

**UNITED STATES OF AMERICA and FRANCE
and
SWITZERLAND**

Agreement regarding the status, privileges and immunities in Switzerland of the Tribunal of Arbitration established pursuant to the compromise signed at Washington on 11 July 1978 between the United States of America and France, and of persons participating in the work of the Tribunal. Signed at Berne on 6 December 1978

Authentic texts: English and French.

Registered by the United States of America on 7 November 1980.

**ÉTATS-UNIS D'AMÉRIQUE et FRANCE
et
SUISSE**

Accord concernant le statut, les privilèges et les immunités en Suisse du Tribunal d'arbitrage constitué en vertu du compromis signé à Washington le 11 juillet 1978 entre les États-Unis d'Amérique et la France et des personnes participant aux travaux du Tribunal. Signé à Berne le 6 décembre 1978

Textes authentiques : anglais et français.

Enregistré par les États-Unis d'Amérique le 7 novembre 1980.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FRENCH REPUBLIC, OF THE ONE PART, AND THE GOVERNMENT OF THE SWISS CONFEDERATION, OF THE OTHER PART, REGARDING THE STATUS, PRIVILEGES AND IMMUNITIES IN SWITZERLAND OF THE TRIBUNAL OF ARBITRATION ESTABLISHED PURSUANT TO THE COMPROMISE SIGNED AT WASHINGTON JULY 11, 1978,² BETWEEN THE UNITED STATES OF AMERICA AND FRANCE, AND OF PERSONS PARTICIPATING IN THE WORK OF THE TRIBUNAL

The Government of the United States of America and the Government of the French Republic, of the one part, the Government of the Swiss Confederation, of the other part;

Considering the establishment at Geneva, with the agreement of the Swiss authorities, of the seat of the Tribunal of Arbitration set up by the Government of the United States and the Government of France to rule on various matters relating to measures adopted by the two governments and bearing on the air traffic between the two countries;

Desiring to fix the status, privileges and immunities of the Tribunal of Arbitration and the persons participating in its work;

Have agreed as follows:

Article 1. USE OF TERMS

For the purposes of this Agreement:

(a) The expression "Members of the Tribunal" means the President of the Tribunal of Arbitration and the remaining Arbitrators, as well as any expert or experts appointed by the Tribunal;

(b) The expression "Members of the administrative and technical staff of the Tribunal" means the staff of the Tribunal employed on administrative and technical duties for the purposes of the arbitration;

(c) The expression "Persons participating in the arbitral procedure" means the persons comprising the two categories defined in paragraphs (a) and (b) of this article;

(d) The expression "Private staff" means persons employed exclusively in the private service of Members of the Tribunal.

Article 2. GENERAL FACILITIES

The Swiss Government shall accord to the Tribunal of Arbitration the facilities required for the performance of its functions.

Article 3. PREMISES AND ACCOMMODATION

The Swiss Government shall assist the Tribunal of Arbitration, if it so requests, in procuring the necessary premises and obtaining suitable accommodation for its Members.

¹ Came into force on 6 December 1978 by signature, in accordance with article 30.

² United Nations, *Treaty Series*, vol. 1106, p. 195.

Article 4. EXEMPTION OF THE PREMISES OF THE TRIBUNAL OF ARBITRATION FROM TAXATION

1. To the extent compatible with the nature and duration of the functions of the Tribunal of Arbitration, the Tribunal and its Members acting on its behalf shall be exempt from all national, regional or municipal dues and taxes in respect of the premises occupied by the Tribunal, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under Swiss law by persons contracting with the Tribunal of Arbitration or with a Member thereof.

Article 5. INVIOIABILITY OF THE PREMISES

1. The premises where the Tribunal of Arbitration is established in accordance with the present Agreement shall be inviolable for the purposes of the arbitration. The agents of the Swiss Government may not enter the said premises, except with the consent of the President of the Tribunal of Arbitration. Such consent may be assumed in case of fire or other disaster that seriously endangers public safety, and only in the event that it has not been possible to obtain the express consent of the President of the Tribunal of Arbitration.

