

TREATY OF CONCILIATION AND ARBITRATION BETWEEN AUSTRIA AND POLAND. SIGNED AT VIENNA, APRIL 16, 1926

THE PRESIDENT OF THE AUSTRIAN FEDERAL REPUBLIC and THE PRESIDENT OF THE POLISH REPUBLIC;

Being desirous of further developing the friendly relations existing between the two countries;

Being determined fully to apply in their mutual relations the principles which inspire the League of Nations.

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

THE PRESIDENT OF THE AUSTRIAN FEDERAL REPUBLIC:
Dr. Rudolph RAMEK, Doctor of Laws, Federal Chancellor;

THE PRESIDENT OF THE POLISH REPUBLIC:
Dr. Alexander SKRZYŃSKI, Doctor of Laws, Prime Minister and Minister for Foreign Affairs;

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

PART I.

Article 1.

1. The Contracting Parties undertake to submit to the procedure of conciliation, and, if necessary, of arbitration, all disputes which may arise between them and which it has not been found possible to settle by diplomacy within a reasonable time.
2. Nevertheless, this undertaking shall not apply either to questions which under international law are within the exclusive competence of the States themselves or to disputes arising out of events prior to the present Treaty and belonging to the past.
3. Disputes for the settlement of which a special procedure is laid down in other Conventions in force between the Contracting Parties shall be settled in conformity with the provisions of those Conventions.

Article 2.

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 the national courts of that Party (including administrative courts), the matter in dispute shall not be submitted to any of the procedures 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.
2. The request for conciliation must in the above case be put forward within one year, at the latest, from the date of the final judgment.

Article 3.

1. Any dispute capable of being settled in the manner set forth above shall be submitted to the procedure of conciliation unless the Parties agree to submit it immediately to arbitration.
2. Should the proposal made by the Permanent Conciliation Commission not have been accepted by both Parties, the dispute shall be submitted to arbitration if one of the Parties so requests.

Article 4.

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 three members.
2. The Parties shall each choose one member and shall jointly appoint the third, who shall be President of the Commission. The latter must not be a national of one of the Contracting Parties nor be domiciled in their territory or be in their service.
3. If the President has not been appointed within the said period of six months or, in the event of the post becoming vacant, if the new President has not been appointed within three months from the date on which the post became vacant, the President of the Swiss Confederation shall, in the absence of any other agreement, be requested to make the necessary appointment.

Article 5.

1. The members of the Commission shall be appointed for three years; their appointment can be renewed. They shall remain in office until replaced, and in any case until the close of proceedings in progress at the date of the expiration of their term of office.
2. Steps shall be taken without delay to fill vacancies arising as a result of the decease, retirement or other circumstances preventing a member from carrying out his duties. In such cases the procedure laid down for appointments shall be followed.

Article 6.

1. The Permanent Conciliation Commission shall be informed by means of a request addressed to its President by the 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.
3. If the request emanates from only one of the Parties notification thereof shall be made without delay to the other Party.

Article 7.

1. Within fifteen days from the date on which either the Polish or the Austrian Government shall have brought a dispute before the Permanent Conciliation Commission, 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 have that case be entitled to take similar action within fifteen days from the date when the notification reaches it.

Article 8.

1. The task of the Permanent Conciliation Commission shall be to elucidate questions in dispute, to collect with that object all necessary information, 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 a period within which they are to make their decision.

2. At the close of its labours the Commission shall draw up a report stating, as the case may be, either that the Parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement.

3. The labours of the Commission must be terminated within six months from the date of the first meeting of the Commission. The Parties may, by common consent, extend or shorten this period.

4. The Commissions report shall not have the character of an arbitral award either in respect of the statement of facts or of the legal arguments set forth.

Article 9.

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

2. The Commission shall itself determine its procedure, being guided, unless it unanimously decides to the contrary, by the provisions of Chapter III of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

3. The discussions shall take place in private unless the Commission with the assent of the Parties should decide otherwise.

Article 10.

1. The Permanent Conciliation Commission shall take no decisions unless all its members have been duly convened and are present.

2. Unless otherwise provided in the present Treaty, the decisions of the Commission shall be taken by a majority vote. Each member shall have one vote.

Article 11.

The Permanent Conciliation Commission shall meet, in the absence of an agreement by the Parties to the contrary, at a place selected by its President, which must, however, be outside the territory of the Parties.

Article 12.

The proceedings of the Permanent Conciliation Commission shall not be public except when an unanimous 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 intermediary between them and the Commission; they may, moreover, be assisted by counsel and experts appointed by them for that purpose.

2. The Commission for its part shall be entitled to request oral explanations from the agents, counsel and experts of the two Parties and to request the Government concerned to communicate the statements made by any persons whose evidence may be considered by the Commission as having a bearing on the case.

Article 14.

The Contracting Parties shall supply the Permanent Conciliation Commission with all information required and shall assist it in all respects and in every way possible in the performance of its task.

PART II.

Article 15.

1. When, under the provisions of Article 1 or Article 3 of the present Treaty, a dispute is submitted to arbitration, a Court of Arbitration shall be set up by agreement between the Parties.

2. If the Court of Arbitration is not set up by agreement between the Parties within a period of three months reckoned from the date on which one of the Parties has addressed the request for arbitration to the other Party, the following procedure shall be adopted:

Each Party shall appoint two arbitrators, one of whom must be on the list of members of the Permanent Court of Arbitration but must not be a national of the Party in question or one of those persons appointed by that Party as members of the said Court. The arbitrators thus appointed shall themselves choose a President of the Court. If the votes are equally divided, the President of the Swiss Confederation shall be requested to make the necessary appointment.

Article 16.

1. Whenever a question has to be decided by arbitration, the Contracting Parties undertake to conclude, within three months reckoned from the day on which either has addressed a request for arbitration to the other Party, a special agreement concerning the object of the dispute and the methods of procedure.

2. If such agreement cannot be concluded within the prescribed period, the Parties shall set up a special court in accordance with the provisions of Article 15 (2), which shall have full authority to draw up the terms of the said agreement.

3. In cases dealt with under Article 15 (2) the above-mentioned time limit shall only be reckoned as from the date on which the Court is established.

Article 17.

1. The arbitral award shall be binding and must be loyally carried out by the Parties.

2. If, however, the award establishes the fact that the decision of some judicial or other authority of one of the Contracting Parties is entirely or partly at variance with International Law and if the Constitutional Law of that Party precludes the annulment, or only allows of a partial annulment, through administrative channels, of the effects of such a decision, the injured Party shall be accorded equitable satisfaction in some other manner.

GENERAL CLAUSES

Article 18.

1. While conciliation or arbitration proceedings are actually in progress, the member of the Permanent Conciliation Commission appointed by common agreement and the members of the Court of Arbitration shall receive an allowance, on a scale to be determined by the Contracting Parties.

2. Each Party shall bear its own expenses and an equal share of the expenses of the Commission and of the Court.

Article 19.

While the procedure of conciliation and arbitration is in progress, the Contracting Parties shall refrain from any act which may tend to hinder acceptance of the proposals of the Permanent Conciliation Commission or the execution of the arbitral award.

Article 20.

Any dispute regarding the interpretation of the present Treaty shall be submitted to the Permanent Court of International Justice.

Article 21.

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

2. The Treaty shall come into force on the thirtieth day after the date of exchange of ratifications and shall remain in force for three years. If not denounced six months before the expiration of that period, it shall remain in force successive periods of one year.

3. As from the date on which the present Treaty comes into force, the Arbitration Convention concluded at Warsaw between Austria and Poland on November 13, 1923, shall cease to have effect.

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

Done at Vienna, April 16, 1926.

RAMEK, m. p.

Al. SKRZYŃSKI, m. p.

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