

N° 3735.

ÉTATS-UNIS D'AMÉRIQUE
ET CANADA

Accord visant le règlement définitif des difficultés provoquées par des réclamations relatives aux dégâts causés dans l'Etat de Washington par les fumées provenant de la fonderie de la « Consolidated Mining and Smelting Company », à Trail, Colombie britannique. Signé à Ottawa, le 15 avril 1935.

UNITED STATES OF AMERICA
AND CANADA

Convention for the Final Settlement of the Difficulties arising through Complaints of Damage done in the State of Washington by Fumes discharged from the Smelter of the Consolidated Mining and Smelting Company, Trail, British Columbia. Signed at Ottawa, April 15th, 1935.

No. 3735. — CONVENTION¹ BETWEEN THE UNITED STATES OF AMERICA AND CANADA FOR THE FINAL SETTLEMENT OF THE DIFFICULTIES ARISING THROUGH COMPLAINTS OF DAMAGE DONE IN THE STATE OF WASHINGTON BY FUMES DISCHARGED FROM THE SMELTER OF THE CONSOLIDATED MINING AND SMELTING COMPANY, TRAIL, BRITISH COLUMBIA. SIGNED AT OTTAWA, APRIL 15TH, 1935.

English official text communicated by the Envoy Extraordinary and Minister Plenipotentiary of the United States of America at Berne. The registration of this Convention took place September 25th, 1935.

THE PRESIDENT OF THE UNITED STATES OF AMERICA and HIS MAJESTY THE KING OF GREAT BRITAIN, IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA, in respect of THE DOMINION OF CANADA,

Considering that the Government of the United States has complained to the Government of Canada that fumes discharged from the smelter of the Consolidated Mining and Smelting Company at Trail, British Columbia, have been causing damage in the State of Washington, and

Considering further that the International Joint Commission, established pursuant to the Boundary Waters Treaty² of 1909, investigated problems arising from the operation of the smelter at Trail and rendered a report and recommendations thereon, dated February 28th, 1931, and

Recognizing the desirability and necessity of effecting a permanent settlement,

Have decided to conclude a Convention for the purposes aforesaid, and to that end have named as their respective Plenipotentiaries :

THE PRESIDENT OF THE UNITED STATES OF AMERICA :

Pierre DE L. BOAL, Chargé d'Affaires *ad interim* of the United States of America at Ottawa ;

HIS MAJESTY THE KING OF GREAT BRITAIN, IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA :

FOR THE DOMINION OF CANADA :

The Right Honourable Richard Bedford BENNETT, Prime Minister, President of the Privy Council and Secretary of State for External Affairs ;

Who, after having communicated to each other their full powers, found in good and due form, have agreed upon the following Articles :

¹ The exchange of ratifications took place at Ottawa, August 3rd, 1935.

² *British and Foreign State Papers*, Vol. 102, page 137.

¹ TRADUCTION. — TRANSLATION.

N^o 3735. — CONVENTION ² ENTRE LES ÉTATS-UNIS D'AMÉRIQUE ET LE CANADA VISANT LE RÈGLEMENT DÉFINITIF DES DIFFICULTÉS PROVOQUÉES PAR DES RÉCLAMATIONS RELATIVES AUX DÉGATS CAUSÉS DANS L'ÉTAT DE WASHINGTON PAR LES FUMÉES PROVENANT DE LA FONDERIE DE LA « CONSOLIDATED MINING AND SMELTING COMPANY », A TRAIL, COLOMBIE BRITANNIQUE. SIGNÉ A OTTAWA, LE 15 AVRIL 1935.

Texte officiel anglais communiqué par l'envoyé extraordinaire et ministre plénipotentiaire des Etats-Unis d'Amérique à Berne. L'enregistrement de cette convention a eu lieu le 25 septembre 1935.

