

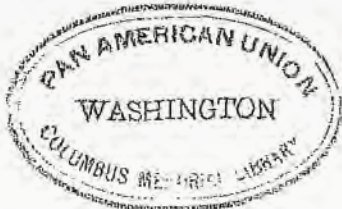


THE INTERNATIONAL CONFERENCES OF AMERICAN STATES

1889-1928

A Collection of the Conventions, Recommendations, Resolutions, Reports, and Motions adopted by the First Six International Conferences of the American States, and Documents relating to the Organization of the Conferences

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FIRST INTERNATIONAL CONFERENCE
OF AMERICAN STATES

WASHINGTON

OCTOBER 2, 1889–APRIL 19, 1890

PLAN OF ARBITRATION¹

The Delegations from North, Central, and South America in Conference assembled:

Believing that war is the most cruel, the most fruitless, and the most dangerous expedient for the settlement of international differences;

¹ *Reports of Committees and Discussions Thereon*, vol. II, p. 875. See also post, p. 65.

² *Id.*, p. 623. See treaty of the Second Conference, post, p. 83.

³ The text of the draft treaty on international penal law adopted by the Congress of Montevideo, not reproduced here, is printed as an appendix to the report of the Committee on Extradition, *Reports of Committees and Discussions Thereon*, vol. II, pp. 570-9. See also Senate Document No. 187, 51st Congress, 1st Session.

⁴ This Plan of Arbitration was submitted to the conference by the Committee on General Welfare as a model for a treaty to be adopted by the states present at the conference and other states desiring to adhere thereto. The plan was adopted by the conference in sessions of April 15-18, 1890, and the present text is taken from a copy of this document filed in the unperfected treaty series in the Department of State. The copy is dated April 24, 1890,

Recognizing that the growth of the moral principles which govern political societies has created an earnest desire in favor of the amicable adjustment of such differences;

Animated by the conviction of the great moral and material benefits that peace offers to mankind, and trusting that the existing conditions of the respective nations are especially propitious for the adoption of Arbitration as a substitute for armed struggles;

Convinced by reason of their friendly and cordial meeting in the present Conference, that the American Republics, controlled alike by the principles, duties, and responsibilities of popular Government, and bound together by vast and increasing mutual interests, can, within the sphere of their own action, maintain the peace of the continent, and the good-will of all its inhabitants;

And considering it their duty to lend their assent to the lofty principles of peace which the most enlightened public sentiment of the world approves;

Do solemnly recommend all the Governments by which they are accredited to conclude a uniform treaty of Arbitration in the articles following:

ARTICLE I. The Republics of North, Central, and South America hereby adopt Arbitration as a principle of American international law for the settlement of the differences, disputes, or controversies that may arise between two or more of them.

ARTICLE II. Arbitration shall be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity, construction, and enforcement of treaties.

ARTICLE III. Arbitration shall be equally obligatory in all cases other than those mentioned in the foregoing article, whatever may be their origin, nature, or object, with the single exception mentioned in the next following article.

ARTICLE IV. The sole questions excepted from the provisions of the preceding articles are those which, in the judgment of any one of the nations involved in the controversy, may imperil its independence. In this event, for such nation, Arbitration shall be optional; but it shall be obligatory upon the adversary power when demanded.¹

and is signed by nine states. With the one exception noted in Article IV, it differs very slightly from the text as printed in *Reports of Committees and Discussions Thereon*, vol. II, p. 1078. A formal treaty with practically identical wording was drawn up after the conference adjourned, and was signed April 28, 1890, by the following eleven states: Bolivia, Brazil, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, El Salvador, United States, Uruguay, Venezuela. It lapsed, however, through the failure of all of its signatories to exchange ratifications within the required time, and never became operative between the states concerned. See W. E. Darby, *International Tribunals* (London, 1904), p. 388.

See protocol and treaty of the Second Conference, post, pp. 61, 100.

¹ The words "when demanded" do not appear in the text printed in *Reports of Committees and Discussions Thereon*, vol. II, p. 1078; nor does their equivalent appear in the Spanish and Portuguese texts of the copy used in the present print. The text of the treaty signed April 28, 1890, copy of which is in the Department of State, also contains these words in the English, but not in the Spanish and Portuguese texts.

ARTICLE V. All controversies or differences, whether pending or hereafter arising, shall be submitted to Arbitration, even though they may have originated in occurrences antedating the present treaty.

ARTICLE VI. No question shall be revived by virtue of this treaty concerning which a definite agreement shall already have been reached. In such cases Arbitration shall be resorted to only for the settlement of questions concerning the validity, interpretation, or enforcement of such agreements.

ARTICLE VII. The choice of Arbitrators shall not be limited or confined to American States. Any government may serve in the capacity of Arbitrator which maintains friendly relations with the nation opposed to the one selecting it. The office of Arbitrator may also be intrusted to tribunals of justice, to scientific bodies, to public officials, or to private individuals, whether citizens or not of the States selecting them.

ARTICLE VIII. The Court of Arbitration may consist of one or more persons. If of one person, he shall be selected jointly by the nations concerned. If of several persons, their selection may be jointly made by the nations concerned. Should no choice be agreed upon, each nation showing a distinct interest in the question at issue shall have the right to appoint one Arbitrator on its own behalf.

ARTICLE IX. Whenever the court shall consist of an even number of Arbitrators, the nations concerned shall appoint an umpire, who shall decide all questions upon which the arbitrators may disagree. If the nations interested fail to agree in the selection of an Umpire, such Umpire shall be selected by the Arbitrators already appointed.

ARTICLE X. The appointment of an Umpire, and his acceptance, shall take place before the Arbitrators enter upon the hearing of the questions in dispute.

ARTICLE XI. The Umpire shall not act as a member of the court, but his duties and powers shall be limited to the decision of questions, whether principal or incidental, upon which the Arbitrators shall be unable to agree.

ARTICLE XII. Should an Arbitrator or an Umpire be prevented from serving by reason of death, resignation, or other cause, such Arbitrator or Umpire shall be replaced by a substitute to be selected in the same manner in which the original Arbitrator or Umpire shall have been chosen.

ARTICLE XIII. The court shall hold its sessions at such place as the parties in interest may agree upon, and in case of disagreement or failure to name a place the court itself may determine the location.

ARTICLE XIV. When the court shall consist of several Arbitrators, a majority of the whole number may act notwithstanding the absence or withdrawal of the minority. In such case the majority shall continue in the performance of their duties until they shall have reached a final determination of the questions submitted for their consideration.

ARTICLE XV. The decision of a majority of the whole number of Arbitrators shall be final both on the main and incidental issues, unless in the agreement to arbitrate it shall have been expressly provided that unanimity is essential.

ARTICLE XVI. The general expenses of arbitration proceedings shall be paid in equal proportions by the governments that are parties thereto; but expenses incurred by either party in the preparation and prosecution of its case shall be defrayed by it individually.

ARTICLE XVII. Whenever disputes arise the nations involved shall appoint Courts of Arbitration in accordance with the provisions of the preceding articles. Only by the mutual and free consent of all such nations may those provisions be disregarded, and Courts of Arbitration be appointed under different arrangements.

ARTICLE XVIII. This Treaty shall remain in force for twenty years from the date of the exchange of ratifications. After the expiration of that period, it shall continue in operation until one of the contracting parties shall have notified all the others of its desire to terminate it. In the event of such notice the treaty shall continue obligatory upon the party giving it for one year thereafter, but the withdrawal of one or more nations shall not invalidate the treaty with respect to the other nations concerned.

ARTICLE XIX. This Treaty shall be ratified by all the nations approving it, according to their respective constitutional methods; and the ratifications shall be exchanged in the city of Washington on or before the first day of May, A. D. 1891.

Any other nation may accept this treaty and become a party thereto, by signing a copy thereof and depositing the same with the Government of the United States; whereupon the said Government shall communicate this fact to the other contracting parties.

In testimony whereof the undersigned Plenipotentiaries have hereunto affixed their signatures and seals.

Done in the city of Washington, in copies in English, Spanish, and Portuguese, on this 24th day of the month of April, one thousand eight hundred and ninety.

[Signed by the delegates for: Bolivia, Brazil, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, El Salvador, United States of America.¹]

¹ In the discussion in the conference of the Plan of Arbitration the following resolution was adopted: "*Resolved*, That the plan of arbitration adopted by this conference shall be engrossed and signed by the delegations approving it, and that a sufficient number of copies be prepared and signed to deliver one copy to each delegation for transmission to its Government." *Reports of Committees and Discussions Thereon*, vol. II, pp. 1065 et seq.