. Delaume

Subject / Title
Comments on the Feb. 23, 1961 Draft Convention for Arbitration of International Investment Disputes. Conflict of Laws provision

Exception(s)
Attorney-Client Privilege

Additional Comments

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

Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

Arbitration

Mr. A. Broches March 15, 1961

M. H. Wiehen

Draft Convention on Arbitration

On Mr. Hynning's invitation, I had lunch with him today. He gave me his and Mr. Haight's Memorandum concerning our meeting on March 6th, which seems to have been written by Mr. Haight. He asked us to look at the Memorandum (which I attach herewith) and to tell him if anything were not correct. I made some remarks in the Memorandum. The only point which I think should be cleared is who will vote on the members of the Tribunal. According to the original draft, the power of voting should be vested in the Board of Governors; the Memorandum speaks of voting by the Executive Directors.

Legal

Mr. Hynning asked me whether we would send him a copy of our Notes on the meeting; I told him that I would have to clear this up with you.

I also received two copies of the Abs-Shawcross Draft and the following citation of an OEEC document which Mr. Hynning could not give me as it was marked "Confidential". The citation is: OCCE Committee for Invisible Transactions, Action Memorandum, Annex VI, Protection of Foreign Property, Summary of Discussion of Draft Convention, dated July 20, 1960, marked TFD/INV/87. This document seems to be interesting and you might be able to get hold of it through somebody in the OEEC.

Attachment

MHWiehen/rc

Record Removal Notice

The World Bank Group Archives & Records Management

File Title	Barcode No.
Operational - Arbitration - General - Correspondence - Volume 1	1070931

Document Date	Document Type	
March 3, 1961	Memorandum	

Correspondents / Participants
To: A. Broches
From: Georges R. Delaume

Subject / Title
Comments on the Feb. 23, 1961 Draft Convention for Arbitration of International Investment Disputes. Conflict of Laws provision

Exception(s)
Attorney-Client Privilege

Additional Comments

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

Withdrawn by	Date
Kim Brenner-Delp	August 21, 2023

FORM No. 209
(1-61)

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

INCOMING MAIL ROUTING SLIP			Date MAR		
	Mr. Black	1024		Mr. Mason	603
	Mr. Broches	1113		Mr. Mendels	1017
	Mr. Cargill	614		Mr. Murick	1121
	Mr. Y.L. Chang	700		Office of Info.	228
	Mr. Cavanaugh	700		Office Services	1A4
	Mr. Clark	1113		Personnel Div.	207
✓	Mr. Cope	813		Mr. Poore	801
	~~Mr. Demuth~~	~~506~~		Mr. Ramm	A313
	Mr. Diamond	513		Mr. Reamy	A318
	Mr. Doucet	1017		Mr. Rist	716
	Mr. Goodman	607		Mr. Rosen	614
	Goor	705		Mr. Rucinski	600
	Mr. Hauenstein	101		Mr. Schmidt	513
	Mr. Howell	801		Mr. Stevenson	600
	Mr. Iliff	1003		Technical Op.	309
	Mr. Knapp	1024		Translation	804
	Mr. Lenfant	617		Mr. Worthington	A316
	Mr. Lejeune	813		~~Dr. Lopez-Herrarte~~	

Remarks: Pls discuss with Legal + Ec. Staff + IFC and then prepare reply. [signature]

F1 Communications Unit - Room P-106 (Ext. 3630)

Arbitration

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS · UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

FILE NO.: EC 223/2(4) 28 February 1961

Ack: April 10/61

Dear Mr. Black,

Under separate cover, I am sending you a copy of the progress report on the Promotion of the International Flow of Private Capital which was submitted to the twenty-ninth session of the Economic and Social Council in 1960. By its resolution 762 (XXIX), the Council has requested the Secretary-General to prepare a further report on measures for the promotion of the international flow of private capital, including "measures to facilitate the adjustment of disputes related to private investments". This report is to be based - inter alia - on the views of "Member States, specialized agencies, and appropriate inter-governmental and non-governmental sources".

Since we are now preparing this report, it would be most helpful to us to have up-to-date information and documentation on any relevant experience which the Bank and the Corporation may have had in this area, and more particularly in the field of arbitration. In this connexion we would like to obtain copies of arbitral clauses used in loan agreements and other instruments, and information regarding any cases in which such clauses may have been invoked. You may also .... wish to comment on the points covered in the enclosed memorandum on the adjustment of disputes related to private investments (Annex I).

A statement of your views on the measures discussed in the progress report and on other measures which may appear relevant in this connexion would be of special interest to us.

Since our report is to be published early in May, I would greatly appreciate receiving your comments at your earliest convenience.

Yours sincerely,

Philippe de Seynes

~~Philippe~~ de Seynes
Under-Secretary
Department of Economic and Social Affairs

Mr. Eugene Black
President
International Bank for Reconstruction
and Development and International
Finance Corporation
1818 H Street, N.W.
Washington 25, D.C.

ANNEX I

Adjustment of Disputes Related to Private Investments:
Views on International Arbitration and Conciliation.

BACKGROUND

1. As indicated in document E/3325 the availability of international facilities for "... adjustment of disputes related to private investments" may contribute to promoting the international flow of private capital by offering increased protection against non-business risks to foreign investors. Such facilities could take the form principally of arbitration and conciliation (the difference being that arbitration would result in binding awards, while conciliation would develop possible solutions for the consideration of the parties).

2. The United Nations has been active for some time in the field of commercial arbitration both through the promotion of international conventions and through the provision of technical assistance, as indicated in the Secretary-General's statement on the economic development of under-developed countries (document E/3394). (See Resolution 708 (XXVII) of the Economic and Social Council on International Commercial Arbitration, and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards).

3. Arbitration of investment disputes between the governments involved is increasingly provided in bilateral treaties between capital-supplying and capital-receiving countries. Provision for arbitration directly between the investor and the government of the country of investment is incorporated in some investment promotion laws and in individual concession agreements concluded between governments and foreign

enterprises. (See the discussion in paras. 200 ff. of document E/3325).

ENQUIRY

4. The questions on which authoritative views are now sought under the above-mentioned resolution of the Economic and Social Council may be formulated as follows:

(a) Is the expansion and institutionalization of the arbitration (or conciliation) of investment disputes likely to add substantially to the security of foreign investments, and thus to encourage the flow of such investments?

(b) If so, what role may usefully be played by the United Nations in this connexion, specifically by:

(i) promoting recourse to existing arbitral machinery for the adjustment of investment disputes;

(ii) assisting in the implementation of arbitral procedures, where desired by the parties, e.g. through the appointment of neutral arbitrators (umpires);

(iii) providing a forum for the discussion and establishment, possibly under United Nations auspices, of international arbitral machinery (de novo or in connexion with existing machinery) to which parties may resort for the adjustment of investment disputes.

COPY

UNITED NATIONS

NEW YORK

EC 223/2(4) 28 February 1961

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Since our report is to be published early in May, I would greatly appreciate receiving your comments at your earliest convenience.

Yours sincerely,

(SIGNED)

Philippe de Seynes
Under-Secretary
Department of Economic and Social Affairs

Mr. Eugene Black
President
International Bank for Reconstruction
and Development and International
Finance Corporation
1818 H Street, N.W.
Washington 25, D.C.

ANNEX I

Adjustment of Disputes Related to Private Investments:
Views on International Arbitration and Conciliation.

BACKGROUND

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2. The United Nations has been active for some time in the field of commercial arbitration both through the promotion of international conventions and through the provision of technical assistance, as indicated in the Secretary-General's statement on the economic development of under-developed countries (document E/3394). (See Resolution 708 (XXVII) of the Economic and Social Council on International Commercial Arbitration, and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards).

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ENQUIRY

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(iii) providing a forum for the discussion and establishment possibly under United Nations auspices, of international arbitral machinery (de novo or in connexion with existing machinery) to which parties may resort for the adjustment of investment disputes.

FORM NO. 75 (5-58)

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

ROUTING SLIP	Date

NAME	ROOM NO.
E. Lopez-Herrarte	

	Action		Note and File
	Appropriate Disposition		Note and Return
	Approval		Prepare Reply
	Comment		Per Our Conversation
	Full Report		Recommendation
	Information		Signature
	Initial		To Handle

REMARKS

The IFC could probably best comment on the report and legal on both Bank / IFC on the question of arbitration. If you want to send us the report we'll be glad to see if we can make some useful comments

John deW.

From

Form No. 75
(2-60)

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

ROUTING SLIP	Date

NAME	ROOM NO.
Mr. ~~Rist~~	716
Jolie r w	
Lopez Herrarte	
over	

	To Handle		Note and File
	Appropriate Disposition		Note and Return
	Approval		Prepare Reply
	Comment		Per Our Conversation
	Full Report		Recommendation
	Information		Signature
	Initial		Send On

REMARKS

Attached is a copy of the letter from the United Nations on the promotion of the international flow of private capital. I would appreciate any comments or suggestions that you may have for the preparation of a reply to this letter.

From Dr. Enrique Lopez-Herrarte

We (I) always had a certain interest in these matters but this has been handled by Bolles and Summers for the Bank —

JR

COPY

UNITED NATIONS

NEW YORK

EC 223/2(4) 28 February 1961

Dear Mr. Black,

Under separate cover, I am sending you a copy of the progress report on the Promotion of the International Flow of Private Capital which was submitted to the twenty-ninth session of the Economic and Social Council in 1960. By its resolution 762 (XXIX), the Council has requested the Secretary-General to prepare a further report on measures for the promotion of the international flow of private capital, including "measures to facilitate the adjustment of disputes related to private investments". This report is to be based - inter alia - on the views of "Member States, specialized agencies, and appropriate inter-governmental and non-governmental sources".

Since we are now preparing this report, it would be most helpful to us to have up-to-date information and documentation on any relevant experience which the Bank and the Corporation may have had in this area, and more particularly in the field of arbitration. In this connexion we would like to obtain copies of arbitral clauses used in loan agreements and other instruments, and information regarding any cases in which such clauses may have been invoked. You may also wish to comment on the points covered in the enclosed memorandum on the adjustment of disputes related to private investments (Annex I).

A statement of your views on the measures discussed in the progress report and on other measures which may appear relevant in this connexion would be of special interest to us.

Since our report is to be published early in May, I would greatly appreciate receiving your comments at your earliest convenience.

Yours sincerely,

(SIGNED)

Philippe de Seynes
Under-Secretary
Department of Economic and Social Affairs

Mr. Eugene Black
President
International Bank for Reconstruction
and Development and International
Finance Corporation
1818 H Street, N.W.
Washington 25, D.C.

ANNEX I

Adjustment of Disputes Related to Private Investments: Views on International Arbitration and Conciliation.

BACKGROUND

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2. The United Nations has been active for some time in the field of commercial arbitration both through the promotion of international conventions and through the provision of technical assistance, as indicated in the Secretary-General's statement on the economic development of under-developed countries (document E/3394). (See Resolution 708 (XXVII) of the Economic and Social Council on International Commercial Arbitration, and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards).

3. Arbitration of investment disputes between the governments involved is increasingly provided in bilateral treaties between capital-supplying and capital-receiving countries. Provision for arbitration directly between the investor and the government of the country of investment is incorporated in some investment promotion laws and in individual concession agreements concluded between governments and foreign

enterprises. (See the discussion in paras. 200 ff. of document E/3325).

ENQUIRY

4. The questions on which authoritative views are now sought under the above-mentioned resolution of the Economic and Social Council may be formulated as follows:

(a) Is the expansion and institutionalization of the arbitration (or conciliation) of investment disputes likely to add substantially to the security of foreign investments, and thus to encourage the flow of such investments?

(b) If so, what role may usefully be played by the United Nations in this connexion, specifically by:

(i) promoting recourse to existing arbitral machinery for the adjustment of investment disputes;

(ii) assisting in the implementation of arbitral procedures, where desired by the parties, e.g. through the appointment of neutral arbitrators (umpires);

(iii) providing a forum for the discussion and establishment possibly under United Nations auspices, of international arbitral machinery (de novo or in connexion with existing machinery) to which parties may resort for the adjustment of investment disputes.