LE PRÉSIDENT DES ETATS-UNIS D'AMÉRIQUE et SA MAJESTÉ LE ROI DE GRANDE-BRETAGNE, D'IRLANDE ET DES DOMINIONS BRITANNIQUES AU DELÀ DES MERS, EMPEREUR DES INDES, ~~POUR LE DOMINION DU CANADA,~~

Considérant que le Gouvernement des Etats-Unis s'est plaint au Gouvernement du Canada, que des fumées provenant de la fonderie de la « Consolidated Mining and Smelting Company » à Trail, Colombie britannique, ont causé des dégâts dans l'Etat de Washington, et

Considérant, en outre, que la Commission internationale mixte créée en vertu du Traité³ de 1909 concernant les eaux frontalières a examiné certains problèmes que soulevait le fonctionnement de la fonderie de Trail et a rédigé, sur cette question, un rapport et des recommandations en date du 28 février 1931, et

Constatant l'opportunité et la nécessité d'aboutir à un règlement définitif de la question,

Ont décidé de conclure une convention en vue des fins énoncées ci-dessus et ont désigné à cet effet pour leurs plénipotentiaires respectifs :

LE PRÉSIDENT DES ETATS-UNIS D'AMÉRIQUE :

M. Pierre DE L. BOAL, chargé d'Affaires par intérim des Etats-Unis d'Amérique à Ottawa ;

SA MAJESTÉ LE ROI DE GRANDE-BRETAGNE, D'IRLANDE ET DES DOMINIONS BRITANNIQUES AU DELÀ DES MERS, EMPEREUR DES INDES :

POUR LE DOMINION DU CANADA :

Le très honorable Richard Bedford BENNETT, premier ministre, président du Conseil privé et secrétaire d'Etat aux Affaires étrangères ;

Lesquels, après avoir échangé leurs pleins pouvoirs, reconnus en bonne et due forme, sont convenus des dispositions suivantes :

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 L'échange des ratifications a eu lieu à Ottawa, le 3 août 1935.

³ DE MARTENS, *Nouveau Recueil général de Traités*, troisième série, tome IV, page 208.

Article I.

The Government of Canada will cause to be paid to the Secretary of State of the United States, to be deposited in the United States Treasury, within three months after ratifications of this Convention have been exchanged, the sum of three hundred and fifty thousand dollars, United States currency, in payment of all damage which occurred in the United States, prior to the first day of January, 1932, as a result of the operation of the Trail Smelter.

Article II.

The Governments of the United States and of Canada, hereinafter referred to as "the Governments", mutually agree to constitute a tribunal hereinafter referred to as "the Tribunal", for the purpose of deciding the Questions referred to it under the provisions of Article III. The Tribunal shall consist of a chairman and two national members.

The chairman shall be a jurist of repute who is neither a British subject nor a citizen of the United States. He shall be chosen by the Governments, or, in the event of failure to reach agreement within nine months after the exchange of ratifications of this Convention, by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague described in Article 49 of the Convention¹ for the Pacific Settlement of International Disputes concluded at The Hague on October 18th, 1907.

The two national members shall be jurists of repute, who have not been associated directly or indirectly in the present controversy. One member shall be chosen by each of the Governments.

The Governments may each designate a scientist to assist the Tribunal.

Article III.

The Tribunal shall finally decide the questions, hereinafter referred to as "the Questions", set forth hereunder, namely :

(1) Whether damage caused by the Trail Smelter in the State of Washington has occurred since the first day of January, 1932, and, if so, what indemnity should be paid therefor ?

(2) In the event of the answer to the first part of the preceding Question being in the affirmative, whether the Trail Smelter should be required to refrain from causing damage in the State of Washington in the future and, if so, to what extent ?

(3) In the light of the answer to the preceding Question, what measures or regime, if any, should be adopted or maintained by the Trail Smelter ?

(4) What indemnity or compensation, if any, should be paid on account of any decision or decisions rendered by the Tribunal pursuant to the next two preceding Questions ?

Article IV.

The Tribunal shall apply the law and practice followed in dealing with cognate questions in the United States of America as well as international law and practice, and shall give consideration to the desire of the High Contracting Parties to reach a solution just to all parties concerned.

Article V.

The procedure in this adjudication shall be as follows :

(1) Within nine months from the date of the exchange of ratifications of this agreement, the Agent for the Government of the United States shall present to the Agent

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

for the Government of Canada a statement of the facts, together with the supporting evidence, on which the Government of the United States rests its complaint and petition.

