II

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du 1er décembre 1981 au 14 décembre 1981

No 896

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COLOMBIA
and
VENEZUELA

Treaty of non-aggression, conciliation, arbitration and judicial settlement. Signed at Bogotá on 17 December 1939

Authentic text: Spanish.
Filed and recorded at the request of Colombia on 4 December 1981.

COLOMBIE
et
VENEZUELA

Traité de non-agression, de conciliation, d'arbitrage et de règlement judiciaire. Signé à Bogotá le 17 décembre 1939

Texte authentique : espagnol.
Classé et inscrit au répertoire à la demande de la Colombie le 4 décembre 1981.

[TRANSLATION — TRADUCTION]

TREATY[1] OF NON-AGGRESSION, CONCILIATION, ARBITRATION AND JUDICIAL SETTLEMENT BETWEEN THE REPUBLIC OF COLOMBIA AND THE UNITED STATES OF VENEZUELA

The President of the Republic of Colombia and the President of the United States of Venezuela, sincerely desirous of expressing in solemn form the peaceful sentiments inspiring their respective peoples, and of manifesting their desire to renounce all recourse to armed force as an instrument of policy between the two nations, have resolved to conclude a treaty for the pacific settlement of disputes which may arise between them, and to this end have appointed as their Plenipotentiaries:

The President of the Republic of Colombia: Mr. Luis López de Mesa, Minister for Foreign Affairs; and

The President of the United States of Venezuela: Mr. José Santiago Rodríguez, Ambassador Extraordinary and Plenipotentiary in Colombia,

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

Article I. The two High Contracting Parties undertake in no case to resort to war or to commit any act of aggression one against the other.

Article II. The two High Contracting Parties undertake, in accordance with the terms of this Treaty, to submit to the procedures for pacific settlement established therein all disputes, whatever their nature or cause, which may arise between them and which it may not have been possible to settle peaceably through the ordinary diplomatic channels, with the sole exception of those which appertain to the vital interests, independence or territorial integrity of the Contracting States.

Disputes for which a special settlement procedure may have been provided for by agreements in force between the Parties shall be resolved in accordance with the provisions of those agreements.

Article III. If one of the Contracting Parties alleges that the dispute between the two is connected with a matter which by its nature and in accordance with international law lies exclusively within the competence and the jurisdiction of the said Party, and if the opposing Party does not admit the allegation, the matter shall be decided by the permanent Court of International Justice. If the Court declares that the claim is well-founded, the dispute shall be declared concluded. Otherwise the Court itself shall decide on the substance of the dispute and shall indicate the procedure for pacific settlement to be employed in accordance with this Treaty.

Article IV. All questions concerning which the two High Contracting Parties have not been able to reach friendly agreement through the ordinary diplomatic channels shall be submitted to the Permanent Conciliation Commission.

[1] Came into force on 12 September 1941 by the exchange of the instruments of ratification, which took place at Caracas, in accordance with Article XXV.

Article V. The High Contracting Parties shall establish a Permanent Conciliation Commission composed of five members.

Each of the Parties shall designate two members, only one of whom shall be a national of the State which nominates him. The fifth member shall be the President and shall be nominated by agreement between the Contracting Parties. The fifth member shall not be a national of any State already represented on the Commission.

Article VI. The Permanent Conciliation Commission shall be established and ready to function within six months following the date of the exchange of the instruments of ratification of this Treaty.

Unless otherwise agreed between the Contracting Parties, the Commission shall be appointed for three years and similarly thereafter, unless during the last three months of each period the Parties decide to change the composition of the Commission or to renew it entirely.

Any vacancies occurring on the Commission shall be filled immediately.

Article VII. Unless otherwise agreed between the Parties, the Commission shall meet at the place designated by its President.

Article VIII. The Commission may be convened by either of the Contracting Parties, which to this end shall make application to the President.

Article IX. Unless otherwise stipulated between the High Contracting Parties, the Commission shall freely establish its rules of procedure, which in any case must provide for both Parties to be heard. In the absence of unanimity, the procedure established in part III of The Hague Convention of 18 October 1907 for the Pacific Settlement of International Disputes[1] shall be followed. The decisions of the Commission shall be taken by majority vote of its members, all of whom must be present.

The Parties shall be represented before the Commission by agents, who shall also act as intermediaries between them and the Commission.

Article X. The High 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 allow it to proceed in their territory and in accordance with their law to summon and hear witnesses or experts and conduct other proceedings.

Article XI. During the proceedings of the Commission, each of the Commissioners shall receive emoluments the amount of which shall be fixed by agreement between the Contracting Parties.

Each of the two Governments shall pay its own expenses and contribute an equal share to the common expenses of the Commission, including the emoluments provided for in the first paragraph of this article.

Article XII. The task of the Permanent Conciliation Commission shall be to examine the questions in dispute, to collect to this end all necessary information by means of inquiry 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 to it suitable and shall in all cases propose a solution to the

[1] *British and Foreign State Papers*, vol. 100, p. 298.

dispute. The report of the Commission shall not be binding on the Parties with regard to either *de facto* or *de jure* considerations.

Article XIII. The recommendations of the Permanent Conciliation Commission shall be submitted within one year from the date on which it opened its proceedings. The High Contracting Parties may extend this period by mutual agreement.

Article XIV. When the recommendations of the Commission have been submitted to the Parties, they shall have six months to negotiate a settlement on the basis of the solution proposed. If no agreement is reached after six months, the dispute shall be submitted for judicial or arbitral decision, according to the provisions of articles XV *et seq* of this Treaty.

