

N° 2042.

ALLEMAGNE ET LITHUANIE

Traité d'arbitrage et de conciliation,
avec protocole final. Signés à
Berlin, le 29 janvier 1928.

GERMANY AND LITHUANIA

Treaty of Arbitration and Concilia-
tion, with Final Protocol. Signed
at Berlin, January 29, 1928.

TEXTE ALLEMAND. — GERMAN TEXT.

N^o 2042. — LITAUISCH-DEUTSCHER SCHIEDSGERICHTS- UND VERGLEICHVERTRAG¹, GEZEICHNET IN BERLIN, AM 29. JANUAR 1928.

Lithuanian and German official texts communicated by the Lithuanian Minister for Foreign Affairs. The registration of this Treaty took place June 4, 1929.

DIE REPUBLIK LITAUEN und DAS DEUTSCHE REICH von dem Wunsche erfüllt, ihre freundschaftlichen Beziehungen zu festigen und die Entwicklung des Verfahrens zur friedlichen Beilegung zwischenstaatlicher Streitigkeiten zu fördern, sind übereingekommen, einen allgemeinen Schiedsgerichts- und Vergleichsvertrag abzuschliessen.

Zu diesem Zwecke haben zu Bevollmächtigten ernannt :

DER PRÄSIDENT DER REPUBLIK LITAUEN :

den Ministerpräsidenten und Minister der Auswärtigen Angelegenheiten Prof. Augustin VOLDEMARAS,

DER DEUTSCHE REICHSPRÄSIDENT :

den Reichsminister des Auswärtigen Dr STRESEMANN,

die, nachdem sie ihre Vollmachten geprüft und in guter und gehöriger Form befunden haben, über folgende Bestimmungen übereingekommen sind :

Artikel 1.

Die vertragschliessenden Teile verpflichten sich, alle Streitigkeiten irgendwelcher Art, die zwischen ihnen entstehen und nicht in angemessener Frist auf diplomatischem Wege geschlichtet werden können, nach Massgabe des gegenwärtigen Vertrags entweder der Entscheidung des Ständigen Internationalen Gerichtshofs im Haag² oder eines besonderen Schiedsgerichts zu unterbreiten oder einem Vergleichsverfahren zu unterwerfen.

Streitigkeiten, für deren Schlichtung die vertragschliessenden Teile durch andere zwischen ihnen bestehende Abmachungen an ein besonderes Verfahren gebunden sind, werden nach Massgabe der Bestimmungen dieser Abmachungen behandelt.

Artikel 2.

Der Entscheidung des Ständigen Internationalen Gerichtshofs werden auf Verlangen einer Partei diejenigen Streitigkeiten unterbreitet, bei denen die Parteien untereinander über ein Recht im Streite sind, insbesondere diejenigen Streitigkeiten, die betreffen :

erstens : Bestand, Auslegung und Anwendung eines zwischen den bei den Parteien geschlossenen Staatsvertrags ;

¹ The exchange of ratifications took place at Kaunas, May 4, 1929.

² Vol. VI, page 379 ; Vol. XI, page 404 ; Vol. XV, page 304 ; Vol. XXIV, page 152 ; Vol. XXVII, page 416 ; Vol. XXXIX, page 165 ; Vol. XLV, page 96 ; Vol. L, page 159 ; Vol. LIV, page 387 ; Vol. LXIX, page 70 ; Vol. LXXII, page 452 ; Vol. LXXVIII, page 435 ; and Vol. LXXXVIII, page 272, of this Series.

¹ TRANSLATION.

No. 2042. — TREATY OF ARBITRATION AND CONCILIATION BETWEEN
THE GERMAN REICH AND LITHUANIA. SIGNED AT BERLIN,
JANUARY 29, 1928.

THE REPUBLIC OF LITHUANIA and THE GERMAN REICH, being desirous of strengthening the ties of friendship which unite them, and of promoting the development of the procedure for the pacific settlement of international disputes, have agreed to conclude a general treaty of Arbitration and Conciliation.

For this purpose they have appointed as their Plenipotentiaries :

THE PRESIDENT OF THE REPUBLIC OF LITHUANIA :

Professor Augustin VOLDEMARAS, Prime Minister and Minister for Foreign Affairs ;

THE PRESIDENT OF THE GERMAN REICH :

Dr. STRESEMANN, Minister for Foreign Affairs, ;

Who, having verified their full powers, which were found in good and due form, have agreed upon the following provisions.

Article 1.

The Contracting Parties undertake to submit to the decision of the Hague Permanent Court of International Justice or of a special arbitral tribunal, or to a procedure of conciliation, as provided in the present Convention, all disputes of any nature whatsoever which may arise between them and which it has not been possible to settle within a reasonable period by diplomacy.

Disputes for the settlement of which a special procedure has been laid down in other conventions in force between the Contracting Parties, shall be settled in accordance with the provisions of such conventions.

Article 2.

At the request of either of the Parties disputes in connection with which the Parties contest a point of law shall be submitted to the decision of the Permanent Court of International Justice, in particular, disputes regarding the following subjects :

First, the existence, interpretation and application of any treaty concluded between the two Parties :

Secondly, any question of international law ;

Thirdly, the existence of any fact which, if established, would constitute a breach of an international obligation ;

Fourthly, the extent and nature of the reparation to be made for the breach of such obligation.

¹ Translated by the Secretariat of the League of Nations, for information.

Article 3.

In the cases mentioned in Article 2 a procedure before a special arbitral tribunal may by special agreement between the Parties, be substituted for the procedure before the Permanent Court of International Justice.

Article 4.

Should the Parties differ on the question whether a dispute comes under any of the categories mentioned in Article 2, this preliminary question shall be settled by the Permanent Court of International Justice or, if the Parties agree to set up a special arbitral tribunal, by that tribunal.

Article 5.

In each individual case which is to be submitted to the decision of the Hague Permanent Court of International Justice or of a special tribunal, the Contracting Parties shall conclude a special agreement mentioning the subject of the dispute and the other conditions upon which the Parties have agreed. If the Contracting Parties agree to set up a special arbitral tribunal, they shall as far as possible comply with the provisions of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

The special agreement shall be drawn up by a protocol or by an exchange of notes. The Permanent Court of International Justice or the special arbitral tribunal shall be competent to interpret the special agreement.

If the special agreement is not concluded within two months after one of the Parties has notified the other Party of its intention to institute proceedings before the Permanent Court of International Justice or a special arbitral tribunal, each Party may bring the matter before the Permanent Court of International Justice by a simple application in accordance with the Statute of the Court.

Article 6.

All disputes which are not submitted to the decision of the Permanent Court of International Justice or a special arbitral tribunal under the foregoing Articles of the present Treaty shall, at the request of one of the Parties, be the subject of a procedure of conciliation.

The Contracting Parties may also agree to submit to the conciliation procedure any of the disputes mentioned in Article 2 before proceedings are opened before the Permanent Court of International Justice or a special arbitral tribunal.

Article 7.

A Permanent Board of Conciliation shall be constituted for the procedure of conciliation.

The Permanent Board of Conciliation shall consist of five members. The Contracting Parties shall each appoint one member of their own choice, and shall nominate the other three members jointly. These three members shall not be nationals of the Contracting States, nor shall they be domiciled in their territory or be employed or have been employed in their service. The Contracting Parties shall jointly elect the Chairman from among these three members.

Either of the Contracting Parties shall have the right at any time, unless a procedure is pending or has been proposed by one of the Parties, to recall the member appointed by it and to appoint a successor. Similarly, either Contracting Party shall also be entitled to withdraw its consent to the appointment of any of the three members nominated jointly. In this case the Contracting Parties shall jointly appoint a new member without delay.

Within a fortnight of the date on which one of the two Parties has submitted a dispute to the Permanent Board of Conciliation, either Contracting Party may, for the examination of such dispute, substitute for the member of the Permanent Board of Conciliation appointed by itself some other person having special competence in the question at issue. The Party making use of this right shall immediately notify the other Party, which, in this case, may exercise the same right within a fortnight of receiving such notification.

The Permanent Board of Conciliation shall be constituted in the course of the six months following the exchange of the instruments of ratification of the present Treaty. Retiring members shall be replaced as soon as possible in the manner laid down for the first election.

If the nomination of the members to be appointed jointly has not taken place within the six months following the exchange of the instruments of ratification or, in the case of a vacancy on the Permanent Board of Conciliation, within three months of the date on which the vacancy occurs, the President of the Swiss Confederation shall, in the absence of any agreement to the contrary, be requested to make the necessary appointments.

Article 8.

The Permanent Board of Conciliation shall enter upon its duties as soon as a dispute has been referred to it by either of the Parties. Such Party shall communicate its request simultaneously to the Chairman of the Permanent Board of Conciliation and to the other Party. The Chairman shall summon the Permanent Board of Conciliation to meet at the earliest possible moment.

The Contracting Parties undertake in all cases and in all respects to help the Permanent Board of Conciliation in its work, and in particular to grant it the assistance of the competent authorities. They shall take all necessary steps to enable the Permanent Board of Conciliation to examine witnesses and experts and to carry out investigations in their respective territories. The Permanent Board of Conciliation may take evidence either *in pleno* or through one or more of the members appointed jointly.

Article 9.

The Permanent Board of Conciliation shall determine its own meeting place and shall be at liberty to transfer it.

The Permanent Board of Conciliation shall, if need be, establish a registry. If it appoints nationals of the Contracting Parties to positions in this office, it shall treat both Parties on an equal footing.

Article 10.

The deliberations of the Permanent Board of Conciliation shall be valid if all the members have been duly convened and if the members nominated jointly are present at the meeting.

The decisions of the Permanent Board of Conciliation shall be taken by a majority vote. If the votes are equally divided, the Chairman shall have a casting vote.

Article 11.

The Permanent Board of Conciliation shall draw up a report setting out the facts of the case and, unless the special circumstances of the case make it impossible, containing proposals for the settlement of the dispute.

The report shall be submitted within six months from the date on which the dispute was laid before the Permanent Board of Conciliation, unless the Parties jointly agree to extend this

time-limit or decide before the Permanent Board of Conciliation meets to shorten it. The report shall be drawn up in three copies ; each Party shall receive one and the third shall be kept in the archives of the Permanent Board of Conciliation.

The report shall not, as regards either the facts or the legal considerations, be in the nature of a final judgment binding upon the Parties. In communicating the report to the Parties, the Permanent Board of Conciliation may invite them to state, within a time-limit to be fixed by the report, whether and how far they recognise the correctness of the findings in the report and accept the proposals which it contains.

The Parties shall jointly decide whether the report shall be published immediately or not. If they fail to agree on this point, the Permanent Board of Conciliation may have the report published immediately, should there be special reasons for so doing.

Article 12.

Each Party shall bear the cost of the remuneration due to the member of the Permanent Board of Conciliation appointed by itself, and half the cost of the remuneration of the members appointed jointly.

Each Party shall bear the costs which it has itself incurred in connection with the proceedings and half of the costs which the Permanent Board of Conciliation declares to be common to both Parties.

Article 13.

Subject to any provisions to the contrary laid down in the preceding Articles, the procedure of conciliation shall be governed *mutatis mutandis* by the provisions of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes. In cases of doubt, the decision shall be taken by the Permanent Board of Conciliation itself.

Article 14.

The Contracting Parties undertake as far as possible to avoid, during the procedure before the Hague Permanent Court of International Justice, the special arbitral tribunal, or the Permanent Board of Conciliation, any measure which might prejudice the execution of the decision or the acceptance of the proposals submitted by the Permanent Board of Conciliation.

Article 15.

The present Treaty shall be ratified as soon as possible and the instruments of ratification shall be exchanged at Kovno.

The Treaty shall come into force one month after the exchange of the instruments of ratification.

The Treaty shall be valid for a period of ten years. If not denounced six months before the expiration of this period, it shall remain in force for a further period of five years, and shall be similarly renewed unless denounced within the prescribed period.

Any procedure before the Hague Permanent Court of International Justice or a special arbitral tribunal, or any procedure of conciliation, which is pending at the time when the present Treaty expires, shall be continued in accordance with the terms of the present Convention or of any other Convention which the Contracting Parties may agree to substitute therefor.

In faith whereof the Plenipotentiaries have signed the present Treaty.

Done at Berlin, in two original texts, one in Lithuanian and the other in German, January 29, 1928.

Prof. A. VOLDEMARAS.

Dr. STRESEMANN.

FINAL PROTOCOL

The Contracting Parties are agreed that in doubtful cases the terms of the present Treaty shall be interpreted in favour of the application of the principle of the settlement of disputes by judicial means or arbitration.

The Contracting Parties declare that the Treaty shall also apply to disputes arising out of events which occurred prior to its conclusion. Article 1 of the Convention between Lithuania and Germany signed on May 31, 1923, regarding the settlement of questions connected with the world war shall remain unchanged.

In view of the provisions of the present Treaty, Article 4 of the above-mentioned Convention of May 31, 1923, and Article 32 of the Commercial Treaty between Lithuania and Germany, dated June 1, 1923, shall no longer be applicable.

The present Treaty shall apply as between the Contracting Parties, even if other Powers are concerned in the dispute.

Nevertheless, the Contracting Parties shall, if possible, conclude agreements with any other Powers concerned with a view to submitting the dispute to one and the same judicial, arbitral or conciliation procedure.

BERLIN, *January* 29, 1928.

Prof. A. VOLDEMARAS.

Dr. STRESEMANN.