

N° 2348.

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## ESPAGNE ET POLOGNE

Traité de conciliation, de règlement  
judiciaire et d'arbitrage, avec proto-  
cole additionnel. Signés à Madrid,  
le 3 décembre 1928.

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## SPAIN AND POLAND

Treaty of Conciliation, Judicial  
Settlement and Arbitration with  
Additional Protocol. Signed at  
Madrid, December 3, 1928.

<sup>1</sup> TRADUCTION. — TRANSLATION.No. 2348. — TREATY <sup>2</sup> OF CONCILIATION, JUDICIAL SETTLEMENT AND ARBITRATION BETWEEN SPAIN AND POLAND. SIGNED AT MADRID, DECEMBER 3, 1928.

*French official text communicated by the Polish Delegate accredited to the League of Nations. The registration of this Treaty took place June 13, 1930.*

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

HIS EXCELLENCY THE PRESIDENT OF THE POLISH REPUBLIC :

His Excellency M. Jean PERLOWSKI, Polish Envoy Extraordinary and Minister Plenipotentiary accredited to His Catholic Majesty, Commander of the Order of the Renaissance of Poland, Grand Cross of the Pontifical Orders of Saint Gregory the Great and of Saint Sylvester, etc. ;

HIS MAJESTY THE KING OF SPAIN :

His Excellency Don Miguel PRIMO DE RIVERA Y ORBANEJA, MARQUIS DE ESTELLA, President of His Council of Ministers, 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 Saint Hermenegild, of Military Merit and of Naval Merit, His Gentleman of the Chamber, etc. ;

Who, after 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 laid down in the present Treaty, all disputes or conflicts of any nature whatsoever which may arise between Spain and Poland, and which it may not have been possible to settle by the normal methods of diplomacy.

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

<sup>1</sup> Translated by the Secretariat of the League of Nations, for information.

<sup>2</sup> The exchange of ratifications took place at Warsaw, March 1, 1930.

## PART I.

## DISPUTES.

*Article 2.*

1. 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 in a reasonable time by the normal methods of diplomacy, shall be submitted for decision to the Permanent Court of Arbitration at The Hague.

2. Disputes for the settlement of which a special procedure is or may hereafter be laid down in other conventions in force between the 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 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 national judicial authority.

*Article 4.*

Before being submitted to the arbitration procedure provided for 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 provisions of the present Treaty.

*Article 5.*

1. 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.

2. 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 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.

3. 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.

4. A vacancy occurring as the 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.

5. Should one of the members of the Conciliation Commission jointly designated by the Contracting Parties be temporarily unable to take part in the work of the Commission owing to

illness or any other circumstance, the Parties shall appoint a substitute by agreement to take his place for the time being.

6. If such appointment has not been made within three months from the date on which the seat became temporarily vacant, the procedure laid down in Article 6 of the present Treaty shall be followed.

*Article 6.*

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

2. 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.*

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

2. 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.*

1. 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 make use of the same right within fifteen days from the date on which it shall have received notification.

2. 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.

*Article 9.*

1. 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.

2. 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 necessary, the terms of that agreement, or that it has been impossible to effect a settlement.

3. 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.

4. 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 publication of a report containing the opinion of each of the members of the Commission, even if the dispute has been brought before the Permanent Court of Arbitration and that Court has not yet given a final decision.

*Article 10.*

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

2. 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 Convention<sup>1</sup> of October 18, 1907, for the Pacific Settlement of International Disputes.

*Article 11.*

The Permanent Conciliation Commission shall meet, in the absence of agreement between the Parties to the contrary, at a place selected by its President, who will, however, not select a place situated in the territories of the High Contracting Parties.

*Article 12.*

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

*Article 13.*

1. The Parties shall be represented before the Permanent 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.

2. 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 Governments.

*Article 14.*

Unless otherwise provided in the present Treaty, the decisions of the Permanent Conciliation Commission shall be taken by a majority, each member having one vote.

*Article 15.*

The Contracting Parties undertake to facilitate the work of the Permanent 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.

<sup>1</sup> *British and Foreign State Papers*. Vol. 100, page 298.

*Article 16.*

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

2. Each Party 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.*

1. Failing 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 to the Permanent Court of Arbitration in accordance with the provisions of Article 2 of the present Treaty.

2. In the above-mentioned case, and also if there has been no previous recourse to the Permanent Conciliation Commission, the Parties shall jointly draw up the special agreement for submitting the dispute to the Permanent Court of Arbitration and appointing arbitrators. The special agreement shall clearly specify the subject of the dispute, the particular competence that might devolve upon the arbitral tribunal and all other conditions decided upon between the Parties. It shall be constituted by a separate agreement submitted for the ratification of the two Governments.

3. The arbitral tribunal which is requested to give a decision on the dispute shall have power to interpret the terms of the special agreement.

4. If the special agreement has not been drawn up within three months from the day on which either Party shall have received from the other a request for arbitration, the Parties shall set up a special tribunal which shall, of full right, draw up the clauses of the special agreement.

The special tribunal shall be constituted as follows :

Each Party shall appoint two arbitrators one of whom must be taken from the list of members of the Permanent Court of Arbitration and chosen to the exclusion of its own nationals and of those who have been designated by that Party as members of the said Court. The arbitrators thus designated shall jointly choose the President of the tribunal. In the event of equality of voting, the President of the Swiss Confederation shall be requested to make the necessary appointment.

5. The procedure applicable shall be that laid down in the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes.

## PART II.

## CONFLICTS.

*Article 18.*

1. All questions on which the High Contracting Parties may differ without being able to reach an amicable solution by the normal methods of diplomacy and the settlement of which cannot be sought by an arbitral decision as provided in Article 2 of the present Treaty, and for the settlement of which another procedure has not already been laid down in a treaty or convention in force between the Parties, shall be submitted to the Permanent Conciliation Commission.

2. 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.

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

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

*Article 19.*

If the Parties cannot be brought to an agreement, the conflict shall, at the request of either Party, be submitted for decision to an arbitral tribunal which, in the absence of any other agreement between the Parties, shall be composed of five members appointed for each particular case, in accordance with the method laid down in Articles 5 and 6 of the present Treaty for the Conciliation Commission. The award given by this arbitral tribunal shall be binding upon the Parties, who shall execute it in good faith.

*Article 20.*

1. Should recourse be had to arbitration between the Contracting Parties, the latter undertake to conclude, within a period of six months from the date on which one of the Parties shall have addressed to the other a request for arbitration, a special agreement concerning the subject of the conflict and the methods of procedure.

2. If this agreement cannot be concluded within the time stipulated, either of the Parties may bring the matter, by a simple application, before the arbitral tribunal constituted in accordance with Article 19. In this case the arbitral tribunal shall itself lay down the procedure to be followed.

PART III.

GENERAL PROVISIONS.

*Article 21.*

Should the arbitral tribunal find that a decision of a court of law or of any other authority of either of the Contracting Parties, including administrative courts, is wholly or in part contrary to international law, and if the municipal 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 injured Party shall be given equitable satisfaction of another kind.

*Article 22.*

During the course of the conciliation procedure or the arbitration procedure, the Contracting Parties shall refrain from all measures which might prejudicially affect the acceptance of the proposals of the Permanent Conciliation Commission or the execution of the arbitral award.

*Article 23.*

Any disputes arising as to the interpretation of the present Treaty shall, in the absence of any agreement to the contrary, be submitted to the Permanent Court of International Justice.

*Article 24.*

1. The present Treaty shall be ratified and the instruments of ratification shall be exchanged at Warsaw as soon as possible.

2. The present Treaty shall come into force on the thirtieth day after the exchange of the ratifications and shall be valid for a period of three years as from that date. Unless it is denounced six months before the expiration of that period, it shall be deemed to be renewed for further successive periods of three years.

3. If, at the time of the expiration of the present Treaty, any proceedings in virtue of this Treaty and in application thereof are pending before the Permanent Conciliation Commission or before an arbitral tribunal, such proceedings shall be continued until completed, in accordance with the provisions of the present Treaty.

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

Done at Madrid in duplicate on December 3, 1928.

*(Signed)* J. PERLOWSKI.

*(Signed)* ESTELLA.

## ADDITIONAL PROTOCOL.

As there is at present no dispute between the two States, the Contracting Parties, on signing the present Treaty, have made no declaration concerning the retrospective application of the Treaty, since that question does not arise.

In faith whereof the Plenipotentiaries have signed the present Protocol.

Done at Madrid in duplicate on the third day of December, one thousand nine hundred and twenty-eight.

*(L. S.) (Signed)* J. PERLOWSKI.

*(L. S.) (Signed)* ESTELLA.