

No. 16191

SPAIN
and
ITALY

Convention concerning the military service of persons with dual nationality (with annexes). Signed at Madrid on 10 June 1974

Exchange of letters constituting an agreement relating to the interpretation of article 1 (b) of the above-mentioned Convention. Rome, 17 October and 2 November 1977

*Authentic texts: Spanish and Italian.
Registered by Spain on 29 December 1977.*

ESPAGNE
et
ITALIE

Convention relative au service militaire des double-nationaux (avec annexes). Signée à Madrid le 10 juin 1974

Échange de lettres constituant un accord relatif à l'interprétation de l'article 1, paragraphe b, de la Convention susmentionnée. Rome, 17 octobre et 2 novembre 1977

*Textes authentiques : espagnol et italien.
Enregistrés par l'Espagne le 29 décembre 1977.*

[TRANSLATION — TRADUCTION]

**CONVENTION¹ BETWEEN THE SPANISH GOVERNMENT AND
THE GOVERNMENT OF THE ITALIAN REPUBLIC CONCERNING THE MILITARY SERVICE OF PERSONS WITH DUAL NATIONALITY**

The Spanish Government and the Italian Government,

Desiring to regulate by joint agreement problems relating to the military service of those of their nationals who possess both Italian and Spanish nationality,

Taking into account the principles set forth in the European Convention of 6 May 1963² on reduction of cases of multiple nationality and military obligations in cases of multiple nationality,

Have decided to conclude a convention for this purpose, appointing as their plenipotentiaries:

The President of the Italian Republic: His Excellency Ettore Staderini, Ambassador of Italy to Spain;

The Head of the Spanish State: His Excellency Pedro Cortina Mauri, Minister for Foreign Affairs,

who, after exchanging their full powers, which they found to be in good and due form, have agreed on the following provisions:

Article 1. For the purposes of this Convention, the following terms shall be understood as indicated below:

(a) The term "dual national" means any person who possesses both Spanish and Italian nationality by virtue of the laws in force in each of the two States.

(b) The term "military service" means compulsory service or any other service regarded as equivalent by the legislation of the State in which the service is performed.

(c) The term "habitual residence" means the effective, stable and permanent residence of the dual national himself, having regard to the centre of his relationships and occupations.

Article 2. (1) A dual national shall be subject to the military service obligations of the High Contracting Party in whose territory he has his habitual residence unless he declares that he wishes to fulfil those obligations *vis-à-vis* the other Contracting Party.

(2) The declaration provided for in the preceding paragraph shall be admissible only if the legislation of the state in which the dual national wishes to fulfil his obligations makes provision for military service.

¹ Came into force on 1 December 1977, i.e., the first day of the month that followed the date of exchange of the instruments of ratification, which took place at Rome on 19 November 1977, in accordance with article 19.

² United Nations, *Treaty Series*, vol. 634, p. 221.

(3) A dual national who has his habitual residence in the territory of a third State shall choose in which of the two States Parties to this Convention he intends to be subject to military service obligations.

Article 3. Notwithstanding the provisions of article 2 of this Convention, dual nationals may perform military service voluntarily in the High Contracting Party of their choice before being enlisted by the other High Contracting Party to perform active national or military service.

The period of active service which they have completed as volunteers shall be deducted from the period of service which they must complete in the High Contracting Party in which, pursuant to article 2, they would normally have been required to perform their active service.

Article 4. (1) A person who has not exercised the option of performing military service in one of the High Contracting Parties before being enlisted shall be required to perform military service in the High Party in whose territory he has his habitual residence.

(2) The period for determining habitual residence shall begin on 1 January of the year in which the dual national reaches the age of 18 and shall terminate on the date of enlistment.

If he acquires the second nationality after reaching the age of 18 but before the date of enlistment the base year shall be that preceding the acquisition of the second nationality.

Article 5. A dual national who has, in conformity with the rules set forth in the preceding articles, fulfilled the obligations of peace-time military service *vis-à-vis* one of the Parties shall be deemed to have fulfilled those obligations *vis-à-vis* the other Contracting Party.

Article 6. For the purposes of the provisions of article 5 of this Convention:

(1) A dual national who has been exempted, as physically unfit, from fulfilling his military service obligations in the State in which he should have done so in accordance with the provisions of articles 2 and 3 of this Convention shall be deemed to have fulfilled those obligations *vis-à-vis* the other High Contracting Party.

