

THE ANGLO-ITALIAN CONCILIATION COMMISSION

Rules of Procedure of the Anglo-Italian Conciliation Commission

Article 1

SEAT OF THE CONCILIATION COMMISSION

The Anglo-Italian Conciliation Commission constituted under the provisions of Article 83 of the Peace Treaty with Italy shall have its seat at Rome.

Article 2

JURISDICTION OF THE CONCILIATION COMMISSION

(a) The jurisdiction of the Conciliation Commission shall extend to all disputes between the United Kingdom and Italy which may arise in giving effect to Articles 75 and 78 and Annexes XIV, XV, XVI and XVII, part B, of the Peace Treaty with Italy.

(b) The Conciliation Commission shall decide its own jurisdiction.

(c) Decisions on questions of jurisdiction shall be given, even *ex officio*.

Article 3

SITTINGS

The sittings of the Conciliation Commission will be held at such places and times as the members thereof may from time to time agree upon.

Article 4

LANGUAGES

Pleadings, statements and documents produced by the parties may be written in either English or Italian. The records and decisions of the Conciliation Commission shall be drawn up in both languages and both texts shall be authoritative. Witnesses may give oral evidence before the Commission in the French language.

Article 5

AGENTS OF THE GOVERNMENTS BEFORE THE CONCILIATION COMMISSION

Each Government shall be represented before the Conciliation Commission by an agent, who may in turn appoint deputies and assistants.

Article 6

SECRETARIAT OF THE CONCILIATION COMMISSION

A joint Secretariat shall be established at the seat of the Conciliation Commission.

Article 7

INSTITUTION OF PROCEEDINGS

Proceedings before the Conciliation Commission shall be initiated by the Agent of the Government concerned who shall draw up and sign the claim and deposit five copies thereof with the Secretariat. The claim shall contain:

(a) A description of the person or persons, on behalf of whom the Government presents the claim, his or their residence and nationality. Such indications must be sufficient to ascertain proper identity. In the case of a Corporation, its description seat, nationality and the country under the laws of which it is constituted and also the name nationality and residence of its legal representative. In the case of unincorporated partnerships, companies and associations, the names of the members their residence and nationality.

(b) A description of the claim.

(c) The material facts and legal principles on which the claim is grounded.

(d) A list of documents produced or of documents which the agent may request the right to produce and an indication of the evidence he will submit during the proceedings.

(e) If the parties request the appearance of witnesses and experts before the Conciliation Commission, such request shall contain a complete description of the witnesses and experts and shall state their place of residence and nationality.

Article 8

DOCUMENTS ANNEXED TO THE CLAIM

A file containing all documents produced by the Government making the claim either in original or authenticated copy shall be annexed to the claim. The file shall contain an index in quintuplicate.

Article 9

FUNCTIONS OF THE SECRETARIAT UPON RECEIPT OF CLAIM FORMS

The Secretariat of the Conciliation Commission upon receipt of claim forms shall:

(a) Enter the claim in the Claims Register and return to the agent of the claiming Government a copy of the claim form proper, together with a copy of the index attached to the file containing the documents annexed. Copies shall be duly signed, stamped, numbered, receipted and dated.

(b) Within seven days of the date of deposit, forward another copy of the claims and index to the agent of the defending Government.

(c) Immediately after these communications have been effected submit to the Commission the claim form and index in duplicate.

(d) File one copy in the archives of the Secretariat.

Article 10

PROVISIONS FOR THE EXAMINATION OF CLAIMS

In accordance with the provisions of the preceding article, the Conciliation Commission shall, upon receipt of the Claim:

(a) Fix the time limits for the presentation of the written answer, and any replication, and for the production of the relevant documents by the defending Government.

(b) Fix the time limit for the presentation of such documents as the parties have reserved the right to produce under the provisions of Article 7, paragraph (d).

(c) Whenever necessary determine the procedure of investigation of claims and eventually summon witnesses.

(d) Request the agents of the Government to present their arguments orally whenever this step is considered appropriate.

Article 11

ANSWER AND REPLICATION

(a) Memoranda of answer and replication shall be forwarded in quintuplicate to the Secretariat of the Conciliation Commission.

(b) Memoranda shall indicate the documents and evidence produced or to be produced as set out in Article 7, paragraph (d). Documents shall be deposited following the procedure established under Article 8. Receipt of memoranda, their communication to the agent of the Government making the claim and their presentation to the Commission shall be governed by the provisions of Article 9.

Article 12

EXTRACTS AND COPIES OF DOCUMENTS

(a) Agents of the respective Governments shall be permitted to inspect at the Secretariat of the Conciliation Commission any documents presented by the other party and to obtain certified copies thereof, at their expense, if any, in the first instance.

(b) Documents may be printed or typewritten and carbon copies or stencils may be used.

Article 13

TRIAL AND PROOF

(a) The following principles shall be observed by the Conciliation Commission in deciding the admissibility of evidence:

(i) Whenever possible written evidence shall be produced in preference to any other form of evidence.

