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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; et al.,

Defendants.

Civil No. 1:21:cv-00243-LEK-RT

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF’S OPPOSITION TO STATE DEFENDANTS’ MOTION TO VACATE DEFAULTS [ECF 241] ON JURISDICTIONAL GROUNDS, AND PLAINTIFF’S MOTION TO SCHEDULE AN EVIDENTIARY HEARING IN ACCORDANCE WITH THE *LORENZO* PRINCIPLE; EXHIBITS 1-7; CERTIFICATE OF SERVICE

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S OPPOSITION TO STATE DEFENDANTS' MOTION TO VACATE DEFAULTS [ECF 241] ON JURISDICTIONAL GROUNDS, AND PLAINTIFF'S MOTION TO SCHEDULE AN EVIDENTIARY HEARING IN ACCORDANCE WITH THE *LORENZO* PRINCIPLE

In accordance with Federal Rule of Evidence 201, the Plaintiff respectfully requests that this Court, in its consideration of Plaintiff's opposition to State Defendants' motion to vacate defaults on jurisdictional grounds and Plaintiff's motion to schedule an evidentiary hearing in accordance with the *Lorenzo* principle, filed herewith, take judicial notice of §202, comment g, and §203, comment c of *Restatement (Third) of the Foreign Relations Law of the United States*. The Plaintiff also respectfully requests that this Court take judicial notice of the information contained in the exhibits attached hereto.

1. Exhibit 1 is a true and correct copy of the 1849 Treaty of Friendship, Commerce, and Navigation between the Hawaiian Kingdom and the United States, 9 Stat. 977. Article VIII states, "and each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, **but subject always to the laws and statutes of the two countries respectively** (emphasis added)."

2. Exhibit 2 is a true and correct copy of Annex 2—*Cases Conducted under the Auspices of the PCA or with the Cooperation of the International Bureau*,

Permanent Court of Arbitration's Annual Report of 2011. On page 51, the Permanent Court of Arbitration ("PCA") reported that Larsen – Hawaiian Kingdom arbitration was established "[p]ursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention)."

3. Exhibit 3 is a true and correct copy of the 1907 Hague Convention, I, for the Pacific Settlement of International Disputes, 36 Stat. 2199, and referred to by the PCA as the 1907 Convention. Article 47 of the 1907 Convention provides access to the PCA for non-Contracting Powers or States.

4. Exhibit 4 is a true and correct copy of the PCA's case repository for *Larsen v. Hawaiian Kingdom*, which is also accessible on the PCA's website at https://pca-cpa.org/en/cases/35/. The PCA acknowledges the Hawaiian Kingdom as a "State" and the Council of Regency as its government.

5. Exhibit 5 is a true and correct copy of Professor Federico Lenzerini's legal memorandum "Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration" [ECF 174-2].

6. Exhibit 6 is a true and correct copy of Professor Federico Lenzerini's "Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom" [ECF 55-2].

7. Exhibit 7 is a true and correct copy of the Declaration of Dr. David Keanu Sai [ECF 55-1] attesting to an agreement brokered by the PCA Deputy Secretary

General Phyllis Hamilton between the Council of Regency and the United States granting access to all records and pleadings in the *Larsen v. Hawaiian Kingdom* arbitral proceedings.

DATED: Honolulu, Hawai‘i, September 1, 2022.

Respectfully submitted,

/s/ Dexter K. Ka‘iama

DEXTER K. KA‘IAMA (Bar No. 4249)
Attorney General of the Hawaiian Kingdom
DEPARTMENT OF THE ATTORNEY GENERAL, HAWAIIAN KINGDOM

Attorney for Plaintiff, Hawaiian Kingdom

Exhibit “1”

TREATY WITH THE HAWAIIAN ISLANDS, DEC. 20, 1849.

Dec. 20, 1849.

Ratifications exchanged at Honolulu Aug. 24, 1850.

Proclamation made Nov. 9, 1850.

Preamble.

WHEREAS a treaty of friendship, commerce, and navigation, between the United States of America and his Majesty the King of the Hawaiian Islands, was concluded and signed at Washington, on the twentieth day of December, in the year of our Lord one thousand eight hundred and forty-nine, the original of which treaty is, word for word, as follows:—

The United States of America and his Majesty the King of the Hawaiian Islands, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective states, and consolidating the commercial intercourse between them, have agreed to enter into negotiations for the conclusion of a treaty of friendship, commerce, and navigation, for which purpose they have appointed plenipotentiaries, that is to say: The President of the United States of America, John M. Clayton, Secretary of State of the United States; and his Majesty the King of the Hawaiian Islands, James Jackson Jarves, accredited as his special commissioner to the government of the United States; who, after having exchanged their full powers, found in good and due form, have concluded and signed the following articles:—

ARTICLE I.

Peace and amity.

There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors.

ARTICLE II.

Reciprocal freedom of trade.

"Most-favored nation" stipulation.

There shall be reciprocal liberty of commerce and navigation between the United States of America and the Hawaiian Islands. No duty of customs, or other impost, shall be charged upon any goods, the produce or manufacture of one country, upon importation from such country into the other, other or higher than the duty of impost charged upon goods of the same kind, the produce or manufacture of, or imported from, any other country; and the United States of America and his Majesty the King of the Hawaiian Islands do hereby engage, that the subjects or citizens of any other state shall not enjoy any favor, privilege, or immunity, whatever, in matters of commerce and navigation, which shall not also, at the same time, be extended to the subjects or citizens of the other contracting party, gratuitously, if the concession in favor of that other state shall have been gratuitous, and in return for a compensation, as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

ARTICLE III.

Same subject

All articles, the produce or manufacture of either country, which can legally be imported into either country from the other, in ships of that other country, and thence coming, shall, when so imported, be subject to the same duties, and enjoy the same privileges, whether imported in ships of the one country, or in ships of the other; and in like manner, all goods which can legally be exported or re-exported

from either country to the other, in ships of that other country, shall, when so exported or re-exported, be subject to the same duties, and be entitled to the same privileges, drawbacks, bounties, and allowances, whether exported in ships of the one country, or in ships of the other; and all goods and articles, of whatever description, not being of the produce or manufacture of the United States, which can be legally imported into the Sandwich Islands, shall, when so imported in vessels of the United States, pay no other or higher duties, imposts, or charges, than shall be payable upon the like goods and articles, when imported in the vessels of the most favored foreign nation, other than the nation of which the said goods and articles are the produce or manufacture.

ARTICLE IV.

Tonnage &c. duties.

No duties of tonnage, harbor, lighthouses, pilotage, quarantine, or other similar duties, of whatever nature, or under whatever denomination, shall be imposed in either country upon the vessels of the other, in respect of voyages between the United States of America and the Hawaiian Islands, if laden, or in respect of any voyage, if in ballast, which shall not be equally imposed in the like cases on national vessels.

ARTICLE V.

Provisions of this treaty not to extend to coasting trade.

It is hereby declared, that the stipulations of the present treaty are not to be understood as applying to the navigation and carrying trade between one port and another, situated in the states of either contracting party, such navigation and trade being reserved exclusively to national vessels.

ARTICLE VI.

Privileges of steam vessels carrying mails.

Steam vessels of the United States which may be employed by the government of the said States, in the carrying of their public mails across the Pacific Ocean, or from one port in that ocean to another, shall have free access to the ports of the Sandwich Islands, with the privilege of stopping therein to refit, to refresh, to land passengers and their baggage, and for the transaction of any business pertaining to the public mail service of the United States, and shall be subject in such ports to no duties of tonnage, harbor, lighthouses, quarantine, or other similar duties of whatever nature or under whatever denomination.

ARTICLE VII.

Privileges of whale ships.

The whale ships of the United States shall have access to the ports of Hilo, Kealakekua, and Hanalei, in the Sandwich Islands, for the purposes of refitment and refreshment, as well as to the ports of Honolulu and Lahaina, which only are ports of entry for all merchant vessels; and in all the above-named ports, they shall be permitted to trade or barter their supplies or goods, excepting spirituous liquors, to the amount of two hundred dollars *ad valorem* for each vessel, without paying any charge for tonnage or harbor dues of any description, or any duties or imposts whatever upon the goods or articles so traded or bartered. They shall also be permitted, with the like exemption from all charges for tonnage and harbor dues, further to trade or barter, with the same exception as to spirituous liquors, to the additional amount of one thousand dollars *ad valorem*, for each vessel, paying upon the additional goods and articles so traded and bartered, no other or higher duties than are payable on like goods and articles, when imported in the vessels and by the citizens or subjects of the most favored foreign nation. They shall also be permitted to pass from port to port of the Sandwich Islands, for the purpose of procuring refreshments, but they

shall not discharge their seamen or land their passengers in the said Islands, except at Lahaina and Honolulu; and in all the ports named in this article, the whale ships of the United States shall enjoy, in all respects whatsoever, all the rights, privileges, and immunities, which are enjoyed by, or shall be granted to, the whale ships of the most favored foreign nation. The like privilege of frequenting the three ports of the Sandwich Islands, above named in this article, not being ports of entry for merchant vessels, is also guaranteed to all the public armed vessels of the United States. But nothing in this article shall be construed as authorizing any vessel of the United States, having on board any disease usually regarded as requiring quarantine, to enter, during the continuance of such disease on board, any port of the Sandwich Islands, other than Lahaina or Honolulu.

Article VIII.

The contracting parties engage, in regard to the personal privileges, that the citizens of the United States of America shall enjoy in the dominions of his Majesty the King of the Hawaiian Islands, and the subjects of his said Majesty in the United States of America, that they shall have free and undoubted right to travel and to reside in the states of the two high contracting parties, subject to the same precautions of police which are practiced towards the subjects or citizens of the most favored nations. They shall be entitled to occupy dwellings and warehouses, and to dispose of their personal property of every kind and description, by sale, gift, exchange, will, or in any other way whatever, without the smallest hindrance or obstacle; and their heirs or representatives, being subjects or citizens of the other contracting party, shall succeed to their personal goods, whether by testament or *ab intestato;* and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at will, paying to the profit of the respective governments, such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And in case of the absence of the heir and representative, such care shall be taken of the said goods as would be taken of the goods of a native of the same country in like case, until the lawful owner may take measures for receiving them. And if a question should arise among several claimants as to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. Where, on the decease of any person holding real estate within the territories of one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all duties of detraction on the part of the government of the respective states. The citizens or subjects of the contracting parties shall not be obliged to pay, under any pretence whatever, any taxes or impositions other or greater than those which are paid, or may hereafter be paid, by the subjects or citizens of the most favored nations, in the respective states of the high contracting parties. They shall be exempt from all military service, whether by land or by sea; from forced loans; and from every extraordinary contribution not general and by law established. Their dwellings, warehouses, and all premises appertaining thereto, destined for the purposes of commerce or residence, shall be respected. No arbitrary search of, or visit to, their houses, and no arbitrary examination or inspection whatever of the books, papers, or accounts of their trade, shall be made; but such measures shall be executed only in conformity with the legal sentence of a competent tribunal; and

Privileges of citizens of U. S. in Hawaiian Islands, and *vice versa*.

Travel.

Trade.

Heirship.

Real estate.

Taxes.

Military service.

Right of search of tenements.

each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively.

ARTICLE IX.

Trade in either country with citizens of the country.

The citizens and subjects of each of the two contracting parties shall be free in the states of the other to manage their own affairs themselves, or to commit those affairs to the management of any persons whom they may appoint as their broker, factor, or agent; nor shall the citizens and subjects of the two contracting parties be restrained in their choice of persons to act in such capacities; nor shall they be called upon to pay any salary or remuneration to any person whom they shall not choose to employ.

Absolute freedom shall be given in all cases to the buyer and seller to bargain together, and to fix the price of any goods or merchandise imported into, or to be exported from, the states and dominions of the two contracting parties, save and except generally such cases wherein the laws and usages of the country may require the intervention of any special agents in the states and dominions of the contracting parties. But nothing contained in this or any other article of the present treaty shall be construed to authorize the sale of spirituous liquors to the natives of the Sandwich Islands, farther than such sale may be allowed by the Hawaiian laws.

ARTICLE X.

Consuls, &c.

Each of the two contracting parties may have, in the ports of the other, consuls, vice-consuls, and commercial agents, of their own appointment, who shall enjoy the same privileges and powers with those of the most favored nations; but if any such consuls shall exercise commerce, they shall be subject to the same laws and usages to which the private individuals of their nation are subject in the same place.

Deserters from vessels.

The said consuls, vice-consuls, and commercial agents, are authorized to require the assistance of the local authorities for the search, arrest, detention and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall, in writing, demand the said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and this reclamation being thus substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the said consuls, vice-consuls, or commercial agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessel to which they belonged, or sent back to their own country by a vessel of the same nation, or any other vessel whatsoever. The agents, owners, or masters of vessels on account of whom the deserters have been apprehended, upon requisition of the local authorities, shall be required to take or send away such deserters from the states and dominions of the contracting parties, or give such security for their good conduct as the law may require. But if not sent back nor reclaimed within six months from the day of their arrest, or if all the expenses of such imprisonment are not defrayed by the party causing such arrest and imprisonment, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserters should

be found to have committed any crime or offence, their surrender may be delayed until the tribunal before which their case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE XI.

Liberty of conscience.

It is agreed that perfect and entire liberty of conscience shall be enjoyed by the citizens and subjects of both the contracting parties, in the countries of the one and the other, without their being liable to be disturbed or molested on account of their religious belief. But nothing contained in this article shall be construed to interfere with the exclusive right of the Hawaiian government to regulate for itself the schools which it may establish or support within its jurisdiction.

Proviso as to schools.

ARTICLE XII.

Wrecks.

If any ships of war or other vessels be wrecked on the coasts of the states or territories of either of the contracting parties, such ships or vessels, or any parts thereof, and all furniture and appurtenances belonging thereunto, and all goods and merchandise which shall be saved therefrom, or the produce thereof, if sold, shall be faithfully restored with the least possible delay to the proprietors, upon being claimed by them, or by their duly authorized factors; and if there are no such proprietors or factors on the spot, then the said goods and merchandise, or the proceeds thereof, as well as all the papers found on board such wrecked ships or vessels, shall be delivered to the American or Hawaiian consul, or vice-consul, in whose district the wreck may have taken place; and such consul, vice-consul, proprietors, or factors, shall pay only the expenses incurred in the preservation of the property, together with the rate of salvage and expenses of quarantine which would have been payable in the like case of a wreck of a national vessel; and the goods and merchandise saved from the wreck shall not be subject to duties unless entered for consumption, it being understood that in case of any legal claim upon such wreck, goods, or merchandise, the same shall be referred for decision to the competent tribunals of the country.

ARTICLE XIII.

Vessels driven into port by stress of weather.

The vessels of either of the two contracting parties which may be forced by stress of weather or other cause into one of the ports of the other, shall be exempt from all duties of port or navigation paid for the benefit of the state, if the motives which led to their seeking refuge be real and evident, and if no cargo be discharged or taken on board, save such as may relate to the subsistence of the crew, or be necessary for the repair of the vessels, and if they do not stay in port beyond the time necessary, keeping in view the cause which led to their seeking refuge.

ARTICLE XIV.

Extradition of criminals.

The contracting parties mutually agree to surrender, upon official requisition, to the authorities of each, all persons who, being charged with the crimes of murder, piracy, arson, robbery, forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall be found within the territories of the other, provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the person so charged shall be found, would justify his apprehension and commitment for trial, if the crime had there been committed; and the respective judges and other magistrates of the two governments shall have authority, upon complaint made under oath, to

issue a warrant for the apprehension of the person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

Article XV.

Mail arrangements.

So soon as steam or other mail packets under the flag of either of the contracting parties shall have commenced running between their respective ports of entry, the contracting parties agree to receive at the post-offices of those ports all mailable matter, and to forward it as directed, the destination being to some regular post-office of either country, charging thereupon the regular postal rates as established by law in the territories of either party receiving said mailable matter, in addition to the original postage of the office whence the mail was sent. Mails for the United States shall be made up at regular intervals at the Hawaiian post-office, and despatched to ports of the United States; the postmasters at which ports shall open the same, and forward the enclosed matter as directed, crediting the Hawaiian government with their postages as established by law, and stamped upon each manuscript or printed sheet.

All mailable matter destined for the Hawaiian Islands shall be received at the several post-offices in the United States, and forwarded to San Francisco, or other ports on the Pacific coast of the United States, whence the postmasters shall despatch it by the regular mail packets to Honolulu, the Hawaiian government agreeing on their part to receive and collect for and credit the post-office department of the United States with the United States' rates charged thereupon. It shall be optional to prepay the postage on letters in either country, but postage on printed sheets and newspapers shall in all cases be prepaid. The respective post-office departments of the contracting parties shall in their accounts, which are to be adjusted annually, be credited with all dead letters returned.

Article XVI.

Continuance of this treaty.

The present treaty shall be in force from the date of the exchange of the ratifications, for the term of ten years, and further, until the end of twelve months after either of the contracting parties shall have given notice to the other of its intention to terminate the same, each of the said contracting parties reserving to itself the right of giving such notice at the end of the said term of ten years, or at any subsequent term.

Any citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.

Article XVII.

Ratification.

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said States, and by his Majesty the King of the Hawaiian Islands, by and with the advice of his Privy Council of State, and the

ratification shall be exchanged at Honolulu within eighteen months from the date of its signature, or sooner if possible.

In witness whereof, the respective plenipotentiaries have signed the same in triplicate, and have thereto affixed their seals.

Done at Washington, in the English language, the twentieth day of December, in the year one thousand eight hundred and forty-nine. Date.

JOHN M. CLAYTON, [SEAL.]
JAMES JACKSON JARVES. [SEAL.]

Dec. 30, 1849.

Consent of Senate Sept. 9, 1850.
Proclamation made Sept. 9, 1850.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UTAH INDIANS.

THE following articles have been duly considered and solemnly adopted by the undersigned — that is to say, James S. Calhoun, Indian Agent, residing at Santa Fe, acting as commissioner on the part of the United States of America, and Quixiachigiate, Nanito, Nincocunachi, Abaganixe, Ramahi, Subleta, Rupallachi, Saguasoxego, Paguisachi, Cobaxanor, Amuche, Puigniachi, Panachi, Sichuga, Uvicaxinape, Cuchuticay, Nachitope, Pueguate, Guano Juas, Pacachi, Saguanchi, Acaguate nochi, Puibuquiacte, Quixache tuate, Saxiabe, Pichiute, Nochichigue, Uvive, principal and subordinate chiefs, representing the Utah tribe of Indians.

Utah Indians acknowledge themselves lawfully under the authority of the U. States.

I. The Utah tribe of Indians do hereby acknowledge and declare, they are lawfully and exclusively under the jurisdiction of the government of said States: and to its power and authority they now unconditionally submit.

Cessation of hostilities and perpetual peace and amity to exist.

II. From and after the signing of this treaty, hostilities between the contracting parties shall cease, and perpetual peace and amity shall exist, the said tribe hereby binding themselves most solemnly never to associate with, or give countenance or aid to, any tribe or band of Indians, or other persons or powers, who may be, at any time, at enmity with the people or government of said States; and that they will, in all future time, treat honestly and humanely every citizen of the United States, and all persons and powers at peace with the said States, and all cases of aggression against said Utahs shall be referred to the aforesaid government for adjustment and settlement.

All American and Mexican captives to be restored to an officer of the U. S. before March 1, 1850.

III. All American and Mexican captives, and others, taken from persons or powers at peace with the said States, shall be restored and delivered by said Utahs to an authorized officer or agent of said States, at Abiquin, on or before the first day of March, in the year of our Lord one thousand eight hundred and fifty. And, in like manner, all stolen property, of every description, shall be restored by or before the aforesaid first day of March, 1850. In the event such stolen property shall have been consumed or destroyed, the said Utah Indians do agree, and are hereby bound, to make such restitution and under such circumstances as the government of the United States may order and prescribe. But this article is not to be so construed, or understood, as to create a claim against said States, for any losses or depredations committed by said Utahs.

Stolen property to be returned, or restitution made.

Laws now in force for regulating trade and preserving peace with the Indian tribes to be extended over the Utahs, and the territory occupied by them is annexed to New Mexico.

IV. The contracting parties agree that the laws now in force, and such others as may be passed, regulating the trade and intercourse, and for the preservation of peace with the various tribes of Indians under the protection and guardianship of the government of the United States, shall be as binding and obligatory upon the said Utahs as if said laws had been enacted for their sole benefit and protection. And that said laws may be duly executed, and for all other useful purposes, the territory occupied by the Utahs is hereby annexed to New Mexico as now organized, or as it may be organized, or until the government of the United States shall otherwise order.

Free passage through their territory.

V. The people of the United States, and all others in amity with the United States, shall have free passage through the territory of said Utahs, under such rules and regulations as may be adopted by authority of said States.

