

N° 1864.

ESPAGNE ET PORTUGAL

Convention pour régler l'aménagement hydro-électrique de la section internationale du Douro. Signée à Lisbonne, le 11 août 1927.

SPAIN AND PORTUGAL

Convention to regulate the Hydro-Electric Development of the International Section of the River Douro. Signed at Lisbon, August 11, 1927.

¹ TRANSLATION.

No. 1864. — CONVENTION BETWEEN SPAIN AND PORTUGAL TO REGULATE THE HYDRO-ELECTRIC DEVELOPMENT OF THE INTERNATIONAL SECTION OF THE RIVER DOURO. SIGNED AT LISBON, AUGUST 11, 1927.

THE GOVERNMENT OF THE PORTUGUESE REPUBLIC and THE GOVERNMENT OF HIS CATHOLIC MAJESTY, with a view to preparing a draft Convention to regulate the hydro-electric development of the international section of the River Douro, have resolved to appoint a Mixed Commission, composed as follows :

As representatives of Portugal :

- M. José Bernardino GONSALVES TEIXEIRA, Ambassador, Secretary-General at the Ministry of Foreign Affairs ;
- M. José Fernando DE SOUZA, Inspector of Public Works ;
- M. João Alexandre LOPES GALVÃO, Colonel of Engineers, Administrator-General of the Hydraulic Department in the Ministry of Commerce and Communications ;
- M. Leopoldo MARQUES POOLE DA COSTA, Civil Engineer ;

As representatives of Spain :

- Don José DE YANGUAS Y MESSIA, former Minister for Foreign Affairs, Professor at Madrid University ;
- Don Antonio Fernandez DE NAVARRETTE Y HURTADO DE MENDOZA, Marquis OF LEGARDA, former President of the Board of Public Works, and Inspector-General of Roads, Canals and Harbours ;
- Don Luis MORALES Y LOPES-HIGUERA and Don Carlos SANTA MARIA Y GARCIA, Chief Engineers in the Roads, Canals and Harbours Department.

This Commission, having submitted to the two Governments the draft convention it had been instructed to prepare, has set forth with respect to the international section of the Douro rules supplementary to the Agreement of 1912 relative to the industrial utilisation of the waters of the boundary rivers between the two States. Both Governments, being sincerely desirous of strengthening the ties of friendship and the solidarity of economic interests existing between the two nations have resolved to transform the draft into a Convention, and have appointed as their Plenipotentiaries for this purpose.

HIS EXCELLENCY THE PRESIDENT OF THE PORTUGUESE REPUBLIC :

- José Bernardino GONSALVES TEIXEIRA, Ambassador, Secretary-General at the Ministry of Foreign Affairs, Grand Cross of the Military Order of Christ, Grand Cross of Isabel the Catholic of Spain, etc., etc., etc.

HIS CATHOLIC MAJESTY :

- Done José DE YANGUAS Y MESSIA, Grand Cross of the Military Order of Christ of Portugal, Grand Cross of the Order of Saint Maurice and Saint Lazarus of Italy, etc., etc., etc.

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

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

Article 1.

The hydro-electric development of the international section of the Douro shall be carried out in the interests of both frontier States, in accordance with Article 1 of the Agreement of 1912 and the provisions of the present Convention.

All the other rights of both frontier States on the said international section, defined in the Frontier Treaty of 1864, and its annex No. 1, ratified on November 26, 1866, shall remain in force in so far as they are not incompatible with the provisions laid down in the present Convention.

Article 2.

The power capable of being developed on the international section of the Douro shall be distributed between Portugal and Spain as follows :

(a) Portugal shall have the exclusive right of utilising the entire fall in level of the river in the zone included between the beginning of the said section and the confluence of the Tormes and the Douro.

(b) Spain shall have the exclusive right of utilising the entire fall in level of the river in the zone included between the confluence of the Tormes and the Douro and the lower limit of the said international section ;

(c) With a view to obtaining the full benefit of the fall caused by the barrage nearest to the frontier under construction on the Portuguese Douro, Portugal may utilise the necessary fall in level at the lower end of the international section, without however going beyond the mouth of the Huebra.

(d) Each State shall have the right to utilise for the production of electric power the entire volume of water which flows through the zone of development allotted to it in accordance with the provisions of paragraphs (a) and (b) of the present Article, with the exception of whatever may be necessary for common needs.

