

N° 1558.

ESPAGNE ET ITALIE

Traité d'amitié, de conciliation et
de règlement judiciaire. Signé à
Madrid, le 7 août 1926.

SPAIN AND ITALY

Treaty of Friendship, Conciliation
and Judicial Settlement. Signed
at Madrid, August 7, 1926.

TEXTE ESPAGNOL. — SPANISH TEXT.

Nº 1558. — TRATADO¹ DE AMISTAD, DE CONCILIACIÓN Y DE ARREGLO JUDICIAL ENTRE ESPAÑA E ITALIA FIRMADO EN MADRID EL 7 DE AGOSTO DE 1926.

Italian and Spanish official texts communicated by the Italian Minister for Foreign Affairs. The registration of this Treaty took place November 1, 1927.

SU MAJESTAD EL REY DE ESPAÑA y SU MAJESTAD EL REY DE ITALIA animados del deseo de estrechar los lazos de amistad existentes entre los dos Países y de contribuir al mantenimiento de la Paz general han resuelto celebrar un Tratado de amistad, de conciliación y de arreglo judicial de las cuestiones que pudieran surgir entre los dos Países.

Al efecto han designado como plenipotenciarios, a saber :

SU MAJESTAD EL REY DE ESPAÑA :

Al Excelentísimo señor Don José DE YANGÜAS MESSIA, Su Ministro de Estado ;

SU MAJESTAD EL REY DE ITALIA :

Al Excelentísimo señor Marqués PAULUCCI DE' CALBOLI, Su Embajador en Madrid, Senador del Reino ;

los cuales despues de comunicarse sus plenos poderes y de haberlos hallado en buena y debida forma han convenido en las disposiciones siguientes :

Artículo I.

Las Partes contratantes se comprometen a someter a un procedimiento de conciliación las diferencias, de cualquier naturaleza que sean, que surgieren entre ellas y que no hubieren podido ser resueltas por la vía diplomática en un plazo prudencial.

En el caso de que fracasare el procedimiento de conciliación se procurará un arreglo judicial, conforme a los artículos 7.º y siguientes del presente Tratado.

Los litigios para cuya solución esté prevista una jurisdicción especial por otros Acuerdos en vigor entre las Partes contratantes serán, sin embargo, sometidos a dicha jurisdicción.

Artículo II.

Cuando se trate de un litigio que, según los términos de la legislación de una de las Partes, sea de la competencia de una autoridad judicial, la Parte demandada podrá oponerse a que sea sometido a un procedimiento de conciliación y, en su caso, a un arreglo judicial, siempre que no haya sido objeto de una decisión definitiva por parte de dicha autoridad judicial. En el caso de que la Parte demandante se propusiera impugnar esta decisión judicial, el litigio deberá ser sometido a procedimiento de conciliación dentro del año, a contar de la referida decisión.

¹ The exchange of ratifications took place at Madrid, October 16, 1926.

¹ TRANSLATION.

No. 1558. — TREATY OF FRIENDSHIP, CONCILIATION AND JUDICIAL SETTLEMENT BETWEEN ITALY AND SPAIN. SIGNED AT MADRID, AUGUST 7, 1926.

HIS MAJESTY THE KING OF ITALY, and HIS MAJESTY THE KING OF SPAIN, being desirous of further strengthening the ties of friendship which already unite the two countries and of helping to maintain general peace, have decided to conclude a Treaty of friendship, conciliation and judicial settlement in regard to questions which may arise between the two countries.

They have therefore appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF ITALY :

His Excellency the Marquis PAULUCCI DI' CALBOLI, His Ambassador Extraordinary and Plenipotentiary, accredited to His Most Catholic Majesty, Senator of the Kingdom ;

HIS MAJESTY THE KING OF SPAIN :

His Excellency Don José DE YANGÜAS MESSIA, His Minister for Foreign Affairs,

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

Article I.

The Contracting Parties undertake to submit to the procedure of conciliation all disputes of any nature whatever which may arise between them, and which it may not have been possible to settle within a reasonable time by diplomatic methods.

In the event of the procedure of conciliation proving unsuccessful, a judicial settlement shall be sought in accordance with Articles VII *et seq.* of the present Treaty.

Disputes for the solution of which a special procedure has been laid down in other conventions in force between the Contracting Parties shall, however, remain subject to such special procedure.

Article II.

In the case of a dispute which, according to the law of one of the Parties, comes within the jurisdiction of the Courts, the defendant Party may oppose the submission of the dispute to a procedure of conciliation and ultimately to judicial settlement, so long as no final judgment has been pronounced by the Court in question. Should the complainant Party desire to contest the judgment, the conciliation procedure must be applied to the dispute within one year from the date on which the judgment was pronounced.

Article III.

The Contracting Parties shall establish a Permanent Commission of Conciliation consisting of five members.

¹ Translated by the Secretariat of the League of Nations.

Each Party shall appoint one member of its own choosing, the other three being appointed by agreement between the Parties. The three latter members may not be nationals of the Contracting Parties or be domiciled in their territories or be employed in their service. The Contracting Parties shall by agreement appoint one of these three members as president.

So long as no proceedings have been begun, either Contracting Party may revoke the appointment of its Commissioner and nominate a successor ; it may also withdraw its consent to the appointment of any of the three Commissioners appointed jointly. In this case the Commissioners whose mandates are terminated shall be replaced without delay.

