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ARBITRATION - SID Vol. IV

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INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

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FOR EXECUTIVE DIRECTORS' MEETING

CONFIDENTIAL

R 65-43

(for consideration on March 18, 1965)

FROM: The Assistant Secretary

March 12, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached is a memorandum of the General Counsel proposing some drafting changes and corrections in the text of the Convention circulated on March 10, 1965 (R65-37).

In order to facilitate the timely preparation of the printed copies of the Convention which will be transmitted to member governments after the Executive Directors take action on the text on March 18, 1965, Executive Directors are requested to inform one of the following staff members of any additional corrections that the text of the Convention in any of the three languages may still require:

for the English text, Mr. Pinto (ext. 2713);

for the French text, Mr. Delaume (ext. 2533);

for the Spanish text, Mr. Cancio (ext. 2323).

In this connection it should be noted that whenever there were variations among the uses of a language in various countries, the use prevailing in the country of origin of that language was followed in drafting the Convention.

Distribution:

Executive Directors and Alternates
President
President's Council
Executive Vice President, IFC
Department Heads (Bank and IFC)

March 12, 1965

MEMORANDUM OF THE GENERAL COUNSEL

In further reviewing the text in English, French and Spanish of the Convention in the March 10, 1965 draft which has been circulated to the Executive Directors (R65-37), some inconsistencies and typographical errors have been pointed out by Executive Directors and members of the staff which should be corrected in the final text.

I therefore propose the following corrections in the text of the Convention:

A

Corrections applicable to the text of the Convention in all three languages:

(a) In Article 7(1), it is provided inter alia that the Administrative Council shall be convened by the Secretary-General at the request of "five members or one-fourth of the members of the Council, whichever is less". Since Article 68(2) now provides that the Convention shall enter into force upon deposit of the twentieth instrument of ratification, acceptance or approval, it is most unlikely that one-fourth of the members of the Administrative Council will ever be less than five members. Accordingly, the text of Article 7(1) should be modified as follows:

English: (page 4) "(1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members ~~or one-fourth of the members~~ of the Council~~, whichever is less~~."

French: "(1) (page 30) Le Conseil Administratif tient une session annuelle et toute autre session qui aura été soit décidée par le Conseil, soit convoquée par le Président, soit convoquée par le Secrétaire Général sur la demande ~~de~~ d'au moins cinq membres ~~ou du quart des membres~~ du Conseil."

Spanish: "(1) (page 57) El Consejo Administrativo celebrará una reunión anual; y tantas otras como sean acordadas por el Consejo, o convocadas por el Presidente, o por el Secretario General cuando lo soliciten a este último no menos de cinco miembros ~~o la cuarta parte de los mismos, de estas dos cifras la que sea menor~~ del Consejo."

(b) The wording of Article 31(1) should be made to conform with the wording of Article 40(1) as follows:

English: "(1) (page 12) Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments by the Chairman pursuant to Article 30."

French: "(1) (page 38) Les conciliateurs peuvent être pris hors de la liste des conciliateurs, sauf ~~dans le~~ au cas de nomination par le Président prévu à l'Article 30."

Spanish: "(1) (page 66) Los conciliadores nombrados podrán no pertenecer a la Lista de Conciliadores, salvo en ~~los supuestos~~ el caso de que los nombre el Presidente conforme al ~~del~~ Artículo 30."

B

Corrections in the English text only:

Page 10

Article 27, second line:

add a comma after the word "protection" and after the word "claim".

Page 11

Article 30, fourth line:

delete the words "the provisions of".

Page 15

Article 39, first line:

delete the figure "(1)" at the beginning.

Article 41(2), second line:

add a comma after the word "Centre".

C

Corrections in the French text only:

Page 27

Preamble, third paragraph, second line:

the word "fair" should read "faire".

Page 30

Article 9, second line:

the word "Géneraux" should read "Généraux".

Page 32

Article 15(2), third line:

the word "dureé" should read "durée".

Page 35

Article 24(3), second line:

the word "versées" should read "versés".

Page 39

Article 34(2), seventh line:

the word "la" should be inserted between the words "à" and "conciliation".

Page 41

Article 39, first line:

delete the figure "(1)" at the beginning.

Page 45

Article 51(4), first and second lines:

the word "circonstances" should be broken as follows: "circons - tances".

Page 46

Article 52(4), fifth line:

the word "éxecution" should read "exécution".

Article 52(6), third line:

the word "a" should read "à".

Page 47

Article 54(1), sixth and seventh lines:

substitute the words "et prévoir que ceux-ci devront" for the words ", ceux-ci devant".

Page 48

Article 57, fourth and fifth lines:

the word "arbitrage" should be broken as follows: "arbi - trage".

Page 49

Article 60(2), third line:

delete the word "les".

Article 61(2), fifth line:

delete the word "des".

Page 50

Heading of Chapitre VIII:

the word "Differénds" should read "Différends".

Page 52

Article 70, fifth and sixth lines:

substitute the words "de l'acceptation ou de l'approbation" for the words "acceptation ou approbation".

D

Corrections in the Spanish text only:

Page 54

Preamble, second paragraph, first line:

the word "cuenta" should be written in lower case.

Preamble, third paragraph, third and fourth lines:

the words "el empleo de" should be inserted before the word "métodos"; the word "pueden" should read "puede", and the word "apropiados" should read "apropiado".

Preamble, fourth paragraph, first line:

the words "particular importancia" should be written in lower case.

Preamble, sixth paragraph, fourth line:

a comma should be inserted after the word "obligatorio".

Preamble, seventh paragraph, third line:

a comma should be inserted after the word "Estado".

Page 55

Article 2, fourth line:

substitute the word "adoptada" for the word "aprobada".

Article 3, second line:

substitute the word "mantendrá" for the words "tendrá disponible".

Article 4(1), fourth and fifth lines:

the words "del titular" should be inserted after the word "ausencia"; the word "de" should be inserted after the word "o", and the word "titular" in the fifth line should be replaced by the word "mismo".

Page 56

Article 6 (e), first line:

the words "de servicios" should be replaced by the words "del desempeño de las funciones".

Article 6 (f), second line:

the word "egresos" should be replaced by the word "gastos".

Article 6 (g), only line:

the words "de actividades" should be inserted after the word "anual".

Page 58

Article 10(3), fourth and fifth lines:

the words "por adelantado" should be replaced by "anticipadamente".

Article 11, third line:

the words "inclusive del" should be replaced by "incluyendo el".

Page 59

Article 13, second and third lines:

the words "para cada lista" should be deleted.

Article 14(2), fourth line:

substitute the words "dichas listas" for "aquéllas".

Article 15(1), the last two lines should be replaced by "se hará por períodos de seis años, renovables".

Article 15(2):

the last three words should be replaced by "para el que aquél fue nombrado".

Page 60

Article 16(2), sixth line:

substitute the words "de uno de los Estados" for the words "del Estado".

Article 17, second line:

the words "del Centro" should read "de sus servicios".

Article 17, third line:

replace the words "el exceso se sufragará" by the words "la diferencia será sufragada".

Article 18, second line:

replace "incluye" by "comprende, entre otras,".

Page 61

Article 21 (b), third and fourth lines:

delete the words "restricciones a la" and the word "requisitos".

Article 21 (b), fifth line:

add the word "de" after the word "y".

Article 21 (b), sixth line:

add the word "asimismo" before the word "gozarán".

Article 21 (b), seventh line:

replace the word "restricciones" by the word "régimen".

Article 21 (b), eighth line:

replace the words "cambio y del mismo" by the words "cambios e igual".

Article 22, fifth line:

insert a comma after the word "mismo".

Page 62

Article 24(2), second line; and (3), first line:

replace, in both cases, the word "devengarán" by the words "estarán sujetas a".

Page 63

Article 25(1), fourth line from the top of the page:

insert the word "en" after the word "escrito".

Article 25(2), first line:

replace the word "por" by the word "como".

Article 25(2)(a), seventh and tenth lines, and (b), seventh line:

delete the commas after the words "Estado" in three places.

Article 25(4), fourth line:

add commas after the words "que", "principio", "someter", and "no".

Page 64

Article 26, second line:

replace the word "reputará", by the word "considerará".

Article 26, third line:

add the word "como" before the word "consentimiento".

Article 27(1), fourth line:

insert the word "en" after the word "consentido".

Article 27(2), third and fourth lines:

replace the words "una diferencia, de acuerdo con este Convenio" by "la diferencia".

Pages 65 and 68

Articles 28(3) and 36(3), second and last lines:

replace the words "la solicitud" on the second lines, by the words "dicha solicitud", and the words "negativa", on the last lines, by the words "denegación".

Page 67

Article 34(2), second and third lines:

add the words "haciéndolo constar y" before the word "anotando".

add a period after the word "controvertidos".

delete the words "y haciendo constar dicha circunstancia".

Article 34 (2), ninth line:

replace the words "se mostrare parte" by the word "participare".

Article 34 (2), tenth line:

the word "así" should come after the word "constar".

Page 68

Article 38, tenth line:

delete the comma after the word "contratante".

Page 72

Article 51 (1), fourth line:

replace the semicolon by a comma.

Article 51 (3), fourth to sixth lines:

delete the last sentence.

Article 51 (4), fifth and sixth lines:

replace the words "de su decisión respecto a tal" by "decida sobre dicha".

Page 73

Article 52 (b), second line:

replace the word "de" by "en".

Article 52 (e), second line:

the word "funda" should read "funde".

Page 75

Chapter V, heading:

the word "Reemplazo" should read "Sustitución".

Page 78

Article 64, fourth and fifth lines:

the words "a la Corte", should be replaced by "al Tribunal", and the words "los propios", by "dichos".

Article 66 (1), seventh line:

the word "notificándolos" should read "notificándoles".

Page 79

Article 67, fourth line:

replace the words "de la Corte" by "del Tribunal".

Mr. A. Broches

March 11, 1965

C. W. Pinto

Formalities connected with SID Convention:
Meeting with U.N. officials

On Wednesday, March 10, 1965 I met Stanislaw Kiernick, Chief of the Treaty Section of the UN Secretariat and discussed with him several questions regarding the formalities of concluding a multilateral agreement and the functions of a depositary.

Full powers for signature

2. Before a State's representative can sign an agreement he is required to present a document authorizing him to do so i.e. his "full powers". Such specific authorization is required even of persons already accredited to the UN. Rarely, and the example he mentioned was the UK's Permanent Representative, the general credentials presented to the UN contain a specific authorization to sign multilateral agreements.

3. Full powers will be accepted provisionally if cabled but must be followed within a reasonable time by a formal written authorization to sign issued by a Head of State, Head of Government or Minister of Foreign Affairs. 1/

4. No special form is prescribed nor need the full powers be in one of the working or official languages of the UN. Full powers were, for instance, sometimes submitted in Arabic. Instruments submitted in non-official languages are as a matter of courtesy generally accompanied by a translation in English or French. If not, they are translated by the Secretariat and accepted only after the translation has been studied and the document found to be satisfactory. However, no reluctance to accept such an instrument is openly expressed. Mr. Kiernik saw no serious objection to indicating the languages in which full powers should be submitted if a full staff of translators from a variety of languages into English and French were not available.

Opening Convention for Signature; Signature

5. Some ceremony generally accompanies the opening of a Convention for signature - although here Kiernik was referring mainly to Conventions signed following agreement on a text at an intergovernmental Conference. For

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1/ In the case of agreements drafted at an intergovernmental conference delegates would be required to have separate sets of full powers (a) to negotiate on behalf of their countries and (b) to sign the agreed text. Where an agreement is actually to become binding on signature the full powers must cover that explicitly in order to confer valid authority to sign.

instance, an announcement would be made in an internal journal of the date and time of signature and the place where the execution copy would be available. Delegates might be called in "alphabetical order", or might make an appointment - generally with Mr. Stavropoulos - to sign individually. Signature would take place in the Conference Room attached to his office.

Instruments of ratification (acceptance etc.); Ratification

6. No particular form is required in instruments of ratification. The Secretariat does, however, check that the instrument

(a) refers to the correct agreement

(b) emanates from the Head of State, Head of Government or Minister of Foreign Affairs;

(c) contains an undertaking to abide by the terms of the agreement; and

(d) where the agreement prescribes conditions for deposit of ratifications, e.g. that only certain States are entitled to become a party, that these conditions have been met.

Instruments of ratification vary in form from the be-ribboned and bound documents emanating from a Head of State to an air mail letter signed by the Minister of Foreign Affairs. The Secretariat does not investigate whether the functionary signing the ratification was the appropriate one by the countries internal laws e.g. whether, if a Minister of Foreign Affairs has signed, the proper authority was in fact the Head of State. Signature "on behalf of" one of the three principal functionaries would be accepted, though such instruments would have to be considered on a case-by-case basis. No credentials are required of the person depositing an instrument of ratification.

7. Deposit of an instrument of ratification is generally accompanied by some ceremony. The country's representative would normally make an appointment with Mr. Stavropoulos, and the instrument would be handed over in the presence of ranking officials, photographers, etc.

8. What has been said in paragraph 4 above on the language of full powers applies equally to instruments of ratification.

Defects; Reservations

9. Formal defects in instruments of ratification must be cured before their acceptance in definitive deposit. For instance, if the instrument purports to be an instrument of "accession" and the Convention speaks only of "ratification" there would be informal exchanges with a view to replacing the defective instrument or correcting it.

10. Where a Convention contains express provisions on reservations these must be followed. Where there is no such express provision, the Secretary General will merely circulate the reservation without making any judgment

on the validity of the principal instrument e.g. whether the country depositing it is a party or not. (The SG's practice in relation to reservations is set out in detail in the UN Repertory of Practice, a photocopy of which is attached hereto).

Order of reference to languages; Binding of texts

11. Conventions deposited with the UN generally list languages in the alphabetical order of the language in which the reference is made, e.g. in an English text: Chinese, English, French, Russian, Spanish. When equally authentic texts exist in languages other than the five official languages of the UN, these are listed according to the same rule but after the list of the five official languages, e.g. German and Portuguese might be added in that order to the list mentioned above.

12. The texts are bound as a matter of practice in the following order: English, French, Chinese, Russian, Spanish. Mr. Kiernik did not himself appear to have given much consideration to these questions, and the foregoing is the result of our examining some original texts at random. In particular, he could give no definite reason for order of binding, but suggested that if an alphabetical order were used the first text would be Chinese, which was relatively unfamiliar to the majority in the UN. My own view is that it may be "rationalised" on the ground that English and French are the two "principal" working languages and are the languages in which the Treaty Series is published.

Concluding paragraph and signature pages

13. Mr. Kiernik thought our idea of putting the concluding paragraph ("DONE at Washington....etc.") in three languages on a final page after the three texts was "very neat". He pointed out that it was not done by the UN because it would not be practical to have five such columns. Treaties drafted under the auspices of the UN generally retain the concluding paragraph in each consecutive text. The signature pages begin after the last page of text without any formal verbal connection. There are generally three spaces for signatures on each page.

Circulation of certified copies

14. Where a Convention is stated in terms to be open for signature for a specified period, UN practice is to circulate certified copies of the Convention (including all signatures) at the end of that period. If no such period is specified, they give a certified copy to each signatory i.e. on signing, a country would receive the text and reproductions of all signatures up to and including its own, certified as being a true and complete copy up to that time. Thereafter, the UN as depositary would merely keep signatories informed of additional signatures, entry into force, etc.

15. He saw no objection on grounds of principle to sending certified copies of the unsigned text to members in the case of our Convention,

particularly as some States might not be familiar with the final text that had been settled by the Directors. On the other hand, he wondered whether submission of copies as annexes to the Report of the Executive Directors might not be sufficient. He recalled that the General Assembly had circulated the UN Privileges and Immunities Convention as an annex to the relevant Assembly Resolution i.e. merely in mimeograph form and without certification.

Communications by depositary

16. Regardless of the languages of the authentic texts and of the languages with which signatories are familiar, all circular-type communications by the UN as depositary are in English and French only.

Memorandum on formalities

17. The UN has not thus far circulated a memorandum on signature and ratification etc. such as the one we now propose to draft, although when asked for assistance in drafting instruments in individual cases they have always given it. He was not very enthusiastic about the idea apparently for the following reasons: (1) most countries, however unsophisticated, would have or could procure traditional forms to follow; (2) no set form was necessary, and to circulate one even as a kind of "boiler-plate" may be misleading since it might be taken to be the only type of form which would be accepted as valid; and (3) some States might even resent the implications of such a memorandum.

18. Mr. Kiernik has undertaken to send us photocopies of instruments of ratification in English, French and Spanish to reach us before the end of this week. He was unable to have them copied in time for me to bring the copies away. On the other hand, he referred me to document ST/LEG/7 "Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements" attached hereto.

19. I invite your attention in particular to the Annex which contains a variety of forms which are useful to us. This document is no longer available in English and has not been reprinted. I therefore had the UN archives copy photocopied. A copy of the French version, which is still available, is also attached. It was not published in Spanish.

Encls.

CWP:es

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

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SID/65-11

March 11, 1965

*Memorandum of Meeting of the Committee of the Whole on Settlement of Investment Disputes held on March 4, 1965, at 3:00 p.m.

1. There were present:

Chairman

George D. Woods, President

Executive Directors and Alternates acting as Executive Directors

S. M. Ali (Alternate)
Reignson C. Chen
John M. Garba
O. Haushofer (Alternate)
Ali Akbar Khosropur (Alternate)
Luis Machado
Jorge Mejia-Palacio
N.M.P. Reilly (Alternate)
Gengo Suzuki
Vilhjalmur Thor
A. Bogoev (Alternate)
Otto Donner
Joaquin Gutierrez Cano
R. Hirschtritt (Temporary Alternate)
A. C. Lamb (Temporary Alternate)
J. Malaplate (Alternate)
K.S.S. Rajan
M. San Miguel
Abderrahman Tazi
A.J.J. van Vuuren (Alternate)

Alternates not acting as Executive Directors

H. Abramowski
C. Ayari
Jose Camacho
S. O. Coleman
Rufino Gil
J. Haus-Solis
E. Ozaki

Officers and Staff Participating

A. Broches
M. M. Mendels
L. Cancio
C. Pinto
P. Sella
C. H. Davies

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

Distribution:

Members of the Committee of the Whole
President
President's Council
Executive Vice President, IFC
Department Heads (Bank and IFC)

Legal Department

Article 26(2)

2. Mr. Woods asked Mr. Broches briefly to describe once again the contents of this paragraph.

3. Mr. Broches said that paragraph (2) of Article 26 provides that where an investor and a host State have agreed to submit a dispute arising out of an investment to arbitration and the investor has obtained investment insurance or guarantee from his own government, then, if the host State and the national State of the investor agree, the State of the investor can be substituted for the investor in the proceedings before the Centre involving rights to which that State has been subrogated as a result of having indemnified the investor. The provision does not say whether subrogation of the investor State to the rights of his national must or must not be recognized by the host State. Elimination of this provision would make it impossible for the national State of the investor to appear before the Centre in lieu of its national. It would not affect the question of subrogation per se nor would it prevent the indemnifying State from requiring that the investor pursue his remedies under the Convention even after he has been indemnified.

4. Mr. Tazi stressed that subrogation of the national State to the rights of the investor affected the basic nature of the dispute at least from a procedural angle and by transforming the case into a case between States would raise many juridical and political problems which did not fall within the scope of the Centre. There might be cases in which it would be better to transfer the dispute from the level of the investor to his State, but this could always be done by direct agreement between the States. He was in favor of deleting paragraph (2) of Article 26 without prejudice to the merits of subrogation as such.

5. Mr. Haushofer pointed out that the main role of the Convention was the protection of the private investor against the host State and thereby the establishment of confidence in the security of private investments in capital-importing countries. To further this confidence insurance against the risks incurred by the investor was an important aspect and the possibility of obtaining insurance often depends on the possibility of substituting the insurer for the insured in proceedings. He did not see how this provision could in any way endanger the position of the capital-importing countries, since the consent of the host State was always a prerequisite. He would be in favor of retaining Article 26(2), but would not strongly oppose its deletion if this were necessary to reach agreement on the Convention. His opinion reflected the views of Belgium and Austria while the other countries he represented had not informed him of their views.

6. Mr. Woods asked a show of hands of those Directors who were in favor of deleting paragraph (2) of Article 26 or would not object to its being deleted. He then announced that 15 Directors out of 20 present were in favor of, or did not object to, deletion.

7. Mr. Gutierrez Cano asked whether as a consequence of the deletion of Article 26(2) Article 27 would also be deleted.

8. Mr. Broches explained that there had never been any suggestion of deleting Article 27 but only to reconsider some of its language if Article 26(2) had remained in the text of the Convention.

Article 54

9. Mr. Woods recalled that Mr. Donner had raised an objection to the text of that Article and that Mr. Broches had proposed some language which would be submitted to the German authorities to see whether it would meet their problem. He then invited Mr. Donner to report on this matter.

10. Mr. Donner explained that the German authorities had great difficulty with the present text of Article 54 for two kinds of reasons: (a) the inconsistency of the text of Article 54 with the provisions of the New York Convention of 1958 on recognition and enforcement of foreign arbitral awards to which the German government is a party; and (b) the provisions of German law concerning the execution of judgments of German courts. The German authorities had not yet been able to overcome these difficulties nor did the suggestion of Mr. Broches help them in that respect. However, in order not to delay the discussion he would not press his point any further, while the German government in the weeks to come would continue to look for a possibility of reconciling the provisions of Article 54 with its own principles within the framework of the implementing legislation that would have to be introduced in Parliament when the Convention came up for ratification. Depending on the result of these efforts he might or might not have to raise this point again.

11. Mr. Woods said that as Mr. Donner did not wish to press his point further, Article 54 would remain as it was unless there was an objection.

12. Mr. Gutierrez Cano said that in his opinion the suggestion made by Mr. Broches for limiting the enforcement of the awards to the pecuniary obligations imposed thereby was very constructive and he would like to see that language introduced in Article 54.

13. Mr. Rajan supported Mr. Gutierrez Cano's proposal.

14. Mr. Malaplate inquired what would be the effect of introducing the reference to pecuniary obligations in Article 54.

15. Mr. Broches replied that while an award would remain res judicata as to all its provisions between the parties, enforcement through the strong arm of the law would be limited to the obligations to pay a sum of money contained in the award. In practice he thought that the difference between the two texts would be minimal.

16. Mr. Machado supported Mr. Gutierrez Cano's proposal as it would enable a State, which could not otherwise abide by the award, to carry out its obligations under the Convention.

17. Mr. Khosropur inquired whether the proposed language would not weaken the Convention, since for example an award might require a host State to grant a visa or a residence permit for an investor at least for a limited time.

18. Mr. Broches replied that in his view the suggested language would not weaken the Convention because he could not imagine specific enforcement of provisions of the award, other than its pecuniary provisions, by a third State against the host State.

19. Mr. Hirschtritt asked whether the obligation of a State party to the proceedings to carry out an award would be weakened by the proposed language.

20. Mr. Broches replied that the obligation of a State party to an arbitration proceedings before the Centre was clearly set forth in Article 53 and would not be affected by the proposed language.

21. Mr. Ozaki said that he and the Japanese government thought it preferable to leave the language of Article 54 unchanged.

22. Mr. Haushofer also expressed his opposition to the proposed language.

23. Mr. Woods stated that there seemed to be a preponderance in favor of the amended language and therefore Article 54(1) would be amended by the inclusion of the words "the pecuniary obligations imposed by that award" in lieu of the word "it" after the word "enforce".

Preamble

24. Mr. Woods stated that the discussion on Chapters I through X of the Convention had been completed; any question of pure drafting which the Directors might have should be brought to Mr. Broches directly.

25. Mr. Broches said that there had been a suggestion by the French government to add in the final provisions a reference to "approval" as an alternative to ratification or acceptance, in order to conform to their practice and unless there was any objection he would correct the text of the Convention accordingly.

26. Mr. Broches said that several comments had been received on the Preamble which was now in the same form in which it had been submitted to the Legal Committee in September. The Legal Committee had had no time to consider it. One suggestion was to delete in paragraph (2) the words "principle of equal" and to add at the end of that paragraph the words "in accordance with international law". In paragraph (6) it had been suggested that the words "due consideration" be changed to "serious consideration". In paragraph (7) it had been suggested that after the words "acceptance of this Convention" the words "and without its consent" be added and that the last ten words of the paragraph be deleted.

27. Mr. Machado suggested that in paragraphs (1) and (2) the words "international investment" be deleted and the words "private foreign investment" be substituted therein so as to use the same words as were used in the Articles of Agreement of the Bank.

28. Mr. Broches explained that in recent years there had been a tendency to shy away from the use of the word "foreign" in connection with investments.

29. Mr. Machado then suggested that the word "private" be added before the words "international investment".

30. Messrs. Donner, Gutierrez Cano and Machado supported this proposal.

31. Mr. Woods said that as there were no ojections the proposal was accepted.

32. Mr. Mejia-Palacio suggested that the change from "due consideration" to "serious consideration" was inelegant in Spanish at least.

33. Mr. Gutierrez Cano supported Mr. Mejia-Palacio's point and pointed out that the word "serious" in this connection would be rather vague while the word "due" was what was meant.

34. Mr. Woods noted that there was a consensus that the words "due consideration" should remain in paragraph (6).

35. Mr. Gutierrez Cano asked whether the proposed deletion in paragraph (2) of the words "principle of equal" was a mere matter of drafting or had substantive implications.

36. Mr. Broches replied that the original draft of the Preamble in which many concepts had been combined seemed a little too heavy and an attempt had been made to simplify it. Mr. Malaplate had suggested what was perhaps the best solution to the drafting problem, i.e. to transfer part of the contents of paragraph (2) to paragraph (1).

37. Mr. Mejia-Palacio suggested that the second part of paragraph (2) starting with the words "and bearing in mind", be deleted. The text of the Preamble would then read more easily.

38. Mr. Woods asked whether there were any comments on this proposal, and there being none, the second part of paragraph (2) was deleted.

39. Mr. Gutierrez Cano suggested that in paragraph (3) the word "usually" be replaced by the word "normally".

40. Mr. Broches stated that the use of the word "normally" would tend to make the exception sound abnormal. The word "usually" in the English text was most appropriate.

41. Mr. Machado, supported by Messrs. Gutierrez Cano and San Miguel, suggested that in paragraph (6) the reference to "good faith" in the carrying out of agreement on the part of States should be deleted as it might imply that States would not always act in good faith.

42. Mr. Broches noted that, if this was accepted, the words "an agreement to be observed in good faith" should be replaced by the words "a binding agreement".

43. Mr. Machado said that the change suggested by Mr. Broches was acceptable to him.

44. Mr. Malaplate wondered whether the whole of paragraph (6), which in some respects at least duplicated the contents of the Convention, should not be eliminated.

45. Mr. Broches noted that if paragraph (6) was eliminated, paragraph (7) would have to go as well.

46. Mr. Machado was against the elimination of paragraph (7) because it was one of the "selling points" in trying to obtain the approval of many governments. He would be in favor also of paragraph (6) if it was necessary in order to keep paragraph (7).

47. Mr. Donner was in favor of retaining both paragraphs which summarized the long discussion of the Executive Directors on the subject.

48. Mr. van Vuuren was also in favor of retaining both paragraphs (6) and (7).

49. Mr. Reilly felt that the Preamble could well stop after paragraph (5), but, if the principle of mutual consent had to be re-emphasized, then both paragraphs (6) and (7) should be retained.