Arbitration

Mr. A. Broches

January 25, 1961

M. H. Wiehen

legal

Excerpt from WESSANEN'S KONINKLIJKE FABRIEKEN N.V. v. ISSAC MODIANO BROTHER & SONS, LTD.
(Queen's Bench Division (Diplock, J.), Oct. 31, Nov. 1, 1960)
As reported in The All England Law Reports of November 29, 1960, p. 617

A dispute having arisen between buyers and sellers under a contract in the form of the London Cattle Food Trade Association (Incorporated) as to the buyers' right to reject goods, each of the parties appointed an arbitrator in accordance with Rule I of the Association's Rules of Arbitration which formed part of the contract and which reads as follows:

> "Any dispute arising out of a contract embodying these rules shall be referred to arbitration in London, each party appointing one arbitrator, who shall be a member of the association, and not interested in the transaction, and such arbitrators shall have the power, if and when they disagree, to appoint an umpire, who shall be a member of the association, whose decision is to be final."

As the arbitrators disagreed, they appointed an umpire and arranged for a hearing of the dispute at the umpire's office. After the buyers' arbitrator had finished stating the facts and arguing the law, the sellers' arbitrator did the same and in the course of doing so read out to the umpire a number of paragraphs of a written opinion of counsel obtained by the sellers and confirming his (the arbitrator's)contentions. The case on which counsel's opinion was obtained was not seen by the umpire. The buyers' arbitrator did not object to the reading of counsel's opinion and at the end of the hearing the umpire asked the buyers' arbitrator if he, too, wished to submit a legal opinion; the buyers' arbitrator said that he did not. Both arbitrators handed to the umpire their files of documents which, in the case of the sellers' arbitrator, contained a copy of counsel's opinion. The umpire made an award in favor of the sellers. The buyers sought to set aside the award for irregularity in procedure amounting to misconduct by the umpire, in that counsel's opinion was read to the umpire and taken away for consideration by him.

The Lower Court held that once the arbitrators had disagreed and appointed an umpire whose decision was final, they were functus officio as arbitrators and appeared at the hearing as advocates for the parties who appointed them; accordingly, if it were an irregularity for the sellers' arbitrator to have read and handed counsel's opinion to the umpire, buyers' arbitrator in his capacity as advocate had implied authority to waive the irregularity and on the facts had plainly done so.

The motion to set aside the award of the umpire was dismissed.

The Queen's Bench Division, Diplock, J. reporting, stressed the fact that, in commercial arbitration of this kind, where arbitrators are appointed who, on disagreeing, appoint an umpire whose decision is final, the arbitrators, once they have disagreed and have agreed on an umpire, are functus officio as arbitrators and act at the hearing before the umpire as advocates for their respective appointers. An arbitrator at this stage of the proceding must have all the necessary powers to agree to the form of the procedure.

"It does not seem to me that it can possibly be said to be outside the implied authority of an arbitrator acting under those circumstances to waive or to agree to any irregularity in procedure which occurs."

The court did not decide whether the adopted procedure constituted an irregularity or an impropriety; but even if there were a misconduct, the irregularity had been waived by the buyers' arbitrator.

MHWiehen/rc

Arbitration
+ private investors
+ Contractors General

G. W. HAIGHT
ROOM 601
630 FIFTH AVE.
NEW YORK 20, N.Y.

JUDSON 6-5000

November 12, 1959

Davidson Sommers, Esquire
International Bank for
Reconstruction & Development
1818 H Street, N.W.
Washington 25, D. C.

Dear Mr. Sommers:

Thank you for your letter of November 9. I have now arranged with Schachter and the others to meet for lunch on the 16th at the University Club, 1 West 54th Street, at 1 P.M. There will be a room in my name and I suggest you ask at the door which one it is and how to get to it.

I believe that Schachter will bring Contini with him. Contini is his expert on arbitration. I have also invited Paul Herzog and Martin Domke to join us, so that there will be seven.

I look forward to seeing you again and I am sure we shall have an interesting and fruitful discussion.

Yours sincerely,

G. W. Haight

Mr Sommers has seen

LBS

23/11/59

November 9, 1959

Dear Mr. Haight:

Thank you for your letter of November 4, 1959. I will plan to meet you for lunch on the 16th. Please let me know the time and whether it is to be at the U.N. or the University Club. I will spend Sunday night at the Hotel Barclay and you can leave word for me there.

Yours sincerely,

Davidson Sommers

Mr. G.W. Haight
Room 601
635th Avenue
New York 20, N.Y.

Arbitration of Foreign + Private Investments
& Contractors General

G.W. HAIGHT

ST HELEN'S COURT.
GREAT ST HELEN'S.
LONDON, E.C.3.

4th November, 1959.

Davidson Sommers, Esq.,
International Bank for Reconstruction
and Development,
1818, H Street,
WASHINGTON 25,
D.C., U.S.A.

Ack Nov. 9th/59
DS

Dear Mr. Sommers,

I am delighted to see from your letter of October 30th that you can meet Sir Edwin and myself on Monday, the 16th. Would it be possible for you to have lunch with us on that day? We are having lunch with Oscar Schachter, either in the Delegates' dining room or at the University Club (I have asked him to choose which), and I think it would be most helpful if we could all talk at the same time. He has said that he would be able to go on afterwards in his office, so that if you could not have lunch with us perhaps you could meet us then.

Otherwise, I should appreciate your letting me know when on Monday or Tuesday morning would be convenient for you.

As I shall be in my office in New York next week, I should appreciate your letting me know there what you can do. My address is Room 601, 635th Avenue, New York 20, N.Y.

Yours sincerely,

G. W. Haight

G.M. HAIGHT

ST HELEN'S COURT.
GREAT ST HELENS.
LONDON. E.C.3

4th November, 1959.

Davidson Sommers, Esq.,
International Bank for Reconstruction
and Development,
1818, H Street,
WASHINGTON 25,
D.C., U.S.A.

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Yours sincerely,

+ Arbitration
+ private investments
+ Contractors General

October 30, 1959

Dear Mr. Haight:

Thank you for your letter of October 26th, 1959. I plan to be in New York on Monday, November 16th, and perhaps on the morning of November 17th, and would be glad to meet you and Sir Edwin Herbert at that time. If that is not convenient for you or him, we could certainly meet in Washington later in the same week. It seems to me that if you are talking with Oscar Schachter, it might be useful to bring him in at the same time.

Please let me know what your preferance is.

Yours sincerely,

Davidson Sommers
Vice President

G. W. Haight, Esq.
St. Helen's Court
Great St. Helen's
London, E.C.3

DS/km

- Arbitration
x private investment
x Contractors Cases

G.W. HAIGHT

ST HELEN'S COURT.
GREAT ST HELEN'S.
LONDON, E.C.3.

26th October, 1959.

Davidson Sommers, Esq.,
International Bank for
Reconstruction and Development,
1818 H Street N.W.,
WASHINGTON 25,
D.C., U.S.A.

Ack. Oct 30/59

Dear Mr. Sommers,

During a recent visit to Paris I had occasion to discuss with Walter Hill and also with Sir Edwin Herbert, President of the I.C.C. Commission on Arbitration, and other experts the subject matter of your very interesting address at the I.C.C. Congress in Washington last May.

As Sir Edwin and I will be in New York during November, we should like to arrange to have a talk with you regarding means for the settlement of disputes between governments and private foreign investors and contractors. Sir Edwin will be in New York from November 12th to 25th.

It would be helpful if you could let me know at the above address in London whether you have any time during this period and what day or days would be most convenient for you. If you are in New York at all during this period and would have any time available while you are there, that would probably be most convenient for Sir Edwin; otherwise, we shall arrange to come to Washington.

I have written Oscar Schachter asking whether he could see us during this period.

We are hopeful of working something out along the lines you suggested. Our aim is to discuss not only fundamentals but also a certain amount of detail. I am planning to sit down with Sir Edwin and a French lawyer next week to discuss some aspects of the problem.

I look forward to seeing you again and I hope that we can find a time and place mutually convenient.

My best regards,

Yours sincerely,

G.W. Haight

G.W. HALGHT

ST HELENS COURT

GREAT ST HELENS

LONDON E.C.3

26th October, 1959.

Davidson Sommers, Esq.,
International Bank for
Reconstruction and Development,
1818 H Street N.W.,
WASHINGTON 25,
D.C., U.S.A.

Dear Mr. Sommers,

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I look forward to seeing you again and I hope that we can find a time and place mutually convenient.

My best regards,

Yours sincerely,

Mr. D. Sommers

Sept. 3, 1957

Bernard Chadenet

Appointment of Arbitrators.
Creation of an International
Abritration Association

I am sending you the memorandum of July 31, 1957 written by Mr. Hathaway about the appointment of arbitrators. Mr. Hathaway suggests that the Bank explore the possibility of promoting an International Arbitration Association patterned along the lines of the American Arbitration Association. I think Mr. Hathaway's suggestion is a very valuable one, particularly from the Bank's point of view, as an International Arbitration Association could help settle differences which may occur between clients, consultants, contractors and manufacturers from different countries working on our projects.

Attachment.

BChadenet:rha
cc: Mr. Hathaway

Mr. Bernard Chadenet July 31, 1957

Gail A. Hathaway

Appointment of Arbitrators
Arbitration Associations Practice

I have given a great deal of study to the question of arbitration procedures and have also discussed the matter informally with Messrs. Fontein and Delaume. Messrs. Fontein and Delaume were particularly anxious to secure copies of typical arbitration clauses now being used in contracts between the borrowers and consulting or management engineering firms. About two dozen typical arbitration clauses have been copied from contracts in T.O.D. files. Five sets of these arbitration clauses are attached.

I also obtained information regarding an arbitration case involving a dispute between the Greek Government, using funds furnished by ICA, and a German contractor. Each party appointed an arbitrator and ICA was called upon to furnish the third. The case is somewhat parallel to the Thailand - Keir & Cawder case. The U.S. State Department selected an American engineer who informed me that he did not believe it would have been possible to settle the case if he had not first drawn up the rules of procedure. He followed those of the American Arbitration Association, changing them slightly to fit the particular case and then obtained the agreement of the other two arbitrators to these procedures as the first step in the proceedings. The case is in the final stages of settlement and, apparently, no great difficulty has been experienced - at least not between the three arbitrators.

Many of the member countries of the Bank now have laws that clearly set forth the procedures for arbitration cases so that contracts involving government agencies of that particular country are generally governed by those laws. A typical example is The Indian Arbitration Act of 1940 which also applies to Pakistan. In some cases, however, contracts have been signed wherein agencies of those countries have agreed to abide by the procedures of the American Arbitration Association. In most cases the most difficult problem is the selection of the third arbitrator or umpire. In cases where the two arbitrators cannot agree upon a third party, the selection of the umpire is made by a member of a Federal Court, the Supreme Court or, in some instances, by the President of the International Court of Justice at the Hague. There is general agreement that the selection of the third arbitrator or umpire should not be made by the Bank or, as in the case of the controversy in Greece, by the Department of State.

It would appear worthwhile for the Bank to explore the possibility of establishing an International Arbitration Association, patterned along the lines of the American Arbitration Association, which might have its headquarters and be closely affiliated with the International Court of Justice in the Hague. Possibly some foundation, such as the Ford Foundation which is extremely

interested in international matters, might be sufficiently interested to sponsor such an organization. The American Arbitration Association, the Inter-American Commercial Arbitration Commission and the International Chamber of Commerce, appear to be more concerned with private and commercial transactions than with cases involving governments and commercial or private concerns.