(e) Both States undertake mutually not to reduce the volume of water which should reach the beginning of each zone of utilisation of the international section of the Douro or of the Portuguese Douro by leading off water with a view to obtaining hydro-electric power by means of barrages placed below the higher level of the regulating reservoirs at Ricobayo on the Esla and at Villardiegua on the Douro, provided for in Article 10 of the Royal decree law of August 23, 1926.

Article 3.

Each State shall proceed to the hydro-electric utilisation of its zone directly or by means of concessions granted in accordance with its laws.

Should the works be built under concession, the firm or firms receiving the concession in each zone must be constituted in accordance with the internal legislation of the State granting the concession, and may not transfer the rights except to a firm of a like nature.

The chairman and the majority of the members of the board of directors of each firm must necessarily be nationals of the State granting the concession.

Such boards shall have their headquarters and hold their meetings in the territory of the State to whose jurisdiction the firm in question is amenable.

Article 4.

The off-lets, canals, buildings and, generally, all the works and installations necessary for the utilisation of each zone shall be situated on the national territory of the State entitled to such utilisation, with the exception of the dams and works for the discharge of water or other accessories which have to be built in the bed or on the bank of the river belonging to the other State.

Article 5.

Each of the High Contracting Parties undertakes to establish on a private footing, in favour of the works of the other Party, on Government lands within its territory, the servitudes with respect to reservoirs, dam-supports, off-lets or installations of any other kind whatsoever which may be necessary for the construction and operation of the said works of development.

The High Contracting Parties further reciprocally undertake, in accordance with the requirements of each case, to establish servitudes on the landed property belonging to the State, public organisations or private individuals, which it may be necessary to occupy on the territory of one State for the purpose of the works situated within the zone of utilisation of the other State, and to decree their expropriation or the temporary occupation necessary in order to obtain building material or to establish the installations and auxiliary services essential for the construction of the works.

The High Contracting Parties likewise undertake to decree the expropriation of other works of development at present being used or operated in the international section which render difficult or prevent the complete utilisation of the hydro-electric power allotted to each State according to the provisions of Article 2 of the present Convention.

Article 6.

With a view to applying the above Article, the two Contracting States declare to be of public utility and urgent all works which either Party may have to carry out for the hydro-electric development of the international section ; they further declare that they will not recognise the river as a navigable waterway or one capable of being used for floating purposes in the zones of the international section, where such a character would be incompatible with the full use of the zones of development.

Should both Governments consider it advisable, with a view to improving communications between the two countries, to organize a system of navigation by stages on the section of the river capable of being used for that purpose, or on the industrial canals, they shall come to an agreement beforehand by means of a special convention concerning the method of carrying out the work and of effecting transport without interfering with the hydro-electric operations.

Under this special Convention the general Regulations for the Free Navigation of Rivers adopted at the Congress of Vienna in 1815 shall be applied equally to Spanish and Portuguese merchant vessels in such a manner as may appear suitable for the navigation of the Douro. Arrangements shall also be made regarding the works which each State must carry out in order to make navigation possible, and regarding the system by which the respective States shall recoup themselves for costs incurred, proportionately to the labour expended by each Party in accordance with the said special Convention.

Article 7.

The servitudes, expropriations and temporary occupations which have to be established or decreed in the territory of one State with a view to carrying out work for the benefit of the zone of development of the other State shall be subject to the following rules of procedure :

(a) The International Commission provided for under Article 14 of the present Convention shall be competent :

To fix the situation and extent of the property which is to be expropriated or occupied in any other way whatsoever, either wholly or in part, in accordance with the approved plans ;

To assess finally the value of such property or the amount of compensation ;

To fix, if the occasion should arise, the amount to be deposited as a preliminary condition for the temporary occupation of the property.

The Commission shall in every case hear the interested parties before taking a decision.

(b) The decisions referred to in the above paragraph shall only be binding for the owners of property and concessionnaires if the execution of such decisions is decreed by the competent territorial authority.

The examination carried out by such authority cannot affect the substance of the decisions, but must be confined to the question whether the formalities laid down in the present Convention have been observed.

If, within a fortnight from the date of the application to the competent authority, the latter has not raised any objection on account of any defect in form which must be corrected, the decision of the Commission shall become executory.

The territorial authority shall alone be responsible for the execution of these decisions in the manner laid down by its own legislation.

