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Party(ies): Germany vs. Poland
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Content:

Order of September 13th, 1928

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¹ date when the request for an advisory opinion or application was filed with the court Registry

[99] Permanent Court of International Justice

Order

<i>Before:</i>	Mm. Anzilotti,	<i>President,</i>
	Huber,	<i>Former President,</i>
Lord	Finlay,	
Mm	Loder, Nyholm, De Bustamante, Altamira, Oda, Pessôa,	<i>Judges,</i>
	M. Beichmann,	<i>Deputy-judge,</i>
Mm.	Rabel, Ehrlich,	<i>National Judges.</i>

The Government of Germany, represented by Dr. Erich Kaufmann, Professor at Berlin,
Applicant,

versus

The Government of the Polish Republic, represented by Dr. Thadeus Sobolewski, Agent for the
Polish Government before the German-Polish Mixed Arbitral Tribunal,
Respondent,

The Court,

Having regard to the Application instituting proceedings filed, on behalf of the German Government, with the Registry of the Court on February 8th, 1927; [100]

Having regard to Judgment No. 13, given this day by the Court upon this Application;

Having regard to Articles 48 and 50 of the Statute;

Decides :

1. That an expert enquiry shall be held with a view to enabling the Court to fix, with a full knowledge of the facts, in conformity with the principles laid down in Judgment No. 13,

the amount of the indemnity to be paid by the Polish Government to the German Government under the terms of the aforesaid Judgment No. 13.

2. The expert enquiry shall relate to the following points:
 - I. A. What was the value, on July 3rd, 1922, expressed in Reichsmarks current at the present time, of the undertaking for the manufacture of nitrate products of which the factory was situated at Chorzów in Polish Upper Silesia, in the state in which that undertaking (including the lands, buildings, equipment, stocks and processes at its disposal, supply and delivery contracts, goodwill and future prospects) was, on the date indicated, in the hands of the Bayerische and Oberschlesische Stickstoffwerke ?
 - B. What would have been the financial results, expressed in Reichsmarks current at the present time (profits or losses), which would probably have been given by the undertaking thus constituted from July 3rd, 1922, to the date of the present judgment, if it had been in the hands of the said Companies?
 - II. What would be the value at the date of the present judgment, expressed in Reichsmarks current at the present time, of the same undertaking (Chorzów) if that undertaking (including lands, buildings, equipment, stocks, available processes, supply and delivery contracts, goodwill and future prospects) had remained in the hands of the Bayerische and Oberschlesische Stickstoffwerke, and had either remained substantially as it was in 1922, or been developed proportionately on lines similar to those applied in the case of other undertakings of the same kind, controlled by the Bayerische, for instance, the undertaking of which the factory is situated at Piesteritz?
3. The expert enquiry will be entrusted to a committee composed as follows: the President of the, Court shall appoint [101] by order three experts. Each of the Parties shall have the right to appoint, within fifteen days from the date of that order, an assessor who will take part in the work of the committee in an advisory capacity. The experts appointed by the President of the Court shall elect the chairman of the committee from amongst themselves.
4. Upon accepting the task entrusted to them under the terms of paragraph 2 above, the

experts and assessors shall make the following solemn declaration, either orally before the President, or by letter addressed to the President :

"I solemnly declare that I will perform the duties of expert (assessor) entrusted to me by virtue of the Order of the Permanent Court of International justice dated September 13th, 1928, honourably and faithfully, impartially and conscientiously, and that I will abstain from divulging or turning to my own use any secrets of an economic or technical nature which may come to my knowledge in the performance of this task."

5. The Registrar shall be responsible for the secretarial arrangements of the committee of experts and for liaison between it and the Court. For this purpose he shall in particular detach, for duty with the committee of experts, one of the higher officials of the Registry. This official shall act as intermediary for all communications between the Court and its services on the one hand and the committee of experts on the other.
6. The Registrar shall communicate to the committee of experts the full record of the proceedings leading up to the Court's Judgment No. 13, as also that of the proceedings leading up to its Judgment No. 6. He is authorized also to hold at the disposal of the committee of experts, upon its request, the records of the proceedings leading up to the Court's judgments Nos. 7, 8 and 11.
7. The committee of experts shall be entitled to ask for the production of any document and any explanations which it may consider useful for the fulfilment of its task; in this respect, its decisions shall be taken by a majority. Such requests shall be addressed to the Registrar of the Court, who will comply with them within the limits fixed by Article 24 [102] of the Rules or, if necessary, submit them to the President of the Court for the purposes of Article 49 of the Statute.
8. The committee of experts shall likewise be entitled to ask for any other facilities which it may consider useful for the fulfilment of its task; in particular it may ask for authorization to inspect the premises ; in that case, the procedure laid down in paragraph 7 shall be applied.

9. A first meeting of the committee of experts shall be convened by the President of the Court. The Committee shall file its report, in two original copies, with the Registrar of the Court, within a period, commencing from this first meeting, to be fixed by the President after hearing the views of the experts. The report, to which shall be attached all documents referred to therein, shall contain the reasoned opinion in regard to each question put of each member of the committee. It shall be communicated, with the attached documents, by the Registry to the members of the Court and to the Agents of the Parties. The Court, or if it is not sitting, the President, shall fix a date for a public sitting of the Court, which the experts will be summoned to attend and the object of which will be to enable the Agents of the Parties to discuss the report and to enable the Court and the said Agents to ask the experts for explanations.

10. The fees of the experts appointed by the President of the Court, the amount of which shall be fixed by the President after hearing the views of the experts, shall be paid to the latter by the Registrar at the conclusion of the enquiry. The fees shall include subsistence and entertainment expenses of the experts but not travelling expenses, etc. Such expenses shall be refunded to those concerned by the Registrar upon the production of accounts submitted at the conclusion of the enquiry, subject to the deduction of any advances made on account of such expenses.

Each Party shall pay the expenses and fees of the assessor appointed by it. All other fees, costs and expenses, including secretariat and establishment expenses, as also expenses for the services of technical staff which the committee may secure with the consent of the President of the Court, shall be advanced by the Court and refunded by the Parties in the [103] proportion to be fixed by the Court in accordance with Article 64 of the Statute.

The Parties are invited to pay to the Registrar of the Court, within fifteen days from the date of this Order, the sum of 25,000 florins each on account towards the expenses of the expert enquiry.

11. The Court reserves to itself or, if it is not sitting, to the President, power to construe and, if necessary, to supplement the foregoing provisions.

12. In the event of a request for an extension of the times laid down in the foregoing provisions, Article 33 of the Rules of Court shall apply.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this thirteenth day of September, nineteen hundred and twenty-eight, in three copies, one of which shall be placed in the archives of the Court, and the others forwarded to the Agents of the German Government and of the Polish Government respectively.

(Signed) D. Anzilotti

President.

(Signed) Paul Ruegger,

Deputy-Registrar.