Exhibit “2”

CASES CONDUCTED UNDER THE AUSPICES OF THE PCA OR WITH THE COOPERATION OF THE INTERNATIONAL BUREAU

For summaries of the arbitral awards in many of these cases, see P. Hamilton, et al., *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution – Summaries of Awards, Settlement Agreements and Reports* (Kluwer Law International 1999) pp. 29-281, and B. Macmahon and F. Smith, *Permanent Court of Arbitration Summaries of Awards 1999-2009* (TMC Asser Press 2010) pp. 39-312.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
1.	United States of America – Republic of Mexico	Pious Fund of the Californias	22 - 05 - 1902	14 - 10 - 1902	**Matzen** Sir Fry de Martens Asser de Savornin Lohman
2.	Great Britain, Germany and Italy – Venezuela	Preferential Treatment of Claims of Blockading Powers Against Venezuela	07 - 05 - 1903	22 - 02 - 1904	**Mourawieff** Lammasch de Martens
3.	Japan – Germany, France and Great Britain	Japanese House Tax leases held in perpetuity	28 - 08 - 1902	22 - 05 - 1905	**Gram** Renault Motono
4.	France – Great Britain	Muscat Dhows fishing boats of Muscat	13 - 10 - 1904	08 - 08 - 1905	**Lammasch** Fuller de Savornin Lohman
5.	France – Germany	Deserters of Casablanca	10/24 - 11 - 1908	22 - 05 - 1909	**Hammarskjöld** Sir Fry Fusinato Kriege Renault
6.	Norway – Sweden[2]	Maritime Boundary Grisbådarna Case	14 - 03 - 1908	23 - 10 - 1909	**Loeff**[3] Beichmann Hammarskjöld
7.	United States of America – Great Britain	North Atlantic Coast Fisheries	27 - 01 - 1909	07 - 09 - 1910	**Lammasch** de Savornin Lohman Gray Sir Fitzpatrick Drago
8.	United States of Venezuela – United States of America	Orinoco Steamship Company	13 - 02 - 1909	25 - 10 - 1910	**Lammasch** Beernaert de Quesada
9.	France – Great Britain	Arrest and Restoration of Savarkar	25 - 10 - 1910	24 - 02 - 1911	**Beernaert** Ce de Desart Renault Gram de Savornin Lohman

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
10.	Italy – Peru	Canevaro Claim	25 - 04 - 1910	03 - 05 - 1912	**Renault** Fusinato Alvarez Calderón
11.	Russia – Turkey[2]	Russian Claim for Indemnities damages claimed by Russia for delay in payment of compensation owed to Russians injured in the war of 1877-1878	22 - 07 - 1910/ 04 - 08 - 1910	11 - 11 - 1912	**Lardy** Bon de Taube Mandelstam[3] H.A. Bey[3] A.R. Bey[3]
12.	France – Italy	French Postal Vessel "Manouba"	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
13.	France – Italy	The "Carthage"	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
14.	France – Italy	The "Tavignano," "Camouna" and "Gaulois" Incident	08 - 11 - 1912	Settled by agreement of parties	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
15.	The Netherlands – Portugal[4]	Dutch-Portuguese Boundaries on the Island of Timor	03 - 04 - 1913	25 - 06 - 1914	**Lardy**
16.	Great Britain, Spain and France – Portugal[5]	Expropriated Religious Properties	31 - 07 - 1913	02/04 - 09 - 1920	**Root** de Savornin Lohman Lardy
17.	France – Peru[2]	French claims against Peru	02 - 02 - 1914	11 - 10 - 1921	**Ostertag**[3] Sarrut[3] Elguera
18.	United States of America – Norway[2]	Norwegian shipowners' claims	30 - 06 - 1921	13 - 10 - 1922	**Vallotton**[3] Anderson[3] Vogt[3]
19.	United States of America – The Netherlands[4]	The Island of Palmas case (or Miangas)	23 - 01 - 1925	04 - 04 - 1928	**Huber**
20.	Great Britain – France[2]	Chevreau claims	04 - 03 - 1930	09 - 06 - 1931	**Beichmann**
21.	Sweden – United States of America[2]	Claims of the Nordstjernan company	17 - 12 - 1930	18 - 07 - 1932	**Borel**
22.	Radio Corporation of America – China[2]	Interpretation of a contract of radio-telegraphic traffic	10 - 11 - 1928	13 - 04 - 1935	**van Hamel**[3] Hubert[3] Furrer[3]
23.	States of Levant under French Mandate – Egypt[2]	Radio-Orient	11 - 11 - 1938	02 - 04 - 1940	**van Lanschot**[3] Raestad Mondrup[3]

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
24.	France – Greece[2]	Administration of lighthouses	15 - 07 - 1931	24 - 07 - 1956	**Verzijl**[3] Mestre Charbouris[3]
25.	Turriff Construction (Sudan) Limited – Sudan[2]	Interpretation of a construction contract	21 - 10 - 1966	23 - 04 - 1970	**Erades**[3] Parker[3] Bentsi-Enchill[3]
26.	United States of America – United Kingdom of Great Britain and Northern Ireland[2]	Heathrow Airport user charges treaty obligations; amount of damages	16 - 12 - 1988	30 - 11 - 1992 02 - 05 - 1994 Settlement on amount of damages	**Foighel**[3] Fielding[3] Lever[3]
27.	Moiz Goh Pte. Ltd – State Timber Corporation of Sri Lanka[2]	Contract dispute	14 - 12 - 1989	05 - 05 - 1997	**Pinto**[3]
28.	African State – two foreign nationals[2]	Investment dispute	–	30 - 09 - 1997 Settled by agreement of parties	–
29.	Technosystem SpA – Taraba State Government and the Federal Government of Nigeria[2]	Contract dispute	21 - 02 - 1996	25 - 11 - 1996 Lack of jurisdiction	**Ajibola**
30.	Asian State-owned enterprise – three European enterprises[2]	Contract dispute	–	02 - 10 - 1996 Award on agreed terms	–
31.	State of Eritrea – Republic of Yemen[2]	Eritrea/Yemen: Sovereignty of various Red Sea Islands sovereignty; maritime delimitation	03 - 10 - 1996	09 - 10 - 1998 Award on sovereignty 17 - 12 - 1999 Award on maritime delimitation	**Jennings** Schwebel[3] El-Kosheri[3] Highet[3] Higgins
32.	Italy – Costa Rica[2]	Loan agreement between Italy and Costa Rica dispute arising under financing agreement	11 - 09 - 1997	26 - 06 - 1998	**Lalive**[3] Ferrari Bravo Hernandez Valle[3]
33.	Larsen – Hawaiian Kingdom[2]	Treaty interpretation	30 - 10 - 1999	05 - 02 - 2001	**Crawford**[3] Greenwood[3] Griffith[3]
34.	The Netherlands – France[2]	Treaty interpretation	21 - 10 -/17 - 12 - 1999	12 - 03 - 2004	**Skubiszewski** Guillaume Kooijmans[3]
35.	European corporation – African government	Contract dispute	04 - 08 - 2000	18 - 02 - 2003 Settled by agreement of parties	–
36.	Eritrea-Ethiopia Boundary Commission[2]	Boundary dispute	12 - 12 - 2000	13 - 04 - 2002	**Lauterpacht** Ajibola Reisman[3] Schwebel[3] Watts

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
37.	Eritrea-Ethiopia Claims Commission[2]	Settlement of claims arising from armed conflict	12 - 12 - 2000	01 - 07 - 2003 Partial Awards for prisoner of war claims 28 - 04 - 2004 Partial Awards for Central Front claims 17 - 12 - 2004 Partial Awards for civilians claims 19 - 12 - 2005 Partial Awards for remaining liability claims 17 - 08 - 2009 Final Award for damages	**van Houtte**[3] Aldrich[3] Crook[3] Paul[3] Reed[3]
38.	Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements[2]	Dispute with former private shareholders	07 - 03 - 2001 31 - 08 - 2001 24 - 10 - 2001	22 - 11 - 2002 Partial Award 19 - 09 - 2003 Final Award	**Reisman**[3] van den Berg[3] Frowein[3] Krafft[3] Lagarde[3]
39.	Ireland – United Kingdom[2]	Proceedings pursuant to the OSPAR Convention	15 - 06 - 2001	02 - 07 - 2003	**Reisman**[3] Griffith[3] Mustill[3]
40.	Saluka Investments B.V. – Czech Republic[2]	Investment treaty dispute	18 - 06 - 2001	17 - 03 - 2006 Partial Award	**Watts** Behrens[3] Fortier[3]
41.	Ireland – United Kingdom[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS) "MOX Plant Case"	25 - 10 - 2001	06 - 06 - 2008 Termination order following withdrawal of claim	**Mensah**[3] Fortier[3] Hafner Crawford[3] Watts
42.	European government – European corporation[2]	Investment treaty dispute	30 - 04 - 2002	24 - 05 - 2004 Settled by agreement of parties	–
43.	Two corporations – Asian government[2]	Contract dispute	16 - 08 - 2002	12 - 10 - 2004 Partial Award	–
44.	Telekom Malaysia Berhad – Government of Ghana[2]	Investment treaty dispute	10 - 02 - 2003	01 - 11 - 2005 Award on agreed terms	**Van den Berg**[3] Gaillard[3] Layton[3]
45.	Belgium – The Netherlands[2]	Dispute regarding the use and modernization of the "IJzeren Rijn" on the territory of The Netherlands	22/23 - 07 - 2003	24 - 05 - 2005	**Higgins** Schrans[3] Simma[3] Soons[3] Tomka
46.	Barbados – Trinidad and Tobago[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	16 - 02 - 2004	11 - 04 - 2006	**Schwebel**[3] Brownlie[3] Orrego Vicuña[3] Lowe[3] Watts
47.	Guyana – Suriname[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	24 - 02 - 2004	17 - 09 - 2007	**Nelson**[3] Hossain[3] Franck[3] Shearer Smit[3]

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
48.	Malaysia – Singapore[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	04 - 07 - 2003	01 - 09 - 2005 Award on agreed terms	**Pinto**[3] Hossain[3] Shearer Oxman[3] Watts
49.	1.The Channel Tunnel Group Limited 2. France-Mache S.A. – 1. United Kingdom 2. France[2]	Proceedings pursuant to the Treaty of Canterbury Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link (Eurotunnel)	17 - 12 - 2003	30 - 01 - 2007 Partial Award 2010 Termination order	**Crawford**[3] Fortier[3] Guillaume Millett[3] Paulsson
50.	Chemtura Corporation (formerly Crompton Corporation) – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	17 - 10 - 2002/ 17 - 02 - 2005	02 - 08 - 2010	**Kaufmann-Kohler**[3] Brower[3] Crawford[3]
51.	Vito G. Gallo – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	30 - 03 - 2007	15 – 9 – 2011	**Fernández-Armesto**[3] Castel[3] Lévy[3]
52.	Romak S.A. - The Republic of Uzbekistan[2]	Proceedings pursuant to the Agreement between the Swiss Confederation and the Republic of Uzbekistan on the Promotion and the Reciprocal Protection of Investments	06 - 09 - 2007	26 - 11 - 2009	**Mantilla-Serrano**[3] Rubins[3] Molfessis[3]
53.	The Government of Sudan – The Sudan People's Liberation Movement/Army[2]	Delimitation of the Abyei area	11 - 07 - 2008	22 – 07 - 2009	**Dupuy**[3] Al-Khasawneh Hafner Reisman[3] Schwebel
54.	Centerra Gold Inc. & Kumtor Gold Co. – Kyrgyz Republic[2]	Investment agreement dispute	08 - 03 - 2006	29 - 06 - 2009 Termination order	**Van den Berg**[3]
55.	TCW Group & Dominican Energy Holdings – Dominican Republic[2]	Proceedings conducted under the Central America-DR-USA Free Trade Agreement (CAFTA-DR)	21 - 12 - 2007	16 – 07 - 2009 Consent Award	**Böckstiegel**[3] Fernández-Armesto[3] Kantor[3]
56.	Bilcon of Delaware *et al.* – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	26-05-2008	-	**Simma**[3] McRae Schwartz[3]

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
57.	HICEE B.V. – The Slovak Republic[2]	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	17 - 12 - 2008	23 - 05 - 2011 Partial Award 17 - 10 - 2011 Supplementary and Final Award	**Berman** Tomka Brower[3]
58.	Polis Fundi Immobliare di Banche Popolare S.G.R.p.A – International Fund for Agricultural Development (IFAD)[2]	Contract dispute	10 - 11 - 2009	17 - 12 - 2010	**Reinisch**[3] Canu[3] Stern[3]
59.	European American Investment Bank AG – The Slovak Republic[2]	Proceedings pursuant to the Agreement Between the Republic of Austria and the Czech and Slovak Federal Republic Concerning the Promotion and Protection of Investments	23 - 11 - 2009	–	**Greenwood** Petsche[3] Stern[3]
60.	Bangladesh – India[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	08 - 10 - 2009	–	**Wolfrum**[3] Mensah[3] Rao[3] Shearer Treves[3]
61.	China Heilongjiang International Economic & Technical Cooperative Corporation *et al.* – Mongolia[2]	Proceedings pursuant to the Agreement between the Government of the Mongolian People's Republic and the Government of the People's Republic of China concerning the Encouragement and Reciprocal Protection of Investments dated August 26, 1991	12 - 02 - 2010	–	**Donovan**[3] Banifatemi[3] Clodfelter[3]
62.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	22 – 05 – 2007	31 – 08 – 2011	**Böckstiegel**[3] Brower[3] Van den Berg[3]

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5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
63.	Achmea B.V. (formerly known as Eureko B.V.) – The Slovak Republic	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments Between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	01 – 10 – 2008		**Lowe**[3] Van den Berg[3] Veeder[3]
64.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	23 – 09 – 2009		**Veeder**[3] Grigera Naón[3] Lowe[3]
65.	Pakistan – India	Indus Waters Treaty Arbitration	17 – 05 – 2010		**Schwebel** Berman Wheater[3] Caflisch Paulsson Simma[3] Tomka
66.	Guaracachi America, Inc. & Rurelec PLC – The Plurinational State of Bolivia	Proceedings pursuant to the Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Bolivia for the Promotion and Protection of Investments	10 – 11 – 2010		**Júdice**[3] Conthe[3] Vinuesa
67.	The Republic of Mauritius - The United Kingdom of Great Britain and Northern Ireland	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	20 – 12 – 2010		**Shearer** Greenwood Hoffmann[3] Kateka[3] Wolfrum[3]

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4. The proceedings of this case were conducted in writing exclusively.
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Exhibit “3”

Convention between the United States and other Powers for the pacific settlement of international disputes. Signed at The Hague October 18, 1907; ratification advised by the Senate April 2, 1908; ratified by the President of the United States February 23, 1909; ratification deposited with the Netherlands Government November 27, 1909; proclaimed February 28, 1910.

October 18, 1907.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

International arbitration. Preamble.

Whereas a Convention for the Pacific Settlement of International Disputes was concluded and signed at The Hague on October 18, 1907, by the respective Plenipotentiaries of the United States of America, Germany, the Argentine Republic, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Cuba, Denmark, the Dominican Republic, Ecuador, Spain, France, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, Luxemburg, Mexico, Montenegro, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Servia, Siam, Sweden, Switzerland, Turkey, Uruguay, and Venezuela, the original of which Convention, being in the French language is word for word as follows:

I.

CONVENTION

POUR LE RÈGLEMENT PACIFIQUE DES CONFLITS INTERNATIONAUX.

Contracting Powers.

SA MAJESTÉ L'EMPEREUR D'ALLEMAGNE, ROI DE PRUSSE; LE PRÉSIDENT DES ÉTATS-UNIS D'AMÉRIQUE; LE PRÉSIDENT DE LA RÉPUBLIQUE ARGENTINE; SA MAJESTÉ L'EMPEREUR D'AUTRICHE, ROI DE BOHÊME, ETC., ET ROI APOSTOLIQUE DE HONGRIE; SA MAJESTÉ LE ROI DES BELGES; LE PRÉSIDENT DE LA RÉPUBLIQUE DE BOLIVIE; LE PRÉSIDENT DE LA RÉPUBLIQUE DES ÉTATS-UNIS DU BRÉSIL; SON ALTESSE ROYALE LE PRINCE DE BULGARIE; LE PRÉSIDENT DE LA RÉPUBLIQUE DE CHILI; SA MAJESTÉ L'EMPEREUR DE CHINE; LE PRÉSIDENT DE LA RÉPUBLIQUE DE COLOMBIE; LE

[Translation.]

I.

CONVENTION

FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

Contracting Powers.

His Majesty the German Emperor, King of Prussia; the President of the United States of America; the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary; His Majesty the King of the Belgians; the President of the Republic of Bolivia; the President of the Republic of the United States of Brazil; His Royal Highness the Prince of Bulgaria; the President of the Republic of Chile; His Majesty the Emperor of China; the President of the Republic of Colombia; the Provisional Governor of the Republic of Cuba; His Majesty the King of Denmark; the President of the Dominican Republic; the President of the Republic of Ecuador; His Majesty the King

GOUVERNEUR PROVISOIRE DE LA RÉPUBLIQUE DE CUBA; SA MAJESTÉ LE ROI DE DANEMARK; LE PRÉSIDENT DE LA RÉPUBLIQUE DOMINICAINE; LE PRÉSIDENT DE LA RÉPUBLIQUE DE L'ÉQUATEUR; SA MAJESTÉ LE ROI D'ESPAGNE; LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE; SA MAJESTÉ LE ROI DU ROYAUME-UNI DE GRANDE BRETAGNE ET D'IRLANDE ET DES TERRITOIRES BRITANNIQUES AU DELÀ DES MERS, EMPEREUR DES INDES; SA MAJESTÉ LE ROI DES HELLÈNES; LE PRÉSIDENT DE LA RÉPUBLIQUE DE GUATÉMALA; LE PRÉSIDENT DE LA RÉPUBLIQUE D'HAÏTI; SA MAJESTÉ LE ROI D'ITALIE; SA MAJESTÉ L'EMPEREUR DU JAPON; SON ALTESSE ROYALE LE GRAND-DUC DE LUXEMBOURG, DUC DE NASSAU; LE PRÉSIDENT DES ÉTATS-UNIS MEXICAINS; SON ALTESSE ROYALE LE PRINCE DE MONTÉNÉGRO; SA MAJESTÉ LE ROI DE NORVÈGE; LE PRÉSIDENT DE LA RÉPUBLIQUE DE PANAMA; LE PRÉSIDENT DE LA RÉPUBLIQUE DU PARAGUAY; SA MAJESTÉ LA REINE DES PAYS-BAS; LE PRÉSIDENT DE LA RÉPUBLIQUE DU PÉROU; SA MAJESTÉ IMPÉRIALE LE SCHAH DE PERSE; SA MAJESTÉ LE ROI DE PORTUGAL ET DES ALGARVES, ETC.; SA MAJESTÉ LE ROI DE ROUMANIE; SA MAJESTÉ L'EMPEREUR DE TOUTES LES RUSSIES; LE PRÉSIDENT DE LA RÉPUBLIQUE DU SALVADOR; SA MAJESTÉ LE ROI DE SERBIE; SA MAJESTÉ LE ROI DE SIAM; SA MAJESTÉ LE ROI DE SUÈDE; LE CONSEIL FÉDÉRAL SUISSE; SA MAJESTÉ L'EMPEREUR DES OTTOMANS; LE PRÉSIDENT DE LA RÉPUBLIQUE ORIENTALE DE L'URUGUAY; LE PRÉSIDENT DES ÉTATS-UNIS DE VÉNÉZUÉLA:

of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of the Hellenes; the President of the Republic of Guatemala; the President of the Republic of Haïti; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; the President of the United States of Mexico; His Royal Highness the Prince of Montenegro; His Majesty the King of Norway; the President of the Republic of Panama; the President of the Republic of Paraguay; Her Majesty the Queen of the Netherlands; the President of the Republic of Peru; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, &c.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; the President of the Republic of Salvador; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden; the Swiss Federal Council; His Majesty the Emperor of the Ottomans; the President of the Oriental Republic of Uruguay; the President of the United States of Venezuela:

Animés de la ferme volonté de concourir au maintien de la paix générale;

Résolus à favoriser de tous leurs efforts le règlement amiable des conflits internationaux;

Reconnaissant la solidarité qui unit les membres de la société des nations civilisées;

Voulant étendre l'empire du droit et fortifier le sentiment de la justice internationale;

Convaincus que l'institution permanente d'une juridiction arbitrale accessible à tous, au sein des Puissances independantes, peut contribuer efficacement à ce résultat;

Considérant les avantages d'une organisation générale et régulière de la procédure arbitrale;

Estimant avec l'Auguste Initiateur de la Conférence internationale de la Paix qu'il importe de consacrer dans un accord international les principes d'équité et de droit sur lesquels reposent la sécurité des Etats et le bien-être des peuples;

Désireux, dans ce but, de mieux assurer le fontionnement pratique des Commissions d'enquête et des tribunaux d'arbitrage et de faciliter le recours à la justice arbitrale lorsqu'il s'agit de litiges de nature à comporter une procédure sommaire;

Ont jugé nécessaire de reviser sur certains points et de compléter l'œuvre de la Première Conférence de la Paix pour le règlement pacifique des conflits internationaux;

Les Hautes Parties contractantes ont résolu de conclure une nouvelle Convention à cet effet et ont nommé pour Leurs Plénipotentiaires, savoir:

SA MAJESTÉ L'EMPEREUR D'ALLEMAGNE, ROI DE PRUSSE:

Son Excellence le baron Marschall de Bieberstein, Son ministre d'état, Son ambassadeur extraordinaire et plénipotentiaire à Constantinople;

Animated by the sincere desire to work for the maintenance of general peace; Purpose of convention.

Resolved to promote by all the efforts in their power the friendly settlement of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Tribunal of Arbitration accessible to all, in the midst of independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an International Agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous, with this object, of insuring the better working in practice of Commissions of Inquiry and Tribunals of Arbitration, and of facilitating recourse to arbitration in cases which allow of a summary procedure;

Have deemed it necessary to revise in certain particulars and to complete the work of the First Peace Conference for the pacific settlement of international disputes; Vol. 32, p. 1779.

