

Max Planck Encyclopedias of International Law



Mixed Commission for Upper Silesia

Michel Erpelding

Content type: Encyclopedia entries

Product: Max Planck Encyclopedias of International Law [MPIL]

Module: Max Planck Encyclopedia of International Procedural Law [MPEiPro]

Article last updated: November 2017

Subject(s):

Minorities — Legality and legitimacy of tribunals — Right to self-representation — Quasi-judicial bodies, procedure — Fact-finding and inquiry

Published under the direction of H el ene Ruiz Fabri, with the support of the Department of International Law and Dispute Resolution, under the auspices of the Max Planck Institute Luxembourg for Procedural Law.

A. Introduction

1 The Upper Silesian Mixed Commission ('Mixed Commission' or 'Commission') was a → *quasi-judicial body* instituted pursuant to the Convention between Germany and Poland relating to Upper Silesia of 15 May 1922 ('Geneva Convention' or 'GC'). The aim of the Geneva Convention, concluded for a transitional period of 15 years ending on 15 July 1937, was to alleviate the economic, social, and minority rights implications of the partition of Upper Silesia, a closely-knit industrial area inhabited by both Poles and Germans of various creeds. Within the framework of the Geneva Convention, the main purpose of the Mixed Commission, located in Katowice/Kattowitz, in Polish Upper Silesia, was to settle disputes between the two States Parties regarding the implementation of the agreement, whereas individual claims of that nature came under the jurisdiction of a second international supervising agency, the → *Upper Silesian Arbitral Tribunal* situated in Beuthen/Bytom, in German Upper Silesia. In addition, the president of the Mixed Commission was given the power to issue nonbinding opinions regarding the compliance with minority rights in individual petitioners' cases.

2 Owing to the reluctance of Germany and Poland to use the inter-State complaints mechanism, and the personal activism of the Commission's president, Felix Calonder (1863–1952), the protection of minority rights eventually became the activity most prominently associated with it. Whereas only 18 inter-State complaints reached the Commission, its president handled more than 3,400 minority rights cases, 127 of which resulted in 'opinions' (*avis*) which, while nonbinding, formally resembled judicial decisions. These numbers should be assessed bearing in mind the comparatively small caseload handled by the Council of the League of Nations between 1919 and 1939 (→ *Minority rights petitions: League of Nations*) under all minority rights treaties combined: under this centralized procedure, which could also be used under the Geneva Convention, '950 petitions were filed, 758 were declared admissible, but only 16 petitions reached the agenda of the Council' (→ *Minority Protection System between World War I and World War II*). Due to their advisory character and insufficient backup by the Council of the League of Nations, Calonder's opinions were not always followed by the States Parties. Nevertheless, in some cases the combination of the debates at the Council of the League of Nations and Calonder's efforts did yield concrete results: thus, the Bernheim petition of 1933 eventually led to the suspension of anti-Jewish legislation in German Upper Silesia until 1937, and triggered an 'avalanche' of complaints (Karch, 2013, 140) which in many cases resulted in the compensation or reinstatement of Jewish officials, lawyers, doctors, and employees (Kaeckenbeeck, 1942, 266). More generally, the opinions of the president of the Mixed Commission, which were published in two volumes after the Commission's cessation of activity, are very likely the most coherent body of international case law regarding the protection of individual and collective rights before the advent of present-day international human rights courts and treaty bodies. The comparison with post-World War II international human rights law seems even more fitting if one takes into account that the Geneva Convention was the only minority rights protection treaty of the interwar period based on a bilateral agreement between two States rather than a unilateral commitment of a single State toward the League of Nations.

B. Historical Context: The Upper Silesian Issue and the Geneva Convention of 15 May 1922

3 The rebirth of the Polish State after World War I soon raised questions about the status of Upper Silesia. Although the region had not been part of the Polish Crown since the fourteenth century, the majority of its population spoke Polish, or the related Silesian dialect, as a mother tongue. However, even before its conquest by Prussia in 1742, it had also been subject to a strong German influence. These ties were considerably reinforced

during the nineteenth century, when Upper Silesia developed into one of Europe's most heavily industrialized regions.

4 After Germany was defeated in 1918, the Allies originally planned to attribute the region as a whole to Poland. However, as a result of German protestations, the Council of Four decided to divide it according to the results of a plebiscite (Art 88 Treaty of Peace between the Allied and Associated Powers and Germany (1919) ['Treaty of Versailles']). The plebiscite was held on 20 March 1921, but the Inter-Allied Military Commission entrusted with its organization failed to agree upon a border line. As a result, the Supreme Council of the Principal Allied Powers referred the matter to an ad hoc Committee of Experts, who issued a report but were also unable to draw a new frontier. Eventually, the Council of the League of Nations was asked for arbitration. For diplomatic reasons, the Council of the League of Nations entrusted a committee of small powers (Belgium, Brazil, Chile, and Spain) to come up with a detailed plan. However, the actual work of drafting this plan was done by the Secretariat of the League of Nations, and most notably its young Deputy Secretary General, Jean Monnet (1888-1979). Monnet and his team came up with a new division, which included carving up the industrial area between the two States (Monnet, 1976, 102-6). In order for the partition to go smoothly, the inhabitants and companies of Upper Silesia were to enjoy special rights during a transitional period of 15 years (it should be noted that the transitory character of the regime was a result of the Supreme Council of the Principal Allied Powers' mandate to the Council of the League of Nations). The Council of the League of Nations recommended this solution to the Conference of Ambassadors (successor to the Supreme Council) which accepted the definitive boundary on 20 October 1921.

5 The recommendations of the Council of the League of Nations to the Conference of Ambassadors included several temporary measures designed to ensure 'the continuity of the economic and social existence of Upper Silesia'. These measures were to be included in a bilateral convention; an Upper Silesian Mixed Commission was to supervise their application. A special procedure was developed by the Conference of Ambassadors in order to ensure the conclusion of a German-Polish convention. According to this procedure, the treaty was to be negotiated between a German and a Polish plenipotentiary; however, in case of disagreement, a casting vote was given to the president of the Conference of Ambassadors, a third national appointed by the Council of the League of Nations. The choice fell on Felix Calonder, a Swiss jurist who had been president of his country in 1918. Negotiations opened in Geneva in November 1921. Remarkably, a second round was held in Upper Silesia between December 1921 and January 1922. Final talks took place in Geneva from February to May 1922. On 15 May 1922, the parties signed the Convention between Germany and Poland relating to Upper Silesia, known to its contemporaries as the Geneva Convention.

6 Although criticized by both parties, the settlement was seen as a triumph of → *conciliation*: not a single one of its provisions was the result of the president's casting vote. The Geneva Convention was undoubtedly a milestone in the history of international law. Not only was it the longest international treaty concluded until that date—as its 606 Articles made even the Treaty of Versailles with its 440 Articles seem comparatively short—and not only did its provisions cover nearly all aspects of life in Upper Silesia, including applicable legislation, expropriation, nationality and domicile, social and economic questions, and the protection of minority rights; it was also highly innovative. Thus, it was the only treaty of the interwar period that based the protection of minorities on a bilateral agreement between two States rather than a unilateral commitment of a single State toward the League of Nations. Even more importantly, it included the creation of two international organs which, supplemented by the Permanent Court of International Justice ('PCIJ'), the Council of the League of Nations, and other bodies, aimed at ensuring its

effective application: these were the Upper Silesian Arbitral Tribunal and the Mixed Commission.

