

N° 2678.

**LUXEMBOURG
ET PORTUGAL**

Traité de conciliation, d'arbitrage et
de règlement judiciaire. Signé à
Luxembourg, le 15 août 1929.

**LUXEMBURG
AND PORTUGAL**

Treaty of Conciliation, Arbitration
and Judicial Settlement. Signed
at Luxemburg, August 15, 1929.

¹ TRADUCTION. — TRANSLATION.

No. 2678. — TREATY OF CONCILIATION, ARBITRATION AND JUDICIAL SETTLEMENT BETWEEN LUXEMBURG AND PORTUGAL. SIGNED AT LUXEMBURG, AUGUST 15, 1929.

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBURG and THE PRESIDENT OF THE PORTUGUESE REPUBLIC desirous of strengthening the ties of friendship which exist between Luxemburg and Portugal and of settling, in accordance with the highest principles of public international law, any disputes which may arise between the two countries, have resolved to conclude a Treaty for this purpose and have appointed as their Plenipotentiaries :

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBURG :

His Excellency M. Joseph BECH, Minister of State, Prime Minister ;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC :

His Excellency M. Alberto d'OLIVEIRA, Envoy Extraordinary and Minister Plenipotentiary of Portugal,

Who, having communicated their full powers, found in good and due form, have agreed as follows :

Article 1.

All disputes concerning a right of any kind claimed by one of the Contracting Parties and opposed by the other Party and, in particular, disputes mentioned in Article 13 of the Covenant of the League of Nations, which it may not have been possible to settle within a reasonable time by the normal methods of diplomacy, shall be submitted for decision to the Permanent Court of International Justice.

Article 2.

The Contracting Parties shall, in each particular case, draw up a special agreement (*compromis*) clearly defining the subject of the dispute, the particular jurisdiction to be exercised by the Permanent Court of International Justice and any other conditions as determined between themselves.

The said agreement shall be constituted by an exchange of notes between the Governments of the Contracting Parties. The Court of Justice may interpret any point in this agreement.

If the agreement has not been drawn up within three months as from the day on which one of the Parties has received a request for judicial settlement, each Party may bring the dispute direct before the Court of Justice by means of an ordinary application.

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.

Article 3.

Previous to the institution of any proceedings before the Permanent Court of International Justice, the dispute shall, if one of the Parties so requests, be submitted for conciliation to a permanent international Commission, to be known as the Permanent Conciliation Commission, constituted in conformity with the present Treaty.

Article 4.

The Permanent Conciliation Commission shall be composed of five members. The Contracting Parties shall each nominate a commissioner of their own choice and shall appoint by agreement three other commissioners one of whom they shall designate as President of the Commission. These three commissioners must not be nationals of the Contracting Parties nor must they be domiciled in their territories nor be in their service. They must all three be of different nationalities.

The commissioners shall be appointed for three years. If on the expiration of a member's term of office no steps have been taken to replace him, his term of office shall be deemed to have been prolonged for a period of three years; the Parties may, however, decide, on the expiration of the President's term of office, to appoint another member of the Commission designated jointly to the office of President.

A member whose term of office expires while proceedings are in progress shall continue to act as a member of the Commission for the dispute in question until the proceedings have been concluded, even if his successor has been appointed.

In case of the death or withdrawal of one of the members of the Conciliation Commission, steps shall be taken to replace this member for the remainder of his term of office, if possible within the three months following his death or withdrawal, and in any case as soon as a dispute has been submitted to the Commission.

Should one of the members of the Conciliation Commission appointed jointly by the Contracting Parties be temporarily prevented from taking part in the work of the Commission owing to illness or some other circumstance, the Parties shall agree to appoint a substitute who shall sit until the termination of the proceedings in hand unless the parties decide otherwise. If the substitute has not been appointed within three months from the date of the temporary vacancy, the procedure followed shall be that laid down in Article 5 of the present Treaty.

Article 5.

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

If the Commissioners to be chosen by agreement have not been appointed within the said period, or if a vacancy has not been filled within three months from the time when the seat fell vacant, the appointments shall be made by a third Power jointly designated by the Parties. If an agreement is not reached on this point, each Party shall designate a different Power and the appointments shall be made jointly by these two Powers. And if, within two months, these two Powers have not been able to reach an agreement, each Power shall submit a number of candidates equal to that of the members to be appointed; the final choice among these candidates shall be made by lot.

Article 6.

The Conciliation Commission shall be informed by means of an application 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 application shall contain a summary account of the subject of the dispute and an invitation to the Commission to take whatever measures are necessary with a view to arriving at an amicable settlement.

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

Article 7.

Within fifteen days from the date on which one of the Contracting Parties has brought a dispute before the Conciliation Commission, either Party may, for the examination of the particular dispute, replace its permanent member 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 be entitled to take similar action within fifteen days from the date on which it has received notification.

Either Party shall be entitled to appoint a temporary substitute forthwith to replace the permanent member designated by it, in case that member should, as a result of illness or any other circumstance, be prevented for the time being from taking part in the work of the Commission.

Article 8.

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

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

The proceedings of the Commission must, unless the Parties otherwise agree, be terminated within six months from the day on which it was first notified of the dispute.

If it has been impossible to bring about a friendly settlement, the Commission may, even if the case has been referred to the Permanent Court of International Justice and that Court has not yet reached a final decision, order the publication of a report setting out the opinion of each of its members unless either of the Commissioners appointed by the Parties of their own choice opposes such action.

Article 9.

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

Article 10.

Except where otherwise agreed by the Parties, the Conciliation Commission shall meet at the place selected by its President.

Article 11.

The proceedings of the Conciliation Commission shall not be public except where otherwise decided by the Commission with the consent of the Parties.

Article 12.

The Contracting Parties shall be entitled to appoint special agents to represent them before the Conciliation Commission ; these agents shall also act as intermediaries between the Parties and the Commission. Failing such appointment, the Commission may, through its President, correspond direct with the Minister for Foreign Affairs of either Party.

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 respective Governments.

Article 13.

Unless otherwise provided in the present Treaty, the decisions of the Conciliation Commission shall be taken by a majority vote.

Article 14.

The Contracting Parties undertake to facilitate the work of the 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 enable it to proceed in their territories and in accordance with their laws to the summoning and hearing of witnesses or experts and to carry out enquiries on the spot.

Article 15.

During the proceedings of the Conciliation Commission, each Commissioner shall receive emoluments the amount of which shall be fixed by agreement between the Contracting Parties.

Each Government shall pay its own expenses and shall contribute an equal share to the joint expenses of the Commission, including the emoluments provided for in paragraph 1.

Article 16.

All questions other than those mentioned in Article 1 which may arise between the Contracting Parties and which it has been impossible to settle in a reasonable time by the normal methods of diplomacy shall be submitted to the Permanent Conciliation Commission. In this case the procedure laid down in Articles 6 to 15 of the present Treaty shall be applicable.

Article 17.

Should it be impossible to reach an amicable settlement, the dispute shall, at the request of either Party, be submitted for decision to a court of arbitration set up under the conditions and according to the procedure defined in the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

The Parties may, however, agree to submit a dispute to the Permanent Court of International Justice, which shall render a decision *ex aequo et bono*.

Article 18.

If one of the Parties has, in conformity with paragraph 1 of the preceding Article, requested that the dispute be submitted to a court of arbitration set up under the conditions and according

to the procedure laid down in Article 45 of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes, the other Party shall be bound to apply to the said Court, for the same purpose, in conjunction with the Party which has requested arbitration, and the two Parties shall within three months conclude a special agreement concerning the subject of the dispute and the procedure to be followed.

Should it be impossible to draw up this special agreement within the above-mentioned time-limit, the procedure laid down in Part IV of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes shall be obligatory.

Should a dispute be submitted to the Permanent Court of International Justice, the procedure shall be that provided by the Statute of the Court.

Article 19.

In the case of a dispute which, according to the municipal law of one of the Parties, falls within the jurisdiction of the national courts of that Party, including the administrative tribunals, the said Party may require that the dispute shall not be submitted for conciliation, judicial settlement or arbitration, as provided in the present Treaty, until a final judgment has been pronounced within a reasonable time by the competent judicial authority.

Article 20.

Should the Permanent Court of International Justice or the Court of Arbitration find that a decision of a court of law or other authority of one of the Contracting Parties is wholly or partly at variance with international law, and should the constitutional law of that Party not allow, or only inadequately allow of the annulment of the consequences of this decision by administrative procedure, the judicial or arbitral decision shall state the nature and extent of the compensation to be accorded to the injured Party.

Article 21.

During the conciliation, judicial settlement or arbitration proceedings, the Contracting Parties shall abstain from all measures which might have a prejudicial effect on the acceptance of the proposals of the Conciliation Commission, the execution of the judgment of the Permanent Court of International Justice, or the award of the Court of Arbitration. For this purpose, the Conciliation Commission, the Court of Justice or the Court of Arbitration shall, if necessary, lay down the provisional measures to be adopted.

Article 22.

Any dispute arising as to the interpretation or execution of the present Treaty shall, except as otherwise agreed, be submitted direct to the Permanent Court of International Justice by means of a simple application.

Article 23.

The present Treaty shall apply only to disputes arising after the exchange of ratifications and in connection with situations or events which have developed or occurred subsequent to that date.

Disputes for the settlement of which a special procedure is provided in other agreements in force between the Contracting Parties shall be settled in conformity with the terms of such agreements.

Article 24.

The present Treaty shall be ratified. The instruments of ratification shall be exchanged at Brussels as soon as possible.

The Treaty shall come into force as soon as the ratifications have been exchanged, and shall be concluded for five years as from the date of its coming into force. If it is not denounced six months before the expiration of this period, it shall be deemed to have been renewed for a further period of five years, and similarly thereafter.

If proceedings for conciliation, judicial settlement or arbitration are pending at the time of the expiration of the present Treaty, they shall pursue their course in accordance with the provisions of the present Treaty.

In faith whereof the above-mentioned Plenipotentiaries have signed the present Treaty, done in duplicate French and Portuguese texts, the two texts having the same force and value and being equally authentic.

Done at Luxemburg on the fifteenth day of August one thousand nine hundred and twenty-nine.

(Signed) BECH.

(Signed) A. D'OLIVEIRA.