

N° 1764.

ESPAGNE ET SUÈDE

Traité de conciliation, de règlement
judiciaire et d'arbitrage. Signé à
Madrid, le 26 avril 1928.

SPAIN AND SWEDEN

Treaty of Conciliation, Judicial Settle-
ment and Arbitration. Signed at
Madrid, April 26, 1928.

¹ TRADUCTION. — TRANSLATION.

No. 1764. — TREATY² OF CONCILIATION, JUDICIAL SETTLEMENT AND ARBITRATION BETWEEN SPAIN AND SWEDEN. SIGNED AT MADRID, APRIL 26, 1928.

French official text communicated by the Swedish Minister for Foreign Affairs and by the Secretary-General for External Affairs of Spain. The registration of this Treaty took place June 28, 1928.

HIS MAJESTY THE KING OF SWEDEN and HIS MAJESTY THE KING OF SPAIN, being desirous of strengthening the ties of friendship existing between Sweden and Spain and of settling, in accordance with the highest principles of public international law, any disputes which may arise between the two countries, have resolved to conclude a Treaty for this purpose and have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF SWEDEN :

His Excellency M. Ivan DANIELSSON, His Envoy Extraordinary and Minister Plenipotentiary to His Catholic Majesty, Commander of the First Class of His Order of the Polar Star, Knight Grand Cross of the Order of Isabella the Catholic, etc. ;

HIS MAJESTY THE KING OF SPAIN :

His Excellency Don Miguel PRIMO DE RIVERA Y ORBANEJA, Marquis de Estella, His Prime Minister and Minister of State, Grandee of Spain, Lieutenant-General of the Armies, decorated with the Grand Cross, with laurels, of the Royal and Military Order of Saint Ferdinand, Knight Grand Cross of the Orders of St. Hermenegilde, of Military Merit, of Naval Merit, of the Swedish Order of Vasa, Lord in Waiting, etc.,

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

Article I.

The High Contracting Parties reciprocally undertake to settle by pacific means and in accordance with the methods provided for in the present Treaty, all disputes or conflicts of any nature whatsoever which may arise between Sweden and Spain and which it may not have been possible to settle by the normal methods of diplomacy.

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

¹ Translated by the Secretariat of the League of Nations, for information.

² The exchange of ratifications took place at Stockholm, June 16, 1928.

PART I.

Article 2.

All disputes of every kind between the High Contracting Parties with regard to which the Parties are in conflict as to their respective rights, and which it may not have been possible to settle amicably by the normal methods of diplomacy, shall be submitted for decision either to the Permanent Court of International Justice or to an Arbitral Tribunal.

Disputes for the settlement of which a special procedure is laid down in other conventions in force between the High Contracting Parties shall be settled in conformity with the provisions of those conventions.

Article 3.

Before any resort is made to the Permanent Court of International Justice or to the Arbitral Tribunal, the dispute may, by agreement between the Parties, be submitted with a view to amicable settlement to a permanent international commission, styled the Permanent Conciliation Commission, constituted in accordance with the present Treaty.

Article 4.

In the case of a dispute the occasion of which, according to the municipal law of one of the Parties, falls within the competence of the national courts, such Party may oppose the submission of the dispute to the procedure laid down in the present Treaty until a judgment with final effect has been pronounced, within a reasonable time, by the competent judicial authority.

Article 5.

The Permanent Conciliation Commission shall be composed of five members. The Contracting Parties shall each appoint a commissioner of its own choosing, and shall appoint, by agreement, the other three commissioners and, from among the latter, the President of the Commission. These three commissioners may not be nationals of the Contracting Parties, nor may they have their domicile in the territory or be employed in the service of the Contracting Parties. They must all three be of different nationality.

The commissioners shall be appointed for three years. If on the expiry of the term of office of a member of the Commission no arrangement has been made for his replacement, his term of office shall be deemed to have been renewed for a period of three years. Nevertheless, the Contracting Parties reserve the right, on the expiry of the term of three years, to transfer the functions of President to another of the members of the Commission appointed by agreement.

Any member whose term of office expires while proceedings are still in progress shall continue to take part in the examination of the dispute until the close of such proceedings, even if his successor has been appointed.

A vacancy occurring as a result of the death or retirement of a member of the Conciliation Commission shall be filled for the remainder of the term of office of such member, if possible within the following three months, and in any case as soon as a dispute is submitted to the Commission.