7 Despite its highly sophisticated regime, the Geneva Convention had one major limitation: it was only to last for a transitional period of 15 years after its entry into force on 15 June 1922. The transfer of sovereignty was initiated on 17 June 1922. On 20 June 1922, Polish troops entered Katowice, where two days later the Mixed Commission formally took up its activity.

C. Composition and Organizational Aspects

1. Members

8 The Commission was composed of two Polish and two German members (Art 562 (1) GC), appointed by their respective Governments (Art 564 (2) GC). All had to show sufficient ties to Upper Silesia: they had to be either native Upper Silesians, or to be 'particularly versed in Upper Silesian conditions' as a result of their profession, their activities as civil servants, or their having resided in the region for several years (Art 562 (2) GC). In contrast to the members of the Arbitral Tribunal, they did not need to be jurists, nor were they subject to any guarantees of judicial independence. They could thus receive governmental instructions, as they in fact did. For Kaeckenbeeck, this was a sign of the Commission's slightly more diplomatic character (1942, at 29). It also made it difficult to distinguish the members' activity from that of the State representatives, a fact which he criticized (1942, at 531).

9 As a matter of fact, almost all appointees had highly political profiles. Thus, the Polish members were: Konstanty Wolny, lawyer, Marshal of the Silesian Diet (1922-1927); Stanislaw Grabianowski, engineer (1922-1934); Stefan Bratkowski, adviser at the Ministry of Foreign Affairs (1927-1929); Minister Kajetan Morawski, Undersecretary of State at the Ministry of Foreign Affairs and Vice-Minister of Finance (1929-1934); Mieczyslaw Chmielewski, lawyer and member of the board of 'Wspólnota Interesów', a local mining and steel company (1934-1937); and Adam Stebłowski, adviser at the Ministry of Foreign Affairs (1936-1937). The German members were: Hans von Moltke, ambassador in Warsaw (1922-1924); Dr Hans Lukaschek, Oberpräsident of German Upper Silesia (1922-1927); Count Hans Praschma, representative of Upper Silesia at the Reichsrat (1924-1935); Paulus van Husen, judge at the High Administrative Court at Berlin (1927-1934); Count Hans Josef Matuschka, Oberregierungsrat (1934-1937); and Gottfried Schwendy, Regierungsvizepräsident (1934-1937).

2. President

10 The Commission's president, who had to be of another nationality than the Commission's two Polish and two German members, was appointed by the Council of the League of Nations at the joint request of the Polish and German Governments (Art 564 (1) GC). Both countries quickly agreed on Felix Calonder, whose qualities as a mediator and willingness to engage with the Upper Silesian population had been unanimously appreciated during the negotiations of the Geneva Convention. Calonder would remain president of the Mixed Commission during the whole 15 years of its existence.

11 Although no author seriously questions Calonder's impartiality, some recognize that his relations with the Polish authorities were generally more difficult than those with their German counterparts. As noted by Sierpowski, this might be partly due to some form of cultural bias (→ *International adjudication and cultural diversity*; → *Professional ethics and cultural diversity*; → *Representation of cultural diversity in international adjudicatory bodies*), since many Poles saw his 'formalistic' mentality as inherently pro-German (1996, at 40). The Polish press also criticized the fact that he resided at Świerklaniec/Neudeck, on

the estate of a prominent German family of aristocratic landowners whose head would later become the president of the main German minority association, the Deutscher Volksbund (Stauffer, 2005, 15-16) (→ *Conflict of interests*).

3. State Representatives

12 As per Article 569 GC, Poland and Germany each appointed one single representative before the Commission and the Arbitral Tribunal. Appointments had to be notified to the presidents of both institutions and to the other government. Representatives were allowed to employ advisers and assistants, who could also act as their mandataries, whether in individual proceedings or in general. According to Georges Kaeckenbeeck, State representatives played a crucial role with regard to the proper functioning of the Upper Silesian dispute settlement mechanisms, as they decided on 'the choice of legal arguments, the degree of weight to be attached to certain circumstances, and the decision whether the point of view of a particular authority was to be endorsed or not' (1942, at 531). Their function as intermediaries between their respective governments and the Mixed Commission was confirmed by Article 585 GC, which instructed the president to 'draw their attention' to potential treaty violations should he notice any. When deemed necessary, direct discussions with local or national political authorities were also an option, especially in the field of minority rights. However, meetings of that nature were, as a rule, arranged through the relevant State representative (Kaeckenbeeck, 1942, 531-32).

13 Poland was represented by: Bronislaw Bouffall, professor at the University of Lublin (1922-1923); Dr Zygmunt Przybylski, senator (1923-1924); Dr Alexander Szczepański, Consul general (1924-1929); Kazimierz Sąchocki, judge at the Supreme Administrative Tribunal in Warsaw (1929-1933); and Leon Babiński, university professor, legal adviser at the Ministry of Foreign Affairs (1933-1937). The German agents were: Karl Budding, head of the local government (1922-1926); Freiherr Werner von Grünau, Consul general, Undersecretary at the Ministry of Foreign Affairs (1926-1931); Count Raban Adelman von Adelmansfelden, minister plenipotentiary in Brussels (1931-1934); and Dr Wilhelm Nöldeke, Consul general (1934-1937).

4. Administrative Staff

14 The Mixed Commission comprised a secretariat, headed by a secretary-general, with the assistance of a secretary. The Commission's Head-of-Chancellery also served at its main interpreter. All agents of the Mixed Commission and their assistants were appointed by decision of the president, on a basis of parity and in agreement with both governments. The same procedure applied to the determination of their titles. The head of the administrative staff had to be a third-country national. All disciplinary powers were vested within the president. As part of the appointment procedure, all agents were asked to make the solemn promise to carry out their duty faithfully while shaking hands with the president. When dismissing a German or Polish staff member, the president had to refer the matter first to the Government of the person concerned.

5. Advisory Labour Committee

15 Article 586 GC provided for the establishment of an Advisory Labour Committee composed of a president and ten assessors. The president (neither Polish nor German) and two assessors (one Pole, one German) were appointed for three years by the governing body of the International Labour Office. The two assessors had to be chosen by their respective governments amongst their country's experts in the field of labour legislation. They had to be neither employers nor employees. As for the remaining eight assessors, Poland and Germany each appointed four for one year. Of these, two had to be employers and the other

two employees in their country's part of Upper Silesia. All had to be appointed in agreement with local labour unions and employers' organizations.

16 The Advisory Labour Committee's role was to assist the Mixed Commission in disputes involving national labour legislation. As such, it was 'thought at first to have an important part to play' (Kaeckenbeeck, 1942, 391, note 1). Although it was duly constituted, and given a prestigious president in the person of Albert Thomas (the first director of the International Labour Office), it never actually held any meetings.

6. Privileges and Immunities

17 On the territories of both States, all agents of the Mixed Commission were given the same special protection in criminal matters as that enjoyed by the authorities and civil servants. The president of the Commission was competent to file complaints for criminal offences perpetrated against the Mixed Commission or its agents (Art 570 GC). He was also granted diplomatic privileges and immunities. So were its German and Polish members, but only on the territory of the other State. Agents of the Commission, unless employed on the territory of their own State, enjoyed tax exemptions, immunity from jurisdiction in non-criminal matters relating to activities conducted in their official capacity, as well as from the obligation to testify in court for such activities. Similarly, the Commission's premises were inviolable (Art 572 GC). The president was given special identification papers allowing him to travel freely between the Polish and German parts of Upper Silesia and to reside therein. At his request, similar papers could be issued to the members of the Commission (Art 573 GC). The president of the Advisory Labour Committee was granted privileges and immunities similar to those of the president of the Mixed Commission (Art 586 § 8 (1-2) GC).

