

Memorandum to Cabinet by the Prime Minister and Minister
of Commonwealth and Foreign Affairs

European Convention for the Peaceful
Settlement of Disputes

The European Convention for the Peaceful Settlement of Disputes which is a Council of Europe Convention was signed in Strasbourg on the 29th April, 1957 and has to date been ratified by 9 member Governments of the Council and signed by 7 others.

2. Chapter I of the Convention provides that all international legal disputes which may arise between the Contracting Parties should be submitted to the judgement of the International Court of Justice. These disputes include particularly 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 reparation to be made for the breach of an international obligation.

3. Chapter II provides that all disputes arising between Contracting Parties, other than those falling within the scope of Chapter I should be referred to a Permanent Conciliation Commission, or, if the parties agree, or there is no such Commission, to a special Conciliation Commission to be composed of five members, one nominated by each party in dispute and the other three, including the President, to be chosen by agreement from among nationals of third States who are neither habitually resident in the territory nor in the service of the parties. If the parties to the dispute agree, they may submit the dispute to an arbitral tribunal without prior recourse to the procedure of arbitration.

4. Chapter III stipulates that all disputes other than those mentioned in paragraph 2 above, which are not settled by Conciliation, should be submitted to arbitration. The set-up of the Arbitral Tribunal follows the same pattern of the special Conciliation Commission.

5. Malta is already a party to the Statute of the International Court of Justice by reason of its being a member
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of the United Nations Organisation. The jurisdiction of this Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force. Under Article 36 of this Statute Malta may recognize as compulsory the jurisdiction of the Court in legal disputes concerning the same four points contained in the European Convention for the Peaceful settlement of Disputes set out at paragraph 2 above. Ministers have recently agreed to recognise the compulsory jurisdiction of the International Court of Justice subject to certain reservations. (Cabinet memorandum CFA. 1408/63 refers).

6. In the circumstances it is also proposed that Malta should accede to Chapter I of the European Convention for the Peaceful Settlement of Disputes subject to the same reservations that have been agreed in regard to the jurisdiction of the International Court of Justice.

7. It is considered that Malta may also safely accede to Chapter II of the European Convention concerning Conciliation.

8. Compulsory arbitration, dealt with in Chapter III of the Convention, involves a very wide element of discretion on the part of the arbitrators as, the matter of the dispute not being of a legal nature, the arbitrators are not to be governed in their award by any legal principles. It is not therefore proposed to accede to this part of the Convention (the United Kingdom Government has been unable to accede to this Part).

9. The views of the Crown Advocate General in regard to Malta's accession to the Council of Europe Convention coincide with what is set out above.

10. Hon. Members are invited to agree to Malta's adherence to the Convention as regards Chapter I (with reservations), and Chapter II, and to declare that it will not be bound by Chapter III relating to arbitration.

22nd April, 1966.