GAHathaway/agk

Burma	Port Project	Sir Alexander Gibb & Partners
Ceylon	Pipe Lines	Societe des Forges et Ateliers du Creusot; Preece Cardew & Rider (consulting engineers)
Colombia	Transmission Lines	Ingenieria y Construcciones Ltda.
	National Railways	Various subcontractors
Ecuador	Power	R. J. Tipton Associated Engineers
El Salvador	Littoral Highway	Knappen-Tippetts-Abbett-McCarthy
Guatemala	Part of Pacific Highway	Rodrigues y Hegel Compania
	Part of Atlantic Highway	Mello Laguy Teer
	Part of Pacific Highway	Ingeniero Jose Arias Dufourco (Compania Constructora el Aguila, S.A.)
Honduras	Re: Highway Program	Porter-Urquhart Associated
Haiti	Highway	Techint
India		Societe Generale pour l'Industrie, Conrad Zschokke Ltd., Monsieur
	Power	Tata & The Andhra Valley Power Supply Ltd.
	Steel Plant	Tata & Kaiser Engineers
Japan	Irrigation & Drainage	Erik Floor & Associates
Lebanon	Power & Irrigation	Societe d'Etudes
Pakistan		Siemens-Schuckertwerke A.G.
	Power	Handcock & Dykes and Brian Colquhoun & Partners
Peru	Port	Raymond Construction Co.
Rhodesia & Nyasaland	Power	Gibb Coyne Sogei
Thailand	Bar Channel	Raymond Concrete Pile Co., Morris Cumings Dredging Co., Daniel, Mann, Johnson & Mendenhall and H.C. Smith Construction Company
	Power & Irrigation	Westinghouse
	Chao Phya River Dam	Keir & Cawder Ltd.
Turkey	Seyhan Dam	KTAM
Uruguay	Power	Gruner Associates

Excerpt from "Board of Management for the Port of Rangoon - Development of Port of Rangoon - Contract No. 1 - Sule Pagoda Wharves Nos. 5, 6 and 7 - General Conditions of Contract - August, 1955"

Board of Management for the Port of Rangoon

Engineer: Sir Alexander Gibb & Partners
Consulting Engineers
London

"66. Settlement of Disputes - Arbitration

If any dispute or difference of any kind whatsoever shall arise between the Employer or the Engineer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (whether during the progress of the Works or after their completion and whether before or after the determination abandonment or breach of the Contract) it shall be referred to and settled by the Engineer who shall state his decision in writing and give notice of thesame to the Employer and the Contractor. Such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor until the completion of the work and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether notice of dissatisfaction is given by him or by the Employer as hereinafter provided or not. If the Engineer shall fail to give such decision for a period of three calendar months after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer then and in any such case either the Employer or the Contractor may within three calendar months after receiving notice of such decision or within three calendar months after the expiration of the said period of three months (as the case may be) require that the matter shall be referred to an arbitrator to be agreed upon between the parties or failing agreement one to be appointed by each party and the arbitrators so appointed shall appoint an umpire before proceeding with the arbitration and any such reference shall be deemed to be a submission to arbitration within the meaning of The Arbitration Act, 1944 (Burma Act No. IV of 1944) or any statutory re-enactment or amendment thereof for the time being in force. Such arbitrator shall have full power to open up review and revise any decision opinion direction certificate or valuation of the Engineer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Engineer for the purpose of obtaining his decision above referred to. The award of the arbitrator shall be final and binding on the parties. Such reference except as to the withholding by the Engineer of any certificate or the withholding of any portion of the retention money under Clause 60 hereof to which the Contractor claims to be entitled or as to the exercise of the Engineer's power to give a certificate under Clause 63(1) hereof shall not be opened until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor. Provided always:-

(i) that the giving of a Certificate of Completion under Clause 48 hereof shall not be a condition precedent to the opening of any such reference

(ii) that no decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.

Excerpt from Form of Contract, Specification and Schedules entered into by the Government of Ceylon (the "Government" or "the Purchasers") of the one part and Societe des Forges et Ateliers du Creusot ("the Contractor") of the other part, March 5, 1955.

Re: Pipe Lines

Consulting Engineers: Preece, Cardew & Rider

"70. Arbitration

If during the continuance of this Contract or at any time after the termination thereof any difference or dispute shall arise between the parties hereto in regard to the interpretation of any of the provisions herein contained or any other matter or thing relating to this Agreement (other than any difference or dispute in respect of which a decision of the Deputy Secretary is declared to be final and binding on the parties hereto) such difference or dispute shall be forthwith referred to two arbitrators for arbitration in Ceylon, one to be appointed by each party with liberty to the arbitrators in case of difference or their failing to reach an agreement within one month of their appointment to appoint an umpire resident in Ceylon and the award made by the two arbitrators or umpire as the case may be shall be final and conclusive and binding on the parties hereto. If either party in difference fail or neglect to appoint an arbitrator for the space of thirty days after notice in writing to do so has been given by the other party or shall appoint an arbitrator who shall refuse to act, then the arbitrator appointed by the other party shall make a final decision alone and the making of any award in such reference shall be a condition precedent to any right of action against any of the parties hereto in respect of such difference."

The same clause is included in the Contract between the Government of Ceylon and Societa Anonima Elettrificazione, Italy. Re: Transmission Lines. Consulting Engineers: Preece, Cardew & Rider.

In a Tender for Construction of Transmission Lines, dated August 26, 1955 the following sentence was included: "The party who requests arbitration shall if so required by the Permanent Secretary to the Ministry of Transport and Works deposit with him prior to the appointment of arbitrators such sum as shall be fixed by him towards the cost of the arbitration."

Excerpt from: Contract for Construction of the Transmission Line

The Anchicaya River Hydroelectric Center, Ltd., and the Ingenieria y Construcciones Ltda.

"... Clause Sixteen - Article 45

Both parties name the city of Cali as their special legal domicile for any arbitration actions or proceedings which may arise from this contract. Article 46. The doubts or differences which may arise between the contracting parties in regard to this contract, about which it has not been possible to reach a direct agreement, shall be submitted to the decision of arbitration courts which will be composed of law graduates, each party appointing one and the two principal ones appointing a third, to that effect it shall be proceeded in accordance to law 2 of 1938, the arbitration will be performed in pursuance with the Colombian law and the decision will have legal effect. The arbitration court will perform in the city of Cali and the District Judge of that jurisdiction will be called in case any of the parties abstains from appointing the arbiter under the provisions of Article Five of said Law 2 of 1938.

PARAGRAPH. When purely technical matters are dealt with not involving any kind of differences of interpretation, performance or effects of the contract, and that therefore there is no matter for legal decision, as it may occur in the case of remarks of the Interventor* on works or part of works in progress or at the time of the checking or inspection of the materials, which remarks are not considered by THE CONTRACTORS as being well founded, there will be no arbitration as provided in this article and such difference will be settled by expert engineers, appointed one by each party and a third, in case of discrepancy, by the two principals; both parties can agree to submit the expert report to the opinion of a single expert, whether natural or legal person. Article 47. The differences that give rise to arbitration, according to the terms of article 46 of this Clause shall be submitted in writing to the arbiters, and while the decision is being reached the work shall not be suspended unless special circumstances make that advisable or the arbiters appointed for the purpose so decide, and in this event the terms of delivery shall be suspended."

* Government Supervisor

Ten files on Loan 68 00 - National Railways Project - contain several contracts and subcontracts for building bridges, etc. The majority of these contracts are in Spanish and include the following "Arbitration" clause:

"Differences - The differences of technical or administrative character that may occur between the Contractor and the Interventor or any other employee authorized by the Government, will be resolved by the Ministry of Public Works, whose decision will not be appealable.

Excerpt from: Contract between Empresa Electrica "Quito" S.A. and R.J. Tipton Associated Engineers, Inc.

Covering consulting engineering services in connection with the Cumucyacu Project

"... Differences in the Interpretation of the Contract

The Empresa and the Engineers are obliged to call to the attention of the World Bank all differences of opinion which may arise between the two parties with respect to the interpretation of anyone or more clauses of this contract. At the same time, the two parties accept the good offices of the World Bank in arriving at a solution of such differences, particularly with respect to matters of technical nature."

Excerpt from Translation of Contract between El Salvador and the firm of Knappen-Tippetts-Abbett-McCarthy re: the design and supervision of the construction work of the Littoral Highway.

"Clause Seventeen

Any controversy arising out of the present contract between the "Government" and "the Consulting Engineers" will be submitted to Arbitrators for decision, all to be done in conformance with the laws of El Salvador. In this case, each one of the parties to the controversy will name one arbitrator and will agree upon a third party who must be mutually agreeable to both parties who will be called upon in case of discord."

Excerpt from Translation of the Proposed Contract between the Government of Guatemala and "Rodriguez y Hegel Compania Limitada" "Ingenieros Contratistas Guatemaltecos" ("ICOMGUA") for the construction of Project "OP - 350 of the Pacific Highway.

"Clause Eight: Arbitration

Both parties agree that in all questions or difference that may arise between them because of this contract, its interpretation, or the work agreed to in it, which might generate judicial action, shall be resolved directly between the two parties in a conciliatory manner. If the differences or questions cannot be settled directly, they shall be submitted to a Board of Arbitration formed by arbitrating arbitrators. Each party shall nominate an arbitrator and these shall immediately appoint a third one, acceptable to both parties, who shall intervene in case of disagreement between the first two. If the first two arbitrators fail to reach an agreement as to the appointment of a third, he shall be appointed by the President of the Judiciary ("Organismo Judicial") of Guatemala upon the request of either of the parties. Proceedings prior to the constitution of the Board of Arbitration, will be effected in the presence of a competent judge of the City of Guatemala, and this Capital shall be the seat of the Board of Arbitration. Written claims presented by one of the parties to the other shall be taken as demands, and as answers, the replies also in writing given to the claims. The official record of commitment shall incorporate these documents in order to determine the objectives of the arbitration. The arbitrators nominated by the parties shall declare the Board of Arbitration in force, and without further proceedings, shall indicate to both parties the term of thirty (30) days set to prove the facts. In the findings, the cost of the arbitration shall be determined by the judge. The findings shall always be definite and final and shall not allow protests of any kind against it, except in the extraordinary cases of appeal to the Supreme Court for cancellation because of substantial violation of the proceeding."

Excerpt from Translation of Contract between "Enrique Salazar Liekens ... in his capacity as Under Secretary of Communications and Public Works, party of the first part; and Nello Leguy Teer ... in his capacity as President of the 'Nello L. Teer Company' registered in the State of Delaware, U.S.A. ..." for the construction of the Atlantic Highway, Project C.I.O. 90, Stretch from Trapichito to the Motagua River.

"Clause Eight: Arbitration

The two parties agree that in all questions or differences which may arise between them because of this contract, its interpretation or of the work agreed to in it, and which might give rise to judicial proceedings, will be resolved directly by them through conciliatory measures. If questions or disagreements cannot be resolved directly in this way, they will be submitted to appointed, disinterested arbitrators. Each party will name an arbitrator (Ex-aequo et bono) and these will immediately appoint a third who would be acceptable to both parties and who would intervene in case of disagreement between the two first. In case the two parties do not arrive at an agreement in regard to the appointment of the third, this person will be appointed by the President of the Judicial Organization in Guatemala upon request from either party. The proceedings previous to the formation of the Tribunal for Arbitration will be expounded before a competent judge of the City of Guatemala, and this Capital will be the seat of the Tribunal of Arbitration. All written communications from one party to the other and the replies will be admitted as claims before the Tribunal. The commitment documents to be presented will include these documents in order to define the objectives of the arbitration. The arbitrators named by the parties will declare the Tribunal in force and, without further proceedings, will indicate to both parties that the term of thirty (30) days is allowed in order to prove all facts. In the decision must be resolved the matter of payment of the costs of arbitration which shall be liquidated by the judge. The decisions shall always be definite and final and no protest against them will be allowed; except in the extraordinary case of appeal to the Supreme Court for annulment due to material violation of the rules governing this contract."

Excerpt from Contract between the Government of the Republic of Guatemala and Ingeniero Jose Arias Dufourco, representing "Compania Constructora el Aguila S.A. de C.V., for the construction of the highway, drainage and bridges of "project C.P. 300 and 350." Sections comprised between Taxisco and Chiquimulilla and Chiquimulilla to Pijije of the Pacific Highway ...

"Twelveth Clause: Authorization to Work, Subjection to the Laws of the Country and Arbitration

a) "Constructora el Aguila S.A. de C.V." and their subcontractors duly incorporated in accordance with the Specifications, are hereby expressly authorized to work in the Republic of Guatemala with the exclusive purpose to carry to completion the present Contract; b) "The Contractor" submits himself expressly to the laws and Legal Provisions of the Republic of Guatemala, and waives his right to recur to diplomatic channels in claim of any matter related to the present contract; c) The parties agree that in all questions and differences which may arise between them because of this contract, its interpretation or of the work contracted, and which may result in Judicial proceedings, will be resolved directly by the parties in a conciliatory manner. In case the differences or questions may not be resolved by means of direct conciliatory agreement, they will be referred to a Board of Arbitration. Each party shall name an Arbitrator and these will appoint immediately a third one, acceptable for both parties, who will intervene in case of any disagreement between the first two. In case the parties can not reach an agreement with regard to the appointment of the third one, he will be appointed by the President of the Judiciary of Guatemala, at the request of either one of the interested parties. The proceedings previous to the constitution of the Board of Arbitration shall be substantiated before a competent Judge of the city of Guatemala and this Capital City shall be the seat of the Board of Arbitration. The written claim or claims submitted by one of the parties shall be considered as the demand and as the reply the written responses given to the claims. The instrument of agreement shall incorporate these documents to define the purposes of the arbitration. The Arbitrators appointed by the parties will declare the Board, as constituted and without any further proceedings will make known to the parties the term of thirty working days to prove the facts. The payment of the costs of the Arbitration shall be resolved in the award which will be liquidated by the Judge. The decision shall be always final and no recourse will be permitted except because of substantial violation of the proceedings."

