

N° 1070.

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**ALLEMAGNE ET FINLANDE**

Convention d'arbitrage et de conciliation avec Protocole final, signés à Berlin, le 14 mars 1925.

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**GERMANY AND FINLAND**

Convention of Arbitration and Conciliation, with Final Protocol, signed at Berlin, March 14, 1925.

TEXTE FINNOIS.  
FINNISH TEXT.

TEXTE SUÉDOIS.  
SWEDISH TEXT.

TEXTE ALLEMAND.  
GERMAN TEXT.

No. 1070. — SUOMEN JA SAKSAN VÄLINEN, VÄLITYSOIKEUDELLISTA JA SOVINTOMENETTELYÄ KOSKEVA SOPIMUS<sup>1</sup>, ALLERKIRJOITETTU BERLINISSÄ, MAALISKUUN 14 PÄWÄNÄ, 1925.

No. 1070. — SKILJEDOMS- OCH FÖRLIKNINGSKONVENTION<sup>1</sup>MELLAN FINLAND OCH TYSKLAND, UNDERTECKNAD I BERLIN, DEN 14 MARS 1925.

No. 1070. — DEUTSCH FINNISCHE S CH I E D S G E R I C H T S - U N D V E R G L E I C H S V E R T R A G<sup>1</sup>, GEZEICHNET IN BERLIN, AM 14. MÄRZ 1925.

*Textes officiels allemand, finnois et suédois communiqués par le Ministre des Affaires étrangères de Finlande. L'enregistrement de cette Convention a eu lieu le 5 février 1926.*

*German, Finnish and Swedish official texts communicated by the Finnish Minister for Foreign Affairs. The registration of this Convention took place February 5, 1926.*

SUOMEN TASAVALTA ja SAKSAN VALTAKUNTA, haluten edistää ja kehittää kansainvälisten riitaisuuksien rauhanomaista ratkaisemista tarkoitettavaa menettelyä, ovat päättäneet keskenään tehdä yleisen, välitysoikeudellista ja sovintomenettelyä koskevan sopimuksen.

Tässä tarkoituksessa ovat valtuutetuikseen määränneet.

SUOMEN TASAVALLAN PRESIDENTTI :

Suomen Berlinissä olevan erikoislähettilään ja täysivaltaisen ministerin, tohtori Harri HOLMAN,

REPUBLIKEN FINLAND och TYSKA RIKET, vilka äro besälade av önskan att främja och utveckla ett fredligt avgörande av mellanstatliga tvister, hava överenskommit att avsluta en allmän skiljedoms och förlikningskonvention.

I detta syfte hava till fullmäktige utsetts

AV REPUBLIKEN FINLANDS PRESIDENT :

Finlands utomordentliga sändebud och befullmäktigade minister i Berlin, doktor Harri HOLMA,

DAS DEUTSCHE REICH und DIE REPUBLIK FINNLAND, von dem Wunsche erfüllt, die Entwicklung des Verfahrens zur friedlichen Beilegung zwischenstaatlicher Streitigkeiten zu fördern, sind übereingekommen, einen allgemeinen Schiedsgerichts- und Vergleichsvertrag abzuschliessen.

Zu diesem Zwecke haben zu Bevollmächtigten ernannt:

DER STELLVERTRETER DES DEUTSCHEN REICHSPRÄSIDENTEN :

den Ministerialdirektor im Auswärtigen Amte, Herrn Dr. Friedrich GAUS,

<sup>1</sup> L'échange des ratifications a eu lieu à Helsingfors, le 27 janvier 1926.

<sup>1</sup> The exchange of ratifications took place at Helsingfors, January 27, 1926.

1. sopimusvaltioiden kesken voimassa olevat yleiset taikka erikoiset sopimukset ja niistä johduvat oikeusohjeet ;
2. tavanomaisen kansainvälisen oikeuden, käsitettynä yleisen, sitovaksi oikeudeksi tunnustetun käytännön ilmaisuksi ;
3. sivistysvaltioiden tunnustamat yleiset oikeusperiaatteet.