The High Contracting Parties have resolved to conclude a new Convention for this purpose, and have appointed the following as their Plenipotentiaries: Plenipotentiaries.

[Here follow the names of Plenipotentiaries.]

Plenipotentiaries—Continued.

M. le dr. Johannes Kriege, Son envoyé en mission extraordinaire à la présente Conférence, Son conseiller intime de légation et jurisconsulte au ministère Impérial des affaires étrangères, membre de la cour permanente d'arbitrage.

LE PRÉSIDENT DES ÉTATS-UNIS D'AMÉRIQUE:

Son Excellence M. Joseph H. Choate, ambassadeur extraordinaire;

Son Excellence M. Horace Porter, ambassadeur extraordinaire;

Son Excellence M. Uriah M. Rose, ambassadeur extraordinaire;

Son Excellence M. David Jayne Hill, envoyé extraordinaire et ministre plénipotentiaire de la République à La Haye;

M. Charles S. Sperry, contre-amiral, ministre plénipotentiaire;

M. George B. Davis, général de brigade, chef de la justice militaire de l'armée fédérale, ministre plénipotentiaire;

M. William I. Buchanan, ministre plénipotentiaire;

LE PRÉSIDENT DE LA RÉPUBLIQUE ARGENTINE:

Son Excellence M. Roque Saenz Peña, ancien ministre des affaires étrangères, envoyé extraordinaire et ministre plénipotentiaire de la République à Rome, membre de la cour permanente d'arbitrage;

Son Excellence M. Luis M. Drago, ancien ministre des affaires étrangères et des cultes de la République, député national, membre de la cour permanente d'arbitrage;

Son Excellence M. Carlos Rodriguez Larreta, ancien ministre des affaires étrangères et des cultes de la République, membre de la cour permanante d'arbitrage.

SA MAJESTÉ L'EMPEREUR D'AUTRICHE, ROI DE BOHÊME, ETC., ET ROI APOSTOLIQUE DE HONGRIE:

Son Excellence M. Gaëtan Mérey de Kapos-Mére, Son conseil-

Plenipotentiaries—Continued.

ler intime, Son ambassadeur extraordinaire et plénipotentiaire;

Son Excellence M. le baron Charles de Macchio, Son envoyé extraordinaire et ministre plénipotentiaire à Athènes.

SA MAJESTÉ LE ROI DES BELGES:

Son Excellence M. Beernaert, Son ministre d'état, membre de la chambre des représentants, membre de l'Institut de France et des Académies Royales de Belgique et de Roumanie, membre d'honneur de l'institut de droit international, membre de la cour permanente d'arbitrage;

Son Excellence M. J. Van den Heuvel, Son ministre d'état, ancien ministre de la justice;

Son Excellence M. le baron Guillaume, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye, membre de l'académie Royale de Roumanie.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE BOLIVIE:

Son Excellence M. Claudio Pinilla, ministre des affaires étrangères de la République, membre de la cour permanente d'arbitrage;

Son Excellence M. Fernando E. Guachalla, ministre plénipotentiaire à Londres.

LE PRÉSIDENT DE LA RÉPUBLIQUE DES ÉTATS-UNIS DU BRÉSIL:

Son Excellence M. Ruy Barbosa, ambassadeur extraordinaire et plénipotentiaire, membre de la cour permanente d'arbitrage;

Son Excellence M. Eduardo F. S. dos Santos Lisbôa, envoyé extraordinaire et ministre plénipotentiaire à La Haye.

SON ALTESSE ROYALE LE PRINCE DE BULGARIE:

M. Vrban Vinaroff, général-major de l'état-major, Son général à la suite;

M. Ivan Karandjouloff, procureur-général de la cour de cassation.

Plenipotentiaries—Continued.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE CHILI:

Son Excellence M. Domingo Gana, envoyé extraordinaire et ministre plénipotentiaire de la République à Londres;

Son Excellence M. Augusto Matte, envoyé extraordinaire et ministre plénipotentiaire de la République à Berlin.

Son Excellence M. Carlos Concha, ancien ministre de la guerre, ancien président de la chambre des députés, ancien envoyé extraordinaire et ministre plénipotentiaire à Buenos Aires.

SA MAJESTÉ L'EMPEREUR DE CHINE:

Son Excellence M. Lou-Tseng-Tsiang, Son ambassadeur extraordinaire; Son Excellence M. Tsien-Sun, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE COLOMBIE:

M. Jorge Holguin, général;

M. Santiago Pérez Triana;

Son Excellence M. Marceliano Vargas, général, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris.

LE GOUVERNEUR PROVISOIRE DE LA RÉPUBLIQUE DE CUBA:

M. Antonio Sanchez de Bustamante, professeur de droit international à l'université de la Havane, sénateur de la République;

Son Excellence M. Gonzalo de Quesada y Aróstegui, envoyé extraordinaire et ministre plénipotentiaire de la République à Washington;

M. Manuel Sanguily, ancien directeur de l'institut d'enseignement secondaire de la Havane, sénateur de la République.

SA MAJESTÉ LE ROI DE DANEMARK:

Son Excellence M. Constantin Brun, Son chambellan, Son envoyé extraordinaire et ministre plénipotentiaire à Washington;

Plenipotentiaries—Continued.

M. Christian Frederik Scheller, contre-amiral;

M. Axel Vedel, Son chambellan, chef de section au ministère Royal des affaires étrangères.

LE PRÉSIDENT DE LA RÉPUBLIQUE DOMINICAINE:

M. Francisco Henriquez y Carvajal, ancien secrétaire d'état au ministère des affaires étrangères de la République, membre de la cour permanente d'arbitrage;

M. Apolinar Tejera, recteur de l'institut professionnel de la République, membre de la cour permanente d'arbitrage.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE L'ÉQUATEUR

Son Excellence M. Victor Rendón, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris et à Madrid;

M. Enrique Dorn y de Alsúa, chargé d'affaires.

SA MAJESTÉ LE ROI D'ESPAGNE:

Son Excellence M. W. R. de Villa-Urrutia, sénateur, ancien ministre des affaires étrangères, son ambassadeur extraordinaire et plénipotentiaire à Londres;

Son Excellence M. José de la Rica y Calvo, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye;

M. Gabriel Maura y Gamazo, comte de Mortera, député aux Cortès.

LE PRÉSIDENT DE LA RÉPUBLIQUE FRANÇAISE:

Son Excellence M. Léon Bourgeois, ambassadeur extraordinaire de la République, sénateur, ancien président du conseil des ministres, ancien ministre des affaires étrangères, membre de la cour permanente d'arbitrage;

M. le baron d'Estournelles de Constant, sénateur, ministre plénipotentiaire de première classe, membre de la cour permanente d'arbitrage;

Plenipotentiaries—Continued.

M. Louis Renault, professeur à la faculté de droit à l'université de Paris, ministre plénipotentiaire honoraire, jurisconsulte du ministère des affaires étrangères, membre de l'Institut de France, membre de la cour permanente d'arbitrage;

Son Excellence M. Marcellin Pellet, envoyé extraordinaire et ministre plénipotentiaire de la République Française à La Haye.

SA MAJESTÉ LE ROI DU ROYAUME-UNI DE GRANDE BRETAGNE ET D'IRLANDE ET DES TERRITOIRES BRITANNIQUES AU DELÀ DES MERS, EMPEREUR DES INDES:

Son Excellence the Right Honourable Sir Edward Fry, G. C. B., membre du conseil privé, son ambassadeur extraordinaire, membre de la cour permanente d'arbitrage;

Son Excellence the Right Honourable Sir Ernest Mason Satow, G. C. M. G., membre du conseil privé, membre de la cour permanente d'arbitrage;

Son Excellence the Right Honourable Donald James Mackay Baron Reay, G. C. S. I., G. C. I.E., membre du conseil privé, ancien président de l'institut de droit international;

Son Excellence Sir Henry Howard, K. C. M. G., C. B., Son envoyé extraordinaire et ministre plénipotentiaire à La Haye.

SA MAJESTÉ LE ROI DES HELLÈNES:

Son Excellence M. Cléon Rizo Rangabé, Son envoyé extraordinaire et ministre plénipotentiaire à Berlin;

M. Georges Streit, professeur de droit international à l'université d'Athènes, membre de la cour permanente d'arbitrage.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE GUATÉMALA:

M. José Tible Machado, chargé d'affaires de la République à La Haye et à Londres, membre de la cour permanente d'arbitrage;

M. Enrique Gómez Carillo, chargé d'affaires de la République à Berlin.

Plenipotentiaries—Continued.

LE PRÉSIDENT DE LA RÉPUBLIQUE D'HAÏTI:

Son Excellence M. Jean Joseph Dalbémar, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris;

Son Excellence M. J. N. Léger, envoyé extraordinaire et ministre plénipotentiaire de la République à Washington;

M. Pierre Hudicourt, ancien professeur de droit international public, avocat au barreau de Port au Prince.

SA MAJESTÉ LE ROI D'ITALIE:

Son Excellence le Comte Joseph Tornielli Brusati Di Vergano, Sénateur du Royaume, ambassadeur de Sa Majesté le Roi à Paris, membre de la cour permanente d'arbitrage, président de la délégation Italienne.

Son Excellence M. le commandeur Guido Pompilj, député au parlement, sous-secrétaire d'état au ministère Royal des affaires étrangères;

M. le commandeur Guido Fusinato, conseiller d'état, député au parlement, ancien ministre de l'instruction.

SA MAJESTÉ L'EMPEREUR DU JAPON:

Son Excellence M. Keiroku Tsudzuki, Son ambassadeur extraordinaire et plénipotentiaire;

Son Excellence M. Aimaro Sato, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye.

SON ALTESSE ROYALE LE GRAND DUC DE LUXEMBOURG, DUC DE NASSAU:

Son Excellence M. Eyschen, Son ministre d'état, président du Gouvernement Grand Ducal;

M. le comte de Villers, chargé d'affaires du Grand-Duché à Berlin.

LE PRÉSIDENT DES ÉTATS-UNIS MEXICAINS:

Son Excellence M. Gonzalo A. Esteva, envoyé extraordinaire et ministre plénipotentiaire de la République à Rome;

Plenipotentiaries—Continued.

Son Excellence M. Sebastian B. de Mier, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris;

Son Excellence M. Francisco L. de la Barra, envoyé extraordinaire et ministre plénipotentiaire de la République à Bruxelles et à La Haye.

SON ALTESSE ROYALE LE PRINCE DE MONTÉNÉGRO:

Son Excellence M. Nelidow, conseiller privé Impérial actuel, ambassadeur de Sa Majesté l'Empereur de Toutes les Russies à Paris;

Son Excellence M. de Martens, conseiller privé Impérial, membre permanent du conseil du ministère Impérial des affaires étrangères de Russie;

Son Excellence M. Tcharykow, conseiller d'état Impérial actuel, envoyé extraordinaire et ministre plénipotentiaire de Sa Majesté l'Empereur de Toutes les Russies à La Haye.

SA MAJESTÉ LE ROI DE NORVÈGE:

Son Excellence M. Francis Hagerup, ancien président du conseil, ancien professeur de droit, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye et à Copenhague, membre de la cour permanente d'arbitrage.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE PANAMA:

M. Belisario Porras.

LE PRÉSIDENT DE LA RÉPUBLIQUE DU PARAGUAY:

Son Excellence M. Eusebio Machaïn, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris;

M. le comte G. Du Monceau de Bergendal, consul de la République à Bruxelles.

SA MAJESTÉ LA REINE DES PAYS-BAS:

M. W. H. de Beaufort, Son ancien ministre des affaires étrangères, membre de la seconde chambre des états-généraux;

Plenipotentiaries—Continued.

Son Excellence M. T. M. C. Asser, Son ministre d'état, membre du conseil d'état, membre de la cour permanente d'arbitrage;

Son Excellence le jonkheer J. C. C. den Beer Poortugael, lieutenant-général en retraite, ancien ministre de la guerre, membre du conseil d'état;

Son Excellence le jonkheer J. A. Röell, Son aide de camp en service extraordinaire, vice-amiral en retraite, ancien ministre de la marine;

M. J. A. Loeff, Son ancien ministre de la justice, membre de la seconde chambre des états généraux.

LE PRÉSIDENT DE LA RÉPUBLIQUE DU PÉROU:

Son Excellence M. Carlos G. Candamo, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris et à Londres, membre de la cour permanente d'arbitrage.

SA MAJESTÉ IMPÉRIALE LE SCHAH DE PERSE:

Son Excellence Samad Khan Momtazos Saltaneh, Son envoyé extraordinaire et ministre plénipotentiaire à Paris, membre de la cour permanente d'arbitrage;

Son Excellence Mirza Ahmed Khan Sadigh Ul Mulk, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye.

SA MAJESTÉ LE ROI DE PORTUGAL ET DES ALGARVES, ETC.:

Son Excellence M. le marquis de Soveral, Son conseiller d'état, pair du Royaume, ancien ministre des affaires étrangères, Son envoyé extraordinaire et ministre plénipotentiaire à Londres, Son ambassadeur extraordinaire et plénipotentiaire;

Son Excellence M. le comte de Selir, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye;

Son Excellence M. Alberto d'Oliveira, Son envoyé extraordinaire et ministre plénipotentiaire à Berne.

Plenipotentiaries—Continued.

SA MAJESTÉ LE ROI DE ROUMANIE:

Son Excellence M. Alexandre Beldiman, Son envoyé extraordinaire et ministre plénipotentiaire à Berlin;

Son Excellence M. Edgar Mavrocordato, Son envoyé extraordinaire et ministre plénipotentiaire à la Haye.

SA MAJESTÉ L'EMPEREUR DE TOUTES LES RUSSIES:

Son Excellence M. Nelidow, Son conseiller privé actuel, Son ambassadeur à Paris;

Son Excellence M. de Martens, Son conseiller privé, membre permanent du conseil du ministère Impérial des affaires étrangères, membre de la cour permanente d'arbitrage;

Son Excellence M. Tcharykow, Son conseiller d'état actuel, Son chambellan, Son envoyé extraordinaire et ministre plénipotentiaire à La Haye.

LE PRÉSIDENT DE LA RÉPUBLIQUE DU SALVADOR:

M. Pedro I. Matheu, chargé d'affaires de la République à Paris, membre de la cour permanente d'arbitrage;

M. Santiago Perez Triana, chargé d'affaires de la République à Londres.

SA MAJESTÉ LE ROI DE SERBIE:

Son Excellence M. Sava Grouïtch, général, président du conseil d'état;

Son Excellence M. Milovan Milovanovitch, Son envoyé extraordinaire et ministre plénipotentiaire à Rome, membre de la cour permanente d'arbitrage;

Son Excellence M. Michel Militchevitch, Son envoyé extraordinaire et ministre plénipotentiaire à Londres et à La Haye.

SA MAJESTÉ LE ROI DE SIAM:

Mom Chatidej Udom, major-général;

Plenipotentiaries—Continued.

M. C. Corragioni d'Orelli, Son conseiller de légation;
Luang Bhuvanarth Narübal, capitaine.

SA MAJESTÉ LE ROI DE SUÈDE, DES GOTHS ET DES VENDES:

Son Excellence M. Knut Hjalmar Leonard Hammarskjold, Son ancien ministre de la justice, Son envoyé extraordinaire et ministre plénipotentiaire à Copenhague, membre de la cour permanente d'arbitrage;
M. Johannes Hellner, Son ancien ministre sans portefeuille, ancien membre de la cour suprême de Suède, membre de la cour permanente d'arbitrage.

LE CONSEIL FÉDÉRAL SUISSE:

Son Excellence M. Gaston Carlin, envoyé extraordinaire et ministre plénipotentiaire de la Confédération suisse à Londres et à La Haye;
M. Eugène Borel, colonel d'état major-général, professeur à l'université de Genève;
M. Max Huber, professeur de droit à l'université de Zürich.

SA MAJESTÉ L'EMPEREUR DES OTTOMANS:

Son Excellence Turkhan Pacha, Son ambassadeur extraordinaire, ministre de l'evkaf;
Son Excellence Rechid Bey, Son ambassadeur à Rome;
Son Excellence Mehemmed Pacha, vice-amiral.

LE PRÉSIDENT DE LA RÉPUBLIQUE ORIENTALE DE L'URUGUAY:

Son Excellence M. José Batlle y Ordoñez, ancien président de la République, membre de la cour permanente d'arbitrage.
Son Excellence M. Juan P. Castro, ancien président du sénat, envoyé extraordinaire et ministre plénipotentiaire de la République à Paris, membre de la cour permanente d'arbitrage.

LE PRÉSIDENT DES ETATS UNIS DE VÉNÉZUÉLA:

M. José Gil Fortoul, chargé d'affaires de la République à Berlin.

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:

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

Maintenance of general peace.

Titre I. Du maintien de la paix générale.

Article Premier.

Peaceful settlement of differences.

En vue de prévenir autant que possible le recours à la force dans les rapports entre les Etats, les Puissances contractantes conviennent d'employer tous leurs efforts pour assurer le règlement pacifique des différends internationaux.

Part I.—The Maintenance of General Peace.

Article 1.

With a view to obviating as far as possible recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences.

Good offices and mediation.

Titre II. Des bons offices et de la médiation.

Article 2.

Recourse to good offices of friendly Powers.

En cas de dissentiment grave ou de conflit, avant d'en appeler aux armes, les Puissances contractantes conviennent d'avoir recours, en tant que les circonstances le permettront, aux bons offices ou à la médiation d'une ou de plusieurs Puissances amies.

Part II.—Good Offices and Mediation.

Article 2.

In case of serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

Article 3.

Offers of mediation.

Indépendamment de ce recours, les Puissances contractantes jugent utile et désirable qu'une ou plusieurs Puissances étrangères au conflit offrent de leur proper initiative, en tant que les circonstances s'y prêtent, leurs bons offices ou leur médiation aux Etats en conflit.

During hostilities.

Le droit d'offrir les bons offices ou la médiation appartient aux Puissances étrangères au conflit, même pendant le cours des hostilités.

Not an unfriendly act.

L'exercice de ce droit ne peut jamais être considéré par l'une ou l'autre des Parties en litige comme un acte peu amical.

Article 3.

Independently of this recourse, the Contracting Powers deem it expedient and desirable that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

ARTICLE 4.

Le rôle du médiateur consiste à concilier les prétentions opposées et à apaiser les ressentiments qui peuvent s'être produits entre les États en conflit.

ARTICLE 4.

Scope of mediator.

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

ARTICLE 5.

Les fonctions du médiateur cessent du moment où il est constaté, soit par l'une des Parties en litige, soit par le médiateur lui-même, que les moyens de conciliation proposés par lui ne sont pas acceptés.

ARTICLE 5.

End of mediator's functions.

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

ARTICLE 6.

Les bons offices et la médiation, soit sur le recours des Parties en conflit, soit sur l'initiative des Puissances étrangères au conflit, ont exclusivement le caractère de conseil et n'ont jamais force obligatoire.

ARTICLE 6.

Not binding.

Good offices and mediation undertaken either at the request of the parties in dispute or on the initiative of Powers strangers to the dispute have exclusively the character of advice, and never have binding force.

ARTICLE 7.

L'acceptation de la médiation ne peut avoir pour effet, sauf convention contraire, d'interrompre, de retarder ou d'entraver la mobilisation et autres mesures préparatoires à la guerre.

Si elle intervient après l'ouverture des hostilités, elle n'interrompt pas, sauf convention contraire, les opérations militaires en cours.

ARTICLE 7.

War measures not *interrupted*.

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted in the absence of an agreement to the contrary.

ARTICLE 8.

Les Puissances contractantes sont d'accord pour recommander l'application, dans les circonstances qui le permettent, d'une médiation spéciale sous la forme suivante.

En cas de différend grave compromettant la paix, les Etats en conflit choisissent respectivement une Puissance à laquelle ils confient la mission d'entrer en rapport direct avec la Puissance choisie d'autre part, à l'effet de prévenir la rupture des relations pacifiques.

ARTICLE 8.

Special mediation.

The Contracting Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:—

Choosing mediators.

In case of a serious difference endangering peace, the States at variance choose respectively a Power, to which they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

Direct communication to cease between States in dispute.

Pendant la durée de ce mandat dont le terme, sauf stipulation contraire, ne peut excéder trente jours, les Etats en litige cessent tout rapport direct au sujet du conflit, lequel est considéré comme déféré exclusivement aux Puissances médiatrices. Celles-ci doivent appliquer tous leurs efforts à régler le différend.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

Efforts to restore peace.

En cas de rupture effective des relations pacifiques, ces Puissances demeurent chargées de la mission commune de profiter de toute occasion pour rétablir la paix.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

International commissions of inquiry.

Titre III. Des Commissions internationales d'enquête.

Part III.—International Commissions of Inquiry.

Article 9.

Article 9.

Investigations of differences of opinion as to facts.

Dans les litiges d'ordre international n'engageant ni l'honneur ni des intérêts essentiels et provenant d'une divergence d'appréciation sur des points de fait, les Puissances contractantes jugent utile et désirable que les Parties qui n'auraient pu se mettre d'accord par les voies diplomatiques instituent, en tant que les circonstances le permettront, une Commission internationale d'enquête chargée de faciliter la solution de ces litiges en éclaircissant, par un examen impartial et consciencieux, les questions de fait.