50. Mr. Woods concluded that the majority was in favor of retaining paragraphs (6) and (7) with the amendment suggested by Mr. Machado and formulated by Mr. Broches.

51. Mr. Woods asked the Committee to consider again paragraphs (1) and (2) as it had been suggested that the reference to the equality of States in the exercise of their sovereignty in accordance with international law should be inserted in paragraph (1) and invited Mr. Broches to read the suggested language.

52. Mr. Broches read the proposed new text of paragraph (1) as follows:

> "Considering that the promotion of economic development requires international cooperation which will respect the equality of States

in the exercise of their sovereignty in accordance with international law and depends to a large extent upon private international investment."

53. Mr. Machado supported the amendment.

54. Mr. Donner thought that the new text would unbalance the Preamble and, if any reference had to be made to equality of States in the exercise of their sovereignty in accordance with international law in the Preamble, paragraph (1) did not seem to be the appropriate place for it. The first thought was to stress what was the purpose for which this Convention was put forth, i.e. the promotion of private international investment.

55. Mr. Rajan felt that paragraph (1) should be left as it was in the original text, because the Preamble should be short and only the essential elements should be pointed out. As to the wording of the amendment he had some question about the statement that the promotion of economic development depended to a large extent on private international investment.

56. Mr. Malaplate said that he had originally proposed that the substance of the second part of paragraph (2) be moved to paragraph (1) as a more logical distribution of subject matter, but he did not think it necessary to have a reference to the principle of equality of the States. He also agreed with Mr. Rajan that it was not necessary in the Preamble to say that economic development depended to a large extent on private international investment.

57. Mr. Woods concluded that, as Mr. Malaplate had withdrawn his suggestion, paragraph (1) could be left as it was, except for the addition of the word "private" and the second part of paragraph (2) would be eliminated. This would produce a more compact Preamble.

58. Mr. Rajan, referring to paragraph (3) of the Preamble, wished to support the proposal made earlier by Mr. Gutierrez Cano that the word "usually" be replaced by the word "normally", particularly since the French text used the word "normalement".

59. Mr. Broches replied that words with common roots often assume different meanings in different languages and in his opinion, the English word "usually" would better reflect the French word "normalement" in that context.

60. Mr. Hirschtritt supported Mr. Broches' argument.

61. Mr. Woods proposed that the word "usually" be left in and that the French and Spanish texts be once again reviewed to ensure uniformity among the three languages.

62. Mr. Broches said that the text of the Convention with the amendments approved by the Committee would be put into print and distributed to the Executive Directors for consideration on March 18, 1965. Any suggestions on drafting points should be sent as soon as possible.

Draft Report of the Executive Directors (Doc. R65-11)

63. Mr. Woods invited the Committee to consider the proposed Report of the Executive Directors to the governments.

64. Mr. Machado said that the three Directors from Latin America wished to suggest some changes in the wording of paragraph 1-7 of the Report.

65. Mr. Woods recalled that the Committee of the Whole had now reached a point in its discussion when the text of the Convention had been agreed and it was clear that the Executive Directors would adopt it. In the summer of 1964 the Directors, acting as a group, had recommended to the Board of Governors that a Convention be drafted and submitted to Governors. At the Governors' meeting in Tokyo in September, 1964, a caucus of the constituents of the three Directors to whom Mr. Machado had referred had gone on record as being against the idea that the Directors should work out a draft Convention on this subject and submit it to governments. It was clear that those Governors of the Bank, in so far as the caucus was representative of their points of view, were not in favor of the objectives that the Directors were now engaged in trying to achieve. He, as President of the Bank, was clearly in favor of achieving the objectives that the Governors had indicated and which he believed to be worthwhile, viz: to formulate a Convention that was most likely to be acceptable to the greatest number of the Bank's membership and to submit that Convention to governments.

66. The question was whether the Report of the Executive Directors should present the strongest case that could reasonably and honestly be presented as being the views of the Bank's board of Executive Directors and add a paragraph that certain Directors who represented Latin American countries could not fully concur, or the weak compromise which would result from the modifications urged by a small minority of the Directors. He would favor the former course and would be opposed to any suggestions in the direction of watering down the Report which represented the judgment of the large majority of the Directors.

67. Mr. Machado recalled that the Latin American Directors had co-operated to make the Convention possible, and that every change they had suggested had been adopted by a large majority of the Board, thus improving the text. The text as it now stood was very different from the one referred to in Tokyo. He believed that his countries could be persuaded to accept the present version.

68. Referring to the draft Report, and specifically to paragraph 2, he proposed that the first sentence be amended to read as follows:

> "On March __, 1965 the Executive Directors of the Bank, acting pursuant to the foregoing Resolution, formulated a Convention on the Settlement of Investment Disputes between States and Nationals of Other States."

- thus omitting the words "approve the text of the Convention, as attached hereto, for submission to member governments of the Bank." The second sentence of paragraph 2 should be amended to read "This action by the Executive Directors does not, of course, imply ..... etc", so as to eliminate needless reference to "approval" by the Directors.

69. Mr. Broches pointed out that the Executive Directors were in fact approving the text of the Convention for submission to governments. Similar wording had been used in connection with the IDA and IFC Charters. From a purely drafting point of view it would not be correct to say that the Convention had been "formulated" on a particular day.

70. Mr. Machado felt that "approval" of the Convention was outside the province of the Directors. It was up to the Parliaments of countries to ratify, accept or approve the Convention. He would be very cautious in submitting the Convention to governments and preferred not to say that the Executive Directors had "approved" the Convention.

71. Mr. Gutierrez Cano, supported by Mr. Mejia-Palacio and Mr. San Miguel expressed agreement with Mr. Machado's proposal to use the word "formulate" rather than "approve" as that would accord more with the Resolution of the Board of Governors. As "formulation" implied basic agreement on the text, he thought the amendment proposed would not change the sense of the document on this point.

72. Mr. Garba supported by Mr. Donner, said that the past weeks had been taken up with trying to agree on the text before them which was now in a form acceptable to the Directors. This meant that the Directors had in fact now approved the text of the Convention.

73. Mr. van Vuuren thought the wording as it stood made it quite clear that approval by the Directors in no way committed governments, and he would support it.

74. Mr. Donner proposed that the last sentence of paragraph 3 be reworded as follows:

> "Accordingly the Executive Directors submit a draft of the Convention to member governments for examination with a view to signature and ratification or acceptance."

This wording might take care of Mr. Machado's point of view that the Directors should not appear to have in terms "approved" the Convention itself which was, of course, the business of governments.

75. Mr. Said Ali thought that once the text had been finally amended with the assistance of the General Counsel the Directors ought to approve it and submit it to governments.

76. Mr. Malaplate said he would prefer to use the word "formulate" which was used in the Resolution of the Board of Governors, but would not object to use of the word "approved".

77. Mr. Reilly thought that the Directors "approval" of the text would be implied in their submission of it to governments, but he would be in favor of mentioning the Directors' approval expressly.

78. Mr. Chen agreed with Mr. Reilly. He would support Mr. Donner's proposal but would like to substitute for the word "examination" the word "consideration" in the text suggested.

79. Mr. Donner agreed with Mr. Chen's proposal.

80. Mr. Machado recalled that in Tokyo the attitude of the Latin American Governors had unfortunately been one of disapproval of the Convention. The Directors had, after much discussion, reached unanimous agreement on the text of the Convention. In formulating the present document, which was only an instrument of transmittal, the Latin American Directors might be put in a difficult position if the approval of the Directors, which was after all implied in their formulation of the Convention and submission of it to governments, were to be emphasized.

81. Mr. Suzuki asked whether it was clear from the words of the Resolution of the Board of Governors: "shall submit the text of such a Convention to member governments with such recommendations as they shall deem appropriate", that what was implied was a recommendation for signature and ratification or acceptance immediately and without any intervening process.

82. Mr. Broches said that this meaning was quite clear from the Resolution and the Report of the Executive Directors which accompanied it. When that Report had been adopted the question whether there should be an international conference was discussed at length and it was decided by an overwhelming majority that that should not be the case and that the Convention should be submitted to governments directly for signature.

83. Mr. Suzuki recalled that his government had been opposed to that course and now wished to propose that the Convention should be open for signature by governments after its adoption by the next meeting of the Board of Governors.

84. Mr. Broches said that in the case of the IDA Charter the Executive Directors had been requested to "formulate" Articles of Agreement for submission to member governments. The IDA Charter had subsequently been submitted directly to governments for signature and ratification as had also been done in the case of the IFC Charter. In neither case was there any question of the text being sent back to the Board of Governors.

85. Mr. Woods asked Mr. Suzuki whether it was the position of his government that when the Directors had agreed on the text and before submission of it to member countries for ratification or other action the Convention should go back to the Board of Governors.

86. Mr. Suzuki confirmed that his government would prefer to have the Convention approved by the Board of Governors before it was submitted to governments for signature.

87. Mr. Broches pointed out that if the Governors had thought their approval necessary the Resolution would have required submission of the text to the Board of Governors and not to governments.

88. Mr. Gutierrez Cano said that in his view there were to be two distinct steps viz: (1) formulation of the convention by the Executive Directors, (2) appropriate action by governments. What would happen if a government wished to amend the text?

89. Mr. Broches said that the task of the Executive Directors would be complete when they finally decided on a text, and countries could not subsequently call upon the Directors to change their text. It was always open to a country, however, to canvass support for any amendment by approaching other governments directly.

90. Mr. Woods suggested that Mr. Suzuki's proposal be left until the Executive Directors took formal action on the text on March 18. Mr. Suzuki said that he would accept the decision of the majority.

91. Mr. Khosropur recalled that in the cases of the IDA and IFC Charters the procedure of "approval" of the text by the Executive Directors had been followed. In his view there was no need to be afraid of letting governments know that the Directors had approved the text. In any event the Report made it clear that approval by the Executive Directors did not commit governments.

92. Mr. Broches recalled that the text of the Resolution of the Executive Directors on the IDA Charter had contained the following paragraph:

> "(1) The Articles of Agreement of the International Development Association, attached hereto as Annex A, and the Report by the Executive Directors relating thereto, attached hereto as Annex B, are hereby approved for submission to governments".

The "approval" referred to here was that of the Executive Directors who approved the text "for submission to governments". No question of governmental approval was involved.

93. Mr. Machado said he hoped that the Directors would be able to agree on a common instrument of transmittal which would take into account the special difficulties of some Directors.

94. Mr. Woods thought that there was a clear majority of the Directors in favor of stating explicitly what in fact had taken place, viz. that the Executive Directors had "approved" the text. However, the wording made it clear that they had approved it for a specific purpose, viz: for submission to governments. He hoped that in view of the explanations that had been offered Mr. Machado would find it possible to go along with the text accepted by the majority of Directors.

95. Mr. Gutierrez Cano suggested that as a compromise the wording should be changed so as to state that the Executive Directors "approved" submission of the Convention to governments. The Executive Directors' approval of the text itself would be implicit in the fact that they had formulated it.

96. Mr. Woods emphasized that the Directors had in fact done more than merely "approve submission" of the Convention viz. they had approved the text and they had approved its submission to governments as well, and he saw no reason to obscure these facts.

97. Mr. Tazi said he could support the text of paragraph 2 as it stood.

98. Mr. Machado reiterated his proposal to shorten the second sentence of paragraph 2.

99. Mr. Mejia-Palacio observed that the Directors seemed in favor of following the precedent of the IDA Charter. He would, therefore, suggest following the precedent of the Report which had accompanied that Charter by eliminating all of Parts II and III of the draft now before them which had no counterpart in the IDA Report.

100. Mr. Broches observed that Part II of the draft set out the history of the Convention while Part III explained the philosophy upon which it was based. While neither was an essential part of the Report both helped to provide the setting for the Convention.

101. Mr. Woods asked whether if Parts II and III were eliminated, Mr. Mejia-Palacio would find paragraphs 2 and 3 acceptable.

102. Mr. Mejia-Palacio said he could accept only paragraphs 1, 2 and 4.

103. Mr. Broches referring to the proposal of Mr. Donner on paragraph 3 felt that while it would not weaken the sense, the amended text would not be fully responsive to the Governors' Resolution in that it would no longer contain a recommendation to governments.

104. Mr. Rajan referring to Mr. Machado's proposal to amend the second sentence of paragraph 2 said that in his view it was important to stress that the Executive Directors' approval of the Convention did not imply that the governments were committed to take action on the Convention. He was, therefore, in favor of retaining the present wording on this point which was of particular importance to countries whose governments might not accept the Convention even though their Executive Directors were helping to formulate, improve or finalize the draft.

105. Mr. Woods observed that paragraph 3 was still open for discussion and it remained to be decided whether the draft would recommend the Convention to governments for signature or avoid a precise recommendation in those terms.

106. The meeting adjourned at 5:30 p.m. o'clock to be reconvened at 10:30 a.m. Monday, March 8, 1965.

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INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

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R 65-42

(for consideration on March 18, 1965)

FOR EXECUTIVE DIRECTORS' MEETING

FROM: The Secretary

March 11, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached is the Spanish text of the Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in the form approved by the Committee of the Whole.

Distribution:

Executive Directors and Alternates
President
President's Council
Executive Vice President, IFC
Department Heads (Bank and IFC)

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PROYECTO
Departamento Legal
10 de marzo de 1965

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

I

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

"SE RESUELVE:

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

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

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

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

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

Ejecutivos no supone, desde luego, que los gobiernos individualmente representados por los Directores Ejecutivos estén obligados a tomar medidas en relación al Convenio.

3. La acción de los Directores Ejecutivos fue precedida de extensas labores preparatorias, acerca de las cuales se ofrecen detalles en los subsiguientes párrafos 6 al 8. Los Directores Ejecutivos creen firmemente que el Convenio en la forma del texto adjunto representa un amplio consenso de los puntos de vista de aquellos gobiernos que aceptan el principio de crear, mediante acuerdos intergubernamentales, mecanismos y procedimientos para el arreglo de diferencias relativas a inversiones que los Estados e inversionistas extranjeros deseen someter a conciliación o arbitraje. También están convencidos que el Convenio constituye una estructura adecuada para esos mecanismos y procedimientos. En consecuencia, el Convenio se somete a los gobiernos miembros para su consideración a fines de su firma y ratificación, aceptación o aprobación.

4. Los Directores Ejecutivos piden que se preste atención a las disposiciones del Artículo 68(2), conforme al cual el Convenio entrará en vigor entre los Estados Contratantes 30 días después de que haya sido depositado en el Banco, como depositario del Convenio, el vigésimo instrumento de ratificación, aceptación o aprobación.

5. El adjunto texto del Convenio en los idiomas inglés, francés y español, ha quedado depositado en los archivos del Banco, como depositario, y se encuentra abierto para su firma.

II

6. La cuestión acerca de la conveniencia y practicabilidad de crear mecanismos institucionales auspiciados por el Banco para el arreglo, mediante la conciliación y el arbitraje, de diferencias relativas a inversiones entre Estados e inversionistas extranjeros, fue planteada por primera vez ante la Junta de Gobernadores del Banco en su Décima Séptima Reunión Anual, celebrada en Washington, D. C., en septiembre de 1962. En esa Reunión, la Junta de Gobernadores, por la Resolución No. 174 adoptada el 18 de septiembre de 1962, pidió que los Directores Ejecutivos estudiaran el asunto.

7. Los Directores Ejecutivos iniciaron su estudio del asunto. Después de una serie de discusiones informales, sobre la base de los documentos de trabajo preparados por el personal del Banco, los Directores Ejecutivos decidieron que el Banco debía convocar reuniones consultivas de juristas designados por los gobiernos miembros a fin de considerar más detalladamente el asunto. Las reuniones consultivas de carácter regional se celebraron en Addis-Abeba (diciembre 16 al 20 de 1963), Santiago de Chile (febrero 3 al 7 de 1964), Ginebra (febrero 17 al 21 de 1964) y Bangkok (abril 27 a mayo 1 de 1964), con la ayuda administrativa de las Comisiones Económicas de las Naciones Unidas y de la Oficina Europea de las Naciones Unidas, y las discusiones se basaron en un Proyecto Preliminar de Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de otros Estados, preparado por el personal del Banco teniendo en cuenta las deliberaciones de los Directores Ejecutivos y los puntos de vista de los gobiernos. A las reuniones asistieron juristas de 86 países.

8. Teniendo en cuenta las labores preparatorias y las opiniones expresadas en las reuniones consultivas, los Directores Ejecutivos informaron a la Junta de Gobernadores en su Décima Novena Reunión Anual en Tokío, en septiembre de 1964, que convendría crear los mecanismos institucionales proyectados dentro de la estructura de un acuerdo intergubernamental. La Junta de Gobernadores adoptó la Resolución cuyo texto se cita en el párrafo 1 de este Informe, y los Directores Ejecutivos emprendieron la tarea de redactar el presente Convenio. Con vista a lograr un texto que pudiera ser aceptado por el mayor número posible de gobiernos, el Banco invitó a sus miembros a que designaran representantes a un Comité Legal que ayudaría a los Directores Ejecutivos en su tarea. Este Comité se reunió en Washington del 23 de noviembre a 11 de diciembre de 1964, y los Directores Ejecutivos expresan su agradecimiento por la valiosa asistencia recibida de los representantes de los 61 países miembros que laboraron en el Comité.

III

9. Al presentar a los gobiernos el Convenio que se adjunta, los Directores Ejecutivos están urgidos por el deseo de fortalecer la asociación de los países en la causa del desarrollo económico. La creación de una institución destinada a facilitar el arreglo de diferencias relativas a inversiones entre Estados e inversionistas extranjeros puede constituir un paso importante para promover un ambiente de confianza mutua y, por consiguiente, estimular el libre flujo de capital privado internacional hacia los países que desean atraerlo.

10. Los Directores Ejecutivos reconocen que las diferencias sobre inversiones por regla general son resueltas a través de los procedimientos

administrativos, judiciales o arbitrales disponibles al amparo de las leyes del país en que se haya realizado la inversión en cuestión. Sin embargo, la experiencia indica que pueden surgir diferencias que las partes desean resolver por otros medios; y los convenios de inversión celebrados en los últimos años indican que tanto los Estados como los inversionistas estiman frecuentemente que resulta más conveniente a sus intereses mutuos acudir, mediante acuerdo, a métodos internacionales de arreglo.

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

12. Los Directores Ejecutivos estiman que el capital privado continuará fluyendo hacia los países que ofrezcan un clima favorable para inversiones provechosas aunque tales países no se hayan hecho partes en el Convenio, o siendo partes no hayan hecho uso del Centro. Por otra parte, la adhesión de un país al Convenio proporcionaría un incentivo adicional y estimularía un mayor flujo de inversiones privadas internacionales hacia su territorio, lo que constituye el principal objetivo de este Convenio.

13. Aunque el objetivo general del Convenio es estimular las inversiones privadas internacionales, sus disposiciones mantienen un cuidadoso equilibrio entre los intereses del inversionista y los de los Estados receptores. Además, el Convenio permite tanto a los Estados como a los inversionistas la incoación de los procedimientos, y los Directores Ejecutivos han tenido presente constantemente que las disposiciones del Convenio deben adaptarse igualmente a los requisitos de ambos casos.

14. Aunque la mayoría de los preceptos del Convenio adjunto se explica por si sóla, sin embargo, un breve comentario acerca de algunas de sus características principales puede ser de utilidad a los gobiernos miembros en su consideración del Convenio.

IV

El Centro Internacional de Arreglo de Diferencias Relativas a Inversiones

Disposiciones Generales

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

16. Como patrocinador del establecimiento de la institución, el Banco facilitará al Centro el local para su sede (Artículo 2) así como, conforme a los arreglos que se celebren entre las dos instituciones, otros servicios

administrativos e instalaciones (Artículo 6(d)).

17. Respecto a la financiación del Centro (Artículo 17), los Directores Ejecutivos han decidido que el Banco debe estar en disposición de facilitar al Centro un local para sus oficinas en forma gratuita mientras el Centro tenga su sede en las oficinas principales del Banco, así como sufragar, dentro de límites razonables, los gastos generales básicos del Centro durante un período de años que se determinará una vez que el Centro esté establecido.

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

de seis años y permite su reelección. Los Directores Ejecutivos estiman que la elección inicial, que tendrá lugar poco tiempo después que el Convenio haya entrado en vigencia, debería ser por un período breve, para no privar a los Estados que se adhieran al Convenio después de su entrada en vigencia de la posibilidad de participar en la selección de los altos funcionarios del Centro. El Artículo 10 también limita los casos en que estos funcionarios pueden dedicarse a actividades distintas de sus funciones oficiales.

Funciones del Consejo Administrativo

19. Las funciones principales del Consejo Administrativo son la elección del Secretario General y de los Secretarios Generales Adjuntos, la adopción del presupuesto anual del Centro y la adopción de los reglamentos administrativos y financieros, de las reglas a seguir para el inicio de los procedimientos y de las reglas procesales aplicables a la conciliación y al arbitraje. Para la aprobación de todas estas cuestiones se requiere una mayoría de dos tercios de los miembros del Consejo.

Funciones del Secretario General

20. El Convenio dispone que el Secretario General desempeñe diversas funciones administrativas como representante legal, registrador y funcionario principal del Centro (Artículos 7(1), 11, 16(3), 28, 36, 49(1), 50(1), 51(1), 52(1), 52(4), 54(2), 59, 60(1), 63(b) y 65). Además, al Secretario General se le conceden facultades para negar el registro de una petición de conciliación o arbitraje, a fin de evitar en esta forma la incoación de dichos procedimientos si, de acuerdo con la información ofrecida por el solicitante, encuentra que la diferencia se halla manifiestamente fuera de la jurisdicción del Centro (Artículos 28(3) y 36(3)). Esta facultad limitada de "entresacar" las solicitudes de conciliación o de arbitraje se le

otorga al Secretario General para evitar lo enojoso que pudiera resultar para una de las partes (particularmente un Estado) el inicio de un procedimiento contra la misma en una controversia respecto a la cual dicha parte no hubiere consentido en someter a la jurisdicción del Centro, así como para prevenir la posibilidad de que se ponga en movimiento el mecanismo del Centro en casos que, por otras razones, caen indudablemente fuera de la jurisdicción del Centro, como, por ejemplo, que el solicitante o la otra parte no reúna los requisitos necesarios para ser parte en los procedimientos conforme al Convenio.

Las Listas

21. El Artículo 3 dispone que el Centro mantenga una Lista de Conciliadores y una Lista de Arbitros, y los Artículos 12 al 16 establecen los términos y condiciones de la designación de los integrantes de las Listas. El Artículo 14(1) trata específicamente de asegurar que los integrantes de las Listas tengan reconocida competencia y sean capaces de expresar criterios imparciales. En concordancia con la índole esencialmente flexible de los procedimientos, el Convenio permite a las partes nombrar conciliadores y árbitros a personas que no figuren en las Listas, pero exige (Artículos 31(2) y 40(2)) que las personas así designadas reúnan las cualidades expresadas en el Artículo 14(1). En los casos en que, conforme al Artículo 30 o al 38, corresponde al Presidente la designación de conciliadores o árbitros, éste sólo puede nombrar personas que figuren en las Listas.

V

Jurisdicción del Centro

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

Consentimiento

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

24. El consentimiento de las partes debe existir en el momento en que el Centro ejercite su jurisdicción (Artículos 28(3) y 36(3)), pero el Convenio no especifica en forma alguna el momento en que debe prestarse el consentimiento. El consentimiento puede prestarse, por ejemplo, en las cláusulas de un contrato de inversión, que disponga la sumisión al Centro de las diferencias futuras surgidas de ese contrato, o en compromiso entre partes respecto a una diferencia que ya haya surgido. El Convenio tampoco exige que el consentimiento de ambas partes se haga constar en un mismo instrumento. Así, un Estado anfitrión pudiera ofrecer en su legislación sobre promoción de inversiones, que se someterán a la jurisdicción del Centro las diferencias producidas con motivo de ciertas clases de inversiones, y el inversionista puede prestar su consentimiento mediante aceptación por escrito de la oferta.

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

Naturaleza de la diferencia

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

27. No se ha intentado definir el término "inversión", teniendo en cuenta el requisito esencial del consentimiento de las partes y el mecanismo mediante el cual los Estados Contratantes pueden dar a conocer de antemano, si así lo desean, las clases de diferencias que estarán o no dispuestos a someter a la jurisdicción del Centro (Artículo 25(4)).

Las partes en la diferencia

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

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

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

Notificaciones por parte de los Estados Contratantes

31. Aunque no se pueden iniciar procedimientos de conciliación o arbitraje contra un Estado Contratante sin su consentimiento, y a pesar de que ningún Estado Contratante está bajo obligación alguna de prestar su consentimiento a dichos procedimientos, se ha estimado que la adhesión al Convenio pudiera ser interpretada en el sentido de entrañar una expectativa de que los Estados Contratantes considerarían favorablemente las solicitudes de los inversionistas encaminadas a someter diferencias a la jurisdicción del Centro. En relación con esto se ha señalado que pudieran existir ciertas clases de diferencias que los gobiernos considerarían impropias para ser sometidas al Centro o que, conforme a su propia legislación, les estuviera prohibido someter al Centro. A fin de evitar el peligro de cualquier mala interpretación en este aspecto,

el Artículo 25(4) permite expresamente a los Estados Contratantes notificar de antemano al Centro, si así lo desean, las clases de diferencias que aceptarían someter o no a la jurisdicción del Centro. El precepto deja aclarado que la declaración del Estado Contratante en el sentido de que aceptaría someter cierta clase de diferencias a la jurisdicción del Centro, es sólo de carácter informativo y no constituye el consentimiento necesario para otorgarle jurisdicción al Centro. Desde luego, una delcaración que excluya la consideración de ciertas clases de diferencias no constituiría una reserva al Convenio.

El arbitraje como procedimiento exclusivo

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

Reclamaciones por parte del Estado del inversionista

33. Cuando un Estado anfitrión consiente en someter al Centro la diferencia con un inversionista, otorgando así al inversionista acceso directo a una jurisdicción de carácter internacional, dicho inversionista no debe quedar en posición de pedir a su Estado que respalde su caso ni se debe permitir a éste que lo haga. En consecuencia, el Artículo 27 prohibe

expresamente al Estado Contratante la concesión de protección diplomática o la promoción de una reclamación internacional respecto a cualquier diferencia que uno de sus nacionales y otro Estado Contratante hayan consentido someter, o hayan sometido, a arbitraje conforme al Convenio, a menos que el Estado que es parte en la diferencia no haya acatado el laudo dictado en tal diferencia.

VI

Procedimientos al amparo del Convenio

34. Los procedimientos se inician mediante una solicitud dirigida al Secretario General (Artículos 28 y 36). Una vez registrada la solicitud, se constituirá la Comisión de Conciliación o el Tribunal de Arbitraje, según sea el caso. Se hace referencia al párrafo 20 de este Informe en cuanto a la facultad del Secretario General para negar el registro de la solicitud.

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

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

36. Con anterioridad se ha hecho mención a que las partes están en libertad de nombrar como conciliadores y árbitros a personas que no figuren en las Listas (véase el párrafo 21 de este Informe). Aunque el Convenio no restringe la designación de conciliadores atendiendo a su nacionalidad, el Artículo 39 establece una norma en el sentido de que la mayoría de los miembros de un Tribunal de Arbitraje no debe ser nacionales ni del Estado que sea parte

en la diferencia ni del Estado cuyo nacional sea parte en la diferencia. Es probable que esta norma produzca el efecto de excluir a las personas que posean estas nacionalidades de la integración de un Tribunal que se componga de no más de tres miembros. Sin embargo, la regla no se aplicará cuando todos y cada uno de los árbitros hayan sido nombrados por mutuo acuerdo de las partes.

