

N° 2231.

ESPAGNE ET NORVÈGE

Traité de conciliation, de règlement
judiciaire et d'arbitrage. Signé à
Madrid, le 27 décembre 1928.

SPAIN AND NORWAY

Treaty of Conciliation, Judicial Sett-
lement and Arbitration. Signed at
Madrid, December 27, 1928.

¹ TRADUCTION. — TRANSLATION.No. 2231. — TREATY² OF CONCILIATION, JUDICIAL SETTLEMENT AND ARBITRATION BETWEEN SPAIN AND NORWAY. SIGNED AT MADRID, DECEMBER 27, 1928.

French official text communicated by the Permanent Delegate of Norway accredited to the League of Nations. The registration of this Treaty took place December 19, 1929.

HIS MAJESTY THE KING OF NORWAY and HIS MAJESTY THE KING OF SPAIN, being desirous of strengthening the ties of friendship between Norway and Spain, and of encouraging, in the interests of general peace the wider application of conciliation procedure, judicial settlement and arbitration to international disputes, have resolved to conclude a treaty for this purpose and have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF NORWAY :

M. Leif BØGH, Norwegian Chargé d'Affaires at Madrid, Commander of the Order of St. Olaf, etc. ;

HIS MAJESTY THE KING OF SPAIN :

His Excellency Don Miguel PRIMO DE RIVERA Y ORBANEJA, MARQUES DE ESTELLA, President of his Council of Ministers, Grandee of Spain, Lieutenant-General of the Armies, Grand Cross with Laurels of the Royal and Military Order of St. Ferdinand, Knight Grand Cross of the Orders of St. Hermenegild, of Military Merit and of Naval Merit, His Acting Gentleman of the Chamber etc., etc.,

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

Article 1.

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

Article 2.

All disputes of any kind whatsoever between the High Contracting Parties which it may not have been possible to settle amicably by the normal methods of diplomacy, shall be submitted to a Permanent Conciliation Commission.

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 Oslo, December 5, 1929.

The Contracting Parties may agree to submit a dispute direct to the Permanent Court of International Justice or to an arbitral tribunal.

Article 3.

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 require that the dispute shall not be submitted 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 4.

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 common agreement the three other 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 in the service of the Contracting Parties. They must all three be of different nationalities.

The commissioners shall be appointed for three years. If upon 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 be 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 common 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.

Vacancies which may occur as the result of the death or retirement of any 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 5.

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

If the nomination of the members 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 nomination shall be made jointly by the Powers thus designated.

If one of the High Contracting Parties has not within one month designated the different Power referred to in the preceding paragraph, the other Party may request the President of the Swiss Republic to designate the Power in question.

If within two months the two Powers designated have not found it possible to agree, the Council of the League of Nations shall, failing any other agreement, at the request of either Party be asked to make the necessary nominations so that the Permanent Conciliation Commission may be constituted.

Article 6.

The Permanent Conciliation Commission shall be informed by means of a request addressed to the President by either of the Contracting Parties.

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

This request shall at the same time be communicated to the other Party by the Party which has requested the opening of the conciliation procedure.

The President shall convene the Commission as soon as possible.

Article 7.

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 desiring to make 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 any permanent member appointed by it who may be temporarily prevented by illness, or any other cause, from taking part in the work of the Commission.

Should one of the members of the Conciliation Commission designated jointly by the Contracting Parties be temporarily prevented from taking part in the work of the Commission owing to illness or any other cause, the Parties shall agree to designate a substitute who shall provisionally take the place of the absent member. If this substitute has not been appointed within one month as from the date on which the seat fell vacant, steps shall be taken in conformity with Article 5 of the present Treaty.

Article 8.

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. This report shall be signed by the President.

The proceedings of the Commission must, unless the Parties agree otherwise, be terminated within six months from the day on which the Commission was first 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 a report to be published setting forth the opinion of each of the members of the Commission.

Article 9.

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.

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

Article 10.

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

Article 11.

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 12.

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 13.

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

Article 14.

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 15.

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.

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

Article 16.

All disputes in which the Parties are in conflict as to their respective rights, shall, failing an amicable settlement before the Permanent Conciliation Commission, be submitted under a special agreement, either to the Permanent Court of International Justice subject to the conditions and according to the procedure laid down in its Statute, or to an arbitral tribunal, subject to the conditions and according to the procedure laid down in 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 date on which one of the Parties was notified of the request for settlement referred to in the previous paragraph, either Party may on the expiry of one month's notice bring the question direct before the Permanent Court of International Justice by a simple application.

Article 17.

All disputes the settlement of which cannot be sought by means of a judgment, as provided in the previous Article, shall, failing an amicable settlement, be submitted at the request of either Party for decision to an arbitral tribunal which shall act as a special referee and shall draw up a settlement which shall be binding on both Parties.

This tribunal shall, unless otherwise agreed, consist of five members appointed according to the method laid down in Articles 4 and 5 of the present Treaty for the constitution of the Conciliation Commission. The tribunal must be constituted within six months as from the date of the request for arbitration.

The decision of the arbitral tribunal shall be binding on both Parties.

Article 18.

Should recourse be had to arbitration, in accordance with the provisions of the previous Article, the Contracting Parties undertake to conclude within six months, as from the date of 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 Party shall have the right to bring the question before the Tribunal by a simple application. In such case the arbitral tribunal shall itself settle the procedure.

Article 19.

During the course of proceedings of conciliation, judicial settlement or arbitration, the Contracting Parties shall abstain from all measures likely to prejudice the acceptance of the proposals of the Conciliation Commission or the execution of the judgment of the Permanent Court of International Justice or 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 20.

Should the Permanent Court of International Justice or the arbitral tribunal find that a decision of a judicial or 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 of the annulment by administrative action of the consequences of the decision in question, the judicial decision or arbitral award should indicate the nature and extent of the compensation to be granted to the injured Party.

Article 21.

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 22.

The present Treaty shall be ratified by His Majesty the King of Norway, with the approval of the Storting, and by His Majesty the King of Spain, after the formalities required by existing Spanish procedure have been fulfilled. The instruments of ratification shall be exchanged at Oslo as soon as possible.

Article 23.

The present Treaty, which takes the place of the Arbitration Convention¹ of January 23, 1905, shall come into force immediately on the exchange of ratifications and shall remain in force for ten years as from that date. Unless denounced six months before the expiration of that period, it shall be regarded as renewed for a period of ten years and similarly thereafter.

If, at the time of expiration of the present Treaty, proceedings of conciliation, judicial settlement or arbitration are pending, they shall pursue their course until their completion.

In faith whereof, the above-named Plenipotentiaries have signed the present Treaty, on December 27, 1928, and have thereunto affixed their seals.

Done at Madrid, in duplicate, December 27, 1928.

(L. S.) (*Signed*) LEIF BØGH.

(L. S.) (*Signed*) EL MARQUÉS DE ESTELLA.

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