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Draft European Convention for the Peaceful Settlement of disputes

Request for an opinion

Committee of Ministers

Letter from the Secretary-General to the President of the Assembly

Monsieur le Président,

In its Supplementary Report to the Assembly in September, 1953 the Committee of Ministers stated that it would transmit to the Assembly for its opinion the draft Convention for the Peaceful Settlement of Disputes when the Governments had reached agreement on the text.

In its Fifth Report the Committee of Ministers stated that it was re-examining this text, as a result of a proposal on arbitration having been submitted by the Swedish Government.

As the Committee of Ministers has in the meantime unanimously agreed that this proposal could not at present be adopted, it has decided to adhere to the draft Convention as drawn up by the experts.

In accordance with the undertaking previously given, the Committee of Ministers has instructed me to transmit this text to the Assembly for its opinion.

I am, Sir,

Your most obedient servant,

signed : Léon MARCHAL

Secretary-General.

Draft European Convention for the Peaceful Settlement of Disputes

The Governments signatory hereto, being Members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members;

Convinced that the pursuit of peace based upon justice is vital for the preservation of human society and civilisation;

Resolved to settle by peaceful means any disputes which may arise between them,

Have agreed as follows :

CHAPTER I

Judicial settlement

Article 1



The High Contracting Parties shall submit to the judgement of the International Court of Justice all international legal disputes which may arise between them, including, in particular, those concerning :

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

Article 2

1. The provisions of Article 1 shall not affect undertakings by which the High Contracting Parties have accepted or may accept the jurisdiction of the International Court of Justice for the settlement of other disputes.

2. The parties to a dispute may agree to resort to the procedure of conciliation before that of judicial settlement.

Article 3

The High Contracting Parties which are not parties to the Statute of the International Court of Justice shall carry out the measures necessary to enable them to have access thereto.

CHAPTER II

Conciliation

Article 1

J. The High Contracting Parties shall submit to conciliation all disputes which may arise between them, other than disputes falling within the scope of Article 1.

2. The provisions of this Article shall not prejudice the rights of Parties under Article 21, paragraph 2.

Article 5

1. When a dispute arises falling within the scope of Article 4, it shall be brought before a Conciliation Commission, which shall be set up by the parties concerned within a period of three months from the date on which a request to that effect is made by one of the parties to the other party.

2. The parties may by common agreement within the same time-limit refer the dispute for conciliation to the European Commission of Human Rights provided for by the Rome Convention of 4th November, 1950.

Article 6

In the absence of agreement to the contrary between the parties concerned the Special Conciliation Commission shall be constituted as follows :

The Commission shall be composed of five members. The parties shall each nominate one Commissioner, who may be chosen from among their respective nationals. The three other Commissioners, including the President, shall be chosen by agreement from among the nationals of third States. These three Commissioners shall be of different nationalities and shall not be habitually resident in the territory nor be in the service of the parties.

Article 7

If the nomination of the Commissioners to be designated jointly is not made within, the period provided for in Article 5, the task of making the necessary nominations shall be entrusted to the Government of a third State, chosen by agreement between the parties, or, failing such agreement being reached within three months, to the President of the International Court of Justice. Should the latter be a national of one of the parties to the dispute, this task shall be entrusted to the Vice-President of the Court, or to the next senior judge of the Court who is not a national of the parties.

Article 8

Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 9

1. Disputes shall be brought before the Conciliation Commission by means of an application addressed to the President by the two parties acting in agreement, or in default thereof by one or other of the parties.
2. The application, after giving a summary account of the subject of the dispute, shall contain the invitation to the Commission to take all necessary measures with a view to arriving at an amicable solution.
3. If the application emanates from only one of the parties, the other party shall, without delay, be notified of it by that party.

Article 10

1. In the absence of agreement to the contrary between the parties, the Conciliation Commission shall meet at the seat of the Council of Europe or at some other place selected by its President.
2. The Commission may at all times request the Secretary-General of the Council of Europe to afford it his assistance.

Article 11

The work of the Conciliation Commission shall not be conducted in public unless the Commission with the consent of the parties so decides.

Article 12

1. In the absence of agreement to the contrary between the parties the Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to enquiries, the Commission, unless it decides unanimously to the contrary, shall act in accordance with the provisions of Part III of the Hague Convention, for the Pacific Settlement of International Disputes, of 18th October, 1907.
2. The parties shall be represented before the Conciliation Commission by agents, whose duty shall be to act as intermediaries between them and the Commission ; they may be assisted by counsel and experts appointed by them for that purpose and may request that all persons whose evidence appears to them desirable shall be heard.
3. The Commission shall be entitled to request oral explanations from the agents, counsel and experts of both parties, as well as from all persons it may think desirable to summon with the consent of their Governments.

Article 13

In the absence of agreement to the contrary between the parties, the decisions of the Conciliation Commission shall be taken by a majority vote, and, except in relation to questions of procedure, decisions of the Commission shall be valid only if all its members are present.

Article 14

The parties shall facilitate the work of the Conciliation Commission, and, in particular, shall supply if to the greatest possible extent with all relevant documents and information. They shall use the means at their disposal to allow it to proceed in their territory, and in accordance with their law, to the summoning and hearing of witnesses or experts and to visit the localities in question.

Article 15

1. The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of enquiry 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 suitable to it, and lay down the period within which they are to make their decision.
2. At the close of its proceedings, the Commission shall draw up a procès-verbal, stating, as the case may be, either that the parties have come to an agreement and, if need arises, the terms of the agreement, or that it has been impossible to effect a settlement. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken unanimously or by a majority vote.
3. The proceedings of the Commission shall, unless the parties otherwise agree, be terminated within six months from the date on which the Commission shall have been given cognisance of the dispute.

Article 16

The Commission's procès-verbal shall be communicated without delay to the parties. It shall only be published with their consent.

Article 17

1. During the proceedings of the Commission, each of the- Commissioners shall receive emoluments, the amount of which shall be fixed by agreement between the parties, each of which shall contribute an equal share.
2. The general expenses arising out of the working of the Commission shall be divided in the same manner.

Article 18

If the parties agree to refer the dispute to the European Commission of Human Rights the following provisions shall apply :

- a. The parties shall submit the dispute to the Commission through the Secretary-General of the Council of Europe ;
- b. The Commission shall undertake its task of conciliation through a sub-committee appointed in accordance with Article 29 of the Rome Convention 'of 4th November, 1950 ;
- c. The proceedings of the Commission shall be conducted in accordance with Articles 11 to 13 above, and the parties shall facilitate its work in accordance with Article 14 ;
- d. The Commission shall exercise the functions specified in Articles 15 and 16 above.

Article 19

The High Contracting Parties reserve the right to entrust the functions set out in this Chapter to permanent Conciliation Commissions established by them in accordance with mutually agreed procedure.

Article 20

In the case of a mixed dispute involving both questions for which conciliation is appropriate and other questions for which judicial settlement is appropriate, any party to the dispute shall have the right to insist that the judicial settlement of the legal questions shall precede conciliation.

CHAPTER III

Arbitration

Article 21

1. The High Contracting Parties shall submit to an Arbitral Tribunal all disputes upon which, within the month following the termination of the procedure of conciliation provided for in Chapter II, the parties have been unable to agree.

The provisions of the preceding paragraph shall not prejudice the right of parties, if they so agree, to submit any dispute falling within the scope of Article 4 to an Arbitral Tribunal without prior recourse to the procedure of conciliation.

Article 22

In the absence of agreement to the contrary between the parties concerned, the Arbitral Tribunal shall be constituted as follows :

The Arbitral Tribunal shall consist of five members. The parties shall each nominate one member, who may be chosen from among their respective nationals. The other three arbitrators, including the President, shall be chosen by agreement from among the nationals of third States. They shall be of different nationalities and shall not be habitually resident in the territory nor be in the service of the parties.

Article 23

If the nomination of the members of the Arbitral Tribunal is not made within a period of three months from the date on which one of the parties requested the other party to constitute an Arbitral Tribunal, the task of making the necessary nominations shall be entrusted to the Government of a third State, chosen by agreement

between the parties, or, failing agreement within three months, to the President of the International Court of Justice. Should the latter be a national of one of the parties to the dispute, this task shall be entrusted to the Vice-President of the Court, or to the next senior judge of the Court who is not a national of the parties.

Article 24

Vacancies which may occur as a result of death, resignation or any other cause shall be filled within the shortest possible time in the manner fixed for the nominations.

Article 25

The parties shall draw up a special agreement determining the subject of the dispute and the details of procedure.

Article 26

In the absence of sufficient particulars in the special agreement regarding the matters referred to in Article 25, the provisions of Part IV of the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes shall apply so far as possible.

Article 27

Failing the conclusion of a special agreement within a period of three months from the date on which the Arbitral Tribunal was constituted, the dispute may be brought before the Tribunal upon application by one or other party.

Article 28

If nothing is laid down in to, special agreement or no special agreement has been niadc, the Tribunal shall decide *ex aequo et bono* within the framework of the general principles of international law, while respecting the contractual obligations and the final decisions of international tribunals which are binding on the parties.

CHAPTER IV

General provisions

Article 29

The provisions of this Convention shall not apply to :

- a. disputes relating- to facts or situations prior to the entry into force of this Convention as between the parties to the dispute;
- b. disputes concerning questions which by international law are solely within the domestic jurisdiction of States.

Article 30

The provisions of this Convention shall not apply to disputes which the parties have agreed or may agree to submit to another procedure of peaceful settlement. Nevertheless, in respect of disputes falling within the scope of Article 1, the High Contracting Parties shall refrain from invoking as between themselves agreements which only provide for the procedure of conciliation.

Article 31

1. In the case of a dispute the subject of which, according to the municipal law of one of the parties, falls within the competence of its judicial or administrative authorities, the party in question may object to the dispute being submitted for settlement by any of the procedures laid down in this Convention until a decision with final effect has been pronounced, within a reasonable time, by the competent authority.

2. In such a case, the party which desires to resort to any of the procedures laid down in this Convention must notify the other party of its intention within a period of one year from the date of the aforementioned decision.

