



Treaty Series No. 18 (1937)

[Reprint of "Canadian Treaty Series No. 20 (1935)"]

CONVENTION

between His Majesty in respect of the Dominion of Canada
and the President of the United States of America

regarding

CLAIMS ARISING FROM THE OPERATION
OF THE SMELTER AT TRAIL,
BRITISH COLUMBIA

Ottawa, April 15, 1935

[Ratifications exchanged at Ottawa, August 3, 1935]

*Presented by the Secretary of State for Foreign Affairs
to Parliament by Command of His Majesty*

LONDON

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CONVENTION BETWEEN HIS MAJESTY IN RESPECT OF THE
DOMINION OF CANADA AND THE PRESIDENT OF THE
UNITED STATES OF AMERICA REGARDING CLAIMS ARISING
FROM THE OPERATION OF THE SMELTER AT TRAIL,
BRITISH COLUMBIA.

Ottawa, April 15, 1935.

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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, AND THE PRESIDENT OF THE UNITED STATES OF AMERICA,

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 TREATY OF 1909, INVESTIGATED PROBLEMS ARISING FROM THE OPERATION OF THE SMELTER AT TRAIL, AND RENDERED A REPORT AND RECOMMENDATIONS THEREON, DATED THE 28TH FEBRUARY, 1931, AND

RECOGNISING 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 :

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 ;

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 ;

WHO, AFTER HAVING COMMUNICATED TO EACH OTHER THEIR FULL POWERS, FOUND IN GOOD AND DUE FORM, HAVE AGREED UPON THE FOLLOWING ARTICLES :—

ARTICLE 1.

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 350,000 DOLLARS, UNITED STATES

currency, in payment of all damage which occurred in the United States, prior to the 1st January, 1932, as a result of the operation of the Trail Smelter.

ARTICLE 2.

The Governments of Canada and of the United States, 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 3. 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 Convention for the Pacific Settlement of International Disputes concluded at The Hague on the 18th October, 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 3.

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 1st 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 régime, 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 4.

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 5.

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 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 6.

When the development of the record is completed in accordance with Article 5 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 7.

After the delivery of the record to the members of the Tribunal in accordance with Article 6, 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 8.

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 9.

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 10.

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 enquiries 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 11.

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 12.

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 13.

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 14.

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 15th day of April, in the year of our Lord, 1935.

(L.S.) R. B. BENNETT.

(L.S.) PIERRE DE L. BOAL.

