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Draft European Convention for the peaceful settlement of disputes

Report
tabled by the Committee on Legal Affairs and Human Rights

The Assembly,

Having been consulted by the Committee of Ministers on the text of a draft European Convention for the Peaceful Settlement of Disputes (Document 271), prepared in the light of the Assembly's Recommendations 56 (1950) and 36 (1952);

Reaffirming its conviction that the acceptance by the Member States of the Council of Europe of far-reaching obligations in relation to the peaceful settlement of disputes will strengthen European unity and international security,

Welcomes the draft Convention submitted by the Committee of Ministers as a step forward in that direction, as it provides that the obligation to submit to judicial settlement the disputes listed in Article 3, paragraph 2, of the Statute of the International Court of Justice shall hereafter be recognised by all signatories;

Notes, however,, that the Committee on Legal and Administrative Questions, having re-examined the draft Convention with particular regard to the comments made by the Swedish Government and the Swedish Representatives to the Assembly, has deemed it necessary to propose a number of amendments, many of which are of considerable importance;

Approves the Amendments submitted by the Committee on Legal and Administrative Questions;

Recommends that the Report of the Committee on Legal and Administrative Questions appended hereto be submitted by the Committee of Ministers to the Government Experts responsible for drafting the Convention with a view to a final revision of the text; and expresses the hope that the signature and entry into force of the Convention will take place' at an early date and thus constitute a further stage in the formation of a united Europe.

Report of the Committee on Legal and Administrative Questions[1]

proposing a number of amendments to the draft European Convention for the Peaceful Settlement of Disputes submitted by the Committee of Ministers to the Assembly for an Opinion (Document 271)

By letter dated 15th September, 1954 the Committee of Ministers requested the opinion of the Assembly on the draft European Convention for the Peaceful Settlement of Disputes (Document 271).

Your Committee on Legal and Administrative Questions notes with pleasure that, in general, the authors of the draft Convention have, to a large extent, taken into account the comments made by the Assembly Representatives at the joint meeting held on the ,15th May, 1953, between your Committee's Sub-Committee

1. 1. This Report was unanimously approved by the Committee on Legal and Administrative Questions on the 19th April, 1955.

and the Sub-Committee of the Committee of Experts appointed by the Committee of Ministers. In view of the importance of the question and of the difficulties involved, however, your Committee deemed it advisable to reconsider the whole of the draft Convention and to submit the following amendments thereto :

CHAPTER I

Judicial Settlement

ARTICLE 1

Delete the words all international legal disputes and substitute the words all disputes with regard to which the parlies are in conflict as to their respective rights instead thereof.

Statement of reasons : Your Committee would like to omit as a definition of justiciable disputes the words " all international legal disputes". It still prefers the terminology used' in the Locarno Agreements, which was later used in the Geneva General Act for the Pacific Settlement of International Disputes of the 26th September, 1928, namely " all disputes with regard to which the parties are in conflict as to their respective rights". Moreover, the words used in the English and French version of the draft Convention do not correspond.

The terminology proposed by the Committee of Ministers is open to objection. In the French version, the word juridique appears to be superfluous as it precedes the words relevant du droit international, unless it is to be interpreted as a limitation on the latter words. In that case how is the word juridique to be understood? There is anyhow a risk that these words may load to uncertainty as to their interpretation.

If, as seems probable, the authors of the draft Convention did not intend to alter the categories of justiciable disputes as defined in the Geneva General Act of 1928, brought up to date in 1949, there is every advantage in retaining a terminology which has been in force for twenty-five years and whose meaning has been made clear by international opinion and practice.

CHAPTER II

Conciliation

ARTICLE 5, paragraph 1

Replace this paragraph by the following :

When a dispute arises falling within the scope of Article 4, it shall be brought either before a permanent conciliation Commission previously established by the parties concerned, or, in the absence of such commission, before an ad hoc conciliation commission which shall be established within a period of three months from the date on which a request for such establishment is made by one party to the other party.

Statement of reasons : Article 5, paragraph 1, of the draft Convention provides that conciliation shall be carried out by an ad hoc commission set up by the parties concerned. A number of Member States of the Council of Europe have, however, already set up permanent conciliation commissions. These are mentioned in Article 19 of the draft Convention, but that Article merely provides that, where such a commission is already in existence, the High Contracting Parties " reserve the right to entrust the functions set out in this chapter " to these commissions. This leaves open the question whether, in cases where a permanent conciliation commission already exists, the application of the requesting State should not normally be referred to such commission. Your Committee believes that it is desirable to state in the Convention that this should be so. It is therefore proposed that Article 19 should be deleted and that Article 5 should provide for the possibility of making use of permanent conciliation commissions.