(The same type clause is included in the Contract between Guatemala and "Mr. Russell David Antisdel Thorsen in his double character with general power of attorney of the companies "Conticca International Corporation" and "Constructora Nacional de Tuneles y Carreteras Compania Anonima" for the construction of the pavement and base of Project C.I.O. 300 ...." Stamped at the top of this contract is the name "Tippetts-Abbett-McCarthy-Stratton of Panama, Inc. Gibbs & Hill, Inc.)

Excerpt from Contract between Ministry of Development of the Republic of Honduras and Upham, Porter-Urquhart Associated, re: Planning and carrying out an overall maintenance program; Reorganization of the entire Highway Department; Preparation of preliminary surveys for the improvement, new construction and reconstruction of the Northern and Western highways.

"K. Arbitration

Any dispute or controversy arising out of or in connection with this Contract shall be submitted to arbitration, to be held in Tegucigalpa, Honduras, and in accordance with the laws of the Republic of Honduras. The award of the arbitrators shall be final and binding, and the award may be filed in any court having jurisdiction. The arbitration shall be had before three arbitrators, one to be chosen by each of the parties and the third by the two so chosen, in the following manner. The party desiring such arbitration shall give to the other party written notice of its desire, specifying the question or questions to be arbitrated, and naming an arbitrator chosen by it. Within 20 calendar days thereafter the other party shall give written notice to the party desiring arbitration, specifying any additional question or questions to be arbitrated, and naming the arbitrator chosen by such other party. The two arbitrators so chosen shall select the third within 10 days after naming the second arbitrator. In the 10-day period above mentioned, the Court having jurisdiction may, upon application by either party, nominate such third arbitrator.

The arbitrators shall determine which party shall pay the expenses of such arbitration, or the proportion thereof which each party shall bear, and the arbitration expenses so allocated shall be paid accordingly."

From a contract for the services of consulting engineers relative to Haiti's highway development.

9. Arbitration Clause

All differences of opinion arising between the two parties relative to the interpretation or execution of this agreement shall be submitted, if no friendly arrangement intervenes, to an arbitration council constituted in accordance with the arbitration procedure provided for by the Haitian legislation with the following reservations:

The arbitration committee shall consist of two arbitrators one appointed by the plaintiff and the other by the defendent. If the arbitrators fail to come to an agreement they shall select a third arbitrator. If they fail to choose a third arbitrator, the latter shall be appointed by the president of the court of appeals.

The third arbitrator shall be neither a Haitian nor an Italian citizen.

The party which deems it necessary to resort to arbitration shall so notify the other party through legal channels or by registered letter. It shall at the same time appoint the arbitrator of his choice. Failure to appoint the arbitrator shall make the action null and void. If within two weeks from the receipt of this notification defendent does not appoint his arbitrator, he shall forfeit all his rights.

The arbitration council must, without recourse to ordinary jurisdiction, take its decisions by majority vote and give its decision ex aequo et bono. In the case that majority is not obtained the vote of the third arbitrator shall be final and shall not be liable to stay of execution.

Arbitration shall be granted a delay of two months. The interested parties may agree to extend this delay.

Neither of the parties may refuse to continue the fulfillment or refuse to continue to fulfill its obligations as defined in this agreement under the pretext that one or the other party has had recourse to arbitration.

The arbitration council shall sit in Haiti.

If there are only two arbitrators, each party shall pay the expenses of its own arbitrator.

If there are three arbitrators the third arbitrator shall decide which of the two interested parties must pay the arbitration expenses.

Translated from French 6.20.57 by AB

Contract in Op Files: 141 HA - Admin. I

Excerpt from the Contract between The Governor of Bombay ("the Government") and Societe Generale pour l'Industrie, Geneva; Conrad Zschokke Limited, Geneva; and Monsieur Henri Gicot, Consulting Engineer, Fribourg ("the Consulting Engineers"):

"Any difference including the difference as to the interpretation of this contract or its clauses which cannot be settled between the parties hereto shall be settled by arbitration in India.

Upon a specific request indicating details of the difference of opinion in writing by either party each party shall appoint an arbitrator within 45 days of receiving the request. In case either party fails to appoint an arbitrator within the time specified above, then such arbitrator shall be appointed by the Chief Justice of the High Court of Bombay, India, at the request of either party. In the event of the arbitrators not being able to come to an agreement within 30 days of their appointment, the matter shall be decided by the award of a third arbitrator to be appointed by the mutual consent of the two arbitrators within one month from the date of their appointment. If the two arbitrators fail to appoint a mutually acceptable third arbitrator within a period of 30 days, the same shall be appointed by the President of the International Court of Justice in the Hague at the request of either party, and his decision shall be final and binding on both the parties. The provisions of the Indian Arbitration Act of 1940 and the rules thereunder and any statutory modifications thereof shall be deemed to apply in this behalf.

The expenses of the arbitration shall be allocated between the parties as the arbitration board may direct."

Excerpt from Final Draft Agreement between Burns and Roe, Inc. and Tata, Inc. acting as representative and agent for The Tata Hydroelectric Power Supply Ltd., The Andhra Valley Power Supply Ltd., and The Tata Power Company Ltd., hereinafter collectively called "Owner."

"Article VII - Audit

The Engineers shall keep accurate records and books of account showing all charges and all expenses incurred by the Engineers in the performance of the work hereunder. The Owner and Tata, Incorporated shall have the privilege of verifying at any time direct costs, expenses and disbursements made or incurred by the Engineers in connection with the work to be performed hereunder by means of examination of the Engineers' books and records relating thereto.

Article VIII - Termination

Should the Owner find it necessary to discontinue or postpone prosecution of the work to be performed hereunder, the Owner shall have the right to terminate the services of the Engineers and to cancel this Agreement forthwith. The Engineers shall be paid the amount earned or reimbursable to them hereunder to the time of such cancellation and all reasonable expenses incurred by the Engineers in terminating the work, under proper certification, and shall have no further claim against the Owner with respect thereto.

Article IX - Arbitration

Any dispute or difference arising out of this Agreement which cannot be settled or adjusted by mutual agreement, or the settlement of which is not otherwise provided for in the Agreement, shall be settled and finally determined by arbitration in the City of New York in the following manner: Each of the two parties concerned shall appoint an arbitrator. If the two arbitrators so appointed cannot agree within two weeks of the date of their appointment, they shall select a third arbitrator. The three arbitrators shall then meet and give an opportunity to each party to present its case and witnesses (if any) in the presence of the other party. The arbitrators shall then make their award. A decision in writing of the three arbitrators, or any two of them, shall be final and binding upon the parties, and judgment may be entered thereon in any court having jurisdiction. The decision of the arbitrators shall include the fixing of the expenses of the arbitration and the assessment of the same against either or both parties.

If either party shall fail to appoint its arbitrator within thirty (30) days after notice in writing from the other party requiring it to do so, the arbitrator appointed by the other party shall act for both, and his decision shall be final and binding upon both parties, as if he had been appointed by consent.

If, in an appropriate case, the arbitrators appointed by the parties shall fail to select a third arbitrator, a third arbitrator shall be selected in accordance with the then current rules and regulations of the American Arbitration Association."

Excerpt from: CONTRACT between THE TATA IRON AND STEEL COMPANY, LIMITED and KAISER ENGINEERS OVERSEAS CORP. Covering The EXPANSION of the JAMSHEDPUR STEEL PLANT.

"... Any dispute or difference as to interpretation, administration or execution of the terms of this contract including any difference arising under Article X, paragraph 3, shall be resolved by a Board of Arbitration to be established as follows:-

(i) Tata Steel shall appoint one person to such Board

(ii) Kaiser Overseas shall appoint one person to such Board

(iii) The two persons so appointed shall appoint a third and impartial person.

The three persons named as above shall constitute the Board of Arbitration and the decision of any two thereof shall be binding upon both parties hereto and the costs of arbitration shall be paid in the manner such Board of Arbitration may decide.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly executed, as of the day and year first hereinabove set forth."

****

"Article X, paragraph 3:

Upon completion in accordance with approved plans and specifications of all work and services within the scope of the Project, and on completion of all performance tests as may be required under this contract Kaiser Overseas shall certify to Tata Steel final completion of the Project. Within 15 days thereafter Tata Steel shall either (i) give Kaiser Overseas in writing a final acceptance of the Project, or (ii) notify Kaiser Overseas in writing of any items of work which it considers incomplete or defective, specifying the extent and character of any work it considers to be requisite to final completion. In the latter event, if Kaiser Overseas does not agree with such specification or work required to be performed, the parties shall mutually agree and failing agreement the Board of Arbitration to be appointed under the provisions of Article XIX may fix on the work to be so performed and upon completion thereof, Tata Steel shall give Kaiser Overseas the abovementioned written final acceptance."

From Op. Files: Doc. 11, Loan 146 IN

Excerpt from the Draft Agreement between the Aichi Irrigation Public Corporation and Erik Floor & Associates, Inc. re: irrigation and drainage, etc.

"Article XII - Arbitration

Any dispute between the Public Corporation and E.F.A. as to the interpretation, administration or execution of the terms and conditions of this agreement shall be resolved by arbitration, and the parties agree to submit all disputes to arbitration. Arbitration shall be conducted in the following manner:

(a) Either party may initiate arbitration proceedings by notifying the second party in writing (registered mail) to this effect, giving the name of its appointed Arbitrator.

(b) Within twenty-(20) days after receipt of such notice, the second party shall by written notice (registered mail), notify the first party of its appointed Arbitrator. In the event that the second party shall refuse or fail to appoint its Arbitrator as provided for in this paragraph (b) then the arbitration shall be proceeded with by the Arbitrator appointed by the first party whose decision shall be final and bindings upon the parties.

(c) Within twenty (20) days after the receipt by the first party of the notice provided for in (b) of the appointment of the second party's arbitrator, a third Arbitrator shall be chosen by these two or, in the event such third Arbitrator cannot be agreed upon by the first two Arbitrators within said period, then he shall be chosen by the then senior diplomatic representative of the Government of Switzerland, resident in Tokyo, Japan. This third Arbitrator shall not be connected with either party hereto in any manner whatsoever.

(d) The Arbitrators shall, during the period of arbitration, reside in Japan, but shall not necessarily be citizens of, or permanent residents in Japan.

(e) All matters concerning the subject to be arbitrated shall be submitted in Tokyo to the Arbitrators as rapidly as possible by both parties hereto, and the findings (delivered in writing) of a majority of the Arbitrators shall be accepted as final and binding upon the parties hereto.

(f) The arbitration expenses shall be paid in the manner decided by the Arbitrators.

(g) The Japanese code of civil procedure shall govern all arbitration proceedings.

Copied from translation of Contract between O.N.L. and the Societe d'Etudes pour les Travaux de la Phase "A" du Litani

"4. Arbitration

All controversies arising from the application of the present contract and not settled by the Commission provided for in article 3 - 6, must be submitted to an arbitration commission composed of two members, both parties appointing one member, the President being an expert designated by the Bureau of Claims of the U.S.A., who shall also fix the respective fees.

The arbitration commission must give judgment within a period not exceeding 3 months; in the case that one of the two parties should fail to appoint its delegate, such delegate shall be appointed by the President of the arbitration commission.

All requests for arbitration, in order to be admitted, must be introduced prior to final settlement. The funds for expenses and fees of the President of the arbitration commission shall be advanced by plaintiff and paid in accordance with the distribution fixed by the President of the arbitration commission.

5. If work is stopped before its completion, whatever be the reason therefor, the engineer shall accept payment for his studies and supervision on the basis of the distribution mentioned in article 9 - 4.

