

N° 1765.

FINLANDE ET SUISSE

Traité de conciliation et de règlement judiciaire. Signé à Berne, le 16 novembre 1927.

**FINLAND
AND SWITZERLAND**

Treaty of Conciliation and Judicial Settlement. Signed at Berne, November 16, 1927.

¹ TRADUCTION. — TRANSLATION.

No. 1765. — TREATY² OF CONCILIATION AND JUDICIAL SETTLEMENT BETWEEN FINLAND AND SWITZERLAND. SIGNED AT BERNE, NOVEMBER 16, 1927.

French official text communicated by the Swiss Federal Council and by the Finnish Minister for Foreign Affairs. The registration of this Treaty took place June 29, 1928.

THE SWISS FEDERAL COUNCIL and THE PRESIDENT OF THE REPUBLIC OF FINLAND, being desirous of strengthening the ties of friendship uniting Switzerland and Finland and of promoting, in the interests of general peace, the application of the procedure for conciliation and judicial settlement to the adjustment of international disputes,

Being resolved to apply to the fullest extent, in the relations between the two countries, the principles embodied in the resolution of the League of Nations dated September 22nd, 1922, regarding the creation of Commissions of Conciliation between States,

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

THE SWISS FEDERAL COUNCIL :

M. Guiseppe MOTTA, President of the Confederation, Head of the Federal Political Department ;

THE PRESIDENT OF THE REPUBLIC OF FINLAND :

His Excellency M. Rafael W. ERICH, Envoy Extraordinary and Minister Plenipotentiary of Finland in Switzerland ;

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

Article 1.

The Contracting Parties undertake to submit all disputes of whatever kind which may arise between them, and which it has not been possible to adjust by diplomacy, to a procedure of conciliation, before having resort to any judicial procedure.

Each of the Contracting Parties shall be free to judge as to the moment when the procedure of conciliation may be substituted for diplomatic negotiations.

Disputes, for the settlement of which a special tribunal is provided by other engagements in force between the Contracting Parties, shall, however, be brought direct before such tribunal.

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 Berne, June 11, 1928.

Article 2.

In the case of a dispute, the occasion of which, according to the law of one of the Parties, falls within the competence of a judicial authority, the defendant Party may oppose the submission of the dispute to a procedure of conciliation, and if necessary to judicial settlement, until a final judgment has been delivered by the aforesaid judicial authority. If the plaintiff Party desires to contest such judgment, the dispute shall be submitted to the procedure of conciliation at latest one year from the date of its delivery.

Article 3.

Within six months after the exchange of the ratifications of the present Treaty, the Contracting Parties shall set up a permanent Conciliation Commission composed of five members.

Each Party shall appoint one member of its own choosing, the other three being nominated by agreement. These three last-named members may not be nationals of the Contracting Parties, nor be habitually resident in their territories, nor be employed in their service.

The President of the Commission shall be appointed by agreement from among the jointly nominated members.

The members of the Commission shall be appointed for three years. Those jointly nominated may not be relieved of their functions during their term of office, unless otherwise agreed between the Parties.

Article 4.

A vacancy caused by the death or retirement of a member of the Conciliation Commission shall be filled for the remainder of that member's term of office, if possible within the next three months and in any case as soon as a dispute is submitted to the Commission.

Should one of the members jointly designated by the Contracting Parties be temporarily unable to take part in the work of the Commission owing to illness or any other circumstance, the Parties shall appoint a substitute by agreement to take his place for the time being. If such appointment has not been carried out within three months from the date on which the seat became temporarily vacant, the procedure laid down in Article 5 of the present Treaty shall be followed.

If on the expiration of a Commissioner's term of office no arrangement has been made to replace him, his mandate shall be deemed to be renewed for a period of three years; nevertheless, the Parties may decide, on the expiration of the period of three years, to transfer the functions of President to another of the members of the Commission jointly designated by the Parties.

A member of the Commission whose term of office expires while proceedings are still in progress shall continue to take part in the examination of the dispute until the close of such proceedings, even if his successor has already been appointed.

Article 5.

If the appointment of the members of the Conciliation Commission to be nominated jointly or of the President is not made within the authorised period of six months or, in the case of their replacement, within three months after the vacancy occurs, such appointments shall be made, on the request of one Party only, by the President of the Permanent Court of International Justice or, if he is a national of one of the Contracting States, by the Vice-President, or, if the latter is similarly situated, by the eldest member of the Court.

Article 6.

Within two weeks from the date on which one of the Contracting Parties has referred a dispute to the Conciliation Commission either Party may, for the purpose of the particular dispute, replace

the permanent member of the Commission nominated by itself by a person possessing special competence in the matter.

The Party desiring to make use of this right shall immediately inform the other Party; the latter shall in that case be entitled to take similar action within fifteen days after receipt of such notice.

Either Party shall, nevertheless, be entitled to appoint a substitute forthwith in temporary replacement of the permanent member nominated by itself if such member is temporarily prevented by illness or any other circumstance from taking part in the Commission's work.

Article 7.

The task of the Conciliation Commission shall be to further the settlement of the dispute by an impartial and conscientious examination of the facts and by formulating proposals with a view to settling the case in conformity with the terms of Article 12 of the present Treaty.

The Commission shall be informed of a dispute by an application addressed to its President by one of the Contracting Parties. Such application shall be notified at the same time to the other Party by the Party which is requesting the institution of the conciliation procedure.

Article 8.

The Conciliation Commission shall meet at the place chosen by its President, unless there is an agreement to the contrary.

Article 9.

The procedure before the Conciliation Commission shall provide for both Parties being heard. The Commission shall determine its own procedure, being guided, in the absence of an unanimous decision to the contrary, by the provisions of Chapter III of the Hague Convention¹, dated October 18, 1907, for the Pacific Settlement of International Disputes.

The proceedings of the Commission shall be in private unless the Commission shall decide otherwise, with the consent of the Parties.

Article 10.

Except as otherwise provided in the present Treaty, the decisions of the Conciliation Commission shall be taken by a majority vote. Each member shall have one vote. If all the members are not present and if the votes are equally divided, the President shall have a casting vote. The Commission may not take a decision affecting the substance of the dispute unless all the members are present.

Article 11.

The Contracting Parties shall furnish the Conciliation Commission with all useful information and shall afford it every assistance to the utmost of their powers in the execution of its duties.

Article 12.

The Conciliation Commission shall present its report within six months from the date on which it was informed of the dispute, unless the Contracting Parties decide by agreement to extend this period.

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

The report shall contain a proposal for the settlement of the dispute, whenever the circumstances permit.

The reasoned opinion of the members forming the minority shall be recorded in the report.

A copy of the report, signed by the President, shall be sent to each Party.

The report of the Commission shall not be in the nature of an arbitral award as regards either the statement of facts or the legal considerations.

Article 13.

The Parties shall inform each other and the President of the Conciliation Commission within a reasonable time, not however exceeding three months, whether they accept the findings of the report and the proposals contained therein.

The Parties shall decide, by agreement, whether the Commission's report and the minutes of the discussions may be published before the expiry of the period within which they have to make their decision regarding the proposals contained in the report.

Article 14.

For the actual duration of the procedure, the members of the Conciliation Commission shall receive emoluments to be fixed by arrangement between the Contracting Parties.

Each Party shall bear its own costs and one half the costs of the Commission.

Article 15.

If one of the Contracting Parties does not accept the proposals of the Conciliation Commission or does not make a decision within the period fixed in the latter's report, either Party may demand that the dispute be submitted to the Permanent Court of International Justice in conformity with the obligation which the Parties assumed by their accession to the Optional Clause of Article 36 of the Court's Statute¹. The Contracting Parties shall continue, until the expiry of the present Treaty, to be mutually bound by that obligation, even if it should meanwhile have ceased to have effect for either or both of them.

The Parties further agree that if the dispute should not fall within one of the four categories of legal disputes specified in paragraph 2 of Article 36 of the Statute¹ of the Court of Justice, either Party may nevertheless demand that it shall be submitted to the Permanent Court of International Justice, which shall settle it *ex aequo et bono*, in so far as no rule of law is applicable to the case.

Article 16.

In each individual case, the Contracting Parties shall draw up a special agreement clearly setting forth the subject of the dispute, the special powers which may be conferred upon the Permanent Court of International Justice, and any other conditions which they may agree to establish.

The special agreement shall be constituted by an exchange of notes between the Governments of the Contracting Parties.

All points therein shall be interpreted by the Court of Justice.

¹ 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; Vol. LIV, page 387; Vol. LXIX, page 70; and Vol. LXXII, page 452, of this Series.

If the special agreement is not drawn up within a period of three months from the day on which one of the Parties received a request for judicial settlement, either Party may bring the matter before the Court of Justice by a simple application.

Article 17.

If the Permanent Court of International Justice finds that a decision of a court of law or any other authority of either of the Contracting Parties is wholly or in part contrary to international law, and if the constitutional law of the said Party does not permit, or only partially permits, the consequences of the decision in question to be annulled by administrative action, the injured Party shall be given equitable satisfaction of another kind.

Article 18.

The judgment of the Permanent Court of International Justice shall be acted upon by the Parties in good faith.

Any difficulties regarding the interpretation of the aforesaid judgment shall be settled by the Court of Justice upon a simple application for this purpose, by either Party.

Article 19.

During the course of the conciliation procedure or of the judicial procedure, the Contracting Parties shall abstain from all measures capable of producing consequences prejudicial to the acceptance of the Conciliation Commission's proposals or to the execution of the judgment of the Permanent Court of International Justice.

Article 20.

Any disputes which may arise as to the interpretation or execution of the present Treaty shall, unless otherwise agreed, be submitted direct to the Permanent Court of International Justice by a simple application.

Article 21.

The present Treaty shall be ratified. The instruments of ratification shall be exchanged at Berne as early as possible.

The Treaty shall come into force immediately on the exchange of the ratifications. It is concluded for a period of ten years reckoned from the date of its coming into force. Unless denounced six months before the expiry of that period, it shall be deemed to have been renewed for a further period of five years, and similarly thereafter.

If a procedure for conciliation or a judicial procedure is pending at the time of the expiry of the present Treaty, it shall pursue its course in conformity with the provisions of the present Treaty or of any other convention which the Contracting Parties may have agreed to substitute therefor.

In faith whereof the Plenipotentiaries have signed the present Treaty.

Done in duplicate at Berne, the sixteenth day of November, one thousand nine hundred and twenty-seven.

(L. S.) (Signed) MOTTA.

(L. S.) (Signed) R. W. ERICH.