The Commissioners shall be replaced in the same manner as they were appointed. For the actual duration of the procedure the jointly appointed Commissioners shall receive an allowance, to be fixed by agreement between the Contracting Parties and to be paid by them in equal shares. On the other hand, each Party shall fix and pay the allowance of the Commissioner appointed by itself.

The general expenses of the Commission shall be borne by the Contracting Parties in equal shares.

The Commission shall be constituted within six months after the exchange of the ratifications of the present Treaty. It shall meet in the place selected by its President.

If the appointment of the members to be nominated jointly is not made within six months as from the date of the exchange of ratifications, or, in the case of replacement, within three months after the vacancy occurs, these appointments shall be made in conformity with Article 45 of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

Article IV.

Failing any special agreement to the contrary, the procedure of conciliation shall be governed by the rules laid down in the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

Article V.

A question may be submitted to the Commission of Conciliation by either of the Parties, who shall notify its request to the President of the Commission and to the other Party. The Commission, however, may offer its services, should its President and two of the Commissioners agree to such a course of action.

The Contracting Parties undertake to assist the Commission in its work, in every possible way and in every respect, and in particular to employ all the means they possess under their respective laws to invest it with the same powers as their Supreme Courts as regards the calling and hearing of witnesses and experts and the carrying out of investigations on the spot.

Article VI.

It shall be the duty of the Conciliation Commission to consider the various questions submitted to it and to embody the results of its enquiry in a report, the object of which shall be to elucidate questions of fact and thus to facilitate the settlement of the dispute. In its report it shall state the controversial points in the case and shall then make such recommendations as might lead to an agreement between the Parties.

The Commission shall report within six months from the day on which the dispute is submitted to it unless the Contracting Parties decide to curtail or extend this period. The report shall be drawn up in triplicate, one copy being sent to each of the Parties and the third being filed in the archives of the Commission.

The Commission shall prescribe a period within which the Parties shall be required to take their decision as regards its recommendations, and also a period within which the Parties may, in case the procedure of conciliation should prove unsuccessful, submit the dispute to a judicial settlement. These periods may not, however, exceed six months in the case of the first period, and three months in the case of the second.

The Commission's report shall not be in the nature of a compulsory final award as regards either the statement of facts or the legal considerations.

Article VII.

Should the Parties not accept the recommendations of the Commission of Conciliation, either of them may, within a period prescribed by the Commission, request that the dispute be submitted to the Permanent Court of International Justice. If, in the opinion of the Court, the case is not of a juridical nature, the Parties shall agree to its being settled *ex aequo et bono*.

Article VIII.

Nevertheless, the Contracting Parties may decide to refer any dispute to a Court of Arbitration established in conformity with Articles 55 *et seq.* of the Convention of October 18, 1907, for the Pacific Settlement of International Disputes, or in conformity with any other agreement concluded between them.

Article IX.

On the basis of the Statute and the Rules of the Permanent Court of International Justice, the Contracting Parties shall draw up a special agreement (*compromis*) specifying the subject of the dispute, the special jurisdiction conferred upon the Court and any other conditions agreed upon between the Parties.

The special agreement shall be constituted by an exchange of notes between the Governments of the Contracting Parties and all points contained therein shall be interpreted by the Court of Justice.

If the special agreement is not drawn up within three months from the day on which one of the Parties was requested to submit the matter for judicial settlement, either Party may bring the question before the Court of Justice by a simple request.

Article X.

If, in a judgment rendered in conformity with the present Treaty, it is found that a ruling of a Court of Law or any other authority of one of the Contracting Parties is wholly or partly at variance with international law, and should the constitutional law of that Party not allow, or only inadequately allow, the cancellation of this decision by administrative procedure, the Party prejudiced shall be granted equitable satisfaction in some other form.

Article XI.

The judgment rendered by the Permanent Court of International Justice shall be carried out by the Parties in good faith.

During the procedure of conciliation or the judicial procedure, the Contracting Parties shall undertake to abstain as far as possible from all measures which might prejudicially affect the acceptance of the proposals of the Commission of Conciliation or the execution of the judgment.

Article XII.

Any disputes which may arise as to the interpretation or the execution of the present Treaty shall, in the absence of agreement to the contrary be submitted direct to the Permanent Court of International Justice by a simple request.

Article XIII.

Should one of the Contracting Parties, notwithstanding its peaceful attitude, be attacked by a third Power or third Powers, the other Contracting Party shall observe neutrality during the whole of the conflict.

Article XIV.

The present Treaty shall be ratified as soon as possible and the instruments of ratification shall be exchanged at Madrid.

The Treaty shall remain in force for a period of ten years from the date of the exchange of ratifications. Unless denounced six months before the expiration of this period it shall remain in force for a further period of five years, and similarly thereafter. If a procedure of conciliation or a judicial procedure is pending at the time of the expiration of the present Treaty, it shall pursue its course in accordance with the provisions of the present Treaty or of any other Convention which the Contracting Parties may have agreed to substitute therefor.

Article XV.

The present Treaty has been drawn up in two original copies, one in Spanish and one in Italian, both copies being authentic.

In faith whereof the Plenipotentiaries have signed the present Treaty.

Done at Madrid on August 7, 1926.

For Italy :

(L. S.) PAULUCCI DI' CALBOLI.

For Spain :

(L. S.) YANGÜAS MESSIA.