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

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

38. El Artículo 41 reitera el bien reconocido principio de que los tribunales internacionales son los llamados a resolver sobre su propia competencia, y el Artículo 32 aplica el mismo principio a las Comisiones de Conciliación. En relación a esto, se debe hacer notar que la facultad del Secretario General para rehusar el registro de una solicitud de conciliación o de arbitraje (véase el párrafo 20 de este Informe) se define en forma tan limitada que no interfiera con la prerrogativa de las Comisiones y Tribunales de determinar su propia competencia y, por otra parte, dicho registro de la solicitud por el Secretario General no impide, desde luego, que la Comisión o el Tribunal decida que la diferencia cae fuera de la jurisdicción del Centro.

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

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

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

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

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

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

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

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

Reconocimiento y ejecución de los laudos arbitrales

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

42. Sin perjuicio de cualquier suspensión de la ejecución relacionada con alguno de los procedimientos antes expresados y efectuada de conformidad con las disposiciones del Convenio, las partes están obligadas a acatar y cumplir el laudo, y el Artículo 54 exige a todos los Estados Contratantes que reconozcan el carácter obligatorio del laudo y que hagan ejecutar las obligaciones pecuniarias impuestas por el laudo como si se tratase de una sentencia firme de uno de sus tribunales locales. Debido a las distintas técnicas procesales seguidas en las jurisdicciones del llamado "common law" y las que se inspiran en el derecho civil de tradición romana, así como a los distintos sistemas judiciales existentes en los Estados unitarios y en los federales u otros no unitarios, el Artículo 54 no establece ningún método especial para lograr su cumplimiento interno, sino que exige a cada Estado Contratante que cumpla las disposiciones del Artículo de conformidad con su propio sistema.

43. La doctrina de la inmunidad del Estado puede impedir la ejecución forzosa en un Estado de sentencias obtenidas contra Estados extranjeros o contra el Estado en el cual se persigue la ejecución. El Artículo 54 dis-

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

VII

Lugar del Procedimiento

44. Al tratar de los procedimientos que se tramiten fuera de la sede del Centro, el Artículo 63 dispone que los procedimientos podrán verificarse, si las partes así lo acuerdan, en la sede de la Corte Permanente de Arbitraje o en la de cualquier otra institución apropiada con la que el Centro hubiere llegado a un acuerdo a tal efecto. Es probable que estos acuerdos difieran según el tipo de institución y varíen desde la simple facilitación de local para los actos procesales hasta el suministro de servicios completos de secretaría.

VIII

Diferencias entre Estados Contratantes

45. El Artículo 64 confiere a la Corte Internacional de Justicia jurisdicción sobre las diferencias entre Estados Contratantes en relación con la interpretación o aplicación del Convenio y que no sean resueltas mediante negociación, a no ser que las partes hayan acordado acudir a otro modo de

arreglo. Aunque la disposición está redactada en términos generales, debe entenderse de acuerdo con el contexto global del Convenio. Específicamente, el precepto no confiere jurisdicción a la Corte para que la misma revise la decisión de una Comisión de Conciliación o de un Tribunal de Arbitraje en cuanto a la competencia de éstos para decidir las diferencias de que conozcan. Ni tampoco faculta a un Estado promover un procedimiento ante la Corte respecto a una diferencia que uno de sus nacionales y otro Estado Contratante hayan consentido en someter a arbitraje, ya que tal procedimiento violaría los preceptos del Artículo 27, a menos que el otro Estado Contratante hubiere dejado de acatar y cumplir el laudo dictado en relación con tal diferencia.

IX

Entrada en Vigor

46. El Convenio queda abierto para la firma de los Estados miembros del Banco. Quedará también abierto para la firma de cualquier otro Estado signatario del Estatuto de la Corte Internacional de Justicia a quien el Consejo Administrativo, por voto de dos tercios de sus miembros, hubiere invitado a firmarlo. No se ha establecido un límite de tiempo para su firma. La firma se requiere de los Estados que se adhieran antes de que el Convenio entre en vigencia así como de los que se adhieran posteriormente (Artículo 67). El Convenio está sujeto a la ratificación, aceptación o aprobación de los Estados signatarios de acuerdo con sus normas constitucionales (Artículo 68). Tal como ya se ha indicado, el Convenio entrará en vigor cuando se deposite el vigésimo instrumento de ratificación, aceptación o aprobación.

Mr. Rashgarian

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

FOR EXECUTIVE DIRECTORS' MEETING

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R65-41

(for consideration on March 18, 1965)

FROM: The Secretary

March 11, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached is the French text of the Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in the form approved by the Committee of the Whole.

Distribution:

Executive Directors and Alternates
President
President's Council
Executive Vice President, IFC
Department Heads (Bank and IFC)

PROJET
Département Juridique
10 mars 1965

Rapport des Administrateurs sur la Convention pour le Règlement des Différends relatifs aux Investissements entre Etats et Ressortissants d'autres Etats

I

1. La résolution No 214, adoptée par le Conseil des Gouverneurs de la Banque Internationale pour la Reconstruction et le Développement le 10 septembre 1964 comporte les dispositions suivantes:

"DECIDE:

(a) Le rapport des Administrateurs sur "le règlement des différends relatifs aux investissements" daté du 6 août 1964 est approuvé.

(b) Les Administrateurs sont priés de rédiger une convention prévoyant la création d'un mécanisme et de procédures auxquels le recours serait volontaire pour le règlement par la conciliation et l'arbitrage des différends relatifs aux investissements entre Etats contractants et nationaux d'autres Etats contractants.

(c) En rédigeant ladite convention, les Administrateurs prendront en considération les opinions des gouvernements membres et le désir d'aboutir à un texte susceptible d'être accepté par le plus grand nombre possible de gouvernements.

(d) Les Administrateurs soumettront le texte de ladite Convention aux gouvernements membres avec les recommandations qu'ils jugeront appropriées."

2. Conformément aux dispositions de la résolution ci-dessus, les Administrateurs de la Banque ont établi une Convention pour le Règlement des Différends relatifs aux Investissements entre Etats et ressortissants d'autres Etats et, le __ mars 1965, ont approuvé le texte ci-joint de cette Convention, en vue de le soumettre aux gouvernements des pays membres de la Banque. Cette décision des Administrateurs n'implique évidemment pas que les gouvernements représentés par chacun desdits Administrateurs soient engagés à y donner suite.

3. La décision des Administrateurs a été précédée d'un important travail préparatoire dont les détails sont donnés aux paragraphes 6-8 ci-dessous. Les Administrateurs sont convaincus que la Convention, dans la forme du texte ci-joint, reflète l'opinion générale qui se dégage des vues exprimées par les gouvernements favorables au principe de l'établissement par voie d'accord intergouvernemental de mécanismes et de procédures pour le règlement des différends relatifs aux investissements que des Etats et investisseurs étrangers souhaiteraient soumettre à la conciliation ou à l'arbitrage. Ils sont aussi convaincus que la Convention constitue une base appropriée pour l'établissement de ces mécanismes et de ces procédures. En conséquence, la Convention est transmise aux gouvernements des pays membres aux fins d'examen et éventuellement de signature, ratification, acceptation ou approbation.

4. Les Administrateurs attirent l'attention sur les dispositions de l'Article 68(2) en vertu duquel la Convention entrera en vigueur entre les Etats contractants 30 jours après dépôt auprès de la Banque, agissant en tant que dépositaire de la Convention, du vingtième instrument de ratification, d'acceptation ou d'approbation.

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

II

6. Le problème de l'utilité et de la possibilité d'établir, sous l'égide de la Banque, un mécanisme institutionnel pour le règlement par voie de conciliation et d'arbitrage des différends relatifs aux investissements entre

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

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

8. Sur la base des travaux préparatoires et des vues exprimées aux réunions consultatives, les Administrateurs ont soumis un rapport à la Dix-Neuvième Assemblée Annuelle du Conseil des Gouverneurs à Tokyo en septembre 1964, concluant qu'il serait souhaitable d'établir les mécanismes institutionnels en question, et ceci dans le cadre d'un accord intergouvernemental.

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

III

9. En soumettant la Convention ci-jointe aux Gouvernements, les Administrateurs sont mus par le désir de renforcer la collaboration des pays à la cause du développement économique. La création d'une institution destinée à faciliter le règlement des différends entre Etats et investisseurs étrangers peut constituer une étape importante vers l'établissement du climat de confiance mutuelle et permettre de stimuler un plus large accès du capital international aux pays qui désirent l'attirer chez eux.

10. Les Administrateurs reconnaissent que les différends relatifs aux investissements sont normalement résolus par les procédures administratives, judiciaires ou arbitrales prévues par le droit du pays où l'investissement en cause est effectué. Cependant l'expérience montre qu'il peut exister des différends que les parties elles-mêmes désirent résoudre par d'autres moyens; les accords d'investissement conclus récemment montrent que tant les Etats que les investisseurs estiment fréquemment que leur intérêt mutuel est de prévoir des modes de règlement international.

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

12. Les Administrateurs estiment que le capital privé continuera de s'investir dans les pays offrant un climat favorable à des investissements intéressants et suffisamment sains, même si lesdits pays n'adhérent pas à la Convention ou, bien qu'ils y aient adhéré, ne font pas usage des mécanismes du Centre. En revanche, l'adhésion d'un pays à la Convention pourrait constituer un attrait additionnel et stimuler un large apport de capitaux privés internationaux dans son territoire, ce qui correspond à l'objet principal de la Convention.

13. Bien que l'objectif général de la Convention soit d'encourager l'investissement privé international, les dispositions de la Convention sont conçues en vue de maintenir l'équilibre entre les intérêts des investisseurs et ceux des Etats hôtes. En outre, la Convention permet tant aux Etats hôtes qu'aux investisseurs d'entamer la procédure et les Administrateurs ont eu pour constante préoccupation de prévoir des dispositions qui répondent aux besoins des deux situations.

14. La plupart des dispositions de la Convention ci-jointe se suffisent à elles-mêmes. Un bref commentaire sur les principaux aspects de la Convention peut, néanmoins, faciliter l'examen du texte par les gouvernements.

IV

Le Centre International pour le Règlement des Différends relatifs aux Investissements

Généralités

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

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

17. En ce qui concerne le financement du Centre (Article 17), les Administrateurs ont décidé que la Banque serait prête à fournir gratuitement des bureaux au Centre tant que le siège de celui-ci coinciderait avec celui de la Banque et à garantir, dans des limites raisonnables, le financement des principaux frais généraux du Centre pendant un nombre d'années à déterminer après sa création.

18. Simplicité et économie compatible avec l'exercice efficace des fonctions du Centre caractérisent sa structure. Les organes du Centre sont le Conseil Administratif (Articles 4-8) et le Secrétariat (Articles 9-11). Le Conseil Administratif est composé d'un représentant de chaque Etat contractant et ne recevant aucune rémunération du Centre. Chaque membre du Conseil dispose d'une voix et les décisions du Conseil sont prises à la majorité des voix, sauf quand une majorité différente est requise par la Convention. Le Président de la Banque assume d'office la Présidence du Conseil mais ne vote pas. Le Secrétariat est composé d'un Secrétaire Général, d'un ou de plusieurs Secrétaires Généraux Adjoints et du personnel. Pour permettre une certaine souplesse, la Convention prévoit la possibilité d'avoir plusieurs Secrétaires Généraux Adjoints, mais les Administrateurs n'envisagent pas pour l'instant la nécessité pour le Centre d'avoir plus de deux hauts fonctionnaires travaillant à plein temps. L'Article 10 prévoit que le Secrétaire Général et tout Secrétaire Général Adjoint sont élus, sur présentation par le Président, par le Conseil Administratif statuant à la majorité des deux tiers de ses membres et limite la durée de leurs fonctions à une période ne pouvant excéder six ans; ils sont rééligibles. Les Administrateurs estiment que la première élection, qui aura lieu peu après l'entrée en vigueur de la Convention, devrait être effectuée pour une courte période de manière à ne pas priver les Etats adhérant à la Convention après son entrée en vigueur de la faculté de participer à la désignation des hauts fonctionnaires du Centre. L'Article 10 limite également la possibilité pour ces fonctionnaires d'assumer d'autres tâches que leurs fonctions officielles.

Fonctions du Conseil Administratif

19. Les principales fonctions du Conseil Administratif sont l'élection du Secrétaire Général et du ou des Secrétaires Généraux Adjoints, l'adoption du budget du Centre et des règlements administratifs et financiers, ainsi que des règlements gouvernant l'introduction et le déroulement des procédures de conciliation et d'arbitrage. Toute décision en ces matières requiert la majorité des deux tiers des membres du Conseil.

Fonctions du Secrétaire Général

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

Les Listes

21. L'Article 3 oblige le Centre à tenir une liste de Conciliateurs et une liste d'Arbitres tandis que les Articles 12-16 décrivent le mode et les conditions de désignation des personnes figurant sur ces listes. L'Article 14(1) en particulier a pour but de donner toutes assurances quant à la haute compétence des personnes inscrites sur ces listes et leur capacité d'exercer leurs fonctions en toute indépendance. En vue de conserver la plus grande souplesse aux mécanismes prévus, la Convention permet aux parties de désigner des conciliateurs et arbitres ne figurant pas sur les listes, mais exige (Articles 31(2) et 40(2)) que les personnes ainsi désignées aient les qualités prévues par l'Article 14(1). Quand, en vertu des Articles 30 ou 38, le Président est appelé à désigner un conciliateur ou un arbitre, son choix est limité aux personnes figurant sur les listes.

V

Compétence du Centre

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

Consentement

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

24. Le consentement des parties doit avoir été donné avant que le Centre ne soit saisi (Articles 28(3) et 36(3)), mais la Convention ne contient aucune précision quant à la date à laquelle le consentement doit être donné. Il peut être donné, par exemple, dans une disposition d'un accord d'investissement prévoyant la soumission au Centre des différends auxquels il pourrait ultérieurement donner lieu, ou dans un compromis concernant un différend déjà né. La Convention n'exige pas que le consentement des deux parties soit exprimé dans le même acte juridique. C'est ainsi qu'un Etat hôte pourrait offrir, dans le cadre d'une législation destinée à promouvoir les investissements, de soumettre à la compétence du Centre les différends résultant de certaines catégories d'investissements, tandis que l'investisseur pourrait donner son consentement en acceptant l'offre par écrit.

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

Nature du différend

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

27. Il n'a pas été jugé nécessaire de définir le terme "investissement", compte tenu du fait que le consentement des parties constitue une condition essentielle et compte tenu du mécanisme par lequel les Etats contractants peuvent, s'ils le désirent, indiquer à l'avance les catégories de différends qu'ils seraient ou ne seraient pas prêts à soumettre au Centre (Article 25(4)).

Parties au différend

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

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

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

Notifications par les Etats contractants

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

De l'arbitrage comme mode exclusif de règlement

32. On peut présumer que quand un Etat et un investisseur s'entendent pour recourir à l'arbitrage et ne se réservent pas le droit de recourir à d'autres modes de règlement ou n'exigent pas l'épuisement préalable d'autres

voies de recours, l'intention des parties est de recourir à l'arbitrage à l'exclusion de tout autre mode de règlement. Cette règle d'interprétation figure expressément dans la première phrase de l'Article 26. Pour qu'il soit bien clair que l'intention n'est pas de modifier les règles de droit international concernant l'épuisement des recours internes, la deuxième phrase reconnaît expressément aux Etats le droit d'exiger l'épuisement préalable desdits recours.

Plaintes déposées par l'Etat de l'investisseur

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

VI

Procédures prévues par la Convention

Introduction des procédures

34. Les procédures sont intentées par une requête adressée au Secrétaire Général (Articles 28 et 36). Après enregistrement de la requête, la Commission de Conciliation ou, selon le cas, le Tribunal arbitral, est constitué (voir alinéa 20 ci-dessus quant au droit du Secrétaire Général de refuser l'enregistrement de la requête).

Constitution des Commissions de Conciliation et des Tribunaux Arbitraux

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

36. Le fait que les parties sont libres de désigner des conciliateurs et des arbitres ne figurant pas sur les listes a déjà été mentionné (cf. alinéa 21 ci-dessus). Si la Convention ne limite pas ce choix des conciliateurs sur la base de leur nationalité, l'Article 39 pose néanmoins le principe que la majorité d'un Tribunal Arbitral ne doit pas être composée de ressortissants de l'Etat partie au différend ou de l'Etat dont un ressortissant est partie au différend. Ce principe aura vraisemblablement pour effet d'empêcher des personnes possédant les nationalités en question de faire partie de tout tribunal qui n'est pas composé de plus de trois membres. Toutefois cette règle ne s'appliquera pas au cas où tous les arbitres du Tribunal auront été désignés par accord entre les parties.

Procédures de conciliation; pouvoirs et fonctions des Tribunaux Arbitraux

37. D'une façon générale, les dispositions des Articles 28-35 se rapportant à la procédure de conciliation et celles des Articles 36-39 concernant les pouvoirs et fonctions des Tribunaux Arbitraux ainsi que les sentences rendues par ces Tribunaux s'expliquent d'elles-mêmes. Les différences entre les deux séries de dispositions reflètent la distinction fondamentale entre la procédure de conciliation dont le but consiste à essayer de

rapprocher les parties et la procédure d'arbitrage dont l'objet est d'obtenir une décision du Tribunal s'imposant aux parties au différend.

38. L'Article 41 réaffirme le principe bien établi que les tribunaux internationaux doivent être juges de leur propre compétence et l'Article 32 applique le même principe aux Commissions de Conciliation. Il convient de noter à cet égard que le droit du Secrétaire Général de refuser l'enregistrement d'une requête en conciliation ou en arbitrage (cf. alinéa 20 ci-dessus) est défini très étroitement de façon à ne pas empiéter sur les prérogatives des Commissions et Tribunaux quant à la détermination de leur propre compétence, mais que l'enregistrement d'une requête par le Secrétaire Général n'empêche évidemment pas une Commission ou un Tribunal de décider que le différend ne relève pas de la compétence du Centre.

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

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

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

Reconnaissance et exécution des sentences arbitrales

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

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

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

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

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

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

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

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

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

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

VII

Lieu des procédures

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

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

VIII

Différends entre Etats contractants

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

IX

Entrée en vigueur

46. La Convention est ouverte pour signature aux Etats membres de la Banque. Elle est également ouverte à la signature de tout autre Etat

partie au Statut de la Cour Internationale de Justice pour autant que le Conseil Administratif l'ait invité, à la majorité des deux tiers de ses membres, à signer la Convention. Aucun délai n'a été imparti pour procéder à la signature. Celle-ci est requise tant pour les Etats adhérant avant l'entrée en vigueur de la Convention que pour ceux qui y adhéreraient par la suite (Article 67). La Convention est soumise à ratification, acceptation ou approbation par les Etats signataires conformément à leurs procédures constitutionnelles (Article 68). Comme on l'a déjà mentionné, la Convention entrera en vigueur au jour du dépôt du vingtième instrument de ratification, d'acceptation ou d'approbation.

Mr. Rashish

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

FOR EXECUTIVE DIRECTORS' MEETING

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R 65-38

(for consideration on March 18, 1965)

FROM: The Secretary

March 10, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached is the English text of the Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in the form approved by the Committee of the Whole.

The French and Spanish texts will be circulated shortly.

Distribution:

Executive Directors and Alternates
President
President's Council
Executive Vice President, IFC
Department Heads (Bank and IFC)

DRAFT
Legal Department
March 10, 1965

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

I

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

"RESOLVED:

(a) The report of the Executive Directors on "Settlement of Investment Disputes," dated August 6, 1964, is hereby approved.

(b) The Executive Directors are requested to formulate a convention establishing facilities and procedures which would be available on a voluntary basis for the settlement of investment disputes between contracting States and Nationals of other contracting States through conciliation and arbitration.

(c) In formulating such a convention, the Executive Directors shall take into account the views of member governments and shall keep in mind the desirability of arriving at a text which could be accepted by the largest possible number of governments.

(d) The Executive Directors shall submit the text of such a convention to member governments with such recommendations as they shall deem appropriate."

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

3. The action by the Executive Directors was preceded by extensive preparatory work, details of which are given in paragraphs 6 - 8 below. The Executive Directors are satisfied that the Convention in the form attached hereto represents a broad consensus of the views of those governments which accept the principle of establishing by intergovernmental agreement facilities and procedures for the settlement of investment disputes which States and foreign investors wish to submit to conciliation or arbitration. They are also satisfied that the Convention constitutes a suitable framework for such facilities and procedures. Accordingly, the text of the Convention is submitted to member governments for consideration with a view to signature and ratification, acceptance or approval.

4. The Executive Directors invite attention to the provisions of Article 68(2) pursuant to which the Convention will enter into force as between the Contracting States 30 days after deposit with the Bank, the depositary of the Convention, of the twentieth instrument of ratification, acceptance or approval.

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

II

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

7. After a series of informal discussions on the basis of working papers prepared by the staff of the Bank, the Executive Directors decided that the Bank should convene consultative meetings of legal experts designated by member governments to consider the subject in greater detail. The consultative meetings were held on a regional basis in Addis Ababa (December 16-20, 1963), Santiago de Chile (February 3-7, 1964), Geneva (February 17-21, 1964) and Bangkok (April 27 - May 1, 1964), with the administrative assistance of the United Nations Economic Commissions and the European Office of the United Nations, and took as the basis for discussion a Preliminary Draft of a Convention on Settlement of Investment Disputes between States and Nationals of Other States prepared by the staff of the Bank in the light of the discussions of the Executive Directors and the views of governments. The meetings were attended by legal experts from 86 countries.

8. In the light of the preparatory work and of the views expressed at the consultative meetings, the Executive Directors reported to the Board of Governors at its Nineteenth Annual Meeting in Tokyo, in September 1964, that it would be desirable to establish the institutional facilities envisaged, and to do so within the framework of an intergovernmental agreement. The Board of Governors adopted the Resolution set forth in paragraph 1 of this Report, whereupon the Executive Directors undertook the formulation of the present Convention. With a view to arriving at a text which could be accepted by the largest possible number of governments, the Bank invited its members to designate representatives to a Legal Committee which would assist the Executive Directors in their task. This Committee met in Washington from November 23 through December 11, 1964, and the Executive Directors gratefully acknowledge the valuable advice they received from the representatives of the 61 member countries who served on the Committee.

III

9. In submitting the attached Convention to governments, the Executive Directors are prompted by the desire to strengthen the partnership between countries in the cause of economic development. The creation of an institution designed to facilitate the settlement of disputes between States and foreign investors can be a major step toward promoting an atmosphere of mutual confidence and thus stimulating a larger flow of private international capital into those countries which wish to attract it.

10. The Executive Directors recognize that investment disputes are as a rule settled through administrative, judicial or arbitral procedures available under the laws of the country in which the investment concerned is made. However, experience shows that disputes may arise which the parties wish to settle by other methods; and investment agreements entered into in recent years show that both States and investors frequently consider that it is in their mutual interest to agree to resort to international methods of settlement.

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

12. The Executive Directors believe that private capital will continue to flow to countries offering a favorable climate for attractive and sound investments, even if such countries did not become parties to the Convention or, having joined, did not make use of the facilities of the Centre. On the other hand, adherence to the Convention by a country would provide additional inducement and stimulate a larger flow of private international investment into its territories, which is the primary purpose of the Convention.

13. While the broad objective of the Convention is to encourage a larger flow of private international investment, the provisions of the Convention maintain a careful balance between the interests of investors and those of host States. Moreover, the Convention permits the institution of proceedings by host States as well as by investors and the Executive Directors have constantly had in mind that the provisions of the Convention should be equally adapted to the requirements of both cases.

14. The provisions of the attached Convention are for the most part self-explanatory. Brief comment on a few principal features may, however, be useful to member governments in their consideration of the Convention.

IV

The International Centre for Settlement of Investment Disputes

General

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

in accordance with the provisions of the Convention.

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

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

18. Simplicity and economy consistent with the efficient discharge of the functions of the Centre characterize its structure. The organs of the Centre are the Administrative Council (Articles 4-8) and the Secretariat (Articles 9-11). The Administrative Council will be composed of one representative of each Contracting State, serving without remuneration from the Centre. Each member of the Council casts one vote and matters before the Council are decided by a majority of the votes cast unless a different majority is required by the Convention. The President of the Bank will serve ex officio as the Council's Chairman but will have no vote. The Secretariat will consist of a Secretary-General, one or more Deputy Secretaries-General and staff. In the interest of flexibility the Convention provides for the possibility of there being more than one Deputy Secretary-General, but the Executive Directors do not now foresee a need for more than one or two full time high officials of the Centre. Article 10, which requires that the Secretary-General and any Deputy Secretary-General be elected by the Administrative Council by a majority of two-thirds of its members, on

the nomination of the Chairman, limits their terms of office to a period not exceeding six years and permits their re-election. The Executive Directors believe that the initial election, which will take place shortly after the Convention will have come into force, should be for a short term so as not to deprive the States which ratify the Convention after its entry into force of the possibility of participating in the selection of the high officials of the Centre. Article 10 also limits the extent to which these officials may engage in activities other than their official functions.

Functions of the Administrative Council

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

Functions of the Secretary-General

20. The Convention requires the Secretary-General to perform a variety of administrative functions as legal representative, registrar and principal officer of the Centre (Articles 7(1), 11, 16(3), 28, 36, 49(1), 50(1), 51(1), 52(1), 52(4), 54(2), 59, 60(1), 63(b) and 65). In addition, the Secretary-General is given the power to refuse registration of a request for conciliation proceedings or arbitration proceedings, and thereby to prevent the institution of such proceedings if on the basis of the information furnished by the applicant he finds that the dispute is manifestly outside the jurisdiction of the Centre (Articles 28(3) and 36(3)). The Secretary-General is given this limited power to "screen" requests for conciliation or arbitration proceedings

with a view to avoiding the embarrassment to a party (particularly a State) which might result from the institution of proceedings against it in a dispute which it had not consented to submit to the Centre as well as the possibility that the machinery of the Centre would be set in motion in cases which for other reasons were obviously outside the jurisdiction of the Centre e.g., because either the applicant or the other party was not eligible to be a party in proceedings under the Convention.

The Panels

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

V

Jurisdiction of the Centre

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

Consent

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

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

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

Nature of the dispute

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

nature or extent of the reparation to be made for breach of a legal obligation.

27. No attempt was made to define the term "investment", given the essential requirement of consent by the parties, and the mechanism through which Contracting States can make known in advance, if they so desire, the classes of disputes which they would or would not consider submitting to the Centre (Article 25(4)).

Parties to the dispute

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

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

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

Notifications by Contracting States

31. While no conciliation or arbitration proceedings could be brought against a Contracting State without its consent and while no Contracting State is

under any obligation to give its consent to such proceedings, it was nevertheless felt that adherence to the Convention might be interpreted as holding out an expectation that Contracting States would give favorable consideration to requests by investors for the submission of a dispute to the Centre. It was pointed out in that connection that there might be classes of investment disputes which governments would consider unsuitable for submission to the Centre or which, under their own law, they were not permitted to submit to the Centre. In order to avoid any risk of misunderstanding on this score, Article 25(4) expressly permits Contracting States to make known to the Centre in advance, if they so desire, the classes of disputes which they would or would not consider submitting to the Centre. The provision makes clear that a statement by a Contracting State that it would consider submitting a certain class of dispute to the Centre would serve for purposes of information only and would not constitute the consent required to give the Centre jurisdiction. Of course, a statement excluding certain classes of disputes from consideration would not constitute a reservation to the Convention.

