

N° 1209.

POLOGNE ET SUISSE

Traité de conciliation et d'arbitrage,
signé à Berne, le 7 mars 1925.

**POLAND
AND SWITZERLAND**

Treaty of Conciliation and Arbitra-
tion, signed at Berne, March 7,
1925.

¹ TRADUCTION. — TRANSLATION.No. 1209. — TREATY² OF CONCILIATION AND ARBITRATION BETWEEN POLAND AND SWITZERLAND, SIGNED AT BERNE, MARCH 7, 1925.

French official text communicated by the Polish Delegate accredited to the League of Nations. The registration of this Treaty took place June 26, 1926.

THE PRESIDENT OF THE POLISH REPUBLIC, and THE SWISS FEDERAL COUNCIL, being desirous of further improving the friendly relations which unite the two countries, and having decided, in their mutual relations, to give wide application to the principles by which the League of Nations is inspired, have resolved to conclude a treaty of conciliation and arbitration, and have for that purpose appointed as their Plenipotentiaries :

THE PRESIDENT OF THE POLISH REPUBLIC :

M. Jan MODZELEWSKI, Envoy Extraordinary and Minister Plenipotentiary of Poland in Switzerland,

M. Juljan MAKOWSKI, Doctor of Laws, Chief of Division in the Ministry of Foreign Affairs;

THE SWISS FEDERAL COUNCIL :

M. Giuseppe MOTTA, Federal Councillor, Head of the Federal Political Department ;

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

Article 1.

The Contracting Parties undertake to submit to the procedure of conciliation or to that of arbitration all disputes which may arise between them and which it may not have been possible to settle within a reasonable time through the diplomatic channel.

This undertaking shall not, however, apply either to questions which, according to international law, come within the exclusive competence of individual States, or to disputes for the solution of which a special procedure is or may be provided by other agreements between the Contracting Parties.

It is agreed that disputes which may arise in regard to the reservations made in the preceding paragraph shall be settled in accordance with Article 19 of the present Treaty.

Any dispute which can be settled in the manner indicated above shall be submitted to the procedure of conciliation, unless the Parties agree to submit it forthwith to arbitration.

¹ Traduit par le Secrétariat de la Société des Nations.

¹ Translated by the Secretariat of the League of Nations.

² The exchange of ratifications took place at Warsaw, June 11, 1926.

Should a report drawn up by the Conciliation Commission constituted under Article 3 of the present Treaty not be accepted by both Parties, the dispute shall, at the request of either Party, be submitted to arbitration.

Article 2.

In the case of a dispute which, according to the municipal law of one of the Parties, comes within the jurisdiction of the Courts, including administrative tribunals, the defendant Party may oppose the submission of the dispute to a procedure of conciliation or arbitration until a final judgment has been given by the competent judicial authority.

In this case, the request for conciliation procedure must be made within a year at most from the date of such judgment.

Article 3.

Within six months after the exchange of the ratifications of the present Treaty, the Contracting Parties shall set up a permanent Conciliation Commission composed of five members.

Each Contracting Party shall nominate one member of its own choosing, the other three being appointed by joint agreement. The latter may not be nationals of the Contracting States or be domiciled in their territory or employed in their service.

The President of the Commission shall be appointed by joint agreement from among the jointly-selected members. Failing agreement between the Parties, he shall be appointed, at the request of the Parties, by the President of the United States of America, if the latter will consent to do so.

The members of the Commission shall be appointed for three years. The appointment of the jointly-selected members shall not be revoked during the term of their mandate unless both Contracting Parties decide otherwise.

Article 4.

In the event of the death or resignation of one of the members of the Conciliation Commission, arrangements shall be made to replace him for the remainder of his mandate ; such arrangements shall be made within three months if possible, or in any case immediately a dispute is submitted to the Commission.

Should any member of the Conciliation Commission jointly appointed by the Contracting Parties be temporarily unable to take part in the Commission's work through illness or for any other reason, the Parties shall jointly appoint a substitute, who will sit temporarily in his place. If such substitute is not appointed within three months from the time when the temporary vacancy occurs, the procedure followed shall be that laid down in Article 5 of the present Treaty.

If, on the expiration of the mandate of a member of the Commission, no steps are taken to replace him, his mandate shall be deemed to be renewed for a further period of three years. The Parties shall, however, reserve the right, on the expiration of the period of three years, to transfer the office of President to another of the jointly-appointed members of the Commission.

A member whose mandate expires in the course of a procedure shall continue to take part in the examination of the dispute until the procedure is completed, even if his successor has been appointed.

Article 5.

If the appointment of the members of the Conciliation Commission who are to be selected jointly does not take place within the specified period of six months, or, in the case of replacements, within three months from the time when the vacancy occurs, the appointments shall be made

as provided in Article 45 of the Hague Convention¹ of October 18, 1907, for the Pacific Settlement of International Disputes.

Article 6.

Within fifteen days from the date when one of the Contracting Parties refers a dispute to the Conciliation Commission, either Party may, for the examination of the dispute, replace the permanent member of its own choosing by a person possessing special competence in the matter which forms the subject of the dispute.

The Party which wishes to avail itself of this right shall immediately notify the other Party; the latter shall be entitled to avail itself of the same right within fifteen days from the date on which it receives the notification.

Nevertheless, each Party reserves the right to appoint forthwith a substitute to replace temporarily the permanent member of its own choosing if, through illness or for any other reason, the latter is temporarily unable to take part in the work of the Commission.

Article 7.

The task of the Conciliation Commission shall be to further the settlement of the dispute by an impartial and conscientious examination of the facts and by formulating proposals with a view to settling the dispute in accordance with the provisions of Article 12 of the present Treaty.

The Commission shall be informed by means of an application addressed to its President by one of the Contracting Parties. This application shall be notified at the same time to the opposing Party by the Party which is requesting the institution of the procedure of conciliation.

Article 8.

The Conciliation Commission shall meet at the place chosen by the President, unless some other arrangement is made.

Article 9.

In proceedings before the Conciliation Commission both Parties shall be heard.

The Commission shall itself draw up rules to govern its procedure, subject to the proviso that the regulations laid down in Part III of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes shall be applied unless the Commission unanimously agrees to depart from those regulations.

The Commission's proceedings shall be held in private unless the Commission, in agreement with the Parties, decides otherwise.

Article 10.

The Conciliation Commission shall take its decisions by a majority vote of its members, except as otherwise provided in the present Treaty. Each member shall have one vote. If all the members are not present and the votes are equally divided, the President shall have a casting vote. The Commission may not take decisions relating to the main issue of the dispute unless all the members are present.

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

Article 11.

The Contracting Parties shall supply the Conciliation Commission with all useful information and shall in every respect give it the utmost possible assistance in the accomplishment of its task.

Article 12.

The Conciliation Commission shall submit its report within six months from the date on which it is informed of a dispute, unless the Contracting Parties jointly decide to extend this period.

Whenever circumstances permit, the report shall contain proposals for the settlement of the dispute.

The reasoned opinion of the members who are in the minority shall be recorded in the report. A copy of the report, signed by the President, shall be submitted to each of the Parties.

The Commission's report shall not be in the nature of an arbitral award, either as regards the statement of the facts or as regards legal considerations.

Article 13.

The Parties shall inform each other, and also the President of the Conciliation Commission, within a reasonable period, and in any case within three months, whether they accept the conclusions of the report and the proposals contained therein.

The Parties shall jointly decide whether the Commission's report and the record of the discussions may be published before the expiration of the period in which they must give their decision on the proposals of the report, or, in a case for settlement by arbitration, before the arbitral tribunal has given its final award.

Article 14.

When a dispute is submitted to arbitration under Article 1 of the present Treaty, the arbitral tribunal shall be set up by agreement between the Parties.

Should the Parties fail to constitute the tribunal by agreement within three months from the date on which one of them has presented to the other a request for arbitration, the procedure to be adopted shall be as follows :

Each Party shall appoint two arbitrators, one of whom must be chosen from the list of members of the Permanent Court of Arbitration and must not be a national of the appointing State. The arbitrators so appointed shall elect the president of the tribunal. Should the votes be equally divided, the president shall be chosen by the President of the United States of America, if he will consent to do so.

Article 15.

When arbitration is to take place between them, the Contracting Parties undertake to conclude, within three months from the date on which one of them presents to the other the request for arbitration, a special agreement (*compromis*) regarding the subject of the dispute and the methods of procedure to be followed.

If the special agreement cannot be drawn up within the period provided, it shall be compulsory to take further action in accordance with the procedure provided in Part IV of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes, which shall in such cases govern the method of recourse to arbitration.

Article 16.

The arbitral award shall be binding and shall be executed in good faith by the Parties.

If, however, the award establishes the fact that a decision of a court of law or any other authority of one of the Contracting Parties is wholly or partly at variance with international law, and if the constitutional law of that Party does not enable the effects of the decision in question to be wholly nullified by administrative action, the aggrieved Party shall be accorded equitable satisfaction in some other form.

Article 17.

For the actual duration of the procedure of conciliation or arbitration, the members of the Permanent Conciliation Commission who are jointly appointed and the members of the arbitral tribunal shall receive an allowance to be fixed by arrangement between the Contracting Parties.

Each Party shall bear its own costs and half the costs of the Commission and tribunal, including the allowances referred to in the first paragraph.

Article 18.

During the procedure of conciliation or arbitration the Contracting Parties shall abstain from all measures which might prejudicially affect the acceptance of the proposals of the Conciliation Commission or the execution of the arbitral award.

Article 19.

Any disputes which may arise in regard to the interpretation or execution of the present Treaty shall be submitted direct to the Permanent Court of International Justice¹ by simple application.

Article 20.

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

The Treaty shall come into force on the thirtieth day after the exchange of ratifications, and shall remain valid for three years. Unless denounced six months before the expiration of that period, it shall remain in force for a further period of three years, and so on thereafter.

In faith whereof the Plenipotentiaries have signed the present Treaty and thereto affixed their seals.

Done in duplicate at Berne, March 7, 1925.

(L. S.) J. MODZELEWSKI.

(L. S.) D^r J. MAKOWSKI.

(L. S.) MOTTA.

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, of this Series, and page 159 of this volume.