

N° 3778.

JAPON ET PAYS-BAS

Traité de règlement judiciaire, d'arbitrage et de conciliation, et protocole de signature. Signés à La Haye, le 19 avril 1933.

**JAPAN
AND THE NETHERLANDS**

Treaty of Judicial Settlement, Arbitration and Conciliation, and Protocol of Signature. Signed at The Hague, April 19th, 1933.

¹ TRADUCTION. — TRANSLATION.

No. 3778. — TREATY² OF JUDICIAL SETTLEMENT, ARBITRATION AND CONCILIATION BETWEEN JAPAN AND THE NETHERLANDS. SIGNED AT THE HAGUE, APRIL 19TH, 1933.

French official text communicated by the Netherlands Minister for Foreign Affairs. The registration of this Treaty took place November 27th, 1935.

HER MAJESTY THE QUEEN OF THE NETHERLANDS
and

HIS MAJESTY THE EMPEROR OF JAPAN,

Equally desirous of strengthening the friendly relations which have existed between the Netherlands and Japan for centuries,

Firmly resolved in no case to seek a settlement other than by pacific means of disputes of any character which may arise between their two countries,

Have decided to conclude a Treaty for that purpose and have appointed as their respective Plenipotentiaries :

HER MAJESTY THE QUEEN OF THE NETHERLANDS :

Jonkheer Frans BEELAERTS VAN BLOKLAND, Her Minister for Foreign Affairs ;

HIS MAJESTY THE EMPEROR OF JAPAN :

Monsieur Hiroshi SAITO, His Envoy Extraordinary and Minister Plenipotentiary accredited to Her Majesty the Queen of the Netherlands ;

Who, having communicated their full powers, found in good and due form, have agreed on the following provisions :

Article I.

All disputes of any character arising between the High Contracting Parties, which it has not been possible to settle amicably within a reasonable period by the normal diplomatic procedure, shall be justiciable, by common accord between the Parties or at the request of either one of them, by a Permanent Conciliation Commission to be established under the provisions of the present Treaty and to exercise its functions in accordance therewith. Disputes which in the opinion of both Parties are of a juridical character shall be submitted to the Permanent Conciliation Commission only by common accord between the Parties.

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

¹ Translated by the Secretariat of the League of Nations, for information.

² The exchange of ratifications took place at The Hague, August 12th, 1935.

Article 2.

Disputes, for the solution of which a special procedure is provided under other Conventions in force between the High Contracting Parties, shall be settled in accordance with the provisions of such Conventions.

Article 3.

Disputes of a legal character (and, in particular, disputes in regard to the interpretation of Treaties in force between the High Contracting Parties) which have not been submitted to the Permanent Conciliation Commission or, having been submitted to the said Commission, have not been settled within three months after its report has been drawn up, shall be submitted for arbitration, at the request of either one of the Parties addressed to the other or by common accord, either to the Permanent Court of International Justice, which shall decide in accordance with the conditions and procedure provided in its Statute,¹ or to an Arbitral Tribunal, which shall decide in accordance with the conditions and procedure provided in the Hague Convention² of October 18th, 1907, for the Pacific Settlement of International Disputes. The submission to the Court or Tribunal shall consist of an exchange of notes between the Governments of the High Contracting Parties.

In default of agreement as to the choice between the Permanent Court of International Justice and an Arbitral Tribunal being reached by the Parties within three months from the addressing of a proposal by one of the Parties to the other for the submission of the dispute to the Court or Tribunal, the dispute shall be submitted in accordance with the procedure provided in the preceding paragraph to the Court, the which shall decide in accordance with the conditions and procedure provided in its Statute. The dispute shall also be submitted to the Court in accordance with the same procedure in the case where, the High Contracting Parties having agreed to submit the dispute to an Arbitral Tribunal, the Tribunal has not been set up in accordance with the provisions of Article 4 within five months from the request to which paragraph 2 of Article 4 relates.