ARTICLE 5, paragraph 2

Delete this paragraph.

Statement of reasons : Article 5, paragraph 2, deals with the important question of tbe effect of the new convention on the Convention for the protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th November, 1950, and the Protocol thereto signed at Paris on the 20th March, 1952, hereinafter referred to as the " Rome Convention " and " Paris Protocol".

The significance of this paragraph is not clear.

Is it merely desired to recall that, according to Article 24 of the Rome Convention, " any High Contracting Party may refer to the (European) Commission (of Human Rights), through the Secretary-General of the Council of Europe, any alleged breach of the provisions of the Convention by another High Contracting Party "

and that, in accordance with Article 28, it is the duty of the European Commission of Human Rights, after having ascertained the facts, to endeavour to secure a friendly settlement? In that case, the draft Convention in its present form has the disadvantage of appearing to make it a prior condition for the lodging of a complaint with the European Commission of Human Rights that both parties concerned should agree to this procedure whereas, according to Article 24 of the Rome Convention, any High Contracting Party can exercise this right individually.

A comparison between Article 5, paragraph 2, and Article 18 of the draft Convention, however, would appear to show that it was not intended to alfect the operation of the machinery provided for in the Rome Convention, but rather to make it possible for disputes not arising out of alleged violations of the said Convention to be referred to the European Commission of Human Rights in the capacity of a conciliation commission. The Committee on Legal and Administrative Questions feels unable to approve this proposal. In the first place, the validity of such a proposal is doubtful because the Parties to the new Convention for the peaceful settlement of disputes might not necessarily be the same as the Parties to the Rome Convention and it would not be possible to amend the competence of the European Commission of Human Rights as originally defined in the Rome Convention. In the second place, it would appear undesirable to entrust, even on an optional basis, the task of effecting a friendly settlement in international disputes of all kinds to a commission whose members were appointed for the limited purpose of protecting individual rights.

For all these reasons, your Committee recommends that Article 5, paragraph 2, and the whole of Article 18 should be deleted, it being understood that the important question of the relation between the new Convention and the Rome Convention must be defined in Chapter IV. Proposals in this connection are set out below.

ARTICLE 12, paragraph 1

After the words unless it decides unanimously to the contrary shall, add the words subject to the provisions of Article 15.

Statement of reasons : see Article 15.

ARTICLE 15

Replace this Article by the following :

1. The task of the Conciliation Commission shall be to elucidate the questions in dispute and to endeavour to bring the parties to an agreement.
2. The Commission may therefore, if it deems it expedient, collect by means of enquiry or otherwise information supplementary to that provided by the parties concerned, hi such case, the examination of witnesses or other investigations shall be recorded in the procès-verbal, a copy of which shall be sent to the parties.
3. The Commission 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. The Commission shall state in the final procès-verbal whether the parties have come to an agreement and, if appropriate, the terms of such agreement. No mention shall be made in the procès-verbal of whether the Commission s decisions were taken unanimously or by a majority vote.
4. The Commission may also, but only with the consent of the parties, express an opinion on the questions in dispute.
5. The proceedings of the Commission shall, unless the parties otherwise agree, be terminated within six months from the date on which the dispute shall have been brought before the Commission.

Statement of reasons : Your Committee gave careful consideration to Article 15 of the draft Convention, in the course of which doubt arose as to the precise extent of the task of the Conciliation Commission and also as to the manner in which the results of its work should be recorded.

According to Article 15, paragraph 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... " Certain member s of the Committee felt that these words imply that the task of the Conciliation Commission is two-fold, comprising, on the one hand, the elucidation of the facts, in particular by means of enquiry, and, on the other hand an attempt to bring the parties to an agreement. The failure of the second part of the Conciliation Commission's task cannot deprive the parties of any results achieved during the first part, in particular the statements made in evidence or even the opinion expressed by the Commission as regards the conclusions to be drawn from the information

collected. Thus, although the final procès verbal cannot indicate the proposed terms of an agreement which have not been accepted by the parties, it does not follow that the procès verbal should not or must not include the information collected or even the opinion of the Commission on the facts in dispute.

This view finds solid support in the provision in Article 12, paragraph 1, of the draft Convention according to which, in regard to enquiries, the Commission shall, unless it decides unanimously to the contrary, act in accordance with the provisions of Part lïl of the Hague Convention for the pacific settlement of international disputes, of the 18th October, 1907. Article 35 of this Convention provides expressly that the report of a commission of enquiry shall include a statement of facts.

