

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

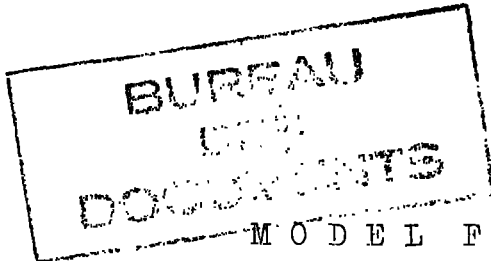
COMMITTEE OF MINISTERS

Strasbourg, 13th July 1962

Confidential

CM (62) 148

Or. Fr.



MODEL FINAL CLAUSES

Memorandum by the Directorate of Legal Affairs

Introduction

1. At the 112th meeting of the Ministers' Deputies it was agreed CM/Del/Concl. (62) 112, point V that the Directorate of Legal Affairs should prepare a document for the 113th meeting combining the draft model final clauses see Doc. CM(62) 37, the amendments presented see Doc. CM(62) 90, 124, 125 and 126 and any comments the Secretariat might have to offer.

2. Annexes I and II have been prepared accordingly. The amendments are underlined.

Annex I contains the final clauses of an agreement that can be signed without reservation as to ratification or acceptance. Annex II contains the final clauses of a convention requiring ratification or acceptance.

Remarks on proposed amendments.

3. The Turkish representative /Doc CM (62) 126/ proposed adding to Article (a) of Annex I a sub-paragraph (c) to read:

"Signature with reservation in respect of promulgation of the Convention in the Official Gazette".

In the opinion of the Directorate of Legal Affairs, the formality of publication in the Official Gazette, which exists in all countries, affects the Convention's entry into force inside the country. We are concerned only with "international"

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entry into force and in international law the only act whereby a State can become a Party to a treaty (agreement or convention) is by signature or subsequent ratification and acceptance. This is why the Turkish amendment has not been included.

4. The Danish representative asked that the territorial clause proposed under point 6 of Document CM (62) 90 be omitted from the final clauses and that the need for such a clause be examined for each convention individually. The United Kingdom Government [Letter of 4th July 1962] made a similar suggestion.

A territorial clause has, however, been included at the request of the Netherlands delegation. It is pointed out that the final clauses are intended as models only and may be modified or omitted to suit the special requirements of each agreement or convention.

5. The Netherlands representative [Doc. CM (62) 125] thought that the article on reservations should be worded as follows:

"1. Reservations may be made only to articles...."

The same delegation also thought that paragraphs 2 and 3 of the text proposed under point 7 of Document CM (62) 90 might be dispensed with.