Article 4.

In the event of the High Contracting Parties agreeing to submit a dispute to an Arbitral Tribunal, the following shall be the composition and constitution of the Tribunal, save in so far as otherwise agreed. The Tribunal shall consist of five arbitrators, whereof one shall be appointed by each of the Parties. The said two arbitrators may be nationals of the States by which they are appointed. The Chairman and the other two arbitrators shall be chosen by common accord from nationals of third Powers in such wise that each is of a different nationality.

In default of the appointment of the members of the Arbitral Tribunal within three months from the addressing of the proposal by one of the Parties to the other for the joint establishment of an Arbitral Tribunal, the necessary appointments shall be made by a third Power chosen by common accord between the Parties.

In default of agreement as to the choice of the third Power, each Party shall designate a different Power, and the appointments shall be made by the Powers thus chosen in concert.

¹ Vol. VI, page 379; Vol. XI, page 405; Vol. XV, page 305; Vol. XXIV, page 153; Vol. XXVII, page 417; Vol. XXXIX, page 165; Vol. XLV, page 96; Vol. L, page 159; Vol. LIV, page 387; Vol. LXIX, page 70; Vol. LXXII, page 452; Vol. LXXXVIII, page 435; Vol. LXXXVIII, page 272; Vol. XCII, page 362; Vol. XCVI, page 180; Vol. C, page 153; Vol. CIV, page 492; Vol. CVII, page 461; Vol. CXI, page 402; Vol. CXVII, page 46; Vol. CXXXVI, page 430; Vol. CXXX, page 440; Vol. CXXXIV, page 392; Vol. CXLVII, page 318; Vol. CLII, page 282; Vol. CLVI, page 176; and Vol. CLX, page 325, of this Series.

² *British and Foreign State Papers*, Vol. 100, page 298.

Article 5.

Vacancies in the membership of the Arbitral Tribunal by reason of death, resignation or other impediment shall be filled as soon as possible in accordance with the provisions in Article 4 in regard to appointments.

Article 6.

The arbitral procedure for which Article 4 provides shall be governed by the provisions of Articles 7, 8 and 9.

Article 7.

The High Contracting Parties shall draw up a submission defining the subject of the dispute and the procedure to be followed.

In default of sufficient indications or particulars in the submission, the arbitral procedure shall be governed by the provisions of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 8.

Save in so far as otherwise agreed, the fundamental rules on which the Arbitral Tribunal shall base its decisions shall be :

- (1) Such general or specific Conventions as are in force between the two Parties, and the rules of law deriving therefrom ;
- (2) International custom regarded as the expression of general practice accepted as law ;
- (3) General principles of law recognised by civilised nations ;
- (4) The result of the most authoritative judicial doctrine and practice regarded as auxiliary means of determining rules of law.

Article 9.

Save in so far as otherwise provided in the submissions, appeals for revision of arbitral awards may be lodged, in accordance with the provisions of Article 83, paragraphs 2 and 3, of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes, within a period to be fixed by the Tribunal.

Article 10.

Where the subject of a dispute according to the municipal law of one of the High Contracting Parties falls within the competence of the said Party's national courts, the dispute shall not be justiciable under the procedure provided in the present Treaty until such time as a final judgment has been passed by the competent national judicial authority, such judgment to be passed within a reasonable period.

Article 11.

The Permanent Conciliation Commission for which the present Treaty provides shall be composed of five members, who shall be appointed as follows, that is to say : the High Contracting Parties shall each appoint one of their own nationals to be a Commissioner, and the remaining three Commissioners shall be chosen by common accord from nationals of third Powers in such wise that each is of a different nationality, one of the latter to be appointed by the High Contracting Parties as President of the Commission.

The Commissioners shall be appointed for five years as from the date of the coming into force of the present Treaty ; their term of office shall be renewable. They shall remain in office until replaced, and in any case until the termination of such work as they may have in hand at the moment of the expiry of their term of office.