Mikäli erikoistapauksessa on aukkoja edellä mainituissa oikeusohjeissa, välitysoikeus tekee ratkaisunsa niiden oikeusperiaatteiden mukaan, joiden sen käsityksen mukaan pitäisi olla kansainvälisessä oikeudessa määrävinä. Se noudattaa tällöin vakaantunutta tietoisoppia ja oikeudenkäyttöä.

Välitysoikeus voi perustaa ratkaisunsa kohtuudenmukaisuussyihin, eikä oikeusperiaatteisiin, jos molemmat asianosaiset sopivat siitä, että näin on meneteltävä.

#### 6 artikla.

Elleivät asianosaiset erikoistapauksessa toisin sovi, on välitysoikeus muodostettava seuraavalla tavalla :

Tuomarit valitaan niistä henkilöistä, joiden nimet ovat lokakuun 18 päivänä 1907 Haagissa<sup>1</sup> päätyn, kansainvälisten riitaisuuksien rauhanomaista ratkaisemista koskevan yleissopimuksen nojalla asetetun pysyvaisen välitystuomioistuimen jäsenten luettelossa.

Kumpikin sopimusvaltio nimittää yhden välitystuoma-

1. mellan parterna gällande överenskommelser av allmän eller speciell natur och därav härflytande rättsnormer ;
2. internationell sedvane-rätt, som uttryck för en allmän, såsom rätt erkänd praxis ;
3. de allmänna rättsgrundsatsen, som av kulturstaterna erkänns såsom bindande.

Därest i det särskilda fallet de ovan angivna rättsnormerna förete luckor, fattar skiljedomstolen beslut enligt de rättsgrundsatsen, vilka enligt dess mening borde vara gällande i den internationella rätten. Den följer därvid stadgad doktrin och rättstillämpning.

Med båda parternas samtycke kan skiljedomstolen i stället för att stödja sitt beslut på rättsgrundsatsen träffa sitt avgörande efter billighetsprövning.

#### Artikel 6.

Därest icke parterna i särskilt fall annorlunda överenskomma, skall skiljedomstolen sammansättas på följande sätt :

Domarna utses bland de personer, som äro upptagna å förteckningen över medlemmarna av den genom konventionen<sup>1</sup> av den 18 oktober 1907 för avgörande på fredlig väg av internationella tvister upprättade permanenta skiljedomstolen i Haag.

Vardera parten utser en skiljedomare efter fritt val.

erstens : die zwischen den Parteien geltenden Übereinkünfte allgemeiner oder besonderer Art und die sich daraus ergebenden Rechtssätze ;  
zweitens : das internationale Wohnheitsrecht als Ausdruck einer allgemeinen, als Recht anerkannten Übung ;

drittens : die allgemeinen von den Kulturstaaten anerkannten Rechtsgrundsätze.

Soweit im einzelnen Falle, die vorstehend erwähnten Rechtsgrundlagen Lücken aufweisen, entscheidet das Schiedsgericht nach den Rechtsgrundsätzen, die nach seiner Ansicht die Regel des internationalen Rechts sein sollten. Es folgt dabei bewährter Lehre und Rechtssprechung.

Mit Zustimmung beider Parteien kann das Schiedsgericht seine Entscheidung, anstatt sie auf Rechtsgrundsätze zu stützen, nach billigem Ermessen treffen.

#### Artikel 6.

Sofern nicht die Parteien im einzelnen Fall eine entgegenstehende Vereinbarung treffen, wird das Schiedsgericht in folgender Weise bestellt :

Die Richter werden auf der Grundlage des Verzeichnisses der Mitglieder des durch das Haager Abkommen<sup>1</sup> zur friedlichen Erledigung internationaler Streitfälle vom 18. Oktober 1907 geschaffenen Ständigen Schiedshofs im Haag gewählt.

Jede Partei ernannt einen Schiedsrichter nach freier

<sup>1</sup> De Martens, Nouveau Recueil général de Traités, troisième série, tome III, page 360.