In disputes of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the Contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

Article 10.

Article 10.

Special agreements.

Les Commissions internationales d'enquête sont constituées par convention spéciale entre les Parties en litige.

International Commissions of Inquiry are constituted by special agreement between the parties in dispute.

Extent of commission's jurisdiction.

La convention d'enquête précise les faits à examiner; elle détermine le mode et le délai de formation de la Commission et l'étendue des pouvoirs des Commissaires.

The Inquiry Convention defines the facts to be examined; it determines the mode and time in which the Commission is to be formed and the extent of the powers of the Commissioners.

Meetings, etc.

Elle détermine également, s'il y a lieu, le siège de la Commission et la faculté de se déplacer, la langue dont la Commission fera usage et celles dont l'emploi sera autorisé devant elle, ainsi que la date à laquelle chaque Partie devra déposer son exposé des faits, et généralement toutes les con-

It also determines, if there is need, where the Commission is to sit, and whether it may remove to another place, the language the Commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and,

ditions dont les Parties sont convenues.

Si les Parties jugent nécessaire de nommer des assesseurs, la convention d'enquête détermine le mode de leur désignation et l'étendue de leurs pouvoirs.

ARTICLE 11.

Si la convention d'enquête n'a pas désigné le siège de la Commission, celle-ci siégera à La Haye.

Le siège une fois fixé ne peut être changé par la Commission qu'avec l'assentiment des Parties.

Si la convention d'enquête n'a pas déterminé les langues à employer, il en est décidé par la Commission.

ARTICLE 12.

Sauf stipulation contraire, les Commissions d'enquête sont formées de la manière déterminée par les articles 45 et 57 de la présente Convention

ARTICLE 13.

En cas de décès, de démission ou d'empêchement, pour quelque cause que ce soit, de l'un des Commissaires, ou éventuellement de l'un des assesseurs, il est pourvu à son replacement selon le mode fixé pour sa nomination.

ARTICLE 14.

Les Parties ont le droit de nommer auprès de la Commission d'enquête des agents spéciaux avec la mission de Les représenter et de servir d'intermédiaires entre Elles et la Commission.

Elles sont, en outre, autorisées à charger des conseils ou avocats nommés par elles, d'exposer et de soutenir leurs intérêts devant la Commission.

ARTICLE 15.

Le Bureau international de la Cour permanente d'arbitrage sert

generally speaking, all the conditions upon which the parties have agreed.

Assessors.

If the parties consider it necessary to appoint Assessors, the Convention of Inquiry shall determine the mode of their selection and the extent of their powers.

ARTICLE 11.

Place of meeting, etc.

If the Inquiry Convention has not determined where the Commission is to sit, it will sit at The Hague.

The place of meeting, once fixed, cannot be altered by the Commission except with the assent of the parties.

If the Inquiry Convention has not determined what languages are to be employed, the question shall be decided by the Commission.

ARTICLE 12.

Formation.

Unless an undertaking is made to the contrary, Commissions of Inquiry shall be formed in the manner determined by Articles 45 and 57 of the present Convention.

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ARTICLE 13.

Filling vacancies.

Should one of the Commissioners or one of the Assessors, should there be any, either die, or resign, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

ARTICLE 14.

Special agents.

The parties are entitled to appoint special agents to attend the Commission of Inquiry, whose duty it is to represent them and to act as intermediaries between them and the Commission.

Counsel.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the Commission.

ARTICLE 15.

Assistance of International Bureau.

The International Bureau of the Permanent Court of Arbitra-

de greffe aux Commissions qui siègent à La Haye, et mettra ses locaux et son organisation à la disposition des Puissance contractantes pour le fonctionnement de la Commission d'enquête.

tion acts as registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal of the Contracting Powers for the use of the Commission of Inquiry.

ARTICLE 16.

ARTICLE 16.

Registry.

Si la Commission siège ailleurs qu'à La Haye, elle nomme un Secrétaire-Général dont le bureau lui sert de greffe.

If the Commission meets elsewhere than at The Hague, it appoints a Secretary-General, whose office serves as registry.

Functions.

Le greffe est chargé, sous l'autorité du Président, de l'organisation matérielle des séances de la Commission, de la rédaction des procès-verbaux et, pendant le temps de l'enquête, de la garde des archives qui seront ensuite versées au Bureau international de La Haye.

It is the function of the registry, under the control of the President, to make the necessary arrangements for the sittings of the Commission, the preparation of the Minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

ARTICLE 17.

ARTICLE 17.

General rules of procedure.

En vue de faciliter l'institution et le fonctionnement des Commissions d'enquête, les Puissances contractantes recommandent les règles suivantes qui seront applicables à la procédure d'enquête en tant que les Parties n'adopteront pas d'autres règles.

In order to facilitate the constitution and working of Commissions of Inquiry, the Contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

ARTICLE 18.

ARTICLE 18.

Further details.

La Commission règlera les détails de la procédure non prévus dans la convention spéciale d'enquête ou dans la présente Convention, et procèdera à toutes les formalités que comporte l'administration des preuves.

The Commission shall settle the details of the procedure not covered by the special Inquiry Convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

ARTICLE 19.

ARTICLE 19.

Hearings.

L'enquête a lieu contradictoirement.

Aux dates prévues, chaque Partie communique à la Commission et à l'autre Partie les exposés des faits, s'il y a lieu, et, dans tous les cas, les actes, pièces et documents qu'Elle juge utiles à la découverte de la vérité, ainsi que la liste des témoins et des experts qu'elle désire faire entendre.

On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the Commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

ARTICLE 20.

La Commission a la faculté, avec l'assentiment des Parties, de se transporter momentanément sur les lieux où elle juge utile de recourir à ce moyen d'information, ou d'y déléguer un ou plusieurs de ses membres. L'autorisation de l'Etat sur le territoire duquel il doit être procédé à cette information devra être obtenue.

ARTICLE 20.

Change of meeting place.

The Commission is entitled, with the assent of the Powers, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send one or more of its members. Permission must be obtained from the State on whose territory it is proposed to hold the inquiry.

ARTICLE 21.

Toutes constatations matérielles, et toutes visites des lieux doivent être faites en présence des agents et conseils des Parties ou eux dûment appelés.

ARTICLE 21.

Presence at investigations.

Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

ARTICLE 22.

La Commission a le droit de solliciter de l'une ou l'autre Partie telles explications ou informations qu'elle juge utiles.

ARTICLE 22.

Explanations, etc.

The Commission is entitled to ask from either party for such explanations and information as it considers necessary.

ARTICLE 23.

Les Parties s'engagent à fournir à la Commission d'enquête, dans la plus large mesure qu'Elles jugeront possible, tous les moyens et toutes les facilités nécessaires pour la connaissance complète et l'appréciation exacte des faits en question.

Elles s'engagent à user des moyens dont Elles disposent d'après leur législation intérieure, pour assurer la comparution des témoins ou des experts se trouvant sur leur territoire et cités devant la Commission.

Si ceux-ci ne peuvent comparaître devant la Commission, Elles feront procéder à leur audition devant leurs autorités compétentes.

ARTICLE 23.

Presenting evidence.

The parties undertake to supply the Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with, and to accurately understand, the facts in question.

Appearance of witnesses.

They undertake to make use of the means at their disposal, under their municipal law, to insure the appearance of the witnesses or experts who are in their territory and have been summoned before the Commission.

Depositions.

If the witnesses or experts are unable to appear before the Commission, the parties will arrange for their evidence to be taken before the qualified officials of their own country.

ARTICLE 24.

Pour toutes les notifications que la Commission aurait à faire sur le territoire d'une tierce Puissance contractante, la Commission s'adressera directement

ARTICLE 24.

Serving notice in other countries.

For all notices to be served by the Commission in the territory of a third Contracting Power, the Commission shall apply direct to the Government of the said Power.

au Gouvernement de cette Puissance. Il en sera de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

Les requêtes adressées à cet effet seront exécutées suivant les moyens dont la Puissance requise dispose d'après sa législation intérieure. Elles ne peuvent être refusées que si cette Puissance les juge de nature à porter atteinte à Sa souveraineté ou à Sa sécurité.

La Commission aura aussi toujours la faculté de recourir à l'intermédiaire de la Puissance sur le territoire de laquelle elle a son siège.

The same rule applies in the case of steps being taken on the spot to procure evidence.

The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal law allow. They can not be rejected unless the Power in question considers they are calculated to impair its sovereign rights or its safety.

The Commission will equally be always entitled to act through the Power on whose territory it sits.

ARTICLE 25.

Summoning witnesses.

Les témoins et les experts sont appelés à la requête des Parties ou d'office par la Commission, et, dans tous les cas, par l'intermédiaire du Gouvernement de l'Etat sur le territoire duquel ils se trouvent.

Hearings.

Les témoins sont entendus, successivement et séparément, en présence des agents et des conseils et dans un ordre à fixer par la Commission.

ARTICLE 25.

The witnesses and experts are summoned on the request of the parties or by the Commission of its own motion, and, in every case, through the Government of the State in whose territory they are.

The witnesses are heard in succession and separately, in the presence of the agents and counsel, and in the order fixed by the Commission.

ARTICLE 26.

Examination of witnesses.

L'interrogatoire des témoins est conduit par le Président.

Les membres de la Commission peuvent néanmoins poser à chaque témoin les questions qu'ils croient convenables pour éclaircir ou compléter sa déposition, ou pour se renseigner sur tout ce qui concerne le témoin dans les limites nécessaires à la manifestation de la vérité.

Les agents et les conseils des Parties ne peuvent interrompre le témoin dans sa déposition, ni lui faire aucune interpellation directe, mais peuvent demander au Président de poser au témoin telles questions complémentaires qu'ils jugent utiles.

ARTICLE 26.

The examination of witnesses is conducted by the President.

The members of the Commission may however put to each witness questions which they consider likely to throw light on and complete his evidence, or get information on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the President to put such additional questions to the witness as they think expedient.

ARTICLE 27.

Restriction on witnesses.

Le témoin doit déposer sans qu'il lui soit permis de lire aucun projet écrit. Toutefois, il peut

ARTICLE 27.

The witness must give his evidence without being allowed to read any written draft. He may,

être autorisé par le Président à s'aider de notes ou documents si la nature des faits rapportés en nécessite l'emploi.

however, be permitted by the President to consult notes or documents if the nature of the facts referred to necessitates their employment.

ARTICLE 28.

Procès-verbal de la déposition du témoin est dressé séance tenante et lecture en est donnée au témoin. Le témoin peut y faire tels changements et additions que bon lui semble et qui seront consignés à la suite de sa déposition.

Lecture faite au témoin de l'ensemble de sa déposition, le témoin est requis de signer.

ARTICLE 28.

Transcript of evidence.

A Minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which will be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is asked to sign it.

ARTICLE 29.

Les agents sont autorisés, au cours ou à la fin de l'enquête, à présenter par écrit à la Commission et à l'autre Partie tels dires, réquisitions ou résumés de fait, qu'ils jugent utiles à la découverte de la vérité.

ARTICLE 29.

Statements by agents.

The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the Commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

ARTICLE 30.

Les délibérations de la Commission ont lieu à huis clos et restent secrètes.

Toute décision est prise à la majorité des membres de la Commission.

Le refus d'un membre de prendre part au vote doit être constaté dans le procès-verbal.

ARTICLE 30.

Decisions of commission.

The Commission considers its decisions in private and the proceedings are secret.

Majority to decide.

All questions are decided by a majority of the members of the Commission.

Record of declining to vote.

If a member declines to vote, the fact must be recorded in the Minutes.

ARTICLE 31.

Les séances de la Commission ne sont publiques et les procès-verbaux et documents de l'enquête ne sont rendus publics qu'en vertu d'une décision de la Commission, prise avec l'assentiment des Parties.

ARTICLE 31.

Sittings, etc., not public.

The sittings of the Commission are not public, nor the Minutes and documents connected with the inquiry published except in virtue of a decision of the Commission taken with the consent of the parties.

ARTICLE 32.

Les Parties ayant présenté tous les éclaircissements et preuves, tous les témoins ayant été entendus, le Président prononce la clôture de l'enquête et la Commission s'ajourne pour délibérer et rédiger son rapport.

ARTICLE 32.

Termination of inquiry.

After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the President declares the inquiry terminated, and the Commission adjourns to deliberate and to draw up its Report.

ARTICLE 33.

Report.

Le rapport est signé par tous les membres de la Commission.

Si un des membres refuse de signer, mention en est faite; le rapport reste néanmoins valable.

ARTICLE 33.

The Report is signed by all the members of the Commission.

If one of the members refuses to sign, the fact is mentioned; but the validity of the Report is not affected.

ARTICLE 34.

Reading of report.

Le rapport de la Commission est lu en séance publique, les agents et les conseils des Parties présents ou dûment appelés.

Un exemplaire du rapport est remis à chaque Partie.

ARTICLE 34.

The Report of the Commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the Report is given to each party.

ARTICLE 35.

Effect of report.

Le rapport de la Commission, limité à la constatation des faits, n'a nullement le caractère d'une sentence arbitrale. Il laisse aux Parties une entière liberté pour la suite à donner à cette constatation.

ARTICLE 35.

The Report of the Commission is limited to a statement of facts, and has in no way the character of an Award. It leaves to the parties entire freedom as to the effect to be given to the statement

ARTICLE 36.

Expenses.

Chaque Partie supporte ses propres frais et une part égale des frais de la Commission

ARTICLE 36.

Each party pays its own expenses and an equal share of the expenses incurred by the Commission.

International arbitration.

TITRE IV. DE L'ARBITRAGE INTERNATIONAL.

PART IV.—INTERNATIONAL ARBITRATION.

System.

CHAPITRE I.—*De la Justice arbitrale.*

CHAPTER I.—*The system of arbitration.*

ARTICLE 37.

Object.

L'arbitrage international a pour objet le règlement de litiges entre les Etats par des juges de leur choix et sur la base du respect du droit.

Submission to award.

Le recours à l'arbitrage implique l'engagement de se soumettre de bonne foi à la sentence.

ARTICLE 37.

International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the Award.

ARTICLE 38.

Recognition by Powers.

Dans les questions d'ordre juridique, et en premier lieu, dans les questions d'interprétation ou d'application des Conventions internationales, l'arbitrage est reconnu par les Puissances contractantes comme le moyen le

ARTICLE 38.

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Contracting Powers as the most effective, and, at the same time, the most equi-

plus efficace et en même temps le plus équitable de régler les litiges qui n'ont pas été résolus par les voies diplomatiques.

En conséquence, il serait désirable que, dans les litiges sur les questions susmentionnées, les Puissances contractantes eussent, le cas échéant, recours à l'arbitrage, en tant que les circontsances le permettraient.

ARTICLE 39.

La convention d'arbitrage est conclue pour des contestations déjà nées ou pour des contestations éventuelles.

Elle peut concerner tout litige ou seulement les litiges d'une catégorie déterminée.

ARTICLE 40.

Indépendamment des Traités généraux ou particuliers qui stipulent actuellement l'obligation du recours à l'arbitrage pour les Puissances contractantes, ces Puissances se réservent de conclure des accords nouveaux, généraux ou particuliers, en vue d'étendre l'arbitrage obligatoire à tous les cas qu'Elles jugeront possible de lui soumettre.

CHAPITRE II.—*De la Cour permanente d'arbitrage.*

ARTICLE 41.

Dans le but de faciliter le recours immédiat à l'arbitrage pour les différends internationaux qui n'ont pu être réglés par la voie diplomatique, les Puissances contractantes s'engagent à maintenir, telle qu'elle a été établie par la Première Conférence de la Paix, la Cour permanente d'arbitrage, accessible en tout temps et fonctionnant, sauf stipulation contraire des Parties, conformément aux règles de procédure insérées dans la présente Convention.

ARTICLE 42.

La Cour permanente est compétente pour tous les cas d'arbitrage, à moins qu'il n'y ait entente entre les Parties pour l'établissement d'une juridiction spéciale.

table means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the Contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit. Recourse to its use.

ARTICLE 39.

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually. Questions to be considered.

It may embrace any dispute or only disputes of a certain category.

ARTICLE 40.

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Contracting Powers, the said Powers reserve to themselves the right of concluding new Agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it. Extension of principle reserved.

CHAPTER II.—*The permanent court of arbitration.* Permanent Court of Arbitration.

ARTICLE 41.

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention. Maintenance agreed to. Vol. 32, p. 1789.

ARTICLE 42.

The Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special Tribunal. Authority.

ARTICLE 43.

Location.

La Cour permanente a son siège à La Haye.

International Bureau. Purpose, etc.

Un Bureau International sert de greffe à la Cour; il est l'intermédiaire des communications relatives aux réunions de celle-ci; il a la garde des archives et la gestion de toutes les affaires administratives.

Awards of special tribunals.

Les Puissances contractantes s'engagent à communiquer au Bureau, aussitôt que possible, une copie certifiée conforme de toute stipulation d'arbitrage intervenue entre Elles et de toute sentence arbitrale Les concernant et rendue par des juridictions spéciales.

Execution of awards.

Elles s'engagent à communiquer de même au Bureau les lois, règlements et documents constatant éventuellement l'exécution des sentences rendues par la Cour.

ARTICLE 44.

Selection of arbitrators.

Chaque Puissance contractante désigne quatre personnes au plus, d'une compétence reconnue dans les questions de droit international, jouissant de la plus haute considération morale et disposées à accepter les fonctions d'arbitre.

List of members.

Les personnes ainsi désignées sont inscrites, au titre de Membres de la Cour, sur une liste qui sera notifiée à toutes les Puissances contractantes par les soins du Bureau.

Changes.

Toute modification à la liste des arbitres est portée, par les soins du Bureau, à la connaissance des Puissances contractantes.

Selection in common.

Deux ou plusieurs Puissances peuvent s'entendre pour la désignation en commun d'un ou de plusieurs Membres.

La même personne peut être désignée par des Puissances différentes.

Terms

Les Membres de la Cour sont nommés pour un terme de six ans. Leur mandat peut être renouvelé.

Vacancies.

En cas de décès ou de retraite d'un Membre de la Cour, il est pourvu à son remplacement selon le mode fixé pour sa nomination, et pour une nouvelle période de six ans.

ARTICLE 43.

The Permanent Court sits at The Hague.

An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has charge of the archives and conducts all the administrative business.

The Contracting Powers undertake to communicate to the Bureau, as soon as possible, a certified copy of any conditions of arbitration arrived at between them and of any Award concerning them delivered by a special Tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the Awards given by the Court.

ARTICLE 44.

Each Contracting Power selects four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrator.

The persons thus selected are inscribed, as members of the Court, in a list which shall be notified to all the Contracting Powers by the Bureau.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Contracting Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. These appointments are renewable.

Should a member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case the appointment is made for a fresh period of six years.

ARTICLE 45.

Lorsque les Puissances contractantes veulent s'adresser à la Cour permanente pour le règlement d'un différend survenu entre Elles, le choix des arbitres appelés à former le Tribunal compétent pour statuer sur ce différend, doit être fait dans la liste générale des Membres de la Cour.

A défaut de constitution du Tribunal arbitral par l'accord des Parties, il est procédé de la manière suivante:

Chaque Partie nomme deux arbitres, dont un seulement peut être son national ou choisi parmi ceux qui ont été désignés par Elle comme Membres de la Cour permanente. Ces arbitres choisissent ensemble un surarbitre.

En cas de partage des voix, le choix du surarbitre est confié à une Puissnace tierce, désignée de commun accord par les Parties.

Si l'accord ne s'établit pas à ce sujet, chaque Partie désigne une Puissance différente et le choix du surarbitre est fait de concert par les Puissances ainsi désignées.

Si, dans un délai de deux mois, ces deux Puissances n'ont pu tomber d'accord, chacune d'Elles présente deux candidats pris sur la liste des Membres de la Cour permanente, en dehors des Membres désignés par les Parties et n'étant les nationaux d'aucune d'Elles. Le sort détermine lequel des candidats ainsi présentés sera le surarbitre.

ARTICLE 46.

Dès que le Tribunal est composé, les Parties notifient au Bureau leur décision de s'adresser à la Cour, le texte de leur compromis, et les noms des arbitres.

ARTICLE 45.

When the Contracting Powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the Arbitrators called upon to form the Tribunal with jurisdiction to decide this difference must be chosen from the general list of members of the Court.

Powers to choose tribunal.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:—

Failure of direct agreement.

Each party appoints two Arbitrators, of whom one only can be its national or chosen from among the persons selected by it as members of the Permanent Court. These Arbitrators together choose an Umpire.

Appointment of separate arbitrators.

If the votes are equally divided, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

Umpire.

If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

Selection by other Powers.

If, within two months' time, these two Powers cannot come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them. Drawing lots determines which of the candidates thus presented shall be Umpire.

Determination of umpire in case of disagreement.

ARTICLE 46.

The Tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court, the text of their "Compromis,"* and the names of the Arbitrators.

Notification to Bureau.

* The preliminary Agreement in an international arbitration defining the point at issue and arranging the procedure to be followed.

Notification to arbitrators.

Le Bureau communique sans délai à chaque arbitre le compromis et les noms des autres Membres du Tribunal.

The Bureau communicates without delay to each Arbitrator the "Compromis," and the names of the other members of the Tribunal.

Meeting of tribunal.

Le Tribunal se réunit à la date fixée par les Parties. Le Bureau pourvoit à son installation.