The fees relative to the preliminary and final completed studies shall be considered to be due and charged on the sums of the estimated amounts.

As regards the works, the fees shall be computed on the basis of the cash amount due to contractors.

Excerpt from Memorandum of Agreement between the Karachi Electric Supply Corporation, Ltd., of Karachi, Pakistan (hereinafter called "the Client") of the one part and the firms (jointly and severally) of (1) Handcock & Dykes of London and (2) Brian Colquhoun and Partners of London ... (who and the survivers or survivor of whom are hereinafter called "the Consulting Engineers") of the other part.

(Re: Construction of Karachi "B" Steam Power Station)

"16. Arbitration. In case of difference or question arising at any time between the parties hereto as to the construction, meaning or effect of this Agreement or as to the rights, obligations or liabilities of either party hereto or as to the adjustment of any matter or thing to be agreed to or adjusted thereunder, such difference or question shall be referred to the arbitration of two arbitrators one to be nominated by each party. Such arbitration shall be governed by the provisions of the Arbitration Act in force in Pakistan at the time.

Excerpt from the Contract between the Government of Pakistan and Siemens-Schuckertwerke A.G.

"If at any time any question, dispute or difference whatsoever shall arise between the purchaser or the Consulting Engineers and the contractor upon, or in relation to, or in connection with the contract, either party may forthwith give to the other notice in writing of the existence of such question, dispute or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon in Pakistan. This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1940 or any statutory modification thereof.

The award of the arbitrator shall be final and binding on the parties. Upon every and any such reference the costs of an incidental to the reference and award respectively shall be in the discretion of the arbitrator, who may determine the amount thereof, or direct the same to be taxed as between solicitor and client, or as between party and shall direct by whom, to whom and in what manner the same shall be borne and paid.

Work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payments due to or payable by the purchaser shall be withheld on account of such proceedings unless they are the subject of the dispute.

Excerpt from: Contract between the Callao Port Authority and the Raymond Construction Corporation relative to the Construction of Foundations for a Grain Elevator and Annexed Railroad Siding on the Grounds of the Callao Maritime Terminal

"... 9. The parties hereto agree that in case of a disagreement regarding the execution of the present contract they waive their right to the jurisdiction of the courts of their domicile, and to all diplomatic intervention, submitting themselves to the courts of the Republic of Peru."

(From Op.Files 57 PE - Supervision I)

Excerpt from: Contract covering the engineering and construction work of the second stage of the Rio Quiroz Irrigation Project in the Department of Piura, entered into by the Government of Peru and the Morrison-Knudsen Company, Inc.

"... Contract Laws

The Government and the Company declare that this contract and the effects thereof shall operate exclusively under the laws of the Republic of Peru, and the Company expressly agrees to submit to the national jurisdiction renouncing appeal to diplomatic intervention in case of the rescision of the contract or of any other difference which may arise during the life of the contract which it may not be possible to settle directly by the parties to this contract."

(From OP.Files 114 PE - Quiroz-Piura)

Excerpt from unsigned, undated Contract No. C.2 - Main Civil Engineering Contract between The Federal Power Board of Rhodesia and Nyasaland and Impresit Kariba (Pvt.) Ltd., re: The Kariba Hydroelectric Scheme. Engineer: Gibb Coyne Sogei

"66. Settlement of Disputes - Arbitration

If any dispute or difference of any kind whatsoever shall arise between the Employer or the Engineer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (whether during the progress of the Works or after their completion and whether before or after the determination abandonment or breach of the Contract) it shall be referred to and settled by the Engineer who shall state his decision in writing and give notice of the same to the Employer and the Contractor. Such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor until the completion of the work and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether notice of dissatisfaction is given by him or by the Employer as hereinafter provided or not. If the Engineer shall fail to give such decision for a period of three calendar months after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer then and in any such case either the Employer or the Contractor may within three calendar months after receiving notice of such decision or within three calendar months after the expiration of the said period of three months (as the case may be) require that the matter shall be referred to arbitration under the arbitration laws in force in Southern Rhodesia.

The arbitrator/umpire shall have full power to open up review and revise any decision opinion direction certificate or valuation of the Engineer and neither party shall be limited in the proceedings before such arbitrator/umpire to the evidence or arguments put before the Engineer for the purpose of obtaining his decision above referred to. The award of the arbitrator/umpire shall be final and binding on the parties. Such reference except as to the withholding by the Engineer of any certificate or the withholding of any portion of the retention money under Clause 60 hereof to which the Contractor claims to be entitled or as to the exercise of the Engineer's power to give a certificate under Clause 63(1) hereof shall not be opened until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor. Provided always:-

(i) that the giving of a Certificate of Completion under Clause 48 hereof shall not be a condition precedent to the opening of any such reference

(ii) that no decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator/umpire on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator/umpire as aforesaid.

Excerpt from Contract between the Port Authority of Thailand (the "Authority") and Raymond Concrete Pile Company of Delaware, Morris and Cumings Dredging Company, Inc., Daniel, Mann, Johnson & Mendenhall, and H.C. Smith Construction Company (the "Contractor")... May 14, 1954

"Clause 56. Arbitration

(a) If any dispute shall arise in connection with the terms of the performance hereof which the Authority and the Contractor will be unable to settle between themselves, such dispute shall be referred to two arbitrators, one to be appointed by each the Authority and the Contractor within 15 days. The two arbitrators shall give a decision on the dispute in Bangkok within 90 days of their appointment.

(b) If the two arbitrators shall disagree so as to be unable to give a decision on the dispute, they shall appoint an umpire to decide the dispute. Should the arbitrators disagree for 15 days on the appointment of an umpire, a request for the appointment of an umpire may then be made to the Chief Justice of the Civil Court by either party. Should the Chief Justice be unable to appoint an umpire within 30 days from the date of such request either party may take the dispute to Court.

(c) The arbitrators or umpire or court shall decide the amount of remuneration to the damaged party, in addition to fees and expenses of arbitration, and these shall be paid by the party or parties to the dispute as ordered in the decision.

(d) The decision of the arbitrators or umpire or court, as the case may be, shall be final and the Authority and the Contractor shall abide by such decision.

(e) During the period of arbitration or pending action in the court the performance hereof shall be carried on without interruption in respect of points not in dispute."

Excerpt from Contract between the Royal Irrigation Department and Westinghouse Electric International Company - November 18, B.E. 2498 for Furnishing 480-volt Unit Substation, Distribution Board and Distribution Transformers for the Greater Chao Phya Project, Chainat, Thailand.

"Clause 11

If any dispute shall arise in connection with the performance hereby contracted which the parties shall be unable to settle among themselves, such dispute shall be referred to two arbitrators who shall give a decision on the dispute in Bangkok within 90 days from the date of their appointment.

The said arbitrators shall be appointed from persons resident in Thailand, each party to appoint one arbitrator. If the two arbitrators disagree and unable to give a decision on the dispute, they shall appoint an umpire to decide it. Should the arbitrators disagree on the appointment of the umpire, action shall be taken in the court in Thailand.

The arbitrators or umpire shall determine the amount of remunerations, fees, and expenses of arbitration and these shall be paid by the party or parties as ordered in the decision.

The decision of the arbitrators or umpire, as the case may be, shall be final and the parties hereby agree to abide by such decision.

During the period of arbitration or pending action in court the performance of this contract shall be carried on without interruption in respect of point not in dispute.

Excerpt from: Agreement - Chao Phya River Dam, Chainat, Thailand

Royal Thai Irrigation Department --- Messrs. Keir and Cawder, Ltd.

August, 1951

"... Any controversy between the Contractor and the Department arising under this Agreement which is not determined by agreement of the parties shall be submitted to two Arbitrators for arbitration. One Arbitrator shall be appointed by the Contractor, the other Arbitrator shall be appointed by the Department. Either party may institute an arbitration proceedings by appointing an Arbitrator and notifying the adverse party in writing of the former party's decision to arbitrate and of the name of the Arbitrator it has appointed. Within thirty days after the giving of such notice, the adverse party shall notify the party instituting the proceedings of the name of the Arbitrator appointed by such adverse party. If the adverse party shall fail so to appoint an Arbitrator, or if the Arbitrators fail to agree within sixty days of the appointment of the Arbitrator last appointed on a determination of the controversy, the controversy shall be determined by an Umpire appointed either by agreement of the parties, or, if they do not agree within such sixty days, by the President of the International Bank for Reconstruction and Development.

The decision of the Arbitrators or the Umpire, as the case may be, shall be final, and the parties hereto agree to abide by such decision."

Excerpt from unsigned, undated Contract between the Ministry of Public Works, Republic of Turkey, and Knappen Tippetts Abbett McCarthy Engineers of New York, U.S.A. for Consulting Engineering Services for "The Seyhan Dam and Power Project"

Article XIV: Disputes

All disputes and controversies of whatever nature arising under this contract that cannot be resolved by mutual agreement of the contracting parties will be settled by arbitration one of whom will be selected by the Owner, one by the Engineer and one by their mutual agreement. If the arbitrators selected by two parties cannot agree on the selection of third arbitrator, the Sayistay Baskani (President of General Accounting Office) will select the third arbitrator. Matters that cannot be settled by arbitration or agreement will be referred to the competent court of the Turkish Government in Ankara.

Excerpt from: A copy of the English Translation of the Contract between Gruner Associates and UTE*

"CONTRACT FOR THE SERVICES OF A CONSULTING ENGINEERING FIRM FOR THE BAYGORRIA PROJECT*

"... 1. In the event of a controversy the parties will undertake to submit such controversy to an expert named by mutual agreement.

2. If such agreement were not reached or if the expert's decision were not satisfactory, the parties would undertake to submit the controversy to arbitration.

3. In such an event each party will appoint an arbitrator within thirty days of receiving notice by registered mail or cable from the interested party.

The third arbitrator will be appointed by agreement of the parties. In the event that no agreement is reached, this appointment will be made by the President of the Supreme Court of Justice."

*UTE - Administracion General de las Usinas Electricas y los Telefonos del Estado

Op.Files: Uruguay - 152 UR - Negotiations II

Mr. Bernard Chadenet July 31, 1957

Gail A. Hathaway

Appointment of Arbitrators
Arbitration Associations Practice

I have given a great deal of study to the question of arbitration procedures and have also discussed the matter informally with Messrs. Fontein and Delaume. Messrs. Fontein and Delaume were particularly anxious to secure copies of typical arbitration clauses now being used in contracts between the borrowers and consulting or management engineering firms. About two dozen typical arbitration clauses have been copied from contracts in T.C.D. files. Five sets of these arbitration clauses are attached.

I also obtained information regarding an arbitration case involving a dispute between the Greek Government, using funds furnished by ICA, and a German contractor. Each party appointed an arbitrator and ICA was called upon to furnish the third. The case is somewhat parallel to the Thailand - Keir & Cawder case. The U.S. State Department selected an American engineer who informed me that he did not believe it would have been possible to settle the case if he had not first drawn up the rules of procedure. He followed those of the American Arbitration Association, changing them slightly to fit the particular case and then obtained the agreement of the other two arbitrators to these procedures as the first step in the proceedings. The case is in the final stages of settlement and, apparently, no great difficulty has been experienced - at least not between the three arbitrators.

Many of the member countries of the Bank now have laws that clearly set forth the procedures for arbitration cases so that contracts involving government agencies of that particular country are generally governed by those laws. A typical example is The Indian Arbitration Act of 1940 which also applies to Pakistan. In some cases, however, contracts have been signed wherein agencies of those countries have agreed to abide by the procedures of the American Arbitration Association. In most cases the most difficult problem is the selection of the third arbitrator or umpire. In cases where the two arbitrators cannot agree upon a third party, the selection of the umpire is made by a member of a Federal Court, the Supreme Court or, in some instances, by the President of the International Court of Justice at the Hague. There is general agreement that the selection of the third arbitrator or umpire should not be made by the Bank or, as in the case of the controversy in Greece, by the Department of State.

It would appear worthwhile for the Bank to explore the possibility of establishing an International Arbitration Association, patterned along the lines of the American Arbitration Association, which might have its headquarters and be closely affiliated with the International Court of Justice in the Hague. Possibly some foundation, such as the Ford Foundation which is extremely

interested in international matters, might be sufficiently interested to sponsor such an organization. The American Arbitration Association, the Inter-American Commercial Arbitration Commission and the International Chamber of Commerce, appear to be more concerned with private and commercial transactions than with cases involving governments and commercial or private concerns.