<sup>1</sup> British and Foreign State Papers, Vol. 100, page 298.

<sup>1</sup> TRANSLATION.

## No. 1070. — CONVENTION OF ARBITRATION AND CONCILIATION BETWEEN GERMANY AND FINLAND, SIGNED AT BERLIN, MARCH 14, 1925.

THE GERMAN REICH and THE REPUBLIC OF FINLAND, being desirous of promoting the development of the procedure for the pacific settlement of international disputes, have agreed to conclude a general arbitration and conciliation convention, and have for this purpose appointed as their Plenipotentiaries :

THE " STELVERTRETER " OF THE PRESIDENT OF THE GERMAN REICH :

Dr. Friedrich GAUS, Head of Department at the Ministry of Foreign Affairs ;

THE PRESIDENT OF THE REPUBLIC OF FINLAND :

Dr. Harri HOLMA, Envoy Extraordinary and Minister Plenipotentiary of Finland in Berlin ;

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

*Article 1.*

The Contracting Parties undertake to submit all disputes of any nature whatever which may arise between them, and which it has not been possible to settle within a reasonable period by diplomatic means, to be dealt with by arbitration or conciliation, as provided in the present Convention.

Disputes for the solution of which a special procedure has been laid down in other conventions in force between the Contracting Parties shall be settled in accordance with the provisions of such conventions.

*Article 2.*

At the request of one of the Parties, disputes regarding the following subjects shall, unless otherwise provided for in Articles 3 and 4, be submitted to arbitration :

First, the contents, interpretation and application of any treaty concluded between the two Parties ;

Secondly, any point of international law ;

Thirdly, the existence of any fact which, if established, would constitute a violation of an international engagement ;

Fourthly, the extent and nature of the reparation due for such violation.

In case of disagreement as to whether the dispute falls under one of the above categories, this preliminary question shall be referred to arbitration.

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<sup>1</sup> Translated by the Secretariat of the League of Nations.

*Article 3.*

In regard to questions which, under the national laws of the Party against which a demand has been formulated, are within the competence of judicial authorities, including administrative tribunals, the defendant Party may require, on the one hand, that the dispute shall not be submitted to arbitral award until a final decision has been pronounced by these judicial authorities and, on the other hand, that the matter shall be brought before the Tribunal not later than six months after the date of such decision. The above provisions shall not apply if justice has been refused and if the matter has been brought before the courts of appeal provided for by law.

In the case of disputes regarding the application of the preceding provision, the Arbitral Tribunal shall decide.

*Article 4.*

If, in a dispute coming under one of the categories mentioned in Article 2, one of the Parties pleads that the question at issue is one which affects its independence, the integrity of its territory or other vital interests of the highest importance, and if the opposing Party admits that the plea is well founded, the dispute shall not be subject to arbitration but to the procedure of conciliation. If, however, the plea is not recognised as well founded by the opposing Party, this point shall be settled by means of arbitration.

If the Tribunal recognises the validity of such pleas, it shall refer the dispute for settlement to the procedure of conciliation. If the contrary is the case, it shall give an award on the dispute itself.

A Party which does not recognise the validity of one of the pleas of exception put forward by the opposing Party may, nevertheless, without first having recourse to arbitration, agree to the application of the procedure of conciliation. It may, however, stipulate that, if the proposal for settlement by conciliation is not accepted by both Parties, the Tribunal shall be required to give a decision regarding the plea of exception and, if necessary, regarding the dispute itself.

*Article 5.*

The Tribunal shall apply :

First : the conventions in force between the Parties, whether general or special, and the principles of law arising therefrom ;

Secondly : international custom as evidence of a general practice accepted as law ;

Thirdly : the general principles of law recognised by civilised nations.

If, in a particular case, the legal bases mentioned above are inadequate, the Tribunal shall give an award in accordance with the principles of law which, in its opinion, should govern international law. For this purpose it shall be guided by decisions sanctioned by legal authorities and by jurisprudence.