(ii) Unless the Commission shall decide otherwise in any specific cases, the evidence of only one expert witness on either side shall be admissible on any one point. The Commission shall have power in any case in which it shall deem it expedient, to appoint an expert to advise the Commission on any point in dispute and nominate interpreters and translators. In all cases the Commission shall always be free to decide the relative value of any evidence produced.

(b) Whenever necessary, evidence on commission may be collected through the British or Italian consular authorities, and when evidence is being collected in this manner an Italian or a British representative as the case may be, shall be present and may add their observations, if any, on the statement of evidence.

(c) The Commission may proceed to places where damage to property may have occurred.

- (d) At all such investigations the agents of the Government shall be present.
- (e) Assistance from the Governments concerned as provided for in paragraph 5 of Article 83 of the Peace Treaty shall be requested through the representative agents.

Article 14

INTERESTED PARTIES

Persons concerned or interested in any disputes before the Conciliation Commission shall only be heard as witnesses.

Article 15

OATH

Before giving evidence witnesses shall take the oath in accordance with the terms of the law of the place where such evidence shall be given or according to the law of their nationality.

Article 16

EXPENSES

Expenses arising from proceedings instituted by one of the Governments other than those coming within the provisions of Article 78, paragraph 5, shall be borne in the first instance, pending decision of the Conciliation Commission, by the Government which has instituted the proceedings. Expenses arising from the normal activities of the Commission under the provisions of Article 83 and of the present rules of procedure shall be shared equally by the respective Governments.

Article 17

INTERPRETATION OF NATIONAL LAW

(a) All questions which may arise in relation to the existence, text or interpretation of concrete rules or general principles of Italian or English municipal law shall be submitted by the Conciliation Commission to the *Avvocato Generale dello Stato* or to Mr. Hubert Hull, former Assistant Procurator General, respectively,

(b) The Commission shall consider such opinions as factual evidence.

Article 18

POWERS OF THE CONCILIATION COMMISSION

The Conciliation Commission may exercise its discretion in interpreting the scope of its powers whether established under these rules of procedure or not. It shall act in a fair and impartial manner.

Article 19

DECISIONS OF THE CONCILIATION COMMISSION

When agreement shall have been reached by the members of the Commission, the text of the decision of the Conciliation Commission shall contain a declaration of its jurisdiction, and:

- (a) The names of the parties.
- (b) The subject matter of the disputes.
- (c) The agents' statements.
- (d) A statement of the material facts and legal arguments.
- (e) The decision, which shall affirm or deny the liability of one of the Governments party to the dispute, determine the amount of such liability and make an order as to costs.
- (f) The date, the signatures and seal of the member of the Commission. The decision in original shall be deposited with the Secretariat, who shall give notice thereof to the respective governmental agents immediately.

Article 20

Procès-verbal OF NON-AGREEMENT

In cases when no agreement has been reached by the members of the Commission they shall draw up a *procès-verbal* of non-agreement. The *procès-verbal* shall contain the information enumerated in paragraphs (a), (b), (c), (d), (e) and (f) of article 9 and also a statement of the points on which the members have not been able to reach agreement.

The *procès-verbal* shall be deposited and communicated according to the rules set out in the preceding article.

Article 21

APPOINTMENT OF THIRD MEMBER

The agents shall communicate to their respective Governments the *procès-verbal* of non-agreement, in order to enable the Governments to act in accordance with the procedure set out in Article 83 of the Peace Treaty for the appointment of the third member, who will fulfil the functions of President on taking up his office.

Article 22

PROCEEDINGS BEFORE THE CONCILIATION COMMISSION OF THREE MEMBERS

(a) Proceedings before the Conciliation Commission of Three Members shall be limited to the points on which no agreement has been reached. Agreement on points already reached by the two members shall be considered as final.

(b) The rules of procedure set out in the preceding articles shall be observed, as far as practicable in the proceedings before the Commission of Three Members. The admissibility of new evidence shall be determined through an interlocutory reasoned decision of the Commission of Three Members.

Article 23

DECISIONS OF THE CONCILIATION COMMISSION OF THREE MEMBERS

(a) The Conciliation Commission of Three Members shall decide upon the points still in dispute by majority vote following the order proposed by the President.

(b) The decision shall have the form set out in article 18.

(c) The decision shall recite the points upon which agreement had been reached by the two members and those remaining in dispute for which a decision of the Commission of Three Members was necessary.

Article 24

DISSENT OF ONE OF THE MEMBERS

When a decision shall not be reached by unanimous vote, the member in the minority shall have the right to express the reasons for his dissent.

Article 25

SEAL

The official seal of the Conciliation Commission shall be such as its members may direct. All copies, notices, orders and other documents appearing to be sealed with the seal of the Commission shall be presumed to be official copies thereof.

Article 26

AMENDMENTS AND DEROGATIONS

The Conciliation Commission, whether of two or three members, shall have the right at any time to amend, modify or complete the present rules of procedure, and, in specific cases only, to depart from them, either by agreement or majority voting.

Rome, 20th day of October 1948

*The Representative of his Majesty's
Government on the Anglo-Italian
Conciliation Commission*

G. G. HANNAFORD

*The Representative of the Government
of the Italian Republic on Anglo-Italian
Conciliation Commission*

MICHELE GIULIANO

PROCÈS-VERBAL

The Representative of Italy and the Representative of the United Kingdom of Great Britain and Northern Ireland at the Anglo-Italian Conciliation Commission, established under Article 83 of the Treaty of Peace, assembled at the premises of the Conciliation Commission at No. 68 Via Palestro, Rome

Having seen article 26 of the Rules of Procedure;

Having recognised the advisability of establishing a fixed period for the presentation of the Reply and of the Replication in the proceeding before the Commission;

Have agreed that:

1. The Reply of the Agent of the convened Government must be presented within the period of 60 days from the date of the presentation of the introductory Submission.

2. The Replica must be presented within 30 days from the date of the presentation of the Reply.

3. The Commission has the power to concede prolongation of the periods established above on the presentation of a written request for well founded reasons by the Agent of the interested Government.

4. The present *procès-verbal* constitutes an integral part of the Rules of Procedure.

Drawn up at Rome on the 24 March 1952.

A. SORRENTINO

*The Representative of Italy
at the Anglo-Italian
Conciliation Commission*

G. G. HANNAFORD

*The Representative of Great Britain
at the Anglo-Italian
Conciliation Commission*

PROCÈS-VERBAL

The Representative of Italy and the Representative of the United Kingdom of Great Britain and Northern Ireland in the Anglo-Italian Conciliation Commission, established under Article 83 of the Treaty of Peace, assembled in Rome at the premises of the Conciliation Commission, Via Palestro No. 68;

Having seen article 26 of the Rules of Procedure;

Having recognised the advisability of granting the defending Government the right to request authority to present a Counter-Replication should the Replication of the Agent of the claimant Government contain new matters either of fact or law which had not been raised in the Submission or in the Answer of the Agent of the defending Government;

Have agreed:

1. that the Agent of the defending Government be granted the right to request, within five days from the filing of the Replication by the Agent of the claimant Government, authority to present a Counter-Replication should the Replication of the Agent of the claimant Government contain new arguments either of fact or law which had not been raised in the Submission or in the Answer of the Agent of the defending Government:

2. that, should the request of the Agent of the defending Government prove to be really founded, the Commission will have the right to grant him a period of up to twenty-five days within which to file a Counter-Replication:

3. that this *procès-verbal* constitutes an integral part of the Rules of Procedure.

Drawn up in Rome on 14th April, 1953.

*The Representative of Great Britain
before the Anglo-Italian
Conciliation Commission*

(G. G. HANNAFORD)

*The Representative of Italy
before the Anglo-Italian
Conciliation Commission*

(A. SORRENTINO)

**Decisions¹ of the Anglo-Italian
Conciliation Commission**

GRANT-SMITH CASE (THE *GIN AND ANGOSTURA*)—
DECISION No. 2 OF 4 MARCH 1952

Claim for compensation — Yacht belonging to a British national seized during war in France by Italian authorities and brought to Italy — Total loss of yacht — Articles 75 and 78 of Peace Treaty — Inapplicability of Article 75 — Distinction between right of owner to claim and that of State from whose territory property taken — Applicability of Article 78 — Whether property must have been in Italy at date specified in said Article — Circumstances in which property lost — Burden of proof — Interpretation of treaties — Rules of.

Demande d'indemnisation — Yacht appartenant à un ressortissant britannique, saisi en France durant la guerre par les autorités italiennes et amené en Italie — Perte totale du navire — Articles 75 et 78 du Traité de Paix — Inapplicabilité de l'article 75 — Distinction entre le droit d'action appartenant au propriétaire et celui de l'Etat du territoire duquel le bien a été enlevé — Applicabilité de l'article 78 — Question de savoir si le bien doit avoir été en Italie à la date visée par cet Article — Circonstances ayant donné lieu à la perte du bien — Fardeau de la preuve — Interprétation des traités — Règles d'interprétation.

Given on 4 March 1952 in Rome by the Anglo-Italian Conciliation Commission established under Article 83 of the Treaty of Peace of 10 February 1947, its members being Colonel G. G. Hannaford of the Embassy of Great Britain, Rome, as representative of the United Kingdom Government, Dott. Antonio Sorrentino, honorary President of Section of the Council of State of Rome, as representative of the Italian Government, and Dr. Plinio Bolla, former President of the Swiss Federal Tribunal of Morcote (Switzerland), as Third Member

¹ Original French text not available. English translations provided by the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations.

Extracts from a number of these decisions may be found in: *International Law Reports*, Lauterpacht, 1955. See also: *American Journal of International Law*, vol. 51, 1957, p. 128.