(2) However, if he has availed himself of the option provided for in article 2, paragraph 1, he may be excused from military service only to the extent that the same provision exists simultaneously in the legislation of both High Contracting Parties.

Article 7. During the fulfilment in one of the two States of military service obligations following a call-up order or voluntary enlistment, a dual national shall be deemed to be in compliance with the legislation of the other High Contracting Party.

Article 8. (1) Dual nationals whose situation is provided for in the foregoing articles shall, whether they have actually performed the service or have been exempted or excused pursuant to the legislation in force of the High Party in which they are resident or for which they have opted, be deemed to have fulfilled all peace-time military service obligations under the laws of the High Contracting Party in which they have not been called up for service.

(2) However, dual nationals who, after fulfilling their military service obligations in one of the High Contracting Parties, have their habitual residence in the territory of the other for at least two years shall, upon expiry of that period, be subject to the other military service obligations in the latter Party.

Article 9. In the event of partial or total mobilization ordered by one or both of the High Contracting Parties, each Party may call up only those dual nationals who have their habitual residence in its territory and those resident in a third State who have fulfilled their military or national service obligations in the High Party which orders the mobilization.

Consequently, dual nationals who have responded to a mobilization order in one of the two States shall be deemed to be in compliance with the legislation of the other High Party.

Article 10. Dual nationals who have not complied with the obligations derived from this Convention shall be excluded from its benefits. To this end, the competent authorities of the High Party in which such dual nationals should have fulfilled those obligations shall report accordingly to the competent authorities of the other High Party.

Article 11. (1) Dual nationals who lose one of the two nationalities shall not lose the benefit of those provisions of this Convention which have been applied to them.

(2) They shall thereafter cease to benefit from the Convention and shall be subject only to the legislation of the State whose nationality they have retained.

Article 12. The provisions of this Convention shall in no way affect the legal status of the persons concerned with regard to nationality.

Article 13. The provisions of this Convention shall apply also to dual nationals who, before its entry into force, had fulfilled their military service obligations in one of the two High Contracting Parties.

Article 14. (1) For the purposes of article 2 of this Convention, dual nationals shall, at the request of the competent authorities of the State in which they reside habitually, sign a declaration of residence in the form of the attached Model A. This declaration must be signed prior to the enlistment of the person concerned in either High Contracting Party.

(2) For the purpose of exercising the option provided for in article 2, paragraph 1, dual nationals shall sign, in the presence of the competent authorities of the State in which they have their habitual residence, a declaration of option in the form of the attached Model B. A copy of this declaration shall be transmitted by those authorities to the competent authorities of the other State.

(3) For the purposes of article 2, paragraph 3, dual nationals residing in the territory of a third State shall, prior to enlistment, sign a deed of option—in the form of the attached Model C—in the presence of the consular authority of the State in which they wish to be subject to military service obligations. A copy of this deed shall be transmitted to the competent authorities of both Contracting Parties.

Article 15. (1) The competent authorities of the High Contracting Party to whose legislation dual nationals are subject by virtue of either their habitual residence or their option shall complete a certificate in the form of the attached Model D and transmit it to the persons concerned so as to enable them to prove their military status to the other State.

(2) Successive certificates may be issued to each dual national in order to take into account any change in his status under the law of the State in which he is to perform, has performed or would have performed military service if he had not been exempted or excused.

(3) The competent authorities which compile these certificates shall forward copies to the competent consular authorities of the other State.

Article 16. The competent administrations of the two High Contracting Parties shall consult each other with the view to establishing arrangements for the application of this Convention.

Article 17. The two High Contracting Parties shall settle through the diplomatic channel any difficulties arising out of the interpretation and application of this Convention.

Article 18. This Convention shall apply throughout the territory of each of the two High Contracting Parties.

Article 19. This Convention shall be ratified. It shall enter into force on the first day of the month following the month during which the instruments of ratification were exchanged.

Article 20. This Convention is concluded for an indefinite period. Each of the High Contracting Parties may denounce it, and such denunciation shall take effect six months after the date of receipt of notice of the denunciation by the other High Party.

DONE at Madrid on 10 June 1974 in duplicate, in the Spanish and Italian languages, both texts being equally authentic.