If the Parties agree, the Tribunal may, instead of basing its decision on legal principles, give an award in accordance with considerations of equity.

*Article 6.*

Subject to special agreement to the contrary in each particular case, the Tribunal shall be constituted as follows :

The judges shall be chosen from the list of members of the Permanent Court of Arbitration established by the Hague Convention, dated October 18, 1907, for the Pacific Settlement of International Disputes.

Each Party shall appoint its own arbitrator. The Parties shall jointly nominate three other arbitrators, one of whom shall be the umpire. If, after having been appointed, one of the judges jointly elected acquires the nationality of one of the Parties, appoints his domicile in its territory or enters its service, either of the Parties may claim that he be replaced. Any disputes which may arise as to whether any one of these conditions exists shall be settled by the other four judges; the eldest of the judges jointly elected shall take the chair in these cases and, if the votes are equally divided, he shall give a casting vote.

For each individual dispute there shall be a fresh election of judges. The Contracting Parties, however, reserve the right to act in concert regarding these elections, so that, for a certain class of dispute arising within a fixed period, the same judges shall be seated on the Tribunal.

In case of the death of members of the Tribunal, or of their retirement for any reason whatever, they shall be replaced according to the manner determined for their appointment.

#### *Article 7.*

In each individual case the Contracting Parties shall, in pursuance of the present Treaty, draw up an agreement of reference (compromis), to determine the subject of the dispute, any special terms of reference which may be accorded to the Tribunal, its composition, the place where it shall meet, the total amount that each Party concerned shall be obliged to deposit in advance to cover expenses, the rules to be observed with regard to the form and time-limits of the proceedings, and any other detail that may be considered necessary.

Any disputes arising out of the terms of the agreement of reference shall, subject to the terms of Article 8, be referred to arbitration.

#### *Article 8.*

If the agreement of reference has not been determined within a period of six months after one Party concerned has notified the other of its intention to refer the dispute to arbitration, either Party may request the Permanent Board of Conciliation provided for under Article 14 to establish the agreement of reference. The Permanent Board of Conciliation shall, within two months after having been convened, settle the terms of the agreement of reference, the subject of the dispute being determined on the basis of the statements submitted by the Parties.

The same procedure shall apply when one Party has not nominated the arbitrator for whose appointment it is responsible, or when the Parties concerned cannot agree upon the choice of judges to be jointly appointed, or upon the umpire.

Pending the constitution of the Tribunal, the Permanent Board of Conciliation shall also be competent to give an award upon any other dispute arising out of the agreement of reference.

#### *Article 9.*

The award of the Tribunal shall be given by a majority vote. The opinion of any member of a minority of the Tribunal who dissents from the award shall be duly placed on record.

#### *Article 10.*

The arbitration award shall specify the manner in which it is to be carried out, especially as regards the time-limits to be observed.

If in an arbitration award it is proved that a decision or measure of a court of law or other authority of one of the Parties is wholly or in part contrary to international law, and if the constitutional law of that Party does not permit, or only partially permits, the consequences of

the decision or measure in question to be annulled by administrative measures, the arbitration award shall give the injured Party equitable satisfaction of another kind.

*Article 11.*

Subject to any provision to the contrary in the agreement of reference, either Party may claim a revision of the award by the Tribunal which gave the award. This demand shall only be warranted by the discovery of a fact which exercises a decisive influence on the award and which, at the time of the close of the discussion in Court, was unknown to the Tribunal itself and to the Party demanding the revision, unless that Party ought to have been aware of it.

If, for any reason, any members of the Tribunal do not take part in the revision proceedings, substitutes for them shall be appointed in the manner determined for their own appointment.

The limit of time within which the demand provided for in the first paragraph may be presented shall be fixed in the arbitral award, unless it has already been fixed in the agreement of reference.

*Article 12.*

Any dispute arising between the Parties concerned as to the interpretation and execution of the award shall, in the absence of an agreement to the contrary, be submitted to the Tribunal which pronounced it. In the latter case the provision contained in Article 11, paragraph 2, shall also apply.