GAHathaway/agk

Burma	Port Project	Sir Alexander Gibb & Partners
Ceylon	Pipe Lines	Societe des Forges et Ateliers du Creusot; Preece Cardew & Rider (consulting engineers)
Colombia	Transmission Lines	Ingenieria y Construcciones Ltda.
	National Railways	Various subcontractors
Ecuador	Power	R. J. Tipton Associated Engineers
El Salvador	Littoral Highway	Knappen-Tippetts-Abbett-McCarthy
Guatemala	Part of Pacific Highway	Rodriguez y Hegel Compania
	Part of Atlantic Highway	Nello Leguy Teer
	Part of Pacific Highway	Ingeniero Jose Arias Dufourco (Compania Constructora el Aguila, S.A.)
Honduras	Re: Highway Program	Porter-Urquhart Associated
Haiti	Highway	Techint
India		Societe Generale pour l'Industrie, Conrad Zschokke Ltd., Monsieur
	Power	Tata & The Andhra Valley Power Supply Ltd.
	Steel Plant	Tata & Kaiser Engineers
Japan	Irrigation & Drainage	Erik Floor & Associates
Lebanon	Power & Irrigation	Societe d'Etudes
Pakistan		Siemens-Schuckertwerke A.G.
	Power	Handcock & Dykes and Brian Colquhoun & Partners
Peru	Port	Raymond Construction Co.
Rhodesia & Nyasaland	Power	Gibb Coyne Sogei
Thailand	Bar Channel	Raymond Concrete Pile Co., Morris Cumings Dredging Co., Daniel, Mann, Johnson & Mendenhall and H.C. Smith Construction Company
	Power & Irrigation	Westinghouse
	Chao Phya River Dam	Keir & Cawder Ltd.
Turkey	Seyhan Dam	KTAM
Uruguay	Power	Gruner Associates

Excerpt from "Board of Management for the Port of Rangoon - Development of Port of Rangoon - Contract No. 1 - Sule Pagoda Wharves Nos. 5, 6 and 7 - General Conditions of Contract - August, 1955"

Board of Management for the Port of Rangoon

Engineer: Sir Alexander Gibb & Partners
Consulting Engineers
London

"66. Settlement of Disputes - Arbitration

If any dispute or difference of any kind whatsoever shall arise between the Employer or the Engineer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (whether during the progress of the Works or after their completion and whether before or after the determination abandonment or breach of the Contract) it shall be referred to and settled by the Engineer who shall state his decision in writing and give notice of thesame to the Employer and the Contractor. Such decisions in respect of every matter so referred shall be final and binding upon the Employer and the Contractor until the completion of the work and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether notice of dissatisfaction is given by him or by the Employer as hereinafter provided or not. If the Engineer shall fail to give such decision for a period of three calendar months after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer then and in any such case either the Employer or the Contractor may within three calendar months after receiving notice of such decision or within three calendar months after the expiration of the said period of three months (as the case may be) require that the matter shall be referred to an arbitrator to be agreed upon between the parties or failing agreement one to be appointed by each party and the arbitrators so appointed shall appoint an umpire before proceeding with the arbitration and any such reference shall be deemed to be a submission to arbitration within the meaning of The Arbitration Act, 1944 (Burma Act No. IV of 1944) or any statutory re-enactment or amendment thereof for the time being in force. Such arbitrator shall have full power to open up review and revise any decision opinion direction certificate or valuation of the Engineer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Engineer for the purpose of obtaining his decision above referred to. The award of the arbitrator shall be final and binding on the parties. Such reference except as to the withholding by the Engineer of any certificate or the withholding of any portion of the retention money under Clause 60 hereof to which the Contractor claims to be entitled or as to the exercise of the Engineer's power to give a certificate under Clause 63(1) hereof shall not be opened until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor. Provided always:-

(i) that the giving of a Certificate of Completion under Clause 48 hereof shall not be a condition precedent to the opening of any such reference

(ii) that no decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.

Excerpt from Form of Contract, Specification and Schedules entered into by the Government of Ceylon (the "Government" or "the Purchasers") of the one part and Societe des Forges et Ateliers du Creusot ("the Contractor") of the other part, March 5, 1955.

Re: Pipe Lines

Consulting Engineers: Preece, Cardew & Rider

"70. Arbitration

If during the continuance of this Contract or at any time after the termination thereof any difference or dispute shall arise between the parties hereto in regard to the interpretation of any of the provisions herein contained or any other matter or thing relating to this Agreement (other than any difference or dispute in respect of which a decision of the Deputy Secretary is declared to be final and binding on the parties hereto) such difference or dispute shall be forthwith referred to two arbitrators for arbitration in Ceylon, one to be appointed by each party with liberty to the arbitrators in case of difference or their failing to reach an agreement within one month of their appointment to appoint an umpire resident in Ceylon and the award made by the two arbitrators or umpire as the case may be shall be final and conclusive and binding on the parties hereto. If either party in difference fail or neglect to appoint an arbitrator for the space of thirty days after notice in writing to do so has been given by the other party or shall appoint an arbitrator who shall refuse to act, then the arbitrator appointed by the other party shall make a final decision alone and the making of any award in such reference shall be a condition precedent to any right of action against any of the parties hereto in respect of such difference."

The same clause is included in the Contract between the Government of Ceylon and Societa Anonima Elettrificazione, Italy. Re: Transmission Lines. Consulting Engineers: Preece, Cardew & Rider.

In a Tender for Construction of Transmission Lines, dated August 26, 1955 the following sentence was included: "The party who requests arbitration shall if so required by the Permanent Secretary to the Ministry of Transport and Works deposit with him prior to the appointment of arbitrators such sum as shall be fixed by him towards the cost of the arbitration."

Excerpt from: Contract for Construction of the Transmission Line

The Anchicaya River Hydroelectric Center, Ltd., and the Ingenieria y Construcciones Ltda.

"... Clause Sixteen - Article 45

Both parties name the city of Cali as their special legal domicile for any arbitration actions or proceedings which may arise from this contract. Article 46. The doubts or differences which may arise between the contracting parties in regard to this contract, about which it has not been possible to reach a direct agreement, shall be submitted to the decision of arbitration courts which will be composed of law graduates, each party appointing one and the two principal ones appointing a third, to that effect it shall be proceeded in accordance to law 2 of 1938, the arbitration will be performed in pursuance with the Colombian law and the decision will have legal effect. The arbitration court will perform in the city of Cali and the District Judge of that jurisdiction will be called in case any of the parties abstains from appointing the arbiter under the provisions of Article Five of said Law 2 of 1938.

PARAGRAPH. When purely technical matters are dealt with not involving any kind of differences of interpretation, performance or effects of the contract, and that therefore there is no matter for legal decision, as it may occur in the case of remarks of the Interventor* on works or part of works in progress or at the time of the checking or inspection of the materials, which remarks are not considered by THE CONTRACTORS as being well founded, there will be no arbitration as provided in this article and such difference will be settled by expert engineers, appointed one by each party and a third, in case of discrepancy, by the two principals; both parties can agree to submit the expert report to the opinion of a single expert, whether natural or legal person. Article 47. The differences that give rise to arbitration, according to the terms of article 46 of this Clause shall be submitted in writing to the arbiters, and while the decision is being reached the work shall not be suspended unless special circumstances make that advisable or the arbiters appointed for the purpose so decide, and in this event the terms of delivery shall be suspended."

* Government Supervisor

Ten files on Loan 68 CO - National Railways Project - contain several contracts and subcontracts for building bridges, etc. The majority of these contracts are in Spanish and include the following "Arbitration" clause:

"Differences - The differences of technical or administrative character that may occur between the Contractor and the Interventor or any other employee authorized by the Government, will be resolved by the Ministry of Public Works, whose decision will not be appealable.

Excerpt from: Contract between Empresa Electrica "Quito" S.A. and R.J. Tipton Associated Engineers, Inc.

Covering consulting engineering services in connection with the Cumucyacu Project

"... Differences in the Interpretation of the Contract

The Empresa and the Engineers are obliged to call to the attention of the World Bank all differences of opinion which may arise between the two parties with respect to the interpretation of anyone or more clauses of this contract. At the same time, the two parties accept the good offices of the World Bank in arriving at a solution of such differences, particularly with respect to matters of technical nature."

From Op.File: Ecuador - Loan 137 EC - Administration II

Excerpt from Translation of Contract between El Salvador and the firm of Knappen-Tippetts-Abbett-McCarthy re: the design and supervision of the construction work of the Littoral Highway.

"Clause Seventeen

Any controversy arising out of the present contract between the "Government" and "the Consulting Engineers" will be submitted to Arbitrators for decision, all to be done in conformance with the laws of El Salvador. In this case, each one of the parties to the controversy will name one arbitrator and will agree upon a third party who must be mutually agreeable to both parties who will be called upon in case of discord."

Excerpt from Translation of the Proposed Contract between the Government of Guatemala and "Rodriguez y Hegel Compania Limitada" "Ingenieros Contratistas Guatemaltecos" ("ICONGUA") for the construction of Project "OP - 350 of the Pacific Highway.

"Clause Eight: Arbitration

Both parties agree that in all questions or difference that may arise between them because of this contract, its interpretation, or the work agreed to in it, which might generate judicial action, shall be resolved directly between the two parties in a conciliatory manner. If the differences or questions cannot be settled directly, they shall be submitted to a Board of Arbitration formed by arbitrating arbitrators. Each party shall nominate an arbitrator and these shall immediately appoint a third one, acceptable to both parties, who shall intervene in case of disagreement between the first two. If the first two arbitrators fail to reach an agreement as to the appointment of a third, he shall be appointed by the President of the Judiciary ("Organismo Judicial") of Guatemala upon the request of either of the parties. Proceedings prior to the constitution of the Board of Arbitration, will be effected in the presence of a competent judge of the City of Guatemala, and this Capital shall be the seat of the Board of Arbitration. Written claims presented by one of the parties to the other shall be taken as demands, and as answers, the replies also inwriting given to the claims. The official record of commitment shall incorporate these documents in order to determine the objectives of the arbitration. The arbitrators nominated by the parties shall declare the Board of Arbitration in force, and without further proceedings, shall indicate to both parties the term of thirty (30) days set to prove the facts. In the findings, the cost of the arbitration shall be determined by the judge. The findings shall always be definite and final and shall not allow protests of any kind against it, except in the extraordinary case of appeal to the Supreme Court for cancellation because of substantial violation of the proceeding."

Excerpt from Translation of Contract between "Enrique Salazar Liekens ... in his capacity as Under Secretary of Communications and Public Works, party of the first part; and Nello Leguy Teer ... in his capacity as President of the 'Nello L. Teer Company' registered in the State of Delaware, U.S.A. ..." for the construction of the Atlantic Highway, Project C.I.O. 90, Stretch from Trapichito to the Motagua River.

"Clause Eight: Arbitration

The two parties agree that in all questions or differences which may arise between them because of this contract, its interpretation or of the work agreed to in it, and which might give rise to judicial proceedings, will be resolved directly by them through conciliatory measures. If questions or disagreements cannot be resolved directly in this way, they will be submitted to appointed, disinterested arbitrators. Each party will name an arbitrator (Ex-aequo et bono) and these will immediately appoint a third who would be acceptable to both parties and who would intervene in case of disagreement between the two first. In case the two parties do not arrive at an agreement in regard to the appointment of the third, this person will be appointed by the President of the Judicial Organization in Guatemala upon request from either party. The proceedings previous to the formation of the Tribunal for Arbitration will be expounded before a competent judge of the City of Guatemala, and this Capital will be the seat of the Tribunal of Arbitration. All written communications from one party to the other and the replies will be admitted as claims before the Tribunal. The commitment documents to be presented will include these documents in order to define the objectives of the arbitration. The arbitrators named by the parties will declare the Tribunal in force and, without further proceedings, will indicate to both parties that the term of thirty (30) days is allowed in order to prove all facts. In the decision must be resolved the matter of payment of the costs of arbitration which shall be liquidated by the judge. The decisions shall always be definite and final and no protest against them will be allowed; except in the extraordinary case of appeal to the Supreme Court for annulment due to material violation of the rules governing this contract."