2. The Swiss Government is under a special duty to take all appropriate steps to protect the premises of the Tribunal of Arbitration against any intrusion or damage and to prevent any disturbance of the peace of the Tribunal or impairment of its dignity.

3. The premises of the Tribunal of Arbitration, their furnishings, other property used in the operation of the Tribunal of Arbitration and its means of transport shall be immune from search, requisition, attachment or execution.

Article 6. INVIOIABILITY OF ARCHIVES AND DOCUMENTS

The archives and documents of the Tribunal of Arbitration shall be inviolable at all times and wherever they may be. They should, when necessary, bear visible external marks of identification.

Article 7. FREEDOM OF MOVEMENT

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the Swiss Government shall ensure to all Members of the Tribunal of Arbitration such freedom of movement and travel in its territory as is necessary for the performance of the functions of the Tribunal of Arbitration.

Article 8. FREEDOM OF COMMUNICATION

1. The Swiss Government shall permit and protect free communication on the part of the Tribunal of Arbitration for all official purposes, and notably with the Governments of the Parties to the Arbitration.

2. The official correspondence of the Tribunal of Arbitration shall be inviolable. Official correspondence means all correspondence relating to the Tribunal of Arbitration and its functions.

Article 9. PERSONAL INVIOIABILITY

The persons of the Members of the Tribunal of Arbitration shall be inviolable. They shall not be liable to any form of arrest or detention. The Swiss Authorities shall treat them with due respect and shall take all appropriate steps to prevent any attack on their persons, freedom or dignity.

Article 10. INVIOIABILITY OF THE PRIVATE ACCOMMODATION

1. The private accommodation of the Members of the Tribunal of Arbitration shall enjoy the same inviolability and protection as the premises of the Tribunal.

2. Their papers, their correspondence and, except as provided in paragraph 4 of article 11, their property shall likewise enjoy inviolability.

Article 11. IMMUNITY FROM JURISDICTION

1. The Members of the Tribunal of Arbitration shall enjoy immunity from the criminal jurisdiction of Switzerland.

2. They shall also enjoy immunity from the civil and administrative jurisdiction of Switzerland, except in the case of:

- (a) A real action relating to private immovable property situated in the territory of Switzerland, unless the person concerned holds it on behalf of the Tribunal of Arbitration;
- (b) An action relating to succession in which the person concerned is involved as executor, administrator, heir or legatee as a private person and not on behalf of the Tribunal of Arbitration;
- (c) An action relating to any professional or commercial activity exercised by the person concerned in Switzerland outside his official functions;
- (d) An action for damages arising out of an accident caused by a vehicle used outside the official functions of the person concerned.

3. The Members of the Tribunal of Arbitration are not obliged to give evidence as witnesses.

4. No measures of execution may be taken in respect of a Member of the Tribunal of Arbitration except in the cases coming under sub-paragraphs (a), (b), (c), and (d) of paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of this person or his accommodation.

5. The immunity from jurisdiction of the Members of the Tribunal of Arbitration does not exempt them from the jurisdiction of the State of which they are nationals or permanent residents.

Article 12. EXEMPTION FROM SOCIAL SECURITY LEGISLATION

1. The Members of the Tribunal of Arbitration shall be exempt from social security provisions in force in Switzerland.

2. The exemption provided for in paragraph 1 of this article shall also apply to persons who are in the sole private employ of a Member of the Tribunal of Arbitration, on condition that they are not nationals of or permanently resident in Switzerland.

3. Members of the Tribunal of Arbitration who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of Switzerland impose upon employers.