(c) The International Commission shall prepare and submit for the approval of the two Governments draft Regulations based on the principles set forth in the present Article, adapting them as far as possible to the provisions in force in the two countries ; further, a summary procedure shall be devised to meet cases in which the votes in the Commission may be equally divided.

Article 8.

In the zone of development of the international section, no part of the water used in virtue of the present Convention may be led off except for reasons of public health or other special purposes and only after agreement between the two States.

The International Commission shall fix the maximum volume of water that may be led off in each case, as also the amount of compensation to be paid.

Article 9.

The Governments of Portugal and Spain shall reciprocally grant each other all the facilities necessary for carrying out the surveys required for preparing the final plans of the works to be built in the zones allotted to them, and for this purpose they shall give suitable instructions to the civil and military authorities of the frontier zones in the international section.

Article 10.

The Governments of the State in whose zone of development the works are situated shall be responsible for the examination and approval of the final plans and any changes that may be effected at the time of building.

The Governments shall communicate these plans to each other before approving them in order to avoid works being carried out in one zone which might prejudice the development and interests of the other zone.

Article 11.

The works referred to in Article 10 of the Royal Decree law of August 23, 1926, to be carried out in Spanish territory, the immediate object of which is to regulate the course of the Douro in the international section, shall begin with the construction of the dam of Ricobayo on the river Esla in the province of Zamora.

Article 12.

The power belonging to each country shall be used exclusively in the territory of that country and may not be transferred, leased or ceded to another country in whole or in part in any manner whatsoever.

Should the two States consider it advisable to export power from one State to the other, such exportation shall in each case form the subject of a special agreement, which shall always be based on the widest principles of reciprocity.

Should the production of power in the two countries exceed the needs of the market, and should this surplus production be such as to give rise to a ruinous competition with other industries already established, or be seriously harmful to the national economy, the two Governments shall examine the manner in which this surplus can be applied, in agreement with the concessionnaires, to manufactures and industries the products of which are mainly intended for export to third countries.

Article 13.

The jurisdiction of each State in the international section shall not extend beyond the boundary fixed in Article 18 of the Treaty of 1864.

On the dams the said boundary shall be situated at an equal distance from each end, and on the reservoirs at an equal distance from each bank.

Article 14.

With a view to facilitating the application of the present Convention, a Spanish-Portuguese International Commission shall be appointed, the special duty of which shall be to regulate the exercise of the rights recognised on either side and to decide the judicial or technical questions to which such rights may give rise.

This Commission shall be composed of three members appointed by the Portuguese Government and of three members appointed by the Spanish Government.

It shall sit alternately at Lisbon and Madrid. At each session the President of the Commission shall be a member who is a national of the State in which the meeting takes place.

The place where the first session shall be held shall be decided by drawing lots at the time of the exchange of the ratifications, and the result shall be noted in the relevant document.

Each State shall contribute one half of the expenditure incurred by the Commission, and shall lay down in the respective concessions the proportion to be paid by the concessionnaires for the maintenance of this common organisation.

As soon as the Commission has been appointed it shall draw up a draft Statute governing its procedure, which it shall submit for the approval of the two Governments.

The said Statute shall provide for the distribution of work among the members of the Commission, and shall set forth the questions to be reserved for examination and decision by the plenary Commission.

Article 15.

At the end of every six years, or earlier, should one of the two Governments so request, the Statute of the International Commission and the powers conferred upon it by the present Convention shall be revised.

Should it be considered advisable in the light of experience, and should the two Governments agree to abolish this international body, so long as the works are under construction or in course of operation, one representative from each State shall continue to be responsible, in the common interest, for ensuring a permanent connection between the States and the concessions.

Article 16.

The duties of the International Commission shall be threefold : advisory, deliberative and supervisory, within the limits laid down in the three following Articles.

The decisions it may take in the exercise of the rights conferred upon it by Article 18 shall be final when adopted unanimously. If adopted by a majority vote, they shall only enter into force in each case with the express approval of the Governments or competent authorities, or after the expiration of thirty days as from the date on which they were communicated, provided the Governments or the said authorities have raised no objection during that period, and provided there is no occasion to apply Article 22 of the Convention, except in the case referred to in Article 7, paragraph (b).

The International Commission shall request the co-operation of the competent authorities in the execution of these decisions.

The Commission's reports and resolutions shall always be communicated to the two Governments.

Article 17.

The International Commission must be heard by the Governments before a decision is taken on the following questions :

(a) Approval of the final plans of the works required for hydro-electric development, and of modifications affecting the site and arrangement of the dams, barrages, and discharge works.

(b) Authorisation to carry out works for public or private services connected with hydro-electric development or situated less than 100 metres horizontally from its works or reservoirs.

(c) Preparation of special agreements governing the exportation from one country to another of electrical power of whatever origin.

(d) Authorisation to transfer or modify the concessions.

(e) Abolition of the Commission or changes in its composition, duties and operations.

The Commission shall also give its opinion on all questions referred to it by the Governments of the two States either jointly or separately.

Article 18.

The Commission shall be competent to take cognisance of and decide the following questions :

(a) Regulations concerning the joint development works and co-ordination thereof with the hydro-electric works.

(b) Incidents which might arise owing to the existence of other services and installations on the river incompatible with the rights which the two States grant to each other with respect to hydro-electric development.

(c) Decisions with respect to servitudes, expropriations or temporary occupations which affect simultaneously the private installations of one State and the territory of the other.

In such cases the action and powers of the Commission shall be governed in the manner laid down in Article 7.

(d) Decisions relative to the volume of water utilised and the compensation to be paid for the utilisations of an exceptional nature referred to in Article 8.

(e) Incidents which might arise between the concessionnaires of the two zones of development as a result of the execution of the works, in so far as they affect the rights recognised to each State.

(f) Disputes between the said concessionnaires, which are harmful to the organic and technical unity of the operations in the international zone, or impede its industrial development.

(g) Delimitation of the part of the international section which the Portuguese Government may use in virtue of Article 2, paragraph (c) of the present Convention, and of the period during which it may avail itself of that right, taking the legitimate interests of the two countries into account.

(h) Placing of boundary-marks to show the limits of the zone assigned to each State, and the part of the international section referred to in the preceding paragraph, should it be utilised.

Article 19.

The supervisory duties of the International Commission shall be as follows :

(a) To ensure the policing of the waters and the bed of the river in the international section, in accordance with the laws in force in each country ;

(b) During the period of construction, to inspect and supervise the works which concern the territories of both States, and those which one State may build on the territory of the other, taking into consideration the conditions of each concession and the plans which have been approved ;

(c) During the period of operation to exercise a like supervision over these works and the hydraulic system of development.

The remaining works and installations shall be subject exclusively, during both periods, to the inspection and supervision established by the laws of each State.

Article 20.

Should the concessionnaires of the two zones agree to form a consortium with a view to industrial and economic co-operation, enabling them to benefit jointly by the available technical experience and resources in material and staff and to attain the greatest possible economy and efficiency in the works and services during the periods of construction and operation, the organisation of the said consortium and its Statutes must be submitted beforehand for the approval of the two Governments, after communication to the International Commission, which shall supervise the operations of the consortium.

Article 21.

The decisions of the International Commission shall be taken by a majority vote.

Should the votes be equally divided, the question shall be submitted to a fresh vote at a subsequent meeting, and, if no agreement has been reached, the Commission shall bring the dispute before the two Governments.

Should the Governments not arrive at an agreement by direct negotiations, the question shall be submitted for decision to an arbitral tribunal, composed of the members of the International Commission themselves and presided over by an umpire.

If the dispute refers to a legal question, the umpire shall be a legal expert appointed by the Permanent Court of International Justice at The Hague ; if the question is of a technical nature the umpire shall be an engineer appointed by the Zurich Polytechnical Institute, in both cases at the request of the two Governments.

Should the two Governments not agree as to whether the dispute is of a legal or technical nature, this previous question shall be decided by the Hague Court itself.

Article 22.

Both High Contracting Parties undertake to submit to the arbitration procedure provided for in the above Article any dispute arising between the two States out of the application of the present Convention or the interpretation of its clauses.

Article 23.

The present Convention shall be ratified and the exchange of ratifications shall take place at Lisbon as soon as possible. It shall enter into force eight days after the exchange of the ratifications.

In faith whereof, the respective Plenipotentiaries have signed the present Convention and have thereto affixed their seals.

Done in duplicate, at Lisbon, the eleventh day of August, one thousand nine hundred and twenty-seven.

(L. S.) José Bernardino GONSALVES TEIXEIRA.

(L. S.) José DE YANGUAS Y MESSÍA.