

Geneva, January 30th, 1932.

LEAGUE OF NATIONS

**PROCEDURE FOR THE FRIENDLY SETTLEMENT  
OF ECONOMIC DISPUTES BETWEEN STATES**

Set up by a Resolution of the Council of January 28th, 1932.

I.

RESOLUTION ADOPTED BY THE COUNCIL OF THE LEAGUE OF NATIONS  
ON JANUARY 28TH, 1932.

The Council,

In view of the proposal put forward in March 1930 by the French delegation to the Conference with a View to Concerted Economic Action and included in the " Programme of Future Negotiations " prepared at the time to the effect that a permanent organ for conciliation and arbitration should be set up for the settlement of *all disputes of an economic nature* which may arise between States;

In view of the resolution of the eleventh Assembly, dated October 2nd, 1930, inviting the Economic Committee to draw up concrete proposals on this subject;

In view of the report of the Economic Committee;

And considering that most States Members of the League and non-member States are already bound by a great number of contractual ties under plurilateral or bilateral treaties, involving compulsory recourse for the friendly settlement of their disputes—including economic disputes—to organs, either permanent or created *ad hoc*, and to the procedure laid down in these Conventions;

Being desirous of avoiding the confusion and uncertainty which might result from the creation of a new permanent organ;

Being desirous, nevertheless, of meeting to some extent certain practical difficulties encountered in carrying out present agreements, above all the difficulty experienced by the parties in choosing the persons to whom their dispute will be submitted;

Being convinced that this difficulty would be greatly reduced if the parties concerned in economic disputes and desirous of reaching a friendly settlement were able to choose or to have chosen by mutual agreement suitable individuals from a group of absolutely trustworthy persons appointed periodically by the Council by a method of selection which would guarantee both the impartiality and competence of the experts;

Noting that the above decisions do not in any way affect the international agreements mentioned in paragraph 2 above or the right of the parties concerned to adopt another procedure if they prefer:

Decides to place at the disposal of the Members of the League and any States non-members, which may wish to avail themselves of the procedure, a body of experts to whom they may submit their *economic disputes* for settlement by arbitration or for the bringing about of a friendly settlement by means either of an advisory opinion or of proposals for solution:

- (a) Adopts the Rules of Procedure appended to the report of the Economic Committee;
- (b) Invites the Economic Committee to submit to it at its next session proposals on the basis of which it may nominate the experts foreseen in these Rules of Procedure;
- (c) Authorises the Secretary-General to take such steps as he may consider necessary under the Rules of Procedure.

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II.

RULES OF PROCEDURE DRAWN UP BY THE COUNCIL WITH A VIEW TO FACILITATE THE PEACEFUL AND RAPID SETTLEMENT OF ECONOMIC DISPUTES WHICH MIGHT ARISE BETWEEN MEMBERS OF THE LEAGUE OF NATIONS OR NON-MEMBER STATES.

CHAPTER I. — JURISDICTION.

*Article 1.*<sup>1</sup>

Only Members of the League and States non-members may apply to the Experts for the peaceful settlement of an economic dispute arising between them.

*Article 2.*

A dispute can only be validly brought before the Experts by a joint application from the Parties to the case.

*Article 3.*<sup>2</sup>

The jurisdiction of the Experts shall extend to all disputes concerned with matters of an economic nature.

CHAPTER II. — APPOINTMENT OF THE EXPERTS.

*Article 4.*<sup>3</sup>

The Experts, to the number of fourteen, shall be appointed by the Council on the proposal of the Economic Committee of the League.

The Experts must:

- (a) Be of different nationalities;
- (b) Be persons enjoying the highest esteem;
- (c) Be of recognised competence in economic questions in the widest sense of the term;
- (d) Be familiar with the problems involved in the regulation of economic relations between countries, and in particular with matters usually forming the subject of commercial treaties and other economic agreements.

*Article 5.*

The Experts shall be appointed for a period of five years. Their appointment may be renewed.

They shall personally perform their duties.

If an Expert dies or resigns, he shall be replaced for the remainder of his term of office by a person appointed in accordance with the provisions of Article 4.

On the expiry of their term of office, the Experts shall continue to deal with any cases that may previously have been submitted to them and are not concluded.

CHAPTER III. — PROCEDURE.

*Article 6.*

The application provided for in Article 2 above shall be addressed to the Secretary-General of the League of Nations.

It shall be drawn up by common agreement between the Parties to the case, and must bear their signatures.

The application shall state:

- (a) The subject of the dispute and the Parties to the case;
- (b) The number of Experts to be selected;
- (c) The nature of the decision the Expert or Experts are requested to give (advisory opinion, conciliation or arbitration);
- (d) The names of the Experts chosen or the request to apply Articles 7 and 8.

<sup>1</sup> This means that only Governments can apply, and not individuals.

