

American Treaty on Pacific Settlement (Pact of Bogota); April 30, 1948

Signed at Bogota, Colombia, April 30, 1948

In the name of their peoples, the Governments represented at the Ninth International Conference of American States have resolved, in fulfillment of Article XXIII of the Charter of the Organization of American States, to conclude the following Treaty:

CHAPTER 1. GENERAL OBLIGATION TO SETTLE DISPUTES BY PACIFIC MEANS

ARTICLE I

The High Contracting Parties, solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures.

ARTICLE II

The High Contracting Parties recognize the obligation to settle international controversies by regional pacific procedures before referring them to the Security Council of the United Nations.

Consequently, in the event that a controversy arises between two or more signatory states which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution.

ARTICLE III

The order of the pacific procedures established in the present Treaty does not signify that the parties may not have recourse to the procedure which they consider most appropriate in each case, or that they should use all these procedures, or that any of them have preference over others except as expressly provided.

ARTICLE IV

Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfillment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded.

ARTICLE V

The aforesaid procedures may not be applied to matters which, by their nature, are within the domestic jurisdiction of the state. If the parties are not in agreement as to whether the controversy concerns a matter of domestic jurisdiction, this preliminary question shall be submitted to decision by the International Court of Justice, at the request of any of the parties.

ARTICLE VI

The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangements between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.

ARTICLE VII

The High Contracting Parties bind themselves not to make diplomatic representations in order to protect their nationals, or to refer a controversy to a court of international jurisdiction for that purpose, when the said nationals have had available the means to place their case before competent domestic courts of the respective state.

ARTICLE VIII

Neither recourse to pacific means for the solution of controversies, nor the recommendations of their use, shall, in the case of an armed attack, be ground for delaying the exercise of the right of individual or collective self-defense, as provided for in the Charter of the United Nations.

CHAPTER 2. PROCEDURES OF GOOD OFFICES AND MEDIATION

ARTICLE IX

The procedure of good offices consists in the attempt by one or more American Governments not parties to the controversy, or by one or more eminent citizens of any American State which is not a party to the controversy, to bring the parties together, so as to make it possible for them to reach an adequate solution between themselves.

ARTICLE X

Once the parties have been brought together and have resumed direct negotiations, no further action is to be taken by the states or citizens that have offered their good offices or have accepted an invitation to offer them; they may, however, by agreement between the parties be present at the negotiations.

ARTICLE XI

The procedure of mediation consists in the submission of the controversy to one or more American Governments not parties to the controversy, or to one or more eminent citizens of any American State not a party to the controversy. In either case the mediator or mediators shall be chosen by mutual agreement between the parties.

ARTICLE XII

The functions of the mediator or mediators shall be to assist the parties in the settlement of controversies in the simplest and most direct manner, avoiding formalities and seeking an acceptable solution. No report shall be made by the mediator and, so far as he is concerned, the proceedings shall be wholly confidential.

ARTICLE XIII

In the event that the High Contracting Parties have agreed to the procedure of mediation but are unable to reach an agreement within two months on the selection of the mediator or mediators, or no solution to the controversy has been reached within five months after mediation has begun, the parties shall have recourse without delay to any one of the other procedures of peaceful settlement established in the present Treaty.

ARTICLE XIV

The High Contracting Parties may offer their mediation, either individually or jointly. but they agree not to do so while the controversy is in process of settlement by any of the other procedures established in the present Treaty.

CHAPTER 3. PROCEDURE OF INVESTIGATION AND CONCILIATION

ARTICLE XV

The procedure of investigation and conciliation consists in the submission of the controversy to a Commission of Investigation and Conciliation, which shall be established in accordance with the provisions established in subsequent articles of the present Treaty, and which shall function within the limitations prescribed therein.

ARTICLE XVI

The party initiating the procedure of investigation and conciliation shall request the Council of the Organization of American States to convoke the Commission of Investigation and Conciliation. The Council for its part shall take immediate steps to convoke it.