Excerpt from Contract between the Government of the Republic of Guatemala and Ingeniero Jose Arias Dufourco, representing "Compania Constructora el Aguila S.A. de C.V., for the construction of the highway, drainage and bridges of "project C.P. 300 and 350." Sections comprised between Taxisco and Chiquimulilla and Chiquimulilla to Pijije of the Pacific Highway ...

"Twelveth Clause: Authorization to Work, Subjection to the Laws of the Country and Arbitration

Calvo clause

a) "Constructora el Aguila S.A. de C.V." and their subcontractors duly incorporated in accordance with the Specifications, are hereby expressly authorized to work in the Republic of Guatemala with the exclusive purpose to carry to completion the present Contract; b) "The Contractor" submits himself expressly to the laws and Legal Provisions of the Republic of Guatemala, and waives his right to recur to diplomatic channels in claim of any matter related to the present contract; c) The parties agree that in all questions and differences which may arise between them because of this contract, its interpretation or of the work contracted, and which may result in Judicial proceedings, will be resolved directly by the parties in a conciliatory manner. In case the differences or questions may not be resolved by means of direct conciliatory agreement, they will be referred to a Board of Arbitration. Each party shall name an Arbitrator and these will appoint immediately a third one, acceptable for both parties, who will intervene in case of any disagreement between the first two. In case the parties can not reach an agreement with regard to the appointment of the third one, he will be appointed by the President of the Judiciary of Guatemala, at the request of either one of the interested parties. The proceedings previous to the constitution of the Board of Arbitration shall be substantiated before a competent Judge of the city of Guatemala and this Capital City shall be the seat of the Board of Arbitration. The written claim or claims submitted by one of the parties shall be considered as the demand and as the reply the written responses given to the claims. The instrument of agreement shall incorporate these documents to define the purposes of the arbitration. The Arbitrators appointed by the parties will declare the Board, as constituted and without any further proceedings will make known to the parties the term of thirty working days to prove the facts. The payment of the costs of the Arbitration shall be resolved in the award which will be liquidated by the Judge. The decision shall be always final and no recourse will be permitted except because of substantial violation of the proceedings."

(The same type clause is included in the Contract between Guatemala and "Mr. Russell David Antisdel Thorsen in his double character with general power of attorney of the companies "Conticca International Corporation" and "Constructora Nacional de Tuneles y Carreteras Compania Anonima" for the construction of the pavement and base of Project C.I.O. 300 ...." Stamped at the top of this contract is the name "Tippetts-Abbett-McCarthy-Stratton of Panama, Inc. Gibbs & Hill, Inc.)

Excerpt from Contract between Ministry of Development of the Republic of Honduras and Upham, Porter-Urquhart Associated, re: Planning and carrying out an overall maintenance program; Reorganization of the entire Highway Department; Preparation of preliminary surveys for the improvement, new construction and reconstruction of the Northern and Western highways.

"K. Arbitration

Any dispute or controversy arising out of or in connection with this Contract shall be submitted to arbitration, to be held in Tegucigalpa, Honduras, and in accordance with the laws of the Republic of Honduras. The award of the arbitrators shall be final and binding, and the award may be filed in any court having jurisdiction. The arbitration shall be had before three arbitrators, one to be chosen by each of the parties and the third by the two so chosen, in the following manner. The party desiring such arbitration shall give to the other party written notice of its desire, specifying the question or questions to be arbitrated, and naming an arbitrator chosen by it. Within 20 calendar days thereafter the other party shall give written notice to the party desiring arbitration, specifying any additional question or questions to be arbitrated, and naming the arbitrator chosen by such other party. The two arbitrators so chosen shall select the third within 10 days after naming the second arbitrator. In the 10-day period above mentioned, the Court having jurisdiction may, upon application by either party, nominate such third arbitrator.

The arbitrators shall determine which party shall pay the expenses of such arbitration, or the proportion thereof which each party shall bear, and the arbitration expenses so allocated shall be paid accordingly."

Mr Hathaway

Room 303

From a contract for the services of consulting engineers relative to the Haiti's highway development.

9. Arbitration Clause

All differences of opinion arising between the two parties relative to the interpretation or execution of this agreement shall be submitted, if no friendly arrangement intervenes, to an arbitration council constituted in accordance with the arbitration procedure provided for by the Haitian legislation with the following reservations:

The arbitration committee shall consist of two arbitrators one appointed by the plaintiff and the other by the defendent. If the arbitrators fail to come to an agreement they shall select a third arbitrator. If they fail to choose a third arbitrator, the latter shall be appointed by the president of the court of appeals.

The third arbitrator shall be neither a Haitian nor an Italian citizen.

The party which deems it necessary to resort to arbitration shall so notify the other party through legal channels or by registered letter. It shall at the same time appoint the arbitrator of his choice. Failure to appoint the arbitrator shall make the action null and void. If within two weeks from the receipt of this notification defendent does not appoint his arbitrator, he shall forfeit all his rights.

The arbitration council must, without recourse to ordinary jurisdiction, take its decisions by majority vote and give its decision ex aequo et bono. In the case that majority is not obtained the vote of the third arbitrator shall be final and shall not be liable to stay of execution.

Arbitration shall be granted a delay of two months. The interested parties may agree to extend this delay.

Neither of the parties may refuse to continue the fulfillment or refuse to continue to fulfill its obligations as defined in this agreement under the pretext that one or the other party has had recourse to arbitration.

The arbitration council shall sit in Haiti.

If there are only two arbitrators, each party shall pay the expenses of its own arbitrator.

If there are three arbitrators the third arbitrator shall decide which of the two interested parties must pay the arbitration expenses.

TRANSLATION SECTION

Translated From: French 6.20.57 By: AB.

Contract in Op Files: 141 HA - Admin. I

Excerpt from the Contract between The Governor of Bombay ("the Government") and Societe Generale pour l'Industrie, Geneva; Conrad Zschokke Limited, Geneva; and Monsieur Henri Gicot, Consulting Engineer, Fribourg ("the Consulting Engineers"):

"Any difference including the difference as to the interpretation of this contract or its clauses which cannot be settled between the parties hereto shall be settled by arbitration in India.

Upon a specific request indicating details of the difference of opinion in writing by either party each party shall appoint an arbitrator within 45 days of receiving the request. In case either party fails to appoint an arbitrator within the time specified above, then such arbitrator shall be appointed by the Chief Justice of the High Court of Bombay, India, at the request of either party. In the event of the arbitrators not being able to come to an agreement within 30 days of their appointment, the matter shall be decided by the award of a third arbitrator to be appointed by the mutual consent of the two arbitrators within one month from the date of their appointment. If the two arbitrators fail to appoint a mutually acceptable third arbitrator within a period of 30 days, the same shall be appointed by the President of the International Court of Justice in the Hague at the request of either party, and his decision shall be final and binding on both the parties. The provisions of the Indian Arbitration Act of 1940 and the rules thereunder and any statutory modifications thereof shall be deemed to apply in this behalf.

The expenses of the arbitration shall be allocated between the parties as the arbitration board may direct."

Excerpt from Final Draft Agreement between Burns and Roe, Inc. and Tata, Inc. acting as representative and agent for The Tata Hydroelectric Power Supply Ltd., The Andhra Valley Power Supply Ltd., and The Tata Power Company Ltd., hereinafter collectively called "Owner."

"Article VII - Audit

The Engineers shall keep accurate records and books of account showing all charges and all expenses incurred by the Engineers in the performance of the work hereunder. The Owner and Tata, Incorporated shall have the privilege of verifying at any time direct costs, expenses and disbursements made or incurred by the Engineers in connection with the work to be performed hereunder by means of examination of the Engineers' books and records relating thereto.

Article VIII - Termination

Should the Owner find it necessary to discontinue or postpone prosecution of the work to be performed hereunder, the Owner shall have the right to terminate the services of the Engineers and to cancel this Agreement forthwith. The Engineers shall be paid the amount earned or reimbursable to them hereunder to the time of such cancellation and all reasonable expenses incurred by the Engineers in terminating the work, under proper certification, and shall have no further claim against the Owner with respect thereto.

Article IX - Arbitration

Any dispute or difference arising out of this Agreement which cannot be settled or adjusted by mutual agreement, or the settlement of which is not otherwise provided for in the Agreement, shall be settled and finally determined by arbitration in the City of New York in the following manner: Each of the two parties concerned shall appoint an arbitrator. If the two arbitrators so appointed cannot agree within two weeks of the date of their appointment, they shall select a third arbitrator. The three arbitrators shall then meet and give an opportunity to each party to present its case and witnesses (if any) in the presence of the other party. The arbitrators shall then make their award. A decision in writing of the three arbitrators, or any two of them, shall be final and binding upon the parties, and judgment may be entered thereon in any court having jurisdiction. The decision of the arbitrators shall include the fixing of the expenses of the arbitration and the assessment of the same against either or both parties.

If either party shall fail to appoint its arbitrator within thirty (30) days after notice in writing from the other party requiring it to do so, the arbitrator appointed by the other party shall act for both, and his decision shall be final and binding upon both parties, as if he had been appointed by consent.

If, in an appropriate case, the arbitrators appointed by the parties shall fail to select a third arbitrator, a third arbitrator shall be selected in accordance with the then current rules and regulations of the American Arbitration Association."

Excerpt from: CONTRACT between THE TATA IRON AND STEEL COMPANY, LIMITED and KAISER ENGINEERS OVERSEAS CORP. Covering The EXPANSION of the JAMSHEDPUR STEEL PLANT.

"... Any dispute or difference as to interpretation, administration or execution of the terms of this contract including any difference arising under Article X, paragraph 3, shall be resolved by a Board of Arbitration to be established as follows:-

(i) Tata Steel shall appoint one person to such Board

(ii) Kaiser Overseas shall appoint one person to such Board

(iii) The two persons so appointed shall appoint a third and impartial person.

The three persons named as above shall constitute the Board of Arbitration and the decision of any two thereof shall be binding upon both parties hereto and the costs of arbitration shall be paid in the manner such Board of Arbitration may decide.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly executed, as of the day and year first hereinabove set forth."

****

"Article X, paragraph 3:

Upon completion in accordance with approved plans and specifications of all work and services within the scope of the Project, and on completion of all performance tests as may be required under this contract Kaiser Overseas shall certify to Tata Steel final completion of the Project. Within 15 days thereafter Tata Steel shall either (i) give Kaiser Overseas in writing a final acceptance of the Project, or (ii) notify Kaiser Overseas in writing of any items of work which it considers incomplete or defective, specifying the extent and character of any work it considers to be requisite to final completion. In the latter event, if Kaiser Overseas does not agree with such specification or work required to be performed, the parties shall mutually agree and failing agreement the Board of Arbitration to be appointed under the provisions of Article XIX may fix on the work to be so performed and upon completion thereof, Tata Steel shall give Kaiser Overseas the abovementioned written final acceptance."

From Op. Files: Doc. 11, Loan 146 IN

Excerpt from the Draft Agreement between the Aichi Irrigation Public Corporation and Erik Floor & Associates, Inc. re: irrigation and drainage, etc.

"Article XII - Arbitration

Any dispute between the Public Corporation and E.F.A. as to the interpretation, administration or execution of the terms and conditions of this agreement shall be resolved by arbitration, and the parties agree to submit all disputes to arbitration. Arbitration shall be conducted in the following manner:

(a) Either party may initiate arbitration proceedings by notifying the second party in writing (registered mail) to this effect, giving the name of its appointed Arbitrator.

(b) Within twenty (20) days after receipt of such notice, the second party shall by written notice (registered mail), notify the first party of its appointed Arbitrator. In the event that the second party shall refuse or fail to appoint its Arbitrator as provided for in this paragraph (b) then the arbitration shall be proceeded with by the Arbitrator appointed by the first party whose decision shall be final and bindings upon the parties.

(c) Within twenty (20) days after the receipt by the first party of the notice provided for in (b) of the appointment of the second party's arbitrator, a third Arbitrator shall be chosen by these two or, in the event such third Arbitrator cannot be agreed upon by the first two Arbitrators within said period, then he shall be chosen by the then senior diplomatic representative of the Government of Switzerland, resident in Tokyo, Japan. This third Arbitrator shall not be connected with either party hereto in any manner whatsoever.