<sup>2</sup> The Experts are given the widest jurisdiction, as their consultation is optional.

<sup>3</sup> The Economic Committee experienced some difficulty in deciding the number of Experts.

The Experts must not be too numerous, so that there may be a sort of continuity and uniformity in their doctrine. The Economic Committee thought that the case-law built up by the Experts might be a useful guide for future decisions, recommendations and opinions, though it would not necessarily form a precedent in the legal sense given to the term "precedent" in Anglo-Saxon countries.

On the other hand, the Experts must not be too few, so that they may include persons versed in the economic conditions of the principal countries and the various branches of national economy. States, too, should be allowed a certain latitude of choice.

*Article 7.*

If the Parties have chosen the Experts themselves, the Experts shall in turn themselves appoint their President.

*Article 8.*

If the Parties themselves have not chosen the Experts in their application, the choice shall be made by the Chairman of the Economic Committee. For this purpose the Secretary-General shall send him a copy of the application.

*Article 9.*

Should the Chairman of the Economic Committee be prevented from making a choice, or be a national of one of the Parties, the choice shall be made by his predecessor, provided the latter is still a member of the Committee.

Should the predecessor of the Chairman also be unable, for one of the above reasons, to make a choice, the choice shall be made by the oldest member who is not a national of any Party to the case.

*Article 10.<sup>1</sup>*

The person called upon to make the choice in accordance with Articles 7 and 8 shall do so within 15 days after receiving the communication from the Secretary-General of the League of Nations. If several Experts have to be chosen, he shall also appoint their President.

The choice shall be made exclusively from among the persons referred to in Article 4.

Moreover, the Experts must be of a different nationality from that of the Parties.

*Article 11.*

Any recourse to the Experts shall imply that the Parties accept the provisions of the present Rules.

If the Parties have requested an arbitral award, that fact shall involve the obligation on their part to submit to the award to be given and to carry it out in good faith.

*Article 12.*

The Experts shall be entirely free to follow the procedure they deem best in each particular case.

*Article 13.<sup>2</sup>*

The Parties shall be informed without delay of the results of the Experts' work.

These results shall be published by the Secretary-General of the League of Nations, if the Parties consent.

CHAPTER IV. — GENERAL PROVISIONS.

A. — SECRETARIAT.

*Article 14.*

The Secretariat shall be provided by the Secretary-General of the League of Nations.

B. — EXPENSES.

*Article 15.*

Each of the Parties shall bear its own expenses for procedure. The joint expenditure decided upon by the President of the Experts shall be borne by the Parties in equal parts.

*Article 16.*

The expenses referred to in the above Article shall include remuneration to be granted to the Experts, witnesses and other persons whose co-operation is required.

*Article 17.<sup>3</sup>*

At the beginning of the procedure the President of the Experts shall fix the amount to be advanced by each of the Parties in order to cover the above-mentioned expenses, and shall draw up an account on the conclusion of the work.

<sup>1</sup> The last provision of Article 10 naturally does not exclude the right of the Parties to have themselves represented by agents instructed to defend their interests.

<sup>2</sup> In principle, the Economic Committee favours the publications of such results, but the results can only be published when the parties agree, because, if publication were compulsory in every instance, Governments might hesitate to resort to the proposed procedure.

<sup>3</sup> This rule is intended to ensure that the League shall not incur expenditure for which no provision has been made in its budget, and which ought, after all, to be borne by the Parties. It also ensures that there shall be no delay in the procedure.

Article 18.

In principle, the Experts shall sit at Geneva in the Secretariat of the League of Nations. Their President may, however, decide that they shall sit elsewhere.

III.

REPORT OF THE ECONOMIC COMMITTEE TO THE COUNCIL.

INTRODUCTION.

1. The " Protocol regarding the Programme of Future Negotiations " drawn up at the time of the Preliminary Conference with a View to Concerted Economic Action and signed on March 24th, 1930, at the end of the Conference, provides " that the various points of the memorandum submitted by the French delegation should be examined by the Economic Organisation of the League of Nations ".

One of these points refers to the creation, " attached to the Council of the League of Nations, of a Permanent Organ of Conciliation and Arbitration. This body would be competent to examine and settle all difficulties submitted to it by the participating States concerning the interpretation and application of measures adopted ' in the domain of economic activity ' and bilateral or multilateral commercial and Customs Conventions now in force or which may hereafter be concluded ".<sup>1</sup>

On May 12th, 1930, the Council instructed the Economic Organisation to carry out the decisions of the Conference.

2. In June 1930, the Economic Committee, being desirous of obtaining full information with regard to the actual situation before considering the question, asked the Secretariat to conduct a preliminary enquiry into such systems of conciliation and arbitration applicable to disputes of an economic nature as are already embodied in bilateral or plurilateral international agreements and the effects of the coexistence of these agreements, taking into account the rights and obligations which the various countries might obtain or incur by their accession to the Permanent Court of International Justice or to arbitration conventions at present in force.