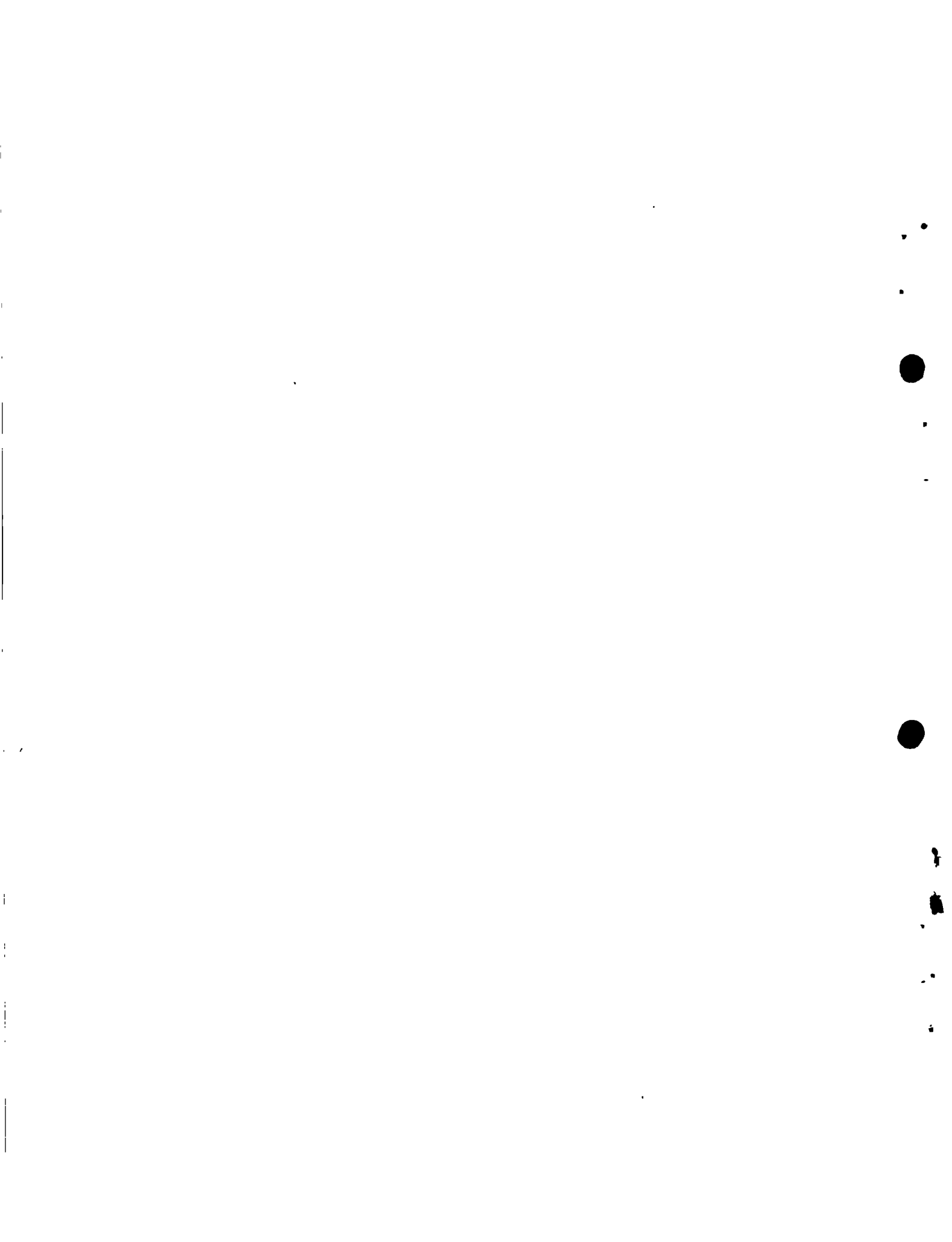
It was not felt possible to adopt these proposals. The wording proposed for paragraph 1 would leave the Contracting Parties free to make any reservations they wished in regard to the articles enumerated whereas committees of experts responsible for drawing up conventions mostly preferred any reservations to be "negotiated", that is to say their nature defined and a restrictive list of permissible reservations embodied in the convention or in an annex. It was thought that the model final clauses should reflect this practice which had certain advantages as compared with a system whereby reservations could be made freely.

In our view, too, there is no reason to dispense with paragraphs 2 and 3 on the withdrawal of reservations and reciprocity. Paragraph 2 stresses the right of any Party to withdraw any reservation previously made and states by what procedure this may be done and when the withdrawal shall take effect. Paragraph 3, which is similar to a clause embodied in other conventions, eliminates any doubt as to the effect of reservations in relations between the State making it and the other Contracting Parties.

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The United Kingdom Government [letter of 4th July 1962] thought that the drafting of the reservations clause should be left in each case to the committee of experts concerned.

6. The United Kingdom representative proposed substituting the expression "Contracting Government" for "Contracting Party" in Article (f) paragraph 2 of Annex I. This suggestion was not adopted as the words "Contracting Party" are used in other articles of the final clauses and are those commonly used in international treaties.



A N N E X I

Preamble

The member States of the Council of Europe, signatory hereto,⁽¹⁾

Final Clauses

of an Agreement which may be signed without reservation
in respect of ratification or acceptance

Article (a)

1. This Agreement shall be open to signature by the member States of the Council of Europe, who may become Parties to it either by:

- (a) signature without reservation in respect of ratification or acceptance, or ⁽²⁾
- (b) signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance.

2. Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

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(1) This wording has been proposed by the Government of the United Kingdom [letter of 4th July 1962]
(2) The word "approval" has been replaced by the word "acceptance" on proposal of the Federal Republic of Germany [cf. CM (62) 90 point 2] the United Kingdom [cf. point 1 of the Doc. mentioned above] and Italy [letter of 2nd July 1962]

Article (b)

1. This Agreement shall enter into force one month after the date on which three member States of the Council shall have become Parties to the Agreement, in accordance with the provisions of Article (a) (1)

2. As regards any member States who shall subsequently sign the Agreement without reservation in respect of ratification or acceptance or who shall ratify or accept it, the Agreement shall enter into force one month after the date of such signature or after the date of deposit of the instrument of ratification or acceptance.

