

N° 1984.

AUTRICHE ET ESPAGNE

Traité de conciliation, de règlement judiciaire et d'arbitrage, signé à Vienne, le 11 juin 1928, et échange de notes de la même date relatif à la non-rétroactivité de ce traité.

AUSTRIA AND SPAIN

Treaty of Conciliation, Judicial Settlement and Arbitration, signed at Vienna, June 11, 1928, and Exchange of Notes of the same date relating to the non-retroactive Effect of this Treaty.

N^o 1984. --- TRAITÉ¹ DE CONCILIATION, DE RÉGLEMENT JUDICIAIRE ET D'ARBITRAGE ENTRE L'AUTRICHE ET L'ESPAGNE. SIGNÉ A VIENNE, LE 11 JUIN 1928.

Texte officiel français communiqué par le chancelier fédéral de la République d'Autriche. L'enregistrement de ce traité a eu lieu le 1^{er} avril 1929.

LE PRÉSIDENT FÉDÉRAL DE LA RÉPUBLIQUE D'AUTRICHE et SA MAJESTÉ LE ROI D'ESPAGNE, animés du désir de resserrer les liens d'amitié qui existent entre l'Autriche et l'Espagne et de résoudre, selon les principes les plus élevés du droit international public, les différends qui viendraient à s'élever entre les deux pays, ont résolu de conclure à cet effet un traité et ont désigné leurs plénipotentiaires, à savoir :

LE PRÉSIDENT FÉDÉRAL DE LA RÉPUBLIQUE D'AUTRICHE :

Monseigneur Ignace SEIPEL, docteur en théologie, chancelier fédéral ;

SA MAJESTÉ LE ROI D'ESPAGNE :

Son Excellence Monsieur Francisco SERRAT Y BONASTRE, son envoyé extraordinaire et ministre plénipotentiaire auprès de la République d'Autriche ;

Lesquels, après s'être fait connaître leurs pleins pouvoirs, reconnus en bonne et due forme, sont convenus des dispositions suivantes :

Article premier.

Les Hautes Parties contractantes s'engagent réciproquement à régler par voie pacifique et d'après les méthodes prévues par le présent traité, tous les litiges ou conflits, de quelque nature qu'ils soient, qui viendraient à s'élever entre l'Autriche et l'Espagne et qui n'auraient pu être résolus par les procédés diplomatiques ordinaires.

PARTIE I

Article 2.

Tous les litiges entre les Hautes Parties contractantes, de quelque nature qu'ils soient, au sujet desquels les Parties se contesteraient réciproquement un droit et qui n'auraient pu être réglés

¹ L'échange des ratifications a eu lieu à Vienne, le 21 mars 1929.

¹ TRADUCTION. — TRANSLATION.No. 1984. — TREATY² OF CONCILIATION, JUDICIAL SETTLEMENT AND ARBITRATION BETWEEN AUSTRIA AND SPAIN. SIGNED AT VIENNA, JUNE 11, 1928.

French official text communicated by the Federal Chancellor of the Austrian Republic. The registration of this Treaty took place April 1, 1929.

THE FEDERAL PRESIDENT OF THE AUSTRIAN REPUBLIC and HIS MAJESTY THE KING OF SPAIN, being desirous of strengthening the ties of friendship existing between Austria 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 :

THE FEDERAL PRESIDENT OF THE AUSTRIAN REPUBLIC :

Monseigneur Ignatius SEIPEL, Doctor of Theology, Federal Chancellor ;

HIS MAJESTY THE KING OF SPAIN :

His Excellency M. FRANCISCO SERRAT Y BONASTRE, His Envoy Extraordinary and Minister Plenipotentiary accredited to the Austrian Republic ;

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 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 Austria and Spain and which it may not have been possible to settle by the normal methods of diplomacy.

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

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 Vienna, March 21, 1929.

amicably by the normal methods of diplomacy, shall be submitted for decision to an arbitral tribunal or to the Permanent Court of International Justice¹. 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.

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.

Before any resort is made to the judicial procedure prescribed in Article 2 of the present Treaty, 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 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 common agreement the three other commissioners, and from among the latter, the President of the Commission. These 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 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 be renewed for a period of three years. Nevertheless, the 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 a 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. Should one of the members of the Conciliation Commission appointed by common agreement by the Contracting Parties be temporarily prevented by illness or any other cause from taking part in the Commission's work, the Parties shall agree to appoint a substitute to take his place for the time being.

If the appointment of this substitute is not made within three months from the time when the seat became temporarily vacant, the procedure laid down in Article 6 of the present Treaty shall be applicable.

Article 6.

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

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 ; Vol. LXXII, page 452 ; and Vol. LXXVIII, page 435, of this Series.

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 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.

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 desiring to make use of this right shall immediately inform the other Party. The latter shall be entitled to take action within fifteen days from 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.

Article 9.

The task of the 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 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 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, even before the Permanent Court of International Justice or the arbitral tribunal notified of the dispute has given a final decision.

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.

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

Article 11.

The Conciliation Commission shall meet, in the absence of an 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 vote.

Article 15.

The High 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 High 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 17.

In the event of no amicable agreement being reached before the Permanent Conciliation Commission, the dispute shall be submitted either to an arbitral tribunal or to the Permanent Court of International Justice, as provided in Article 2 of the present Treaty.

In this case, and also when there has been no previous recourse to the Permanent Conciliation Commission, the Parties shall jointly draw up the special agreement referring the dispute to the Permanent Court of International Justice or appointing arbitrators. The aforesaid agreement shall clearly state the subject of the dispute, the particular competence that might devolve upon

the Permanent Court of International Justice or upon the arbitral tribunal and any other conditions arranged between the Parties. This agreement shall be constituted by an exchange of Notes between the two Governments.

The Permanent Court of International Justice, when requested to render a decision on the dispute, or the arbitral tribunal, when appointed for the same purpose, shall respectively be competent to interpret the terms of the special agreement.

If the special agreement has not been 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, on the expiry of one month's notice, bring the question direct before the Permanent Court of International Justice by means of a request.

The procedure applicable shall be that laid down by the Statute of the Permanent Court of International Justice or, in the case of recourse to an arbitral tribunal, that laid down by the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

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, and which cannot be submitted for decision as provided in Article 2 of the present Treaty, and for the settlement of which no procedure has been provided by any treaty or convention in force between the Parties, shall be referred to the Permanent Conciliation Commission.

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, such Party shall notify such request forthwith to the other Party.

The procedure laid down in paragraph 2 of Article 7 and in Articles 8 to 16 of the present Treaty shall be applicable.

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 consisting, in the absence of any other agreement between the Parties, of five members appointed for each individual case, according to the method laid down in Articles 5 and 6 of the present Treaty for the constitution of the Conciliation Commission. This arbitral tribunal shall, in such a case, act as a special referee and shall draw up a settlement which shall be binding upon the Parties.

Article 20.

Should recourse be had to arbitration, the High Contracting Parties undertake to conclude, within three months from the day on which one of the Parties shall have addressed to the other a 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, recourse to the arbitral tribunal provided for in Article 19 shall be obligatory.

GENERAL PROVISIONS.

Article 21.

Should the Permanent Court of International Justice or the arbitral tribunal find that a decision of a court of law or any other authority of either of the High 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 22.

During the course of proceedings of conciliation, judicial settlement or arbitration, the Contracting Parties shall abstain from all measures likely to exert any influence on 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 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 and the instruments of ratification shall be exchanged at Vienna as soon as possible.

The present Treaty shall come into force on the date of the exchange of ratifications and shall remain in force for ten years 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 the expiration of the present Treaty, proceedings of conciliation, judicial settlement or arbitration are pending, they shall pursue their course until their completion in accordance with the stipulations of the present Treaty.

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

Done in duplicate at Vienna, June 11, 1928.

(L. S.) SEIPEL.

(L. S.) F. SERRAT.

EXCHANGE OF NOTES.

VIENNA, *June 11, 1928.*

YOUR EXCELLENCY,

On proceeding this day to sign the Treaty of Conciliation, Judicial Settlement and Arbitration, I am happy to inform you that His Catholic Majesty's Government, being desirous in present circumstances of according to Austria a proof of friendship, has authorised me to declare that it will not require this Treaty to be applied to disputes arising out of events which occurred prior to its conclusion.

If the Federal Government is prepared to subscribe to this declaration, its mere acceptance by Your Excellency will be regarded as constituting a reciprocally binding agreement in this matter, having the same force as the Treaty itself.

I have the honour to be, etc.

F. SERRAT.

His Excellency
Monseigneur Ignatius Seipel,
Federal Chancellor,
Vienna.

VIENNA, *June 11, 1928.*

YOUR EXCELLENCY,

You were good enough to send me the following Note bearing to-day's date :

YOUR EXCELLENCY,

“ On proceeding this day to sign the Treaty of Conciliation, Judicial Settlement and Arbitration, I am happy to inform you that His Catholic Majesty's Government, being desirous in present circumstances of according to Austria proof of friendship, has authorised me to declare that it will not require this Treaty to be applied to disputes arising out of events which occurred prior to its conclusion.

“ If the Federal Government is prepared to subscribe to this declaration, its mere acceptance by Your Excellency will be regarded as constituting a reciprocally binding agreement in this matter, having the same force as the Treaty itself.”

“ I have the honour, etc....”

I have the honour to inform Your Excellency that the Federal Government accepts the declaration contained in your Note, so that the present Note constitutes a reciprocally binding agreement in the said matter, having the same force as the Treaty itself.

I have the honour to be, etc.

To
His Excellency
Monsieur Francisco Serrat y Bonastre,
His Catholic Majesty's
Envoy Extraordinary and Minister
Plenipotentiary
at Vienna.

SEIPEL.