Arbitration as exclusive remedy

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

Claims by the investor's State

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

VI

Proceedings under the Convention

Institution of proceedings

34. Proceedings are instituted by means of a request addressed to the Secretary-General (Articles 28 and 36). After registration of the request the Conciliation Commission or Arbitral Tribunal, as the case may be, will be constituted. Reference is made to paragraph 20 above for the power of the Secretary-General to refuse registration.

Constitution of Conciliation Commissions and Arbitral Tribunals

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

36. Mention has already been made of the fact that the parties are free to appoint conciliators and arbitrators from outside the Panels (see paragraph 21 above). While the Convention does not restrict the appointment of conciliators with reference to nationality, Article 39 lays down the rule that the majority of the members of an Arbitral Tribunal should not be nationals either of the State party to the dispute or of the State whose national is a party to the dispute. This rule is likely to have the effect of excluding persons having these nationalities from serving on a Tribunal composed of not more than three members. However, the rule will not apply where each and every arbitrator on the Tribunal has been appointed by agreement of the parties.

Conciliation proceedings; powers and functions of Arbitral Tribunals

37. In general, the provisions of Articles 28-35 dealing with conciliation proceedings and of Articles 36-49, dealing with the powers and functions of Arbitral Tribunals and awards rendered by such Tribunals, are self-explanatory. The differences between the two sets of provisions reflect the basic distinction between the process of conciliation which seeks to bring the parties to agreement and that of arbitration which aims at a binding determination of the dispute by the Tribunal.

38. Article 41 reiterates the well-established principle that international tribunals are to be the judges of their own competence and Article 32 applies the same principle to Conciliation Commissions. It is to be noted in this connection that the power of the Secretary-General to refuse registration of a request for conciliation or arbitration (see paragraph 20 above) is so narrowly defined as not to encroach on the prerogative of Commissions and Tribunals to determine their own competence and, on the

other hand, that registration of a request by the Secretary-General does not, of course, preclude a Commission or Tribunal from finding that the dispute is outside the jurisdiction of the Centre.

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

40. Under the Convention an Arbitral Tribunal is required to apply the law agreed by the parties. Failing such agreement, the Tribunal must apply the law of the State party to the dispute (unless that law calls for the application of some other law), as well as such rules of international law as may be applicable. The term "international law" as used in this context should be understood in the sense given to it by Article 38(1) of the Statute of the International Court of Justice, allowance being made for the fact that Article 38 was designed to apply to inter-State disputes.[1)]

---

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

> "1. The Court, whose function it is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
>
> b. international custom, as evidence of a general practice accepted as law;
>
> c. the general principles of law recognized by civilized nations;
>
> d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

Recognition and enforcement of arbitral awards

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

42. Subject to any stay of enforcement in connection with any of the above proceedings in accordance with the provisions of the Convention, the parties are obliged to abide by and comply with the award and Article 54 requires every Contracting State to recognize the award as binding and to enforce the pecuniary obligations imposed by the award as if it were a final decision of a domestic court. Because of the different legal techniques followed in common law and civil law jurisdictions and the different judicial systems found in unitary and federal or other non-unitary States, Article 54 does not prescribe any particular mecthod to be followed in its domestic implementation, but requires each Contracting State to meet the requirements of the Article in accordance with its own legal system.

43. The doctrine of sovereign immunity may prevent the forced execution in a State of judgments obtained against foreign States or against the State in which execution is sought. Article 54 requires Contracting States to equate an award rendered pursuant to the Convention with a final judgment of its own courts. It does not require them to go beyond that and to undertake forcible execution of awards rendered pursuant to the Convention in cases in which final judgments could not be executed. In order to leave

no doubt on this point Article 55 provides that nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

VII

Place of Proceedings

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

VIII

Disputes Between Contracting States

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

Contracting State had failed to abide by and comply with the award rendered in that dispute.

IX

Entry into Force

46. The Convention is open for signature on behalf of States members of the Bank. It will also be open for signature on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, shall have invited to sign. No time limit has been prescribed for signature. Signature is required both of States joining before the Convention enters into force and those joining thereafter (Article 67). The Convention is subject to ratification, acceptance or approval by the signatory States in accordance with their constitutional procedures (Article 68). As already stated, the Convention will enter into force upon the deposit of the twentieth instrument of ratification, acceptance or approval.

Mrs. Rathgeber

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

FOR EXECUTIVE DIRECTORS' MEETING

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R65-37

(for consideration on March 18, 1965)

FROM: The Secretary

March 10, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached is the text in English, French and Spanish of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in the form approved by the Committee of the Whole.

Distribution:

Executive Directors and Alternates
President
President's Council
Executive Vice President, IFC
Department Heads (Bank and IFC)

DRAFT
March 10, 1965

PROJET
10 mars 1965

PROYECTO
10 de marzo 1965

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

Convention
pour le
Règlement des Différends Relatifs
Aux Investissements
entre
Etats et Ressortissants d'autres Etats

Convenio
sobre
Arreglo de Diferencias Relativas a Inversiones
entre
Estados y Nacionales de Otros Estados

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

PREAMBLE

The Contracting States

Considering the need for international cooperation for economic development, and the role of private international investment therein;

Bearing in mind the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States;

Recognizing that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

Attaching particular importance to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

Desiring to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

Recognizing that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

Declaring that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration,

Have agreed as follows:

CHAPTER I

International Centre for Settlement of Investment Disputes

SECTION 1

Establishment and Organization

Article 1

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

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

Article 2

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

Article 3

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

SECTION 2

The Administrative Council

Article 4

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

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

Article 5

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

Article 6

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

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

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

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

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

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

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

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

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

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

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

Article 7

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

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

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

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

Article 8

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

Section 3

The Secretariat

Article 9

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

Article 10

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

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

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

Article 11

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

Section 4

The Panels

Article 12

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

Article 13

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

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

Article 14

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

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

Article 15

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

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

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

Article 16

(1) A person may serve on both Panels.

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

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

Section 5

Financing the Centre

Article 17

If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts,

the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

Section 6

Status, Immunities and Privileges

Article 18

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

(a) to contract;

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

(c) to institute legal proceedings.

Article 19

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

Article 20

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

Article 21

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

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

(b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same

treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

Article 22

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

Article 23

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

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

Article 24

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

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

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

CHAPTER II

Jurisdiction of the Centre

Article 25

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

(2) "National of another Contracting State" means:

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

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

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

(4) Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1).

Article 26

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

Article 27

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

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

CHAPTER III

Conciliation

SECTION 1

Request for Conciliation

Article 28

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings

shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

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

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

Section 2

Constitution of the Conciliation Commission

Article 29

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

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

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

Article 30

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

Article 31

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

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

Section 3

Conciliation Proceedings

Article 32

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

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 33

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

Article 34

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

the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.

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

Article 35

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

CHAPTER IV

Arbitration

SECTION 1

Request for Arbitration

Article 36

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

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

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

Section 2

Constitution of the Tribunal

Article 37

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

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

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

Article 38

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

ing State party to the dispute or of the Contracting State whose national is a party to the dispute.

Article 39

(1) The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

Article 40

(1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.

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

Section 3

Powers and Functions of the Tribunal

Article 41

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

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 42

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

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

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

Article 43

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

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

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

Article 44

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

Article 45

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

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

Article 46

Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or

additional claims or counter-claims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.

Article 47

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

Section 4

The Award

Article 48

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

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

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

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

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

Article 49

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

(2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the

award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

Section 5

Interpretation, Revision and Annulment of the Award

Article 50

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

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

Article 51

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

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

(3) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter.

(4) The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of

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

Article 52

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

(a) that the Tribunal was not properly constituted;

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

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

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

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

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

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

(4) The provisions of Articles 41–45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply *mutatis mutandis* to proceedings before the Committee.

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

(6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.

Section 6

Recognition and Enforcement of the Award

Article 53

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

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

Article 54

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

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

the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

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

Article 55

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

CHAPTER V

Replacement and Disqualification of Conciliators and Arbitrators

Article 56

(1) After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

(2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.

(3) If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy.

Article 57

A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of

an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.

Article 58

The decision on any proposal to disqualify a conciliator or arbitrator shall be taken by the other members of the Commission or Tribunal as the case may be, provided that where those members are equally divided, or in the case of a proposal to disqualify a sole conciliator or arbitrator, or a majority of the conciliators or arbitrators, the Chairman shall take that decision. If it is decided that the proposal is well-founded the conciliator or arbitrator to whom the decision relates shall be replaced in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

CHAPTER VI

Cost of Proceedings

Article 59

The charges payable by the parties for the use of the facilities of the Centre shall be determined by the Secretary-General in accordance with the regulations adopted by the Administrative Council.

Article 60

(1) Each Commission and each Tribunal shall determine the fees and expenses of its members within limits established from time to time by the Administrative Council and after consultation with the Secretary-General.

(2) Nothing in paragraph (1) of this Article shall preclude the parties from agreeing in advance with the Commission or Tribunal concerned upon the fees and expenses of its members.

Article 61

(1) In the case of conciliation proceedings the fees and expenses of members of the Commission as well as the

charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceedings.

(2) In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

CHAPTER VII

Place of Proceedings

Article 62

Conciliation and arbitration proceedings shall be held at the seat of the Centre except as hereinafter provided.

Article 63

Conciliation and arbitration proceedings may be held, if the parties so agree,

(a) at the seat of the Permanent Court of Arbitration or of any other appropriate institution, whether private or public, with which the Centre may make arrangements for that purpose; or

(b) at any other place approved by the Commission or Tribunal after consultation with the Secretary-General.

CHAPTER VIII

Disputes between Contracting States

Article 64

Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred

to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement.

CHAPTER IX

Amendment

Article 65

Any Contracting State may propose amendment of this Convention. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days prior to the meeting of the Administrative Council at which such amendment is to be considered and shall forthwith be transmitted by him to all the members of the Administrative Council.

Article 66

(1) If the Administrative Council shall so decide by a majority of two-thirds of its members, the proposed amendment shall be circulated to all Contracting States for ratification, acceptance or approval. Each amendment shall enter into force 30 days after dispatch by the depositary of this Convention of a notification to Contracting States that all Contracting States have ratified, accepted or approved the amendment.

(2) No amendment shall affect the rights and obligations under this Convention of any Contracting State or of any of its constituent subdivisions or agencies, or of any national of such State arising out of consent to the jurisdiction of the Centre given before the date of entry into force of the amendment.

CHAPTER X

Final Provisions

Article 67

This Convention shall be open for signature on behalf of States members of the Bank. It shall also be open

for signature on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, shall have invited to sign the Convention.

Article 68

(1) This Convention shall be subject to ratification, acceptance or approval by the signatory States in accordance with their respective constitutional procedures.

(2) This Convention shall enter into force 30 days after the date of deposit of the twentieth instrument of ratification, acceptance or approval. It shall enter into force for each State which subsequently deposits its instrument of ratification, acceptance or approval 30 days after the date of such deposit.

Article 69

Each Contracting State shall take such legislative or other measures as may be necessary for making the provisions of this Convention effective in its territories.

Article 70

This Convention shall apply to all territories for whose international relations a Contracting State is responsible, except those which are excluded by such State by written notice to the depositary of this Convention either at the time of ratification, acceptance or approval or subsequently.

Article 71

Any Contracting State may denounce this Convention by written notice to the depositary of this Convention. The denunciation shall take effect six months after receipt of such notice.

Article 72

Notice by a Contracting State pursuant to Articles 70 or 71 shall not affect the rights or obligations under this Convention of that State or of any of its constituent subdivisions or agencies or of any national of that State arising

out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.

Article 73

Instruments of ratification, acceptance or approval of this Convention and of amendments thereto shall be deposited with the Bank which shall act as the depositary of this Convention. The depositary shall transmit certified copies of this Convention to States members of the Bank and to any other State invited to sign the Convention.

Article 74

The depositary shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Article 75

The depositary shall notify all signatory States of the following:

(a) signatures in accordance with Article 67;
(b) deposits of instruments of ratification, acceptance and approval in accordance with Article 73;
(c) the date on which this Convention enters into force in accordance with Article 68;
(d) exclusions from territorial application pursuant to Article 70;
(e) the date on which any amendment of this Convention enters into force in accordance with Article 66; and
(f) denunciations in accordance with Article 71.

CONVENTION POUR LE REGLEMENT DES DIFFERENDS RELATIFS AUX INVESTISSEMENTS ENTRE ETATS ET RESSORTISSANTS D'AUTRES ETATS

PREAMBULE

Les Etats contractants

Considérant la nécessité de la coopération internationale pour le développement économique, et le rôle joué dans ce domaine par les investissements privés internationaux;

Ayant présent à l'esprit que des différends peuvent surgir à toute époque au sujet de tels investissements entre Etats contractants et ressortissants d'autres Etats contractants;

Reconnaissant que si ces différends doivent normalement fair l'objet de recours aux instances internes, des modes de règlement internationaux de ces différends peuvent être appropriés dans certains cas;

Attachant une importance particulière à la création de mécanismes pour la conciliation et l'arbitrage internationaux auxquels les Etats contractants et les ressortissants d'autres Etats contractants puissent, s'ils le désirent, soumettre leurs différends;

Désirant établir ces mécanismes sous les auspices de la Banque Internationale pour la Reconstruction et le Développement;

Reconnaissant que le consentement mutuel des parties de soumettre ces différends à la conciliation ou à l'arbitrage, en ayant recours auxdits mécanismes, constitue un accord ayant force obligatoire qui exige en particulier que toute recommandation des conciliateurs soit dûment prise en considération et que toute sentence arbitrale soit exécutée; et

Déclarant qu'aucun Etat contractant, par le seul fait de sa ratification acceptation ou approbation de la présente Convention et sans son consentement, ne sera réputé avoir assumé aucune obligation de recourir à la conciliation ou à l'arbitrage, en aucun cas particulier,

Sont convenus de ce qui suit:

CHAPITRE I

Le Centre International Pour le Règlement des Différends Relatifs aux Investissements

Section 1

Création et Organisation

Article 1

(1) Il est institué, en vertu de la présente Convention, un Centre International pour le Règlement des Différends Relatifs aux Investissements (ci-après dénommé le Centre).

(2) L'objet du Centre est d'offrir des moyens de conciliation et d'arbitrage pour régler les différends relatifs aux investissements opposant des Etats contractants à des ressortissants d'autres Etats contractants, conformément aux dispositions de la présente Convention.

Article 2

Le siège du Centre est celui de la Banque Internationale pour la Reconstruction et le Développement (ci-après dénommée la Banque). Le siège peut être transféré en tout autre lieu par décision du Conseil Administratif prise à la majorité des deux tiers de ses membres.

Article 3

Le Centre se compose d'un Conseil Administratif et d'un Secrétariat. Il tient une liste de conciliateurs et une liste d'arbitres.

Section 2

Du Conseil Administratif

Article 4

(1) Le Conseil Administratif comprend un représentant de chaque Etat contractant. Un suppléant peut agir en qualité de représentant si le titulaire est absent d'une réunion ou empêché.

(2) Sauf désignation différente, le gouverneur et le gouverneur suppléant de la Banque nommés par l'Etat

contractant remplissent de plein droit les fonctions respectives de représentant et de suppléant.

Article 5

Le Président de la Banque est de plein droit Président du Conseil Administratif (ci-après dénommé le Président) sans avoir le droit de vote. S'il est absent ou empêché ou si la présidence de la Banque est vacante, la personne qui le remplace à la Banque fait fonction de Président du Conseil Administratif.

Article 6

(1) Sans préjudice des attributions qui lui sont dévolues par les autres dispositions de la présente Convention, le Conseil Administratif:

(a) adopte le règlement administratif et le règlement financier du Centre;

(b) adopte le règlement de procédure relatif à l'introduction des instances de conciliation et d'arbitrage;

(c) adopte les règlements de procédure relatifs aux instances de conciliation et d'arbitrage (ci-après dénommés le Règlement de Conciliation et le Règlement d'Arbitrage);

(d) approuve tous arrangements avec la Banque en vue de l'utilisation de ses locaux et de ses services administratifs;

(e) détermine les conditions d'emploi du Secrétaire Général et des Secrétaires Généraux Adjoints;

(f) adopte le budget annuel des recettes et dépenses du Centre;

(g) approuve le rapport annuel sur les activités du Centre.

Les décisions visées aux alinéas (a), (b), (c) et (f) ci-dessus sont prises à la majorité des deux tiers des membres du Conseil Administratif.

(2) Le Conseil Administratif peut constituer toute commission qu'il estime nécessaire.

(3) Le Conseil Administratif exerce également toutes autres attributions qu'il estime nécessaires à la mise en œuvre des dispositions de la présente Convention.

Article 7

(1) Le Conseil Administratif tient une session annuelle et toute autre session qui aura été soit décidée par le Conseil, soit convoquée par le Président, soit convoquée par le Secrétaire Général sur la demande de cinq membres ou du quart des membres du Conseil.

(2) Chaque membre du Conseil Administratif dispose d'une voix et, sauf exception prévue par la présente Convention, toutes les questions soumises au Conseil sont résolues à la majorité des voix exprimées.

(3) Dans toutes les sessions du Conseil Administratif, le quorum est la moitié de ses membres plus un.

(4) Le Conseil Administratif peut adopter à la majorité des deux tiers de ses membres une procédure autorisant le Président à demander au Conseil un vote par correspondance. Ce vote ne sera considéré comme valable que si la majorité des membres du Conseil y ont pris part dans les délais impartis par ladite procédure.

Article 8

Les fonctions de membres du Conseil Administratif et de Président ne sont pas rémunérées par le Centre.

Section 3

Du Secrétariat

Article 9

Le Secrétariat comprend un Secrétaire Général, un ou plusieurs Secrétaires Généraux Adjoints et le personnel.

Article 10

(1) Le Secrétaire Général et les Secrétaires Généraux Adjoints sont élus, sur présentation du Président, par le Conseil Administratif à la majorité des deux tiers de ses membres pour une période ne pouvant excéder six ans et sont rééligibles. Le Président, après consultation des mem-

bres du Conseil Administratif, présente un ou plusieurs candidats pour chaque poste.

(2) Les fonctions de Secrétaire Général et de Secrétaire Général Adjoint sont incompatibles avec l'exercice de toute fonction politique. Sous réserve de dérogation accordée par le Conseil Administratif, le Secrétaire Général et les Secrétaires Généraux Adjoints ne peuvent occuper d'autres emplois ou exercer d'autres activités professionnelles.

(3) En cas d'absence ou d'empêchement du Secrétaire Général ou si le poste est vacant, le Secrétaire Général Adjoint remplit les fonctions de Secrétaire Général. S'il existe plusieurs Secrétaires Généraux Adjoints, le Conseil Administratif détermine à l'avance l'ordre dans lequel ils seront appelés à remplir lesdites fonctions.

Article 11

Le Secrétaire Général représente légalement le Centre, il le dirige et est responsable de son administration, y compris le recrutement du personnel, conformément aux dispositions de la présente Convention et aux règlements adoptés par le Conseil Administratif. Il remplit la fonction de greffier et a le pouvoir d'authentifier les sentences arbitrales rendues en vertu de la présente Convention et d'en certifier copie.

Section 4

Des Listes

Article 12

La liste de conciliateurs et la liste d'arbitres sont composées de personnes qualifiées, désignées comme il est dit ci-dessous et acceptant de figurer sur ces listes.

Article 13

(1) Chaque Etat contractant peut désigner pour figurer sur chaque liste quatre personnes qui ne sont pas nécessairement ses ressortissants.

(2) Le Président peut désigner dix personnes pour

figurer sur chaque liste. Les personnes ainsi désignées sur une même liste doivent toutes être de nationalité différente.

Article 14

(1) Les personnes désignées pour figurer sur les listes doivent jouir d'une haute considération morale, être d'une compétence reconnue en matière juridique, commerciale, industrielle ou financière et offrir toute garantie d'indépendance dans l'exercice de leurs fonctions. La compétence en matière juridique des personnes désignées pour la liste d'arbitres est particulièrement importante.

(2) Le Président, dans ses désignations, tient compte en outre de l'intérêt qui s'attache à représenter sur ces listes les principaux systèmes juridiques du monde et les principaux secteurs de l'activité économique.

Article 15

(1) Les désignations sont faites pour des périodes de six ans renouvelables.

(2) En cas de décès ou de démission d'une personne figurant sur l'une ou l'autre liste, l'autorité ayant nommé cette personne peut désigner un remplaçant pour la dureé du mandat restant à courir.

(3) Les personnes portées sur les listes continuent d'y figurer jusqu'à désignation de leur successeur.

Article 16

(1) Une même personne peut figurer sur les deux listes.

(2) Si une personne est désignée pour figurer sur une même liste par plusieurs Etats contractants, ou par un ou plusieurs d'entre eux et par le Président, elle sera censée l'avoir été par l'autorité qui l'aura désignée la première; toutefois si cette personne est le ressortissant d'un Etat ayant participé à sa désignation, elle sera réputée avoir été désignée par ledit Etat.

(3) Toutes les désignations sont notifiées au Secrétaire Général et prennent effet à compter de la date de réception de la notification.

Section 5

Du Financement du Centre

Article 17

Si les dépenses de fonctionnement du Centre ne peuvent être couvertes par les redevances payées pour l'utilisation de ses services ou par d'autres sources de revenus, l'excédent sera supporté par les Etats contractants membres de la Banque proportionnellement à leur souscription au capital de celle-ci et par les Etats qui ne sont pas membres de la Banque conformément aux règlements adoptés par le Conseil Administratif.

Section 6

Statut, Immunités et Privilèges

Article 18

Le Centre a la pleine personnalité juridique internationale. Il a, entre autres, capacité:

(a) de contracter;

(b) d'acquérir des biens meubles et immeubles et d'en disposer;

(c) d'ester en justice.

Article 19

Afin de pouvoir remplir ses fonctions, le Centre jouit, sur le territoire de chaque Etat contractant, des immunités et des privilèges définis à la présente Section.

Article 20

Le Centre, ses biens et ses avoirs, ne peuvent faire l'objet d'aucune action judiciaire, sauf s'il renonce à cette immunité.

Article 21

Le Président, les membres du Conseil Administratif, les personnes agissant en qualité de conciliateurs, d'arbitres ou de membres du Comité prévu à l'Article 52, alinéa (3), et les fonctionnaires et employés du Secrétariat:

(a) ne peuvent faire l'objet de poursuites en raison

d'actes accomplis par eux dans l'exercice de leurs fonctions, sauf si le Centre lève cette immunité;

(b) bénéficient, quand ils ne sont pas ressortissants de l'Etat où ils exercent leurs fonctions, des mêmes immunités en matière d'immigration, d'enregistrement des étrangers, d'obligations militaires ou de prestations analogues et des mêmes facilités en matière de change et de déplacements, que celles accordées par les Etats contractants aux représentants, fonctionnaires et employés de rang comparable d'autres Etats contractants.

Article 22

Les dispositions de l'Article 21 s'appliquent aux personnes participant aux instances qui font l'objet de la présente Convention en qualité de parties, d'agents, de conseillers, d'avocats, de témoins ou d'experts, l'alinéa (b) ne s'appliquant toutefois qu'à leurs déplacements et à leur séjour dans le pays où se déroule la procédure.

Article 23

(1) Les archives du Centre sont inviolables où qu'elles se trouvent.

(2) Chaque Etat contractant accorde au Centre pour ses communications officielles un traitement aussi favorable qu'aux autres institutions internationales.

Article 24

(1) Le Centre, ses avoirs, ses biens et ses revenus ainsi que ses opérations autorisées par la présente Convention sont exonérés de tous impôts et droits de douane. Le Centre est également exempt de toute obligation relative au recouvrement ou au paiement d'impôts ou de droits de douane.

(2) Aucun impôt n'est prélevé sur les indemnités payées par le Centre au Président ou aux membres du Conseil Administratif ou sur les traitements, émoluments ou autres indemnités payés par le Centre aux fonctionnaires ou employés du Secrétariat, sauf si les bénéficiaires sont ressortissants du pays où ils exercent leurs fonctions.

(3) Aucun impôt n'est prélevé sur les honoraires ou indemnités versées aux personnes agissant en qualité de conciliateurs, d'arbitres ou de membres du Comité prévu à l'Article 52, alinéa (3), dans les instances qui font l'objet de la présente Convention, si cet impôt n'a d'autre base juridique que le lieu où se trouve le Centre, celui où se déroule l'instance ou celui où sont payés lesdits honoraires ou indemnités.

CHAPITRE II

De la Compétence du Centre

Article 25

(1) La compétence du Centre s'étend aux différends d'ordre juridique entre un Etat contractant (ou telle collectivité publique ou tel organisme dépendant de lui qu'il désigne au Centre) et le ressortissant d'un autre Etat contractant qui sont en relation directe avec un investissement et que les parties ont consenti par écrit à soumettre au Centre. Lorsque les parties ont donné leur consentement, aucune d'elles ne peut le retirer unilatéralement.

(2) "Ressortissant d'un autre Etat contractant" signifie:

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

(b) toute personne morale qui possède la nationalité d'un Etat contractant autre que l'Etat partie au différend à la date à laquelle les parties ont

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

(3) Le consentement d'une collectivité publique ou d'un organisme dépendant d'un Etat contractant ne peut être donné qu'après approbation par ledit Etat, sauf si celui-ci indique au Centre que cette approbation n'est pas nécessaire.

(4) Tout Etat contractant peut, lors de la ratification ou lors de son acceptation ou approbation de la Convention ou à toute date ultérieure, faire connaître au Centre la ou les catégories de différends qu'il considérerait comme pouvant être soumis ou non à la compétence du Centre. Le Secrétaire Général transmet immédiatement la notification à tous les Etats contractants. Ladite notification ne constitue pas le consentement requis aux termes de l'alinéa (1).

Article 26

Le consentement des parties à l'arbitrage dans le cadre de la présente Convention est, sauf stipulation contraire, considéré comme impliquant renonciation à l'exercice de tout autre recours. Comme condition à son consentement à l'arbitrage dans le cadre de la présente Convention, un Etat contractant peut exiger que les recours administratifs ou judiciaires internes soient épuisés.

Article 27

(1) Aucun Etat contractant n'accorde la protection diplomatique ou ne formule de revendication internationale au sujet d'un différend que l'un de ses ressortissants et un autre Etat contractant ont consenti à soumettre ou ont soumis à l'arbitrage dans le cadre de la présente Convention, sauf si l'autre Etat contractant ne se conforme pas à la sentence rendue à l'occasion du différend.

(2) Pour l'application de l'alinéa (1), la protection diplomatique ne vise pas les simples démarches diplomatiques tendant uniquement à faciliter le règlement du différend.

CHAPITRE III

De la Conciliation

Section 1

De la Demande en Conciliation

Article 28

(1) Un Etat contractant ou le ressortissant d'un Etat contractant qui désire entamer une procédure de conciliation doit adresser par écrit une requête à cet effet au Secrétaire Général, lequel en envoie copie à l'autre partie.