The Tribunal assembles at the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

Diplomatic privileges.

Les Membres du Tribunal, dans l'exercice de leurs fonctions et en dehors de leur pays, jouissent des privilèges et immunités diplomatiques.

The members of the Tribunal, in the exercise of their duties and out of their own country, enjoy diplomatic privileges and immunities.

ARTICLE 47.

ARTICLE 47.

Use of Bureau for special boards.

Le Bureau est autorisé à mettre ses locaux et son organisation à la disposition des Puissances contractantes pour le fonctionnement de toute juridiction spéciale d'arbitrage.

The Bureau is authorized to place its offices and staff at the disposal of the Contracting Powers for the use of any special Board of Arbitration.

Extension to non-contracting powers.

La juridiction de la Cour permanente peut être étendue, dans les conditions prescrites par les règlements, aux litiges existant entre des Puissances non contractantes ou entre des Puissances contractantes et des Puissances non contractantes, si les Parties sont convenues de recourir à cette juridiction.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal.

ARTICLE 48.

ARTICLE 48.

Notifying disputants.

Les Puissances contractantes considèrent comme un devoir, dans le cas où un conflit aigu menacerait d'éclater entre deux ou plusieurs d'entre Elles, de rappeler à celles-ci que la Cour permanente leur est ouverte.

The Contracting Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Regarded as a friendly act.

En conséquence, Elles déclarent que le fait de rappeler aux Parties en conflit les dispositions de la présente Convention, et le conseil donné, dans l'intérêt supérieur de la paix, de s'adresser à la Cour permanente, ne peuvent être considérés que comme actes de bons offices.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

Offer for arbitration.

En cas de conflit entre deux Puissances, l'une d'Elles pourra toujours adresser au Bureau International une note contenant sa déclaration qu'Elle serait disposée à soumettre le différend à un arbitrage.

In case of dispute between two Powers, one of them can always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

Notice to other Power.

Le Bureau devra porter aussitôt la déclaration à la connaissance de l'autre Puissance.

The Bureau must at once inform the other Power of the declaration.

ARTICLE 49.

Le Conseil administratif permanent, composé des Représentants diplomatiques des Puissances contractantes accrédités à La Haye et du Ministre des Affaires Etrangères des Pays-Bas, qui remplit les fonctions de Président, a la direction et le contrôle du Bureau International.

Le Conseil arrête son règlement d'ordre ainsi que tous autres règlements nécessaires.

Il décide toutes les questions administratives qui pourraient surgir touchant le fonctionnement de la Cour.

Il a tout pouvoir quant à la nomination, la suspension ou la révocation des fonctionnaires et employés du Bureau.

Il fixe les traitements et salaires, et contrôle la dépense générale.

La présence de neuf membres dans les réunions dûment convoquées suffit pour permettre au Conseil de délibérer valablement. Les décisions sont prises à la majorité des voix.

Le Conseil communique sans délai aux Puissances contractantes les règlements adoptés par lui. Il Leur présente chaque année un rapport sur les travaux de la Cour, sur le fonctionnement des services administratifs et sur les dépenses. Le rapport contient également un résumé du contenu essentiel des documents communiqués au Bureau par les Puissances en vertu de l'article 43 alinéas 3 et 4.

ARTICLE 50.

Les frais du Bureau seront supportés par les Puissances contractantes dans la proportion établie pour le Bureau international de l'Union postale universelle.

Les frais à la charge des Puissances adhérentes seront comptés à partir du jour où leur adhésion produit ses effets.

ARTICLE 49.

The Permanent Administrative Council, composed of the Diplomatic Representatives of the Contracting Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as President, is charged with the direction and control of the International Bureau. Administrative council.

The Council settles its rules of procedure and all other necessary regulations. Functions.

It decides all questions of administration which may arise with regard to the operations of the Court.

It has entire control over the appointment, suspension, or dismissal of the officials and employees of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes. Quorum, etc.

The Council communicates to the Contracting Powers without delay the regulations adopted by it. Regulations.

It furnishes them with an annual Report on the labours of the Court, the working of the administration, and the expenditure. The Report likewise contains a résumé of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43 paragraphs 3 and 4. Annual report. *Ante*, p. 2222.

ARTICLE 50.

The expenses of the Bureau shall be borne by the Contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union. Expenses. Vol. 35, p. 1730.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

Procedure.

CHAPITRE III.—*De la procédure arbitrale.*

ARTICLE 51.

General rules.

En vue de favoriser le développement de l'arbitrage, les Puissances contractantes ont arrêté les règles suivantes qui sont applicables à la procédure arbitrale, en tant que les Parties ne sont pas convenues d'autres règles.

ARTICLE 52.

"Compromis." Contents.

Les Puissances qui recourent à l'arbitrage signent un compromis dans lequel sont déterminés l'objet du litige, le délai de nomination des arbitres, la forme, l'ordre et les délais dans lesquels la communication visée par l'article 63 devra être faite, et le montant de la somme que chaque Partie aura à déposer à titre d'avance pour les frais.

Post, p. 2228.

Further conditions.

Le compromis détermine également, s'il y a lieu, le mode de nomination des arbitres, tous pouvoirs spéciaux éventuels du Tribunal, son siège, la langue dont il fera usage et celles dont l'emploi sera autorisé devant lui, et généralement toutes les conditions dont les Parties sont convenues.

ARTICLE 53.

Settlement by Permanent Court.

La Cour permanente est compétente pour l'établissement du compromis, si les Parties sont d'accord pour s'en remettre à elle.

Post, p. 2240.

Requests by one Power.

Elle est également compétente, même si la demande est faite seulement par l'une des Parties, après qu'un accord par la voie diplomatique a été vainement essayé, quand il s'agit:

Disputes under arbitration treaties.

1°. d'un différend rentrant dans un Traité d'arbitrage général conclu ou renouvelé après la mise en vigueur de cette Convention et qui prévoit pour chaque différend un compromis et n'exclut pour l'établissement de ce dernier ni explicitement ni implicitement la compétence de la Cour. Toutefois, le recours à la Cour n'a pas lieu si l'autre Partie déclare qu'à son avis

Exception.

CHAPTER III.—*Arbitration procedure.*

ARTICLE 51.

With a view to encouraging the development of arbitration, the Contracting Powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

ARTICLE 52.

The Powers which have recourse to arbitration sign a "Compromis," in which the subject of the dispute is clearly defined, the time allowed for appointing Arbitrators, the form, order, and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.

The "Compromis" likewise defines, if there is occasion, the manner of appointing Arbitrators, any special powers which may eventually belong to the Tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

ARTICLE 53.

The Permanent Court is competent to settle the "Compromis," if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:—

1. A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a "Compromis" in all disputes and not either explicitly or implicitly excluding the settlement of the "Compromis" from the competence of the Court. Recourse cannot, however, be had to the

le différend n'appartient pas à la catégorie des différends à soumettre à un arbitrage obligatoire, à moins que le Traité d'arbitrage ne confère au Tribunal arbitral le pouvoir de décider cette question préalable;

2°. d'un différend provenant de dettes contractuelles réclamées à une Puissance par une autre Puissance comme dues à ses nationaux, et pour la solution duquel l'offre d'arbitrage a été acceptée. Cette disposition n'est pas applicable si l'acceptation a été subordonnée à la condition que le compromis soit établi selon un autre mode.

ARTICLE 54.

Dans les cas prévus par l'article précédent, le compromis sera établi par une commission composée de cinq membres désignés de la manière prévue à l'article 45 alinéas 3 à 6.

Le cinquième membre est de droit Président de la commission.

ARTICLE 55.

Les fonctions arbitrales peuvent être conférées à un arbitre unique ou à plusieurs arbitres désignés par les Parties à leur gré, ou choisis par Elles parmi les Membres de la Cour permanente d'arbitrage établie par la présente Convention.

A défaut de constitution du Tribunal par l'accord des Parties, il est procédé de la manière indiquée à l'article 45 alinéas 3 à 6.

ARTICLE 56.

Lorsqu'un Souverain ou un Chef d'Etat est choisi pour arbitre, la procédure arbitrale est réglée par Lui.

ARTICLE 57.

Le surarbitre est de droit Président du Tribunal.

Lorsque le Tribunal ne comprend pas de surarbitre, il nomme lui-même son Président.

Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to compulsory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question;

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the "Compromis" should be settled in some other way.

Contract debts.

Post, p. 2241.

ARTICLE 54.

In the cases contemplated in the preceding Article, the "Compromis" shall be settled by a Commission consisting of five members selected in the manner arranged for in Article 45, paragraphs 3 to 6.

The fifth member is President of the Commission *ex officio*.

Selection of Commission.

Ante, p. 2123.

ARTICLE 55.

The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Convention.

Failing the constitution of the Tribunal by direct agreement between the parties, the course referred to in Article 45, paragraphs 3 to 6, is followed.

Selection of arbitrators.

Disagreements.

Ante, p. 2123.

ARTICLE 56.

When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitration procedure is settled by him.

Arbitration by a Sovereign, etc.

ARTICLE 57.

The Umpire is President of the Tribunal *ex officio*.

When the Tribunal does not include an Umpire, it appoints its own President.

President of Tribunal.

ARTICLE 58.

Tribunal formed by commission.

En cas d'établissement du compromis par une commission, telle qu'elle est visée à l'article 54, et sauf stipulation contraire, la commission elle même formera le Tribunal d'arbitrage.

Ante, p. 2227.

ARTICLE 58.

When the "Compromis" is settled by a Commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the Commission itself shall form the Arbitration Tribunal.

ARTICLE 59.

Vacancies.

En cas de décès, de démission ou d'empêchement, pour quelque cause que ce soit, de l'un des arbitres, il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ARTICLE 59.

Should one of the Arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

ARTICLE 60.

Sessions.

A défaut de désignation par les Parties, le Tribunal siège à La Haye.

Le Tribunal ne peut siéger sur le territoire d'une tierce Puissance qu'avec l'assentiment de celle-ci.

Le siège une fois fixé ne peut être changé par le Tribunal qu'avec l'assentiment des Parties.

ARTICLE 60.

The Tribunal sits at The Hague, unless some other place is selected by the parties.

The Tribunal can only sit in the territory of a third Power with the latter's consent.

The place of meeting once fixed cannot be altered by the Tribunal, except with the consent of the parties.

ARTICLE 61.

Selection of language.

Si le compromis n'a pas déterminé les langues à employer, il en est décidé par le Tribunal.

ARTICLE 61.

If the question as to what languages are to be used has not been settled by the "Compromis," it shall be decided by the Tribunal.

ARTICLE 62.

Agents.

Les Parties ont le droit de nommer auprès du Tribunal des agents spéciaux, avec la mission de servir d'intermédiaires entre Elles et le Tribunal.

Counsel.

Elles sont en outre autorisées à charger de la défense de leurs droits et intérêts devant le Tribunal, des conseils ou avocats nommés par Elles à cet effet.

Restriction on members of Permanent Court.

Les Membres de la Cour permanente ne peuvent exercer les fonctions d'agents, conseils ou avocats, qu'en faveur de la Puissance qui les a nommés Membres de la Cour.

ARTICLE 62.

The parties are entitled to appoint special agents to attend the Tribunal to act as intermediaries between themselves and the Tribunal.

They are further authorized to retain for the defence of their rights and interests before the Tribunal counsel or advocates appointed by themselves for this purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them members of the Court.

ARTICLE 63.

Procedure.

La procédure arbitrale comprend en règle générale deux

ARTICLE 63.

As a general rule, arbitration procedure comprises two distinct

phases distinctes: l'instruction écrite et les débats.

L'instruction écrite consiste dans la communication faite par les agents respectifs, aux membres du Tribunal et à la Partie adverse, des mémoires, des contre-mémoires et, au besoin, des répliques; les Parties y joignent toutes pièces et documents invoqués dans la cause. Cette communication aura lieu, directement ou par l'intermédiaire du Bureau International, dans l'ordre et dans les délais déterminés par le compromis.

Les délais fixés par le compromis pourront être prolongés de commun accord par les Parties, ou par le Tribunal quand il le juge nécessaire pour arriver à une décision juste.

Les débats consistent dans le développement oral des moyens des Parties devant le Tribunal.

ARTICLE 64.

Toute pièce produite par l'une des Parties doit être communiquée, en copie certifiée conforme, à l'autre Partie.

ARTICLE 65.

A moins de circonstances spéciales, le Tribunal ne se réunit qu'après la clôture de l'instruction.

ARTICLE 66.

Les débats sont dirigés par le Président.

Ils ne sont publics qu'en vertu d'une décision du Tribunal, prise avec l'assentiment des Parties.

Ils sont consignés dans des procès-verbaux rédigés par des secrétaires que nomme le Président. Ces procès-verbaux sont signés par le Président et par un des secrétaires; ils ont seuls caractère authentique.

ARTICLE 67.

L'instruction étant close, le Tribunal a le droit d'écarter du débat tous actes ou documents nouveaux qu'une des Parties voudrait lui soumettre sans le consentement de l'autre.

phases: pleadings and oral discussions.

Pleadings. The pleadings consist in the communication by the respective agents to the members of the Tribunal and the opposite party of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents called for in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the "Compromis."

Extension of time. The time fixed by the "Compromis" may be extended by mutual agreement by the parties, or by the Tribunal when the latter considers it necessary for the purpose of reaching a just decision.

Oral discussions. The discussions consist in the oral development before the Tribunal of the arguments of the parties.

ARTICLE 64.

Exchange of documents. A certified copy of every document produced by one party must be communicated to the other party.

ARTICLE 65.

Meeting of Tribunal. Unless special circumstances arise, the Tribunal does not meet until the pleadings are closed.

ARTICLE 66.

Discussions. The discussions are under the control of the President.

Public. They are only public if it be so decided by the Tribunal, with the assent of the parties.

Record. They are recorded in minutes drawn up by the Secretaries appointed by the President. These minutes are signed by the President and by one of the Secretaries and alone have an authentic character.

ARTICLE 67.

Limiting discussions. After the close of the pleadings, the Tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

ARTICLE 68.

Admission of new evidence.

Le Tribunal demeure libre de prendre en considération les actes ou documents nouveaux sur lesquels les agents ou conseils des Parties appelleraient son attention.

En ce cas, le Tribunal a le droit de requérir la production de ces actes ou documents, sauf l'obligation d'en donner connaissance à la Partie adverse.

ARTICLE 68.

The Tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

ARTICLE 69.

Production of all papers.

Le Tribunal peut, en outre, requérir des agents des Parties la production de tous actes et demander toutes explications nécessaires. En cas de refus, le Tribunal en prend acte.

ARTICLE 69.

The Tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the Tribunal takes note of it.

ARTICLE 70.

Oral arguments.

Les agents et les conseils des Parties sont autorisés à présenter oralement au Tribunal tous les moyens qu'ils jugent utiles à la défense de leur cause.

ARTICLE 70.

The agents and the counsel of the parties are authorized to present orally to the Tribunal all the arguments they may consider expedient in defence of their case.

ARTICLE 71.

Decisions final.

Ils ont le droit de soulever des exceptions et des incidents. Les décisions du Tribunal sur ces points sont définitives et ne peuvent donner lieu à aucune discussion ultérieure.

ARTICLE 71.

They are entitled to raise objections and points. The decisions of the Tribunal on these points are final and cannot form the subject of any subsequent discussion.

ARTICLE 72.

Questions by arbitrators.

Les membres du Tribunal ont le droit de poser des questions aux agents et aux conseils des Parties et de leur demander des éclaircissements sur les points douteux.

Ni les questions posées, ni les observations faites par les membres du Tribunal pendant le cours des débats ne peuvent être regardées comme l'expression des opinions du Tribunal en général ou de ses membres en particulier.

ARTICLE 72.

The members of the Tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the Tribunal in the course of the discussions, can be regarded as an expression of opinion by the Tribunal in general or by its members in particular.

ARTICLE 73.

Competence of Tribunal.

Le Tribunal est autorisé à déterminer sa compétence en interprétant le compromis ainsi que les autres actes et documents qui peuvent être invoqués dans la matière, et en appliquant les principes du droit.

ARTICLE 73.

The Tribunal is authorized to declare its competence in interpreting the "Compromis," as well as the other Treaties which may be invoked, and in applying the principles of law.

ARTICLE 74.

Le Tribunal a le droit de rendre des ordonnances de procédure pour la direction du procès, de déterminer les formes, l'ordre et les délais dans lesquels chaque Partie devra prendre ses conclusions finales, et de procéder à toutes les formalités que comporte l'administration des preuves.

ARTICLE 74.

Special rules.

The Tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE 75.

Les Parties s'engagent à fournir au Tribunal, dans la plus large mesure qu'Elles jugeront possible, tous les moyens nécessaires pour la décision du litige.

ARTICLE 75.

Information to be furnished.

The parties undertake to supply the Tribunal, as fully as they consider possible, with all the information required for deciding the case.

ARTICLE 76.

Pour toutes les notifications que le Tribunal aurait à faire sur le territoire d'une tierce Puissance contractante, le Tribunal s'adressera directement au Gouvernement de cette Puissance. Il en sera de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

Les requêtes adressées à cet effet seront exécutées suivant les moyens dont la Puissance requise dispose d'après sa législation intérieure. Elles ne peuvent être refusées que si cette Puissance les juge de nature à porter atteinte à sa souveraineté ou à sa sécurité.

Le Tribunal aura aussi toujours la faculté de recourir à l'intermédiaire de la Puissance sur le territoire de laquelle il a son siège.

ARTICLE 76.

Serving notice in other countries.

For all notices which the Tribunal has to serve in the territory of a third Contracting Power, the Tribunal shall apply direct to the Government of that Power. The same rule applies in the case of steps being taken to procure evidence on the spot.

Executing requests.

The requests for this purpose are to be executed as far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its own sovereign rights or its safety.

The Court will equally be always entitled to act through the Power on whose territory it sits.

ARTICLE 77.

Les agents et les conseils des Parties ayant présenté tous les éclaircissements et preuves à l'appui de leur cause, le Président prononce la clôture des débats.

ARTICLE 77.

Close of discussions.

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the President shall declare the discussion closed.

ARTICLE 78.

Les délibérations du Tribunal ont lieu à huis clos et restent secrètes.

Toute décision est prise à la majorité de ses membres.

ARTICLE 78.

Deliberations private.

The Tribunal considers its decisions in private and the proceedings remain secret.

Majority to decide.

All questions are decided by a majority of the members of the Tribunal.

ARTICLE 79.

Statement of award.

La sentence arbitrale est motivée. Elle mentionne les noms des arbitres; elle est signée par le Président et par le greffier ou le secrétaire faisant fonctions de greffier.

ARTICLE 79.

The Award must give the reasons on which it is based. It contains the names of the Arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.

ARTICLE 80.

Announcement.

La sentence est lue en séance publique, les agents et les conseils des Parties présents ou dûment appelés.

ARTICLE 80.

The Award is read out in public sitting, the agents and counsel of the parties being present or duly summoned to attend.

ARTICLE 81.

Finality.

La sentence, dûment prononcée et notifiée aux agents des Parties, décide définitivement et sans appel la contestation.

ARTICLE 81.

The Award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal

ARTICLE 82.

Disputes as to interpretation.

Tout différend qui pourrait surgir entre les Parties, concernant l'interprétation et l'exécution de la sentence, sera, sauf stipulation contraire, soumis au jugement du Tribunal qui l'a rendue.

ARTICLE 82.

Any dispute arising between the parties 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.

ARTICLE 83.

Right of revision.

Les Parties peuvent se réserver dans le compromis de demander la révision de la sentence arbitrale.

Grounds for demand.

Dans ce cas, et sauf stipulation contraire, la demande doit être adressée au Tribunal qui a rendu la sentence. Elle ne peut être motivée que par la découverte d'un fait nouveau qui eût été de nature à exercer une influence décisive sur la sentence et qui, lors de la clôture des débats, était inconnu du Tribunal lui-même et de la Partie qui a demandé la révision.

Proceedings.

La procédure de révision ne peut être ouverte que par une décision du Tribunal constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères prévus par le paragraphe précédent et déclarant à ce titre la demande recevable.

Limitation.

Le compromis détermine le délai dans lequel la demande de révision doit être formée.

ARTICLE 83.

The parties can reserve in the "Compromis" the right to demand the revision of the Award.

In this case and unless there be an Agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the Award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence upon the Award and which was unknown to the Tribunal and to the party which demanded the revision at the time the discussion was closed.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The "Compromis" fixes the period within which the demand for revision must be made.

ARTICLE 84.

La sentence arbitrale n'est obligatoire que pour les Parties en litige.

Lorsqu'il s'agit de l'interprétation d'une Convention à laquelle ont participé d'autres Puissances que les Parties en litige, celles-ci avertissent en temps utile toutes les Puissances signataires. Chacune de ces Puissances a le droit d'intervenir au procès. Si une ou plusieurs d'entre Elles ont profité de cette faculté, l'interprétation contenue dans la sentence est également obligatoire à leur égard.

ARTICLE 84.

The Award is not binding except on the parties in dispute. Parties bound.

When it concerns the interpretation of a Convention to which Powers other than those in dispute are parties, they shall inform all the Signatory Powers in good time. Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the Award is equally binding on them. Right of other Powers to intervene.

ARTICLE 85.

Chaque Partie supporte ses propres frais et une part égale des frais du Tribunal.

ARTICLE 85.

Each party pays its own expenses and an equal share of the expenses of the Tribunal. Expenses.

