

N° 2737.

AUTRICHE ET NORVÈGE

Convention de conciliation, d'arbitrage et de règlement judiciaire.
Signée à Oslo, le 1^{er} octobre
1930.

AUSTRIA AND NORWAY

Convention of Conciliation, Arbitration and Judicial Settlement.
Signed at Oslo, October 1, 1930.

¹ TRADUCTION. — TRANSLATION.

No. 2737. — CONVENTION² OF CONCILIATION, ARBITRATION AND JUDICIAL SETTLEMENT BETWEEN AUSTRIA AND NORWAY. SIGNED AT OSLO, OCTOBRE 1, 1930.

French official text communicated by the Permanent Delegate of Norway accredited to the League of Nations. The registration of this Convention took place June 24, 1931.

HIS MAJESTY THE KING OF NORWAY and THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA,

Animated by the desire to develop the friendly relations which unite the two countries,
And desirous of fully applying in their mutual relations the principles of the League of Nations,

Have decided to achieve their common aim by means of a Convention and have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF NORWAY :

M. Johan Ludwig MOWINCKEL, His President of the Council and Minister for Foreign Affairs ;

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA :

M. Charles BUCHBERGER, Austrian Chargé d'Affaires to the Norwegian Government ;

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

CHAPTER I.

PACIFIC SETTLEMENT IN GENERAL.

Article I.

Disputes of every kind which may arise between the High Contracting Parties and which it has not been possible to settle by diplomacy shall be submitted, under the conditions laid down in the present Convention, to settlement by judicial means or arbitration, preceded, according to circumstances, as a compulsory or optional measure, by recourse to the procedure of conciliation.

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 Oslo, June 15, 1931.

Article 2.

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

2. The present Convention shall not affect any agreements in force by which conciliation procedure is established between the High Contracting Parties or by which they have assumed obligations to resort to arbitration or judicial settlement for the purpose of settling the dispute. If, however, these agreements provide only for a procedure of conciliation, then after such procedure has been followed without result, the provisions of the present Convention concerning judicial settlement or arbitration shall be applied.

Article 3.

1. In the case of a dispute the occasion of which, according to the municipal law of one of the Parties, falls within the competence of its judicial or administrative authorities, the Party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Convention until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the Party which desires to resort to the procedures laid down in the present Convention must notify the other Party of its intention within a period of one year from the date of the aforementioned decision.

CHAPTER II.

JUDICIAL SETTLEMENT.

Article 4.

All disputes with regard to which the Parties are in conflict as to their respective rights shall be submitted for decision to the Permanent Court of International Justice, unless the Parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal.

It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute¹ of the Permanent Court of International Justice.

Article 5.

If the Parties agree to submit the disputes mentioned in the preceding Article to an arbitral tribunal, they shall draw up a special agreement in which they shall specify the subject of the dispute, the arbitrators selected and the procedure to be followed. In the absence of sufficient particulars in the special agreement, the provisions of the Hague Convention² of October 18, 1907, for the Pacific Settlement of International Disputes shall apply so far as is necessary. If nothing is laid down in the special agreement as to the rules regarding the substance of the dispute to be followed by the arbitrators, the tribunal shall apply the substantive rules enumerated in Article 38 of the Statute of the Permanent Court of International Justice.

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. LXXVIII, 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; and Vol. CXVII, page 46, of this Series.

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

Article 6.

If the Parties fail to agree concerning the special agreement referred to in the preceding Article, or fail to appoint arbitrators, either Party shall be at liberty, after giving three months' notice, to bring the dispute by an application direct before the Permanent Court of International Justice.

Article 7.

1. In the case of the disputes mentioned in Article 4, before any procedure before the Permanent Court of International Justice or any arbitral procedure, the Parties may agree to have recourse to the conciliation procedure provided for in the present Convention.

2. In the event of recourse to and failure of conciliation, neither Party may bring the dispute before the Permanent Court of International Justice or call for the constitution of the Arbitral Tribunal referred to in Article 5 before the expiration of one month from the termination of the proceedings of the Conciliation Commission.

CHAPTER III.

CONCILIATION.

Article 8.