Accordingly, the Secretariat drew up a " Memorandum " (booklet E.666), which is a first attempt to collect and group in a logical form the provisions in force in the various acts, treaties, conventions and agreements concluded between the different Powers, mainly in Europe, which might be applied for the peaceful settlement of international disputes regarding economic matters, more particularly commercial and Customs matters. The Council regarded this " Memorandum " as so valuable a compendium of information for all persons interested in the question that it decided, at its September 1931 session, to communicate it to the Members of the League of Nations.

3. This Memorandum proved to the Economic Committee that the network of contractual inter-State undertakings which might be applied for the peaceful settlement of economic disputes arising between States was already so widespread and interlocked that the creation of a new body to carry out the same work in this category of disputes would complicate what was already a sufficiently confused situation and would cause overlapping, doubts, and even conflicts of jurisdiction.

In these circumstances the establishment of a special new organisation seemed to be superfluous, if not actually harmful.

4. On the other hand, is the present situation entirely satisfactory? If so, what were the reasons which led the French delegation to make its proposal?

A careful enquiry into the present situation reveals many drawbacks.

(a) First the *slow and laborious procedure* of the permanent organisations, or organisations created *ad hoc* for the settlement of disputes, is ill-adapted to the speed with which economic conditions are developing at the present time. The circumstances which give rise to the dispute are often entirely different when the decision is finally given.

(b) Moreover, *bodies composed of judges*, who cannot be thoroughly well acquainted with all the details of economic life, and who are rather inclined to rely on criteria of pure law in judging cases in which situations of fact and technical considerations are of predominant importance, do not always appear to operate in a way satisfactory to the parties. Moreover, it appears, from a recent order issued by the Permanent Court of International Justice, that the Court itself is of the opinion that judicial settlement is not always the best way of settling disputes of an economic nature.<sup>2</sup>

<sup>1</sup> See document C.203.M.96.1930.II, pages 16 and 25.

<sup>2</sup> Order of December 6th, 1930, concerning the case of the Free Zones of Upper Savoy and the district of Gex. Publications of the Permanent Court of International Justice, Series A, No. 24.

(c) Finally, *the choice of the persons called upon to act as arbitrators or conciliators* often—particularly as regards nationality—causes so much anxiety and leads to such difficult and complex negotiations that in many cases the parties, though they desire to settle the dispute, hesitate in face of the numerous difficulties involved in selecting arbitrators in whom they have confidence, so that confused situations are perpetuated and regrettable misunderstandings arise.

5. Having decided, for the reasons explained in paragraph 3, not to recommend the creation of a new organ, but fully appreciating the reasons which led the French delegation to make its proposal, and being desirous of remedying one at least of the most serious drawbacks which, in practice, hinder the satisfactory operation of procedures of arbitration and conciliation, *the Economic Committee is unanimously of opinion that the League of Nations might—without in any way modifying the existing legal situation or imposing any new obligations on States—render considerable service to the States concerned by endeavouring to facilitate, through appropriate procedure, the choice of the conciliators or experts to be consulted, to whom the parties might submit disputes of an economic nature.*

6. Under these circumstances, *the Economic Committee proposes to the Council to establish a group of experts to whom the interested parties might apply for the peaceful settlement of economic disputes.*

A draft set of Rules is attached to the present report.

The draft set of Rules *is not intended to become an international convention.* It will come into force by a decision of the Council. The experts appointed by the Council will be at the disposal of the various States, provided the latter agree to conform, when applying to the experts, to the provisions of the Rules.

7. The main features of the procedure proposed by the Economic Committee are as follows:

- (a) No permanent body will be set up.
- (b) States will not enter into any obligations.
- (c) The experts placed at the disposal of the States concerned will be appointed by the Council. They will be fourteen in number.<sup>1</sup>
- (d) The dispute to be submitted to experts must be of an economic nature.
- (e) A dispute is only laid before experts at the common and express desire of the litigant parties.
- (f) All States, whether Members of the League or not, may apply to the experts.
- (g) The parties to the dispute will themselves decide the number of experts to whom they wish to submit their dispute.
- (h) The parties themselves will choose (experts of their own nationality being excluded) from the group of experts appointed by the Council those to whom they desire to submit the dispute, but they may instruct the Chairman of the Economic Committee to make the choice for them.
- (i) The parties themselves will decide the terms of reference to be given to the experts (advisory opinion, proposal for conciliation, arbitral award).

8. *In conclusion*, the Economic Committee feels that it would be desirable to set up the group of experts as outlined above. This could be obtained through a resolution of the Council. This resolution should be communicated immediately to all Members of the League, together with the present report.

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<sup>1</sup> This figure is regarded as a minimum which would in all circumstances provide the parties with persons acquainted with the economic conditions of the principal countries and the various branches of national economy.