

Artikel 10

Dieses Abkommen wird in deutscher und in russischer Sprache abgeschlossen. Beide Texte haben gleiche Geltung.

Zu Urkund dessen haben die genannten Bevollmächtigten dieses Abkommen unterzeichnet und mit ihrem Siegel versehen.

Ausgefertigt in Moskau in 2 Exemplaren am 25. Januar 1929.

(Siegel) von Dirksen. (Siegel) M. Litvinoff.

13. Panamerikanischer Schiedsvertrag und panamerikanischer Vermittlungsvertrag.

(Angenommen am 4. Januar 1929 in der Vollsitzung der "International Conference of American States on Conciliation and Arbitration")

a) Panamerikanischer Schiedsvertrag¹⁾.

"The Governments of Venezuela, Chile, Bolivia, Uruguay, Costa Rica, Peru, Honduras, Guatemala, Haiti, Ecuador, Colombia, Brazil, Panama, Paraguay, Nicaragua, Mexico, El Salvador, the Dominican Republic, Cuba, and the United States of America, represented at the Conference on Conciliation and Arbitration, assembled at Washington, pursuant to the resolution adopted on February 18, 1928, by the Sixth International Conference of American States, held in the city of Havana;

In accordance with the solemn declarations made at said conference, to the effect that the American republics condemn war as an instrument of national policy and adopt obligatory arbitration as the means for the settlement of their international differences of a juridical character;

Being convinced that the republics of the New World, governed by the principles, institutions and practices of democracy and bound furthermore by mutual interests, which are increasing each day, have not only the necessity but also the duty of avoiding the disturbance of continental harmony whenever differences which are susceptible of judicial decision arise among them;

Conscious of the great moral and material benefits which peace offers to humanity and that the sentiment and opinion of America demand, without delay, the organization of an arbitral system which shall strengthen the permanent reign of justice and law;

And animated by the purpose of giving conventional form to these

¹⁾ U. S. D. Jan. 4, 1929. Der Delegierte der Vereinigten Staaten (Charles Evans Hughes) erklärte, daß seine Regierung dem Vertrag vorbehaltlos zustimmen würde. Seine Rede folgt unten S. 452 im Wortlaut. Vorbehaltlos stimmten ebenfalls die Delegierten von Cuba, Panama und Nicaragua zu, während die Delegierten von Salvador und Honduras mitteilten, daß ihre Regierungen ihre Vorbehalte noch bekannt geben würden. Bisher hat nur San Domingo (am 23. Mai 1929) den Vertrag ratifiziert.

Z. ausl. öff. Recht u. Völkerr. Bd. 1, T. 2: Urk.

postulates and aspirations with the minimum exceptions which they have considered indispensable to safeguard the independence and sovereignty of the States and in the most ample manner possible under present international conditions, have resolved to effect the present Treaty, and for that purpose have designated the Plenipotentiaries hereinafter named:

Who, after having deposited their full powers, found in good and due form by the Conference, have agreed upon the following:

Article I. — The High Contracting Parties bind themselves to submit to arbitration all differences of an international character which have arisen or may arise between them by virtue of a claim of right made by one against the other under Treaty or otherwise, which it has not been possible to adjust by diplomacy and which are juridical in their nature by reason of being susceptible of decision by the application of the principles of law.

There shall be considered as included among the questions of juridical character:

- (a) The interpretation of a Treaty;
- (b) Any question of international law;
- (c) The existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) The nature and extent of the reparation to be made for the breach of an international obligation.

The provisions of this Treaty shall not preclude any of the Parties, before resorting to arbitration, from having recourse to procedures of investigation and conciliation established in conventions then in force between them.

Article II. — There are excepted from the stipulations of this Treaty the following controversies:

- (a) Those which are within the domestic jurisdiction of any of the parties to the dispute and are not controlled by international law; and
- (b) Those which affect the interest or refer to the action of a State not a party to this Treaty.

Article III. — The arbitrator or tribunal who shall decide the controversy shall be designated by agreement of the parties.