7. Financial Aspects

18 The Commission's operating costs, including the remuneration of its agents, were borne equally by Poland and Germany. The salaries of the administrative staff were determined in agreement with both governments (Art 574 GC). Its budget was established by the president, in agreement with the representatives of both States (Art 575 GC).

D. Jurisdiction

19 Like the Arbitral Tribunal, the Mixed Commission did not enjoy a general jurisdiction under the Convention. The drafters of the Convention had indeed preferred to define the Commission's competence through a limited number of provisions. Of these, 41 related to economic and administrative inter-State disputes, two regarded the implementation of the Convention, whereas four addressed minority rights petitions filed by individuals, groups, or minority associations. The Commission could ascertain its competence *proprio motu*, at any given moment of a procedure (Art 21 Rules of Procedure of the Mixed Commission ['RPMC']). In case of a conflict of jurisdiction between the Mixed Commission and the Arbitral Tribunal, the assumption of jurisdiction by the Mixed Commission bound the Arbitral Tribunal (Art 604 (2) GC). However, such a conflict never arose.

1. Implementation of the Geneva Convention: Binding Proposals of the Commission and Interventions of its President

(a) Binding Bilateral Agreement Proposals of the Commission

20 Apart from its role as a dispute settlement body, the Mixed Commission was also granted wide-ranging powers to facilitate the conclusion of agreements required for the implementation of the Convention. In cases where Poland and Germany were unable to come up with a mutually agreeable text, Article 582 (1) GC enabled the Commission to table a draft agreement, provided that reaching such an agreement was ‘urgent and indispensable for the execution and implementation’ of the relevant treaty provisions. After being notified with this draft agreement, both parties were given one month to accept it or propose their own solution. If they failed to do so, they were presumed to have accepted the Commission’s proposition, which then became binding upon them. In cases where agreements were not explicitly provided for by the Convention but still necessary for its implementation, Article 582 § 2 GC enabled Poland and Germany to jointly ask the Commission to provide a binding agreement proposal. However, this procedure was never actually used.

(b) Interventions of the President of the Commission

21 According to Article 585 GC, the president of the Commission had the right to ‘draw the attention’ of the competent State representative to any ‘facts, circumstances, or situations’ which had come to his attention and which, ‘in his opinion’, were ‘not in keeping’ with the Convention. In practice, this provision was used by President Calonder as a fast-track procedure in matters relating to minority rights.

2. Economic and Administrative Inter-State Disputes: Binding Resolutions of the Commission

22 The Geneva Convention provided the Mixed Commission with jurisdiction over a large number of inter-State disputes relating to economic and administrative matters. The Commission’s binding decisions had to be based on the Convention. They were referred to as ‘resolutions’ (Art 562 (2) GC), as opposed to the ‘awards’ given by the Arbitral Tribunal (Art 563 § 3 (2) GC).

(a) Maintenance of German Laws in Polish Upper Silesia: Filtering Instance for the PCIJ

23 One of the most important questions over which the Commission was given jurisdiction was the maintenance of German laws in Upper Silesia and the restrictions on Polish legislative sovereignty it implied. As a matter of fact, Article 1 GC had established a special transitional regime intended to limit the effects of the cession on applicable laws. Under general international law, only laws which are not public in nature remain in force so long as they are not abrogated by the cessionary State. Under the Upper Silesian treaty regime, all German laws that had not been *ipso facto* abrogated by the cession (eg laws regarding the constitutional, political, and administrative organization of the State) were to remain in force, in principle, for another 15 years. Poland was thus barred from abrogating these laws during the transitional period, but would be able to do so once the treaty lapsed. The treaty specified that this included legislation on mining, industry, trade, or labour. This limitation of Polish sovereignty was somewhat lessened by the possibility of introducing new legislation, provided that it applied to the whole of Poland (legal unification was an important process in reunified Poland, where some regions were still applying Prussian and German laws, while others were subject to Austrian or Russian legislation or to provisions of the *Code Napoléon*). However, in the fields of land distribution and labour law, which were deemed especially sensitive, a supplementary condition was added: new laws had to be ‘fit’ (*propres*) to replace existing provisions. Whenever Germany felt this was not the case, it could refer the matter to the PCIJ. However, the drafters of the Geneva Convention wanted to prevent the two Governments from directly appealing to the PCIJ, for ‘it was not unreasonably feared that a large number of statutory changes, of no great importance severally, might constantly be burdening that high tribunal’ (Kaeckenbeeck, 1942, 36). In

order to prevent institutional gridlock, they designated the Mixed Commission as a filtering instance (→ *Case filtering*; → *Case pre-filtering*). Under Article 2 GC, the German State representative had two months to refer to the Commission a new Polish law his Government deemed unfit. If the Commission decided that the law was indeed 'of a nature (*susceptible*) to be submitted to the judgment' of the PCIJ, the German Government had two months to file a complaint before the Permanent Court.

(b) Other Economic and Administrative Issues

24 Polish expropriation measures regarding big industrial companies (Art 7 GC) and agricultural estates over 100 hectares (Art 12 GC) had to be authorized by a resolution of the Mixed Commission. The Commission could also render binding resolutions in disputes regarding the rights of unions and employers' alliances (Arts 165, 170 GC), social insurance (Arts 182-84, 191, 199, 200, 215 GC), customs (Art 237 GC), currency (Arts 306-12 GC), coal and mining products (Arts 331, 333-35 GC), water distribution (Arts 337-45, 367 GC), post, telegraph, and telephone services (Arts 370-72, 375 GC), and railways (Arts 477, 499, 556 GC).

3. Minority Rights Petitions: Advisory Opinions of the President of the Commission

25 In order to allow for a 'uniform and equitable' application of its provisions regarding minority rights, Article 148 GC instructed both governments to establish a Minorities Office in their part of the territory. According to Articles 149-52 GC, these Minorities Offices were under the obligation to request the president's 'advisory opinion' (*avis*) whenever they had been unable to satisfy a petitioner's request. During the negotiations leading up to the Geneva Convention, Felix Calonder had tried to secure wider-ranging powers for the Commission's president by enabling him to issue 'recommendations'. As both Poland and Germany feared that this term might be subsequently interpreted as implying a legal obligation, they replaced it by the even less stringent 'advisory opinion' (Kaeckenbeeck, 1942, 223, note 1). From a purely formal perspective, it was argued that giving the president of the Mixed Commission the right of issuing final decisions would have conflicted with the fact that the Upper Silesian minorities had been placed under the guarantee of the League of Nations and given the right to directly petition the Council of the League of Nations under Article 147 GC. As for the decision to entrust the protection of minorities to the president rather than the whole Commission, it was meant to reduce Polish and German interference. According to Kaeckenbeeck, this assumption proved to be wrong, as it reduced the Commission's esprit de corps and discouraged the Polish and German members from acting as conciliators (1942, at 224-25, 231).