All disputes between the Parties other than the disputes mentioned in Article 4 shall be submitted obligatorily to a procedure of conciliation before they can form the subject of a settlement by arbitration.

Article 9.

The disputes referred to in the preceding Article shall be submitted to a permanent or special Conciliation Commission constituted by the Parties.

Article 10.

On a request to that effect being made by one of the Contracting Parties to the other Party, a permanent Conciliation Commission shall be constituted within a period of six months.

Article 11.

Unless the Parties agree otherwise, the Conciliation Commission shall be constituted as follows :

1. The Commission shall be composed of five members. The Parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The other three commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the Parties. The Parties shall appoint the President of the Commission from among them.

2. The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the term of their mandate by agreement between the Parties. Either Party may, moreover, at any time replace the commissioner whom

it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

3. 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 fixed for the nominations.

Article 12.

If, when a dispute arises, no permanent Conciliation Commission appointed by the Parties is in existence, a special commission shall be constituted for the examination of the dispute within a period of three months from the date at which a request to that effect is made by one of the Parties to the other Party. The necessary appointments shall be made in the manner laid down in the preceding Article, unless the Parties decide otherwise.

Article 13.

1. If the appointment of the commissioners to be designated jointly is not made within the periods provided for in Articles 10 and 12, the making of the necessary appointments shall be entrusted to a third Power, chosen by agreement between the Parties or, on the request of the Parties, to the Acting President of the Council of the League of Nations.

2. If no agreement is reached on either of these procedures, each Party shall designate a different Power, and the appointments shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 14.

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two Parties acting in agreement, or, in default thereof, by one or other of the Parties.

2. The application, after giving a summary account of the subject of the dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable solution.

3. If the application emanates from only one of the Parties, the other Party shall without delay be notified by it.

Article 15.

1. Within fifteen days from the date on which a dispute has been brought by one of the Parties before a permanent Conciliation Commission, either Party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The Party making use of this right shall immediately notify the other Party; the latter shall in such case be entitled to take similar action within fifteen days from the date on which it received the notification.

Article 16.

1. In the absence of agreement to the contrary between the Parties, the Conciliation Commission shall meet at the seat of the League of Nations, or at some other place selected by its President.

2. The Commission may in all circumstances request the Secretary-General of the League of Nations to afford it his assistance.

Article 17.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is taken by the Commission with the consent of the Parties.

Article 18.

1. In the absence of agreement to the contrary between the Parties, the 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 decides unanimously to the contrary, shall act in accordance with the provisions of Part III of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

2. The Parties shall be represented before the Conciliation Commission by agents, whose duty 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 may request that all persons whose evidence appears to them desirable shall be heard.

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of both Parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 19.

In the absence of agreement to the contrary between the Parties, the decisions of the Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 20.

The Parties undertake to facilitate the work of the Conciliation Commission and in particular to supply it to the greatest possible extent with all relevant documents and informations, 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.

Article 21.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments the amount of which shall be fixed by agreement between the Parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same manner.

Article 22.

1. The task of the Conciliation Commission shall be to elucidate the 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 seem suitable to it, and lay down the period within which they are to make their decision.

2. At the close of its proceedings, the Commission shall draw up a *procès-verbal* stating, as the case may be, either that the Parties have come to an agreement, and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the *procès-verbal* of whether the Commission's decisions were taken unanimously or by a majority vote.

3. The proceedings of the Commission must, unless the Parties otherwise agree, be terminated within six months from the date on which the Commission shall have been given cognisance of the dispute.

Article 25.

The Commission's *procès-verbal* shall be communicated without delay to the Parties. The Parties shall decide whether it shall be published.

CHAPTER IV.

SETTLEMENT BY ARBITRATION.

Article 24.

If the Parties have not reached an agreement within a month from the termination of the proceedings of the Conciliation Commission mentioned in the previous Articles, the question shall be brought before an arbitral tribunal which, unless the Parties agree otherwise, shall be constituted in the manner indicated below.

Article 25.