In the absence of an agreement the following procedure shall be adopted:

Each party shall nominate two arbitrators, of whom only one may be a national of said party or selected from the persons whom said party has designated as members of the Permanent Court of Arbitration at The Hague. The other member may be of any other American nationality. The arbitrators shall in turn select a fifth arbitrator who shall be the President of the Court.

Should the arbitrators be unable to reach an agreement among themselves for the selection of a fifth American arbitrator, as in lieu thereof, of another who is not, each party shall designate a non-American member of the Permanent Court of Arbitration at The Hague, and the

two persons so designated shall select the fifth arbitrator, who may be of any nationality other than that of a party to the dispute.

Article IV. — The parties to the dispute shall formulate by common accord, in each case, a special agreement which shall clearly define the particular subject-matter of the controversy, the seat of the Court, the rules which will be observed in the proceedings, and the other conditions to which the parties may agree.

If an accord has not been reached with regard to the agreement within three months reckoned from the date of the installation of the Court, the agreement shall be formulated by the Court.

Article V. — In case of death, resignation or incapacity of one of the arbitrators the vacancy shall be filled in the same manner as the original appointment.

Article VI. — When there are more than two States directly interested in the same controversy, and the interests of two or more of them are similar, the State or States who are on the same side of the question may increase the number of arbitrators on the Court, provided that in all cases the parties on each side of the controversy shall appoint an equal number of arbitrators.

There shall also be a presiding arbitrator selected in the same manner as that provided in the last paragraph of Article III, the parties on each side of the controversy being regarded as a single party for the purpose of making the designation therein described.

Article VII. — The award duly pronounced and notified to the parties, settles the dispute definitely and without appeal. Differences which arise with regard to its interpretation or execution shall be submitted to the decision of the Court which rendered the award.

Article VIII. — The reservations made by one of the High Contracting Parties shall have the effect that the other Contracting parties are not bound with respect to the party making the reservations except to the same extent as that expressed therein.

Article IX. — The present Treaty shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures.

The original Treaty and the instruments of ratification shall be deposited in the Department of State of the United States of America, which shall give notice of the ratifications through diplomatic channels to the other signatory Governments and the Treaty shall enter into effect for the High Contracting Parties in the order that they deposit their ratifications.

This Treaty shall remain in force indefinitely, but it may be denounced by means of one year's previous notice at the expiration of which it shall cease to be in force as regards the party denouncing the same, but shall remain in force as regards the other signatories. Notice of the denunciation shall be addressed to the Department of State of the United States of America, which will transmit it for appropriate action to the other signatory Governments.

Any American State not a signatory of this Treaty may adhere to the same by transmitting the official instrument setting forth such adherence, to the Department of State of the United States of America which will notify the other High Contracting Parties thereof in the manner heretofore mentioned.

In witness whereof the above mentioned Plenipotentiaries have signed this Treaty in Spanish, English, Portuguese and French and hereunto affix their respective seals."

Das den Vertrag begleitende Protokoll lautet wie folgt:²⁾

"Whereas, a General Treaty of Inter-American Arbitration has this day been signed at Washington by Plenipotentiaries of the Governments of Venezuela, Chile, Bolivia, Uruguay, Costa Rica, Peru, Honduras, Guatemala, Haiti, Ecuador, Colombia, Brazil, Panama, Paraguay, Nicaragua, Mexico, El Salvador, the Dominican Republic, Cuba and the United States of America;

Whereas, that treaty by its terms excepts certain controversies from the stipulations thereof;

Whereas, by means of reservations attached to the treaty at the time of signing, ratifying or adhering, certain other controversies have been or may be also excepted from the stipulations of the treaty or reserved from the operation thereof;

Whereas, it is deemed desirable to establish a procedure whereby such exceptions or reservations may from time to time be abandoned in whole or in part by the parties to said Treaty, thus progressively extending the field of arbitration;

The Governments named above have agreed as follows:

Article I. — Any party to the General Treaty of Inter-American Arbitration signed at Washington the third day of January, 1929, may at any time deposit with the Department of State of the United States of America an appropriate instrument evidencing that it has abandoned in whole or in part the exceptions from arbitration stipulated in the said Treaty or the reservation or reservations attached by it thereto.

Article II. — A certified copy of each instrument deposited with the Department of State of the United States of America pursuant to the provisions of Article I of this Protocol shall be transmitted by the said Department through diplomatic channels to every other party to the above-mentioned General Treaty of Inter-American Arbitration.

Rede von Charles Evans Hughes zu dem panamerikanischen Schiedsvertrag³⁾.

"On behalf of the Government of the United States, I am happy to say that the delegates of the United States of America will sign this Treaty of Arbitration without any reservations. We consider this

²⁾ U. S. D. Jan. 5, 1929.

³⁾ Gehalten am 3. Januar 1929 auf der panamerikanischen Konferenz für Vermittlung und Schiedsgerichtsbarkeit. U. S. D. Jan. 4, 1929.

Treaty as a notable advance in the development of peaceful settlement. It is quite obvious that it is not sufficient to renounce war unless we are ready to have recourse to the processes of peace.

The resolution adopted at Havana under which this conference has met proposed that there should be a treaty of obligatory arbitration with respect to juridical questions. That at once defined the field. That field is specifically defined in the first article of this proposed Treaty. In that article it is stated that the controversies in question are those of a juridical character.

They are juridical because they can be solved by the application of principles of law. Then in order to explain even more fully what is meant we find in Article 2 a specific statement of certain categories. I might say that it is a classical statement of certain categories which are deemed to be susceptible of determination by the application of principles of law.

That being so, when we come to consider the exceptions which are to be introduced, we have in mind two fields of obligations: Those where the obligations are created in the exercise of sovereignty and which fall within the domestic jurisdiction⁴); and, the other obligations, which are created by international law and which are not susceptible of final determination through local tribunals without the intervention of an appropriate international tribunal.

In other words, where a treaty is concerned, for example, or matters which have given rise to rights under international law, the appropriate resort, if the parties cannot dispose of the controversy amicably, is to an international tribunal. We have sought to provide the means for constituting such a tribunal in this treaty.

So these two sources, domestic jurisdiction and international jurisdiction, stand separate, the one governed by the law of the sovereign State, the other governed by the international law which consists of those principles and rules which States have accepted as governing the relations that exist between them.

When we say in the first exception, 'And are not controlled by international law', we have obvious reference to those situations in which matters which would otherwise fall within the domestic jurisdiction have, by reason of an international transaction, through treaty for example, become the subject of international consideration because they import international obligations.

We are not here to add to international law. We are not here to codify international law. We are not here to create, we have no power to create additional rights under international law. We have no power to impose upon any State additional duties under international law. We are simply providing means for pacific settlement.

Now with regard to pecuniary claims, 12 States have ratified the Convention adopted at Buenos Aires in August, 1910. We hope that other States will ratify that Convention.

4) Vgl. Anmerkung zum deutsch-amerik. Schiedsvertr. oben S. 444.

So far as the reservations that have been proposed are concerned, it should of course be understood that we do not seek to discuss the reservations which any State desires to make either in signing or in ratifying this treaty. It is not within the competence of any State to another sovereign State when it comes to the signing or ratification of a treaty.

But perhaps I may be allowed to make the suggestion that under this treaty no State is deprived of any right that it has under international law, and no State, of course, is relieved of any obligation which it may have under international law. Therefore a reservation, if made with the idea that it would change international law, would be ineffective. It would simply mean that with respect to the matter reserved or excepted from the treaty we decline to have recourse to pacific settlement by arbitration.

I trust that we shall all agree so far as we can to have recourse to pacific settlement, and I take pleasure in saying on behalf of the United States that we accept this treaty without reservations."

b) Panamerikanischer Vermittlungsvertrag⁵⁾.

"The Governments of Venezuela, Chile, Bolivia, Uruguay, Costa Rica, Peru, Honduras, Guatemala, Haiti, Ecuador, Columbia, Brazil, Panama, Paraguay, Nicaragua, Mexico, El Salvador, the Dominican Republic, Cuba, and the United States of America, represented at the Conference on Conciliation and Arbitration, assembled at Washington, pursuant to the Resolution adopted on February 18, 1928, by the Sixth International Conference of American States held in the City of Havana:

Desiring to demonstrate that the condemnation of war as an instrument of national policy in their mutual relations, set forth in the above mentioned resolution constitutes one of the fundamental bases of inter-American relations;

Animated by the purpose of promoting, in every possible way, the development of international methods for the pacific settlement of differences between the States;

Being convinced that the "Treaty to Avoid or Prevent Conflicts between the American States", signed at Santiago de Chile, May 3, 1923, constitutes a notable achievement in inter-American relations, which it is necessary to maintain by giving additional prestige and strength to the action of the commissions established by Articles III and IV of the aforementioned Treaty;

Acknowledging the need of giving conventional form to these purposes have agreed to enter into the present Convention, for which purpose they have appointed Plenipotentiaries as follows:

Venezuela: Carlos F. Grisanti, Francisco Arroyo Parejo.

Chile: Manuel Foster Recebarren, Antonio Planet.

Bolivia: E uar o Diez de Medina.

⁵⁾ U. S. D. Jan. 5, 1929.

Uruguay: José Pedro Varela.

Costa Rica: Manuel Castro Quesada, José Tible-Machado.

Peru: Hernan Velarde, Victor M. Maurtua.

Honduras: Romulo Duron, Marcos Lopez Ponce.

Guatemala: Adrian Recinos, José Falla.

Haiti: Auguste Bonamy, Raoul Lizaire.

Ecuador: Gonzalo Zaldumbide.

Colombia: Enrique Olaya Herrera, Carlos Escallon.

Brazil: S. Gurgel do Amaral, Arturo Guimaraes de Araujo-Jorge.

Panama: Ricardo J. Alfaro, Carlos L. Lopez.

Paraguay: Eligio Ayala.

Nicaragua: Manuel Zavala.

Mexico: Fernando Gonzalez Roa, Benito Flores.

El Salvador: Cayetano Ochoa, David Rosales, Junior.

The Dominican Republic: Angel Morales, Gustavo A. Diaz.

Cuba: Orestes Ferrara, Gustavo Gutierrez.

United States of America: Frank B. Kellogg, Charles Evans Hughes.

Who after having deposited their full powers which were found to be in good and due form by the Conference, have agreed as follows:

Article I. — The High Contracting Parties agree to submit to the procedure of conciliation established by this Convention all controversies of any kind which have arisen or may arise between them for any reason and which it may not have been possible to settle through diplomatic channels.

Article II. — The Commissions of Inquiry to be established pursuant to the provisions of Article IV of the Treaty signed in Santiago de Chile on May 3, 1923, shall likewise have the character of Commissions of Conciliation.

Article III. — The Permanent Commissions which have been established by virtue of Article III of the Treaty of Santiago de Chile of May 3, 1923, shall be bound to exercise conciliatory functions, either on the own motion when it appears that there is a prospect of disturbance of peaceful relations, or at the request of a Party to the dispute, until the Commission referred to in the preceding article is organized.

Article IV. — The conciliatory functions of the Commission described in Article II shall be exercised on the occasions hereinafter set forth:

1. The Commission shall be at liberty to begin its work with an effort to conciliate the differences submitted to its examination with a view to arriving at a settlement between the Parties.

2. Likewise the same Commission shall be at liberty to endeavor to conciliate the Parties at any time which in the opinion of the Commission may be considered to be favorable in the course of the investigation and within the period of time fixed therefor in Article V of the Treaty of Santiago de Chile of May 3, 1923.

3. Finally, the Commission shall be bound to carry out its conciliatory function within the period of six months which is referred to in Article VII of the Treaty of Santiago de Chile of May, 1923.

The parties to the controversy may, however, extend this time, if they so agree and notify the Commission in due time.

Article V. — The present Convention does not preclude the High Contracting Parties, or one or more of them, from tendering their good offices or their mediation, jointly or severally, on their own motion or at the request of one or more of the parties to the controversy; but the High Contracting Parties agree not to make use of those means of pacific settlement from the moment that the Commission described in Article II is organized until the final act referred to in Article XI of this Convention is signed.

