

CONVENTION ON THE RECOGNITION
AND ENFORCEMENT OF FOREIGN
ARBITRAL AWARDS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION ON THE RECOGNITION AND ENFORCE-
MENT OF FOREIGN ARBITRAL AWARDS, ADOPTED AT
NEW YORK ON JUNE 10, 1958



APRIL 24, 1968.—Convention was read the first time and, together
with the message and accompanying papers, was referred
to the Committee on Foreign Relations and ordered
to be printed for use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1968

LETTER OF TRANSMITTAL

THE WHITE HOUSE, April 24, 1968.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to accession, I transmit herewith the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted at New York on June 10, 1958.

The provisions of the convention are explained in the report of the Secretary of State and in an accompanying memorandum transmitted herewith. The convention will facilitate the recognition and enforcement by foreign courts of arbitral awards granted in the United States as well as similar action by our courts with respect to foreign arbitral awards.

Thirty-three countries are parties to this convention including such nations with which the United States has major trading relations as France, Germany, India, Japan, the Netherlands and the Philippines. We have been informed that the United Kingdom is taking steps to accede to the convention. Experience under the convention has established that it contributes in many ways to the promotion of international trade and investment. For example, it provides greater flexibility for the arranging of business transactions abroad; it simplifies the enforcement of foreign arbitral awards; it gives more binding effect to awards and standardizes enforcement procedures; and it strengthens the concept of safeguarding private rights in foreign transactions.

Changes in Title 9 (Arbitration) of the United States Code will be required before the United States becomes a party to the convention. The United States instrument of accession to the convention will be executed only after the necessary legislation is enacted.

There is substantial support for United States accession to this convention among members of the business community concerned with international trade. Both the American Bar Association and the American Arbitration Association support accession. I recommend that the Senate give its advice and consent to accession subject to two declarations for which provision is made in the convention. In the first, the United States would declare that it will apply the convention to the recognition and enforcement of awards made only in the territory of another Contracting State. In the second, the United States would declare that it will apply the convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the Federal law of the United States.

LYNDON B. JOHNSON.

(Enclosures: (1) Report of the Secretary of State; (2) Convention on the Recognition and Enforcement of Arbitral Awards.)

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 13, 1968.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted at New York on June 10, 1958, and to recommend that it be transmitted to the Senate for its advice and consent to accession.

As its title suggests, the convention applies to the recognition and enforcement of foreign arbitral awards; it also deals with the recognition of agreements to arbitrate. A memorandum prepared in the Department of State, which deals in some detail with each of the sixteen articles comprising the convention, is enclosed.

The convention was formulated at the United Nations Conference on Commercial Arbitration held in New York from May 20 to June 10, 1958, in which the United States and 44 other states participated. The convention was signed on behalf of 26 states, but it was not signed for the United States. Thirty-three countries including major trading nations have become parties to the convention. The countries are listed in the attached status report along with a reference to the declarations made in connection with ratifications.

The U.S. delegation to the conference recommended against signature of the convention. But during the past several years there has been an increasing support—both within and without the Government—for U.S. accession.

On September 1, 1960, the House of Delegates of the American Bar Association, following a unanimous recommendation by its Board of Governors, adopted two recommendations made by the Section of International and Comparative Law: (1) that the convention be ratified by the United States and (2) that the Federal Arbitration Act and the Judicial Code be appropriately amended to bring domestic law into conformity with the obligations the United States would assume if it acceded. A copy of the association's resolution is enclosed.

Nine letters written in late 1958 and early 1959 from prominent individuals concerned with foreign trade to Mr. Clifford J. Hynning, chairman of the American Bar Association Committee on International Unification of Private Law, set forth advantages that would be obtained for the United States by accession to the convention. Copies of those letters are enclosed.

There is also enclosed a copy of a letter of March 1, 1966, from Mr. Donald B. Straus, president of the American Arbitration Association, to the Secretary of State. In his official capacity as president of the association, and on behalf of its board of directors, Mr. Straus urges that the Secretary give this matter his strong endorsement and

use his good offices to secure early approval by the Senate. He states that there is a growing need for arbitration by those engaged in international trade and that the Arbitration Association alone handled some 8,000 commercial arbitration cases in the United States in 1965. The association has also made available to the Department a copy of a resolution passed by its executive council on January 10, 1967, supporting accession, and a list of distinguished businessmen, bankers, attorneys, and brokers who are now supporting accession. Both documents are attached.

These recommendations for U.S. accession to the convention recognize the continually increasing importance of arbitration as an efficient, expeditious, and inexpensive means of resolving disputes that arise between private parties in carrying on international commerce. They also underline the importance which the convention has assumed in insuring the carrying out of arbitration awards in cases involving persons of different nationality.

The convention, of course, applies only to arbitral awards in cases where the persons concerned have voluntarily accepted arbitration. Article II specifically requires a written agreement under which the parties have undertaken to submit differences to arbitration. Article V contains guarantees in the nature of due process which insure that a party against whom an award is sought to be enforced may raise among others such issues as the invalidity of the agreement to arbitrate, lack of proper notice of the arbitration and inability to present his case before the arbitral body. Article V also would permit a court in the United States to refuse recognition or enforcement of an arbitral award as contrary to the public policy of the United States. These and other provisions provide substantial safeguards to American citizens against any misuse of the arbitration process.

Accession to the convention by the United States was endorsed by the Secretary of State's Advisory Committee on Private International Law at its meeting on February 18, 1966. The Advisory Committee includes members designated by the American Bar Association, the American Law Institute, the American Branch of the International Law Association, the Association of American Law Schools, the American Association for the Comparative Study of Law, the American Society of International Law, the National Conference of Commissioners on Uniform State Laws, the Judicial Conference of the United States, the Conference of Chief Justices, and the Department of Justice.

The Department of Justice recommends accession to the convention.

The convention permits a State to make declarations at the time of signature, ratification, or accession with respect to its application.

Paragraph 3 of article I of the convention permits a state, on the basis of reciprocity, to make a declaration that it will apply the convention to the recognition and enforcement of awards made only in the territory of another contracting state. That paragraph also provides that a state may declare that it will apply the convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the state making such declaration.

I recommend that the U.S. accession to the convention be accompanied by the two declarations provided for in paragraph 3 of article I. By acceding to the convention with a declaration requiring reciprocity,

the United States would not be required to recognize and enforce arbitral awards made in states not parties to the convention or arbitral awards made in another contracting state with respect to matters excluded by that state or by the United States in its approval of the convention. A declaration limiting application of the convention by the United States to commercial transactions would be consistent with the policy expressed in title 9 (arbitration) of the United States Code (Federal Arbitration Act). At the same time, changes in the Federal Arbitration Act will be required before the United States becomes a party to the convention.

In view of the general support for the convention evidenced by American citizens concerned with international commerce and the adherence to the convention of a substantial number of countries with important interests in international trade, it is hoped that the Senate will give favorable consideration to this convention and approve accession thereto by the United States with the two declarations recommended above.

Respectfully submitted.

NICHOLAS DEB. KATZENBACH.

(Enclosures: (1) Convention on the Recognition and Enforcement of Foreign Arbitral Awards; (2) memorandum on the convention articles; (3) status list; (4) American Bar Association resolution; (5) nine letters of 1958 and 1959 from prominent individuals; (6) letter of March 1, 1966, from Mr. Straus to the Secretary of State; (7) resolution of Executive Committee of American Arbitration Association; (8) list of persons favoring ratification.)

UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION

(United Nations, 1958)

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid

down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (c), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

- (a) Signatures and ratifications in accordance with article VIII;
- (b) Accessions in accordance with article IX;
- (c) Declarations and notifications under articles I, X and XI;
- (d) The date upon which this Convention enters into force in accordance with article XII;
- (e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

For Afghanistan:

For Albania:

For Argentina:

C. RAMOS

26 August 1958

Subject to the declaration contained in the Final Act.¹

For Australia:

For Austria:

For the Kingdom of Belgium:

JOSEPH NISOT

A. HERMENT

For Bolivia:

For Brazil:

¹The representative of Argentina made the following declaration on behalf of his Government in relation to article X: "If another Contracting Party extends the application of the Convention to territories which fall within the sovereignty of the Argentine Republic, the rights of the Argentine Republic shall in no way be affected by that extension."

For Bulgaria:

A. GHEORGIEV

17 XII 1958

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

For the Union of Burma:

For the Byelorussian Soviet Socialist Republic:

F. N. GRYAZNOV

29/XII-1958

For Cambodia:

For Canada:

For Ceylon:

M. T. D. KANAKARATNE

December 30th, 1958

For Chile:

For China:

For Colombia:

For Costa Rica:

ALBERTO F. CAÑAS

For Cuba:

For Czechoslovakia:

JAROSLAV PŠČOLKA

October 3, 1958

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

For Denmark:

For the Dominican Republic:

For Ecuador:

José A. CORREA

Dec 17/1958

El Ecuador, a base de reciprocidad, aplicará la Convención al reconocimiento y a la ejecución de sentencias arbitrales dictadas en el territorio de otro Estado Contratante únicamente y sólo cuando tales sentencias se hayan pronunciado sobre litigios surgidos de relaciones jurídicas consideradas comerciales por el Derecho ecuatoriano.²

²[Translation] Ecuador, on a basis of reciprocity, will apply the Convention to the recognition and enforcement of arbitral awards made in the territory of another Contracting State only if such awards have been made with respect to differences arising out of legal relationships which are regarded as commercial under Ecuadorian law.

- For El Salvador:
M. RAFAEL URQUÍA
F.R. LIMA
- For Ethiopia:

- For the Federation of Malaya:

- For Finland:
G. A. GRIPENBERG
Dec. 29th, 1958
- For France:
G. GEORGES-PICOT
25 Novembre 1958
- For the Federal Republic of Germany:
A. BULOW
- For Ghana:

- For Greece:

- For Guatemala:

- For Haiti:

- For the Holy See:

- For Honduras:

- For Hungary:

- For Iceland:

- For India:
C. K. DAPHTARY
- For Indonesia:

- For Iran:

- For Iraq:

- For Ireland:

- For Israel:
H. COHN
- For Italy:

- For Japan:

- For the Hashemite Kingdom of Jordan:
THABET KHALIDI
- For the Republic of Korea:

- For Laos:

- For Lebanon:

For Liberia: _____

For Libya: _____

For Liechtenstein: _____

For the Grand Duchy of Luxembourg:

GEORGES HEISBOURG

Le 11 novembre 1958

For Mexico: _____

For Monaco:

MARCEL PALMARO

Le 31/12/58

For Morocco: _____

For Nepal: _____

For the Kingdom of the Netherlands:

C. SCHURMANN

For New Zealand _____

For Nicaragua: _____

For the Kingdom of Norway: _____

For Pakistan:

K. M. KAISER

30th of December 1958

For Panama: _____

For Paraguay: _____

For Peru: _____

For the Philippine Republic:

Octavio L. MALOLES

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

For Poland:

Jacek MACHOWSKI

With reservations as mentioned in article I, par. 3.

For Portugal: _____

For Romania: _____

For San Marino: _____

For Saudi Arabia: _____

For Spain: _____

For the Sudan: _____

For Sweden: _____

Agda RÖSSEL

Dec. 23, 1958

For Switzerland: _____

Felix SCHNYDER

29 décembre 1958

For Thailand: _____

For Tunisia: _____

For Turkey: _____

For the Ukrainian Soviet Socialist Republic: _____

P. P. UDOVICHENKO

29.XII.1958

For the Union of South Africa: _____

For the Union of Soviet Socialist Republics: _____

A. A. SOBOLEV

29-XII-58

For the United Arab Republic: _____

For the United Kingdom of Great Britain and Northern Ireland: _____

For the United States of America: _____

For Uruguay: _____

For Venezuela: _____

For Viet-Nam: _____

For Yemen: _____

For Yugoslavia: _____

DISCUSSION OF THE PROVISIONS OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

The Title

Some background regarding the title to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards may be of interest in connection with the intended scope of its provisions, particularly since the convention does not contain any preamble.

The title "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" was proposed by an Ad Hoc Committee established in 1954 by the United Nations Economic and Social Council to study and report on a draft convention submitted by the International Chamber of Commerce. The committee was of the view that the expression "international arbitral awards" used by the International Chamber of Commerce normally referred to arbitration between States. The committee considered that, since the draft convention does not deal with arbitration between States but with the recognition and enforcement in one country of arbitral awards made in another country, the title "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" more accurately reflected the object of the convention.

At the time the Ad Hoc Committee made this decision the draft convention contained no provisions on the recognition of arbitration agreements.

When the subject of recognition of the validity of arbitral agreements was discussed in the conference, it was suggested that the title be changed to reflect that addition. In the closing sessions in which the report of the Drafting Committee of the conference was considered, various proposals were made for changes in the title. One proposal was to delete the word "foreign", since that word did not appear in the body of the convention. Another proposal was that the words "arbitral awards in private law" be used. Another suggestion was that the title read "Convention on the Recognition and Enforcement of Certain Arbitral Awards". It was agreed, however, that the title should remain "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" as approved by the Drafting Committee.

Article I

Paragraph 1 of Article I defines the scope of the convention as applying to the recognition and enforcement of (a) arbitral awards made in the territory of a State other than the State where the recognition and enforcement are sought, and arising out of differences between persons, whether physical or legal; and (b) arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

The draft convention proposed by the Ad Hoc Committee and used as a basis during the conference contained only item (a) referred to in the preceding paragraph. That provision was criticized as

placing undue emphasis on the place in which an award was made, since the place of an award was often fortuitous or artificial. However, the provision was supported on the ground that it was the place of arbitration that determined whether an award was foreign. Thus, in Belgium—a civil law country—an award made in Belgium under the law of a foreign country would be considered a Belgian award, and an award made in a foreign country under the law of Belgium would be considered in Belgium to be a foreign award. An award between two Czech nationals in another country would, however, under Czech law, be a domestic award. It was because of the desire of the civil law countries to avoid having to apply the convention to awards considered under their law to be domestic that item (b) was included in paragraph 1 of Article I.

The expression “legal persons” in paragraph 1 is intended to cover not only corporate bodies under public law but also state trading corporations.

Paragraph 2 is intended as a clarification of the scope of the term “arbitral awards”. When the conference delegates agreed to the inclusion of paragraph 2, it was with the understanding that the arbitration had to be voluntary arbitration, not arbitration imposed by law. The words “to which the parties have submitted” were included to make this voluntary aspect clear.

Paragraph 3 permits a State to limit its application of the convention. A State may make a declaration that it will apply the convention with respect to awards made only in the territory of another contracting State. Unless a country avails itself of this declaration, it is obliged to apply the convention to awards rendered in a foreign country, whether or not the foreign country is a contracting party. A State may also make a declaration that it will apply the convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making the declaration. The intent of this second declaration is to accommodate a number of countries having separate civil and commercial codes and to permit arbitration only with respect to differences cognizable under the commercial code.

Although the word “only” in the first sentence of paragraph 3 appeared at one stage between the words “apply the Convention” and the words “to the recognition and enforcement”, it was transposed to its present position between the words “made” and “in the territory of another Contracting State” in order to make it clear that the provisions of Article II regarding recognition of arbitral agreements are binding on States; otherwise a party to a dispute could have recourse to the courts, even if it had signed an arbitral agreement.

The words “differences arising out of legal relationships, whether contractual or not” in the second sentence of paragraph 3 are employed to assure coverage not only for disputes arising under commercial contracts but for other disputes, such as damage claims which might come within the scope of a commercial code.

Article II

The purpose of this article is to provide an appropriate treaty rule with respect to agreements to arbitrate.

Paragraph 1 requires each contracting country to recognize written agreements to submit to arbitration differences capable of settlement by arbitration. Agreements to submit existing disputes (submissions)

and agreements to submit disputes that may arise in the future (compromissary clauses) are covered. The requirement that the agreement apply to a matter capable of settlement by arbitration is necessary in order to take proper account of laws in force in many countries which prohibit the submission of certain questions to arbitration. In some States of the United States, for example, disputes affecting the title to real property are not arbitrable. With respect to the phrase "capable of settlement by arbitration", it is noted that Article V specifies several grounds on which recognition and enforcement of an award may be refused. Paragraph 1(a) of Article V permits a defense against recognition and enforcement of an award on the grounds that "The parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made * * *". Paragraph 2 of Article V permits the competent authority in a country where recognition and enforcement of an arbitral award are sought to refuse such recognition and enforcement if it finds that—

(a) The subject matter of the differences is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Paragraph 2 of Article II is in effect a clarification of the requirement in paragraph 1 that the arbitration agreement must be in writing. It recognizes, however, that a requirement that both parties must sign the same document would be at variance with the needs and usages of international trade. Accordingly, the provision specifies that the agreement may be signed by the parties or contained in an exchange of letters or telegrams.

Paragraph 3 makes provision for the enforcement of the rule specified in paragraph 1 by providing that a court in a contracting country, when seized of an action in respect of which the parties have made an agreement within the meaning of Article II, shall, upon the request of one of the parties, refer the parties to arbitration unless it finds the agreement null and void, inoperative, or incapable of being performed. Here again, it appears that the exceptions provided in Article V, paragraph 2, with respect to the enforcement of awards, would apply.

This article requires each contracting country to recognize and enforce arbitral awards. Such recognition and enforcement is to be in accordance with the rules of procedure of the territory where the award is relied upon and under the conditions laid down in the articles that follow in the convention. The phrase "in accordance with the rules of procedure of the territory where the award is relied upon" would permit the application of different procedures for the recognition and enforcement of foreign awards as compared with domestic awards, but such procedures would be required to conform to the final sentence of the article, which provides that "There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this convention applies than are imposed on the recognition or enforcement of domestic arbitral awards".

Article IV

Articles IV, V, and VI in effect constitute a unit which sets forth the conditions governing the granting or refusal of enforcement of an award. Article IV stipulates the affirmative actions that must be taken by a party seeking enforcement of a foreign arbitral award. The requirements with respect to the actions to be taken are reduced to a minimum. The successful party to the arbitration needs only to submit to the court where enforcement is sought proper copies of the award and the agreement to arbitrate and, if the award or agreement is not in an official language of the country in which the award is relied upon, a certified translation of those documents into that language.

The wording of Article IV was formulated especially to avoid requiring the applicant for enforcement to submit evidence of a "double exequatur" or dual review of the reward. The successful party to an arbitration proceeding is entitled under Article IV to request recognition and enforcement of his foreign award without having first to prove that the award was binding in the country in which it was made.

The effect of Article IV, requiring only the establishment of a *prima facie* case, together with the provisions of Article V, is to place upon the defendant the burden of establishing one of the defenses specified in Article V.

Article V

This article specifies five grounds on which a defendant may challenge a foreign award, and two further grounds which may be raised by the defendant or invoked by the court of the country of enforcement on its own initiative.

Paragraph 1 specifies that recognition and enforcement of an award may be refused at the request of the party against whom it is invoked only if that party furnishes to the competent authority where recognition and enforcement are sought proof of one or more of the defenses specified thereunder.

The first of those defenses, specified in subparagraph (a), is the incapacity of the parties under the law applicable to them, or the invalidity of the agreement under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made. This provision recognizes a choice of law by the parties.

Subparagraph (b) incorporates into the convention a basic concept of due process, in permitting the defense that the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case. Because of the close link between the concept of due process and public policy of the forum, the enforcing State could apply additional standards of due process pursuant to the public policy ground specified in paragraph 2(b) of Article V.

Subparagraph (c) permits a defense against recognition and enforcement of an award on the ground that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or that it contains decisions on matters beyond the scope of the submission, provided that, if the decisions on matters agreed to be submitted to arbitration can be separated from those not so submitted, that party of the award on matters submitted may be recognized and enforced.

The defense specified in subparagraph (d) recognizes the concept of the autonomy of the will of the parties as to the choice of arbitration procedures by permitting a defense on the grounds that the composition of the arbitral authority was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place.

Subparagraph (e) embodies the concept of "double exequatur", or dual review of the award, by permitting the defense that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

The term "binding" was used here because of the difficulty in determining the legal import of the terms "final" and "operative" used in the corresponding provision of the draft convention submitted by the Ad Hoc Committee to the conference. The effect of the use of the word "binding" would be to require the Court before which a defense is made on the grounds that an award is not binding to consider its status under the law of the country in which it was made or such other law as the parties may have agreed upon.

Paragraph 2 of Article V permits the competent authority before whom recognition and enforcement of a foreign arbitral award are sought to refuse such recognition and enforcement on two grounds. Those two grounds may be presented also by the defendant. The first of those grounds is that the subject matter of the difference is not capable of settlement by arbitration under the law of the country where recognition and enforcement are sought. Both this ground and the second one under paragraph 2, namely, that the recognition or enforcement of the award would be contrary to the public policy of the enforcing country, would give the courts to which application is made considerable latitude in refusing enforcement. It should be noted, however, that the reciprocity clause in Article XIV may have considerable effect in discouraging any abuse of that discretion.

Article VI

This article complements paragraph 1(e) of Article V. The article is purely discretionary in that it permits the authority to which application is made for enforcement of a foreign award to adjourn its decision if it is satisfied that an application for annulment or suspension of the award was made for a good reason in the country where the award was given or under whose law it was given. But this is a discretionary authority only. To prevent abuse by a losing party who may have started annulment proceedings purely to delay or frustrate enforcement, the enforcement authority is given the right to enforce the award forthwith or, in adjourning the enforcement, to order the other party to give suitable security on the application of the party claiming enforcement.

Article VII

The provisions of paragraph 1 of Article VII are designed to preserve rights under existing multilateral or bilateral international agreements as well as rights acquired under an arbitral award to the extent permitted under the law or the treaties of the country where recognition or enforcement of an award is sought. One of

the basic purposes of the provision is to safeguard existing agreements which stipulate more liberal provisions than the convention.

The United States is not a party to the Geneva Protocol of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927, which are referred to in paragraph 2 of Article VII.

Articles VIII and IX

These articles contain standard provisions on signature, ratification and accession.

Article X

This article permits a State which has territories for whose international relations it is responsible to declare the convention applicable to any or all of such territories.

Article XI

This article recognizes the special situation with respect to jurisdiction in federal or nonunitary States and attempts to accommodate such States. It would, however, run counter to the express provisions of the article for the United States to seek to take advantage of its provisions with respect to foreign arbitral awards arising out of commercial relationships. The Federal Arbitration Act of 1925 (9 U.S.C. 1-14) and the decisions of U.S. Courts relating thereto show that legislation on arbitration is clearly within the competence of the Federal Government.

Article XII

This article specifies that the convention shall enter into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession. Ratifications or accessions deposited after the deposit of the third instrument are to enter into force on the ninetieth day after deposit.

Article XIII

Paragraph 1 permits denunciation of the convention by a Contracting Party by one year's written notice to the Secretary-General of the United Nations.

Under paragraph 2 denunciation may also be effected separately with respect to territories to which the convention had been extended.

Article XIV

The general reciprocity clause embodied in this article was proposed on the grounds that, although some provision had already been made for reciprocity in the first sentence of paragraph 3 of Article I, no corresponding words had been inserted in the second sentence of paragraph 3 of Article I, in Article X or in paragraph 2 of Article XIII. It was suggested that a general clause, contained in a separate article inserted immediately after Article XIII, would remedy all those defects.

Article XV

This provision relates to notifications to be given by the Secretary-General to the States concerned of signatures, ratification, accessions, declarations, entry into force, and denunciations.

Article XVI

This article contains the usual provisions regarding the equal authenticity of the languages in which the convention was adopted and provides that the Secretary-General of the United Nations shall transmit certified copies to the States to which it is open to signature or accession.

RESERVATIONS

Although the Convention on the Recognition and Enforcement of Foreign Arbitral Awards contains provisions permitting a State to make certain declarations limiting the application of the convention, it does not contain any provision relating to reservations in general.

The conference which adopted the convention was unable to agree upon a general provision regarding reservations for inclusion in the text of the convention but did agree upon the inclusion of the following paragraph in the Final Act of the conference.

14. The Conference decided that, without prejudice to the provisions of its articles I(3), X, XI, and XIV, no reservations shall be admissible to the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards".

Several of the delegations to the conference strongly objected to the inclusion of such a statement in the Final Act of the conference. One delegate remarked that, although paragraph 14 did not have binding force, as a provision of the convention itself would have had, it was nevertheless valuable because it revealed the intentions of the drafters of the convention.

STATUS OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

(Entered into force June 7, 1959)

The following 33 countries are now parties to the Convention:

Austria ¹	Madagascar ^{1,2}
Bulgaria ¹	Morocco ¹
Byelorussian S.S.R. ¹	Netherlands ¹
Cambodia	Niger
Central African Re- public ^{1,2}	Norway ^{1,3}
Ceylon	Philippines ^{1,2}
Czechoslovakia ¹	Poland ^{1,2}
Ecuador ^{1,2}	Romania ^{1,2}
Finland	Switzerland ¹
France ^{1,2}	Tanzania
Germany, Federal Republic ¹	Thailand
Greece	Trinidad and Tobago ^{1,2}
Hungary ^{1,2}	Tunisia ^{1,2}
India ^{1,2}	Ukrainian S.S.R. ¹
Israel	U.S.S.R. ¹
Japan ¹	United Arab Republic
	Yugoslavia

¹ With a declaration on reciprocity.

² With a declaration limiting participation to arbitration of disputes arising out of legal relationships on commercial matters.

³ With a reservation reading:

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

**RESOLUTION ADOPTED BY THE HOUSE OF DELEGATES
OF THE AMERICAN BAR ASSOCIATION, SEPTEMBER 1,
1960**

Resolved, That the American Bar Association recommend to the President and the Congress that the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards be ratified by the United States:

Be It Further Resolved, That the Officers of the Association be directed to urge upon the proper Committees of Congress amendment to the Federal Arbitration Act, 9 U.S.C. 1 *et seq.* dealing with contracts of arbitration and awards which are subject to the applicable arbitration provisions of any treaty of the United States; and amendment to the Judicial Code, conferring original jurisdiction on federal district courts over any arbitration contract or award which is subject to the applicable arbitration provisions of any treaty of the United States, without regard to the amount involved in the controversy or the citizenship of the parties to the proceeding, or the equivalent amendments in purpose and effect, as follows:

Section 1. Section 9 U.S.C. 2 is amended to read as follows (new matter in italics):

"A written provision in any maritime transaction or a contract evidencing a transaction involving commerce, *or a contract which is subject to the applicable arbitration provisions of any treaty of the United States*, to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable and enforceable, save upon such grounds as existed in law or in equity for the revocation of any contract."

Section 2. Section 9 U.S.C. 9 is amended to read as follows (new matter in italics):

"If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year, after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award is made, *or where the award was made abroad and is subject to the applicable arbitration provisions of any treaty of the United States, then such application may be made to the United States court in and for the district which has jurisdiction over the person sought to be held or his property*. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdic-

tion of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action, in the same court. If the adverse party shall be a non-resident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court."

Section 3. Section 9 U.S.C. 10 is amended to read as follows (deleted matter in small capitals and new matter in italics):

"In [EITHER] any of the following cases the United States court in and for the district wherein the award was made, *or the United States court in and for the district which has jurisdiction over the person sought to be held or his property under an award made abroad which is subject to the applicable arbitration provisions of any treaty of the United States*, may make an order vacating the award upon the application of any party to the arbitration—

"(a) Where the award was procured by corruption, fraud, or undue means.

"(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

"(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or if any other misbehavior by which the rights of any party have been prejudiced.

"(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

"(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

"(f) *Where an award made abroad may be refused recognition or enforcement on any other ground specified in the arbitration provisions of any treaty of the United States.*"

Section 4. Section 28 U.S.C. 1337 is amended to read as follows (new matter in italics):

"The district courts shall have original jurisdiction of any civil action or proceedings arising under any act of Congress regulating commerce *(including any transaction or contract which is subject to the applicable arbitration provisions of any treaty of the United States)* or protecting trade and commerce against restraints and monopolies."

AMERICAN & FOREIGN POWER CO., INC.,
New York, N.Y., December 23, 1958.

MR. CLIFFORD J. HYNNING,
Chairman, ABA Section of International and Comparative Law,
Washington, D.C.

DEAR MR. HYNNING: This is in response to your letter of December 9 soliciting my comments on the proposed adoption by the United States of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

It is my understanding that the Convention will require signatory nations to grant recognition and enforcement to foreign arbitral awards made pursuant to private agreement. Of course, I have no

idea how many nations will sign the Convention, or to what precise extent the Convention will change the various degrees of legal recognition given to arbitral awards at the present time. But if the Convention makes it easier for businessmen of different countries to enforce their agreements, and collect their claims, it seems to me obviously of benefit to international trade and investment, and I see no reason why the United States should not take advantage of it.

Very truly yours,

H. W. BALGOOYEN.

ALUMINUM CO. OF AMERICA,
INTERNATIONAL DIVISION,
Pittsburgh, Pa., February 20, 1959.

MR. CLIFFORD J. HYNNING,
Chairman, Committee on International Unification of Private Law,
Washington, D.C.

DEAR MR. HYNNING: In reply to your letter of February 5, 1959, let me first express my apologies for delay in answering your inquiry. I now have reviewed the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and can express my opinion to you concerning its effect upon American business.

In brief, I believe that the Convention would be of practical help to American business and that its ratification by the United States would be advantageous. My opinion is based upon the belief that the present and future growth and expansion of United States trade and investment overseas will see more frequent resort to arbitration as a means of expediting the settlement of commercial disputes. It will prove quite valuable to United States business to be able to enforce arbitral awards in foreign countries, and there is no reason why we should not support such arbitral awards in this country as a matter of reciprocity.

Thank you for requesting my views on this subject.)

Sincerely yours,

WILLIAM J. BARTON.

(The reproduction of this letter was permitted on the condition that Mr. Barton spoke for himself as an international businessman and lawyer and did not imply that the Aluminum Company of America had taken an official stand on this matter.)

NEW YORK, January 19, 1959.

CLIFFORD J. HYNNING, Esq.,
Chairman, Committee on International Unification of Private Law,
Washington, D.C.

DEAR MR. HYNNING: Thank you for your letter of December 9th. I am sorry that my reply has been delayed until this date, but in view of the importance which I attach to your project, I wanted to go over the material which you sent me with care before replying.

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards is of great interest both to a lawyer advising clients who deal in international trade and to a student of foreign affairs who feels that facilitating commercial exchange amongst the free nations of the world is of the first order of importance.

As you know, since World War II, the United States has signed commercial treaties containing arbitration provisions with Japan, Korea, the Republic of China, Iran, Israel, Haiti, Colombia, Nicaragua, Ireland, Greece, Italy, the Federal Republic of Germany, Denmark, and The Netherlands.

These have been bilateral treaties covering a broad range of commercial provisions, treating, among other problems, the recognition and enforcement of arbitral awards. Although such bilateral commercial treaties are a flexible medium for arbitral provisions, and can be adapted to the requirements of each nation with whom the United States contracts, the variations from treaty to treaty hardly encourage the formation of a uniform international law of arbitration.

Of course, the first deficiency in the scheme for international arbitration established through these recent treaties is that relatively few states are as yet covered by such treaties. States not so covered include, among the more commercially important states, Great Britain and France.

A second major deficiency is that the arbitration provisions of these treaties normally provide simply that each contracting state will recognize arbitral agreements providing for foreign arbitration between nationals of the two states, and enforce such foreign arbitral awards, equally as it recognizes arbitration agreements providing for domestic arbitration and enforces such domestic arbitral awards. To the extent that such state does not recognize an arbitration clause, in its own legal system, as an irrevocable bar to a court action, and does not enforce domestic arbitral awards as binding, the treaty imposes no new obligations upon it.

The United Nations Convention, as I understand its provisions, goes further. In Article II, each contracting state agrees that its courts will not entertain an action contrary to the terms of an agreement to arbitrate unless they find, presumably on the basis of the law chosen by the parties to govern that agreement, "that the said agreement is null and void, inoperative or incapable of being performed."

Furthermore, in Article V, each contracting state agrees to recognize and enforce arbitral awards made in the territory of another contracting state, provided that the agreement to arbitrate is valid according to the law the parties have selected to govern it, or the law of the place where the arbitral award was rendered, subject to the requirement that the enforcement of the award be not contrary to the public policy of the state so asked to enforce the award.

I must add that, in reaching this conclusion, it has been necessary for me to make certain assumptions, for I regard certain provisions of the Convention as ambiguous. For example, as mentioned above, Article II(3) provides for the recognition of arbitral agreements as a bar to court actions, unless such agreements are "null and void, inoperative or incapable of being performed". It is not clear in the text which law determines the validity or operability of the agreement. I have assumed that the validity of the arbitration agreement for purposes of Article II, as well as for Article V, will be determined, in the first instance, by the law "to which the parties have subjected it * * *." I should have preferred that this language, taken from Article V, also appear in Article II.

I have similar questions as to Article III, which provides:

"Each contracting state shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions * * * than are imposed on the recognition or enforcement of domestic arbitral awards."

It might be argued that the phrase "in accordance with the rules of procedure of the territory where the award is relied upon" means that the contracting party is obligated only to grant such enforcement as it grants to its domestic awards, and that if it has no procedure for the enforcement of such domestic awards it need not enforce foreign awards. However, the prior language "each contracting state shall recognize arbitral awards as binding" and the provision that enforcement must be "under the conditions laid down in the following articles", which would include Article V, seem to me to authorize the conclusion that a state must provide some means of enforcement consistent with the characterization of the award as binding.

I mention these few ambiguities only to indicate my understanding of the terms of the Convention upon which my opinions are based. I am not, of course, familiar with the debates that led to the particular language chosen. I well understand, from my own recent experience, that attempts to gain the subscription of a great many nations to a document may result in the adoption of language which is less exact, and perhaps less clear, than the draftsmen would otherwise like.

On this basis, I shall indicate what seem to me to be the advantages to American business of the adherence by the United States to the Convention. I assume, of course, that a significant number of commercially important nations would also be contracting parties.

(1) As I mentioned above, the United States now has commercial treaties providing for the recognition of arbitral agreements and the enforcement of arbitral awards with only a limited number of other states. With the sole exception, I believe, of Sweden, the nations which adhered to the Geneva Protocol of 1923 and Geneva Convention of 1927 grant the benefits of those treaties only to other parties to these agreements.

Thus there are certain nations in which, though American arbitral awards are now enforceable, United States adherence to the Convention would simplify the procedure of such enforcement. For example, Great Britain enacted a simplified and summary method of execution of arbitral awards, but applies this procedure only to domestic awards or awards rendered in states parties to the Geneva Convention of 1927. Our adherence to the present Convention, were Britain also to join, would give American businessmen opportunity to use this simplified summary procedure.

(2) Certain nations in which United States businessmen are now involved do not recognize at all the binding character of arbitrations, including domestic arbitrations. For example, in Liberia, an arbitration procedure is available, but an arbitral award serves only to establish certain presumptions as to the facts, which may be rebutted, and what amounts to an original court action is necessary to enforce that award. On my understanding of the text, as expressed above, a state like Liberia, in adhering to the Convention, would be committed to grant a more "binding" character to foreign arbitrations.

(3) A general arbitral convention to which the United States is a party would give American businessmen and their lawyers much more flexibility in arranging complicated foreign transactions. Today, it is often necessary, in order to gain the acknowledged advantages of arbitration over local court procedures, to schedule arbitrations in inconvenient locations so as to insure that any arbitral decision will be enforceable in that location. Often it is impossible, when drafting agreements, to schedule arbitration proceedings so that awards can be enforced in whatever territory might later prove desirable, or even so that they can be enforced in the territories of both parties.

(4) A general arbitral convention would enable the American businessman to understand with much greater precision the effect of any arbitration clause he might insert in his contract. At present, several questions and doubts must arise about the recognition and enforcement of many arbitral agreements or awards. Even if the businessman is satisfied that the particular nation with which he is concerned recognizes arbitral agreements and enforces arbitral awards as binding he may yet be uncertain as to the law which that state will apply to determine the validity of the arbitration agreement, the propriety of the procedures that have been followed in the arbitration proceedings, and the grounds upon which enforcement of the arbitral decree may be denied.

The present Convention, were it in force between the United States and the particular state involved, would be of aid in answering these questions. In this connection, I consider it a particular virtue of the Convention that it allows the parties to subject the arbitration agreement to the law of a nation other than a nation in which the award is technically rendered, and to subject the arbitral procedure, as well as the composition of the arbitral tribunal, to their own agreement. This advance is of importance to businessmen in that it allows them the utmost flexibility in determining the legal principles which are to be applied to their transaction, without tying themselves down to a particular place of arbitration which might be geographically inconvenient or impossible.

This is not to say, of course, that I regard the Convention as free from difficulties of interpretation and from uncertainty in application. Thus enforcement may be refused by a contracting state if it would offend the "public policy" of that state. However, it must be recognized that almost every state refuses to enforce even foreign judgments if these would offend its public policy. The Geneva Convention of 1927 contained a similar restriction as to arbitral awards.

Furthermore, this very restriction gives a safeguard to the American businessman, as does the further restriction that an American court may refuse to enforce an arbitral award rendered against him if it finds that he was not given proper notice of the arbitral proceeding or was otherwise unable to present his case.

In conclusion, the United Nations Convention seems to me an advance over the present situation. If a significant number of other nations should also adhere, the Convention would make available to American businessmen arbitration procedures in situations where up till now they have been lacking. It might facilitate transactions involving many nations by removing the necessity for scheduling arbitral proceedings in particular nations in which enforcement would otherwise be impossible, often at the cost of foregoing the possibility of enforcement in other such nations. It would remove a good deal

of the legal uncertainty surrounding the use of arbitration clauses in foreign transactions, and thereby make the technique of arbitration that much more valuable and less dangerous.

Very truly yours,

ARTHUR H. DEAN.

GRAVER TANK & MANUFACTURING CO., INC.,
Chicago, Ill., December 23, 1958.

MR. CLIFFORD J. HYNNING,
Chairman, Committee on International Unification of Private Law,
Washington, D.C.

DEAR MR. HYNNING: Your letter of December 9 asks for comment in reference to the proposed adoption of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

A system for arbitration of international commercial disputes, in my judgment, is highly desirable. In the absence of this facility, the United States Business Corporation may be forced to proceed in a foreign court in which it will be placed at a considerable disadvantage. Acceptance of arbitration implies the acceptance of certain responsibilities which the United States, as a major international trading nation, should be prepared to assume.

Yours very truly,

(S) R. F. DUNN,
ROGER F. DUNN,
Vice President and General Manager,
International Division.

THE B. F. GOODRICH CO.,
OFFICE OF COUNSEL,
Akron, Ohio, December 30, 1958.

CLIFFORD J. HYNNING, Esq.,
Washington, D.C.

DEAR MR. HYNNING: I have your letter of December 9, relating to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

While our Company, as a matter of policy, has not provided for or resorted to arbitration to any substantial degree in contractual areas other than those involving labor relations, we do have special provision for arbitration in regard to the settlement of disputes arising under a very limited number of our arrangements involving certain of our international operations.

A principal reason for our policy has been the lack of a procedure, not only for the recognition and enforcement but also for the arbitration itself, which we considered to provide an equitable basis for the handling of disputes in commercial affairs and to afford protection even comparable to that which otherwise we may seek under law.

It is my opinion that the adoption of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as limited to contracts in foreign commerce, would be of practical help in furthering the establishment of a basis for arbitration which might be of interest to those engaged in business abroad.

Thank you for writing me concerning this matter.

Very truly yours,

C. R. COUTS, *Counsel.*

NEW YORK, N.Y., *January 21, 1959.*

CLIFFORD J. HYNNING, Esq.,
Washington, D.C.

DEAR MR. HYNNING: My delay in replying to your letter of December 9 has not been due to any lack of interest in the proposed Convention on the Recognition and Enforcement of Foreign Arbitral Awards, a copy of which is attached to your letter. It has rather been the result of a business trip abroad and the pressure of other work.

I am very much interested in this Convention and I am anxious to do all that I can to assist in arousing support for it in this country. All those who feel the same way must be grateful indeed to you, as I sincerely am, for your initiative in sounding out opinion and for your support. Let us hope that your efforts will lead to a favorable report from the Committee on International Unification of Private Law and to the submission of a strong case to the State Department and to the Congress.

I agree with you that there should not be any major Constitutional or statutory objection to adherence by the United States to this Convention. In addition to the ground that you mention, there is Article XI of the Convention which would permit our Government to limit its adherence to the federal jurisdiction. Although there may be some ambiguity in the expression "legislative jurisdiction of the federal authority" in Article XI, the instrument of accession could, and in view of (c) of Article XI presumably would, explain the extent of the federal authority in this respect. Presumably this would be either the area now covered by the Federal Arbitration Act or the entire area of interstate and foreign commerce and maritime matters.

The most serious objection to our adherence seems to be the limitations of the Federal Arbitration Act itself. Unless Congress is prepared to extend the Act so as to cover all arbitrations arising out of agreements concerned with interstate or foreign commerce and all maritime arbitrations, the major part of awards rendered in this country would be excluded by virtue of Article XIV. Foreign awards are enforceable in many of our jurisdictions as a matter of judicial comity, but I should imagine Congress would be more concerned with the enforcement of American awards abroad. As American awards are usually made under State laws, even though they relate to foreign commerce, the Convention would not apply if Congress authorized accession only within the scope of the Federal Arbitration Act.

There should, however, be a way out of this dilemma. As an amendment of the Federal Arbitration Act might prove to be a difficult task, might it not be possible to persuade the States of New York, New Jersey, Massachusetts, Connecticut, California, Ohio, Michigan and others having arbitration statutes, to ask Congress to accede to the Convention with respect not only to the federal power but also to the legislative jurisdiction of the requesting States? In this way, not only would the requirements of business interests in the leading commercial States be met as regards the enforcement abroad of arbitral awards rendered in those States, but the rights of other States who did not wish to participate in such a program would be safeguarded.

Broadly speaking, it seems to me that there is a desperate need for some legal framework within which American business can contract, invest and trade in foreign countries. Without tribunals abroad other than municipal courts which are frequently biased against

aliens and without, in many countries, even developed systems of law or appropriate enforcement machinery, business and investors are required to operate in a sort of legal desert—no courts, no law, no enforcement.

I know that traders and investors have long put up with this sad state of affairs, and that the chief motivating power is high profits from foreign operations, but we are now on the threshold of a vast private investment program, or that is the hope of many governments, and continued lack of legal security may well prove a substantial deterrent, particularly in areas such as the Middle East. It probably has had much to do with keeping investments and trade down.

If governments are now really determined, as it seems to me our government is, to encourage private investment in underdeveloped countries, they should be willing to participate in efforts to establish effective private international arbitral machinery. If the United States fails to take a lead in this effort, other countries may well conclude that the Convention is not a matter of great importance and refuse to take much interest in it. Active support by the United States, on the other hand, would constitute an important step in the direction of encouraging American trade and investment abroad as it would provide an essential framework for the operation of arbitration agreements not only among private parties but between such parties and governments as well.

I am afraid I have written a good deal without answering the specific question at the end of your letter. I hope I have made it clear, however, that I favor prompt accession to the Convention and I sincerely hope that effective efforts can be speedily made to persuade Congress that our country should adhere to this important instrument.

Yours sincerely,

G. W. HAIGHT.

MINNESOTA MINING & MANUFACTURING CO.,

LAW DEPARTMENT,

St. Paul, Minn., December 30, 1958.

MR. CLIFFORD J. HYNNING,

*Chairman, Committee on International Unification of Private Law,
American Bar Association, Washington, D.C.*

DEAR MR. HYNNING: I have your letter of December 9 on the Recognition of Foreign Arbitral Awards as proposed by the Convention prepared by the United Nations in June of 1958.

I am of opinion that the adoption of the U.N. Convention would be in the interest of the foreign commerce of the United States.

Following are a few personal remarks which I submit in support of this view.

It is worth noting, at the outset, that the convention was approved by a vote of 35 out of the 39 countries represented at the U.N. Conference, without a single negative vote. It might seem a bit ironical to find the United States, the world's greatest economic power and probably the largest foreign trader, among the four abstainers in the company of Guatemala, a practically undeveloped country, and Yugoslavia, a communist country. One might argue "a contrario" that

the U.S. refusal to adhere to the 1923 Geneva Protocol and the 1927 Geneva Convention did not noticeably affect America's foreign expansion during the three decades since 1927, at the close of which this country had emerged as the dominant economic force in the world.

Conditions have, however, changed since 1927. Powerful economic agglomerates such as various groupings of European highly industrialized countries and, as of late, the Sino-Russian bicephalous colossus, are out to conquer foreign markets which we traditionally regarded as our very own backyard. In the present day political and economic conjecture, I submit that it may be unwise, even disastrous, for the U.S. to remain aloof from this field of international arbitration. The covenants of 1923 and 1927 have admittedly fared well under the Geneva provisions.

The convention of June 1958 is an offshoot of the draft convention prepared in 1953 by the International Chamber of Commerce and presented by the Chamber to the Economic and Social Committee of the United Nations. International business has had first hand in preparing and promoting the new treaty. In evaluating the merits of the convention and its potential usefulness, business thinking must be preponderant; legalistic criticism can only come second. The classic controversy over the constitutionality of treaty imposed law that would oust the states from their dominion over commercial matters has lost much of its foundation since the Federal Arbitration Act 1925 as pertinently stated in your letter and in your article in the *A.B.A. Journal* of December 1956. The convention itself precludes the argument by the provisions of Article XI(a)(b)(c).

It would be wrong to construe International Arbitration as an attempt to divest the established judiciaries of their statutory jurisdiction. That the judicatures of most of the so-called advanced countries are held in high esteem and that great reliance is placed on their adjudications is manifested by the fact that presently the bulk of international litigation is still pleaded at the bar.

The question, however, may be asked as to whether the same trust is warranted in the court systems of so many countries which have very recently emerged from a colonial condition to the status of total or semi-independence? There is, of course, always the possibility of resorting to a jurisdiction clause assuming that nationalistic or political considerations do not preclude it. The jurisdiction clause, however, is not a panacea for all the ills that beset international business disputes. The doctrine of "*Renvoi*" is far from being universally settled and wherever the litigation is finally brought to bar it usually turns stale long before the *exequatur* procedure is completed.

In business litigation, particularly in international business, the only kind of good justice is the one that is simple, expeditious, cheap and final. Arbitration if aptly organized can be such a kind of justice. If foreign trade and, foremost, international investment have failed to attract medium size enterprises, one of the reasons may well be the fear of getting entangled in legal disputes, the complications and cost of which are beyond evaluation. A simple arbitration clause which calls for a referee or an umpire to settle any differences that may arise from the contract, takes away much of the sensation of insecurity evoked by the spectre of judicial litigation.

The most efficacious instrument in international business is the contract. In fact, a whole series of international, one might say universal, bodies of law have developed from contractual devices rather

than through specific legislation. A few examples of this kind of contract-made-international-private law are: the laws of documentary credit, the Charter-party, a fairly substantial section of exchange laws (often referred to internationally as "loi cambiaire") and many others.

Since an arbitration clause is truly a contractual agreement and one that is genuine to the very essence of any business transaction (considering that business shall for ever remain a natural hotbed for disputes) there seems to be no logic in curtailing the business man's freedom of contract which would be the case if arbitration and awards issuing therefrom were to be ruled unenforceable as such.

Recognition of the right to arbitrate or to bargain posited in the terms of an agreement and effectuated by the enforceability of the award is nothing but the acknowledgment of one of the oldest rules of law: the freedom and sacredness of contract (*pacta sunt servanda*). Freedom can, of course, be abused in the field of contracts as in any other. An arbitration clause may be invalid because e.g. it covers matters that are not adjustable by arbitration or that are contrary to the public policy of the country of recognition. If such be the case, Article V of the Convention provides the means for the exequatur court to, *proprio motu*, refuse recognition and enforcement.

International business transactions are no longer limited to agreements between parties whose individuality, nationality and seat of business are easily identifiable and never changing factors. For contracts of old, the *forum contractus* was never seriously in doubt. Today many transactions are made between parties whose corporate entity is nothing but a veil behind which a whole pack of business enterprises operate in a quasi-autonomous fashion. Transactions of this kind usually cover operations extending far beyond the boundaries of one country or group of countries. Sometimes the place of signature is chosen for reasons which have nothing to do with the sphere of operation or with the nationality of the signatories. At times the contractual documents travel from country to country gathering signatures, making it all near impossible to determine with any measure of validity the *forum contractus*, or the *forum litis*. The concept of territoriality has been long, and still is in many fields, sacrosanct in international law. It is being eroded more and more, however, and the day is dawning where its application will be restricted to some areas of International *Public Law*.

A special type of international business transaction which would be immensely improved upon by having arbitration clauses in the instruments of agreement are those made with foreign governments, agencies, government authorities, state monopolies, nationalized industries, or state established industrial concerns totally or partially controlled by the state or by one of its instrumentalities.

When difficulties occur in this realm of international business, the phantom of sovereignty always looms in the distance. It is not yet known whether the Convention of 1958 will unnerve this often-abused power, but there is some hope that it may.

An interesting decision by the French Court of Conflicts (*Tribunal des Conflicts*) has been reported very recently in the *Recueil Dalloz*.

In 1940 a representative of the French Government in exile in London signed a Charter party with a British Steamship Company. An Arbitration Clause in the agreement provided that all differences should be submitted to arbitral award. A dispute about freight monies

was brought by the British Company before the arbitrators who awarded payment and damages to the plaintiff by a decision rendered in 1951. A petition for exequatur was subsequently filed by the British Company before a French Civil Court. After several appeals (including a "renvoi" to the administrative court) two principles were finally sanctioned by the French Court: (1) The right for the government, through its authorized representatives, to enter into an arbitration agreement and, subsequently, the obligation for the government to abide by it and (2) The enforceability of an arbitral award, even though the defendant, in casu, the State, is vested with the privileges of sovereignty, provided the matter is (a) of a private nature (b) adjustable by arbitration and (c) not contrary to public policy.

The decision is interesting in more than one way: It takes its place in a line of other French decisions (some rendered by the Council of State) inaugurating the notion that the government may act, and more and more does act in a dual capacity, as a sovereign power on the one hand and as a private entrepreneur on the other. When the State acts in the latter capacity the Court holds that it must accept the responsibilities and liabilities of private business. Any overt abuse of its sovereign character in matters that are considered private business transactions and do not conflict with public policy and any attempt to nullify its action by taking cover behind the rampart of sovereignty will be declared void. The French courts will take this stand by applying the doctrine of the "abuse of power" (*Abus de pouvoir*) a convenient substitute for the concept of unconstitutionality which is lacking in most Civil Law systems.

In business transactions, disputes, misunderstandings, differences, misinterpretations, non-performance, negligent or faulty performance, etc., are incidents which realistic business people expect to happen during the lifetime of any contract. Sometimes differences have their source in outside occurrences: a change in legislation, a deterioration of the market, a shift of personnel, an interfering third party, a defaulting customer, an alteration in tariff rates, customs regulations or import procedure, etc., etc.

These are like the accidents which are likely to happen on any voyage when the sea gets rough and the ship runs into a storm. What business men and their attorneys are trying to do with arbitration clauses is to provide the tools which are needed to patch up chinks when they occur, or to secure the bulkhead when the ship springs a leak and so to keep the vessel on course and save the rest of the cargo. It is rather seldom that a difference between contractants imperils the whole agreement. Business differences can best be settled by compromise and arbitration. A lawsuit in the grand style brings the whole agreement into question and paralyzes the normal flow of business. Business must go on and usually it can go on if the safety hatch of arbitration functions promptly and properly.

In conducting international business transactions, considerable talent, legal and other, is employed for the purpose of settling differences when they occur without resorting to complex and costly litigation. During the gestational phase of an international business agreement of any magnitude, lawyers, financial experts, tax and exchange specialists, patent attorneys and consultants in various fields work together to set up a contractual structure that will stand up under any stress.

If, later on, some crack should develop the same experts are on hand to prevent the building from collapsing. Through our modern means of communication the legal people and other technical consultants who assisted at the laying of the groundwork of the new enterprise can convene practically overnight to work out an early settlement or, if this should fail, an arbitration agreement which would seal off the sour spot permitting the rest of the business to be carried on, while in the meantime the difference is being argued before an independent panel of arbitrators.

Transacting international business nowadays is largely a technical job and counseling the transactors is technical in no lesser degree. The same could be said of the skills that are required to adjudicate international business disputes. The courts in many countries are manned by career jurists appointed for life, who, though able and just, are not fully cognizant of the intricacies of modern business technology.

Even in this country some branches of the judiciary have been criticized for too much legalism and too little perception of the economic and social realities. On how much more this kind of criticism is deserved by foreign judicial systems, one who has had an opportunity to observe them in action might offer some conclusive testimony.

My plea for arbitration does not imply that it is desirable and practical under any circumstances. There are undoubtedly cases which require the full procedural display before the regular courts. In a great many instances, however, business will be getting a better brand of justice from arbitration tribunals than it would receive in the dignified halls of justice.

When debating the 1958 Convention, pro and con, one should not overlook the fact that, although under the Convention (Art. III) the arbitral award has binding force "prima facie", there are several provisions in the context which permit the exequatur court to refuse recognition and enforcement. Article V provides five grounds for summary judgment of dismissal on motion by the defendant and Article VI two for dismissal by the exequatur court, *proprio motu*.

Two other sections of the Convention should merit consideration: Article XI designed to facilitate joining by federal states and Article XIII providing for cancellation of the Convention by any of the contracting states.

After all the arguments in favor of the Convention have been debated, the only question that should be answered is the one which you have pointedly asked in your letter: Is there any decisive reason why American business should not avail itself of an international instrumentality for arbitration that has worked satisfactorily for British business and served it well for more than four decades? Evidently not.

One of the innovations of the 1958 convention is to have formalized the arbitral jurisdiction of "arbitral bodies" (Article I (2)). Arbitral bodies, tribunals or courts, have been in existence "de facto" before the Convention. The offices for arbitration (the one in Paris being the most widely known and used) organized and supervised by the International Chamber of Commerce will no doubt acquire some kind of institutional status as the Convention is being ratified by more and more states.

It will be interesting to watch this development in the light of the general tendency in the text of the Convention to get away from the concept of territoriality with a view to truly internationalizing the

artibral award. The US is a powerful and influential member of the International Chamber of Commerce. It is easy to see the opportunity for shaping this new international institution so that it may serve our interests, we will jeopardize by staying aloof from this field.

In summary, I should like to reiterate the statement that, in my opinion, the adoption of the Convention would be in the best interests of American business.

Yours sincerely,

R. B. VAN DER BORGH.

MOBIL INTERNATIONAL OIL CO.,
OFFICE OF GENERAL COUNSEL,
New York, N.Y., March 9, 1959.

CLIFFORD J. HYNNING, Esq.,
Chairman, Committee on International Unification of Private Law,
Washington, D.C.

DEAR MR. HYNNING: This is in reply to your letter of December 9, 1958, addressed to Mr. George F. James. You inquired as to whether we would anticipate tangible benefits from adoption by the United States of the U.N. Convention on Arbitral Awards.

Briefly, we feel that American corporations doing business in foreign countries would benefit from accession to this Convention by the United States. Our Company, for example, customarily includes arbitration provisions in its contracts. While we do not find that any substantial number of disputes arise, still the recognition and enforcement of awards, if and when obtained, remains an important matter.

Beyond the specific improvements contemplated in this Convention, we also feel that United States accession would represent a favorable development in demonstrating that our Government supports the extension of the rule of law to commercial activities in the general international sphere. We believe this to be the true position and the one which should apply notwithstanding that the traditional limitations to which you refer have caused some confusion as to the stand taken by the United States in the past.

We realize that our above comments are general in nature. We trust, however, that they will be of some assistance and we appreciate the opportunity of making them. We would be happy to discuss any more specific questions with you at any time.

Sincerely yours,

PAUL SMITH, Jr.

THE UNIVERSITY OF VERMONT,
Burlington, Vt., February 18, 1959.

CLIFFORD J. HYNNING, Esq.,
Washington, D.C.

DEAR MR. HYNNING: I read the proposed Convention on the Recognition and Enforcement of Foreign Arbitral Awards with a great deal of interest and with the feeling that there would be tangible benefits from its adoption. Your analysis of the constitutionality and legal aspects of its possible adoption would seem to be entirely sound; and from a policy approach, it would seem that adoption of such a con-

vention would be in keeping with developments which have occurred since 1925.

It would seem to me that the existence of a system of arbitration which would be recognized on a broad basis would be a particular benefit to private investment in various parts of the world and would produce the likelihood of a speedy adjustment of problems which arise in international transactions. The safeguards which are provided in this convention would appear to make such a system of arbitration superior to decisions by local courts and would assure the private parties full protection of their interests. It is conceivable that a matter of political sovereignty of a particular state may be in question, but this would seem to be a very small likelihood and could in no respect be of any great significance as compared to the importance of encouraging the full development of international congress which, I feel, is one of our best means of promoting international understanding and peace.

Sincerely yours,

JOHN T. FEY, *President.*

AMERICAN ARBITRATION ASSOCIATION,
New York, N.Y., March 1, 1966.

HON. DEAN RUSK,
The Secretary of State,
Washington, D.C.

DEAR MR. SECRETARY: I understand that the United States accession to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 is now under review by the State Department. Thirty-one countries have already acceded to the Convention; among them Germany, Switzerland, France, the Netherlands, India, Japan and the Philippines.

In my official capacity as President of the American Arbitration Association, and on behalf of the Board of Directors of this Association, I urge that you give this matter your strong endorsement and use your good offices to secure early passage of this action in the Senate.

There is growing interest on the part of businessmen throughout the world in the use of arbitration to settle commercial disputes. The increasing volume of trade, the complexity of modern commercial contracts, and the tangled and conflicting laws of the trading nations, all contribute to the advantages arbitration has over litigation in different countries, for settling trade disputes effectively, quickly, and with a minimum of international bitterness. The rising preference for arbitration by those engaged in international trade parallels the growth in the use of arbitration here at home. Last year, exclusive of cases wholly in the field of labor relations, this Association alone handled some 8000 commercial arbitration cases.

But in the field of international trade, the American businessman finds himself at a considerable disadvantage in the use of arbitration. Because the United States has not acceded to the UN New York Convention of 1958, there now exists an unfortunate and unnecessary barrier to the enforcement of properly executed American awards abroad. As I reported to the Committee on "Peaceful Settlement of Disputes" at the White House Conference on International Cooperation on December 1, 1965, a recent case involving a dispute between

an American firm and an Indian company illustrates the problem encountered by the American businessman. Although operating under a well drafted arbitration clause, the American company was prevented from arbitrating his case by Indian court decree. Later, in commenting on this case, a report issued by the Indian Ministry of Commerce, stated:

"If a country desires that her nationals should enjoy the rights given under the Convention (sic, New York Convention of 1958) in regard to arbitration proceedings, it should join the Convention so that there is mutuality between the two countries."

This remark is typical of those heard in many countries by Dr. Martin Domke, American Arbitration Association Vice President, who has just returned from a trip through Asia as a United Nations' special consultant on Commercial Arbitration.

Three of the ICY Committees all stressed the value of arbitration in international trade and urged U.S. accession to the New York Convention. These Committees were: Peaceful Settlement of Disputes, Development of International Law, and Business and Industry.

I would also like to draw your attention to the fact that the House of Delegates of the American Bar Association has also strongly recommended U.S. accession after receiving from the Section on International and Comparative Law a well documented report (proceedings 1960, pp. 194-260).

Accession to the Convention by the United States would also encourage other countries, especially in Latin America, to adhere to the Convention and thus stimulate the inclusion of arbitration agreements in business contracts.

Please be assured that this Association is ready to offer any assistance within our command that you and your staff may desire in the further consideration of this matter of such importance to world trade.

Sincerely,

DONALD B. STRAUS, *President.*

RESOLUTION DULY PASSED ON JANUARY 10, 1967, BY THE EXECUTIVE COMMITTEE OF THE AMERICAN ARBITRATION ASSOCIATION

Whereas the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, of June 10, 1958, would facilitate final resolution of disputes which might otherwise hamper the development of international trade; and

Whereas commercial arbitration has proved an effective means of settling disputes between contractual parties from different countries with diverse systems of law; and

Whereas thirty-one Nations have already ratified the 1958 Convention, including France, Germany, India, Japan, The Netherlands and Switzerland; and

Whereas enforcement of arbitral agreements voluntarily entered upon by business firms is in the interest of the United States as a principal trading country: Be it

Resolved, That the American Arbitration Association supports the ratification by the United States of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards; be it further

Resolved, That the officers of the Association be directed to express this endorsement to certain other organizations interested in foreign trade, and to call upon such organizations to express their support of the Convention.

PERSONS WHO HAVE SIGNED CARDS FAVORING RATIFICATION OF THE UNITED NATIONS CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRABLE AWARDS OF JUNE 10, 1958

Robert Abelow, Weil, Gotshal & Manges, 60 East 42d Street, New York City.

Allan J. Ackerman, partner, Main Lafrentz & Co.

Joseph J. Akulonis, Jr., controller, International Basic Engineering Corp.

Richard C. Allison, partner, Reid & Priest.

Manuel R. Angulo, partner, Curtis, Mallet-Prevost, Colt & Mosle.

Elizabeth Ashby, treasurer, Carpet Masterpieces, Inc.

Jeff Bernstein, assistant editor, New York Law Journal.

George A. Birrell, general counsel, International Division, Mobil Oil Corp.

Frederick H. Bullen, Esq., partner, Kaye, Scholer, Furman, Hayes & Handler.

William G. Beckham, partner, Main, Lafrentz & Co.

James J. Cihard, merchandise manager, Greenwood Mills.

Alex Chopnick, partner, Connors & Chopnick.

Henry Clifton, Jr., partner, Buell Clifton & Turner.

Stephen H. Cooper, associate attorney, Weil, Gotshal & Manges.

Homer Crawford, secretary, St. Regis Paper Co.

A. C. Croft, editor, Personnel Journal.

Oscar W. Darge, director, International Division, Turner Jones Co.

W. D. Davies, international transportation consultant, Deerfield Drive, Greenwich, Conn.

S. S. De Mallis, market research manager, Greenwood Mills, Inc.

Warren Diefendorf, assistant credit manager, Greenwood Mills, Inc.

Joseph DiFede, lawyer and professor of law, DiFede & Martoccia.

Robert W. Dowling, City Investing Co., 784 Madison Avenue, New York City.

William H. Draper, Jr., chairman, Pension Corp. of America, 320 Park Avenue, New York City.

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Edwin M. Fuller, vice president-treasurer, Greenwood Mills, Inc.

Phil A. Gates, attorney, 830 Park Avenue, New York City.

Samuel E. Gates, partner, Debevoise, Plimpton, Lyons & Gates.

S. Harry Galfand, chairman, board of directors, The Citizens Bank, Philadelphia, Pa.

G. A. Gomprecht, partner, Main Lafrentz & Co.

John T. Gwynne, secretary, New York Chamber of Commerce.

Philip W. Haberman, Jr., partner, Proskauer, Rose, Goetz & Mendelsohn.

L. W. Heptig, attorney.

J. Wayne Hisle, vice president, finance, Rockefeller Center, Inc.

Howard M. Holtzmann, partner, Holtzmann, Wise & Shepard.
 Neal Henry Hundt, staff vice president and counsel, AMF.
 Floyd W. Jefferson, chairman, Iselin Jefferson Co.
 Joseph E. Johnson.
 Robert C. Jones, partner, Main Lafrentz & Co.
 David Lenefsky, research assistant, United Nations Association-USA.
 D. G. Lewis, vice president, American & Foreign Power Co.
 John W. Lewis, partner, Weil, Gotshal & Manges.
 Richard E. Luhmann, partner, Price Waterhouse & Co.
 LeRoy Marceau, counsel, Standard Oil Co. (New Jersey).
 Lawrence I. Marks, vice president, finance, General Cigar Co., Inc.
 S. Grant Mason, Jr.
 Gordon E. McCoy, secretary-credit manager, Greenwood Mills, Inc.
 Rev. Thomas J. McDonough, head, Economics Department, Notre Dame University.
 J. J. McFadden, Jr., principal, Eggers & Higgins.
 Mrs. Marion H. McVitty.
 Oscar L. Miller, partner, Main Lafrentz & Co.
 David W. Peck, partner, Sullivan & Cromwell.
 Robert M. Pennoyer, partner, Patterson Belknap & Webb.
 Bernard W. Recknagel, vice president, St. Regis Paper Co.
 Samuel A. Reinach, Jr., member of firm, Reinach & Lehrer.
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 Henry F. Skelton, vice president, Manufacturers Hanover Trust Co.
 Alex Smalley, group vice president, St. Regis Paper Co.
 Bruce F. Smith, partner, Price Waterhouse & Co.
 Willis A. Smith, partner, Main Lafrentz & Co.
 Abraham Stanger, senior partner, Stanger & Rothstein.
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 Thomas Thacher, member, Patterson, Belknap & Webb.
 Alfred Tree, vice president, Chemical Bank New York Trust Co.
 R. L. Vayo, international vice president, St. Regis Paper Co.
 S. Leonard Wall, associate attorney, Conner & Chopnick.
 Bethuel M. Webster.
 Arnold S. Zander, president, United World Federalists.
 E. Nobles Lowe, vice president-general counsel, West Virginia Pulp & Paper Co.
 Kenneth Spang, vice president, First National City Bank.