E. Procedure

1. General Features

26 Basic rules of procedure for the Mixed Commission were laid down in Articles 576 GC (language) and 577-86 GC (all other questions). In accordance with Article 596 GC, the Mixed Commission subsequently elaborated its own Rules of Procedure ('RPMC') which were published in German and Polish on 5 December 1922. They considerably reinforced the Commission's judicial character, notably by affirming its → *competence-competence* (Art 21 RPMC) and obliging its president to motivate his opinions in minority matters (Art 38 RPMC).

(a) Publicity

27 As opposed to the hearings of the Arbitral Tribunal, those of the Mixed Commission were not public (Art 579 (2) GC). For Kaeckenbeeck, this was another sign of the Commission's more diplomatic nature (1942, at 483).

(b) Languages

28 Owing to the sensitive nature of the question, the use of languages by and before the Commission was strictly regulated. Thus, only the president had the right to use the language with which he was the most familiar. Calonder, whose mother tongue was Romansh, generally expressed himself either in German or, especially at more formal occasions, in French. All other officials had to use either German or Polish (→ *Language of proceedings*). The same rule applied to private persons, unless they spoke neither language. Oral translations were handled by the president, a member of the Commission, or, where required, an interpreter. Written documents, notably declarations, applications (*requêtes*), resolutions, and decisions, were translated into both German and Polish. Minutes of proceedings were taken in both languages. Applications to the Commission had to be written in either German or Polish. The response had to be in the same language, unless the applicant had waived this right. All other official communications addressed to Germany or Poland had to be written in the language of the State concerned. Rules regarding internal use were equally detailed. Thus, staff members were allowed to use both German and Polish when addressing each other. Circulars of a general character had to be written in both languages, with Polish coming first, being the official language of the hosting State (Art 576 GC). Kaeckenbeeck criticized the potentially disruptive effect of these rules on the discussions and deliberations within both international organs. With regard to the Arbitral Tribunal, he makes clear that its operation would have been a 'sheer impossibility' had not its president, its members, and the State representatives informally agreed on German as the common → *working language*, and as the predominating language during hearings (1942, at 500-1). Whether a similar solution was reached at the Mixed Commission could not be determined.

(c) Evidentiary and Disciplinary Powers

29 The Convention authorized the Mixed Commission and the Arbitral Tribunal to 'collect evidence they deem necessary' for their purposes, including by having witnesses and experts residing in Upper Silesia testify under oath. A → *summons* to appear before the Commission automatically served as a safe-conduct to persons living on the other side of the frontier. Perjurers were to be punished as such by their own authorities according to applicable domestic law (Art 601 § 1 (2) GC). Similarly, persons failing or refusing to appear before the Commission or to testify under oath were subject to disciplinary sanctions. Sanctions were to be pronounced, at the request of the Commission, by the competent German or Polish court and in accordance with applicable domestic law (Art 602 GC). Within Upper Silesia, the Commission could collect evidence either directly or through the competent State representative. For evidence situated outside Upper Silesia, recourse to the State representative was mandatory. All Polish and German authorities were requested to assist the Mixed Commission free of charge (Art 601 § 2 (2) GC).

30 President Calonder made an extensive use of these possibilities in the field of minority rights. According to Kaeckenbeeck, with regard to the collection of evidence, the ability to conduct on-the-spot → *investigations* and to call upon parties and witnesses 'to appear before them and to speak the truth, even under oath and under penalty of perjury' made it impossible to distinguish the Mixed Commission from an arbitral tribunal (1942, at 358, 519).

(d) Referrals

31 The Geneva Convention authorized the Commission to seek → *advisory opinions* from the Arbitral Tribunal, as well as from Upper Silesian domestic jurisdictions and administrative authorities on issues falling within their sphere of competence. Administrative authorities were under the obligation to accede to the Commission's requests (Art 580 GC). The Commission could also unanimously refer technical or financial disputes to one or several experts. After verification, it could choose to confirm the experts' opinions, making it binding upon the parties (Art 581 GC).

2. Inter-State Disputes

32 Inter-State complaints could be filed at the request only of a State representative. If the complaint had already been notified to the other State's representative, it could not be withdrawn without the latter's consent (Art 577 GC). The president then decided whether the complaint was receivable. If it was, he appointed a rapporteur and a co-rapporteur, one from each State (Art 578 GC). The written phase (case, counter-case, reply, rejoinder, consultations, etc) was followed by one or several closed hearings, during which the rapporteur, the co-rapporteur, the State representatives, and other interested parties presented their arguments. The Commission then decided whether the complaint was founded (Art 579 GC). Deliberations were held in the absence of the parties, although the rules of procedure did not specify whether they were secret (Art 29 RPMC). Resolutions were passed by a majority vote of the full Commission (Art 20 RPMC). The Governments were under the obligation to 'do everything necessary, without delay, to comply with the Commission's resolutions' (Art 584 (1) GC).

3. Minority Rights Petitions

(a) Direct Procedure before the Council of the League of Nations (Art 147 GC)

33 Under Article 147 GC, members of minorities were allowed to send individual or collective petitions directly to the Council of the League of Nations in Geneva. In an important departure from petitions filed under other treaties which could only be acted upon by the Council if they were endorsed by one of its members, those sent by Upper Silesian minorities automatically had to be considered in public before the Council, possibly leading to the appointment of a special rapporteur, or the establishment of an ad hoc committee. A solution could be obtained through negotiation or a decision of the Council. However, this procedure did not always prove effective, since the Council had trouble handling the many petitions from Upper Silesia, most of which addressed questions of a very local nature, such as verbal insults, dismissal of individual employees, or admissions to schools. It could also exacerbate political tensions. Thus, after its accession to the League of Nations in 1926, Germany was regularly accused of exploiting the procedure through its minority association, the Deutscher Volksbund. The problem was only partly solved pursuant to the 'German-Polish Conversations' of 6 April 1929, during which both countries agreed to allow the Council to refer cases deemed insufficiently important to the competent local authorities.

(b) Main Local Procedure before the President (Art 149 GC)

34 Petitions had first to be sent to the competent national Minorities Office, provided that local administrative remedies had been exhausted, unless the case was urgent or there had been unreasonable administrative delay (Arts 150-51 GC). If the Minorities Office did not succeed in giving satisfaction to the petitioners, it was under the obligation to forward the petition to the president of the Mixed Commission, before whom it acted as the representative of its country's administrative authorities (Art 152 GC). During a written phase, the president provided the petitioners with the Minority Office's reply. After obtaining their response, he could decide whether or not to authorize rejoinders. If

necessary, he could then organize an oral hearing. This happened in almost all cases, and often resulted in conciliation (Stone, 1933, 112-16). Both parties could later be asked to provide additional written explanations (Art 40 RPMC). The president had the possibility of entrusting the Secretary-General of the Commission with the examination of witnesses. However, in this case, testimonies could not be taken under oath (Art 42 RPMC).

35 The president was under the obligation to formulate a motivated written opinion on every minority rights petition he received (Art 38 RPMC). Calonder's opinions greatly resembled judicial decisions: after an impartial examination of the facts and the application to those facts of the applicable legal rules, including precedent resulting from earlier opinions (→ *Stare decisis*), they ended with a set of → *operative provisions* couched in imperative terms. The opinion could indicate a final, a provisional, or a partial solution. It could also be postponed. In the great majority of cases, the opinion was final. The members of the Mixed Commission had the possibility of expressing their views before the president took up his position (Art 153 GC). In practice, as noted by Kaeckenbeeck, 'they looked into the files, attended hearings, witness and local examinations, and took part in deliberations, but they had no vote, no power in taking part in any decision' (1942, at 481, note 2). Once it had been notified of the president's opinion, the Minorities Office forwarded it to the competent national authorities and, at the request of the president, to the petitioners. The Minorities Office had to report back to the president if and how the matter had been settled (Arts 154, 156 GC). This information had to be communicated within twenty days (Art 44 RPMC). However, as noted before, the national authorities were under no obligation to follow the president's opinions.

36 Petitioners were under no obligation to appoint a professional lawyer as their legal representative (→ *Self-representation*). This was in fact rather uncommon, as most petitioners chose to issue a mandate to a minority association (an example of such a mandate can be found in Stone, 1933, 58). Petitioners not satisfied with the outcome of the local procedure could appeal the decision before the Council of the League of Nations (Art 149 GC). In this case, the president transferred the files of the case to the Minorities Section of the League Secretariat (Calonder, 1937, XIII). This avenue disappeared with Germany's departure from the League of Nations in October 1933 and Poland's decision of September 1934 to no longer collaborate with the League of Nations organs in matters of minority protection.

(c) Summary Local Procedure before the President (Art 585 GC)

37 Although the right of presidential intervention under Article 585 GC did not exclusively refer to minority issues, but to violations of the Convention in general, Calonder used the provision to establish an alternative procedure for minority rights petitions. Article 49 RPMC had given him total freedom in this regard. The procedure under Article 585 GC could be used in conjunction with, or independently of, the main procedure under Article 149 GC. The most salient advantage of the summary procedure was its celerity. Rather than having to wait for the national Minority Office to reject their claims, petitioners could directly refer a situation to the president. Moreover, the president could act alone, without having to consult the members of the Commission. It proved therefore especially useful in cases that demanded an urgent solution, such as cases of terrorism against minorities, or discriminatory measures against Jews in German Upper Silesia after 1933 (→ *Urgency*).

F. Cases Handled by the Commission

38 Although the Commission was initially created as a dispute settlement body focussing on inter-State disputes relating to administrative, social, and economic matters, its eventual role in this regard was virtually non-existent, as almost all disputes of that nature were settled amicably between the two governments. Conversely, its president was almost immediately confronted with an avalanche of minority rights petitions. Responding to these petitions and negotiating with States in order to protect the rights of minorities soon became the Commission's main activity, and its most lasting legacy.

39 Possible reasons behind this unexpected development were already identified by some of the protagonists of the Upper Silesian treaty rights protection system. Thus, in his speech at the Commission's closing ceremony on 15 July 1937, Calonder noted that economic disputes, being ultimately of a purely 'material' nature, could be resolved more easily by mutual agreement than minority rights issues, which he characterized as ultimately founded on 'sentiment'. He also deplored the two Minorities Offices' inability to deal effectively with petitions on a national level. Kaeckenbeeck, for his part, noted that 'Government officials dislike and distrust international organs not amenable to the same kind of considerations and pressure which are apt to carry victory in national administrative circles', whereas members of a minority 'whenever under a sense of being wronged, [are] only too prone to appeal to international protection'. He concluded that 'the protection of the population of territories subjected to changes of sovereignty is not and cannot be satisfactorily ensured by international organs which only the Governments themselves can set in motion' (1942, at 481-82).

1. Inter-State Disputes

40 The Commission received a total of 18 State complaints. Two were filed by Poland. One concerned the importation of German coke into Polish Upper Silesia. It was the only case which led to a resolution by the Commission, although it was later settled amicably. Another related to export of cereals to German Upper Silesia. It was eventually withdrawn. The remaining 16, filed by Germany, concerned the maintenance of German laws in Polish Upper Silesia. All were eventually struck from the Commission's list of cases by mutual agreement.

(a) Maintenance of German Laws in Polish Upper Silesia

41 Of the 16 cases filed by Germany with regard to the maintenance of its laws in Polish Upper Silesia, 12 concerned land distribution; the remaining four, labour legislation. While six cases were withdrawn and one resolved by a mutual agreement, the remaining nine were left in abeyance until the winding up of the Commission. According to Kaeckenbeeck, most complaints had been filed hastily, due to the strict time limit of two months fixed by Article 2 GC. Once the parties realized that they had nothing to gain from resolution of the Commission, let alone a judgment of the PCIJ, they disengaged from the proceedings (1942, at 41-42).

(b) Customs and Mining Products

42 A reciprocal commitment had been made by both States to allow the exportation of coal, coke, zinc, and lead, between the two parts of Upper Silesia (Arts 330 and 332 GC). Germany's obligation was, however, limited to the average quantities exported from Germany to Polish Upper Silesia in the period between 1911 and 1913 (Art 333 GC). A dispute subsequently arose over the interpretation of Article 333 GC. Germany read the provision as referring to a limitation in quantities according to places of origin, whereas Poland thought in terms of total quantities. The German intent was to cripple the industries of Polish Upper Silesia by inundating them with lower-grade coke from German Upper Silesia rather than allowing them to import the higher-grade variant from the entirely German Lower Silesia. Poland filed a complaint before the Commission on 1 March 1923.

Kaeckenbeeck summarized the proceedings as follows: '[c]ase and counter-case, reply and rejoinder were successively submitted. Reports, discussions, and oral debates then followed upon the written procedure. Little more than a year after the case had been raised, a compromise solution was proposed by the President of the Mixed Commission and adopted' (1942, at 468).

43 The regime of the Geneva Convention provided, in principle, for national autonomy with regard to customs (Art 216 GC). For the duration of the transitional regime, both States were, however, obliged to exempt from customs duty 'the natural products which originate in and come from one of the two zones of the plebiscite area, and are destined for consumption or use in the other zone' (Art 218 GC). On 24 February 1926, Poland filed a complaint against Germany under Article 237 GC. The Chamber of commerce of Oppeln/Opole in German Upper Silesia had, in fact, invoked quantitative restrictions to limit importation of cereals from Polish Upper Silesia. The German State representative agreed that this measure was a breach of Article 218 GC, and explained, both in writing and before the Mixed Commission, that quotas were no longer being applied to cereals from Polish Upper Silesia. Poland eventually withdrew its complaint.

2. Minority Rights Petitions

44 Calonder received an overall number of 2,283 petitions under Article 149 GC, 1,613 of which were filed by the German minority, 522 by the Polish minority, and 148 by the Jewish minority (all of which originated in German Upper Silesia). Of these 2,283, 1,929 were settled amicably, which underlines the importance of conciliation within the Commission's work. Another 227 were left unresolved. Only 127 resulted in formal opinions, many of which were rejected by the Government authorities. The summary procedure under Article 585 GC led to 1,180 petitions.

(a) Protection of Life and Liberty

45 Pursuant to Articles 66 and 83 GC, Germany and Poland were under the obligation 'to assure full and complete protection of life and liberty to all inhabitants of the plebiscite territory, without distinction of party, nationality, language, race or religion'. This proved especially challenging during the waves of violence that gripped Upper Silesia on several occasions.

46 Immediately after its creation in July 1922, the Commission was confronted with a situation of general lawlessness, with minorities on both sides suffering attacks and expulsion by armed civilians. Its reaction was to organize a meeting between the Polish and German authorities, in order to take active steps for the return of refugees, the coordination of police operations on both sides of the border, and the effective prosecution of illegal acts. Subsequent agreements to this effect were made in consultation with the Commission. A similar method was followed to reduce the tensions created by the occupation of the Ruhr in 1923.