Article 32

If the execution of a judicial sentence or arbitral award would conflict with a judgment or measure enjoined by a court of law or other authority of one of the parties to the dispute, and if the municipal law of that party does not permit or only partially permits the consequences of the judgment or measure in question to be annulled, the Court or the Arbitral Tribunal shall, if necessary, grant the injured party equitable satisfaction.

Article 33

1. In all cases where a dispute forms the subject of arbitration or judicial proceedings, and particularly if the question on which the parties differ arises out of acts already committed or on the point of being committed, the International Court of Justice, acting in accordance with Article 41 of its Statute, or the Arbitral Tribunal, shall lay down within the shortest possible time the provisional measures to be adopted. The parties to the dispute shall be bound to accept such measures.
2. If the dispute is brought before a Conciliation Commission the latter may recommend to the parties the adoption of such provisional measures as it considers suitable.
3. The parties shall abstain from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision, or upon the arrangements proposed by the Conciliation Commission and, in general, shall abstain from any sort of action whatsoever which may aggravate or extend the dispute.

Article 34

1. This Convention shall remain applicable as between the Parties thereto, even though a third State, whether a Party to the Convention or not, has an interest in the dispute.
2. In the procedure of conciliation, the parties may agree to invite such a third State to intervene.

Article 35

1. In judicial or arbitral procedure, if a third State should consider that its legitimate interests are involved, it may submit to the International Court of Justice or to the Arbitral Tribunal a request to intervene as a third party.
2. It will be for the Court or the Tribunal to decide upon this request.

Article 36

1. On depositing its instrument of ratification, any one of the High Contracting Parties may declare that it will not be bound by :
 - (a) Chapter III relating to arbitration ;
 - (b) Chapters II and III relating to conciliation and arbitration.
2. A High Contracting Party may only benefit from those provisions of this Convention by which it is itself bound.

Article 37

1. The High Contracting Parties may only make reservations which exclude from the application of this Convention disputes concerning particular cases or clearly specified subject matters, such as territorial status, or disputes falling within clearly defined categories. If one of the High Contracting Parties has made a reservation, the other Parties may enforce the same reservation in regard to that Party.
2. Any reservation made shall, unless otherwise expressly stated, be deemed not to apply to the procedure of conciliation.
3. Except as provided in paragraph 4 of this Article, any reservations must be made at the time of depositing instruments of ratification of the Convention.
4. If a High Contracting Party accepts the compulsory jurisdiction of the International Court of Justice under paragraph 2 of Article 36 of the Statute of the said Court subject to reservations, or amends any such reservations, that High Contracting Party may by a simple declaration and subject to the provisions of paragraphs 1 and 2 of this Article make the same reservations to this Convention. Such reservations shall not release the High Contracting Party concerned from its obligations under this Convention in respect of disputes relating to facts or situations prior to the date of the declaration by which it is made. Such disputes shall, however, be submitted to the appropriate procedure under the terms of this Convention within a period of one year from the said date.

Article 38

A Party which is bound by only part of this Convention, or which has made reservations, may at any time, by a simple declaration, either extend the scope of its obligations or abandon all or part of its reservations.

Article 39

The declarations provided for in paragraph 4 of Article 37 and in Article 38 shall be addressed to the Secretary-General of the Council of Europe, who shall transmit copies to each of the other High Contracting Parties.

Article 40

Disputes relating to the interpretation or application of this Convention,, including those concerning the classification of disputes and the scope of reservations, shall be submitted to. the International Court of Justice.

Article 41

1. Each of the High Contracting Parties shall comply with the decision of the International Court of Justice or the award of the Arbitral Tribunal in any dispute to. which it is a party.

2. If one the parties to a dispute fails to carry out its obligations under a decision of the , International Court of Justice or an award of the Arbitral Tribunal, the other party may appeal to the Committee of Ministers of the Council .of Europe. Should it deem necessary, the latter, acting by a two-thirds majority of the representatives entitled to sit on the -Committee, may make recommendations, with a view to ensuring compliance with the said decision or award.

Article 42

1. This Convention may be denounced by a High Contracting Party only after the conclusion of a period of five years from the date of its entry into force for the party in question. Such denunciation shall be subject to six months' notice, which shall be communicated to the Secretary-General of the Council of Europe who shall inform the other Contracting Parties.

2. Denunciation shall not release the High Contracting Party concerned from its obligations under this Convention in respect of disputes relating to facts or situations prior to tho date of the notice referred to in the preceding paragraph. Such disputes shall, however, be submitted to the appropriate procedure under the terms of this Convention within a period of one year from the said date.

3. • .'Subjec t to the same conditions any Contracting Party which ceases to be a Member of the Council of Europe shall cease to be a party to this Convention.

Article 43

1. - • This ' Convention shall be open for signature- by the Members of the' Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary- General of the Council of Europe.

2. This Convention shall enter into force at the date of the deposit of the second instrument of ratification.

3. As regards any signatory ratifying subsequently, the Convention shall enter into force at the date of the deposit of its instrument of ratification.

4. The Secretary-General of the Council of Europe shall notify all the Members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at this day of

in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the Archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatories.