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CONSIDERATION OF CONVENTIONS UNDER THE RESPONSIBILITY OF THE CAHDI:

THE EUROPEAN CONVENTION FOR PEACEFUL SETTLEMENT OF DISPUTES (European Treaty Series (ETS) No. 23)

Secretariat memorandum
Prepared by the Directorate of Legal Affairs

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Foreword

1. At its 15th meeting (Strasbourg, 3 and 4 March 1998), further to proposals made by the delegation for the Russian Federation the CAHDI decided to include on its agenda discussions on the legal instruments coming under its responsibility.

2. At its 16th meeting (Paris, 17 and 18 September 1998) the CAHDI examined the European Convention on State Immunity (ETS No. 74) (see document CAHDI (98) 14) and decided that at its 17th meeting the discussion would focus on the European Convention for the Peaceful Settlement of Disputes (ETS No. 23).

3. The following document presents the European Convention for the Peaceful Settlement of Disputes. It contains information on the context in which the convention came into being, the drafting work, the convention's purpose and subject-matter, and an assessment of its effectiveness. The aim is to provide a framework for discussion of the convention within the CAHDI.

4. The text of the convention appears in Appendix 1. Appendix 2 shows the current state of signatures and ratifications, and Appendix 3 reservations and declarations.

Action required

Members of the CAHDI are invited to hold an exchange of views on the effective importance of the European Convention for the Peaceful Settlement of Disputes and to report to the Committee of Ministers of the Council of Europe.

THE EUROPEAN CONVENTION FOR THE PEACEFUL SETTLEMENT OF DISPUTES (ETS No. 23)

(Strasbourg, 29.IV.1957)

I. Background

Unlike the instruments founding other international organisations, the Statute of the Council of Europe says nothing about the settlement of disputes between member states. Since the aim of the Council of Europe is to achieve a greater unity between its members, the idea that disputes might arise between the member states was alien to the viewpoint from which the Statute was drawn up.

The Statute moreover provides that states' participation in the Council of Europe shall not affect their collaboration in the work of the United Nations. A dispute settlement system specific to member states of the Council of Europe was therefore not deemed necessary at the time.

Nonetheless, as far back as 1951 a very clear tendency in favour of such a regional settlement system was to emerge among members of the Consultative Assembly, where proposals were made to set up a European Court of Justice, which would have been a regional court with general jurisdiction. This idea met with opposition, on the ground that such an initiative would undermine the position of the International Court of Justice (ICJ), and it was therefore rejected. Yet, at the time of these proposals the ECSC Treaty already contained provisions establishing a Court of Justice and the European Convention on Human Rights of 4 November 1950 had instituted a European Court of Human Rights. No-one thought of those courts as competing with the ICJ, given the highly specific nature of the disputes for which they had jurisdiction. The proposed European Court of Justice would, however, have been a serious rival to the ICJ, and the Committee of Ministers was therefore against it.

The Assembly then conceived the idea of making it obligatory for Council of Europe member states to refer legal disputes to the International Court of Justice, which was followed by the more general suggestion of drawing inspiration from the Geneva General Act for the Settlement of Disputes of 26 September 1928 in order to define arrangements for the settlement of disputes between Council of Europe member states. It was the Act which served as a basis for the initial drafting work on a European Convention for the Peaceful Settlement of Disputes, which was adopted on 29 April 1957.

There were two obstacles to the alternative solution of requiring member states to submit disputes to the ICJ.

The Statute of the ICJ did not give it compulsory jurisdiction from the outset.

It is true that if all member states of the Council of Europe had agreed to be bound by the optional clause contained in paragraph 3 of Article 36 of the Statute of the ICJ, they could have conferred such jurisdiction on the ICJ by common consent.

However, this would still not have made it possible to settle disputes other than those coming within the ICJ's jurisdiction under paragraph 2 of Article 36 of its Statute, viz:

"legal disputes 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."

At the time of the League of Nations it had already been pointed out that, alongside such disputes coming within the ambit of international law, other disputes might arise where a state was dissatisfied with a situation which it acknowledged to be consistent with the international law in force, but deemed unacceptable as contrary to what it regarded as its vital interests.

In any case, the aim of the General Act for the Settlement of Disputes of 26 September 1928 was to offer a solution to all kinds of disputes, whether legal or non-legal in nature. It provided for a conciliation procedure, following which legal disputes, which Article 17 defined as all those where the parties mutually contested a right, could be referred, even by one side, to the Permanent Court of International Justice, whose jurisdiction was compulsory, or to an arbitral tribunal. Disputes not of a legal nature were to be referred to an arbitral tribunal, possibly at the initiative of a single party.

