

No. 4146

**ITALY
and
BRAZIL**

**Agreement concerning conciliation and judicial settlement.
Signed at Rio de Janeiro, on 24 November 1954**

Official texts: Italian and Portuguese.

Registered by Italy on 3 January 1958.

**ITALIE
et
BRÉSIL**

**Convention de conciliation et de règlement judiciaire.
Signée à Rio-de-Janeiro, le 24 novembre 1954**

Textes officiels italien et portugais.

Enregistrée par l'Italie le 3 janvier 1958.

[TRANSLATION — TRADUCTION]

No. 4146. AGREEMENT¹ BETWEEN ITALY AND BRAZIL
CONCERNING CONCILIATION AND JUDICIAL SET-
TLEMENT. SIGNED AT RIO DE JANEIRO, ON 24 NO-
VEMBER 1954

The President of the Republic of Italy and the President of the Republic of the United States of Brazil, desiring to conclude an agreement for the amicable settlement of any disputes which might arise between the two countries, have for that purpose appointed as their plenipotentiaries :

The President of the Republic of Italy :

His Excellency Mr. Giovanni Fornari, Ambassador Extraordinary and Plenipotentiary;

The President of the Republic of the United States of Brazil :

His Excellency Dr. Raul Fernandes, Minister of Foreign Affairs,

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

Article 1

Any dispute of whatsoever nature which arises between the High Contracting Parties and which cannot be settled through the normal diplomatic channel shall be dealt with according to the conciliation procedure described in articles 4 to 15 of this Agreement.

If the conciliation procedure is unsuccessful, a judicial settlement shall be sought in accordance with articles 16 *et seq.* of this Agreement.

Article 2

Disputes for which a special procedure is laid down in other agreements in force between the Parties shall be settled in conformity with the provisions of those agreements.

Article 3

If, under the domestic legislation of one of the Parties, a dispute is within the competence of its judicial or administrative authorities, this Party shall be at liberty to claim that the dispute shall not be dealt with according to the various procedures for which provision is made in this Agreement until a final decision has been rendered within a reasonable time by the competent authority.

¹ Came into force on 8 August 1957, upon the exchange of the instruments of ratification at Rome, in accordance with article 23.

The Party which, in the aforementioned case, intends to resort to the procedures for which provision is made in this Agreement shall give notice of its intention to the other Party within six months from the date of the decision in question.

Article 4

A Permanent Conciliation Commission shall be constituted within the six months following the entry into force of this Agreement.

This Commission shall be composed of three members.

The High Contracting Parties shall each appoint one commissioner chosen from among their respective nationals and shall by agreement designate the President, who shall not be a national of either High Contracting Party nor be habitually resident in their territories nor be employed in their service.

If in the absence of agreement the appointment of the President is not made within the period stipulated in the first paragraph of this article or, in the case of the appointment of a successor, within three months from the date on which the vacancy occurs, the President shall be appointed as follows :

Each of the High Contracting Parties shall nominate two candidates, other than the members designated by the Parties, from the list of the members of the Permanent Court of Arbitration at The Hague, who shall not be nationals of either Party. The President shall be chosen by lot from among the candidates so nominated.

If either of the High Contracting Parties fails to nominate its candidates, the President of the International Court of Justice shall, upon the request of either of the Parties, designate the President of the Permanent Commission.

The commissioners shall be appointed for three years and shall be re-eligible. They shall remain in office until replaced and in any event until the expiry of their term.

So long as proceedings have not commenced, each High Contracting Party may recall the commissioner appointed by it and designate a successor in his stead, and may also withdraw its approval of the appointment of the President.

Any vacancies due to expiry of term of office, recall, death, resignation or any other cause shall be filled by the High Contracting Parties as promptly as possible in the manner prescribed for appointments.

Article 5

A matter shall be brought before the Conciliation Commission by means of an application addressed to the President by the two Parties acting in agreement or, failing that, by the one or other Party.

The application, after giving an account of the subject of the dispute, shall invite the Commission to take any measures likely to lead to an amicable solution.

If the application is made by one of the Parties only, the other Party shall be notified by it at the same time.

Article 6

Within fifteen days from the date on which a dispute has been brought before the Conciliation Commission by one of the Parties, either Party may replace its own commissioner, for the examination of the particular dispute, by a person possessing special competence in the matter.

The Party making use of this right shall immediately notify the other Party, and the latter shall in such case be entitled to take similar action within fifteen days from the date on which it receives the notification.

Article 7

Unless otherwise agreed between the Parties, the Conciliation Commission shall meet at a place selected by its President.

