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**Folder ID:** 30354856

**Series:** Operations policy and procedures

**Dates:** 02/19/1965 - 07/31/1965

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**ISAD Reference Code:** WB IBRD/IDA ADMCF-04

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Washington, D.C.

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I N C O M I N G C A B L E

DATE AND TIME  
OF CABLE:

JULY 31, 1965

1450

LOG NO.:

WU 3

TO:

BROCHES INTBAFRAD

FROM:

KUWAIT

R O U T I N G

ACTION COPY:

MR. BROCHES

INFORMATION  
COPY:

DECODED BY:

TEXT:

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TELECOMMUNICATIONS

DATE AND TIME OF CALL	TO	FROM	REMARKS
JULY 27, 1965	WT-3	WT-3	ENDING - INTERRUPTED
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TELECOMMUNICATIONS  
GENERAL FILES

**OUTGOING WIRE**

TO: ALSUNDUK  
KUWAIT

DATE: JULY 30, 1965

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CLASS OF  
SERVICE: LT

COUNTRY: KUWAIT

TEXT:  
Cable No.:

KINDLY CABLE SAAD EL FISHAWY'S VACATION ADDRESS IN  
ALEXANDRIA. MANY THANKS.

BROCHES  
WORLD BANK

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

NAME A. Broches

DEPT. Legal

SIGNATURE *A. Broches*  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

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ABroches:cml

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INTERNATIONAL DEVELOPMENT ADMINISTRATION  
INTERNATIONAL DEVELOPMENT ADMINISTRATION

OUTGOING WIRE

JULY 30, 1965

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WORLD BANK  
BROOKS

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Attachments: 1

JUL 30 4 12 PM 1965

GENERAL INVESTIGATIONS  
COMMUNICATIONS SECTION

A. Brooks

Legal

Approved by: [Signature]

ORIGINAL FILED

le 30 juillet 1965

Buchdruckerei  
Schulthess & Co AG  
8022 Zurich  
Switzerland

Concerne: Règlement des différends relatifs  
aux investissements

Messieurs,

Suite à ma lettre du 28 juillet par laquelle je vous ai retourné les épreuves de mon article sur le sujet ci-dessus, j'ai l'honneur de vous informer que la Convention pour le Règlement des Différends Relatifs aux Investissements entre Etats et Ressortissants d'Autres Etats a été signée aujourd'hui même par la Mauritanie.

En conséquence, je vous serais reconnaissant de bien vouloir insérer, au cas où vous en auriez encore la possibilité, les mots "la Mauritanie" entre la Jamaïque et le Nigeria à la note 8 de mon article.

Veillez agréer, Messieurs, l'expression de mes sentiments distingués.

  
J.-D. Roulet .

cc: Legal Files

JDRoulet:al



810

Form No. 27  
(7-61)  
INTERNATIONAL DEVELOPMENT  
ASSOCIATION

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE  
CORPORATION

**OUTGOING WIRE**

TO: Abderrahman Tazi  
6 RUE GASTOUS  
CASABLANCA

*271*

DATE: July 30, 1965

CLASS OF  
SERVICE: **LT**

COUNTRY: MOROCCO

TEXT:  
Cable No.:

MR WOODS WOULD LIKE TO KNOW WHEN WE CAN EXPECT TO RECEIVE  
FULL POWERS FOR SIGNATURE BY MOROCCO OF ~~SD~~ CONVENTION STOP  
REGARDS

*on Settlement of  
Investment Disputes*

MENDELS

*INT BAFRAD*

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:  
NAME **M.M. Mendels** *[Signature]*  
DEPT. Office of the Secretary  
SIGNATURE \_\_\_\_\_  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)  
MMM/bm

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**Mr. Broches**  
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(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: *[Signature]*

INTERNATIONAL FINANCE CORPORATION

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL DEPARTMENT

OUTGOING WIRE

DATE July 30, 1965

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MR WOODS WOULD LIKE TO KNOW WHEN HE CAN EXPECT TO RECEIVE  
FULL POWERS FOR SIGNATURE BY MOROCCO OF THE CONVENTION STOP

REGARDS

*on statement of  
investment properties*

MENDELS

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Mr. Broches

JUL 30 3 50 PM 1965

M.M. Mendels

Office of the Secretary

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July 30, 1965

Dr. Jose Luis Sapateiro  
Banco de Fomento Nacional  
Rua Braamcamb, 5  
Lisbon  
PORTUGAL

Dear Dr. Sapateiro:

I have returned from a long and very pleasant vacation in Europe and was happy to find that our third Portuguese loan had become effective on schedule.

In a different field, I thought that you might be interested to know the progress made with the Convention on the Settlement of Investment Disputes which you helped draft.

Seven countries have now signed it: Tunisia, the United Kingdom, Ivory Coast, Jamaica, Pakistan, Nigeria and Mauritania. Ivory Coast has also obtained legislative authority to ratify it. The United States and Japan have informed us of their intention of signing in the very near future. Several other countries have also indicated that they would soon proceed with signature of the Convention.

We are rather happy that the Convention is finding ready acceptance among capital exporting and capital importing countries alike.

You will have noticed that the text of the Convention, as it was finally approved by the Executive Directors of the Bank and submitted to its member governments, does not depart substantially from the text drafted by the Legal Committee except on the question of substitution of a subrogee State for its national in arbitral proceedings before the Centre.

We have not received any indication of the position of the Portuguese Government on the Convention and I wonder whether you could let me know, informally of course, what such position is likely to be.

The President of the Bank, Mr. Woods, is particularly anxious to have the largest possible number of member countries sign the Convention before the next Annual Meeting of the Bank in September because he considers the Convention such an important step towards accelerating the pace of economic development.

I should think that Portugal, which is both a capital importer and a capital exporter, will want to be among the initial parties to the Convention.


I shall be grateful for any information you will be able to give us on the likelihood of an early signature of the Convention by Portugal; I shall naturally hold such information in confidence if you so wish.

I hope that we shall soon have the pleasure of seeing you in Washington again. Mr. Broches asks to be remembered to you and so do your other friends at the Bank.

Please remember me respectfully to Mrs. Sapateiro.

With warm regards,

Sincerely yours,

  
Piero Sella  
Attorney

PSella/ar

SecM65-205

FROM: The Secretary

July 30, 1965

SETTLEMENT OF INVESTMENT DISPUTES

The Convention on Settlement of Investment Disputes between States and Nationals of Other States was signed today at 3:00 p.m. on behalf of the Islamic Republic of Mauritania by His Excellency Ahmed-Baba Miske, Ambassador at Washington.

The Islamic Republic of Mauritania became the seventh member of the Bank to sign the Convention.

Distribution:

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

SecM65-200

FROM: The Secretary

July 29, 1965

SETTLEMENT OF INVESTMENT DISPUTES

There is attached hereto for the information of the Executive Directors a report on the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States prepared by the Committee on International Law of the Association of the Bar of the City of New York. The report consists of a description of the Convention, comments on United States adherence and an analysis of desirable implementing Congressional legislation. The report concludes that the Convention is "an extremely competent work that reflects thorough consideration of the difficult problems involved and adroitly reconciles the interests and viewpoints of diverse states" and urges prompt ratification of the Convention by the United States.

The comments on implementing legislation may be of interest to the governments of member countries which follow the Anglo-American system of law and particularly those that have a federal structure.

Additional copies of the report may be obtained from the Secretary's Office (ext. 2158).

Distribution:

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

# The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States

By THE COMMITTEE ON INTERNATIONAL LAW

On March 18, 1965, the Executive Directors of the International Bank for Reconstruction and Development approved the submission to member governments of the Bank with a view to ratification of a Convention On the Settlement of Investment Disputes Between States and Nationals of Other States. In the opinion of the Committee the Convention proposed for ratification is a sound, statesmanlike proposal that promises to make a significant contribution to the settlement of disputes with respect to international investments. We urge that it be ratified by the United States.

In submitting the Convention, the Directors stated that they were satisfied that it represented a broad consensus of the views of those governments which accepted the principle of establishing, by international agreement, facilities and procedures for the settlement of investment disputes which states and foreign investors wish to submit to conciliation or arbitration, and that they regarded the Convention as a suitable framework for such facilities and procedures.

The International Bank has given extensive consideration over a period of several years to the question of the desirability and practicability of establishing additional international facilities associated with the Bank for the settlement of investment disputes. The text of the Convention to establish these facilities was similarly carefully considered and has benefited from extensive preparatory work. In September 1962, pursuant to the request of the Board of Governors of the Bank, the Executive Directors began to study the matter and the legal staff of the Bank, under the chairmanship of Mr. Aaron Broches, prepared a preliminary draft Convention. This draft was subsequently discussed by legal experts designated by the member governments of the Bank in regional meetings in Addis Ababa, Santiago de Chile, Geneva and Bangkok. The four meetings were in the aggregate attended by legal representatives of eighty-six governments. At the annual meeting of the Bank in Tokyo in September 1964, the Executive Directors reported that in the light of the preparatory work and the views expressed at the regional meetings, it would be desirable to establish the contemplated international facilities. The Board of Governors then authorized the Directors to prepare a final draft of the Convention and invited all of the members of the Bank to designate legal representatives to assist the Executive Directors in this task with a view to arriving at a text acceptable to the largest possible number of governments. Representatives from sixty-one countries

participated in a conference of several weeks duration in Washington which substantially revised the basic working draft.

As this brief summary of the background of the Convention indicates, it is a thoroughly considered document that gives consideration to the desires of both the capital exporting and the capital importing countries and to various regional viewpoints and social and legal traditions. The Bank also received and considered the comments on the draft Convention submitted by various interested private groups, including this Committee.

Conciliation or arbitration of disputes between states and nationals of other states with respect to investments is an alternative that will often, indeed generally, be preferable for the investor to exclusive reliance on either the courts of the foreign state with whom the investor has an investment dispute or on time consuming and uncertain diplomatic representations by the investor's government on his behalf. Not only will arbitral proceedings make available prompt and impartial decisions that could usually not otherwise be obtained, but the decisions arrived at by an arbitral tribunal or as a result of recommendations of a panel of conciliators may not involve the embarrassment to either state that may sometimes arise by having the matter considered in courts of a foreign state. As a result the decisions reached are likely to be more politically acceptable to the nation in which the investment is made. From the standpoint of the host state a favorable decision will protect it from diplomatic and other pressures from the investor's government since the arbitral decision is an exclusive and final remedy.

The Convention is one of a number of recent proposals to facilitate international arbitration. In June 1958, the United Nations opened for signature a Convention on the Recognition and Enforcement of Foreign Arbitral Awards which came into force on June 7, 1959. In February of 1962 the Permanent Court of Arbitration at the Hague promulgated rules pursuant to which the International Bureau of the Permanent Court was authorized to make its facilities available for the arbitration or conciliation of international disputes between two parties only one of which is a state. The O.E.C.D. Draft Convention currently under discussion, while it is directed primarily toward a clarification of the obligations of states with respect to international investments in their territory and the formulation of specific substantive undertakings to be accepted by such states with respect to those investments, also contemplates arbitration to settle disputes between states and nationals of other states without, however, prescribing procedures. It would, therefore, if adopted, neatly complement the World Bank Convention which is primarily concerned with the improvement of procedures to settle disputes rather than with the substantive questions of paramount concern to the O.E.C.D. Convention. Previously, in April of 1961, a European Convention on International Commercial Arbitration was adopted to reduce the difficulties affecting commercial arbitration between physical or legal persons of European countries, particularly in East/West trade where the Eastern party was likely to be a state trading corporation of a communist state.

The existence of other efforts in this field (certain of which are specialized



and of limited general applicability) is no indication that the World Bank Convention is unnecessary, but is rather evidence of general need for more effective arrangements. The Committee believes that the Bank's Convention is a particularly well-conceived response to this need in view of its limited and well-defined objectives and the status that the Center which the Convention establishes would have by reason of its affiliation with a powerful international organization of the standing and reputation for impartiality that the Bank enjoys.

In relation to the development of international law, the Convention also represents another significant step in the gradual recognition of the standing of individuals as subjects of international law in that it enables an individual to bring a sovereign state before an international tribunal (given, of course, an appropriate arbitration agreement) and there to conduct his own case.

### *Principal Provisions of the Convention*

The Convention establishes an international Center for the settlement of investment disputes as an autonomous international organization. The actual conciliation or arbitration would be carried out not by the Center itself but by conciliation commissions and arbitral tribunals constituted in accordance with the provisions of the Convention. The organs of the Center are an Administrative Council composed of one representative of each contracting state and Secretariat consisting of a Secretary-General with such deputies and staff as may be required. The Bank has offered to provide an office for the Center and to make available administrative facilities and services and to underwrite within reasonable limits its basic overhead expenditures for a number of years.

The principal functions of the Administrative Council are the election of the Secretary General, the adoption of the budget of the Center and the adoption of administrative and financial regulations and the rules of procedure for the institution and the conduct of conciliation and arbitration proceedings. Action on these matters requires a majority of two-thirds of the members of the Council. Unless a state makes a contrary designation, each Governor and alternative Governor of the Bank appointed by a Contracting State will be *ex-officio* its representative and its alternate, respectively, on the Administrative Council.

The Secretary General performs a variety of administrative functions. In addition he has the power to refuse registration of a request for conciliation or arbitration proceedings, and therefore to prevent the commencement of such proceedings, if on the basis of the information submitted by the moving party he finds the dispute is "manifestly" outside the jurisdiction of the Center. The purpose of this limited power is to prevent the embarrassment that might result from the institution of proceedings in disputes which have clearly not been submitted to the jurisdiction of the Center. With the consent of the Administrative Council the Secretary General could be an employee of the Bank.

The Center will maintain panels of conciliators and panels of arbitrators. Each contracting state may designate to each panel four persons who may, but need not be, its nationals. The Chairman of the Bank may in addition designate ten persons of different nationality to each panel. Persons designated to the panels are required to 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 is stipulated to be of importance in the case of persons on the panel of arbitrators. In keeping with the essential consensual nature of any proceedings, the Convention permits the parties to appoint conciliators and arbitrators from outside the panels but requires that such appointees possess the qualities required for members of the panels.

It is to be hoped that the contracting states in designating panel members will bear in mind the standards applicable to the Judges of the International Court of Justice and designate persons similarly qualified.

Each conciliation commission consists of such number of conciliators as the parties have agreed upon. If there is no agreement, each would appoint one and, failing agreement upon a third, the Chairman of the Bank after consultation with the parties would appoint the third.

The arbitral tribunal is constituted in the same fashion except that a majority of the arbitrators are required to be nationals of states not party to the dispute, unless otherwise agreed between the parties. Either party may propose to the commission or the tribunal the disqualification of any of its members on account of a fact indicating a manifest lack of the qualities required by the Convention. The remaining members of the commission or tribunal, or in certain cases the Chairman of the Bank, will pass upon the qualification of panel members.

The purpose of a conciliation commission is to clarify the issues in dispute between the parties and to endeavor to bring about agreement between them on mutually acceptable terms. The commission may at any stage of the proceeding recommend terms of settlement to the parties which are not binding upon the parties, although they are obligated to give consideration to them.

The arbitral tribunal is the judge of its own competence. It applies such rules of law as may be agreed between the parties, and, in the absence of agreement, will 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. If the parties agree, it may also decide a dispute *ex aequo et bono*.

Arbitration proceedings will be conducted in accordance with the arbitration rules in effect on the date on which the parties consented to arbitration except as they may otherwise agree. Unless otherwise provided in a submission to the tribunal, it may call upon parties to produce documents or other evidence and may visit the scene of the dispute and conduct there such inquiries as it deems appropriate. It may also consider counterclaims arising directly out of the subject matter of the dispute provided that they are within the scope of the consent of the parties and otherwise within the

jurisdiction of the Center. The tribunal is given the power to prescribe provisional measures to preserve the rights of either party pending decision.

The Center will only concern itself with legal disputes arising directly out of an investment. The term investment is not defined. In as much as the consent of the parties is an essential prerequisite for the jurisdiction of the Center, each state may by giving or withholding consent define the categories of investments it will consider as potentially subject to the Convention. The consent must be in writing and once given may not be withdrawn unilaterally. Consent may be given in a variety of ways, for example in a clause included in an investment agreement providing for the submission to the Center of future disputes, or in a *compromis* regarding a dispute which has already arisen. It is also possible for a state in its investment promotion legislation to offer to submit disputes arising out of certain classes of investments to the jurisdiction of the Center. The investor might then give his consent by accepting the offer in writing. It is competent for a state to impose limitations on its consent, as for example requiring the prior exhaustion of local remedies.

The Center will only consider disputes between a contracting state or a subdivision or agency of that state and a national of another contracting state. The individual investor may not submit a dispute against any state of which he is a national, even if he is also a national of another state. However, a corporation or other business enterprise which had the nationality of a state party to the dispute would be eligible if that state had agreed to treat it as a national of another contracting state because of foreign control. This is an important provision since in many cases the foreign investment will be made through a foreign corporation.

If the parties agree to arbitration under the Convention they adopt this as the exclusive mode of settlement of the dispute. The investor's state is prohibited from giving diplomatic protection or bringing an international claim in respect of a dispute which the investor and another contracting state have submitted to arbitration or agreed to submit to arbitration unless the state party to the dispute fails to honor the award rendered by the tribunal. The host state agrees in the Convention to honor any award that may be rendered against it. The award is not subject to appeal or to any other remedy except those provided for in the Convention. These remedies include a request to the tribunal for a revision or for a supplementation or interpretation of the award. In addition, an award may be annulled by an *ad hoc* committee selected from the panel of arbitrators 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.

Contracting states agree to recognize awards as binding and to enforce the *pecuniary* obligations imposed by awards as if they were final decisions of domestic courts (whether or not the enforcing state or its national was a party to the award). Each contracting state is required to take such steps as may be necessary to implement these requirements in accordance with its own legal system. Submission of a dispute by a host state does not affect any immunity from execution that such state may have under the international law or national law provisions on sovereign immunity in judgments obtained against that state. However, contracting states agree to accept the jurisdiction of the International Court of Justice in disputes arising over the interpretation or application of the Convention. This would include a dispute arising from the failure of a contracting state to honor an award rendered against it pursuant to the Convention.

In addition to members of the Bank, the Convention is open to signature by any other state which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a two-thirds vote, invites to sign. The Convention will enter into force among the states which ratify it 30 days after the deposit with the Bank of the 20th instrument of ratification.

#### *United States Adherence*

The United States is the greatest capital exporting country in the world. It would appear to have much to gain and little or nothing to lose by the adoption of the Convention. So far as the United States is concerned, the principal effect of the Convention will be to make available to such of its nationals as desire to invest abroad additional remedies to supplement the inadequate remedies presently available. United States ratification would not require anybody to make use of the Convention. This will be entirely a matter for decision by the investor in every case. As previously noted, however, it does require the investor if he consents to arbitration under the Convention to adopt this route as his exclusive remedy, waiving diplomatic protection until such time as the host state fails to comply with any award. Since this consent will ordinarily be given by persons fully cognizant of their rights because they deem it to be in their interest, there can hardly be any United States objection to this procedure. Indeed, it may be very desirable to the extent that it insulates the State Department from private disputes and permits it to concentrate on matters of direct concern to the foreign policy of the United States, thus avoiding the strain on United States relations with a foreign country that the espousal of the cause of an investor in a particular dispute might give rise to. The very nature of the arbitration and conciliation proceedings envisaged by the Convention are such that they offer none of the possible embarrassment to the conduct of foreign policy that was feared by the State Department in connection with decisions with respect to foreign acts of state by domestic courts. United

States adherence to the Convention would also permit the United States, to the extent it desires to do so, to enter into arbitration or conciliation agreements with foreigners investing in the United States.

If the Convention is broadly ratified and foreign states consent to the settlement of disputes pursuant to the Convention it will make a significant contribution to the encouragement of foreign investments by reducing an aspect of insecurity and uncertainty affecting such investments.

If the United States adopts the Convention, it will be necessary for it to take appropriate measures to provide for the enforcement within the United States of agreements to arbitrate and of awards rendered under the Convention. The problem here is that in view of the historic bias of the common law against arbitration, a majority of the states of the United States still do not enforce arbitration clauses in contracts or recognize an arbitral award as final and binding. Awards rendered in other states of the United States are as such generally not enforceable in a majority of the states until an award has been reduced to judgment in a sister state, in which event it receives the benefit of the full faith and credit clause of the Constitution. Foreign arbitral awards and judgments resulting therefrom, however, are not generally enforceable in many states.

To comply with the Convention the United States would have to give to an award under the Convention the same standing as a final decision of a court in the United States. The Convention requires each Contracting State to designate a competent court or other authority for the purpose of granting recognition or enforcement of awards within that State's territory, but adds:

"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."

It would probably be desirable that United States adherence to the Convention be supplemented by implementing Congressional legislation, if the Convention is ratified as a treaty by the President with the advice and consent of the Senate. (If the Convention should be ratified by the United States in the same manner as the United States joined the World Bank, *i.e.*, by Congressional legislation, the Bretton Woods Agreements Act, 22 U.S.C. §§ 286-286k-1, such legislation could also provide the necessary mechanics for recognizing and enforcing awards in the United States.)

There are a number of problems which the Committee believes should be considered in relation to implementing legislation. These include:

(1) *Enforcement of awards in the federal courts.* Because a majority of the states do not enforce foreign awards, any attempt to make awards pursuant to the Convention enforceable in state courts would override the laws of the states. If this appears undesirable, the federal legislation may provide for enforcement of awards in the federal courts only.

(2) *Inadequacy of the Federal Arbitration Act.* The Federal Arbitration

Act, 9 U.S.C. §§ 1-14 would not provide adequate implementation of the Convention. It should be noted that:

(a) The scope of that Act is limited to written agreements to arbitrate contained in a contract evidencing a transaction involving "commerce," *i.e.*, U.S. domestic or foreign commerce.

(b) Petitions to compel arbitration pursuant to Section 4 of the Act may be brought only in a U.S. district court "which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties." In other words, a petitioner must be able to get into a federal court on some other basis of jurisdiction in order to make use of the Federal Arbitration Act.

(c) Stays of litigation brought in defiance of an agreement to arbitrate are available, pursuant to Section 3 of the Act, only in the federal court in which the suit is pending. Stays of conflicting state court litigation are not provided for.

(d) An arbitral award is not enforceable, as such, pursuant to the Act. Section 9 provides for awards to be confirmed as court judgments, but only if the parties in their agreement have agreed that a judgment of a court shall be entered upon the award and only by the federal court specified in the agreement of the parties or, if no court is so specified, by the federal court "in and for the district within which such award was made."

The Federal Arbitration Act in its present form, then, is obviously an inadequate basis for complying with the obligations of a contracting party under the Convention, especially the obligation to enforce an award covered by the Convention whether or not the "commerce" of the enforcing state is involved and the obligation to enforce such award as if it were a final judgment of a court in that state. New federal legislation geared to the requirements of the Convention appears necessary.

(3) *Scope of new federal legislation.* The scope of implementing legislation should be as broad as the Convention. It should apply to awards rendered pursuant to the Convention, whether or not the U.S. or one of its nationals was a party to the arbitration and whether or not U.S. commerce was involved. There would appear to be no doubt of the constitutionality of such federal legislation in view of the Congressional power to regulate commerce as well as the power to implement treaties and regulate foreign affairs.

(4) *Provisions on enforcement of awards.* As a contracting party under the Convention, the U.S. would be obliged (a) to abide by and comply with an award rendered against the U.S. and (b) to recognize any award rendered pursuant to the Convention as binding and to enforce the pecuniary obligations imposed by that award within U.S. territory as if it were a final judgment of a court in the U.S. No legislation would be required to comply with the former obligation; there is already provision for recovery against the U.S. for breach of its contracts with individuals. As to the latter obliga-

tion, the U.S. is further obliged by the Convention to designate "a competent court or other authority" for the recognition and enforcement of awards.

It appears that the U.S. may fulfill its obligations under the Convention by investing the federal courts with jurisdiction to recognize and enforce awards and by decreeing that such courts shall treat an award as if it were a final judgment of a state court. Jurisdiction should be granted to the federal courts without regard to jurisdictional amount and without requiring some additional basis of federal jurisdiction. Such legislation would create valid "arising under" federal subject matter jurisdiction, not only because arbitration is substantive, *Bernhardt v. Polygraphic Co.*, 350 U.S. 198 (1956), but also because such legislation would in effect enact the substantive provisions of the Convention as federal arbitration law.

As to the enforcement of awards as if they were state court judgments, it may be desirable to direct the federal courts to follow the policy of the state in which the court sits as to enforcing sister state judgments. It would be sufficient for the Convention to direct the court to give full faith and credit to the award.

(5) *Provisions on enforcement of arbitral agreements; stays of litigation.* As the Federal Arbitration Act indicates, effective arbitration legislation requires not only provisions or enforcing awards but also provisions for enforcing the agreement to arbitrate, both by ordering a recalcitrant party to arbitrate and by staying court proceedings instituted in disregard of the agreement. The Convention, however, contains no provisions requiring contracting states to recognize and enforce agreements to arbitrate. The only requirement in this regard is that if a contracting state enters into an agreement to arbitrate, such consent to arbitration, unless otherwise stated, shall be "deemed consent to such arbitration to the exclusion of any other remedy." (Article 26). A contracting state is not even required to take steps to prevent its nationals from instituting litigation at home or abroad in disregard of an agreement by such nationals to arbitrate investment disputes with another contracting state.

On balance, it seems best for Congress not to attempt to legislate in this area. The Convention does not require it and legislation providing for court orders compelling sovereigns to arbitrate ought to be based on express international agreement.

(6) *"Act of State."* Awards granting relief to private investors against states may from time to time be based upon the conclusion that the state involved violated its obligations under the investment contract, e.g., by expropriating the investor's property without compensation. Enforcement of such an award in U.S. courts against a foreign state should not be thought to run afoul of the "act of state" doctrine laid down by the Supreme Court in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964), since the domestic court is not asked to consider the "act" of a foreign state but to give effect to a decision rendered by an international arbitral tribunal pursuant to express agreement of that state.

*Conclusion*

The Committee on International Law has followed closely the development of the World Bank Convention on the Settlement of Investment Disputes which it regards as an extremely competent work that reflects thorough consideration of the difficult problems involved and adroitly reconciles the interests and viewpoints of diverse states. The Committee urges prompt ratification of the Convention by the United States. It believes that the Convention can make a significant contribution to the encouragement of foreign investment and ultimately to the maintenance and promotion of the rule of law in international disputes.

*June 1, 1965*

Respectfully submitted,

COMMITTEE ON INTERNATIONAL LAW

CARLYLE E. MAW, *Chairman*

MANUEL R. ANGULO	WILLIAM A. PERLMUTH
JACK P. JEFFERIES	LEONARD V. QUIGLEY
ALAN RICHARD KASDAN	LYMAN M. TONDEL, JR.
WILLIAM T. KETCHAM, JR.	MITCHELL BROCK
ISAAC SHAPIRO	DONALD J. COHN
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PETER A. BATOR	WILLIAM EVERDELL, III
LOUIS HENKIN	ALBERT H. GARRETSON
ELIOT D. HAWKINS	JOHN C. SCHLUER





ROUTING SLIP

Date

July 30, 1965

OFFICE OF THE PRESIDENT

Name

Room No.

Mr. Broches

810

Action

Note and File

Approval

Note and Return

Comment

Prepare Reply

Full Report

Previous Papers

Information

Recommendation

Initial

Signature

Remarks

Mr. Woods has not seen the attached as yet, but, as you are going on leave, you may like to have it immediately, and perhaps you will arrange for someone in your department to give Mr. Woods a reply to send to Mr. Walter Hill.

From

G.C. Wishart

INCOMING MAIL ROUTING SLIP		Date JUL 30 1955	
Mr. Alter	510	Mr. Loftus	578
Mr. Avramovic	1033	Mr. Lutolf	547
Mr. Bart	640	Mr. Mason	622
Mr. Benjenk	560	Mr. McIvor	606
Mr. Broches	810	Mr. Melmoth	674
Mr. Calika	541	Mr. Michaels	1217
Mr. Cargill	600	Mr. Nelson	576
Mr. Cavanaugh	700	Mr. Nurick	805
Mr. Chauffournier	510	Office of Information	461
Mr. Cheek	645	Office of Secretary	1205
Mr. Clark	805	Office Services	107
Mr. Collier	646	Personnel Division	206
Mr. Consolo	839	Projects	
Mr. Cone	651	Mr. Reamy	722
Mr. de la Renaudiere	544	Mr. Rist	1127
Mr. Demuth	845	Mr. Schmidt	1122
Mr. de Vries	800	Mr. Stevenson	606
E.D.I.		Mr. Street	600
Mr. El Emary	552	Mr. Tolbert	625
Mr. Fontein	651	Travel Office	224
Mr. Friedman	1223	Treasurer's	717
Mr. Ghoshal	659	Mr. Twining	1210
Mr. Goodman	600	Mr. Vignes	500
Mr. Goor	851	Mr. Weiner	513
Mr. Gordon	845	Mr. Wiese	570
Mr. Hartwich	650	Mr. Williams	552
Mr. Kamarck	800	Mr. Wilson	1220
Mr. Knapp	1220	Mr. Woods	1220
Mr. Knox	584	Mr. Worthington	446
Mr. Kruihof	546	Mr. Wright	852
Mr. Lejeune	1210		

JUL 30 REC'D

## INTERNATIONAL CHAMBER OF COMMERCE

PARIS  
38, COURS ALBERT 1<sup>ER</sup>

OFFICE OF THE SECRETARY GENERAL

Paris, 28th July 1965.

Dear Mr. President,

On 3rd April 1964 I had pleasure in sending you the statement by the International Chamber of Commerce welcoming the IBRD's Preliminary Draft of a Convention on the Settlement of Investment Disputes between States and Nationals of other States.

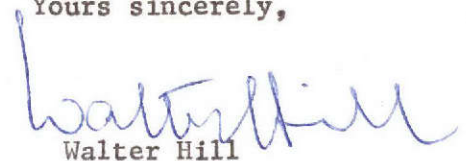
This statement was subsequently adopted by the Council of the I.C.C. at its Stockholm meeting in May 1964, and finally ratified by the XXth Congress of the I.C.C. at New Delhi last February.

We are pleased to inform you that the same full support was given by the I.C.C.'s Commission on International Arbitration, at its meeting on 28th June 1965, to the final text of the Convention as established by the Executive Directors of the I.B.R.D. on 18th March 1965.

It is with this in mind that the I.C.C.'s Commission felt your attention should be drawn to two points which are outlined in the enclosed note. In the Commission's view, their clarification would tend to facilitate the support given by international business circles to the signature and ratification of the Convention by as many States as possible.

You may also be interested in having the attached copy of a Note prepared for the Commission's meeting by Professor E. Minoli (Doc.No.420/158).

Yours sincerely,

  
Walter Hill

George D. WOODS Esq.  
President  
International Bank for Reconstruction  
and Development  
1818 H Street, N.W.  
WASHINGTON 25, D.C.

*sent. Aug. 2 x 5, 1965*

INTERNATIONAL CHAMBER OF COMMERCE

PARIS  
38 COUR ALBERT I<sup>er</sup>

OFFICE OF THE SECRETARY GENERAL

Paris, 28th July 1962.

Dear Mr. President,

On 2nd April 1962 I had pleasure in reading you the statement by the International Chamber of Commerce welcoming the IBCD's Preliminary Draft of a Convention on the Settlement of Investment Disputes between States and Nationals of other States.

This statement was subsequently adopted by the Council of the I.C.C. at its Stockholm meeting in May 1962, and finally ratified by the XXth Congress of the I.C.C. at New Delhi last February.

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You may also be interested in having the attached copy of a note prepared for the Commission's meeting by Professor E. Minelli (Doc. No. 420) 28.

Yours sincerely,

Walter Hill

George H. W. Bush  
President  
International Chamber of Commerce  
and Development  
COMMUNICATIONS  
GENERAL FILES  
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1115 A STREET, N.W.  
WASHINGTON 25, D.C.  
1962 JUL 30 AM 8:43

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

1. The Convention apparently provides an arbitral scheme under which one of the parties will be a Contracting State and the other a "National of another Contracting State". The question is whether the Convention applies to the frequently-arising case in which the private investor benefits from the credit guarantee of a body within his own country, predominantly controlled by the State. In such circumstances it is to be supposed that in case of litigation between the above-mentioned "Contracting State" and the private investor as "National of another Contracting State", this other State as credit guarantor may wish to step into the shoes of its own national. Such subrogation would seem to raise two different problems. The first relates to the arbitral agreement between the three parties concerned : it would seem possible, however, to provide for such subrogation in the arbitral agreement between the Contracting State and the National of another Contracting State. The second difficulty, in the absence of any provision in the Convention explicitly providing for such subrogation, appears to lie in the practical application of the arbitral machinery to cases where the Contracting State might eventually find itself confronted with another State. In the various capital-exporting countries investors would appreciate clarification of this point, which would enable them to fathom more precisely the practical services offered by the Convention.

2. Furthermore, the Commission of the International Chamber of Commerce noted with interest the importance attached by the authors of the Convention to the choice of arbitrators for the satisfactory working of the arbitral system thus provided, and which fully appears in the text finally formulated. In the opinion of the Commission the provisions of articles 37 and following on the constitution of the arbitral tribunal are likely to ensure the highest possible measure of impartiality of the arbitrators. However, it is precisely in view of the importance of the matter that it was felt necessary to clarify

the precise meaning of article 39. The English version would seem to suggest that the majority of the arbitrators constituting the arbitral tribunal must be of a nationality other than that of the parties ; however, the French text uses language which would rather imply that the majority relates to the voting, i.e. that in case of a decision by majority no arbitrator of the nationality of the parties may be included in such majority.

-:-:-:-:-:-:-



CHAMBRE DE COMMERCE INTERNATIONALE  
INTERNATIONAL CHAMBER OF COMMERCE

38, COURS ALBERT 1<sup>er</sup> - PARIS VIII<sup>e</sup>



Legal Group  
FE

Document No. 420/158  
20. VII. 1965 - ib  
(Translation)

COMMISSION ON INTERNATIONAL ARBITRATION

Meeting on 28th June 1965

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THE WORLD BANK'S ARBITRATION SYSTEM

Note

by Professor E. MINOLI  
Vice-Chairman of the Commission

---

1. The efforts of the International Bank for Reconstruction and Development to facilitate the settlement of disputes between States and other public bodies on the one side, and nationals of other States on the other, have finally resulted in the drafting of a Convention setting up an arbitration centre for investment disputes.
2. It contains praiseworthy solutions to several problems. A number of these are discussed below.
3. It should be noted in the first place that the Convention contains no definition of the term "investment" which gives the centre a very wide jurisdiction. It is left to the parties to decide whether the contract between them does or does not concern investments. The Secretariat will refuse to register the request only if "the dispute is manifestly outside the jurisdiction of the Centre" (Article 28, 3). The Tribunal, for its part, "shall be the judge of its own competence" (Article 41, 1). It seems hardly likely that the Secretariat would refuse to register a request or that the Tribunal would declare itself incompetent on the ground that no investment existed once the parties had stipulated that their dispute was to be judged under the Centre's rules.
4. Everything possible is done to ensure that the parties will apply their arbitral agreement in good faith. Article 72 stipulates that notice denouncing the Convention "shall not affect the rights or obligations... arising out of consent to the jurisdiction of the Centre given... before such notice was received by the depository". Furthermore, under 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".

.../...



5. The Centre's arbitration is designed essentially to settle disputes between a State and a natural or juridical person foreign to that State. But the concepts of a "State" and of a person "foreign" thereto are given the widest possible meaning. Not only the State in the strict sense of the word, but also any "constituent subdivision or agency" (also including, for instance, companies incorporated under private law that are directly or indirectly controlled by the State) may have recourse to the Centre's arbitration. In view of the fact that States very frequently use such juridical persons for tasks in which investments generally play some part - such as the operation of electricity services, railways, telecommunications, etc - the solution adopted in the Convention appears highly appropriate.

In the same way, certain juridical persons created for some reason or other as companies subject to national law may nevertheless be considered to be foreign because they are controlled by foreign interests.

6. The Convention is skilfully and wisely designed to ensure the maximum degree of competence and impartiality on the part of the arbitral tribunal, since these qualities should encourage States to accept it. It concedes to each party the right to choose its own arbitrator, but sets very strict limits on the exercise of this right :

- (a) the arbitrator should be chosen from the "panels" (Article 12 et seq.), or should possess the qualities required for inclusion on the panels ;
- (b) in the event of a majority decision no arbitrator of the same nationality as the party in whose favour the award is made may form part of such majority (unless he has been chosen by agreement of all the parties). (+)

This should encourage the parties - save in exceptional cases - either to leave the appointment of the arbitrators to the Chairman, who in accordance with the "golden rule" of the International Chamber of Commerce (which has been accepted by those drafting the Convention) will choose arbitrators of a third nationality, or else to appoint arbitrators of a nationality other than their own. This can only serve to weaken the connection between a party and the arbitrator it has named, which is often too close and may jeopardize the success of arbitration.

When a decision has to be given on a request for annulment, even greater precautions are taken : all the members of the Committee are appointed by the Chairman and they must all be of a nationality other than those of the parties of the arbitrators who made the award.

7. The working of the rules concerning the nationality of the arbitrators, and the fact that the Chairman is obliged to choose the arbitrators he has to appoint from the panels provided for under the Convention, and from different countries, should ensure that the conciliators and arbitrators serving on these panels form a body of persons genuinely capable of remaining above purely national interests. They shall constitute a group of persons chosen for their personal qualifications and their ability to serve the general interest. The very existence of such a body and the fact that nationals of many countries representing many races will be able to make a concrete contribution as arbitrators or conciliators, can only help to advance the cause of arbitration throughout the world.

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(+) This would seem to be the case according to one possible interpretation of Art. 39.

8. The Convention contains no innovations of principle : arbitration must be based on an agreement between the parties giving the Centre jurisdiction to settle legal disputes, and the agreement cannot be unilaterally denounced.

The arbitrators will in principle judge cases in accordance with the rules of law, unless the parties agree to request a decision *ex aequo et bono*. The law applicable is to be that "agreed by the parties", or failing such agreement "the law of the Contracting State party to the dispute... and such rules of international law as may be applicable" (which reveals an intention not to apply national law when it conflicts with an international obligation of the State in question).

Decisions are to be taken by a majority of the tribunal and the reasons must be stated. It has been provided that each arbitrator shall have the right to express his individual opinion, whether he dissents from the majority or not, and that this opinion shall be attached to the award. The decision is not published (another principle found in the ICC's arbitration system). It may be supplemented within a short period if all the questions submitted to the tribunal have not been settled. Finally, the Convention provides for machinery, within the Centre itself, for the interpretation, revision or annulment of awards. Thus there will be no need to have recourse for this purpose to purely national authorities. This represents a decisive step forward in the development of arbitration.

9. The award "shall be binding on the parties", who are required to "abide by and comply with the terms of the award". Here an international obligation is combined with an obligation under national law, and with the undertaking given by each Contracting State to "enforce the pecuniary obligations imposed by that award within its territories as if it were the final judgment of a court in that State" (Articles 53 and 54). Moreover, each Contracting State must specify what competent Court or other authority has been designated to enforce the award (Article 54, 2).

10 The Convention does not however interfere with certain rights which States often jealously preserve. They retain the right to decide what classes of disputes they would or would not consider as within the Centre's jurisdiction. They can decide what persons (apart from the State) may be parties in arbitration cases, and whether the State's prior consent is necessary. They are not required either to undertake to renounce the law applicable in their territories regarding immunity from enforcement, or to establish in their territories any special enforcement procedure for awards given under the terms of the Convention.

States will still be free to decide in each individual case, whether to undertake that differences coming within the Centre's jurisdiction will be submitted to arbitration. Moreover, they may, if appropriate, stipulate that submission to arbitration does not imply renunciation of recourse to other remedies. They may even insist, if they so wish, as a condition for their agreement to submit to arbitration, that the latter shall be considered as the ultimate remedy, to be resorted to only after exhaustion of all local administrative or judicial remedies (Articles 25 and 26). Nevertheless it does seem that what is *res judicata* under national law will in the last resort have to give way to the arbitral award. This would be an innovation of vital importance.

.../...

11. Contracting States will undertake on a reciprocal basis to refrain from any diplomatic intervention in connection with a dispute which is to be submitted to the Centre's arbitration, save when the Contracting State concerned "fails to abide by and comply with the award". It may be wondered whether this provision also covers the case of a State which in order to protect one of its nationals, prevents enforcement of the award made against him.

12. The ICC has always strongly favoured the Convention, which it sees as an instrument designed to ensure that order and justice shall prevail in relations connected with investments. The ICC is naturally willing to offer the Centre, in the context of Article 63, any facilities which may be requested of it.

National Committees should use all their influence with their respective Governments to ensure that the Convention is signed and ratified as soon as possible.

S. I. D.  
le 28 juillet 1965

Buchdruckerei  
Schulthess & Co AG  
8022 Zurich  
Switzerland

Concerne: Règlement des différends relatifs  
aux investissements

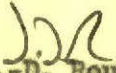
Messieurs,

Par la présente, j'ai l'honneur de vous faire parvenir le bon à tirer concernant ma note sur le sujet ci-dessus.

Ainsi que vous pourrez le constater, je me suis permis d'apporter quelques corrections et adjonctions mineures au texte de l'épreuve. Bien que celles-ci ne nécessitent en fait aucune explication, je voudrais néanmoins relever le point suivant: étant donné que j'ai obtenu tant mon doctorat que mon brevet d'avocat à Neuchâtel (Suisse), la mention "(Washington D.C.)" figurant à la troisième ligne de la première page pourrait prêter à confusion et doit par conséquent être supprimée. Tout au plus pourrait-elle être remplacée par la mention "(Neuchâtel)". Au cas toutefois où vous considèreriez souhaitable d'indiquer la provenance de l'article, je vous suggérerais d'insérer en fin de texte, par exemple au bas de la page 8, les mots "Washington D.C., juillet 1965".

Finalement, je serais fort heureux s'il vous était possible de m'adresser, en temps voulu, quelques exemplaires (si possible entre 10 et 15) du numéro où paraîtra ma note. Etant donné la brièveté de celle-ci, je ne pense pas qu'il soit désirable d'en imprimer des tirés-à-part.

Veuillez agréer, Messieurs, l'expression de mes sentiments distingués.

  
J.-D. Roulet

Annexes

Copie: Prof. Dr. Oftinger

cc: Legal Files

JDRoulet/al

July 27, 1965

Dear Mr. Kutner:

Your letter of June 4, 1965 arrived here while I was in Africa.

I regret that I missed the opportunity of meeting you in San Juan for a discussion of your proposals in relation to the Bank sponsored Convention. This Convention is now open for signature and the initial responses are favorable. The Convention will enter into force after it has been signed and ratified by twenty States. We think that this stage may be reached in the middle of next year.

I am fully aware of the fact that this Convention, even after its entry into force, will be only a first step in the direction of what you seek to achieve. However our experience has convinced us that in order to achieve practical results one has to move slowly and in a fairly limited range. While I would be happy to study any suggestions which you may have for an initial utilization for your proposed Treaty-Statute in connection with the Convention, I do not believe that we could appropriately move very far ahead on this until the International Centre for the Settlement of Investment Disputes is firmly established.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Luis Kutner  
Chairman  
WORLD HABEAS CORPUS  
105 W. Adams Street  
Chicago, Illinois 60603

ABroches:cml

1965 JUL 28 6W 2:12

COMMUNICATIONS  
GENERAL COUNSEL  
RECEIVED

July 27, 1965

Dear Mr. Kutner:

Your letter of June 11, 1965 arrived here while I was in Africa.

I regret that I missed the opportunity of meeting you in San Juan for a discussion of your proposals in relation to the Bank sponsored Convention. This Convention is now open for signature and the initial responses are favorable. The Convention will enter into force after it has been signed and ratified by twenty States. We think that this stage may be reached in the middle of next year.

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Sincerely yours,

A. Broches

A. Broches  
General Counsel

Mr. Luis Kutner  
Chairman  
WORLD HABEAS CORPUS  
105 W. Adams Street  
Chicago, Illinois 60603

ABroches:cmf

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# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> July 26, 1965	<b>Document Type</b> Memorandum			
<b>Correspondents / Participants</b> To: Mr. Vilhjalmur Thor From: A. Broches				
<b>Subject / Title</b> Convention on the Settlement of Investment Disputes				
<b>Exception(s)</b>				
<b>Additional Comments</b> 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.  <table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			

Le 23 juillet 1965

Monsieur P.T. Mpanjo  
Ministère des Finances  
Yaounde, Cameroun

Cher Monsieur,

C'est au sujet de la Convention sur le Règlement des Différends relatifs aux Investissements entre Etats et Ressortissants d'autres Etats que je vous écris afin de vous mettre au courant des derniers développements.

Le texte de la Convention qui fut approuvé par les Administrateurs de la Banque et soumis aux gouvernements membres au mois de mars de cette année a été signé par la Tunisie, la Grande-Bretagne, la Jamaïque, la Côte d'Ivoire, le Pakistan et le Nigéria et l'Assemblée nationale de la Côte d'Ivoire en a autorisé la ratification. Plusieurs autres pays nous ont informé qu'ils signeront la Convention avant la prochaine assemblée annuelle de la Banque au mois de septembre.

Je suis donc très content de l'accueil que nos pays membres ont jusqu'à présent réservé à cette Convention et j'aimerais savoir, à titre personnel, quelle est l'attitude du Gouvernement du Cameroun à cet égard.

Je pense que le texte de la Convention est à l'examen des autorités camerounaises et vous aurez sans doute remarqué que ce texte a tenu compte de plusieurs remarques que vous aviez faites à la réunion d'Addis-Abéba, notamment au sujet de l'incompatibilité entre les fonctions de Secrétaire Général et l'emploi par la Banque, la double nationalité des personnes physiques et des sociétés, le choix du droit applicable et la récusation des conciliateurs et arbitres. En outre, l'alinéa (h) de l'Article 25 de la Convention tient compte du problème que vous aviez soulevé dès l'ouverture de la réunion d'Addis-Abéba, en permettant à tout Etat signataire d'indiquer les catégories de différends qu'il considérerait comme pouvant être soumis ou non à la compétence du Centre.

Je vous serai reconnaissant pour toute information que vous voudrez bien m'envoyer au sujet de l'adhésion du Cameroun à la Convention.

La prochaine assemblée de la Banque sera, j'espère, une occasion pour vous revoir.

Veillez agréer, cher Monsieur, l'expression de mes sentiments les plus distingués.

S/

A. Broches  
Conseiller Juridique

PSella/ABroches/lj  
cc: Mr. Sella



July 22, 1965

Dear Mr. Maw:

I have your letter of July 20th and want to thank you and the City Bar Association for your courtesy in making available to us 150 copies of the International Law Committee's report on the Convention on the Settlement of Investment Disputes.

With personal regards,

Sincerely yours,

*(Signature)* A. Broches

A. Broches  
General Counsel

Mr. Carlyle E. Maw  
Cravath, Swaine & Moore  
1 Chase Manhattan Plaza  
New York, N. Y. 10005

ABroches:cml



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> July 22, 1965	<b>Document Type</b> Memorandum			
<b>Correspondents / Participants</b> To: Mr. Tourice Toussaint From: A. Broches				
<b>Subject / Title</b> Convention pour le reglement des differends relatifs aux investissements entre Etats et ressortissants d'autres Etats				
<b>Exception(s)</b> Attorney-Client Privilege				
<b>Additional Comments</b>		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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			

812

**OUTGOING WIRE**

**TO:** JOAQUIN GUTIERREZ CANO  
FELIPE IV No. 4  
MADRID

**DATE:** July 20, 1965

*RCM*

**CLASS OF SERVICE:** LT

**COUNTRY:** SPAIN

**TEXT:**  
**Cable No.:**

MR. WOODS SUGGESTED I CABLE YOU TO INQUIRE ABOUT LIKELIHOOD  
SIGNATURE OF CONVENTION PRIOR TO ANNUAL MEETING BY THE COUNTRIES  
YOU REPRESENT. WOULD APPRECIATE YOUR ADVICE. REGARDS.

BROCHES

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

NAME

A. Broches

DEPT.

Legal

SIGNATURE

*A. Broches*

(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

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INTERNATIONAL BANKING CORPORATION  
INTERNATIONAL DEVELOPMENT CORPORATION

OUTGOING WIRE

DATE: \_\_\_\_\_  
CLASS OF SERVICE: \_\_\_\_\_

RGH

COUNTRY: \_\_\_\_\_

TIME: \_\_\_\_\_

MR. WOLFE REQUESTED I GABRIEL YOU TO INVITE MEAT MEETING  
SIGNATURE OF CONFERENCE PRIOR TO ANNUAL MEETING BY THE COUNTRIES  
YOU REPRESENT. WOULD APPROPRIATE YOUR ADVICE. REGARDS.

PROCES

NOT TO BE TRANSMITTED

CLEARING AND WIRE DISTRIBUTION

Air Station

JUL 20 6 48 PM 1965

COMMUNICATIONS  
GENERAL LINES

RECEIVED

A. Brookes

Legal

For Use by Receiver Division

ORIGINAL (the Copy)

the copy of the message should be prepared for

Checked for Delivery

July 19, 1965

Sir:

Your letter of July 7, 1965 addressed to Mr. Woods has been referred to me for reply.

While the International Bank for Reconstruction and Development has in a few instances agreed to act as mediator or conciliator in disputes between one of its member governments and foreign investors, this is not a normal activity of the Bank and, in any event, is not one in which the Bank would engage unless it had been requested to do so by the member government concerned.

As you are probably aware, the World Bank has taken the initiative in proposing a Convention on the Settlement of Investment Disputes between States and Nationals of Other States which would establish mechanisms to which governments and foreign investors may have access for the settlement through conciliation or arbitration of disputes between them. The Convention was approved by the Bank's Executive Directors on March 18, 1965 and is now open for signature and ratification. The Convention has been signed by a number of countries, including Tunisia, but not yet by France.

One of the reasons which prompted the Bank to take the initiative for the Convention was the fact that its principal responsibility as a development institution does not permit it to devote the time of its senior officers to conciliation activities, save in extraordinary circumstances.

For the reasons stated, I must inform you that the Bank cannot accede to your request.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

M. André Lefebvre  
Le Président du Conseil d'Administration  
Société HIPPO-ZARITUS  
60 rue de Londres  
Paris 8, France

ABroches:cml

July 19, 1965

Dear Mr. Mirghani:

Thank you for your letter of July 7, 1965 regarding the Convention on the Settlement of Investment Disputes.

Since I had heard that my friend Saad El Fishawy was working on an Arabic translation of the Convention, I asked him whether he could make a copy available to you. He cabled me in reply that he had seen you and had already handed to you the Arabic text of the report of the Executive Directors and that he would give you the Arabic text of the Convention as soon as he had completed it. I trust that this will be helpful to you in connection with the memorandum to the Cabinet.

Meanwhile I remain with best personal regards,

Sincerely yours,  
(Signed) A. Broches

A. Broches  
General Counsel

Mr. Abdel Rahim Mirghani  
Under Secretary for Economic Planning  
Ministry of Finance & Economics  
P.O.B. 298  
Khartoum, Sudan

ABroches:cml

512

DECLASSIFIED

AUG 21 2023

WBG ARCHIVES

July 16, 1965

Personal and Confidential

Dear Mr. Kazeem:

As you may be aware, Chief Adebo signed the SID Convention on July 13th. Chief Adebo gave us a copy of the extract from the minutes of the Council which authorized signature of the Convention and further authorized the Ministry of External Affairs to arrange for the deposit of the instrument of ratification. I do not know whether this is a matter with which you are officially concerned, but I thought I would pass it on to you as a point of information.

My principal reason for writing to you is to tell you that I followed up on what you had told me about a note addressed to Nigeria, among others, by Ceylon. The Ceylonese Embassy procured a copy of that note which had been addressed to a number of Commonwealth countries. In your case it was transmitted through the United Kingdom Government since Ceylon has no diplomatic representation in Lagos, hence the note reached you with considerable delay and after the elections of March as a result of which there was a change of government. The note had been sent by the earlier government and I have just been informed unofficially, but I believe quite reliably, that the new government wants to dissociate itself from the position taken earlier and is in fact considering adhering to the Convention.

Without further news for the moment, I send you my best regards.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. B. O. Kazeem  
Deputy Solicitor General  
Federal Ministry of Justice  
Lagos, Nigeria

ABroches:cml

July 16, 1965

Dear Adeyeye:

In reply to your today's cable I confirm that Chief Adebo signed the SID Convention on July 13. He has been sent a certified copy of the Convention including the signatures preceding his as well as his own. I take it that that document will in due course reach the Ministry of External Affairs. I am sending you under separate cover by air mail a dozen copies of the official tri-lingual text of the Convention as well as a dozen copies of the English text of the Convention with the accompanying report of the Executive Directors.

I take this opportunity to tell you once again how much my wife and I enjoyed our stay in Nigeria and to thank you for your many kindnesses.

With personal regards to yourself and your wife.

Sincerely yours,

*A. Broches*

A. Broches  
General Counsel

Mr. J. A. Adeyeye  
Federal Ministry of Finance  
Lagos, Nigeria

ABroches:cm1



INCOMING CABLE

DATE AND TIME  
OF CABLE:

JULY 16, 1965 1030

LOG NO.:

RC 37

TO:

BROCHES INTBAFRAD

FROM:

LAGOS

ROUTING

ACTION COPY: MR. BROCHES

INFORMATION  
COPY:

DECODED BY:

TEXT:

FOR BROCHES FROM ADEYEYE ✓

FURTHER MYCABLE OF 1ST JULY UNDERSTAND CIEF ABEBO ALREADY SIGNED  
SID CONVENTION. GRATEFULLY SUPPLY ME DOZEN COPIES OF CONVENTION  
EARLIEST PERSONAL REGARDS

PERMIFINANCE LAGOS

TLF

*ack July 16/65*

INCOMING CABLE

DATE AND TIME OF CABLE	JUL 16, 1965	ROUTING
LOG NO.	10 21	ACTION (BY: MR. SPOONER)
TO	REGIONS INFORMATION	INFORMATION COPY
FROM	LAGOS	DECODED BY:
TEXT:		

FOR REGIONS WITH AIRMAIL  
 AIRMAIL MESSAGE ON JULY 16, 1965. THIS MESSAGE WAS ALREADY SIGNED  
 AND COPIES. COPIES OF THIS MESSAGE ARE BEING COPIED TO  
 EARLIEST THROUGH REGIONS  
 INFORMATION LAGOS

JUL 16 11 57 AM 1965

COMMUNICATIONS  
GENERAL FILES

FOR INFORMATION REGARDING CABLES, PLEASE CALL THE COMMUNICATIONS UNIT EXT. 2001

TYPED

DUPLICATE

810  
July 16, 1965

Dear Sir:

As requested in your letter dated July 12, 1965, addressed to Mr. Mendiels, I enclose herewith five copies of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Yours sincerely,

Donald D. Fowler  
Assistant Secretary

Mr. A. Hamid bin Pawanchee  
Charge d'Affaires, a.i.  
Embassy of Malaysia  
2401 Massachusetts Avenue, N.W.  
Washington, D. C. 20008

Encs.

cc: Mr. Broches

neb

July 15, 1965

Dear Mr. Maw:

Thank you for your letter of July 12th.

Some of our Executive Directors have expressed an interest in seeing the report for the purpose of sending it on to their governments. The numbers involved are rather high I am afraid, say 150. If it were still possible to increase your order, we would be very happy to pay for the extra copies. However, if this should not be possible we shall be grateful for a lesser number for which we would also be glad to pay.

With best regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Carlyle E. Maw  
1 Chase Manhattan Plaza  
New York 5, N.Y.

ABroches:cml

*Kuwait Sak*  
*810*

INCOMING CABLE

DATE AND TIME OF CABLE: **JULY 15, 1965** **1100**

LOG NO.: **WU 10**

TO: **INTBAFRAD**

FROM: **KUWAIT**

ROUTING	
ACTION COPY:	<b>MR. BROCHES</b>
INFORMATION COPY:	
DECODED BY:	

TEXT:

**FOR BROCHES**

**HANDED MIRGHANI HERE SIGNING LOAN AGREEMENT ARABIC EXPLANATORY REPORT. CONVENTION TRANSLATION BEING PREPARED WILL BE SENT REGARDS**

**EL FISHAWY**

**FCA**

TELETYPE CABLE

DATE AND TIME OF CABLE	TO	FROM	TEXT
JUL 15, 1965	INTERPAD	KIMALT	
1100			

ROUTING

ACTION COPY: MR. MOORE  
 INFORMATION COPY: DECODED BY:

FOR INFO: HANDED KIMALT RE: BERING LAM AGREEMENT ABANDON EXPLANATORY REPORT. CONVERSION TRANSLATION BEING PREPARED WILL BE SENT SEPARATE

SI. FISHERY

FOA

JUL 16 8 34 AM 1965

GENERAL FILES COMMUNICATIONS

July 15, 1965

Dear Mr. Spencer:

Thank you for your letter of July 6, 1965 addressed to Mr. El Emery, in which you request available information and documents regarding the Convention on Settlement of Investment Disputes.

I am glad to be able to send you under separate cover copies of the Convention and the Report of the Executive Directors thereon in English and French. The Report contains a brief historical outline of the preparatory work as well as explanatory notes on some of the main provisions of the Convention. I am also sending you a document containing the text of the Convention in the three official languages viz. English, French and Spanish.

The Convention was circulated to member States at the end of March, and to date six countries have signed the Convention: the Ivory Coast, Jamaica, Nigeria, Pakistan, Tunisia and the United Kingdom. The National Assembly of the Ivory Coast has authorized ratification of the Convention. We have also had indications of interest from many other countries in Asia and Africa.

The Convention will come into force 30 days after twenty members of the Bank have signed it and deposited instruments of ratification with the Bank which is designated Depository under the Convention. It is our present estimate that the Convention will be in force about the middle of next year.


The Bank issues a monthly press release on the status of the Convention and copies of it are mailed as a matter of course to the Librarian of ECA. This bulletin would be the best means of your keeping currently informed of developments regarding the Convention.

Yours sincerely,

C. W. Pinto  
Attorney  
Legal Department

Mr. O. A. Spencer  
Senior Regional Adviser  
Fiscal Unit  
U.N. Economic Commission for Africa  
P.O. Box 3001  
Africa Hall  
Addis Ababa

cc. Mr. Broches  
Messrs. El Emery/Kruithof

 CWP:es

July 14, 1965

Dear Mr. Ambassador:

Enclosed, in accordance with your request, please find two copies of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Also please find memoranda naming the countries which, as of this date, have signed the Convention.

In reply to your question concerning the position taken by the Governor of Chile on this subject at the Annual Meetings of the Board of Governors of the Bank in Tokyo, your attention is directed to the last paragraph on page 3 of the enclosed Press Release No. 25 dated September 10, 1964.

Sincerely yours,

Donald D. Fowler  
Assistant Secretary

His Excellency  
André Theard  
Ambassador of Haiti  
Embassy of Haiti  
1400 - 17th Street, N.W.  
Washington, D.C. 20011

DDF:ypg

cc: Dr. Machado



DECLASSIFIED

AUG 21 2023

Personal

WBG ARCHIVES

July 14, 1965

Dear Saad:

✓  
Yesterday I cabled you as follows: "Re Convention Settlement Investment Disputes stop Understand from Fontein you were preparing Arabic translation stop Please advise whether you would be willing make Arabic text available to Sudanese Government which asked us for one stop Convention signed to date by Tunisia, United Kingdom, Jamaica, Ivory Coast, Pakistan and Nigeria with several more in pipeline including Japan and Ceylon. Regards."

I would be most grateful if you could help me with the Arabic text. The Sudan Ministry of Finance and Economics, which has indicated that Sudan wants to sign the Convention, states that for that purpose they must submit a formal memorandum to the Cabinet with the text of the Convention in Arabic translation. While on the subject of the Convention, we remain of course much interested in early signature by Kuwait.

However, the purpose of this letter is of a more personal nature, more particularly to inquire about your future plans. Your leave of absence runs until May of next year if I am not mistaken and I want you to know that we shall be very happy to see you back here. As a matter of fact I would be even happier if you came back sooner. It is, however, important for us to know what your plans are. We are short of staff at the moment and we are going to have to do some recruiting in any event but in doing that I would like to be sure to know whether we can count on your return on a fixed date. In that connection I want not only to repeat that we shall be very happy to see you back, but also to express the view that you will find your work here professionally satisfying. The Bank is very active indeed and is increasingly getting involved in more difficult projects.

I hope you will find time soon to write to me.

With my best regards to yourself and Mona.

Sincerely,

*1st Ronnie*

Mr. Saad E. Fishawy  
Kuwait Fund for Arab Economic Development  
P.O. Box 2921  
Kuwait

ABroches:cml

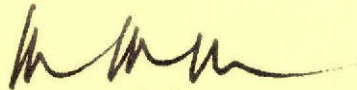
July 14, 1965

His Excellency  
Chief S. O. Adebayo  
Commissioner General for  
Economic Affairs  
Permanent Mission of Nigeria  
to the U.N.  
757, Third Avenue, Twentieth Floor  
New York 10017, N.Y.

Excellency:

I enclose two certified copies of the Convention on  
the Settlement of Investment Disputes between States and  
Nationals of Other States which was signed by you on be-  
half of Nigeria on July 13, 1965.

Very truly yours,



M. M. Mendels  
Secretary

Encl.

ID:phm

cc: Mr. Garba  
Mr. Broches

9113

July 13, 1965

Dear Mr. Walker:

I have received your letter of July 6, 1965 and I am enclosing a copy of the Convention and the accompanying report of the Executive Directors of the World Bank which I believe will enable you to form a judgment as to the uses that might be made of the Centre to be established under the Convention.

The Convention is not yet in force. Without being able to make any accurate prediction, I would venture to say it might be in force by the middle of 1966. As you will see from Article 25 of the Convention, the parties involved must be a Contracting State (or public agency thereof) on the one hand and a national of another Contracting State on the other. You might note in this connection that in order for Canadian investors to take advantage of the Convention, Canada would have to become a party thereto. Countries having signed to date are Tunisia, the United Kingdom, Jamaica, the Ivory Coast, Pakistan and Nigeria.

Clauses to the effect that arbitration will be conducted in accordance with the Convention would be quite in order. The parties might, however, wish to stipulate certain additional details.

I cannot answer your question about costs except to say that I would expect only disputes involving sizable sums or important issues of principle to be brought before the Centre. For less important disputes recourse might be had to existing arrangements for commercial arbitration. As for the amounts mentioned by you, I would certainly pick the range of \$50,000 and upward.

Sincerely yours,

~~(Signed)~~ A. Broches

A. Broches  
General Counsel

Mr. Wilfred Walker  
Chew-Walker Associates  
164 Nipigon Avenue  
Willowdale, Ontario  
Canada  
ABroches:cml  
Enclosure

SecM65-191

FROM: The Secretary

July 13, 1965

SETTLEMENT OF INVESTMENT DISPUTES

The Convention on Settlement of Investment Disputes between States and Nationals of Other States was signed today at 1:00 p.m. on behalf of Nigeria by His Excellency Chief S. O. Adebo, Commissioner General for Economic Affairs.

Nigeria became the sixth member of the Bank to sign the Convention.

Distribution:

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

July 13, 1965

Dear Mr. Schenck:

Thank you for your letter of May 19, 1965 containing questions on the Convention on Settlement of Investment Disputes and other matters. I am sorry that our summer workload has made it difficult for us to reply sooner. On the other hand this delay has enabled us to make a clearer estimation of progress regarding adherence to the Convention.

Our answers to your questions are contained in the annex to this letter. While we do try to obtain as much information as possible on investment disputes and on nationalization generally, most of this information is available in the wealth of published material on these subjects. Answers to your questions 4 and 5 therefore consist of reference to some of the more useful of the recent works of which we are aware, and to journals which would enable you to keep currently informed of developments in these fields.

I very much appreciate your interest in the Bank's work in the field of settlement of investment disputes, and hope that your article will have the desired effect of persuading States which wish to attract foreign capital to sign and ratify the Convention.

Yours sincerely,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. George K. Schenck  
The Pennsylvania State University  
301 Engineering Unit D  
University Park  
Pennsylvania 16802

CWPinto:es

810

OUTGOING WIRE

TO: ALSUNDUK  
KUWAIT

DATE: JULY 13, 1965

*RCM*

CLASS OF  
SERVICE: *LT*

COUNTRY: KUWAIT

TEXT:  
Cable No.:

FOR EL FISHAWAY RE CONVENTION SETTLEMENT INVESTMENT DISPUTES STOP  
UNDERSTAND FROM FONTEIN YOU WERE PREPARING ARABIC TRANSLATION STOP  
PLEASE ADVISE WHETHER YOU WOULD BE WILLING MAKE ARABIC TEXT AVAILABLE  
TO SUDANESE GOVERNMENT WHICH ASKED US FOR ONE STOP CONVENTION SIGNED  
TO DATE BY TUNISIA, UNITED KINGDOM, JAMAICA, IVORY COAST, PAKISTAN  
AND NIGERIA WITH SEVERAL MORE IN PIPELINE INCLUDING JAPAN AND CEYLON.  
REGARDS.

BROCHES

NOT TO BE TRANSMITTED

MESSAGE AUTHORIZED BY:

NAME A. Broches  
DEPT. Legal

SIGNATURE *A. Broches*  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

CLEARANCES AND COPY DISTRIBUTION:

ABroches:cml

For Use by Archives Division

ORIGINAL (File Copy)

(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: *[Signature]*

INTERNATIONAL TELEGRAPH UNION  
INTERNATIONAL TELEGRAPH UNION  
INTERNATIONAL TELEGRAPH UNION  
INTERNATIONAL TELEGRAPH UNION

OUTGOING WIRE

DATE: 7/13/65

CLASS OF SERVICE: 1A

100

COUNTRY: JAPAN

TEXT

Code No.

FOR ED RISHAWAY RE C MENTION SETTLEMENT INVESTMENT DISTRICTS  
UNDERSTAND FROM BOSTON YOU WERE PREPARING ARABIC TRANSLATION  
PLEASE ADVISE WHETHER YOU WOULD BE WILLING MAKE ARABIC TEXT AVAILABLE  
TO SWANESE GOVERNMENT WHICH ASKED US FOR ONE STOP CONNECTION WITH  
TO NAME BY JORDANIA, UNITED KINGDOM, JAMAICA, IVORY COAST, BAHAMAS  
AND JORDANIA WITH SEVERAL MORE IN REPLYING INCLUDING GAMBIA AND GAMBIA

URGENT

NOT TO BE TRANSMITTED

SEPARATED THE COPY DISTRIBUTION

JUL 13 6 40 PM 1965

COMMUNICATIONS  
GENERAL FILES

DISPATCHED FOR USE BY AIRMAIL DIVISION

*[Handwritten signature]*

July 12, 1965

Dear Mr. Hynning:

*July 2/65*

Thank you very much for sending me a copy of your recent article in the American Bar Journal on the Convention on the Settlement of Investment Disputes. I know that you have been interested in this matter for a long time and that the Bank staff has always found you willing to consult with them on this subject. Your article will undoubtedly help to draw the attention of the American legal profession to the Convention.


Sincerely yours,

(Signed) George D. Woods

George D. Woods

Mr. Clifford J. Hynning  
1555 Connecticut Avenue, N.W.  
Washington, D. C. 20036

ABroches:cml





July 12, 1965

*Handwritten initials*

Dear Mr. Hyman:

Thank you very much for sending me a copy of your recent article in the American Bar Journal on the Convention on the Settlement of Investment Disputes. I know that you have been interested in this matter for a long time and that the Bank staff has always found you willing to consult with them on this subject. Your article will undoubtedly help to draw the attention of the American legal profession to the Convention.

Sincerely yours,

(Signed) George D. Woods

George D. Woods

Mr. Clifford J. Hyman  
1555 Connecticut Avenue, N.W.  
Washington, D. C. 20036

ABSTRACT

*Handwritten scribble*

JUL 13 1965

*Handwritten notes*

July 12, 1965

Dear Professor Sereni:

Thank you for your letter of July 6, 1965. I am of course well aware who you are and even had the privilege of having a brief glimpse of you during the oral proceedings in the Barcelona Traction Case.

In accordance with your request I send you herewith a copy of the Convention on the Settlement of Investment Disputes. From the Convention you will see that the Panels of Conciliators and Arbitrators will be composed principally of persons designated by Contracting States, although the Chairman of the Administrative Council has the right to nominate a small number of additional panel members.

We lectured in The Hague during the same year and I am sorry we did not meet then. I shall be very glad to receive the reprint of your 1959 course and I hope that there will be soon an opportunity for us to meet.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Avv. Prof. Angelo Piero Sereni  
Via Toscana 10  
Rome, Italy

Enclosure  
ABroches:cml

July 8, 1965

Prof. Dr. K. Oftinger  
Belsitostrasse 17  
Zurich, Switzerland

Re: Convention on Settlement of Investment Disputes

Dear Prof. Oftinger:

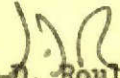
Further to my letter of June 22, 1965, I am pleased to inform you that since that date, the above Convention has been signed by three additional countries, i.e. Jamaica, Ivory Coast and Pakistan. Consequently, the footnote No. 8 on page 11 of my short article should now read:

" A l'heure actuelle, la Convention a été signée par la Côte d'Ivoire, la Jamaïque, le Pakistan, le Royaume-Uni et la Tunisie".

Actually, we feel confident that the number of signatories of the Convention might reach twenty by the time of the next Annual Meeting of the Bank to be held in Washington towards the end of September.

I shall, of course, not fail to keep you up to date.

Sincerely yours,

  
J.-D. Roulet  
Attorney

cc: Mr. Broches  
Mr. Pinto  
Legal Files

JDRoulet/al

July 7, 1965

Dear Mr. Sand:

Thank you for your letter of June 30th bringing me up to date on the present state of consideration of the Convention in Norway.

You may be interested to know that the Convention has in the meantime been signed by Tunisia, the United Kingdom, Jamaica, the Ivory Coast and Pakistan (in that order) and that Nigeria is expected to sign very shortly. The Ivory Coast and Nigeria have also the necessary authority to ratify the Convention. Several other countries in Asia and Africa have indicated unofficially that they will take favorable action on the Convention.

We are naturally quite gratified by the favorable response on the part of developing countries and our main interest is now to achieve a proper "mixture" of developing and industrialized countries in the first group of twenty that we expect will have signed the Convention before the Annual Meeting. I am therefore glad to know that you expect that Norway will be in that group.

With personal regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Asbjorn Sand  
Chief, Foreign Loans Division  
The Royal Norwegian Ministry of  
Commerce and Shipping  
Oslo, Norway

ABroches:cml

July 7, 1965

Mr. Ray V. Bailey  
Clarion, Iowa 50525

Dear Sir:

I am writing in reply to your letter of June 21, 1965 on the subject of shares owned by you in the Trans Cuba Oil Company.

The Convention on the Settlement of Investment Disputes provides machinery for the settlement of disputes submitted to the Centre by parties which have agreed to make use of this machinery. The Convention does not provide for compulsory arbitration of disputes in the absence of a previous arbitration agreement by the parties to the dispute.

In addition to requiring the consent of the parties, the Convention also requires that one of them be a Contracting State (or public agency thereof) and the other an investor who is a national of another Contracting State. I am not familiar with the Trans Cuba Oil Company but I assume that its properties are located in Cuba. Cuba is not a member of the Bank and while it could be invited to become a signatory to the Convention I doubt whether the contracting parties would wish to extend an invitation to Cuba and, even if such an invitation were extended, I can see no likelihood that Cuba would accept it.

If I am right in my assumption that your problem is one of property lost or become worthless as a result of action of the Cuban Government, I am afraid that the Convention would not be of assistance to you.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

ABroches:cml

Mr. George D. Woods

July 7, 1965

A. Broches

SID Convention - Japan

Last week I had requested Mr. Suzuki to remind the Japanese authorities of the Convention. He called me the other day to say that the Japanese Minister of Finance would inform you during his forthcoming breakfast meeting with you that the Japanese Government would submit the Convention to the Diet in September for authority to ratify. This act would be preceded by signature.

Since signature of an international agreement falls within the competence of the Foreign Ministry, it had been suggested to Mr. Suzuki that you raise the question with the Foreign Minister who is also going to be here next week. In most countries there is no love lost between Ministries of Finance and Foreign Offices and this seems to be more true in Japan than anywhere else. The suggestion therefore sounds as if the Ministry of Finance wants to talk to the Foreign Ministry through the intermediary of the President of the World Bank. Mr. Suzuki did not think you should volunteer for this honorable role but that if you met the Foreign Minister socially, as he expected you might, it might be useful to mention the subject to him. Mr. Suzuki was going to give this matter further thought and call me about it again.

(Initialed) A. B.

ABroches:cml

July 7, 1965

Dear Mr. Maw,

I have seen the text of the report of your Committee on the Convention on the Settlement of Investment Disputes in The Record of the Association of the Bar of the City of New York. We are, of course, quite pleased with the favorable recommendations of the Committee.

I take this opportunity to ask you whether it would be possible to obtain copies of the report or, in the alternative, to ask your permission to reproduce the text of the report as published in The Record.

Looking forward to hearing from you, I am,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Carlyle E. Maw  
Chairman  
Committee on International Law  
120 E. End Avenue  
New York, N.Y.

ABroches:lj

July 7, 1965

His Excellency  
Ghulam Ahmed  
Ambassador of Pakistan  
2315 Massachusetts Ave., N.W.  
Washington, D.C.

Excellency:


I enclose two certified copies of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States which was signed by you on behalf of Pakistan on July 6, 1965.

Very truly yours,



Donald D. Fowler  
Assistant Secretary

Encl.

LD:phm 

cc: Mr. Mirza  
Mr. Broches



CROSS REFERENCE SHEET

COMMUNICATION: Letter

DATED: July 7, 1965

TO: Governor Castillo

FROM: Mr. Woods

FILED UNDER: Philippines-General Negotiations

SUMMARY:

I would like to take this opportunity to refer to the Convention on the Settlement of Investment Disputes. The Convention has been signed to date by Tunisia, the United Kingdom, Jamaica, Ivory Coast and Pakistan. Nigeria is expected to sign in the immediate future, while unofficial indications have been received of favorable action by a number of countries in Africa and Asia, including among others Malaysia. As you know, I believe that this Convention can make an important and needed contribution to the cause of economic development and I am most eager that the facilities provided under it be established as soon as practicable. I would, therefore, be grateful if your Government would give early consideration to the Convention and, if it decides to become a party, would take the necessary steps for signature and ratification.

July 7, 1965

Your Ref. 1198-EF(IFR)/65


Ministry of Finance  
Government of Pakistan  
Rawalpindi, Pakistan

Attn: Mr. S. Ahsan Hyder  
Section Officer

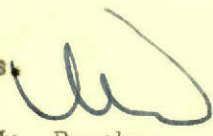
Dear Sir:

As requested in your letter of June 28, 1965, I enclose herewith three copies of the document entitled "Memorandum on Signature and Ratification, Acceptance or Approval of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States".

Yours truly,



Donald D. Fowler  
Assistant Secretary

Encls. 

cc: Mr. Broches

LD/neb

1198-EF(IFR) 2150

Your Ref. 1198-EP(LTR)\62  
July 7, 1962

Ministry of Finance  
Government of Pakistan  
Rawalpindi, Pakistan


Attn: Mr. S. Ahsan Hyder  
Section Officer

Dear Sir:

As requested in your letter of June 28, 1962, I  
enclose herewith three copies of the document entitled  
"Memorandum on Signature and Ratification, Acceptance  
or Approval of the Convention on the Settlement of In-  
vestment Disputes between States and Nationals of Other

States".

Yours truly,

  
Donald D. Fowler  
Assistant Secretary

  
Enclos  
cc: Mr. Broches

LD\nep

JUL 10 1962

RECEIVED  
SECTION OFFICER

FORM NO. 92  
(10-61)

IDA

IBRD

IFC

CORRESPONDENCE RECORD FORM

FROM

Ministry of Finance and  
Economics, Khartoum

DATED

7 July 1965

SUBJECT

Letter regarding the signature and ratification  
of the Convention on the Settlement of Investment  
Disputes.

REFERRED TO

Mr. Broches

DATE RECEIVED

July 13, 1965 *egc*

N. N. Philippines

July 7, 1965

Dear Governor Castillo,

Thank you for your letter of June 28 sending me a copy of Republic Act 4199. I am glad that it was possible to amend the Rural Banks Act so expeditiously.

I well understand you wish to move quickly but Mr. Courbois had to visit some other countries after leaving Manila and has only just returned to the Bank. The appraisal report should now be completed soon. I understand you have also written to Mr. Cargill about this project, and I am arranging for him to let you know the outcome of our consideration of the appraisal report as soon as possible. However, in view of other commitments I am afraid the earliest negotiations could begin is about the middle of August. I hope this will prove to be soon enough.

I would like to take this opportunity to refer to the Convention on the Settlement of Investment Disputes. The Convention has been signed to date by Tunisia, the United Kingdom, Jamaica, Ivory Coast and Pakistan. Nigeria is expected to do so in the immediate future, while unofficial indications have been received of favorable action by a number of countries in Africa and Asia, including among others Malaysia. As you know, I believe that this Convention can make an important and needed contribution to the cause of economic development and I am most eager that the facilities provided under it be established as soon as practicable. I would, therefore, be grateful if your Government would give early consideration to the Convention and, if it decides to become a party, would take the necessary steps for signature and ratification.

With kind regards,

Yours sincerely,

George D. Woods

The Honorable  
Andres V. Castillo  
Governor  
Central Bank of the Philippines  
Manila, Philippines

Cleared with Messrs. McManis and Wisen.

810

INCOMING CABLE

DATE AND TIME  
OF CABLE: **JULY 7, 1965 1720**

LOG NO.: **TELEX**  
TO: **INTBAFRAD**  
FROM: **PARIS**

ROUTING	
ACTION COPY:	<b>MR. BROCHES</b>
INFORMATION COPY:	
DECODED BY:	

TEXT:

**FOR BROCHES.**

**IS IT EXPECTED THAT IRAN WILL RATIFY ARBITRATION CONVENTION. IN THE  
AFFIRMATIVE WE WOULD SUGGEST THAT ARBITRATION CLAUSE IS INSERTED IN  
CONTRACT UNDER NEGOTIATION.**

**BENRUBI CLEARGO**

**AB**

INCOMING CABLE

ROUTING
ACTION COPY: MR. ROOSENS
INFORMATION COPY:
DECIDED BY:

DATE AND TIME OF CABLE: JULY 7, 1965 1730  
 TO: DUTYMAN  
 FROM: PARIS  
 TEXT:

FOR RECORDS.  
 IT IS EXPECTED THAT BANK WILL NOTIFY ARBITRATION COMMISSION IN THE  
 ALTERNATIVE WE WOULD SUGGEST THAT ARBITRATION CLAUSE IS INSERTED IN  
 CONTRACT UNDER NEGOTIATION.

MEMPHIS OFFICE

JUL 7 12 42 PM 1965

COMMUNICATIONS  
GENERAL FILES

July 7, 1965

Dear Charlie,

✓  
Thank you for your letter of June 25th in which you recommended Mr. Ralph N. Williams for the position of Conciliator or Arbitrator in the International Centre for Settlement of Investment Disputes. Under the terms of the Convention creating the Centre each Contracting State has the right to designate four persons to the Panel of Conciliators and four persons to the Panel of Arbitrators. In addition the President of the World Bank in his capacity as ex officio Chairman of the Administrative Council of the Centre may designate ten persons to each Panel. The persons designated by the Chairman must each have a different nationality.

As you say, the Convention will probably not enter into force until early next year. At that time I will have to consider making designations to the Panels and I am glad that you gave me the name of a person with experience in the field of arbitration.

With warm regards,

Sincerely yours,

(Signed) George D. Woods

George D. Woods

Mr. Charles M. Meriwether  
Export-Import Bank of Washington  
Washington, D.C. 20571

ABroches:lj





FORM NO. 92 (10-61)	IDA	IBRD	IFC
<b>CORRESPONDENCE RECORD FORM</b>			
<b>FROM</b> <b>Chew-Walker Associates,</b> <b>Canada</b>	<b>DATED</b> <b>6 July 1965</b>		
<b>SUBJECT</b> <b>Letter in English inquiring about the functions</b> <b>of the International Centre for Settlement of</b> <b>Investment Disputes.</b>			
<b>REFERRED TO</b> <b>Mr. Broches</b>		<b>DATE RECEIVED</b> <b>9 July 1965 egc</b>	

Sec 65-180

FROM: The Assistant Secretary

July 6, 1965

SETTLEMENT OF INVESTMENT DISPUTES

The Convention on Settlement of Investment Disputes between States and Nationals of Other States was signed today at 4:00 p.m. on behalf of Pakistan by His Excellency Ghulam Ahmed, Ambassador at Washington.

Pakistan became the fifth member of the Bank to sign the Convention.

Distribution:

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

JUL 7 REC'D

LAW OFFICES  
CLIFFORD J. HYNNING  
1555 CONNECTICUT AVENUE, N. W.  
WASHINGTON, D. C. 20036

July 2, 1965

Dear Mr. Woods,

I am enclosing a copy of my recent article in the American Bar Journal on "The World Bank's Plan for the Settlement of International Investment Disputes." This is the current culmination of work stretching over the last five years. Within another year, I hope to see the idea a reality.

If you should need further copies of the reprint, please let me know.

Sincerely yours,

*Clifford Hynning*

*seen*  
Mr. George D. Woods, President  
International Bank for Reconstruction and Development  
1818 H Street, N. W.  
Washington, D. C.

*seen. Mr. Brooks*

*ack. July 17/65*

1988 DEC 27 AM 9:27

RECEIVED  
GENERAL FILES  
COMMUNICATIONS

# The World Bank's Plan for the Settlement of International Investment Disputes

The signing of the new Convention on the Settlement of Investment Disputes Between States and Nationals of Other States last March marks the beginning of a new era of international law. For the first time, a private investor will have direct access to an international forum to resolve a dispute with a sovereign state over his legal rights. Mr. Hynning discusses the provisions of the convention and explains how it will operate.

by Clifford J. Hynning • of the District of Columbia Bar

GEORGE D. WOODS, President of the World Bank (officially the International Bank for Reconstruction and Development), on March 18, 1965, signed an international Convention on the Settlement of Investment Disputes Between States and Nationals of Other States<sup>1</sup> and promptly transmitted it to the bank's 102 member states for their consideration as "an important and a needed contribution to the cause of economic development".<sup>2</sup> It is anticipated that the convention, which has been in preparation within the World Bank for approximately four years, will be promptly ratified by the required minimum of twenty states, so that it may go into effect by the end of 1966. The establishment under the auspices<sup>3</sup> of the World Bank of new adjudicating machinery in the form of an International Center for Settlement of Investment Disputes signifies a most important breakthrough in the development of international law in three major respects:

1. For the first time, direct access to a permanent international forum will be accorded a private investor<sup>4</sup> for the purpose of resolving a dispute with a sovereign state over the legal rights and obligations of an international investment, provided that the parties

have consented to resort to the new center. Direct access avoids the uncertainty and delay associated with the espousal of private claims by the claimant's state. By taking investment disputes out of foreign office corridors<sup>5</sup> and placing them in the channels of conciliation and arbitration to be conducted directly between the parties themselves, the World Bank plan takes an important step forward in removing politics from international investment disputes and towards upholding the rule of law.

2. An agreement between a private investor and the host government to make use of the settlement facilities of the new International Center is made expressly binding as a matter of treaty. Thus, the convention declares that

consent once given by the parties to a dispute cannot be unilaterally withdrawn.<sup>6</sup> The provision is reinforced by specifically authorizing the President of the World Bank to take prompt action if a party attempts to frustrate the agreement by the failure or refusal to appoint a conciliator or an arbitrator within ninety days after registration of a case<sup>7</sup> or by the withdrawal or resignation of an arbitrator already appointed.<sup>8</sup> Moreover, the refusal or failure of a party "to appear or present his case at any stage" in an arbitral proceeding does not halt the proceeding since the arbitral tribunal is authorized to deal with the questions submitted and render an award.<sup>9</sup>

3. The close nexus between the new center and the World Bank itself pro-

1. The text and the accompanying report of the executive directors will be printed in a forthcoming issue of *INTERNATIONAL LEGAL MATERIALS*. Copies may be obtained from the World Bank in Washington, D.C.

2. Press Release of IBRD, No. 65/14, March 29, 1965.

3. Preamble, unnumbered paragraph 5.

4. The Central American Court of Justice, established in 1901 by Costa Rica, Guatemala, Honduras, Nicaragua and San Salvador, could take cognizance over the claims of an individual subject of one of the contracting states against any other contracting state without regard to governmental espousal. This court was never of more than local importance and expired during World War I. See Hudson, *The Central American Court of Justice*, 26 *AM. J. INT'L L.* 759 (1932); Korowicz, *The Problem*

*of the International Personality of Individuals*, 50 *AM. J. INT'L L.* 533 (1956), at 552 *et seq.*

The Upper Silesian Arbitral Tribunal, created pursuant to the Versailles treaties, exercised jurisdiction over claims by individuals. 1 OPPENHEIM, *INTERNATIONAL LAW* (8th ed. Lauterpacht 1955) 638 n. The International Bureau of the Permanent Court of Arbitration in 1962 issued *Rules of Arbitration and Conciliation for Settlement of International Disputes Between Two Parties of Which Only One Is a State*, 57 *AM. J. INT'L L.* 500 (1963).

5. Article 27 balances the right of access of a private party to the center by banning the right of diplomatic protection.

6. Article 25 (1).

7. Articles 30 and 38.

8. Article 56 (3).

9. Article 45 (2).

vides a measure of assurance for the faithful observance by the parties of their obligation to "co-operate in good faith" with a conciliation commission and to "give their most serious consideration to its recommendations" and to comply with an award of an arbitral tribunal.<sup>10</sup> Few states are likely to agree to settle an investment dispute through neutral arbitration for the mere sake of settling the dispute. However, successful efforts at the conciliation or arbitration of major disputes over foreign investments in the postwar period may be accompanied by international refinancing, in which the World Bank as one of the foremost sources of international lending and investments can play a significant role, as, for example, the Suez Canal and the Indus River settlements.<sup>11</sup>

A state is more likely to agree to third-party conciliation or arbitration when the settlement aids its credit or is conducive to an influx of new investment. Moreover, as a result of its sponsorship, the World Bank has eliminated any problem of financing the new institution by furnishing it with office space and facilities and paying its overhead costs.<sup>12</sup>

The International Center will make available to the parties rules for the conduct of conciliation and arbitral proceedings without requiring them to agree in advance and in detail upon the procedure. These rules, which are applicable in the absence of a specification to the contrary by the parties, should eliminate much of the delay when the parties must agree on the specifics of an *ad hoc* procedure. The arbitral process has frequently foundered on what appeared to be minor points of procedure.<sup>13</sup>

### **Background of the World Bank Disputes Convention**

In the summer of 1960, the author, who was then serving as Chairman of the Committee on the Unification of Private Law of the Section of International and Comparative Law of the American Bar Association, asked Burke Knapp, Vice President of the World Bank, whether that institution would undertake to play a role in the international protection of the rights

of private investors. Mr. Knapp thought that a promising approach was procedural—*i.e.*, the establishment of new machinery for the international arbitration of investment disputes.<sup>14</sup>

The problem was to find an appropriate forum for negotiating a procedural convention. To negotiate an investment treaty in the United Nations would run into the usual difficulties of dealing with the Communist countries which are always hostile to private enterprise. They typically characterize international investment as "imperialist enterprise" that opens the door to monopolistic abuses. Such negotiations would be mere exercises in frustration, productive only of innumerable disputations, delay and irritation, with no prospects of agreement.

On the other hand, it was plainly desirable that an international agreement establishing machinery for the conciliation or arbitration of investment disputes should be negotiated within an international forum that encompassed as much of the non-Communist world as possible. It should include investing countries such as Western Europe, the United States and Japan, as well as the countries of the less-developed areas in Asia, Africa and Latin America. The World Bank was precisely such a forum.<sup>15</sup>

During the winter of 1961-1962 the World Bank's staff commenced work on this under the direction of A. Broches, the bank's general counsel. The legal staff was truly international.

Mr. Broches is a Dutch lawyer who, like most of his non-American colleagues, also holds an American law degree. His aides include lawyers trained in the French, German, Spanish and Roman-Dutch legal systems as well as Anglo-American lawyers. Working papers outlining the proposal in detail were periodically submitted to the president of the bank and its executive directors who represent the countries that are members of the World Bank. The Executive Director for the United States strongly supported the plan.

At its meeting in San Francisco in the summer of 1962, the House of Delegates of the American Bar Association placed the Association on record as favoring the establishment of machinery in close conjunction with the World Bank

for the conciliation and arbitration of international investment disputes between governments and foreign private investors in accordance with principles of law applicable to the rights of investors and with provision for direct access to such machinery by private persons to the extent that the parties to the international investment dispute have consented thereto.<sup>16</sup>

In view of the Association's resolution, the Treasury Department requested the author to assemble his committee as an informal consulting group<sup>17</sup> from time to time in order to confer with the staff of the Treasury Department in the evolution of the World Bank plan. In addition to frequent

10. Article 34 (1) and Article 53(1).

11. Heads of Agreement Initiated in Rome by Representatives of the Stockholders of the Suez Canal Company and a Representative of the United Arab Republic, April 29, 1958. LAUTERPACHT, THE SUEZ CANAL SETTLEMENT 3 (1961).

12. "With respect to the financing of the center (Article 17), the executive directors have decided that the Bank should be prepared to provide the center with offices free of charge so long as the center has its seat at the Bank's headquarters, and to underwrite, with reasonable limits, the basic overhead expenditure of the center for a period of years to be determined after the center is established."

13. 1 INTERNATIONAL LAW COMMISSION, YEARBOOK 1952, 45.

14. "Some may think it desirable to go beyond this and attempt to achieve a substantive definition of the status of foreign property. There is no doubt in my mind that there is need for a meaningful understanding between capital-exporting and capital-importing nations on these matters. And it seems to me that the draft on Protection of Foreign Property, prepared in the Organization for Economic Cooperation and Development, might constitute a useful starting point for discussions between these two groups of countries."

Broches, Speech to the World Conference on Peace through Law, Athens, July, 1963. For a full discussion of the OECD Convention, see AMERICAN BAR ASSOCIATION, COMMITTEE ON INTERNATIONAL TRADE AND INVESTMENT, SECTION OF INTERNATIONAL AND COMPARATIVE LAW, A REPORT ON THE PROTECTION OF PRIVATE PROPERTY INVESTED ABROAD 60 (1963).

15. Among its 102 member states there is only one communist state, Yugoslavia.

16. AMERICAN BAR ASSOCIATION, SECTION OF INTERNATIONAL AND COMPARATIVE LAW, 1963 PROCEEDINGS 32.

17. The members of the committee included, in addition to the author, who served as Chairman, the following: G. W. Haight, Vice Chairman; Phillip W. Amram; Nicholas deB. Katzenbach; Willis L. M. Reese; Seymour J. Rubin; Soia Mentschikoff; George H. Owen; Lloyd N. Cutler; and Walter S. Surrey. Professor Stanley Metzger of Georgetown University and C. H. Merillat, Executive Director of the American Society of International Law, also joined the group during its early stages. The participation of Messrs. Katzenbach and Rubin, who were Deputy Attorney General and U.S. Minister to the OECD respectively, was, of course, only in their personal capacities and without reference to such official positions as their agencies might later take.

conferences with the Treasury and State staffs, the group submitted various papers on such issues as (1) the case in international law for a convention as opposed to informal action (e.g., resolution) within the board of the bank, particularly as this choice of the enabling instrument would affect (a) the binding character of the consent of the parties to make use of the settlement facilities of the new institution and (b) the recognition and enforcement of awards, and (2) the problems of defining investment disputes.

During the winter and spring of 1963-1964, the executive directors decided that the general counsel of the World Bank should consult with legal experts designated by member governments to consider a proposed draft convention at a series of regional meetings. A preliminary draft prepared by the staff of the bank in the light of the discussions of the executive directors and the views of governments was circulated in English, French and Spanish. The consultative meetings were held regionally 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). The meetings were attended by legal experts from eighty-six countries.<sup>18</sup>

Next, the World Bank invited its member states to designate representatives to a legal committee which met in Washington from November 23 through December 11, 1964. Representatives of the sixty-one member countries were present.<sup>19</sup>

The principal issues that arose in the course of discussion within the World Bank and by the bank with its member governments related to (a) whether the new institutional facilities should be set up by informal action by the bank itself or by an international convention which would have the force of a treaty; (b) whether the connection of the proposed institution with the World Bank should be loose or should be direct; (c) whether the international convention should be negotiated within the framework of the World Bank itself, acting through its management, the executive directors and the board of governors, as had been the

case with the articles of agreement of the International Finance Corporation and the International Development Association, or whether the preparation of the convention should be turned over to a full diplomatic conference; (d) whether the proposal should be limited to conciliation or should also include arbitration; and (e) whether investment disputes should be defined in specific terms. These issues were at long last resolved in favor of (a) an international convention, drafted and negotiated within the framework of the World Bank itself without reference to a full-scale diplomatic conference, (b) a close connection between the proposed International Center and the World Bank, (c) the inclusion of arbitration as well as conciliation, and (d) the omission of any formal definition of investment disputes.

The only substantial opposition to the World Bank proposal came from Latin American states, which, together with the Philippines, took a formal position in opposition to the plan at the annual meeting of the bank's board of governors in Tokyo in 1964.<sup>20</sup> However, several of the Latin American countries have since participated in the development of the convention, and it is hoped that it will be supported by several Latin American states.

### *The Institutional Machinery*

The Center for Settlement of Investment Disputes is to be established as an autonomous international institution under the auspices of the World Bank.<sup>21</sup> The center itself does not engage in conciliation or arbitration. It functions through an administrative council<sup>22</sup> whose ex officio head is the President of the World Bank; a secretary-general and such deputies as he may require; panels of conciliators; and arbitrators.

The relationship of the International

18. It is expected that the summary records of these meetings will be eventually published by the World Bank.

19. States sending representatives to the Legal Committee in Washington on the Settlement of Investment Disputes (November 23 to December 11, 1964): Australia, Austria, Belgium, Brazil, Burundi, Central African Republic, Ceylon, Chile, China, Congo (Brazzaville), Costa Rica, Dahomey, Denmark, Ecuador, El Salvador, Ethiopia, Finland, France, Germany, Ghana, Greece, Guatemala, Haiti, Honduras, Iceland, India, Iran, Israel, Ivory Coast, Japan, Korea, Lebanon, Liberia, Malagasy Republic, Malaysia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway,



Clifford J. Hynning received his A.B. and Ph.D. degrees from the University of Chicago and his J.D. from Kent College of Law. Formerly an attorney for the Treasury Department, he now practices law in Washington, D. C. He is Divisional Vice Chairman of the Section of International and Comparative Law.

Center to the World Bank is drawn primarily in terms of the functions and powers of the President of the World Bank. He nominates the secretary-general, who is elected by the administrative council.<sup>23</sup> He designates substitute conciliators or arbitrators when the parties fail to act within specified times.<sup>24</sup> He designates the ten members of the panel of conciliators and the ten members of the panel of arbitrators, but in exercising this power, he may not select more than one person of the same nationality for either panel and must be guided by the "importance of assuring representation on the panels of the principal legal systems of the world and of the main forms of economic activity".<sup>25</sup> Finally, he appoints the *ad hoc* committee to consider a request for the annulment of an

Panama, Peru, Philippines, Portugal, Sierra Leone, Spain, Sweden, Syrian Arab Republic, Tunisia, Turkey, Uganda, United Kingdom, United Republic of Tanganyika and Zanzibar, United States, Uruguay, Venezuela, and Yugoslavia.

20. See the statement of the Chilean representative, 3 INTERNATIONAL LEGAL MATERIALS 1174-75.

21. Articles 18 to 24.

22. Articles 4 to 8.

23. Article 10(1).

24. Articles 30-38.

25. Articles 13(2) and 14(2).

26. Article 52.

award.<sup>26</sup> Neither the World Bank President nor the secretary-general has any direct influence over any particular proceeding before a conciliation commission or an arbitral tribunal.

The administrative council consists of one representative of each contracting state, and each representative has one vote. It is anticipated that this representative will also be the executive director or governor for that country in the World Bank. The administrative council elects the secretary general, adopts the budget and adopts the regulations and rules of the center. These actions require a two-thirds majority.<sup>27</sup> The secretary-general, who is elected by the administrative council on nomination of the President of the World Bank, is the legal representative of the center and functions as the registrar in charge of the flow of papers.<sup>28</sup> He is also given the authority to refuse the registration of a request when he finds that "the dispute is manifestly outside the jurisdiction of the center".<sup>29</sup>

The panels of conciliators and arbitrators consist of persons designated by the contracting states, each of which is entitled to designate four, who may, but need not, be its own nationals.<sup>30</sup> Panel members are required to 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, with competence in the field of law being of particular importance in the case of persons on the panel of arbitrators.<sup>31</sup> The panel, once it has been selected by the parties or by the president of the bank, is made the judge of its own competence, passing on preliminary objections.<sup>32</sup> There are detailed provisions dealing with the immunities and exemptions of agents, counsel, witnesses and experts.<sup>33</sup> A significant provision relates to the immutability of a conciliation commission or arbitral tribunal once it has been constituted.<sup>34</sup>

Since the adjudication of disputes will be made by panels, there is obviously the possibility of contradictory awards in cases involving similar points. That possibility is inherent in any plan that does not contemplate a standing tribunal acting in accordance

with *stare decisis*. Even common law lawyers are familiar with the extent to which a system of adjudication by panels can result in contradictory decisions.

### ***Jurisdiction Based Exclusively on the Consent of the Parties***

The cornerstone of the jurisdiction of the International Center is consent.<sup>35</sup> Only through the written consent of the investor, who must be a national of a contracting state, and the consent of another contracting state to submit to the center a legal dispute arising directly out of an investment can any conciliation or arbitral proceeding start.<sup>36</sup> Consent of the parties must exist when the center receives a request, but the convention does not otherwise specify the time when consent should be given. Consent may be given, for example, by a clause in an investment agreement providing for the submission to the center of disputes arising out of that agreement or in a *compromis* regarding a dispute that 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 to the center disputes arising out of certain classes of investments, and the investor might give his consent by accepting the offer in writing. But consent must be clearly given.<sup>37</sup>

"Investment dispute" is defined only as a "legal dispute, arising directly out of an investment". However, the accompanying report adds the following commentary:

The expression "legal dispute" has been used to make clear that while conflicts of rights are within the jurisdiction of the Center, 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 the breach of a legal obligation.<sup>38</sup>

Whenever a state consents to the use of the center for resolving a dispute it has occasion to define in most specific terms "investment dispute" as covered by that consent. The convention expressly permits a contracting state to make known to the center in advance, if it so desires, the classes of disputes which it will or will not consider submitting to the center. Such a statement by a contracting state will serve as information only and will not constitute the consent required to give the center jurisdiction. Likewise, a statement excluding certain classes of disputes from consideration would not constitute a reservation to the convention.

The term "national" is defined with some care.<sup>39</sup> A natural person who is a national of a state party to the dispute cannot proceed against his own state under the auspices of the center, even if he is also a national of another state.

27. Articles 9 to 11.

28. Articles 28 (3) and 36 (3), see Report para. 38.

29. Article 28 (3).

30. Article 13 (1).

31. Article 14 (1).

32. Articles 32 and 41.

33. Articles 21 and 22.

34. Article 56 (1).

35. "It is well established in international law that no state can, without its consent be compelled to submit its disputes with other states, either to mediation or arbitration, or to any other kind of pacific settlement." *Eastern Carelia Case*, PCIJ, Ser. B., No. 5, page 27.

36. Article 25 (1) reads as follows: "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."

37. "... nothing undermines confidence in the process of international adjudication so quickly and completely as the feeling that international tribunals may assume jurisdiction in cases not really covered by the intended scope of the consents given by the parties."

Fitzmaurice, *The Law and Procedure of the International Court of Justice, 1951-54*, 34 B.Y.I.L. 88 (1958).

38. Para. 26. In the *Mavrommatis Palestine Commissions Case*, the Permanent Court defined "dispute" in the widest terms as "a disagreement on a point of law or fact, a conflict of legal views or of interests . . .". Ser. A, No. 2, page 11.

39. Article 25 (2) defines "(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."



This ban is absolute and cannot be cured, even if the state that is party to the dispute should give its consent.

The definition of "juridical person" is more flexible. A juridical person which is a national of a state party to a dispute will nonetheless be eligible to be a party to proceedings under the auspices of the center if that state has agreed to treat such a juridical person as a national of another contracting state because of foreign control. It is thus possible for a contracting state to agree that a corporation incorporated under its laws is to be regarded as a foreign national for purposes of the submission of a dispute to the center. The convention also applies to "any constituent subdivision or agency" of a contracting state if the contracting state has so agreed, either specifically or by notification that no approval is required.<sup>40</sup> At one stage in the draft of the convention, there were elaborate provisions on subrogation under investment guaranties or insurance programs, but they were finally dropped because of the difficulties involved.

There is a specific rule on local remedies. Article 26 provides that consent to arbitration "shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy". However, it remains expressly within the power of the contracting state to "require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration...".<sup>41</sup>

Except for a certain element of compulsion affecting the constitution of a conciliation commission, the convention contains nothing particularly new in its provisions on conciliation. Thus, the conciliation process is initiated upon the request of the parties<sup>42</sup> and the constitution of the conciliation commission is determined by agreement of the parties.<sup>43</sup> The duty of the commission is "to clarify the issues in dispute between the parties and to endeavor to bring about agreement between them upon mutually acceptable terms", and to that end it may recommend terms of settlement.<sup>44</sup> If the parties do not agree, the commission is directed to end the proceeding and report the submission of the dispute

and the failure to agree. There is a provision that nothing said or produced before the conciliation commission can be used in any other proceeding, whether arbitration or a suit in a court of law.<sup>44</sup> When one party fails to appear or participate in the proceeding, the proceeding is also ended. Perhaps it would have been more constructive if the conciliation commission had been authorized to continue to conduct the proceeding, as in the case of arbitration, and to prepare a report on the basis of the evidence produced by the participating party so that the commission could have noted what the essential dispute was about.

### The Arbitral Tribunal

In addition to authorizing the President of the World Bank to take steps to prevent frustration of the arbitral clause, a new feature of the arbitral articles of the convention is the composition of the arbitral tribunal. Except in the case of a sole arbitrator or in a case in which the parties have agreed specifically on each arbitrator, the majority of the members of the tribunal are not to be nationals of either the contracting state which is a party or of the contracting state of which a private party is a national.<sup>45</sup> This salutary provision should go a long way toward eliminating the highly nationalistic considerations that have so frequently characterized arbitral proceedings where each party has its own national arbitrator with the deciding voice in the hands of a neutral umpire.

Party autonomy is accepted in specifying the applicable law for the resolution of a dispute, which is to be decided "in accordance with such rules of law as may be agreed by the parties".<sup>46</sup> Failing such an agreement by the parties, "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". The accompanying report of the executive directors of the World Bank explains that "international law" 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."<sup>47</sup> That is to say, the arbitral tribunal shall apply (a) international conventions, whether general or particular, establishing rules expressly recognized by the states that are directly or indirectly (through their nationals) involved in the specific proceeding; (b) international custom as evidence of general practices accepted as law by international tribunals or arbitral bodies; (c) the general principles of law recognized by civilized nations; and (d) judicial decisions and the teachings of the most highly qualified publicists of various nations, as a subsidiary means for the determination of rules of law.

In no circumstances is an arbitral tribunal to bring in a finding of *non liquet* on grounds of silence or obscurity of the law.<sup>48</sup> The very purpose of having the proceeding brought before the tribunal is to have a decision made, and it should be possible to reach a decision on the basis of the general principles of law. If the parties have so agreed, the tribunal may, of course, render an award *ex aequo et bono*.<sup>49</sup> While an arbitration proceeding is pending, the tribunal has the power to recommend "any provisional measures which should be taken to preserve the respective rights of either party".<sup>50</sup> However, this provision is for recommendation only, and it does not authorize the tribunal to order provisional measures like those that can be ordered by the International Court of Justice under Article 41 of its statute.

The award of an arbitral tribunal is

40. Article 25 (1) and (3).

41. AMERICAN LAW INSTITUTE, PROPOSED DRAFT OF THE RESTATEMENT OF THE FOREIGN RELATIONS LAW 722.

42. Articles 28 and 29.

43. Article 34(1).

44. Article 35.

45. Articles 38 and 39. Cf. FELLER, THE MEXICAN CLAIMS COMMISSIONS, 1923-1934, 317.

46. Article 42(1). Generally see Mann, *The Proper Law of Contracts Concluded by International Persons*, 35 B.Y.I.L. 34 (1959).

47. Paragraph 40.

48. Article 42(2). Stone, *Non Liqueet and the Function of Law in the International Community*, 35 B.Y.I.L. 128 (1959).

49. Article 42 (3). 1 YEARBOOK, 1952, 196.

50. Article 47.

to be reached by a majority vote and must be written and signed by the members of the tribunal who voted for it.<sup>51</sup> Any private practitioner of law would like to see written into the domestic law of his country the further requirement that the "award shall deal with every question submitted to the Tribunal and shall state the reasons upon which it is based".<sup>52</sup> The failure of the award to comply with these rules may result in annulment. It is regrettable that the convention provides that the awards shall not be published "without the consent of the parties",<sup>53</sup> but it is understandable why this sort of provision was inserted. In view of the extreme difficulties of an amendment to the convention, it is unlikely that this provision will ever be changed.

There are detailed provisions permitting interpretation, revision and annulment of awards. Interpretation of an award will be handled either by the original arbitral tribunal or a new tribunal constituted in accordance with the convention.<sup>54</sup> There are no time limits on a request for interpretation. Revision of the award can be had only within ninety days after the discovery of "some fact of such a nature as decisively to affect the award" and in any event within three years after the date on which the award was rendered.<sup>55</sup> The annulment of an award may be granted on various specific grounds.<sup>56</sup> Again there is a time limit of 120 days and three years. When a request has been made for annulment, the President of the World Bank is to appoint a new *ad hoc* committee, no member of which can be a member of the original arbitral tribunal or of the nationality of either party to the dispute. This committee is given the power to stay enforcement of the award pending its decision. If an award is annulled, a new tribunal will be constituted in accordance with the general provisions of the convention.

Once an award has been rendered, it "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".<sup>57</sup> Each

party is directed to comply with the terms of the award unless the enforcement thereof has been stayed under the convention. Recognition is analogous to the finality of a judgment of a court. Thus, any contracting state, whether or not it was involved in the award, is required to "recognize" any award rendered under the convention "as binding and enforce the pecuniary obligations imposed by that award within its territories".<sup>58</sup> By limiting enforcement in third states to "pecuniary obligations", the convention makes no provision for the enforcement of restitution in kind or for the performance of or failure to perform acts or omissions so far as the third-party states are concerned.<sup>59</sup> The execution of the award is left to the laws on execution of judgments in force in the state. It is expressly provided that nothing is intended to derogate from the law on the immunity of states or of foreign states.<sup>60</sup>

It is fitting that the World Bank Disputes Convention should itself contain a disputes clause conferring jurisdiction on the International Court of Justice over "any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation. . .".<sup>61</sup> The bare wording of this provision leaves open the question whether the interpretation of the convention in the course of a proceeding before an arbitral tribunal could give rise to a dispute of which the International Court of Justice would be seized so that the International Court of Justice might sit in appeal from a "final" award by the arbitral tribunal.<sup>62</sup> That

this is not the intention of the executive directors of the World Bank in drafting the convention is clear from the following statement in their accompanying report:

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 had failed to abide by and comply with the award rendered in that dispute.<sup>63</sup>

Recognizing that few states are likely to agree to the neutral settlement of investment disputes for the mere sake of reaching a settlement, an international convention establishing machinery for the conciliation or arbitration of investment disputes in close connection with the World Bank has a much better chance of success than either *ad hoc* arrangements or the creation of another United Nations agency. The convention creating the new International Center defines the conditions under which its mechanisms of conciliation and arbitration are available, lays down the basic rules for the conduct of proceedings, provides for the enforcement of awards and protects the effectiveness of the entire scheme by establishing it under the auspices of the World Bank.

51. Article 48(1) and (2).

52. Article 48(3).

53. Article 48(5).

54. Article 50. In the absence of such authorization, an arbitral tribunal, having rendered a decision and thereby having fulfilled its arbitral function cannot interpret, modify or revoke the award. LAUTERPACHT, DEVELOPMENT OF INTERNATIONAL LAW IN THE INTERNATIONAL COMMUNITY 235 (rev. ed. 1958).

55. Article 51.

56. 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."

57. Article 53(1).

58. Article 54(1). "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."

59. Article 13 of the Covenant of the League of Nations required members of the League to implement awards.

60. Article 55.

61. Article 64.

62. The Permanent Court of International Justice heard appeals from mixed arbitral tribunals set up by Czechoslovakia, Yugoslavia and Rumania. See Peter Pazmany University Case, P.C.I.J., ser. A/B, No. 61, at 220-222.

63. Paragraph 45.

July 2, 1965


Dear Mr. Cherrie:

As you know, the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States was approved by the Executive Directors and submitted to member governments in March this year. The text of the Convention and the accompanying Report of the Executive Directors as well as a certified copy of the Convention in the three official languages, together with a memorandum outlining the steps to be taken by States wishing to sign and ratify the Convention, have been sent to your Government.

As you probably know, the United Kingdom signed the Convention in May. Jamaica, Tunisia and the Ivory Coast have signed the Convention since then, while Nigeria and Pakistan have officially announced their intention to sign and are expected to do so in the immediate future. Furthermore, unofficial indications have been received of favorable action by a number of other countries in Africa and Asia, including Malaysia.

From your participation at the Consultative Meeting on the Convention in Santiago de Chile, it is our impression that the Convention as finally drafted will prove acceptable to your Government since nearly all of the subsequent changes from the draft discussed at that meeting have been designed to meet points raised by the developing countries.

I write now to ask whether you could advise me informally as to the likelihood of action on the Convention by your Government in the near future. Mr. Woods very much hopes that we will have more than the required number of signatures before the Annual Meeting. We realize, of course, that the ratification process may take somewhat longer. I believe, however, that in Trinidad the

  
Mr. Errol S. Cherrie  
Legal Secretary to the Attorney General  
Sinclair Hill  
Diego Martín  
Trinidad, W. I.

practice would be to sign first and then submit the document for ratification. We would be most happy if your Government would find it possible to take the action necessary for Trinidad to be among the initial group of signatories.

Mr. Broches sends his warm regards, as do I and my other colleagues who had the pleasure of working with you at the Santiago meeting. I look forward to hearing from you soon.

Yours sincerely,

C. W. Pinto  
Attorney

cc: Mr. Broches

CWP:mu

July 2, 1965

Mr. Solomon S. Lutchman  
Counsellor  
Embassy of Trinidad and Tobago  
2209 Massachusetts Avenue  
Washington, D.C.

Dear Mr. Lutchman:

As requested by your letter of June 25, 1965, I  
enclose two copies of the Convention on the Settlement  
of Investment Disputes between States and Nationals of  
Other States.

Yours sincerely,



Lyell Doucet  
Assistant to Secretary

LD:phm

July 2, 1965

Dear Mr. Chopnick:

Thank you very much for your letter of June 26, 1965. In accordance with your request I am sending you herewith a photograph as well as a copy of my remarks at the Spring luncheon.

I am not sure from your letter whether you have enough copies of the Convention for the use of your Officers and Council or if you would want additional copies. If the latter is the case, please let me know. We are very pleased with the support which we are receiving, especially from the developing countries including such important ones as Nigeria and Pakistan.

I want to assure you that I very much enjoyed participating in the meeting of your Section and that it was a pleasure to have made your acquaintance in San Juan.

With best regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Max Chopnick  
9 # East 46th Street  
New York, N. Y. 10017

Enclosures  
ABroches:cml

July 2, 1965

Mr. V.H. McFarlane  
Embassy of Jamaica  
2129 Leroy Place, N.W.  
Washington, D.C.

Dear Mr. McFarlane,

According to your request of June 30 to Mr. Chauffournier we are hereby sending you the desired document and also the summary proceedings of the consultative meeting of Legal Experts held in Bangkok, which might be helpful to you.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Enclosures

ABroches:lj

cc: Mr. Chauffournier  
Mr. Kuriyama  
Legal Files (with incoming letter)

July 1, 1965

Mr. Daba Agoussi  
Charge d'Affaires  
Embassy of the Republic of Ivory Coast  
2424 Massachusetts Ave., N.W.  
Washington, D.C.

Dear Mr. Agoussi:

I enclose two certified copies of the Convention  
on the Settlement of Investment Disputes between States  
and Nationals of Other States which was signed by you  
on behalf of the Republic of Ivory Coast on June 30, 1965.

Yours sincerely,



M. M. Mendels  
Secretary

ID:phm

cc: Mr. Kochman  
Mr. Broches

1965 JUL -5 PM 2:10

COMMUNICATIONS  
GENERAL FILES  
RECEIVED

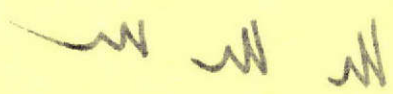


July 1, 1965

Mr. Dada Agoussi  
Charge d'Affaires  
Embassy of the Republic of Ivory Coast  
31st Massachusetts Ave., N.W.  
Washington, D.C.

Dear Mr. Agoussi:

I enclose two certified copies of the Convention  
on the Settlement of Investment Disputes between States  
and Nationals of Other States which was signed by you  
on behalf of the Republic of Ivory Coast on June 30, 1965.  
Yours sincerely,



H. M. Hendels  
Secretary

ID: phm

cc: Mr. Kochman  
Mr. Broches

1965 JUL -2 PM 5:49

RECEIVED  
GENERAL FILES  
COMMUNICATIONS

810

INCOMING CABLE

DATE AND TIME OF CABLE: **JULY 1, 1965 1422**

LOG NO.: **RC 23**

TO: **BROCHES INTBAFRAD**

FROM: **LAGOS**

TEXT:

ROUTING	
ACTION COPY:	<b>MR. BROCHES</b>
INFORMATION COPY:	
DECODED BY:	

*- June 28/65*

**FROM ADEYEYE. THANKS FOR YRCABLE. LETTER AUTHORIZING CHIEF ADEBO TO SIGN SID CONVENTION ALREADY DESPATCHED TO HIM. PERSONAL REGARDS PERMFINANCE LAGOS**

**AB**

INCOMING CABLE

DATE AND TIME OF CABLE: JULY 1, 1965 12:23  
LINE NO.:  
TO:  
FROM:  
RE:

JULY 1, 1965 12:23  
MORNING  
LADD

ROUTING

ACTOR COPY: MR. BROWN  
INFORMATION COPY:  
DROPPED BY:

FROM ALBANY. THANKS FOR MESSAGE. INITIAL ANSWERING UNIT ADDED TO SIDE AND CONVENTION ALREADY REFERRED TO HIM. PERSONAL MESSAGE REPLYING LADD

JUL 1 11 14 AM 1965

GENERAL FILES COMMUNICATIONS

**FOR IMMEDIATE RELEASE**

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT



1818 H STREET, N.W., WASHINGTON D. C. 20433 TELEPHONE: EXECUTIVE 3-6360

Bank Press Release No. 65/31  
July 1, 1965

Subject: Settlement of Investment  
Disputes

During June 1965 the Convention on Settlement of Investment Disputes, submitted to governments by the Executive Directors of the World Bank, was signed by Jamaica (June 23) and the Ivory Coast (June 30). The National Assembly of the Ivory Coast has also authorized ratification of the Convention.

Tunisia and the United Kingdom signed in the month of May making a total of four signatories to date.

Nigeria and Pakistan have informed the World Bank that they would shortly sign the Convention.

The Convention will enter into force after signature and ratification by twenty States.

910

INCOMING WIRE

DATE OF WIRE: JUNE 30, 1965 1625

LOG NO.: WU 2

TO: INTBAFRAD

FROM: ABIDJAN

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

TEXT:

23 BROCHES

NATIONAL ASSEMBLY PASSED JUNE 25 FOLLOWING LAW ARTICLE PREMIER AI  
 APPROUVEE LA CONVENTION PASSEE AVEC BIRD POUR LE REGLEMENT DES DIFFERENTS  
 RELATIFS AUX INVESTISSEMENTS ENTRE ETATS ET RESSORTISSANTS D'AUTRES ETATS  
 ARTICLE DEUX LE PRESIDENT DE LA REPUBLIQUE EST AUTORISE A RATIFIER LA  
 CONVENTION VISEE A L'ARTICLE PREMIER SI-DESSUS

MATTER

AB

INCOMING AIR

ROUTING
ACTION COPY:
INFORMATION COPY:
DECIDE BY:

DATE OF  
WIRE: JUNE 30, 1965

NO. 2

TO: DIRECTOR

FROM: AMERICAN

RE:

23 MEXICO

ATTENTION: ASSEMBLY WOULD BE FOLLOWING THE ACTION PERIOD. AT  
APPROXIMATELY THE CONVENTION PERIOD AND FOR THE PERIOD OF THE DISCUSSIONS  
RELATIVE AND INVESTIGATIONS WOULD BE AT THE CONVENTION PERIOD OF THE STATES  
WHICH WOULD BE THE PERIOD OF THE CONVENTION BUT WOULD BE A PERIOD OF  
CONVENTION PERIOD AT THE PERIOD OF THE CONVENTION PERIOD.

WATER

JUL 1 8 35 AM 1965  
COMMUNICATIONS  
GENERAL FILES  
RECEIVED

FORM NO. 92  
(10-61)

IDA

IBRD

IFC

CORRESPONDENCE RECORD FORM

FROM

DATED

June 30, 1965

Embassy of Jamaica  
Washington  
(V.H. McFarlane)

SUBJECT

Letter re: Convention on the Settlement of  
Investment Disputes between States and Nationals  
of other states  
request for report of the proceedings of mtg. held  
23rd Nov. to 11th Dec.

REFERRED TO

Mr. Chauffournier

DATE RECEIVED

July 1, 1965 ks

SecM65-177

FROM: The Secretary

June 30, 1965

SETTLEMENT OF INVESTMENT DISPUTES

The Convention on Settlement of Investment Disputes between States and Nationals of Other States was signed today at 4:00 p.m. on behalf of the Republic of Ivory Coast by Mr. Daba Agoussi, Charge d'Affaires at Washington.

The Republic of Ivory Coast became the fourth member of the Bank to sign the Convention.

Distribution:

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



FOR EARLY  
ATTENTION

SecM65-176

FROM: The Secretary

June 30, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Arrangements have been made for signing by the Republic of Ivory Coast of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States:

- Time: - 4:00 p.m., Wednesday, June 30, 1965
- Place: - Mr. Mendels' office, Room 1205
- Signing Official: - Mr. Daba Agoussi  
Charge d'Affaires

Those attending the signing are requested to be in Mr. Mendels' office shortly before 4:00 p.m.

Distribution:

- Mr. Kochman  
President  
President's Council  
Executive Vice President, IFC
- Mr. El Emary
- Mr. Pinto

June 30, 1965

Dear Mr. Minister:

I am writing to acknowledge receipt of your cable of June 28th in which you advise me that the National Assembly on June 26th approved legislation authorizing the President of the Republic to ratify the Convention on the Settlement of Investment Disputes and that you had asked the Embassy in Washington to take all necessary measures to sign the Convention.

The Chargé d'Affaires of the Ivory Coast signed the Convention today. I am particularly pleased that this action could be taken before the end of the fiscal year 1964-65 and I want to express my appreciation for the promptness with which you and your colleagues have acted in this matter. The action by the National Assembly will undoubtedly be welcomed by the capital exporting countries and will confirm and strengthen the confidence of investors in your country and its economy.

With warm regards,

Sincerely yours,

(Signed) George D. Woods

George D. Woods

His Excellency  
Raphael Saller  
Minister of Finance  
Abidjan, Ivory Coast

ABroches:cml

1822 707-1 011 2:10

COMMUNICATIONS  
GENERAL SERVICES  
RECEIVED

June 30, 1965

Dear Mr. Minister:

I am writing to acknowledge receipt of your cable of June 28th in which you advise me that the National Assembly on June 28th approved legislation authorizing the President of the Republic to ratify the Convention on the Settlement of Investment Disputes and that you had asked the Embassy in Washington to take all necessary measures to sign the Convention.

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With warm regards,

Sincerely yours,

(Signed) George D. Woods

George D. Woods

His Excellency  
Raphael Saïer  
Minister of Finance  
Abidjan, Ivory Coast

ABroches:cmj

1965 JUL - 1 PM 5: 10

RECEIVED  
GENERAL FILES  
COMMUNICATIONS

Mr. George D. Woods

June 30, 1965

A. Broches

SID Convention - Switzerland

As you may remember, when Chuck Spofford came to your apartment in Rome he said that he would try and interest the Swiss in the Convention. Spofford phoned me yesterday to say that he had had a visit from Victor Umbricht who had talked about the matter in Bern and found the Foreign Minister very much interested in Switzerland's adherence to the Convention. As you know, under the terms of the Convention, Switzerland could not sign until it had been invited to do so by the Administrative Council, that is after the Convention has become effective. The Swiss Government could, however, do all the preparatory work so that it would be in a position to sign and ratify promptly upon receiving an invitation.

ABroches:cml

Le 30 juin 1965

Cher Monsieur Ghachem,

J'avais l'intention de vous écrire plus tôt afin de vous dire le plaisir que m'a causé le fait que la Tunisie a été le premier pays à signer la Convention. Je puis maintenant ajouter à votre égard mes félicitations pour avoir été nommé représentant de la Tunisie au sein du Conseil administratif et désigné pour figurer sur la Liste d'Arbitres.

Outre la Tunisie, la Jamaïque, la Côte d'Ivoire, le Nigeria, le Pakistan et le Royaume-Uni ont signé ou sont sur le point de signer la Convention. Nous avons bon espoir que nous aurons au moins vingt signatures à l'époque de la Réunion annuelle en septembre prochain. Le Nigeria et la Côte d'Ivoire ont autorisé à la fois la signature et la ratification de la Convention.

Veuillez agréer, cher Monsieur Ghachem, avec mes meilleurs messages personnels, l'expression de mes sentiments distingués.

*S*  
A. Broches  
Conseiller Juridique

*follow-up letter*  
*March 15, 1966*

M. Hedi Ghachem  
Chef du Contentieux de l'Etat  
Tunis, Tunisia

ABroches/lj  
translated into French by JDRoulet

1303 707-1 6/15/30  
RECEIVED

Le 30 Juin 1965

Cher Monsieur Ghachem,

J'avais l'intention de vous écrire plus tôt afin de vous dire le plaisir que m'a causé le fait que la Tunisie a été le premier pays à signer la Convention. Je puis maintenant ajouter à votre regard ses réalisations pour avoir été nommé représentant de la Tunisie au sein du Conseil administratif et désigné pour figurer sur la liste d'Arbitres.

Outre la Tunisie, la Jamaïque, la Côte d'Ivoire, la Nigeria, le Pakistan et la Royaume-Uni ont signé ou sont sur le point de signer la Convention. Nous avons bon espoir que nous aurons au moins vingt signatures à l'époque de la Réunion annuelle en septembre prochain. La Tunisie et la Côte d'Ivoire ont autorisé à la fois la signature et la ratification de la Convention.

Veuillez agréer, cher Monsieur Ghachem, avec mes meilleures messages personnels, l'expression de mes sentiments distingués.

A. Broches  
Conseiller juridique

*généraliste  
le 1er*

*Monsieur Ghachem*

M. Hedi Ghachem  
Chef du Contentieux de l'Etat  
Tunis, Tunisie

ABroches\13  
translated into French by JBrochet  
1965 JUL -1 PM 12:30  
RECEIVED  
GENERAL FILES  
COMMUNICATIONS

FORM NO. 92 (10-61)		IDA	IBRD	IFC
CORRESPONDENCE RECORD FORM			DATED June 29, 1965	
FROM Foreign Office S.Wl.				
SUBJECT Letter re: Convention on the Settlement of Investment Disputes, Will fwd. White paper con- taining the text of the Convention & the E.D. rpt. as soon as it is published etc.				
REFERRED TO Mr. Pinto			DATE RECEIVED July 1, 1965 ks	



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> June 29, 1965	<b>Document Type</b> Letter			
<b>Correspondents / Participants</b> To: Dr. Clive Schmitthoff From: David M. Sassoon				
<b>Subject / Title</b> Mr. David Suratgar				
<b>Exception(s)</b> Personal Information				
<b>Additional Comments</b>		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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			



June 29, 1965

No. 29

Dear Alfred:

Thank you very much for your cable of June 26 and your letter No. 41 with which you sent me the very interesting clipping regarding the action by the National Assembly. In the meantime we have also received the cable from Saller and the Chargé d'Affaires of the Ivory Coast will sign the Convention tomorrow afternoon just before the end of the fiscal year.

Mr. Woods is very pleased by this prompt action and I think he will be interested in reading your letter, which I am passing on to him.

I want to take this opportunity to thank you for your help in this matter as well as for your assistance during our stay in Abidjan.

As regards the Convention, the only thing left to be done by the Ivory Coast is to transmit the instrument of ratification. I think you will probably prefer not to bother them about that for a little while and there is in fact no great hurry. For the time being, therefore, let us just see whether they take action on their own initiative.

With best regards,

Sincerely yours,

*1517 Roanne*

A. Broches

Mr. Alfred E. Matter  
International Bank for Reconstruction  
and Development  
Hotel Ivoire  
Abidjan, Ivory Coast

ABroches:cml

1965 JUN 30 11 23 AM  
RECEIVED

I N C O M I N G W I R E

DATE OF WIRE: JUNE 29, 1965 1220  
LOG NO.: RC 17  
TO: BROCHES INTBAFRAD  
FROM: DAR ES SALAAM

R O U T I N G	
ACTION COPY:	MR. BROCHES
INFORMATION COPY:	
DECODED BY:	

TEXT:

SID CONVENTION. HAVE DISCUSSED WITH KAMES GICHURU KENYA MINISTER OF FINANCE WHO HAS PROMISED GIVE MATTER EARLY ATTENTION. HAVE ALSO DISCUSSED WITH SWAI TANZANIA ACTING MINISTER OF FINANCE WHO HAS PROMISED TO BRING MATTER TO ATTENTION OF PRESIDENT NYERERE ON LATTERS RETURN TO DAR ES SALAAM AND TRY TO RATIFY DURING CURRENT SESSION OF PARLIAMENT RECESSING BEFORE JULY 7

GARBA

TLF

INCOMING FILE

ROUTING

ACTION COPY: MR. [REDACTED]  
INFORMATION COPY:  
DECIDED BY:

DATE

TIME

BY

PROJECT

FILE NO.

DATE OF  
FILE

FILE NO.

TO:

FROM:

TEXT

AND OBSERVATION. HAVE BEEN...  
MINISTER OF FINANCE WHO HAS...  
AGREEMENT. HAS ALSO...  
MEMBERS OF...  
AGREEMENT OF...  
AND THE...  
OF...  
GIVEN

JUN 29 9 52 AM 1965

GENERAL FILES  
COMMUNICATIONS

RECEIVED

Le 29 juin 1965

Cour Internationale de Justice  
La Haye, Pays-Bas

A l'attention de Monsieur le Greffier Adjoint

Monsieur,

Votre lettre No 41 566 du 31 mai 1965 concernant la prochaine édition de l'Annuaire de la Cour internationale de Justice m'est bien parvenue. Malheureusement elle a gagné mon bureau peu après mon départ pour quelques semaines en Afrique occidentale, de sorte que je n'ai pu y répondre plus tôt. Tout en vous priant de bien vouloir excuser mon retard, j'espère néanmoins qu'il ne vous aura causé aucun inconvénient.

Après avoir examiné votre question à la lumière de nos archives, je peux vous informer que nous n'avons aucun amendement ou addition à vous suggérer aux textes et références bibliographiques reproduits dans les Annaires 1947-1948, 1956-1957 et 1961-1962. Nous avons néanmoins pris note de votre intérêt et ne manquerons pas de vous tenir au courant des modifications qui pourraient apparaître nécessaires à l'avenir.

Veuillez agréer, Monsieur, l'expression de mes sentiments distingués.

*so*

A. Broches  
Conseiller Juridique

cc. Miss Marchant

JDRoulet/cl) J.R.

June 29, 1965

Dear Mr. Perez-Serrano:

The purpose of this letter is to ask you whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes. Mr. Woods very much hopes that we will have more than the required number of signatures before the Annual Meeting. We realize, of course, that the ratification process may take somewhat longer but I believe that in your country the practice would be to sign first and then submit the document for ratification.

As you will have noticed, the final text of the Convention does not differ greatly from the text established by the Legal Committee with the exception of the deletion of the second paragraph of old Article 26 (subrogation).

As you probably know, the United Kingdom signed the Convention in May. In addition, Jamaica and Tunisia have signed while the Ivory Coast, Nigeria and Pakistan have officially announced their intention to sign and are expected to do so in the immediate future.

Hoping to hear from you soon, I remain, with personal regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Jorge Perez-Serrano  
Embajador-Abogado  
Ministerio de Relaciones Exteriores  
Avenida 12 de Octubre 1842  
Quito, Ecuador

ABroches:cml

June 29, 1965

Dear Mr. Ong:

As you know, the Executive Directors on March 18th approved for submission to governments the final text of the Convention on the Settlement of Investment Disputes and of an accompanying report. The Convention and report were forwarded to your Government on March 23, 1965 and on April 8, 1965 a certified copy of the Convention (in its three official languages) was transmitted to your Government together with a memorandum outlining the steps to be taken in connection with signature and ratification.

As you will have seen, the final text does not significantly differ from the text as approved by the Legal Committee. Apart from the final provisions, with which the Legal Committee did not deal, the principal change is the deletion of old Article 26(2) dealing with subrogation. As you will remember, there was a strong minority opposed to this provision. When the matter was considered by the Executive Directors they decided that since this seemed to be the only item on which a number of countries felt strongly, they should accede to the wishes of the minority.

The Convention provides that it will enter into force thirty days after deposit of the twentieth instrument of ratification. We hope to have at least twenty signatures by the time of the Annual Meeting. The ratification process will in most instances take somewhat more time. The response of the developing countries has been very encouraging. Tunisia and Jamaica have signed the Convention and Pakistan, Nigeria and the Ivory Coast have all taken the necessary governmental action to authorize signature and we expect these signatures any day now. You probably know that the United Kingdom has also signed the Convention. In view of the generally favorable attitude towards the Convention on the part of your delegation, both in Bangkok and Washington, I trust that Malaysia will find the Convention acceptable. I understand from Mr. Tazi, the Executive Director who represents Malaysia in the Bank, that the Government is giving favorable consideration to the Convention and I would appreciate it if you could advise me informally as to the present status of that consideration.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. H. S. Ong  
Solicitor-General  
29 1/2 Guillemard Hill  
Kuala Lumpur, Malaysia  
ABroches:cml

June 29, 1965

Dear Mr. Quill:

The purpose of this letter is to ask you whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes. Mr. Woods very much hopes that we will have more than the required number of signatures before the Annual Meeting. We realize, of course, that the ratification process may take somewhat longer but I believe that in your country the practice would be to sign first and then submit the document for ratification.

As you will have noticed, the final text of the Convention does not differ greatly from the text established by the Legal Committee with the exception of the deletion of the second paragraph of old Article 26 (subrogation).

As you probably know, the United Kingdom signed the Convention in May. In addition, Jamaica and Tunisia have signed while the Ivory Coast, Nigeria and Pakistan have officially announced their intention to sign and are expected to do so in the immediate future. Furthermore, unofficial indications have been received of favorable action by a number of countries in Africa and Asia, including among others Malaysia.

Hoping to hear from you soon, I remain, with personal regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Albyn J. Quill  
Senior Crown Counsel  
Crown Law Office  
Law Society Building  
Waring-Taylor St.  
Wellington, New Zealand

ABroches:cml

June 29, 1965

Dear Mr. Mirghani:

As you know, the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States was approved by the Executive Directors on March 18, 1965 for submission to Governments. The text of the Convention and the accompanying Report of the Executive Directors as well as a certified copy of the Convention in the three official languages, together with a memorandum outlining the steps to be taken by States wishing to sign and ratify the Convention have been sent to your Ministry. To date Tunisia, the United Kingdom and Jamaica have signed the Convention, while three other countries have officially announced that they will become parties very shortly, viz. Pakistan, Nigeria and the Ivory Coast.

From your letter of October 31, 1964 in response to Mr. Woods' invitation to attend the Legal Committee which assisted the Executive Directors in formulating the Convention, and from your subsequent cable it was our impression that the Convention as finally drafted would prove to be acceptable to your Government since nearly all of the changes from the earlier draft were designed to meet points raised by developing countries. I was very pleased to learn from Mr. Garba, who had seen Mr. Hassan Awadalla, that this impression was correct.

The process of adherence to the Convention comprises two steps, viz. signature and subsequent ratification. In many countries, including as I have been informed Sudan, ratification requires legislative action and must therefore be fitted into a country's legislative program. Signature, on the other hand, generally is a matter for cabinet action. It is therefore our hope that prior to the Annual Meeting at least twenty countries will have completed the first step toward adherence, namely, signature. We would be most happy if your Government would find it possible to take the action necessary for Sudan to be among the initial group of signatories.

If you should wish to receive any further information, I shall be pleased to provide it.

Sincerely yours,  
(Signed) A. Broches

A. Broches  
General Counsel

Mr. Abdel Rahim Mirghani  
Under Secretary for Economic Planning  
Ministry of Finance and Economics  
P.O. Box 298  
Khartoum, Sudan



June 29, 1965

Dear Fred:

Thank you for your letter of June 25 in which you tell me of your conversation with Bombieri. The timing of Bombieri's visit to Minister Colombo could not be better since Mr. Woods just recently wrote to Minister Colombo asking him to give early attention to the Convention. By the way, I sent a copy of Mr. Woods' letter to Egidio Ortona so that he knows that we have followed up on his suggestion.

Incidentally, Mr. Woods and I were in Rome at the time of the APPI meeting and Mr. Woods will undoubtedly be pleased that Bombieri is supporting the Convention.

With best regards,

*151/Room*

Mr. Federico Consolo  
Hotel des Bergues  
Geneva, Switzerland

ABroches:cml  
cc: Mr. Woods

June 29, 1965

Dear Dr. Lara:

In view of your interest in and support of the Convention on the Settlement of Investment Disputes, I am writing to tell you that the initial reaction of member countries to the final text submitted to them by the Executive Directors of this Bank has been quite encouraging.

As you know the Convention will enter into force after signature and ratification by twenty States. On the basis of indications received we are confident that we shall have twenty signatures by the time of the Annual Meeting of the Board of Governors in September of this year and that the required ratifications will be obtained relatively soon thereafter. At the present time the Convention has been signed by the United Kingdom, Jamaica and Tunisia and signature by the Ivory Coast, Nigeria and Pakistan is expected within the immediate future.

To date we have not received any reactions, either positive or negative, from Latin American countries. I would be most grateful if you could let me know informally the present status of consideration of the Convention by the Costa Rican authorities. On my part, I shall be glad to give you any further information which you may wish to receive in connection with the Convention and the procedure for its signature and ratification.

I have the most pleasant memories of our collaboration during the meetings of the Legal Committee and I shall be looking forward to hearing from you.

With warm regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Lic. Rodolfo Lara  
Vice President, Board of Directors  
Banco Central de Costa Rica  
San José, Costa Rica

ABroches:cml

DECLASSIFIED

AUG 21 2023

Personal

June 29, 1965

WBG ARCHIVES

Dear Mr. Gonzalez Bueno:

Having returned from my African travels I write to thank you once again for the wonderful hospitality which you showed me during my brief stay in Madrid. As a matter of fact, thinking back on that enjoyable period, I find it hard to believe that the extensive program was compressed within a 24 hour period. I hope that some day I shall be in a position to reciprocate here in Washington.

I take this opportunity to bring you up-to-date on developments with respect to the Convention. The Convention has now been signed by the United Kingdom, Tunisia and Jamaica and signature by the Ivory Coast, Nigeria and Pakistan has been announced and is expected in the immediate future. In addition we have unofficial indications of support from a number of Asian and African countries.

In view of the favorable response of the developing countries I expect that the United States and some of the European countries which have held back so as to give the developing countries a chance to be among the first signatories will now take action as well. If you have any news concerning the consideration of the Convention by the Spanish authorities I hope you will let me know.

En route to Africa I spoke briefly by telephone to Dr. Melchor de las Heras and was pleased to hear that the condition of his wife was slightly improved. Please give him my respects upon his return to Madrid. Please remember me also to your cousin and your friend with whom we spent such an enjoyable evening.

With warm regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. J. Gonzalez Bueno  
Ministerio de Hacienda  
Madrid, Spain

ABroches:cml

DECLASSIFIED

SEP 06 2023

Personal

WBG ARCHIVES

June 29, 1965

Dear Mr. Brunner:

Having returned from my African trip, I am now writing to give you the promised information on developments with respect to the Convention on the Settlement of Investment Disputes about which we spoke during our stay at San Juan.

Of the developing countries Tunisia and Jamaica have signed the Convention. Nigeria issued a communique on June 10 announcing that the Nigerian Government had decided to sign and ratify the Convention and we expect this to take place at any time now. The Ivory Coast is expected to sign on June 30th and the Parliament of the Ivory Coast on June 25th passed a law authorizing ratification of the Convention. Pakistan has also decided to join. Full powers have already been received and the Convention will be signed when the Ambassador returns from the Commonwealth Prime Ministers' Conference in London. In addition we have unofficial indications of willingness to adhere on the part of a number of Asian and African countries.

Of the developed countries, only the United Kingdom has signed to date. The United States and a number of European countries which have declared themselves in favor of the Convention have delayed action so as to avoid an impression of pressure on the developing countries. With the gratifying response thus far on the part of the developing countries, including such important ones as Nigeria and Pakistan, I expect that a number of developed countries will sign the Convention in the near future.

I shall be glad to keep you informed of further developments as they occur and I shall be grateful if you would keep me informed in turn of reactions in Chilean circles.

I enclose for your confidential information a copy of the letter which I addressed last month to Dr. Valdés.

Sincerely yours,  
(Signed) A. Broches

A. Broches  
General Counsel

Mr. Helmut Brunner  
Casilla 2040  
Santiago, Chile

Enclosure  
ABroches:cml

June 29, 1965

Dear Mr. O'Donovan:

The purpose of this letter is to ask you whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes. Mr. Woods very much hopes that we will have more than the required number of signatures before the Annual Meeting. We realize, of course, that the ratification process may take somewhat longer but I believe that in your country the practice would be to sign first and then submit the document for ratification.

As you will have noticed, the final text of the Convention does not differ greatly from the text established by the Legal Committee with the exception of the deletion of the second paragraph of old Article 26 (subrogation).

As you probably know, the United Kingdom signed the Convention in May. In addition, Jamaica and Tunisia have signed while the Ivory Coast, Nigeria and Pakistan have officially announced their intention to sign and are expected to do so in the immediate future. Furthermore, unofficial indications have been received of favorable action by a number of countries in Africa and Asia, including among others Malaysia.

Hoping to hear from you soon, I remain, with personal regards,

Sincerely yours,

{Signed} A. Broches

A. Broches  
General Counsel

Mr. B. J. O'Donovan  
Senior Assistant Secretary  
Attorney-General's Department  
Canberra, A.C.T., Australia

ABroches:cml



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> June 29, 1965	<b>Document Type</b> Letter			
<b>Correspondents / Participants</b> To: Dr. C.W. van Santen, Ministry of Foreign Affairs, Netherlands From: A. Broches				
<b>Subject / Title</b> [Convention for settlement of investment disputes - enforcement against States]				
<b>Exception(s)</b> Attorney-Client Privilege				
<b>Additional Comments</b>		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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			

June 29, 1965

Dear Mr. Ortiz de Zevallos:

The purpose of this letter is to ask you whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes. Mr. Woods very much hopes that we will have more than the required number of signatures before the Annual Meeting. We realize, of course, that the ratification process may take somewhat longer but I believe that in your country the practice would be to sign first and then submit the document for ratification.

As you will have noticed, the final text of the Convention does not differ greatly from the text established by the Legal Committee with the exception of the deletion of the second paragraph of old Article 26 (subrogation). As I recall you were opposed to that paragraph and you will therefore have noted its deletion with satisfaction.

As you probably know, the United Kingdom signed the Convention in May. In addition, Jamaica and Tunisia have signed while the Ivory Coast, Nigeria and Pakistan have officially announced their intention to sign and are expected to do so in the immediate future.

Hoping to hear from you soon, I remain, with personal regards,

Sincerely yours,  
*(signed) A. Broches*

A. Broches  
General Counsel

Mr. Gonzalo Ortiz de Zevallos  
Ministerio de Relaciones Exteriores  
Lima, Peru

ABroches:cml

810

I N C O M I N G W I R E

DATE OF WIRE: JUNE 28, 1965 2045

LOG NO.: WU 11

TO: INTBAFRAD

FROM: ABIDJAN

R O U T I N G	
ACTION COPY:	MR. BROCHES
INFORMATION COPY:	
DECODED BY:	

TEXT:

22 BROCHES

REMYTEL 21 MINFIN HAS CABLED EMBASSY AMENDED AUTHORITY TO SIGN. WILL  
CABLE YOU TEXT RATIFICATION LAW TOMORROW

MATTER

AB



INCOMING WIRE

ROUTING	
DECIDED BY:	MR. HUGHES
INFORMATION COPY:	
ACTION COPY:	

JUNE 28, 1965

DATE OF WIRE:

BU 11

DOC NO.:

INTERRAIL

TO:

ASIJAR

FROM:

TEXT:

RECEIVED BY: MR. HUGHES

PLEASE FOR THE PARTICIPATION AND NUMBER

WIRE

JUN 29 11 34 AM 1965

GENERAL FILES COMMUNICATIONS

RECEIVED

SID

INCOMING CABLE

DATE AND TIME OF CABLE: **JUNE 28, 1965 1553**

LOG NO.: **WU 8**

TO: **INTBAFRAD**

FROM: **ABIDJAN**

TEXT:

ROUTING
ACTION COPY: <b>MR. WOODS</b>
INFORMATION COPY: <b>MR. BROCHES</b>
DECODED BY:

A L ATTENTION DU PRESIDENT WOODS

CONVENTIN COTE D IVOIRE BIRD REGLEMENT DIFFERENDS RELATIFS

INVESTISSEMENTS APPROUVEE PAR LOI 65 237 DU 26 JUIN 1965

QUI AUTORISE EGALEMENT PRESIREPUBLIQUE A LA RATIFIER. DECRET

RATIFICATION INTERVENU SOUS NUMERO 65 238 DU 26 JUIN.

AMBACOTIVOIRE INVITEE A PRENDRE TOUTES DISPOSITIONS NECESSAIRES

POUR SIGNER CONVENTION AVANT LE 30 JUIN HAUTE CONSIDERATION

R SALLER

INCOMING CABLE

ROUTING

ADVICE ONLY MR. MOORE  
INFORMATION MR. BROOKS  
DELETED BY

DATE AND TIME  
OF CABLE

JUN 26, 1965 1258

LOG NO.

50 5

TO

WASHINGTON

FROM

ALGERIA

TEXT

A MESSAGE IN ENGLISH WAS  
RECEIVED ON JUNE 26, 1965 AT 12:58 PM  
FROM ALGERIA TO WASHINGTON  
CONCERNING THE PROGRESS OF THE  
NEGOTIATIONS FOR THE  
RECONSTRUCTION OF THE  
ALGERIAN ECONOMY  
AND THE NEED FOR  
INTERNATIONAL ASSISTANCE  
IN THIS REGARD.

JUN 29 8 35 AM 1965

GENERAL FILES  
COMMUNICATIONS

FOR INFORMATION REGARDING CABLES, PLEASE CALL THE COMMUNICATIONS UNIT EXT. 2021

REPLY DATE

June 28, 1965

His Excellency  
Sir Neville Noel Ashenheim  
Ambassador of Jamaica  
2129 Leroy Place, N.W.  
Washington, D.C. 20008

Dear Mr. Ambassador:

I enclose two certified copies of the  
Convention on the Settlement of Investment  
Disputes between States and Nationals of Other  
States, which was signed by you on behalf of  
Jamaica on June 23, 1965.

Yours sincerely,

  
N. H. Mendels  
Secretary

Encs.

  
cc: Mr. Hudson  
Mr. Brookes

LS:bw

I N C O M I N G W I R E

DATE OF WIRE: JUNE 26, 1965 1725

LOG NO.: WU 3

TO: INTBAFRAD

FROM: ABIDJAN

R O U T I N G	
ACTION COPY:	MR. BROCHES
INFORMATION COPY:	
DECODED BY:	

TEXT:

21 BROCHES

NATIONAL ASSEMBLY YESTERDAY UNANIMOUSLY APPROVED RATIFICATION OF SID CONVENTION. CANNOT SEE MINFIN REURTEL 15 UNTIL MONDAY. WILL URGE AMENDED AUTHORITY AND ONE PARAGRAPH LAW OF RATIFICATION BE CABLED BANK SAME DAY

MATTER

TLF

INCOMING AIR

DATE OF  
WIRE  
LOG NO.  
TO  
FROM  
TEXT

ROUTING
AGENCY COPY: MR. STODOLSKY
INFORMATION COPY: DELETED BY:

TO: DIRECTOR GENERAL  
 FROM: DIRECTOR GENERAL  
 SUBJECT: ...  
 RE: ...

JUN 28 9 13 AM 1965

GENERAL FILES  
COMMUNICATIONS

TYPED

DUPLICATE

E. B. Williams

A. G. El Emary

LETTER NO. 41

Hôtel Ivoire  
Abidjan, June 26, 1965

Mr. Aron Broches  
General Counsel  
IBRD  
Washington, D.C.

Dear Mr. Broches:

Just a note to send you the clipping in today's *Fraternité* regarding the ratification of the SID Convention.

The National Assembly passed this law unanimously. The action was beautifully timed by Saller to coincide with his speech at the Annual Seminar of the Centre Européen pour le Développement Industriel et la Mise en Valeur de l'Outre-Mer (CEDIMOM).

Furthermore, the passage of the law was given a good deal of publicity in the daily French and English standard and shortwave broadcasts of the Ivory Coast radio system.

Cables from Abidjan not being very reliable, I am quoting here the text of the one which I sent you today:

"NATIONAL ASSEMBLY YESTERDAY UNANIMOUSLY APPROVED  
RATIFICATION OF SID CONVENTION STOP CANNOT SEE  
MINFIN REURTEL 15 UNTIL MONDAY STOP WILL URGE  
AMENDED AUTHORITY AND ONE PARAGRAPH LAW OF  
RATIFICATION BE CABLED BANK SAME DAY MATTER"

I hope you have had the follow-up cable before this letter reaches you.

With best personal regards to you and Mrs. Broches.

Sincerely yours,

*Alfred E. Matter*

Alfred E. Matter

cc: (with clipping) Messrs. El Emary/Williams ✓

P.S. Mr. El Emary,

Have made definite plans to return to  
Paris for short visit July 8. Looking very much  
forward to it. Best personal wishes and regards. Alth

comme chaque année, de cadre aux réunions, pendant lesquelles les participants discutèrent autour du thème : « Face au développement du Tiers-Monde, comment les industries européennes doivent-elles s'organiser ? » Il y avait, réunis sous la présidence du gouverneur Roland Pré, président du CEDIMON, MM. Raphaël Saller, Ministre des Finances de Côte d'Ivoire, Jeanney, ancien ministre, des chefs d'entreprises européennes, les ambassadeurs africains auprès de la C.E.E. et de hauts fonctionnaires du Marché Commun européen.

**ADAPTER LES STRUCTURES**

Qu'est-il sorti des trois journées de Royaumont ?

Au cours de son intervention, le Ministre des Finances de la Côte d'Ivoire a souhaité que les industries européennes, au lieu de se borner à la vente de produits ou de matériel aux pays en voie de développement, y fassent de véritables investissements, y créent des entreprises, et les gèrent.

Le vœu de M. Raphaël Saller faisait écho à l'affirmation de maints conférenciers, concernant la nécessité d'élargir les dimensions des entreprises. Insistant, ce faisant, sur le double effet de profit au niveau de l'entreprise d'une part, et d'autre part, au niveau du pays où celle-ci s'installe, les conférenciers ont estimé, en conclusion, que ces entreprises doivent, non pas empêcher l'installation d'industries dans les pays d'Outre-Mer, mais adapter au mieux leurs structures, pour réaliser l'industrialisation de ces pays.

Industries complémentaires entre elles, ou industries de finition de produits élaborés en Europe, les unités implantées dans les pays en voie de développement doivent obligatoirement s'intégrer dans les économies locales. Devant cette « mondialisation » des entreprises, les chefs d'industries n'ont pas manqué de souligner les risques qu'entraîneraient d'éventuelles violations des règles contractuelles et

**VONT INTENSIFIER AVEC L'AFRIQUE**

« La conquête d'un important marché brésiliens et la fin d'un isolement de la qualité des produits brésiliens sur le marché international, tels sont les objectifs de la tournée que vient de faire la mission commerciale brésilienne », a déclaré le ministre Mario

En ce qui concerne les produits

naire pour l'Afrique Occidentale, « création d'un large marché monétaire, avec l'aide des organismes bancaires et d'assurance, dont l'activité s'étend aussi bien en Europe que dans les pays d'Outre-Mer ».

« Dans le souci d'affirmer leur indépendance », dit M. Carour, directeur général des « Messageries Maritimes », les jeunes nations attachent beaucoup de prix à ce que leurs couleurs flottent sur les océans, et sillonnent les espaces aériens intercontinentaux... C'est pourquoi, constate-t-il, les entreprises européennes de transports, plus particulièrement concernées, puisque le Tiers-Monde a toujours été leur champ d'action, doivent, peut-être, faire leur propre révolution.

« Il s'agit pour les Européens, affirme M. Carour, de savoir s'ils entendent résister à cette évolution ou s'y adapter, lutter ou coopérer ».

**20 OFFICIERS MALGACHES**

Le directeur des « Messageries Maritimes » cite un exemple de coopération de sa compagnie, et évoque la constitution en 1963, de la Société Malgache de Transports Maritimes. Créée à la demande du gouvernement malgache, qui détient une participation de 20 % du capital, la Société possède, actuellement, deux cargos qui assurent la liaison avec la France.

de la coopération, devait, lors de la séance de clôture, tirer la leçon des trois journées de



**REMISE DE MATÉRIEL AU MINISTÈRE DE LA**

Depuis quelques jours séjourne dans notre capitale le Dr. Siegfried Gerth, un des directeurs des programmes de l'Association Allemande de l'Education des Adultes. Cette visite qui s'inscrit dans le cadre de l'assistance que cette institution allemande continue à donner à ses anciens stagiaires africains a permis hier au Dr. Gerth de remettre solennellement, par le truchement de Dr. Hansjoerg Eiff chargé d'affaires de l'Ambassade



5110.

June 25, 1965

Dear Mr. Sapateiro:

I am writing to ask whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes in the preparation of which you so ably participated last year. Mr. Woods very much hopes that we will have more than the required number of signatures before the Bank's Annual Meeting in September. We realize, of course, that the ratification process may take somewhat longer.

As you will have noticed, the text of the Convention as approved by the Executive Directors does not differ greatly from the text established by the Legal Committee, except for deletion of the second paragraph of the old Article 26 (subrogation).

I would like to take this opportunity to let you know that to date three countries have actually signed the Convention viz. Tunisia, the United Kingdom and Jamaica, while three others have announced that they will become parties very shortly viz. Nigeria, the Ivory Coast and Pakistan.

With warm personal regards,

I am,  
Yours sincerely

A. Broches  
General Counsel

Mr. Jose Luis Sapateiro  
Ministerio de Finanzas  
Lisbon  
Portugal

June 25, 1965

Dear Mr. Ortona:

On my return from Africa, which unfortunately did not lead me via Rome, Federico Consolo informed me of the letters exchanged between him and yourself.

In order to keep you informed of what we are doing in this matter, I am sending you enclosed herewith a copy of a letter addressed by Mr. Woods to Minister Colombo. Supplementing the information in that letter I can tell you that Jamaica signed the Convention on June 23rd and that we have received unofficial indications of favorable action by a number of African and Asian countries.

With personal regards,

Sincerely yours,

*A. Broches*

A. Broches  
General Counsel

Mr. Emilio Ortona  
Director General of Economic Affairs  
Ministry of Foreign Affairs  
Rome, Italy

ABroches:cml  
Enclosure

JUN 28 REC'D



EXPORT-IMPORT BANK OF WASHINGTON

WASHINGTON, D.C. 20571

CABLE ADDRESS "EXIMBANK"

BOARD OF DIRECTORS

June 25, 1965

Dear George:

I would like to recommend to you a long-time personal friend of mine, Mr. Ralph R. Williams who is in law practice in Tuscaloosa, Alabama, for the position of Conciliator or Arbitrator in the International Centre for Settlement of Investment Disputes. Mr. Williams is anxious to become a member of the Panel of Conciliators and/or Arbitrators which I understand will consist of ten people each. It is realized that the Convention creating the Centre is yet to be signed, then ratified by the states involved which probably will not take place until early next year.

Mr. Williams would be a good man for that type of panel, as he is presently one of the leading arbitrators of labor-management disputes in the South and has been for the past fifteen years. In addition to his A. B. and law degrees from Georgia, he has an M. A. in political science from Syracuse and Master of Laws from Stanford, also Doctor of Laws from Atlanta Law School. He taught at the University of Alabama Law School for five years. Since 1950 he has arbitrated between 400 and 500 labor dispute cases.

The members of the Board enjoyed having you in for lunch recently, and I am personally looking forward to seeing you again in the near future.

With kind personal regards,

Sincerely,

*Charles*

Charles M. Meriwether

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

*ack. July 7/65*

EXPORT-IMPORT BANK OF WASHINGTON

WASHINGTON, D.C. 20571

CABLE ADDRESS: EXIMBANK



BOARD OF DIRECTORS

June 25, 1965

Dear George:

I would like to recommend to you a long-time personal friend of mine, Mr. William R. Williams who is in law practice in Tuscaloosa, Alabama, for the position of Conciliator or Arbitrator in the International Centre for the Settlement of Investment Disputes. Mr. Williams is anxious to become a member of the Panel of Conciliators and/or Arbitrators which I understand will consist of ten people each. It is realized that the Convention creating the Centre is yet to be signed, then ratified by the states involved which generally will not take place until early next year.

Mr. Williams would be a good man for that type of panel, as he is presently one of the leading arbitrators of labor-management disputes in the South and has been for the past fifteen years. In addition to his A.B. law degrees from Georgia, he has an M.A. in political science from Tennessee and Master of Laws from Stanford, also Doctor of Laws from Stanford Law School. He taught at the University of Alabama Law School for five years, since 1959 he has maintained between 500 and 800 labor law cases.

The members of the Board enjoy having you in for lunch recently, and I am personally looking forward to seeing you again in the near future.

Very truly yours,

Charles M. Marshall

1965 JUN 26 AM 10:58

RECEIVED  
GENERAL FILES  
COMMUNICATIONS

June 25, 1965

Dear Mr. Brown:

As you know, the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States was approved by the Executive Directors on March 18, 1965 for submission to Governments. You will by now have received the text of the Convention and the accompanying Report of the Executive Directors as well as a certified copy of the Convention in the three official languages together with a memorandum outlining the steps to be taken by States wishing to sign and ratify the Convention.

The text of the Convention as it was finally approved by the Executive Directors is not substantially different from that adopted by the Legal Committee in which Mr. Bomani played an active part. It may, however, interest you that the provision in the draft which permitted a capital-exporting State under certain circumstances to be substituted for its national in proceedings before the Centre was deleted by the Executive Directors. That provision had obtained a majority in the Legal Committee but in view of the strong reservations expressed by a number of countries the Executive Directors agreed to its deletion.

On the basis of your remarks at the Addis Ababa meeting and Mr. Bomani's participation in the work of the Legal Committee, it is our impression that your Government would find the Convention acceptable, and I write now to ask if you could advise me informally as to whether Tanzania is likely to take action on the Convention in the near future. In this connection you may be interested to know that to date Tunisia, the United Kingdom and Jamaica have signed the Convention and that three other countries, viz. Nigeria, the Ivory Coast and Pakistan, have announced their intention to become parties very shortly. We are therefore quite pleased with the prompt response of the capital-importing countries thus far, and expect that among the 20 countries whose ratifications are necessary in order to bring the Convention into force initially both capital importers and capital exporters will be represented.

Eli Lauterpacht was here in February and we spoke of you. More recently Lars Kalderen stopped in Washington on his way to Tanzania and was able to give us news of you and of developments in the country. Mr. Broches sends his regards as do I and my other colleagues who had the pleasure of working with you in Addis Ababa. Please be kind enough to convey our regards to Mr. Bomani as well.

Yours sincerely,

C. W. Pinto  
Attorney

The Hon. Roland Brown, Q.C.  
Attorney General  
Attorney General's Chambers  
P. O. Box 9050  
Dar es Salaam

*Send*

sid

Form No. 27  
(7-61)

INTERNATIONAL DEVELOPMENT  
ASSOCIATION

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE  
CORPORATION

**OUTGOING WIRE**

TO: MATTER  
INHOTELCOR  
ABIDJAN

DATE: JUNE 24, 1965

CLASS OF SERVICE: LT

*REA*

COUNTRY: IVORY COAST

TEXT:  
Cable No.:

15. LAST WEEK PRESIDENCE AND MINISTRY FINANCE CABLED AUTHORITY TO  
AMBASSADOR TO SIGN CONVENTION BUT AMBASSADOR ABSENT FROM WASHINGTON  
ON EXTENDED LEAVE STOP UNDERSTAND EMBASSY WROTE TO ABIDJAN ASKING  
AMENDED AUTHORITY STOP WHILE THERE IS NO URGENCY WE WOULD LIKE  
SIGNATURE BEFORE END FISCAL YEAR NEXT WEDNESDAY. REGARDS.

BROCHES

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

NAME A. Broches

DEPT. Legal

SIGNATURE *A. Broches*  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

CLEARANCES AND COPY DISTRIBUTION:

ABroches:cml

For Use by Archives Division

ORIGINAL (File Copy)

(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: *[Signature]*

OUTGOING WIRE

TO: [REDACTED]  
FROM: [REDACTED]  
DATE: [REDACTED]  
CLASS OF SERVICE: [REDACTED]

20A

LAST WEEK PRESIDENT AND MESSY FINANCIAL CALLED A MEETING  
AMBASSADOR TO SIGN CONVENTION BUT AMBASSADOR REFUSED TO SIGN  
ON INTERESTED LEAVE FOR UNDERSTAND FINANCIAL WROTE TO ALL  
MEETING A MEETING FOR WHILE THERE IS NO FINANCIAL WE WOULD  
SIGNATURE BEFORE END FISCAL YEAR NEXT WEDNESDAY, [REDACTED]

FINANCIAL

NOT TO BE TRANSMITTED

REPLACES AND COPY DISTRIBUTION

JUN 24 6 27 PM 1965

COMMUNICATIONS  
GENERAL FILLS

PRINTED

For Use by Archives Division

[Handwritten signature]

June 23, 1965

Dear Mr. Martin:

In reply to your letter of June 18 addressed to Mr. George D. Woods, I am sending you herewith a copy of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The Convention will enter into force after having been signed and ratified by twenty States. While it is difficult to predict with any accuracy when these requirements will have been met, my best estimate is that the Convention will enter into force sometime during 1966.

Sincerely yours,

*Joseph A. Broches*

A. Broches  
General Counsel

Mr. William R. Martin  
International House  
New Orleans, Louisiana

Enclosure  
ABroches:cml  
cc: Mr. Woods



8117

**OUTGOING WIRE**

TO: J.A. ADEYEYE  
FEDERAL MINISTRY OF FINANCE  
P.M.B. 2591  
LAGOS

DATE: JUNE 23, 1965

CLASS OF ~~FULL RATE~~  
SERVICE: *IBF GOVT.*

*RCA*

COUNTRY: NIGERIA

TEXT:  
Cable No.:

COULD YOU INFORM ME WHEN FULL POWERS TO SIGN SID CONVENTION CAN  
BE EXPECTED IN WASHINGTON STOP FOR YOUR INFORMATION IN ADDITION  
TO TUNISIA AND THE UNITED KINGDOM, JAMAICA HAS NOW SIGNED AND  
PAKISTAN AND IVORY COAST ARE ABOUT TO DO SO. REGARDS.

BROCHES

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

NAME A. Broches

DEPT. Legal

SIGNATURE *A. Broches*  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

CLEARANCES AND COPY DISTRIBUTION:

ABroches:cml

*ack. July 1/65*

For Use by Archives Division

*[Signature]*

**ORIGINAL (File Copy)**

(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: \_\_\_\_\_

OUTBOARDS WIRE

TO: 4.4.4.4.4.4  
FROM: 4.4.4.4.4.4  
CLASS OF SERVICE: ~~TELETYPE~~  
DATE: JUN 23 1965

RRR

COUNTRY: NIGERIA

TEXT

COULD YOU INFORM ME WHEN FULL POWERS TO SIGN SUD CONVENTION CAN  
BE EXPLORED IN WASHINGTON STOP FOR YOUR INFORMATION IN ADDITION  
TO THE NIGERIA AND THE UNITED KINGDOM, CAMBODIA HAS NOW SIGNED AND  
PAKISTAN AND IVORY COAST ARE ABOUT TO DO SO. REGARDS.

END

NOT TO BE TRANSMITTED

JUN 23 3 36 PM 1965

JUN 23 3 36 PM 1965

GENERAL FILES COMMUNICATIONS

GENERAL FILES COMMUNICATIONS

DISPATCHED

*Shreber*

Original File Copy

Checked for Dispatch

Checked for Dispatch

June 23, 1965

Dear Mr. Djuvara:

Thank you for your letter of June 17 and for the information contained therein regarding the study of the Convention by the Government of Niger. Mr. Kochman showed me the letter of the Minister of Finance to which you refer and I believe that he has answered some of the questions raised in that letter.

You may be interested to learn that Tunisia and the United Kingdom have signed the Convention and Pakistan, Nigeria, the Ivory Coast and Jamaica have officially informed the Bank that signature has been authorized and will take place within the very near future.

With personal regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. N. Djuvara  
Conseiller Diplomatique  
Ministère des Affaires Etrangères  
Niamey, Niger

ABroches:cml

SecM65-169

FROM: The Secretary

June 23, 1965

SETTLEMENT OF INVESTMENT DISPUTES

The Convention on Settlement of Investment Disputes between States and Nationals of Other States was signed today at 12:00 noon on behalf of Jamaica by His Excellency Sir Neville Noel Ashenheim, Ambassador of Jamaica.

Jamaica became the third member of the Bank to sign the Convention.

Distribution:

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

June 23, 1965

His Excellency  
Ato Menasse Lemma  
Governor  
National Bank of Ethiopia  
Addis Ababa, Ethiopia

Excellency:

As you may know, the Executive Directors of the Bank on March 18 last approved the final text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and of an accompanying report for submission to governments. The final text of the Convention is substantially in accordance with the text as it was approved by the Legal Committee which met in Washington during November/December of 1964 and at which Ethiopia was represented.

The Convention as finally approved for submission to governments incorporates a number of suggestions made at the consultative meeting in Addis Ababa, at which you led the Ethiopian delegation, and the subsequent meetings in Latin America, Europe and Asia. On the basis of the views expressed by your delegation in Addis Ababa and subsequently in Washington, I hope that the document in its final form will be found acceptable by your Government.

The first definitive reactions of member countries have now been received. Tunisia, the United Kingdom and Jamaica have signed the Convention and Pakistan, Nigeria and the Ivory Coast have officially informed us that all necessary governmental action has been taken to authorize signature of the Convention and instructions to that effect sent to the respective Embassies in Washington. We are encouraged by this prompt action. Mr. Woods is particularly anxious that by the time of the Annual Meeting the Convention should have been signed by at least twenty States representative of both capital-importing and capital-exporting areas. I hope that the Ethiopian Government will find it possible to give early consideration to the Convention and that if it finds the document acceptable it will be among the initial group of signatories.

I may add for your information that the procedure for adherence

to the Convention consists of the traditional two steps of signature and ratification. The Convention will enter into force after signature and ratification by twenty States. As I said, we hope that the minimum number of signatures can be obtained before the Annual Meeting. We realize, however, that legislative calendars may cause a certain delay in the subsequent step, i.e. ratification.

Looking forward to greeting you at the forthcoming Annual Meeting, I remain with personal regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

ABroches:cml

8110

I N C O M I N G W I R E

DATE OF WIRE: **JUNE 23, 1965 1506**

LOG NO.: **TELEX**

TO: **INTBAFRAD**

FROM: **RIO DE JANEIRO**

R O U T I N G	
ACTION COPY:	<b>MR. BROCHES</b> <b>MR. NURICK</b>
INFORMATION COPY:	
DECODED BY:	

TEXT: **FOR BROCHES NURICK**

HAVE DELIVERED OFFICIAL SID TEXTS MINISTERS FINANCE PLANNING ENERGY STRESSING CONVENTIONS IMPORTANCE STIMULATION FOREIGN INVESTMENT AND EARNESTLY REQUESTING CONVENTION BE STUDIED THOROUGHLY WITHOUT LETTING FORMALISTIC OBJECTIONS ECLIPSE SUBSTANTIAL ADVANTAGES

WAS WELL RECEIVED MINISTERS FINANCE PLANNING ENERGY AND BANCENTRAL PRESIDENT CHIEF LEGAL COUNSEL CUNHA RIBEIRO AND ALL ARE AWARE URGENCY EFFECTIVENESS OBLIGORS AGREEMENT JULY 1ST. HAVE DRAFTED GOVERNMENT CONSENT FOR FINANCE MINISTER AND HE PROMISED LETTER SOONEST. BANCENTRAL REGISTRATION PROGRESSING RAPIDLY PERHAPS READY BY WEEKEND. PROCURADOR GERAL FAZENDA SOLE BIG OBSTACLE. HAVENT SEEN PROCURADOR AS OUT OF TOWN TILL NEXT TUESDAY. FINANCE MINISTER FORESEES DELAY SEVERAL WEEKS BEFORE PROCURADOR GIVES OPINION SUGGESTS IBRD ACCEPT OPINION CUNHA RIBEIRO BECAUSE MATTERS INTERNATIONAL INVESTMENT NOW ARE WITHIN FUNCTIONS NEW BANCENTRAL. MYSELF WILLING ACCEPT CUNHA BUT UNCERTAIN WHETHER PINHEIRO APPROVES OR CUNHA WILLING. TRYING REACH PINHEIRO. RONNIE KNOWS CUNHA WELL. BELIEVE PRUDENT EXTEND MY STAY UNTIL JULY 1ST PLEASE AUTHORIZE OTHERWISE RETURNING NEXT SUNDAY. IF SATISFIED EVERYTHING HERE QUERY WHETHER MY CABLE SO SAYING SUFFICIENT FOR EFFECTIVENESS BRAZILIAN END. NOTE CABLE DECLARING EFFECTIVENESS SHOULD BE SENT ALSO BANCENTRAL. IF DEPARTURE POSTPONED ASK WEBB CONTACT MICHAELS REGARDING INSURANCE UNTIL JULY 3. CALL JULIE REGARDS

CANCIO

INCOMING MAIL

ROUTING

ACTION COPY: MR. HUGHES  
MR. WHITE  
INFORMATION COPY:  
DECODED BY:

JUN 23 1965

MAIL

INTERNAL

FOR DE LABELING

FOR RECORDS SECTION

THE FOLLOWING INFORMATION IS BEING FURNISHED TO YOU FOR YOUR INFORMATION AND ACTION. THE INFORMATION IS BEING FURNISHED TO YOU FOR YOUR INFORMATION AND ACTION. THE INFORMATION IS BEING FURNISHED TO YOU FOR YOUR INFORMATION AND ACTION.

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THE FOLLOWING INFORMATION IS BEING FURNISHED TO YOU FOR YOUR INFORMATION AND ACTION. THE INFORMATION IS BEING FURNISHED TO YOU FOR YOUR INFORMATION AND ACTION. THE INFORMATION IS BEING FURNISHED TO YOU FOR YOUR INFORMATION AND ACTION.

JUN 23 2 48 PM 1965

COMMUNICATIONS  
GENERAL FILES

TYPED

GENERAL INFORMATION AND MAIL

CARDIO



810

I N C O M I N G W I R E

DATE OF WIRE: **JUNE 23, 1965** **1150**

LOG NO.: **RC 12**

TO: **BROCHES INTBAFRAD**

FROM: **NAIROBI**

R O U T I N G	
ACTION COPY:	<b>MR. BROCHES</b>
INFORMATION COPY:	
DECODED BY:	

TEXT:

*June 29/65*

REYOURCAB RECEIVED IN SUDAN. HAVE RAISED SUBJECT OF  
 SID CONVENTION WITH KALULESETTALA MINISTER OF FINANCE  
 AND PROTEM PRIME MINISTER. SETTALA PROMISED TO GIVE  
 EARLY ATTENTION AND TO KEEP ME INFORMED OF PROGRESS

GARBA

FCA

INCOMING WIRE

DATE OF WIRE:	JUNE 23, 1965	WIRE NO.:	1250
TO:	BROOKS INTERNATIONAL	FROM:	NAIROBI
INFO:			
ACTION COPY:		DELETED BY:	
INFORMATION COPY:			
RE: BROOKS			

REYNOLDS RECEIVED IN NAIROBI. HAVE RAISED SUBJECT OF  
 HIS CONVICTION WITH PARLIAMENTARY MINISTER OF FINANCE  
 AND NOTED FROM MINISTER. DETAILS PROMISED TO GIVE  
 EARLY ATTENTION AND TO KEEP ME INFORMED OF PROGRESS

CLARA

104

JUN 23 8 28 AM 1965

COMMUNICATIONS  
GENERAL FILES

TYPED

DUPLICATE

**OUTGOING WIRE**

TO: JOHN GARBA  
HOTEL NEW STANLEY  
NAIROBI

DATE: JUNE 22, 1965

CLASS OF SERVICE: Full rate

*WUI*

COUNTRY: Kenya

TEXT:  
Cable No.:

✓  
THANKS YOUR CABLE JUNE 19 STOP OUR AIM IS TO OBTAIN SIGNATURES  
BEFORE ANNUAL MEETING BUT WE DO NOT REPEAT NOT EXPECT THAT  
COUNTRIES REQUIRING PARLIAMENTARY ACTION WILL BE ABLE TO RATIFY  
BY THAT TIME STOP SINCE IN MOST COUNTRIES DECISION TO SIGN IS  
TAKEN BY CABINET HOPE THAT COUNTRIES FAVORABLY DISPOSED TOWARDS  
CONVENTION WILL TAKE SIGNATURE STEP BEFORE ANNUAL MEETING AND  
TAKE PARLIAMENTARY ACTION AS SOON AS ~~SEE~~ CONVENIENT THEREAFTER.

BROCHES

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

CLEARANCES AND COPY DISTRIBUTION:

NAME A. Broches

ABroches; cml

DEPT. Legal

SIGNATURE *A. Broches*  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

*ack: June 23/65*

For Use by Archives Division

ORIGINAL (File Copy)

(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: *[Signature]*

INTERNATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS UNION  
INTERNATIONAL BUREAU OF  
TELECOMMUNICATIONS UNION

OUTGOING WIRE

TO: *WU*  
FROM: *WU*  
CLASS OF SERVICE: *WU*

THANKS YOUR CABLE JUNE 19 STOP OUR AIM IS TO OBTAIN SIGNATURES  
BEFORE ANNUAL MEETING BUT WE DO NOT REPEAT AND EXPECT THAT  
COUNTRIES REQUIRING PARLIAMETARY ACTION WILL BE ABLE TO PARTICIPATE  
BY THAT TIME STOP SINCE IN MOST COUNTRIES DECISION TO SIGN IS  
TAKEN BY CABINET HOPE THAT COUNTRIES FAVORABLY DISPOSED TOWARDS  
CONVENTION WILL TAKE SIGNATURES STOP BEFORE ANNUAL MEETING AND  
TAKE PARLIAMETARY ACTION AS SOON AS ~~THE~~ COMMITTEE THEREAFTER.

BROCHES

NOT TO BE TRANSMITTED

CLEARANCE AND COPY DISTRIBUTION

JUN 22 1 58 PM 1965

JUN 22 1 26 PM 1965

COMMUNICATIONS  
GENERAL FILES

COMMUNICATIONS  
GENERAL FILES

*[Handwritten signature]*

510 ?

June 22, 1965

Prof. Dr. K. Oftinger  
Belsitestrasse 17  
Zurich, Switzerland


Dear Prof. Oftinger:

With reference to our telephone conversation of last April, I am pleased to enclose herewith two copies of the promised note on the World Bank's Convention on the Settlement of Investment Disputes, which I hope you will find satisfactory. I am really sorry that contrary to what I told you at that time, I was not able to fulfill my promise at an earlier date but the pressure of work since my return to Washington has so far prevented me from doing so.

As you will notice, the Convention has up to now been signed by the United Kingdom and Tunisia (note 8, page 11). Since other countries are expected to sign it in the near future, I would be grateful if you would let me know at your convenience the date on which the note is expected to be sent to the printers so as to enable me to up-date at that time the list of signatories.

Hoping to hear from you, I remain, dear Prof. Oftinger,

Yours sincerely,

  
J.-D. Roulet  
Attorney

cc: Legal Files

JDRoulet:al

June 22, 1965

Dear Mr. Himadeh:

I was very pleased to hear from Mr. Fontein that he had had an opportunity to discuss with you the Convention on the Settlement of Investment Disputes and that he had learned there was a good likelihood that Lebanon would soon take favorable action on the Convention.

I thought you might be interested in knowing that a number of developing countries have already either signed or have instructed their Ambassadors in Washington to that effect. The countries in question are Tunisia, Pakistan, Nigeria, the Ivory Coast and Jamaica. As is customary these signatures will be subject to ratification where parliamentary approval may be required. However I understand that the Nigerian Cabinet has authorized both signature and ratification.

It is our hope that we will have at least twenty signatures before the Annual Meeting and that the ratification process will be completed within a relatively short time therefore.

I shall be grateful if you will keep me informed of any action that may be taken by the Government of Lebanon. Meanwhile, I remain with personal regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Raja S. Himadeh  
Government Commissioner to BCAIF  
Ministry of Finance  
Beirut, Lebanon

ABroches:cml

June 22, 1965

Dear Mr. Bernard:

As you know, the Executive Directors on March 18th approved for submission to governments the final text of the Convention on the Settlement of Investment Disputes and of an accompanying report. The Convention and report were forwarded to your Government on March 23, 1965 and on April 8, 1965 a certified copy of the Convention (in its three official languages) was transmitted to your Government together with a memorandum outlining the steps to be taken in connection with signature and ratification.

As you will have seen, the final text does not significantly differ from the text as approved by the Legal Committee. Apart from the final provisions, with which the Legal Committee did not deal, the principal change is the deletion of old Article 26(2) dealing with subrogation. As you will remember, there was a strong minority opposed to this provision and if I am not mistaken you yourself were somewhat doubtful about the provision and abstained from the vote. When the matter was considered by the Executive Directors they decided that since this seemed to be the only item on which a number of countries felt strongly, they should accede to the wishes of the minority.

The Convention provides that it will enter into force thirty days after deposit of the twentieth instrument of ratification. We hope to have at least twenty signatures by the time of the Annual Meeting. The ratification process will in most instances take somewhat more time. The response of the developing countries has been very encouraging. Tunisia signed the Convention in May and Pakistan, Nigeria, the Ivory Coast and Jamaica have all taken the necessary governmental action to authorize signature and we expect these signatures any day now. In view of the generally favorable attitude towards the Convention on the part of your delegation, both in Addis Ababa and Washington, I hope that Liberia will be among the first twenty countries to sign. I would appreciate it if you could advise me informally as to the present status of the consideration given by your Government to the Convention.

Looking forward to hearing from you I remain, with warm personal regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Estrada Bernard  
Chief Counsel  
Treasury Department  
Monrovia, Liberia  
ABroches:cml

June 21, 1965

Dear Mr. Macaulay:

As you know, the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States was approved by the Executive Directors on March 18, 1965 for submission to Governments. You will in the meantime have received the text of the Convention and the accompanying Report of the Executive Directors as well as a certified copy of the Convention in the three official languages together with a memorandum outlining the steps to be taken by States wishing to sign and ratify the Convention.

The text as it was finally approved by the Executive Directors is not substantially different from that adopted by the Legal Committee. It may, however, interest you that the provision in the draft which permitted a capital-exporting State under certain circumstances to be substituted for its national in proceedings before the Center was deleted by the Executive Directors. That provision had obtained a majority in the Legal Committee but in view of the strong reservations expressed by a number of countries, including Sierra Leone, the Executive Directors agreed to its deletion.

On the basis of Sierra Leone's participation in the preparatory work on the Convention, it was our impression that the purpose and basic concept of the Convention would be viewed favorably by your Government. In addition I understood from our last conversation that you were engaged in drafting investment promotion legislation and might wish to include in it a reference to settlement of disputes under the Convention.

I write now to ask if you could advise me informally as to whether Sierra Leone is likely to take action on the Convention in the near future. In this connection you may be interested to know that to date Tunisia and the United Kingdom have signed the Convention and that Nigeria, the Ivory Coast, Pakistan and Jamaica have announced their intention to become parties to the Convention very shortly.

I was disappointed not to have seen more of you during the General Assembly Sessions last year. Please let me know whether you will be in New York again in September so that we may arrange to meet. Mr. Broches

The Honorable  
Berthan Macaulay, Esq., Q.C.  
Attorney General  
The Law Courts  
Freetown  
Sierra Leone



sends his regards as do I and my other colleagues who have had the pleasure of working with you.

Yours sincerely,

CWPinto:es

June 21, 1965

Dear Mr. Minister:

As you know the Executive Directors of the International Bank for Reconstruction and Development on March 18, 1965 approved the text of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States for submission to governments. The text of the Convention and of the accompanying report of the Executive Directors was sent to your Ministry on March 23, 1965.

At the last Annual Meeting of the Bank's Board of Governors in Tokyo, Dr. Carli expressed the support of Italy for such a Convention and I hope therefore that Italy will decide to adhere.

The Convention will enter into force after it has been signed and ratified by twenty States. It is my expectation that we shall have at least twenty signatures prior to the next Annual Meeting and that the required procedures for ratification will be completed relatively soon thereafter. At the moment the Convention has been signed by the United Kingdom and Tunisia. In addition three developing countries, Pakistan, Nigeria and the Ivory Coast, have informed me that they will sign the Convention within the next few weeks. I am particularly pleased at this early favorable response of a number of important developing countries. It is, however, most desirable that the first twenty signatures should also include a substantial number of capital exporting States. In view of Italy's expressed support for the Convention I hope that it will be possible for Italy to take early action towards signature.


With warm regards,

Sincerely yours,

*George D. Woods*

George D. Woods

His Excellency  
Dr. Emilio Colombo  
Minister of the Treasury  
Rome, Italy

  
ABroches:cml

June 21, 1965

Mrs. Christine Villgrattner  
Ballhaus Platz 2  
Vienna, Austria

Dear Mrs. Villgrattner:

I am writing to ask whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes in the preparation of which you so ably participated last year. Mr. Woods very much hopes that we will have more than the required number of signatures before the Bank's Annual Meeting in September. We realize, of course, that the ratification process may take somewhat longer.

As you will have noticed, the text of the Convention as approved by the Executive Directors does not differ greatly from the text established by the Legal Committee except for deletion of the second paragraph of the old Article 26 (subrogation).

I would like to take this opportunity to let you know that to date two countries have actually signed the Convention viz., Tunisia and the United Kingdom, while four others have announced that they will become parties very shortly viz., Nigeria, the Ivory Coast, Pakistan and Jamaica.

We are very pleased with the interest shown thus far in the Convention by the developing countries and I hope that a number of European countries will be equally prompt so that the first twenty signatures will include representatives from both the capital-importing and capital-exporting countries.

Finally, I want to mention that I recently spoke by telephone to Dr. Elias, the Nigerian Minister of Justice, who is in Geneva for the session of the International Law Commission. Dr. Elias mentioned that he had participated in a ceremony at the University of Vienna sponsored, I believe, by the Austrian Ministry of Justice. On that occasion he spoke about problems of international investment, in the course of which he referred to the Convention. Dr. Elias told me that after his speech there was considerable discussion of the Convention during the question period. I would be most grateful if you could let me have the text of Dr. Elias' remarks and, if possible, of the discussion which followed.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

CWPinto:ABroches:cml

June 21, 1965

Dear Sir:

In accordance with your request I am sending you enclosed the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and of the accompanying report of the Executive Directors of the World Bank.

As you will note, the Convention will enter into force after signature and ratification by twenty States. At the present time the Convention has been signed by Tunisia and the United Kingdom and signature by Pakistan, Nigeria, Ivory Coast and Jamaica is imminent.

The Convention is under active consideration by the authorities in The Hague and I hope that the Netherlands will soon sign it. The document enclosed herewith is a public document and should you wish additional copies I suggest that you write to our Paris Office, 4 Avenue d'Iéna, Paris 16.

Sincerely yours,

*(Signed) A. Broches*

A. Broches  
General Counsel

Mr. U. J. N. de Graaff  
Director  
Vereeniging Voor den Effectenhandel  
Beursplein 5  
Amsterdam-C, Netherlands

ABroches:cml  
Enclosure

June 21, 1965

Dear Mr. Serb:

I am writing to ask whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes in the preparation of which you so ably participated last year. Mr. Woods very much hopes that we will have more than the required number of signatures before the Bank's Annual Meeting in September. We realize, of course, that the ratification process may take somewhat longer.

The text of the Convention as it was finally approved by the Executive Directors is not substantially different from that established by the Legal Committee. You will, however, have noticed that the provision in the draft which permitted a capital-exporting State under certain circumstances to be substituted for its national in proceedings before the Centre was deleted by the Executive Directors. That provision had obtained a majority in the Legal Committee but in view of the strong reservations expressed by a number of countries, including Yugoslavia, the Executive Directors agreed to its deletion.

I would like to take this opportunity to let you know that to date two countries have actually signed the Convention viz. Tunisia and the United Kingdom, while four others have announced that they will become parties very shortly viz. Nigeria, the Ivory Coast, Pakistan and Jamaica.

We are very pleased with the interest shown thus far in the Convention by the developing countries and I hope that a number of European countries will be equally prompt so that the first twenty signatures will include representatives from both the capital-importing and capital-exporting countries.

With warm personal regards,

I am,  
Yours sincerely,  
(Signed) A. Broches

A. Broches  
General Counsel

Mr. Ladislav Serb  
Assistant Chief Legal Adviser  
Secretariat of State for  
Foreign Affairs  
Belgrade  
Yugoslavia

June 21, 1965

Dear Mr. Mantzoulinos:

I am writing to ask whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes in the preparation of which you so ably participated last year. Mr. Woods very much hopes that we will have more than the required number of signatures before the Bank's Annual Meeting in September. We realize, of course, that the ratification process may take somewhat longer.

The text of the Convention as it was finally approved by the Executive Directors is not substantially different from that established by the Legal Committee. You will, however, have noticed that the provision in the draft which permitted a capital-exporting State under certain circumstances to be substituted for its national in proceedings before the Centre was deleted by the Executive Directors. That provision had obtained a majority in the Legal Committee but in view of the strong reservations expressed by a number of countries, including Greece, the Executive Directors agreed to its deletion.

I would like to take this opportunity to let you know that to date two countries have actually signed the Convention viz. Tunisia and the United Kingdom, while four others have announced that they will become parties very shortly viz. Nigeria, the Ivory Coast, Pakistan and Jamaica.

We are very pleased with the interest shown thus far in the Convention by the developing countries and I hope that a number of European countries will be equally prompt so that the first twenty signatures will include representatives from the capital-importing and capital-exporting countries.

With warm personal regards,

I am,  
Yours sincerely  
(Signed) A. Broches

A. Broches  
General Counsel

Mr. Dionyssios Mantzoulinos  
Ministry of Co-ordination  
Athens  
Greece

June 21, 1965

Dear Mr. Andre:

I am writing to ask whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes in the preparation of which you so ably participated last year. Mr. Woods very much hopes that we will have more than the required number of signatures before the Bank's Annual Meeting in September. We realize, of course, that the ratification process may take somewhat longer.

As you will have noticed, the text of the Convention as approved by the Executive Directors does not differ greatly from the text established by the Legal Committee except for deletion of the second paragraph of the old Article 26 (subrogation).

I would like to take this opportunity to let you know that to date two countries have actually signed the Convention viz., Tunisia and the United Kingdom, while four others have announced that they will become parties very shortly viz., Nigeria, the Ivory Coast, Pakistan and Jamaica.

We are very pleased with the interest shown thus far in the Convention by the developing countries and I hope that a number of European countries will be equally prompt so that the first twenty signatures will include representatives from both the capital-importing and capital-exporting countries.

With warm personal regards,

Sincerely yours,

*(Signed)* A. Broches

A. Broches  
General Counsel

Mr. Karl Andre  
Administration de la Trésorerie et  
de la Dette Publique  
33, Avenue des Arts  
Brussels, Belgium

CWPinto:cml

I N C O M I N G W I R E

DATE OF WIRE: JUNE 19, 1965  
LOG NO.: WU 5  
TO: INTBAFRAD  
FROM: KHARTOUM

1100

R O U T I N G

ACTION COPY: MR. BROCHES

INFORMATION  
COPY:

DECODED BY:

TEXT:

358 BROCHES

*June 14/65*

YOURCAB RECEIVED. SUDAN GOVERNMENT CONTINUE THEIR SUPPORT OF SID CONVENTION. HOWEVER OFFICIAL DECISION TO RATIFY UNLIKELY BEFORE TIME OF BANK ANNUAL MEETING OWING DIFFICULTY OF PASSING THE NECESSARY PARLIAMENTARY ACT EARLY AS PRIORITY IS GIVEN TO URGENT MATTERS OF NATIONAL RECONSTRUCTION ONLY. ELMUFTI MINISTER OF FINANCE PRESENTLY IN LONDON WITH SICK DAUGHTER. HASSAN AWADALLA ACTING MINISTER ASSURES ME HE WILL MAKE EVERY EFFORT PLACE CONVENTION BEFORE ATTENTION OF HIS GOVERNMENT. WILL KEEP YOU INFORMED OF REACTION FROM MY OTHER GOVERNORS

GARBA

FCA

*ack. June 22/65*



INCOMING WIRE

ROUTING

ACTION COPY: MR. [unclear]  
INFORMATION COPY:  
DECODED BY:

2100

JUNE 20, 1965

WIRE NO. 2

INTERVAL

UNKNOWN

DATE OF WIRE:  
WIRE NO.:  
TO:  
FROM:  
RE:

THE MESSAGE  
RECEIVED FROM THE GOVERNMENT CONCERNING THEIR SUPPORT OF THE  
CONVENTION. HOWEVER OFFICIAL DECISION TO PARTICIPATE EARLY IN THE  
TYPE OF BANK ANNUAL MEETING DURING DISCUSSION OF PASSING THE NECESSARY  
PARLIAMENTARY ACT BANK AS PRIORITY IS GIVEN TO URGENT MATTERS OF  
NATIONAL IMPORTANCE ONLY. SENATE MEMBERS OF FINANCE PRESENTLY  
IN LONDON WITH SICK DAUGHTER. HASAN AMALIA ACTING MINISTER  
AGREES HE WILL MAKE EVERY EFFORT PLACE CONVENTION BEFORE ATTENTION  
OF HIS GOVERNMENT. WILL KEEP YOU ADVISED OF REACTION FROM HIS OTHER  
GOVERNMENT

DATA

JUN 21 9 20 AM 1965

GENERAL FILES  
COMMUNICATIONS

FILED

REPLY DATE

SID

**OUTGOING WIRE**

TO: TENLEY JONES  
HOTEL N'GOR  
DAKAR

DATE: JUNE 18, 1965

CLASS OF LT  
SERVICE:

RCH

COUNTRY: SENEGAL

TEXT:  
Cable No.:

5. DURING YOUR STAY IN DAKAR PLEASE INQUIRE INFORMALLY ABOUT STATUS OF SENEGAL'S CONSIDERATION OF SID CONVENTION AND OFFER TO GIVE ANY INFORMATION THEY MAY REQUIRE STOP CABINET MINISTER IN CHARGE OF THIS SUBJECT IS HABIB THIAM WHOM I MET BRIEFLY AND SOCIALLY LAST SUNDAY WITH WOODS TRAVELLING FROM ABIDJAN TO DAKAR STOP FOR YOUR INFORMATION UNITED KINGDOM AND TUNISIA HAVE SIGNED THE CONVENTION AND IVORY COAST, JAMAICA, PAKISTAN AND NIGERIA SIGNATURES IMMINENT STOP REGARDS

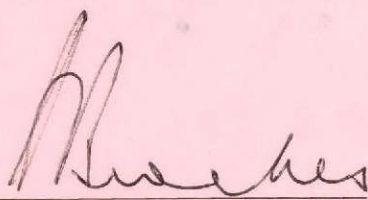
BROCHES

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

NAME A. Broches

DEPT. Legal

SIGNATURE   
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)


CLEARANCES AND COPY DISTRIBUTION:

ABroches:cm1

For Use by Archives Division

ORIGINAL (File Copy)

(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: 

INTERNATIONAL CHANCE CORPORATION  
INTERNATIONAL ASSOCIATION  
INTERNATIONAL DEVELOPMENT AND RESEARCH CORPORATION

OUTGOING WIRE

DATE TIME OF DAY

TO

CLASS OF SERVICE

RR

COUNTRY

2. DURING YOUR STAY IN DAKAR PLEASE INQUIRE INFORMALLY ABOUT SEASONS  
OF SENEGAL'S CONSIDERATION OF SID CONVENTION AND OFFER TO GIVE ANY  
INFORMATION THEY MAY REQUIRE STOP CABINET MINISTER IN CHARGE OF THIS  
SUBJECT IS HABIB TELAM WHOM I MET BRIEFLY AND SOCIALLY LAST SUNDAY  
WITH WORDS TRAVELLING FROM ABIDJAN TO DAKAR STOP FOR YOUR INFORMATION  
UNITED KINGDOM AND TUNISIA HAVE SIGNED THE CONVENTION AND IVOIRE COAT  
JAMAICA, PAKISTAN AND NIGERIA SIGNATURES IMMINENT STOP REGARDS

BROCHERS

NOT TO BE TRANSMITTED

CLEARANCE AND COPY DISTRIBUTION

METHOD APPROVED BY

JUN 10 9 30 PM 1965

GENERAL FILES  
COMMUNICATIONS

RECEIVED

*[Handwritten signature]*

JUN 21 REC'D

WILLIAM R. MARTIN  
COUNSELOR AT LAW  
INTERNATIONAL HOUSE  
NEW ORLEANS, LOUISIANA

18 June, 1965

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

Dear Mr. Woods:

I am particularly interested in the recent International Convention on the Settlement of Investment Disputes between States and nationals of other States. I would very much appreciate having a copy of the text of this convention and a copy of whatever procedural materials are available at this time.

An instrument such as this has long been needed in the realm of International Finance and I congratulate you on the part you played in bringing this theory to a reality.

Most sincerely yours,

  
William R. Martin

WRM/ao

ack. June 23/65

COMMUNICATIONS  
GENERAL FILES  
RECEIVED

JUN 21 1965

COMMUNICATIONS  
GENERAL FILES  
RECEIVED

COMMUNICATIONS  
GENERAL FILES  
RECEIVED

COMMUNICATIONS  
GENERAL FILES  
RECEIVED

1965 JUN 21 AM 8:55

RECEIVED  
GENERAL FILES  
COMMUNICATIONS

S →

June 18, 1965

Mr. F. Burrows  
Assistant Legal Adviser  
Foreign Office  
London, S.W.1.  
ENGLAND

Dear Mr. Burrows:

I was very happy indeed the other day to be present when Sir Patrick Dean signed our Convention on behalf of the United Kingdom. No doubt you had a hand in making early action possible and we do appreciate your efforts. As you know, to date Tunisia and the United Kingdom have signed the Convention; Pakistan, Nigeria and the Ivory Coast have, however, announced that they will shortly become parties to the Convention.

We were given to understand that ratification by the United Kingdom would require authorization by Parliament which would be preceded by circulation to members of a White Paper attaching the text of the Convention and a Bill to authorize ratification. I wonder whether you could let me know when this action may be expected? I would also appreciate it if you could send us a copy of the White Paper and the Bill - assuming, of course, that this is not confidential material.

With warm personal regards, I am,

Yours sincerely,

C.W. Pinto  
Attorney

  
CWPinto/ar

June 17, 1965

Dear Wim:

Just a line to keep you informed of progress on the Convention on the Settlement of Investment Disputes. Since I last wrote to you Pakistan, Nigeria and the Ivory Coast have officially informed us that they will sign the Convention within the very near future.

With best regards,

Sincerely yours,

*A. Broches*

A. Broches

Dr. C. W. van Santen  
Ministry of Foreign Affairs  
The Hague, Netherlands

ABroches:cml

SID

June 17, 1965

Sir:

I acknowledge receipt of your letter of June 3, 1965, No. 10616, from which I understand that Iraq does not plan to sign the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Abdul Rahman Al-Habeeb  
Under-Secretary  
Ministry of Finance  
Baghdad, Iraq  
ABroches:cml



S.D

June 17, 1965

Dear Mr. Bilgen:

Thank you for your letter of June 10, 1965 from which I was pleased to learn that steps are now in progress towards the signature by Turkey of the Convention on the Settlement of Investment Disputes.

It may interest you in this connection that in addition to Tunisia and the United Kingdom, which signed the Convention in May, Pakistan, Nigeria and the Ivory Coast have officially informed us that they will sign the Convention within the next few weeks. We are therefore confident that by the time of the Annual Meeting we shall have at least twenty signatures and that within some months thereafter the required ratification process will have been completed.

Meanwhile, I remain with personal regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Samim Bilgen  
Chief Legal Advisor  
Ministry of Finance  
Ankara, Turkey

ABroches:cml

June 16, 1965

Dear Jack:

Thank you for your inquiry of May 28, 1965 regarding the progress made in obtaining signatures and ratifications of the Convention on the Settlement of Investment Disputes.

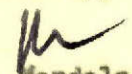
To date - some three months after approval of the Convention by the Executive Directors - the Convention has been signed by Tunisia and by the United Kingdom. I am happy to be able to tell you that one of the countries in which you are particularly interested, Nigeria, has announced that it will shortly sign and ratify the Convention. We have also been informed that signature by Pakistan and the Ivory Coast is imminent.

As you know, before a State can become a party to the Convention it must both sign and ratify, accept or approve it. Article 68(1) of the Convention provides that the Convention shall enter into force 30 days after twenty signatory State deposit with the Bank as Depositary their instruments of ratification, acceptance or approval.

Signatures and deposit of instruments of ratification, acceptance or approval by countries will, as a matter of course, be the subject of Press Releases from time to time which I am arranging to have sent to you.

With best personal regards,

Sincerely,



M. M. Mendels  
Secretary

Mr. John G. Beavor  
International Finance Corporation  
New Zealand House  
Haymarket, London, S.W. 1  
England

c.c. Mr. Broches - for information

IDA	IBRD	IFC
FORM NO. 92 (10-61)		
<b>CORRESPONDENCE RECORD FORM</b>		
<b>FROM</b> ASSOCIATION INTERNATIONALE POUR LA PROMOTION ET LA PROTECTION DES INVESTISSEMENTS PRIVES EN TERRITOIRES ETRANGERS 92, Rue du Rhone 1204 Geneve		<b>DATED</b> June 15, 1965
<b>SUBJECT</b> Re: Request for six copies in English and six copies in French of the World Bank Convention on the Settlement of Investment Disputes bet. States & National of ther States. <del>xxxxxxx</del> Enclosing a copy of a press release dated 1 June issued to press agencies in Rome after a meeting of the APPI's Directing Committee.		
<b>REFERRED TO</b> Mr. Broches		<b>DATE RECEIVED</b> June 18, 1965

Legal files closing  
June 22/65

June 15, 1965

Dear Mr. Maktos:

I have received your letter of  
May 26, 1965 with its enclosures and  
I shall be glad to keep your interest  
in mind.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. John Maktos  
705 18th Street, N.W.  
Washington, D. C. 20006

ABroches:cml



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> June 15, 1965	<b>Document Type</b> Memorandum			
<b>Correspondents / Participants</b> To: Mr. Chedly Ayari From: Christopher W. Pinto, Legal Department				
<b>Subject / Title</b> Designations under SID Convention				
<b>Exception(s)</b>				
<b>Additional Comments</b> 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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			

SecM65-154

FROM: The Secretary

June 15, 1965

CONVENTION ON SETTLEMENT OF INVESTMENT DISPUTES

For the information of the Executive Directors, following is the text of a press release released in Lagos, Nigeria on June 10, 1965:

"Chief Festus S. Okotie-Eboh, Federal Minister of Finance, with concurrence of the Rt. Hon. Prime Minister Alhaji Sir Abubakar Tafawa Balewa, K.B.E., M.P., announced today that Nigeria, in pursuance of its policy of fostering peaceful co-existence and international cooperation for economic development, has agreed to sign and ratify a Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The Minister made this announcement during his meeting this morning with Mr. George Woods, President of the International Bank for Reconstruction and Development (popularly referred to as the World Bank) prior to Mr. Woods' departure from Nigeria. Mr. Woods expressed his gratification at this decision of the Government of the Federation. He recalled that Chief Festus Sam Okotie-Eboh had been a staunch supporter of the idea of such Convention and that the Attorney-General and the Minister of Justice of the Federation, Dr. T. O. Elias, had taken a most active part in the preparation of the Convention.

The Convention, which was sponsored by the World Bank, provides for the establishment of a centre which would provide facilities for conciliation and arbitration of disputes arising directly out of an investment between a contracting State and a national of another contracting State. All States which are members of the International Bank for Reconstruction and Development have been invited to sign and ratify this Convention and Nigeria will be one of the first States to do so."

Distribution:

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

June 15, 1965

Dear Mr. Ramaer:

In answer to your letter of June 2, 1965 the best I can do is give you my own estimate of when the Convention will be in force and that would be by the middle of 1966. The present situation is that Tunisia and the United Kingdom have signed and that Nigeria, Ivory Coast and Pakistan have taken all necessary governmental action to sign so that these countries may be expected to become signatories within the next couple of weeks. As you know, I attached considerable importance to having a group of important developing countries among the early signatories and in this we have been successful. I would therefore expect that by the time of the Annual Meeting (September 27th of this year) we will have more than 20 signatures so that entry into force by the middle of 1966 would not seem like an overly optimistic estimate.

In connection with the Kenya project I would like to suggest that the agreement might contain a conciliation and/or arbitration clause pursuant to the Convention, subject to the Convention then being in force and Kenya and the Netherlands being parties thereto, with alternative provisions in the event that these conditions had not or not yet been fulfilled.

Although I have had no official word from the Netherlands Government I would expect that the Netherlands would have signed and ratified the Convention by the end of this year.

With best regards, also to Hein Wertheimer.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. J. C. Ramaer  
N.V. Philips' Gloeilampenfabrieken  
Eindhoven, Netherlands

ABroches:cml

June 15, 1965

Dear Mr. Thesleff:

Thank you very much for your letter of May 26 which arrived during my absence from Washington.

As you may be aware, during the month of May the Convention received its first two signatures, those of Tunisia and the United Kingdom. We have in the meantime been officially informed that the Governments of Pakistan, Nigeria and the Ivory Coast have taken all necessary action to sign the Convention and we expect signature to take place within the next two weeks. In the light of this action by these important developing countries we now consider it desirable that some of the developed countries should show their interest by early signature and I hope therefore that the meeting of the four Nordic countries will lead to a positive result.

With personal regards,

Sincerely yours,

*A. Broches*

A. Broches  
General Counsel

Mr. A. Thesleff  
Ministry for Foreign Affairs  
Helsinki, Finland

ABroches:cml



June 15, 1965

Dear Mr. Hartlev:

Thank you for your letter of May 28 which I found on my return from a three weeks' absence.

As you will be aware, the Convention was signed during the month of May by Tunisia and the United Kingdom. We have now been officially informed that Pakistan, Nigeria and the Ivory Coast have decided to sign and will do so within the next few weeks. These are exactly the countries which I had hoped would be among the earliest signatories since each of them occupies a special place in some part of the world. I therefore expect that a number of other developing countries will soon follow their example. With these signatures in hand it now is important to have some evidence of interest among the capital-exporting countries and I hope therefore that it will prove possible for the Scandinavian countries, in the light of the response from the countries mentioned above, to reach a conclusion in the near future.

With personal regards,

Sincerely yours,

(Signature of A. Broches)

A. Broches  
General Counsel

Mr. Sv. Hartlev  
Handelsministeriet  
Slotsholmsgade 10  
Copenhagen K., Denmark

ABroches:cml

**OUTGOING WIRE**

TO: JOHN GARBA  
EXECUTIVE DIRECTOR WORLD BANK  
c/o MINISTRY OF FINANCE AND PLANNING  
~~POB 290~~ 298  
KHARTOUM

DATE: June 14, 1965

CLASS OF SERVICE: LT

*2TT*

COUNTRY: SUDAN

TEXT:  
Cable No.:

ON JUNE 10 NIGERIA ISSUED PRESS RELEASE ANNOUNCING DECISION TO SIGN  
AND RATIFY SID CONVENTION STOP PAKISTAN AND IVORY COAST HAVE OFFICIALLY  
INFORMED BANK OF DECISION TO SIGN CONVENTION STOP WOODS WOULD BE GRATEFUL  
IF YOU DISCUSSED ADHERENCE WITH COUNTRIES ON YOUR ITINERARY AND WOULD  
KEEP HIM CURRENTLY INFORMED BY CABLE OF THE RESULT OF YOUR DISCUSSIONS STOP  
SINCE YOUR OFFICE HAD NO HOTEL ADDRESS FOR KHARTOUM PLEASE CONFIRM RECEIPT  
OF THIS CABLE. REGARDS

BROCHES

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

NAME A. Broches  
DEPT. Legal

DEPT.

SIGNATURE *A. Broches*  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

CLEARANCES AND COPY DISTRIBUTION:

ABroches:cml

*ack, June 19/65*

For Use by Archives Division

ORIGINAL (File Copy)

(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: *[Signature]*

OUTGOING WIRE

DATE: 3 June 1965

CLASS OF SERVICE: *MT*

*TTT*

TO: JOHN GARBA  
 EXECUTIVE DIRECTOR WORLD BANK  
 c/o MINISTRY OF FINANCE AND PLANNING  
 BOX 999  
 KHARTOUM

COUNTRY: SUDAN

ON JUNE 10 NIGERIA ISSUED PRESS RELEASE ANNOUNCING DECISION TO SIGN  
 AND RATHER SIGN CONVENTION STOP FAKISTAN AND IVORY COAST HAVE OFFICIALLY  
 INFORMED BANK OF DECISION TO SIGN CONVENTION STOP WOODS WOULD BE GRANTED  
 IF YOU DISCUSSED ADDRESS WITH COUNTRIES ON YOUR ITINERARY AND WOULD  
 KEEP HIM CURRENTLY INFORMED BY CABLE OF THE RESULT OF YOUR DISCUSSIONS STOP  
 SINCE YOUR OFFICE HAD NO HOTEL ADDRESS FOR KHARTOUM PLEASE CONFIRM RECEIPT  
 OF THIS CABLE. REGARDS

BROCHERS

NOT TO BE TRANSMITTED

ARRANGERS AND COPY DISTRIBUTION

ARRANGERS: *mt*

JUN 14 6 36 PM 1965

A. Brocher  
 Bogal

COMMUNICATIONS  
 GENERAL SUPERVISOR

RECEIVED

ORIGINAL (File Copy)

Checked for Dispatch

Approved and Sent by [Signature]

SID ( )  
X  
K. Wood

I N C O M I N G W I R E

DATE OF WIRE: JUNE 10, 1965 1810  
LOG NO.: RC 8  
TO: INTBAFRAD  
FROM: LAGOS

R O U T I N G	
ACTION COPY:	OFFICE OF INFORMATION
INFORMATION COPY:	
DECODED BY:	

TEXT:

URGENT FOR GRAVES

FOLLOWING RELEASED LAGOS TODAY "SIGNING AND RATIFICATION OF THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES CHIEF FESTUS S. OKOTIE-EBOH, FEDERAL MINISTER OF FINANCE WITH CONCURRENCE OF THE RT. HON. PRIME MINISTER ALHAJI SIR, ABUBAKAR TAFAWA BALEWA, K.B.E., M.P., ANNOUNCED TODAY THAT NIGERIA, IN PURSUANCE OF ITS POLICY OF FOSTERING PEACEFUL CO-EXISTENCE AND INTERNATIONAL COOPERATION FOR ECONOMIC DEVELOPMENT, HAS AGREED, TO SIGN AND RATIFY A CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES. THE MINISTER MADE THIS ANNOUNCEMENT DURING HIS MEETING THIS MORNING WITH MR. GEORGE WOODS, PRESIDENT OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (POPULARLY REFERRED TO AS THE WORLD BANK) PRIOR TO MR. WOODS DEPARTURE FROM NIGERIA, MR. WOODS EXPRESSED HIS GRATIFICATION AT THIS DECISION OF THE GOVERNMENT OF THE FEDERATION. HE RECALLED THAT CHIEF FESTUS SAM OKOTIE-EBOH HAD BEEN A STAUNCH SUPPORTER OF THE IDEA OF SUCH CONVENTION AND THAT THE ATTORNEY-GENERAL AND THE MINISTER OF JUSTICE OF THE FEDERATION, DR. T. O. ELIAS HAD TAKEN A MOST ACTIVE PART IN THE PREPARATION OF THE CONVENTION. THE CONVENTION, WHICH WAS SPONSORED BY THE WORLD BANK, PROVIDES FOR THE ESTABLISHMENT OF A CENTRE WHICH WOULD PROVIDE FACILITIES FOR CONCILIATION AND ARBITRATION OF

INCOMING WIRE

ROUTING
ACTION COPY: OFFICE OF INFORMATION
INFORMATION COPY
DECODED BY:

INFO

JUN 10, 1965

DATE OF WIRE:

LOG NO.:

NO 8

TO:

INTERNAL

FROM:

LAGOS

TEXT:

URGENT FOR CHAIRS

FOLLOWING RELEASED LAGOS TODAY REGARDING AND SATISFACTION OF THE COMMISSION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES ONLY. STATE S. OROTI-KIWA, FEDERAL MINISTER OF FINANCE WITH CONCURRENCE OF THE ST. HON. PRIME MINISTER ALHAI ALI, APPEARING BEFORE SENATE, 8.5.65, 11.1. ANNOUNCED TODAY THAT NIGERIA, IN PURSUANCE OF ITS POLICY OF POSITIVE NEUTRALITY, CO-EXISTENCE AND INTERNATIONAL COOPERATION FOR ECONOMIC DEVELOPMENT, HAS AGREED TO SIGN AND RATIFY A CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES. THE MINISTER MADE THIS ANNOUNCEMENT DURING HIS VISIT TO NIGERIA WITH MR. CHARLES WOODS, DIRECTOR OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (IBRD) VISITING TO AS THE WORLD BANK PRIOR TO MR. WOODS DEPARTURE FROM NIGERIA. MR. WOODS EXPRESSED HIS GRATITUDE AT THIS DECISION OF THE GOVERNMENT OF THE NIGERIA. HE RECALLED THAT STATE S. OROTI-KIWA HAS BEEN A STANDING MEMBER OF THE ICSID SINCE CONVENTION AND THAT THE ATTORNEY-GENERAL HAS THE HONOR OF JUSTICE OF THE SUPREME COURT, N. I. O. KILAS HAD TAKEN A MOST ACTIVE PART IN THE NEGOTIATION OF THE CONVENTION. THE CONVENTION, WHICH WAS APPROVED BY THE HOUSE OF REPRESENTATIVES FOR THE DEPARTMENT OF A CERTAIN FIELD WOULD BE...

JUN 11 8 26 AM 1965

GENERAL FILES COMMUNICATIONS

TYPED

INTERNAL

I N C O M I N G W I R E

DATE OF WIRE: JUNE 10, 1965 1810

LOG NO.: RC 8

TO: INTBAFRAD

FROM: LAGOS

R O U T I N G	
ACTION COPY:	OFFICE OF INFORMATION
INFORMATION COPY:	
DECODED BY:	

TEXT: - 2 -

DISPUTES ARISING DIRECTLY OUT OF AN INVESTMENT BETWEEN A CONTRACTING STATE AND A NATIONAL OF ANOTHER CONTRACTING STATE. ALL STATES WHICH ARE MEMBERS OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT HAVE BEEN INVITED TO SIGN AND RATIFY THIS CONVENTION AND NIGERIA WILL BE ONE OF THE FIRST STATES TO DO SO." REGARDS

HORSLEY

FCA

INCOMING WIRE

DATE OF WIRE: JUNE 10, 1965  
DOC NO.: 20.8  
TO: INT/AFAD  
FROM: LAGOS  
TEXT:

ROUTING
ACTION COPY: OPTION OR INFORMATION
INFORMATION COPY:
RECORDED BY:

-- 2 --

MEMBERS WISHING DIRECTLY OUT OF AN INVESTMENT BETWEEN A CONTRACTING STATE AND A NATIONAL OF A OTHER CONTRACTING STATE. ALL STATES WHICH ARE MEMBERS OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT HAVE BEEN INVITED TO SIGN AND RATIFY THIS CONVENTION AND NIGERIA WILL BE ONE OF THE FIRST STATES TO DO SO. REGARDS

URGENT

END

JUN 11 8 26 AM 1965

GENERAL FILES COMMUNICATIONS

URGENT

Mr. Ellsworth E. Clark

June 9, 1965

C. W. Pinto

Pakistan inquiry regarding legislative authorization  
to signed and ratified SID Convention

With reference to the above inquiry I spoke to Mr. Reilly of the British Embassy regarding the United Kingdom procedures. He told me the following:

- (a) Signature of the Convention would have been the result of a cabinet decision following a recommendation by the Foreign Secretary. No legislative action was needed to authorize signature, which was nevertheless an action of the Government.
- (b) Ratification would require an authorization from Parliament. This would follow circulation to Members of Parliament of the text of the Convention in the form of a White Paper, and adoption by Parliament of a Bill authorizing ratification.

As far as Mr. Reilly knew, no draft of the Bill was as yet available. However, he felt sure that the Foreign Office would gladly make copies of such a Bill available to the Pakistan High Commission in London as early as possible.

CWP:es

cc. Mr. Broches  
L.F.



510  
4 de junio de 1965

Sr. Angel A. Sola  
Secretario Ejecutivo  
Asociación Latinoamericana  
de Libre Comercio  
Montevideo, Uruguay

Estimado Sr. Sola:

Hemos recibido un telegrama de la Biblioteca ALAIC, ✓  
fechado el 25 de mayo de 1965, en el que se nos solicita el  
envío de documentación relativa al "régimen jurídico de inver-  
siones".

Supongo que esta solicitud se refiere al Centro de Arbi-  
traje patrocinado por este Banco, y por lo tanto me es grato  
enviarle copias, en inglés y español, del texto del "Convenio  
sobre Arreglo de Diferencias Relativas a Inversiones entre Estados  
y Nacionales de Otros Estados", del Informe de los Directores Eje-  
cutivos del Banco y de la declaración de prensa respectiva, los  
que se hicieron públicos el 18 de marzo de 1965. Dicho Convenio  
fue sometido a los Gobiernos miembros del Banco, y hasta la fecha  
lo han firmado dos de ellos, Túnez y Gran Bretaña.

Espero que los documentos adjuntos les sean de utilidad;  
y con mucho gusto contestaría cualquier pregunta que puedan tener  
al respecto.

Saludo a Ud. muy atte.,

Carlos Fligler  
Abogado

cc: Mr. Broches (o/r)  
Mr. Durán-Ballén

CF:mu 

INCOMING WIRE

DATE OF WIRE: JUNE 2, 1965 1415

LOG NO.: RC 9

TO: TOLLEY INTBAFRAD

FROM: BANGKOK

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

TEXT:

MINISTER SUNTHORN WISHES YOU TO FIND OUT IF EUGENE BLACK  
CAN ADDRESS SID LOCAL CHAPTER ONE AFTERNOON WHILE HERE.  
WOULD BE NICE TO HAVE HIM AS FIRST SPEAKER

SUPARB

FCA

JUN 5 8 30 AM 1965

COMMUNICATIONS  
SECTION

INCOMING WIRE

DATE OF WIRE: JUNE 2, 1965  
NO. 9  
TO: SOLLY DWYER  
FROM: BANGOR  
TEXT:

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

MINISTER STEVENSON WISHED YOU TO FIND OUT IF BUREAU BLACK  
CAN ADDRESS THE LOCAL CHAPTER ONE AFTERNOON WHILE HERE.  
WOULD BE NICE TO HAVE HIM AS FIRST SPEAKER

STAVAN

104

JUN 2 8 28 AM 1965

GENERAL FILES  
COMMUNICATIONS  
TYPED

DUPLICATE

**FOR IMMEDIATE RELEASE**

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT



1818 H STREET, N.W., WASHINGTON D. C. 20433 TELEPHONE: EXECUTIVE 3-6360

Bank Press Release No. 65/27  
June 1, 1965

Subject: Settlement of  
Investment Disputes

During May 1965 the Convention on Settlement of Investment Disputes, submitted to governments by the Executive Directors of the World Bank, received its first signatures. Tunisia signed the Convention on May 5, 1965 and the United Kingdom signed on May 26, 1965.

The Convention will enter into force upon signature and ratification by 20 States.

DECLASSIFIED

June 1st, 1965

Mr. A. Broches

AUG 21 2023

Lewis Perinbam


WBG ARCHIVES

S.I.D. Convention

CONFIDENTIAL

I had a conversation today with Mr. Hashim Bin Sultan, Counselor at the Malaysian Embassy, regarding the Convention. He told me that he personally favoured the Convention and had urged the Malaysian Government to sign it. The matter is presently under active consideration and Mr. Hashim seemed reasonably hopeful that Malaysia would sign.

Mr. Hashim is leaving tomorrow for Cairo and Algiers to attend the Afro-Asian Conference. He expects to return to Washington early in July and will keep me informed of further developments regarding the Convention.

LP:mar 

Mr. A. Broches

5 12  
May 28, 1965

Piero Sella

S.I.D. - France

Yesterday Mr. Malaplate called me and asked about the progress being made in obtaining signatures for the Convention.

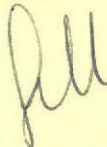
I told him that Tunisia and the United Kingdom had signed and that we hoped to have a continuous flow of new signatures in the coming months, but that I had no precise information at this time about any other country who would sign in the very near future.

I then asked him when he expected France to sign and he replied that the French Government wanted to wait and see how popular the Convention is with the developing countries. He would therefore like to be kept informed of the trend in signing the Convention.

I told him that I would try to do so. During my absence perhaps Mr. Pinto could kindly do it.

cc: Mr. Mendels  
Mr. Pinto

PSella/ar



Mr. N. M. P. Reilly


May 26, 1965

M. M. Mendels

Convention on Settlement of Investment Disputes

I attach herewith two certified copies of the Convention on Settlement of Investment Disputes between States and Nationals of Other States which was signed today on behalf of the United Kingdom by His Excellency Sir Patrick H. Dean, Her Majesty's Ambassador at Washington.

*M. M. Mendels*

  
Attachments

LD:phm

SecM65-135

FROM: The Secretary

May 26, 1965

SETTLEMENT OF INVESTMENT DISPUTES

The Convention on Settlement of Investment Disputes between States and Nationals of Other States was signed today at 10:30 a.m. on behalf of the United Kingdom by His Excellency Sir Patrick H. Dean, Her Majesty's Ambassador at Washington.

The United Kingdom became the second member of the Bank to sign the Convention.

Distribution:

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



SID

IDA	IBRD	IFC
FORM NO. 92 (10-61)		
CORRESPONDENCE RECORD FORM		
FROM	MINISTRY FOR FOREIGN AFFAIRS of Finland, Helsinki	DATED
		May 26, 1965
SUBJECT		
Letter re preparatory work on the Convention on the Settlement of Investments Disputes.		
fca		
REFERRED TO	Mr. Broches	DATE RECEIVED
		May 28, 1965

CROSS REFERENCE SHEET

COMMUNICATION: Memorandum (Letter)

DATED: May 25, 1965

TO: Mr. George D. Woods

FROM: Mr. Mohamed Nassim Kochman

FILED UNDER: AFRICA - General Negotiations

SUMMARY:

2. Settlement of Investment Disputes

I availed myself of the opportunity given to me during my meeting with the Heads of State to talk with them of the Convention on the Settlement of Investment Disputes. In general, this convention has been well received. Some expressed fears insofar as sovereignty implications are concerned, but came to the conclusion that there is a compensating consideration in the fact that all the facilities provided by this convention proceed from a voluntary basis.

The most important remark came from those who, in spite of praising the merits of this convention, declared that the main problem is that of guaranteeing private foreign investments which has been broached in many international meetings. As a matter of fact, one of the Governors took up this point in a recent letter that he sent to me dealing with the convention on the Settlement of Investment Disputes. He suggested that the Bank might consider an international system of guarantees for private investments, just as it was done for the Settlement of Investment Disputes. I met with Mr. Broches to discuss the content of the aforementioned letter.

SID

INCOMING WIRE

DATE OF WIRE: MAY 25, 1965 1820

LOG NO.: RC 7

TO: BROCHES INTBAFRAD

FROM: MADRID

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

TEXT:

LE ESPERARE AEROPUERTO. PREPARARE ENTREVISTA RUIZ MORALES SALUDOS

GONZALEZ BIENO

NA

INCOMING MAIL

DATE OF  
FILE  
DOC NO.  
TO  
FROM  
TEXT

MAY 26, 1965  
NY  
BROOKS  
BANKING

ROUTING

ACTION COPY: MR. BROOKS  
INFORMATION COPY:  
DECIDED BY:

THE ATTACHED DOCUMENTS CONTAIN INFORMATION OF A CONFIDENTIAL NATURE.

CONFIDENTIAL INFO

MAY 26 8 30 AM 1965

GENERAL FILES  
COMMUNICATIONS

TYPED

REPLICATED

**OUTGOING WIRE**

TO: MAX CHOPNICK  
EL SAN JUAN HOTEL  
SAN ~~MOTEL~~ JUAN

DATE: MAY 25, 1965

CLASS OF FULL RATE  
SERVICE:

*WJI*

*See incoming  
cable of May 24/65*

COUNTRY: PUERTO RICO

TEXT:  
Cable No.: ARRIVING WEDNESDAY MAY 26 1:50 PM FLIGHT EAL 947 REGARDS

BROCHES

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

NAME A. Broches

DEPT. Legal

SIGNATURE *A. Broches*  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

ABroches:lj

ORIGINAL (File Copy)

(IMPORTANT: See Secretaries Guide for preparing form)

CLEARANCES AND COPY DISTRIBUTION:

cc: Legal Files

For Use by Archives Division

Checked for Dispatch: *[Signature]*

DATE: MAY 25, 1965  
CLASS OF SERVICE: FULL RATE

TO: MAX GROPNICK  
EL SAN JUAN HOTEL  
SAN JUAN, PUERTO RICO

COUNTRY: PUERTO RICO

ARRIVING WEDNESDAY MAY 26 1:50 PM ALIGHT BAL 913 REGARDS

BROCHES

NOT TO BE TRANSMITTED

MAY 25 10 40 AM 1965

MAY 25 10 05 AM 1965

DISPATCHED  
GENERAL FILES  
GENERAL INVESTIGATIONS  
COMMUNICATIONS

GENERAL FILES  
COMMUNICATIONS

ABROCHES: 15

*[Handwritten signature]*

*[Handwritten signature]*

DECLASSIFIED

AUG 21 2023

PERSONALE

WBG ARCHIVES

25 Maggio 1965

S.E. dr. Egidio Ortona  
Direttore Generale per gli Affari Economici  
Ministero per gli Affari Esteri  
Roma, Italy

Carissimo Egidio,

Ti scrivo personalmente a proposito di una questione che interessa molto la Banca e con la quale Carli si è dichiarato d'accordo durante la riunione di Tokyo.

Si tratta della "Convention pour le Règlement des Différends Relatifs aux Investissements entre Etats et Ressortissants d'Autres Etats" (All. I). Questa importantissima convenzione, frutto di quasi due anni di lavoro intenso del nostro comune amico, Ronnie Broches (General Counsel della Banca) è stata presentata con un rapporto degli Executive Directors ai Governi membri della Banca (All. II) con (All. III) le modalità per l'adesione e la firma. Non so se il tuo ministero, e soprattutto la tua Direzione Generale, sia al corrente e della cosa e dell'invio della documentazione al Governo Italiano. Ti dico questo perchè la documentazione è stata, come prescritto, "formalmente" inviata al Ministero del Tesoro (Ufficio Bretton Woods), per conoscenza all'Ambasciata qui, e anche a Carli e a Menichella (quali Governor e Alternate Governor).

Alla Banca preme assai che i Governi procedano alla adesione ufficiale, cioè alla firma della Convenzione, ed è per questo che ti scrivo data l'importanza politica ed economica della cosa. La Tunisia ha firmato, l'Inghilterra firma domani. Una tua iniziativa e un po' di pressione da parte tua darebbero, sono sicuro, risultati positivi. Per tua norma, t'informo che Ronnie Broches sarà a Roma (Hotel Excelsior) tutto Domenica 30 e Lunedì 31 fino alle prime ore del pomeriggio, partendo poi con il Presidente Woods verso le 16/17 del 31 per la Nigeria. Sono sicuro che Ronnie sarà a tua completa disposizione per darti qualsiasi ulteriore ragguaglio sulla cosa, e ad ogni modo, apprezzerà molto una tua telefonata.

S.E. Dr. Egidio Ortona

- 2 -

25 Maggio 1965

Ritorno da 1 mese a Ginevra, Vienna, Parigi e Bruxelles: Rysia è rimasta in Europa ad attendermi. Ritournerò a metà giugno e sarò europeo fino a metà Settembre per le sessioni di ECOSOC e UNCTAD.

Tante care cose a Giulia

Federico Consolo

3 All.

cc: Mr. Broches

FC mar  




SID

May 25, 1965

Dear Mr. Ray:

I have received your letter of May 21, 1965. My remarks were addressed to the World Bank-sponsored Convention on Settlement of Investment Disputes. I enclose a copy of the Convention and the accompanying report of the Executive Directors as well as the text of my remarks. As you will notice from the document, it is a final text and has been submitted for signature.

I made a reference to multilateral guarantee schemes and I can supplement that statement by saying that the OECD has done preparatory work on an international agreement in this field which would provide for risk sharing among capital-exporting countries. However, as far as I know, the OECD reports have not been made public.

With best regards,

Sincerely yours,

*15/ a B*

A. Broches  
General Counsel

Mr. George W. Ray, Jr.  
901 Ridgefield Road  
Wilton, Conn.

ABroches:cml  
Enclosures

I N C O M I N G   W I R E

DATE OF WIRE:           **MAY 25, 1965 1250**  
LOG NO.:               **WU 14**  
TO:                    **INTBAFRAD**  
FROM:                 **MONTEVIDEO**

R O U T I N G	
ACTION COPY:	<b>MR. LOFTUS</b>
INFORMATION COPY:	<b>MR. ALTER</b>
DECODED BY:	

TEXT:

**ROGAMOS ENVIAR DOCUMENTACION REGIMEN  
JURIDICO DE INVERSIONES  
BIBLIOTECA ALALC**

INCOMING WIRE

ROUTING

RECEIVED BY: MR. ALLEN  
INFORMATION COPY:  
ACTION COPY: MR. LESTER

MAY 25 1965 10 50

WU 1A

INTERNET

ROUTING

DATE OF WIRE  
TO  
FROM  
TEXT

AGENCIA DE INVESTIGACION  
JULIANO DE INVESTIGACION  
AGENCIA DE INVESTIGACION

MAY 25 1 54 PM 1965

GENERAL FILES COMMUNICATIONS

TYPED

TELETYPE



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> May 25, 1965	<b>Document Type</b> Letter			
<b>Correspondents / Participants</b> To: Dr. C.W. van Santen From: A. Broches				
<b>Subject / Title</b> [Convention - Enforceability]				
<b>Exception(s)</b> Attorney-Client Privilege				
<b>Additional Comments</b>		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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			

May 25, 1965

The Honorable  
Mr. Justice Bankole-Jones, M.A., B.C.L.  
Freetown, Sierra Leone

Sir:

At the suggestion of Mr. Charles M. Spofford of New York, I take the liberty of sending you enclosed a copy of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and of the accompanying report of the Executive Directors of the International Bank for Reconstruction and Development which were approved for submission to governments on March 18 of this year.

Sincerely yours,

*151 A B*

A. Broches  
General Counsel

Enclosure

ABroches:cml

1965 MAY 28 10:25

COMMUNICATIONS  
GENERAL FILES  
RECEIVED

May 25, 1965

The Honorable  
Mr. Justice Barkoie-Jones, M.A., B.C.I.,  
Preston, Stairs Leone

Sir:

At the suggestion of Mr. Charles M. Spofford of New York, I take the liberty of sending you enclosed a copy of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and of the accompanying report of the Executive Directors of the International Bank for Reconstruction and Development which were approved for submission to governments on March 18 of this year.

Sincerely yours,

121 2 B

A. Broches  
General Counsel

Enclosure

ABroches:cmj

1965 MAY 26 AM 10:52

RECEIVED  
GENERAL FILES  
COMMUNICATIONS

I N C O M I N G W I R E

DATE OF WIRE: MAY 24, 1965 459 PM

LOG NO.: ITT 5

TO: BROCHES WORLD BANK

FROM: SAN JUAN

R O U T I N G	
ACTION COPY:	MR. BROCHES
INFORMATION COPY:	
DECODED BY:	

TEXT:

*Ack May 27/65*

PLEASE NOTIFY EXPECTED TIME OF ARRIVAL AND FLIGHT NUMBER IN ORDER  
WE MAY MEET YOU

MAX CHOPNICK

NA

INCOMING AIR

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

MAY 24 1965

LET 5

HUGHES WORLD BANK

SM 108

DATE OF  
WIRE  
LOG NO.:  
TO:  
FROM:  
TEXT:

PLEASE NOTIFY RECEIVING TIME OF ARRIVAL AND FLIGHT NUMBER IN ORDER

WE MAY NEED YOU

MAX CHAPMAN

MAY 25 8 36 AM 1965

GENERAL FILES  
COMMUNICATIONS

TYPED

DUPLICATE



May 21, 1965

Mr. Raul Saez  
Vice President  
Corporacion de Fomento  
Casilla 3886  
Santiago, Chile

Dear Raul:

As you probably know the Executive Directors of the Bank on March 18th of this year approved a Convention on the Settlement of Investment Disputes between States and Nationals of Other States for submission to member governments of the Bank. The text of the Convention and of the accompanying report of the Executive Directors have been submitted to member governments through the official channels of communication, in the case of Chile the Central Bank. The Convention is now open for signature on behalf of governments. Mr. Woods in a covering letter transmitting these documents to your Government strongly recommended the Convention for early and favorable consideration.

I thought that you might be interested in these documents, because I understand that in your negotiations with some of the foreign interests the question of special procedures for resolving disagreements arising out of the new agreements has been considered. I am therefore enclosing herewith the Spanish and English texts of the Convention and the accompanying report of the Executive Directors.

With best personal regards to you and your family.

Very sincerely yours,

Roger Chauffournier  
Deputy Director  
Western Hemisphere Department

ABroches:eb

cc: Mr. Broches  
Mr. Loftus  
Mr. Reitter

511

I N C O M I N G W I R E

DATE OF WIRE: **MAY 21, 1965**  
LOG NO.: **ITT 4**  
TO: **BROCHES INTBAFRAD**  
FROM: **MADRID**

R O U T I N G	
ACTION COPY:	<b>MR. BROCHES</b>
INFORMATION COPY:	
DECODED BY:	

TEXT:

ANTONIO MELCHOR AUSENTE MADRID HASTA PRINCIPIOS  
MES JUNIO. GONZALEZ BUENO ESTARA EN MADRID 28 Y 29  
MAYO. PUEDE CABLEGRAFARLE ALMAGRO 31 MADRID.

SECRETARIA ANTONIO MELCHOR

FCA

MAY 21 9 10 AM 1965

INCOMING WIRE

ROUTING

ACTION COPY: MR. ROBERTS

INFORMATION  
COPY:  
DECODED BY:

MAY 21, 1965

IT 4

ROBERTS INTERRAD

MADRID

DATE OF WIRE:  
EX. NO.:  
TO:  
FROM:  
TEXT:

ANTONIO MELGON ANTONIO MELGON ANTONIO MELGON ANTONIO MELGON ANTONIO MELGON  
MAYO . WERE CALIBRATED ALMAYO 21 MADRID .  
MAYO . WERE CALIBRATED ALMAYO 21 MADRID .

ENCARTA LA ANTONIO MELGON

104

MAY 24 8 18 AM 1965

GENERAL FILES  
COMMUNICATIONS

TYPED

511  
May 21, 1965

Mr. Robert de Lesseps  
International Bank for  
Reconstruction and Development  
European Office  
4, Avenue d'Iéna  
Paris 16, France

Dear Robert,

I have received your letter in which you passed on Mr. Dunant's inquiry regarding the Convention on the Settlement of Investment Disputes. You might tell him that the documents reached governments only in the first half of April and that they are now being studied. We therefore do not intend to make any statements for the time being.

I do not plan to be in Europe until August when I shall spend my holidays in Seillans but may be travelling via Paris at that time.

With best regards,

Sincerely yours,

s/Ronnie

A. Broches

ABroches:lj

cc: Legal Files (with incoming letter)

511  
✓ Woods

May 21, 1965

Dear Mr. Rishtiya:

As you know, the Executive Directors have submitted to the member governments of the Bank the text of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States for their consideration with a view to signature and ratification, acceptance or approval. Copies of the Convention and of the accompanying report of the Executive Directors have been sent to your Government together with the memorandum explaining the procedure for signature and subsequent ratification.

I recall that in October 1963, at the Annual Meeting of the Boards of Governors of the International Monetary Fund and the International Bank for Reconstruction and Development, the then Governor for Afghanistan, the Honorable Abdul Hai Aziz, called the proposal for such a Convention "most welcome". He mentioned in that connection that Afghanistan may well have been the first country to provide for arbitration of certain disputes between foreign investors and the Government under the auspices of the World Bank.

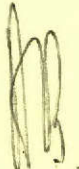
As I mentioned in my letter to you of March 23, 1965, I believe that the Convention in the text finally approved by the Executive Directors can make an important and needed contribution to the cause of economic development. I am most eager that the facilities provided by the Convention be established as soon as practicable. I would therefore be grateful if your Government would give early consideration to the Convention and, if it decides to become a party, would take the necessary steps for signature and ratification.

I hope to hear from you at your convenience and I look forward to seeing you at our next Annual Meeting in September.

Sincerely yours,

(Signed) George D. Woods

George D. Woods

  
The Honorable  
Sayed Kassem Rishtiya  
Minister of Finance  
Ministry of Finance  
Kabul, Afghanistan

ABroches:lj

S.D.

May 20, 1965

His Excellency  
Dr. Gabriel Valdés S.  
Minister of Foreign Affairs  
Santiago, Chile

Dear Mr. Minister,

I have the honor to send you enclosed herewith the authentic text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, together with the Spanish text of the Convention and the accompanying report of the Executive Directors of the International Bank for Reconstruction and Development. The Convention and the report were approved by the Executive Directors for submission to governments on March 18th of this year and copies of these documents were dispatched to all member governments of the Bank.

The Convention as finally approved by the Executive Directors differs in a number of respects from the draft which was discussed at the Regional Consultative Meeting in Santiago de Chile in February 1964. As a result of that meeting and the other regional meetings, and the subsequent meetings of the Legal Committee in Washington in November/December 1964, a number of amendments, additions and refinements were approved to take account of the views of member countries.

The Convention is now open for signature and will enter into force after signature and ratification by twenty States. I assume that the document is now under study by the Chilean authorities. I nevertheless undertook to write to you directly on a personal basis since our official channel of communications is the Banco Central de Chile, so that the documents may not yet have come to your attention.

It is our hope that the Chilean Government will give serious and sympathetic consideration to the Convention especially since it seems to us that the principals underlying the Convention would be entirely compatible with the dynamic and original approach taken by President Frei and yourself towards problems of international economic cooperation and international investment.

In closing I want to say that I am entirely at your disposal to

- 2 -

furnish any further information and that, if you would think it useful, I would be most happy to come to Santiago for this purpose.

Meanwhile I remain, with warm regards,

Respectfully yours,

A. Broches  
General Counsel  
and  
Member of the President's Council

Enclosures

ABroches:lj

May 20, 1965

Dear Mr. Nydorf,

In accordance with our telephone conversation I am sending you herewith two copies of the Convention on the Settlement of Investment Disputes.

I shall be away from Washington between the 26th of May and the 11th of June. Should you, during this period, wish any further information in connection with the matter we were discussing I suggest that you get in touch with my associates Lester Nurick, Deputy General Counsel, and Christopher Pinto, who is the lawyer most familiar with the Convention.

With kind regards,

Sincerely yours,

S/

A. Broches  
General Counsel

Mr. William S. Nydorf  
American & Foreign Power  
Company Inc.  
100 Church Street  
New York 7, N.Y.

Enclosures

ABroches:lj

cc: Mr. Nurick  
Mr. Pinto



FORM NO. 92 (10-61)		IDA	IBRD	IFC
<b>CORRESPONDENCE RECORD FORM</b>				
FROM <b>AMERICAN &amp; FOREIGN POWER COMPANY INC., 100 Church St., New York</b>			DATED <b>May 20, 1965</b>	
SUBJECT <b>Letter enclosing a tentative draft of a Convention to Improve the Climate for Investments in Latin Ame- rica by Facilitating the Settlement of Disputes, together with a Commentary on the draft Convention.</b>				
REFERRED TO <b>Mr. Broches</b>			DATE RECEIVED <b>May 21, 1965</b>	

fca

514

**OUTGOING WIRE**

TO: MATTER  
INTBAFRAD  
ABIDJAN

DATE: MAY 20, 1965

*RCA*

CLASS OF LT  
SERVICE:

COUNTRY: IVORY COAST

TEXT:  
Cable No.: 6 ✓ REFERENCE MYLET MAY 17 PERSON IN MINISTRY OF FINANCE TO

WHOM DOCUMENTS REGARDING CONVENTION ARE ADDRESSED IS J.B. AMETHIE

REGARDS

BROCHES

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

NAME A. Broches

DEPT. Legal

SIGNATURE *A. Broches*  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

ABroches:ljl

CLEARANCES AND COPY DISTRIBUTION:

cc: Legal Files

For Use by Archives Division

**ORIGINAL (File Copy)**

(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: *[Signature]*

OUTGOING WIRE

DATE MAY 20, 1965

CLASS OF SERVICE

*Handwritten initials*

MATTER: AFRICAN

COUNTRY: IVORY COAST

WHOM DOCUMENTS REGARDING CONVENTION ARE ADDRESSED IS J.B. AMETHIE  
REFERENCE MUST BE MADE TO PERSON IN MINISTRY OF FINANCE TO

REGARDS

BROCHES

MAY 20 6 03 PM 1965

cc: Legal Files

GENERAL FILES COMMUNICATIONS

DISPATCHED

A. Broches

Legal

Abroches: J

*Handwritten signature*

HEADQUARTERS:  
WASHINGTON 25, D. C.

510

AV  
MPB  
my

5/21

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CABLE ADDRESS-INTBAFRAD

INTERNATIONAL DEVELOPMENT ASSOCIATION

CABLE ADDRESS-INDEVAS

J. H. Williams



EUROPEAN OFFICE:  
4, AVENUE D'ÏENA  
PARIS (16<sup>e</sup>) - FRANCE  
TELEPHONE: KLEBER 25-10

May 19, 1965

Mr. Munir Benjenk  
Africa Department  
International Bank for  
Reconstruction and Development  
Washington, D.C.

Dear Munir:

Your memo of your meeting with Ben Salah was very interesting but not very encouraging. I am wondering what, if anything, to say to Monsieur Ariès at this stage. Would you advise me to tell him what was finally agreed (i.e. first paragraph of page 5) or to wait until it has happened (i.e. until we have received Ben Salah's letter)? Ariès may of course find out that they have been in Washington and enquire.

to Benjenk  
yes, preferably.

I enclose a copy of a letter I wrote to Ronnie Broches yesterday in reply to one of his telling me of the Tunisian signature of the Convention.

I sent John Williams a copy of an article by Pleven which woke up the Patronat to what we were doing for Ariès & Co., and brought them round here to tell me that they thought of asking the French Government to back the idea of our lending the money to bail out French investors in North Africa generally. I dissuaded them (I hope) from doing so but they are going to send us a list of their members who have complaints against the Tunisian and Algerian governments.

Ariès called up yesterday wanting to see me urgently. When he came it was to hint that he had heard that others were trying to jump on his bandwagon ("voulaiènt s'accrocher à la BIRD") and would we please give his case priority.

Yours ever,

John Duncan Miller  
Director, European Office

Encl.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT



INTERNATIONAL DEVELOPMENT ASSOCIATION  
CABLE ADDRESS: INDEVAS

EUROPEAN OFFICE:  
4, AVENUE D'ENNA  
PARIS (16<sup>e</sup>) - FRANCE  
TELEPHONE: KLEBER 55-10



2/21  
J. H. Williams

MAY 19, 1965

Mr. Munir Benjenk  
Africa Department  
International Bank for  
Reconstruction and Development  
Washington, D.C.

Dear Munir:

Your memo of your meeting with Ben Salah was very interesting but not very encouraging. I am wondering what, if anything, to say to Monsieur Ariès at this stage. Would you advise me to tell him what was finally agreed (i.e. first paragraph of page 2) or to wait until it has happened (i.e. until we have received Ben Salah's letter)? Ariès may of course find out that they have been in Washington and endure.

to be sent  
copy  
4/10

I enclose a copy of a letter I wrote to Ronnie Broches yesterday in reply to one of his telling me of the Tunisian signature of the Convention.

I sent John Williams a copy of an article by Pleven which woke up the Patronat to what we were doing for Ariès & Co., and brought them round here to tell me that they thought of asking the French Government to back the idea of our lending the money to bail out French investors in North Africa generally. I dissuaded them (I hope) from doing so but they are going to send a list of their members who have complaints against the Tunisian and Algerian governments.

Ariès called up yesterday wanting to see me urgently. When he came it was to hint that he had heard that others were trying to jump on his bandwagon ("voulant s'accrocher à la BIRD") and would we please give his case priority.

Yours ever,

1965 MAY 21 10 54 AM  
RECEIVED  
GENERAL COUNCIL  
DIRECTOR, EUROPEAN OFFICE  
John Duncan Miller

Encl.

May 18, 1965

Mr. A. Broches  
General Counsel  
International Bank for  
Reconstruction and Development  
Washington, D.C.

Dear Ronnie:

Thank you very much for your note of May 11 about the Convention. We were glad to hear that an under-developed country had been first to sign up.

The news that Tunisia had signed has had an immediate effect here. A new batch of hitherto somnolent expropriees has woken up and begun to wonder what their chances are. To avoid a multitude of callers I have asked the Patronat for a consolidated list - a useful thing for us to have whatever happens.

The last sentence of your letter was most useful because none of us had realised the investor's own government had to be a party to the Convention (though a little thought made it obvious why). I fancy there will be some pressure on the French Government now because, as you say, any compensation that is paid will be largely reinvested (will have to be) and then the Convention becomes important.

Yours ever,

JDM/c

John Duncan Miller

517

19 de mayo de 1965

Sr. D.  
Antonio Melchor de las Heras  
Plaza de la Independencia, 2  
Madrid, España

Muy estimado Sr. Melchor:

Le escribo estas líneas para participarle que pasaré unas breves horas en Madrid del día 28 al 29 de los corrientes y para sugerirle la posibilidad de reunirnos si Ud. tiene algún rato disponible en esa fecha. Quizá el Sr. González Bueno podría también estar con nosotros. Le agradecería me cablegrafiasse si tendré el placer de verlo y entonces yo le participaría los detalles de mi viaje, vuelo, horas, etc., tan pronto fueran firmes.

Aunque estoy seguro que ya debe Ud. haber recibido copia de los textos oficiales del Convenio, me complace adjuntarle otro ejemplar. El Gobierno de Túnez fué el primero en firmar el Convenio, y tengo fundadas esperanzas que pronto otros gobiernos sigan esa iniciativa.

Le ruego dé un recado amistoso a nuestro amigo el Sr. González Bueno y Ud. reciba un afectuoso saludo de

A. Broches

ABroches:LCancio:mu

cc: Mr. Sella

*Lancio*

S D

May 18, 1965

Dear Mr. Pant,

As you will know, the text of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States, a draft of which we discussed at Bangkok about a year ago, has been submitted by the Executive Directors of the Bank to its member governments and is open for signature and ratification, approval or acceptance.

I remember that both in Bangkok and in your address at the Annual Meeting of the Bank in Tokyo last September you welcomed the idea of this Convention. I also remember that on both occasions you expressed the view that foreign investors should be required to exhaust local remedies before availing themselves of the facilities of the Centre. You will therefore have noted with satisfaction that the final text of the Convention provides expressly in Article 26 that "[a] Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention".

I shall be very grateful if you could let me know, informally and at your convenience, how far you and your Government have progressed in your study of the Convention in its final text and of the action that Nepal may take thereon. Signature of the Convention by Nepal would be of particular significance since your country has in recent years consistently taken an open and original attitude to the problems of economic development and the attempts made towards their solution.

I look forward to seeing you again at the next Annual Meeting, if not, as I hope, earlier.

Sincerely yours,

A. Broches  
General Counsel

Dr. Yadav Prasad Pant  
Secretary  
Ministry of Finance  
Singha Durbar  
Kathmandu, Nepal

ABroches:lj





# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> May 17, 1965	<b>Document Type</b> Letter			
<b>Correspondents / Participants</b> To: Mr. Alfred E. Matter, IBRD, Ivory Coast From: A. Broches				
<b>Subject / Title</b> Position on the Convention				
<b>Exception(s)</b> Attorney-Client Privilege				
<b>Additional Comments</b>		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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			

DECLASSIFIED

AUG 21 2023

WBG ARCHIVES

May 14, 1965

PERSONAL

Mr. Svend Hartlev  
Handelsministeriet  
Slotsholmsgade 10  
Copenhagen K., Denmark

Dear Mr. Hartlev,

The purpose of this letter is to ask you whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes. Mr. Woods very much hopes that we will have more than the required number of signatures before the Annual Meeting. We realize, of course, that the ratification process may take somewhat longer but I believe that in your country the practice would be to sign first and then submit the document for ratification.

As you will have noticed the final text of the Convention does not differ greatly from the text established by the Legal Committee with the exception of the deletion of the second paragraph of old Article 26 (subrogation).

Hoping to hear from you soon, I remain, with personal regards,

Sincerely yours,

S/

A. Broches  
General Counsel.

ABroches;lj

DECLASSIFIED

AUG 21 2023

WBG ARCHIVES

May 14, 1965

PERSONAL

Mr. Alexander Thesleff  
Director, Legal Affairs  
Foreign Ministry  
Helsinki, Finland

Dear Mr. Thesleff,

The purpose of this letter is to ask you whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes. Mr. Woods very much hopes that we will have more than the required number of signatures before the Annual Meeting. We realize, of course, that the ratification process may take somewhat longer but I believe that in your country the practice would be to sign first and then submit the document for ratification.

As you will have noticed the final text of the Convention does not differ greatly from the text established by the Legal Committee with the exception of the deletion of the second paragraph of old Article 26 (subrogation).

Hoping to hear from you soon, I remain, with personal regards,

Sincerely yours,



A. Broches  
General Counsel

ABroches:lj

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AUG 21 2023

WBG ARCHIVES

May 14, 1965

PERSONAL

Mr. Samim Bilgen  
Chief Legal Advisor and Director  
General of Disputed Claims  
Ministry of Finance  
Ankara, Turkey

Dear Mr. Bilgen,

The purpose of this letter is to ask you whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes. Mr. Woods very much hopes that we will have more than the required number of signatures before the Annual Meeting. We realize, of course, that the ratification process may take somewhat longer but I believe that in your country the practice would be to sign first and then submit the document for ratification.

As you will have noticed the final text of the Convention does not differ greatly from the text established by the Legal Committee with the exception of the deletion of the second paragraph of old Article 26 (subrogation).

Hoping to hear from you soon, I remain, with personal regards,

Sincerely yours,

S/

A. Broches  
General Counsel

ABroches:lj

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AUG 21 2023

WBG ARCHIVES

May 14, 1965

PERSONAL

Mr. Asbjorn Sand  
Chief of Division  
Foreign Exchange Department  
Ministry of Commerce and Shipping  
Oslo, Norway

Dear Mr. Sand,

The purpose of this letter is to ask you whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes. Mr. Woods very much hopes that we will have more than the required number of signatures before the Annual Meeting. We realize, of course, that the ratification process may take somewhat longer but I believe that in your country the practice would be to sign first and then submit the document for ratification.

As you will have noticed the final text of the Convention does not differ greatly from the text established by the Legal Committee with the exception of the deletion of the second paragraph of old Article 26 (subrogation).

Hoping to hear from you soon, I remain, with personal regards,

Sincerely yours,

S/

A. Broches  
General Counsel

DECLASSIFIED

AUG 21 2023

WBG ARCHIVES

May 14, 1965

PERSONAL

Mr. Vidar Hellners  
Assistant Head of Division  
Ministry for Foreign Affairs  
Stockholm, Sweden

Dear Mr. Hellners,

The purpose of this letter is to ask you whether you could advise me informally as to the likelihood of action by your Government in the near future on the Convention on the Settlement of Investment Disputes. Mr. Woods very much hopes that we will have more than the required number of signatures before the Annual Meeting. We realize, of course, that the ratification process may take somewhat longer but I believe that in your country the practice would be to sign first and then submit the document for ratification.

As you will have noticed the final text of the Convention does not differ greatly from the text established by the Legal Committee with the exception of the deletion of the second paragraph of old Article 26 (subrogation).

Hoping to hear from you soon, I remain, with personal regards,

Sincerely yours,

S/

A. Broches  
General Counsel

ABroches:ljl

OUTGOING WIRE

TO: ABDEL EL EMARY  
~~HOTEL BENIN~~  
~~LOME~~

*Federal Palace Hotel  
Lagos  
Nigeria*

DATE: MAY 13, 1965

CLASS OF SERVICE: STRAIGHT CABLE

COUNTRY: ~~TOGO~~

TEXT:

Cable No.: 8 REFERENCE WOODS FORTHCOMING VISIT TO ABIDJAN PLEASE ADVISE  
WHETHER YOU DISCUSSED SID CONVENTION WITH AUTHORITIES ~~XXXX~~ THERE  
STOP SINCE WE HOPE FOR LARGEST POSSIBLE NUMBER SIGNATURES BEFORE  
ANNUAL MEETING WOULD APPRECIATE YOU MENTIONING SUBJECT DURING  
YOUR COMING VISITS STOP TUNISIA SIGNED MAY 5 STOP REGARDS

BROCHES

① COCOTIERS HOTEL  
DOUALA, CAMEROON

② DU ROI DENIS  
LIBREVILLE, GABON

NOT TO BE TRANSMITTED

MESSAGE AUTHORIZED BY:

NAME A. Broches

DEPT. Legal Department

SIGNATURE *A. Broches*  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

CLEARANCES AND COPY DISTRIBUTION:

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ABroches:lj

ORIGINAL (File Copy)

(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch: *[Signature]*

OUTGOING WIRE

DATE MAY 13, 1965  
CLASS OF SERVICE STRAIGHT CABLE

ADDRESSEE NAME  
HOTEL DE LA MER  
TUNISIA  
*[Handwritten signatures and initials]*

COUNTRY TUNISIA

YOUR COMING VISITS STOP TUNISIA SIGNED MAY 2 STOP HOWARDS  
ALBANY MEETING WOULD APPRECIATE YOU MENTIONING SUBJECT DURING  
STOP SINCE WE HOPE FOR LARGEST POSSIBLE NUMBER SIGNATURES BEFORE  
WHETHER YOU DISCUSSED BID CONVENTION WITH AUTHORITIES XXXX THERE  
8 REFERENCED WOODS FORTHCOMING VISIT TO ALBANY PLEASE ADVISE

BROOKS

① CANTONERS HOTEL  
BOUVAH CAHIERIN  
② 62 R01 FEMIS  
LISSEVILLE CABON

NOT TO BE TRANSMITTED

CLERK AND COPY DISTRIBUTION

MAY 13 6 21 PM 1965

GENERAL FILES  
COMMUNICATIONS

DISPATCHED

A. Brooks

Legal Department

Attachments: 1

ORIGINAL FILE COPY



Mr. Broches is giving  
Mr. van Santen some information  
about the Convention on the  
Settlement of Investment Dis-  
putes and asking him in con-  
fidence about the Dutch  
progress on this matter.

12 mei 1965

De Hoogedelgestrengste Heer  
Mr. C.W. van Santen  
Nieuwe Parklaan 119a  
Scheveningen  
Netherlands

Beste Win,

Ik hoop dat je in de afgelopen weken tijd hebt gehad om het eindprodukt van de Conventie nader te bestuderen. Je zult dan hebben gezien dat er eigenlijk met uitzondering van de schrapping van de bepaling inzake substitutie (Artikel 26, 2de alinea oud) weinig veranderd is in de tekst zoals die door het Legal Committee is vastgesteld. Hoofdstuk X is nogal grondig herzien door de Executive Directors maar het komt mij voor dat het resultaat aanvaardbaar is.

Nu bevinden wij ons dus in het volgende stadium, namelijk het bijeengaren van ondertekeningen en vervolgens bekrachtigingen. Wij zijn er nu mee bezig bij een aantal "bevriende" lid Staten inlichtingen in te winnen omtrent de voortgang van de bestudering der Conventie. Woods hoopt dat de Conventie voor de jaarvergadering althans ondertekend zal zijn door meer dan 20 staten.

Gisteren lunchte ik met Lieftinck die net uit Nederland terug gekeerd was. Ik vroeg hem of hij ermee akkoord ging dat ik rechtstreeks met Nederland op persoonlijke dan wel officiële basis over Nederland's eventuele toetreding zou corresponderen. Hij had hiertegen geen enkel bezwaar. Wij rekenen op Nederland, tezamen met Engeland en de Scandinavische landen als de kop groep van de Europese ondertekenaars. Ik kan je vertrouwelijk medelen dat de Engelsen reeds een nota voor de Ministerraad hebben voorbereid alsmede een ontwerp "white paper" voor het Parlement. Wij hopen dus dat Engeland spoedig tot ondertekening zal overgaan. Van Scandinavische zijde heb ik geen rechtstreekse berichten, maar ik ben van plan de collega's die de vergadering hier hebben bijgewoond met een persoonlijk briefje om inlichtingen te vragen. Ik zou het uiteraard bijzonder op prijs stellen indien jij mij zoudt kunnen vertellen hoever men in Nederland gevorderd is. Lieftinck meende zich te herinneren dat de procedure in Nederland nogal eens aan vertraging onderhevig is als gevolg van de noodzaak Suriname en de Antillen

te raadplegen. Hij wist echter niet of dit al bij de ondertekening speelt of eerst bij de bekrachtiging. Artikel 70 van de Conventie gaat ervan uit dat de toepasselijkheid van de Conventie op overzeese gebieden pas op het tijdstip van de bekrachtiging wordt geregeld.

Jij hebt waarschijnlijk al gehoord dat Tunesie op 5 mei als eerste de Conventie heeft ondertekend. Wij hadden generlei contact over deze zaak met Tunesie gehad en wij waren aangenaam verrast door de snelheid waarmee dit land heeft gehandeld. Verder kan ik je nog vertrouwelijk medelen dat de Amerikanen na enig wilden en wegen besloten hebben de Conventie als een verdrag te behandelen. Er wordt thans gewerkt aan de boodschap waarmee de President het stuk aan de Senaat zal aanbieden. Ondertekening zal uiteraard plaats vinden alvorens de Conventie naar de Senaat gaat. Blijkbaar hoopt de regering de bekrachtigingswetgeving er nog dit jaar door te krijgen.

Ik verwacht tot 25 mei in Washington te zijn, daarna vergezel ik Woods op een reis naar Nigeria en de Ivoorkust die mij midden juni weer naar Washington terug brengt.

In de hoop speedig iets van je te horen verblijf ik met vriendschappelijke groeten,

t.t.

s/Ronnie

Mr. A. Broches

cc: Mr. van der Tak

ABroches:lj

Mr. Broches is sending  
Mr. van der Tak a copy of his  
letter to Mr. van Santen of  
even date. Also he is giving  
Mr. van der Tak some more  
details on the Convention.

12 mei 1965

Persoonlijk en Vertrouwelijk

Beste Kees,

Ik hoop dat je met genoeg kennis hebt genomen van het feit dat wij er tenslotte op 18 maart in geslaagd zijn een eindtekst van de Convention on the Settlement of Investment Disputes te produceren. Ik stuur je hierbij een copie van een persoonlijke brief aan van Santen, die zoals je weet Nederland in the Legal Committee heeft vertegenwoordigd. Wij hebben sinds de 18de maart niets uit Nederland vernomen. Ik weet niet welk departement voor die zaak primaire verantwoordelijkheid draagt. Ik wend mij dus tot persoonlijke vrienden op Buitenlandse Zaken en Financien.

Wij verwachten thans binnenkort van de OESO de stukken inzake investeringsgaranties officieel te ontvangen. (Könz heeft ons natuurlijk de verschillende ontwerpen reeds officieus doen toekomen). Blijkbaar zijn Portugal en Griekenland voor de vertraging verantwoordelijk.

Met hartelijke groeten,

t.t.

S/ Ronnie

Mr. A. Broches

Bijlage: 1

De Hoogedelgestrengste Heer  
Mr. C. van der T-k  
Ministerie van Financien  
Kneuterdijk 20  
's-Gravenhage  
Netherlands

ABroches:lj

May 11, 1965

Mr. George K. Schenck  
The Pennsylvania State  
University  
301 Engineering Unit D  
University Park, Pennsylvania

Dear Mr. Schenck,

Mr. Albert Waterston has referred your letter of  
May 5, 1965 to me for reply. I suggest that you  
address questions regarding the Convention and the  
status of ratification to the Legal Department of  
this Bank.

Sincerely yours,

A. Broches  
General Counsel

ABroches:lj

cc: Mr. Waterston  
Legal Files (with incoming letter)

May 11, 1965

Mr. John D. Miller  
Director  
European Office  
4, Avenue d'Iéna  
Paris 16, France

Dear Johnnie,

In view of the interest of French investors in Tunisia and the questions regarding Tunisia put to Pierre Moussa during his recent appearance at the Patronat, you may be interested to learn that Tunisia signed the Convention last Wednesday. It is the first and until now the only signature. From the informal conversations surrounding the signing ceremony I obtained the strong impression that Tunisia expected to include arbitration clauses pursuant to the Convention in agreements with respect to future investments, but would not submit the presently outstanding "old disputes" to the Centre. Nevertheless, it will be interesting to see whether the French will now sign. Whatever the outcome of the present disputes, one may safely assume that such compensation as may be agreed upon will be largely reinvested in Tunisia. In order to give French investors an opportunity to bring these new investments under the umbrella of the Convention France would have to become a party to the Convention.

With kind regards,

A. Broches

cc: Mr. J.P. Simond

ABroches:lj

*ack. May 18/65*

= 10

May 11, 1965

Mr. George Worsley  
Clerk to the Association  
International Law Association  
3, Paper Buildings  
The Temple  
London, E.C.4, England

Dear Mr. Worsley,

I thank you for your letter of May 6, 1965 and for the information contained therein regarding the International Law Association's Committee on International Trade and Investment and the Resolutions approved by your Tokyo Conference.

I am sending you under separate cover a copy of the Convention on the Settlement of Investment Disputes and of the accompanying report of the Executive Directors in English, French and Spanish. I am also sending you a copy of the trilingual text of the Convention.

As you will note from these documents the Executive Directors of the World Bank, acting pursuant to an authorization of its Board of Governors given at its Tokyo Meeting (September 1964), approved the text of the Convention for submission to member Governments of the Bank. The Convention has been deposited in the archives of the Bank and is now open for signature and ratification.

You may want to bring this fact to the attention of the Committee on International Trade and Investment. Additional copies of the documents referred to above may be obtained on request from the Publications Office of this Bank.

Sincerely yours,

A. Broches  
General Counsel

ABroches:l j

cc: Legal Files (with incoming letter)



**ROUTING SLIP**

Date

May 7, 1965

**NAME**

**ROOM NO.**

Mr. Delaume

To Handle

Note and File

Appropriate Disposition

Note and Return

Approval

Prepare Reply

Comment

Per Our Conversation

Full Report

Recommendation

Information

Signature

Initial

Send On

REMARKS

Can we speak about this please?

From

M. P. Benjenk

To Benjank.

May

enclose that you and  
Jelane are preparing  
a position paper on  
the Tunisian conciliation  
procedures (ready for  
discussion with Mapp  
and Brock) in good  
time for Ben Salah's visit  
during which Mapp hopes  
to wrap the thing up. J.W.

INCOMING MAIL ROUTING SLIP			Date <b>MAY 6 - 1965</b>	
Mr. Alter	510	Mr. Lutolf	547	
Mr. Avramovic	873	Mr. Mason	622	
Mr. Bart	650	Mr. McIvor	600	
<del>Mr. Benjenk</del>	560	Mr. Melmoth	673	
2 Mr. Broches <i>DeLaune</i>	810	Mr. Michaels	1217	
Mr. Calika	541	Mr. Nurick	805	
Mr. Cargill	674	Office of Information	461	
Mr. Cavanaugh	700	Office of Secretary	1205	
Mr. Chaufournier	510	Office Services	107	
Mr. Cheek	645	Personnel Division	206	
Mr. Clark	805	Projects		
Mr. Collier	646	Mr. Reamy	722	
Mr. Consolo	844	Mr. Rist	1127	
Mr. Cope	651	Mr. Schmidt	1122	
Mr. de la Renaudiere	544	Mr. Stevenson	600	
M emuth	845	Mr. Street	664	
E.D.I.		Mr. Tolbert	625	
Mr. El Emary	552	Travel Office	224	
Mr. Fontein	651	Treasurer's	717	
Mr. Friedman	1223	Mr. Twining	1210	
Mr. Fuchs	371	Mr. Vignes	500	
Mr. Ghoshal	677	Mr. Weiner	586	
Mr. Goodman	674	Mr. Wiese	570	
Mr. Goor	851	<del>Mr. Williams</del>	552	
Mr. Gordon	845	Mr. Wilson	1220	
Mr. Kamarck	873	Mr. Woods	1220	
Mr. Knapp	1220	Mr. Worthington	446	
Mr. Kruithof	546	Mr. Wright	610	
Mr. Lejeune	1210			
M oftus	578			

*blue copies*  
*SID*

~~OFFICE~~ MEMORANDUM

TO: Messrs. Alter, Cope, Goodman, Stevenson  
and Williams

DATE: May 6, 1965

FROM: A. Broches

SUBJECT:

As discussed at yesterday's Senior Staff Meeting, I am asking the Publications Office to send you a sufficient number of copies of the Convention on the Settlement of Investment Disputes and the accompanying report of the Executive Directors, in English and where appropriate French and Spanish. I would appreciate it if you would ask your staff to familiarize themselves with the main outlines of the Convention. I think that reading the report will largely suffice for that purpose.

*AB*

*Note:*

*When the SID reports are rec'd.*

*they will be circulated.*  
*S.R.C.*

*— copies distributed*  
*5/24/65*  
*MR*

SIP


May 6, 1965

His Excellency  
Rachid Driss  
Ambassador of Tunisia  
2408 Massachusetts Avenue, N.W.  
Washington, D. C. 20008


Dear Mr. Ambassador:

I enclose two certified copies of the  
Convention on the Settlement of Investment  
Disputes between States and Nationals of Other  
States, which was signed by you on behalf of  
Tunisia on May 5, 1965.

Yours sincerely,

  
M. M. Mendels  
Secretary

Encs.

  
cc: Mr. Ayari  
Mr. Broches

LD:neb

SID

Form No. 27  
(7-61)  
INTERNATIONAL DEVELOPMENT  
ASSOCIATION

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE  
CORPORATION

**OUTGOING WIRE**

TO: FERRAS  
INTERBANK  
BASLE

RCA

DATE: MAY 16, 1965

CLASS OF SERVICE: LT

COUNTRY: SWITZERLAND

TEXT: 43

Cable No.: EXPECT ARRIVE BASLE SATURDAY 8:30 AM SWISSAIR FLIGHT 140 STAYING  
SCHWEITZERHOFF. WILL BE ACCOMPANIED BY STAFF MEMBER MR. BIMAL  
JALAN AND HOPE HE WILL HAVE OPPORTUNITY TO MEET MEMBERS OF YOUR  
ECONOMIC STAFF. REGARDS

FRIEDMAN

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY: Irving S. Friedman  
NAME  
DEPT. Office of the President  
SIGNATURE  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

CLEARANCES AND COPY DISTRIBUTION:

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ORIGINAL (File Copy)  
(IMPORTANT: See Secretaries Guide for preparing form)

Checked for Dispatch:

INTERNATIONAL DEVELOPMENT ASSOCIATION

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE CORPORATION

OUTGOING WIRE

TO: FERRAS  
IMTARBAN  
BASSE

DATE: MAY 5, 1965  
CLASS OF SERVICE: IN

COUNTRY: SWITZERLAND

TEXT: 13

Cable No:

EXPECT ARRIVE BASLE SATURDAY 8:30 AM SWISS AIR FLIGHT 110 STALIM

GOWITZKHOFF, WILL BE ACCOMPANIED BY STATE MINISTER MR. BIMAL

JALAN AND HOPE HE WILL HAVE OPPORTUNITY TO MEET MEMBERS OF YOUR

ECONOMIC STAFF. REGARDS

FELDMAN

NOT TO BE TRANSMITTED

CLEARANCE AND COPY DISTRIBUTION:

MESSAGE AUTHORIZED BY Irving S. Friedmann

MAY 6 5 02 PM 1965

NAME

Office of the President  
COMMUNICATIONS  
GENERAL FILES

DEPT

SIGNATURE

(Signature of individual authorized to approve)

For Use by Archives Division

ORIGINAL (file Copy)

IMPORTANT: See instructions for preparing form

Checked for Dispatch

Dev 310

Form No. 27  
(7-61)

INTERNATIONAL DEVELOPMENT  
ASSOCIATION

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE  
CORPORATION

**OUTGOING WIRE**

TO: PINTO  
106 PARK ROAD  
COLOMBO

DATE: MAY 5, 1965

CLASS OF  
SERVICE: LT

*WJ*

COUNTRY: CEYLON

TEXT:  
Cable No.: TUNISIA TODAY BECAME FIRST SID SIGNATORY REGARDS

BROCHES

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

NAME A. Broches  
DEPT. Legal Department

*A. Broches*

SIGNATURE  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)

CLEARANCES AND COPY DISTRIBUTION:

cc: Legal Files

ABroches/lj

**ORIGINAL (File Copy)**

(IMPORTANT: See Secretaries Guide for preparing form)

For Use by Archives Division

Checked for Dispatch: \_\_\_\_\_

*[Handwritten signature]*



INTERNATIONAL DEVELOPMENT  
ASSOCIATION

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE  
CORPORATION

OUTGOING WIRE

TO: TINTO  
100 PARK ROAD  
COLOMBO

COMPANY BELCON

RE: TUNISIA TODAY BECAME FIRST SID STANATORY REGARDS

BROCHES

DATE: MAY 5, 1965  
CLASS OF SERVICE: LT

NOT TO BE TRANSMITTED

CLASSIFICATION AND COPY DISTRIBUTION

NAME: A. Broches

DEPT: Legal Department

MAY 5 9 11 PM 1965

cc: Legal Files

COMMUNICATIONS  
GENERAL FILES

DISPATCHED

ORIGINAL (File Copy)

Checked for Dispatch

IMPORTANT: The International Bank for Reconstruction and Development

DECLASSIFIED

S.D  
CONFIDENTIAL

AUG 21 2023

SecM65-112

WBG ARCHIVES

FROM: The Secretary

May 5, 1965

SETTLEMENT OF INVESTMENT DISPUTES

The Convention on Settlement of Investment Disputes between States and Nationals of Other States was signed today at 12 noon on behalf of Tunisia by His Excellency Rachid Driss, Ambassador of the Republic of Tunisia in Washington.

Tunisia thus became the first member of the Bank to sign the Convention.

Distribution:

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

SD

I N C O M I N G W I R E

DATE OF WIRE: **MAY 5, 1965** **1048**  
LOG NO.: **RC 15**  
TO: **BROCHES INTBAFRAD**  
FROM: **COMMUGNY**

R O U T I N G	
ACTION COPY:	<b>MR. BROCHES</b>
INFORMATION COPY:	
DECODED BY:	

TEXT:

**BEST THANKS SPANISH COPIES CONVENTION COULD  
YOU POSSIBLY SPARE ANOTHER SIX IN BOTH ENGLISH  
AND FRENCH REGARDS**

**BRANDON APPI**

**FCA**

INCOMING MAIL

DATE OF MAIL:	MAY 3, 1965	ROUTING:
FILE NO.:	NO 13	ACTION TYPE: MR. BROOKER
TO:	EXECUTIVE SECRETARIAT	INFORMATION COPY:
FROM:	GOVERNMENT	DELETED BY:
TEXT:		

PLEASE PRINT NAME AND ADDRESS OF THE CONTRIBUTOR IN ENGLISH  
AND PAPER RECORDS

BRANDON APPY

PCA

MAY 5 8 32 AM 1965

GENERAL FILES COMMUNICATIONS

DUPLICATE LABEL

S/D

517

HEADQUARTERS:  
WASHINGTON 25, D. C.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CABLE ADDRESS-INTBAFRAD



INTERNATIONAL DEVELOPMENT ASSOCIATION

CABLE ADDRESS-INDEVAS



EUROPEAN OFFICE:  
4, AVENUE D'IEÑA  
PARIS (16<sup>e</sup>) - FRANCE  
TELEPHONE: KLEBER 25-10

May 4, 1965

*John*  
*Mr. Williams*  
*to be checked (detained)*

Mr. John H. Williams  
Deputy Director  
Africa Department  
International Bank for  
Reconstruction and Development  
Washington, D.C.

Dear John:

I have seen Mr. Ariès and Mr. de Tonquedec this morning and told them of the letter sent from Mr. Woods to Ben Salah. I explained why we had offered conciliation rather than arbitration and they agreed at once that we were right. "Arbitration" as a word was "un peu brutal" and "conciliation" was more likely to produce the desired reply.

Mr. Ariès told me at the same time that Mr. Oudiard had decided not to press the claims of La Tunisienne Automobile de Transport at this moment but to await the outcome of our intervention.

Yours ever,

John Duncan Miller  
Director, European Office

1965 MAY -8 6:15:38

COMMUNICATIONS  
GENERAL LINES  
RECEIVED

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CABLE ADDRESS-INTBARAD

INTERNATIONAL DEVELOPMENT ASSOCIATION

CABLE ADDRESS-INDEVAS

EUROPEAN OFFICE:  
4, AVENUE D'ENNA  
PARIS (18<sup>e</sup>) - FRANCE  
TELEPHONE: KLEBER 58-10



May 4, 1965

*Handwritten notes:*  
To be sent to Mr. Williams  
in Washington

Mr. John H. Williams  
Deputy Director  
Africa Department  
International Bank for  
Reconstruction and Development  
Washington, D.C.

Dear John:

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Yours ever,

John Duncan Miller  
Director, European Office

1965 MAY -6 PM 12:38

RECEIVED  
GENERAL FILES  
COMMUNICATIONS

Mr. A. Broches

May 4, 1965

Michael H. Wiehen

PHILIPPINES - Governmental action required in connection with SID Convention

Article VII, Section 10, Clause 7 of the Constitution of the Philippines reads as follows:

"The President shall have the power, with the concurrence of two-thirds of all the Members of the Senate, to make treaties x x x".

A textbook on the "Constitution of the Philippines" by Tanada & Fernando (4th Ed. 1953) comments on this constitutional provision as follows (p. 1055):

"A treaty may be defined as a compact between two or more independent nations with a view to the public welfare. While senatorial concurrency by two-third vote of all its members is required, it is the President who alone negotiates treaties. There is an American case to the effect that in the field of negotiation the Senate cannot intrude and Congress is powerless to invade.

Once submitted to the Senate, however, for ratification, the Senate may propose or concur with amendments or reservations x x x."

Lately there has been the question of whether an executive agreement may take the place of a treaty. x x x In the Philippines the question seems to be academic for the present. There is a widespread recognition of the view that international compacts must be submitted to the Senate for ratification in accordance with the Constitution. In the one case where there was executive agreement, such executive agreement was entered into in pursuance of a Congressional act which was passed to accept in advance an executive agreement to be entered into between the President of the Philippines and the President of the United States x x x."

While the constitutional provision quoted above leaves it open at what moment the Senate has to act on a proposed treaty, it appears from the other quotations that at least in the normal case a treaty is first signed by the President and subsequently ratified by the Senate.

cc: Mr. Sella

*MHW*  
MHW/whc

5 D  
May 3, 1965

Dear Professor MacChesney:

Thank you very much for your letter of April 29, 1965. In accordance with your request I am sending you enclosed herewith a copy of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying report of the Executive Directors. I am also enclosing the text of my remarks at the panel session.

I am very much looking forward to the meeting in Bellagio and I hope to find time soon to do a little homework for that meeting.

With kindest regards,

Sincerely yours,

(Signature) A. Broches

A. Broches  
General Counsel

Mr. Brunson MacChesney  
Northwestern University  
School of Law  
357 East Chicago Avenue  
Chicago, Illinois 60611

Enclosures  
ABroches:cml



S D

May 3, 1965

Dear Mr. Minister:

As you know, the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States was approved by the Executive Directors on March 18, 1965 for submission to governments. You will in the meantime have received the text of the Convention and the accompanying report of the Executive Directors as well as a certified copy of the Convention in the three official languages together with a memorandum outlining the steps to be taken by States wishing to sign and ratify the Convention.

Experts from Ghana have participated both in the regional consultative meeting at Addis Ababa and the Legal Committee meeting in Washington. The text as it was finally approved by the Executive Directors is not substantially different from the one which was adopted by the Legal Committee. It may however interest you that a provision in the draft permitting a capital exporting State under certain circumstances to be substituted for its national in proceedings before the Centre was deleted from the text by the Executive Directors. The provision had obtained a majority in the Legal Committee but in view of the strong reservations expressed by a number of countries, including Ghana, the Executive Directors agreed to its deletion.

On the basis of Ghana's participation in the work of the Convention it is my impression that the purpose and basic concept of the Convention are viewed favorably by your officials. In addition Ghana is the only country in the world which in its investment promotion legislation specifically refers to the possibility of settlement of disputes "through the agency of the World Bank". I hope, therefore, that your Government will give early consideration to the text of the Convention.

If as a result of such consideration your Government decides to become a party to the Convention, I would be most happy if Ghana were among the first signatories. For Ghana to take the lead in this matter would be particularly appropriate since your country has demonstrated that a policy generally favoring public ownership is in no way inconsistent with fair and equitable treatment of private capital.

Sincerely yours,

(Signed) George D. Woods  
George D. Woods

His Excellency  
K. Amako-Atta  
Minister of Finance  
Accra, Ghana

ABroches:cml

May 3, 1965

Dear Mr. Ramaer:

Thank you for your letter of April 29, 1965. I am passing your suggestions for risk sharing keys on to Mrs. Boskey who, as you know, is now engaged in preparing a presentation of the whole subject to our Executive Directors.

I would be quite interested in hearing a report on the ECLA conference in case you should happen to be passing through Washington on your way back. I think you know the general position in Latin America on both subjects you mention. Recently the Organization of American States has been circulating a draft convention on investment guarantees which is substantially identical to the American bi-lateral investment guarantee agreements. The convention would be open to signature by any capital exporting States but there would be no risk sharing. On conciliation and arbitration the only development is that in their report on a Latin American common market the authors (Raul Prebisch, Felipe Herrera, José Mayobre and Carlos Sans de Santa María) take a gratuitous "sideswipe" at the World Bank proposals in the following terms:

"Recientemente se ha propuesto establecer un régimen internacional destinado a dirimir conflictos que se presenten a los inversionistas extranjeros. Los países latinoamericanos, al negar su apoyo a esas propuestas, han asumido implícitamente la responsabilidad de crear un sistema propio que ofrezca garantías concretas y estables, dentro de principios que se arraigan en toda una tradición de vida independiente."

The meaning of this is not very clear and probably was not intended to be. It would certainly be useful if they heard some voices from Europe, especially from a small country, in support of the World Bank Convention.

With kind regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. J. C. Ramaer  
N.V. Philips' Gloeilampenfabrieken  
Eindhoven, The Netherlands

*A. Broches: c m d*

May 3, 1965

Dear Mr. Minister:

As you know, the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States was approved by the Executive Directors on March 18, 1965 for submission to governments. You will in the meantime have received the text of the Convention and the accompanying report of the Executive Directors as well as a certified copy of the Convention in the three official languages together with a memorandum outlining the steps to be taken by States wishing to sign and ratify the Convention.

Remembering the support that your Government and yourself in particular have given in the past to the purpose and basic concept of this Convention, and your efforts to attract foreign private capital, I hope that your Government will give early consideration to the text of the Convention. If as a result of such consideration your Government decides to become a party to the Convention, I would be most happy if the Federation of Nigeria were among the first signatories. For Nigeria to take the lead in this matter would be entirely in accordance with its position among the members of the International Bank for Reconstruction and Development, and particularly among its members in Africa.

I look forward very much to seeing you in Nigeria in a few weeks. I may mention that Mr. Broches, who has been primarily responsible for the preparation of the Convention, will accompany me so that if by the time of my arrival in Nigeria there should still be open questions, they can be discussed at that time.

Sincerely yours,

(Signed) George D. Woods

George D. Woods

His Excellency  
Chief Festus S. Okotie-Eboh, C.M.G.  
Federal Minister of Finance  
Lagos, Nigeria

ABroches:cml 

DECLASSIFIED

SEP 06 2023

May 3, 1965

Personal

WBG ARCHIVES

Dear Shoaib:

As you know, the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States was approved by the Executive Directors on March 18, 1965 for submission to governments. You will in the meantime have received the text of the Convention and the accompanying report of the Executive Directors as well as a certified copy of the Convention in the three official languages together with a memorandum outlining the steps to be taken by States wishing to sign and ratify the Convention.

I believe that the work on the Convention has been followed closely by people in your Ministry as well as in the Ministry of Law and the comments we have received through Mr. Mirza as well as directly indicated that the purpose and basic concept of the Convention were generally acceptable to them. I hope, therefore, that your Government will give early consideration to the text of the Convention. If as a result of such consideration your Government decides to become a party to the Convention, I would be most happy if Pakistan were among the first signatories. For Pakistan to take the lead in this matter would be entirely in accordance with your outstanding and successful efforts, unique in your area of the world, to promote private investment, both domestic and foreign.

Warm regards.

Sincerely,

(Signed) George D. Woods

George D. Woods

His Excellency  
Mohamed Shoaib  
Minister of Finance  
Rawalpindi, Pakistan

ABroches:cml

510

April 27, 1965

Mr. A. Postel-Vinay  
Managing Director  
Caisse Centrale de Coopération  
Economique  
110, Rue de l'Université  
Paris 7, France

Dear Mr. Postel-Vinay,

I want to thank you for sending me the brochure describing the many activities of the Caisse Centrale. I take this opportunity to send you a copy of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States together with the accompanying report of the Executive Directors of this Bank.

With kind regards.

Sincerely yours,

A. Broches  
General Counsel

Enclosure: 1

ABroches/lj

April 26, 1965

Dear Sir:

The Publications Department referred your letter of April 23 to me for reply. I regret having to tell you that for the time being all working papers and records of the meetings leading up to the adoption of the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States are restricted documents. I hope that at some point we shall be able to remove the restriction but I doubt whether this would occur before the Convention has entered into force.

For the time being, therefore, all I can do is to send you a copy of my opening remarks at the last of the four consultative meetings as well as the text of my remarks last week before the Society.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. L. F. E. Goldie  
417 1/2 Veteran Avenue  
Los Angeles, California 90024

1965 APR 27 11 31 AM

COMMUNICATIONS  
GENERAL LITER  
RECEIVED

April 26, 1966

Dear Sir:

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Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. L. F. E. Goldie  
117 1/2 Veteran Avenue  
Los Angeles, California 90024

1966 APR 27 PM 3:21

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COMMUNICATIONS

Legal Files

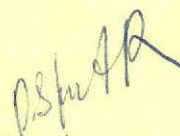
April 26, 1965

Piero Sella

Distribution of S.I.D. Documents

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States with the accompanying Report of the Executive Directors was distributed to all delegates who attended the Legal Committee Meeting in Washington and the Regional Meetings in Addis Ababa, Santiago de Chile, Geneva and Bangkok in the language as marked on the attached list.

Encl.

  
PSella/ar



I N C O M I N G W I R E

DATE OF WIRE: APRIL 25, 1965 1500

LOG NO.: WU 2

TO: INTBAFRAD

FROM: TRIPOLI

R O U T I N G	
ACTION COPY:	MR. MENDELS
INFORMATION COPY:	
DECODED BY:	

TEXT:

SECRETARY

PLEASE SEND 10 COPIES AGREEMENT ON SETTLEMENT  
OF INVESTMENT DISPUTES FOR PRESENTATION TO  
AUTHORITIES CONCERNED.

ATTIGA ALTERNATE GOVERNOR

*Sent by Air 4/26/65*

FCA

Form No. 75  
(2-60)

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL FINANCE  
CORPORATION

INTERNATIONAL DEVELOPMENT  
ASSOCIATION

**ROUTING SLIP**

Date

April 26, 1965

**NAME**

**ROOM NO.**

Mrs. Eliason

461

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

REMARKS

From

A. Broches

ASSOCIATION INTERNATIONALE POUR LA PROMOTION ET LA  
PROTECTION DES INVESTISSEMENTS PRIVÉS EN TERRITOIRES ÉTRANGERS

92, RUE DU RHÔNE - 1204 GENÈVE (SUISSE) TÉL. GENÈVE 8 62 22

OFFICE OF THE  
SECRETARY  
MICHAEL BRANDON

REF: 364/65

Mr. A. Broches,  
General Counsel,  
International Bank for  
Reconstruction and Development,  
1818 H Street, N.W.,  
Washington D.C. 20433.

23 April 1965

Dear Mr. Broches,

Thank you very much, in response to my letter of 13 April, for forwarding 6 copies in Spanish of the Convention on the Settlement of Investment Disputes between States and Nationals of other States.

I may inform you that these copies have been forwarded to our Correspondents in Argentina, Chile, Costa Rica, Mexico, Peru and Venezuela. I know that all these persons will seek an opportunity to add their voice in favour of the Convention at the appropriate level of their Government.

I had a talk yesterday with Mr. F. Consolo, your representative at the United Nations, and he indicated his view that this could only have beneficial effects.

We have also Correspondents in Colombia, Nicaragua, Panama and Uruguay, whilst the position in Brazil just at this time is changing. Might I therefore request a further 6 copies in Spanish for the same purposes.

Many thanks in anticipation,

Yours sincerely,

*Michael Brandon*

*Sent Apr 4/28/65*

APR 28 1965

ASSOCIATION INTERNATIONALE POUR LA PROMOTION ET LA  
PROTECTION DES INVESTISSEMENTS PRIVÉS EN TERRITOIRES ÉTRANGERS

92, RUE DU RHÔNE - 1204 GENÈVE (SUISSE) TÉL. GENÈVE 8 62 22

OFFICE OF THE  
SECRETARY  
MICHAEL BRANDON

36465

Mr. A. Broches,  
General Counsel,  
International Bank for  
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1818 H Street, N.W.,  
Washington D.C. 20433.

23 April 1965

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Panama and Uruguay, whilst the position in Brazil just at  
this time is changing. Might I therefore request a further  
6 copies in Spanish for the same purposes.

Many thanks in anticipation,

Yours sincerely,

*Michael Brandon*

*Recd APR 26 4/28/65*

1965 APR 26 AM 10:29

SECRET  
GENERAL SECRETARIAT  
GENÈVE



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> April 23, 1965	<b>Document Type</b> Letter			
<b>Correspondents / Participants</b> To: Mr. Robert F. Skillings From: H.T. Parekh				
<b>Subject / Title</b> Enclosing the Convention on the Settlement of Industrial Disputes				
<b>Exception(s)</b> Information Provided by Member Countries or Third Parties in Confidence				
<b>Additional Comments</b>		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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> April 23, 1965	<b>Document Type</b> Memorandum			
<b>Correspondents / Participants</b> To: Mr. Vilhjalmur Thor From: A. Broches				
<b>Subject / Title</b> Settlement of Investment Disputes				
<b>Exception(s)</b> Attorney-Client Privilege				
<b>Additional Comments</b>		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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> April 23, 1965	<b>Document Type</b> Memorandum			
<b>Correspondents / Participants</b> To: Mr. Douglas J. Fontein From: Piero Sella				
<b>Subject / Title</b> Settlement of Investment Disputes - Position of Middle Eastern Countries				
<b>Exception(s)</b> Attorney-Client Privilege				
<b>Additional Comments</b>		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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			

April 21, 1965

Dear Mr. Maillard,

In accordance with our telephone conversation I am sending you herewith one certified copy of the text of the Convention in the three official languages as approved by the Executive Directors on March 18, 1965 for submission to Governments. I am also sending you five copies of the French text of the Convention and of the accompanying report of the Executive Directors of this Bank.

If, after Bern has examined these documents, they or you would like to receive further information I shall be glad to meet with you for this purpose. I expect to be in Washington until the 25th of May.

Sincerely yours,

A. Broches  
General Counsel

Mr. André Maillard  
Second Secretary  
Embassy of Switzerland  
2900 Cathedral Avenue N.W.  
Washington, D.C. 20008

ABroches/lj



April 19, 1965

Dear Mr. Coulson:

In accordance with our telephone conversation I am enclosing herewith a copy of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and of the accompanying Report of the Executive Directors of the World Bank.

I shall be glad to meet you at breakfast on May 17 and I will call your office on the 13th or 14th of May to confirm place and hour.

Sincerely yours,

~~(Signed)~~ A. Broches

A. Broches  
General Counsel

Mr. Robert Coulson  
Executive Vice President  
American Arbitration Association  
140 W. 51st Street  
New York, N.Y.

Enclosure  
ABroches:cml

April 16, 1965

Hauptverband der Deutschen Bauindustrie E.V.  
Friedrich-Ebert-Anlage 38  
Frankfurt 6, A.M.  
Germany

Attention: Dr. Brenner

Dear Sir:

I am sending you enclosed a copy of  
the Convention on the Settlement of Invest-  
ment Disputes between States and Nationals  
of Other States which I think will answer  
your questions.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Enclosure  
ABroches:cml

April 15, 1965

U Thant  
Secretary-General of the United Nations  
United Nations  
New York

My dear Secretary-General:

As you know, the Final Act of the United Nations Conference on Trade and Development, adopted in June 1964, took note of the fact that the International Bank for Reconstruction and Development was then examining the question of the establishment of machinery for the settlement of investment disputes, and requested the Bank to submit the result of its studies and consultations to the United Nations. I send this letter in response to that request.

Some months after the close of the Conference, at the Annual Meeting of the Board of Governors of the Bank in September 1964, the Executive Directors of the Bank reported that they had considered whether it would be desirable and practicable to establish institutional facilities under the Bank's sponsorship for the settlement, through conciliation and arbitration, of investment disputes between States and nationals of other States, and had concluded that it would be desirable to do so, within the framework of an intergovernmental agreement. The Board of Governors thereupon requested the Executive Directors to formulate a convention establishing facilities and procedures for the settlement of such disputes, to be available on a voluntary basis, and directed the Executive Directors to submit the convention to the Bank's member governments.

On March 18, 1965, the Executive Directors approved the text of a Convention and accompanying report for submission to governments. I have transmitted these documents to each of the 102 member governments of the Bank, noting that the Convention is the result of detailed and careful study and deliberation over a period of years and recommending that it receive early and favorable consideration by governments. I now take pleasure in sending to you, with this letter, a certified copy of the Convention and, in addition, copies of the Executive Directors' report in the English, French and Spanish languages, to which the text of the Convention in these respective languages is attached.

April 15, 1965

The text of the Convention has been deposited in the archives of the Bank, as the depositary designated by the Convention. The Convention is open for signature on behalf of States members of the Bank, and also on behalf of any other State which is a party to the Statute of the International Court of Justice and which has been invited to sign the Convention by a two-thirds vote of the members of the Administrative Council constituted by the Convention, on which each Contracting State will be represented. No time limit has been prescribed for signature. The Convention is subject to ratification, acceptance or approval by signatory States in accordance with their constitutional procedures. It will come into force 30 days after the deposit of the twentieth instrument of ratification, acceptance or approval.

I am sure that you take satisfaction, as I do, in this significant further step to encourage and facilitate a greater flow of private capital to the developing countries, and that you share my hope that the Convention will soon become effective, enabling the procedures and facilities it offers to be made available to governments and investors.

Yours sincerely,

((Signed) George D. Woods  
George D. Woods

Encs. 4

SB

SBoskey/jk

April 14, 1965

Mr

Cleared with and copy to Mr. Broches

April 14, 1965

Your Ref: SR(900)  
251/1/4 Pt.II

Mr. Hashim bin Sultan  
Counsellor  
Embassy of Malaysia  
2401 Massachusetts Avenue, N.W.  
Washington, D. C. 20008

Dear Sir:

As requested by your letter of April 12, 1965,  
there is enclosed an extra copy of the Convention  
on the Settlement of Investment Disputes between  
States and Nationals of Other States.

Yours sincerely,

Donald D. Fowler  
Assistant Secretary

Enc.



LD:neb

April 13, 1965

Dear Mr. Rhyne:

Thank you very much for your kind letter of April 12.

I am particularly pleased that the Convention will be distributed by the World Peace Through Law Center since I had the privilege of speaking to the Athens Conference about the proposal which was then in a preliminary stage. Incidentally, it may interest you that a large proportion of the legal experts who attended the various regional meetings to discuss the Convention in draft form had been delegates to the Athens Conference.

I am glad to accept your invitation to serve as Rapporteur of the Panel Session on Transnational Trade and Investments at the September Washington Conference.

With personal regards,

Sincerely yours,

A. Broches

A. Broches  
General Counsel

Mr. Charles S. Rhyne  
World Peace Through Law Center  
400 Hill Building  
Washington, D. C. 20006

ABroches:cml

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WBG ARCHIVES

Personal

April 13, 1965

Dear Mr. Djuvara:

As you may remember, I was unable to attend the Third River Niger Conference because of a meeting in Washington which was held simultaneously for the purpose of examining a draft of a Convention on the Settlement of Investment Disputes. The work on the Convention has now been completed and you will probably have received copies of the text approved by the Executive Directors as well as of their Report. While Niger was not represented at the meetings of experts concerning this subject, I understand that the Government is sympathetic to the proposal. The Convention is now open for signature and I hope that Niger will become a party. If you should have any questions or desire any further information on the subject, I hope you will write to me.

With personal regards,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Neagu M. Djuvara  
Conseiller Diplomatique du  
Gouvernement de la République du Niger  
Niamey, Niger

ABroches:cml

April 13, 1965

Dear Mrs. Avramov:

I am sending you herewith a copy of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States together with a Report thereon of the Executive Directors of the International Bank. As you will see from that Report the approval of the text of the Convention was preceded by meetings of experts at which I had the pleasure of meeting our fellow lawyer Dr. Serb as well as Mr. Prazic.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mrs. Smilja Avramov  
University of Beograd  
Bulevar Revolucije 67  
Beograd, Yugoslavia

Enclosure

ABroches:cml



April 13, 1965


Vorort des Schweizerischen  
Handels-und Industrievereins  
Borsenstrasse 26  
Zurich, Switzerland

Attention: Prof. Pointet

Dear Sirs:

In accordance with the conversation  
which Mr. Jean-David Roulet of my staff  
had with Professor Pointet, I have sent  
you under separate cover 5 copies in  
English and 10 copies in French of the  
Convention on the Settlement of Invest-  
ment Disputes between States and Nationals  
of Other States.

Very truly yours,

  
A. Broches  
General Counsel

ABroches:cml



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> April 13, 1965	<b>Document Type</b> Letter			
<b>Correspondents / Participants</b> To: Mr. H.T. Parekh, General Manager, The Industrial Credit and Investment Corporation of India Limited From: Mr. Robert F. Skillings, Deputy Director, Development Finance Companies				
<b>Subject / Title</b> [Copies of the Convention on the Settlement of Industrial Disputes]				
<b>Exception(s)</b> Information Provided by Member Countries or Third Parties in Confidence				
<b>Additional Comments</b>		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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			

April 13, 1965

Dear Mr. Kutner:

Mr. Woods has asked me to reply to your letter of April 9, 1965.

On March 18, 1965 the Executive Directors of this Bank approved the text of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States. A copy of the Convention and of the accompanying Report of the Executive Directors is enclosed herewith.

You are quite right in saying that this Convention deals with the procedural aspects of investment disputes and does not purport to lay down rules of law for the treatment of foreign-owned property. It has been our judgment that it would be best to approach the problem first from a procedural angle, leaving the question of substantive treatment to be dealt with thereafter. I am glad to hear that you are making good progress on your proposed treaty statute and I hope you will keep me informed of your work in this field.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Luis Kutner  
Chairman  
Commission for International  
Due Process of Law  
105 W. Adams Street  
Chicago, Illinois 60603

cc: Mr. Woods  
ABroches:cml

April 12, 1965

Dear Ernst:

I am sending you enclosed a copy of the Convention on the Settlement of Investment Disputes on which, as you know, I have been working for the past few years. The text was approved by the Executive Directors last month and the Convention is now open for signature.

I look forward to seeing you on the 21st at eleven o'clock.

Kindest regards,

*S. R. Rosne*

Mr. Ernst H. van der Beugel  
Smidswater 1  
The Hague, Netherlands

Enclosure  
ABroches:cml

April 12, 1965

Dear Mitch:

Under separate cover 25 copies of the Convention in English are being dispatched to you in accordance with the request made in your letter of April 7. There is no charge for these copies and additional copies are available in reasonable quantities.

Best regards,

Sincerely yours,

*S/ Ronald Broches*

A. Broches  
General Counsel

Mr. Mitchell Brock  
Sullivan & Cromwell  
48 Wall Street  
New York 5, N.Y.

ABroches:cml

*P. O. for 25  
Copies 4/13/65*

April 9, 1965

Dear Don,

Yes, we can let you have as many copies of the  
Convention on the Settlement of Investment Disputes  
as you might need. I am accordingly asking our Mail  
Room to ship 200 copies to you, and should you need  
more in the coming months, please do not hesitate to  
let me know.

*see letter April 2*

Sincerely yours,

Harold N. Graves, Jr.  
Director of Information

Mr. Donald F. Heatherington  
Vice President  
NATIONAL FOREIGN TRADE COUNCIL, INC.  
10 Rockefeller Plaza  
New York, New York 10020

DRE/va



April 8, 1965

Dear Mr. Farley:

This is in response to your letter of April 1 ✓  
to Mr. Lind. A copy of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States was mailed to you a day or two after its release to the public (March 29), when we received the bulk supply, and I trust you have received it by now. However, another copy has been mailed on the offchance that yours was overlooked or misdirected.

Sincerely yours,

(Mrs.) Doris R. Eliason  
Office of Information

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

*ARC*

ROUTING SLIP

Date

April 12, 1965

OFFICE OF THE PRESIDENT

Name

Room No.

Mr. Broches

Action

Note and File

Approval

Note and Return

Comment

Prepare Reply

Full Report

Previous Papers

Information

Recommendation

Initial

Signature

Remarks

Please handle with copy of your  
reply to this office for record  
purposes.



G. D. Woods

Fro





# -WORLD HABEAS CORPUS-

APR 12 REC'D

x. ref. alpha - Kutner

## Commission for International Due Process of Law

Incorporated, STATE OF ILLINOIS

105 W. Adams Street, Chicago, Illinois, U.S.A. 60603

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... "The proponents of WORLD HABEAS CORPUS are therefore moving in the right path in insisting upon a discriminating and efficient general principle of law and method rather than a sovereign political authority as the basis of a world legal order."

ROSCOE POUND, *Dean Emeritus, Harvard Law School*

... "WORLD HABEAS CORPUS is a concrete program whereby the now only morally binding Universal Declaration of Human Rights would be made, by the voluntary consent of the nations of the World, a legally binding commitment enforceable in an International Court of Habeas Corpus which would function through appropriately accessible regional courts."

JUSTICE WILLIAM J. BRENNAN, JR., *United States Supreme Court*

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JUSTICE KOTARO TANAKA, *The International Court of Justice*

... "WORLD HABEAS CORPUS fulfills the demands of the United Nations Charter for respect of Human Rights and answers the problem of arrest and detention without Due Process of Law which is an abuse of ancient standing and modern exemption."

PROFESSOR QUINCY WRIGHT, *Former President, American Society of International Law*

April 9, 1965

Dear Mr. Wood: I have learned that you are in process of setting up a court for investors.

It has come to my attention that the proposed program offers no insurance of compensation to investors and that the machinery will be set up to settle disputes on a voluntary basis.

I call your attention again to WORLD HABEAS PROPRIETATEM.

I have been in touch with PAUL HOFFMAN. We have had many meetings, together with CHIEF ADEBO and we are now in the process of considering the final draft of a proposed TREATY-STATUTE.

I look forward to hearing from you. With all good wishes,

Sincerely yours,

LUIS KUTNER

LK:11  
Enc.

Mr. George Wood  
World Bank  
Washington, D.C.

ack. April 13, 1965

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

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B'NAI B'RITH  
United Nations Liaison  
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The Servants of India  
Society, Poona, India

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W. H. WHEELER, JR.  
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WORLD MOVEMENT FOR EFFECTIVE  
NATIONAL INDEPENDENCE  
AND FREEDOM

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Chief Justice of the  
Supreme Court of Japan  
OKA YOSHIOKI

Chairman of Congress of  
International Law, Japan  
INTERNATIONAL ASSOCIATION OF  
CRIMINOLOGY, Geneva, Switzerland

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1965 APR 12 AM 8:54

COMMUNICATIONS SECTION  
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# LAW JOURNAL

JUNE 1963

HABEAS PROPRIETATEM: DUE PROCESS FOR  
INTERNATIONAL INVESTMENTS: A  
PRIOR CONSIDERATION FOR  
INVESTMENTS ABROAD

By

LUIS KUTNER



Reprinted from  
Vol. 40, No. 5

To be cited as  
40 U. DET. L.J. 617

# HABEAS PROPRIETATEM: DUE PROCESS FOR INTERNATIONAL INVESTMENTS: A PRIOR CONSIDERATION FOR INVESTMENTS ABROAD

LUIS KUTNER\*

The international community of property and individuals has long earned the expectancy of international guaranty against unlawful seizures of property and arbitrary detention of individuals. This article is concerned with international guaranty of property by an international tribunal competent to safeguard property rights.

The antithesis between the western philosophical concept of private property rights and the Soviet Republic's concept of the same often results in international complications when one state nationalizes foreign-owned property within the nationalizing state (hereinafter referred to as the "host" nation). The accepted international principle is that a host nation has the right to nationalize the property of a foreign alien located within the state, but it can do so only with just, prompt, and effective compensation.<sup>1</sup> In spite of this well-recognized rule, there exists a failure by national courts and the international tribunals to resolve many of the problems realized by nationalizations of foreign property. As with personal rights on the international scene, the legislative silence of the national world community has permitted nations to exercise wide and singular control over their policies of property seizure. The confused, hesitating, and inarticulate manner in which mankind protects his person, property, and contract rights is indeed a blinding glare when reflected against the steel of cosmic rockets and the pragmatic-scientific conquest of outer space. When considering equitable governmentalization of person and property one finds the world in a lamentable condition.

This failure can well be exemplified by a brief mention of a few of the numerous controversial land reform programs. In addition to the Mexican,<sup>2</sup>

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\* Member, Illinois Bar; President, Commission for International Due Process of Law; Author, *WORLD HABEAS CORPUS* (1962); former Visiting Lecturer & Associate Professor of Law, Yale University; Lecturer, University of Chicago Law School and others; former Consul of Ecuador; Consul General for Guatemala.

The author acknowledges the assistance of Richard Schultz, LL.B., DePaul Law School.

1. Fachiri, *Expropriation and International Law*, 6 BRIT. YB. INT'L L. 159 (1925).

"International law and justice are based on the principle of equality between States. No state can exercise towards the citizens of another civilized State the 'power of eminent domain' without respecting the property of such foreign citizens, or without paying just compensation . . ." *Anglo-Iranian Oil Co., Ltd. v. Jaffrate (The Rose Mary)*, 20 Int'l L. Rep. 316, 326 (1953), quoting from *Norwegian Ships* case, 1922.

2. GORDON, *THE EXPROPRIATION OF FOREIGN OWNED PROPERTY IN MEXICO* (1941).

Cuban,<sup>3</sup> and the plethora of Soviet seizures,<sup>4</sup> history has recently been a witness to nationalization controversies in India,<sup>5</sup> Burma,<sup>6</sup> Iran,<sup>7</sup> Indonesia,<sup>8</sup> Ceylon,<sup>9</sup> Iraq,<sup>10</sup> Egypt,<sup>11</sup> and in many of the South American States.<sup>12</sup>

An international nationalization of property, where property is subject to unlawful seizure or ownership affectation by unilateral court decree, victimizes the economic benefit-assets of international commerce, investment, and transactions in general. Excess nationalism annihilates millions of individuals or arbitrarily detains or imprisons a single individual. Such is the melancholy confession of the inadequacy and barbarism of the international community.

#### THE ENIGMA CONFRONTING THE INVESTOR

The motives for nationalization are often complicated by ideological, social, and economic necessity,<sup>13</sup> but generally a state nationalizes for one or more of the following reasons: (1) The movement may be a social reform requiring a redistribution of land and industry; (2) It may be a political exploitation of the income-producing industries to finance the government and/or to eliminate capitalism; (3) The movement may be to reconstruct the state after a war or revolution; (4) It may be a nationalistic movement to oust a foreign nation that dominates a certain industry.<sup>14</sup> Underlying these motives are, perhaps, the antagonistic feelings of the host nation toward a foreign investor. The general trend of these feelings was perceptively analyzed by Mr. W. L. Thorp, Assistant Secretary of State: "[T]he foreign investor is an 'exploiter and not a contributor,' . . . his interest is not in local welfare . . . [his allegiance] is to a distant stockholder . . . when he has won the highest return possible he and his enterprise will withdraw."<sup>15</sup>

3. Nationalization Law, July 7, 1960, Gaceta Oficial (Cuba), translated in 55 AM. J. INT'L L. 822 (1961).

4. FRIEDMAN, EXPROPRIATION IN INTERNATIONAL LAW (1953).

5. Columbia University, Joint International Business Ventures in India, May 1959 (unpublished research project report).

6. FRIEDMAN, *op. cit. supra* note 4.

7. Oil Nationalization Law, art. 2-3, [1951] (Persia). See FORD, THE ANGLO-IRANIAN OIL DISPUTE OF 1951-52 (1954).

8. McNam, *The Seizure of Property and Enterprises in Indonesia*, 6 NETH. INT'L L. REV. 218 (1959).

9. Domke, *Foreign Nationalizations*, 55 AM. J. INT'L L. 585 (1961).

10. AMERICAN BAR ASSOCIATION, THE PROTECTION OF PRIVATE PROPERTY ABROAD 5 (1963) [hereinafter cited as A.B.A.].

11. THE SUEZ SETTLEMENT (Lauterpacht ed. 1960).

12. See LEWIS, THE UNITED STATES AND FOREIGN INVESTMENT PROBLEMS 155 (1948); THOMAS, *Protection of Property of Citizens Abroad*, in 1 INSTITUTE ON PRIVATE INVESTMENTS ABROAD 417 (Wilson ed. 1959).

13. Re, *The Nationalization of Foreign-Owned Property*, 36 MINN. L. REV. 323 (1952).

14. WHITE, NATIONALIZATION OF FOREIGN PROPERTY 18-31 (1961).

15. Woolsey, *The Problem of Foreign Investments*, 42 AM. J. INT'L L. 121 (1948), quoting William L. Thorp, Assistant Secretary of State.

Unfortunately, this antipathy toward the foreign investor does not take into account the truly important role that foreign investments are playing in the betterment of today's world. The increasing flow of international commerce not only is bringing about an improvement in the world's standard of living, but also, because it catalyzes nations to become interdependent, it is one of the instrumental factors in combating the cold war. The free flow of commerce is stimulated by investments in foreign countries and the presence of a modern industry in an underdeveloped area is a stimulant to economic and educational reforms.<sup>16</sup> Such investments are also an effective weapon in the struggle of the capitalistic nations against the increasing spread of communism.

International trade promotes understanding and creates closer ties. Beyond that, investment in the less developed foreign nations is designed to acquaint the peoples of these nations with the underlying vigor and creative power of twentieth century free enterprise, and thereby inoculate them against the want, injustices and poverty upon which Communism thrives.<sup>17</sup>

A few figures will show the extent to which United States citizens have invested abroad. By the end of 1961 the total of long-term private investments from the United States was over 34.7 billion dollars<sup>18</sup> and another 14 billion dollars in foreign bonds and securities were invested.<sup>19</sup> The amount of foreign investments is increasing at a rapid rate: In the first five years after the war the annual net out-flow of capital averaged one billion dollars; from 1950-1960 it averaged two billion per year; in 1960 and 1961 the average was nearly three billion.<sup>20</sup> It is clear that an enlargement and increased certainty of remedies of private property claimants is directly related to the gross world product. To the extent that the wealthy nations of the world are encouraged or discouraged to invest abroad, the less wealthy nations of the world which receive the foreign investments will either profit or suffer. Therefore, a world atmosphere encouraging foreign investments confers a substantial benefit upon the entire community of nations participating. "[D]iscrimination against foreign capital solely because it is foreign serves only to diminish world trade, employment, and well-being."<sup>21</sup> It is evident that it imperils world peace as well.

We are unable to estimate, of course, to what extent this "discrimination against foreign capital" by threat of confiscations and the like has deterred

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16. The United States Fruit Company has instituted extensive social and educational reforms in Latin America.

17. A.B.A. 1.

18. *Id.* at 4.

19. *Ibid.*

20. *Ibid.*

21. Woolsey, *supra* note 15.

foreign investment, yet we know that investors are cognizant of the risk. The flow of investment capital must not be interrupted by antiquated equitable fictions of nationalism. Without adequate and prompt restoration of title or reparation in money or negotiable securities for property seized wrongfully on the international scene, investments and business transactions otherwise made will continue to be stalemated—or in worse times, halted—by legitimate fears about the crushing resultant losses reasonably certain or expected “in the market.” Today the fear of risking a confiscation of foreign investment is predicated on reality, for numerous land reforms have been initiated since the Mexican and Russian revolutions.<sup>22</sup> “The movement has been general enough so that the threat of expropriation clearly is one of the risks that the investor has to consider in weighing the odds for and against the export of capital.”<sup>23</sup>

We have experienced numerous nationalization decrees on the South American Continent, in the Middle East,<sup>24</sup> in the Far East,<sup>25</sup> and in Soviet Europe. The danger of these movements to the betterment of the world must be countered by insuring the safety of foreign capital. Such a safeguard could be guaranteed by universal accord on the international principles governing nationalizations as well as accord in the court decisions of the different members of the international community. In the past there has been no such uniformity in the decisions of the national courts of different states.

#### FAILURE OF TRIBUNALS AND GOVERNMENTS TO ALLEVIATE THE THREAT

Although political and economic reasons comprise part of the basis for the failure to arrive at uniform decisions, the failure of the national courts to clearly define certain terms must be overcome before unanimity can be achieved. Judges, no matter what nationality, are prisoners of their language, “for law is a linguistic discipline, and the functions of words, which are the tools of lawyers, are of extreme importance to members of the bench and bar who want to perform their work in the most intelligent way.”<sup>26</sup> We must therefore have a clear understanding of the terms “nationalization,” “expropriation,” and “confiscation” before we can proceed. Writers uniformly agree that “nationalization” is the bringing of land, property, industries, etc. under the control of the nation.<sup>27</sup> “Nationalization” resembles confiscation if,

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22. See Doman, *Postwar Nationalization of Foreign Property in Europe*, 48 COLUM. L. REV. 1125 (1948).

23. LEWIS, *op. cit. supra* note 12.

24. Law, *Middle East Oil Operations*, in 1 INSTITUTE ON PRIVATE INVESTMENTS ABROAD 615 (Wilson ed. 1959).

25. FRIEDMAN, *op. cit. supra* note 4.

26. Hensen, *The Prospective Effect of the Uniform Judicial Code on Commercial Financing*, 1962 ILL. L.F. 349, 363.

27. See 7 OXFORD ENGLISH DICTIONARY 32 (1909).

in taking the property, compensation is inadequate.<sup>28</sup> It is expropriation if the taking is accompanied by adequate compensation.<sup>29</sup> Confiscation is that type of nationalization which makes no provision for adequate compensation<sup>30</sup> and expropriation is that nationalization providing for adequate compensation.<sup>31</sup> We may summarize then, by saying that to ascertain if the nationalization is confiscation or expropriation we need only determine if adequate compensation has been offered to the property owner. If confiscation is found, then the tribunal of the country other than the nationalizing state shall not, according to the principles of international law, give effect to the unlawful nationalization.

The international law concept of adequate compensation requires prompt, efficient, and effective payment for the seized property<sup>32</sup>; "the legality of an expropriation is in fact dependent upon the observance of this requirement."<sup>33</sup> In spite of the general acceptance of the international principle of just compensation, the courts of different countries have not satisfactorily resolved disputes revolving upon the definition. The Anglo-Iranian Oil Nationalization in 1951<sup>34</sup> provided for a deposit of up to twenty-five per cent of the normal current revenue from the oil after deduction of working expenses. The Act provided that, under the supervision of a mixed board, compensation would be paid after obtaining the approval of the two Houses of Parliament. Two claims that arose from the Iranian nationalization were the *Anglo-Iranian*

28. Sipkov, *Postwar Nationalizations and Alien Property in Bulgaria*, 52 AM. J. INT'L L. 469, 470 (1958).

29. *Ibid.* See Re, *supra* note 13.

30. 1 OXFORD ENGLISH DICTIONARY 808 (1888); 19 Dep't State Press Release 51 (1938).

31. 3 OXFORD ENGLISH DICTIONARY 449 (1897). See Doman, *supra* note 22; Thomas, *supra* note 12.

32. *Arabian Am. Oil Co. v. Saudi Arabia*, 6 NETH. INT'L L. REV. 233 (1959); *Arbitral Award Between Portugal and Germany*, 2 U.N. Rep. Int'l Arb. Awards 1035 (1930); *Spanish Zone of Morocco (Spain v. Great Britain)*, 2 U.N. Rep. Int'l Arb. Awards 618 (1925); *Chorzow Factory Case*, P.C.I.J., ser. A, No. 5 (1922); *Norwegian Shipowners' Claims (Norway v. United States)*, 1 U.N. Rep. Int'l Arb. Awards 307 (1922).

See also RESTATEMENT, FOREIGN RELATIONS LAW OF THE UNITED STATES § 190 (Proposed draft 1962); Doman *supra* note 22, at 1130; Fawcett, *Some Foreign Effects of Nationalization of Property*, 27 BRIT. YB. INT'L L. 335 (1950); Friedman, *Some Impacts of Social Organization on International Law*, 50 AM. J. INT'L L. 475, 505 (1956); Kunz, *The Mexican Expropriations*, 17 N.Y.U.L. REV. 327, 344 (1940); Re, *supra* note 13, at 328; Wortley, *Observations on the Public and Private International Law Relating to Expropriation*, 5 AM. J. COMP. L. 577, 591 (1956); Sohn & Baxter, *Convention on the International Responsibility of States for Injuries to Aliens* art. 10 (Draft Nov. 12, 1961), 55 AM. J. INT'L L. 548 (1961).

33. 2 DEP'T STATE BULL. 380 (1940). See Hull's note to the Ambassador of Mexico. *Anderson v. N. V. Transandine Handelmaatschappij*, 28 N.Y.S.2d 547 (Sup. Ct.), *aff'd*, 363 App. Div. 705, 31 N.Y.S.2d 194 (1941), distinguishes between a conservation and a confiscation.

34. See note 7 *supra*.



*Oil Co. v. Idemitsu Kosan Kabushiki, Kaisha*,<sup>35</sup> decided by the District Court of Tokyo and affirmed by the High Court of Tokyo, and the Aden Supreme Court's decision of the *Anglo-Iranian Oil Co., Ltd. v. Jaffrate*,<sup>36</sup> commonly called *The Rose Mary* case. The two Courts reached exactly contrary interpretations of the same nationalization Act. *The Rose Mary* case held that the Act was confiscatory while the Tokyo Court determined it to be an expropriation.

In *The Rose Mary* case the Court held that the Act is at most "no more than a suggestion that at some future time the matter of compensation may be considered. . . ."<sup>37</sup> The Court said that article 3 of the Act requiring the approval of the two Houses of Parliament of the rightful compensation means that they might not approve. Therefore, the court decided it can "only find to be true the plaintiffs' contention that expropriation has taken place without any compensation and that this is confiscation."<sup>38</sup>

The remarkable decision of the Tokyo courts in holding that the Act provided for adequate compensation and was therefore an expropriation will be quoted at length:

Evidence has been adduced by the respondents to show that the Iranian Government has already opened a deposit account with the Bank Milli, and has admitted that it is under an obligation to pay just compensation; further, it has expressed willingness to enter into negotiations concerning compensation. . . . However, the vastness of the rights and interests expropriated, the complexity and diversity of the interest involved, the extreme difficulty of the final assessment of compensation and the difficulty of prompt payment in the present case are unprecedented. In a special case like this, where disputes as to what is the fair amount of compensation are likely to arise, it would be unreasonable to expect immediate payment. . . . As to the question whether the Iranian Government has provided for compensation, the Court considers that the definite expression of intention to pay . . . combined with such a concrete preparation for payment as the opening of an account at a bank for the purpose of depositing money for compensation, should be regarded as compensation for expropriation.<sup>39</sup>

The Indonesian Nationalization of Dutch Enterprisers Act of 1958 is another example of the failure of courts to recognize the international law concept of adequate compensation. The 1958 Act provided "that payment

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35. 20 Int'l L. Rep. 305 (1953). See Thomas, *supra* note 12.

36. 20 Int'l L. Rep. 316 (1953).

37. *Id.* at 321.

38. *Id.* at 322.

39. *Anglo-Iranian Oil Co. v. Idemitsu Kosan Kabushiki, Kaisha*, 20 Int'l L. Rep. 305, 310-11 (1953).

be regulated by a separate act."<sup>40</sup> A German court held that the nationalization enactment was an expropriation because adequate compensation was provided. The court held:

Compensation could not be paid in full and promptly out of the substance, but only to be made out of the proceeds of the nationalized enterprises. Compensation as to time and amount must therefore be made in accordance with the conditions in the expropriating state. Thus *the long-standing principle of strong protection of private property clashes here with the modern concept that underdeveloped countries must be given the possibility of using their own national resources.*<sup>41</sup> (Emphasis added.)

The Austrian Supreme Court,<sup>42</sup> when confronted with a problem similar to that before the German court, held that a Hungarian decree transferring all the assets to national enterprise and providing for compensation to be paid—the terms of which were to be laid down by a subsequent act—was confiscatory, for the implementation of the promise is not probable.<sup>43</sup>

The problem is further aggravated by the contempt of many nations for the accepted rules of compensation. This can be demonstrated by repeated nationalization acts and unjustifiable demands. Guatemala's<sup>44</sup> and Mexico's<sup>45</sup> attempt to determine adequate compensation for the seized property by basing the value on a past taxation basis is not, by international law standards, an adequate compensation. In Egypt's decree, which nationalized the Suez Canal Company, the compensation was the value of the shares in the closing stock quotations of the Paris Stock Exchange on the day prior to the nationalization. The market, however, was affected by the imminent threats of nationalization.<sup>46</sup> In Bolivia's 1953 nationalization of three tin

40. McNam, *Nationalization of Dutch Enterprises Act of 1958*, 6 NETH. INT'L L. REV. 291 (1959).

41. Domke, *Indonesian Nationalization Measures Before Foreign Courts*, 54 AM. J. INT'L L. 303, 317 (1960). *Contra*, 29 DEP'T STATE BULL. 357 (1953). In discussing the 1952 Guatemalan expropriation it was recommended that consideration be given to:

The need for maintaining the flow of capital in conditions of security, mutual confidence, and economic cooperation among nations in the exercise of the right freely to use and exploit their natural wealth and resources. As is well known, the undermining of confidence on the part of foreign investors is a direct result of Guatemala's expropriation of foreign owned property. Domke, *supra*.

42. Danuua Feinmechanische und Werkzrus Fabrik Nationalum Ternehmen v. Seiberth Austria, 21 Int'l L. Rep. 38 (1954).

43. Naturalization Decree, art. 25, para. 14, [1948] (Hungary).

44. 29 DEP'T STATE BULL. 357 (1953). In 1952, Guatemala seized a division of the United Fruit Company.

45. 43 TRANSACT. GRO. SOC'Y 15 (1957). See DUNA, THE DIPLOMATIC PROTECTION OF AMERICANS IN MEXICO 332 (1933); Domke, *supra* note 9; Editorial Comment, *Confiscatory Expropriation*, 32 AM. J. INT'L L. 759 (1938).

46. Domke, *American Protection Against Foreign Expropriation in the Light of the Suez Canal Crisis*, 105 U. PA. L. REV. 1033, 1040 n.46 (1957):

International Chamber of Commerce Resolution of Oct. 22, 1956, Doc. No. 100/72, likewise declared that "the seizure of the Suez properties without notice or negotiation is certain to weaken the confidence of businessmen in the guarantees

companies, Bolivia first offered to pay one third of the value of the nationalized mines and then levied a bill for over seven times their value, claiming the amount represented illegal past profits. It was not until the United States agreed to double its foreign aid and purchase a minimum amount of tin at an agreed minimum price in receipt for a percentage of the revenue as payment for the seizure, that Bolivia capitulated.<sup>47</sup> In 1960 The United Arab Republic nationalized Belgian property interests in Egypt without compensation because Belgium, it was alleged, was instrumental in causing the termination of diplomatic relations between the Republic of Congo and the United Arab Republic.<sup>48</sup>

The ever-evolving civilization of man has to a large degree sophisticated the ways and means by which nations or their agents confiscate private property. This sophistication, unfortunately, has clouded and often fully overshadowed the essential fact that the confiscation or "expropriation" amounts to theft. International tensions and tight-rope conflicts, such as the past and present antics of Cuba's Fidel Castro, tend to mushroom over the basic theft element. Particularly is this true when, as in the case of Cuba, one-hundred year one per cent bonds are given to the aggrieved party in "exchange" for stolen property. The bonds "in exchange," while of no value inside or outside of Cuba, seem to lend a certain air of respectability to the theft. A more dignified term, confiscation or "expropriation," is used. And so the international community is less outraged and soothes itself by contemplation of settlement of individual claims at some future time.<sup>49</sup>

The Cuban Nationalization Act of 1960, which the United States contends to be confiscatory in that it totally defies international law principles, while the Cubans maintain its legality, reads as follows:

Article 4: . . . [T]he President . . . and the Prime Minister shall appoint the experts they deem proper for the evaluation of the expropriated properties . . . .

Article 5: . . . . (A) The payment shall be made in bonds of the Republic of Cuba . . . . (B) For the amortization of said bonds and as security thereof the Cuban state shall form a fund which will be made up annually by twenty-five percent (25) of the foreign exchange corresponding to the excess of the purchase of sugars in each calendar year by the United States of America over three million (3,000,000) long Spanish tons for internal consumption

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of the Egyptian Government and all governments which condone this action. Unless this confidence is restored, the development of all countries where investment capital is needed may be postponed for many years."

47. Thomas, *supra* note 12, at 437-38.

48. N.Y. Times, Dec. 2, 1960, p. 8, col. 8.

49. Graving, *Shareholder Claims Against Cuba*, 48 A.B.A.J. 226 (1962). Nearly all of the \$1,250,000,000 American privately owned property was confiscated by Castro. Christian Science Monitor, June 9, 1960, p. 4c, col. 1.

and at a price not under 5.75 cents of a dollar . . . . (E) The bonds shall be amortized in a period of not less than thirty (30) years . . . .

Article 6: Against the resolutions which the President . . . and the Prime Minister may issue in the expropriation proceedings to which this law refers, no appeal shall be allowed.<sup>50</sup>

It is apparent that though the authorities may agree that adequate compensation must be paid by the host country; that adequate compensation is the fair market value, unaffected by the taking; that the payment be prompt or, if bonds are given, a reasonable compensation be promptly paid; and that the bonds pay a reasonable rate of interest over a reasonable period, a uniform determination of the meaning of prompt, effective, and adequate payment<sup>51</sup> has not been adopted by our tribunals. Moreover, many nations have flagrantly violated the principles by unlawful nationalization acts and unwarranted demands.

Realizing that nationalization will continue as long as we have political and social instability, it is imperative that we correct the present maladies by employing a method of protecting foreign investments from unlawful seizures if we are to stimulate a free flow of international commerce.

#### ATTEMPTED REMEDIES

Anyone who undertakes a search for the principles of international law cannot help but be aware of the nebulous nature of the substance we call international law. . . . The lack of effective international remedies doubtless contributes to this state of affairs.<sup>52</sup>

Numerous methods of remedy have been attempted by various governments and international organizations to protect foreign investors and relieve international tensions resulting from confiscatory nationalization programs. Settlement by use of local remedies, diplomacy or diplomatic protest, *ad hoc* arbitration, suspension of foreign aid,<sup>53</sup> economic embargo by one or a bloc

50. Nationalization Law, July 7, 1960, Gaceta Oficial (Cuba), translated in 55 AM. J. INT'L L. 822, 823-24. In *Banco Nacional de Cuba v. Sabbatino*, 307 F.2d 845 (2d Cir. 1962), the court refused to recognize this law under principles of international law.

51. *Anglo-Iranian Oil Co., Ltd. v. Jaffrate*, 20 Int'l L. Rep. 315, 322 (1953); Sohn & Baxter, *Responsibility of States for Injuries to the Economic Interests of Aliens*, 55 AM. J. INT'L L. 545 (1961). Article 14 of the Basic Law provides: "The compensation is to be determined in a just balancing of the interests of the community and the parties. In the case of dispute, the regular courts are open for the determination of the extent of the compensation." Baade, *Indonesian Nationalization Measures Before Foreign Courts—A Reply*, 54 AM. J. INT'L L. 801 (1960). Baade distinguishes there between the right of compensation and the right of restitution. 2 WHITMAN, *DAMAGES IN INTERNATIONAL LAW* 919 (1937), lists twelve elements of damage.

52. *Banco Nacional de Cuba v. Sabbatino*, 307 F.2d 845, 860-61 (2d Cir. 1962).

53. Note, *Foreign Seizure of Investments: Remedies and Protection*, 12 STAN. L. REV. 606 (1960); 22 U.S.C.A. § 2370(e)(1) (Supp. 1962) provides:

of nations, and use of force<sup>54</sup> has resulted in only scattered success.<sup>55</sup> The effectiveness of the International Court of Justice is limited by article 36 and emasculated by the relatively few states that have submitted to compulsory jurisdiction. Article 36 of the statute of the court provides for jurisdiction in only those cases in which the individual state submits by treaty on an *ad hoc* basis or by an acceptance of compulsory jurisdiction. Of a total of 107 members, only thirty-eight have accepted compulsory jurisdiction,<sup>56</sup> seven of which impose restrictions such as the Connally Amendment passed by the United States Congress.<sup>57</sup> The bill accepts compulsory jurisdiction with the reservation that the United States, instead of the International Court, will determine if the issue is an internal matter, and hence without the jurisdiction of the International Court. In 1955 France had a Connally-type reservation and Norway had no restriction. Norway took advantage of France's reservation and successfully pleaded defensively that the matter was a domestic one and without the International Court's jurisdiction.<sup>58</sup> "The present difficulty in surmounting jurisdictional problems indicates that an individual should not rely on the chance of having his state argue on his behalf at The Hague."<sup>59</sup>

Diplomatic routes can be effective for resolution of private property injuries only if the nations involved are, either directly or indirectly, diplomatically responsive to each other. In the case of American property seized in Cuba, resolution of private property rights is insoluble at the present time because of a break-off of diplomatic relations between the two countries. Individuals (and, of course, corporations directly) suffer irreparable losses as a result. And so the melancholy lamentation.

In contrast to the Cuban situation is the seizure of foreign properties in Ceylon, where the Ceylon Government seized British and American oil

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The President shall suspend assistance to the government of any country to which assistance is provided under this chapter when the government of such country . . .

(1) has nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum beneficially owned by United States citizens . . . .

54. U.N. CHARTER art. 2, para. 3 prohibits any forceful measures.

55. Note, *supra* note 53, at 615-27.

56. ROSENE, *THE WORLD COURT: WHAT IT IS AND HOW IT WORKS* (1962); Layton, *The Dilemma of the World Court: The United States Recognizes Compulsory Jurisdiction*, 12 STAN. L. REV. 323, 335 n.54 (1960). The U.S.S.R. has not conceded any jurisdiction of the World Court.

57. Kutner, *World Habeas Corpus—A Legal Absolute for Survival*, 39 U. DET. L.J. 279 (1962); U.S. Recognition of the Compulsory Jurisdiction of the International Court of Justice, Aug. 14, 1946, T.I.A.S. No. 1958; Harbro, *Some Observations on the Compulsory Jurisdiction of the International Court of Justice*, 25 BRIT. YB. INT'L L. 33 (1948).

58. Young, *Remedies of Private Claimants Against Foreign Study*, 3 INSTITUTE ON PRIVATE INVESTMENTS ABROAD 45, 72 (Wilson ed. 1961).

59. Note, *supra* note 53, at 614.

interests without compensation. When the United States warned that American aid to Ceylon, 1.3 million dollars in technical assistance grants, and a 3 million dollar loan, would be terminated unless two American companies, Standard Vacuum and Coltex, received prompt and adequate compensation for their facilities seized, Ceylon's Finance Minister P. G. B. Kalugalle announced that his Government "decided" to compensate the foreign companies and ordered negotiations with them. The Ceylon situation illustrated leverage diplomacy at work.<sup>60</sup> The result was: recognition of private property rights and the increased security of international investment.

*But for* diplomacy, the victims of the foreign seizures in Ceylon might be denied any effective relief by application of the principles of sovereign immunity and the Act of State Doctrine. Judicial relief in situations has been effectively denied in the past.<sup>61</sup> One cannot help bear cold hostility toward a principle which leaves the injured remediless.<sup>62</sup>

Due process of property rights will best be served if compensation is made to individual property owners who have suffered loss of property at the hands of national policy *because* they were owners,<sup>63</sup> *because* their property rights merit both international and intranational respect, and *not* because the diplomatic relations of particular nations at some point of time happen to dictate respect for property rights.

Nor has the Permanent Court of Arbitration<sup>64</sup> been effective machinery in settling international disputes. In 1907 an abortive attempt was made to force a form of compulsory arbitration in certain disputes.<sup>65</sup> The fact that the court made only twenty awards from 1902 to 1950,<sup>66</sup> and that its most recent case was *France v. Greece*, decided in 1956,<sup>67</sup> indicates it is not presently an effective tribunal for resolving international property claims.<sup>68</sup>

Treaties, too, have proved inept. After a very comprehensive analysis of the United States treaty provisions dealing with expropriation of property,

60. See address by Professor Louis B. Sohn, American Society of International Law Regional Meeting in New York, March 2, 1962:

Those countries which do not want private investment are usually those countries which do not want to give guarantees to private investment, and as a result they insist that they want to get public loans. To me the idea should be just the opposite. Public loans should be given to those countries which are willing to treat investments properly.

See also Edwards, *The Internationality of Economic Interests*, 111 U. PA. L. REV. 183 (1962).

61. U.S. DEP'T OF COMMERCE STATISTICS BULL. No. — (Jan. 1, 1963).

62. Note, 75 HARV. L. REV. 1607 (1962).

63. Wortley, *The Protection of Property Invested Abroad*, 35 TUL. L. REV. 739, 766 (1961).

64. Convention With Other Powers on International Arbitration, Feb. 28, 1910, 36 Stat. 2199, T.S. No. 4563.

65. SIMPSON & FOX, INTERNATIONAL ARBITRATION 14 (1959).

66. 2 OPPENHEIM, INTERNATIONAL LAW 39-46 (Lauterpacht ed. 1952).

67. 23 Int'l L. Rep. 659 (1956).

68. Individual states have instituted many postwar arbitration tribunals. SIMPSON & FOX, *op. cit. supra* note 65, at 34.

the American Bar Association Committee on International Trade and Investment concluded:

That the provisions applicable to expropriation do not prohibit that act as such, and the broad generalities of even the expanded language could lead to disagreement on rights and values. With respect to the reparation of capital, the provisions in the treaties since 1945 attempt to protect earnings and capital transfers, but ultimately leave the discretion to the host country. It is, therefore, difficult to conclude that these provisions actually guarantee against expropriation or that the foreign investor will be able to re-transfer his capital and earnings from the foreign country . . . . *In light of the broad language and inevitable escape clauses, combined with the political questions involved in a determination whether to expouse a national's cause, the investor's rights are inherently subject to a significant degree of uncertainty.* This is especially so since his rights may vary from nation to nation, not on the nature of his investment but depending on the nature of the treaty in force there.<sup>69</sup> (Emphasis added.)

A relatively new method of protecting foreign investors from foreign confiscations is a government guarantee to its nationals who invest capital in foreign states. The investment guarantee program of the Mutual Security Act of 1954<sup>70</sup> provides that the investor pay a low rate<sup>71</sup> for a guarantee of adequate compensation if his property is seized by the foreign state and no just compensation is tendered or given. However, the purpose of the insurance program is to aid underdeveloped countries<sup>72</sup> and it is only incidental to this goal that investments are protected. Consequently, the restrictions placed on the guarantee are not directed at stimulating foreign investment. The maximum insurance of one billion dollars (the limit prior to 1962)<sup>73</sup> is restricted to investments in certain countries that approve the program;<sup>74</sup> the country must be underdeveloped and the investment must not have been previously established or it must be an expansion of an existing investment

69. A.B.A. 53.

70. Section 413, 68 Stat. 846 (1954), as amended, 22 U.S.C. § 1933 (1958), as amended, 75 Stat. 460 (1961), 22 U.S.C. § 1933 (Supp. III, 1962).

71. One-half of one per cent for each of the three types of coverage.

72. Act for International Development of 1961, § 601, 75 Stat. 438 (1961), 22 U.S.C. § 2351 (Supp. III, 1962). "[T]o facilitate and increase the participation of private enterprise in furthering the development of the economic resources and the productive capacities of less developed friendly countries and areas . . . ." Act for International Development of 1961, § 221(a), 75 Stat. 429 (1961), 22 U.S.C. § 2181(a) (Supp. III, 1962).

73. Act for International Development of 1961, § 221(b) (1) (C), 75 Stat. 429-30 (1961), 22 U.S.C. § 2181(b) (1) (C) (Supp. II, 1961), amended by 76 Stat. 255-56 (1962), 22 U.S.C. § 2181 (Supp. III, 1962) which increased the guaranties minimum to \$1,300,000,000.00. As of September 30, 1962, 564.7 million dollars in guaranties had been issued. See also A.B.A. 25.

74. As of November 30, 1962 forty-six underdeveloped countries had agreed.

in which case the guarantee is limited to the extent of the expansion. Hence, though the act, as intended, may effectively improve the underdeveloped countries, the present restrictions proscribe a solution to the world's need for protection of all private foreign investments.

Multilateral insurance programs for foreign private investment through international organizations are presently being considered.<sup>75</sup> These programs require only a small contribution to the general reserve by each participating nation and an equally inexpensive premium paid by the private investor. The various contributions and reserve commitments by the nations vary according to the wealth of the nation and the benefits it derives under the plan. The international organization promptly pays the insured investor out of the fund consisting of contributions and investors' premiums of the participating nations. The organization is then subrogated to the investor's rights against the host state. It is anticipated that a multilateral insurance program will give impetus to the growth of private international investment. The advantages of such a program are outlined by the Committee of International Trade and Investment of the American Bar Association which states that it could provide for uniform coverage for investments in numerous foreign countries; the risk of loss may be spread over a greater number of countries; the losses resulting from confiscation of property will likely be reduced; and most important is the possibility that the developing of legal order and uniformity may be enhanced.<sup>76</sup>

However, the multilateral insurance proposals are not an ultimate solution to the problem; they serve only as temporary substitutes for our existing deficiencies and, hopefully, perhaps as a vehicle for improving our legal protection against illegal seizures. The programs are merely transient devices geared to immediately stimulate increased foreign capital investment. The Committee concludes that the proposals be presently advocated only as an *alternative* and should not be resorted to until attempts to arrive at suggested legal safeguards do not satisfactorily progress.<sup>77</sup>

#### PROPOSED HABEAS PROPRIETATEM

Heretofore, no single remedy or combination of remedies has successfully relieved the investor from the threat of an unlawful seizure of property owned in foreign states. The obstacles which existing remedies have failed to overcome are three-fold. First, the states have not formally agreed on the generic international rules of law. Second, they have failed to uniformly interpret those rules that they have ostensibly agreed upon. Third, their courts are often unable to effectively enforce their orders in cases where

75. See A.B.A. 114-29 for a discussion of six of twelve pending proposals.

76. *Id.* at 124-27.

77. *Id.* at 128-29.



jurisdiction is not conferred by treaty. It is submitted that the first obstacle can be overcome if an organization of states would ratify an acceptable declaration of the fundamental rules of international law dealing with property rights. A uniform interpretation of these rules would be achieved if the states also consented to the jurisdiction of an international tribunal which would primarily adjudicate only those cases involving alleged breaches of the multilateral covenant. The final barrier would be surmounted by the unified states' organized exertion of bloc pressure to enforce the orders of the court.

The first step, then, is to arrive at certain fundamental principles of international law which must be multinationally agreed upon before we can begin to alleviate the dilemma facing private investors. The International Court must have delimited, in treaty form, the substantive requirements of due process of property rights. The following credo is merely a restatement of the fundamental tenants of international law which have been recognized, in the abstract at least, by the courts of all civilized countries.<sup>78</sup> They are some of the principles suggested by the Organization for the Economic Cooperation and Development (O.E.C.D.) in the *Draft Convention on the Protection of Foreign Property*.<sup>79</sup>

No country shall take any measures depriving, directly or indirectly, of his property a national of another country unless the measures are taken in the public interest and under international due process of law. "National" shall include both natural persons and companies. "Property" means all property, rights and interests, whether held directly or indirectly, including the interest which a member of a company is deemed to have in the property of the company.

Nor shall property be taken by any measures which are discriminatory or contrary to any undertaking which the taking country may have entered into.

Such taking of property must be accompanied by provision for the payment of just compensation. Such compensation shall represent the genuine value of the property affected, shall be paid without undue delay, and shall be transferable to the extent necessary to make it effective for the national entitled thereto.

The above principles may be reasonably violated if such country is involved in war, hostilities or other grave public emergency of a nation-wide character provoked by unforeseen circumstances or threatening its essential security interests.

To avoid negation of these due process requirements it is suggested that at least the following requirements be set out in treaty form. (1) A

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78. Cf. authorities cited note 32 *supra*.

79. Reprinted in full in A.B.A. 59-113. (Copies of the "Draft" are available at the office of the Organization for Economic Development in Washington, D.C.)

hearing should be held to determine the reasons for a seizure. (2) The individual should have the right to present reasons why his property should not be seized. (3) The individual should have the right to the aid of an interpreter, and, if not a citizen of the seizing state, the right to receive any aid provided by his home government.<sup>80</sup>

In general, the duty of a nation under the above essential constituents of international law is to ensure fair and equitable treatment to the property invested by nationals of the other countries. Countries must accord within their territory the most constant protection and security to such property and shall not in any way impair the management, maintenance, use, enjoyment, or disposal thereof by unreasonable or discriminatory measures. These principles constitute the most fundamental rules of international law. Consequently, it should not be too difficult to obtain consent from any nation that is concerned with the pressing problem of protecting foreign investment. Ratification could either be secured through a convention such as the O.E.C.D. or by a formal consent to the following proposed treaty-statute.

It is submitted that an International Court of Habeas Corpus would be most effective in achieving a uniform interpretation of the legal principles adopted by the participating states.<sup>81</sup> The author has previously set forth a blueprint for an International Court of Habeas Corpus.<sup>82</sup> The court machinery will consist of one Court of Review and nine international circuit tribunals. The Court of Review will be composed of nine justices—each of whom will be selected from one circuit. Each of the tribunals will have equal jurisdiction within its respective territories. Two jurists from each signatory state will preside over the circuit tribunal having jurisdiction over their state.<sup>83</sup>

The parties would voluntarily submit the dispute to the International Court of Habeas Corpus either by ratification or *ad hoc* accession to its jurisdiction. The petition would state which covenant of the convention had been abridged and that all local remedies had been exhausted or that there were no such remedies available. The Court would then issue a show cause order to the host state as to why a writ should not issue. The state's return must show a legally sufficient cause by stating compliance with the stipulated rules. If the answer fails to show cause within ten days or the return is legally

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80. The treaty-statute was proposed at the meeting of the American Bar Association, Section of International and Comparative Law Section, Miami Beach, August 25, 1959.

81. The nine circuits would be: (1) Communist Orient, (2) U.S.S.R., (3) Western Europe, (4) Anglo-American, (5) Latin America, (6) Southern Africa, (7) Austral-Oceania, (8) Islamic States, (9) Non-Communist Orient.

82. Meeting, A.B.A., International and Comparative Law Section, Miami Beach, August 25, 1959.

83. For a full analysis of the court structure see Kutner, *Habeas Proprietatem: An International Remedy for Wrongful Seizures of Property*, 38 U. DET. L.J. 419 (1961).

insufficient, then the Court will issue the writ of habeas proprietatem ordering the state to produce the title, or proof thereof, to the Court which will hold a hearing to decide the merits of the case.

The hearing would not adjudicate matters of assessments of damages, for the scope of the Court's jurisdiction would be to determine only whether the host state's nationalization complied with international due process of law as enunciated by the aforementioned ratified principles of international law. All matters dealing with determining the amount of compensation would be transferred to an *ad hoc* international tribunal. It can be anticipated that full payment in gross, upon the tribunal's award, will seldom be possible. Therefore, payment of the award could be required in *negotiable* bonds, bearing a *negotiable* internationally acceptable interest rate and term, running for not more than say approximately twenty years. The value of the bonds would have to be measured against a stable money economy so that the claimant would receive protection against inflation. At the same time, the respondent would be protected against paying excessive damages in the event of an increase in purchasing power of the money standard in which payment is ordered to be made. Full compensation could be required by the tribunal within a short time period based upon a workable formula based on the gross income of the seizing nation. If the return of the property is not feasible, or if the question of "damages," *i.e.*, just compensation, is in issue, the tribunal would then assess damages and other payment. Carefully determined appraisal or value standards for the international assessment of property value would be established by court rule or would be incorporated in the treaty-statute creating the international tribunal. Monetary value should be measured upon some stable money commodity, such as the dollar, the Swiss franc, or gold.<sup>84</sup>

The Court would have the power to issue three types of orders. (1) The Court could declare that the seizure is unlawful and it could negate the state's seizure by returning the title to the petitioner. If there were any losses incurred while the host state was in unlawful possession, an *ad hoc* tribunal could order an accounting.<sup>85</sup> (2) The Court may adjudicate that the seizure

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84. In an address, Professor Louis B. Sohn, American Society of International Law Regional Meeting in New York, March 2, 1962, stated that:

It is in the general interest of the international community to have clear standards, generally accepted standards, and to have them applied impartially by an impartial tribunal. If underdeveloped countries are not willing to accept impartial tribunals and international standards, they are going to discover that there is not going to be investment in them, and as a result, their development is going to suffer.

85. The problem under consideration by no means involves merely providing adequate compensation for seized property. Property seizure may be economically wrong even if adequate compensation is offered and paid. The recent Brazilian seizure of Companhia Telefonica Nacional, a subsidiary of International Telephone & Telegraph of New York, prompted the following statement from our State Department:

We acknowledge the right of a government to expropriate property belonging to nationals of other countries for public purposes if provision is made for the payment of prompt, adequate and effective compensation.

is lawful except for the confiscating nature and remove the proceedings to an *ad hoc* tribunal to fix adequate compensation. (3) Finally, the Court may find in favor of the host state holding that it complied with all the articles of the convention.<sup>86</sup>

The International Court of Habeas Corpus would provide a great improvement over existing remedies in that many states would be more readily induced to consent to submit to its jurisdiction because the Court would not be asking for a consent to a general jurisdiction to which many states, including the United States,<sup>87</sup> are reluctant to submit; it would be requesting only a limited jurisdiction to hear confiscation allegations to which nations will be less reluctant to concede. The principle of *stare decisis*, fundamental in the federalist system, has promoted comity between the states and the federal court in respect to jurisdiction which may otherwise be overlapping and conflicting. It can be assumed that this comity can also be achieved between nations and the International Court by application and the cumulation of precedent case histories.

The requirement of exhaustion of available local remedies would be an attractive provision to the signatory states. Furthermore, because the non-submitting nations will find it difficult to stimulate foreigners to invest in their industry, they would be encouraged to participate in the agreement. The fact that the circuit courts are composed of judges selected from the states constituting the circuit will remove the fear of alien intervention and will encourage acquiescence to the treaty.

Because the Court's jurisdiction will be limited only to the international writs of habeas corpus and habeas proprietatem, it is anticipated that from intensified concentration on these problems a uniform application of the international law principles will evolve. Appeals to the Court of Review would help insure this result. In time, after the Court had clearly defined international law concepts relating to property rights and the *ad hoc* tribunals

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However, when a government expropriates existing resources or uses its own funds to create existing operations, rather than using those funds to create new wealth, new jobs and new taxpayers and to increase productivity, this action appears to be a step backward. DEP'T STATE BULL. No. — (Jan. 1, 1963).

Thus the problem encompasses the power of a nation to arbitrarily expropriate property when no public purpose, or no bona fide public purpose, exists. When a nation invites foreign investors to participate in the economy of that nation, the invitee should be protected by certain rules of fair play which protect both investor as well as the invested nation. The problem of fair compensation was also present: a \$100,000 "indemnity" was offered for property valued by the company at \$6,000,000 to \$8,000,000.

86. For a discussion of the World Court of Habeas Corpus see Kutner, *Habeas Proprietatem: An International Remedy for Wrongful Seizures of Property*, 38 U. DET. L.J. 419 (1961); Kutner, *The Case for an International Writ of Habeas Corpus: A Reply*, 37 U. DET. L.J. 605 (1960); Kutner, *World Habeas Corpus for International Man: A Credo for International Due Process of Law*, 36 U. DET. L.J. 235 (1959); KUTNER, *WORLD HABEAS CORPUS* (1962).

87. See the Connally Amendment, 61 Stat. 1218, T.I.A.S. No. 1598 (1946).

had established uniform criterion for determining adequate compensation, litigation would decrease because states would be cognizant of the international principles and be reluctant to violate them. Moreover, the individual would be given the right to appear before the Court without requiring his state to represent him. This right would not only decrease the interstate conflict which exists when a state is the petitioner against the host state, but it would engender an international recognition of the fundamental rights of the individual.<sup>88</sup>

Finally, the enforcement of the order of the Court and the *ad hoc* international tribunal's award could be accomplished by employing a number of alternatives. First, however, it must be pointed out that it is seldom that a state refuses to abide by a decision of a court that is recognized by a treaty.<sup>89</sup> The orders of the Court could be enforced without the aid of specific enforcement procedures other than court decree.<sup>90</sup> Traditionally, arbitral boards, special international courts, the old Permanent Court of International Justice, and the International Court of Justice have made their orders effective without a system of extrinsic enforcement.

Because the International Court of Habeas Corpus would be grounded upon treaty between the member states and, as one authority in international law has declared, "treaties are more regularly and more honestly observed than violated . . .,"<sup>91</sup> the Court's orders would have efficacy. "Seldom has a State refused to execute the decision of a court which it has recognized in a treaty. The idea of law, in spite of everything, still seems stronger than the ideology of power."<sup>92</sup>

The sanctity of pacts (contracts-treaties) is an essential cog in the ever-rotating life-wheel of national communities. The roots are deep. The principle is aged, first developed in the East by the Chaldeans, the Egyptians, and the Chinese, when each contract was bound up in rituals, in the name of natural gods.<sup>93</sup> The divine command was reflected in religions and in all commercial areas of the world: The Koran and Mediterranean trade, Christianity and St. Augustine, the Christian Knights of the Middle Ages, the

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88. See Leighton, *The Rights of Man in the World Community: Constitutional Illusion Versus Rational Action*, 59 YALE L.J. 60 (1949); Bergman, *The Communal Concept of Law*, 57 YALE L.J. 55 (1947).

89. Kelsen, *Compulsory Adjudication of International Disputes*, 37 AM. J. INT'L L. 400 (1944).

90. Kutner, *The Case for an International Writ of Habeas Corpus: A Reply*, 37 U. DET. L.J. 605, 606 (1960).

91. BRIGGS, *THE LAW OF NATIONS* 20-21 (2d ed. 1952).

92. Kelsen, *supra* note 89.

93. Kutner, *World Habeas Corpus—A Legal Absolute for Survival*, 39 U. DET. L.J. 279, 293 (1962); Wehberg, *Pacta Sunt Servandi*, 53 AM. J. INT'L L. 775, 778 (1959). See editorial entitled "A Court for Human Rights," N.Y. Times, Aug. 9, 1962, p. 24, col. 1: "If the system worked even with a limited number of nations, it might influence countries where individual rights are not now respected."

Renaissance and Reformation, Thomas Aquinas, Jean Bodin, Hobbs, Spinoza, and countless others. This, of course, is not to say that in every case the Court's decree would be unhesitatingly obeyed. Suitors in the American judicial system are often left with unsatisfied judgments.

But due process for international investments must begin somewhere. The treaty-statute would empower the Court to make rules to enforce its judgments. Citation and execution procedures could be established and enforced by the Court. A common law of international due process of property rights would begin to flourish. As the security of individual property rights is strengthened, so, too, will the security of international investments. Private property *rights* "abroad" will be drafted in new dimensions. The result will be an international confidence in individual property rights and infinite potential for world economic growth.

Because the parties to the International Court of Habeas Corpus will have submitted by a similar instrument and because each state is jealously interested in protecting its own investments abroad, cognizant that a violation by one state will jeopardize the entire compact, it can be expected that the signatory states will enthusiastically band together to enforce the Court's decree. Therefore, the tremendous psychological force of their unanimous opinion could force capitulation by a reluctant state. If a state still refused to comply with the decree, the Court could order attachment of the host's property located within the territories of the signatory nations. In extraordinary circumstances, where the seizure is a flagrant confiscation, the parties to the convention could induce compliance with the Court decree by initiating an economic embargo against the host state.

#### CONCLUSION

While this work is by no means intended to present an exhaustive analysis of the inherent problems of foreign confiscations and a panacea thereto, it is intended to encourage and to point the way to a workable remedy to the existing enigma which not only threatens to impede our economic prosperity, but our political stability as well. An international tribunal for the adjustment of property disputes is an attempt to preserve traditional values of individual rights in property by a means which is itself traditional, *i.e.*, judicial procedure, and which is revolutionary, if at all, only insofar as it does not now exist at the international level. The international tribunal is not proposed as a complete substitute for consultation, arbitration, or other methods of settlement of disputes between countries or individuals and a foreign state, as has been suggested.<sup>94</sup> Rather, it is intended as a really effective supplement to existing means of settling these disputes when the existing means

94. Kopelmanas, *The Settlement of Disputes in International Trade*, 61 COLUM. L. REV. 386 (1961).

break down.<sup>95</sup> It is intended to fill a gap, not to displace what nations and claimants already have. If this is kept in mind, there would seem to be no cause to pessimistically abandon the progressive steps which have been taken toward establishment of an international court competent to administer due process of personal and property rights.

By adopting the International Court of Habeas Corpus and employing the writ of habeas proprietatem we could make the first important step toward overcoming the existing ineptness in successfully combating unlawful foreign seizures. A multi-purpose international tribunal, with accessible regional courts, would contribute vitally to the fulfillment of a durable, companionable world society. An International Court of Habeas Corpus and Proprietatem, created by treaty-statute bottomed on an international bill of personal and property rights, would demand obedience from its signatory members. The treaty-statute would be the thick plank of tough legal construction spanning the gaps of nationalism which have limited the personal and property rights of individuals through the present time.

The Court would be able to accomplish its objective in the following manner. It would formally declare the accepted fundamental principles of international property rights. These rules would be uniformly interpreted by limiting jurisdiction primarily to confiscation petitions and providing for appeal to one High Court. Nations would be induced to consent to the Court's jurisdiction because the jurisdiction would be limited to cases involving only foreign confiscations and the judges would be selected from the territory in which the host state is situated. Finally, in extreme circumstances where the psychological pressure of the signatories' unified opinion is unavailing, the Court would be able to compel a recalcitrant state to comply with its order by employing a unified political and/or economic reprisal against the host state.

The proposal of an International Court of Habeas Corpus has continued to undergo pyramidal consideration by legal scholars and jurists.<sup>96</sup> That tribunal would provide an international guarantee against unlawful and un-

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95. Enforcement of international arbitration also embodies the need to force a recalcitrant party into a voluntary submission of a dispute. See Quigley, *Accession by the United States to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, 70 YALE L.J. 1049 (1961).

96. Address by Justice William J. Brennan, Jr. of the United States Supreme Court, A.B.A. Law and Layman Conference in San Francisco, August 7, 1962. In August, 1961, a seminar on Amparo, Habeas Corpus, and other similar remedies was held in Mexico City. The seminar was organized by the United Nations at the invitation of the government of Mexico for the purpose of bringing together key people from the countries of the Western Hemisphere in order to study available remedies for effective exercise of human rights. The PROCEEDINGS of the seminar points out the international concern for human rights and their legal safeguards in this hemisphere. See also PROCEEDINGS, SEMINAR ON JUDICIAL AND OTHER REMEDIES AGAINST THE ABUSE OF ADMINISTRATIVE AUTHORITY (1962).

reasonable detention of persons in the setting of a court of competent world jurisdiction to enforce the International Bill of Rights. No nation should be permitted to deprive people of freedom. Nor should any nation be permitted to unilaterally discriminate against the covenants of international commerce on investments.

Due process of property rights on the international scene is one of those branches of international law which is not "true" law because there is no judicial or administrative procedure for the settlement of disputes.<sup>97</sup> It has been suggested that promotion of authoritative international procedure for settlement of disputes has been exaggerated, and that such promotion is premature.<sup>98</sup>

It is conceded that procedure for authoritative settlement of intergovernmental property disputes, whether involving nations or individuals, will require some degree of surrender of national independence. But it does not follow that such surrender is not possible or desirable. Nor is it necessarily premature.<sup>99</sup>

The "Foreword" to the March, 1961 edition of the *Columbia Law Review*, devoted to legal-economic problems of international trade contains appropriate concluding words:

A revolutionary program? Perhaps. But in revolutionary times revolutionary means may be the only way of preserving traditional values . . . .

As some wise man once said: "All revolutions seem impossible before they occur and inevitable after they occur."<sup>100</sup>

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97. Kopelmanas, *supra* note 94.

98. *Ibid.*

99. Address by Justice William J. Brennan, Jr. of the United States Supreme Court, A.B.A. Law and Layman Conference in San Francisco, August 7, 1962.

100. Gardner, *Legal-Economic Problems of International Trade*, 61 COLUM. L. REV. 313, 321 (1961).





SULLIVAN & CROMWELL

*48 Wall Street, New York 5,*

April 7, 1965

Aaron Broches, Esq.,  
General Counsel,  
International Bank for  
Reconstruction and Development,  
1818 H Street, N. W.,  
Washington 25, D. C.

Dear Mr. Broches:

At the meeting last night of the International Law Committee of the City Bar Association we decided to prepare and publish a report recommending United States adherence to the Convention. This report is now being prepared and will probably be published in June.

Would it be possible for me to obtain from you 25 copies, in English, of the Convention for distribution to members of the Committee? Please advise me if any charges are payable in this connection.

With best regards.

Very truly yours,



Mitchell Brock

SULLIVAN & CROWMELL

10 Wall Street, New York 2  
April 1, 1951

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

Dear Mr. Boardman:

As the majority last night of the International Law  
Commission of the United Nations Association we failed to prepare  
and publish a report recommending United States membership in  
the organization. This report is now being prepared and will  
probably be published in June.

It is possible for me to obtain two or  
three copies in English of the brochure for distribution to  
members of the Committee. Please advise me if any action  
should be taken in this connection.  
With best regards,

[Redacted signature area]

Michael Boardman

APR 2 1951

51D

April 6, 1965

Dear Mr. Lauterpacht:

Thank you very much for your letter of April 2nd. Under separate cover I have sent you two sets of the Convention and the accompanying Report of the Executive Directors in English, French and Spanish.

As you may have read, the Convention will enter into force after signature and ratification by 20 States. At that time the Administrative Council will be established which will have to adopt the various rules and regulations to which you refer. Some work has already been done on the rules of procedure and it is our intention to circulate them on a selected basis to individuals and institutions with experience in this field in order to have the benefit of their advice. I shall be glad at that time to include you in that list.

For the time being the travaux preparatoires are restricted documents. I consider it best not even to raise the question of "derestricting" with the Executive Directors until the Convention has entered into force. To bring the matter up for discussion at an earlier time is likely to prove troublesome. As a matter of fact, even if we get a policy decision permitting a release of the reports, there may be an editing problem since many experts spoke in a purely personal capacity and in some cases gave evidence of not having done their homework.

With kind regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. E. Lauterpacht  
Trinity College  
Cambridge, England

ABroches:cml

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL DEVELOPMENT  
ASSOCIATION

INTERNATIONAL FINANCE  
CORPORATION

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Date

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Remarks

From

*Dev. SID*

# OFFICE MEMORANDUM

TO: Mrs. Doris R. Eliason

DATE: April 5, 1965

FROM: Piero Sella *Piero Sella*

SUBJECT: SID Convention

Please have the following quantities of the S.I.D. Convention and the accompanying Report of the Executive Directors on thin paper delivered free of charge to World Peace Through Law Center, Hill Building, 839 17th Street, N.W. Washington, D.C. (attention Mr. Egbert):

English	3,000 copies
French	1,000 copies
Spanish	1,000 copies

You may wish to contact Mr. Egbert (ST 3-3174) to arrange for delivery at a mutually convenient time.

APPROVED:

*Broches*

A. Broches

*2 + 5  
tomorrow  
afternoon*

*Bring to  
5/04*

*Go to 4th floor  
Reception  
I'll bring  
+ ask for  
Mr. Egbert*

PS:es

*D.O.  
4/6/65*

*- 15 -*

April 5, 1965

Dr. E. Meyer  
Swiss Aluminium Limited  
Feldeggstrasse 4  
Zurich 8, Switzerland

Dear Dr. Meyer:

I am enclosing herewith two copies of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States as approved by the Executive Directors of the Bank for submission to member governments. I thought you might want to have these copies for your own study. These are now public documents and may be shown to any interested parties.

My best personal regards.

Sincerely yours,

Roger A. Hornstein

enclosures

RAH:la

*RAH*



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> April 5, 1965	<b>Document Type</b> Letter			
<b>Correspondents / Participants</b> To: Robert F. Skillings, Dputy Director, Development Finance Companies, International Finance Corporation From: Mr. H.T. Parekh, General Manager, The Industrial Credit and Investment Corporation of India Limited				
<b>Subject / Title</b> Draft Convention on the Settlement of Investment Disputes				
<b>Exception(s)</b> Information Provided by Member Countries or Third Parties in Confidence				
<b>Additional Comments</b>		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.		
		<table border="1"><tr><td><b>Withdrawn by</b> Kim Brenner-Delp</td><td><b>Date</b> August 21, 2023</td></tr></table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
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**NATIONAL FOREIGN TRADE COUNCIL, INC.**

10 ROCKEFELLER PLAZA • NEW YORK, N.Y. 10020 • LT 1-6420

April 2, 1965

Mr. Harold N. Graves, Jr., Director of Information  
International Bank for Reconstruction and Development  
1818 H Street, N. W.  
Washington, D. C.

Dear Harold,

Thank you for remembering our interest in the Convention on the Settlement of Investment Disputes and for sending me a copy of the Convention as it is now being submitted to member governments.

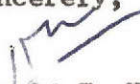
This is a development in which I believe there will be increasing interest. Accordingly, I would like to raise with you the question as to the availability of additional copies.

What we would like to do first of all would be to send a copy to each member of our Foreign Property Committee which will be the one most directly concerned in the formulation of any position we may take. My colleague, Mr. Brady, who acts as Secretary of this particular Committee tells me that he would need somewhere around 40 copies for this purpose. Beyond this, I would like to have some 10 to 20 copies to meet individual requests which I am sure we will be receiving from members within the next few months.

In a sense, the foregoing represents what we would regard as our minimum needs and which I hope you will be able to meet. However, both Mr. Brady and I would like to be able to put out a summary bulletin, based in part on your press release and in part on the document itself. If we do so and past experience is any guide, we will receive requests from members for copies of the actual document. My guess would be that we would have to allow for between 100 and 150 such requests. I don't know whether it would be convenient for you to provide us with this number, but if you can we would be most appreciative. In any event, I hope you can let us have the 50 copies mentioned.

Thanking you for whatever help you can give us in this matter, I am, with kindest personal regards,

Sincerely,

  
Donald F. Heatherington  
Vice President

DFH:RMM

Founded in 1914, the National Foreign Trade Council, Inc. is a private non-profit organization for the promotion and protection of United States international trade and investments.

ack. April 9, 1965

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IDA

IBRD

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FORM NO. 92  
(10-61)

## CORRESPONDENCE RECORD FORM

FROM

DR. E. I. NWOGUGU  
Law Faculty, University of Lagos  
Yaba, Lagos, Nigeria

DATED

April 2, 1965

SUBJECT

Asking for a copy of the proposed draft "Convention  
on the Settlement of Investment Disputes between  
States and nationals of other states"

fca

REFERRED TO

Office of Secretary

DATE RECEIVED

April 7, 1965

le 2 avril 1965

Monsieur et cher Maître,

Veillez trouver ci-joint un exemplaire, en anglais, français et espagnol, de la Convention pour le Règlement des Différends Relatifs aux Investissements entre Etats et Ressortissants d'autres Etats ainsi que du Rapport des Administrateurs de la Banque.

Veillez agréer, Monsieur et cher Maître, l'assurance de mes sentiments bien dévoués.

(Signed) A. Broches

A. Broches  
Conseiller Juridique

Annexes

Monsieur André Gros  
Juge à la Cour Internationale  
de Justice  
La Haye, Pays-Bas

April 2, 1965

Dear Miss Winkelman:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Miss Irene Winkelman  
c/o Asiatic Petroleum Co.  
One Rockefeller Plaza  
New York 20, N.Y.

Enclosure

AB:cml

April 2, 1965

My dear Guisan:

Under separate cover I take pleasure in sending you three sets, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,



A. Broches  
General Counsel

Mr. Henri Guisan  
Bank for International Settlements  
Basle, Switzerland

AB:cml

April 2, 1965

Dear Mr. Velebit:

Under separate cover I take pleasure in sending you three sets, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,  
(Signed) A. Broches

A. Broches  
General Counsel

Mr. Vladimir Velebit  
Executive Secretary  
Economic Commission for Europe  
Palais des Nations  
Geneva, Switzerland

AB:cml

April 2, 1965

Dear Mr. Gardiner:

Under separate cover I take pleasure in sending you three sets, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. R. K. A. Gardiner  
Executive Secretary  
Economic Commission for Africa  
Addis Ababa, Ethiopia

AB:cml



April 2, 1965

Dear Mr. Mayobre:

Under separate cover I take pleasure in sending you three sets, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

*(Signed) A. Broches*

A. Broches  
General Counsel

Mr. José A. Mayobre  
Executive Secretary  
Economic Commission for Latin America  
Santiago, Chile

AB:cml

April 2, 1965

Dear U Nyun:

I take pleasure in sending you under separate cover three sets, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

*(Signed) A. Broches*

A. Broches  
General Counsel

U Nyun  
Executive Secretary  
Economic Commission for Asia  
and the Far East  
Sala Santithan  
Bangkok, Thailand

AB:cml

April 2, 1965

Dear Mr. Kanellopoulos:

I am enclosing herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. N. Kanellopoulos  
4 Dragatsaniou St.  
Athens, Greece

Enclosure

AB:cml

April 2, 1965

Dear Mr. Menon:

I am enclosing herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. A. G. Menon  
Chief  
Industries Division  
Economic Commission for Asia  
and the Far East  
Sala Santitham  
Bangkok, Thailand

Enclosure

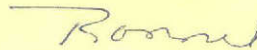
AB:cml

April 2, 1965

Dear Walter:

I am enclosing herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,



A. Broches  
General Counsel

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

Enclosure

AB:cml

April 2, 1965

Dear Mr. Gonon:

I take pleasure in sending you herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. René Gonon  
Président-Directeur Général  
de la Société des Grands  
Travaux de Marseille  
25, Rue de Courcelles  
Paris, France

Encløsure

AB:cml

April 2, 1965

Dear Mr. Kristensen:

I am enclosing herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors. Additional copies will be available in our Paris Office.

Sincerely yours,  
*(Signed) A. Broches*

A. Broches  
General Counsel

Mr. Thorkil Kristensen  
OECD  
Chateau de la Muette  
2, Rue André Pascal  
Paris 16, France

Enclosure

AB:cml

April 2, 1965

Dear Dr. Rocha:

I take pleasure in sending you herewith one copy in Spanish of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Dr. Antonio Rocha  
Edificio Banco de Bogota  
Oficinas Nos. 612, 613 y 614  
Bogota, Colombia

Enclosure

AB:cml



747 UNION TRUST BUILDING  
PITTSBURGH, PA. 15219

April 1, 1965

Mr. Lars J. Lind  
Assistant Director of Information  
International Bank for Reconstruction  
and Development  
1818 H Street, N.W.  
Washington, D.C. 20433

Dear Mr. Lars:

An associate with the Inter-American Development Bank advises that the "World Bank" has completed and circulated to member governments the preliminary draft convention on the settlement of investment disputes. He also indicates that the text of this draft convention together with the recommendation of the Executive Directors has been released to the public. In accordance with your letter of January 6, may I again inquire if you would be so kind as to forward me a copy of that draft convention. I am

Sincerely yours,

*Andrew N. Farley*  
Andrew N. Farley

ANF: jm

*dropped here*

*We made a label  
& sent this to him  
with the press release;  
I don't think he's had  
time to receive it yet.*

*ack. April 8, 1965*



April 1, 1965

Dear Mr. Aquarone:

The Executive Directors of the Bank have completed their work on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. They approved the text of the Convention and of an accompanying report on March 18, 1965.

Under separate cover I am sending you twelve sets of these documents in English, French and Spanish intended for yourself and for the members of the Court. I have sent copies directly to Judges Sir Zafrulla Khan, Wellington Koo, Andre Gros and Ph. C. Jessup, with whom I am personally acquainted.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. S. Aquarone  
Deputy Registrar  
International Court of Justice  
The Hague, Netherlands

ABroches:cml

April 1, 1965

Dear Judge Jessup:

I take pleasure in sending you herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

His Excellency  
Ph. C. Jessup  
International Court of Justice  
The Hague, Netherlands

Enclosures

ABroches:cml

April 1, 1965

Dear Sir Zafrulla:

I am happy to be able to report to you that the Executive Directors of the Bank have completed their work on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. They approved the text of the Convention and of an accompanying report on March 18, 1965. I am enclosing herewith the text of these documents in English, French and Spanish.

Sincerely yours,  
(Signed) A. Broches

A. Broches  
General Counsel

His Excellency  
Sir Zafrulla Khan  
International Court of Justice  
The Hague, Netherlands

Enclosures

ABroches:cml

April 1, 1965

Dear Dr. Koo:

I take pleasure in sending you herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

*(Signed) A. Broches*

A. Broches  
General Counsel

His Excellency  
Dr. Wellington V. Koo  
International Court of Justice  
The Hague, Netherlands

Enclosures

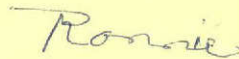
ABroches:cml

April 1, 1965

Dear Grady:

I take pleasure in sending you herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely,



A. Broches  
General Counsel

Mr. T. Graydon Upton  
Executive Vice President  
Inter-American Development Bank  
808 17th Street, N.W.  
Washington, D. C.

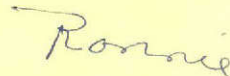
Enclosures  
ABroches:cml

April 1, 1965

Dear Chuck:

I am enclosing herewith one copy  
in English of the Convention on the  
Settlement of Investment Disputes between  
States and Nationals of Other States and  
the accompanying Report of the Executive  
Directors.

Sincerely yours,



A. Broches  
General Counsel

Mr. Charles Spofford  
Davis Polk Wardwell Sunderland & Kiendl  
One Chase Manhattan Plaza  
New York 5, N.Y.

Enclosure

AB:cml



April 1, 1965

Dear Mr. Secretary General:

I am enclosing herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

His Excellency  
José A. Mora  
Secretary General  
Organization of American States  
Pan American Union  
Washington, D. C.

Enclosures

AB: cml

April 1, 1965

Dear Mr. Gess:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Karol N. Gess  
606 West 116th Street  
New York 27, N.Y.

Enclosure

AB:cml

April 1, 1965

Dear Mr. Esgain:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

[Signed] A. Broches

A. Broches  
General Counsel

Mr. Albert J. Esgain  
Chairman  
International Law Committee  
The Federal Bar Association  
1815 H Street, N.W.  
Washington, D. C. 20006

Enclosure

AB#cml

April 1, 1965

Dear Mr. Spaeth:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Carl B. Spaeth  
School of Law  
Stanford University  
Stanford, California

Enclosure  
AB: cml

April 1, 1965

Dear Mr. Conover:

I am enclosing herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

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

Enclosures  
AB:cml

April 1, 1965

Dear Henry:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,



A. Broches  
General Counsel

Mr. Henry P. de Vries  
Professor of Inter-American Law  
Columbia University  
New York 27, N.Y.

Enclosure

AB:cm1

April 1, 1965

Dear Mr. Sohn:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Louis B. Sohn  
Bemis Professor of International Law  
Law School of Harvard University  
Cambridge 38, Massachusetts

Enclosure

AB:cml

April 1, 1965

Dear Mr. Garcia-Amador:

I am sending you under separate cover three sets, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

*(Signed) A. Broches*

A. Broches  
General Counsel

Mr. F. V. Garcia-Amador  
Director  
Department of Legal Affairs  
Pan American Union  
Washington, D. C.

Enclosures

AB:cml

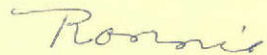


April 1, 1965

Dear Marc:

I am enclosing herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,



A. Broches  
General Counsel

Mr. Marc Schreiber  
United Nations  
New York, N.Y.

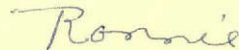
Enclosures  
AB:cml

April 1, 1965

Dear Oscar:

I am enclosing herewith one set,  
in English, French and Spanish, of the  
Convention on the Settlement of Invest-  
ment Disputes between States and Nationals  
of Other States and the accompanying Report  
of the Executive Directors.

Sincerely yours,



A. Broches  
General Counsel

Mr. Oscar Schachter  
Legal Department  
United Nations  
New York, N.Y.

Enclosures

AB:cml

April 1, 1965

Dear Mr. Kiernik:

I am enclosing herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Stanislaw Kiernik  
Chief, Treaty Section  
United Nations  
New York, N.Y.

Enclosures

AB:cml

April 1, 1965

Dear Professor Friedmann:

I am enclosing herewith one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Professor Wolfgang Friedmann  
School of Law  
Columbia University  
New York 27, N.Y.

Enclosures

AB:cml

April 1, 1965

Dear Mr. Sirefman:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Joseph P. Sirefman  
745 Fifth Avenue  
New York 22, N.Y.

Enclosure

AB:cml

April 1, 1965

Dear Mr. McCloy:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. John J. McCloy  
One Chase Manhattan Plaza  
New York 5, N.Y.

Enclosure

AB: cml

April 1, 1965

Dear Mr. Brownell:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. George A. Brownell  
Davis Polk Wardwell Sunderland  
& Kiendl  
One Chase Manhattan Plaza  
New York 5, N.Y.

Enclosure  
AB:cml

April 1, 1965

Dear Mr. Maw:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Carlisle Maw  
Cravath Swaine & Moore  
One Chase Manhattan Plaza  
New York 5, N.Y.

Enclosure  
AB:cml



April 1, 1965

Dear Mr. de Seynes:

Under separate cover I am sending you, in English, French and Spanish, five sets of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Director.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Philippe de Seynes  
Under Secretary for Economic  
and Social Affairs  
United Nations  
New York, N.Y.

AB:cml

April 1, 1965

Dear Mr. Carroll:

I am sending you herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Mitchell B. Carroll  
Battle, Fowler, Stokes & Kheel  
280 Park Avenue  
New York, N. Y. 10017

Enclosure  
AB:cml

April 1, 1965

Dear Mr. Lazarus:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Steven Lazarus  
Research Project 20  
Harvard Graduate School of  
Business Administration  
Soldiers' Field  
Boston, Massachusetts

Enclosure  
AB:cml

April 1, 1965

Dear Win:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

*Roanne*

A. Broches  
General Counsel

Mr. G. W. Haight  
Counsel  
Asiatic Petroleum Co.  
One Rockefeller Plaza  
New York 20, N.Y.

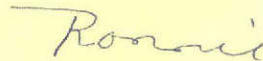
Enclosure  
AB:cml

April 1, 1965

Dear Ad:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,



A. Broches  
General Counsel

Mr. Adolphus G. Redley  
145 East 33rd Street  
New York, N.Y.

Enclosure  
AB:cml

*Files*

I N C O M I N G W I R E

DATE OF WIRE: MARCH 31, 1965 2024

LOG NO.: WU 8

TO: INTBAFRAD

FROM: SAN JOSE

R O U T I N G	
ACTION COPY:	OFFICE OF INFORMATION
INFORMATION COPY:	
DECODED BY:	

TEXT:

6 LIND

SID CONVENTION NOT ARRIVED VISITING PAPERS THURSDAY CACHI POWER  
 PROJECT FRIDAY. SALVADOR UNICS BUENO AIRMAILING YOUR NAME SID STORY  
 CLIPPINGS WHICH HOPEFULLY BEING PUBLISHED THURSDAY REGARDS

BRAVO



March 31, 1965

Dear Mr. Parekh:

You will recall that on November 25 and December 29 last year I wrote to you about the draft Convention which was being prepared on the settlement of investment disputes. The Executive Directors of the World Bank have now approved the text of the Convention and I enclose a copy of it for your information, together with a copy of the press release which was issued on March 29. It now remains for the interested governments to ratify the Convention. It will become effective 30 days after it has been signed by 20 governments. Since ratification usually requires parliamentary action, it may be some time before the Convention comes into force and the international center is set up. We will continue to keep you informed.

With kind regards,

Sincerely yours,

Robert F. Skillings  
Deputy Director  
Development Finance Companies Department

Encls. 2

Mr. H.T. Parekh  
General Manager  
The Industrial Credit and Investment  
Corporation of India, Limited  
163 Backbay Reclamation  
Bombay 1  
India

cc. Circ. 2

RWyeth:RFSkillings:lg

1802



5.7.D.  
March 31, 1965

Mr. Clifford J. Hymning  
1555 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Dear Cliff:

Thanks for your letter of March 29. I would certainly have no objection to your quoting me as indicated. Incidentally, I have pleasure in enclosing herewith our press release issued on March 29, reporting the substantial progress which we are making toward the establishment of an International Centre for Settlement of Investment Disputes.

Sincerely yours,

J. Burke Knapp  
Vice President

Encl.

  
JBKnapp:ism

March 31, 1965

Dear Lord McNair:

I am happy to be able to report to you that on March 18, 1965 the Executive Directors approved the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States for submission to governments. The Convention provides that it will enter into force 30 days after signature and ratification on behalf of 20 States.

Under separate cover I am sending you the text of the Convention and of the accompanying Report of the Executive Directors in the three official languages, English, French and Spanish. I am also sending you the Summary Records of the meetings of the Legal Committee which met for a three week period in November/December of last year to assist the Executive Directors in their task of formulating a convention. Finally I am sending you a copy of my report as Chairman of the Legal Committee.

I do not know whether and to what extent the travaux preparatoires will be made public. For the time being they are restricted documents but I thought you might want to have them since you have the earlier documentation.

Meanwhile I remain with kind regards,

Sincerely yours,  
(Signed) A. Broches

A. Broches  
General Counsel

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

ABroches:cml

March 31, 1965

Dear Mr. Stavropoulos:

I have today sent you under separate cover two sets, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Constantin A. Stavropoulos  
Under Secretary  
Legal Counsel  
United Nations  
New York, N.Y.

ABroches:cml

March 31, 1965

Dear Mitch:

I am enclosing herewith one copy  
in English of the Convention on the  
Settlement of Investment Disputes between  
States and Nationals of Other States and  
the accompanying Report of the Executive  
Directors.

Sincerely yours,

*A. Broches*

A. Broches  
General Counsel

Mr. Mitchel Brock  
Sullivan and Cromwell  
48 Wall Street  
New York 5, N.Y.

Enclosure

ABroches:cml

March 31, 1965

Dear Mr. Lodge:

I recently saw a newspaper report of an address given by you at a meeting of the Inter-American Bar Association urging the establishment of a hemispheric tribunal to handle complaints by citizens of one state against the government of another. In view of your interest in this subject, I send you herewith the text of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States which on March 18, 1965 was approved for submission to governments by the Executive Directors of this Bank.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

The Honorable  
John Davis Lodge  
129 Easton Road  
Westport, Connecticut

Enclosure

ABroches:cml

March 31, 1965

Dear Mr. Herrera:

I am sending you enclosed one set, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors. Under separate cover I am also sending you 14 additional sets which you may wish to distribute to the members of the Board of Directors.

In addition I have sent three sets to Mr. Arnold for the use of the Legal Department.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Felipe Herrera  
President  
Inter-American Development Bank  
808 17th Street, N.W.  
Washington, D. C.

Enclosures

ABroches:cml

March 31, 1965

Dear Dave:

Here is the end product.

I have no time to write you extensively

but would like to have a long chat.

I shall call you as soon as I see a

chance of coming to New York.

Best regards,

*1st Ronne*

Mr. Davidson Sommers  
Senior Vice President  
and General Counsel  
The Equitable Life Assurance Society  
1285 Avenue of the Americas  
New York 19, N.Y.

Enclosure

ABroches:cml

March 31, 1965

Dear Gene:

I hope you will be pleased to learn that our efforts in the conciliation and arbitration matter have borne fruit to the point where the Executive Directors have submitted a Convention to governments. I am enclosing a copy of the English text of the Convention and the Report of the Executive Directors.

With best regards,

*15/ Ronnie*

Mr. Eugene R. Black  
The Chase Manhattan Bank  
One Chase Manhattan Plaza  
New York 15, N.Y.

Enclosure

AB: cml



March 31, 1965

Dear Mr. Dam:

In accordance with your request I am pleased to enclose herewith a copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. Kenneth W. Dam  
Professor of Law  
The University of Chicago  
The Law School  
1111 East 60th Street  
Chicago, Illinois 60637

Enclosure

ABroches:cml

March 31, 1965

Dear Arthur:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

*A. Broches*

A. Broches  
General Counsel

Mr. Arthur Dean  
Sullivan & Cromwell  
48 Wall Street  
New York 5, N.Y.

Enclosure  
ABroches:cml

March 31, 1965

Dear Ward:

I am enclosing herewith one copy in English of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely yours,

*A. Broches*

A. Broches  
General Counsel

Mr. Ward Foshay  
Sullivan & Cromwell  
48 Wall Street  
New York 5, N.Y.

Enclosure

ABroches:cml

March 31, 1965

Dear Mr. Stevenson:

I am enclosing herewith one copy  
in English of the Convention on the  
Settlement of Investment Disputes between  
States and Nationals of Other States and  
the accompanying Report of the Executive  
Directors.

Sincerely yours,  
(Signed) A. Broches

A. Broches  
General Counsel

Mr. John R. Stevenson  
Sullivan & Cromwell  
48 Wall Street  
New York 5, N.Y.

EBrohusecml

March 31, 1965

Dear Elting:

I have today sent you under separate cover three sets, in English, French and Spanish, of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the accompanying Report of the Executive Directors.

Sincerely,

*A. Broches*

A. Broches  
General Counsel

Mr. Elting Arnold  
General Counsel  
Inter-American Development Bank  
808 17th Street, N.W.  
Washington, D. C.

ABroches:cml

I N C O M I N G W I R E

DATE OF WIRE: MARCH 31, 1965 2024

LOG NO.: WU 8

TO: INTBAFRAD

FROM: SAN JOSE

R O U T I N G	
ACTION COPY:	OFFICE OF INFORMATION
INFORMATION COPY:	
DECODED BY:	

TEXT:

6 LIND

SID CONVENTION NOT ARRIVED VISITING PAPERS THURSDAY CACHI POWER  
 PROJECT FRIDAY. SALVADOR UNICS BUENO AIRMAILING YOUR NAME SID STORY  
 CLIPPINGS WHICH HOPEFULLY BEING PUBLISHED THURSDAY REGARDS

BRAVO



I N C O M I N G W I R E

DATE OF WIRE: MARCH 30, 1965 1655  
LOG NO.: WU 5  
TO: BROCHES INTBAFRAD  
FROM: COMMUGNY

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

TEXT:

VERY GRATEFUL RECEIVE SOONEST 4 ENGLISH 2 FRENCH  
COPIES CONVENTION SETTLEMENT INVESTMENT DISPUTES  
BEST THANKS

BRANDON APPI

FCA





*M.*

INTERNATIONAL DEVELOPMENT  
ASSOCIATION

INTERNATIONAL FINANCE  
CORPORATION

ROUTING SLIP

Date

April 6, 1965

OFFICE OF THE PRESIDENT

Name

Room No.

~~Mr. Broches~~

✓

*File*

Action

Note and File

Approval

Note and Return

Comment

Prepare Reply

Full Report

Previous Papers

Information

Recommendation

Initial

Signature

Remarks

For information.



G. D. Woods

Frc

BANCO CENTRAL DE RESERVA  
DE EL SALVADOR

1A. CALLE PONIENTE Y 7A. AVENIDA NORTE

APR 6 REC'D

OFICINA DEL PRESIDENTE

San Salvador 30 de marzo de 1965

1898

Dear Mr. Woods:

I acknowledge receipt of your letter of March 23, 1965 with which you sent me the following documents:

- 1) Resolution No. 65-14 of the Executive Directors, adopted on March 18, 1965, approving a report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the text of said Convention for submission to governments;
- 2) the Report of the Executive Directors referred to above;
- 3) the text of the Convention referred to above.

I understand that the Convention has been deposited in the archives of the Bank and is open for signature on behalf of governments. I am transmitting the documentation to the proper branches of the Government of El Salvador, and I am recommending the Convention for early and favorable consideration.

Let me congratulate you on this very important new contribution of the Bank.

Yours sincerely,

FRANCISCO AQUINO h.  
President

Mr. George D. Woods, President  
International Bank for Recon-  
struction and Development  
Washington D.C. 20433.

APR 6 REC'D

BANCO CENTRAL DE RESERVA  
DE EL SALVADOR

LA CALLE PONIENTE Y LA AVENIDA NORTE

OFICINA DEL PRESIDENTE

San Salvador 30 de marzo de 1965

1898

Dear Mr. Woods:

I acknowledge receipt of your letter of March 23, 1965 with which you sent me the following documents:

- 1) Resolution No. 65-14 of the Executive Directors, adopted on March 18, 1965, approving a report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the text of said Convention for submission to governments;
- 2) the Report of the Executive Directors referred to above;
- 3) the text of the Convention referred to above.

I understand that the Convention has been deposited in the archives of the Bank and is open for signature on behalf of governments. I am transmitting the document to the proper branches of the Government of El Salvador, and I am recommending the Convention for early and favorable consideration.

Let me congratulate you on this very important new contribution of the Bank.

Yours sincerely,

FRANCISCO AQUINO  
President

Mr. George D. Woods, President  
International Bank for Recon-  
struction and Development  
Washington D.C. 20433

APR 6 1965

RECEIVED  
APR 6 1965  
OFFICE OF THE PRESIDENT

SID

March 31, 1965

Dr. Raul Prebisch  
Secretary General  
U.N.C.T.A.D.  
United Nations  
New York, N.Y.

Dear Dr. Prebisch,

I am sending you herewith enclosed 2 copies each of the Convention on the Settlement of Investment Disputes in the English, French and Spanish texts as well as the corresponding press release.

I did enjoy our talk this morning and look forward to seeing you next week.

Yours sincerely,

Federico Console  
Special Representative  
for  
United Nations Organizations

Encls.

FC  
Pamar

March 30, 1965

Dear Mr. van den Houten:

In going through my papers of my recent European trip I saw your letter of January 15, 1965. I did not manage to get to Brussels during that trip and I have the distinct impression that I wrote to you to tell you that but I can't find any record of that letter. Most probably, therefore, I owe you an apology for not having shown up. I hope that another occasion will present itself within the not too distant future.

Sometime ago I sent you some documentation on the draft of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States. I can now inform you that the Executive Directors have approved the text of a Convention and have submitted it to the member governments of the Bank. I am sending you herewith the three official texts of the Convention and of the accompanying Report of the Executive Directors. Additional copies will be available at our Paris Office.

Meanwhile I remain with kind regards,

Sincerely yours,

(Signed) A. Broches

A. Broches  
General Counsel

Mr. J. N. van den Houten  
European Investment Bank  
11, Mont des Arts  
Brussels 1, Belgium

Enclosures  
ABroches:cml

March 30, 1965

Mr. William McCulloch  
Legal Advisor  
Ministry of Commerce  
Kabul  
Afghanistan

Dear Mr. McCulloch:

Referring to your letter of May 20, 1964, to Mrs. Boskey I have the pleasure of enclosing herewith a copy of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and of the accompanying Report of the Executive Directors of this Bank which were submitted to member governments of the Bank for their consideration.

Sincerely yours,



Piero Sella  
Attorney

Encl.

cc: Mrs. Boskey

PSella/ar

AIR MAIL

March 30, 1965

Mr. Ricardo Crespo  
Bustamante & Crespo  
P. O. Box 2455  
Quito, Ecuador

Dear Ricardo,

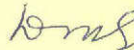
I would like to thank you for the kind regards you sent with Mr. Perez-Serrano who paid us a visit yesterday.

I am happy to enclose herewith a copy of the Convention for the Settlement of Investment Disputes (Spanish version) which includes the Report of the Executive Directors of the Bank. As you will see, the Report sheds some light on some of the provisions of the Convention. I am also enclosing a short note which I wrote for the Journal of Business Law on the Convention which you might find useful, at any rate I hope so, in the writing of your article. I would be most obliged if you could send me a copy of your article when it is published.

The Bank's mission is due back in a couple of days time, at which time we shall take up the recent proposals of the Government pertaining to the amendment of the various decrees issued in connection with the Second Highway Project.

With warmest personal regards,

Yours sincerely,



David M. Sassoon

Enclosures

DMS/km



**FOR IMMEDIATE RELEASE**

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT



1818 H STREET, N.W., WASHINGTON D. C. 20433 TELEPHONE: EXECUTIVE 3-6360

Bank Press Release No. 65/14  
March 29, 1965

Subject: Settlement of Investment  
Disputes

The Executive Directors of the International Bank for Reconstruction and Development on March 18, 1965 approved the text of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States for submission to member governments. The Convention will enter into force 30 days after it has been signed and ratified by 20 governments.

The Convention establishes an International Centre for Settlement of Investment Disputes as an autonomous international institution under the auspices of the World Bank. The Centre will be administered by an Administrative Council consisting of one representative of each State party to the Convention. The President of the World Bank will be ex officio Chairman of the Council. One of the first tasks of the Administrative Council will be to elect a Secretary-General who will be the principal officer of the Centre.

The Centre will make available facilities to which Contracting States and foreign investors which are nationals of other Contracting States have access on a voluntary basis for the settlement of investment disputes between them in accordance with rules laid down in the Convention. The method of settlement selected might be conciliation or arbitration, or conciliation followed by arbitration in case the conciliation effort would fail. The initiative for such proceedings could come from a State as well as from an investor. The Centre will not itself act as conciliator or arbitrator but

will maintain Panels of specially qualified persons from which conciliators and arbitrators can be selected if the parties to the dispute so desire, and will provide the necessary facilities for the conduct of the proceedings.

Recourse to conciliation or arbitration under the auspices of the Centre is entirely voluntary, and no State which becomes a party to the Convention is bound to make use of the facilities of the Centre. However, under the provisions of the Convention, once a State and a foreign investor have agreed to use the facilities of the Centre, they are required to carry out their agreement, to give due consideration to the recommendations of a conciliator and to comply with an arbitral award. In addition all Contracting States, whether or not parties to the dispute, are required to recognize arbitral awards rendered in accordance with the Convention as binding and to enforce the pecuniary obligations imposed thereby.

The Convention now submitted to the Bank's 102 members originated in a Resolution adopted by the Board of Governors of the Bank at its Seventeenth Annual Meeting in Washington, D.C., September 1962, and represents the climax of some three years of intensive preparatory work. Before formulating the Convention the Bank sought expert advice by convening four regional consultative meetings which were attended by legal experts designated by 86 member governments of the Bank. These meetings were held in Addis Ababa (December 1963), Santiago de Chile and Geneva (February 1964), and in Bangkok (April 1964). In the final stages of drafting the text of the Convention, the Executive Directors were assisted by a Legal Committee of representatives of 61 member governments which met in Washington from November 23 to December 11, 1964.

In their Report submitting the Convention to member governments of the Bank the Executive Directors state as their aim the strengthening of the partnership between countries for economic development. In their opinion the creation of an institution designed to facilitate the settlement of disputes between States and foreign investors could be a major step toward promoting an atmosphere of mutual confidence which, in turn, would stimulate a larger flow of private international capital into those countries which wish to attract it. In approving their Report and the text of the Convention the Executive Directors noted that their action did not imply that the governments represented by the individual Executive Directors were committed to take action on the Convention.

Mr. George D. Woods, President of the World Bank, in a letter of transmittal, urges governments to give early and favorable consideration to the Convention which in his opinion "can make an important and a needed contribution to the cause of economic development."

SecM65-74/1

FROM: The Assistant Secretary

March 29, 1965

SETTLEMENT OF INVESTMENT DISPUTES

With reference to SecM65-74 circulated on March 24, 1965, there are attached copies of the Convention and Report of the Executive Directors in French and Spanish.

Distribution:

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

S. I. D.  
X-Ref - alpha - Clifford J. Hynning

LAW OFFICES  
CLIFFORD J. HYNNING  
1555 CONNECTICUT AVENUE, N. W.  
WASHINGTON, D. C. 20036

March 29, 1965

Dear Burke:

In the course of writing an article, "World Bank Plan for the Settlement of International Investment Disputes," for the University of Chicago Law Review, I have referred to you specifically by name in the attached text, page 6.

Do you have any objection to this reference?

Sincerely,



Mr. Burke Knapp  
Vice President  
World Bank  
1818 "H" Street, N.W.  
Washington, D.C.

ack. mar 31, 1965

Faint, illegible text, possibly a header or introductory paragraph.

Faint, illegible text, possibly a signature or date.

1965 MAR 30 AM 10:01

RECEIVED  
GENERAL FILES  
COMMUNICATIONS

of private investors is the draft Convention on the Protection of Foreign Property, under consideration in the organization for Economic Cooperation and Development (OECD).<sup>23</sup> This draft ~~was~~ derived from <sup>the</sup> earlier Abs/Shawcross Convention on Investment Abroad, which had been referred by the German and Swiss Governments to OECD's predecessor organization, the Organization of European Economic Cooperation (OEEC). When the German and Swiss proposals were discussed within the Committee for Invisible Transactions of the OEEC in 1960, they were regarded most critically by the observer delegation of the United States on the grounds that, (a) the past efforts at The Hague and Bogota at a multilateral investment convention led to failure because of the wide gap in the legal concepts of the capital-exporting states and the less developed countries which need capital imports; (b) the present time (1960) is deemed no more propitious for an investment than 1930 (The Hague) or 1947-48 (Havana and Bogota), if not less so; (c) any attempt to negotiate a treaty in a purely Western European forum of a predominantly highly industrialized countries without a full participation of the less-developed countries of Asia and Africa would be self-defeating; and (d) the United States would be unable to adhere to a convention of the type proposed.<sup>24</sup>

It was in this context that the author, who was then serving as Chairman of the Committee of the Unification of Private Law of the Section of International and Comparative Law of the American Bar Association, raised the question with Burke Knapp, Vice President of the World Bank, whether that institution would possibly undertake to play a role in finding a way out of the impasse that appeared to be developing with OEEC on the matter of the international protection of the rights of private investors. Mr. Knapp thought that a promising approach to providing some assurances to international investors might be found in establishing machinery for the international arbitration of investment disputes.

In view of the limitations of the OEEC forum, both geographically and in terms of the kinds of countries which were members of it, the problem was really to find an appropriate forum within which to try to negotiate a procedural

SecM65-76

FROM: The Secretary

March 25, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached for information is a memorandum from the General Counsel containing corrections in the French and Spanish texts of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Distribution:

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



March 24, 1965

MEMORANDUM FROM THE GENERAL COUNSEL

SETTLEMENT OF INVESTMENT DISPUTES

In preparing printed copies of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, it was found that the French text and the Spanish text, in the form approved by the Executive Directors (R65-37, R65-43 and R65-45), contained some minor printing mistakes which should be corrected as follows:

French Text

Preamble, seventh paragraph: add a comma after the word "ratification".

Article 36(1): the word "en" should be added before the words "envoi copie".

Article 74: the words "des Règlements" should read "aux Règlements".

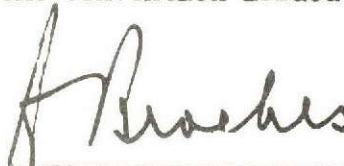
Spanish Text

Article 74: the words "del Reglamento" should read "el Reglamento".

Article 75, paragraph (b): the words "Artículo 68" should read "Artículo 73".

Article 75, paragraph (c): the words "Artículo 69" should read "Artículo 68".

The original of the Convention deposited in the archives of the Bank, as well as all copies of the Convention issued hereafter, will be corrected accordingly.



A. Broches

SecM65-74

FROM: The Secretary

March 24, 1965

SETTLEMENT OF INVESTMENT DISPUTES

There is attached a copy of a letter dated March 23, 1965 from the President of the Bank, together with Resolution No. 65-14 of the Executive Directors and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and accompanying Report of the Executive Directors, which has been forwarded to all member countries, Governors and Alternate Governors.

Copies of the letter and Resolution in French and Spanish are also attached. Copies of the Convention and Report of the Executive Directors in French and Spanish will be available in the near future.

Distribution:

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



INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT  
WASHINGTON, D. C. 20433, U.S.A.

OFFICE OF THE PRESIDENT

March 23, 1965

Sir:

I have the honor to transmit to your Government herewith:

1) Resolution No. 65-14 of the Executive Directors, adopted on March 18, 1965, approving a Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the text of said Convention for submission to governments;

2) the Report of the Executive Directors referred to above;

3) the text of the Convention referred to above.

The Convention has been deposited in the archives of the Bank and is open for signature on behalf of governments in accordance with Article 67 thereof.

The Convention is the result of detailed and careful study and deliberation over a period of several years. In my opinion it can make an important and a needed contribution to the cause of economic development.

I unreservedly recommend the Convention for early and favorable consideration by your Government so that the procedures and facilities it provides may be available to governments and investors with a minimum delay.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "George D. Woods".

George D. Woods



# INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

1818 H Street, N.W., Washington, D. C. 20433, U.S.A.

Area Code 202 • Telephone - EXecutive 3-6360 • Cable Address - INTBAFRAD

## RESOLUTION NO. 65-14

### Settlement of Investment Disputes

WHEREAS the Board of Governors on September 10, 1964 adopted Resolution No. 214 providing 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."

NOW THEREFORE the Executive Directors hereby resolve as follows:

- (1) the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States formulated by the Executive Directors in the form presented to this meeting and the Report of the Executive Directors thereon are hereby approved for submission to member Governments of the Bank;
- (2) the President of the Bank shall transmit said Report and the text of the said Convention to all member Governments of the Bank;
- (3) the President and the General Counsel of the Bank shall sign a copy of said Convention on behalf of the Bank to indicate the Bank's agreement to fulfil the functions with which it is charged under the Convention;
- (4) the copy of the Convention so signed on behalf of the Bank shall remain deposited in the archives of the Bank and shall be open for signature on behalf of Governments in accordance with its terms.

(Adopted by the Executive Directors March 18, 1965.  
Dr. Mejía-Palacio wished to be recorded as voting  
against the resolution.)



OFFICE OF THE PRESIDENT

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT  
WASHINGTON, D. C. 20433, U.S.A.

23 mars 1965

Monsieur,

J'ai l'honneur de transmettre à votre gouvernement:

- 1) la Résolution No 65-14 des Administrateurs adoptée le 18 mars 1965, approuvant le Rapport des Administrateurs sur la Convention pour le Règlement des Différends Relatifs aux Investissements entre Etats et Ressortissants d'autres Etats ainsi que le texte de ladite Convention en vue de les soumettre aux gouvernements;
- 2) le Rapport des Administrateurs ci-dessus mentionné;
- 3) le texte de la Convention ci-dessus mentionné.

La Convention a été déposée aux archives de la Banque et est ouverte à la signature des gouvernements conformément aux dispositions de son Article 67.

La Convention est l'aboutissement d'études et de discussions détaillées et approfondies portant sur plusieurs années. Elle peut, à mon avis, constituer une importante et utile contribution à la cause du développement économique.

Je recommande sans la moindre hésitation la Convention à l'examen, que j'espère proche et favorable, de votre gouvernement afin que les procédures et les mécanismes qu'elle prévoit puissent être mis dès que possible à la disposition des gouvernements et des investisseurs.

Veillez agréer, ...

George D. Woods



INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

1818 H Street, N.W., Washington, D. C. 20433, U.S.A.

Area Code 202 • Telephone - EXecutive 3-6360 • Cable Address - INTBAFRAD

RESOLUTION NO 65-14

REGLEMENT DES DIFFERENDS RELATIFS AUX INVESTISSEMENTS

Considérant que le Conseil des Gouverneurs a, le 10 septembre 1964, adopté la Résolution No 214 ainsi rédigée:

"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."

PAR CES MOTIFS, les Administrateurs adoptent la résolution suivante:

- (1) le texte de la Convention pour le Règlement des Différends Relatifs aux Investissements entre Etats et Ressortissants d'autres Etats rédigé par les Administrateurs et présenté à cette réunion ainsi que le Rapport des Administrateurs y afférent sont approuvés en vue de les soumettre aux gouvernements membres de la Banque.
- (2) le Président de la Banque transmettra ledit Rapport et le texte de ladite Convention à tous les gouvernements membres de la Banque;
- (3) le Président et le Conseiller Juridique de la Banque signeront un exemplaire de ladite Convention au nom de la Banque afin de marquer l'accord de celle-ci quant aux fonctions qui lui sont dévolues par la Convention;
- (4) la copie ainsi signée au nom de la Banque demeurera dans ses archives et sera ouverte à la signature des gouvernements conformément à ses dispositions.

(Adoptée par les Administrateurs le 18 mars 1965.  
M. Mejia-Palacio a tenu à enregistrer son vote négatif).



INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT  
WASHINGTON, D. C. 20433, U. S. A.

OFFICE OF THE PRESIDENT

23 de marzo de 1965

Muy señor mío:

Con la presente me honra remitirle a su Gobierno:

- 1) la Resolución No. 65-14 de los Directores Ejecutivos, adoptada el 18 de marzo de 1965, que aprueba el Informe de los Directores Ejecutivos acerca del Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de Otros Estados así como el texto del Convenio a fin de someterlos a los gobiernos;
- 2) el Informe de los Directores Ejecutivos a que anteriormente se hace referencia;
- 3) el texto del Convenio.

El Convenio ha quedado depositado en los archivos del Banco y está abierto a la firma de los gobiernos conforme a su Artículo 67.

El Convenio viene a ser el resultado de varios años de profundos y cuidadosos estudios y discusiones. Opino que puede constituir una contribución importante y necesaria a la causa del desarrollo económico.

Recomiendo, sin reservas, la pronta y favorable consideración del Convenio por parte de su Gobierno, de manera que los medios y servicios que ha de proveer queden en breve plazo a la disposición de los gobiernos y de los inversionistas.

Muy atentamente,

George D. Woods



INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

1818 H Street, N.W., Washington, D. C. 20433, U.S.A.

Area Code 202 • Telephone - Executive 3-6360 • Cable Address - INTBAFRAD

RESOLUCION NO. 65-14

ARREGLO DE DIFERENCIAS RELATIVAS A INVERSIONES

POR CUANTO: la Junta de Gobernadores adoptó el 10 de septiembre de 1964 la Resolución cuyo texto es el 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."

POR TANTO: los Directores Ejecutivos por la presente resuelven lo siguiente:

- (1) se aprueban el texto del Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de Otros Estados formulado por los Directores Ejecutivos tal como ha sido presentado a esta reunión y el Informe de los Directores Ejecutivos sobre el mismo a fin de someterlos a los gobiernos miembros del Banco;
- (2) el Presidente del Banco remitirá dicho Informe y el texto de dicho Convenio a todos los gobiernos miembros del Banco;
- (3) el Presidente y el Consejero Jurídico General del Banco firmarán una copia de dicho Convenio a nombre del Banco para indicar la conformidad del Banco con el desempeño de las funciones que se le encomiendan en el Convenio;
- (4) la copia del Convenio firmada a nombre del Banco quedará depositada en los archivos del mismo y estará abierta a la firma de los gobiernos conforme a sus disposiciones.

(Adoptada por los Directores Ejecutivos el 18 de marzo de 1965. El Sr. Mejía-Palacio quiere hacer constar su voto opuesto a la Resolución.)



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

Submitted to Governments  
by the Executive Directors of the  
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

AND

ACCOMPANYING REPORT  
OF THE EXECUTIVE DIRECTORS

March 18, 1965

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

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

March 18, 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 18, 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 inter-governmental 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 con-

sultative 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 inter-governmental 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), 25(4), 28, 36, 49(1), 50(1), 51(1), 52(1), 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 pro-

ceedings, 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 Article 25(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 Article 25(2), which deals with juridi-

cal 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 on 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 Com-

missions 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 29-30 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 32-35 dealing with conciliation proceedings and of Articles 41-49, 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.<sup>1)</sup>

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<sup>1)</sup> 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 method to be followed in its domestic implementation, but requires each Contracting State to meet the requirements of the Article in accordance with its own legal system.

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 forced 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.

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

Submitted to Governments  
by the Executive Directors of the  
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

March 18, 1965

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 not less than five members of the Council.

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

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

(4) The Administrative Council may establish, by a 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 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 by the Chairman 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*

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.

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.



March 25, 1965

Dear Neville,

Last week, when we were discussing the proposal for a Centre for the Settlement of Investment Disputes, I promised to collect together some literature on the subject and send it to you. Enclosed are reprints of addresses given by Aron Broches, the General Counsel of the World Bank, who has been closely identified with the preparation of the Convention on which the Centre would be based, as well as an address by George Woods which gives the Bank's view point on the need for machinery for settling investment disputes.

The press conference on the Centre, as I mentioned, will be held at 11 a.m. on March 29, in Room 1038 at 1818 H Street here in Washington.

I hope you enjoy your visit to Japan and Australia and that some time after that we shall have a chance to see you down here.

Sincerely,

David Grenier

Enclosures

Mr. Neville Nankivell  
Investment Editor  
Financial Post  
481 University Avenue  
Toronto  
Ontario  
Canada

DG:mlg

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INTERNATIONAL FINANCE CORPORATION

INTERNATIONAL BUILT FOR RECONSTRUCTION AND DEVELOPMENT

INTERNATIONAL DEVELOPMENT ASSOCIATION

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NEW YORK 4, N.Y.

March 23, 1965

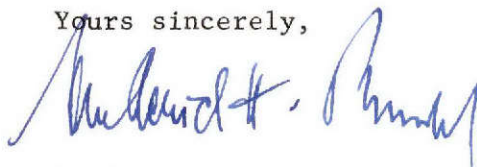
Mr. Harold N. Graves, Jr.  
Director of Information  
International Bank for  
Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433

Dear Mr. Graves:

Thanks very much for your invitation to come to the meeting on March 29th at which <sup>the</sup> Convention on the Settlement of Investment Disputes is being discussed. Unfortunately, I will be unable to attend as I'm leaving for Europe on March 26th. I would, however, appreciate if you would send me further material when it becomes available on this subject.

Thanking you, I am,

Yours sincerely,



Frederick H. Rosenstiel

FHR:ls

Sens 3/29/65



*yellow  
copy  
- files -*

March 23, 1965

Dear Viggo:

Herewith ten copies each in English and French of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States together with the Report from the Executive Directors. As you know, we are organizing a press conference on this subject on Monday, the 29th at 1100 hours at which time we will make the Convention and Report available and also a press release. The press release will be translated into French here as it has to be checked over by our Legal people. We shall airmail or if too late cable the text in time for immediate release on Monday, which normally would mean for morning papers Tuesday, the 30th. I am enclosing a copy of the English text.

Sincerely yours,

Lars J. Lind

Attachments

Mr. Viggo Christensen  
European Office  
IBRD  
4, Avenue d'Iena  
Paris 16e  
France

**OUTGOING WIRE**

TO: PINTO  
C/O JAYAWARDENA  
106 PARK ROAD  
COLOMBO 5

DATE: MARCH 19, 1965

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MESSAGE AUTHORIZED BY:

NAME A. Broches  
DEPT. Legal Department

SIGNATURE *A. Broches*  
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March 19, 1965

Mr. Leo A. Suslow  
Chief  
Program of Labor Relations  
Department of Social Affairs  
Pan American Union  
Washington 6, D. C.

Dear Mr. Suslow:

Thank you for your letter of March 15. I regret that I do not have at present a written version of my remarks at last week's SID meeting. I spoke from notes which are indecipherable by anyone other than myself. However, I understand that the reporter of the meeting will be producing at least a summary which will eventually be printed, and I shall be glad to send you a copy as soon as it is available.

Thank you very much for the paper on industrial promotion in Latin America which you enclosed. I have read it with interest and profit.

Sincerely yours,

David L. Gordon  
Deputy Director  
Development Services Department

DLG/vj  


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(for consideration on  
March 18, 1965)

**FOR  
EXECUTIVE  
DIRECTORS'  
MEETING**

FROM: The Secretary

March 17, 1965

SETTLEMENT OF INVESTMENT DISPUTES

Attached is a Memorandum of the General Counsel listing additional corrections in the text of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States circulated on March 10, 1965 (R65-37).

Distribution:

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

March 17, 1965

MEMORANDUM OF THE GENERAL COUNSEL

A

In addition to the corrections listed in my Memorandum of March 12, 1965 (R65-43) the following corrections should be made in the French text of the Convention (as circulated on March 10, 1965 - R65-37):

Page 27, second line

add the words "de son" before the word "acceptation" and before the word "approbation".

Page 36

Article 25 (4), first and second lines:

substitute the word "sa" for the word "la";  
delete the words "ou lors" and replace them with a comma;  
add the words "de son" before the word "approbation".

Page 37

Article 28 (2), third, fourth and fifth lines:

add the words "de procédure" after the word "règlement";  
substitute the words "de conciliation" for the words  
"en conciliation";  
substitute the words "et d'arbitrage" for the words  
"ou en arbitrage".

Page 38

Article 29 (2) (b), second line:

add the words "mode de" before the word "nomination".

Article 31 (2), third line:

substitute the word "qualités" for the word "qualifications".

Page 40

Article 36 (2), third, fourth and fifth lines:

substitute the words "règlement de procédure" for the word "Règlement";

substitute the words "de conciliation" for the words "en conciliation";

substitute the words "et d'arbitrage" for the words "ou en arbitrage".

Article 37 (2) (b), second and third lines:

add the words "mode de" before the word "nomination";

substitute a semicolon for the colon.

Page 41

Article 40 (2), second line:

substitute the word "qualités" for the word "qualifications".

Page 43

Article 48 (1), second line:

add after the word "voix", the words "de tous ses membres".

Page 44

Article 51 (1), third line:

substitute the words "de nature à exercer une influence décisive sur la sentence" for the word "nouveau".

Page 45

Article 51 (2), third line:

substitute the words "la date" for the words "le prononcé".

Article 52 (2), first, second, fourth and sixth lines:

substitute the figure "120" for the word "cent-vingt",

wherever it appears;

substitute the words "la date" for the words "le prononcé",

wherever they appear.

Article 52 (3), seventh line:

substitute the words "de l'" for the words "d'un", wherever

they appear.

Page 46

Article 52 (4), second line:

add the word "et" after the figure "54".

Article 52 (5), third line:

substitute the words "se soit prononcé" for the words

"ait statué".

Article 53 (2), first line:

substitute the words "de la présente Section" for the words

"du présent Article".

Page 47

Article 54 (2), eighth line:

delete the word "internes".

Page 48

Article 58, eighth and ninth lines:

substitute the words "est remplacé conformément aux" for the  
words "doit démissionner et il est pourvu à la vacance selon  
les".

Page 49

Article 62, first and second lines:

delete the words "prévues par la présente Convention".

Page 50

Article 63 (a), third line:

substitute the words "aura conclu des" for the words "conclut  
tous".

Article 65, fifth line:

substitute the word "amendement" for the word "amendment".

Page 51

Article 66 (2), third and fourth lines:

substitute the words "dépendant de lui" for the words "en  
dépendant";

substitute the words "de ses ressortissants" for the words  
"ressortissant d'un Etat contractant".

Page 52

Article 72, first and fourth lines:

substitute the word "Articles" for the word "articles";

substitute the words "dépendant de lui" for the words  
"en dépendant";

substitute the words "de ses ressortissants" for the words  
"ressortissant dudit Etat".

Page 53

Article 75

the word "article" in each paragraph should have an initial  
capital.

B

Messrs. Machado, Mejia-Palacio and San Miguel have proposed the following changes in the Spanish text of the Convention circulated on March 10, 1965 (R 65-37), as amended pursuant to my Memorandum of March 12, 1965 (R 65-43); these changes are acceptable to Mr. Gutierrez Cano and the staff and will be made in the final text (an asterisk indicates the provisions which were modified pursuant to my Memorandum of March 12, 1965).

Page 54

Preamble, first paragraph, first line:

substitute the word "la" for the word "una".

Preamble, first paragraph, third line:

substitute the words "ese campo" for the word "ello".

Preamble, second paragraph\*, first and second lines:

substitute the words "a veces" for the word "periódicamente".

Preamble, second paragraph\*, second and fourth lines:

the words "en relación con tales inversiones", which now appear on the second line, should come at the end of the paragraph.

Preamble, third paragraph\*, first and second lines:

substitute the words "se someten" for the words "han venido sometiéndose".

Preamble, third paragraph\*, third and fourth lines:

the words "en ciertos casos", which now appear on the fourth line, should come on the third line before the words "el empleo...".

Preamble, fourth paragraph\* should read as follows:

"Atribuyendo particular importancia a la disponibilidad de medios de conciliación o arbitraje internacionales a los que puedan los Estados Contratantes y los nacionales de otros Estados Contratantes, si lo desean, someter dichas diferencias;".

Preamble, fifth paragraph, first line:

substitute the word "medios" for the word "mecanismos".

Preamble, sixth paragraph\*, third through sixth lines:

replace the words "aquellos mecanismos" on the third line by "dichos medios"; the words "sea otorgada" on the fourth-fifth lines by "se preste"; and the word "ejecuten" on the sixth line by "cumplan".

Preamble, seventh paragraph\*, should read as follows:

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

Page 55

Article 1(2) should read as follows:

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



Article 4(2), first and second lines:

substitute the word "distinta" for the word "contraria"  
and the word "nombrados" for the word "designados".

Page 56

Article 5, fourth line:

replace the words "mientras esté vacante el" by the words  
"en caso de vacancia del".

Article 6(1):

subparagraph (a) should read: "adoptar los reglamentos  
administrativos y financieros del Centro;".

subparagraph (d): substitute the words "la utilización"  
for the words "el uso".

subparagraph (e)\*: the words "cualquier Secretario General  
Adjunto;" should read: "los Secretarios Generales Adjuntos;".

Article 6(1), last line:

delete the words "los votos de".

Article 6(2):

the words "tantas Comisiones como" should read: "las  
Comisiones que".

Page 57

Article 7(1), second line:

change the semicolon to a comma after the word "anual"  
and substitute the words "las demás que" for the words  
"tantas otras como".

Article 7(1), fifth line:

the word "Consejo" should be written in upper case.

Article 7(4), fifth line:

the words "la votación" should read: "esta votación".

Article 9, third line:

add the words "del Centro" after the word "personal".

Article 10(1), first and second lines:

the words "cualquier Secretario General Adjunto" should read: "los Secretarios Generales Adjuntos".

Page 58

Article 10(1), third line on page 58:

the word "de" should be replaced by "a".

Article 10(3)\*, first line:

delete the word "la" before the word "incapacidad".

Article 10(3)\*, second and fourth lines:

substitute the words "durante la vacancia del" for the words "mientras esté vacante el" on the second line; and insert the words "Secretario General" before the word "Adjunto" in both the second and fourth lines.

Article 11\* should read as follows:

"El Secretario General será el representante legal y el funcionario principal del Centro y será responsable de su administración, incluyendo el nombramiento del personal, de acuerdo con las disposiciones de este Convenio y los reglamentos dictados por el Consejo Administrativo, desempeñará la función de registrador, y tendrá facultades para autenticar los laudos arbitrales dictados conforme a este Convenio y para conferir copias certificadas de los mismos."

Article 12, first and second lines:

the word "contendrán" should be replaced by the words  
"estarán integradas por".

Page 59

Article 13(1), second and third lines:

substitute the words "o no," for the words "aunque  
no necesariamente,".

Article 14(1), sixth-eighth lines:

delete the commas after the word "será" on the sixth  
line and "Arbitros" on the seventh line.

the words "para las personas designadas en la Lista  
de Arbitros" should come after the word "relevante"  
on the eighth line.

Article 14(2)\*, third line:

the word "considerar" should be replaced by the words  
"tener presente".

the words "que reviste el hecho" should be deleted.

Article 14(2)\*, fourth line:

the word "Listas" should be written in upper case.

Article 14(2)\*, fifth line:

the words "las ramas" should read: "los ramos".

Article 16(2)\* should read as follows:

"(2) Cuando alguna persona hubiere sido designada  
para integrar una Lista por más de un Estado Contra-  
tante o por uno o más Estados Contratantes y el  
Presidente, se entenderá que lo fué por la autoridad  
que lo designó primero; pero si una de esas autoridades

es el Estado de que es nacional, se entenderá designada por dicho Estado."

Page 60

Article 16(2)\*[continued]

(see new Article 16(2), above)

Article 17\*, sixth line:

the words "de éste" should be replaced by "del Banco".

Article 18\*, third line:

the word "le" should read "la".

Page 61

Article 21, third line:

the words "la Comisión" should read: "una Comisión".

Page 62

Article 24(2)\*, first line:

delete the words "Salvo que se trate de nacionales del Estado," and start the paragraph with the word "No".

Article 24(2)\*, sixth line:

after the word "Secretariado" change the period to a comma and add the following words: "salvo la facultad del Estado de gravar a sus propios nacionales."

Article 24(3)\*, third line:

the word "la" should be replaced by the word "una".

Article 25(1)\*, first and second lines:

the words "toda diferencia...que surja" should be  
changed to read: "las diferencias...que surjan".

Page 63

Article 25(1)\*, fifth line on page 63:

substitute the word "dado" for the word "prestado".

Article 25(2)(a)\*:

first line: change the words "que, en las fechas"  
to read: "que tenga, en la fecha".

third line: insert the words "la fecha en" after  
the word "en".

sixth line: delete the word "posea".

eighth line: change the comma to a semicolon after  
the word "diferencia".

tenth line: substitute the word "tenían" for "poseían".

Article 25(2)(b)\*:

fourth line: substitute the word "tenga" for "posea".

fifth line: delete the comma after the word "Estado"  
and insert the words "personas jurídicas" after the  
word "las".

sixth line: substitute the word "teniendo" for the  
word "poseyendo" and delete the comma after the  
word "fecha".

ninth-tenth lines: substitute the word "estar" for  
the words "razón de encontrarse".

Article 25(3), second line:

insert the words "de un Estado Contratante" after the  
word "público" and change the words "del Estado," to  
read: "de dicho Estado,".

Article 25(4)\*, fourth line:

delete the words ", en principio,".

Page 64

Article 25(4)\*:

the sentence beginning with the words "El Secretario General..." should come before the sentence starting with the words "Esta notificación...".

Article 26\* should read as follows:

"Salvo estipulación en contrario, el consentimiento de las partes al procedimiento de arbitraje conforme a este Convenio se considerará como consentimiento a dicho arbitraje con exclusión de cualquier otro recurso. Un Estado Contratante podrá exigir el agotamiento previo de sus vías administrativas o judiciales, como condición a su consentimiento al arbitraje conforme a este Convenio."

Article 27(1)\*, second line:

delete the word "una".

Article 27(1)\*, sixth line:

delete the words "en caso de".

Article 27(1)\*, seventh-eighth lines:

the words "lo haya incumplido." should be replaced by:

"haya dejado de cumplirlo."

Article 27(2)\*, first line:

after the word "considerará" insert the word "como".

Article 28(1), fourth line:

substitute the words "quien enviará" for the words "y éste trasladará".

Page 65

Article 29(1), second line:

insert the words "lo antes posible" after the word  
"procederá" and delete the word "inmediata".

Article 29(2)(a), second line:

insert the word "nombrados" before the word "según".

Article 30, second line:

delete the words "contar desde" and replace the word  
"traslado" by the word "envío".

Article 30, sixth and seventh lines:

substitute the words "en lo" for the word "siendo" on  
the sixth line and the words "a ambas partes," for  
the words "de las mismas," on the seventh line.

Page 66

Article 31(2), second line:

substitute the word "reunir" for the word "poseer".

Article 32(2), fourth line:

the words "someterá a la consideración de la Comisión,  
quien" should be replaced by: "considerará por la  
Comisión, la que".

Article 34(1), fourth line:

substitute the word "estado" for the word "trámite".

Page 67

Article 34(2)\*, second and third lines:

delete the comma after the word "acta" on the second  
line and substitute the word "estado" for the word  
"trámite" on the third line.

Article 35, fourth line:

add a comma after the word "consideraciones" and  
delete the words "hechas por la otra parte, sus".

Article 35, fifth line:

the word "expuestas" should be replaced by: "hechas  
por la otra parte".

Article 35, sixth line:

delete the word "en" both times.

Article 36(1), fourth line:

substitute the words "quien enviará" for the words  
"y éste trasladará".

Page 68

Article 37(1), second line:

insert the words "lo antes posible" after the word  
"procederá" and delete the word "inmediata".

Article 37(2)(a), second line:

insert the word "nombrados" before the word "según".

Article 38\*, second line:

delete the words "contar desde" and replace the word  
"traslado" by the word "envío".

Article 38\*, sixth and seventh lines:

substitute the words "en lo" for the word "siendo" on  
the sixth line and the words "a ambas partes," for  
the words "de las mismas," on the seventh line.

Article 39, second line:

insert the words "parte en la diferencia," after the  
word "Contratante".



Page 69

Article 39, first and second lines on page 69:

change the comma to a period after the word

"Contratante" and delete the words "que sean partes en la diferencia."

Article 40(2), second line:

substitute the word "reunir" for the word "poseer".

Article 41(2), fourth line:

the words "someterá a la consideración del Tribunal, quien" should be replaced by: "considerará por el Tribunal, el que".

Article 42(1), second and third lines:

the words "En defecto" should be replaced by: "A falta".

Article 42(1), fourth line:

substitute the word "incluyendo" for the word "incluidas".

Page 70

Article 45(2), second line:

substitute the word "estado" for the word "trámite".

Article 45(2), second sentence, should read as follows:

"Antes de dictar laudo el Tribunal, previa notificación, concederá un período de gracia a la parte que no haya comparecido o no haya hecho uso de sus derechos, salvo que esté convencido que dicha parte no tiene intenciones de hacerlo."

Article 46, first line:

insert the words "en contrario" after the word "acuerdo".

Article 46, fifth line:

substitute the word "de" for the words "prestado por".

Page 71

Article 47, first line:

insert the word "en" after the word "acuerdo".

Article 48(1), second line:

insert the word "todos" before the words "sus miembros".

Article 48(4):

the words ", estén o no de acuerdo con la mayoría,"

which now appear on the first line should come

after the word "particular" on the second line.

Article 48(5), first line:

the words "los laudos" should read: "el laudo".

Article 49(2), fourth line:

substitute the word "punto" for the word "extremo".

Article 49(2), fifth line:

the words "materiales o aritméticos del mismo." should

be replaced by: "materiales, aritméticos o similares

del mismo.".

Article 49(2), sixth line:

delete the words "En ambos casos," and start the

sentence with the word "La".

Article 49(2), seventh-tenth lines:

change the comma to a period after the word "éste" on

the seventh line and delete the words "computándose

desde la fecha en que se dicte tal resolución". The

last sentence should read as follows: "Los plazos

establecidos en el apartado (2) del Artículo 51 y apartado (2) del Artículo 52 se computarán desde la fecha en que se dicte la decisión."

Page 72

Article 50(2), fourth and fifth lines:

on the fourth line, insert the words "el Tribunal considera que" after the word "Si".

on the fifth line, substitute the word "exigen," for the word "exigieren," and delete the words "el Tribunal".

Article 51(1)\*, third line:

the words "cuando se descubra" should be replaced by: "fundada en el descubrimiento de".

Article 51(1)\*, sixth line:

the word "instó" should read: "inste".

Article 51(2), fourth line:

the word "del" should be replaced by the words "de dictarse el".

Article 51(4)\*, first line:

insert the words "el Tribunal considera que" after the word "Si"; substitute the word "exigen," for the word "exigieren," and delete the words "el Tribunal" at the end of the line.

Page 73

Article 52(1), third line:

substitute the words "fundado en" for the words "al amparo de".

Article 52(1)(c) should read as follows:

"(c) que hubiere habido corrupción de algún miembro  
del Tribunal;".

Article 52(1)(d), first line:

delete the words "se" and "producido un".

Article 52(2), second and seventh lines:

the word "del" should be replaced by: "de dictarse el"  
in both cases.

Article 52(3):

insert the word "ni" before the word "ser" on the  
fifth line.

on the seventh line, change the comma to a semicolon  
and substitute the words "no podrá tener" for the  
word "poseer".

change the word "o" to "ni" on the eighth, ninth and  
eleventh lines.

Page 74

Article 52(5), first line:

insert the words "la Comisión considera que" after  
the word "Si", substitute the word "exigen," for  
the word "exigieren,", and delete the words "la  
Comisión" at the end of the line.

Article 53(1), second line:

substitute the word "ni" for the word "o".

Article 54(1), seventh line:

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

Page 75

Article 53(2), first line:

substitute the word "inste" for the word "persiga".

Article 56(1), first line:

change the words "la" to "una" and "el" to "un".

Article 56(2), first line:

insert the word "un" before "Tribunal".

Page 76

Article 56(3), first line on page 76:

insert the words "de que forma parte," after the  
word "Tribunal".

Article 60(1), first line:

change the words "La Comisión o el Tribunal fijarán,"  
to read: "Cada Comisión o Tribunal determinará,".

Page 78

Article 64\*, fourth line:

substitute the words "a la Corte" for the words "al  
Tribunal".

Article 66(2), first line:

the words "Tales enmiendas no afectarán a los" should  
be changed to read: "Ninguna enmienda afectará los".

Article 66(2), fourth line:

the words "nacidos de" should read "nacidos del".

Page 79

Article 67\*, first and third lines:

the word "para" should be replaced by the word "a" in  
both lines.

Article 67\*, fourth line:

substitute the words "de la Corte" for "del Tribunal"

and the words "al que" for "a quien".

Article 68(2), fifth line:

insert a comma after the word "aprobación".

Page 80

Article 72, fifth line:

the words "nacidos de" should read: "nacidos del".

Page 81

Fourth line:

substitute the word "auténticos" for the word

"fehacientes".

**OUTGOING WIRE**

TO: DR. JOHN ADLER  
HOTEL COLUMBUS  
VIA DELLE CONCILIAZIONE  
ROME

DATE: March 17, 1965

CLASS OF SERVICE: LT

*ITT*

COUNTRY: Italy

TEXT:  
Cable No.: 2

REFERENCE WOODS'S SPEECH TO SID CONFERENCE IN CONFORMITY ROUTINE  
PROCEDURE WOULD LIKE TO PRINT THIS SPEECH IN PAMPHLET FORM BUT  
WOULD GREATLY APPRECIATE RECEIVING YOUR COMMENTS BEFORE DOING SO  
REGARDS

GRAVES

**NOT TO BE TRANSMITTED**

MESSAGE AUTHORIZED BY:

NAME Harold N. Graves, Jr.  
Office of Information

DEPT.

SIGNATURE *Harold N. Graves, Jr.*  
(SIGNATURE OF INDIVIDUAL AUTHORIZED TO APPROVE)  
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Checked for Dispatch: *[Signature]*

OUTGOING WIRE

TO	DR. JOHN ALDER HOTEL GOLDEN VIA BRILLI CONSULTANTS ROME
COURTESY	Italy
TEXT	
CODE NO.	3
DATE	March 27, 1962
CLASS OF SERVICE	IT

REMARKS: WOULD GREATLY APPRECIATE RECEIVING YOUR COMMENTS BEFORE DOING SO  
 PROCEEDS WOULD LIKE TO PRINT THIS SPEECH IN BARRIERS FORM BUT  
 REFINANCE WORK'S SPEECH TO SID CONFERENCE IN CONCOMITANT ROUTINE

REGARDS

GRAVES

NOT TO BE TRANSMITTED

REMARKS AND COPY DESTINATION

Harold M. Graves, Jr.  
Office of Information

MAR 29 1962

*[Handwritten signature]*

HMG/jaw

ORIGINAL (30 Copy)



*WMA*

March 17, 1965

Dear Mr. Menon:

*not sent to files*

Thank you for your letter of March 3, 1965 inquiring about the Bank's work on the settlement of investment disputes and in particular about reprints of my speech before the World Conference on World Peace through Law in Athens in June 1963, which dealt with that subject.

The Bank's efforts in this field have, I am glad to say, achieved considerable success. At the request of the Bank's Board of Governors and after intensive preparatory work over some three years, the Executive Directors of the Bank will within the next week or so submit to governments the text of a Convention on the Settlement of Investment Disputes between States and Nationals of Other States. I shall see to it that you will receive a copy of the Report of the Executive Directors on the Convention to which is attached the text of the Convention itself. I am sending you herewith a copy of my speech in Athens which will further assist you to place this project in the context of the Bank's efforts to promote the flow of private foreign capital to countries in need of it.

The field of investment promotion in developing countries has received increasing attention in recent years and with regard to your request for a bibliography I could not do better than refer you to a recent work entitled "International Financing and Investment" edited by John F. McDaniels (Oceana Publications, Inc., Dobbs Ferry, New York, 1964) and to the extensive bibliography contained in the Appendix to the book. The following recent works would also be of interest to you:

A. A. Fatouros: Government Guarantees to Foreign Investors, New York, Columbia University Press (1962)

Rights and Duties of Private Investors Abroad.  
A Symposium. Mathew Bender and Company, 205 E. 42nd Street, New York, N.Y. 10017 (1965).

Yours sincerely,

A. Broches  
General Counsel

Mr. A. G. Menon  
Chief, Industries Division  
Economic Commission for Asia and the Far East  
Sala Santitham  
Bangkok, Thailand

DMS

March 18, 1965

Dr. Clive M. Schmitthoff  
Editor, The Journal of Business Law  
City of London College  
Moorgate  
London E.C. 2, England

Dear Dr. Schmitthoff,

As promised, I am enclosing herewith a short outline -- summarizing the major features -- of the Settlement of Investment Disputes Convention. I am unable to enclose a copy of the Convention itself as it is not to be released to the public until the end of the Month. For this reason, I would be grateful if you could treat the contents of the note with discretion until such date.

I could not, of course, comment on the attitude of Governments to this Project. However, the objection of certain countries to submit disputes between themselves (or any of their agencies) and private aliens to foreign arbitration is well known and is sometimes "justified" on the theory that foreign investors should enjoy no greater rights than are afforded to local citizens. In the context of their particular historic experience this should not come as too great a surprise. Moreover, I understand that French law was at one time construed to contain a similar prohibition in relation to "state contracts" which are still not arbitrable under domestic (French) law.

I do hope that you will find the enclosed note of sufficient interest for inclusion in an early edition of the J.B.L. The Convention will probably draw a volume of comment, and it would be desirable to be among the first. Otherwise references might have to be included at a later date to other writings and I would prefer to avoid any supplemental future documentation if possible.

I am looking forward to hearing from you on the above and shall try and send you a copy of the Convention and of the Report of the Executive Directors of the Bank accompanying it as soon as they are made available to the public.

With warmest personal regards,

Yours sincerely,

David M. Sassoon

Enclosure

DMS/km



# Record Removal Notice

<b>File Title</b> Operational - Arbitration - Settlement of Investment Disputes [SID] - Correspondence - Volume 5		<b>Barcode No.</b>  30354856		
<b>Document Date</b> March 18, 1965	<b>Document Type</b> Board Record			
<b>Correspondents / Participants</b> The Secretary to distribution list				
<b>Subject / Title</b> SID/65-13/1 Memorandum of the Meeting of the Committee of the Whole on Settlement of Investment Disputes held on March 8, 1965 at 10:30am				
<b>Exception(s)</b>				
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		<table border="1"> <tr> <td><b>Withdrawn by</b> Kim Brenner-Delp</td> <td><b>Date</b> August 21, 2023</td> </tr> </table>	<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023
<b>Withdrawn by</b> Kim Brenner-Delp	<b>Date</b> August 21, 2023			

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R 65-44

(for consideration on  
March 18, 1965)

FROM: The Secretary

March 17, 1965

**FOR  
EXECUTIVE  
DIRECTORS'  
MEETING**

SETTLEMENT OF INVESTMENT DISPUTES

Attached for the consideration of the Executive Directors on March 18, 1965 is a draft Resolution on Settlement of Investment Disputes.

There is also attached, for the information of the Executive Directors, a draft of the letter with which Mr. Woods intends to transmit the Resolution, the Report of the Executive Directors and the text of the Convention to member governments of the Bank.

Distribution:

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

Draft of Letter of Transmittal

Sir:

I have the honor to transmit to your Government herewith:

1) Resolution No. \_\_\_ of the Executive Directors, adopted on March 18, 1965, approving a Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the text of said Convention for submission to governments;

2) the Report of the Executive Directors referred to above;

3) the text of the Convention referred to above.

The Convention has been deposited in the archives of the Bank and is open for signature on behalf of governments in accordance with Article 67 thereof.

The Convention is the result of detailed and careful study and deliberation over a period of several years. In my opinion it can make an important and a needed contribution to the cause of economic development.

I unreservedly recommend the Convention for early and favorable consideration by your Government so that the procedures and facilities it provides may be available to governments and investors without delay.

Sincerely yours,

George D. Woods

Legal Department

Legal Department

(Draft)

RESOLUTION NO.

SETTLEMENT OF INVESTMENT DISPUTES

WHEREAS the Board of Governors on September 10, 1964 adopted Resolution No. 214 providing 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 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."

NOW THEREFORE the Executive Directors hereby resolve as follows:

- (1) the Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the text of said Convention are hereby approved in the form presented to this meeting;
- (2) the President of the Bank shall transmit said Report and the text of the said Convention to all member Governments of the Bank;

- (3) the President and the General Counsel of the Bank shall sign a copy of said Convention on behalf of the Bank to indicate the Bank's agreement to fulfil the functions with which it is charged under the Convention;
- (4) the copy of the Convention so signed on behalf of the Bank shall remain deposited in the archives of the Bank and shall be open for signature on behalf of Governments in accordance with its terms.

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SID/65-14

March 17, 1965

\*Memorandum of Meeting of the Committee of the Whole on Settlement of Investment Disputes held in the Board Room on March 9, 1965, at 11:20 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  
O. Haushofer (Alternate)  
Ali Akbar Khosropur (Alternate)  
A. Lamb (Temporary Alternate)  
Jean Malaplate (Alternate)  
K.S.S. Rajan  
M. San Miguel  
Abderrahman Tazi  
A.J.J. van Vuuren (Alternate)

A. Bogoev (Alternate)  
Otto Donner  
Joaquin Gutierrez Cano  
R. Hirschtritt (Temporary  
Alternate)  
Luis Machado  
Jorge Mejia-Palacio  
N.M.P. Reilly (Alternate)  
Gengo Suzuki  
Vilhjalmur Thor

Alternates not acting  
as Executive Directors

H. Abramowski  
C. Ayari  
Jose Camacho  
S. O. Coleman  
J. Haus-Solis  
Eiji Ozaki

Officers and Staff  
Participating

M. M. Mendels  
A. Broches  
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



2. Mr. Woods said that the Committee of the Whole would, at the present meeting, continue its discussion of the draft Report of the Executive Directors, Document R65-11.

3. Mr. Broches referred the meeting to Document R65-12 which reproduced the text of parts I, II and III of the Report and incorporated all of the decisions taken during the past sessions. In addition, the last two pages of that document contained some corrections to parts IV and V of the Report which had not yet been discussed and included the reference in paragraph 17 to the term of service of the Secretary-General which Mr. Rajan had pointed out should go in.

4. He recalled that the Executive Directors had invited attention to the desirability of a short term of service for the first Secretary-General because he would have to be elected immediately after the minimum number of 20 ratifications had been deposited, and if he were appointed for the full six year term it would be that long before States that joined later would have an opportunity to participate in selecting a person for this high office.

5. Referring to paragraphs 18 and 19 of the draft Report he proposed that their headings be changed to "Functions of the Administrative Council" and "Functions of the Secretary-General" respectively.

6. Paragraphs 18-20 were adopted by the Committee.

#### V - Jurisdiction of the Centre

7. Mr. Mejia-Palacio said that it would not be correct to say, as was done in paragraph 26 that "The Executive Directors did not think it necessary or desirable to attempt to define the term 'investment' ....." In his opinion, it was difficult to define that term but he could not support the idea that a definition was unnecessary or undesirable.

8. Mr. Broches suggested that the sentence might be reworded to read "No attempt was made to define the term 'investment'".

9. Paragraph 26 amended as proposed by Mr. Broches, was adopted.

10. There was no comment on paragraphs 27-29.

11. Mr. Mejia-Palacio thought that paragraph 30, which gave the background of Article 25(4) of the Convention and which recognized the right of States to notify the Centre of types of disputes which they would or would not consider submitting to the Centre, ought to be changed. In particular, he objected to that part of the paragraph which read:

".....some governments nevertheless felt that adherence to the Convention might be interpreted as holding out an expectation that Contracting States would give favorable consideration to requests by investors for the submission of a dispute to the Centre".

This kind of background could be obtained from the records of the preparatory work and should not be put in the Report so as to make it appear argumentative.

12. Mr. Broches proposed that in order to meet Mr. Mejia-Palacio's point the phrase "some governments nevertheless felt" could be changed to "the view was expressed" or "it was nevertheless felt". Alternatively, the first and second sentences of paragraph 30 might be omitted and the paragraph start with the flat statement "Article 25(4) expressly permits .....etc". On the other hand the provisions of Article 25(4) were very important to certain countries and had been the subject of much discussion. He felt it would be helpful to retain a brief explanation of the background, and did not believe that the present wording was argumentative.

13. Mr. Hirschtritt said he would have no objection to omitting the first and second sentences of paragraph 30. Alternatively the words "some governments" might be replaced by "some participants in the preparatory conferences".

14. Mr. Gutierrez Cano observed that the Report was divided into two parts: the first, a declaration of intention or a description of the scope of the project; and second, a description of the provisions of the Convention. The latter part should not contain any speculation on the implications of certain provisions, which would be more appropriate to the first part. For that reason he would be in favor of deleting the first and second sentences of paragraph 30 and of starting the paragraph with the words "Article 25(4) expressly permits Contracting States ..... etc".

15. Mr. Rajan said he could support Mr. Gutierrez Cano's suggestion as offering a clear solution that would be in accord with the rest of the Report. On the other hand, the whole question had assumed a great deal of importance during the earlier discussions and many governments would be looking for some reference to it in the Report. He would therefore prefer the other solution proposed by Mr. Broches viz. to leave the explanation in but to replace the words "some governments nevertheless felt" by the more neutral form "it was nevertheless felt".

16. Mr. Woods said that there seemed to be agreement on leaving the explanation in and changing the phrase "some governments nevertheless felt" in the first sentence to "it was nevertheless felt". The opening words of the sentence "These governments pointed out" would be replaced by "It was pointed out in that connection ....", and in the same sentence the phrase "disputes which they would ..... consider" should be amended to read "disputes which governments would ..... consider".

17. Mr. Machado said that while he would have preferred a text that appeared less argumentative, he would be prepared to support the amended version of paragraph 30 now before the Committee.

18. Mr. Gutierrez Cano said he would abstain on paragraph 30.

19. Paragraph 30 was adopted by the Committee.

20. Mr. Rajan referring to the last sentence of paragraph 31, enquired whether it could not be expanded by some further explanation of "the rules of international law regarding the exhaustion of local remedies", and what form a modification" of the rule might take.

21. Mr. Broches said that if a provision were included in the Convention stating that access to the Centre would always be available without prior exhaustion of local remedies such a provision would have represented a modification of international law, and of course the Convention contained no provision of this nature. It had been recognized that the two sentences in Article 26 of the Convention were really not connected, the second having been inserted to make it clear that the first did not modify the rule of international law on the exhaustion of local remedies. But he could not see how the Report could be elaborated to make the position clearer.

22. Mr. Woods said that paragraphs 32 and 33 of the Report would be deleted since they contained an explanation of Article 26(2) which had itself been deleted. Subsequent paragraphs would be renumbered accordingly in the new version of the draft.

23. As to paragraph 34, he understood that Mr. Gutierrez Cano wished to speak on Article 27 of the Convention which was dealt with in that paragraph. The Committee might therefore wish to complete its discussion of the rest of the Report and then return to paragraph 34 and Article 27 of the Convention.

#### VI - Proceedings under the Convention

24. There was no comment on paragraphs 35-40 of the Report.

25. Mr. Khosropur referring to paragraph 41 wondered whether it was necessary to quote Article 38(1) of the Statute of the International Court of Justice in the Report since that text was readily accessible to anyone who wished to read it. In any event he did not favor the wording of Article 38(1) itself and in particular its reference to the general principles of law recognized by "civilized" nations.

26. Mr. Broches said that even at the meetings of the Legal Committee many of the distinguished lawyers present had requested that the text of Article 38(1) of the Statute be read to the meeting. He did not think it would be offensive to any reader to put the text of Article 38(1) in a footnote.

27. There was no further comment on paragraph 41. There was no comment on paragraph 42.

28. Mr. Broches referring to paragraph 43 said that in order to conform the wording of the Report to the text of the Convention as amended by the Executive Directors, the phrase, "to enforce it" should be replaced by "to enforce the pecuniary obligations imposed by the award".

29. There was no comment on paragraphs 43-44.

VII - Place of Proceedings

30. There was no comment on paragraph 45.

VIII - Disputes between Contracting States

31. Mr. Broches said that in paragraph 46 the Executive Directors would be expressing a view on a question of international law when they said in the third sentence:

"Specifically, the provision is not intended to, and in the opinion of the Executive Directors does not, confer ....."

and some explanation of the background would be useful. At the Legal Committee there had been a proposal to amend the text of Article 64 of the Convention to make two points clear, viz. that (a) Article 64 did not constitute the International Court of Justice a court of appeal in relation to decisions by arbitral tribunals under the Convention and (b) that it did not empower a Contracting State to take a dispute pending before an arbitral tribunal to the International Court of Justice in contravention of Article 27. It had been agreed in the Legal Committee after some discussion that there was no need to amend Article 64 if the substance of the views of the Legal Committee on these points were to be included, for instance, in the Report of the Executive Directors. If any of the Directors felt hesitant about expressing a view on the matter, the phrase "in the opinion of the Executive Directors" could be replaced by "in the opinion of the Legal Committee rendered to the Executive Directors" or words to that effect.

32. In reply to Mr. Garba, Mr. Broches explained that Article 64 was intended to deal with disputes which could arise among Contracting States in the application of the Convention, e.g. a dispute about the degree of immunity or tax exemption that a State grants to an official of the Centre.

33. Mr. Rajan agreed that the explanation in paragraph 46 should remain. However, as the majority of the Executive Directors were not lawyers, he would omit the words "in the opinion of the Executive Directors" which introduced the interpretation of Article 64. He would also replace the phrase "would contravene the prohibition laid down in Article 27" by "contravene the provisions of Article 27".

34. Mr. Broches suggested that the second sentence of paragraph 45 might be amended to read:

"Specifically, the provision is not intended to and in the opinion of the Legal Committee advising the Directors in this regard, does not ..... etc."

35. Mr. Gutierrez Cano said he fully supported retention of the explanation contained in paragraph 45. However, he felt that the idea should be expressed

categorically by stating:

"Specifically, the provision does not confer ..... etc."

36. Mr. Broches said that the sentence as redrafted on the proposal of Mr. Gutierrez Cano would, in his view, carry out the mandate of the Legal Committee.

37. Mr. Malaplate said that while he agreed that Article 64 did not confer appellate jurisdiction on the International Court of Justice he doubted whether the terms of the explanation in paragraph 46 was satisfactory. The Directors were not a court and had no power actually to interpret the Convention. He would, therefore, prefer the wording "is not intended to ... confer".

38. Mr. Broches explained that despite the categorical nature of the proposed wording the Court would not be bound by this statement of the Directors. The categorical statement of the Directors, while giving effect to the wishes of the Legal Committee, was not in fact more than a statement of intention.

39. Mr. Woods said that there seemed to be agreement on redrafting the third sentence of paragraph 46 as follows:

"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".

40. Mr. Woods said that consequent upon changes in the provisions on entry into force on the Convention, paragraph 47 and 48 would be deleted and replaced by the paragraph on the last page of document R65-12 which reflected the new rules on signature. The substance of paragraph 49 would form a new paragraph immediately following paragraph 4.

41. There was no comment on the text to be substituted for paragraph 47 and 48, or on the other proposed changes.

42. Mr. Woods said that the draft Report of the Executive Directors was now in a form acceptable to the majority of the Directors. However, he would propose one further change with a view to making the Report more palatable to two of the Directors who had earlier expressed reservations viz. he would propose in paragraph 3 as set forth on page 2 of document R65-12, that the last sentence be amended to read:

"Accordingly, the text of the Convention is submitted to member governments for consideration with a view to signature and ratification (or acceptance or approval)".

43. Mr. Malaplate wondered whether if this change were made the Report would be fully responsive to the Resolution of the Board of Governors which said in

paragraph (d) "The Executive Directors shall submit ..... etc."

44. Mr. Donner said he would be prepared to accept the change if the footnote earlier proposed as a means of recording the dissent of certain Directors would thereby become unnecessary.

45. Mr. Hirschtritt and Mr. Rajan said they would support the change proposed by Mr. Woods.

46. Mr. Garba observed that the majority of the Directors had found the text as it stood before quite acceptable. The change suggested by Mr. Woods was intended to accommodate the two dissenting Directors and, in his view, it would be best at this stage to find out from those Directors if the proposed change would really secure their support for the Report.

47. Mr. Woods said that while he had earlier been willing to accept the idea of recording the dissent of certain Directors in a footnote, he now realized that the majority of the Board did not agree with that view and were opposed to having such a footnote. The exception taken by certain Directors and their comments would, of course, be set forth in the record of the meeting. He then asked whether his proposed change in the wording of paragraph 3 would enable the dissenting Directors to give their affirmative vote for the Report.

48. Mr. Mejia-Palacio said that while he very much appreciated Mr. Woods' effort to settle this question, his real objection was to the reference to the various forms of governmental action, viz. signature and ratification, acceptance or approval. It should be left to governments to decide what action they wished to take. He recalled that in the case of the IDA Charter certain Directors had been given the right to have their dissent recorded in a footnote.

49. Mr. San Miguel said that in view of the proposed new wording of paragraph 3 he would be in a position to give his support to the Report.

50. Mr. Broches pointed out that in the case of the IDA Charter certain Directors had been given the right to record the reasons for their abstention in a footnote to the Resolution which was circulated to governments along with the Report and the text of the Articles of Agreement. No footnotes had been appended to the Report of the Directors even in that case.

51. Mr. Mejia-Palacio said that in the case of the IDA Charter the Directors concerned had in fact been able to support the Report. Their abstentions had related to the Resolution which was why the footnote had appeared there.

52. Mr. Machado said he welcomed Mr. Woods' proposed amendment to paragraph 3.

53. Mr. Woods said there seemed to be agreement among all the Directors with the exception of Mr. Mejia-Palacio on adopting the Report as a whole. Paragraph 3 of the Report would be amended as he had suggested.

54. On the proposal of Messrs. Machado and Rajan it was decided to remove the brackets in the last line of paragraph 3 and amend that part of the sentence to

read "with a view to signature and ratification, acceptance or approval".

55. Mr. Woods said that the Directors appeared to be willing to consider the final draft of the Report of the Executive Directors together with the final draft of the Convention itself at 10:30 a.m. on Thursday, March 18, 1965. Both documents would be available by that date in English, French and Spanish.

Article 27 of the Convention; Paragraph 34 of the Report

56. Mr. Woods said that the meeting would now hear Mr. Gutierrez Cano's comments on Article 27 and on paragraph 34 of the Report which dealt with that Article.

57. Mr. Gutierrez Cano recalled that it had been decided to postpone discussion of Article 27 which operated to prevent diplomatic protection or the bringing of an international claim in respect of a dispute before the Centre, until a decision had been taken on Article 26(2) on "subrogation". His specific proposal was that all reference to diplomatic protection be eliminated from Article 27. "Diplomatic protection" was a wide concept and a State might wish to retain its rights in that area for a variety of purposes. Moreover, he felt it would be very difficult to distinguish between "formal" and "informal" diplomatic exchanges as contemplated in paragraph (2) of Article 27. In his view, a general suspension of diplomatic protection was a matter for each State to decide and Article 27 should specifically prohibit only the bringing of an international claim. He did not think his proposal would alter the main principle underlying Article 27.

58. Mr. Broches replied that Article 27 had been discussed thoroughly and at length in the Legal Committee. All had agreed that the right to bring an international claim should be suspended. As for diplomatic protection, some had felt that reference to it should be omitted entirely, while others had objected to this, and Article 27 as it stood represented the compromise that had been reached. Diplomatic protection could, on the one hand, consist of a formal representation by one government to another declaring that in its opinion the latter had failed to perform its obligations. Paragraph (2) on the other hand specifically permitted such actions as informal enquiries made through an Embassy and relating to disputes within the jurisdiction of the Centre. Total exclusion of any reference to the right of diplomatic protection had not been favored by some developing countries. The compromise in Article 27 had been acceptable to all.

59. Mr. Gutierrez Cano said that a further ground for his objections to the idea of suspension of diplomatic protection as contemplated in Article 27 was that it permitted a citizen, by consenting to the jurisdiction of the Centre, to deprive his State of the right to decide whether or not it would extend diplomatic protection in a particular case. However, in view of the compromise just mentioned by Mr. Broches he could go along with Article 27 if it could be made clear, perhaps by the addition of commas after the words "protection" and "claim" in paragraph (1), that the prohibition related only to disputes subject to arbitration under the Convention.

60. Mr. Broches observed that he had understood Mr. Gutierrez Cano to object to a principle which had clearly been accepted by the Legal Committee viz. that a State should give up its right to diplomatic protection in cases where one of its citizens had obtained a direct right of access against a foreign State. However, the change of punctuation suggested by Mr. Gutierrez Cano might make clear what had always been the intention viz. that diplomatic protection would only be suspended in the specific circumstance set forth in Article 27, and he had no objection to it.

61. Mr. Woods said that in the absence of objection from the other Directors the changes proposed by Mr. Gutierrez Cano would be made in Article 27 and reflected in paragraph 34 of the Report. The Directors would, at their next meeting on this subject, take formal action on the text of the Convention and on the Report of the Executive Directors.

62. The meeting was adjourned at 12:45 p.m.



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SID/65-13

March 17, 1965

\*Memorandum of Meeting of the Committee of the Whole on Settlement of Investment Disputes held in the Board Room on March 8, 1965 at 10:30 a.m.

1. There were present:

Chairman

George D. Woods, President

Executive Directors and Alternates acting as Executive Directors

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

Officers and Staff  
Participating

M. M. Mendels  
A. Broches  
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

Draft Report of the Executive Directors (Doc. R. 65-11) (continued)

2. Mr. Woods remarked that a redraft of paragraphs 8-13 of the draft Report was being circulated to the Committee by the staff. He then asked the Committee to consider again paragraph 3 of the draft Report on the understanding that if the text of that paragraph could be agreed upon, the Committee would then go back to paragraph 2. He asked Mr. Broches to indicate to the Committee a few changes in paragraph 3 which the Chair would like to introduce.
3. Mr. Broches proposed that the words "approving the text of the Convention" be deleted in the first sentence of paragraph 3. In the second sentence of the same paragraph 3, he proposed that the words "in the form approved by them" be replaced by the words "in the form attached hereto".
4. Mr. van Vuuren expressed support for the changes just proposed by Mr. Broches and wished to support the amendment suggested at the last meeting by Mr. Donner, as modified by Mr. Chen, in the last sentence of paragraph 3.
5. Mr. Woods while noting Mr. van Vuuren's views, asked that the Committee for the time being defer comments on the last sentence of paragraph 3 which would embody the recommendations of the Committee.
6. Mr. Gutierrez Cano referring to the third sentence in paragraph 3 of the draft Report pointed out that there was a certain lack of elegance in using the same sentence "satisfied" and "satisfactory".
7. Mr. Broches suggested that instead of "satisfactory framework" the words "suitable framework" be used.
8. Mr. Machado suggested that the third sentence of paragraph 3 be shortened by omitting the reference to the Executive Directors and simply making a possible statement that the Convention offers a suitable framework for the facilities and procedures thereunder.
9. Mr. Woods asked the Committee to indicate by a show of hands whether it would prefer to leave the words "They [i.e. the Executive Directors] are also satisfied that" at the beginning of the sentence, and stated that there was a clear majority in favor of retaining the third sentence in paragraph 3 as it was in the draft, with only the substitution of the word "suitable" for the word "satisfactory".
10. Mr. Woods asked the Committee to consider the last sentence in paragraph 3 and asked Mr. Donner whether he would still support the amendment to that sentence which he had proposed at the last meeting.
11. Mr. Donner replied in the affirmative.
12. Mr. Chen wished to confirm his support for Mr. Donner's amendment.

13. Mr. Reilly was in favor of retaining the sentence as it appeared in the draft. He thought that some words in Mr. Donner's amendment might be confusing. He did not like the reference to the "draft Convention" because he thought that, after all the work done on it, this should be the text of the Convention and not merely a draft. He also thought that the word "examination" initially proposed by Mr. Donner might give the implication that governments would be expected to propose further changes and amendments in the text.
14. Mr. Hirschtritt supported Mr. Reilly's point; in his opinion, it behooved the Executive Directors to make a clear-cut recommendation to the more than 100 member governments as requested by the Governors' Resolution.
15. Mr. Donner wished to amend his proposal to take into account Mr. Reilly's point by substituting the expression "submit the text of the Convention" for the expression "submit the draft of the Convention".
16. Mr. Khosropur said that he had no strong feelings on the point and that both the present draft and Mr. Donner's amendment would be acceptable to him.
17. Mr. Suzuki asked what kind of recommendations were contemplated in the Resolution of the Board of Governors which mentioned "such recommendation as [the Executive Directors] shall deem appropriate".
18. Mr. Broches replied that the recommendations could vary from a recommendation to sign and ratify the Convention to a recommendation to put it away with such intermediate positions as to give favorable early consideration etc. The request for recommendations was inserted in the Resolution approved by the Board of Governors in order to make it clear that the Executive Directors would be responsible for carrying out this proposal and in doing so they would act on their own without committing the governments whom they represented. As the Report, and particularly paragraph 8 and following, explained the reasons why the Executive Directors thought that the text of the Convention would meet the objectives and desires of the various member countries, it follows that the Directors should make a recommendation and they would do so even if they only said that they submitted the Convention as proposed by Mr. Donner.
19. Mr. Donner agreed that substitution of the words "submit" for "recommend" did not change the substance but was a more polite approach to governments.
20. Mr. Suzuki remarked that the text of the Resolution of the Governors did not make it clear that the recommendation would be for signature and ratification. He wondered whether this had been explained to the Governors, perhaps in private conversation with the various delegations at the Annual Meeting.
21. Mr. Woods said that, as far as he knew, no such conversations had taken place.
22. Mr. Broches remarked that the first Resolution of the Board of Governors in 1962 spoke of "drafting an agreement for submission to governments". Later it was felt that this wording did not authorize the Executive Directors to . .

put a text before the governments and invite their signatures. After long discussions by the Executive Directors it was decided that the majority wanted an authorization by the Governors to submit to governments a text which they could sign and the Resolution adopted at the Tokyo meeting reflected that position.

23. Mr. Mejia-Palacio recalled that he had suggested deletion of paragraph 3 because it would be extremely difficult to reach unanimity on its contents and particularly the last sentence. He thought that to say in the Report that the Executive Directors submitted the text of the Convention to governments for their signature and ratification went beyond the proper scope of the Executive Directors' responsibilities as it would tell governments what to do with the Convention. If such language was retained in the Report he would wish to dissociate himself from the Report and would ask that the language be amended to say that the majority of the Executive Directors submitted the Convention, or alternatively, to indicate that some of the Executive Directors did not agree with this action.

24. Mr. Woods said that he personally thought that if the text under discussion was eventually adopted by a majority and not unanimously, it would be reasonable to state these facts.

25. Mr. Rajan asked what the exact wording of Mr. Donner's amendment was.

26. Mr. Woods said that the amendment, as modified by Mr. Donner himself and by Mr. Chen, would read as follows:

"Accordingly, the Executive Directors submit the text of the Convention to member governments for consideration with a view to signature and ratification or acceptance".

27. Mr. Rajan supported this amendment which would correctly reflect the Executive Directors' intentions and would probably meet some of Mr. Mejia-Palacio's suggestions.

28. Mr. Chen restated that he was in favor of Mr. Donner's amendment and mentioned that in paragraph 8 of the draft Report it was stated that the Executive Directors submitted the Convention to governments. He also thought it important to say that the Convention was submitted for consideration with a view to signature and ratification. This phrase would still leave some flexibility for governments to act.

29. Mr. Machado thought that it would be very unfortunate if, after agreeing on the text of the Convention, the Executive Directors were unable to agree on the report transmitting the Convention to member countries. He would, therefore, urge that every effort be made to avoid a split between a majority and a minority as lack of unanimity would weaken the Convention itself. In the hope of reconciling the different views expressed he would suggest that the last sentence of paragraph 3 read as follows:

"Accordingly, the Executive Directors recommend to the member governments a most careful consideration of the Convention, for their proper governmental action."

As various countries had different procedures for acceding to an international Convention it was better to use generic terms to describe their action. Since the Convention was not wholly satisfactory to every Executive Director but represented a satisfactory compromise, unanimity could be obtained on a recommendation to governments to give careful consideration to the Convention.

30. Mr. Gutierrez Cano said that he was in favor of any wording which would help the minority to join the majority in approving the final Report. He found a certain contradiction between the last sentence of paragraph 3 and the last sentence of paragraph 2. In his opinion the duty of the Executive Directors was to prepare a Convention and to submit it or even recommend it to governments but he did not see that the Executive Directors would have also to recommend the signature and ratification of the Convention. He was, therefore, in favor of Mr. Donner's proposal or Mr. Machado's proposal if unanimity could be reached on either of them.

31. Mr. Woods summing up the discussion noted that while Mr. Mejia-Palacio had proposed deletion of paragraph 3, there seemed to be a clear consensus that the first, second and third sentences, as modified during this meeting, should be included in the Report. On the last sentence he would ask the Committee to indicate by show of hands whether the suggestion by Mr. Donner, as amended, would be acceptable. He then read the proposal as follows:

"Accordingly, the Executive Directors submit the text of the Convention to member governments for consideration with a view to signature and ratification or acceptance".

32. Mr. Broches pointed out that since the Convention now provided also for "approval" that word should be added or, in order to simplify the language, the sentence could stop after the word "signature".

33. Mr. Donner accepted Mr. Broches' second suggestion.

34. Mr. Mejia-Palacio asked what the second change suggested by Mr. Broches would mean since, in his view, signature was only the preliminary step taken by the executive branch of the government which would still require further action by the legislative power.

35. Mr. Broches agreed with Mr. Mejia-Palacio's analysis but thought that if a government went to the trouble of signing the Convention they would do so because it expected to have the Convention ratified by the legislature. His suggestion was intended to simplify the drafting and to avoid technicalities.

36. Mr. Rajan disagreed with Mr. Broches' suggestion because he thought that "ratification or acceptance" were the important steps that should be stressed.

37. Mr. Woods thought that, in order to take into account the different constitutional procedures of the various countries, it would be preferable to keep the original text as he had read it a while ago.

38. Mr. Broches pointed out that, in that case, the words "or approval" should be added at the end of the sentence.

39. Mr. Machado asked whether instead of the reference to "ratification, acceptance or approval" a generic term such as "proper governmental action" would now be preferable.

40. Mr. Woods said that at this point the Committee should decide by a vote on the text it preferred. The fact that a minority might be against it should not delay the proceedings. It was well known that not all the 102 member governments had the same views on the proposed Convention and the Committee should not attempt to reach unanimity at all costs. If a text was adopted by a majority then the minority would consider whether or how it wanted its dissent to be recorded.

41. Mr. Mejia-Palacio recalled that in the past the Executive Directors had always tried to be very diplomatic in their relations with member governments. He thought also in this case it would be better not to tell governments the specific action they should take and, therefore, he would support Mr. Machado's proposal.

42. Mr. Reilly asked the Chairman to tell the Committee whether, in the opinion of the Chair, Mr. Machado's wording would defeat the purpose of the Report

43. Mr. Woods said that he would ask Mr. Broches to give his opinion on Mr. Machado's proposed language, perhaps modified to say "appropriate action".

44. Mr. Broches expressed the view that the proposed language would not express what was the Executive Directors' intention. That intention, as expressed in Mr. Donner's proposal, was to ask governments to take a good look at the Convention with a view to "joining". The layman's expression "to join the Convention" was expressed in the text of the Convention as "signature and ratification, acceptance or approval". By using these words the Executive Directors would not interfere with, or pass a judgment on, the legal processes which in each particular State would be appropriate for joining.

45. Mr. Rajan wondered whether unanimity on this last sentence of paragraph 3 could not be reached by using the following language:

"Accordingly, the Executive Directors recommend the Convention to the member Governments for their most careful consideration".

46. Mr. Woods noted that Mr. Rajan's proposal would be another way of handling the problem by sending the Convention to governments with no suggestion as to how the Executive Directors felt.

47. Mr. Rajan thought that a recommendation by the Executive Directors to member governments to give their most careful consideration would mean the same thing as saying that the Convention was, in the opinion of the Executive Directors, a desirable thing.

48. Mr. Woods asked whether in Mr. Rajan's proposal the word "recommend" would carry the connotation that the Executive Directors hoped that the governments would favorably consider the Convention.

49. Mr. Rajan replied in the affirmative.

50. Mr. Machado wished to support Mr. Rajan's proposal with the addition at the end of the words "and governmental action" to stress that the Executive Directors expected action from the governments.

51. Mr. San Miguel supported Mr. Rajan's proposal as amended by Mr. Machado, but would want to specify that the majority of the Executive Directors would make the recommendation.

52. Mr. Khosropur thought that the proposal of Mr. Donner already covered Mr. Machado's point because it indicated, in the terms used in the Convention, the kind of action that governments could take.

53. Mr. Woods asked for a vote by a show of hands on the following text of the last sentence of paragraph 3:

"Accordingly, the Executive Directors submit the text of the Convention to member governments for consideration with a view to signature and ratification (or acceptance or approval)".

He stressed that if this text were adopted by a majority, the words "a majority" would be added before the words "Executive Directors".

54. Mr. Woods noted that 13 Directors were in favor of that sentence. Mr. Mejia-Palacio was against it and Messrs. Machado, Lamb, San Miguel and Suzuki had not voted.

55. Mr. Suzuki thought that the question of including the words "a majority" of the Executive Directors" had not been explored sufficiently.

56. Mr. Woods asked Mr. Mejia-Palacio and the Executive Directors who had abstained whether they would still wish the approved sentence to be modified to use the words "The majority of the Executive Directors".

57. Mr. Machado said that it would be unfortunate if the report of the Executive Directors showed that they had been able to agree on the text of the Convention but unable to agree on the instrument of transmittal, and therefore, he would be against the reference to "the majority".

58. Mr. Mejia-Palacio was in favor of the reference to "the majority".

59. Mr. Said Ali wondered whether the term "majority" should be used whenever the Executive Directors were mentioned in the Report if it were used in paragraph 3. The alternative of a footnote indicating the dissenting minority would be preferable.

60. Mr. Woods asked Mr. Mejia-Palacio whether the footnote would be acceptable to him.

61. Mr. Mejia-Palacio said that all he wanted was to dissociate himself from the statement in the last sentence of the Report. The footnote would be acceptable. In the further discussion on the Report he would thereafter abstain since it did not reflect his views.

62. Mr. San Miguel said that he was in favor of having a reference to "the majority" in the sentence under discussion.

63. Mr. Suzuki pointed out that the term "Executive Directors" in the Bank meant what in other institutions was called the Board of Directors, i.e. a collective body which would act by majority vote and, therefore, it would not be proper to use the term "a majority of the Executive Directors".

64. Mr. Chen and Mr. Rajan supported Mr. Suzuki's point of view.

65. Mr. Woods concluded that paragraph 3 as amended was now approved and that the possibility of adding a footnote to indicate the dissent of the minority would be studied.

66. Mr. Khosropur said that in connection with the Executive Directors' recommendation for acceptance of the Convention it might be useful to draw immediately the attention of the governments to the provisions of paragraph (4) of Article 25 which permitted the Contracting States to notify to the Centre the class or classes of disputes which they wanted or did not want to submit to the Centre. This would be psychologically helpful for governments in deciding whether to accede to the Convention.

67. Mr. Broches pointed out that paragraph (4) of Article 25 was covered at length in another part of the Report and that to introduce a description of it at this point of the Report might give the impression that the notifications contemplated in paragraph (4) of Article 25 would constitute reservations to the Convention.

68. Mr. Machado submitted an additional proposal which might obtain unanimity in the Committee, that is to say:

"Accordingly, the Convention is submitted to member governments for consideration . . . . ."



69. Mr. Woods asked Mr. Mejia-Palacio whether this proposal would obtain his support.
70. Mr. Mejia-Palacio replied in the negative.
71. Mr. Woods then invited the Committee to consider paragraph 2 of the draft Report.
72. Mr. Broches stated that a suggestion had been made to modify the words "approve for submission". The suggestion had come both from Directors who were against the use of the word "approve" and from those who believed that it would be difficult to render in French or Spanish the concept of "approval for submission". A solution of the problem would be to change the clause "approve for submission" to "approve the submission of the text of the Convention". In the second sentence of paragraph 2 the words "approval of the Convention for submission to governments" could be replaced by the words "this action". Finally, Mr. Machado had suggested that the reference to governments be made more specific by changing the last clause of that sentence to read "implied that the governments they represent are committed to take action on the Convention".
73. Mr. Machado said that he was in favor of the first sentence as amended in the form suggested by Mr. Broches.
74. Mr. Mejia-Palacio said that he had no objection to the first sentence but asked why the Convention would be submitted only to member governments while also other governments could accede to the Convention.
75. Mr. Broches explained that until the Convention had come into force and the Administrative Council had been constituted, no State which was not a member of the Bank could accede because its accession was conditional upon an invitation by the Administrative Council.
76. Mr. Gutierrez Cano stressed that in any case the Executive Directors should submit the Convention only to the governments which are members of the Bank.
77. Mr. Woods asked whether there were any comments on the second sentence of paragraph 2.
78. Mr. Chen was in favor of deleting the words "of course" which were superfluous.
79. Mr. Broches thought that the emphasis provided by those words was necessary in the context.

80. Mr. Rajan was in favor of the new draft of the sentence but suggested that it be slightly modified to refer to governments that the Executive Directors individually represented because the term Executive Directors in the Bank meant the Board of Directors rather than the individual members.
81. Mr. Mejia-Palacio thought that to refer to governments which the Executive Directors individually represent was contradictory as the Executive Directors as such acted only collectively.
82. Mr. Broches said that the apparent contradiction pointed out by Mr. Mejia-Palacio could perhaps be solved if the sentence would say that the governments represented by the individual Executive Directors were not committed. etc. The sentence would then read as follows:
- "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".
83. Mr. Said Ali suggested that the wording be changed to refer to "any government" and to omit any mention of representation of governments by the Executive Directors.
84. Mr. Woods said that the consensus of the Committee was to accept the sentence as it had just been read by Mr. Broches. He then invited attention of the Committee to a redraft of paragraph 4 which had just been circulated and which read as follows:
- "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 or acceptance."
85. Mr. Rajan suggested that a uniform spelling in the Convention and in the Report be used for the word "depositary".
86. Mr. Woods noted that there were no objections to paragraph 4 as amended and asked for comments on paragraph 5.
87. Mr. Gutierrez Cano suggested that, in order to shorten the Report, that paragraph be eliminated.
88. Mr. Broches replied that the paragraph was a statement of fact which introduced the following paragraph.
89. Mr. Woods noted that there were no objections to paragraph 5 and asked for comments on paragraph 6.
90. Mr. Khosropur enquired whether all the persons who attended the Regional meetings were legal experts or also representatives of governments.

91. Mr. Broches replied that all those who attended the meetings had been invited to attend, and had been designated by their governments, as legal experts.

92. Mr. Malaplate suggested that the first sentence of paragraph 6 could be conveniently merged with the first sentence as follows:

"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 etc. . . ."

93. Mr. Rajan suggested that in order to avoid repetition the words that follow "86 countries" be eliminated.

94. Mr. Woods noted that paragraph 6, with Messrs. Malaplate and Rajan's suggestions was approved and asked for comments on paragraph 7. As none were offered he called the Committee's attention to the redraft of paragraphs 8 through 13 which had been circulated earlier at this meeting.

95. Mr. Broches read paragraph 8 in the new redraft as follows:

"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 could be a major step towards promoting an atmosphere of mutual confidence which is a prerequisite for the free flow of private foreign capital into those countries which wish to attract it".

96. Mr. Machado agreed with the sentence of the new paragraph but suggested that the words "which is a pre-requisite" be deleted.

97. Mr. Khosropur wondered why the words "flow of capital" should be qualified by the adjective "free" and suggested its deletion.

98. Mr. Mejia Palacio agreed with the first sentence of the paragraph. In connection with the second sentence he pointed out that there existed already other institutions designed to settle disputes such as the 1929 Latin American Convention, the International Court of Justice, the Convention on the Pacific Settlement of Disputes, or special mechanisms such as the ones provided under the Bank, or IDA or IFC agreements. He also questioned whether it was correct to assert that the proposed Centre would be a "major step toward promoting an atmosphere of mutual confidence". He also agreed with Mr. Machado's suggestion to delete the word "pre-requisite" and suggested that instead of "promoting" the word "improving" be used.

99. Mr. Said Ali suggested that instead of the words "free flow of private capital," the words "international flow of private capital" be used and the last eight words of the second sentence be deleted.

100. Mr. Gutierrez Cano suggested that the second sentence be shortened so as to make its drafting into Spanish easier. He also suggested that the words "promoting an atmosphere" be replaced by the words "strengthening the atmosphere".

101. Mr. Woods said that some of the suggestions made could certainly improve the text and proposed the following redraft of the second part of the last sentence after the words "major step":

"toward promoting an atmosphere of mutual confidence and thus stimulating the international flow of private foreign capital into those countries which wished to attract it".

102. Mr. Broches said that the whole sentence should then be redrafted as follows:

"The creation of an institution designed to facilitate the settlement of disputes between States and foreign investors could be a major step toward promoting an atmosphere of mutual confidence and thus stimulating a larger flow of private international capital . . . . "

103. Mr. Machado thought unfortunate the use of "foreign investor" in this Report and suggested that instead the Report refer to "the settlement of international investment disputes".

104. Mr. Woods pointed out that the suggested change would not reflect the contents of the Convention because there could be international disputes between States. He wondered whether some other word could be found to replace the adjective "foreign".

105. Mr. Broches said that throughout the Convention a technically precise but long circumlocution had been used but he did not see any reason why people should object to the use of the word "foreign" as applied to investors.

106. Mr. Woods then asked a vote on the following text of the second sentence of paragraph 8:

"The creation of an institution designed to facilitate the settlement of disputes between States and foreign investors could 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 wished to attract it".

He then announced that a large majority was in favor and the text had been adopted.

107. Mr. Broches then read paragraph 9 in the new redraft as follows:

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

108. Mr. Mejia-Palacio said that he had no objection to the first sentence of paragraph 9 but questioned the word "frequently" in the second sentence.

109. Mr. Broches explained that in those parts of the world where investment agreements were used they very frequently included a clause for international arbitration. Investment agreements were not normally used in Latin America or Europe.

110. Mr. Rajan suggested that the words "frequently consider" be substituted for "frequently decide".

111. Mr. Woods asked for a show of hands on paragraph 9 with Mr. Rajan's amendment and declared it approved.

112. Mr. Broches remarked that paragraph 10 had remained unchanged. As there were no objections to that paragraph, Mr. Broches proceeded to read the redraft of paragraph 11 as follows:

"The Executive Directors believe that private capital will continue to flow, as in the past, 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. It cannot be doubted, on the other hand, that 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."

113. Mr. Khosropur asked whether there was an inconsistency between the reference to the larger flow of private international investment and the preceding sentence.

114. Mr. Broches replied in the negative.

115. Mr. Malaplate suggested that it was superfetatory to say that capital "will continue to flow as in the past,". He also suggested that the words "it cannot be doubted" in the second sentence be deleted.

116. Mr. Woods thought that the two suggestions would improve the text and declared that paragraph 11, with the improvements suggested by Mr. Malaplate, was accepted.

117. Mr. Broches on paragraph 12 noted that only two minor changes had been made to lighten the text, viz. the opening clause "The Executive Directors draw attention to the fact that" was deleted and the word "drafters" in the second sentence was replaced by the words "the Executive Directors".

118. Mr. Woods noted that paragraph 12, as amended, was adopted.

119. Mr. Broches on paragraph 13 pointed out that the words "the Executive Directors believe" were deleted to simplify the paragraph.

120. Mr. Woods then called the attention of the Committee to paragraphs 14 through 48 which described the Convention and pointed out that some changes had been made as a result of modifications in the text of the Convention.

121. Mr. Gutierrez Cano suggested that in paragraph 15 the words "as sponsor of the institution" be amended to read "as sponsor of the establishment of the institution".

122. Mr. Garba, on paragraph 17 suggested that the words "maximum of simplicity" read just "simplicity".

123. Mr. Broches said that some consequential changes would have to be introduced and he would provide the appropriate language.

124. Mr. Rajan pointed out that during the discussions on the Convention the Committee had agreed that suitable explanations of certain points should be included in the Report. He had in mind particularly the suggestion of Mr. Lieftinck that the Report mention the desirability of appointing initially the Secretary-General for a short period. He had found no such comment in the present draft.

125. Mr. Woods said that the staff would prepare appropriate language to cover those points.

126. Mr. Machado remarked that since the draft report had been prepared, important modifications had been introduced in the text of the Convention, and he would suggest that the staff prepare all consequential amendments to the Report.

127. Mr. Broches said that this had already been done by the staff although, as Mr. Rajan had pointed out, some points had been omitted. He and his staff would go through the Convention and the Report again and present any necessary amendments or additions to the Report at the next meeting.

128. Mr. Gutierrez Cano raised a point about Article 27 of the Convention. He seemed to remember that when paragraph (2) of Article 26 was deleted Mr. Broches had stated that new language would be required for Article 27.

129. Mr. Broches replied that, on the contrary, new language would have been suggested in Article 27 by several Executive Directors, if Article 26(2) had remained in the Convention.

130. Mr. Gutierrez Cano said that in any case Article 27 had not been discussed during previous meetings and he had some suggestions to offer.

131. Mr. Woods said that the Committee would meet again the following day to complete the work on the Report and any pending matters on the Convention.

132. Mr. Malaplate asked whether the fact that the provision of "subrogation" (Article 26(2)) had been deleted in the Convention should not be mentioned in the Report. He understood that paragraph 32 of the draft Report which dealt with subrogation was to be deleted altogether and no substitute text had been proposed. However, he did not feel very strongly on the point.

133. Mr. Gutierrez Cano thought that this point should be recorded in the minutes of the meetings of the Committee rather than included in the Report.

134. The meeting adjourned at 12:45 p.m. to reconvene on Tuesday, March 9, at 11:00 a.m. o'clock.

March 17, 1965

Dear Claude:

You probably know that for some time, the Executive Directors and staff of the Bank have been preparing a Convention which would establish machinery for the conciliation or arbitration of disputes between private investors and governments. A preliminary draft Convention was discussed at four regional meetings of legal experts held in 1963 and 1964 (in Geneva, Addis Ababa, Santiago [and Bangkok]); and in 1964, the Governors of the Bank, at their Annual Meeting in Tokyo, formally voted to instruct the Executive Directors to prepare a final draft.

The draft is now nearly ready, and we think that we will be having a press conference to release the final text next Tuesday, March 23, at 3:00 p.m. in the Board Room on the 11th floor of 1818 H Street. We expect that Mr. Aron Broches, the General Counsel of the Bank, will make a brief explanatory statement and will answer questions.

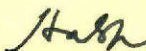
We very much hope that you will come to the briefing. In the absence of any other documents that I can send you at this time, I thought you might be interested in the attached statements which Mr. Broches has made on this project in recent months.

Sincerely yours,

Harold Graves

Enclosures

Mr. Claude Moisy  
Agence France Presse  
National Press Building  
14th and F Streets, N. W.  
Washington 4, D. C.

  
HNG:ap



Files

March 17, 1965

Jorge Bravo *JB*

Publicity for SID

In a telephone conversation with Executive Director Mr. Gutierrez-Cano today, we talked about the planned press conference to announce that the Bank's Executive Directors have completed the drafting of a convention on the settlement of investment disputes as agreed upon by the Governors at their Tokyo meeting.

Mr. Gutierrez-Cano said that in his opinion the text or details of the draft agreement should not be publicized. He said it was too sensitive a subject whose interpretation should not be left to outsiders. As an Executive Director, he said, he had a strong feeling against the Bank appearing as trying to influence member countries to approve the draft.

Mr. Gutierrez-Cano said any publicity might be harmful and/or embarrassing to some Governments as the agreement is still subject to what he called diplomatic negotiations. He said that might be the case of one of the Governments he represents.

He said that if any announcement is made, it might be limited to a brief one, saying the Executive Directors have completed their task as requested by the Governors, and that the draft of the convention has been submitted to the Government of the member countries for their decision. A brief and cautiously worded summary of the Executive Directors' report might be attached. The announcement might also include quotes from Mr. Woods's speech to ECOSOC last year.

JB:hm.

ORGANIZATION OF AMERICAN STATES  
ORGANIZACION DE LOS ESTADOS AMERICANOS  
ORGANIZAÇÃO DOS ESTADOS AMERICANOS  
ORGANISATION DES ETATS AMERICAINS



**PAN AMERICAN UNION**

Washington 6, D.C., U.S.A.  
Cable address: PAU WASH DC

March 15, 1965

Dear Dr. Gordon:

I enjoyed hearing your comments at the recent SID meeting.  
Would it be possible to secure a printed version?

I am enclosing an English-version of a brief article which  
suggests some ideas on organizing for technical assistance in  
the industrial development sector.

Sincerely yours,

Leo A. Suslow, Chief  
Program of Labor Relations  
Department of Social Affairs

Dr. David Gordon  
Deputy Director  
Development Services Department  
International Bank for Reconstruction  
Development  
Washington, D.C.

Enclosure

*ack. mar 19, 1965*



February 19, 1965

Mr. Ricardo Crespo  
Bustamante & Crespo  
P. O. Box 2455  
Quito, Ecuador

Dear Ricardo,

This is to acknowledge receipt of your letter of February 10, 1965. I was very interested to learn of your intention to include some comments on the Convention for the Settlement of Investment Disputes in the article you propose to write for the "Revista de Derecho". The final draft of the Convention which is a more recent one than the text I sent you at the time is now in the process of being approved by the Executive Directors of the Bank. This should not take more than another few weeks, at which time the veil of classification will be lifted and the Convention dispatched to Governments for ratification.

In view of the foregoing I think it will be better to await the printing of the Convention in its final form, at which time I will send you a Spanish text and possibly some other material also which may be of use to you in writing the article. I do hope that this delay does not interfere with your plans but since the final draft is to be approved in such a short time it seemed to me better to proceed in the indicated manner.

With kindest personal wishes and regards,

Yours sincerely,



David M. Sassoon

DMS/km

cc: Mr. Broches