Once the request to convoke the Commission has been received, the controversy between the parties shall immediately be suspended, and the parties shall refrain from any act that might make conciliation more difficult. To that end. at the request of one of the parties, the Council of the Organization of American States may, pending the convocation of the Commission, make appropriate recommendations to the parties.

ARTICLE XVII

Each of the High Contracting Parties may appoint, by means of a bilateral agreement consisting of a simple exchange of notes with each of the other signatories, two members of the Commission of Investigation and Conciliation, only one of whom may be of its own nationality. The fifth member who shall perform the functions of chairman, shall be selected immediately by common agreement of the members thus appointed.

Any one of the contracting parties may remove members whom it has appointed, whether nationals or aliens; at the same time it shall appoint the successor. If this is not done, the removal shall be considered as not having been made. The appointments and substitutions shall be registered with the Pan American Union, which shall endeavor to ensure that the commissions maintain their full complement of five members.

ARTICLE XVIII

Without prejudice to the provisions of the foregoing article, the Pan American Union shall draw up a permanent panel of American conciliators, to be made up as follows:

- (a) Each of the High Contracting Parties shall appoint, for three-year periods, two of their nationals who enjoy the highest reputation for fairness, competence and integrity;
- (b) The Pan American Union shall request of the candidates notice of their formal acceptance, and it shall place on the panel of conciliators the names of the persons who so notify it;
- (c) The governments may, at any time, fill vacancies occurring among their appointees; and they may reappoint their members.

ARTICLE XIX

In the event that a controversy should arise between two or more American States that have not appointed the Commission referred to in Article XVII, the following procedure shall be observed:

- (a) Each party shall designate two members from the permanent panel of American conciliators, who are not of the same nationality as the appointing party.
- (b) These four members shall in turn choose a fifth member, from the permanent panel, not of the nationality of either party.
- (c) If, within a period of thirty days following the notification of their selection, the four members are unable to agree upon a fifth member, they shall each separately list the conciliators composing the permanent panel, in order of their preference, and upon comparison of the lists so prepared the one who first receives a majority of votes shall be declared elected. The person so elected shall perform the duties of chairman of the Commission.

ARTICLE XX

In convening the Commission of Investigation and Conciliation, the Council of the Organization of American States shall determine the place where the Commission shall meet. Thereafter the Commission may determine the place or places in which it is to function, taking into account the best facilities for the performance of its work.

ARTICLE XXI

When more than two states are involved in the same controversy, the states that hold similar points of view shall be considered as a single party. If they have different interests they shall be entitled to increase the number of conciliators in order that all parties may have equal representation. The chairman shall be elected in the manner set forth in Article XIX.

ARTICLE XXII

It shall be the duty of the Commission of Investigation and Conciliation to clarify the points in dispute between the parties and to endeavor to bring about an agreement between them upon mutually acceptable terms. The Commission shall institute such investigations of the facts involved in the controversy as it may deem necessary for the purpose of proposing acceptable bases of settlement.

ARTICLE XXIII

It shall be the duty of the parties to facilitate the work of the Commission and to supply it, to the fullest extent possible, with all useful documents and information, and also to use the means at their disposal to enable the Commission to summon and hear witnesses or experts and perform other tasks in the territories of the parties, in conformity with their laws.

ARTICLE XXIV

During the proceedings before the Commission, the parties shall be represented by plenipotentiary delegates or by agents, who shall serve as intermediaries between them and the Commission. The parties and the Commission may use the services of technical advisers and experts.

ARTICLE XXV

The Commission shall conclude its work within a period of six months from the date of its installation; but the parties may, by mutual agreement, extend the period.

ARTICLE XXVI

If, in the opinion of the parties, the controversy relates exclusively to questions of fact, the Commission shall limit itself to investigating such questions, and shall conclude its activities with an appropriate report.