Other members of the Committee on Legal and Administrative Questions feared that the essentially conciliatory nature of the procedure provided for in Chapter If of the draft Convention might be prejudiced if judicial significance were to be attached to the evidence collected by the Commission in the course of its investigations.

Thirdly, the intermediate view was put forward that, although one cannot altogether leave out the possibility of the Commission being required to report on facts in dispute, as provided for in Part III of the 1907 Hague Convention, it would appear preferable, in view of the conciliatory function of the Commission, to provide that the Commission shall only have the competence so to report as a result of a specific agreement between the parties concerned.

But, on othcrhand when, in the absence of such agreement, the Commission finds cause, as provided for in Article 15 of the draft Convention, to collect with a view to exercising its conciliatory function useful information, in particular by means of enquiry, it would appear excessive to deprive the parties, in case of failure to reach a friendly settlement, of the benefit of the evidence so collected by the Conciliation Commission either by means of enquiry or by examination of a locality or from expert opinion, etc.

A majority of the Committee eventually accepted this view.

In Article 12 of the draft Convention, then, after the words "unanimously to the contrary, shall " the words " subject to the provisions of Article 15 " should be added.

ARTICLE 18

Delete this paragraph.

Statement of reasons : See Article 5, paragraph 2.

ARTICLE 19

Delete this paragraph.

Statement of reasons : See Article 5, paragraph 1.

CHAPTER III

Arbitration

Your Committee on Legal and Administrative Questions devoted considerable time to Chapter III of the draft Convention.

The object of this Chapter is to complete the machinery for peaceful settlement by submitting to compulsory settlement even those disputes which arise out of conflicts of interests and not conflicts as to respective rights. The difficulties involved in this undertaking have been underlined by the Swedish Foreign Minister, M. Unden, in a memorandum which was submitted to the Committee of Ministers and brought to the notice of your Committee. Your Committee studied this memorandum Avith particular care, as it was inspired by an international lawyer who, in 1928, took a leading part in the drafting of the Geneva General Act for the pacific settlement of international disputes, which already contained the far-reaching provisions reproduced in the draft Convention and criticised in the memorandum. This criticism is undoubtedly strengthened by the fact that, although during the past thirty years compulsory arbitration has been accepted by a number of States, the great majority of them have felt unable to accept such compulsory settlement, and it is even more serious that in practice no dispute of a non-justiciable nature has ever been settled in this manner.

The realistic Swedish proposals, which have been re-examined in your Committee, are based on these considerations. They aim essentially at modifying the obligation to submit to compulsory arbitration by the addition of a saving clause which provides that any State may, for reasons of expediency, refuse to submit to this procedure in a particular case. The application of this clause would be within the competence of the Committee of Ministers.

While it does not fail to recognize the great value of these suggestions, your Committee on Legal and Administrative Questions felt that it could not accept the responsibility of recommending generally such a considerable limitation of the field of application which certain States, rightly or wrongly, have so far believed it possible to assign to compulsory arbitration.

Thus, it is within the framework of the reservations provided for in Chapter IV of the draft Convention that your Committee has felt able in some degree to follow the Swedish proposals by means of the provisions set out below.

Having thus provisionally disposed of this question, the Committee on Legal and Administrative Questions considers it useful to recommend the three following amendments to Chapter III of the draft Convention.

ARTICLE 21

Replace this article by the following :

The High Contracting Parties shall submit to arbitration all disputes which may arise between them other than those mentioned in Article 1 and in respect of which the parties have been unable to agree, either because the parties have by mutual agreement decided not to have prior recourse to conciliation or because conciliation has failed.

Statement of reasons : The proposed amendment only alfects the form of this Article. It would appear preferable and clearer to indicate expressly in the text, rather than by means of a reference, that the disputes to which Chapter III applies are, in principle, those which are not comprised within Article 1 of the Convention. Article 21 could also usefully mention the two cases in which arbitral settlement of such disputes must be resorted to, i.e. absence of any previous resort to conciliation and failure of conciliation.

ARTICLE 22

Insert the following paragraph before the existing paragraph :

1. The application submitted by one party to the other shall specify the subject of the claim which it desires to submit to the arbitrators, the grounds on which sucli claim is based and the name of the arbitrator nominated by that party.