Article VI. — The function of the Commission, as an organ of conciliation, in all cases specified in Article II of this Convention, is to procure the conciliation of the differences subject to its examination by endeavoring to effect a settlement between the Parties.

When the Commission finds itself to be within the case foreseen in paragraph 3 of Article IV of this Convention, it shall undertake a conscientious and impartial examination of the questions which are the subject of the controversy, shall set forth in a report the results of its proceedings, and shall propose to the Parties the bases of a settlement for the equitable solution of the controversy.

Article VII. — Except when the parties agree otherwise, the decisions and recommendations of any Commission of Conciliation shall be made by a majority vote.

Article VIII. — The Commission described in Article II of this Convention shall establish its rules of procedure. In the absence of agreement to the contrary, the procedure indicated in Article IV of the Treaty of Santiago de Chile of May 3, 1923, shall be followed. Each Party shall bear its own expenses and a proportionate share of the general expenses of the Commission.

Article IX. — The report and the recommendation of the Commission, insofar as it may be acting as an organ of conciliation, shall not have the character of a decision nor an arbitral award, and shall not be binding on the parties either as regards the exposition or interpretation of the facts or as regards questions of law.

Article X. — As soon as possible after the termination of its labors the Commission shall transmit to the Parties a certified copy of the report and of the bases of settlement which it may propose. The Commission in transmitting the report and the recommendations to the Parties shall fix a period of time, which shall not exceed six months, within which the Parties shall pass upon the bases of settlement above referred to.

Article XI. — Once the period of time by the Commission for the Parties to make their decisions has expired, the Commission shall set forth in a final act the decision of the Parties, and if the conciliation has been effected, the terms of the settlement.

Article XII. — The obligations set forth in the second sentence of the first paragraph of Article I of the Treaty of Santiago de Chile of

May 3, 1923, shall extend to the time when the final act referred to in the preceding article is signed.

Article XIII. — Once the procedure of conciliation is under way it shall be interrupted only by a direct settlement between the Parties or by their agreement to accept absolutely the decision "ex aequo et bono" of an American Chief of State or to submit the controversy to arbitration or to an international court.

Article XIV. — When for any reason the Treaty of Santiago de Chile of May 3, 1923, does not apply, the Commission referred to in Article II of this Convention shall be organized to the end that it may exercise the conciliatory functions stipulated in this Convention; the Commission shall be organized in the same manner as that prescribed in Article IV of said Treaty.

In such cases, the Commission thus organized shall be governed in its operation by the provisions, relative to conciliation, of this Convention.

Article XV. — The provisions of the preceding article shall also apply with regard to the Permanent Commissions constituted by the aforementioned Treaty of Santiago de Chile, to the end that said commissions may exercise the conciliatory functions prescribed in Article III of this Convention.

Article XVI. — The present Convention shall be ratified by the High Contracting Parties in conformity with their respective constitutional procedures provided that they have previously ratified the Treaty of Santiago, Chile, of May 3, 1923.

The original Convention and the instruments of ratification shall be deposited in the Ministry for Foreign Affairs of the Republic of Chile which shall give notice of the ratifications through diplomatic channels to the other signatory Governments and the Convention shall enter into effect for the High Contracting Parties in the order that they deposit their ratifications.

This Convention shall remain in force indefinitely, but it may be denounced by mean of one year's previous notice at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other signatories. Notice of the denunciation shall be addressed to the Ministry for Foreign Affairs of the Republic of Chile which will transmit it for appropriate action to the other signatory Governments.

Any American State not a signatory of this Convention may adhere to the same by transmitting the official instrument setting forth such adherence, to the Ministry for Foreign Affairs of the Republic of Chile which will notify the other High Contracting Parties thereof in the manner heretofore mentioned.

In witness thereof the above mentioned Plenipotentiaries have signed this Convention in Spanish, English, Portuguese and French and hereunto affix their respective seals."

ZWEITE ABTEILUNG
STAATS- UND
VERWALTUNGSRECHT