47 Petitions relating to the protection of life and liberty were generally filed according to the procedure under Article 585 GC, which allowed for speedier action than that under Article 149 GC. The president's ability to conduct on-the-spot investigations and make concrete suggestions was seen as an advantage over the procedure before the Council of the League of Nations under Article 147 GC. However, as the Governments were under no obligation to follow the president's suggestions, an appeal before the Council was sometimes required to find a solution. Calonder ultimately reached an agreement with

national authorities according to which all offences reported by him would result in *ex officio* criminal proceedings.

(b) Non-discrimination

48 Articles 75-77 GC provided for equal treatment of minorities with regard to civil and political rights. They generated a substantial amount of petitions, second only to that in the field of educational rights. Calonder developed several criteria to identify cases of discrimination. Legal provisions explicitly discriminating against a minority were always declared contrary to the Convention. With regard to administrative practice, Calonder used his powers of inquiry to get a precise account of the facts. If the administration's actions proved to be in violation of domestic law, they were deemed arbitrary and, accordingly, declared discriminatory under the Convention (*Opinion 39*). Calonder also decided that this test could in no way be avoided by the invocation of discretionary powers (*Opinion 93*).

49 Arguably, the Geneva Convention's most spectacular achievement was to put a halt to the discrimination of the Jews in German Upper Silesia between 1933 and 1937. Legal action was initiated when Franz Bernheim, a German Jew born in Austria and living as an émigré in Prague, filed an Article 147 GC petition before the Council of the League of Nations in order to challenge his dismissal from a department store in German Upper Silesia on 30 April 1933. The German Government questioned Bernheim's status as member of a minority under Article 147 GC, but a committee of jurists (Bourquin, Huber, Pedroso) appointed by the Council rejected this argument. The case was then referred to the local procedure before Calonder, who was able to reach a settlement. He subsequently handled 47 other petitions relating to individual dismissals of Jews, 16 of which led to reinstatements, 23 resulted in settlements, and eight remained unsolved. Calonder's interventions under Article 585 GC had even further-reaching results. On 8 August 1934, following Calonder's suggestion, the head of German Upper Silesia issued a proclamation to the effect that all statutes and orders, either promulgated since 1 April 1933 or in the future, would have no validity in the area in so far as they contained provisions of exception for 'non-Aryans'. Similar measures were taken to end boycott actions against Jewish stores and the diffusion of the anti-Semitic periodical *Der Stürmer*. Although the Nazi authorities were often reluctant to enforce these guarantees, the social exclusion of Jews was markedly less severe in Upper Silesia than in the rest of Germany (Karch, 2013, 150-51).

(c) Right of Association

50 President Calonder rendered two important opinions with regard to Article 78 GC, which recognized the right of minorities to form associations. Thus, he held that minority associations could file petitions under the Convention, at least in regard to all questions not pertaining exclusively to the personal rights of individuals. He motivated his opinion by noting that the Convention did not restrict the right of petition to physical persons and that Articles 75, 78, and 86 ff. GC explicitly recognized the rights of minority associations. He added that the right of associations to lodge petitions should be interpreted broadly, since, from a practical point of view, individuals often lacked the necessary knowledge, means, or time to defend their rights effectively, or might be too afraid to file a petition. Accordingly, minority associations could file petitions in their own name as well as on behalf of individual members of the minority (*Opinion 8*, II paras 1-2). This faculty was later extended to petitions filed on behalf of the minority as a whole (*Opinion 17*, II para 1), and of other associations (*Opinion 71*) (→ *International Courts and Tribunals, Standing*), Calonder's office was in constant contact with the three main minority associations (German, Polish, and Jewish). Nevertheless, he did not consider the right of association of minorities to be

unlimited. Thus, he held that it did not include the right to join associations incompatible with the State's sovereignty, such as paramilitary foreign groups (*Opinion 29*, III para 4).

(d) Cultural Rights

51 Article 81 GC guaranteed the right of minorities to establish, manage, and control cultural institutions which were allowed to carry on their activities unhindered by the State. Problems soon arose, as municipalities on both sides limited, hindered, or prohibited theatre performances in the minority language. (Poland also banned German film subtitles.) Calonder addressed the theatre issue in two of his opinions. He held that pursuant to Articles 75 (2) and 81 GC, minorities had a right to organize theatre performances and to a proportionate use of municipal theatre rooms. More importantly, he specified that each State Party's obligation in this regard was independent from its alleged or actual disregard by the other State Party (*Opinion 87*, III para 3; *Opinion 88*, III para 1).

(e) Educational Rights

52 The question of minority schools was addressed in great detail in 37 provisions of the Convention (Arts 97–133 CG). In addition to allowing private minority schools, each State had the obligation to create and maintain public minority schools. In principle, German children were to be sent to German schools and Polish children to Polish schools. However, a fundamental conflict soon arose over bilingual children, whose mother tongue was usually Polish or Silesian. Article 74 GC provided for a subjective criterion of minority membership, based on free individual choice. Applied to schools, this meant that parents were free to decide which school their children should attend (Art 131 GC). This approach was favoured by Germany which assumed that most parents would want to send their children to the more prestigious German schools. Poland, on the other hand, favouring an objective criterion, wanted to declare all bilingual children Polish. As a matter of fact, almost all educational disputes related to German minority schools in Polish Upper Silesia.

53 During the first years of the treaty's existence, Calonder systematically upheld the principle of free choice when confronted with the sometimes almost unbelievably petty attempts by local authorities to reduce the number of minority schools (eg *Opinions 1, 2, 11, 12, 17, 20, 21, 26, 33, 36*). He also formulated the general principle according to which questions not addressed by express special provisions of the Convention should be solved in accordance with its general provisions, ie in the sense of protecting minority education rather than restricting it (*Opinion 31*). On 15 December 1926, reaffirming his interpretation of Articles 74 and 131 GC, Calonder even went as far as declaring individual self-determination an 'absolute necessity' in a culturally diverse border region such as Upper Silesia (*Opinion 40*, IV para 2). However, he conceded that it was possible to restrict access to German minority schools to children that actually spoke German (*Opinion 40*, V). The matter was referred to the Council of the League of Nations, which appointed a Swiss school inspector to conduct language examinations. Germany accepted the procedure, but protested its results. When examinations resumed the following year, it referred the matter to the PCIJ under Article 12 (3) of the Polish Minorities Treaty. In its *Minority Schools* Judgment of 26 April 1928, the PCIJ rejected Calonder's subjective approach, holding that 'the question whether a person does or does not belong to a racial, linguistic or religious minority ... is a question of fact and not solely one of intention' (para 94). However, in a paradoxical twist, it decided that admissions to minority schools were to be based on a declaratory system leaving no room for verification by the State (paras 100–2). This was a *de facto* return to the subjective approach. Calonder tried to have the solution implemented (*Opinion 86*), but the Polish authorities refused. The main German minority association brought their decision before the Council of the League of Nations, which referred the matter to the PCIJ. In its Advisory Opinion on the *Access to German Minority Schools in Upper Silesia* of 15 May 1931, the Court confirmed its earlier decision. This gave Calonder

enough clout to have both parties agree, in November 1934, on a compromise based on language tests supervised by the Mixed Commission (Kaeckenbeeck, 1942, 333).

