

N° 2581.

LUXEMBOURG ET POLOGNE

Traité de conciliation et d'arbitrage.

Signé à Luxembourg, le 29 octobre 1928.

LUXEMBURG AND POLAND

Treaty of Conciliation and Arbitra-

tion. Signed at Luxemburg, October 29, 1928.

¹ TRADUCTION. — TRANSLATION.No. 2581. — TREATY² OF ARBITRATION AND CONCILIATION BETWEEN LUXEMBURG AND POLAND. SIGNED AT LUXEMBURG, OCTOBER 29, 1928.

French official text communicated by the Minister of State, President of the Government of the Grand Duchy of Luxemburg and by the Polish Delegate accredited to the League of Nations. The registration of this Treaty took place January 2, 1931.

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBURG and THE PRESIDENT OF THE POLISH REPUBLIC, being desirous of developing the friendly relations which unite their two countries,

And being also convinced of the necessity of ensuring the settlement by pacific procedure in every case of the disputes which may arise between their States,

Have resolved to conclude a Treaty of Conciliation and Arbitration, and have appointed for this purpose as their Plenipotentiaries :

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBURG :

M. Joseph BECH, Minister of State, Prime Minister of the Grand-Ducal Government,

THE PRESIDENT OF THE POLISH REPUBLIC :

M. Julien DE MAKOWSKY, Doctor of Laws, Head of the Treaties Section at the Ministry of Foreign Affairs ;

M. Anatole MÜHELSTEIN, Councillor of Legation, Chargé d'Affaires of Poland at Luxemburg ;

Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions :

Article 1.

The High Contracting Parties mutually undertake to settle in every case by pacific procedure and according to the methods laid down in the present Treaty, all disputes and differences of whatever kind which may arise after the conclusion of the present Treaty between Luxemburg and Poland and which it has been impossible to settle by the ordinary methods of diplomacy within a reasonable period.

Article 2.

Disputes for the settlement of which a special procedure is or shall be laid down in other conventions in force between the High Contracting Parties shall be settled in conformity with the provisions of those conventions.

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

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

² The exchange of ratifications took place at Luxemburg, December 3, 1930.

Article 3.

Before any resort is made to arbitral procedure or to procedure before the Permanent Court of International Justice, the dispute shall, at the request of one of the Parties, be submitted, with a view to amicable settlement, to a permanent international commission, styled the Permanent Conciliation Commission, constituted in accordance with the present Treaty.

Article 4.

In the case of a dispute the occasion of which, according to the municipal law of one of the Parties, falls within the competence of the national courts of such Party, the dispute shall not be submitted to the procedure laid down in the present Treaty until a judgment with final effect has been pronounced, within a reasonable time, by the competent national judicial authority.

Article 5.

1. In the six months following the exchange of the ratifications of the present Treaty, the Contracting Parties shall set up a Permanent Conciliation Commission consisting of five members.

2. Each Party shall appoint two members, one being a national of its own State, and the other a national of a third State. The latter must neither be domiciled in the territory of the Party which has appointed him nor be in the service of that Party.

3. The two Parties shall jointly appoint a national of a third State as President of the Commission for a period of three years. Should the Parties fail to agree on this choice, the President shall be appointed in accordance with Article 45 of the Hague Convention¹ of October 18, 1907 for the Settlement of International Disputes.

Article 6.

1. The commissioners are appointed for three years, and their mandate is renewable. Their appointment shall continue until their replacement, and in any case until the termination of the work in hand at the moment of the expiry of their mandate.

2. In the case of the death or withdrawal of one of the members of the Conciliation Commission, arrangements shall be made to replace that member, if possible within the following three months and in any case as soon as a dispute has been submitted to the Commission.

3. Should one of the members of the Conciliation Commission be temporarily prevented as a result of illness or any other circumstance from taking part in the work of the Commission, the Party which has appointed him shall choose a substitute who shall sit until the conclusion of the proceedings in hand, unless the Parties decide otherwise.

Article 7.

1. The Permanent Conciliation Commission shall be informed by means of a request addressed to the President by the other two Parties, acting in agreement, or in the absence of such agreement, by one or other of the Parties.

2. The request, after having given a summary account of the subject of the dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable settlement.

¹ *British and Foreign State Papers*, Vol. 100, page 298.

3. If the request emanates from only one of the Parties, notification thereof shall be made without delay by that Party to the other Party.

Article 8.

1. Within fifteen days from the date when the Permanent Conciliation Commission shall have been informed of the dispute, either Party may, for the examination of the particular dispute, replace its commissioner by a person possessing special competence in the matter.

2. The Party making use of this right shall immediately inform the other Party ; the latter shall in that case be entitled to take similar action within fifteen days from the date when the notification reaches it.

Article 9.

1. The task of the Permanent Conciliation Commission shall be to elucidate questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the Parties to an agreement. After the case has been examined, it shall inform the Parties of the terms of settlement which seem suitable to it.

2. The Commission shall make its report laying down the terms of this settlement within six months from the date when the dispute is submitted to it, unless the Contracting Parties agree to an extension of this period.

3. A copy of the report shall be communicated to each of the Parties.

4. The Commission shall fix the period within which the Parties will be required to take their decision as regards the Commission's proposals.

5. This period shall not, however, exceed three months.

Article 10.

Failing any special provision to the contrary, the Permanent Conciliation Commission shall lay down its own procedure, which in any case must provide for both Parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Chapter III (International Commissions of Enquiry) of the Hague Convention of the 18 October, 1907, for the Pacific Settlement of International Disputes.

Article 11.

The Permanent Conciliation Commission shall meet, in the absence of agreement by the Parties to the contrary, at a place selected by its President ; this place shall be chosen outside the territories of the two Parties.

Article 12.

The proceedings of the Permanent Conciliation Commission are not public except when a decision to that effect has been taken by the Commission with the consent of the Parties.

Article 13.

1. The Parties shall be represented before the Permanent Conciliation Commission by agents, whose duty it shall be to act as intermediaries between them and the Commission. They may,

moreover, be assisted by counsel and experts appointed by them for that purpose, and request that all the persons whose evidence appears to them useful should be heard.

2. The Commission on its side shall be entitled to request oral explanations from the agents, counsel and experts of the two Parties, as well as from all persons it may think useful to summon with the consent of their Government.

Article 14.

Unless otherwise provided in the present Treaty, the decisions of the Permanent Conciliation Commission shall be taken by a majority ; each member shall be entitled to one vote.

The Commission's decisions shall only be valid if all its members are present.

Article 15.

The High Contracting Parties undertake at the request of the Commission to facilitate the work of the Permanent Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to allow it to proceed in their territory and in accordance with their law to the summoning and hearing of witnesses and experts and to visit the localities in question.

Article 16.

During the proceedings of the Permanent Conciliation Commission each commissioner shall receive salary, the amount of which shall be fixed by agreement between the High Contracting Parties, each of which shall contribute an equal share. The expenses of the working of the Commission shall also be equally shared.

Article 17.

1. If one of the Parties does not accept the proposals of the Permanent Conciliation Commission or does not announce its decision within the period prescribed in the report, the dispute shall be submitted by mutual consent by means of a special agreement either to the Permanent Court of International Justice under the conditions and according to the procedure laid down by its Statute,¹ or if one of the Parties so requests, to an arbitral tribunal under the conditions and according to the procedure laid down by the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

2. In each particular case the Contracting Parties shall draw up a special agreement specifying clearly the subject of the dispute, the particular competence that might devolve upon the Permanent Court of International Justice or the Permanent Court of Arbitration, and any other conditions fixed between themselves.

3. If the agreement is not drawn up within three months from the day on which one of the Parties was requested to submit the matter for judicial settlement or arbitration, this agreement shall be drawn up in definitive form by a special Commission appointed for this purpose by the Parties in the following manner :

4. Each Party shall appoint two members, only one of whom may be a national of its country. These members shall together choose a fifth member to act as President.

¹ 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. LXXXVIII, page 435 ; Vol. LXXXVIII, page 272 ; Vol. XCII, page 362 ; Vol. XCVI, page 180 ; Vol. C, page 153 ; Vol. CIV, page 492 ; Vol. CVII, page 461. of this Series ; and page 402 of this Volume.

5. If, for any reason one or more of these appointments should not be made, the President of the Swiss Confederation shall be asked to make the necessary appointment.

Article 18.

If in the opinion of the Court or the arbitral tribunal the dispute is not of a juridical nature, the Parties agree to its being settled *ex aequo et bono*.

Article 19.

Should the Court or the arbitral tribunal find that a decision of a court of law or of any other authority of one of the Contracting Parties is wholly or partly at variance with international law, and should the municipal law of that Party not allow, or only inadequately allow, the cancellation of the consequences in question by administrative procedure, the Party prejudiced shall be granted satisfaction in some other form.

Article 20.

1. The arbitral award shall be acted upon by the Parties in good faith.
2. Any difficulties to which the interpretation of the award may give rise shall be settled by the Court or the tribunal which pronounced it. Either Party shall have the right to inform the Court or the tribunal for this purpose by a simple application.

Article 21.

In any case, and particularly if the question on which the Parties differ arises out of acts already committed or on the point of commission, the Conciliation Commission or, if the question is no longer before the latter, the arbitral tribunal or the Permanent Court of International Justice deciding in accordance with Article 41 of its Statute shall, if necessary, indicate, within the shortest possible time, the provisional measures to be adopted. The High Contracting Parties undertake respectively to comply with such measures, to abstain from any measure likely to have an effect prejudicial to the execution of the decision or to the settlement proposed by the Conciliation Commission and, in general, to abstain from any act whatsoever which might aggravate or extend the dispute.

Article 22.

If on the expiration of the present Treaty any proceedings whatsoever in virtue of the Treaty are pending before the Permanent Conciliation Commission, an arbitration tribunal, or the Permanent Court of International Justice, these proceedings shall be continued until their completion.

Article 23.

The present Treaty shall be communicated to the League of Nations for registration, in conformity with Article 18 of the Covenant.

Article 24.

1. The present Treaty shall be ratified. The ratifications shall be exchanged at Luxemburg.
2. It shall enter into force on the thirtieth day after the exchange of ratifications. It shall have a duration of three years from the date of its entry into force. Unless denounced six months before the expiration of this period, it shall be deemed to be renewed for a period of three years, and similarly thereafter.

In faith whereof, the above-mentioned Plenipotentiaries have signed the present Treaty.

Done in duplicate at Luxemburg, October 29, 1928.

(L. S.) BECH.

(L. S.) Julien MAKOWSKI.

(L. S.) Anatole MÜHLSTEIN.