ARTICLE XXVII

If an agreement is reached by conciliation, the final report of the Commission shall be limited to the text of the agreement and shall be published after its transmittal to the parties, unless the parties decide otherwise. If no agreement is reached, the final report shall contain a summary of the work of the Commission; it shall be delivered to the parties, and shall be published after the expiration of six months unless the parties decide otherwise. In both cases, the final report shall be adopted by a majority vote.

ARTICLE XXVIII

The reports and conclusions of the Commission of Investigation and Conciliation shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

ARTICLE XXIX

The Commission of Investigation and Conciliation shall transmit to each of the parties, as well as to the Pan American Union, certified copies of the minutes of its proceedings. These minutes shall not be published unless the parties so decide.

ARTICLE XXX

Each member of the Commission shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree thereon, the Council of the Organization shall determine the remuneration. Each government shall pay its own expenses and an equal share of the common expenses of the Commission, including the aforementioned remunerations.

CHAPTER 4. JUDICIAL PROCEDURE

ARTICLE XXXI

In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory ipso facto, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

- (a) The interpretation of a treaty;
- (b) Any question of international law
- (c) The existence of any fact which, if established, would constitute the breach of an international obligation;
- (d) The nature or extent of the reparation to be made for the breach of an international obligation.

ARTICLE XXXII

When the conciliation procedure previously established in the present Treaty or by agreement of the parties does not lead to a solution, and the said parties have not agreed upon an arbitral procedure, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof. The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of the said Statute.

ARTICLE XXXIII

If the parties fail to agree as to whether the Court has jurisdiction over the controversy, the Court itself shall first decide that question.

ARTICLE XXXIV

If the Court, for the reasons set forth in Articles V, VI and VII of this Treaty, declares itself to be without jurisdiction to hear the controversy, such controversy shall be declared ended.

ARTICLE XXXV

If the Court for any other reason declares itself to be without jurisdiction to hear and adjudge the controversy, the High Contracting Parties obligate themselves to submit it to arbitration, in accordance with the provisions of Chapter Five of this Treaty.

ARTICLE XXXVI

In the case of controversies submitted to the judicial procedure to which this Treaty refers, the decision shall devolve upon the full Court, or, if the parties so request, upon a special chamber in conformity with Article 26 of the Statute of the Court. The parties may agree, moreover, to have the controversy decided *ex aequo et bono*.

ARTICLE XXXVII

The procedure to be followed by the Court shall be that established in the Statute thereof.

CHAPTER 5. PROCEDURE OF ARBITRATION

ARTICLE XXXVIII

Notwithstanding the provisions of Chapter 4 of this Treaty, the High Contracting Parties may, if they so agree, submit to arbitration differences of any kind, whether Juridical or not, that have arisen or may arise in the future between them.

ARTICLE XXXIX

The Arbitral Tribunal to which a controversy is to be submitted shall, in the cases contemplated in Articles XXXV and XXXVIII of the present Treaty, be constituted in the following manner, unless there exists an agreement to the contrary.

ARTICLE XL

(1) Within a period of two months after notification of the decision of the Court in the case provided for in Article XXXV, each party shall name one arbiter of recognized competence in questions of international law and of the highest integrity, and shall transmit the designation to the Council of the Organization. At the same time, each party shall present to the Council a list of ten jurists chosen from among those on the general panel of members of the Permanent Court of Arbitration of The Hague who do not belong to its national group and who are willing to be members of the Arbitral Tribunal.

(2) The Council of the Organization shall, within the month following the presentation of the lists, proceed to establish the Arbitral Tribunal in the following manner:

(a) If the lists presented by the parties contain three names in common, such persons, together with the two directly named by the parties, shall constitute the Arbitral Tribunal;

(b) In case these lists contain more than three names in common, the three arbiters needed to complete the Tribunal shall be selected by lot;

(c) In the circumstances envisaged in the two preceding clauses, the five arbiters designated shall choose one of their number as presiding officer;

(d) If the lists contain only two names in common, such candidates and the two arbiters directly selected by the parties shall by common agreement choose the fifth arbiter, who shall preside over the Tribunal. The choice shall devolve upon a jurist on the aforesaid general panel of the Permanent Court of Arbitration of The Hague who has not been included in the lists drawn up by the parties;

(e) If the lists contain only one name in common, that person shall be a member of the Tribunal, and another name shall be chosen by lot from among the eighteen jurists remaining on the above-mentioned lists. The presiding officer shall be elected in accordance with the procedure established in the preceding clause;

(f) If the lists contain no names in common, one arbiter shall be chosen by lot from each of the lists; and the fifth arbiter, who shall act as presiding officer, shall be chosen in the manner previously indicated;

(g) If the four arbiters cannot agree upon a fifth arbiter within one month after the Council of the Organization has notified them of their appointment each of them shall separately arrange the list of jurists in the order of their preference and, after comparison of the lists so formed the person who first obtains a majority vote shall be declared elected.

ARTICLE XLI

The parties may by mutual agreement establish the Tribunal in the manner they deem most appropriate; they may even select a single arbiter, designating in such case a chief of

state, an eminent jurist, or any court of justice in which the parties have mutual confidence.

ARTICLE XLII

When more than two states are involved in the same controversy, the states defending the same interests shall be considered as a single party. If they have opposing interests they shall have the right to increase the number of arbiters so that all parties may have equal representation. The presiding officer shall be selected by the method established in Article XL.

ARTICLE XLIII

The parties shall in each case draw up a special agreement clearly defining the specific matter that is the subject of the controversy, the seat of the Tribunal, the rules of procedure to be observed, the period within the award is to be handed down, and such other conditions as they may agree upon among themselves.

If the special agreement cannot be drawn up within three months after the date of the installation of the Tribunal, it shall be drawn up by the International Court of Justice through summary procedure, and shall be binding upon the parties.

ARTICLE XLIV

The parties may be represented before the Arbitral Tribunal by such persons as they may designate.

ARTICLE XLV

If one of the parties fails to designate its arbiter and present its list of candidates within the period provided for in Article XL, the other party shall have the right to request the Council of the Organization to establish the Arbitral Tribunal. The Council shall immediately urge the delinquent party to fulfill its obligations within an additional period of fifteen days, after which time the Council itself shall establish the Tribunal in the following manner:

- (a) It shall select a name by lot from the list presented by the petitioning party.
- (b) It shall choose, by absolute majority vote, two jurists from the general panel of the Permanent Court of Arbitration of The Hague who do not belong to the national group of any of the parties.
- (c) The three persons so designated, together with the one directly chosen by the petitioning party, shall select the fifth arbiter, who shall act as presiding officer, in the manner provided for in Article XL.
- (d) Once the Tribunal is installed, the procedure established in Article XLIII shall be followed.

ARTICLE XLVI

The award shall be accompanied by a supporting opinion, shall be adopted by a majority vote, and shall be published after notification thereof has been given to the parties. The dissenting arbiter or arbiters shall have the right to state the grounds for their dissent.

The award, once it is duly handed down and made known to the parties shall settle the controversy definitively, shall not be subject to appeal, and shall be carried out immediately.

ARTICLE XLVII

Any differences that arise in regard to the interpretation or execution of the award shall be submitted to the decision of the Arbitral Tribunal that rendered the award.

ARTICLE XLVIII

Within a year after notification thereof, the award shall be subject to review by the same Tribunal at the request of one of the parties, provided a previously existing fact is discovered unknown to the Tribunal and to the party requesting the review, and provided the Tribunal is of the opinion that such fact might have a decisive influence on the award.

ARTICLE XLIX

Every member of the Tribunal shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree on the amount, the Council of the Organization shall determine the remuneration. Each Government shall pay its own expenses and an equal share of the common expenses of the Tribunal, including the aforementioned remunerations.

CHAPTER 6. FULFILLMENT OF DECISIONS

ARTICLE L

If one of the High Contracting Parties should fail to carry out the obligations imposed upon it by a decision of the International Court of Justice or by an arbitral award, the other party or parties concerned shall, before resorting to the Security Council of the United Nations, propose a Meeting of Consultation of Ministers of Foreign Affairs to agree upon appropriate measures to ensure the fulfillment of the judicial decision or arbitral award.

CHAPTER 7. ADVISORY OPINIONS

ARTICLE LI

The parties concerned in the solution of a controversy may, by agreement petition the General Assembly or the Security Council of the United Nations to request an advisory opinion of the International Court of Justice on any juridical question.

The petition shall be made through the Council of the Organization of American States.

CHAPTER 8. FINAL PROVISIONS

ARTICLE LII

The present Treaty shall be ratified by the High Contracting Parties in accordance with their constitutional procedures. The original instrument shall be deposited in the Pan American Union, which shall transmit an authentic certified copy to each Government for the purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan American Union' which shall notify the signatory governments of the deposit. Such notification shall be considered as an exchange of ratifications.

ARTICLE LIII

This Treaty shall come into effect between the High Contracting Parties in the order in which they deposit their respective ratifications.

ARTICLE LIV

Any American State which is not a signatory to the present Treaty, or which has made reservations thereto, may adhere to it, or may withdraw its reservations in whole or in part, by transmitting an official instrument to the Pan American Union, which shall notify the other High Contracting Parties in the manner herein established.

ARTICLE LV

Should any of the High Contracting Parties make reservations concerning the present Treaty, such reservations shall, with respect to the state that makes them, apply to all signatory states on the basis of reciprocity.

ARTICLE LVI

The present Treaty shall remain in force indefinitely, but may be denounced upon one year's notice, at the end of which period it shall cease to be in force with respect to the state denouncing it, but shall continue in force for the remaining signatories. The denunciation shall be addressed to the Pan American Union, which shall transmit it to the other Contracting Parties.

The denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification.

ARTICLE LVII

The present Treaty shall be registered with the Secretariat of the United Nations through the Pan American Union.

ARTICLE LVIII

As this Treaty comes into effect through the successive ratifications of the High Contracting Parties, the following treaties, conventions and protocols shall cease to be in force with respect to such parties:

Treaty to Avoid or Prevent Conflicts between the American States, of May 3, 1923

General Convention of Inter-American Conciliation, of January 5, 1929;

General Treaty of Inter-American Arbitration and Additional Protocol of Progressive Arbitration, of January 5, 1929;

Additional Protocol to the General Convention of Inter-American Conciliation, of December 26, 1933;

Anti-War Treaty of Non-Aggression and Conciliation, of October 10, 1933;

Convention to Coordinate, Extend and Assure the Fulfillment of the Existing Treaties between the American States, of December 23, 1936;

Inter-American Treaty on Good Offices and Mediation, of December 23, 1936;

Treaty on the Prevention of Controversies, of December 23, 1936.

ARTICLE LIX

The provisions of the foregoing Article shall not apply to procedures already initiated or agreed upon in accordance with any of the above-mentioned international instruments.

ARTICLE LX

The present Treaty shall be called the "PACT OF BOGOTA".

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having deposited their full powers, found to be in good and due form, sign the present Treaty, in the name of their respective Governments, on the dates appearing below their signatures.

Done at the City of Bogota, in four texts, in the English, French, Portuguese and Spanish languages respectively, on the thirtieth day of April, nineteen hundred forty-eight.

RESERVATIONS

Argentina

"The Delegation of the Argentine Republic, on signing the American Treaty on Pacific Settlement (Pact of Bogota), makes reservations in regard to the following articles, to which it does not adhere:

(1) VII, concerning the protection of aliens

(2) Chapter 4 (Articles XXXI to XXXVII), Judicial Procedure;

(3) Chapter 5 (Articles XXXVIII to XLIX), Procedure of Arbitration;

(4) (chapter 6 (Article L), Fulfillment of Decisions.