*Article 13.*

Any dispute which, under the terms of the present Convention, cannot be referred to arbitration shall, at the request of one of the Parties concerned, be submitted to the procedure of conciliation.

If the opposing Party claims that a dispute, for which conciliation procedure has been initiated, should be settled by the Tribunal, the latter shall first pronounce judgment upon this prior question.

The Governments of the Contracting Parties shall be entitled to agree that a dispute which, under the terms of the present Convention, can be settled by arbitration shall be referred to the conciliation procedure, either without appeal or subject to appeal to the Tribunal.

*Article 14.*

A Permanent Board of Conciliation shall be constituted for the procedure of conciliation.

The Permanent Board of Conciliation shall consist of five members. The Contracting Parties shall appoint one member each of their own choice, and nominate the other three members by mutual agreement. These three members shall not be nationals of the Contracting Parties, nor shall they be domiciled on their territory, nor employed in their service. The Contracting Parties shall by mutual agreement elect the President from among these three Members.

Either of the Contracting Parties shall at any time, if no procedure is pending or if no procedure has been proposed by one of the Parties, have the right to recall the member appointed by it, and to appoint a successor. In the same circumstances, either Contracting Party shall be entitled to withdraw its consent to the appointment, without delay, by joint nomination.

The Permanent Board of Conciliation shall be constituted in the course of the six months following the exchange of ratifications of the present Convention. Retiring members shall be replaced as soon as possible in the manner laid down for the first election.

If the nomination of the members to be appointed in common has not taken place within the six months following the exchange of ratifications or, in the case of a vacancy on the Permanent Board of Conciliation, within the three months dating from the retirement or death of a member,

the provisions of Article 45, paragraphs 4 to 6, of the Hague Convention, dated October 18, 1907, for the Pacific Settlement of International Disputes, shall be applicable by analogy as regards the appointment of members.

*Article 15.*

The Permanent Board of Conciliation shall take action immediately a dispute has been referred to it by either of the Parties. Such Party shall communicate its request simultaneously to the chairman of the Permanent Board of Conciliation and to the other Party. The chairman shall summon the Permanent Board of Conciliation to meet at the earliest possible moment.

The Contracting Parties undertake in all cases and in all respects to further the work of the Permanent Board of Conciliation and in particular to grant it every legal assistance through the competent authorities. They shall enable the Permanent Board of Conciliation to summon and examine witnesses and experts and to proceed to investigations on the spot in their respective territories, within the limits of the powers enjoyed by their own Courts. The Permanent Board of Conciliation may take evidence either *in corpore* or through one or more of the members appointed jointly.

*Article 16.*

The Permanent Board of Conciliation shall determine its own meeting-place and shall be at liberty to transfer it.

The Permanent Board of Conciliation shall, if need be, establish a Registry. If it appoints nationals of the Contracting Parties to positions in this office, it shall treat both Parties alike.

*Article 17.*

The deliberations of the Permanent Board of Conciliation shall be valid if all the members have been duly convoked and if members nominated by mutual agreement are present at the meeting.

Decisions of the Permanent Board of Conciliation shall be taken by a majority vote. If the votes are equally divided, the chairman shall give a casting vote.

*Article 18.*

The Permanent Board of Conciliation shall draw up a report which shall determine the facts of the case and, if the circumstances permit, shall contain proposals for the settlement of the dispute.

The report shall be submitted within six months from the date on which the dispute was laid before the Permanent Board of Conciliation, unless the Parties shall agree to shorten or extend this time-limit. The report shall be drawn up in three copies, one of which shall be handed to each of the Parties and the third preserved in the archives of the Permanent Board of Conciliation.

The report shall not, either as regards statement of fact or as regards legal considerations, be in the nature of a final judgment binding upon the Parties. Each Party shall, however, state, within a time-limit to be fixed by the report, whether and within what limits it recognises the correctness of the facts noted in the report and accepts the proposals which it contains. The duration of this time-limit shall not exceed three months.

