

N° 1735.

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DANEMARK ET ESPAGNE

Traité de conciliation, de règlement  
judiciaire et d'arbitrage. Signé à  
Copenhague, le 14 mars 1928.

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DENMARK AND SPAIN

Treaty of Conciliation, Judicial Sett-  
lement and Arbitration. Signed at  
Copenhagen, March 14, 1928.

<sup>1</sup> TRADUCTION. — TRANSLATION.No. 1735. — TREATY<sup>2</sup> OF CONCILIATION, JUDICIAL SETTLEMENT AND ARBITRATION BETWEEN DENMARK AND SPAIN. SIGNED AT COPENHAGEN, MARCH 14, 1928.

*French official text communicated by the Danish Chargé d'Affaires a.i. at Berne. The registration of this Treaty took place June 1, 1928.*

HIS MAJESTY THE KING OF DENMARK AND ICELAND and HIS MAJESTY THE KING OF SPAIN, Being desirous of strengthening the ties of friendship which exist between Denmark and Spain, and settling, in accordance with the highest principles of international public law, any differences which may arise between them, have resolved to conclude a treaty for this purpose, and have appointed as their Plenipotentiaries:

HIS MAJESTY THE KING OF DENMARK AND ICELAND :

M. Laust MOLTESEN, Ph. D., His Minister for Foreign Affairs ;

HIS MAJESTY THE KING OF SPAIN :

M. Vicente GUTIERREZ DE AGÜERA, His Envoy Extraordinary and Minister Plenipotentiary in Denmark ;

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

*Article 1.*

The High Contracting Parties undertake to settle by pacific means and in accordance with the methods contemplated in the present Treaty, all disputes or conflicts of every kind which may arise between Denmark 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 amicably by the normal methods of diplomacy, shall be submitted for decision either to an arbitral

<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 Copenhagen, May 24, 1928.

tribunal or to the Permanent Court of International Justice. Disputes for the solution of which a special procedure is provided by other conventions in force between the High Contracting Parties shall be settled in accordance 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 jurisdiction of the national courts, that Party may require that the dispute be not submitted to the procedure laid down in the present Treaty until a final judgment has been pronounced within a reasonable time by the competent judicial authority.

*Article 4.*

Before being submitted 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 nominate a commissioner of its own choosing and shall appoint the three other commissioners by common agreement, and the President of the Commission from among them. These three commissioners may neither 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 members of the Commission shall be appointed for three years. They may not be removed before the expiry of their term unless the Contracting Parties agree otherwise.

If the term of office of a member appointed by common agreement expires without either of the Parties objecting to its extension, it shall be deemed to be extended for a further period of three years. Similarly if, on the expiry of the term of office of a member appointed by one of the Parties, that Party has not arranged for his replacement, his term shall be deemed to be extended for three years.

A member whose term expires while a case is proceeding shall continue to take part in the examination of the dispute until the proceedings are concluded, notwithstanding the fact that his successor may have been appointed.

In the event of the death or resignation of one of the members of the Conciliation Commission, the vacancy shall be filled for the rest of his term of office, if possible within the next 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 jointly by the Contracting Parties be temporarily prevented from taking part in the Commission's work owing to illness or any other cause, the Parties shall agree on the appointment of a deputy who shall take his place for the time being.

If no such deputy is appointed within three months from the date when the temporary vacancy occurred, the provisions of Article 6 of the present Treaty shall apply.

*Article 6.*

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

If the nomination of the members to be appointed by common agreement should not have taken place within the said period, or, in the case of the filling of a vacancy, within three months

from the date when the seat falls vacant, it shall be entrusted to a third Power designated by agreement between the Parties. Failing such agreement, each Party shall designate a different Power, and the appointments shall be made jointly by the Powers thus designated. If within two months these two Powers have not been able to agree, each of them shall propose a number of candidates equal to the number of members to be appointed. Lots shall be drawn to decide which of the candidates so proposed shall be appointed.

*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 giving a summary account of the subject of the dispute, shall contain an invitation to the Commission to take all necessary measures with a view to arriving at an amicable settlement.

*Article 8.*

Within fifteen days from the date on which the dispute was brought before the Commission, either Party may, for the examination of that particular dispute, replace the permanent member whom it has appointed by a person possessing special competence in the matter. The Party desiring to avail itself of this right shall immediately inform the other Party. The latter shall be entitled to avail itself of the same right within fifteen days from the date on which it shall have received notification.

Each Party reserves the right immediately to nominate a deputy to replace temporarily the permanent member appointed by it, if the latter, owing to illness or any other circumstance, should be temporarily prevented from taking part in the Commission's work.