Statement of reasons : The proposed amendment is one of procedure. It appears expedient, in order to speed up the constitution of the arbitral tribunal, to require the State which desires to resort to this procedure to mention in its initial application both the name of the arbitrator nominated by it and also a summary account of the claim which it desires to submit to the arbitrators.

ARTICL E 28

Replace this article by the following :

If no special agreement has been made, or if nothing is laid down in the special agreement, or if no provisions to the contrary are contained in a reservation made by one or other of the parties at the time of the deposit of its instrument of ratification, the arbitral tribunal shall decide ex aequo et bono.

Statement of reasons : The third amendment proposed to Chapter III of the draft Convention concerns the substance of arbitration.

According to Article 28 " if nothing-is laid down in the special agreement or no special agreement has been made, the tribunal shall decide eh 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 ".

This provision, which was already included in the 1928 Geneva General Act for the Pacific Settlement of International Disputes, brought up to date in 1949, has from the beginning been the target of strong criticism. A number of writers have held that it is a contradiction in terms, as claims submitted to .arbitration have necessarily for object a change of existing law and are therefore incapable of solution if the arbitrators are compelled to follow the existing law.

Although certain members of the Committee considered this view to be extreme, they were unanimous in recognising that the present text of Article 28 would take away from the provisions of Chapter III a good deal of their usefulness.

At the most, it would perhaps be possible to provide that the parties might, when making their declaration of acceptance of arbitration, limit in the manner proposed the freedom of decision of the arbitrators.

CHAPTER IV

General Provisions

ARTICLE 29, sub-paragraph (b)

Delete this sub-paragraph.

Statement of reasons : Article 29 of the draft Convention provides in sub-paragraph (b) that the provisions of the Convention shall not apply to " disputes concerning questions which by international law are solely within the domestic jurisdiction of States ". The Committee on Legal and Administrative Questions is in some doubt as to the desirability of this limitation. In its view, such limitation is superfluous as regards judicial settlement, the International Court of Justice having no jurisdiction in the case of applications not based on law, which by définition sets aside those relating to questions which international law leaves to the exclusive competence of States.

Nor does the proposed limitation appear to be advisable as regards conciliation. Certain States may believe it to be in their interests to allow an attempt at conciliation even in the case of disputes whose subject is within their exclusive competence. Your Committee sees no reason why the Convention should render this impossible. Likewise in the case of arbitration the possibility mentioned above cannot be entirely left out and must lead to the same conclusions. No doubt the majority of States will prefer, in general, not to expose themselves to the risks of arbitration or even to the inconvenience of conciliation as regards questions within their exclusive competence. It is, however, sufficient to authorise them to make reservations in this respect.

ARTICLE 30

Add the following paragraph

In particular, this Convention shall in no way affect the application of the provisions of the Convention for the protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November, 1950, and the Protocol thereto signed at Paris on 20th March, 1952, in respect of the settlement of any dispute between High Contracting Parties concerning cm alleged violation of the said Convention or Protocol thereto.

Statement of reasons : Article 30 of the draft Convention concerns the relation between the new Convention and the provisions of previous conventions which may bind certain Contracting Parties as regards the settlement of disputes arising between them.

As stated elsewhere in this report, there is some doubt as to how far the draft Convention affects the Convention for the protection of Human Rights and Fundamental Freedoms and the Protocol thereto.

As it appears desirable that no change should be made at the present time to the obligations undertaken by Member States . of the Council of Europe in this respect, it is proposed that the above paragraph be added to Article 30.

ARTICLE 31, paragraph 2

Replace this paragraph by the following :

If a decision with final effect has been pronounced in the State concerned, it will no longer be possible to resort to any of the procedures laid down in this Convention after the expiration of a period of two years from the date of the aforementioned decision.

Statement of reasons : Article 31 contains in paragraph 2 the following idea : it provides that, 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, it would only be possible to lodge an application after a decision Avith final effect has been pronounced and only on condition that the party which desires to resort to any of the procedures laid down in this Convention notify the other party of its intention within a period of one year from the date of the aforementioned decision.

There is a certain contradiction between the texts of these two paragraphs, as paragraph 2 appears to exclude all possibility of resorting to the procedure of the Convention so long as a decision with final effect has not been pronounced on any appeal lodged by the interested party in the country concerned. Paragraph , on the contrary, makes it possible for the dispute to be raised on the international plane within a reasonable time when no decision with final effect has been taken in the State concerned.

In order to avoid this contradiction, it would appear preferable to amend the second paragraph of Article 3:1. Moreover, the words " notify the other party of its intention... to resort " are vague and do not exclude the possibility of considerable new delays. It would appear desirable to limit the period within which an objection may be lodged; but in that case the time-limit could be increased to two years.