Article 6.

The Permanent Conciliation Commission shall be constituted within six months from the exchange of ratifications of the present Treaty.

If the nomination of the members to be appointed jointly should not have taken place within the said period, or, in the case of the filling of a vacancy, within three months from the time when the seat falls vacant, such nomination shall be entrusted to a third Power designated by the Parties by common agreement. Should no agreement be reached on this subject, each Party shall designate a different Power, and the nominations shall be made jointly by the Powers thus designated. If, within two months, these two Powers have not found it possible to agree, they shall each submit as many candidates as there are members to be appointed. The choice of the candidates thus submitted shall be determined by lot.

Article 7.

The Permanent Conciliation Commission shall be informed by means of a request addressed to the President by the two Parties acting in agreement.

The request, after giving a summary account of the subject of the dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable settlement.

Article 8.

Within fifteen days from the date on which the dispute shall have been brought before the Commission, either Party may, for the examination of the particular dispute, replace the permanent member whom it has appointed by a person possessing special competence in the matter. The Party making use of this right shall immediately inform the other Party. The latter shall be entitled to take similar action within fifteen days from the date on which it shall have received notification.

Each of the Parties reserves the right to appoint immediately a substitute to replace for the time being the permanent member appointed by it if he is temporarily prevented by illness or any other circumstance from taking part in the Commission's work.

Should one of the members of the Conciliation Commission appointed jointly by the Contracting Parties be temporarily prevented by illness or any other circumstance from taking part in the Commission's work, the Parties shall agree with regard to the appointment of a substitute to replace him for the time being. Should the said substitute not be appointed within a month from the date when the seat becomes temporarily vacant, the procedure provided for in Article 6 of the present Treaty shall apply.

Article 9.

The task of the Permanent Conciliation Commission shall be to elucidate questions in dispute, to collect with that object all necessary information by means of enquiry or otherwise, and to endeavour to bring the Parties to an agreement. It may, after the case has been examined, inform the Parties of the terms of settlement which seem suitable to it and lay down a period within which they are to make their decision.

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

The proceedings of the Commission must, unless the Parties agree otherwise, be terminated within six months from the day on which the Commission was notified of the dispute.

If a settlement has not been effected between the Parties the Commission may, unless the two commissioners freely appointed by the Parties oppose this procedure, order the immediate publication of a report containing the opinion of each of the members of the Commission.

Article 10.

Failing any special provision to the contrary, the Conciliation Commission shall lay down its own procedure, which in any case must provide for both Parties being heard. In regard to

enquiries, the Commission, unless it unanimously decides otherwise, shall act in accordance with the provisions of Chapter III (International Commissions of Enquiry) of the Hague Convention¹ of October 18, 1907, for the Pacific Settlement of International Disputes.

Article 11.

The Conciliation Commission shall meet, in the absence of agreement by the Parties to the contrary, at a place selected by its President.

Article 12.

The proceedings of the Conciliation Commission shall not be public, except when a decision to that effect has been taken by the Commission with the consent of the Parties.

Article 13.

The Parties shall be represented before the Conciliation Commission by agents, whose duty it shall be to act as intermediaries between them and the Commission. They may, moreover, be assisted by counsel and experts appointed by them for that purpose, and they may request that all persons whose evidence appears to them useful should be heard.

The Commission on its side shall be entitled to request oral explanations from the agents, counsel and experts of the two Parties, as well as from all persons it may think useful to summon with the consent of their Government.

Article 14.

Unless otherwise provided in the present Treaty, the decisions of the Conciliation Commission shall be taken by a majority. Should the votes be equally divided, the President shall have a casting vote.

Article 15.

The Contracting Parties undertake to facilitate the work of the Conciliation Commission, and particularly to supply it to the greatest possible extent with all relevant documents and information, as well as to use the means at their disposal to enable it to proceed in their territory and in accordance with their law to the summoning and hearing of witnesses or experts, and to visit the localities in question.

Article 16.

During the proceedings of the Conciliation Commission, each commissioner shall receive emoluments the amount of which shall be fixed by agreement between the Contracting Parties.

¹ *British and Foreign State Papers*, Vol. 100, page 298.

Each Government shall pay its own expenses and shall pay half the joint expenses of the Commission, the emoluments provided for in paragraph 1 being included in these joint expenses.

Article 17.

Failing an agreement to bring the dispute before the Permanent Conciliation Commission and, should such an agreement be arrived at, in the event of no amicable settlement being reached before the Permanent Conciliation Commission, the dispute shall be submitted by means of a special agreement either to the Permanent Court of International Justice under the conditions and according to the procedure provided for in its Statute¹, or to an Arbitral Tribunal under the conditions and according to the procedure provided for by the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

If the special agreement has not been drawn up within three months from the day on which one of the Parties has been informed of the request for judicial settlement, either Party may, on the expiry of one month's notice, bring the dispute direct before the Permanent Court of International Justice by means of an application.

PART II.

Article 18.

All questions on which the Governments of the two High Contracting Parties may differ without being able to reach an amicable solution by the normal methods of diplomacy, the settlement of which cannot be attained by means of a judicial decision as provided in Article 2 of the present Treaty, and for the settlement of which no procedure has been laid down by any treaty or convention in force between the Parties, shall be submitted to the Permanent Conciliation Commission.

The procedure laid down in Articles 7 to 16 of the present Treaty shall be applicable.

Failing agreement between the Parties on the request to be made to the Commission, either Party shall be entitled to submit the question direct to the said Commission on the expiry of one month's notice.

Should the request be preferred by one Party only, that Party shall notify such request forthwith to the other Party.

Article 19.

In the event of no agreement being reached between the Parties, the dispute shall, at the request of either Party, be submitted for decision to an Arbitral Tribunal having power to decide *ex aequo et bono*.

This Tribunal shall, in the absence of agreement to the contrary, consist of five members appointed according to the method laid down in Articles 5 and 6 of the present Treaty for the constitution of the Conciliation Commission. The Tribunal shall be constituted within six months from the request for arbitration.

The decision of the Arbitral Tribunal shall be binding on the Parties.

¹ Vol. VI, page 379 ; Vol. XI, page 404 ; Vol. XV, page 304 ; Vol. XXIV, page 152 ; Vol. XXVII, page 416 ; Vol. XXXIX, page 165 ; Vol. XLV, page 96 ; Vol. L, page 159 ; Vol. LIV, page 387 ; Vol. LXIX, page 70 ; and Vol. LXXII, page 452, of this Series.

Article 20.

Should recourse be had to arbitration between the Contracting Parties, the latter undertake to conclude, within six months from the request for arbitration, a special agreement concerning the subject of the dispute and the methods of procedure.

If this agreement cannot be concluded within the time stipulated, either of the Parties may notify the Tribunal by a simple application. In this case the Arbitral Tribunal shall itself lay down its procedure.

GENERAL PROVISIONS.

Article 21.

During the course of proceedings of conciliation, judicial settlement or arbitration, the Contracting Parties shall abstain from all measures likely to exert any influence prejudicial to the acceptance of the proposals of the Conciliation Commission or to the execution of the judgment of the Permanent Court of International Justice or to the award of the Arbitral Tribunal. For this purpose the Conciliation Commission, the Court of Justice and the Arbitral Tribunal shall, if necessary, lay down the provisional measures to be adopted.

Article 22.

Should the Permanent Court of International Justice or the Arbitral Tribunal find that a decision of a judicial authority or of any other authority of either of the Contracting Parties is wholly or in part contrary to international law, and if the constitutional law of that Party does not permit or only partially permits the consequences of the decision in question to be annulled by administrative action, the judicial decision or arbitral award should indicate the nature and extent of the compensation to be granted to the injured Party.

Article 23.

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

Article 24.

The present Treaty shall be ratified by His Majesty the King of Sweden with the approval of the Riksdag, and by His Majesty the King of Spain after the formalities prescribed by the regulations in force in Spain have been carried out. The instruments of ratification shall be exchanged at Stockholm as soon as possible.

Article 25.

The present Treaty, which replaces the Arbitration Convention¹ of January 23, 1905, shall come into force on the date of the exchange of ratifications, and shall remain valid for ten years

¹ *British and Foreign State Papers*, Vol. 103, page 1002.

from the date on which it comes into force. Unless it shall have been denounced six months before the expiration of this period it shall be deemed to be renewed for a period of ten years, and similarly thereafter.

If, on the date on which the present Treaty expires, a conciliation, judicial settlement or arbitration procedure is pending, it shall pursue its course until completed.

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

Done at Madrid in duplicate, April 26, 1928.

(L. S.) DANIELSSON.

(L. S.) Miguel PRIMO DE RIVERA,
Marques de Estella.