For the Spanish State:

[Signed]

PEDRO CORTINA MAURI
Minister
for Foreign Affairs

For the Italian Republic:

[Signed]

ETTORE STADERINI
Ambassador of Italy
to Spain

MODEL A

DECLARATION OF RESIDENCE

(*Article 14, paragraph 1, of the Spanish-Italian Convention of 10 June 1974*)

I, the undersigned (1)
born on at
son of and of

domiciled at (2) possessing both Spanish and Italian nationality, declare that I have resided at the following addresses:
 since 1 January of the year in which I reached the age of 18 } (3)
 since the date on which I acquired dual nationality
 from to .
 at (2)
 occupation (4)
 from to .
 at (2)
 occupation (4)
 from to .
 at (2)
 occupation (4)

I also declare that I am aware of the provisions of the Convention of 10 June 1974, whereby persons with dual Spanish and Italian nationality are subject to military service obligations in that one of the two States in which they have their habitual residence, unless they sign a declaration that they wish to fulfil those obligations in the other State.

Done at on

(Signature of the person concerned)

- (1) First name and surname of the person making the declaration.
- (2) Full address.
- (3) Delete whichever does not apply.
- (4) Educational or professional activity, apprenticeship, mission, studies.

NOTE. Attach to this declaration all documents or copies of documents providing evidence of successive places of residence.

[Signed]
PEDRO CORTINA

[Signed]
ETTORE STADERINI

MODEL B

DECLARATION OF OPTION

FOR DUAL NATIONALS RESIDENT IN SPAIN OR ITALY

(Article 14, paragraph 2, of the Spanish-Italian Convention of 10 June 1974)

I, the undersigned (1)
 born on at
 son of born at
 and of born at
 domiciled at (2)

registered on the census rolls at Spain, at
Italy, at
registered on the census rolls at Spain, at
Italy, in the commune of
possessing both Spanish and Italian nationality, declare that I wish to be subject to military service obligations in (3). in accordance with the option provided for in article 2 of the Spanish-Italian Convention of 10 June 1974.

I hereby state that I am aware of the provisions of the said Convention whereby the option resulting from this declaration is admissible only if the legislation of (4) makes provision for military service.

STAMP OF THE AUTHORITY
RECEIVING THIS DECLARATION

Done at on

(Signature of the person concerned)

- (1) First name and surname of the person making the declaration.
(2) Full address.
(3) Spain or Italy.
(4) Spain or Italy.

NOTE. This declaration is to be drawn up in triplicate (one copy for the person concerned and one for the competent authorities of each of the two States).

[Signed]
PEDRO CORTINA

[Signed]
ETTORE STADERINI

MODEL C

DEED OF OPTION

FOR DUAL NATIONALS RESIDING IN A COUNTRY OTHER THAN SPAIN OR ITALY

(Article 14, paragraph 3, of the Spanish-Italian Convention of 10 June 1974)

On the day of
in the year one thousand nine hundred and
there appeared before us (1)
Mr.
born on at
son of born at
and of born at

registered on the census rolls at Spain, at
 registered on the census rolls at Italy, in the commune of } (4)
 Spain, at at Italy, in the commune of } (4)
 who, possessing both Spanish and Italian nationality and having his habitual residence (2)
 at has declared that he opts to be subject to the military service
 obligations prescribed by the law of (3). in conformity with
 the provisions of article 2, paragraph 3, of the Spanish-Italian Convention of 10 June
 1974.

The declarant has been informed that he is required to report any change of residence
 to the consular authority of the State for which he has opted.

The declarant having read
 having had read to him, since he declined to do so himself, } (4)
 this deed undertakes to fulfil the obligations resulting from the option he is exercising and
 signs with us.

Done at on.

(Signature of the person concerned) (5)

- (1) Authority before whom the deed is signed.
- (2) As defined in article 1 of the Convention.
- (3) Spain or Italy.
- (4) Delete whichever does not apply.
- (5) Stamp and signature of the authority before whom the declaration is signed.

NOTE. This deed is to be drawn up in triplicate (one copy for the person concerned and one for the competent authorities of each of the two States).