The ICJ was able to avoid having to determine whether the General Act for the Settlement of Disputes of 1928 had lapsed with the disappearance of the League of Nations.

The United Nations chose to counter the risk of a loophole of this kind by adopting the revised General Act for the Settlement of Disputes of 28 April 1949, which made only minor amendments to the earlier instrument.

For the reasons expounded above, the Consultative Assembly of the Council of Europe chose to draft a European Convention for the Peaceful Settlement of Disputes rather than recommending that member states accede to the revised General Act. The Assembly hoped to improve on the General Act, while at the same time drawing inspiration from it.

At the time of its adoption, the machinery of the European Convention for the Peaceful Settlement of Disputes did not involve any spectacular innovations. The convention's content can be seen to follow directly from the Geneva General Act of 1928, as revised in 1949, in that it is divided into the same three chapters (judicial settlement, conciliation and arbitration) and draws the same distinction between legal and other disputes.

It is a known fact that, for judicial settlement of disputes, recourse to the International Court of Justice was then considered an absolute necessity.

For one thing, there were scarcely any regional courts with general jurisdiction to settle disputes, one of the sole exceptions being the Central American Court of Justice. We have also seen how great was the fear of weakening the role of the International Court of Justice.

This is why, although the need to provide Council of Europe member states with a mechanism for the settlement of disputes was recognised at the time, it was not thought that this might take the form of a genuine regional settlement system.

It was hence deemed sufficient to strengthen the generally applicable machinery in respect of disputes between member states and to broaden the scope for arbitration and conciliation already existing under bilateral agreements between the member states.

It should be noted that "disputes concerning questions which by international law are solely within the domestic jurisdiction of States" are explicitly excluded from the scope of the 1957 convention.

II. The machinery of the European Convention for the Peaceful Settlement of Disputes

A. Judicial settlement

1. Strengthening the role of the International Court of Justice in the settlement of legal disputes

Since one of the principal objectives of the convention was in point of fact to strengthen the international court's role, states ratifying the convention cannot, contrary to what is stipulated in Article 34 in respect of the acceptance of chapters II (conciliation) and III (arbitration), declare that they will not be bound by the first chapter, which makes it mandatory to submit all "international legal disputes" to the International Court of Justice.

It follows that the provisions of the first chapter are binding on Council of Europe member states parties to the convention.

Chapter I of the convention, dealing with judicial settlement, provides:

"The High Contracting Parties shall submit to the judgment 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."

2. Scope of the provisions relating to the settlement of legal disputes

Pursuant to paragraph 1 of Article 34 of the convention, High Contracting Parties are bound by the first chapter thereof, which deals with judicial settlement.

The commitment to submit all international legal disputes to the International Court of Justice, which is set out in the first paragraph of Article 1, goes hand in hand with a definition of a legal dispute, the same as that to be found in Article 36 of the Statute of the ICJ.

The words "in particular" have nevertheless been added to this definition, and this in theory means that the list of legal disputes that must be referred to the court is unlimited.

Mention must also be made of Article 18 of the convention, which relates to "mixed disputes" and gives any party to a dispute the right to insist that conciliation must be preceded by judicial settlement of the legal issues at stake.

B. Arbitration and conciliation

1. Attempts to widen the scope for conciliation and arbitration in the case of disputes that are not legal in nature

Chapter II of the convention, on the subject of conciliation, and Chapter III, on arbitration, can be seen as the outcome of attempts to supplement and adapt the text of the Geneva General Act of 1928 in the light of a debate on certain of its provisions which had been going on for the past thirty years.

2. The conciliation procedure

Chapter II deals with arrangements for conciliation, involving recourse to a Permanent Conciliation Commission set up beforehand by the parties concerned or - a more likely alternative - to a Special Conciliation Commission to be set up within a period of three months.

The convention provides that, failing agreement on the Commission's membership, the choice of commissioners shall be referred to the President of the ICJ.

> "The task of the Special 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."

The procedure culminates in the drafting of a report (*procès-verbal)* confined to stating either that the parties have reached a settlement, and "the terms of the agreement", or that it has been impossible to effect a settlement.

3. The nature of the conciliation procedure adopted under the convention

The question whether prior recourse to conciliation should be obligatory was answered in a flexible manner, reflecting the different solutions successively envisaged in the course of the drafting work.

With regard to disputes that were not legal in nature, the initial intent had been to borrow from the system established by the Geneva General Act, providing that such disputes must be submitted to conciliation before being referred to arbitration.

However, at a later stage in the work, the experts wished to allow parties the possibility of agreeing to refer a dispute directly to an arbitral tribunal where, in the specific circumstances of a case, they were convinced that no settlement was possible through recourse to conciliation.

These two solutions are reflected in paragraphs 1 and 2 of Article 4 of the convention.

As the negotiations were drawing to a close, the convention's authors decided to introduce a system of partial acceptance of its provisions. Article 34 stipulates that a state may declare that it will not be bound by either the chapter relating to arbitration or both that chapter and the chapter relating to conciliation. It is therefore possible for states to be parties to the chapter on conciliation without acceding to that on arbitration.

4. The convention's concept of arbitration

Chapter III provides for recourse to arbitration.

It is for the President of the ICJ to appoint the arbitrators, should the parties fail to agree thereon.

Chapter III has two distinctive features: firstly, it provides that arbitration shall be mandatory in disputes other than the legal disputes defined in Chapter I and, secondly, it makes express reference to the fact that the arbitral tribunal may determine a dispute *ex aequo et bono*, having regard to the general principles of international law.

On the subject of which disputes should be referred to arbitration, one member state pointed out, firstly, that in certain disputes where vital interests were at stake states could hardly be expected to commit themselves unreservedly to a mandatory arbitration procedure and, secondly, that it would be extremely difficult to establish a general rule deciding which disputes must be submitted to arbitration and which did not lend themselves to the procedure.

The state in question proposed that, in each particular case, a political body - which it believed should be the Committee of Ministers of the Council of Europe - should assess whether arbitration was an admissible solution.

The Assembly did not back this proposal, and the Committee of Ministers concurred with the Assembly's position.

The question of the nature of the arbitral tribunal's jurisdiction was also central to the drafting work. The wording proposed by the experts scarcely differed from that ultimately adopted in the convention itself (Article 26):

> "If nothing is laid down in the special agreement or no special agreement has been made, the Tribunal shall decide *ex aequo et bono*, having regard to 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 wording is based on Article 28 of the Geneva General Act of 1928.

III. The convention in practice

The convention laid the foundations for the Federal Republic of Germany's acceptance of the jurisdiction of the ICJ in its dispute with the Netherlands and Denmark over the North Sea continental shelf.

It was also referred to in the disputes between Austria and Italy concerning ethnic minorities in the southern Tyrol.

Another example of practical application of the convention is the Austro-Italian agreement of 29 March 1974 on regulation of cross-border rail traffic. Under that agreement disputes are to be submitted not to the ICJ but to the arbitration procedure provided for in Chapter III of the convention.

At one time Council of Europe member states were wary of the ICJ, and as a result a number of other European conventions provided for dispute settlement procedures of their own, without making reference to the European Convention for the Peaceful Settlement of Disputes, the first chapter of which leads to proceedings before the ICJ.

IV. The convention's effectiveness

The European Convention for the Peaceful Settlement of Disputes came into force on 30 April 1958, and thirteen member states (Austria, Belgium, Denmark, the Federal Republic of Germany, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom) are currently bound by it. Five other member states (France, Greece, Iceland, Ireland and Turkey) have merely signed it.

However, the convention's value cannot solely be gauged from the rare cases where it has openly been relied on.

The fact that the convention exists and that a party to a dispute may threaten to have recourse to it doubtless facilitates the conclusion of friendly settlements.

The convention therefore quite often functions as a "fleet in being".

Given the group of countries currently parties to it and the extent to which they have agreed to be bound thereby, the convention does afford greater scope for judicial settlement of disputes between Council of Europe member states. However, in the past a number of disputes have fallen outside the ambit of the convention - and this may also arise with potential future disputes - primarily because one-third of the member states of the Council of Europe are not parties to it.

It should be noted that the last ratification of the convention by a member state (Liechtenstein) goes back to 18 February 1980, and the last signature to 1958 (Turkey).

V. The role of the Council of Europe

Apart from providing technical assistance in the event of conciliation, the role of the Council of Europe can be seen to be confined to enforcing judicial decisions:

> "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 to the dispute 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." (paragraph 2 of Article 39)

VI. Overview of the dispute settlement machinery established by the convention

The European Convention for the Peaceful Settlement of Disputes of 1957 is based on a distinction between legal disputes, as defined in paragraph 2 of Article 36 of the Statute of the International Court of Justice, and other (non-legal) disputes.

In respect of the former category of dispute, the parties to the convention undertake to accept the compulsory jurisdiction of the ICJ. However, the parties to a legal dispute may agree to submit a dispute to conciliation before having recourse to judicial settlement proceedings before the ICJ.

In the case of disputes not of a legal nature (that is to say disputes other than those mentioned in paragraph 2 of Article 36 of the Statute of the ICJ), the convention provides for the following means of settlement:

a) conciliation, except where the parties to a dispute agree to submit it to an arbitral tribunal without prior recourse to the conciliation procedure, and

b) arbitration, for all disputes which are not legal in nature and which have not been settled by conciliation, either because the parties have agreed not to have prior recourse to it or because conciliation has failed.

Although, under the terms of the convention states parties are precluded from refusing to accept the compulsory jurisdiction of the International Court of Justice in legal disputes, each contracting party can nevertheless declare, on depositing its instrument of ratification, that it will not be bound by either the provisions relating to arbitration or the provisions relating to both conciliation and arbitration.

Certain countries have preferred to make reservations of this kind. Seven Council of Europe member states have filed declarations specifying that their acceptance of the convention does not extend to Chapter III relating to arbitration. These are Belgium, France, Italy, Malta, the Netherlands, Sweden and the United Kingdom.

As to conciliation, only two member states have made declarations specifying that they will not be bound by Chapter II of the convention (Italy and the United Kingdom, in respect of its overseas territories other than the Channel Islands and the Isle of Man). Only the Netherlands, the United Kingdom and Germany have made declarations affecting the territorial scope of the convention.

The convention also stipulates that its provisions shall not apply to disputes which the parties may agree to submit to another procedure of peaceful settlement.

The only proviso thereto is that, in respect of legal disputes, the parties undertake to refrain from invoking as between themselves agreements which do not provide for a procedure entailing a binding decision.

APPENDIX I

EUROPEAN CONVENTION FOR THE PEACEFUL SETTLEMENT OF DISPUTES (ETS 23)

Strasbourg, 29.IV.1957

Preamble

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 disputes other than those mentioned in Article 1. 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. Nevertheless, the parties to a dispute falling within the scope of this article may agree to submit it to an arbitral tribunal without prior recourse to the procedure of conciliation.

Article 5

When a dispute arises which falls within the scope of Article 4, it shall be referred to a Permanent Conciliation Commission competent in the matter, previously set up by the parties concerned. If the parties agree not to have recourse to that Commission, or if there is no such Commission, the dispute shall be referred to a special Conciliation Commission, which shall be set up by the parties 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.

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 Special 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 Special 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 Special 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 Special Conciliation Commission shall lay down its own procedure, which in any case must provide for both parties being heard. In regard to enquiries, subject to the provisions of this Convention, 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 counsels 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, counsels 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 Special 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 Special 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 Special 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

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 19

The High Contracting Parties shall submit to arbitration all disputes which may arise between them other than those mentioned in Article 1 and which have not been settled by conciliation, either because the parties have agreed not to have prior recourse to it or because conciliation has failed.

Article 20

1. The party requesting arbitration shall inform the other party of the claim which it intends to submit to arbitration, of the grounds on which such claim is based and of the name of the arbitrator whom it has nominated.

2. 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 21

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 22

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 nomination.

Article 23

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

Article 24

In the absence of sufficient particulars in the special agreement regarding the matters referred to in Article 23, the provisions of Part IV of The Hague Convention of 18th October 1907 for the Pacific Settlement of International Disputes shall apply so far as possible.

Article 25

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 26

If nothing is laid down in the special agreement or no special agreement has been made, the Tribunal shall decide *ex aequo et bono*, having regard to 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 27

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 28

1. 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 do not provide for a procedure entailing binding decisions.

2. 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 on 4th November 1950, or of the Protocol thereto signed on 20th March 1952.

Article 29

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. 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 five years from the date of the aforementioned decision.

Article 30

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 31

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 32

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 33

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 34

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; or

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 35

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 they are 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 36

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 37

The declarations provided for in paragraph 4 of Article 35 and in Article 36 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 38

1. 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. However, an objection concerning the obligation of a High Contracting Party to submit a particular dispute to arbitration can only be submitted to the Court within a period of three months after the notification by one party to the other of its intention to resort to arbitration. Any such objection made after that period shall be decided upon by the arbitral tribunal. The decision of the Court shall be binding on the body dealing with the dispute.

2. Recourse to the International Court of Justice in accordance with the above provisions shall have the effect of suspending the conciliation or arbitration proceedings concerned until the decision of the Court is known.

Article 39

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 to the dispute 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 40

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 dispute 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 High Contracting Party which ceases to be a member of the Council of Europe shall cease to be a party to this Convention within a period of one year from the said date.

Article 41

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 on the date of the deposit of the second instrument of ratification.

3. As regards any signatory ratifying subsequently, the Convention shall enter into force on 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 Strasbourg, this 29th day of April 1957, 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.

APPENDIX II

CHART OF SIGNATURES AND RATIFICATIONS OF THE EUROPEAN CONVENTION FOR THE PEACEFUL SETTLEMENT OF DISPUTES

APPENDIX III

RESERVATIONS AND DECLARATIONS TO THE EUROPEAN CONVENTION FOR PEACEFUL SETTLEMENT OF DISPUTES (ETS 23)

BELGIUM

Declaration made at the time of deposit of the instrument of ratification, on 20 April 1970 - Or. Fr.

In accordance with the provisions of Article 34 (1) of the Convention, Belgium will not be bound by Chapter III relating to arbitration.

FRANCE

Declaration made at the time of signature, on 29 April 1957 - Or. Fr.

The French Government's acceptance will not apply to Chapter III of the said Convention, relating to arbitration.

GERMANY

Declaration contained in a letter from the Permanent Representative of the Federal Republic of Germany, dated 10 July 1961, registered at the Secretariat General on 12 July 1961 - Or. Fr.

The European Convention for the Peaceful Settlement of Disputes also applies to the Land Berlin with effect from 18 April 1961.

ITALY

Declaration made at the time of deposit of the instrument of ratification, on 29 January 1960 - Or. Fr.

The Italian Government declared that it intended to avail itself of the option contained in Article 34, paragraph 1 b, of the Convention, and that the present ratification would therefore not apply to Chapters II and III relating to conciliation and arbitration.

MALTA

Reservations and declaration made at the time of signature, on 12 December 1966, and confirmed in the Annex of the instrument of ratification, deposited on 28 February 1967 - Or. Engl.

The Government of Malta declares, in accordance with the provisions of Articles 34 and 35 of the Convention, that:

a. in regard to Chapter I, it accepts as compulsory ipso facto and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes other than:

i. disputes in regard to which the Parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement;

ii. disputes with the Government of any other country which is a Member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree;

iii. disputes with regard to questions which by international law fall exclusively within the jurisdiction of Malta;

iv. disputes concerning any question relating to or arising out of belligerent or military occupation or the discharge of any functions pursuant to any recommendation or decision of an organ of the United Nations, in accordance with which the Government of Malta have accepted obligations;

v. disputes arising under a multilateral treaty, unless (1) all Parties to the treaty affected by the decision are also Parties to the case before the Court, or (2) the Government of Malta specially agrees to jurisdiction;

vi. disputes relating to any matter excluded from compulsory adjudication or arbitration under any treaty, convention or other international agreement or instrument to which Malta is a party;

vii. disputes in respect of which arbitral or judicial proceedings are taking or have taken place with any State which, at the date of the commencement of the proceedings, had not itself accepted the compulsory jurisdiction of the International Court of Justice; and

viii. disputes in respect of which any other party to the dispute has accepted the compulsory jurisdiction of the International Court of Justice only in relation to or for the purposes of the dispute; or where the acceptance of the Court's compulsory jurisdiction on behalf of any other party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court.

The Government of Malta also reserves the right at any time, by means of a notification addressed to the Secretary General of the Council of Europe, and with effect as from the moment of such notification either to add to, amend or withdraw any of the foregoing reservations or any that may hereafter be added.

b. It does not consider itself bound by the provisions of Chapter III of the Convention.

Declaration contained in a letter from the Minister for Foreign Affairs of Malta, dated 2 September 1983, registered at the Secretariat General on 5 September 1983 - Or. Engl.

I have the honour to refer to the Declaration made by the Government of Malta with respect to the European Convention for the Peaceful Settlement of Disputes (Strasbourg, 29 April 1957) and annexed to the Instrument of Ratification of the said Convention, signed on behalf of the Government of Malta on 28 February 1967, whereby, in regard to Chapter 1 of the said Convention the Government of Malta accepted the compulsory jurisdiction of the International Court of Justice subject to the conditions and reservations therein contained or referred to, including the reservation of the right at any time by means of a notification addressed to the Secretary General of the Council of Europe and with effect from the moment of such notification, to add to, amend or withdraw any of the reservations contained in that Declaration.

Further and pursuant to the above, the Government of Malta hereby gives notice that, with effect from the moment this notification is received by you, the acceptance by the Government of Malta of the Jurisdiction of the International Court of Justice shall be limited to all disputes with Malta other than:

1. the disputes mentioned in sub-paragraphs i to viii, both inclusive, of the said Declaration, and

2. the following categories of disputes, that is to say: "disputes with Malta concerning or relating to:

a) its territory, including the territorial sea, and the status thereof;

b) the continental shelf or any other zone of maritime jurisdiction and the resources thereof;

c) the determination or delimitation of any of the above;

d) *the prevention or control of pollution or contamination of the marine environment in marine areas adjacent to the coast of Malta."*

The Government of Malta confirms the reservation of the right at any time, by means of a notification addressed to the Secretary General of the Council of Europe, and with effect as from the moment of notification, to add to, amend or withdraw any of the foregoing reservations or any that may hereafter be added.

The Government of Malta further declares that the above reservations are made following similar reservations made with respect to acceptance of the Compulsory jurisdiction of the International Court of Justice under paragraph 2 of Article 36 of the Statute of the said Court.

NETHERLANDS

Declarations contained in the instrument of ratification, deposited on 7 July 1958 - Or. Fr.

We approve herewith, for the Kingdom in Europe, Surinam, the Netherlands Antilles and Netherlands New Guinea, in respect of all the provisions contained therein, the Convention reproduced above.

We declare that our acceptance does not apply to Chapter III relating to arbitration.

Declaration contained in a letter from the Permanent Representative of the Netherlands, dated 24 December 1985, registered at the Secretariat General on 3 January 1986 - Or. Engl.

The island of Aruba, which is at present still part of the Netherlands Antilles, will obtain internal autonomy as a country within the Kingdom of the Netherlands as of 1 January 1986. Consequently the Kingdom will from then on no longer consist of two countries, namely the Netherlands (the Kingdom in Europe) and the Netherlands Antilles (situated in the Caribbean region), but will consist of three countries, namely the said two countries and the country Aruba.

As the changes being made on 1 January 1986 concern a shift only in the internal constitutional relations within the Kingdom of the Netherlands, and as the Kingdom as such will remain the subject under international law with which treaties are concluded, the said changes will have no consequences in international law regarding to treaties concluded by the Kingdom which already apply to the Netherlands Antilles, including Aruba. These treaties will remain in force for Aruba in its new capacity of country within the Kingdom. Therefore these treaties will as of 1 January 1986, as concerns the Kingdom of the Netherlands, apply to the Netherlands Antilles (without Aruba) and Aruba.

Consequently the treaties referred to in the annex, to which the Kingdom of the Netherlands is a Party and which apply to the Netherlands Antilles, will as of 1 January 1986 as concerns the Kingdom of the Netherlands apply to the Netherlands Antilles and Aruba.

List of Conventions referred to by the Declaration

23. European Convention for the Peaceful Settlement of Disputes (1957).

SWEDEN

Declaration contained in the instrument of ratification, deposited on 30 April 1958 - Or. Fr.

We accept, approve and ratify with the exception of Chapter III relating to arbitration.

UNITED KINGDOM

Declarations and reservations made at the time of deposit of the instrument of ratification, on 7 December 1960 - Or. Engl.

On depositing this day the Instrument of Ratification by the Government of the United Kingdom of Great Britain and Northern Ireland of the European Convention for the Peaceful Settlement of Disputes signed at Strasbourg on the 29th of April, 1957, I have the honour to declare, on instructions from Her Majesty's Principal Secretary of State for Foreign Affairs that:

a) in accordance with paragraph 1 of Article 34 of the said Convention, the Government of the United Kingdom will not be bound by Chapter III of the said Convention;

b) in accordance with Article 35 of the said Convention:

i. the reservations subject to which the Government of the United Kingdom have accepted the compulsory jurisdiction of the International Court of Justice shall apply to the said Convention in so far as they are relevant and are not covered by other provisions thereof;

ii. *Chapter II of the said Convention shall not apply to any dispute which concerns any or all of the non-metropolitan territories of the United Kingdom (other than the Channel Islands or the Isle of Man) for whose international relations the Government of the United Kingdom are responsible*.

I have also to inform you that the reservations referred to in sub-paragraph (b)(i) above were communicated to the Secretary General of the United Nations by the United Kingdom Representative to the United Nations in Notes dated the 12th and 18th of April 1957.