Arbitration and judicial procedure have as institutions, the firm adherence of the Argentine Republic. but the Delegation cannot accept the form in which the Procedures for their application have been regulated, since, in its opinion, they should have been established only for controversies arising in the future and not originating in or having any relation to causes, situations or facts existing before the signing of this instrument. The compulsory execution of arbitral or judicial decisions and the limitation which Prevents the states from judging for themselves in regard to matters that pertain to their domestic jurisdiction in accordance with Article V are contrary to Argentine tradition. The protection of aliens, who in the Argentine Republic are protected by its Supreme Law to the same extent as the nationals, is also contrary to that tradition."

Bolivia

"The Delegation of Bolivia makes a reservation with regard to Article VI, inasmuch as it considers that pacific procedures may also be applied to controversies arising from matters settled by arrangement between the Parties' when the said arrangement affects the vital interests of a state."

Ecuador

"The Delegation of Ecuador, upon signing this Pact, makes an express reservation with regard to Article VI and also every provision that contradicts or is not in harmony with the principles proclaimed by or the stipulations contained in the Charter of the United Nations, the Charter of the Organization of American States, or the Constitution of the Republic of Ecuador."

United States of America

"1. The United States does not undertake as the complainant State to submit to the International Court of Justice any controversy which is not considered to be properly within the jurisdiction of the Court.

2. The submission on the part of the United States of any controversy to arbitration, as distinguished from judicial settlement, shall be dependent upon the conclusion of a special agreement between the parties to the case.

3. The acceptance by the United States of the jurisdiction of the International Court of Justice as compulsory ipso facto and without special agreement, as provided in this Treaty, is limited by any jurisdictional or other limitations contained in any Declaration deposited by the United States under Article 36, paragraph 4, of the Statute of the Court, and in force at the time of the submission of any case.

4. The Government of the United States cannot accept Article VII relating to diplomatic protection and the exhaustion of remedies. For its part, the Government of the United

States maintains the rules of diplomatic protection, including the rule of exhaustion of local remedies by aliens, as provided by international law."

Paraguay

"The Delegation of Paraguay makes the following reservation:

Paraguay stipulates the prior agreement of the parties as a prerequisite to the arbitration procedure established in this Treaty for every question of a nonjudicial nature affecting national sovereignty and not specifically agreed upon in treaties now in force."

Peru

"The Delegation of Peru makes the following reservations:

1. Reservation with regard to the second part of Article V, because it considers that domestic jurisdiction should be defined by the state itself.
2. Reservation with regard to Article XXXIII and the pertinent part of Article XXXIV, inasmuch as it considers that the exceptions of *res judicata*, resolved by settlement between the parties or governed by agreements and treaties in force, determine, in virtue of their objective and peremptory nature, the exclusion of these cases from the application of every procedure.
3. Reservation with regard to Article XXXV, in the sense that, before arbitration is resorted to, there may be, at the request of one of the parties, a meeting of the Organ of Consultation, as established in the Charter of the Organization of American States.
4. Reservation with regard to Article LXV (*This is a misprint in the source document and should read Article XLV. Note added by Tocsin-Bang Archive*), because it believes that arbitration set up without the participation of one of the parties is in contradiction with its constitutional provisions."

Nicaragua

"The Nicaraguan Delegation, on giving its approval to the American Treaty on Pacific Settlement (Pact of Bogota) wishes to record expressly that no provisions contained in the said Treaty may prejudice any position assumed by the Government of Nicaragua with respect to arbitral decisions the validity of which it has contested on the basis of the principles of international law, which clearly permit arbitral decisions to be attacked when they are adjudged to be null or invalidated. Consequently, the signature of the Nicaraguan Delegation to the Treaty in question cannot be alleged as an acceptance of any arbitral decisions that Nicaragua has contested and the validity of which is not certain.

Hence the Nicaraguan Delegation reiterates the statement made on the 28th of the current month on approving the text of the above-mentioned Treaty in Committee III."

Notes: