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Two draft agreements with the Hague Conference on Private International Law and the Rome Institute for the Unification of Private Law

Report
Committee on Legal Affairs and Human Rights
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A. Explanatory Memorandum

1.

1. On 18th September, 1953, the Assembly referred to the Committee on Legal and Administrative Questions the request of the Committee of Ministers for an Opinion on two draft agreements with the Hague Conference on Private International Law and the Rome Institute for the Unification of Private Law (Reference to Committee No. 13).

2. The two draft agreements were considered by the Committee on Legal and Administrative Questions at a meeting held on 23rd September, 1953, when the following draft - Opinion now submitted to the Assembly was unanimously adopted.

B. Draft Opinion

The Assembly has taken note of the request for an Opinion by the Committee of Ministers on the two draft Agreements with the Hague Conference on Private International Law and the International Institute for the Unification of Private Law at Rome. It is observed that the Committee of Ministers has agreed to the requests of the Assembly contained in its Reply to the Committee of Ministers (Fourth Session, Doc. 28, section III, chapter 1), namely that it should be kept informed of any proposed Agreement between the Council of Europe and The Hague Conference on Private International Law before the signature of such an agreement and that an Agreement should be concluded with the International Institute for the Unification of Private Law at Rome at the same time as that concluded with the Hague Conference.

The Assembly wishes to make a number of comments on the two draft Agreements 1 submitted to it. These are mostly points of drafting.

I

Draft Agreement with the Hague Conference

1. Preamble, paragraph 1. In the copy intended for the Council of Europe, it is desirable to name the Council first. This is in accordance with the practice whereby when an agreement between two parties is drawn up in two copies, each party is named first in one copy and second in the other.

2. Preamble, paragraph 3. Amendment proposed : (French text only) to delete the word " rentre " and to substitute for it the word " entre ".

3. Preamble, paragraph 7 Amendment proposed : to delete the word " competence " and to substitute for it the word " experience " . This is in order to stress the most outstanding and unchallenged characteristic of the Conference.

Preamble, paragraph 8 Amendment proposed : to delete the words " so far as they relate to the ", which appear to be superfluous.

Article 2 The French text should read : " Unification du droit international privé ".

Article 4 The Assembly fully shares the preoccupation which is inherent in this article, namely that the organs of the Council should be kept fully informed of progress achieved on studies undertaken at its request, and that the Conference should be given the fullest information on the aims and purposes of the Council in referring questions to the Conference. It is clear, however, that a more flexible method of communication than the compulsory participation by an official of the Secretariat in the work of the Conference would not be entirely satisfactory, and that cooperation between the two organisations would be better assured if the second proposition of Article 4 were worded as follow : " The Council may send this official or another representative to take part in the preparatory work relating to questions submitted to the Conference by the Council. " The first sentence of this Article remains as follows :" An official of the Secretariat- General of the Council of Europe will ensure liaison between the two organisations. "

Article 5 The first sentence seems to be partly a repetition of Article 2, which requires that the conclusions of the Conference relating to a question referred to it by the Council shall be communicated to the Council, and thus provides for the case mentioned in the first paragraph of Article 5. It can therefore be deleted, but in that case a clause should be inserted at the end of the paragraph to make it clear that the Conventions referred to are those initiated by the Council of Europe. With regard to the second paragraph of Article 5, the Assembly fully approves the idea which the authors apparently had in mind here—namely, that the Council should only make amendments in exceptional cases and that there can be no question of its revising the wording of texts carefully drafted by experts of recognised- authority. It is felt, however, that this idea is made sufficiently clear by stating that amendments should only be proposed in cases where they are considered necessary. To add a clause about the expediency of such revisions would only serve to obscure this idea, with which it is in any case hardly compatible.

Article 6 It is desired that this clause should mention that the Conference may request the Council's opinion, when it considers this desirable, on any aspect of a question referred to it, in order to avoid research being undertaken on lines not thought desirable by the Council. The last paragraph of Article 6 should therefore read as follows : " The Conference may ask the advice of the Council on any matter referred to it by the latter, or may request the Council to recommend to its Members etc... "

II

Draft Agreement with the Rome Institute

4. Preamble, paragraph 3 Amendment proposed to delete the words " is an international organisation specialising " and to substitute for it the word " specialises ".

5. Article 1 It is proposed in the French text only to replace the word " et " between " Conseil de V Europe" and " Secrétariat- General " by the word " ou " (no change being required in the English text), in order to avoid the repetition suggested by the present wording. The words " insofar as its means permit " are unnecessary and should be deleted.

6. Article 2 Amendment proposed : to delete the words " which may be ".

7. Article 4 The following improved wording is suggested : " Subject to such preliminary consultations as may be necessary, the Institute may propose to the Committee of Ministers items for inclusion in the Agenda of the Committee of Ministers or of the Consultative Assembly. Such questions may include the adoption by the Members of the Council of draft Conventions prepared by the Institute. "

8. Article 5, paragraph 2 It would seem superfluous to provide for consultations on the subject of sending representatives to certain meetings. It is clear that such invitations can bo extended without qualification, in the case of meetings in which the collaboration of the Institute has been requested; it would also be advisable to specify that in such cases the representatives would not only attend but take an active part in the proceedings. As far as Assembly Sessions are concerned, it seems superfluous to make specific mention of these as the Sittings are public. This paragraph should therefore be re-worded as follows : " The Rome Institute shall be invited to take part in the discussions in any Committee which may be considering questions regarding which the Institute has been requested to give its assistance. "

9. Article 7 It is proposed to delete this Article. It is, indeed, obvious that the Contracting Parties would consult each other with a view to the settlement of any difficulties arising in connection with the implementation of this Agreement.

Appendix NEW TEXT OF THE TWO DRAFT AGREEMENTS AS PROPOSED BY THE ASSEMBLY

Draft Agreement between the Council of Europe and the Hague Conference on Private International Law

The Council of Europe, of the first part, and

The Government of the Kingdom of the Netherlands, representing the Hague Conference on Private International Law and, more particularly, acting in accordance with the desire expressed in the Final Act of the Seventh Session of the Conference, dated 31st October, 1951 (Part D, Section (a), concerning future relations between the Conference and the Council of Europe, of the second part,

Considering that it is within the aims of the Hague Conference to work for the progressive unification of the rules of Private International Law ;

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members, and that this aim is to be pursued inter alia by the conclusion of agreements in the legal and administrative fields;

Having regard to paragraph (c) of Article 1 of the Statute of the Council of Europe, which provides that " participation in the Council of Europe shall not affect the collaboration of its Members in the work of the United Nations and of other international organisations or unions to which they are parties " ;

Desirous of avoiding, as far as possible, duplication of work between the Council of Europe and the Hague Conference;

Having regard to the extensive experience of the Hague Conference in matters relating to the unification of Private International Law;

Having regard to the desire expressed by the Hague Conference for close co-operation with the Council of Europe, in order that the Conference should be able to contribute to the achievement of the aims of the Council in the field of Private International Law, and in order that the Conference should be able to benefit from the expression of European co-operation afforded by the Council;

Taking into account the independent character of the two organisations,

Have agreed as follows :

Article 1

The Committee of Ministers of the Council of Europe will refer to the Conference questions relating to the unification of Private International Law which may be submitted to it for examination, unless special circumstances warrant a departure from this practice.

Article 2

When a question of unification of Private International Law has been referred to the Conference by the Council, the Conference will either prepare a draft Convention or state its opinion on the subject. In either case, the conclusions of the Conference will be communicated to the Council.

Article 3

The Permanent Bureau of the Conference which it is proposed to create will be the competent organ for correspondence with the Council.

Article 4

An official of the Secretariat-General of the Council of Europe will ensure liaison between the two organisations. The Council may send this official or another representative to take part in the preparatory work relating to questions submitted to the Conference by the Council.

Article 5

The Council will recommend that its Members should take all appropriate action calculated to lead to the signature and ratification of Conventions adopted by the Hague Conference concerning matters submitted to it by the Council.

If the Council considers it necessary to propose modifications to a draft Convention adopted by the Conference, it will communicate its views to the Conference and the latter will take a decision as quickly as possible, if necessary after written consultation of the Governments concerned.

Article 6

The Conference may ask the advice of the Council on any matter referred to it by the latter, or request the Council to recommend to its Members that they should sign, ratify or accede to any other Conventions adopted by the Conference.

Article 7

This Agreement is concluded for a period of four years and thereafter shall be automatically renewed for further successive periods of four years, subject to the right of either party to terminate it at the expiry of the initial period or of any subsequent period by a notification to that effect addressed to the other party at least one year before the expiry of the period in question.

II Draft Agreement between the Council of Europe and the International Institute for the Unification of Private Law

The Council of Europe, of the one part, and

The International Institute for the Unification of Private Law, of the other part,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members, and that this aim is to be pursued inter alia by the conclusion of agreements in the legal and administrative fields;

Considering that the International Institute for the Unification of Private Law, by the terms of its Statute, and by the nature of the activities which it has carried on since its foundation, specialises in the unification, as between States, of the rules of private law;

Considering that the International Institute for the Unification of Private Law has declared its readiness to assist the Council of Europe in the achievement of its aims;

Having regard to the assistance which the Institute has already furnished to the Council in legal matters ;

Being desirous of defining the relation between the two organisations by a formal agreement,

Have agreed as follows :

Article 1

At the request of the organs of the Council of Europe or of its Secretariat-General,the International Institute for the Unification of Private Law shall assist the Council in the study of any questions concerning comparative law or the unification of the rules of private law which may be submitted to the Council for consideration.

Article 2

The Council of Europe will inform the Institute of all questions relating to the unification, as between States, of the rules of private law submitted for its consideration and will give the Institute an opportunity of expressing its views thereon.

Article 3

The assistance referred to in Article 1 shall include furnishing the Council with information and the preparation of technical studies and preliminary draft Conventions.

Article 4

Subject to such preliminary consultations as may be necessary, the Institute may propose to the Committee of Ministers items for inclusion in the Agenda of the Committee of Ministers or of the Consultative Assembly. Such questions may include the adoption by the Members of the Council of draft Conventions prepared by the Institute.

Article 5

The Secretariat-General of the Council of Europe shall be invited to send representatives to any meetings of the Rome Institute at which questions of interest to the Council are to be considered.

The Rome Institute shall be invited to take part in the discussions in any committee considering questions regarding which the Institute has been requested to give its assistance.

Whenever it appears advisable, a representative of the Rome Institute shall be invited to attend meetings of the committees of governmental experts convened by the Committee of Ministers.

Article 6

If compliance with a request for assistance made by the Council of Europe in accordance with Article 1 involves the Institute in any substantial expenditure, consultations shall take place with a view to determining the most equitable manner of meeting such expenditure.

Article 7

This Agreement shall come into force on the date of signature.

Article 8

This Agreement is concluded for a period of four years and thereafter shall be automatically renewed for further successive periods of four years, subject to the right of either party to terminate it at the expiry of the initial period or of any subsequent period by a notification to that effect addressed to the other party at least one year before the expiry of the period in question.