

¹ TRADUCTION. — TRANSLATION.No. 2533. — TREATY² OF CONCILIATION, JUDICIAL SETTLEMENT AND ARBITRATION BETWEEN SPAIN AND LUXEMBURG. SIGNED AT LUXEMBURG, JUNE 21, 1928.

French official text communicated by the Minister of State, President of the Government of the Grand Duchy of Luxemburg. The registration of this Treaty took place November 19, 1930.

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBURG and HIS MAJESTY THE KING OF SPAIN, being desirous of strengthening the ties of friendship existing between Spain and the Grand Duchy of Luxemburg and of settling, in accordance with the highest principles of public international law, any disputes which may arise between their two countries, have resolved to conclude a treaty for this purpose and have appointed as their Plenipotentiaries :

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBURG :

His Excellency M. Joseph BECH, Her Minister of State and President of the Government,

HIS MAJESTY THE KING OF SPAIN :

His Excellency M. Emilio DE PALACIOS Y FAU, His Envoy Extraordinary and Minister Plenipotentiary,

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

Article 1.

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 Luxemburg 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 Brussels, November 7, 1930.

amicably by the normal methods of diplomacy, shall be submitted for decision either to an Arbitral Tribunal or to the Permanent Court of International Justice.

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 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 judicial authority.

Article 4.

Before being submitted to the judicial 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 called 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 freely appoint one commissioner and shall jointly designate the other three from among whom the President of the Commission shall be chosen. These three Commissioners must not be nationals of the Contracting Parties nor be domiciled in their territory nor be in their service. They must all three be of different nationalities.

The commissioners shall be appointed for five years. If, upon the expiration of the mandate of a member of the Commission, no steps are taken to replace him, his mandate shall be deemed to have been renewed for a period of five years; nevertheless, the Parties reserve the right, after the expiration of five years, to transfer the duties of President to another of the members of the Commission jointly appointed.

A member whose mandate expires while proceedings are in course shall continue to take part in the examination of the dispute until the proceedings are terminated, notwithstanding the fact that his successor has been appointed.

In the event of the death or resignation of one of the members of the Conciliation Commission, arrangements shall be made to replace him for the remainder of the period of his mandate, if possible within three months and in any case as soon as a dispute has been submitted to the Commission.

Should one of the members of the Conciliation Commission jointly designated by the Contracting Parties be temporarily prevented from taking part in the work of the Commission by illness or any other cause, the Parties shall agree to appoint a substitute to replace him provisionally for as long as the Commission may deem necessary.

If such a substitute is not appointed within three months from the date on which the temporary vacancy occurs, the procedure laid down in Article 6 of the present Treaty shall be applied.

Article 6.

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

If the appointment of members to be designated jointly is not made within the above-named period or, in the case of replacement, within three months from the date on which the vacancy occurs, it shall be entrusted to a third Power designated jointly by the Parties. If no agreement

is reached on this point, each Party shall designate a different Power and the appointments shall be made in concert by the Powers thus designated. If, within a period of two months, the two Powers have been unable to reach an agreement, each of them shall submit a number of candidates equal to the number of members to be appointed. It shall then be decided by lot which of the candidates thus designated shall be appointed.

Article 7.

Disputes shall be brought before the Permanent Conciliation Commission by means of an application addressed to the President by the two Parties acting in agreement.

The application, 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 solution.

Article 8.

Within fifteen days from the date on which a dispute has been brought before the Conciliation Commission, either Party may replace the permanent member designated by it, for the examination of the particular dispute, by a person possessing special competence in the matter. The Party desiring to make use of this right shall immediately notify the other Party; the latter shall be entitled to take similar action within fifteen days from the date on which it received the notification.

Each Party reserves the right immediately to appoint a substitute to replace temporarily the permanent member designated by it if, as a result of illness or for any other reason, he is temporarily prevented from taking part in the work of the Commission.

Article 9.

The task of the Conciliation Commission shall be to elucidate the 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 the period within which they are to make their decision.

At the close of its proceedings, the Commission shall draw up a *procès-verbal* stating, as the case may be, either that the Parties have come to an agreement and, if necessary, the terms of the agreement, or that it has been impossible to effect a settlement.

The proceedings of the Commission must, unless the Parties otherwise agree, be terminated within six months from the date on which the Commission shall have been given cognisance of the dispute.

If no settlement has been effected, the Commission may, unless the two Commissioners freely appointed by the Parties object, order, before the Permanent Court of International Justice or the Tribunal which has been given cognisance of the dispute has given a final decision, that a report be published containing the opinion of each of the members of the Commission.

Article 10.

Failing stipulations 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 decides unanimously to the contrary, shall act in accordance with the provisions of Part 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.

¶ In the absence of agreement to the contrary between the Parties, the Conciliation Commission shall meet at the place selected by its President.

Article 12.

The work of the Conciliation Commission shall not be conducted in public unless a decision to that effect is 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 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 may request that all persons whose evidence appears to them desirable shall be heard.

