

N° 2334.

NORVÈGE ET POLOGNE

Traité de conciliation, d'arbitrage et de règlement judiciaire, avec Protocole de signature. Signés à Oslo, le 9 décembre 1929.

NORWAY AND POLAND

Treaty of Conciliation, Arbitration and Judicial Settlement, with Protocol of Signature. Signed at Oslo, December 9, 1929.

¹ TRADUCTION. — TRANSLATION.No. 2334. — TREATY ² OF CONCILIATION, ARBITRATION AND JUDICIAL SETTLEMENT BETWEEN NORWAY AND POLAND. SIGNED AT OSLO, DECEMBER 9, 1929.

French official text communicated by the Permanent Delegate of Norway accredited to the League of Nations and the Chargé d'Affaires a. i. of the Polish Delegation accredited to the League of Nations. The registration of this Treaty took place May 26, 1930.

HIS MAJESTY THE KING OF NORWAY and HIS EXCELLENCY THE PRESIDENT OF THE POLISH REPUBLIC, being desirous of strengthening the ties of friendship which exist between Norway and Poland and of settling, in conformity with the principles of the League of Nations, any differences which may arise between the two countries, have decided to achieve their common aim by means of a Treaty, and have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF NORWAY :

M. Johan Ludwlg MOWINCKEL, His President of the Council and Minister for Foreign Affairs ;

HIS EXCELLENCY THE PRESIDENT OF THE POLISH REPUBLIC :

M. Leszek MALCZEWSKI, Polish Chargé d'Affaires at Oslo; and

M. Juljan MAKOWSKI, Doctor of Laws, Head of the Treaties Section at the Polish Ministry of Foreign Affairs,

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

CHAPTER I.

PACIFIC SETTLEMENT IN GENERAL.

Article I.

Disputes of every kind which may arise between the High Contracting Parties and which it has not been possible to settle by diplomacy shall be submitted, under the conditions laid down in the present Treaty, to settlement by judicial means or arbitration, preceded, according to circumstances, as a compulsory or optional measure, by recourse to the procedure of conciliation.

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 Warsaw, April 26, 1930.

Article 2.

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

2. The present Treaty shall not affect any agreements in force by which conciliation procedure is established between the High Contracting Parties or by which they have assumed obligations to resort to arbitration or judicial settlement for the purpose of settling the dispute. If, however, these agreements provide only for a procedure of conciliation, then after such procedure has been followed without result, the provisions of the present Treaty concerning judicial settlement or arbitration shall be applied.

Article 3.

1. 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 its judicial or administrative authorities, the Party in question may object to the matter in dispute being submitted for settlement by the different methods laid down in the present Treaty until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the Party which desires to resort to the procedures laid down in the present Treaty must notify the other Party of its intention within a period of one year from the date of the aforementioned decision.

CHAPTER II.

JUDICIAL SETTLEMENT.

Article 4.

All disputes with regard to which the Parties are in conflict as to their respective rights shall be submitted for decision to the Permanent Court of International Justice, or, if either Party so requests, to an arbitral tribunal in the manner hereinafter provided.

It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute¹ of the Permanent Court of International Justice.

Article 5.

If a dispute mentioned in the preceding Article is to be submitted to an arbitral tribunal, the provisions of Articles 23 to 28 of the present Treaty shall apply, unless the Parties agree otherwise.

Article 6.

If nothing is laid down in the special agreement as to the rules regarding the substance of the dispute to be followed by the arbitrators, the Tribunal shall apply the following rules :

(1) International conventions, whether general or particular, establishing rules expressly recognized by the contesting States ;

(2) International custom, as evidence of a general practice accepted as law ;

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. LXXVIII, page 435 ; Vol. LXXXVIII, page 272 ; Vol. XCII, page 362 ; Vol. XCVI, page 180 ; and Vol. C, page 153, of this Series.

- (3) The general principles of law recognised by civilised nations ;
- (4) Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Article 7.

1. In the case of the disputes mentioned in Article 4, before any procedure before the Permanent Court of International Justice or any arbitral procedure, the Parties may agree to have recourse to the conciliation procedure provided for in the present Treaty.

2. In the event of recourse to and failure of conciliation, neither Party may bring the dispute before the Permanent Court of International Justice or call for the constitution of the Arbitral Tribunal referred to in Article 5 before the expiration of one month from the termination of the proceedings of the Conciliation Commission.

CHAPTER III.

CONCILIATION.

Article 8.

All disputes between the Parties other than the disputes mentioned in Article 4 shall be submitted obligatorily to a procedure of conciliation before they can form the subject of a settlement by arbitration.

Article 9.

The disputes referred to in the preceding Article shall be submitted to a permanent Conciliation Commission constituted by the Parties to the dispute within six months of the exchange of the instruments of ratification of the present Treaty.

Article 10.

The permanent Conciliation Commission shall be constituted as follows :

(1) The Commission shall be composed of five members. The Parties shall each nominate one commissioner, who may be chosen from among their respective nationals. The three other commissioners shall be appointed by agreement from among the nationals of third Powers. These three commissioners must be of different nationalities and must not be habitually resident in the territory nor be in the service of the Parties. The Parties shall appoint the President of the Commission from among them.

(2) The commissioners shall be appointed for three years. They shall be re-eligible. The commissioners appointed jointly may be replaced during the course of their mandate by agreement between the Parties. Either Party may, moreover, at any time replace the commissioner whom it has appointed. Even if replaced, the commissioners shall continue to exercise their functions until the termination of the work in hand.

(3) Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 11.

If the appointment of the commissioners to be designated jointly is not made within the period provided for in Article 9, the making of the necessary appointments shall be entrusted to a third Power, chosen by agreement between the Parties or, on the request of either Party, the President of the Swiss Confederation shall be asked to make the necessary appointments.

Article 12.

1. Disputes shall be brought before the Permanent Conciliation Commission by means of an application addressed to the President by the Parties acting in agreement, or, in default thereof, by one or other of the Parties.

2. The application, after giving 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 solution.

3. If the application emanates from only one of the Parties, the other Party shall without delay be notified by it.

Article 13.

1. Within fifteen days from the date on which a dispute has been brought by one of the Parties before the permanent Conciliation Commission, either Party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

2. The Party making use of this right shall immediately notify the other Party; the latter shall in such case be entitled to take similar action within fifteen days from the date on which it received the notification.

Article 14.

In the absence of agreement to the contrary between the Parties, the permanent Conciliation Commission shall meet at the place selected by its President; this place shall not be situated in the territory of the Parties.

Article 15.

The work of the permanent Conciliation Commission shall not be conducted in public unless a unanimous decision to that effect is taken by the Commission with the consent of the Parties.

Article 16.

1. In the absence of agreement to the contrary between the Parties, 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 Part III of the Hague Convention¹ of October 18, 1907, for the Pacific Settlement of International Disputes.

2. The Parties shall be represented before the permanent Conciliation Commission by agents, whose duty 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 may request that all persons whose evidence appears to them desirable shall be heard.

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

3. The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of both Parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 17.

In the absence of agreement to the contrary between the Parties, the decisions of the permanent Conciliation Commission shall be taken by a majority vote and the Commission may only take decisions on the substance of the dispute if all its members are present.

Article 18.

The Parties undertake 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 or experts and to visit the localities in question.

Article 19.

1. During the proceedings of the Commission, each of the commissioners shall receive emoluments the amount of which shall be fixed by agreement between the Parties, each of which shall contribute an equal share.

2. The general expenses arising out of the working of the Commission shall be divided in the same manner.

Article 20.

1. The task of the permanent Conciliation Commission shall be to elucidate the 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. It may, after the case has been examined, inform the Parties of the terms of settlement which seem suitable to it, and lay down the period within which they are to make their decision.

2. At the close of its proceedings, the Commission shall draw up a *procès-verbal* stating, as the case may be, either that the Parties have come to an agreement, and, if necessary, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the *procès-verbal* as to whether the Commission's decisions were taken unanimously or by a majority vote.

3. The proceedings of the Commission must, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been given cognisance of the dispute.

Article 21.

The Commission's *procès-verbal* shall be communicated without delay to the Parties. The Parties shall decide whether it shall be published.

CHAPTER IV.

SETTLEMENT BY ARBITRATION.

Article 22.

If the Parties have not reached an agreement within a month from the termination of the proceedings of the permanent Conciliation Commission mentioned in the previous Articles, the question shall be brought before an arbitral tribunal which, unless the Parties agree otherwise, shall be constituted in the manner indicated below.

Article 23.

The Arbitral Tribunal shall consist of five members. The Parties shall each nominate one member, who may be chosen from among their respective nationals. The two other arbitrators and the Chairman shall be chosen by common agreement from among the nationals of third Powers. They must be of different nationalities and must not be habitually resident in the territory nor be in the service of the Parties.

Article 24.

1. If the appointment of the members of the arbitral tribunal is not made within a period of three months from the date on which one of the Parties requested the other Party to constitute an arbitral tribunal, a third Power, chosen by agreement between the Parties, shall be requested to make the necessary appointments.

2. If no agreement is reached on this point, each Party shall designate a different Power, and the appointments shall be made in concert by the Powers thus chosen.

3. If, within a period of three months, the Powers so chosen have been unable to reach an agreement, the President of the Swiss Confederation shall be asked to make the necessary appointments.

Article 25.

Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 26.

The Parties shall draw up a special agreement determining the subject of the dispute and the details of procedure.

Article 27.

In the absence of sufficient indications or particulars in the special agreement concerning the points mentioned in the preceding Article, the provisions of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes shall apply so far as is necessary.

Article 28.

Failing the conclusion of a special agreement within a period of three months from the date on which the tribunal was constituted, the dispute may be brought before the tribunal by an application by one or other Party.

CHAPTER V.

GENERAL PROVISIONS.

Article 29.

1. In all cases where a dispute forms the object of arbitration or judicial proceedings, and particularly if the question on which the Parties differ arises out of acts already committed or on the point of being committed, the Permanent Court of International Justice, acting in accordance with Article 41 of its Statute, or the arbitral tribunal shall lay down within the shortest possible time the provisional measures to be adopted. The Parties to the dispute shall be bound to accept such measures.

2. If the dispute is brought before the permanent Conciliation Commission, the latter may recommend to the Parties the adoption of such provisional measures as it considers suitable.

3. The Parties undertake to abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the permanent Conciliation Commission, and, in general to abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 30.

If, in a judicial sentence or arbitral award, it is declared that a judgment, or a measure enjoined by a court of law or other authority of one of the Parties to the dispute, is wholly or in part contrary to international law, and if the constitutional law of that Party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the judicial sentence or arbitral award shall specify the nature and extent of the reparation to be granted to the injured Party.

Article 31.

The present Treaty shall be applicable as between the High Contracting Parties, even though a third Power has an interest in the dispute.

Article 32.

Disputes relating to the interpretation of the present Treaty, including those concerning the classification of disputes, shall be submitted to the Permanent Court of International Justice.

Article 33.

The present Treaty, which is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take, at any time, whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 34.

1. The present Treaty shall be ratified and the exchange of ratifications shall take place at Warsaw. It shall be registered at the Secretariat of the League of Nations.

2. The Treaty shall be concluded for a period of five years dating from the exchange of ratifications.

3. If it has not been denounced at least six months before the expiration of this period, it shall remain in force for further successive periods of five years.

4. Notwithstanding denunciation by one of the High Contracting Parties, all proceedings pending at the expiration of the current period of the Treaty shall be duly completed.

5. The Treaty shall enter into force on the thirtieth day after the exchange of the ratifications.

In faith whereof, the above-mentioned Plenipotentiaries have signed the present Treaty and have thereto affixed their seals.

Done at Oslo on December 9, 1929, in two copies.

(L. S.) (Signed) Joh. Ludw. MOWINCKEL.

(L. S.) (Signed) Leszek MALCZEWSKI.

(L. S.) (Signed) Dr. J. MAKOWSKI.

PROTOCOL OF SIGNATURE.

On proceeding to sign the Treaty of Conciliation, Arbitration and Judicial Settlement of this day's date the High Contracting Parties have agreed as follows :

(1) As there is at present no dispute between the two States, the Contracting Parties, on signing the present Treaty, have made no declaration concerning the retrospective application of the Treaty, since that question does not arise.

(2) Should Poland at a later date ratify the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice, the said Court, in place of the tribunal provided for in the Treaty, shall thereafter have competence regarding all the disputes to which the aforementioned Clause refers. It is, however, understood that this obligation shall be subject to the same reservations and shall remain in force for the same period as the Polish accession to the Optional Clause in question.

In faith whereof the Plenipotentiaries have signed the present Protocol.

Done at Oslo on December 9, 1929, in two copies.

(Signed) Joh. Ludw. MOWINCKEL.

(Signed) Leszek MALCZEWSKI.

(Signed) Dr. J. MAKOWSKI.