Vacancies occurring as a result of death, resignation or other permanent or temporary impediment shall be filled as soon as possible, and in any case within three months, in accordance with the provisions in regard to appointments. Persons thus appointed shall be appointed only for the unexpired portion of the term of office of the Commissioners they replace.

Article 12.

The Permanent Conciliation Commission shall be constituted as soon as possible after the ratifications of the present Treaty have been exchanged.

In the event of the appointment of the members to be appointed by common accord not having been made within six months from the exchange of ratifications of the Treaty or, in the case of the filling of a vacancy, within three months after the vacancy occurs, the President of the Permanent Court of International Justice shall be requested, in default of agreement as to any other procedure, by the two High Contracting Parties jointly, or by either one of them, to make the necessary appointments. Should the President be prevented from making the appointments or should he be a national of either of the Parties, the Vice-President shall be requested to make the appointments. Should the Vice-President be prevented from making the appointments or should he be a national of either of the Parties, the next Judge on the roll of the Court, not being a national of either of the Parties, shall be requested to make the appointments.

Article 13.

Disputes shall be brought before the Permanent Conciliation Commission by means of requests addressed to the President.

Requests shall contain a summary account of the subject of the dispute, together with an invitation to the Commission to take all necessary steps with a view to an amicable settlement.

Where a request emanates from one only of the Parties, the Party making the request shall notify the other Party forthwith.

Article 14.

It shall be the duty of the Permanent Conciliation Commission to elucidate questions in dispute, to collect with that object all necessary information by enquiry or otherwise, and to endeavour to bring the Parties to an agreement. It shall be open to the Commission, after examination of the case, to indicate to the Parties such terms of settlement as it may consider reasonable, and to specify (should it so see fit) a time-limit for the statement by the Parties of their attitude in regard to the same.

At the close of the proceedings, the Commission shall draw up a report stating the result of the proceedings. A copy of the report shall be delivered to each Party. The report shall not mention whether the decisions of the Commission were taken by a unanimous or by a majority vote.

The High Contracting Parties shall at no time be bound by any considerations of fact or law or any other considerations accepted by the Commission.

The proceedings of the Commission shall begin not later than two months from the date on which the dispute has been brought before it. They shall be concluded within six months from the date on which the Commission has declared the proceedings open, unless the Parties otherwise agree or the Commission is of opinion that an extension of the time-limit is indispensable. In the event of the Commission being of opinion that an extension of the time-limit is indispensable, it shall communicate a statement of the reasons for its opinion to both Parties.

Article 15.

Save in so far as otherwise specifically provided, the Permanent Conciliation Commission shall lay down its own procedure. The procedure must in any case provide for both Parties being heard. In all cases of enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Chapter III (International Commissions of Enquiry) of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 16.

The President shall convene the Permanent Conciliation Commission as soon as possible after a dispute has been brought before it.

Save in so far as otherwise agreed between the Parties, the Commission shall meet at the place and on the date fixed by the President.

Article 17.

The proceedings of the Permanent Conciliation Commission shall be private save in so far as otherwise decided by the Commission with the consent of the Parties.

The High Contracting Parties undertake not to publish the results of the proceedings of the Commission without previous consultation with one another.

Article 18.

The High Contracting Parties shall be represented before the Permanent Conciliation Commission by agents, whose duty it shall be to act as intermediaries between the High Contracting Parties and the Commission. The High Contracting Parties may, further, be assisted by counsel or experts appointed by them for the purpose, and may request that all persons whose evidence appears to them useful should be heard.

The Commission shall be entitled to require oral explanations from the agents, counsel and experts of the two Parties, as well as from any person it may see fit, with the consent of the said person's Government, to call.

Article 19.

Save in so far as otherwise provided in the present Treaty, the decisions of the Permanent Conciliation Commission shall be taken by a majority vote.