(d) The Arbitrators shall, during the period of arbitration, reside in Japan, but shall not necessarily be citizens of, or permanent residents in Japan.

(e) All matters concerning the subject to be arbitrated shall be submitted in Tokyo to the Arbitrators as rapidly as possible by both parties hereto, and the findings (delivered in writing) of a majority of the Arbitrators shall be accepted as final and binding upon the parties hereto.

(f) The arbitration expenses shall be paid in the manner decided by the Arbitrators.

(g) The Japanese code of civil procedure shall govern all arbitration proceedings.

Copied from translation of Contract between O.N.L. and the Societe d'Etudes pour les Travaux de la Phase "A" du Litani

"4. Arbitration

All controversies arising from the application of the present contract and not settled by the Commission provided for in article 3 - 6, must be submitted to an arbitration commission composed of two members, both parties appointing one member, the President being an expert designated by the Bureau of Claims of the U.S.A., who shall also fix the respective fees.

The arbitration commission must give judgment within a period not exceeding 3 months; in the case that one of the two parties should fail to appoint its delegate, such delegate shall be appointed by the President of the arbitration commission.

All requests for arbitration, in order to be admitted, must be introduced prior to final settlement. The funds for expenses and fees of the President of the arbitration commission shall be advanced by plaintiff and paid in accordance with the distribution fixed by the President of the arbitration commission.

5. If work is stopped before its completion, whatever be the reason therefor, the engineer shall accept payment for his studies and supervision on the basis of the distribution mentioned in article 9 - 4.

The fees relative to the preliminary and final completed studies shall be considered to be due and charged on the sums of the estimated amounts.

As regards the works, the fees shall be computed on the basis of the cash amount due to contractors.

Excerpt from Memorandum of Agreement between the Karachi Electric Supply Corporation, Ltd., of Karachi, Pakistan (hereinafter called "the Client") of the one part and the firms (Jointly and severally) of (1) Handcock & Dykes of London and (2) Brian Colquhoun and Partners of London ... (who and the survivers or survivor of whom are hereinafter called "the Consulting Engineers") of the other part.

(Re: Construction of Karachi "B" Steam Power Station)

"16. Arbitration. In case of difference or question arising at any time between the parties hereto as to the construction, meaning or effect of this Agreement or as to the rights, obligations or liabilities of either party hereto or as to the adjustment of any matter or thing to be agreed to or adjusted thereunder, such difference or question shall be referred to the arbitration of two arbitrators one to be nominated by each party. Such arbitration shall be governed by the provisions of the Arbitration Act in force in Pakistan at the time.

Excerpt from the Contract between the Government of Pakistan and Siemens-Schuckertwerke A.G.

"If at any time any question, dispute or difference whatsoever shall arise between the purchaser or the Consulting Engineers and the contractor upon, or in relation to, or in connection with the contract, either party may forthwith give to the other notice in writing of the existence of such question, dispute or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon in Pakistan. This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1940 or any statutory modification thereof.

The award of the arbitrator shall be final and binding on the parties. Upon every and any such reference the costs of an incidental to the reference and award respectively shall be in the discretion of the arbitrator, who may determine the amount thereof, or direct the same to be taxed as between solicitor and client, or as between party and shall direct by whom, to whom and in what manner the same shall be borne and paid.

Work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payments due to or payable by the purchaser shall be withheld on account of such proceedings unless they are the subject of the dispute.

Excerpt from: Contract between the Callao Port Authority and the Raymond Construction Corporation relative to the Construction of Foundations for a Grain Elevator and Annexed Railroad Siding on the Grounds of the Callao Maritime Terminal

"... 9. The parties hereto agree that in case of a disagreement regarding the execution of the present contract they waive their right to the jurisdiction of the courts of their domicile, and to all diplomatic intervention, submitting themselves to the courts of the Republic of Peru."

(From Op.Files 57 PE - Supervision I)

Excerpt from: Contract covering the engineering and construction work of the second stage of the Rio Quiroz Irrigation Project in the Department of Piura, entered into by the Government of Peru and the Morrison-Knudsen Company, Inc.

"... Contract Laws

The Government and the Company declare that this contract and the effects thereof shall operate exclusively under the laws of the Republic of Peru, and the Company expressly agrees to submit to the national jurisdiction renouncing appeal to diplomatic intervention in case of the rescision of the contract or of any other difference which may arise during the life of the contract which it may not be possible to settle directly by the parties to this contract."

(From OP.Files 114 PE - Quiroz-Piura)

Excerpt from unsigned, undated Contract No. C.2 - Main Civil Engineering Contract between The Federal Power Board of Rhodesia and Nyasaland and Impresit Kariba (Pvt.) Ltd., re: The Kariba Hydroelectric Scheme. Engineer: Gibb Coyne Sogei

"66. Settlement of Disputes - Arbitration

If any dispute or difference of any kind whatsoever shall arise between the Employer or the Engineer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works (whether during the progress of the Works or after their completion and whether before or after the determination abandonment or breach of the Contract) it shall be referred to and settled by the Engineer who shall state his decision in writing and give notice of the same to the Employer and the Contractor. Such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor until the completion of the work and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence whether notice of dissatisfaction is given by him or by the Employer as hereinafter provided or not. If the Engineer shall fail to give such decision for a period of three calendar months after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer then and in any such case either the Employer or the Contractor may within three calendar months after receiving notice of such decision or within three calendar months after the expiration of the said period of three months (as the case may be) require that the matter shall be referred to arbitration under the arbitration laws in force in Southern Rhodesia.

The arbitrator/umpire shall have full power to open up review and revise any decision opinion direction certificate or valuation of the Engineer and neither party shall be limited in the proceedings before such arbitrator/umpire to the evidence or arguments put before the Engineer for the purpose of obtaining his decision above referred to. The award of the arbitrator/umpire shall be final and binding on the parties. Such reference except as to the withholding by the Engineer of any certificate or the withholding of any portion of the retention money under Clause 60 hereof to which the Contractor claims to be entitled or as to the exercise of the Engineer's power to give a certificate under Clause 63(1) hereof shall not be opened until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor. Provided always:-

(i) that the giving of a Certificate of Completion under Clause 48 hereof shall not be a condition precedent to the opening of any such reference

(ii) that no decision given by the Engineer in accordance with the foregoing provisions shall disquality him from being called as a witness and giving evidence before the arbitrator/umpire on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator/umpire as aforesaid.

Excerpt from Contract between the Port Authority of Thailand (the "Authority") and Raymond Concrete Pile Company of Delaware, Morris and Cumings Dredging Company, Inc., Daniel, Mann, Johnson & Mendenhall, and H.C. Smith Construction Company (the "Contractor")... May 14, 1954

"Clause 56. Arbitration

(a) If any dispute shall arise in connection with the terms of the performance hereof which the Authority and the Contractor will be unable to settle between themselves, such dispute shall be referred to two arbitrators, one to be appointed by each the Authority and the Contractor within 15 days. The two arbitrators shall give a decision on the dispute in Bangkok within 90 days of their appointment.

(b) If the two arbitrators shall disagree so as to be unable to give a decision on the dispute, they shall appoint an umpire to decide the dispute. Should the arbitrators disagree for 15 days on the appointment of an umpire, a request for the appointment of an umpire may then be made to the Chief Justice of the Civil Court by either party. Should the Chief Justice be unable to appoint an umpire within 30 days from the date of such request either party may take the dispute to Court.

(c) The arbitrators or umpire or court shall decide the amount of remuneration to the damaged party, in addition to fees and expenses of arbitration, and these shall be paid by the party or parties to the dispute as ordered in the decision.

(d) The decision of the arbitrators or umpire or court, as the case may be, shall be final and the Authority and the Contractor shall abide by such decision.

(e) During the period of arbitration or pending action in the court the performance hereof shall be carried on without interruption in respect of points not in dispute."

Excerpt from Contract between the Royal Irrigation Department and Westinghouse Electric International Company - November 18, B.E. 2498 for Furnishing 480-volt Unit Substation, Distribution Board and Distribution Transformers for the Greater Chao Phya Project, Chainat, Thailand.

"Clause 11

If any dispute shall arise in connection with the performance hereby contracted which the parties shall be unable to settle among themselves, such dispute shall be referred to two arbitrators who shall give a decision on the dispute in Bangkok within 90 days from the date of their appointment.

The said arbitrators shall be appointed from persons resident in Thailand, each party to appoint one arbitrator. If the two arbitrators disagree and unable to give a decision on the dispute, they shall appoint an umpire to decide it. Should the arbitrators disagree on the appointment of the umpire, action shall be taken in the court in Thailand.

The arbitrators or umpire shall determine the amount of remunerations, fees, and expenses of arbitration and these shall be paid by the party or parties as ordered in the decision.

The decision of the arbitrators or umpire, as the case may be, shall be final and the parties hereby agree to abide by such decision.

During the period of arbitration or pending action in court the performance of this contract shall be carried on without interruption in respect of point not in dispute.

Excerpt from: Agreement - Chao Phya River Dam, Chainat, Thailand

Royal Thai Irrigation Department --- Messrs. Keir and Cawder, Ltd.

August, 1951

"... Any controversy between the Contractor and the Department arising under this Agreement which is not determined by agreement of the parties shall be submitted to two Arbitrators for arbitration. One Arbitrator shall be appointed by the Contractor, the other Arbitrator shall be appointed by the Department. Either party may institute an arbitration proceedings by appointing an Arbitrator and notifying the adverse party in writing of the former party's decision to arbitrate and of the name of the Arbitrator it has appointed. Within thirty days after the giving of such notice, the adverse party shall notify the party instituting the proceedings of the name of the Arbitrator appointed by such adverse party. If the adverse party shall fail so to appoint an Arbitrator, or if the Arbitrators fail to agree within sixty days of the appointment of the Arbitrator last appointed on a determination of the controversy, the controversy shall be determined by an Umpire appointed either by agreement of the parties, or, if they do not agree within such sixty days, by the President of the International Bank for Reconstruction and Development.

The decision of the Arbitrators or the Umpire, as the case may be, shall be final, and the parties hereto agree to abide by such decision."

Excerpt from unsigned, undated Contract between the Ministry of Public Works, Republic of Turkey, and Knappen Tippetts Abbett McCarthy Engineers of New York, U.S.A. for Consulting Engineering Services for "The Seyhan Dam and Power Project"

Article XIV: Disputes

All disputes and controversies of whatever nature arising under this contract that cannot be resolved by mutual agreement of the contracting parties will be settled by arbitration one of whom will be selected by the Owner, one by the Engineer and one by their mutual agreement. If the arbitrators selected by two parties cannot agree on the selection of third arbitrator, the Sayistay Baskani (President of General Accounting Office) will select the third arbitrator. Matters that cannot be settled by arbitration or agreement will be referred to the competent court of the Turkish Government in Ankara.

Excerpt from: A copy of the English Translation of the Contract between Gruner Associates and UTE*

"CONTRACT FOR THE SERVICES OF A CONSULTING ENGINEERING FIRM FOR THE BAYGORRIA PROJECT*

"... 1. In the event of a controversy the parties will undertake to submit such controversy to an expert named by mutual agreement.

2. If such agreement were not reached or if the expert's decision were not satisfactory, the parties would undertake to submit the controversy to arbitration.

3. In such an event each party will appoint an arbitrator within thirty days of receiving notice by registered mail or cable from the interested party.

The third arbitrator will be appointed by agreement of the parties. In the event that no agreement is reached, this appointment will be made by the President of the Supreme Court of Justice."

*UTE - Administracion General de las Usinas Electricas y los Telefonos del Estado

Mr. Gail Hathaway

April 15, 1957

Bernard Chadenet

Appointment of arbitrators.
Arbitration Associations Practice.

I have received the attached memorandum from Mr. Delaume of the Legal Department about the appointment of arbitrators and arbitration practice. Mr. Delaume wants to get the comments of our department.

The Legal Department is studying this subject because, in the recent past, the Bank has been requested twice to act as arbitrators. The first time was for a dispute between the Comision Ejecutive Hidroelectrica del Rio Lempa (CEL) in El Salvador and the contractor, the Jones Construction Company. The second time was, and is, for a dispute between the Royal Irrigation Department and the consultants, Keir and Cawder, in connection with the Chao Phya project in Thailand.

I would appreciate your comments.

Attach.