The Arbitral Tribunal shall consist of five members. The Parties shall each nominate one member, who may be chosen from among their respective nationals. The other two arbitrators and the Chairman shall be chosen by common agreement from among the nationals of third Powers. They must be of different nationalities and must not be habitually resident in the territory nor be in the service of the Parties.

Article 26.

1. If the appointment of the members of the Arbitral Tribunal is not made within a period of three months from the date on which one of the Parties requested the other Party to constitute an arbitral tribunal, a third Power, chosen by agreement between the Parties, shall be requested to make the necessary appointments.

2. If no agreement is reached on this point, each Party shall designate a different Power, and the appointments shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the two Powers so chosen have been unable to reach an agreement, the necessary appointments shall be made by the President of the Permanent Court of International Justice. If the latter is prevented from acting or is a subject of one of the Parties, the nomination shall be made by the Vice-President. If the latter is prevented from acting or is a subject of one of the Parties, the appointments shall be made by the oldest member of the Court who is not a subject of either Party.

Article 27.

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 fixed for the nominations.

Article 28.

The Parties shall draw up a special agreement determining the subject of the dispute and the procedure to be followed.

Article 29.

Failing adequate indications or stipulations in the special agreement regarding the points referred to in the previous Article, the procedure followed shall be that laid down in the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes, as far as this may be necessary.

Article 30.

Failing the conclusion of a special agreement within a period of three months from the date on which the Tribunal was constituted, the dispute may be brought before the Tribunal by an application by one or other Party.

Article 31.

If nothing is laid down in the special agreement or no special agreement has been made, the Tribunal shall apply the rules in regard to the substance of the dispute indicated in Article 38 of the Statute of the Permanent Court of International Justice. In so far as there exists no such rule applicable to the dispute, the Tribunal shall decide *ex aequo et bono*.

CHAPTER V.

GENERAL PROVISIONS.

Article 32.

1. In all cases where a dispute forms the subject of arbitration or judicial proceedings, and particularly if the question on which the Parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. The Parties to the dispute shall be bound to accept such measures.

2. If the dispute is brought before a Conciliation Commission, the latter may recommend to the Parties the adoption of such provisional measures as it considers suitable.

3. The Parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission, and, in general, to abstain from any act whatsoever which may aggravate or extend the dispute.

Article 33.

If, in a judicial sentence or arbitral award, it is declared that a judgment given or a measure enjoined by a court of law or other authority of one of the Parties to the dispute is wholly or in part contrary to international law, and if the constitutional law of that Party does not permit or only partially permits of the consequences of the judgment or measure in question being annulled, the

Parties agree that the judicial sentence or arbitral award shall grant the injured Party equitable satisfaction.

Article 34.

1. The present Convention shall be applicable as between the High Contracting Parties, even though a third Power has an interest in the dispute.
2. In conciliation procedure, the Parties may agree to invite such third Power to intervene.
3. In judicial or arbitral procedure, if a third Power should consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit to the Permanent Court of International Justice or to the Arbitral Tribunal a request to intervene as a third party. It will be for the Court or the Tribunal to decide upon this request.
4. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar of the Permanent Court of International Justice or the Arbitral Tribunal shall notify all such States forthwith.
Every State so notified has the right to intervene in the proceedings ; but if it uses this right, the construction given by the decision shall be binding upon it.

Article 35.

Disputes relating to the interpretation or application of the present Convention, including those concerning the classification of disputes, shall be submitted to the Permanent Court of International Justice.

Article 36.

The present Convention, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 37.

1. The present Convention shall be ratified and the exchange of ratifications shall take place at Oslo.
It shall be registered at the Secretariat of the League of Nations.
2. The Convention shall be concluded for a period of five years dating from the exchange of ratifications.
3. If it has not been denounced at least six months before the expiration of this period, it shall remain in force for further successive periods of five years.
4. Notwithstanding denunciation by one of the High Contracting Parties, all proceedings pending at the expiration of the current period of the Convention shall be duly completed.

In faith whereof, the above mentioned Plenipotentiaries have signed the present Convention.

Done at Oslo, October 1, 1930, in two copies.

(L. S.) (*Signed*) Joh. Ludw. MOWINCKEL. (L. S.) (*Signed*) BUCHBERGER.