The Commission may not take any decision relating to the substance of the dispute, unless all the members have been duly convened and at least all the members appointed by common accord are present.

Article 20.

The High Contracting Parties undertake to facilitate the labours of the Permanent Conciliation Commission and, in particular, to lend it the assistance of their competent authorities, to supply it to the fullest possible extent with all material documents and information, and to take the necessary steps to allow the Commission to proceed in their several territories to the calling and hearing of witnesses or experts, and to visit particular localities with a view to enquiries on the spot.

Article 21.

For the period of the proceedings of the Permanent Conciliation Commission, each Commissioner shall receive emoluments, the amount of which shall be fixed by common accord between the

High Contracting Parties, each of which shall contribute an equal moiety thereof. The general cost of the proceedings of the Commission shall be divided equally between the two Parties.

Article 22.

The decisions of the Arbitral Tribunal or of the Permanent Court of International Justice shall be executed in good faith by the Parties.

The High Contracting Parties undertake for the period of the proceedings of the Permanent Conciliation Commission, the Arbitral Tribunal or the Permanent Court of International Justice not to take any step capable of exercising an adverse influence on the acceptance of proposals by the Permanent Conciliation Commission, or on the execution of decisions of the Arbitral Tribunal or of the Permanent Court of International Justice. The Arbitral Tribunal may order provisional measures, at the request of either one of the Parties, provided such measures admit of execution by the Parties by means of administrative regulations. The Permanent Conciliation Commission may make proposals in the same sense. In the case of the Permanent Court of International Justice, the provisions of the Statute of the same shall be applicable.

Article 23.

In the event of dispute between the High Contracting Parties concerning the interpretation of the present Treaty, such dispute shall be settled in accordance with the procedure provided in Article 3.

Article 24.

The present Treaty shall be ratified and the ratifications shall be exchanged at The Hague as soon as possible.

Article 25.

The present Treaty shall come into force as soon as the ratifications have been exchanged and shall remain in force for a period of five years as from its coming into force. If not denounced six months before the expiry of the said period, it shall be deemed to be tacitly renewed for further successive periods of five years.

Any proceedings of whatever kind under the present Treaty which may be pending, at the time of the expiry of the same, before the Permanent Conciliation Commission, the Permanent Court of International Justice or the Arbitral Tribunal shall continue until they are concluded.

In faith whereof the Plenipotentiaries aforesaid have signed the present Treaty and have thereto affixed their seals.

Done at The Hague in duplicate on April 19th, 1933, corresponding to the nineteenth day of the fourth month of the eighth year of Showa.

(L. S.) BEELAERTS VAN BLOKLAND.

(L. S.) HIROSI SAITO.

PROTOCOL OF SIGNATURE.

At the moment of proceeding to the signature of the Treaty of Judicial Settlement, Arbitration and Conciliation between the Netherlands and Japan, the undersigned Plenipotentiaries declare themselves agreed as to the following :

(1) The aforesaid Treaty shall be applicable to all disputes which may arise between the two countries not directly affecting the interests of third Powers.

(2) Should the legal situation of Japan in relation to the Permanent Court of International Justice be modified as a result of the withdrawal of Japan from the League of Nations, notice of which was given on March 27th, 1933, becoming definitive, the High Contracting Parties shall proceed, at the request of the Japanese Government, to enter into negotiations in order to decide whether it is necessary to amend the provisions of the said Treaty relating to the said Court. For the period of such negotiations the application of the said provisions shall be suspended. Nevertheless, proceedings pending before the Court at the time of the Japanese Government's request shall continue until a conclusion is reached ; and the provisions of the Treaty shall continue to be applicable to decisions of the Court in such cases.

The Hague, April 19th, 1933, corresponding to the nineteenth day of the fourth month of the eighth year of Showa.

BEELAERTS VAN BLOKLAND.
Hiroshi SAITO.