

N° 1434.

AUTRICHE ET SUÈDE

Traité de conciliation et d'arbitrage,
avec protocole de signature. Signés
à Stockholm, le 28 mai 1926.

AUSTRIA AND SWEDEN

Treaty of Conciliation and Arbitra-
tion, with Protocol of Signature.
Signed at Stockholm, May 28,
1926.

¹ TRADUCTION. — TRANSLATION.No. 1434. — TREATY² OF CONCILIATION AND ARBITRATION BETWEEN AUSTRIA AND SWEDEN. SIGNED AT STOCKHOLM, MAY 28, 1926.

French official text communicated by the Swedish Minister for Foreign Affairs. The registration of this Treaty took place April 1, 1927.

HIS MAJESTY THE KING OF SWEDEN and THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA, being desirous of developing the friendly relations which unite the two countries, and having decided that their relations with one another shall be governed in the largest possible measure by the principles on which the League of Nations is based, have resolved to conclude a Treaty of Conciliation and Arbitration, and for this purpose have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF SWEDEN :

M. Bo Östen UNDÉN, His Minister for Foreign Affairs ;

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA :

M. Charles BUCHBERGER, Austrian Chargé d'Affaires at Stockholm ;

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

PART I.

Article 1.

All disputes between Sweden and Austria of whatever nature with regard to which the Parties are in conflict as to their respective rights and which it may not be possible to settle amicably by the normal methods of diplomacy, shall be submitted for decision to the Permanent Court of International Justice,³ as provided hereinafter.

Disputes for the settlement of which a special procedure is laid down in other conventions in force between Sweden and Austria shall be settled in conformity with the provisions of those conventions.

Article 2.

Before any recourse is had to the Permanent Court of International Justice the dispute may, by agreement between the Parties, be submitted with a view to amicable settlement to a permanent international commission styled the "Permanent Conciliation Commission" constituted in accordance with the present Treaty.

¹ Traduit par le Secrétariat de la Société des Nations.

¹ Translated by the Secretariat of the League of Nations.

² The exchange of ratifications took place at Stockholm, March 29, 1927.

³ Vol. VI, page 379 ; Vol. XI, page 404 ; Vol. XV, page 304 ; Vol. XXIV, page 152 ; Vol. XXVII, page 416 ; Vol. XXXIX, page 165 ; Vol. XLV, page 96 ; Vol. L, page 159 and Vol. LIV, page 387 of this Series.

Article 3.

The Permanent Conciliation Commission mentioned in Article 2 shall be composed of five members, who shall be appointed as follows ; the Swedish Government and the Austrian Government shall each nominate a commissioner from among their respective nationals and shall appoint, by common agreement, the three other commissioners from among the nationals of third Powers. Those three commissioners must be of different nationalities, and the Swedish and the Austrian Governments shall appoint the President of the Commission from among them.

The commissioners are appointed for three years and their mandate is renewable. Their appointment shall continue until their replacement or in any case until the termination of the work in hand at the moment of the expiry of their mandate.

Vacancies which may occur as a result of death, resignation or any other cause, shall be filled within the shortest possible time in the manner laid down for the nominations.

Article 4.

The Permanent Conciliation Commission shall be instituted within six months from the entry into force of the present Treaty.

If the nomination of the commissioners who have to be appointed by common agreement should not have taken place within the aforesaid period, or in the case of the filling of a vacancy, within three months from the date when the seat falls vacant, the President of the Swiss Confederation shall, in the absence of an agreement, be requested to make the necessary appointment.

Article 5.

Disputes shall be referred to the Permanent Conciliation Commission by means of a request addressed to the President by the two Parties, acting in agreement, or, in the absence of such agreement, by one or other of the Parties.

The request shall give a summary account of the subject of the dispute and shall invite the Commission to take all necessary measures with a view to arriving at an amicable settlement.

If the request emanates from one Party only, notification thereof shall be made without delay to the other Party.

Article 6.

Within fifteen days from the date on which the Swedish Government or the Austrian Government shall have brought a dispute before the Permanent Conciliation Commission, either Party may replace, for the examination of the particular dispute, its own Commissioner by a person possessing special competence in the matter.

The Party availing itself of this right shall at once notify the other Party. The latter shall, in that case, be entitled to take similar action within fifteen days from the date on which it shall have received notification.

Article 7.

The task of the Permanent Conciliation Commission shall be to elucidate questions in dispute, to collect for this purpose all necessary information by means of enquiry or otherwise and to make every effort to bring the Parties to an agreement. It may, after the case has been examined, inform the Parties of the terms of settlement which seem suitable to it and lay down a period within which they are to make their decision.

At the close of its labours, the Commission shall draw up a report stating either that the Parties have come to an arrangement and, if the case arises, the terms of such agreement, or that it has been impossible to effect a settlement.

The labours of the Commission must, unless the Parties otherwise agree, be terminated within six months from the date on which the dispute was first submitted to the Commission.

Article 8.

Failing any special provision to the contrary, the Permanent Conciliation Commission shall lay down its own procedure, which, in any case, must provide for both Parties being heard. In regard to enquiries, the Commission, unless it unanimously decides otherwise shall act in accordance with the provisions of Title III (International Commissions of Enquiry) of The Hague Convention¹ of October 18, 1907, for the Pacific Settlement of International Disputes.

Article 9.

The Permanent Conciliation Commission shall meet, in the absence of agreement by the Parties to the contrary, at a place selected by its President.

Article 10.

The labours of the Permanent Conciliation Commission shall not be public, except when a contrary decision has been taken by the Commission with the consent of the Parties.

Article 11.

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

The Commission on its side shall be entitled to request oral explanations from the agents, counsel and experts of the two Parties, as well as from all persons it may think useful to summon with the consent of their Government.

Article 12.

Unless otherwise provided in the present Treaty, the decisions of the Permanent Conciliation Commission shall be taken by a majority. Each member shall have one vote ; the President shall have a casting vote.

The Commission shall not have power to take any decision relative to the substance of the dispute unless all the members are present.

Article 13.

The Swedish Government and the Austrian Government undertake to facilitate the labours of the Permanent Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory and in accordance with their law to the summoning and hearing of witnesses or experts, and to visit the localities in question.

¹ *British and Foreign State Papers*, Vol. 100, page 298.

Article 14.

During the labours of the Permanent Conciliation Commission each Commissioner shall receive remuneration, the amount of which shall be fixed by joint agreement between the Swedish and Austrian Governments.

Each Government shall pay its own expenses and shall contribute an equal share to the joint expenses of the Commission, the remuneration of the Commissioners being included in these joint expenses.

Article 15.

In the event of no amicable agreement being reached before the Permanent Conciliation Commission, the dispute shall be submitted, by means of a special agreement, to the Permanent Court of International Justice under the conditions and according to the procedure laid down by its Statute.

If the Parties cannot agree on the terms of the special agreement after a month's notice, one or other of them may bring the dispute directly before the Permanent Court of International Justice by means of an application.

PART II.

Article 16.

All questions other than those mentioned in Article 1 on which the Swedish Government and the Austrian Government disagree, without being able to reach an amicable solution by means of the normal methods of diplomacy, and for the settlement of which no procedure has been laid down by other conventions in force between the Parties, shall be submitted to the Permanent Conciliation Commission, whose duty it shall be to propose to the Parties an acceptable solution, and, in any case, to present a report.

The procedure laid down in Articles 5 to 14 of the present Treaty shall be applicable.

Article 17.

If the two Parties have not reached an agreement within one month of the termination of the labours of the Permanent Conciliation Commission, the question shall, at the request of either Party, be brought before an arbitral tribunal, which shall be constituted, unless otherwise agreed between the Parties, in conformity with the provisions of Article 45 of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes. This tribunal shall follow, so far as may be applicable, the procedure laid down in Title IV, Chapter III of the said Convention. Notwithstanding, if within six months from the date on which one of the Parties has applied to the other with a view to submitting the dispute to arbitration, the special agreement (*compromis*) mentioned in the said Hague Convention has not been signed, it shall be established at the request of one of the Parties, by the arbitral tribunal.

The tribunal shall give its decision *ex aequo et bono*.

The arbitral decision shall, if necessary, specify the formalities for execution, and shall, more particularly, fix the time-limits for execution.

GENERAL PROVISIONS.

Article 18.

In the case of a dispute concerning a matter which, under the internal legislation of one of the Parties, comes within the jurisdiction of the national tribunals of such Party, including the

administrative tribunals, the said Party may object to the dispute being made subject to the procedure laid down in the present Treaty, until a judgment possessing the force of *res judicata* has been given within a reasonable time by the competent national judicial authority.

Article 19.

The Swedish and Austrian Governments undertake, during the course of proceedings commenced in virtue of the provisions of the present Treaty, to abstain from all measures which might prejudicially affect, on the one hand, the execution of the decision of the Permanent Court of International Justice or the arbitral decision, or, on the other, the arrangements proposed by the Permanent Conciliation Commission, and in general, not to commit any act of any kind which might aggravate or extend the dispute.

In any case, and particularly if the question on which the Parties differ arises out of acts already committed or on the point of commission, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, shall indicate, within the shortest possible time, the provisional measures to be adopted. It shall similarly be the duty of the arbitral tribunal, if a dispute is brought before it in virtue of the provisions of Article 17 of the present Treaty, to indicate suitable provisional measures. The High Contracting Parties undertake to accept the provisional measures thus indicated by the Court or by the arbitral tribunal.

Article 20.

If, by the terms of a judicial or arbitral award, a decision passed, or a measure ordered by a judicial or other authority of either of the two States is entirely or in part contrary to international law, and if under the constitutional law of the said State, the consequences of such decision or measure cannot be annulled, or can only be partially annulled, the Parties agree that the injured Party shall be given equitable satisfaction in some other form, by judicial or arbitral award.

Article 21.

All disputes regarding the interpretation of this Treaty shall be submitted to the Permanent Court of International Justice.

Article 22.

The present Treaty shall be ratified by His Majesty the King of Sweden with the approval of the Riksdag.

The exchange of ratifications shall take place at Stockholm as soon as possible.

The Treaty shall be concluded for ten years, reckoned from the date of the exchange of ratifications. Unless it shall have been denounced at least six months before the expiration of this term, it shall remain in force for a further period of five years, and so on for successive periods.

In faith whereof, the Plenipotentiaries have signed the present Treaty.

Done at Stockholm, in duplicate, May 28, 1926.

(L. S.) (Signed) Östen UNDÉN.

(L. S.) (Signed) BUCHBERGER.

PROTOCOL OF SIGNATURE.

Before proceeding to sign the Treaty of Conciliation and Arbitration concluded this day between Sweden and Austria, the undersigned, duly authorised thereto, agreed as follows :

Until such time as the Federal Government of the Republic of Austria shall have acceded to the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes, it shall be entitled, when selecting the members of the arbitral tribunal mentioned in Article 17 of the said Treaty between Sweden and Austria, to choose one of its own nationals not on the general list of members of the Permanent Court of Arbitration.

In faith whereof, the Plenipotentiaries have signed the present Protocol.

Done at Stockholm, in duplicate, May 28, 1926.

(L. S.) (Signed) Östen UNDÉN.

(L. S.) (Signed) BUCHBERGER.