Article 8

It shall be the function of the Conciliation Commission to elucidate the questions in dispute, to collect all necessary information for this purpose and to endeavour to reconcile the Parties.

After considering the case, the Commission shall draw up a report making proposals for the settlement of the dispute.

Article 9

The procedure of the Conciliation Commission shall provide for the hearing of both Parties.

The Commission shall lay down its own procedure and, unless otherwise agreed unanimously, shall be guided by the provisions of part III of The Hague Convention of 18 October 1907¹ for the pacific settlement of international disputes.

Article 10

The deliberations of the Conciliation Commission shall take place in private unless, in agreement with the Parties, the Commission decides otherwise.

Article 11

The Parties shall be entitled to be represented before the Commission by agents, counsel and experts who shall, at the same time, act as intermediaries between them and the Commission, and the Parties shall likewise take steps so that any person whose evidence appears to them to be desirable may be heard.

¹ *British and Foreign State Papers*, Vol. 98, p. 626, and League of Nations, *Treaty Series*, Vol. LIV, p. 435, and Vol. CXXXIV, p. 453.

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

Article 12

The Parties undertake to facilitate the work of the Conciliation Commission and in particular to supply it to the greatest possible extent with all relevant documents and information, and to use all the means at their disposal, in accordance with their law, to enable the Commission to summon and hear witnesses and experts.

Article 13

The Conciliation Commission shall present its report within four months from the day on which the dispute was brought before it, unless the Parties agree to prolong this time-limit.

A copy of the report shall be handed to each Party. The report shall not be in the nature of an arbitral award, either as regards the statement of facts or as regards the legal arguments.

Article 14

The Conciliation Commission shall prescribe the time-limit within which the Parties are to give their decisions concerning the proposals for settlement contained in its report. This time-limit shall not exceed three months.

Article 15

For so long as the proceedings are actually in progress, each of the commissioners shall receive an emolument in an amount to be fixed by agreement between the Parties, each of which shall contribute an equal share.

The overhead expenses incurred in connexion with the proceedings before the Commission shall be divided in the same manner.

Article 16

If either of the Parties fails to accept the proposals of the Conciliation Commission or to give its decision within the time-limit prescribed in the report of the Commission, each Party may request that the dispute shall be submitted to the International Court of Justice.

If the International Court finds that the dispute does not involve a question of law, the Parties agree that it shall be decided *ex aequo et bono*.

Article 17

The Contracting Parties shall, in each particular case, conclude a special agreement clearly defining the subject of the dispute, the particular competence which might be vested in the International Court of Justice and any other

conditions agreed between the Parties. The agreement shall be concluded by exchange of notes between the Governments of the Contracting Parties.

The agreement shall be interpreted in all respects by the International Court.

If this agreement is not concluded within three months from the date on which either Party received a request for judicial settlement, each Party shall be entitled to submit the question direct to the Court of Justice by simple application.

Article 18

If the International Court of Justice should hold that a decision of a judicial or other authority of one of the Contracting Parties is wholly or in part at variance with international law, and if the constitutional law of the said Party does not make it possible, or does not make it fully possible, to remove the consequences of the decision in question by administrative action, then, in such circumstances, the injured Party shall be awarded equitable satisfaction in a different form.

Article 19

The decision of the International Court of Justice shall be carried out in good faith by the Parties. Any difficulty in the interpretation of the decision shall be settled by the Court of Justice, to which each Party may refer the question by simple application.

Article 20

For so long as the conciliation or judicial proceedings are in progress, the High Contracting Parties shall abstain from any action capable of having an adverse influence on the acceptance of the proposals of the Conciliation Commission or on the execution of the decision of the International Court of Justice.

Article 21

If any conciliation or judicial proceedings are pending at the time of the expiry of this Agreement, the said proceedings shall be conducted according to the terms of this Agreement or of any other Agreement which the Parties have agreed to substitute therefor.

Article 22

Any disagreements which might arise concerning the interpretation or application of this Agreement shall be submitted to the International Court of Justice by simple application.

Article 23

This Agreement shall be ratified as soon as possible and shall come into force upon the exchange of the instruments of ratification, which is to take place at Rome. It shall remain in force for five years from the date on which the instruments of ratification are exchanged.

Unless denounced six months before the expiry of this period, it shall remain in force for a further period of five years and so on thereafter.

IN WITNESS WHEREOF the plenipotentiaries have signed this Agreement, which has been drawn up in duplicate in the Italian and Portuguese languages, both texts being equally authentic, and have thereto affixed their seals.

DONE at Rio de Janeiro on 24 November 1954.

Giovanni FORNARI

Raul FERNANDES