

N° 2207.

PORTUGAL ET SUISSE

Traité de conciliation, de règlement
judiciaire et d'arbitrage. Signé à
Berne, le 17 octobre 1928.

**PORTUGAL
AND SWITZERLAND**

Treaty of Conciliation, Judicial Set-
tlement and Arbitration. Signed at
Berne, October 17, 1928.

¹ TRADUCTION. — TRANSLATION.No. 2207. — TREATY² OF CONCILIATION, JUDICIAL SETTLEMENT AND ARBITRATION BETWEEN PORTUGAL AND SWITZERLAND. SIGNED AT BERNE, OCTOBER 17, 1928.

French official text communicated by the Swiss Federal Council and the Permanent Delegate of Portugal accredited to the League of Nations. The registration of this Treaty took place November 25, 1929.

THE SWISS FEDERAL COUNCIL and THE PRESIDENT OF THE PORTUGUESE REPUBLIC, being desirous of strengthening the traditional ties of friendship between Switzerland and Portugal and of deciding, by conciliation, by judicial settlement or by arbitration, any dispute which may arise between the two countries,

Have resolved to conclude a Treaty and with that object have appointed as their Plenipotentiaries :

THE SWISS FEDERAL COUNCIL :

M. Giuseppe MOTTA, Federal Councillor, Head of the Federal Political Department ;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC :

His Excellency M. Albert D'OLIVEIRA, Envoy Extraordinary and Minister Plenipotentiary of Portugal in Switzerland ;

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

Article 1.

All disputes relating to a right of whatever nature alleged by one of the Contracting Parties and contested by the other, and in particular the disputes mentioned in Article 13 of the Covenant of the League of Nations, which it has not been possible to settle by the normal methods of diplomacy within a reasonable time, shall be submitted for settlement to the Permanent Court of International Justice.

Article 2.

In each particular case, the Contracting Parties shall draw up a special agreement (*compromis*) specifying clearly the subject of the dispute, the particular competence that might devolve upon the Permanent Court of International Justice, and any other conditions agreed on between themselves.

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, November 9, 1929.

The agreement shall be constituted by an exchange of notes between the Governments of the Contracting Parties. All points contained therein shall be interpreted by the Court of International Justice.

If the agreement is not drawn up within three months from the day on which one of the Parties was requested to submit the matter for judicial settlement, either Party may bring the matter before the Court of International Justice by a simple request.

Article 3.

Before any resort is made to procedure before the Permanent Court of International Justice, the dispute must on the request of either Party, be submitted, with a view to amicable settlement, to a permanent international commission styled the Permanent Conciliation Commission, constituted in accordance with the present Treaty.

Article 4.

The Permanent Conciliation Commission shall be composed of five members. The Contracting Parties shall each appoint a commissioner of their own choice, and shall jointly designate the three others, and the President of the Commission from among the latter. These three commissioners must not be nationals of the Contracting Parties, and must not be habitually resident in the territory or be in the service of the Parties. They must all three be of different nationalities.

The commissioners shall be appointed for three years. If, on the expiry of the mandate of a member of the Commission, no arrangements have been made to replace him, his mandate shall be deemed to be renewed for a further period of three years. Nevertheless, the Parties reserve the right, on the expiry of the period of three years, to transfer the functions of President to another of the members of the Commission who have been jointly designated.

A member whose mandate expires while proceedings are still in progress shall continue to take part in the examination of the dispute until the procedure is completed, notwithstanding the fact that his successor has been appointed.

Vacancies which may occur as a result of the death or resignation of one of the members of the Conciliation Commission, shall be filled for the remainder of his term of office, if possible within the following three months, and in any case as soon as a dispute has been submitted to the Commission.

Should one of the members of the Conciliation Commission jointly designated by the Contracting Parties be temporarily prevented, by illness or any other cause, from taking part in the Commission's work, the Parties shall jointly designate a substitute, who will sit temporarily in his place. If the appointment of this substitute is not made within three months from the time when the seat became temporarily vacant, the procedure laid down in Article 5 of the present Treaty shall be applicable.

Article 5.

The Conciliation Commission shall be constituted within six months after the coming into force of the present Treaty.

If the appointment of the members to be designated jointly has not been made within the aforesaid period, or where a vacancy has to be filled, within three months after the seat became vacant, such appointment shall be entrusted to a third Power chosen by agreement between the Parties. Should no agreement be reached on this point, each Party shall designate a different Power and the appointments shall be made jointly by the Powers thus designated. If, within two months, these two Powers have been unable to agree, they shall each submit as many candidates as there are members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 6.

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.

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

If the application emanates from only one of the Parties, that Party shall, without delay, notify it to the other Party.

Article 7.

Within fifteen days from the date on which a dispute has been brought by one of the Contracting Parties before the Conciliation Commission, the other Party may, for the examination of the particular dispute, replace the permanent member whom it has appointed by a person possessing special competence in the matter. The Party desiring to make use of this right shall immediately notify the other Party; the latter shall be entitled to make use of this same right within fifteen days from the date on which it received the notification.

Each Party reserves the right immediately to appoint a substitute to replace for the time being a permanent member appointed by it, who may be temporarily prevented by illness or any other cause from taking part in the Commission's work.

Article 8.

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.

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.

The work of the Commission shall, unless the Parties agree otherwise, be terminated within six months from the date on which the dispute has been submitted to it.

If the Parties have been unable to come to an amicable agreement, the Commission may, unless either of the two Commissioners freely appointed by the Parties opposes this procedure, order a report to be published setting forth the opinion of each of the members of the Commission, even before the Permanent Court of International Justice, to which the dispute has been submitted, has given its final decision.

Article 9.

Failing any special provision to the contrary, the Conciliation Commission shall lay down its own procedure, which must in any case provide for both Parties being heard. In regard to enquiries, the Commission shall, unless it unanimously decides otherwise, act in accordance with the provisions of Chapter III (International Commissions of Enquiry) of the Hague Convention¹ of October 18, 1907, for the Pacific Settlement of International Disputes.

Article 10.

Unless otherwise decided by agreement between the Parties, the Conciliation Commission shall meet at the place appointed by its President.

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

Article 11.

The proceedings of the Conciliation Commission shall not be held in public, unless the Commission decides otherwise, with the consent of the Parties.

Article 12.

The Contracting Parties shall be represented before the Permanent Conciliation Commission by agents whose duty it shall be to act as intermediaries between them and the Commission ; the Contracting Parties may, moreover, be assisted by counsel and experts appointed by themselves for that purpose, and may request that any persons whose evidence they may consider useful should be heard by the Commission.

The Commission shall be entitled, for its part, to ask for oral explanations from the agents, counsel or experts of the two Parties, as also from any other persons whom it may think fit to summon, subject to the consent of their respective Governments.

Article 13.

Except as otherwise provided in the present Treaty the decisions of the Conciliation Commission shall be taken by a majority.

Article 14.

The Contracting 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 information, and to employ all means at their disposal to enable it to proceed, in their respective territories and in accordance with their internal laws, to the summoning and hearing of witnesses or experts, and to visit the localities in question.

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 an equal share of the joint expenses of the Commission, the emoluments provided for in paragraph 1 being included in these joint expenses.

Article 16.

All disputes, other than those mentioned in Article 1, which may arise between the Contracting Parties and which it has not been possible to settle by the normal methods of diplomacy within a reasonable period, shall be submitted to the Permanent Conciliation Commission. In such cases, the procedure laid down in Articles 6 to 15 of the present Treaty shall be applicable.

Article 17.

In the event of no amicable agreement being reached between the Parties, the dispute shall, at the request of either Party, be submitted for decision to an arbitral tribunal, consisting, unless

the Parties agree otherwise, of five members appointed, in each individual case, according to the method laid down in Articles 4 and 5 of the present Treaty for the constitution of the Conciliation Commission.

The Parties reserve the right, however, to submit the dispute, by agreement, to the Permanent Court of International Justice, which shall decide the matter *ex aequo et bono*.

Article 18.

Whenever a question has to be settled by arbitration, the Contracting Parties undertake to conclude, within three months reckoned from the day on which either Party has addressed a request for arbitration to the other Party, a special agreement (*compromis*) regarding the subject of the dispute and the methods of procedure.

If this special agreement cannot be concluded within the period specified above, it must be replaced by measures in accordance with the procedure indicated in Chapter IV of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

If the dispute is submitted to the Permanent Court of International Justice, the procedure provided in the Statute of that Court shall be applicable.

Article 19.

In the case of a dispute which, according to the municipal law of one of the Parties, falls within the competence of the courts, including the administrative tribunals, the defendant Party may oppose the submission of the dispute to a procedure of conciliation, to judicial settlement or to arbitration as provided in the present Treaty, until a judgment with final effect has been pronounced within a reasonable time by the competent judicial authority.

Article 20.

Should the Permanent Court of International Justice or the arbitral tribunal find that a decision of a court of law or any other authority of either Contracting Party 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 in question to be annulled by administrative action, the judicial decision or arbitral award should indicate the nature and extent of the compensation to be granted to the injured Party.

Article 21.

During the proceedings of conciliation, judicial settlement or arbitration, the Contracting Parties shall abstain from all measures likely to exert any influence on the acceptance of the proposals of the Conciliation Commission, or the execution of the judgment of the Permanent Court of International Justice, or the award of the arbitral tribunal. For this purpose, the Conciliation Commission, the court of justice and the arbitral tribunal shall if necessary lay down the provisional measures to be adopted.

Article 22.

Any disputes which may arise as to the interpretation or the execution of the present Treaty shall, in the absence of an agreement to the contrary, be submitted direct to the Permanent Court of International Justice by means of a simple request.

Article 23.

The present Treaty shall only apply to disputes arising, after the instruments of ratification of the present Treaty have been exchanged, in connection with situations or facts 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 provisions of these agreements.

Article 24.

The present Treaty shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

The present Treaty shall come into force as soon as the instruments of ratifications have been exchanged and shall be valid for a period of five years reckoned from the date on which it comes into force. Unless it is denounced six months before the expiry of this period, it shall be regarded as renewed for a period of five years, and similarly thereafter.

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

In faith whereof the undermentioned Plenipotentiaries have signed the present Treaty.

Done at Berne in duplicate on October the seventeenth, one thousand nine hundred and twenty-eight.

(Signed) MOTTA.

(Signed) D'OLIVEIRA.