The Parties shall jointly decide whether the report should be published immediately. If they fail to reach an agreement on this point, the Permanent Board of Conciliation may cause the report to be published immediately should there be special reasons for so doing.

*Article 19.*

Each Party shall bear the cost of the remuneration of the member appointed by itself and half the cost of remuneration of the members appointed jointly.

Each Party shall bear its own costs and half of the costs which the Permanent Board of Conciliation declares to be common to both Parties.

*Article 20.*

The award pronounced as the result of the procedure of arbitration shall be carried out in good faith by the Parties concerned.

The Contracting Parties shall undertake, during the course of the arbitration or conciliation proceedings, to refrain as far as possible from any action liable to have a prejudicial effect on the execution of the arbitral award or on the acceptance of the proposals of the Permanent Board of Conciliation. In the case of conciliation proceedings they shall refrain from resorting to forcible measures of any kind until the expiration of the time-limit fixed by the Permanent Board of Conciliation, for the acceptance of its proposals.

The Arbitral Tribunal may, at the request of either of the Parties, prescribe measures of precaution provided that such measures can be carried out by the Parties through their administrative machinery. The Permanent Board of Conciliation may also make proposals for the same purpose.

*Article 21.*

Subject to any provisions to the contrary laid down in the present Convention or the agreement of reference, the procedure of arbitration and conciliation shall be regulated by the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

In as far as the present Convention refers to the stipulations of the Hague Convention, the latter shall continue to be applicable to the relations between the Contracting Parties, even if one or both of them denounce the Hague Convention.

In so far as the present Convention, or the agreement of reference, or any other conventions in force between the Parties do not lay down the time-limits and other details connected with the procedure of arbitration or conciliation, the Tribunal of the Permanent Board of Conciliation shall itself be competent to decide as to the necessary provisions.

*Article 22.*

The present Convention shall be ratified as soon as possible. The instruments of ratification shall be exchanged at Helsingfors.

The Convention shall come into force one month after the exchange of the instruments of ratification.

The Convention shall be valid for a period of ten years. If, however, it is not denounced six months before the expiration of this period, it shall remain in force for a further period of two years, and so on, so long as it has not been denounced within the prescribed period.

If a dispute which has been referred to arbitration or conciliation has not been settled when the present Treaty expires, the case shall be proceeded with according to the stipulations of the present Convention or of any other convention which the Contracting Parties may agree to substitute therefor.

In witness whereof the Plenipotentiaries have signed the present Convention.

Done in duplicate in German, Finnish and Swedish at Berlin, March 14, 1925.

(Signed) FRIEDRICH GAUS.

(Signed) HARRI HOLMA.

## FINAL PROTOCOL

OF THE ARBITRATION AND CONCILIATION CONVENTION BETWEEN GERMANY AND FINLAND.

(1) The Contracting Parties are agreed that in doubtful cases the stipulations of the present Convention shall be interpreted in favour of the application of the principle of settlement of disputes by arbitration.

(2) The Contracting Parties declare that the Convention shall apply equally to disputes arising out of events which occurred prior to its conclusion. In consideration of their general political bearing, an exception shall, however, be made with regard to disputes arising directly out of the world-war.

(3) The Convention shall not cease to be applicable if a third State is concerned in a dispute. The Contracting Parties shall endeavour, if necessary, to induce the third State to agree to refer the dispute to arbitration or conciliation. In this case the two Governments may, if they so desire, jointly provide that the Tribunal or the Permanent Board of Conciliation shall be composed of members specially chosen for the case.

If no agreement is reached with the third State as regards its adhesion within a reasonable period, the case shall proceed in accordance with the provisions of the Convention, but with effect only as regards the Contracting Parties.

(4) The Contracting Parties declare that disputes between Germany and a third State, in which Finland might be interested as a Member of the League of Nations, cannot be considered as disputes between the Contracting Parties in the sense intended by the present Convention.

BERLIN, March 14, 1925.

(Signed) FRIEDRICH GAUS.

(Signed) HARRI HOLMA.