(f) Linguistic Rights

54 Article 134 GC guaranteed to the minorities the free use of their languages in their individual, economic, and collective relations, as well as in the press and in publications. The use of languages by administrative and judicial authorities was regulated in Articles 135–46 GC. Under these provisions, minorities were given the right to address the administration in their language. Responses had to be made in the same language if so requested. Similarly, official communications, although always written in the official language, had sometimes to be supplemented by a translation.

55 Although Calonder did not receive many language-related petitions, two of them resulted in noteworthy opinions. Thus, when the Polish authorities refused to supply minority schools with bilingual administrative forms, on the ground that the Convention contained no provision to that effect, he countered that lacunae in the Convention's minority provisions were to be interpreted in accordance with the needs of minorities (*Opinion 58*). Poland's rejection of this statement led to an appeal before the League of Nations. The Council, rather than backing the president of the Mixed Commission, decided to rely on the goodwill of national authorities. In another case, Calonder's interpretation of the Convention led to what may well have been one of the earliest uses of indirect discrimination in international law. In the matter at hand, a publicly-owned insurance company had decided to dismiss several of its doctors because they lacked sufficient command of Polish. Although fluency in written and spoken Polish was requested from all doctors in Polish Upper Silesia, regardless of their belonging to a minority or not, Calonder still held it to be discriminatory. In his view, '[d]iscrimination exists not only when different conditions are imposed on members of the minority, but also when the conditions are the same from an outward point of view, yet in practice, owing to the factual circumstances, constitute a unilateral disadvantage for the minority. In particular, conditions resulting, in practice, in a general elimination of members of the minority are neither compatible with the spirit of the Geneva Convention or with the principle of equal treatment' (*Opinion 82*, IV para 1).

G. Cessation of Activity

56 Unlike the Arbitral Tribunal, which Article 606 GC entrusted with terminating the cases that were still pending, the Mixed Commission ceased all its activities 15 years after the transfer of sovereignty, on 15 July 1937. An official closing ceremony was held on the morning of that day, during which President Calonder gave a final assessment of the Commission's activity, before '[commending] the minorities of Upper Silesia to the generosity of their great and powerful States' ('[recommander] les minorités de la Haute Silésie à la générosité de leurs grands et puissants États' [translation by the author]) (Kaeckenbeeck, 1942, 853).

57 The Commission's archives were later deposited at the Secretariat of the League of Nations in Geneva.

H. Assessment

58 Authors of the interwar period tended to refer to the Upper Silesian regime as an 'experiment' (eg Stone, Kaeckenbeeck, de Azcárate, Korowicz), thus underlining its singular character and uncertain fate. In his 1942 book, Kaeckenbeeck, who had presided over the Arbitral Tribunal between 1922 and 1937, readily acknowledged all procedural shortcomings of the Upper Silesian system and recognized that it had been unable to stop the 'decline' of minorities in both parts of the territory. He nevertheless deemed it to be a

partial success, at least insofar as it had fulfilled the Geneva Convention's limited objective, which was 'to endow with a peaceful and legal character a period of readjustment'. He hoped that it would inspire similar attempts in a context marked by more 'good will' (1942, at 355-56, 537-38). Conversely, the Polish legal scholar and former head of the Polish Minority Office in Upper Silesia, Marek Stanisław Korowicz (1903-1964) was of the opinion that Calonder, as president of the Mixed Commission, had indeed often been able to appease relations between Poles and Germans. This did not prevent him from deeming the mechanism a failure with regard to the protection of minorities in this region. In his eyes, no legal or diplomatic mechanism could have worked in Upper Silesia, since Germans and Poles (as well as Germans and Czechs) had simply become unable to live peacefully side by side, as the German minority's involvement with the Nazis before and after 1939 had confirmed. In this kind of situation, the only answer, 'however painful and upsetting' ('si douloureuse et bouleversante qu'elle soit' [translation by the author]) was transferring minorities to their own national State, rather than giving them special rights within the majority's national State. However, Korowicz did consider that the Upper Silesian 'experiment' did provide insights 'of exceptional importance' for the international protection of minorities in other regions of the world, or, indeed, 'for the international protection of man' in general (1946, at 160-74).

59 Since the end of the Cold War, several authors have undertaken efforts to rescue the Mixed Commission and its legacy from oblivion. Polish and German historians have published studies on the political impact of the Upper Silesian minority rights protection system, especially between 1933 and 1937. While the American historian and international legal scholar Nathaniel Berman has underlined the profound originality of the 'local, yet international' procedure before the president of the Mixed Commission (1993, at 1896), the British legal historian AW Brian Simpson has described the Mixed Commission as 'a model for the institutional arrangements incorporated in 1950 in the European Convention on Human Rights' (2001, at 134). Although Brian Simpson does not show that the example of Upper Silesia was actually mentioned during the negotiations leading up to the ECHR, it seems difficult to deny the pioneering role of the Mixed Commission with regard to the international protection of individual rights, both procedurally and substantively.

Cited Bibliography

J Stone, *Regional Guarantees of Human Rights: A Study of Minorities Procedure in Upper Silesia* (Macmillan New York 1933).

F Calonder, 'Vorwort' in Gemischte Kommission für Oberschlesien/Komisja Mieszana dla Górnego Śląska (ed), *Amtliche Sammlung der Stellungnahmen des Präsidenten der Gemischten Kommission für Oberschlesien auf dem Gebiete des Minderheitenrechtes auf Grund der Vorschriften des III. Teils des deutsch-polnischen Genfer Abkommens vom 15. Mai 1922 in der Zeit vom 15. Juni 1922 bis 15. Juli 1937/ Zbiór urzędowy poglądów Prezydenta Komisji Mieszanej dla Górnego Śląska z dziedziny praw mniejszościowych wydanych na podstawie przepisów części III polsko-niemieckiej Konwencji Genewskiej z dnia 15 maja 1922 w czasie od 15 czerwca 1922 do 15 lipca 1937* vol 1 (De Gruyter Berlin Leipzig/Dziedzictwo Cieszyn 1937) V-XXIII.

G Kaeckenbeeck, *The International Experiment of Upper Silesia: A Study in the Working of the Upper Silesian Settlement, 1922-1937* (OUP Oxford 1942).

P de Azcárate, *League of Nations and National Minorities: An Experiment* (Carnegie Endowment for International Peace Washington DC 1945).

MS Korowicz, *Une expérience de droit international : La protection des minorités de Haute-Silésie* (Pedone Paris 1946).

J Monnet, *Mémoires* (Fayard Paris 1976).

N Berman, 'But the Alternative is Despair: European Nationalism and the Modernist Renewal of International Law' (1993) 106 *HarvLRev* 1792-1903.

S Sierpowski, 'Die Stellung Polens zu den Bestimmungen des Völkerbundes über die nationalen Minderheiten' in M Mohr (ed), *Friedenssichernde Aspekte des Minderheitenschutzes in der Ära des Völkerbundes und der Vereinten Nationen in Europa* (Springer Berlin 1996).

AW Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (OUP Oxford 2001).

P Stauffer, 'Der patriotische Internationalist. Felix Calonder als Schweizer Aussenpolitiker und als "Minderheitenschützer" im deutsch-polnisch-jüdischen Spannungsherd Oberschlesien' (2005) 1 *Bündner Monatsblatt: Zeitschrift für Bündner Geschichte, Landeskunde und Baukultur* 3-20.