(2) La requête doit contenir des informations concernant l'objet du différend, l'identité des parties et leur consentement à la conciliation conformément au règlement relatif à l'introduction des instances en conciliation ou en arbitrage.

(3) Le Secrétaire Général doit enregistrer la requête sauf s'il estime au vu des informations contenues dans la requête que le différend excède manifestement la compétence du Centre. Il doit immédiatement notifier aux parties l'enregistrement ou le refus d'enregistrement.

Section 2

De la Constitution de la Commission de Conciliation

Article 29

(1) La Commission de conciliation (ci-après dénommée la Commission) est constituée dès que possible après enregistrement de la requête conformément à l'Article 28.

(2) (a) La Commission se compose d'un conciliateur unique ou d'un nombre impair de conciliateurs nommés conformément à l'accord des parties.

(b) A défaut d'accord entre les parties sur le nombre de conciliateurs et leur nomination, la Commission comprend trois conciliateurs; chaque partie nomme un conciliateur et le troisième, qui est le président de la Commission, est nommé par accord des parties.

Article 30

Si la Commission n'a pas été constituée dans les 90 jours suivant la notification de l'enregistrement de la requête par le Secrétaire Général conformément à l'Article 28, alinéa (3) ou dans tout autre délai convenu par les parties, le Président, à la demande de la partie la plus diligente et, si possible, après consultation des parties, nomme le conciliateur ou les conciliateurs non encore désignés.

Article 31

(1) Les conciliateurs peuvent être pris hors de la liste des conciliateurs, sauf dans le cas prévu à l'Article 30.

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

Section 3

De la Procédure devant la Commission

Article 32

(1) La Commission est juge de sa compétence.

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

Article 33

Toute procédure de conciliation est conduite conformément aux dispositions de la présente Section et, sauf

accord contraire des parties, au Règlement de Conciliation en vigueur à la date à laquelle elles ont consenti à la conciliation. Si une question de procédure non prévue par la présente Section ou le Règlement de Conciliation ou tout autre règlement adopté par les parties se pose, elle est tranchée par la Commission.

Article 34

(1) La Commission a pour fonction d'éclaircir les points en litige entre les parties et doit s'efforcer de les amener à une solution mutuellement acceptable. A cet effet, la Commission peut à une phase quelconque de la procédure et à plusieurs reprises recommander aux parties les termes d'un règlement. Les parties doivent collaborer de bonne foi avec la Commission afin de lui permettre de remplir ses fonctions et doivent tenir le plus grand compte de ses recommandations.

(2) Si les parties se mettent d'accord, la Commission rédige un procès-verbal faisant l'inventaire des points en litige et prenant acte de l'accord des parties. Si à une phase quelconque de la procédure, la Commission estime qu'il n'y a aucune possibilité d'accord entre les parties, elle clôt la procédure et dresse un procès-verbal constatant que le différend a été soumis à conciliation et que les parties n'ont pas abouti à un accord. Si une des parties fait défaut ou s'abstient de participer à la procédure, la Commission clôt la procédure et dresse un procès-verbal constatant qu'une des parties a fait défaut ou s'est abstenue de participer à la procédure.

Article 35

Sauf accord contraire des parties, aucune d'elles ne peut, à l'occasion d'une autre procédure se déroulant devant des arbitres, un tribunal ou de toute autre manière, invoquer les opinions exprimées, les déclarations ou les offres de règlement faites par l'autre partie au cours de la procédure non plus que le procès-verbal ou les recommandations de la Commission.

CHAPITRE IV

De L'Arbitrage

Section 1

De la Demande d'Arbitrage

Article 36

(1) Un Etat contractant ou le ressortissant d'un Etat contractant qui désire entamer une procédure d'arbitrage doit adresser par écrit une requête à cet effet au Secrétaire Général, lequel envoie copie à l'autre partie.

(2) La requête doit contenir des informations concernant l'objet du différend, l'identité des parties et leur consentement à l'arbitrage conformément au Règlement relatif à l'introduction des instances en conciliation ou en arbitrage.

(3) Le Secrétaire Général doit enregistrer la requête sauf s'il estime au vu des informations contenues dans la requête que le différend excède manifestement la compétence du Centre. Il doit immédiatement notifier aux parties l'enregistrement ou le refus d'enregistrement.

Section 2

De la Constitution du Tribunal

Article 37

(1) Le Tribunal arbitral (ci-après dénommé le Tribunal) est constitué dès que possible après enregistrement de la requête conformément à l'Article 36.

(2) (a) Le Tribunal se compose d'un arbitre unique ou d'un nombre impair d'arbitres nommés conformément à l'accord des parties.

(b) A défaut d'accord entre les parties sur le nombre des arbitres et leur nomination, le Tribunal comprend trois arbitres: chaque partie nomme un arbitre et le troisième, qui est le président du Tribunal, est nommé par accord des parties.

Article 38

Si le Tribunal n'a pas été constitué dans les 90 jours suivant la notification de l'enregistrement de la requête par le Secrétaire Général conformément à l'Article 36, alinéa (3) ou dans tout autre délai convenu par les parties, le Président, à la demande de la partie la plus diligente et, si possible, après consultation des parties, nomme l'arbitre ou les arbitres non encore désignés. Les arbitres nommés par le Président conformément aux dispositions du présent Article ne doivent pas être ressortissants de l'Etat contractant partie au différend ou de l'Etat contractant dont le ressortissant est partie au différend.

Article 39

(1) Les arbitres composant la majorité doivent être ressortissants d'Etats autres que l'Etat contractant partie au différend et que l'Etat contractant dont le ressortissant est partie au différend; étant entendu néanmoins que cette disposition ne s'applique pas si, d'un commun accord, les parties désignent l'arbitre unique ou chacun des membres du Tribunal.

Article 40

(1) Les arbitres peuvent être pris hors de la liste des arbitres, sauf au cas de nomination par le Président prévu à l'Article 38.

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

Section 3

Des Pouvoirs et des Fonctions du Tribunal

Article 41

(1) Le Tribunal est juge de sa compétence.

(2) Tout déclinatoire de compétence soulevé par l'une des parties et fondé sur le motif que le différend n'est pas de la compétence du Centre ou, pour toute autre raison, de celle du Tribunal doit être examiné par le Tri-

bunal qui décide s'il doit être traité comme question préalable ou si son examen doit être joint à celui des questions de fond.

Article 42

(1) Le Tribunal statue sur le différend conformément aux règles de droit adoptées par les parties. Faute d'accord entre les parties, le Tribunal applique le droit de l'Etat contractant partie au différend—y compris les règles relatives aux conflits de lois—ainsi que les principes de droit international en la matière.

(2) Le Tribunal ne peut refuser de juger sous prétexte du silence ou de l'obscurité du droit.

(3) Les dispositions des alinéas précédents ne portent pas atteinte à la faculté pour le Tribunal, si les parties en sont d'accord, de statuer *ex aequo et bono*.

Article 43

Sauf accord contraire des parties, le Tribunal s'il l'estime nécessaire, peut à tout moment durant les débats:

(a) demander aux parties de produire tous documents ou autres moyens de preuve, et

(b) se transporter sur les lieux et y procéder à telles enquêtes qu'il estime nécessaires.

Article 44

Toute procédure d'arbitrage est conduite conformément aux dispositions de la présente Section et, sauf accord contraire des parties, au Règlement d'Arbitrage en vigueur à la date à laquelle elles ont consenti à l'arbitrage. Si une question de procédure non prévue par la présente Section ou le Règlement d'Arbitrage ou tout autre règlement adopté par les parties se pose, elle est tranchée par le Tribunal.

Article 45

(1) Si l'une des parties fait défaut ou s'abstient de faire valoir ses moyens, elle n'est pas pour autant réputée acquiescer aux prétentions de l'autre partie.

(2) Si l'une des parties fait défaut ou s'abstient de faire valoir ses moyens à tout moment de la procédure,

l'autre partie peut demander au Tribunal de considérer les chefs de conclusions qui lui sont soumises et de rendre sa sentence. Le Tribunal doit, en notifiant à la partie défaillante la demande dont il est saisi, accorder à celle-ci un délai de grâce avant de rendre sa sentence, à moins qu'il ne soit convaincu que ladite partie n'a pas l'intention de comparaître ou de faire valoir ses moyens.

Article 46

Sauf accord contraire des parties, le Tribunal doit, à la requête de l'une d'elles, statuer sur toutes demandes incidentes, additionnelles ou reconventionnelles se rapportant directement à l'objet du différend, à condition que ces demandes soient couvertes par le consentement des parties et qu'elles relèvent par ailleurs de la compétence du Centre.

Article 47

Sauf accord contraire des parties, le Tribunal peut, s'il estime que les circonstances l'exigent, recommander toutes mesures conservatoires propres à sauvegarder les droits des parties.

Section 4

De la Sentence

Article 48

(1) Le Tribunal statue sur toute question à la majorité des voix.

(2) La sentence est rendue par écrit; elle est signée par les membres du Tribunal qui se sont prononcés en sa faveur.

(3) La sentence doit répondre à tous les chefs de conclusions soumises au Tribunal et doit être motivée.

(4) Tout membre du Tribunal peut faire joindre à la sentence soit son opinion particulière—qu'il partage ou non l'avis de la majorité—soit la mention de son dissentiment.

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

Article 49

(1) Le Secrétaire Général envoie sans délai aux parties copies certifiées conformes de la sentence. La sentence est réputée avoir été rendue le jour de l'envoi desdites copies.

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

Section 5

De l'Interprétation, de la Révision et de l'Annulation de la Sentence

Article 50

(1) Tout différend qui pourrait s'élever entre les parties concernant le sens ou la portée de la sentence peut faire l'objet d'une demande en interprétation adressée par écrit au Secrétaire Général par l'une ou l'autre des parties.

(2) La demande est, si possible, soumise au Tribunal qui a statué. En cas d'impossibilité, un nouveau Tribunal est constitué conformément à la Section 2 du présent Chapitre. Le Tribunal peut, s'il estime que les circonstances l'exigent, décider de suspendre l'exécution de la sentence jusqu'à ce qu'il se soit prononcé sur la demande en interprétation.

Article 51

(1) Chacune des parties peut demander, par écrit, au Secrétaire Général la révision de la sentence en raison de la découverte d'un fait nouveau, à condition qu'avant le prononcé de la sentence ce fait ait été inconnu du Tribunal et de la partie demanderesse et qu'il n'y ait pas eu, de la part de celle-ci, faute à l'ignorer.

(2) La demande doit être introduite dans les 90 jours suivant la découverte du fait nouveau et, en tout cas, dans les trois ans suivant le prononcé de la sentence.

(3) La demande est, si possible, soumise au Tribunal ayant statué. En cas d'impossibilité, un nouveau Tribunal est constitué conformément à la Section 2 du présent Chapitre.

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

Article 52

(1) Chacune des parties peut demander, par écrit, au Secrétaire Général l'annulation de la sentence pour l'un quelconque des motifs suivants :

(a) vice dans la constitution du Tribunal;
(b) excès de pouvoir manifeste du Tribunal;
(c) corruption d'un membre du Tribunal;
(d) inobservation grave d'une règle fondamentale de procédure;
(e) défaut de motifs.

(2) Toute demande doit être formée dans les cent-vingt jours suivant le prononcé de la sentence, sauf si l'annulation est demandée pour cause de corruption, auquel cas ladite demande doit être présentée dans les cent-vingt jours suivant la découverte de la corruption et, en tout cas, dans les trois ans suivant le prononcé de la sentence.

(3) Au reçu de la demande, le Président nomme immédiatement parmi les personnes dont les noms figurent sur la liste des arbitres, un Comité *ad hoc* de trois membres. Aucun membre dudit Comité ne peut être choisi parmi les membres du Tribunal ayant rendu la sentence, ni posséder la même nationalité qu'un des membres dudit Tribunal ni celle d'un Etat partie au différend ou d'un Etat dont le

ressortissant est partie au différend, ni avoir été désigné pour figurer sur la liste des arbitres par l'un desdits Etats, ni avoir rempli les fonctions de conciliateur dans la même affaire. Le Comité est habilité à annuler la sentence en tout ou en partie pour l'un des motifs énumérés à l'alinéa (1) du présent Article.

(4) Les dispositions des Articles 41–45, 48, 49, 53 et 54 des Chapitres VI et VII s'appliquent *mutatis mutandis* à la procédure devant le Comité.

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

(6) Si la sentence est déclarée nulle, le différend est, à la requête de la partie la plus diligente, soumis à un nouveau Tribunal constitué conformément a la Section 2 du présent Chapitre.

Section 6

De la Reconnaissance et de l'Exécution de la Sentence

Article 53

(1) La sentence est obligatoire à l'égard des parties et ne peut être l'objet d'aucun appel ou autre recours, à l'exception de ceux prévus à la présente Convention. Chaque partie doit donner effet à la sentence conformément à ses termes, sauf si l'exécution en est suspendue en vertu des dispositions de la présente Convention.

(2) Aux fins du présent Article, une "sentence" inclut toute décision concernant l'interprétation, la révision ou l'annulation de la sentence prise en vertu des Articles 50, 51 ou 52.

Article 54

(1) Chaque Etat contractant reconnaît toute sentence rendue dans le cadre de la présente Convention comme

obligatoire et assure l'exécution sur son territoire des obligations pécuniaires que la sentence impose comme s'il s'agissait d'un jugement définitif d'un tribunal fonctionnant sur le territoire dudit Etat. Un Etat contractant ayant une constitution fédérale peut assurer l'exécution de la sentence par l'entremise de ses tribunaux fédéraux, ceux-ci devant considérer une telle sentence comme un jugement définitif des tribunaux de l'un des Etats fédérés.

(2) Pour obtenir la reconnaissance et l'exécution d'une sentence sur le territoire d'un Etat contractant, la partie intéressée doit en présenter copie certifiée conforme par le Secrétaire Général au tribunal national compétent ou à toute autre autorité que ledit Etat contractant aura désigné à cet effet. Chaque Etat contractant fait savoir au Secrétaire Général le tribunal compétent ou les autorités internes qu'il désigne à cet effet et le tient informé des changements éventuels.

(3) L'exécution est régie par la législation concernant l'exécution des jugements en vigueur dans l'Etat sur le territoire duquel on cherche à y procéder.

Article 55

Aucune des dispositions de l'Article 54 ne peut être interprétée comme faisant exception au droit en vigueur dans un Etat contractant concernant l'immunité d'exécution dudit Etat ou d'un Etat étranger.

CHAPITRE V

Du Remplacement et de la Récusation des Conciliateurs et des Arbitres

Article 56

(1) Une fois qu'une Commission ou un Tribunal a été constitué et la procédure engagée, sa composition ne peut être modifiée. Toutefois, en cas de décès, d'incapacité ou de démission d'un conciliateur ou d'un arbitre, il est pourvu à la vacance selon les dispositions du Chapitre III, Section 2 ou du Chapitre IV, Section 2.

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

(3) Si un conciliateur ou un arbitre nommé par une partie démissionne sans l'assentiment de la Commission ou du Tribunal dont il est membre, le Président pourvoit à la vacance en prenant un nom sur la liste appropriée.

Article 57

Une partie peut demander à la Commission ou au Tribunal la récusation d'un de ses membres pour tout motif impliquant un défaut manifeste des qualités requises par l'Article 14, alinéa (1). Une partie à une procédure d'arbitrage peut, en outre, demander la récusation d'un arbitre pour le motif qu'il ne remplissait pas les conditions fixées à la Section 2 du Chapitre IV pour la nomination au Tribunal Arbitral.

Article 58

Les autres membres de la Commission ou du Tribunal, selon le cas, se prononcent sur toute demande en récusation d'un conciliateur ou d'un arbitre. Toutefois, en cas de partage égal des voix, ou si la demande en récusation vise un conciliateur ou un arbitre unique ou une majorité de la Commission ou du Tribunal, la décision est prise par le Président. Si le bien-fondé de la demande est reconnu, le conciliateur ou l'arbitre visé par la décision doit démissionner et il est pourvu à la vacance selon les dispositions du Chapitre III, Section 2 ou du Chapitre IV, Section 2.

CHAPITRE VI

Des Frais de Procédure

Article 59

Les redevances dues par les parties pour l'utilisation des services du Centre sont fixées par le Secrétaire Général conformément aux règlements adoptés en la matière par le Conseil Administratif.

Article 60

(1) Chaque Commission et chaque Tribunal fixe les honoraires et frais de ses membres dans les limites qui sont définies par le Conseil Administratif et après consultation du Secrétaire Général.

(2) Nonobstant les dispositions de l'alinéa précédent, les parties peuvent fixer par avance, en accord avec la Commission ou le Tribunal, les honoraires et les frais de ses membres.

Article 61

(1) Dans le cas d'une procédure de conciliation les honoraires et frais des membres de la Commission ainsi que les redevances dues pour l'utilisation des services du Centre sont supportés à parts égales par les parties. Chaque partie supporte toutes les autres dépenses qu'elle expose pour les besoins de la procédure.

(2) Dans le cas d'une procédure d'arbitrage le Tribunal fixe, sauf accord contraire des parties, le montant des dépenses exposées par elles pour les besoins de la procédure et décide des modalités de répartition et de paiement desdites dépenses, des honoraires et des frais des membres du Tribunal et des redevances dues pour l'utilisation des services du Centre. Cette décision fait partie intégrante de la sentence.

CHAPITRE VII

Du Lieu de la Procédure

Article 62

Les procédures de conciliation et d'arbitrage prévues par la présente Convention se déroulent au siège du Centre, sous réserve des dispositions qui suivent.

Article 63

Si les parties en décident ainsi, les procédures de conciliation et d'arbitrage peuvent se dérouler:

(a) soit au siège de la Cour Permanente d'Arbitrage ou de toute autre institution appropriée, publique ou privée, avec laquelle le Centre conclut tous arrangements à cet effet;

(b) soit en tout autre lieu approuvé par la Commission ou le Tribunal après consultation du Secrétaire Général.

CHAPITRE VIII

Differénds Entre Etats Contractants

Article 64

Tout différend qui pourrait surgir entre les Etats contractants quant à l'interprétation ou l'application de la présente Convention et qui ne serait pas résolu à l'amiable est porté devant la Cour Internationale de Justice à la demande de toute partie au différend, à moins que les Etats intéressés ne conviennent d'une autre méthode de règlement.

CHAPITRE IX

Amendements

Article 65

Tout Etat contractant peut proposer des amendements à la présente Convention. Tout texte d'amendement doit être communiqué au Secrétaire Général 90 jours au moins avant la réunion du Conseil Administratif au cours de laquelle ledit amendment doit être examiné, et doit être immédiatement transmis par lui à tous les membres du Conseil Administratif.

Article 66

(1) Si le Conseil Administratif le décide à la majorité des deux tiers de ses membres, l'amendement proposé est distribué à tous Etats contractants aux fins de ratifica-

tion, d'acceptation ou d'approbation. Chaque amendement entre en vigueur 30 jours après l'envoi par le dépositaire de la présente Convention d'une notice adressée aux Etats contractants les informant que tous les Etats contractants ont ratifié, accepté ou approuvé l'amendement.

(2) Aucun amendement ne peut porter atteinte aux droits et obligations d'un Etat contractant, d'une collectivité publique ou d'un organisme en dépendant ou d'un ressortissant d'un Etat contractant, aux termes de la présente Convention qui découlent d'un consentement à la compétence du Centre donné avant la date d'entrée en vigueur dudit amendement.

CHAPITRE X

Dispositions Finales

Article 67

La présente Convention est ouverte à la signature des Etats membres de la Banque. Elle est également ouverte à la signature de tout autre Etat partie au Statut de la Cour Internationale de Justice que le Conseil Administratif, à la majorité des deux tiers de ses membres, aura invité à signer la Convention.

Article 68

(1) La présente Convention est soumise à la ratification, à l'acceptation ou à l'approbation des Etats signataires conformément à leurs procédures constitutionnelles.

(2) La présente Convention entrera en vigueur 30 jours après la date du dépôt du vingtième instrument de ratification, d'acceptation ou d'approbation. A l'égard de tout Etat déposant ultérieurement son instrument de ratification, d'acceptation ou d'approbation, elle entrera en vigueur 30 jours après la date dudit dépôt.

Article 69

Tout Etat contractant doit prendre les mesures législatives ou autres qui seraient nécessaires en vue de

donner effet sur son territoire aux dispositions de la présente Convention.

Article 70

La présente Convention s'applique à tous les territoires qu'un Etat contractant représente sur le plan international, à l'exception de ceux qui sont exclus par ledit Etat par notification adressée au dépositaire de la présente Convention soit au moment de la ratification, acceptation ou approbation soit ultérieurement.

Article 71

Tout Etat contractant peut dénoncer la présente Convention par notification adressée au dépositaire de la présente Convention. La dénonciation prend effet six mois après réception de ladite notification.

Article 72

Aucune notification par un Etat contractant en vertu des articles 70 et 71 ne peut porter atteinte aux droits et obligations dudit Etat, d'une collectivité publique ou d'un organisme en dépendant ou d'un ressortissant dudit Etat, aux termes de la présente Convention qui découlent d'un consentement à la compétence du Centre donné par l'un d'eux antérieurement à la réception de ladite notification par le dépositaire.

Article 73

Les instruments de ratification, d'acceptation ou d'approbation de la présente Convention et de tous amendements qui y seraient apportés seront déposés auprès de la Banque, laquelle agira en qualité de dépositaire de la présente Convention. Le dépositaire transmettra des copies de la présente Convention certifiées conformes aux Etats membres de la Banque et à tout autre Etat invité à signer la Convention.

Article 74

Le dépositaire enregistrera la présente Convention auprès du Secrétariat des Nations Unies conformément à

l'article 102 de la Charte des Nations Unies et des Règlements y afférents adoptés par l'Assemblée Générale.

Article 75

Le dépositaire donnera notification à tous les Etats signataires des informations concernant:

(a) les signatures conformément à l'article 67;
(b) le dépôt des instruments de ratification, d'acceptation ou d'approbation conformément à l'article 73;
(c) la date d'entrée en vigueur de la présente Convention conformément à l'article 68;
(d) les exclusions de l'application territoriale conformément à l'article 70;
(e) la date d'entrée en vigueur de tout amendement à la présente Convention conformément à l'article 66;
(f) les dénonciations conformément à l'article 71.

CONVENIO SOBRE ARREGLO DE DIFERENCIAS RELATIVAS A INVERSIONES ENTRE ESTADOS Y NACIONALES DE OTROS ESTADOS

PREAMBULO

Los Estados Contratantes

Considerando la necesidad de una cooperación internacional para el desarrollo económico y la función que en ello desempeñan las inversiones internacionales de carácter privado;

Teniendo en Cuenta la posibilidad de que periódicamente surjan diferencias en relación con tales inversiones entre Estados Contratantes y nacionales de otros Estados Contratantes;

Reconociendo que aun cuando tales diferencias han venido sometiéndose corrientemente a sistemas procesales nacionales, métodos internacionales de arreglo pueden ser apropiados, en ciertos casos, para su solución;

Atribuyendo Particular Importancia a la disponibilidad de mecanismos de conciliación o arbitraje internacionales ante los cuales los Estados Contratantes y nacionales de otros Estados Contratantes puedan someter tales diferencias cuando así lo deseen;

Deseando crear tales mecanismos bajo los auspicios del Banco Internacional de Reconstrucción y Fomento;

Reconociendo que el consentimiento mutuo de las partes en someter dichas diferencias a conciliación o a arbitraje a través de aquellos mecanismos constituye un acuerdo obligatorio lo que exige particularmente que sea otorgada la debida consideración a las recomendaciones de los conciliadores y que se ejecuten los laudos arbitrales; y

Declarando que, a no ser que medie el consentimiento del Estado Contratante, la mera ratificación, aceptación o aprobación de este Convenio por parte de dicho Estado no se reputará que constituye una obligación de someter ninguna diferencia a conciliación o arbitraje,

Han acordado lo siguiente:

CAPITULO I

Centro Internacional de Arreglo de Diferencias Relativas a Inversiones

Sección 1

Creación y Organización

Artículo 1

(1) Por el presente Convenio se crea el Centro Internacional de Arreglo de Diferencias Relativas a Inversiones (en lo sucesivo llamado el Centro).

(2) El Centro tendrá por objeto facilitar la sumisión a un procedimiento de conciliación y arbitraje de las diferencias relativas a inversiones entre Estados Contratantes y nacionales de otros Estados Contratantes, de acuerdo con las disposiciones de este Convenio.

Artículo 2

La sede del Centro será la oficina principal del Banco Internacional de Reconstrucción y Fomento (en lo sucesivo llamado el Banco). La sede podrá trasladarse a otro lugar por decisión del Consejo Administrativo aprobada por una mayoría de dos terceras partes de sus miembros.

Artículo 3

El Centro estará compuesto por un Consejo Administrativo y un Secretariado, y tendrá disponible una Lista de Conciliadores y una Lista de Arbitros.

Sección 2

El Consejo Administrativo

Artículo 4

(1) El Consejo Administrativo estará compuesto por un representante de cada uno de los Estados Contratantes. Un suplente podrá actuar con carácter de representante en caso de ausencia de una reunión o incapacidad del titular.

(2) Salvo en caso de designación contraria, el gobernador y el gobernador suplente del Banco designados por

un Estado Contratante serán *ex officio* el representante y el suplente de ese Estado, respectivamente.

Artículo 5

El Presidente del Banco será *ex officio* Presidente del Consejo Administrativo (en lo sucesivo llamado el Presidente) pero sin derecho a voto. En caso de ausencia o incapacidad para actuar y mientras esté vacante el cargo de Presidente del Banco, la persona que lo sustituya en el Banco actuará como Presidente del Consejo Administrativo.

Artículo 6

(1) Sin perjuicio de las demás facultades y funciones que le confieren otras disposiciones de este Convenio, el Consejo Administrativo tendrá las siguientes:

(a) adoptar los reglamentos administrativos y los de orden financiero para el funcionamiento del Centro;

(b) adoptar las reglas de procedimiento a seguir para iniciar la conciliación y el arbitraje;

(c) adoptar las reglas procesales aplicables a la conciliación y al arbitraje (en lo sucesivo llamadas Reglas de Conciliación y Reglas de Arbitraje);

(d) aprobar los arreglos con el Banco sobre el uso de sus servicios administrativos e instalaciones;

(e) fijar las condiciones de servicios del Secretario General y de cualquier Secretario General Adjunto;

(f) adoptar el presupuesto anual de ingresos y egresos del Centro;

(g) aprobar el informe anual del Centro.

Para la aprobación de lo dispuesto en los incisos (a), (b), (c) y (f) se requerirá una mayoría de dos tercios de los votos de los miembros del Consejo Administrativo.

(2) El Consejo Administrativo podrá nombrar tantas Comisiones como considere necesarias.

(3) Además, el Consejo Administrativo ejercerá todas las facultades y realizará todas las funciones que a

su juicio sean necesarias para llevar a efecto las disposiciones del presente Convenio.

Artículo 7

(1) El Consejo Administrativo celebrará una reunión anual; y tantas otras como sean acordadas por el Consejo, o convocadas por el Presidente, o por el Secretario General cuando lo soliciten a este último cinco miembros o la cuarta parte de los mismos, de estas dos cifras la que sea menor.

(2) Cada miembro del Consejo Administrativo tendrá un voto, y, salvo disposición expresa en contrario de este Convenio, todos los asuntos que se presenten ante el Consejo se decidirán por mayoría de votos emitidos.