[Signed]
 PEDRO CORTINA

[Signed]
 ETTORE STADERINI

MODEL D

CERTIFICATE OF MILITARY STATUS

(Article 15 of the Spanish-Italian Convention of 10 June 1974)

The (1)
 certifies that Mr. (2)
 born on at

having his habitual residence in (3)
having his habitual residence in (3)
but having opted to fulfil his military service obligations in (3)
having his habitual residence in a third State and having opted to fulfil his military service obligations in (3)
is subject to the military service obligations prescribed by the law of (4)
is registered on the recruitment rolls of (3)
entered military service on
was exempted as physically unfit
was excused from military service on the following grounds
enlisted voluntarily in the armed forces of (3)
has performed military service in (3) } (5)

Done at on

(Signature of the person concerned) (6)

- (1) Name of authority issuing the certificate.
- (2) Surname and first name.
- (3) Spain or Italy.
- (4) Spain or Italy.
- (5) Delete whichever does not apply, complete the others where necessary.
- (6) Signature and stamp of the authority issuing the certificate.

[*Signed*]
PEDRO CORTINA

[*Signed*]
ETTORE STADERINI

**EXCHANGE OF LETTERS
BETWEEN THE SPANISH
GOVERNMENT AND THE
GOVERNMENT OF THE
ITALIAN REPUBLIC CON-
STITUTING AN AGREE-
MENT¹ RELATING TO THE
INTERPRETATION OF ARTI-
CLE (1) (b) OF THE CONVEN-
TION OF 10 JUNE 1974² CON-
CERNING THE MILITARY
SERVICE OF PERSONS WITH
DUAL NATIONALITY**

**ÉCHANGE DE LETTRES
ENTRE LE GOUVERNE-
MENT ESPAGNOL ET LE
GOUVERNEMENT DE LA RÉ-
PUBLIQUE ITALIENNE CON-
STITUANT UN ACCORD¹
RELATIF À L'INTERPRÉTA-
TION DE L'ARTICLE 1,
PARAGRAPHE b, DE LA CON-
VENTION DU 10 JUIN 1974²
RELATIVE AU SERVICE
MILITAIRE DES DOUBLE-
NATIONAUX**

I

[ITALIAN TEXT — TEXTE ITALIEN]

IL MINISTRO DEGLI AFFARI ESTERI

Roma, 17 ottobre 1977

142/2298

Signor Ambasciatore,

Ho l'onore di riferirmi alla Convenzione tra l'Italia e la Spagna relativa al servizio militare dei doppi cittadini, firmata a Madrid il 10 giugno 1974 e di comunicare che l'espressione «qualsiasi altro servizio considerato come equivalente dalla legislazione dello Stato ove questo servizio viene prestato», di cui all'art. 1, par. (b), della Convenzione citata, include, per l'ordinamento italiano, il servizio di assistenza tecnica prestato e compiuto da giovani sottoposti all'obbligo di leva nei Paesi in via di sviluppo.

Qualora il Governo spagnolo concordi con quanto precede, ho l'onore di proporre che la presente lettera e la lettera di risposta di Vostra Eccellenza costituiscano un Accordo tra l'Italia e la Spagna per l'interpretazione dell'art. 1, par. (b), della Convenzione citata.

Voglia gradire, Signor Ambasciatore, gli atti della mia più alta considerazione.

[*Signed³ — Signé³*]

S.E. Don Carlos Robles Piquer
Ambasciatore di Spagna
Ambasciata di Spagna
Roma

¹ Came into force on 1 December 1977, the date of entry into force of the Convention of 10 June 1974 (see footnote 2 below).

² See p. 24 of this volume.

³ Signed by Arnaldo Forlani.

¹ Entré en vigueur le 1^{er} décembre 1977, date de l'entrée en vigueur de la Convention du 10 juin 1974 (voir note 2 ci-dessous).

² Voir p. 32 du présent volume.

³ Signé par Arnaldo Forlani.

[TRANSLATION]

MINISTRY OF FOREIGN AFFAIRS

Rome, 17 October 1977

142/2298

Sir,

I have the honour to refer to the Convention between Spain and Italy concerning the military service of persons with dual nationality, signed at Madrid on 10 June 1974, and to inform you that the expression "any other service regarded as equivalent by the legislation of the State in which the service is performed" in article 1 (b) of the aforesaid Convention includes, under Italian law, technical assistance service actually performed in developing countries by young persons subject to compulsory military service.

I have the honour to propose that, if the Spanish Government is in agreement with the foregoing, this letter and your letter in reply shall constitute an Agreement between Italy and Spain on the interpretation of article 1 (b) of the aforesaid Convention.