4. The provisions of these articles shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 13. EXEMPTION FROM DUES AND TAXES

The Members of the Tribunal of Arbitration shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) Indirect taxes of a kind which are normally incorporated in the price of goods or services;

- (b) Dues and taxes on private immovable property situated in the territory of Switzerland, unless the person concerned holds it on behalf of the Tribunal of Arbitration;
- (c) Estate, succession or inheritance duties levied by Switzerland subject to the provisions of article 23;
- (d) Dues and taxes on private income having its source in Switzerland and capital taxes on investments made in commercial undertakings in Switzerland;
- (e) Charges levied for specific services rendered;
- (f) Registration, court or record fees, mortgage dues and stamp duty, subject to the provisions of article 4.

Article 14. EXEMPTION FROM PERSONAL SERVICES

Switzerland shall exempt the Members of the Tribunal of Arbitration from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 15. EXEMPTION FROM CUSTOMS DUTIES AND INSPECTION

1. Within the limits of such laws and regulations as it may adopt, Switzerland shall permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) Articles for the official use of the Tribunal of Arbitration;
- (b) Articles for the personal use of the Members of the Tribunal of Arbitration.

2. The personal baggage of the Members of the Tribunal of Arbitration shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of Switzerland. In such cases, inspection shall be conducted only in the presence of the person concerned or of his authorized representative.

Article 16. ADMINISTRATIVE AND TECHNICAL STAFF

Members of the administrative and technical staff of the Tribunal of Arbitration shall enjoy the privileges and immunities specified in articles 9 to 14, except that the immunity from civil and administrative jurisdiction of Switzerland specified in paragraph 2 of article 11 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges mentioned in paragraph 1 of article 15 in respect of articles imported at the time of their first entry into Switzerland.

Article 17. PRIVATE STAFF

Private staff shall be exempt from dues and taxes on the emoluments they receive by reason of their employment. In all other respects, they may enjoy privileges and immunities only to the extent permitted by Switzerland. However, Switzerland shall exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the Tribunal of Arbitration.

Article 18. MEMBERS OF THE FAMILY

1. Members of the families of Members of the Tribunal of Arbitration shall, if they accompany such Members of the Tribunal, enjoy the privileges and immunities specified in articles 9 to 15 provided that they are not nationals of or permanently resident in Switzerland.

2. Members of the families of members of the administrative and technical staff of the Tribunal of Arbitration shall, if they accompany such persons, enjoy the privileges and immunities specified in article 16 provided that they are not nationals of or permanently resident in Switzerland.

*Article 19. SWISS NATIONALS AND PERSONS PERMANENTLY
RESIDENT IN SWITZERLAND*

1. The persons participating in the arbitral procedure as well as the Registrar of the Tribunal of Arbitration who are nationals of or permanently resident in Switzerland shall enjoy only immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions.

2. Private staff who are nationals of or permanently resident in Switzerland shall enjoy privileges and immunities only to the extent granted to them by Switzerland. However, Switzerland shall exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the Tribunal of Arbitration.

Article 20. WAIVER OF IMMUNITY

1. The Tribunal of Arbitration may waive the immunity from jurisdiction of its Members or other persons enjoying immunity under articles 16 to 19. Immunity shall be waived in any case where such immunity would impede the course of justice and waiver would not prejudice the purpose for which immunity is accorded.

2. Waiver must always be express.

3. The initiation of proceedings by any of the persons referred to in paragraph 1 of this article shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

Article 21. DURATION OF PRIVILEGES AND IMMUNITIES

1. Every person participating in the arbitral procedure shall enjoy the privileges and immunities to which he is entitled from the moment he enters Swiss territory for the purpose of performing his functions in the arbitration or, if he is already in its territory, from the moment when his appointment is notified to the Federal Political Department or such other Swiss authority as may be agreed.

2. When the functions of a person participating in the arbitral procedure have come to an end, his privileges and immunities shall normally cease at the moment when he leaves Swiss territory, or on the expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, in respect of acts performed by such a person in the exercise of his functions, immunity shall continue to subsist.

