

Session of Salzburg – 1961

International Conciliation

(Thirtieth Commission, Rapporteur : Mr Henri Roulin)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Considering that by the provisions of the Charter of the United Nations, States have the duty to seek by peaceful means the settlement of international disputes,

Acknowledging that nevertheless a certain number of disputes have remained unsettled in the course of recent years, the Parties having neglected or refused recourse to judicial settlement or arbitration,

Considering that such a state of affairs is prejudicial to international understandings,

Observing, on the other hand, that the procedure of international conciliation has been employed with success in a number of cases during recent years,

Draws the attention of States to the advantage, for a sound appreciation by them of questions arising from a dispute and for its peaceful solution, of the assistance of a small number of competent and impartial men of good will,

For this reason again *recommends* States to conclude, if they have not already done so, conventions establishing permanent bilateral commissions of conciliation as provided by different treaties and, in particular, by the General Act of 1928-1949, even if they are not disposed to undertake any engagement to submit to these commissions all disputes or certain categories of disputes,

Emphasizes that Parties willing to have recourse to the procedure of conciliation are free to determine the methods according to their particular preferences, either when establishing a permanent or ad hoc Commission or at a later date,

Declares that no admission or proposal formulated during the course of the conciliation procedure, either by one of the Parties or by the Commission, can be considered as prejudicing or affecting in any manner the rights or the contentions of either Party in the event of the failure of the procedure ; and, similarly, the acceptance by one Party of a proposal of settlement in no way implies any admission by it of the considerations of law or of fact which may have inspired the proposal of settlement, and

Recommends that States wishing either to conclude a bilateral conciliation convention or to submit a dispute which has already arisen to conciliation procedures before an *ad hoc* Commission, should adopt the rules contained in the annexed Regulations which the Institute substitutes for those adopted 2 September 1927, at the Session of Lausanne ; and that, in the absence of such adoption, the members of Commissions of Conciliation should be guided by these rules for the solution of questions entrusted to them by the Parties.

Regulations on the Procedure of International Conciliation

Sec. 1. Definition of Conciliation

Article 1

For the purpose of the present provisions, "conciliation" means a method for the settlement of international disputes of any nature according to which a Commission set up by the Parties, either on a permanent basis or on an ad hoc basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of a settlement susceptible of being accepted by them, or of affording the Parties, with a view to its settlement, such aid as they may have requested.

Sec. 2. Procedure for Conciliation

Article 2

The Conciliation Commission is seised of the dispute in the manner agreed upon by the Parties. In the absence of such agreement, the Commission can be seised not only by a joint application of the Parties, but by an application by one of them, addressed to the President and indicating in summary form the object of the dispute. On receiving a unilateral application, the President is responsible for seeing that it has been communicated to the other Party and that the latter accepts recourse to conciliation.

Article 3

It is desirable that any application by which the Commission is seised of a dispute should contain the designation of the agent or agents who will represent the Party or Parties making the application.

Should occasion arise, the President of the Commission may request any Party to make such a designation.

He then designates the place and date of the first meeting to which the members of the Commission and the agents are summoned.¹

Article 4

At its first meeting, the Commission will name its secretary and, taking account of such circumstances, among others, as the time which may have been granted to it for the completion of its task, will determine the method for proceeding to the examination of the affair, whether, in particular, the Parties should be invited to present written pleadings, and in what order and with what time-limits such pleadings must be presented, as well as the time and the place where the agents and counsel will, should occasion arise, be heard.

Article 5

If the Commission establishes that the Parties are in disagreement on a question of fact, it may proceed, either at their request or *ex officio*, to the consultation of experts, to investigations on the spot, or to the interrogation of witnesses. In such case, the provisions of Part III of The Hague Convention of 18 October 1907 on the Pacific Settlement of International Disputes are applicable, except for article 35 which requires the Commission to set forth in a report the facts resulting from the investigation.

Article 6

If the Commission fails to achieve general agreement, it can decide by majority vote, without being obliged to indicate the number of votes.

Sec. 3. Conclusion of the Commission's Work

Article 7

At the conclusion of its examination, the Commission will attempt to define the terms of a settlement susceptible of being accepted by the Parties. In this connection, it may proceed to an exchange of views with the agents of the Parties, who may be heard either together or separately.

Once decided upon, the terms of the proposed settlement will be communicated by the President to the agents of the Parties with a request to inform him within a stated period whether or not the governments accept the proposed settlement. The President of the Commission may accompany his communication with a statement, either orally, or in writing, of the principal reasons which, in the opinion of the Commission, appear likely to persuade the Parties to accept the settlement. He will refrain in this statement from setting forth definitive conclusions with reference to disputed facts or from formally deciding questions of law involved, unless the Commission has been requested to do so by the Parties.

¹ Attention is drawn to the fact that the Administrative Council of the Permanent Court of Arbitration places its premises and staff at the disposition of States Parties to its Statute who resort to conciliation.

Article 8

If the Parties accept the proposed settlement, a *procès-verbal* will be drawn up setting forth its terms and will be signed by the President and by the secretary. A copy signed by the President and the secretary will be handed to each Party.

Article 9

If any of the Parties do not accept the settlement and the Commission decides that no purpose will be served by attempting to reach an agreement between the Parties on the terms of a different settlement, a *procès-verbal* will be drawn up as provided above, stating, without setting forth the terms of the proposed settlement, that the Parties were unable to accept the conciliation proposal.

Sec. 4. Secrecy of the Proceedings

Article 10

The meetings of the Commission will be secret ; the members of the Commission and the agents will refrain from divulging any documents or oral statements, as well as any *communiqué* relating to the progress of the proceedings which has not received the approval of both agents.

Should any indiscretion occur while the proceedings are pending, the Commission shall have power to determine its possible effect on the continuation of the proceedings.

Article 11

No declaration or communication of the agents or members of the Commission made with regard to the merits of the affair will be entered in the *procès-verbaux* of the meetings except with the permission of the agent or member of the Commission making it. On the other hand, written or oral reports of experts, the reports of investigations on the spot and depositions of witnesses will be annexed to the *procès-verbaux* of the meetings, unless, in a particular case, the Commission decides otherwise.

Article 12

Certified copies of the *procès-verbaux* of the meetings and copies of the annexes will be delivered to the agents through the secretary of the Commission unless, in a particular case, the Commission decides otherwise.

Article 13

Except for evidential material which may be derived from reports of experts, investigations on the spot or interrogations of witnesses, of which the agents will have received the *procès-verbaux*, the obligation to respect the secrecy of the proceedings and deliberations continues for the Parties as well as for the members of the Commission after the closure of the proceedings and even includes the terms of settlement in case the Commission has succeeded in its task of conciliation, unless, by common agreement, the Parties authorize a total or partial publication of the documents. When the Commission has completed its task, the Parties will consider whether or not to authorize the total or partial publication of the documents. The Commission may address recommendations to them on the subject.

Article 14

At the termination of the proceedings, the President of the Commission will deposit the documents in the archives of a government or of an international organization chosen by the Parties; the secretariat of the Permanent Court of Arbitration appears to be particularly well qualified for this purpose. The depositary authority will preserve the secrecy of the archives within the limits indicated above.

Sec. 5. Expenses

Article 15

Expenses connected with the conciliation procedure, including expenses occasioned by investigations which the Commission shall have judged it useful to institute, will be borne in equal shares by the Parties.

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(11 September 1961)