Article XV. Subject to the reservation established in article II, all disputes shall be submitted for a decision, based on law, by the Permanent Court of International Justice or of an arbitral tribunal constituted according to the provisions of this Treaty, if they have not been previously settled by the conciliation procedure and if they arise from:

(*a*) The existence, interpretation and application of an international treaty concluded between the Parties;

(*b*) Any point of international law;

(*c*) The existence of any fact which, if verified, would constitute the breach of an international agreement;

(*d*) The nature and extent of the reparation due for such a breach.

If there is disagreement between the two Contracting Parties as to whether or not the dispute can be classified under one of the above categories, the Permanent Court of International Justice shall take a decision concerning this preliminary question. The Contracting Parties undertake to accept the opinion of the Court and to proceed accordingly.

If the dispute arises from causes other than those listed in paragraphs (*a*), (*b*), (*c*) and (*d*) of this article, the Contracting Parties may submit the matter to the Arbitral Tribunal established in this Treaty and authorize it to decide *ex aequo et bono* if no rule of law is applicable.

Article XVI. In cases where recourse is had to settlement by arbitration, each of the Contracting Parties shall nominate an arbitrator, who shall not be a national of the Party appointing him, and shall endeavour to reach agreement with the other Party regarding the nomination of a third arbitrator, who shall not be of the same nationality as either of the other two. This third arbitrator shall be the President of the Tribunal thus constituted.

If there is disagreement with regard to the nomination of the third arbitrator, both Contracting Parties shall request the Permanent Court of International Justice to nominate the President of the Tribunal.

The decisions of the Arbitral Tribunal shall be taken by majority vote and shall be binding on the Parties.

Article XVII. In each individual case which may have to be submitted to the Permanent Court of International Justice or the Arbitral Tribunal, the Contracting Parties shall conclude a special agreement by an exchange of notes, which shall set forth clearly the matter in dispute, the powers conferred on the Court or the Arbitral

Tribunal, the periods of time allowed and other conditions agreed upon between them.

If the Parties fail to agree concerning the terms of the special agreement, either Party shall have the right, subject to one month's notice, to submit the matter by means of a simple request directly to the Permanent Court of International Justice.

If the Court finds that the matter is not within its competence according to article XV, it shall so inform the Parties, which may constitute the Arbitral Tribunal in accordance with the provisions of article XV.

Article XVIII. Questions which have already been the subject of a definitive settlement between the Contracting Parties shall not be reopened before the Permanent Court of International Justice or submitted to the Arbitral Tribunal, unless the dispute arises from the interpretation or execution of the settlement.

Article XIX. In the case of a dispute the object of which, according to the internal legislation of one of the Contracting Parties, falls within the competence of its national courts, the question shall not be submitted for settlement by the methods laid down in this Treaty, unless denial of justice is alleged in a decision with final effect by the competent judicial authority.

Article XX. If, in the judgement of the Permanent Court of International Justice or the award of the Arbitral Tribunal, it is declared that a decision made by any authority of one of the Contracting Parties is, wholly or partly, contrary to international treaty law in force between the Parties and if the constitutional law of that Party permits, or only partly permits, the consequences of such decision to be annulled by administrative channels, the Parties agree that the judgement of the Court or the award of the Tribunal shall grant the injured Party equitable satisfaction.

Article XXI. The two Parties undertake to refrain, during the course of any proceedings opened under this Treaty, from any measures likely to aggravate the dispute, and to carry out the provisional measures which, in the case of disputes arising from acts already committed or in the course of being committed, the Permanent Court of International Justice, the Arbitral Tribunal or the Conciliation Commission, according to the circumstances, consider advisable.

Article XXII. The Party causing a dispute by acts which by their nature are to be resolved by the methods for pacific settlement established in this Treaty shall, as soon as the dispute is submitted to one of the procedures provided therein, terminate the effects of such acts and restore the *status quo*.

Article XXIII. Save as otherwise provided in the terms of the special agreement provided for in article XVII of this Treaty, each Contracting Party may request the Arbitral Tribunal which handed down the award to review it. However, such a request may be made only if some fact is brought to light which might have had a decisive effect on the award and which, at the time when the proceedings were closed, was not known to the Tribunal itself or to the Party making the request.

If, for any reason, one or more members of the Tribunal which handed down the award are prevented from taking part in the review, the vacancy or vacancies shall be filled in the manner fixed for the nominations.

The time limit within which a request for review must be submitted shall be prescribed in the arbitral award, unless this is already laid down in the special agreement.

Article XXIV. Unless otherwise agreed by the High Contracting Parties, disputes relating to the interpretation or execution of this Treaty shall be submitted to the Permanent Court of International Justice or to the Arbitral Tribunal, on the application of either Party.

Article XXV. As soon as the legal formalities in each of the Contracting States have been completed, this Treaty shall be ratified and the ratifications shall be exchanged in the city of Caracas as soon as possible.

It shall remain in force for a period of ten years from the date of exchange of ratifications. If it is not denounced six months before the expiry of this period, it shall be renewed by tacit agreement for a further period of ten years and similarly thereafter.

In any event, proceedings pending at the expiry of the current period of the Treaty shall be duly completed.

IN WITNESS WHEREOF the above-named Plenipotentiaries have signed this Treaty in two copies and have thereto affixed their special seals, at Bogotá, on 17 December 1939.

LUIS LÓPEZ DE MESA

JOSÉ SANTIAGO RODRÍGUEZ