

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

Strasbourg, 4th March, 1957

Confidential

CM (57) 37

Or. Fr.

PEACEFUL SETTLEMENT OF DISPUTES

Memorandum by the Legal Department
on the present stage of this question

1. At their 45th meeting the Deputies resumed their examination of M. Rolin's proposals in Doc. CM (56) 130.
2. As stated in paragraph XV of their Conclusions, the Deputies rejected the first two proposals regarding the procedure of conciliation.
3. As regards the third proposal to delete in the text of the original Article 28 (new Article 26) of the draft Convention the words "within the framework of the general principles of international law", the Deputies agreed that it would be difficult for the Arbitral Tribunal to judge disputes not subject to international law if its decisions were limited by the framework of **these principles**. Nevertheless, they considered that the Tribunal should not make decisions which took no account of or were at variance with the said principles. In this connection, the Deputies adopted the formula "having regard to the general principles of international law." The Netherlands and Norwegian representatives accepted this formula ad referendum. The Irish Representative reserved his Government's position.

In order to settle this point, it is necessary to know whether the Netherlands and Norwegian Representatives confirm their acceptance and whether the Irish Representative withdraws his Government's reservation.

4. M. Rolin's fourth proposal concerned the adoption of the provisions appearing in square brackets in the original Articles 37 and 40 (new Articles 35 and 38) with the deletion of the reference to "the procedure of conciliation". This is a modified form of the original proposal made by the Swedish Government. Several Representatives were opposed to this proposal. Furthermore the Irish, Norwegian and Swedish Representatives, who had supported the proposal, stated that their Governments would be able to sign the Convention even if the bracketed provisions were deleted.

The Danish Representative pointed out that after the deletion of these clauses the signature of this Convention would lose much of its importance.

The Belgian representative, while regretting the fate of the proposals made by the Swedish Government, the Assembly and M. Rolin, said that his Government could accept the text proposed by the other delegations if, notwithstanding the deletion of the bracketed clauses, arbitral procedure could be ruled out for disputes affecting vital interests.

On this point, it should be noted that under the terms of the original Article 37 (new Article 35), the vital interests reservation was only permissible if specified in the text of the Convention. Indeed, the Experts have set aside the idea of a Contracting Party excluding from arbitration any dispute affecting its vital interests unless the Committee of Ministers were not authorised to decide upon the application of this reservation. Their opinion is stated in the second paragraph on page 12 of the report CM (56) 23 which reads:

"The question was raised whether this type of reservation could be accepted unless its application was controlled by the Committee of Ministers or possibly by the Arbitral Tribunal. The Committee of Experts decided against such acceptance on the ground that absence of control would make the arbitration provisions ineffective."