(2) Within a like period of nine months from the date on which this agreement becomes effective, as aforesaid, the Agent for the Government of Canada shall present to the Agent for the Government of the United States a statement of the facts, together with the supporting evidence, relied upon by the Government of Canada.

(3) Within six months from the date on which the exchange of statements and evidence provided for in paragraphs 1 and 2 of this Article has been completed, each Agent shall present in the manner prescribed by paragraphs 1 and 2 an answer to the statement of the other with any additional evidence and such argument as he may desire to submit.

Article VI.

When the development of the record is completed in accordance with Article V hereof, the Governments shall forthwith cause to be forwarded to each member of the Tribunal a complete set of the statements, answers, evidence and arguments presented by their respective Agents to each other.

Article VII.

After the delivery of the record to the members of the Tribunal in accordance with Article VI, the Tribunal shall convene at a time and place to be agreed upon by the two Governments for the purpose of deciding upon such further procedure as it may be deemed necessary to take. In determining upon such further procedure and arranging subsequent meetings, the Tribunal will consider the individual or joint requests of the Agents of the two Governments.

Article VIII.

The Tribunal shall hear such representations and shall receive and consider such evidence, oral or documentary, as may be presented by the Governments or by interested parties, and for that purpose shall have power to administer oaths. The Tribunal shall have authority to make such investigations as it may deem necessary and expedient, consistent with other provisions of this Convention.

Article IX.

The Chairman shall preside at all hearings and other meetings of the Tribunal, and shall rule upon all questions of evidence and procedure. In reaching a final determination of each or any of the Questions, the Chairman and the two members shall each have one vote, and, in the event of difference, the opinion of the majority shall prevail, and the dissent of the Chairman or member, as the case may be, shall be recorded. In the event that no two members of the Tribunal agree on a question, the Chairman shall make the decision.

Article X.

The Tribunal, in determining the first question and in deciding upon the indemnity, if any, which should be paid in respect to the years 1932 and 1933, shall give due regard to the results of investigations and inquiries made in subsequent years.

Investigators, whether appointed by or on behalf of the Governments, either jointly or severally, or the Tribunal, shall be permitted at all reasonable times to enter and view and carry on investigations upon any of the properties upon which damage is claimed to have occurred or to be occurring, and their reports may, either jointly or severally, be submitted to and received by the Tribunal for the purpose of enabling the Tribunal to decide upon any of the Questions.

Article XI.

The Tribunal shall report to the Governments its final decisions, together with the reasons on which they are based, as soon as it has reached its conclusions in respect to the Questions, and within a period of three months after the conclusion of proceedings. Proceedings shall be deemed to have been concluded when the Agents of the two Governments jointly inform the Tribunal that they have nothing additional to present. Such period may be extended by agreement of the two Governments.

Upon receiving such report, the Governments may make arrangements for the disposition of claims for indemnity for damage, if any, which may occur subsequently to the period of time covered by such report.

Article XII.

The Governments undertake to take such action as may be necessary in order to ensure due performance of the obligations undertaken hereunder, in compliance with the decision of the Tribunal.

Article XIII.

Each Government shall pay the expenses of the presentation and conduct of its case before the Tribunal and the expenses of its national member and scientific assistant.

All other expenses, which by their nature are a charge on both Governments, including the honorarium of the neutral member of the Tribunal, shall be borne by the two Governments in equal moieties.

Article XIV.

This agreement shall be ratified in accordance with the constitutional forms of the Contracting Parties and shall take effect immediately upon the exchange of ratifications, which shall take place at Ottawa as soon as possible.

In witness whereof the respective Plenipotentiaries have signed this Convention and have hereunto affixed their seals.

Done in duplicate at Ottawa, this fifteenth day of April, in the year of our Lord, one thousand nine hundred and thirty-five.

(Seal) Pierre DE L. BOAL.

(Seal) R. B. BENNETT.

Certified to be a true and complete textual copy of the original Convention in the sole language in which it was signed.

For the Secretary of State
of the United States of America :

C. E. MacEachran,

Chief Clerk and Administrative Assistant.