3. In the event of the death of a person participating in the arbitral procedure, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave Swiss territory.

*Article 22. PROPERTY OF A PERSON PARTICIPATING IN THE ARBITRAL PROCEDURE
OR OF A MEMBER OF HIS FAMILY IN THE EVENT OF DEATH*

1. In the event of the death of a person participating in the arbitral procedure or of a member of his family accompanying him, if the deceased was not a national of or

permanently resident in Switzerland, Switzerland shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.

2. Estate, succession and inheritance duties shall not be levied on movable property which is in Switzerland solely because of the presence there of the deceased as a person participating in the arbitral procedure or a member of the family of such a person.

Article 23. FACILITIES TO LEAVE THE TERRITORY OF SWITZERLAND AND TO REMOVE THE ARCHIVES OF THE TRIBUNAL OF ARBITRATION

1. Switzerland shall, even in case of armed conflict, grant facilities to enable persons enjoying privileges and immunities, other than Swiss nationals, and members of the family of such persons, irrespective of their nationality, to leave at the earliest possible moment. In particular it must, in case of need, place at their disposal the necessary means of transport for themselves and their property.

2. Switzerland shall grant the Tribunal of Arbitration facilities for removing its archives from Swiss territory.

Article 24. CONSEQUENCES OF THE CESSATION OF THE FUNCTIONS OF THE TRIBUNAL OF ARBITRATION

When the functions of the Tribunal of Arbitration come to an end, Switzerland shall respect and protect its premises so long as they are assigned to it, as well as the property and archives of the Tribunal of Arbitration. The Tribunal of Arbitration must withdraw its property and archives within a reasonable period of time.

Article 25. RESPECT FOR SWISS LAWS AND REGULATIONS AND USE OF THE PREMISES OF THE TRIBUNAL OF ARBITRATION

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying those privileges and immunities under the present Agreement to respect the laws and regulations of Switzerland. They also have duty not to interfere in the internal affairs of Switzerland.

2. The premises of the Tribunal of Arbitration must not be used in any manner incompatible with the functions of the Tribunal as envisaged in this Agreement or in other rules of general international law.

Article 26. PROFESSIONAL OR COMMERCIAL ACTIVITY

The Members of the Tribunal of Arbitration shall not practice for personal profit any professional or commercial activity in Switzerland outside the exercise of their functions as Members of the Tribunal of Arbitration.

Article 27. MISSIONS APPOINTED BY THE UNITED STATES AND BY FRANCE FOR THE PURPOSES OF THE ARBITRATION

The Missions appointed by the United States and by France for the purposes of the Arbitration, including the Agents, counsel and advisers, shall be accorded the status, privileges and immunities which are accorded to the Tribunal of Arbitration and to its Members by articles 2 to 26 of this Agreement. Members of the administrative and technical staff of each mission shall be accorded the status, privileges and immunities which are accorded to the members of the administrative and technical staff of the Tribunal of Arbitration by those articles.

Article 28. EVIDENCE BEFORE THE TRIBUNAL OF ARBITRATION

Witnesses called upon by the Tribunal of Arbitration by the United States and by France to take part in the proceedings of the Tribunal shall enjoy immunity from legal process in respect of oral or written statements made, or documents or other evidence submitted, by them before or to the Tribunal.

Article 29.

Nothing in this Agreement shall prejudice the status, privileges and immunities to which any person may be entitled apart from this Agreement.

Article 30.

This Agreement shall enter into force on signature, and shall remain in force thereafter for a period of one year, but may be continued in force for a further period of one year by mutual agreement of the three Governments.

DONE in triplicate at Berne this 6 day of December 1978 in the English and French languages.

For the Government
of the United States
of America:
[Signed]¹

For the Government
of the French Republic:
[Signed]²

For the Government
of the Swiss
Confederation:
[Signed]³

¹ Signed by Marvin Warner.

² Signed by C. Lebel.

³ Signed by E. Diez.