CHAPITRE IV.—*De la Procédure sommaire d'arbitrage.*

CHAPTER IV.—*Arbitration by summary procedure.* Summary arbitration.

ARTICLE 86.

En vue de faciliter le fonctionnement de la justice arbitrale, lorsqu'il s'agit de litiges de nature à comporter une procédure sommaire, les Puissances contractantes arrêtent les règles ci-après qui seront suivies en l'absence de stipulations différentes, et sous réserve, le cas échéant, de l'application des dispositions du chapitre III qui ne seraient pas contraires.

ARTICLE 86.

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the Contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be. Rules for summary procedure.

Ante, p. 2226.

ARTICLE 87.

Chacune des Parties en litige nomme un arbitre. Les deux arbitres ainsi désignés choisissent un surarbitre. S'ils ne tombent pas d'accord à ce sujet, chacun présente deux candidats pris sur la liste générale des Membres de la Cour permanente en dehors des Membres indiqués par chacune des Parties Elles-mêmes et n'étant les nationaux d'aucune d'Elles; le sort détermine lequel des candidats ainsi présentés sera le surarbitre.

Le surarbitre préside le Tribunal, qui rend ses décisions à la majorité des voix.

ARTICLE 87.

Each of the parties in dispute appoints an Arbitrator. The two Arbitrators thus selected choose an Umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the Umpire is determined by lot. Arbitrators and Umpire.

The Umpire presides over the Tribunal, which gives its decisions by a majority of votes.

ARTICLE 88.

Submission of cases.

A défaut d'accord préalable, le Tribunal fixe, dès qu'il est constitué, le délai dans lequel les deux Parties devront lui soumettre leurs mémoires respectifs.

ARTICLE 88.

In the absence of any previous agreement the Tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

ARTICLE 89.

Agents.

Chaque Partie est représentée devant le Tribunal par un agent qui sert d'intermédiaire entre le Tribunal et le Gouvernement qui l'a désigné.

ARTICLE 89.

Each party is represented before the Tribunal by an agent, who serves as intermediary between the Tribunal and the Government who appointed him.

ARTICLE 90.

Proceedings to be in writing.

Oral explanations.

La procédure a lieu exclusivement par écrit. Toutefois, chaque Partie a le droit de demander la comparution de témoins et d'experts. Le Tribunal a, de son côté, la faculté de demander des explications orales aux agents des deux Parties, ainsi qu'aux experts et aux témoins dont il juge la comparution utile.

ARTICLE 90.

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The Tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

Final provisions.

TITRE V.—DISPOSITIONS FINALES.

PART V.—FINAL PROVISIONS.

ARTICLE 91.

Former convention replaced.

Vol. 32, p. 1779.

La présente Convention dûment ratifiée remplacera, dans les rapports entre les Puissances contractantes, la Convention pour le règlement pacifique des conflits internationaux du 29 juillet 1899.

ARTICLE 91.

The present Convention, duly ratified, shall replace, as between the Contracting Powers, the Convention for the Pacific Settlement of International Disputes of the 29th July, 1899.

ARTICLE 92.

Ratification.

Deposit at The Hague.

La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des Puissances qui y prennent part et par le Ministre des Affaires Etrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

ARTICLE 92.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification, sera immédiatement remise, par les soins du Gouvernement des Pays-Bas et par la voie diplomatique, aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, ledit Gouvernement Leur fera connaître en même temps la date à laquelle il a reçu la notification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to those Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform the Powers of the date on which it received the notification.

Certified copies to Powers.

ARTICLE 93.

Les Puissances non signataires qui ont été conviées à la Deuxième Conférence de la Paix pourront adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans les archives dudit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances conviées à la Deuxième Conférence de la Paix copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

ARTICLE 93.

Non-Signatory Powers which have been invited to the Second Peace Conference may adhere to the present Convention.

Nonsignatory Powers may adhere.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

Notification of intent.

This Government shall immediately forward to all the other Powers invited to the Second Peace Conference a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

Communication to other Powers.

ARTICLE 94.

Les conditions auxquelles les Puissances qui n'ont pas été conviées à la Deuxième Conférence de la Paix, pourront adhérer à la présente Convention, formeront l'objet d'une entente ultérieure entre les Puissances contractantes.

ARTICLE 94.

The conditions on which the Powers which have not been invited to the Second Peace Conference may adhere to the present Convention shall form the subject of a subsequent Agreement between the Contracting Powers.

Adherence by other Powers.

ARTICLE 95.

La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ulté-

ARTICLE 95.

The present Convention shall take effect, in the case of the Powers which were not a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which

Effect of ratification.

rieurement ou qui adhèreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 96.

ARTICLE 96.

Denunciation.

S'il arrivait qu'une des Puissances contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

In the event of one of the Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

Notifying Power only affected.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 97.

ARTICLE 97.

Register of ratifications.

Un registre tenu par le Ministère des Affaires Etrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'article 92 alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (article 93 alinéa 2) ou de dénonciation (article 96 alinéa 1).

Ante, p. 2234.

Ante, p. 2235.

Supra.

Chaque Puissance contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

A register kept by the Netherland Minister for Foreign Affairs shall give the date of the deposit of ratifications effected in virtue of Article 92, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 93, paragraph 2) or of denunciation (Article 96, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

Signing.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Deposit of original.

Fait à La Haye, le dix-huit octobre mil neuf cent sept, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Contracting Powers.

[Here follow signatures.]

Signatures.

1. Pour l'Allemagne:
MARSCHALL.
KRIEGE.

Signatures—Cont d.

2. Pour les Etats-Unis d'Amérique. Sous réserve de la Déclaration faite dans la séance plénière de la Conférence du 16 Octobre 1907.
   Joseph H. Choate.
   Horace Porter.
   U. M. Rose.
   David Jayne Hill.
   C. S. Sperry:
   William I. Buchanan.
3. Pour l'Argentine:
   Roque Saenz Peña.
   Luis M. Drago.
   C. Rúez Larreta.
4. Pour l'Autriche-Hongrie:
   Mérey.
   Bon Macchio.
5. Pour la Belgique:
   A. Beernaert.
   J. van den Heuvel.
   Guillaume.
6. Pour la Bolivie:
   Claudio Pinilla.
7. Pour le Brésil: Avec réserves sur l'article 53, alinéas 2, 3 et 4.
   Ruy Barbosa.
8. Pour la Bulgarie:
   Général-Major Vinaroff.
   Iv. Karandjouloff.
9. Pour le Chili: Sous la réserve de la déclaration formulée à propos de l'article 39 dans la septième séance du 7 octubre de la première Commission.
   Domingo Gana.
   Augusto Matte.
   Carlos Concha.
10. Pour la Chine:
    Loutsengtsiang.
    Tsiensun.
11. Pour la Colombie:
    Jorge Holguin.
    S. Perez Triana.
    M. Vargas.
12. Pour la République de Cuba:
    Antonio S. de Bustamante.
    Gonzalo de Quesada.
    Manuel Sanguily.
13. Pour le Danemark:
    C. Brun.
14. Pour la République Dominicaine:
    dr. Henrique y Carvajal.
    Apolinar Tejera.

Signatures—Cont'd.

15. Pour l'Equateur:
VICTOR M. RENDON.
E. DORN Y DE ALSÚA.
16. Pour l'Espagne:
W. R. DE VILLA URRUTIA.
JOSÉ DE LA RICA Y CALVO.
GABRIEL MAURA.
17. Pour la France:
LÉON BOURGEOIS.
D'ESTOURNELLES DE CONSTANT.
L. RENAULT.
MARCELLIN PELLET.
18. Pour la Grande-Bretagne:
EDW. FRY.
ERNEST SATOW.
REAY.
HENRY HOWARD.
19. Pour la Grèce: Avec la réserve de l'alinéa 2 de l'article 53:
CLÉON RIZO RANGABÉ.
GEORGES STREIT.
20. Pour le Guatémala:
JOSÉ TIBLE MACHADO.
21. Pour le Haïti:
DALBÉMAR JN JOSEPH.
J. N. LÉGER.
PIERRE HUDICOURT.
22. Pour l'Italie:
POMPILJ.
G. FUSINATO.
23. Pour le Japon: Avec réserve des alinéas 3 et 4 de l'article 48, de l'alinéa 2 de l'article 53 et de l'article 54.
AIMARO SATO.
24. Pour le Luxembourg:
YESCHEN.
Cte. DE VILLERS.
25. Pour la Mexique:
G. A. ESTEVA.
S. B. DE MIER.
F. L. DE LA BARRA.
26. Pour le Monténégro:
NELIDOW.
MARTENS.
N. TCHARYKOW.
27. Pour le Nicaragua:
28. Pour la Norvège:
F. HAGERUP.
29. Pour le Panama:
B. PORRAS.
30. Pour le Paraguay:
J DU MONCEAU.
31. Pour les Pays-Bas:
W. H. DE BEAUFORT.
T. M. C. ASSER.
DEN BEER POORTUGAEL.
J. A. RÖELL.
J. A. LOEFF.

Signatures—Cont'd.

32. Pour le Pérou:
C. G. CANDAMO.
33. Pour la Perse:
MOMTAZOS-SALTANEH M. SAMAD KHAN.
SADIGH UL MULK M. AHMED KHAN.
34. Pour le Portugal:
MARQUIS DE SOVERAL.
CONDE DE SÉLIR.
ALBERTO D'OLIVEIRA.
35. Pour la Roumanie: Avec les mêmes réserves formulées par les Plénipotentaires Roumains à la signature de la Convention pour la Règlement pacifique des conflits internationaux du 29 juillet 1899.
EDG. MAVROCORDATO.
36. Pour la Russie:
NELIDOW.
MARTENS.
N. TCHARYKOW.
37. Pour le Salvador:
P. J. MATHEU.
S. PEREZ TRIANA.
38. Pour la Serbie:
S. GROUITCH.
M. G. MILOVANOVITCH.
M. G. MILITCHEVITCH.
39. Pour le Siam:
MOM CHATIDEJ UDOM.
C. CORRAGIONI D'ORELLI.
LUANG BHÜVANARTH NARÜBAL.
40. Pour la Suède:
JOH. HELLNER.
41. Pour la Suisse: Sous réserve de l'article 53, chiffre 2°.
CARLIN.
42. Pour la Turquie: Sous réserve des déclarations portées au procès-verbal de la 9e séance plénière de la Conférence du 16 octobre 1907.
TURKHAN.
43. Pour l'Uruguay:
JOSÉ BATLLE Y ORDOÑEZ.
44. Pour le Vénézuéla:
J. GIL FORTOUL.

Certifié pour copie conforme:
Le Secrétaire-Général du Ministère des Affaires Etrangères des Pays-Bas.
HANNEMA.

Reservation by United States.

And whereas the said Convention was signed by the Plenipotentiaries of the United States of America under reserve of the declaration made by them to the International Peace Conference at its session of October 16, 1907, as follows:

"Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state; nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of its traditional attitude toward purely American questions;"

Resolution of the United States Senate.

And whereas the Senate of the United States, by its resolution of April 2, 1908, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said Convention with the following understanding and declarations, to wit:

"*Resolved further, as a part of this act of ratification,* That the United States approves this convention with the understanding that recourse to the permanent court for the settlement of differences can be had only by agreement thereto through general or special treaties of arbitration heretofore or hereafter concluded between the parties in dispute; and the United States now exercises the option contained in article fifty-three of said convention, to exclude the formulation of the 'compromis' by the permanent court, and hereby excludes from the competence of the permanent court the power to frame the 'compromis' required by general or special treaties of arbitration concluded or hereafter to be concluded by the United States, and further expressly declares that the 'compromis' required by any treaty of arbitration to which the United States may be a party shall be settled only by agreement between the contracting parties, unless such treaty shall expressly provide otherwise."

Ante, p. 2226.

Ratification.

And whereas the said Convention has been duly ratified by the Government of the United States of America, by and with the advice and consent of the Senate thereof, and by the Governments of Germany, Austria-Hungary, Bolivia, China, Denmark, Mexico, the Netherlands, Russia, Salvador, and Sweden, and the ratifications of the said Governments were, under the provisions of Article 92 of the said Convention, deposited by their respective plenipotentiaries with the Netherlands Government on November 27, 1909;

Ante, p. 2234.

Proclamation.

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof, subject to the reserve made in the aforesaid declaration of the Plenipotentiaries of the United States and to the aforesaid understanding and declarations stated and made by the Senate of the United States in its resolution of April 2, 1908.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-eighth day of February in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States of America the one hundred and thirty-fourth.

[SEAL.]

WM H TAFT

By the President:

P C KNOX
Secretary of State.

Convention between the United States and other Powers respecting the limitation of the employment of force for the recovery of contract debts. Signed at The Hague October 18, 1907; ratification advised by the Senate April 17, 1908; ratified by the President of the United States February 23, 1909; ratification deposited with the Netherlands Government November 27, 1909; proclaimed February 28, 1910.

October 18, 1907.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Contract debts. Preamble.

Whereas a Convention respecting the limitation of the employment of force for the recovery of contract debts was concluded and signed at The Hague on October 18, 1907, by the respective Plenipotentiaries of the United States of America, Germany, the Argentine Republic, Austria-Hungary, Bolivia, Bulgaria, Chile, Colombia, Cuba, Denmark, the Dominican Republic, Ecuador, Spain, France, Great Britain, Greece, Guatemala, Haiti, Italy, Japan, Mexico, Montenegro, Norway, Panama, Paraguay, the Netherlands, Peru, Persia, Portugal, Russia, Salvador, Servia, Turkey, and Uruguay, the original of which Convention, being in the French language, is word for word as follows:

[Translation.]

II.

CONVENTION

CONCERNANT LA LIMITATION DE L'EMPLOI DE LA FORCE POUR LE RECOUVREMENT DE DETTES CONTRACTUELLES.

II.

CONVENTION

RESPECTING THE LIMITATION OF THE EMPLOYMENT OF FORCE FOR THE RECOVERY OF CONTRACT DEBTS.

Contracting Powers.

SA MAJESTÉ L'EMPEREUR D'ALLEMAGNE, ROI DE PRUSSE; LE PRÉSIDENT DES ÉTATS-UNIS D'AMÉRIQUE; LE PRÉSIDENT DE LA RÉPUBLIQUE ARGENTINE; SA MAJESTÉ L'EMPEREUR D'AUTRICHE, ROI DE BOHÊME ETC., ET ROI APOSTOLIQUE DE HONGRIE; LE PRÉSIDENT DE LA RÉPUBLIQUE DE BOLIVIE; SON ALTESSE ROYALE LE PRINCE DE BULGARIE; LE PRÉSIDENT DE LA RÉPUBLIQUE DE CHILI; LE PRÉSIDENT DE LA RÉPUBLIQUE DE COLOMBIE; LE GOUVERNEUR PROVISOIRE DE LA RÉPUBLIQUE DE CUBA; SA MAJESTÉ LE ROI DE DANE-

His Majesty the German Emperor, King of Prussia; the President of the United States of America; the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary; the President of the Republic of Bolivia; His Royal Highness the Prince of Bulgaria; the President of the Republic of Chile; the President of the Republic of Colombia; the Provisional Governor of the Republic of Cuba; His Majesty the King of Denmark; the President of the Dominican Republic; the President of the Republic of Ecuador; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of

Exhibit “4”

Larsen v. Hawaiian Kingdom

Case name	Larsen v. Hawaiian Kingdom
Case description	Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom. In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings. The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States' actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.
Name(s) of claimant(s)	Lance Paul Larsen (Private entity)
Name(s) of respondent(s)	The Hawaiian Kingdom (State)
Names of parties	
Case number	1999-01
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Other proceedings
Subject matter or economic sector	Treaty interpretation
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	Other The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America
Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
Representatives of the claimant(s)	Ms. Ninia Parks, Counsel and Agent
Representatives of the respondent(s)	Mr. David Keanu Sai, Agent

	Mr. Peter Umialiloa Sai, First deputy agent Mr. Gary Victor Dubin, Second deputy agent and counsel
Representatives of the parties	
Number of arbitrators in case	3
Date of commencement of proceeding [dd-mm-yyyy]	08-11-1999
Date of issue of final award [dd-mm-yyyy]	05-02-2001
Length of proceedings	1-2 years
Additional notes	
Attachments	**Award or other decision** > Arbitral Award 15-05-2014 English **Other** > Annex 1 - President Cleveland's Message to the Senate and the House of Representatives 18-12-1893 English > Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii. 23-11-1993 English

Exhibit “5”

CIVIL LAW ON JURIDICAL FACT OF THE HAWAIIAN STATE AND THE CONSEQUENTIAL JURIDICAL ACT BY THE PERMANENT COURT OF ARBITRATION

FEDERICO LENZERINI*

5 December 2021

Juridical Facts

In the civil law tradition, a *juridical fact* (or *legal fact*) is a fact (or event) – determined either by natural occurrences or by humans – which produces consequences that are relevant according to law. Such consequences are defined *juridical effects* (or *legal effects*), and consist in the establishment, modification or extinction of rights, legal situations or *juridical* (or *legal*) *relationships* (*privity*). Reversing the order of the reasoning, among the multifaceted natural or social facts occurring in the world a fact is *juridical* when it is *legally relevant*, i.e. determines the production of *legal effects* per effect of a *legal* (*juridical*) *rule* (*provision*). In technical terms, it is actually the legal rule which produces legal effects, while the juridical fact is to be considered as the *condition* for the production of the effects. In practical terms, however, it is the juridical fact which activates a reaction by the law and makes the production of the effects concretely possible. At the same time, no fact can be considered as "juridical" without a legal rule attributing this quality to it.[1]

Both *rights*, *powers* or *obligations* – held by/binding a person or another subject of law (in international law, a State, an international organization, a people, or any other entity to which international law attributes legal personality) – may arise from a juridical fact.

Sometimes a juridical fact determines the production of legal effects irrespective of the action of a person or another subject of law. In other terms, in some cases legal effects are automatically produced by a(n *inactive*) juridical fact – only by virtue of the mere existence of the latter – without any need of an action by a legal subject. "Inactive juridical facts are events which occur more or less spontaneously, but still have legal effects because a certain reaction is regarded to be necessary to deal with the newly arisen circumstances".[2] Inactive juridical facts may be based on an occasional situation, a quality of a person or a thing, or the course of time.[3]

Juridical Acts

In other cases, however, the legal effects arising from a juridical fact only exist *potentially*, and, in order to concretely come into existence they need to be activated through a behaviour by a subject of law, which may consist of either an action or a passive behaviour. The legal effects may arise from either an *operational act* – i.e. a behaviour to which the law attributes legally-relevant effects for the sole ground of its existence, "although the acting [subject] had no intention to create this legal

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[1] See Lech Morawski, "Law, Fact and Legal Language", (1999) 18 *Law and Philosophy* 461, at 463.

[2] See "Legal System of Civil Law in the Netherlands", available at <http://www.dutchcivillaw.com/content/legalsystem022aa.htm> (accessed on 4 December 2021).

[3] Ibidem.

effect"[4] – or an act that a subject of law performs intentionally, "because he[/she/it] knows that the law will respond to it by acknowledging the conception of a particular legal effect. The act is explicitly [and voluntarily] chosen to let this legal effect arise".[5] In order to better comprehend this line of reasoning, one may consider the example of adverse possession,[6] which is determined by the juridical fact that a given span of time has passed during which the thing has continuously been in the possession without being claimed by its owner. However, in order for the possessor to effectively acquire the right to property, it is usually necessary to activate a legal action before the competent authority aimed at obtaining its legal recognition. In this and other similar cases a subject of law intentionally performs an act "to set the law in motion" with the purpose of producing a desired juridical effect. The legal subject concerned knows that, through performing such an act, the wanted juridical effect will be produced as a consequence of the existence of a juridical fact. Acts that are intentionally performed by a subject of law with the purpose of producing a desired legal effect are defined as *juridical acts* (or *legal acts*). It follows that an act consequential to a juridical fact (i.e. having the purpose of producing a given juridical effect in consequence of the existence of a juridical fact) is called *juridical* (or *legal*) *act*. The entitlement to perform a *juridical act* is the effect of a *power* attributed by the *juridical fact* to the legal subject concerned. The most evident difference between *juridical facts* and *juridical acts* is that, while the former "produce legal consequences regardless of a [person]'s will and capacity", the latter "are licit volitional acts – in the form of a manifestation of will – that are intended to produce legal consequences".[7]

Effects of Juridical Acts on Third Parties

One legal subject may only perform a juridical act unilaterally when it falls within her/his/its own legal sphere, but an unilateral juridical act may produce effects for other legal subjects as well. For instance, in private law unilateral juridical acts exist which produce juridical effects on third parties – for instance a will or a promise to donate a sum of money. Usually, unilateral juridical acts start to produce their effects from the moment when they are known by the beneficiary, and from that moment their withdrawal is precluded, unless otherwise provided for by applicable law (depending on the specific act concerned).

Similarly, bilateral or plurilateral juridical acts influencing the life of third parties are also provided by law – e.g. a contract in favour of third parties or a trust, typical of the common law tradition. Then, of course, the beneficiary of such acts may decide to refuse the benefits (if any) arising from them; however, if such benefits are not refused, said acts will definitely produce their effects, and may only be withdrawn within the limits established by law. Juridical acts also include the laws and regulations adopted by national parliaments, administrative acts, and, more in general, all acts determining – i.e. creating, modifying or abrogating – legal effects. *Acts of the judiciary* (judgments, orders, decrees, etc.) are also included in the concept of juridical acts. For instance, a judgment recognizing natural filiation produces the effects of filiation – with *retroactive effects* – "transform[ing] the [juridical] fact of procreation (in itself insufficient to create a legal relationship)

[4] Ibidem.
[5] Ibidem.
[6] Adverse possession refers to a legal principle – in force in many countries, especially of civil law – according to which a subject of law is granted property title over another subject's property by keeping continuous possession of it for a given (legally defined) period of time, on the condition that the title over the property is not claimed by the owner throughout the whole duration of that period of time.
[7] See Nikolaos A. Davrados, "A Louisiana Theory of Juridical Acts" (2020) 80 *Louisiana Law Review* 1119, at 1273.

into a state of filiation (recognized child) that is relevant to the law".[8] In this case, a juridical act of the judge actually leads to the recognition of a legal state – productive of a number of juridical effects, including *ex tunc* – arising from the juridical fact of the natural filiation. This is a perfect example of a juridical fact (exactly the natural filiation) whose legal effects exist *potentially*, and are activated by the juridical act represented by the judge's decision.

The Juridical Act of the Permanent Court of Arbitration (PCA) Recognizing the Juridical Fact of the Statehood of the Hawaiian Kingdom and the Council of Regency as its government

According to the *PCA Arbitration Rules*,[9] disputes included within the competence of the PCA include the following instances:

- disputes between two or more States;
- disputes between two parties of which only one is a State (i.e., disputes between a State and a private entity);
- disputes between a State and an international organization;
- disputes between two or more international organizations;
- disputes between an international organization and a private entity.

It is evident that, in order for a dispute to fall within the competence of the PCA, it is *always* necessary that either a State or an international organization are involved in the controversy. The case of *Larsen v. Hawaiian Kingdom*[10] was qualified by the PCA as a dispute between a State (The Hawaiian Kingdom) and a Private entity (Lance Paul Larsen).[11] In particular, the Hawaiian Kingdom was qualified as a non-Contracting Power under Article 47 of the 1907 Convention for the Pacific Settlement of International Disputes.[12] In addition, since the PCA allowed the Council of Regency to represent the Hawaiian Kingdom in the arbitration, it also implicitly recognized the former as the government of the latter.[13]

According to a civil law perspective, the juridical act of the International Bureau of the PCA instituting the arbitration in the case of *Larsen v. Hawaiian Kingdom* may be compared – *mutatis mutandis* – to a juridical act of a domestic judge recognizing a juridical fact (e.g. *filiation*) which is productive of certain legal effects arising from it according to law. Said legal effects may include, depending on applicable law, the power to stand before a court with the purpose of invoking certain rights. In the context of the *Larsen* arbitration, the juridical fact recognized by the PCA in favour of the Hawaiian Kingdom was its quality of *State* under international law. Among the legal effects produced by such a juridical fact, the entitlement of the Hawaiian Kingdom to be part of an international arbitration under the auspices of the PCA was included, since the existence of said juridical fact actually represented an indispensable condition for the Hawaiian Kingdom to be admitted in the *Larsen* arbitration, *vis-à-vis* a private entity (Lance Paul Larsen). Consequently, the

[8] See Armando Cecatiello, "Recognition of the natural child", available at <https://www.cecatiello.it/en/riconoscimento-del-figlio-naturale-2/> (accessed on 4 December 2021).

[9] The *PCA Arbitration Rules 2012* (available at <https://docs.pca-cpa.org/2015/11/PCA-Arbitration-Rules-2012.pdf>, accessed on 5 December 2021) constitute a consolidation of the following set of PCA procedural rules: the *Optional Rules for Arbitrating Disputes between Two States (1992)*; the *Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State* (1993); the *Optional Rules for Arbitration Between International Organizations and States* (1996); and *the Optional Rules for Arbitration Between International Organizations and Private Parties (1996)*.

[10] Case number 1999-01.

[11] See <https://pca-cpa.org/en/cases/35/> (accessed on 5 December 2021).

[12] Available at <https://docs.pca-cpa.org/2016/01/1907-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf> (accessed on 5 December 2021).

[13] See Declaration of Professor Federico Lenzerini [ECF 55-2].

International Bureau of the PCA carried out the juridical act consisting in establishing the arbitral tribunal as an effect of the recognition of the juridical fact in point. Likewise, e.g., the recognition of the juridical fact of filiation by a domestic judge, also the recognition of the Hawaiian Kingdom as a State had in principle retroactive effects, in the sense that the Hawaiian Kingdom did *not* acquire the condition of State per effect of the PCA's juridical act. Rather, the Hawaiian Kingdom's Statehood was a juridical fact that the PCA recognized as *pre-existing* to its juridical act.

The Effects of the Juridical Act of the PCA Recognizing the Juridical Fact of the Continued Existence of the Hawaiian Kingdom as a State and the Council of Regency as its government

At the time of the establishment of the *Larsen* arbitral tribunal by the PCA, the latter had 88 contracting parties.[14] One may safely assume that the PCA's juridical act consisting in the recognition of the juridical fact of the Hawaiian Kingdom as a State, through the institution of the *Larsen* arbitration, reflected a view shared by all such parties, on account of the fact that the decision of the International Bureau of the PCA was not followed by any complaints by any of them. In particular, it is especially meaningful that there was "no evidence that the United States, being a Contracting State [indirectly concerned by the *Larsen* arbitration], protested the International Bureau's recognition of the Hawaiian Kingdom as a State in accordance with Article 47".[15] On the contrary, the United States appeared to provide its acquiescence to the establishment of the arbitration, as it entered into an agreement with the Council of Regency of the Hawaiian Kingdom to access all records and pleadings of the dispute.

Under international law, the juridical act of the PCA recognizing the juridical fact of the Hawaiian Kingdom as a State may reasonably be considered as an important manifestation of – contextually – State practice and *opinio juris*, in support of the assumption according to which the Hawaiian Kingdom is actually – and has never ceased to be – a sovereign and independent State pursuant to customary international law. As noted a few lines above, it may be convincingly held that the PCA contracting parties actually agreed with the recognition of the juridical fact of the Hawaiian Kingdom as a State carried out by the International Bureau. In fact, in international law, *acquiescence* "concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State [or an international institution] would be called for".[16] The case in discussion is evidently a situation in the context of which, in the event that any of the PCA contracting parties would have disagreed with the recognition of the continued existence of the Hawaiian Kingdom as a State by the International Bureau through its juridical act, an explicit reaction would have been necessary. Since they "did not do so […] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*".[17]

[14] See <https://pca-cpa.org/en/about/introduction/contracting-parties/> (accessed on 5 December 2021).
[15] See David Keanu Sai, "The Royal Commission of Inquiry", in David Keanu Sai (ed.), The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom (Honolulu 2020) 12, at 25.
[16] See Nuno Sérgio Marques Antunes, "Acquiescence", in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (2006), at para. 2.
[17] See International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

Exhibit “6”

LEGAL OPINION ON THE AUTHORITY OF THE COUNCIL OF REGENCY OF THE HAWAIIAN KINGDOM

PROFESSOR FEDERICO LENZERINI*

As requested in the Letter addressed to me, on 11 May 2020, by Dr. David Keanu Sai, Ph.D., Head of the Hawaiian Royal Commission of Inquiry, I provide below a legal opinion in which I answer the three questions included in the above letter, for purposes of public awareness and clarification of the Regency's authority.

a) Does the Regency have the authority to represent the Hawaiian Kingdom as a State that has been under a belligerent occupation by the United States of America since 17 January 1893?

1. In order to ascertain whether the Regency has the authority to represent the Hawaiian Kingdom *as a State*, it is preliminarily necessary to ascertain whether the Hawaiian Kingdom can actually be considered a State under international law. To this purpose, two issues need to be investigated, i.e.: a) whether the Hawaiian Kingdom was a State at the time when it was militarily occupied by the United States of America, on 17 January 1893; b) in the event that the solution to the first issue would be positive, whether the continuous occupation of Hawai'i by the United States, from 1893 to present times, has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law.
2. With respect to the first of the abovementioned issues, as acknowledged by the Arbitral Tribunal of the Permanent Court of Arbitration (PCA) in the *Larsen* case, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[1] At the time of the American occupation, the Hawaiian Kingdom fully satisfied the four elements of statehood prescribed by customary international law, which were later codified by the *Montevideo Convention on the Rights and Duties of States* in 1933[2]: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states. This is confirmed by the fact that

> "the Hawaiian Kingdom became a full member of the Universal Postal Union on 1 January 1882, maintained more than a hundred legations and consulates throughout the world, and entered into extensive diplomatic and treaty relations with other States that included Austria-Hungary,

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[1] See *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports*, 2001, 566, at 581.

[2] See *Montevideo Convention on the Rights and Duties of States*, 1933, 165 *LNTS* 19, Article 1. This article codified the so-called *declarative* theory of statehood, already accepted by customary international law; see Thomas D. Grant, "Defining Statehood: The Montevideo Convention and its Discontents", 37 *Columbia Journal of Transnational Law*, 1998-1999, 403; Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity*", The Hague/Boston/London, 2000, at 77; David J. Harris (ed.), *Cases and Materials on International Law*, 6th Ed., London, 2004, at 99.

> Belgium, Bremen, Denmark, France, Germany, Great Britain, Hamburg, Italy, Japan, Netherlands, Portugal, Russia, Spain, Sweden-Norway, Switzerland and the United States".[3]

It is therefore unquestionable that **in the 1890s the Hawaiian Kingdom was an independent State and, consequently, a subject of international law**. This presupposed that its territorial sovereignty and internal affairs could not be legitimately violated by other States.

3. Once established that the Hawaiian Kingdom was actually a State, under international law, at the time when it was militarily occupied by the United States of America, on 17 January 1893, it is now necessary to determine whether the continuous occupation of Hawai'i by the United States from 1893 to present times has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law. This issue is undoubtedly controversial, and may be considered according to different perspectives. As noted by the Arbitral Tribunal established by the PCA in the *Larsen* case, in principle the question in point might be addressed by means of a careful assessment carried out through "having regard *inter alia* to the lapse of time since the annexation [by the United States], subsequent political, constitutional and international developments, and relevant changes in international law since the 1890s".[4]
4. However – beyond all speculative argumentations and the consequential conjectures that might be developed depending on the different perspectives under which the issue in point could be addressed – in reality the argument which appears to overcome all the others is that a long-lasting and well-established rule of international law exists establishing that military occupation, irrespective of the length of its duration, *cannot* produce the effect of extinguishing the sovereignty and statehood of the occupied State. In fact, the validity of such a rule has *not* been affected by whatever changes occurred in international law since the 1890s. Consistently, as emphasized by the Swiss arbitrator Eugène Borel in 1925, in the famous *Affaire de la Dette publique ottomane*,

> "[q]uels que soient les effets de l'occupation d'un territoire par l'adversaire avant le rétablissement de la paix, il est certain qu'à elle seule cette occupation ne pouvait opérer juridiquement le transfert de souveraineté […] L'occupation, par l'un des belligérants, de […] territoire de l'autre belligérant est un pur fait. C'est un état de choses essentiellement provisoire, qui ne substitue pas légalement l'autorité du belligérant envahisseur à celle du belligérant envahi".[5]

This position was confirmed by, among others, the US Military Tribunal at Nuremberg in 1948, holding that "[i]n belligerent occupation the occupying power does not hold enemy territory by virtue of any legal right. On the contrary, it merely exercises a precarious and temporary actual control".[6] Indeed, as noted, much more recently, by Yoram Dinstein, "occupation does not affect sovereignty. The displaced sovereign loses possession of the occupied territory de facto but it retains title *de jure* [i.e. "as a matter of law"]".[7] In this regard, as previously specified, this

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[3] See David Keanu Sai, "Hawaiian Constitutional Governance", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 58, at 64 (footnotes omitted).

[4] See *Larsen v. Hawaiian Kingdom*, *supra* n. 1, at 9.2.

[5] See *Affaire de la Dette publique ottomane (Bulgarie, Irak, Palestine, Transjordanie, Grèce, Italie et Turquie)*, 18 April 1925, *Reports of International Arbitral Awards*, Volume I, 529, also available at <https://legal.un.org/riaa/cases/vol_I/529-614.pdf> (accessed on 16 May 2020), at 555 ("whatever are the effects of the occupation of a territory by the enemy before the re-establishment of peace, it is certain that such an occupation alone cannot legally determine the transfer of sovereignty […] The occupation, by one of the belligerents, of […] the territory of the other belligerent is nothing but a pure fact. It is a state of things essentially provisional, which does not legally substitute the authority of the invading belligerent to that of the invaded belligerent").

[6] See *USA v. Otto Ohlendorf et al. (Einsatzgruppen Trial)*, 10 April 1948, (1948) *LRTWC* 411, at 492.

[7] See Yoram Dinstein, *The International Law of Belligerent Occupation*, 2nd Ed., Cambridge, 2019, at 58.

conclusion can in no way be influenced by the length of the occupation in time, as "[p]rolongation of the occupation does not affect its innately temporary nature".[8] It follows that "'precarious' as it is, the sovereignty of the displaced sovereign over the occupied territory is not terminated" by belligerent occupation.[9] Under international law, "le transfert de souveraineté ne peut être considéré comme effectué juridiquement que par l'entrée en vigueur du Traité qui le stipule et à dater du jour de cette mise en vigueur",[10] which means, in the words of the famous jurist Oppenheim, that "[t]he only form in which a cession [of sovereignty] can be effected is an agreement embodied in a treaty between the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war".[11] Such a conclusion corresponds to "a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts".[12]

5. The United States has taken possession of the territory of Hawai'i solely through de facto occupation and unilateral annexation, without concluding any treaty with the Hawaiian Kingdom. Furthermore, it appears that such an annexation has taken place in contravention of the rule of *estoppel*. At it is known, in international law "the doctrine of estoppel protects legitimate expectations of States induced by the conduct of another State".[13] On 18 December 1893 President Cleveland concluded with Queen Lili'uokalani a treaty, by executive agreement, which obligated the President to restore the Queen as the Executive Monarch, and the Queen thereafter to grant clemency to the insurgents.[14] Such a treaty, which was never carried into effect by the United States, would have precluded the latter from claiming to have acquired Hawaiian territory, because it had evidently induced in the Hawaiian Kingdom the legitimate expectation that the sovereignty of the Queen would have been reinstated, an expectation which was unduly frustrated through the annexation. It follows from the foregoing that, according to a plain and correct interpretation of the relevant legal rules, **the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and a subject of international law**, despite the long and effective exercise of the attributes of government by the United States over Hawaiian territory.[15] In fact, in the event of illegal annexation, "the legal existence of […] States [is] preserved from extinction",[16] since "illegal occupation cannot of itself terminate statehood".[17] The possession of the attribute of statehood by the Hawaiian Kingdom was substantially confirmed by the PCA, which, before establishing the Arbitral Tribunal for the *Larsen* case, had to get assured that one of the parties of the arbitration was a State, as a necessary precondition for its jurisdiction to exist. In

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[8] Ibid.

[9] Ibid. (footnotes omitted). See also, consistently, Peter M.R. Stirk, *The Politics of Military Occupation*, Edinburgh, 2009, at 168 and 230.

[10] See *Affaire de la Dette publique ottomane*, *supra* n. 5, at 555 ("the transfer of sovereignty can only be considered legally effected by the entry into force of a treaty which establishes it and from the date of such entry into force").

[11] See Lassa FL Oppenheim, *Oppenheim's International Law*, 7th Ed., vol. 1, 1948, at 500.

[12] See Jean S. Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, Geneva, 1958, at 275.

[13] See Thomas Cottier, Jörg Paul Müller, "Estoppel", *Max Planck Encyclopedias of International Law*, April 2007, available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1401> (accessed on 20 May 2020).

[14] See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 1269, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).

[15] In this respect, it is to be emphasized that "a sovereign State would continue to exist despite its government being overthrown by military force"; see David Keanu Sai, "The Royal Commission of Inquiry", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 12, at 14.

[16] See James Crawford, *The Creation of States in International Law*, 2nd Ed., Oxford, 2006, at 702.

[17] See Ian Brownlie, *Principles of Public International Law*, 7th Ed., Oxford, 2008, at 78.

that case, the Hawaiian Kingdom was actually qualified as a "State", while the Claimant – Lance Paul Larsen – as a "Private entity."[18]

6. The conclusion according to which the Hawaiian Kingdom cannot be considered as having been extinguished – as a State – as a result of the American occupation also allows to confirm, *de plano*, that the Hawaiian Kingdom, as an independent State, **has been under uninterrupted belligerent occupation by the United States of America, from 17 January 1893 up to the moment of this writing**. This conclusion cannot be validly contested, even by virtue of the hypothetical consideration according to which, since the American occupation of Hawai'i has not substantially involved the use of military force, and has not encountered military resistance by the Hawaiian Kingdom,[19] it consequently could not be considered as "belligerent". In fact, a territory is considered occupied "when it is placed under the authority of the hostile army […] The law on occupation applies to all cases of partial or total occupation, even if such occupation does not encounter armed resistance. The essential ingredient for applicability of the law of occupation is therefore the actual control exercised by the occupying forces".[20] This is consistent with the rule expressed in Article 42 of the Regulations annexed to the *Hague Convention (IV) respecting the Laws and Customs of War on Land* of 1907 – affirming that a "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army" – as well as with Article 2 common to the four Geneva Conventions of 1949, establishing that such Conventions apply "to all cases of partial or total occupation of the territory of a High Contracting Party, *even if the said occupation meets with no armed resistance*" (emphasis added).
7. Once having ascertained that, under international law, the Hawaiian Kingdom continues to exist as an independent State, it is now time to assess the legitimacy and powers of the Regency. According to the *Lexico Oxford Dictionary*, a "regency" is "[t]he office of or period of government by a regent".[21] In a more detailed manner, the *Black's Law Dictionary*, which is the most trusted and widely used legal dictionary in the United States, defines the term in point as "[t]he man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the king".[22] Therefore, it appears that, in consideration of the current situation of the Hawaiian Kingdom, a regency is the right body entitled to provisionally exercise the powers of the Hawaiian Executive Monarch in the absence of the latter, an absence which forcibly continues at present due to the persistent situation of military occupation to which the Hawaiian territory is subjected.
8. In legal terms, the legitimacy of the Hawaiian Council of Regency is grounded on Articles 32 and 33 of the *Hawaiian Kingdom Constitution* of 1864. In particular, Article 32 states that "[w]henever, upon the decease of the Reigning Sovereign, the Heir shall be less than eighteen years of age, the Royal Power shall be exercised by a Regent Council of Regency; as hereinafter provided". As far as Article 33 is concerned, it affirms that

> "[i]t shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in

[18] See <https://pcacases.com/web/view/35> (accessed on 16 May 2020).
[19] It is to be noted, in this respect, that no armed resistance was opposed to the occupation despite the fact that, as acknowledged by US President Cleveland, the Queen "had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal"; see United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 453, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).
[20] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", Geneva, June 2002, available at <https://www.icrc.org/en/doc/assets/files/other/law9_final.pdf> (accessed on 17 May 2020), at 3.
[21] See <https://www.lexico.com/en/definition/regency> (accessed on 17 May 2020).
[22] See <https://thelawdictionary.org/regency/> (accessed on 17 May 2020).

> His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne; and should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent of Council of Regency, who shall administer the Government in the name of the King, and exercise all the powers which are Constitutionally vested in the King, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign".

The Council of Regency was established by proclamation on February 28, 1997, by virtue of the offices made vacant in the Cabinet Council, on the basis of the doctrine of necessity, the application of which was justified by the absence of a Monarch. Therefore, **the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom**. The Council of Regency, composed by *de facto* officers, is actually serving as the provisional government of the Hawaiian Kingdom, and, should the military occupation come to an end, it shall immediately convene the Legislative Assembly, which "shall proceed to choose by ballot, a Regent of Council of Regency, who shall administer the Government in the name of the King, and exercise all the powers which are Constitutionally vested in the King" until it shall not be possible to nominate a Monarch, pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864.

9. In light of the foregoing – particularly in consideration of the fact that, under international law, the Hawaiian Kingdom continues to exist as an independent State, although subjected to a foreign occupation, and that the Council of Regency has been established consistently with the constitutional principles of the Hawaiian Kingdom and, consequently, possesses the legitimacy of temporarily exercising the functions of the Monarch of the Kingdom – it is possible to conclude that **the Regency actually has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level**.

b) Assuming the Regency does have the authority, what effect would its proclamations have on the civilian population of the Hawaiian Islands under international humanitarian law, to include its proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State on 3 June 2019?