B Karch, 'A Jewish "Nature Preserve": League of Nations Minority Protections in Nazi Upper Silesia, 1933-1937' (2013) 46 *Central European History* 124-60.

Further Bibliography

G Kostencki, *Der Schutz der nationalen Minderheiten in Oberschlesien nach dem deutsch-polnischen Abkommen über Oberschlesien vom 15.V.1922 unter besonderer Berücksichtigung der Entscheidungen des Schiedsgerichts für Oberschlesien und der Stellungnahmen des Präsidenten der Gemischten Kommission für Oberschlesien. Inaugural-Dissertation zur Erlangung der Doktorwürde einer Hohen Rechtswissenschaftlichen Fakultät der Universität Köln* (Heinrich und J Lechte 1933).

G Kaeckenbeeck, 'Upper Silesia Under the League of Nations' (1946) 243 *Annals of the American Academy of Political and Social Science* 129-33.

FP Walters, *A History of the League of Nations* (OUP London/New York 1952).

CR von Frenzt, *A Lesson Forgotten: Minority Protection under the League of Nations. The Case of the German Minority in Poland, 1920-1934* (LIT Hamburg 1999).

PC Mohr, 'Kein Recht zur Einmischung?' *Die politische und völkerrechtliche Reaktion Großbritanniens auf Hitlers 'Machtergreifung' und die einsetzende Judenverfolgung* (Mohr Siebeck Tübingen 2002).

P Stauffer, "'Staatsmann des kommenden Europa'? Felix Calonder und seine Tätigkeit im deutsch-polnisch-jüdischen Spannungsfeld Oberschlesien 1921-1937' in P Stauffer, *Polen - Juden - Schweizer: Felix Calonder (1921-1937), 'Exilpolens' Berner Emissäre (1939-1945), Die Schweiz und Katyn (1943)* (Neue Zürcher Zeitung Zurich 2004).

P Graf, *Die Bernheim-Petition 1933: Jüdische Politik in der Zwischenkriegszeit* (Vandenhoeck & Ruprecht Göttingen 2008).

Cited Documents

Convention between Germany and Poland relating to Upper Silesia (signed 15 May 1922, entered into force 3 June 1922) 9 LNTS 465; 118 BSP 365 (Geneva Convention).

Decision of the Conference of Ambassadors (20 October 1921), LoN II A, 16923/14724.

German-Polish Conversations concerning the Application of Certain Clauses of the Convention of May 15th, 1922, relating to Upper Silesia (signed 6 April 1929) 10 League of Nations Official Journal 1104-06.

Treaty of Peace between the Allied and Associated Powers and Germany (signed 28 June 1919, entered into force 10 January 1920) [1919] 225 CTS 188 (Treaty of Versailles).

Verfahrensordnung der Gemischten Kommission für Oberschlesien (5 December 1922) Reichsgesetzblatt (1923) II, 63 (Rules of Procedure of the Mixed Commission) [German and Polish only].

Further Documents

Gemischte Kommission für Oberschlesien/Komisja Mieszana dla Górnego Śląska (ed), *Amtliche Sammlung der Stellungnahmen des Präsidenten der Gemischten Kommission für Oberschlesien auf dem Gebiete des Minderheitenrechtes auf Grund der Vorschriften des III. Teils des deutsch-polnischen Genfer Abkommens vom 15. Mai 1922 in der Zeit vom 15. Juni 1922 bis 15. Juli 1937/Zbiór urzędowy poglądów Prezydenta Komisji Mieszanej dla Górnego Śląska z dziedziny praw mniejszościowych wydanych na podstawie przepisów części III polsko-niemieckiej Konwencji Genewskiej z dnia 15 maja 1922 w czasie od 15 czerwca 1922 do 15 lipca 1937* (De Gruyter Berlin Leipzig/Dziedzictwo Cieszyn 1937), 2 vol (Official Collection of the Opinions of the President of the Upper Silesian Mixed Commission, OCOPUSMC) [German and Polish only].

Cited Cases

Permanent Court of International Justice

Access to German Minority Schools in Upper Silesia, Advisory Opinion, 15 May 1931, (1931) PCIJ Series A/B No 40; ICGJ 286 (PCIJ 1931).

Rights of Minorities in Upper Silesia (Minority Schools), Germany v Poland, Judgment, 26 April 1928, (1928) PCIJ Series A No 15; ICGJ 253 (PCIJ 1928).

Upper Silesian Mixed Commission

Opinion 1: Pogrzeba, 1 May 1923, Case 1, 1 OCOPUSMC 2-9.

Opinion 2: Gawlik, 1 May 1923, Case 6, 1 OCOPUSMC 10-17.

Opinion 8: Deutsch-Oberschlesischer Volksbund, 26 November 1923, Case 41, 1 OCOPUSMC 87-107.

- Opinion 11: August Kühnel und Genossen*, 20 December 1923, Case 29, 1 OCOPUSMC 117-23.
- Opinion 12: August Jung und Genossen*, 3 January 1924, Case 11, 1 OCOPUSMC 123-69.
- Opinion 17: Deutsch-Oberschlesischer Volksbund*, 20 March 1924, Case 44, 1 OCOPUSMC 208-11.
- Opinion 20: Richard Rutz und 6 Genossen*, 22 April 1924, Case 71, 22 April 1924, 1 OCOPUSMC 221-25.
- Opinion 21: Deutsch-Oberschlesischer Volksbund*, 22 April 1924, Case 75, 1 OCOPUSMC 225-31.
- Opinion 26: August Machura*, 31 December 1924, Case 90, 1 OCOPUSMC 263-75.
- Opinion 29: Związek Polaków w Niemczech*, 15 September 1925, Case 100, 1 OCOPUSMC 284-301.
- Opinion 31: Otto Ulitz*, 15 November 1925, Case 138, 1 OCOPUSMC 313-21.
- Opinion 33: Deutsch-Oberschlesischer Volksbund*, 20 December 1925, Case 155, 1 OCOPUSMC 333-47.
- Opinion 36: Deutsch-Oberschlesischer Volksbund*, 15 September 1926, Case 211, 1 OCOPUSMC 359-67.
- Opinion 39: Kreissekretär Boleslaus Drodzdowski*, 11 October 1926, Case 169, 1 OCOPUSMC 381-97.
- Opinion 40: Deutsch-Oberschlesischer Volksbund*, 15 December 1926, Case 257, 1 OCOPUSMC 397-447.
- Opinion 58: Deutsch-Oberschlesischer Volksbund*, 10 October 1927, Case 274, 1 OCOPUSMC 593-99.
- Opinion 71: Turngemeinde Katowice*, 21 June 1928, Case 314, 2 OCOPUSMC 91-97.
- Opinion 82: Dr. Cohn*, 30 June 1929, Case 307, 2 OCOPUSMC 185-221.
- Opinion 86: Josef Kawulok*, 10 February 1930, Case 733, 2 OCOPUSMC 235-51.
- Opinion 87: Deutsche Theatergemeinde für Polnisch-Schlesien*, 1 March 1930, Case 705, 2 OCOPUSMC 251-67.
- Opinion 88: Związek Polaków*, 1 March 1930, Case 836, 2 OCOPUSMC 267-77.
- Opinion 93: Paul Besuch*, 16 July 1930, Case 702, 2 OCOPUSMC 307-15.