

N° 1766.

ESPAGNE ET PORTUGAL

Traité de conciliation, de règlement judiciaire et d'arbitrage, et protocole additionnel. Signés à Lisbonne, le 18 janvier 1928.

SPAIN AND PORTUGAL

Treaty of Conciliation, Judicial Settlement and Arbitration, and Additional Protocol. Signed at Lisbon, January 18, 1928.

TEXTE PORTUGAIS. — PORTUGUESE TEXT.

N  1766. — TRATADO ¹ GERAL DE CONCILIA O, REGULAMENTO JUDICIAL E ARBITRAGEM. ASSINADO EM LISBOA, EM 18 DE JANEIRO DE 1928.

Textes officiels espagnol et portugais communiqu s par le ministre des Affaires  trang res de Portugal et par le Secr taire g n ral des Affaires ext rieures d'Espagne. L'enregistrement de ce trait  a eu lieu le 2 juillet 1928.

O PRESIDENTE DA REP BLICA PORTUGUESA e SUA MAJESTADE O REI DE ESPANHA, animados do desejo de estreitar os la os de amizade existentes entre os dois Pa ses e de contribuir para a manut n o da paz geral, resolvendo, segundo os princ pios mais elevados do Direito Internacional P blico, os desacordos entre os dois Pa ses, resolveram concluir para  ste efeito um Tratado geral de Concilia o, Regulamento Judicial e Arbitragem, e designaram por seus Plenipotenciarios, a saber :

O PRESIDENTE DA REP BLICA PORTUGUESA :

Sua Excel ncia o Senhor Doutor Ant nio Maria DE BETTENCOURT RODRIGUES, Ministro dos Neg cios Estrangeiros, Gr -Cruz da Ordem Militar de Cristo, Grande Oficial da Legi o de Honra, etc., etc., etc.

SUA MAJESTADE O REI DE ESPANHA :

Sua Excel ncia o Senhor Don Crist bal Fernandez VALLIN y ALFONSO, Seu Embaixador Extraordin rio e Plenipotenci rio em Lisboa, Gentilhomem de Sua Real C mara, Gr -Cruz da Ordem de Isabel a Cat lica e do M rito Naval, Comendador da Ordem Militar de S o Tiago da Espada, etc., etc., etc. ;

os quais, depois de trocarem os seus Plenos Poderes, que foram achados em boa e devida forma, convieram nas disposi es seguintes :

Artigo 1. 

As Partes Contractantes comprometem-se a submeter a um processo de concilia o os lit gios e conflitos, de qualquer natureza que sejam, que venham a surgir entre elas e que n o puderem ser resolvidos pela via diplom tica num prazo razo vel.

No caso de mal gro do processo de concilia o, o lit gio ou o conflito ser  submetido ao Tribunal Permanente de Justi a Internacional ².

Os desacordos para cuja solu o est  prevista uma jurisdi o especial por outros acordos em vigor entre as Partes Contractantes ser o, n o obstante, submetidos   dita jurisdi o.

¹ L' change des ratifications a eu lieu   Lisbonne, le 28 mai 1928.

² 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 ; et vol. LXXII, page 452, de ce recueil.

TEXTE ESPAGNOL. — SPANISH TEXT.

No. 1766. — TRATADO¹ GENERAL DE CONCILIACIÓN, ARREGLO JUDICIAL Y ARBITRAJE, FIRMADO EN LISBOA, EL 18 DE ENERO DE 1928.

Spanish and portuguese official texts communicated by the Portuguese Minister for Foreign Affairs and by the Secretary-General for External Affairs of Spain. The registration of this Treaty took place July 2, 1928.

SU MAJESTAD EL REY DE ESPAÑA y EL PRESIDENTE DE LA REPÚBLICA DE PORTUGAL, animados del deseo de estrechar los lazos de amistad existentes entre los dos Países y de contribuir al mantenimiento de la paz general, resolviendo, según los principios más elevados del Derecho Internacional Público, las diferencias entre los dos Países, han resuelto firmar a este efecto un Tratado general de Conciliación, Arreglo Judicial y Arbitraje, y han designado sus Plenipotenciarios que son :

SU MAJESTAD EL REY DE ESPAÑA :

Su Excelencia el Señor Don Cristóbal Fernandez VALLÍN y ALFONSO, Su Embajador Extraordinario y Plenipotenciario en Lisboa, Gentilhombre de Cámara, Gran Cruz de Isabel la Católica y del Mérito Naval, Comendador de la Orden Militar de Santiago de la Espada, etc., etc., etc.

EL PRESIDENTE DE LA REPÚBLICA DE PORTUGAL :

Su Excelencia el Señor Doctor Antonio Maria DE BETTENCOURT RODRIGUES, Ministro de Negocios Etranjeros, Gran Cruz de la Orden Militar de Cristo, Gran Oficial de la Legión de Honor, etc., etc., etc. ;

los cuales, después de comunicarse sus Plenos Poderes y de haberlos hallado en buena y debida forma, han convenido las disposiciones siguientes :

Artículo 1.

Las Partes Contratantes se comprometen a someter a un procedimiento de conciliación los litigios y conflictos, de cualquiera naturaleza que éstos sean, que surgiesen entre ellas y que no hubieran podido ser resueltos por la vía diplomática en un plazo prudencial.

En el caso en que fracasara el procedimiento de conciliación, el litigio o el conflicto será sometido al Tribunal Permanente de Justicia Internacional².

Las diferencias para cuya solución esté prevista una jurisdicción especial por otros acuerdos en vigor entre las Partes Contratantes serán, sin embargo, sometidas á dicha jurisdicción.

¹ The exchange of ratifications took place at Lisbon, May 28, 1928.

² 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.

Artículo 2.

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, cualquiera de las Partes podrá oponerse a que sea sometido a un procedimiento de conciliación y, en su caso, a un arreglo judicial en los términos de este Tratado, mientras no haya sido objeto de una decisión definitiva por parte de dicha autoridad judicial. En este caso deberá ser sometido al procedimiento de conciliación un año, a lo más tarde, a partir de tal decisión.

Artículo 3.

Las Partes Contratantes instituirán una Comisión Permanente de Conciliación compuesta de cinco miembros. Las Partes nombrarán, cada una, un Comisario a su arbitrio y designarán, de común acuerdo, los otros tres y, entre estos últimos, el Presidente de la Comisión. Estos tres Comisarios no deberán ni ser súbditos de las Partes Contratantes, ni tener su domicilio en su territorio, ni estar a su servicio. Los tres deberán ser de distinta nacionalidad.

Los Comisarios se nombrarán por tres años. Si, a la expiración del mandato de un miembro de la Comisión, no se ha provisto a su sustitución, su mandato se considerará renovado por un período de tres años; las Partes se reservan, sin embargo, el poder transferir a la expiración del término de tres años las funciones del Presidente a otro de los miembros de la Comisión, designados en común.

Un miembro cuyo mandato expira durante el curso de un procedimiento pendiente continuará tomando parte en el examen del asunto hasta que la actuación quede terminada, aunque su reemplazante haya sido designado.

En caso de fallecimiento o retiro de uno de los miembros de la Comisión, deberá proveerse a su sustitución por el resto de la duración de su mandato, a ser posible, dentro de los tres meses siguientes, y, en todo caso, en cuanto sea sometida una diherencia a la Comisión.

En el caso de que uno de los miembros de la Comisión de Conciliación designados en común por las Partes Contratantes estuviese por el momento impedido de tomar parte en los trabajos de la Comisión, a causa de enfermedad o cualquiera otra circunstancia, las Partes se pondrán de acuerdo para la designación de un suplente, que actuará temporalmente en su lugar. Si la designación de este suplente no se hace en un plazo de tres meses, a contar de la vacante temporal del puesto, se procederá de acuerdo con lo que especifica el último párrafo del presente artículo.

Cuando no haya pendiente ningún procedimiento cada una de las Partes Contratantes podrá revocar el Comisario nombrado por ella y designarle un sucesor.

Cuando se haya iniciado un procedimiento, mientras dure efectivamente éste, los miembros nombrados de común acuerdo recibirán una indemnización cuya cuantía será fijada por las Partes Contratantes y sufragada por ellas por partes iguales. En cambio, cada parte fijará y asumirá por sí misma la indemnización del miembro de la Comisión nombrado por ella.

Cada Parte sufragará una cuota igual de los gastos generales de la Comisión.

La Comisión Permanente de Conciliación será constituida dentro de los seis meses siguientes al canje de las ratificaciones del presente Tratado.

Si el nombramiento de los miembros que han de designarse de común acuerdo no se efectuase en el plazo de seis meses a contar desde el canje de las ratificaciones, o, en caso de sustitución, en el de tres meses a partir de la vacante del puesto, se procederá a los nombramientos de conformidad con el artículo 45.^o de Convenio ¹ de El Haya para el arreglo pacífico de los conflictos internacionales, de 18 de Octubre de 1907.

Artículo 4.

Salvo pacto en contrario, el procedimiento de conciliación se regirá por el Convenio de El Haya para el arreglo pacífico de los conflictos internacionales ¹, de 18 de Octubre de 1907.

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

Artículo 10.

Si en una sentencia dictada, conforme al presente Tratado, se establece que una decisión de carácter judicial o de cualquier otra autoridad dependiente de una de las Partes Contratantes se halla completa o parcialmente en oposición con el derecho de gentes, y si el derecho constitucional de esta Parte no permite, o solo permite imperfectamente, anular por vía administrativa las consecuencias de la decisión de que se trata, la sentencia concederá a la parte lesionada una satisfacción equitativa de otro orden.

Artículo 11.

La sentencia dictada será ejecutada de buena fé por las Partes.

Mientras dure el proceso de conciliación o el procedimiento judicial o de arbitraje, las Partes Contratantes se comprometen a abstenerse, en cuanto sea posible, de adoptar medidas susceptibles de producir una repercusión perjudicial sobre la aceptación de las proposiciones de la Comisión de Conciliación o sobre la ejecución de la sentencia o del laudo arbitral.

Artículo 12.

El presente Tratado será ratificado en el más breve plazo posible y los instrumentos de ratificación se canjearán en Lisboa.

El Tratado se concerta por un período de cinco años a contar del canje de ratificaciones. Si no es denunciado seis meses antes de la expiración de este plazo, permanecerá en vigor por un nuevo período de cinco años y así sucesivamente. Si algún procedimiento de conciliación o procedimiento judicial o de arbitraje estuviera pendiente en el momento de la expiración del presente Tratado, seguirá su curso conforme a las disposiciones del mismo o de cualquier otro acuerdo que las Partes Contratantes hubieran convenido para substituirle.

En fé de lo cual los Plenipotenciarios firman el presente Tratado.

Hecho en doble ejemplar en Lisboa el dieciocho de Enero de mil novecientos y veintiocho.

Cristóbal F. VALLIN.

PROTOCOLO ADICIONAL.

El Tratado de Arbitraje¹ firmado entre España y Portugal en 1904 y ratificado el 27 de Febrero de 1909 queda abrogado por el presente acuerdo ; pero, a todas las cuestiones y reclamaciones por actos, omisiones o disposiciones anteriores a la fecha de la ratificación del nuevo Tratado de Conciliación, Arreglo Judicial y Arbitraje, a las que se hubiera podido aplicar el Tratado firmado en 1904 y ratificado en 1909, se aplicará el nuevo Convenio, haciendo extensivas a la resolución pacífica de dichas cuestiones y reclamaciones las nuevas normas establecidas ; y esto, al efecto de que el actual Tratado no excluya de un posible arreglo pacífico los hechos anteriores que hubieran tenido su normal solución en el arbitraje, según preveía el Pacto de 1904.

En fé de lo cual los Plenipotenciarios firman el presente Protocolo.

Hecho en doble ejemplar en Lisboa el dieciocho de Enero de mil novecientos y veintiocho.

Cristóbal F. VALLIN.

Copie certifiée conforme à l'original.
Secrétariat des Affaires extérieures.

Le Secrétaire général,
Bernardo Almeida.

¹ *British and Foreign State Papers*, Vol. 101, page 549.

¹ TRANSLATION.

No. 1766. — TREATY OF CONCILIATION, JUDICIAL SETTLEMENT AND ARBITRATION BETWEEN SPAIN AND PORTUGAL. SIGNED AT LISBON, JANUARY 18, 1928.

THE PRESIDENT OF THE PORTUGUESE REPUBLIC and HIS MAJESTY THE KING OF SPAIN being desirous of strengthening the ties of friendship which exist between the two countries and of contributing to the maintenance of the general peace by settling disputes between the two countries in accordance with the highest principles of Public International Law, have resolved to conclude for this purpose a general treaty of conciliation, judicial settlement and arbitration, and have appointed as their Plenipotentiaries :

THE PRESIDENT OF THE PORTUGUESE REPUBLIC :

His Excellency Dr. António Maria DE BETTENCOURT RODRIGUES, Minister for Foreign Affairs, Grand Cross of the Military Order of Christ, Grand Officer of the Legion of Honour, etc., etc., etc.

HIS MAJESTY THE KING OF SPAIN :

His Excellency Don Cristóbal Fernandez VALÍN Y ALFONSO, His Ambassador Extraordinary and Plenipotentiary in Lisbon, Gentleman of the Chamber, Grand Cross of the Order of Isabella the Catholic and of Naval Merit, Commander of the Military Order of St. James of the Sword, etc., etc., etc.

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

Article 1.

The Contracting Parties undertake to submit to a procedure of conciliation all disputes and conflicts of every kind which may arise between them and which it may not have been possible to settle through the diplomatic channel within a reasonable time.

Should the procedure of conciliation fail, the dispute or conflict shall be submitted to the Permanent Court of International Justice.

Disputes for the settlement of which a special procedure is provided in other agreements in force between the Contracting Parties shall, however, be settled in accordance with such procedure.

Article 2.

In the case of a dispute which, according to the laws of one of the Parties, falls within the jurisdiction of a judicial authority, either of the Parties may require that the dispute shall not be submitted for conciliation or, as the case may be, to judicial settlement as provided in the present Treaty, until a judgment with final effect has been pronounced by the judicial authority in question. In such case it shall be submitted for conciliation within one year at the latest, counting from the date on which the judgment was given.

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

Article 3.

The Contracting Parties shall set up a Permanent Conciliation Commission consisting of five members. The Parties shall each nominate a Commissioner of their own choice, and shall appoint by agreement the three other Commissioners and from among the latter, the President of the Commission. These three Commissioners must not be nationals of the Contracting Parties nor may they have their domicile in their territory or be employed in their service. They must all three be of different nationalities.

The Commissioners shall be appointed for three years. If on the expiration of a member's term of office no steps have been taken to replace him, his term of office shall be deemed to have been renewed for a period of three years. The Parties may, however, decide, on the expiration of the term of three years, to appoint another member of the Commission, designated jointly, to the office of President.

A member whose term of office expires while a case is proceeding shall continue to take part in the examination of the dispute until the proceedings have been concluded, even though his successor has been appointed.

In case of the death or resignation of one of the members of the Commission, steps shall be taken to replace him for the remainder of his term of office ; if possible, within three months of his death or resignation, and in any case as soon as a dispute is submitted to the Commission.

Should one of the members of the Conciliation Commission appointed jointly by the Contracting Parties be temporarily prevented from taking part in the work of the Commission owing to illness or some other circumstance, the Parties shall agree to appoint a substitute who shall act temporarily in his place. If the substitute has not been appointed within three months as from the date of the temporary vacancy, the procedure to be followed shall be that laid down in the last paragraph of the present Article.

When no case is proceeding, each of the Contracting Parties may recall the Commissioner appointed by itself, and designate his successor.

When proceedings have been instituted and while they are actually in progress the members appointed jointly shall receive an allowance the amount of which shall be fixed by the Contracting Parties and shall be borne by them in equal shares. Each Party shall, however, itself determine and pay the allowance of its own member of the Commission.

Each Party shall contribute an equal share to the general expenses of the Commission.

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

Should the members to be appointed jointly not have been nominated within six months of the date on which the ratifications were exchanged, or, in the case of the appointment of a substitute, within three months of the date on which the vacancy occurred, the 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 4.

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

Article 5.

The Conciliation Commission may be informed by either of the Parties ; the latter shall notify its request to the President of the Commission and to the other Party.

The Commission may, however, offer its services of its own motion should its President and two of its members agree to such a course of action.

The Contracting Parties undertake to assist the Commission in its work in every circumstance and in every respect, and in particular to employ all the means at their disposal under their respective

laws to enable it to proceed in their territories to the summoning and hearing of witnesses and experts and to visit the localities in question.

Article 6.

The duty of the Conciliation Commission shall be to consider the special points submitted to it, embody the result of its enquiry in a report elucidating the questions of fact, and thus facilitate the settlement of the disputes. In its report it shall define the controversial points which have led to the disputes and add recommendations likely to facilitate an agreement between the Parties.

This report must be submitted within six months as from the day on which the Commission was first notified of the dispute, unless the Contracting Parties decide to shorten or extend this period. The report must be drawn up in three copies, one copy being sent to each Party, and the third filed in the archives of the Commission.

The Commission shall prescribe the period within which the Parties shall be required to take their decision as regards its recommendations, and also the period within which the Parties may, in case the conciliation procedure fails, submit the dispute, if necessary, to judicial settlement or arbitration. The former of these time-limits may not, however, exceed six months, nor the latter three months.

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 7.

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 or conflict be submitted to the Permanent Court of International Justice.

If, in the opinion of the Court, the dispute is not of a juridical nature, the Contracting Parties agree that the Court shall settle the matter *ex aequo et bono*, its judgment being binding on both Parties.

Article 8.

The Permanent Court of International Justice shall be competent to take cognisance of any dispute including any discussion which may arise with regard to the interpretation and execution of the present Treaty. The Contracting Parties may, however, agree to submit any dispute to a Court of Arbitration set up in conformity with Articles 55 et seq. of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes, or in conformity with any other agreement concluded between them.

Article 9.

The Contracting Parties shall, in conformity with the provisions of the Statute and Rules of the Permanent Court of International Justice, draw up a special agreement specifying the subject of the dispute, the special jurisdiction which may be 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 therein shall be interpreted by the Permanent Court of International Justice.

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

Article 10.

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 if the constitutional law of that Party does not allow, or only inadequately allows, the cancellation of the consequences of this decision by administrative action, the Party prejudiced shall, in the judgment in question, be granted equitable satisfaction in some other form.

Article 11.

The judgment rendered shall be carried out by the Parties in good faith.

During the procedure of conciliation or the judicial procedure or arbitration, the Contracting Parties undertake to abstain, as far as possible, from adopting any measures which might prejudicially affect the acceptance of the proposal of the Conciliation Commission or the execution of the judgment or of the arbitral award.

Article 12.

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

The Treaty shall be concluded for a period of five years as 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 any procedure of conciliation or judicial procedure or arbitration is in progress at the time of the expiration of the present Treaty, it shall pursue its course in conformity with the provisions of this Treaty or of any other agreement which the Contracting Parties may have decided to substitute for it.

In faith whereof the Plenipotentiaries have signed the present Treaty.

Done in two copies at Lisbon this eighteenth day of January of the year one thousand nine hundred and twenty-eight.

Antonio Maria DE BETTENCOURT RODRIGUES.
Cristóbal F. VALLÍN.

ADDITIONAL PROTOCOL.

The Treaty of Arbitration concluded between Spain and Portugal in 1904 and ratified on February 27, 1909, is abrogated by the present Agreement ; the new Convention shall apply to all questions and claims in respect of acts, omissions or provisions prior to the date of the ratification of the new Treaty of Conciliation, Judicial Settlement and Arbitration to which the Treaty signed in 1904 and ratified in 1909 could have applied ; this shall be done by extending the new rules to the pacific settlement of such questions and claims and the present Treaty shall accordingly not exclude the possibility of the pacific settlement of previous questions which would normally have been settled by arbitration according to the 1904 Agreement.

In faith whereof the Plenipotentiaries have signed the present Protocol.

Done in two copies at Lisbon this eighteenth day of January of the year one thousand nine hundred and twenty-eight.

Antonio Maria DE BETTENCOURT RODRIGUES.
Cristóbal F. VALLÍN.