(3) Habrá quórum en las reuniones del Consejo Administrativo cuando esté presente la mayoría de sus miembros.

(4) El Consejo Administrativo podrá establecer, por mayoría de dos tercios de sus miembros, un procedimiento mediante el cual el Presidente pueda pedir votación del Consejo sin convocar a una reunión del mismo. Sólo se considerará válida la votación si la mayoría de los miembros del Consejo emiten el voto dentro del plazo fijado en dicho procedimiento.

Artículo 8

Los miembros del Consejo Administrativo y el Presidente desempeñarán sus funciones sin remuneración por parte del Centro.

Sección 3

El Secretariado

Artículo 9

El Secretariado estará constituido por un Secretario General, por uno o más Secretarios Generales Adjuntos y por el personal.

Artículo 10

(1) El Secretario General y cualquier Secretario General Adjunto serán elegidos, a propuesta del Presidente,

por el Consejo Administrativo por mayoría de dos tercios de sus miembros por un período de servicio no mayor de seis años, pudiendo ser reelegidos. Previa consulta de los miembros del Consejo Administrativo, el Presidente presentará uno o más candidatos para cada uno de esos cargos.

(2) Los cargos de Secretario General y de Secretario General Adjunto serán incompatibles con el ejercicio de toda función política. Ni el Secretario General ni ningún Secretario General Adjunto podrán desempeñar cargo alguno o dedicarse a otra actividad, sin la aprobación del Consejo Administrativo.

(3) Durante la ausencia o la incapacidad del Secretario General y mientras esté vacante el cargo, el Adjunto actuará como Secretario General. Si hubiere más de un Adjunto, el Consejo Administrativo determinará por adelantado el orden en que deberán actuar como Secretario General.

Artículo 11

El Secretario General ostentará la representación legal del Centro y será el funcionario principal y responsable de su administración, inclusive del nombramiento del personal, de acuerdo con las disposiciones de este Convenio y con las normas dictadas por el Consejo Administrativo. Tendrá facultades para autenticar los laudos arbitrales dictados conforme a este Convenio y para conferir copias certificadas de los mismos. Desempeñará también la función de registrador.

Sección 4

Las Listas

Artículo 12

La Lista de Conciliadores y la Lista de Arbitros contendrán los nombres de las personas calificadas, designadas tal como se dispone más adelante, y que estén dispuestas a desempeñar sus cargos.

Artículo 13

(1) Cada Estado Contratante podrá designar cuatro personas para cada Lista quienes podrán ser, aunque no necesariamente, nacionales de ese Estado.

(2) El Presidente podrá designar diez personas para cada Lista, cuidando que las personas así designadas para cada Lista sean de diferente nacionalidad.

Artículo 14

(1) Las personas designadas para figurar en las Listas deberán gozar de amplia consideración moral, tener reconocida competencia en el campo del Derecho, del comercio, de la industria o de las finanzas, e inspirar plena confianza en su imparcialidad de juicio. La competencia en el campo del Derecho será, para las personas designadas en la Lista de Arbitros, circunstancia particularmente relevante.

(2) Al hacer la designación de las personas que han de figurar en las Listas, el Presidente deberá además considerar la importancia que reviste el hecho de que en aquéllas estén representados los principales sistemas jurídicos del mundo y las ramas más importantes de la actividad económica.

Artículo 15

(1) La designación de los integrantes de las Listas será para un período de seis años, pudiendo ser indefinidamente repetida.

(2) En caso de muerte o renuncia de un miembro de cualquiera de las Listas, la autoridad que lo hubiere designado tendrá derecho a nombrar otra persona que le reemplace en sus funciones por el resto del período de su predecesor.

(3) Los componentes de las Listas continuarán en las mismas hasta que sus sucesores hayan sido designados.

Artículo 16

(1) Una misma persona podrá figurar en ambas Listas.

(2) Si la designación de alguna persona para figurar en una misma Lista hubiese sido hecha por más de un Estado Contratante, o por uno o más Estados Contratantes y el Presidente, se entenderá que aquélla corresponde a la autoridad que la hizo en primer lugar; sin embargo, si esta persona es nacional del Estado que la designó, se entenderá que el nombramiento corresponde a tal Estado.

(3) Todas las designaciones se notificarán al Secretario General y entrarán en vigor en la fecha en que la notificación fué recibida.

Sección 5

Financiación del Centro

Artículo 17

Si los gastos del Centro no pudieren ser cubiertos con los derechos percibidos por la utilización del Centro, o con otros ingresos, el exceso se sufragará por los Estados Contratantes miembros del Banco en proporción a sus respectivas subscripciones de capital del Banco, y por los Estados Contratantes no miembros de éste de acuerdo con las reglas que el Consejo Administrativo adopte.

Sección 6

Status, Inmunidades y Privilegios

Artículo 18

El Centro tendrá plena personalidad jurídica internacional. La capacidad legal del Centro incluye la de

(a) contratar;

(b) adquirir bienes muebles e inmuebles y disponer de ellos;

(c) comparecer en juicio.

Artículo 19

Para que el Centro pueda dar cumplimiento a sus fines, gozará, en los territorios de cada Estado Contratante, de las inmunidades y privilegios que se señalan en esta Sección.

Artículo 20

El Centro, sus bienes y derechos, gozarán de inmunidad frente a toda acción judicial, salvo que renuncie a ella.

Artículo 21

El Presidente, los miembros del Consejo Administrativo, las personas que actúen como conciliadores o árbitros o como miembros de la Comisión designados de conformidad con lo dispuesto en el apartado (3) del Artículo 52, y los funcionarios y empleados del Secretariado

(a) gozarán de inmunidad frente a toda acción judicial respecto de los actos realizados por ellos en el ejercicio de sus funciones, salvo que el Centro renuncie a dicha inmunidad;

(b) cuando no sean nacionales del Estado donde ejerzan sus funciones, gozarán de las mismas inmunidades en materia de restricciones a la inmigración, requisitos de registro de extranjeros y obligaciones derivadas del servicio militar u otras prestaciones análogas, y gozarán de idénticas facilidades respecto a restricciones de cambio y del mismo tratamiento respecto a facilidades de desplazamiento, que los Estados Contratantes concedan a los representantes, funcionarios y empleados de rango similar de otros Estados Contratantes.

Artículo 22

Las disposiciones del Artículo 21 se aplicarán a las personas que comparezcan en los procedimientos promovidos conforme a este Convenio como partes, apoderados, consejeros, abogados, testigos o peritos, con excepción de las contenidas en el párrafo (b) del mismo que se aplicarán solamente en relación con su desplazamiento hacia y desde el lugar donde los procedimientos se tramiten y con su permanencia en dicho lugar.

Artículo 23

(1) Los archivos del Centro, dondequiera que se encuentren, serán inviolables.

(2) Respecto de sus comunicaciones oficiales, el Centro recibirá de cada Estado Contratante un trato no menos favorable que el acordado a otras organizaciones internacionales.

Artículo 24

(1) El Centro, su patrimonio, sus bienes y sus ingresos y las operaciones y transacciones autorizadas por este Convenio estarán exentos de toda clase de impuestos y de derechos arancelarios. El Centro quedará también exento de toda responsabilidad respecto a la recaudación o pago de tales impuestos o derechos.

(2) Salvo que se trate de nacionales del Estado, no devengarán impuestos las cantidades pagadas por el Centro al Presidente o a los miembros del Consejo Administrativo por razón de dietas, ni tampoco los sueldos, dietas y demás emolumentos pagados por el Centro a los funcionarios o empleados del Secretariado.

(3) No devengarán impuestos las cantidades recibidas a título de honorarios o dietas por las personas que actúen como conciliadores o árbitros o como miembros de la Comisión designados de conformidad con lo dispuesto en el apartado (3) del Artículo 52, en los procedimientos promovidos conforme a este Convenio, por razón de servicios prestados en dichos procedimientos, si la única base jurisdiccional de imposición es la ubicación del Centro, el lugar donde se desarrollen los procedimientos o el lugar de pago de los honorarios o dietas.

CAPITULO II

Jurisdicción del Centro

Artículo 25

(1) La jurisdicción del Centro se extenderá a toda diferencia de naturaleza jurídica que surja directamente de una inversión entre un Estado Contratante (o cualquiera

subdivisión política u organismo público de un Estado Contratante acreditados ante el Centro por dicho Estado) y el nacional de otro Estado Contratante y que las partes hayan consentido por escrito someter al Centro. El consentimiento prestado por las partes no podrá ser unilateralmente retirado.

(2) Se entenderá por "nacional de otro Estado Contratante":

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

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

(3) El consentimiento de una subdivisión política u organismo público requerirá la aprobación del Estado, salvo que éste notifique al Centro que tal aprobación no es necesaria.

(4) Los Estados Contratantes podrán, al ratificar, aceptar o aprobar este Convenio o en cualquier momento ulterior, notificar al Centro la clase o clases de diferencias que en principio aceptarían someter o no a su jurisdicción.

Esta notificación no se entenderá que constituye el consentimiento a que se refiere el apartado (1) anterior. El Secretario General transmitirá inmediatamente dicha notificación a todos los Estados Contratantes.

Artículo 26

Todo consentimiento prestado para someterse al procedimiento de arbitraje se reputará, salvo que conste lo contrario, consentimiento a la sumisión al mismo, con exclusión de cualquier otro procedimiento. Los Estados Contratantes podrán condicionar tal sumisión a que se agoten las vías administrativas o judiciales internas.

Artículo 27

(1) Ningún Estado Contratante concederá protección diplomática ni promoverá una reclamación internacional respecto de cualquier diferencia que uno de sus nacionales y otro Estado Contratante hayan consentido someter o hayan sometido a arbitraje conforme a este Convenio, salvo en caso de que este último Estado Contratante no haya acatado el laudo dictado en tal diferencia o lo haya incumplido.

(2) A los efectos de este Artículo, no se considerará protección diplomática las gestiones diplomáticas informales que tengan como único fin facilitar la resolución de una diferencia, de acuerdo con este Convenio.

CAPITULO III

La Conciliación

Sección 1

Solicitud de Conciliación

Artículo 28

(1) Cualquier Estado Contratante o nacional de un Estado Contratante que quiera incoar un procedimiento de conciliación, dirigirá, a tal efecto, una solicitud escrita al Secretario General y éste trasladará copia de la misma a la otra parte.

(2) La solicitud deberá contener los datos referentes al asunto objeto de la diferencia, a la identidad de las partes y al consentimiento de éstas a la conciliación, de conformidad con las reglas de procedimiento a seguir para iniciar la conciliación y el arbitraje.

(3) El Secretario General registrará la solicitud salvo que, de la información contenida en la solicitud, encuentre que la diferencia se halla manifiestamente fuera de la jurisdicción del Centro. Notificará inmediatamente a las partes el acto de registro de la solicitud, o su negativa.

Sección 2

Constitución de la Comisión de Conciliación

Artículo 29

(1) Una vez registrada la solicitud de acuerdo con el Artículo 28, se procederá a la inmediata constitución de la Comisión de Conciliación (en lo sucesivo llamada la Comisión).

(2) (a) La Comisión se compondrá de un conciliador único o de un número impar de conciliadores, según lo acuerden las partes.

(b) Si las partes no se pusieren de acuerdo sobre el número de conciliadores y el modo de nombrarlos, la Comisión se constituirá con tres conciliadores designados, uno por cada parte y el tercero, que presidirá la Comisión, de común acuerdo.

Artículo 30

Si la Comisión no llegare a constituirse dentro de los 90 días siguientes a contar desde la fecha del traslado de la notificación del acto de registro, hecho por el Secretario General conforme al apartado (3) del Artículo 28, o dentro de cualquier otro plazo que las partes acuerden, el Presidente, a petición de cualquiera de éstas y, siendo posible, previa consulta de las mismas, deberá nombrar el conciliador o los conciliadores que aún no hubieren sido designados.

Artículo 31

(1) Los conciliadores nombrados podrán no pertenecer a la Lista de Conciliadores, salvo en los supuestos del Artículo 30.

(2) Todo conciliador que no sea nombrado de la Lista de Conciliadores deberá poseer las cualidades expresadas en el apartado (1) del Artículo 14.

Sección 3

Procedimiento de Conciliación

Artículo 32

(1) La Comisión resolverá sobre su propia competencia.

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

Artículo 33

Todo procedimiento de conciliación deberá tramitarse según las disposiciones de esta Sección y, salvo acuerdo en contrario de las partes, de conformidad con las Reglas de Conciliación vigentes en la fecha en que las partes prestaron su consentimiento a la conciliación. Toda cuestión de procedimiento no prevista en esta Sección, en las Reglas de Conciliación o en las demás reglas acordadas por las partes, será resuelta por la Comisión.

Artículo 34

(1) La Comisión deberá dilucidar los puntos controvertidos por las partes y esforzarse por lograr la avenencia entre ellas, en condiciones aceptables para ambas. A este fin, la Comisión podrá, en cualquier trámite del procedimiento y tantas veces como sea oportuno, proponer a las partes fórmulas de avenencia. Las partes colaborarán de buena fe con la Comisión al objeto de posibilitarle el cumplimiento de sus fines y prestarán a sus recomendaciones, la máxima consideración.

(2) Si las partes llegaren a un acuerdo, la Comisión levantará un acta, anotando los puntos controvertidos y haciendo constar dicha circunstancia. Si en cualquier trámite del procedimiento la Comisión estima que no hay probabilidades de lograr un acuerdo entre las partes, declarará concluso el procedimiento y redactará un acta, haciendo constar que la controversia fué sometida a conciliación sin lograrse la avenencia. Si una parte no compareciere o no se mostrare parte en el procedimiento, la Comisión lo hará así constar en el acta, declarando igualmente concluso el procedimiento.

Artículo 35

Salvo que las partes acuerden otra cosa, ninguna de ellas podrá invocar, en cualquier otro procedimiento, ya sea arbitral o judicial o ante cualquier otra autoridad, las consideraciones hechas por la otra parte, sus declaraciones, admisión de hechos u ofertas de avenencia, expuestas dentro del procedimiento de conciliación, o en el informe o en las recomendaciones propuestas por la Comisión.

CAPITULO IV

El Arbitraje

Sección 1

Solicitud de Arbitraje

Artículo 36

(1) Cualquier Estado Contratante o nacional de un Estado Contratante que quiera incoar un procedimiento de arbitraje, dirigirá, a tal efecto, una solicitud escrita al Secretario General y éste trasladará copia de la misma a la otra parte.

(2) La solicitud deberá contener los datos referentes al asunto objeto de la diferencia, a la identidad de las partes y al consentimiento de éstas al arbitraje, de conformidad con las reglas de procedimiento a seguir para iniciar la conciliación y el arbitraje.

(3) El Secretario General registrará la solicitud salvo que, de la información contenida en la solicitud, encuentre que la diferencia se halla manifiestamente fuera de la jurisdicción del Centro. Notificará inmediatamente a las partes el acto de registro de la solicitud, o su negativa.

Sección 2

Constitución del Tribunal

Artículo 37

(1) Una vez registrada la solicitud de acuerdo con el Artículo 36, se procederá a la inmediata constitución del Tribunal de Arbitraje (en lo sucesivo llamado el Tribunal).

(2) (a) El Tribunal se compondrá de un árbitro único o de un número impar de árbitros, según lo acuerden las partes.

(b) Si las partes no se pusieren de acuerdo sobre el número de árbitros y el modo de nombrarlos, el Tribunal se constituirá con tres árbitros designados, uno por cada parte y el tercero, que presidirá el Tribunal, de común acuerdo.

Artículo 38

Si el Tribunal no llegare a constituirse dentro de los 90 días siguientes a contar desde la fecha del traslado de la notificación del acto de registro, hecho por el Secretario General conforme al apartado (3) del Artículo 36, o dentro de cualquier otro plazo que las partes acuerden, el Presidente, a petición de cualquiera de éstas y, siendo posible, previa consulta de las mismas, deberá nombrar el árbitro o los árbitros que aún no hubieren sido designados. Los árbitros nombrados por el Presidente conforme a este Artículo no podrán ser nacionales del Estado Contratante, parte en la diferencia, o del Estado Contratante cuyo nacional sea parte en la diferencia.

Artículo 39

La mayoría de los árbitros no podrá tener la nacionalidad del Estado Contratante ni la del Estado a que

pertenezca el nacional del otro Estado Contratante, que sean partes en la diferencia. La limitación anterior no será aplicable cuando ambas partes, de común acuerdo, designen el árbitro único o cada uno de los miembros del Tribunal.

Artículo 40

(1) Los árbitros nombrados podrán no pertenecer a la Lista de Arbitros, salvo en el caso de que los nombre el Presidente conforme al Artículo 38.

(2) Todo árbitro que no sea nombrado de la Lista de Arbitros deberá poseer las cualidades expresadas en el apartado (1) del Artículo 14.

Sección 3

Facultades y Funciones del Tribunal

Artículo 41

(1) El Tribunal resolverá sobre su propia competencia.

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

Artículo 42

(1) El Tribunal decidirá la diferencia de acuerdo con las normas de derecho acordadas por las partes. En defecto de acuerdo, el Tribunal aplicará la legislación del Estado que sea parte en la diferencia, incluidas sus normas de derecho internacional privado, y aquellas normas de derecho internacional que pudieren ser aplicables.

(2) El Tribunal no podrá eximirse de fallar so pretexto de silencio u obscuridad de la ley.

(3) Las disposiciones de los precedentes apartados de este Artículo no impedirán al Tribunal, si las partes así lo acuerdan, decidir la diferencia *ex aequo et bono*.

Artículo 43

Salvo que las partes acuerden otra cosa, el Tribunal, en cualquier momento del procedimiento, podrá, si lo estima necesario:

(a) solicitar de las partes la aportación de documentos o de cualquier otro medio de prueba;

(b) trasladarse al lugar en que se produjo la diferencia y practicar en él las diligencias de prueba que considere pertinentes.

Artículo 44

Todo procedimiento de arbitraje deberá tramitarse según las disposiciones de esta Sección y, salvo acuerdo en contrario de las partes, de conformidad con las Reglas de Arbitraje vigentes en la fecha en que las partes prestaron su consentimiento al arbitraje. Cualquier cuestión de procedimiento no prevista en esta Sección, en las Reglas de Arbitraje o en las demás reglas acordadas por las partes, será resuelta por el Tribunal.

Artículo 45

(1) El que una parte no comparezca en el procedimiento o no haga uso de su derecho, no supondrá la admisión de los hechos alegados por la otra parte ni allanamiento a sus pretensiones.

(2) Si una parte dejare de comparecer o no hiciere uso de su derecho, podrá la otra parte, en cualquier trámite del procedimiento, instar del Tribunal que resuelva los puntos controvertidos y dicte el laudo. El Tribunal, antes de dictarlo, concederá a aquélla, previa notificación, un término de gracia, salvo que le conste que la misma ha de persistir en su conducta.

Artículo 46

Salvo acuerdo de las partes, el Tribunal deberá, a petición de una de ellas, resolver las demandas incidentales, adicionales o reconvencionales que se relacionen directamente con la diferencia, siempre que estén dentro de los límites del consentimiento prestado por las partes y caigan además dentro de la jurisdicción del Centro.

Artículo 47

Salvo acuerdo contrario de las partes, el Tribunal, si considera que las circunstancias así lo requieren, podrá recomendar la adopción de aquellas medidas provisionales que considere necesarias para salvaguardar los respectivos derechos de las partes.

Sección 4

El Laudo

Artículo 48

(1) El Tribunal decidirá todas las cuestiones por mayoría de votos de sus miembros.

(2) El laudo deberá dictarse por escrito y llevará la firma de los miembros del Tribunal que hayan votado en su favor.

(3) El laudo contendrá declaración sobre todas las pretensiones sometidas por las partes al Tribunal y será motivado.

(4) Los árbitros, estén o no de acuerdo con la mayoría, podrán formular un voto particular o manifestar su voto contrario si disienten de ella.

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

Artículo 49

(1) El Secretario General procederá a la inmediata remisión a cada parte de una copia certificada del laudo. Este se entenderá dictado en la fecha en que tenga lugar dicha remisión.

(2) A requerimiento de una de las partes, instado dentro de los 45 días después de la fecha del laudo, el Tribunal podrá, previa notificación a la otra parte, decidir cualquier extremo que haya omitido resolver en dicho laudo y rectificar los errores materiales o aritméticos del mismo. En ambos casos, la decisión constituirá parte del laudo y se notificará en igual forma que éste, computándose desde la fecha en que se dicte tal resolución los plazos establecidos en el apartado (2) del Artículo 51 y apartado (2) del Artículo 52.

Sección 5

Aclaración, Revisión y Anulación del Laudo

Artículo 50

(1) Si surgiere una diferencia entre las partes acerca del sentido o alcance del laudo, cualquiera de ellas podrá solicitar su aclaración mediante escrito dirigido al Secretario General.

(2) De ser posible, la solicitud deberá someterse al mismo Tribunal que dictó el laudo. Si no lo fuere, se constituirá un nuevo Tribunal de conformidad con lo dispuesto en la Sección 2 de este Capítulo. Si las circunstancias lo exigieren, el Tribunal podrá suspender la ejecución del laudo hasta que decida sobre la aclaración.

Artículo 51

(1) Cualquiera de las partes podrá pedir, mediante escrito dirigido al Secretario General, la revisión del laudo, cuando se descubra algún hecho que hubiera podido influir decisivamente en el laudo; y siempre que, al tiempo de dictarse el laudo, hubiere sido desconocido por el Tribunal y por la parte que instó la revisión y que el desconocimiento de ésta no se deba a su propia negligencia.

(2) La petición de revisión deberá presentarse dentro de los 90 días siguientes al día en que fué descubierto el hecho, y, en todo caso, dentro de los tres años siguientes a la fecha del laudo.

(3) De ser posible, la solicitud deberá someterse al mismo Tribunal que dictó el laudo. Si no lo fuere, se constituirá un nuevo Tribunal de conformidad con lo dispuesto en la Sección 2 de este Capítulo. Si las circunstancias lo exigieren, el Tribunal podrá suspender la ejecución del laudo hasta que decida sobre la revisión.

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

Artículo 52

(1) Cualquiera de las partes podrá solicitar la anulación del laudo mediante escrito dirigido al Secretario General al amparo de una o más de las siguientes causas:

(a) que el Tribunal se hubiere constituido incorrectamente;

(b) que el Tribunal se hubiere extralimitado manifiestamente de sus facultades;

(c) que algún miembro del Tribunal hubiere sido corrompido;

(d) que se hubiere producido un quebrantamiento grave de una norma de procedimiento; o

(e) que no se hubieren expresado en el laudo los motivos en que se funda.

(2) Las solicitudes deberán presentarse dentro de los 120 días a contar desde la fecha del laudo. Si la causa alegada fuese la prevista en la letra (c) del apartado (1) de este Artículo, el referido plazo de 120 días comenzará a computarse desde el descubrimiento del hecho pero, en todo caso, la solicitud deberá presentarse dentro de los tres años siguientes a la fecha del laudo.

(3) Al recibo de la petición, el Presidente procederá a la inmediata constitución de una Comisión *ad hoc* integrada por tres personas seleccionadas de la Lista de Arbitros. Ninguno de los miembros de la Comisión podrá haber pertenecido al Tribunal que dictó el laudo, ser de la misma nacionalidad que cualquiera de los miembros de dicho Tribunal, poseer la nacionalidad del Estado que sea parte en la diferencia o la del Estado a que pertenezca el nacional que también sea parte en ella, o haber sido designado para integrar la Lista de Arbitros por cualquiera de aquellos Estados o haber actuado como conciliador en la misma diferencia. Esta Comisión tendrá facultad para resolver sobre la anulación total o parcial del laudo por alguna de las causas enumeradas en el apartado (1).

(4) Las disposiciones de los Artículos 41–45, 48, 49, 53 y 54 y de los Capítulos VI y VII se aplicarán, *mutatis*

mutandis, al procedimiento que se tramite ante la Comisión.

(5) Si las circunstancias lo exigieren, la Comisión podrá suspender la ejecución del laudo hasta que decida sobre la anulación. Si la parte pidiere la suspensión de la ejecución del laudo en su solicitud, la ejecución se suspenderá provisionalmente hasta que la Comisión dé su decisión respecto a tal petición.

(6) Si el laudo fuere anulado, la diferencia será sometida, a petición de cualquiera de las partes, a la decisión de un nuevo Tribunal que deberá constituirse de conformidad con lo dispuesto en la Sección 2 de este Capítulo.

Sección 6

Reconocimiento y Ejecución del Laudo

Artículo 53

(1) El laudo será obligatorio para las partes y no podrá ser objeto de apelación o de cualquier otro recurso, excepto en los casos previstos en este Convenio. Las partes lo acatarán y cumplirán en todos sus términos, salvo en la medida en que se suspenda su ejecución, de acuerdo con lo establecido en las correspondientes cláusulas de este Convenio.

(2) A los fines previstos en esta Sección, el término "laudo" incluirá cualquier decisión que aclare, revise o anule el laudo, según los Artículos 50, 51 ó 52.

Artículo 54

(1) Todo Estado Contratante reconocerá al laudo dictado conforme a este Convenio carácter obligatorio y hará ejecutar dentro de sus territorios las obligaciones pecuniarias impuestas por el laudo como si se tratare de una sentencia firme dictada por un tribunal existente en dicho Estado. El Estado Contratante que se rija por una Constitución federal podrá hacer que se ejecuten los laudos a través de sus tribunales federales y podrá disponer que dichos tribunales reconozcan al laudo la misma eficacia que

a las sentencias firmes dictadas por los tribunales de cualquiera de los estados que lo integran.

(2) La parte que persiga el reconocimiento o ejecución del laudo en los territorios de un Estado Contratante deberá presentar, ante los tribunales competentes o ante cualquier otra autoridad designados por los Estados Contratantes a este efecto, una copia del mismo, debidamente certificada por el Secretario General. La designación de tales tribunales o autoridades y cualquier cambio ulterior que a este respecto se introduzca será notificada por los Estados Contratantes al Secretario General.

(3) El laudo se ejecutará de acuerdo con las normas que, sobre ejecución de sentencias, estuvieren en vigor en los territorios en que dicha ejecución se pretenda.

Artículo 55

Nada de lo dispuesto en el Artículo 54 se interpretará como derogatorio de las leyes vigentes en cualquier Estado Contratante relativas a la inmunidad en materia de ejecución de dicho Estado o de otro Estado extranjero.

CAPITULO V

Reemplazo y Recusación de Conciliadores y Arbitros

Artículo 56

(1) Tan pronto quede constituida la Comisión o el Tribunal y se inicie el procedimiento, su composición permanecerá invariable. La vacante por muerte, incapacidad o renuncia de un conciliador o árbitro será cubierta en la forma prescrita en la Sección 2 del Capítulo III y Sección 2 del Capítulo IV.

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

(3) Si un conciliador o árbitro, nombrado por una de las partes, renuncia sin el consentimiento de la Comisión

o Tribunal, el Presidente nombrará, de entre los que integran la correspondiente Lista, la persona que deba sustituirle.

Artículo 57

Cualquiera de las partes podrá proponer a la Comisión o Tribunal correspondiente la recusación de cualquiera de sus miembros por la carencia manifiesta de las cualidades exigidas por el apartado (1) del Artículo 14. Las partes en el procedimiento de arbitraje podrán, asimismo, proponer la recusación por las causas establecidas en la Sección 2 del Capítulo IV.

Artículo 58

La decisión sobre la recusación de un conciliador o árbitro se adoptará por los demás miembros de la Comisión o Tribunal, según los casos, pero, si hubiere empate de votos o se tratare de recusación de un conciliador o árbitro único, o de la mayoría de los miembros de una Comisión o Tribunal, corresponderá resolver al Presidente. Si la recusación fuere estimada, el conciliador o árbitro afectado deberá ser sustituido en la forma prescrita en la Sección 2 del Capítulo III y Sección 2 del Capítulo IV.

CAPITULO VI

Costas del Procedimiento

Artículo 59

Los derechos exigibles a las partes por la utilización del Centro serán fijados por el Secretario General de acuerdo con los aranceles adoptados por el Consejo Administrativo.

Artículo 60

(1) La Comisión o el Tribunal fijarán, previa consulta al Secretario General, los honorarios y gastos de sus miembros, dentro de los límites que periódicamente establezca el Consejo Administrativo.

(2) Sin perjuicio de lo dispuesto en el apartado (1) de este Artículo, las partes podrán acordar anticipadamente con la Comisión o el Tribunal la fijación de los honorarios y gastos de sus miembros.

Artículo 61

(1) En el caso de procedimiento de conciliación las partes sufragarán por partes iguales los honorarios y gastos de los miembros de la Comisión así como los derechos devengados por la utilización del Centro. Cada parte soportará cualquier otro gasto en que incurra, en relación con el procedimiento.

(2) En el caso de procedimiento de arbitraje el Tribunal determinará, salvo acuerdo contrario de las partes, los gastos en que éstas hubieren incurrido en el procedimiento, y decidirá la forma de pago y la manera de distribución de tales gastos, de los honorarios y gastos de los miembros del Tribunal y de los derechos devengados por la utilización del Centro. Tal fijación y distribución formarán parte del laudo.

CAPITULO VII

Lugar del Procedimiento

Artículo 62

Los procedimientos de conciliación y arbitraje se tramitarán, sin perjuicio de lo dispuesto en el Artículo siguiente, en la sede del Centro.

Artículo 63

Si las partes se pusieren de acuerdo, los procedimientos de conciliación y arbitraje podrán tramitarse:

(a) en la sede de la Corte Permanente de Arbitraje o en la de cualquier otra institución apropiada, pública o privada, con la que el Centro hubiere llegado a un acuerdo a tal efecto; o

(b) en cualquier otro lugar que la Comisión o Tribunal apruebe, previa consulta con el Secretario General.

CAPITULO VIII

Diferencias Entre Estados Contratantes

Artículo 64

Toda diferencia que surja entre Estados Contratantes sobre la interpretación o aplicación de este Convenio y que no se resuelva mediante negociación se remitirá, a instancia de una u otra parte en la diferencia, a la Corte Internacional de Justicia, salvo que los propios Estados acuerden acudir a otro modo de arreglo.

CAPITULO IX

Enmiendas

Artículo 65

Todo Estado Contratante podrá proponer enmiendas a este Convenio. El texto de la enmienda propuesta se comunicará al Secretario General con no menos de 90 días de antelación a la reunión del Consejo Administrativo a cuya consideración se ha de someter, y aquél la transmitirá inmediatamente a todos los miembros del Consejo Administrativo.

Artículo 66

(1) Si el Consejo Administrativo lo aprueba por mayoría de dos terceras partes de sus miembros, la enmienda propuesta será circulada a todos los Estados Contratantes para su ratificación, aceptación o aprobación. Las enmiendas entrarán en vigor 30 días después de la fecha en que el depositario de este Convenio despache una comunicación a los Estados Contratantes notificándolos que todos los Estados Contratantes han ratificado, aceptado o aprobado la enmienda.

(2) Tales enmiendas no afectarán a los derechos y obligaciones, conforme a este Convenio, de los Estados Contratantes, sus subdivisiones políticas u organismos públicos,

o de los nacionales de dichos Estados nacidos de consentimiento a la jurisdicción del Centro dado con anterioridad a la fecha de su entrada en vigor.

CAPITULO X

Disposiciones Finales

Artículo 67

Este Convenio quedará abierto para la firma de los Estados miembros del Banco. Quedará también abierto para la firma de cualquier otro Estado signatario del Estatuto de la Corte Internacional de Justicia a quien el Consejo Administrativo, por voto de dos tercios de sus miembros, hubiere invitado a firmar el Convenio.

Artículo 68

(1) Este Convenio será ratificado, aceptado o aprobado por los Estados signatarios de acuerdo con sus respectivas normas constitucionales.

(2) Este Convenio entrará en vigor 30 días después de la fecha del depósito del vigésimo instrumento de ratificación, aceptación o aprobación. Entrará en vigor respecto a cada Estado que con posterioridad deposite su instrumento de ratificación, aceptación o aprobación 30 días después de la fecha de dicho depósito.

Artículo 69

Los Estados Contratantes tomarán las medidas legislativas y de otro orden que sean necesarias para que las disposiciones de este Convenio tengan vigencia en sus territorios.

Artículo 70

Este Convenio se aplicará a todos los territorios de cuyas relaciones internacionales sea responsable un Estado Contratante salvo aquéllos que dicho Estado excluya mediante notificación escrita dirigida al depositario de este Convenio en la fecha de su ratificación, aceptación o aprobación, o con posterioridad.

Artículo 71

Todo Estado Contratante podrá denunciar este Convenio mediante notificación escrita dirigida al depositario del mismo. La denuncia producirá efecto seis meses después del recibo de dicha notificación.

Artículo 72

Las notificaciones de un Estado Contratante hechas al amparo de los Artículos 70 y 71 no afectarán a los derechos y obligaciones, conforme a este Convenio, de dicho Estado, sus subdivisiones políticas u organismos públicos, o de los nacionales de dicho Estado nacidos de consentimiento a la jurisdicción del Centro dado por alguno de ellos con anterioridad al recibo de dicha notificación por el depositario.

Artículo 73

Los instrumentos de ratificación, aceptación o aprobación de este Convenio y sus enmiendas se depositarán en el Banco, quien desempeñará la función de depositario de este Convenio. El depositario transmitirá copias certificadas del mismo a los Estados miembros del Banco y a cualquier otro Estado invitado a firmarlo.

Artículo 74

El depositario registrará este Convenio en el Secretariado de las Naciones Unidas de acuerdo con el Artículo 102 de la Carta de las Naciones Unidas y del Reglamento de la misma adoptado por la Asamblea General.

Artículo 75

El depositario notificará a todos los Estados signatarios lo siguiente:

(a) las firmas, conforme al Artículo 67;

(b) los depósitos de instrumentos de ratificación, aceptación y aprobación, conforme al Artículo 68;

(c) la fecha en que este Convenio entre en vigor, conforme al Artículo 69;

(d) las exclusiones de aplicación territorial, conforme al Artículo 70;

(e) la fecha en que las enmiendas de este Convenio entren en vigor, conforme al Artículo 66; y
(f) las denuncias, conforme al Artículo 71.

DONE at Washington in the English, French and Spanish languages, all three texts being equally authentic, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfil the functions with which it is charged under this Convention.

FAIT à Washington en anglais, espagnol et français, les trois textes faisant également foi, en un seul exemplaire qui demeurera déposé aux archives de la Banque Internationale pour la Reconstruction et le Développement, laquelle a indiqué par sa signature ci-dessous qu'elle accepte de remplir les fonctions mises à sa charge par la présente Convention.

HECHO en Washington en los idiomas español, francés e inglés, cuyos tres textos son igualmente fehacientes, en un solo ejemplar que quedará depositado en los archivos del Banco Internacional de Reconstrucción y Fomento, el cual ha indicado con su firma su conformidad con el desempeño de las funciones que se le encomiendan en este Convenio.

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AUG 12 2023

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CONFIDENTIAL

SID 65-10

March 5, 1965

FROM: The Secretary

SETTLEMENT OF INVESTMENT DISPUTES

1. Attached hereto is the English text of the Preamble to the Convention as amended by the Committee of the Whole at its meeting on Thursday, March 4, 1965.

2. The Committee also decided to make the following changes in the text of the Convention:

(a) Deletion of paragraph (2) of Article 26;

(b) Substitution of the words "ratification or acceptance" by "ratification, acceptance or approval" in Articles 25(4), 66(1), 68(1), 68(2), 70, 73;

(c) Substitution of the words "ratification and acceptance" by the words "ratification, acceptance and approval" in Article 75(b);

(d) Substitution of the words "ratified or accepted" in the last line of Article 66(1) by "ratified, accepted or approved";

(e) Substitution of the words "enforce it" in the second/third lines of Article 54(1) by "enforce the pecuniary obligations imposed by that award".

Distribution:

Executive Directors and Alternates
President
President's Council
Department Heads

SETTLEMENT OF INVESTMENT DISPUTES

PREAMBLE

The Contracting States

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

2. Bearing in mind the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States;

3. Recognizing that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

4. Attaching particular importance to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

5. Desiring to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

6. Recognizing that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

7. Declaring that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration,

Have agreed as follows:

Legal Department
March 5, 1965

Mr. D. Fowler

March 4, 1965

Piero Sella

S.I.D. - Printing of Convention

I have discussed with Mr. Broches the question of the printing and distribution of the text of the Convention and of the Report of the Executive Directors. The best course of action appears to be the following:

(i) 1 copy of the English, French and Spanish texts of the Convention in consecutive order with the closing clause in the three languages in three columns on the last page would be printed on special paper and used as the execution copy.

(ii) 300 (?) copies of the English, French and Spanish texts of the Convention bound together under one cover with the closing clause printed in the three languages in three columns on the last page would be printed under a cover carrying the title of the Convention in the three languages and would be kept available for preparing certified copies of the Convention.

(iii) 21,000 copies of the Report of the Executive Directors and the text of the Convention under one cover would be printed as follows:

	Total	English	French	Spanish
Heavy paper	9,000	5,000	2,000	2,000
Thin paper	~~12,000~~ 14,000	~~?~~ 8,000	~~?~~ 3,000	~~?~~ 3,000

These copies would be under a cover carrying the title "Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of other States submitted to Member Governments on March____, 1965" and would have a Table of Contents singling out the Report of the Executive Directors as a first item and the text of the Convention as a second item with its subdivisions in Chapters, Sections and Articles.

(iv) Upon approval of the text of the Convention and of the Report by the Executive Directors, Mr. Woods would send to the Agencies for Communication of all member countries, a copy of the Report with attached the text of the Convention in each of the three languages (copies under (iii)). At the same time the Bank's Secretary, acting pursuant to Article 73 of the Convention, would send to the Agencies for Communication of all member countries a certified copy of the three texts of the Convention for delivery to the appropriate authorities (copies under (ii)).

(v) 5,000 ~~5,000~~ copies of the Report and Convention on thin paper (the distribution among the three languages will be determined later (copies under (iii)) would be sent to the World Peace through Law organization for distribution to their own members.

(vi) Copies of the Report and Convention on heavy paper in the three languages (copies under (iii)) would be distributed to the Executive Directors and Officers of the Bank in the normal fashion.

Your comments and suggestions on the above will be appreciated.

cc: Mr. Broches
Mr. Pinto

PSella/ar

Messrs. Malaplate, Tasi and van Campenhout March 4, 1965

A. Broches

Settlement of Investment Disputes - French text of the Convention

1. Attached are page proofs of the French text of the Convention conforming to the English text which was distributed on March 1, 1965 (SID 65-9).

2. Mr. Malaplate has suggested that:

(a) The wording of Article 48(4) be modified to read as follows:

"Tout membre du Tribunal peut faire joindre à la sentence soit son opinion particulière - qu'il partage ou non l'avis de la majorité - soit la mention de son dissentiment."

(b) To substitute in Articles 51(4) and 52(5) the words "l'exécution" for the words "ladite exécution".

(c) to use in Articles 68, 70, 73 and 75 the word "approbation" instead of, or in addition to, the word "acceptation".

3. I shall appreciate your comments on the attached French text and Mr. Malaplate's suggestions.

4. Mr. Malaplate has also proposed some changes in the Preamble which could be considered when the Committee of the Whole deals with the Preamble.

Encl.

ABroches/PSella/ar

Mr. Graves

March 3, 1965

Lars J. Lind

Press Conference on Settlement of Investment Disputes

Mr. Broches is in favor of the suggestion of having a press conference after the Board has approved the draft Convention on SID and the report. The approval is likely to be given on March 18, although there is a small possibility that some last-minute changes might have to be approved on March 23. The best time for a press conference would seem to be 1700 hours, Tuesday, March 23, at headquarters.

For the press conference we should have available for the press the draft Convention itself, the accompanying report and a press release announcing the decision by the Board, giving the highlights of the Convention and explaining the next steps (submission to governments, signing, ratification, entry into force, etc.). I shall work together with Sella and Pinto in the Legal Department on this.

Invitations to correspondents could go out immediately after the expected approval by the Board on March 18. The only slight difficulty might be that not all governments would have had time to receive copies of the Convention and the report by March 23, although they would have been mailed by then. I do not think this is a major consideration, as we cannot keep the decision on ice much longer than the period March 18 - March 23, and even in that period there is no guarantee against premature stories on the decision.

Although Legal Counsel should be the main spokesman on this subject, it might be that Mr. Woods would like to announce the decision by the Board and open the proceedings. Perhaps you would like to check that point.

LJL/jsw

Record Removal Notice

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Correspondents / Participants

Subject / Title

SID/65-4/1 Memorandum of Meeting of the Committee of the Whole on Settlement of Investment Disputes held on February 18, 1965 at 3:30 pm
SID/65-4 of February 23, 1965

Exception(s)

Additional Comments

Declassification review of this record may be initiated upon request.

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

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INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

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March 3, 1965

*Memorandum of Meeting of the Committee of the Whole on Settlement of Investment Disputes held on February 25, 1965 at 3:00 p.m.

1. There were present:

Chairman

George D. Woods, President

Executive Directors and Alternates acting as Executive Directors

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

Alternates not acting as Executive Directors

H. Abramowski
O. Haushofer
J. Haus-Solis

Officers and Staff Participating

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

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

Distribution:

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

Legal Department

Article 69

2. Mr. Broches introducing Article 69, said that the main object of the procedure prescribed was to ensure that the Convention would enter into force only when it had been ratified or accepted by a reasonable number of both capital-importing and capital-exporting States. An alternative approach might be to provide that the Convention would enter into force on ratification by a certain number of States, and at the same time prescribe a time limit after which, if the required number of ratifications had not been received, it would be open to those States which had ratified to bring the Convention into force among themselves.

3. Mr. Rajan did not think that the Executive Directors of the Bank should be given a role in bringing the Convention into force. Decisions were usually taken by the Directors through ascertaining a consensus. On an issue like that presented by Article 69 there might be a clear divergence of views leading to a vote and the attendant problems. As to the number of ratifications required, his own view was that a requirement of, say, 24 ratifications would take into account the desirability of ratification by an appropriate number of capital-exporting and capital-importing countries.

4. Mr. Chen and Mr. Garba endorsed the statement of Mr. Rajan and proposed that the Convention enter into force on ratification or acceptance by not less than 25 member States of the Bank without further action by the Executive Directors.

5. Mr. Machado thought the procedure in Article 69 would place the Executive Directors in the position of determining what combination of States should bring the Convention into force. He anticipated that the capital-exporting countries would be the first to join, and clearly the Executive Directors ought not to bring the Convention into force if only capital-exporting countries had adhered to it. On the other hand, it had to be borne in mind that when acting as the Executive Directors of the Bank they would have to reach a decision on the issue by a system of weighted voting which was controlled in effect by three Directors. He would favor substituting the procedure in Article 69 by a requirement of ratification by a fixed number of countries neither so high as to prevent the Convention going into force nor too low, and one which did not require action by the Executive Directors.

6. Mr. Woods observed in reply that recent informal contacts had led him to believe that not only capital-exporting countries but also several capital-importing countries were looking forward to acceding to the Convention as early as possible.

7. In reply to Mr. van Vuuren, Mr. Broches said that the procedure in Article 69 had been designed with a view to ensuring that there would be a fair representation of both capital-exporting and capital-importing countries among adherents to the Convention.

8. Mr. van Vuuren said he could support the procedure in Article 69 as it stood.

9. Mr. Donner said he had a strong preference for eliminating the role of the Executive Directors in bringing the Convention into force. There were constitutional difficulties in making the entry into force of an agreement between States dependent on a decision by the Executive Directors of the Bank. He was, therefore, in favor of making ratification of the Convention by a specified number of countries the only requirement for entry into force.

10. Mr. van Campenhout thought the procedure in Article 69 would give rise to difficulties. For instance, what criteria were the Directors to apply in order to determine whether the right kinds of countries were included among the 12 that had ratified? Would an Executive Director be justified in voting for bringing the Convention into force even if none of the countries he represented had ratified it? Nor was he convinced that it would be easy to determine whether a particular country was a capital-exporting or a capital-importing country.

11. Mr. Kochman endorsed the points raised by Mr. Rajan and supported deletion of the requirement of action by the Executive Directors for entry into force of the Convention.

12. Mr. Malaplate preferred to omit the role of the Executive Directors in bringing the Convention into force. He would favor requiring ratification or acceptance by at least 24 States.

13. Mr. Hirschtritt was in favor of the Convention entering into force on ratification by a specified number of States.

14. Mr. Gutierrez-Cano favored automatic entry into force upon ratification or acceptance by a specified number of States fixed so as to ensure adequate participation by capital-importing countries.

15. Mr. Ozaki said the Japanese Government did not favor requiring action by the Executive Directors to bring the Convention into force. In its written comments his Government had proposed that ratification or acceptance by 25 States (roughly one-fourth of the Bank's membership) be made the condition for entry into force of the Convention.

16. Mr. Woods said it was clear that there was a consensus among the Directors that the procedure in Article 69 whereby the Convention would enter into force after action by the Executive Directors of the Bank acting on the recommendation of the President should be eliminated. It remained to decide upon the actual number of States required to ratify or accept the Convention in order to bring it into force.

17. In that connection he recalled that over some three years the Bank had, with the knowledge and approval of the Executive Directors, invested a very substantial amount of money and effort in order to bring the Convention into being in the sincere belief that the proposed Centre would prove to be of very great assistance in the efforts of countries towards economic development. The Governors of the Bank at their meeting in September, 1964 had enjoined the Directors to bring the Centre into being. He would like to see the Centre created as early as possible so that it could prove its worth through its operation and achievements. The figure of 12 ratifications had been initially proposed as being the lowest figure that might gain acceptance. It now appeared that several Directors thought that figure too low. He would urge the Directors to agree upon the lowest number which they felt would be acceptable, and for the purposes of the discussion he would like to suggest 20.

18. Mr. Wright said that a great deal of effort had gone into this project and it was to be hoped that a large number of countries would eventually adhere to the Convention. There might be a certain hesitancy on the part of some countries at first and the best way to overcome it would be to prove the usefulness of the Centre through its operation. Hesitancy on the part of the majority of countries should not be permitted to deprive the others of the use of the facilities of the Centre, and for that reason he would favor a low number of ratifications. It had been argued that as a consequence of the deletion of the requirement of action by the Executive Directors the number of ratifications should be increased. He saw no connection between these requirements and would still favor the number 12. However, if the figure 20 found general acceptance he would support it.

19. Mr. Machado said he had no strong views on the number of ratifications to be required. In his view the principal consideration should be the minimum number of countries that would justify the additional expense that the Bank would assume in maintaining the Centre and opening it for business. We would have no objection to requiring the ratification of from 12 to 20 States.

20. Mr. Chen said that in view of the arguments advanced he would support the figure suggested by Mr. Woods, viz. 20.

21. Mr. van Campenhout said he could support a figure between 12, which seemed the minimum that would justify setting up an administration, and say 20.

22. Messrs. Mejia-Palacio, van Vuuren, Khosropur, Rajan and Ozaki said they could support Mr. Woods' suggestion to require ratification by 20 countries.

23. Mr. Woods said there was agreement among the Directors that Article 69 should require ratification by 20 countries to bring the Convention into force.

24. Mr. Malaplate proposed that for a State ratifying after initial entry into force the interval between deposit of its instrument of ratification and entry into force for that State should be 30 days.

25. Mr. Broches agreed that a provision along those lines should be added, and suggested that the interval between deposit of the twentieth instrument of ratification and initial entry into force of the Convention should likewise be 30 days.

26. Mr. Machado supported Mr. Broches' proposal.

27. Mr. van Campenhout asked whether 30 days after deposit of the twentieth instrument of ratification would, as a practical matter, be sufficient to organize the Centre.

28. Mr. Broches replied that it was only necessary to ensure that the Convention had entered into force before the President of the Bank convened the first meeting of the Administrative Council. It was at that meeting that the Secretary-General would be elected and steps taken to organize the Centre.

Article 69A

29. Mr. Kochman asked whether Mr. Broches could give him the background to Article 69A which seemed to him unnecessary.

30. Mr. Broches agreed that if a State entered into an international agreement it had an obligation to adapt its own law to the extent necessary to carry out its obligations, and that on a strict view a provision of this kind was unnecessary. In earlier drafts, following the precedent of the Bank's Articles of Agreement, the provisions on privileges and immunities and on enforcement of awards had been followed by a specific injunction to States to take whatever action might be necessary to implement their obligations in terms of their own law. At the Legal Committee some delegates had questioned the need for such a provision while others had felt it would be a useful reminder to States and perhaps even necessary in some States where treaties would not be applied without implementing legislation. It was finally decided without dissent to include a provision along the lines of Article 69A at the end of the Convention.

31. Mr. Mejia-Palacio said that in the light of his experience Article 69A would serve a very useful purpose and would ensure that implementing legislation would be enacted.

32. Mr. van Campenhout said that while Article 69A might be strictly unnecessary it could be very useful. It should be brought home to governments that it was not enough merely to ratify a Convention but that they must also take effective steps to implement their obligations under it.

Precedents for such a clause were to be found in the Bretton Woods Agreements.

33. Mr. Malaplate said that while he had no objection to retaining Article 69A he did not think it useful. He wondered whether a State would agree to accept what might appear to it a limitation of its legislative power.

34. Mr. Broches replied that such a provision was frequently included in international agreements and had proved acceptable.

35. Mr. Woods said that there was a consensus among the Directors in favor of retaining the text of Article 69A which would be renumbered Article 70.

Articles 71, 72 and 73

36. Mr. Broches invited attention to the text of Articles 71-73 which had been distributed informally during the meeting:

> Article 71
>
> This Convention shall apply to all territories for whose international relations a Contracting State is responsible except those which are excluded by such State by written notice to the Bank either at the time of ratification or acceptance or subsequently.
>
> Article 72
>
> Any Contracting State may denounce this Convention by written notice to the Bank. The denunciation shall take effect six months after receipt by the Bank of such notice.
>
> Article 73
>
> Notice by a Contracting State pursuant to Articles 71 or 72 shall not affect the rights or obligations under this Convention of that State, or of any of its constituent subdivisions or agencies, or of any national of that State with respect to or arising out of proceedings for conciliation or arbitration of a dispute which it had consented to submit to the jurisdiction of the Centre before such notice was received by the Bank.

37. Mr. Broches said that the new texts constituted a technical improvement over the previous versions of these articles and had been drafted in the light of comments made by the Japanese Government. With reference to Article 71 the Australian Government had inquired whether the phrase "which are excluded by such State by written notice to the Bank" was intended to

convey the notion that once a territory had been excluded it remained excluded or, whether the Article provided a built-in revolving door by which a State could withdraw an exclusion. It was his firm view that the present wording would permit a Contracting State to exclude a dependent territory (sometimes necessary because there had been no time to consult the legislature of the dependent country) and later to include it, perhaps after the dependent territory had given its assent to being bound by the Convention.

38. Mr. Machado said that the notice required by Article 72 should be communicated to the Centre rather than to the Bank which was merely the sponsor of the institution.

39. Mr. Broches pointed out that the Bank, as depositary of the Convention, was the proper authority to which this kind of communication (including ratifications of the Convention and of amendments) should be addressed. The Bank was designated depositary in the concluding paragraph of the Convention. It was usual to designate the sponsor of an institution as depositary. It was also usual to provide that actions affecting the structure of the Convention as a whole, such as denunciation by a Contracting State, should be notified to the depositary which, as Mr. Machado had pointed out, was charged with keeping records and transmitting information to all Contracting States.

40. Mr. Machado thought that the position might be made clear by changing any reference to "the Bank" to read "the Bank as depositary" thus limiting the Bank's functions in this respect to the mere keeping of records and the other simple functions of a depositary.

41. Mr. van Campenhout supported by Mr. Rajan suggested that the problem referred to by Mr. Machado might be taken care of by making it clear in the Report of the Executive Directors that when there was a reference to "the Bank" in these provisions what was meant was the Bank in its capacity as depositary of the Convention. This would be preferable to encumbering the text by the change suggested.

42. Mr. Malaplate referring to Mr. Machado's suggestion observed that deposit of instruments with the Centre might in any event not be possible during the period before the Centre had come into existence.

43. Mr. Woods said that the sense of the meeting appeared to be that the Report of the Executive Directors should reflect the point made by Mr. Machado while the text of the Convention might be left as it stood. The final paragraph of the Convention would, in any event, clearly define the posture of the Bank.

44. Mr. Gutierrez Cano wondered whether the words "the Bank" could be replaced by the words "the depositary".

45. Mr. Broches said that it might be possible when the term "Bank" was first used in Article 68 to follow it by the words "as the depositary of this Convention".

46. Mr. Hirschtritt said he would exercise caution in obscuring the role of the Bank upon which the Centre would depend to a great extent at any rate in the early years of its existence.

47. Mr. Woods said that the reference to the Bank in Article 68 would be followed by the words suggested by Mr. Broches viz. "as the depositary of this Convention". Articles 71 and 72 would thereafter refer to "the depositary" rather than "the Bank".

Article 72

48. Mr. Machado said that the arguments advanced by him regarding use of the words "the Bank" in Article 71 applied with greater force to Article 72. Contracting States should not be permitted to denounce the Convention merely by written notice to the Bank which, as depositary, only received and filed communications. Notice should be given both to the Bank and to the Administrative Council. In the alternative the provision might merely require "written notice" without specifying to whom such notice should be addressed.

49. Mr. Woods asked Mr. Broches to point out what would be the functions of the Bank as depositary of the Convention.

50. Mr. Broches stated that the features were listed in the draft Article 72 which was before the meeting and was based on the most recent United Nations treaty practice. These functions would be to notify Contracting States of signatures of the Convention, ratifications and acceptances, exclusions from territorial application, the date of entry into force of the Convention, and denunciations.

51. Mr. Woods asked a show of hands on the question of whether the article in question should be left as it was, except for the substitution of the term "depositary" for the word "Bank", and announced that there was a large majority in favor of leaving the article as it was.

Article 73

52. Mr. Broches referred to draft Article 73 which had been presented to the meeting and explained that it was intended to deal with the effects of denunciation of the Convention or the exclusion of a territory from the scope of the application of the Convention on consents to conciliation or arbitration under the Convention already given. Mr. Malaplate had proposed a simplification of the language of that article and he would like to consider that drafting point further and to report to the Board at the next session.

53. Mr. Malaplate stated that the proposal he had made could somehow affect the substance of the provision because the article as it stood now did not seem to protect a consent given before denunciation or exclusions if proceedings under that consent had not yet started.

54. Mr. Broches replied that the intention of Article 73 in the text submitted to the Directors was to make it clear that if a State had consented to arbitration, for instance by entering into an arbitration clause with an investor, the subsequent denunciation of the Convention by that State would not relieve it from its obligation to go to arbitration if a dispute arose. He could not see any difference of substance between the text as it stood and Mr. Malaplate's proposal but in any case, he would review the language of that article to make sure that the provision was clear.

55. Mr. Malaplate remarked that if the English text was clear, the French and Spanish texts seem to apply the only procedures which had been initiated before denunciation of the Convention by that State.

56. Mr. Woods suggested that the Spanish and French texts be reviewed in order to conform them with the English text.

57. Mr. Mejia-Palacio asked what would happen if a State which was a party to the Convention signed an agreement with a company and later withdrew from the Centre while no disputes were pending. If, say ten years later a dispute arose - would that dispute still be under the jurisdiction of the Centre?

58. Mr. Broches replied that if the agreement with the company included an arbitration clause and that agreement lasted for say 20 years, that State would still be bound to submit its disputes with that company under that agreement to the Centre.

59. Mr. Mejia-Palacio stated that in certain cases agreement had no definite duration but provided that they could be terminated by denunciation.

60. Mr. Broches remarked that in the case of an arbitration clause which could be terminated by one of the parties, the jurisdiction of the Centre would come to an end on termination of the clause.

61. Mr. Gutierrez Cano said that Article 73 in the new text was lacking a time limit beyond which the Convention would cease to apply. Unless such time limit was introduced States would be bound indefinitely. He had in mind the case in which there was no agreement between the State and the foreign investor but only a general declaration on the part of the State in favor of submission of claims to the Centre and a subsequent withdrawal from the Convention by that State before any claim had been in fact submitted to the Centre. Would the Convention still compel the State to accept the jurisdiction of the Centre?

62. Mr. Broches replied that a general statement of the kind mentioned by Mr. Gutierrez Cano would not be binding on the State which had made it until it had been accepted by an investor. If the State withdraws its unilateral statement by denouncing the Convention before it has been accepted by any

investor, no investor could later bring a claim before the Centre. If, however, the unilateral offer of the State has been accepted before the denunciation of the Convention, then disputes arising between the State and the investor after the date of denunciation will still be within the jurisdiction of the Centre.

63. Mr. Rajan said that Mr. Broches' reply to Mr. Mejia-Palacio on the question of termination of agreements had not satisfied him entirely because disputes could arise out of the very termination of the agreement.

64. Mr. Broches answered that in replying to Mr. Mejia-Palacio he had taken the case of a State which had reserved, in its contract, the right to terminate the arbitration clause therein. It would have been an unusual clause but if it existed the parties would be bound by it.

65. Mr. Rajan said that he was still not clear about this question.

66. Mr. Woods thought it important to clarify all the implications of Article 73 before proceeding further. For his part he thought Article 73 expressed a basic principle, i.e. that if an agreement was in force at the time the State party to that agreement denounced the Convention, obligations under that contract to have recourse to arbitration would continue after denunciation.

67. Mr. Machado stated that the fact that sovereign States would be parties to the Convention would create additional difficulties. As long as the State was a party to the Convention it had to fulfil in good faith all its obligations under the Convention and, if a proceeding had been started, subsequent denunciation of the Convention by that State should have no retroactive effect. To say, however, that the Centre would continue to have jurisdiction over disputes which arose after the State had ceased to be a member of the Centre would in fact compel the State to remain forever in an organization to which it did not want to belong. He therefore suggested that the provision be amended to say that denunciation shall not affect obligations arising out of proceedings or conciliation or arbitration which had started before the Centre and before notice of denunciation had been received.

68. Mr. Woods pointed out that this proposal would frustrate the main purpose of the Convention.

69. Mr. Mejia-Palacio agreed that if a State had undertaken to go before the Centre it could not unilaterally decide that its undertaking had come to an end, but both in international law and domestic law every obligation comes to an end either because it is fulfilled or because the parties have agreed to terminate it or by prescription. Therefore, he had suggested that some ways be found for setting a time limit, as wide as necessary, after which an undertaking to submit to the jurisdiction of the Centre could come to an end.

70. Mr. Broches pointed out that the provision in discussion had not been questioned at any of the regional meetings or in the Legal Committee. It was a basic essential provision. The Convention establishes the principle that agreements to arbitration cannot be broken by one of the parties. The provision under discussion only drew the necessary consequences in case of denunciation of the Convention: the denouncing State could not incur any new obligations but the existing obligations would remain in force.

71. Mr. Woods asked for a show of hands for those in favor of leaving the substance of Article 73 as it was and announced that the consensus was to leave Article 73 unchanged.

Article 74

72. Mr. Kochman asked whether such a provision was necessary in the Convention as it dealt with a matter of detail.

73. Mr. Broches agreed that the provision was not necessary. It had been introduced because a similar provision existed in the Articles of Agreement for IDA.

74. Mr. Woods asked whether there was any objection to deleting the article. As there was none, he stated that the article would be deleted.

Article 75

75. Mr. Broches pointed out that this provision was necesssry under the regulations for registration of treaties adopted by the General Assembly.

Article 76

76. Mr. Broches suggested some re-arrangement of the items contained in it and some minor drafting suggestions.

Final Clause

77. Mr. Broches explained that the final clause provided that the Convention would be in three languages, English, French and Spanish and each text would be equally authentic. The three languages would be listed in their respective alphabetical order for each language. The clause also indicated that the Bank would sign the Convention for the sole purpose of indicating its acceptance of its functions of depositary given to it by the Convention.

78. Mr. Malaplate stated that his government would like a provision somewhere in the Convention specifying that the Bank would have to provide the Contracting States with certified copies of the Convention.

Article 26 (2)

79. Mr. Woods invited the Committee to consider again Article 26(2) on which the discussion had not been completed last week. He then invited Mr. Broches briefly to review the contents and implications of that Article 26(2).

80. Mr. Broches stated that Article 26(2) would permit, under certain specific circumstances, the substitution of a State for its national in proceedings before the Centre with the consent of the other State. Some objections of principle had been voiced and some strong support of the provision had been given. In further conversations with Directors he had found that some of them while finding the provisions entirely acceptable would nevertheless be willing to leave them out in order to meet the objections raised by some Directors. Some Directors had proposed far-reaching amendments to the provision.

81. Mr. Woods asked for a vote on the question whether paragraph (2) of Article 26 should be eliminated. Messrs. Garba, Gutierrez Cano, Kochman, Mejia-Palacio, Machado, Khosropur and San Miguel were in favor of eliminating the provision.

82. Mr. Woods then asked the Directors who were in favor of retaining the provision to raise their hand. Messrs. Donner, van Vuuren, Lieftinck, Osaki, Sumanang, Thor and van Campenhout were in favor of retaining the provision.

83. Mr. Woods announced that as 7 Directors were in favor of retaining the provision, 7 were against retaining it, 5 had abstained and 1 was absent the question would be reconsidered at the next meeting of the Committee of the Whole.

84. The meeting adjourned at 4.45 p.m.

March 2, 1965

Dear Mr. Brandon:

Your letter of January 22 arrived here while I was out of the country. Our Executive Directors are at the moment engaged in what I hope will be the final round of discussions on the Bank's draft Convention. I hope that we shall be able to submit it to governments before the end of this month.

Sincerely yours,

(Signed) A. Broches

A. Broches
General Counsel

Mr. Michael Brandon
Secretary
Association Internationale Pour la
Promotion et la Protection des
Investissements Privés en Territoires
Etrangers
92, Rue du Rhone
Geneve, Switzerland

ABroches:cml

Miss Georgiou

INTERNATIONAL BANK FOR
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FROM: The Secretary

March 2, 1965

NOTICE OF MEETINGS

SETTLEMENT OF INVESTMENT DISPUTES

It is proposed to hold meetings of the Committee of the Whole on Settlement of Investment Disputes as follows:

Thursday, March 4	-	3:00 p.m. (as already notified)
Monday, March 8	-	10:30 a.m.
Tuesday, March 9	-	Following the meeting of the Bank Executive Directors scheduled for 10:00 a.m.
Tuesday, March 9	-	3:00 p.m. (if required)

Distribution:

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

Miss Georgion

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

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CONFIDENTIAL

SID 65-9

FROM: The Secretary

March 1, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached is the English text of the draft Convention on Settlement of Investment Disputes (Z-16) with the modifications thus far approved in substance by the Committee of the Whole. Particular reference is made to the following provisions:

Article 6 (1) (f)	Article 67	Article 73
Article 7 (1)	Article 68	Article 74
Article 10 (1)	Article 69	Article 75
Article 17	Article 70	Closing clause
Article 58	Article 71	
Article 66 (2)	Article 72	

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RESTRICTED
Report No. Z-16
DRAFT
March 1, 1965

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

PREAMBLE

The Contracting States

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

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

3. ***Recognizing*** that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

4. ***Attaching particular importance*** to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

5. ***Desiring*** to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

6. ***Recognizing*** that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes an agreement to be observed in good faith which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

7. ***Declaring*** that no Contracting State shall by the mere fact of its ratification or acceptance of this Conven-

tion be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration in the absence of a specific undertaking to that effect,

Have agreed **as follows:**

CHAPTER I

International Centre for Settlement of Investment Disputes

SECTION 1

Establishment and Organization

Article 1

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

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

Article 2

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

Article 3

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

SECTION 2

The Administrative Council

Article 4

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

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

Article 5

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

Article 6

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

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

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

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

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

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

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

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

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

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

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

Article 7

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

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

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

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

Article 8

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

Section 3

The Secretariat

Article 9

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

Article 10

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

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

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

Article 11

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

Section 4

The Panels

Article 12

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

Article 13

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

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

Article 14

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

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

Article 15

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

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

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

Article 16

(1) A person may serve on both Panels.

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

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

Section 5

Financing the Centre

Article 17

If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts,

the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

Section 6

Status, Immunities and Privileges

Article 18

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

(a) to contract;

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

(c) to institute legal proceedings.

Article 19

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

Article 20

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

Article 21

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

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

(b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same

treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

Article 22

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

Article 23

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

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

Article 24

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

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

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

CHAPTER II

Jurisdiction of the Centre

Article 25

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

(2) "National of another Contracting State" means:

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

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

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

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

Article 26

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

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

Article 27

(1) No Contracting State shall give diplomatic protection or bring an international claim in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted

to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

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

CHAPTER III

Conciliation

SECTION 1

Request for Conciliation

Article 28

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

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

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

SECTION 2

Constitution of the Conciliation Commission

Article 29

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

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

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

Article 30

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

Article 31

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

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

Section 3

Conciliation Proceedings

Article 32

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

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 33

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

Article 34

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

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

Article 35

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

settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

CHAPTER IV

Arbitration

SECTION 1

Request for Arbitration

Article 36

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

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

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

SECTION 2

Constitution of the Tribunal

Article 37

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

(2) (a) The Tribunal shall consist of a sole arbi-

trator or any uneven number of arbitrators appointed as the parties shall agree.

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

Article 38

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

Article 39

(1) The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

Article 40

(1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.

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

Section 3

Powers and Functions of the Tribunal

Article 41

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

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 42

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

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

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

Article 43

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

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

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

Article 44

Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure

arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.

Article 45

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

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

Article 46

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

Article 47

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

Section 4

The Award

Article 48

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

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

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

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

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

Article 49

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

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

Section 5

Interpretation, Revision and Annulment of the Award

Article 50

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

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

Article 51

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

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

(3) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter.

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

Article 52

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

(a) that the Tribunal was not properly constituted;

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

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

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

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

(2) The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption

such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered.

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

(4) The provisions of Articles 41–45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply *mutatis mutandis* to proceedings before the Committee.

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

(6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.

Section 6

Recognition and Enforcement of the Award

Article 53

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

(2) For the purposes of this Section, "award" shall

include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

Article 54

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

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

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

Article 55

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

CHAPTER V

Replacement and Disqualification of Conciliators and Arbitrators

Article 56

(1) After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the

provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

(2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.

(3) If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy.

Article 57

A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.

Article 58

The decision on any proposal to disqualify a conciliator or arbitrator shall be taken by the other members of the Commission or Tribunal as the case may be, provided that where those members are equally divided, or in the case of a proposal to disqualify a sole conciliator or arbitrator, or a majority of the conciliators or arbitrators, the Chairman shall take that decision. If it is decided that the proposal is well-founded the conciliator or arbitrator to whom the decision relates shall be replaced in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

CHAPTER VI

Cost of Proceedings

Article 59

The charges payable by the parties for the use of the facilities of the Centre shall be determined by the Secre-

tary-General in accordance with the regulations adopted by the Administrative Council.

Article 60

(1) Each Commission and each Tribunal shall determine the fees and expenses of its members within limits established from time to time by the Administrative Council and after consultation with the Secretary-General.

(2) Nothing in paragraph (1) of this Article shall preclude the parties from agreeing in advance with the Commission or Tribunal concerned upon the fees and expenses of its members.

Article 61

(1) In the case of conciliation proceedings the fees and expenses of members of the Commission as well as the charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceedings.

(2) In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

CHAPTER VII

Place of Proceedings

Article 62

Conciliation and arbitration proceedings shall be held at the seat of the Centre except as hereinafter provided.

Article 63

Conciliation and arbitration proceedings may be held, if the parties so agree,

(a) at the seat of the Permanent Court of Arbitration or of any other appropriate institution, whether private or public, with which the Centre may make arrangements for that purpose; or

(b) at any other place approved by the Commission or Tribunal after consultation with the Secretary-General.

CHAPTER VIII

Disputes between Contracting States

Article 64

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

CHAPTER IX

Amendment

Article 65

Any Contracting State may propose amendment of this Convention. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days prior to the meeting of the Administrative Council at which such amendment is to be considered and shall forthwith be transmitted by him to all the members of the Administrative Council.

Article 66

(1) If the Administrative Council shall so decide by a majority of two-thirds of its members, the proposed amendment shall be circulated to all Contracting States for ratification or acceptance. Each amendment shall enter into force 30 days after dispatch by the depository of this Convention of a notification to Contracting States that all

Contracting States have ratified or accepted the amendment.

(2) No amendment shall affect the rights and obligations under this Convention of any Contracting State or of any of its constituent subdivisions or agencies, or of any national of such State arising out of consent to the jurisdiction of the Centre given before the date of entry into force of the amendment.

CHAPTER X

Final Provisions

Article 67

This Convention shall be open for signature on behalf of States members of the Bank. It shall also be open for signature on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, shall have invited to sign the Convention.

Article 68

(1) This Convention shall be subject to ratification or acceptance by the signatory States in accordance with their respective constitutional procedures.

(2) This Convention shall enter into force 30 days after the date of deposit of the twentieth instrument of ratification or acceptance. It shall enter into force for each State which subsequently deposits its instrument of ratification or acceptance 30 days after the date of such deposit.

Article 69

Each Contracting State shall take such legislative or other measures as may be necessary for making the provisions of this Convention effective in its territories.

Article 70

This Convention shall apply to all territories for whose international relations a Contracting State is respon-

sible, except those which are excluded by such State by written notice to the depository of this Convention either at the time of ratification or acceptance or subsequently.

Article 71

Any Contracting State may denounce this Convention by written notice to the depository of this Convention. The denunciation shall take effect six months after receipt of such notice.

Article 72

Notice by a Contracting State pursuant to Articles 70 or 71 shall not affect the rights or obligations under this Convention of that State or of any of its constituent subdivisions or agencies or of any national of that State arising out of consent to the jurisdiction of the Centre given by it before such notice was received by the depository.

Article 73

Instruments of ratification or acceptance of this Convention and of amendments thereto shall be deposited with the Bank which shall act as the depository of this Convention. The depository shall transmit certified copies of this Convention to States members of the Bank and to any other State invited to sign the Convention.

Article 74

The depository shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Article 75

The depository shall notify all signatory States of the following:

(a) signatures in accordance with Article 67;
(b) deposits of instruments of ratification and acceptance in accordance with Article 73;
(c) the date on which this Convention enters into force in accordance with Article 68;

(d) exclusions from territorial application pursuant to Article 70;
(e) the date on which any amendment of this Convention enters into force in accordance with Article 66; and
(f) denunciations in accordance with Article 71.

DONE at Washington, in the English, French and Spanish languages, all three texts being equally authentic, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfil the functions with which it is charged under this Convention.

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INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

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March 1, 1965

*Memorandum of Meeting of the Committee of the Whole on Settlement of Investment Disputes held on February 25, 1965 at 11:50 a.m.

1. There were present:

Chairman

George D. Woods, President

Executive Directors and Alternates acting as Executive Directors

Said Mohamed Ali (Alternate)
Reignson C. Chen
John M. Garba
S.J. Handfield-Jones (Alternate)
Ali Akbar Khosropur (Alternate)
Jean Malaplate (Alternate)
Eiji Ozaki (Alternate)
M. San Miguel
Vilhjalmur Thor
A.J.J. van Vuuren (Alternate)
A. Bogoev (Alternate)
Otto Donner
J. Gutierrez Cano
R. Hirschtritt (Temporary Alternate)
Luis Machado
Jorge Mejia-Palacio
K.S.S. Rajan
J. Stevens
Andre van Campenhout

Alternates not acting as Executive Directors

Jose Camacho
S. O. Coleman
O. Haushofer
J. Haus-Solis
S. Wright (Temporary)

Officers and Staff Participating

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

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

Distribution:

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

Legal Department

2. Mr. Woods hoped it would be possible to complete discussion of the draft Convention at the present meeting leaving consideration of the accompanying Report of the Executive Directors until Thursday, March 4, 1965. The Committee would now resume its consideration of Chapter X.

Capter X - Final Provisions (continued)

Article 67

3. Mr. Broches said that in the light of the Directors' discussion of Article 67 at the previous meeting of the Committee of the Whole, the following text might prove acceptable:

> This Convention shall be open for signature on behalf of States members of the Bank. It shall be open for signature on behalf of other States with the approval of two-thirds of the members of the Administrative Council.

4. Mr. Woods thought that that text represented the preponderance of views among the Directors.

5. Mr. Machado and Mr. Chen supported the draft proposed by Mr. Broches.

6. Mr. Hirschtritt supported by Mr. van Campenhout and Mr. Gutierrez Cano proposed limiting the eligibility of States which were not members of the Bank to such States parties to the Statute of the International Court of Justice as were approved by the Administrative Council by a qualified majority.

7. Mr. Broches said he had on purpose avoided reference to categories of States in connection with eligibility to become parties to the Convention, and thought that the requirement of approval of a State's candidature by a two-thirds or higher majority would provide an adequate safeguard. However, as some Directors seemed to favor the former approach, the second sentence of the draft he had just read might be re-worded as follwos:

> It is open for signature on behalf of other States parties to the Statute of the International Court of Justice with the approval of two-thirds of the members of the Administrative Council.

While the drafting would have to be improved this text seemed to express the idea with sufficient clarity.

8. Mr. Woods said that Article 67 as drafted by Mr. Broches subject to minor modifications in form seemed acceptable to the Directors.

Mr. Hirschtritt might, however, wish to discuss the provision further with his colleagues.

9. Mr. Broches recalled that when Mr. Woods had outlined the program for the Directors' consideration of the Convention he had envisaged a week's pause following the end of the discussion. One government had requested a longer pause. The Directors would then meet in a formal session to take a final decision on points still left open.

10. There would then remain for consideration the Report of the Executive Directors. The draft Report circulated as document R65-11 comprised two parts: the first contained general observations by the Directors, on which there might be a good deal of discussion, and the second, which would consist essentially of clarification and comments on the text of the Convention, which would not take much time. The pause envisaged by Mr. Woods would commence on completion of the discussion of the text of the Convention and it would not be necessary to wait until discussion of the Report had also been concluded. When the Directors had finished discussing the Report there would be a further interval.

11. Mr. Woods said he would like the Directors to bear this program in mind. The Report of the President of the Bank to ECOSOC was now scheduled for Friday, March 26, 1965 and that would certainly be a desirable and natural time at which to announce completion of the task which the Board of Governors of the Bank had asked the Executive Directors to undertake.

Article 68

12. Mr. Broches introducing Article 68 said the word "acceptance" which was sometimes used was the exact equivalent in substance of "ratification". It was customary for States to sign an agreement first and then ratify or accept it in accordance with their constitutional procedures. The Bank was designated depository of the Convention.

13. There was no comment on Article 68.

Chapter IX - Amendment

Article 66

14. Mr. Woods asked the Committee to complete its consideration of Article 66.

15. Mr. Broches recalled that the provisions of Article 66 made amendment of the Convention subject to very stringent requirements. The Administrative Council had first to approve the proposal to amend by a two-thirds majority, and after that every Contracting State had to ratify or accept the amendment.

Some of the Directors had objections to this procedure, but the alternatives suggested in the Legal Committee had met with no success. While there had ben no opposition to the present text in the Legal Committee, the Directors were free to reconsider the matter. Mr. Rajan, for instance, had suggested a return to the concept of distinguishing important amendments, which would require unanimity for their adoption and other amendments which could be adopted by a simpler process. He would like to propose the following new text of Article 66 for consideration by the Directors:

Article 66

(1) Amendments which would impose new obligations on Contracting States or would affect the provisions of Chapter II or Articles 53 and 54 of Chapter IV or Chapter IX shall, if the Administrative Council so decides by a majority of two-thirds of its members, be circulated to all Contracting States;

(2) All other amendments shall enter into force upon adoption by the Administrative Council by a majority of two-thirds of its members;

(3) (Present text of Article 66(2)).

16. By way of explanation he noted that the concept of amendments involving a "fundamental alteration of the nature or scope of the Convention" used in Article 69(1) of the draft of September 11, 1964 had been replaced by specific reference to provisions of crucial importance.

17. Mr. Machado found the text proposed by Mr. Broches acceptable. He would, however, add to the list of fundamental provisions to be specified as requiring unanimity for amendment, Article 7(2) which incorporated the principle of one-State-one-vote.

18. Mr. Mejia-Palacio asked whether the phrase "new obligations" covered new financial arrangements.

19. Mr. Broches replied that amendments of the Convention which imposed new financial obligations would, under the text he had proposed, require unanimity for adoption.

20. Mr. Mejia-Palacio thought that in that respect the draft did not permit adequate flexibility. It would be necessary, for instance, to be able to increase the budget from year to year without difficulty.

21. Mr. Broches pointed out that Article 6 provided for adoption of the Centre's budget. No amendment of the Convention would be necessary in order to permit an increase in the annual budget.

22. Mr. Hirschtritt said he was personally in sympathy with the views that had been expressed in favor of less stringent provisions on amendment. However, it was necessary to look at the problem from the point of view of securing wide support for the Convention. To introduce a procedure whereby the Convention could be changed without the consent of some of the States parties to it would create difficulties for some governments. He believed that the terms of the Convention themselves had sufficient inherent flexibility to meet various problems and most of the minor changes which might become necessary could be accomplished through changes in the rules and regulations without amendment of the text of the Convention itself. Other provisions, like that on the location of the seat of the Centre, had built-in flexibility. It had to be remembered that the Legal Committee had gone into the matter thoroughly and had recommended adoption of the procedure now embodied in Article 66(2). He was not able to support any of the modifications of that procedure hitherto proposed.

23. Mr. van Campenhout said he personally favored the proposal of Mr. Broches. However, he had been advised that that proposal would be difficult for his Parliament to accept. He would be willing to try to persuade those in his country who had expressed that view.

24. Mr. Malaplate thought the existing provisions requiring unanimous ratification of amendments would make any change impossible. He would favor requiring ratification of an amendment by a majority, even a large one like two-thirds or four-fifths. States which could not accept the amendment could still denounce the Convention.

25. Mr. van Vuuren said that although he personally favored the approach suggested by Mr. Broches, he agreed with Mr. Hirschtritt that due weight should be given the fact that the Legal Committee had decided without dissent to recommend the present text of Article 66(1). His government would have to consider the text of the new proposals with a view to determining which of the Articles could be amended by the simpler procedure and which could not.

26. Mr. Donner said that he had sympathy with the views of Mr. Machado and Mr. Malaplate. However, taking into consideration the discussion in the Legal Committee and its adoption without dissent of Article 66(2) as it now stood, he felt it would be best to leave the text unchanged.

27. Mr. Gutierrez Cano said he was inclined to support the text proposed by Mr. Broches although he would like to have the opportunity of studying the precise wording. He was in favor of limiting the requirement of unanimity to those areas in which it was clearly essential.

28. Mr. Rajan supported the text proposed by Mr. Broches which would be quite acceptable to his government. He was not sure whether it would be necessary to include, as had been suggested by Mr. Machado, a specific reference to Article 7(2) as being one of the provisions requiring unanimity for amendment. He was of the view that it was axiomatic that each member of the Administrative Council would have one vote.

29. Mr. Broches recalled that he himself had been in favor of a simpler amendment procedure. Delegates to the Legal Committee, speaking under instructions from their governments, i.e. from Foreign Offices which would eventually have to place the text before their Parliaments, had favored the procedure now in Article 66(2), and he saw no real danger in the Directors accepting it without change.

30. Mr. Machado recalled that the Legal Committee had been convened to advise the Directors and that the Directors were not bound to the advice of the Committee. He recalled that the texts formulated at Bretton Woods had maintained flexibility. The weakness of the United Nations Charter in providing for a veto power in the Security Council had been amply demonstrated in recent times. Those who insisted on the unanimity principle for amendment of the Convention in effect gave any Contracting State, whether large or small, a right to vote. He could not agree that any text that the Directors might eventually submit to Governments would be perfect and would not need modification in the future. He would, therefore, like to see provision made for a more flexible procedure for amendment. The time might come, for instance, when it might be desirable for the Centre to become completely separate from and independent of the Bank. The President of the Bank might well be too busy with his other functions to perform those given to him under the Convention. The present rule which required unanimity for all amendments would enable any such amendment to be frustrated by a single dissident country.

31. Mr. Mejia-Palacio said he had been convinced of the need for flexibility in the Convention. He particularly had it in mind that Article 5 which made the President of the Bank Chairman of the Administrative Council ex officio might need to be changed if the Administrative Council in the future decided that it was unwise for the Centre to be linked to the Bank.

32. Mr. Broches pointed out that Article 66(2) was one on which particular attention ought to be paid to the views of Foreign Offices. For instance some Foreign Offices in Latin American countries thought there would be very serious objections to any possibility of amendment without unanimous ratification. He had himself cited the Bretton Woods texts as examples of agreements which did not require unanimous ratification of amendments. In answer it had been argued that the Bretton Woods texts established a different type of institution - an operating institution rather than a rule-making one - and that in any event it would be difficult to get parliaments again to adhere to an instrument which could be amended otherwise than by unanimous ratification. He doubted that any countries would refuse to sign the Convention on the grounds that it was "inflexible". On the other hand, it was clear from the discussion in the Legal Committee that some countries might refuse to sign because their parliaments could not give a blank cheque to a group of countries to change its own position on the instrument.

33. Mr. Woods said he agreed with Mr. Broches that on balance Article 66(2) should remain unaltered. It was clear that a majority of the Directors also shared that view.

34. Mr. Malaplate suggested that deposit of instruments of ratification and acceptance both of the Convention as a whole (Article 68) and of amendments (Article 66(1)) should be dealt with in a single provision.

35. The meeting adjourned at 12:45 p.m. o'clock to reconvene at 3:00 p.m. the same day.