ARTICLE 37

(i) Add the following words at the beginning of the first sentence :

Without prejudice lo the provisions oj Article 28 concerning the principles which the arbitral tribunal shall be authorised to apply.

(ii) Add a new paragraph 1A as follows :

A High Contracting Parly may also exclude from the field of application of Chapter II or Chapter III of this Convention disputes concerning questions which by international law are solely within the domestic jurisdiction of Stales or disputes affecting their vital interests.

Statement of reasons : Article 37 deals with the important question of reservations.

As was mentioned above, your Committee on Legal and Administrative Questions wish to see a number of amendments made to this Article :

a. first, it would be desirable to refer to the right of the parties contained in the amended text of Article 28 to limit the power of the arbitrators to decide ex aequo et bono by means of a reservation to the effect that the arbitrators should conform to the principles of law, to contractual obligations or to judicial decisions;

b. secondly, it is necessary to provide that the High Contracting Parties may refuse to submit to arbitration or conciliation disputes which according to international law are within their exclusive competence, it being understood that, as provided for in Article 40 of the draft Convention, the application of this reservation would be subject to the jurisdiction of the International Court of Justice;

c. thirdly, it would be desirable to authorise those States sharing the views of the Swedish Government to make acceptance by them of compulsory arbitration subject to a reservation refusing such arbitration in the case of a dispute affecting their vital interests. The application of this reservation would be within the competence of the Committee of Ministers. Finally, it would be desirable to determine how this competence would be exercised.

As regards the competence to be exercised by the Committee of Ministers it would be preferable to deal with it in Article 40 of the draft Convention.

ARTICLE 40

Replace this Article by the following :

1. Objections relating to the interpretation or application of this Convention or to declarations of acceptance, including possible reservations and objections concerning the nature of disputes, may be submitted by one or other party to the International Court of Justice within three months of the notification by one party to the other of its intention to resort to conciliation or arbitration. Any such objections made after this period shall be decided upon by the body before which the dispute has been brought.

2. Notwithstanding the above provision, an objection concerning the claim by one of the parties that the dispute submitted to arbitration or conciliation by the other party affects the vital interests of the former party and that, in accordance with a reservation made to that effect, arbitration or conciliation is not therefore appropriate may, within the same period, only be submitted by one of the other parties to the Committee of Ministers of the Council of Europe. The latter may, by a two-thirds majority of the representatives entitled to sit in the Committee, either declare that the objection is without foundalion, and in that case refer the dispute for settlement by arbitration, or recognise the objection as partly or wholly valid. In the former case it may determine the limits within which the arbitral tribunal may be

authorised to decide, provided that even in this case the Committee of M blisters may either instruct the parties to lake provisional measures in order to avoid the aggravation of their international relations or authorise the arbitral tribunal lo lay down such a modus vivendi.

3. Objections lodged in accordance with the above-mentioned provisions shall have the eFFect of suspending the conciliation or arbitration proceedings concerned until the decision of The International Court of Justice or of the Committee of Ministers.

Statement of reasons : The following comments arise in connection with Article 40 :

a. The first use of the word " disputes " in this Article is likely to give rise to confusion. This Article does not refer to any new dispute but rather to an objection concerning a point of competence or procedure, in other words, an objection which is additional to the dispute itself.

b. It would be better to avoid the possibility of conciliation or arbitration being impeded by belated objections of competence or of procedure or, worse, by a series of such objections leading to a succession of appeals to the International Court of Justice or the Committee of Ministers.

The above considerations have led your Committee on Legal and Administrative Questions to propose that Article 40 of the draft Convention should be replaced by the above text.

Appendix APPENDIX

Draft European Convention for the Peaceful Settlement of Disputes

Text submitted by the Committee of Ministers to the Assembly

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 bè made for the breach' of an international obligation.

ARTICLE 2

1. The provisions of Article I 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 4

1. 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 he 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 he 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 exports of both parties, as woll 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 it 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.

2. 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, the special agreement or no special agreement has been made, 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 t o :

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 judgement 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 judgement 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.

AUTICLE 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 bo bound by :

a. Chapter fit relating to arbitration; or

b. Chapters If 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 of 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 the 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. Subject 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 shail 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.

Draft European Convention for the Peaceful Settlement of Disputes

Text amended by the Committee on Legal and Administrative Questions

The amendments are printed in italics

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 disputes with regard to which the parties are in conflict as to their respective rights, 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 4

1. 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

When a dispute arises falling within the scope of Article 4, it shall be brought either before a permanent conciliation commission previously established by the parties concerned, or, \in the absence of such commission, before an ad hoc conciliation commission which shall be established within a period of three months from the date on which a request for such establishment is made by one party to the other party.

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 he 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 he 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 exports of both parties, as woll 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 it 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 and to endeavour to bring the parties to an agreement.

2. The Commission may therefore, if it deems it expedient, collect by means of enquiry or otherwise, information supplementary to that provided by the parties concerned. In such case, the examination of witnesses or other investigations shall be recorded in the procès-verbal, a copy of which shall be sent to the parties.

3. The Commission 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. The Commission shall state in the final procès-verbal whether the parties have come to an agreement and, if appropriate, the terms of such agreement. No mention shall be made in the procès-verbal of whether the Commission's decisions were taken unanimously or by a majority vote.

4. The Commission may also, but only with the consent oj the parties, express an opinion on the questions in dispute.

5. The proceedings of the Commission shall, unless the parties otherwise agree, be terminated within six months from the date on which the dispute shall have been brought before the Commission.

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 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

The High Contracting Parties shall submit to arbitration all disputes which may arise between them other than those mentioned in Article 1 and in respect of which the parties have been unable to agree, either because the parties have by mutual agreement decided not to have prior recourse to conciliation or because conciliation has failed.

ARTICLE 22

1. The application submitted by one parly to the other shall specify the subject of the claim which it desires to submit to the arbitrators, the grounds on which such claim is based, and the name of the arbitrator nominated by that party.

2. n 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 no special agreement has been made or if nothing is laid down in the special agreement or if no provisions to the contrary are contained in a reservation made by one or other of the parties at the time of the deposit of its instrument of ratification, the arbitral tribunal shall decide ex aequo et bono.

CHAPTER IV - General provisions

ARTICLE 29

The provisions of this Convention shall not apply to disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute.

ARTICLE 30

1. The provisions of this Convention shal, 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.

2. In particular, this convention shall in no way affect the application of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the dth November, 1950, and Protocol thereto signed at Paris on the 20th March, 1952, in respect of the settlement of any dispute between High Contracting Parties concerning an alleged violation of the said Convention or Protocol thereto.

ARTICLE 31

1. In the case of a dispute the subject of which, according to the municipal law of one of the pai'ties, 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. If a decision with final effect has been pronounced in the State concerned, it will no longer be possible lo resort lo any of the procedures laid down in this Convention after the expiration of a period of two years from the date of the aforementioned decision.

ARTICLE 32

If the execution of a judicial sentence or arbitral award would conflict with a judgement 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 judgement 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 bo bound by :

a. Chapter fit relating to arbitration; or

b. Chapters If 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. Without prejudice to the provisions of Article 28 concerning the principles which the arbitral tribunal shall be authorised to apply, 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.

1 A. A High Contracting Party may also exclude from the field of application of Chapter II or Chapter III of this Convention disputes concerning questions which by international law are solely within the domestic jurisdiction of States or disputes affecting their vital interests.

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

1. Objections relating to the interpretation or application of tliis Convention or to declarations of acceptance, including possible reservations and objections concerning the nature of disputes, may be submitted by one or other party to the International Court of Justice within three months of the notification by one party to the other of its intention to resort to conciliation or arbitration. Any such objections made after this period shall be decided upon by the body before which the dispute has been brought.

2. Notwithstanding the above provision, an objection concerning the claim by one of the parties that the dispute submitted to arbitration or conciliation by the other party affects the vital interests of the former party and that, in accordance with a reservation made to that effect, arbitration or conciliation is not therefore appropriate may, within the same period, only be submitted by one or the other parties to the Committee of Ministers of the Council of Europe. The latter may, by a two-thirds majority of the representatives entitled to sit in the Committee either declare that the objection is without foundation and in that case refer the dispute for settlement by arbitration or recognise the objection as partly or wholly valid. In the former case it may determine the limits within which the arbitral tribunal may be authorised to decide, provided that even in this case the Committee of Ministers may either instruct the parties to take provisional measures in order to avoid the aggravation of their international relations or authorise the arbitral tribunal to lay down such a modus vivendi.

3. Objections lodged in accordance with the above-mentioned provisions shall have the effect of suspending the conciliation or arbitration proceedings concerned until the decision of the International Court of Justice or of the Committee of Ministers.

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 of 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 the 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. Subject 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 shail 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.