REPORT NO. 1 OF THE
STANDING COMMITTEE ON
WORLD ORDER UNDER LAW

RECOMMENDATION*

BE IT RESOLVED, That the American Bar Association urges the
government of the United States to start negotiations with other
governments in order to implement the principles contained in the
Draft General Treaty on the Peaceful Settlement of International
Disputes to accept arbitration for the resolution of international
disputes.

REPORT

In August, 1984 the American Bar Association House of Delegates
adopted a policy resolution approving in principle a Draft Gen-
eral Treaty on the Peaceful Settlement of International Dis-
putes. The Draft Treaty was prepared by Professor Louis B. Sohn
for the Standing Committee on World Order Under Law and was
also approved by the Section of In-
ternational Law and Practice of the
American Bar Association. The
Draft Treaty is attached as an Ap-
pendix to the present report.

The principle of resolving interna-
tional disputes by arbitration is an
integral part of the Draft Gen-
eral Treaty and has therefore also
been approved in principle by the
Association. Under Chapter VII,
Arbitration, Article XXII states that
at any stage of a dispute the par-
ties to a dispute may agree to have
recourse to the procedure of arbi-
tration. An award of an arbitrator
or arbitral tribunal shall be binding
on the parties to the dispute.

No one should need to be con-
vinced of the importance of pro-
moting international peace. Goal
VIII of the American Bar Associa-
tion clearly outlines the responsi-
bility of lawyers to take steps to
advance the rule of law in the
world.

The current situations in South-
east Asia, Africa, Central America,
and the Middle East indicate that
we will continue to have at least
one troubled area erupting at any
given time. Many international dis-
putes could be handled effectively
by arbitration. The problems of
fishing rights, riparian rights, ex-
propriation of property, interna-
tional crimes, and environmental
protection are by themselves rela-
tively narrow questions which ar-
bitration could address successfully.
Left unresolved, these minor dis-
putes can evolve into major con-

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*The recommendation was approved. See page 29.
frontations. Even if the disputes do not lead to armed warfare, their mere existence as unsettled conflicts raises problems for any affected nation because of the loss of efficiency and productivity, and general loss of confidence inherent in uncertainty.

Aside from the very tangible benefits of effectively settling nagging disputes among countries, perhaps the greatest consequence of a simple arbitration system would be its more general effect on the conduct of international relations. If countries could learn to settle these minor disputes effectively and peacefully, and in so doing, develop some mutual trust and understanding, it logically follows that in time larger disputes could be settled through the same arbitration approach. Once a foundation of trust and belief in the arbitration process can be established, any problem might be settled.

The present co-operative climate between the United States and the Soviet Union sets the stage for future negotiation and arbitration of disputes between the two superpowers. An example is the current dispute over construction of the U.S. Embassy complex in Moscow. The U.S. and the Soviet Union are preparing to arbitrate a dispute over the construction of the U.S. Mission in Moscow, a case involving the alleged electronic bugging of an office building in the complex. The arbitration will be held in Stockholm, Sweden, under the United Nations Commission on International Trade Law Arbitration Rules. Resort to arbitration by the U.S. and the Soviet Union in this case underscores the importance of institutional arrangements that facilitate effective, peaceful and impartial dispute resolution. An enforceable arbitration clause in an international contract is beneficial because arbitration provides an expeditious, efficient, binding settlement that is fair to both parties.

The world today is too small and too dangerous for anyone to argue that we can hide and ignore international problems. And only through international co-operation, which inherently transcends the solitary interest of any single country, can any successful attempt at solution of these international problems be made. We can be too easily adversely affected by these foreign problems to allow concerns for nationalism to defeat cooperation in international efforts to resolve them. Moreover, the loss of sovereignty involved in submission to compulsory arbitration of international disputes is minimal. The loss is no greater than for anyone submitting to binding arbitration of a problem within the United States.

No one can deny that arbitration has proven successful in many years of American life, notably labor relations and commercial transactions. Successful arbitration on the international level, far from being an alien concept has been an important part of American history. The San Juan Islands, claimed by both the United States and Great Britain, became part of the United States in 1871 as part of an award by the German Emperor, Kaiser Wilhelm, acting as arbitrator. Several other American boundary disputes, such as the division of the St. Lawrence River and the Great Lakes, were also settled effectively and peacefully by arbitration. Arbitration has been used successfully since the Greek city-states of Sparta and Argos in the fourth century B.C. agreed that disputes between them would be decided by a neutral town.
Arbitration assures that the problems are solved on their merits. Further, arbitration is a more adaptable system, and thus can handle a wider range of disputes than can the World Court. Arbitration certainly need not replace the World Court, but could be a very effective supplement. We cannot possibly avoid the consequences of international conflict. Moreover, if the United States is to retain its leadership position in world affairs as we have traditionally held, we must develop a system of solving international disputes that can contribute to world peace. If we are going to solve these conflicts peacefully, we must do so through a system of international cooperation. Recent years have seen a renewed effort to establish a system for the compulsory arbitration of international disputes. The legal profession has played a key role in these developments, through such institutions as the World Peace Through Law Center, headed by Charles S. Rhyne, former President of the American Bar Association.

Because arbitration is a simple process, it is easily adaptable to vastly different foreign legal systems. Arbitration guarantees that the merits of the dispute will dictate the solution. Its simplicity ensures that no country will be at a disadvantage in that no adversary country will "know the game better." To say that such disputes are minor is to speak only in a relative sense. Left unsolved, the disputes can easily evolve into major confrontations.

Arbitration of international disputes between countries offers the same advantages as arbitration of international commercial disputes, and domestic disputes, whether commercial or labor. Arthur J. Goldberg, former United States Supreme Court Justice, Secretary of Labor, and Ambassador to the United Nations, has noted the following advantages of arbitration procedures:

1. They can provide a "cooling off period" for the fever of controversy to subside.
2. They can help bring contending parties into touch with one another.
3. They can help find the facts.
4. They can identify points of agreement.
5. They can introduce the calming effect of impartial conciliation or judgment.
6. They can mobilize public opinion against excessive claims.
7. They can place responsibility on others for which the parties themselves could not accept responsibility.

All of these procedures are needed and adaptable to international disputes.

Justice Goldberg also points out that an international arbitration framework need not wait for an increased belief in internationalism on the part of individuals:

"I have no illusions that institutions alone can solve the problems of persuading sovereign states to accept third party assistance as conciliators or arbitrators. I recognize that the central problem is one of national attitudes. The most important requirement for peaceful settlement

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is the willingness of nations to settle their differences by peaceful means. However, institutions can help shape national attitudes."

The basic concepts of arbitration greatly simplify the institutionalization problems. Structure is important simply to promote the implementation of the arbitration, but the process itself would remain totally separate from any form of international government. The countries involved in the dispute can maintain control over the process of conciliation, because each country can choose its own representatives on the arbitration panel and the only "outsider" would be chosen by those representatives. Inasmuch as arbitration is a simple process which relies heavily on the participants, any organization would be involved only in a supervisory and functional capacity and would serve primarily as a clearing house.

All of the developments of the post-war world, including the increasing role of international trade, the increasing internationalism of every facet of human life caused by developments in transportation and communication, and the urgency of developing peaceful methods of resolving international disputes imposed by the proliferation of nuclear weapons, have brought attention back to the concept of arbitration.

Compulsory arbitration of smaller scale international disputes could be the first step toward a global judicial process. We encourage the members of the legal profession, and all others who are in a position to help foster world peace, to work toward the development of an arbitration system that transcends the shortsightedness and limitations of nationalism and permits a fair and impartial resolution of global disputes. Arbitration is a tried and tested procedure, successfully practiced as early as 2,300 years ago by the Greeks, and if used wisely could help bring world peace closer to a reality.

Respectfully submitted,

Paul C. Warnke,
Chair,
Standing Committee on World Order Under Law

February, 1990