The Commission, for its part, shall be entitled to request oral explanations from the agents, counsel and experts of both Parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 14.

In the absence of any provision to the contrary in the present Treaty, the decisions of the Conciliation Commission shall be taken by a majority vote.

Article 15.

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 allow 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 of the Commissioners shall receive emoluments the amount of which shall be fixed by agreement between the Contracting Parties.

Each Government shall bear its own costs and an equal share of the joint costs of the Commission, the emoluments referred to in paragraph 1 being included in such joint costs.

Article 17.

Failing an amicable settlement before the Permanent Conciliation Commission, the dispute shall be submitted either to an Arbitral Tribunal or to the Permanent Court of International Justice, in accordance with the provisions of Article 2 of the present Treaty.

In this case, as in the case where there has been no previous recourse to the Permanent Conciliation Commission, the Parties shall jointly draw up a special agreement for submitting the dispute to the Permanent Court of International Justice or appointing arbitrators. The special

agreement shall clearly specify the subject of the dispute, the particular competence that might devolve upon the Permanent Court of International Justice or upon the Arbitral Tribunal and all other conditions decided upon between the Parties. The special agreement shall be constituted by an exchange of notes between the two Governments.

The Permanent Court of International Justice, if requested to give a decision on the dispute or the Arbitral Tribunal appointed for the same purpose shall respectively be competent to interpret the terms of the special agreement.

If the special agreement is not drawn up within three months of the date on which either Party shall have received a request for judicial settlement, either Party may, after giving one months notice, bring the dispute by means of an application direct before the Permanent Court of International Justice.

Moreover, the procedure applicable shall be that laid down in the Statute¹ of the Permanent Court of International Justice, or, in the case of recourse to an Arbitral Tribunal, that laid down in 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 differ without being able to reach an amicable solution by the normal methods of diplomacy and the settlement of which cannot be sought by a decision as provided in Article 2 of the present Treaty, and for the settlement of which a 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.

If the Parties cannot agree on the request to be made to the Commission, either Party shall be entitled, on the expiry of one month's notice, to submit the question direct to the Permanent Conciliation Commission.

If the request emanates from one of the Parties only, that Party shall notify the request forthwith to the other Party.

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 dispute 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. This Arbitral Tribunal shall, in such cases, be empowered to act as a friendly arbitrator and shall give an award binding upon all parties.

Article 20.

Should recourse be had to arbitration between the Contracting Parties, the latter undertake to conclude, within a period of three months from the date at which a request for arbitration has been made by one of the Parties to the other Party, a special agreement concerning the subject of the dispute and the methods of procedure.

If this special 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.

¹ Vol. VI, page 379; Vol. XI, page 405; Vol. XV, page 305; Vol. XXIV, page 153; Vol. XXVII, page 417; Vol. XXXIX, page 165; Vol. XLV, page 96; Vol. L, page 159; Vol. LIV, page 387; Vol. LXIX, page 70; Vol. LXXII, page 452; Vol. LXXVIII, page 435; Vol. LXXXVIII, page 272; Vol. XCII, page 362; Vol. XCVI, page 180; Vol. C, page 153; Vol. CIV, page 492; and Vol. CVII, page 461, of this Series.

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 of 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 the consequences of the decision in question to be annulled by administrative action, the judicial sentence or arbitral award shall determine the nature and extent of the satisfaction to be granted to the injured Party.

Article 22.

During the conciliation procedure or the judicial or arbitral proceedings, the Contracting Parties shall refrain from all measures which might affect the acceptance of the proposals of the Conciliation Commission or the execution of the decision of the Permanent Court of International Justice or of the award of the Arbitral Tribunal. For this purpose, the Conciliation Commission, the Court of Justice and the Arbitral Tribunal shall, if necessary, decide what provisional measures shall be adopted.

Article 23.

Any disputes arising as to the interpretation or application 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 means of a simple application.

Article 24.

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

The present Treaty shall come into force on the date of the exchange of the ratifications and shall remain in force for a period of ten 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 ten years.

If, at the time of the expiration of the present Treaty, proceedings of conciliation or judicial or arbitral proceedings are pending, such proceedings shall be duly 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 Luxemburg in duplicate on June the twenty-first, one thousand nine hundred and twenty-eight.

(L. S.) BECH.

(L. S.) EMILIO DE PALACIOS.

FINAL 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 ; nevertheless, it is understood that the undertakings entered into in this Treaty shall apply to disputes relating to the interpretation of any earlier Treaty still in force which either Party may, after the signature of the present Treaty of Conciliation, Judicial Settlement and Arbitration, apply in a way which the other Party regards as inconsistent with its rights. The same shall apply if the application objected to had begun before the signature of the present Treaty and continued after the signature thereof.

In faith whereof, the Plenipotentiaries have signed the present Protocol.

Done at Luxemburg in duplicate June the twenty-first, one thousand nine hundred and twenty-eight.

(L. S.) BECH.

(L. S.) Emilio DE PALACIOS.