Article (c)

1. After the entry into force of this Agreement, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto. (2)

2. Such accession shall be effected by depositing with the Secretary-General of the Council of Europe an instrument of accession which shall take effect one month after the date of its deposit.

Article (d)(3)

1. Any contracting party may at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Agreement shall apply.

(1) This paragraph has been proposed by the Netherlands [cf. CM (62) 90 point 5]. The United Kingdom [letter of 4th 4th July 1962] would prefer the wording of Article (b) as proposed by the Directorate of Legal Affairs:

"1. This Agreement shall enter into force one month after the date on which three member States of the Council shall, in accordance with the provisions of Article (a), have signed the Agreement without reservation in respect of ratification or acceptance or shall have deposited their instrument of ratification or acceptance."

(2) cf. United Kingdom comment, point 4.

(3) Proposal of the Directorate of Legal Affairs [CM (62) 90 point 6] point 6 modified in pursuance of the wording presented by the Netherlands [CM (62) 125].

2. Any contracting party may when depositing its instrument of ratification, acceptance or accession or at any later date, by notification addressed to the Secretary-General of the Council of Europe, extend this Agreement to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article (f) of this Agreement.

Article (c)⁽¹⁾

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in the Annex (2) to this Agreement.

2. Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a notification addressed to the Secretary-General of the Council of Europe which shall become effective as from the date of its receipt.

3. A Contracting Party which has made a reservation in respect of any provision of this Agreement may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article (f)

1. This Agreement shall remain in force indefinitely. /.

(1) Proposal of the Directorate of Legal Affairs accordingly with a suggestion of the Netherlands /CM (62) 90 point 7/

(2) The Annex might be worded as follows:

"Any Contracting Party may declare that it reserves the right:

1. to.....
2. to....."

2. Any Contracting Party may, in so far as it is concerned, denounce this Agreement by means of a notification addressed to the Secretary-General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary-General of such notification.

Article (g)

The Secretary-General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Agreement, of:

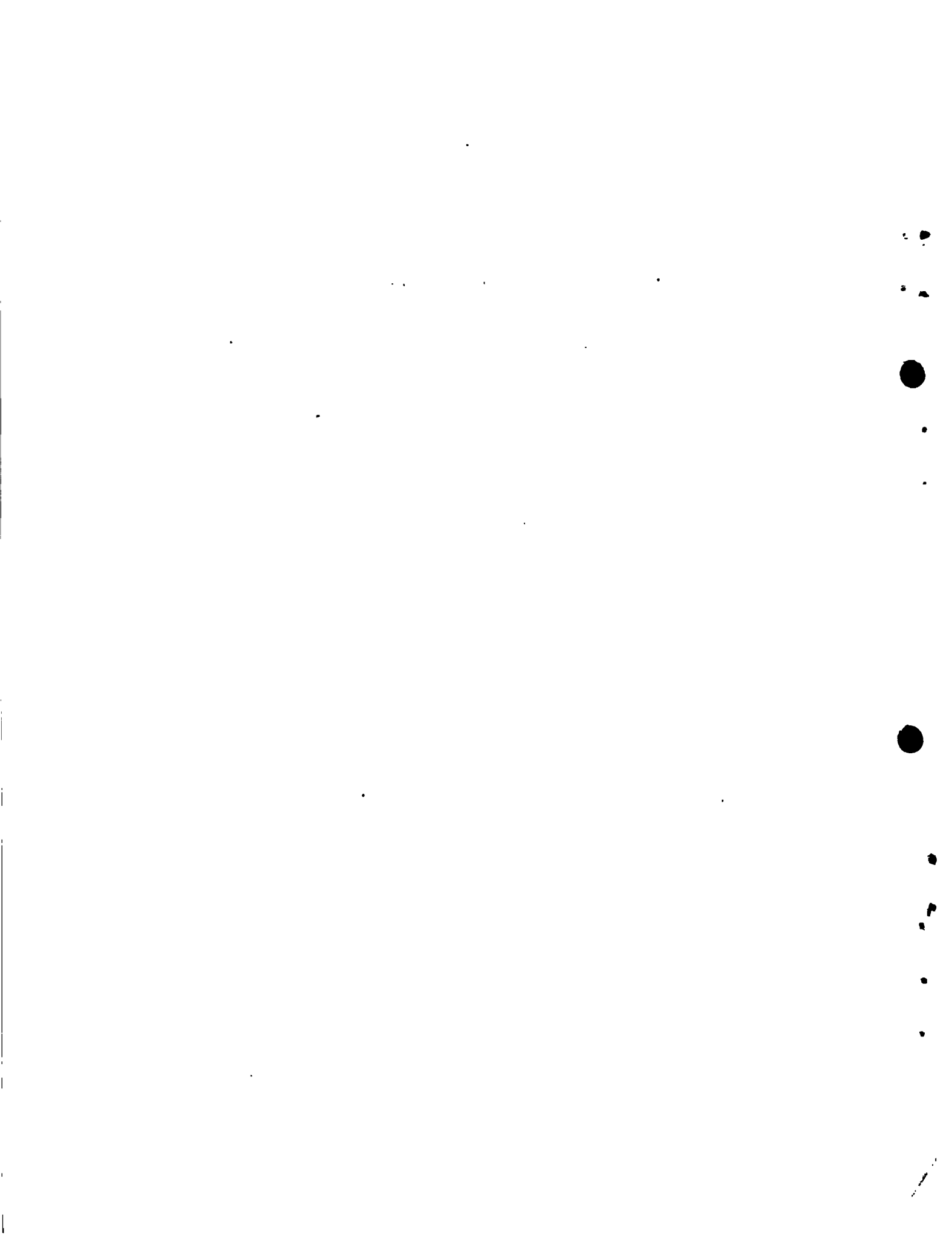
- (a) any signature without reservation in respect of ratification or acceptance;
- (b) any signature with reservation in respect of ratification or acceptance;
- (c) the deposit of any instrument of ratification, acceptance or accession;
- (d) any date of entry into force of this Agreement in accordance with Article (b) thereof; (1)
- (e) any declaration and notification received in pursuance of the provisions of paragraphs 2 and 3 of Article (d);
- (f) any reservation made in pursuance of the provisions of paragraph 1 of Article (e);
- (g) the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article (e);
- (h) any notification received in pursuance of the provisions of Article (d) and the date on which denunciation takes effect.

(1) Proposed by the United Kingdom /point 6 of the Doc. mentioned above/.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at....., the in the English and French languages, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States. (1)

(1) The word "governments" has been replaced by the word "States" on proposal of the Netherlands /point 4 of the above mentioned document/.



A N N E X . II

Preamble

The member States of the Council of Europe, signatory hereto, (1)

Final Clauses

of a Convention which must be ratified
or accepted

Article (a)

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. (2) Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.
2. This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
3. In respect of a signatory State (3) ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article (b)

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto. (4)
2. Such accession shall be effected by depositing with the Secretary-General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

(1) cf. foot-note (1), page 4.

(2) cf. point 8 of the comment of the Government of the United Kingdom /CM (62) 124/

(3) Modification proposed by the Federal Republic of Germany and the Netherlands /cf. CM (62) 90 point 3/

(4) cf. foot-note (2), page 5.

Article (o)⁽¹⁾

1. Any Contracting Party may at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
2. Any Contracting Party may when depositing its instrument of ratification, acceptance or accession or at any later date, by notification addressed to the Secretary-General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article (e) of this Convention.

Article (d)⁽²⁾

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in the Annex (3) to this Convention.
2. Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a notification addressed to the Secretary-General of the Council of Europe which shall become effective as from the date of its receipt.
3. A Contracting Party which has made a reservation in respect of any provision of this Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article (e)

1. This Convention shall remain in force indefinitely.

(1) cf. foot-note (3), page 5.

(2) cf. foot-note (1), page 6.

(3) cf. foot-note (2), page 6.

2. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary-General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary-General of such notification.

Article (f)

The Secretary-General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

- (a) any signature;
- (b) any deposit of an instrument of ratification, acceptance or accession;
- (c) any date of entry into force of this Convention in accordance with Article (a) thereof;⁽¹⁾
- (d) any declaration and notification received in pursuance of the provisions of paragraphs 2 and 3 of Article (c);
- (e) any reservation made in pursuance of the provisions of paragraph 1 of Article (d);
- (f) the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article (d);
- (g) any notification received in pursuance of the provisions of Article (e) and the date on which denunciation takes effect.

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

Done at, this, in French and English, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States. (2)

(1) cf. foot-note (3), page 5.

(2) cf. foot-note (1), page 6.

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