10. As previously ascertained, the Council of Regency actually possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom and, consequently, has the authority to represent the Hawaiian Kingdom as a State pending the American occupation and, in any case, up to the moment when it shall be possible to convene the Legislative Assembly pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864. This means that **the Council of Regency is exactly in the same position of a government of a State under military occupation, and is vested with the rights and powers recognized to governments of occupied States pursuant to international humanitarian law**.
11. In principle, however, such rights and powers are quite limited, by reason of the fact that the governmental authority of a government of a State under military occupation has been replaced by that of the occupying power, "[t]he authority of the legitimate power having in fact passed into the

hands of the occupant".[23] At the same time, the ousted government retains the function and the duty of, to the extent possible, preserving order, protecting the rights and prerogatives of local people and continuing to promote the relations between its people and foreign countries. In the *Larsen* case, the claimant even asserted that the Council of Regency had "an obligation and a responsibility under international law, to take steps to protect Claimant's nationality as a Hawaiian subject";[24] the Arbitral Tribunal established by the PCA, however, did not provide a response regarding this claim. In any event, leaving aside the latter specific aspect, in light of its position the Council of Regency may to a certain extent interact with the exercise of the authority by the occupying power. This is consistent with the fact that the occupant is under an international obligation to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country".[25] Indeed, as noted by the eminent jurist Robert Y. Jennings in an influential article published in 1946,[26] one of the main purposes of the law of belligerent occupation is to protect the sovereign rights of the legitimate government of the occupied territory, and the obligations of the occupying power in this regard continue to exist "even when, in disregard of the rules of international law, it claims […] to have annexed all or part of an occupied territory".[27] It follows that, the ousted government being the entity which represents the "legitimate government" of the occupied territory, it may "attempt to influence life in the occupied area out of concern for its nationals, to undermine the occupant's authority, or both. One way to accomplish such goals is to legislate for the occupied population".[28] In fact, "occupation law does not require an exclusive exercise of authority by the Occupying Power. It allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory".[29] While in several cases occupants have maintained the inapplicability to the occupied territory of new legislation enacted by the occupied government, for the reason that it "could undermine their authority […] the majority of post-World War II scholars, also relying on the practice of various national courts, have agreed that the occupant should give effect to the sovereign's new legislation as long as it addresses those issues in which the occupant has no power to amend the local law, most notably in matters of personal status".[30] The Swiss Federal Tribunal has even held that "[e]nactments by the [exiled government] are constitutionally laws of the [country] and applied *ab initio* to the territory occupied […] even though they could not be effectively implemented until the liberation".[31] Although this position was taken with specific regard to exiled governments, and the Council of Regency was not established *in exile* but *in situ*, the conclusion, to the extent that it is considered valid, would not substantially change as regards the Council of Regency itself.

12. It follows from the foregoing that, under international humanitarian law, **the proclamations of the Council of Regency are not divested of effects as regards the civilian population of the Hawaiian Islands**. In fact, considering these proclamations as included in the concept of "legislation" referred

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[23] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

[24] See *Larsen v. Hawaiian Kingdom*, *supra* n. 1, at 12.8.

[25] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

[26] See "Government in Commission", 23 *British Year Book of International Law*, 1946, 112.

[27] See Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, *supra* n. 12, at 276.

[28] See Eyal Benvenisti, *The International Law of Occupation*, 2nd Ed., Oxford, 2012, at 104.

[29] See Philip Spoerri, "The Law of Occupation", in Andrew Clapham and Paola Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford, 2014, 182, at 190.

[30] See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 104-105.

[31] See *Ammon v. Royal Dutch Co.*, 21 *International Law Reports*, 1954, 25, at 27.

to in the previous paragraph,[32] they might even, if the concrete circumstances of the case so allow, apply retroactively at the end of the occupation, irrespective of whether or not they must be respected by the occupying power during the occupation, on the condition that the legislative acts in point do not "disregard the rights and expectations of the occupied population".[33] It is therefore necessary that the occupied government refrains "from using the national law as a vehicle to undermine public order and civil life in the occupied area".[34] In other words, in exercising the legislative function during the occupation, the ousted government is subjected to the condition of not undermining the rights and interests of the civilian population. However, once the latter requirement is actually respected, the proclamations of the ousted government – including, in the case of Hawai'i, those of the Council of Regency – may be considered applicable to local people, unless such applicability is explicitly refuted by the occupying authority, in its position of an entity bearing "the ultimate and overall responsibility for the occupied territory".[35] In this regard, however, it is reasonable to assume that the occupying power should not deny the applicability of the above proclamations when they do not undermine, or significantly interfere with the exercise of, its authority. This would be consistent with the obligation of the occupying power "to maintain the status quo ante (i.e. as it was before) in the occupied territory as far as is practically possible",[36] considering that local authorities are better placed to know what are the actual needs of the local population and of the occupied territory, in view of guaranteeing that the status quo ante is effectively maintained.

13. As regards, specifically, the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019,[37] it reads as follows:

> "Whereas, in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai'i and its Counties to begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:
> Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby recognize the State of Hawai'i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;
> And, We do hereby further proclaim that the State of Hawai'i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law".

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[32] This is consistent with the assumption that the expression "laws in force in the country", as used by Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907 (see *supra*, text corresponding to n. 25), "refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents […] as well as administrative regulations and executive orders"; see Marco Sassòli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", 16 *European Journal of International Law*, 2005, 661, at 668-69.

[33] See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 105.

[34] Ibid., at 106.

[35] See *supra*, text corresponding to n. 29.

[36] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", *supra* n. 20, at 9.

[37] Available at <https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf> (accessed on 18 May 2020).

As it is evident from a plain reading of its text, this Proclamation pursues the clear purpose of ensuring the protection of the Hawaiian territory and the people residing therein against the prejudicial effects which may arise from the occupation to which such a territory is actually subjected. Therefore, it represents a legislative act aimed at furthering the interests of the civilian population through ensuring the correct administration of their rights and of the land. As a consequence, it has the nature of an act that is equivalent, in its rationale and purpose (although not in its precise subject), to a piece of legislation concerning matters of personal status of the local population, requiring the occupant to give effect to it.[38] It is true that the Proclamation of 3 June 2019 takes a precise position on the status of the occupying power, the State of Hawai'i and its Counties being a direct emanation of the United States of America. However, in doing so, the said Proclamation simply reiterates an aspect that is self-evident, since the fact that the State of Hawai'i and its Counties belong to the political organization of the occupying power, and that they are de facto administering the Hawaiian territory, is objectively irrefutable. It follows that the Proclamation in discussion simply restates rules already existing under international humanitarian law. In fact, the latter clearly establishes the obligation of the occupying power to preserve the sovereign rights of the occupied government (as previously ascertained in this opinion),[39] the "overarching principle [of the law of occupation being] that an occupant does not acquire sovereignty over an occupied territory and therefore any occupation must only be a temporary situation".[40] Also, it is beyond any doubts that an occupying power is bound to guarantee and protect the human rights of the local population, as defined by the international human rights treaties of which it is a party as well as by customary international law. This has been authoritatively confirmed, *inter alia*, by the International Court of Justice.[41] While the Proclamation makes reference to the duty of the State of Hawai'i and its Counties to protect the human rights of the local population "under Hawaiian Kingdom law", and not pursuant to applicable international law, this is consistent with the obligation of the occupying power to respect, to the extent possible, the law in force in the occupied territory. In this regard, respecting the domestic laws which protect the human rights of the local population undoubtedly falls within "the extent possible", because it certainly does not undermine, or significantly interfere with the exercise of, the authority of the occupying power, and is consistent with existing international obligations. In other words, the occupying power cannot be considered "absolutely prevented"[42] from applying the domestic laws protecting the human rights of the local population, unless it is demonstrated that the level of protection of human rights guaranteed by Hawaiian Kingdom law is less advanced than human rights standards established by international law. Only in this case, the occupying power would be under a duty to ensure in favour of the local population the higher level of protection of human rights guaranteed by international law. In sum, **the Council of Regency's Proclamation of 3 June 2019 may be considered as a domestic act implementing international rules at the internal level,**

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[38] See *supra* text corresponding to n. 30.

[39] See, in particular, *supra*, para. 11.

[40] See United Nations, Officer of the High Commissioner of Human Rights, "Belligerent Occupation: Duties and Obligations of Occupying Powers", September 2017, available at <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ohchr_syria_-_belligerent_occupation_-_legal_note_en.pdf> (accessed on 19 May 2020), at 3.

[41] See, in particular, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, *ICJ Reports*, 2004, at 111-113; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgement of 19 December 2005, at 178. For a more comprehensive assessment of this issue see Federico Lenzerini, "International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 173, at 203-205.

[42] See *supra*, text corresponding to n. 25

which should be effected by the occupying power pursuant to international humanitarian law, since it does not undermine, or significantly interfere with the exercise of, its authority.

14. It may be concluded that, under international humanitarian law, **the proclamations of the Council of Regency** – including the Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State on 3 June 2019 – **have on the civilian population the effect of acts of domestic legislation aimed at protecting their rights and prerogatives, which should be, to the extent possible, respected and implemented by the occupying power**.

c) Comment on the working relationship between the Regency and the administration of the occupying State under international humanitarian law.

15. As previously noted, "occupation law […] allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory".[43] This said, it is to be kept well in mind that belligerent occupation necessarily has a *non-consensual nature*. In fact, "[t]he absence of consent from the state whose territory is subject to the foreign forces' presence […] [is] a precondition for the existence of a state of belligerent occupation. Without this condition, the situation would amount to a 'pacific occupation' not subject to the law of occupation".[44] At the same time, we also need to remember that the absence of armed resistance by the territorial government can in no way be interpreted as determining the existence of an implied consent to the occupation, consistently with the principle enshrined by Article 2 common to the four Geneva Conventions of 1949.[45]. On the contrary, the consent, "for the purposes of occupation law, […] [must] be genuine, valid and explicit".[46] It is evident that such a consent has never been given by the government of the Hawaiian Kingdom. On the contrary, the Hawaiian government opposed the occupation since its very beginning. In particular, Queen Lili'uokalani, executive monarch of the Hawaiian Kingdom, on 17 January 1893 stated that,

> "to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands".[47]

The opposition to the occupation has never been abandoned up to the time of this writing, although for some long decades it was stifled by the policy of *Americanization* brought about by the US government in the Hawaiian Islands. It has eventually revived in the last three lustrums, with the establishment of the Council of Regency.

16. Despite the fact that the occupation inherently configures as a situation unilaterally imposed by the occupying power – any kind of consent of the ousted government being totally absent – there still is some space for "cooperation" between the occupying and the occupied government – in the specific case of Hawai'i between the State of Hawai'i and its Counties and the Council of Regency.

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[43] See *supra*, text corresponding to n. 29.
[44] See Spoerri, "The Law of Occupation", supra n. 29, at 190.
[45] See *supra*, para. 6.
[46] See Spoerri, "The Law of Occupation", supra n. 29, at 190.
[47] See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 586.

Before trying to specify the characteristics of such a cooperation, it is however important to reiterate that, under international humanitarian law, the last word concerning any acts relating to the administration of the occupied territory is with the occupying power. In other words, "occupation law would allow for a vertical, but not a horizontal, sharing of authority […] [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory".[48] This vertical sharing of authority would reflect "the hierarchical relationship between the occupying power and the local authorities, the former maintaining a form of control over the latter through a top-down approach in the allocation of responsibilities".[49]

17. The cooperation referred to in the previous paragraph is implied or explicitly established in some provisions of the Fourth Geneva Convention of 1949. In particular, Article 47 states that

> "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory".

Through referring to possible agreements "concluded between the authorities of the occupied territories and the Occupying Power", this provision clearly implies the possibility of establishing cooperation between the occupying and the occupied government. More explicitly, Article 50 affirms that "[t]he Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children", while Article 56 establishes that, "[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory […]".

As far as United States practice is concerned, it acknowledges that "[t]he functions of the [occupied] government – whether of a general, provincial, or local character – continue only to the extent they are sanctioned".[50] With specific regard to cooperation with the occupied government, it is also recognized that "[t]he occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions".[51]

18. Importantly, the provisions referred to in the previous paragraph exactly refer to issues related to the protection of civilian persons and of their rights, which is one of the two main aspects (together with the preservation of the sovereign rights of the Hawaiian Kingdom government) dealt with by the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019.[52] In practice, the cooperation advocated by the provisions in point may take different forms, one of which translates into the possibility for the ousted government to adopt legislative provisions concerning the above aspects. As previously seen, the occupying power has, *vis-à-vis* the ensuing legislation, a duty not to oppose to it, because it normally does not undermine, or significantly interfere with the exercise of, its authority. Further to this, it is reasonable to assume that – in light of the spirit and the contents of the provisions referred to in the previous paragraph – the occupying power has a duty to cooperate in giving

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[48] See International Committee of the Red Cross, *Expert Meeting. Occupation and Other Forms of Administration of Foreign Territory. Report*, Geneva, 2012, available at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf> (accessed on 20 May 2020), at 20.

[49] Ibid., at footnote 7.

[50] See "The Law of Land Warfare", *United States Army Field Manual* 27-10, July 1956, Section 367(a).

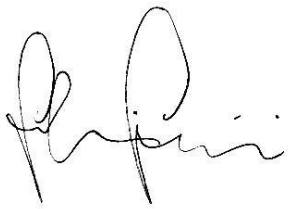
[51] Ibid., Section 367(b).

[52] See *supra*, text following n. 37.

realization to the legislation in point, unless it is "absolutely prevented" to do so. This duty to cooperate appears to be reciprocal, being premised on both the Council of Regency and the State of Hawai'i and its Counties to ensure compliance with international humanitarian law.

19. The latter conclusion is consistent with the logical (and legally-grounded) assumption that the ousted government is better placed than the occupying power in order to know what are the real needs of the civilian population and what are the concrete measures to be taken to guarantee an effective response to such needs. It follows that, through allowing the legislation in discussion to be applied – and through contributing in its effective application – the occupying power would better comply with its obligation, existing under international humanitarian law and human rights law, to guarantee and protect the human rights of the local population. It follows that the occupying power has a duty – if not a proper legal obligation – to cooperate with the ousted government to better realize the rights and interest of the civilian population, and, more in general, to guarantee the correct administration of the occupied territory.
20. In light of the foregoing, it may be concluded that **the working relationship between the Regency and the administration of the occupying State should have the form of a cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory**, provided that there are no objective obstacles for the occupying power to cooperate and that, in any event, the "supreme" decision-making power belongs to the occupying power itself. This conclusion is consistent with the position of the latter as "administrator" of the Hawaiian territory, as stated in the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019 and presupposed by the pertinent rules of international humanitarian law.

24 May 2020



Professor Federico Lenzerini

Exhibit “7”

DECLARATION OF DAVID KEANU SAI, Ph.D.

I, David Keanu Sai, declare the following:

1. Declarant is a Hawaiian subject residing in Mountain View, Island of Hawai‘i, Hawaiian Kingdom. I am the Minister of the Interior, Minister of Foreign Affairs *ad interim*, and Chairman of the Council of Regency. Declarant served as Agent for the Hawaiian Kingdom in *Larsen v. Hawaiian Kingdom* arbitral proceedings at the Permanent Court of Arbitration from 1999-2001.

2. On or about mid-February 2000, declarant, as Agent for the Hawaiian Kingdom, had a phone conversation with the Secretary General of the Permanent Court of Arbitration (PCA), Tjaco T. van den Hout. In that conversation, the Secretary General stated to the declarant that the Secretariat was not able to find any evidence that the Hawaiian Kingdom had been extinguished as a State and admitted that the 1862 Hawaiian-Dutch Treaty was not terminated. The declarant understood that the Hawaiian Kingdom satisfied the PCA's institutional jurisdiction pursuant to Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes, I, whereby the PCA would be accessible to Non-Contracting States. The arbitral tribunal was not formed until June 9, 2000.

3. The Secretary General then stated to the declarant that in order to maintain the integrity of these proceedings, he recommended that the Hawaiian Kingdom Government provide a formal invitation to the United States to join in the arbitral proceedings. The declarant stated that he will bring this request up with the Council of Regency. After discussion, the Council of Regency accepted the Secretary General's request and declarant travelled by airplane with Ms. Ninia Parks, counsel for claimant, Lance P. Larsen, to Washington, D.C., on or about March 1, 2000.

4. On March 2, 2000, Ms. Parks and the declarant met with Sonia Lattimore, Office Assistant, L/EX, at 10:30 a.m. on the ground floor of the Department of State and presented her with two (2) binders, the first comprised of an Arbitration Log Sheet with accompanying documents on record at the Permanent Court of Arbitration. The second binder comprised of divers documents of the Acting Council of Regency as well as diplomatic correspondence with treaty partners of the Hawaiian Kingdom.

5. Declarant stated to Ms. Lattimore that the purpose of our visit was to provide these documents to the Legal Department of the U.S. State Department in order for the U.S. Government to be apprised of the arbitral proceedings already in train and that the Hawaiian Kingdom, by consent of the Claimant, extends an opportunity for the United States to join in the

arbitration as a party. Ms. Lattimore assured the declarant that the package would be given to Mr. Bob McKenna for review and assignment to someone within the Legal Department. Declarant told Ms. Lattimore that he and Ms. Parks will be in Washington, D.C., until close of business on Friday, and she assured declarant that she will call on declarant's cell phone by the close of business that day with a status report.

6. At 4:45 p.m., Ms. Lattimore contacted the declarant by phone and stated that the package had been sent to John Crook, Assistant Legal Advisor for United Nations Affairs. She stated that Mr. Crook will be contacting the declarant on Friday (March 3, 2000), but declarant could give Mr. Crook a call in the morning if desired.

7. At 11:00 a.m., March 3, 2000, declarant called Mr. Crook and inquired about the receipt of the package. Mr. Crook stated that he did not have ample time to critically review the package but will get to it. Declarant stated that the reason for our visit was the offer by the Respondent Hawaiian Kingdom, by consent of the Claimant, by his attorney, for the United States Government to join in the arbitral proceedings already in motion. Declarant also advised Mr. Crook that Secretary General van den Hout of the PCA was aware of our travel to Washington, D.C., and the offer to join in the

arbitration. The Secretary General requested that the dialogue be reduced to writing and filed with the International Bureau of the PCA for the record.

8. Declarant further stated to Mr. Crook that enclosed in the binders were Hawaiian diplomatic protests lodged by declarant's former country men and women with the Depart of State in the summer of 1897, that are on record at the U.S. National Archives, in order for him to understand the gravity of the situation. Declarant also stated that included in the binders were two (2) protests by the declarant as an officer of the Hawaiian Government against the State of Hawai'i for instituting unwarranted criminal proceedings against the declarant and other Hawaiian subjects under the guise of American municipal laws within the territorial dominion of the Hawaiian Kingdom.

9. In closing, the declarant stated to Mr. Crook that after a thorough investigation into the facts presented to his office, and following zealous deliberations as to the considerations offered, the Government of the United States shall resolve to decline our offer to enter the arbitration as a Party, the present arbitral proceedings shall continue without affect pursuant to the 1907 Hague Conventions IV and V, and the UNCITRAL Rules of arbitration. Mr. Crook acknowledged what was said and the conversation then came to a close. That day a letter confirming the content of the discussion was drafted by the declarant and sent to Mr. Crook. The letter

was also carbon copied to the Secretary General of the PCA, Ms. Parks, Mr. Keoni Agard, appointing authority for the arbitral proceedings, and Ms. Noelani Kalipi, Hawai‘i Senator Daniel Akaka’s Legislative Assistant.

10. Thereafter, the PCA’s Deputy Secretary General, Phyllis Hamilton, spoke with declarant over the phone and informed declarant that the United States, through its embassy in The Hague, notified the PCA that the United States had declined the invitation to join in the arbitral proceedings. Instead, the United requested permission from the Hawaiian Government and the Claimant to have access to the pleadings and records of the case. Both the Hawaiian Government and the Claimant consented to the United States’ request.

11. On March 21, 2000, Professor Christopher Greenwood, QC, was confirmed as an arbitrator, and on March 23, 2000, Gavan Griffith, QC, was confirmed as an arbitrator. On May 28, 2000, the arbitral tribunal was completed by the appointment of Professor James Crawford as the presiding arbitrator. On June 9, 2000, the parties jointly notified, by letter, to the Deputy Secretary General of the PCA that the arbitral tribunal had been duly constituted.

12. After written pleadings were filed by the parties with the PCA, oral hearings were held at the PCA on December 7, 8 and 11, 2000. The arbitral award was filed with the PCA on February 5, 2000 where the tribunal found that it

lacked subject matter jurisdiction because it concluded that the United States was an indispensable third party. Consequently, the Claimant was precluded from alleging that the Hawaiian Kingdom, by its Council of Regency, was liable for the unlawful imposition of American municipal laws over the Claimant's person within the territorial jurisdiction of the Hawaiian Kingdom without the participation of the United States.

13. After returning from The Hague in December of 2000, the Council of Regency determined that the declarant would enter University of Hawai'i at Mānoa as a graduate student in the political science department in order to directly address the misinformation regarding the continuity of the Hawaiian Kingdom as an independent and sovereign State that has been under a prolonged occupation by the United States since January 17, 1893 through research and publication of articles. The decision made by the Council of Regency was in accordance with Section 495—*Remedies of Injured Belligerent*, United States Army FM-27-10 states, "[i]n the event of violation of the law of war, the injured party may legally resort to remedial action of the following types: *a.* Publication of the facts, with a view to influencing public opinion against the offending belligerent."

14. The declarant received his master's degree in political science specializing in international relations and law in 2004 and received his Ph.D. degree in

political science with particular focus on the continuity of the Hawaiian Kingdom. Declarant has published multiple articles and books on the prolonged occupation of the Hawaiian Kingdom and its continued existence as a State under international law. Declarant's curriculum vitae can be accessed online at http://www2.hawaii.edu/~anu/pdf/CV.pdf. Declarant can be contacted at interior@hawaiiankingdom.org.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Mountain View, Hawaiian Kingdom, May 19, 2021.

David Keanu Sai

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2022 I electronically filed the foregoing document by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by said CM/ECF system.

/s/ Dexter K. Ka'iama
Dexter K. Ka`iama
Attorney for Appellant Hawaiian Kingdom