Accept, Sir, etc.

[ARNALDO FORLANI]

His Excellency Carlos Robles Piquer
Ambassador of Spain
Embassy of Spain
Rome

[TRADUCTION]

LE MINISTRE
DES AFFAIRES EXTÉRIEURES

Rome, le 17 octobre 1977

142/2298

Monsieur l'Ambassadeur,

J'ai l'honneur de me référer à la Convention relative au service militaire des double-nationaux, signée à Madrid le 10 juin 1974 par l'Italie et l'Espagne, et de vous faire connaître que l'expression «tout autre service considéré comme équivalent par la législation de l'Etat où ce service s'accomplit», énoncée à l'art. 1, alinéa b, de ladite Convention, comprend, selon la réglementation italienne, le service d'assistance technique accompli par les jeunes appelés à servir dans les pays en développement.

Si la précision ci-dessus rencontre l'agrément du Gouvernement espagnol, j'ai l'honneur de proposer que la présente lettre et la réponse de Votre Excellence constituent un Accord entre l'Italie et l'Espagne, relatif à l'interprétation de l'art. 1, alinéa b, de ladite Convention.

Veuillez agréer, etc.

[ARNALDO FORLANI]

S.E. Don Carlos Robles Piquer
Ambassadeur d'Espagne
Ambassade d'Espagne
Rome

II

[SPANISH TEXT—TEXTE ESPAGNOL]

EMBAJADA DE ESPAÑA

Roma, 2 de noviembre de 1977

Señor Ministro:

Tengo el honor de referirme a la carta de Su Excelencia de fecha 17 de octubre, y cuyo texto es el siguiente:

“Señor Embajador. Tengo el honor de referirme al Convenio entre Italia y España relativo al Servicio Militar de los súbditos de doble

nacionalidad, firmado en Madrid el 10 de junio de 1974, y de comunicarle que la expresión “cualquier otro servicio considerado como equivalente por la legislación del Estado en que cumpla este servicio” recogida en el artículo 1, párrafo *b*), del Convenio citado, incluye, según el ordenamiento italiano, el servicio de asistencia técnica prestado y cumplido por los jóvenes sometidos a reclutamiento en los países en vías de desarrollo.

“Si el Gobierno Español está de acuerdo con cuanto antecede, tengo el honor de proponer que la presente carta, así como la respuesta de Vuestra Excelencia, constituyan un Acuerdo entre Italia y España sobre la interpretación del artículo 1, párrafo *b*), del Convenio citado.

“Le ruego acepte, Señor Embajador, el testimonio de mi más alta consideración.”

Tengo el honor de comunicarle que el Gobierno Español está de acuerdo con el contenido de dicha carta, por ser conforme con lo dispuesto en el art. 1, apartado *b*), del Convenio.

Aprovecho la oportunidad, Señor Ministro, para reiterarle el sentimiento de mi más alta consideración.

CARLOS ROBLES PIQUER
Embajador de España en Roma

Excmo. Sr. D. Arnaldo Forlani
Ministro de Asuntos Exteriores
Roma

[TRANSLATION]

EMBASSY OF SPAIN

Rome, 2 November 1977

Sir,

I have the honour to refer to your letter dated 17 October 1977, which reads as follows:

[See letter I]

I have the honour to inform you that the Spanish Government concurs with the content of that letter, since it is consistent with the provisions of article 1 (*b*) of the Convention.

Accept, Sir, etc.

[TRADUCTION]

AMBASSADE D'ESPAGNE

Rome, le 2 novembre 1977

Monsieur le Ministre,

J'ai l'honneur de me référer à la lettre de Votre Excellence en date du 17 octobre 1977, dont la teneur suit :

[Voir lettre I]

J'ai l'honneur de vous faire savoir que le contenu de ladite lettre rencontre l'accord du Gouvernement de l'Espagne, qui l'estime conforme à l'article premier, alinéa *b*, de la Convention.

Veuillez agréer, etc.

L'Ambassadeur d'Espagne
à Rome,

CARLOS ROBLES PIQUER

S.E. Don Arnaldo Forlani
Ministre des affaires étrangères
Rome

CARLOS ROBLES PIQUER
Ambassador of Spain
in Rome
His Excellency Arnaldo Forlani
Minister for Foreign Affairs
Rome