*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 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 arrangement, and, if need be, the terms of the arrangement, 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 was first notified of the dispute.

If it has been impossible to effect a settlement, the Commission may, unless the two commissioners freely appointed by the Parties object, and even before the Permanent Court of International Justice or the Arbitral Tribunal, to one of which the dispute has been referred, has pronounced a final judgment, order the publication of a report embodying the opinion of each member of the Commission.

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

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

*Article 11.*

The Conciliation Commission shall meet, in the absence of 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 contrary decision 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 respective Governments.

*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 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 laws, to summon and hear 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 Contracting Parties.

Each Government shall pay its own expenses and shall contribute an equal share to the joint expenses of the Commission, the emoluments referred to 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, in accordance with the provisions of Article 2 of the present Treaty.

In that case, as in cases where application was not first made to the Permanent Conciliation Commission, the Parties will jointly draw up the special agreement referring the dispute to the Permanent Court of International Justice or appointing arbitrators. The special agreement shall define clearly the subject of the dispute, the particular powers which may be vested in the

Permanent Court of International Justice or the Arbitral Tribunal, and all other conditions arranged between the Parties. It shall be established by an exchange of notes between the two Governments.

The Permanent Court of International Justice, when requested to pronounce upon the dispute, or the Arbitral Tribunal appointed for the same purpose, shall have power to construe the terms of the special agreement.

¶<sup>4</sup> If the special agreement is not drawn up within three months from the date on which one of the Parties received the request for a judicial settlement, either Party may, after a month's notice, bring the dispute direct before the Permanent Court of International Justice by means of an application.

In all other respects the procedure followed shall be that laid down in the Statute<sup>1</sup> of the Permanent Court of International Justice, or, in the event of resort 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 may differ without being able to reach an amicable solution by means of the normal methods of diplomacy, and for which a judicial solution cannot be sought as provided in Article 2 of the present Treaty, and for the settlement of which no procedure has been laid down in any Treaty or Convention in force between the Parties, shall be submitted to the Permanent Conciliation Commission.

Failing an agreement between the Parties as to the request to be submitted to the Commission, either Party shall be entitled to submit the question direct to the Commission on giving one month's notice.

If the request is submitted by only one of the Parties, notification thereof shall be made without delay 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 one Party, be submitted for decision to an Arbitral Tribunal, which, unless the Parties otherwise agree, shall be composed of five members appointed specially for each case by the method provided in Articles 5 and 6 of the present Treaty for appointments to the Conciliation Commission. In such cases the Arbitral Tribunal shall have the powers of a special umpire, (*amiable compositeur*), and shall prescribe a settlement which shall be binding on the Parties.

### Article 20.

When there is occasion for arbitration between them, the Contracting Parties undertake to conclude, within three months from the date on which one of them applies to the other for arbitration, a special agreement concerning the subject of the dispute and the details of the procedure.

If this arbitration agreement cannot be concluded within the period specified, the procedure laid down in Part IV of the Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes shall be obligatorily applied, and in this case the said Convention shall apply to the proceedings.

<sup>1</sup> 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. LXXIX, page 70; and Vol. LXXXII, page 452, of this Series.

## GENERAL PROVISIONS.

*Article 21.*

If the Permanent Court of International Justice or the Arbitral Tribunal rules that a decision of a court of law or other authority of one 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 decision or arbitral award shall determine the nature and extent of the reparation to be made to the injured Party.

*Article 22.*

During the course of conciliation, judicial, or arbitration proceedings, the Contracting Parties shall abstain from all measures which might affect the acceptance of the Conciliation Commission's proposals, or the execution of the decision of the Permanent Court of International Justice or the award of the Arbitral Tribunal. With this object the Conciliation Commission, the Court of Justice, or the Arbitral Tribunal, as the case may be, shall lay down the provisional measures to be adopted.

*Article 23.*

Disputes arising as to the interpretation or execution of the present Treaty shall, failing 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. The instruments of ratification shall be exchanged at Copenhagen as soon as possible.

The present Treaty shall come into force on the date of the exchange of ratifications, and shall, as between Denmark and Spain, take the place of the Arbitration Convention concluded at Madrid on December 1, 1905. It shall remain valid for ten years from the date on which it comes into force. Unless it shall have been denounced six months before the expiration of this period, it shall be deemed to be renewed for a period of ten years, and so on for successive periods.

If, at the date on which the present Treaty expires, conciliation, settlement, or arbitration proceedings are pending, they shall be continued to their conclusion 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 Copenhagen in duplicate on March 14, 1928.

(L. S.) Laust MOLTESEN.

(L. S.) Vicente GUTIERREZ DE AGÜERA.