

MEMORANDUM TO CABINET BY THE HON. MINISTER OF  
COMMONWEALTH AND FOREIGN AFFAIRS

General Agreement on Privileges and  
Immunities of the Council of Europe

The General Agreement on Privileges and Immunities of the Council of Europe was signed in Paris on 2nd September, 1949 and has to date been signed by 16 member Governments of the Council. It has been ratified by fourteen Governments. Only Cyprus and Malta have not yet signed.

2. The Agreement provides for the privileges and immunities that the Council of Europe (as a juridical personality) and officials of the Council should enjoy in the territories of the Contracting Parties.

3. The enactment of the Malta Diplomatic Immunities and Privileges Act 1966 has rendered possible the signing of this Agreement.

4. There is, however, one provision in the Agreement which the Crown Advocate General considers may be objectionable. This is contained in article 21 which lays down that "any dispute between the Council and private persons regarding supplies furnished, services rendered or immovable property purchased on behalf of the Council, shall be submitted to arbitration, as provided in an administrative order issued by the Secretary-General with the approval of the Committee of Ministers". The Crown Advocate General feels that a policy decision is called for in regard to its adoption. He is inclined to look with disfavour on Conventions which deprive our civil Courts of their normal jurisdiction, particularly in contractual matters. He points out that in the present instance there is the added uncertainty of arbitration proceedings depending on an administrative order made "ex parte".

5. The Crown Advocate General has stressed that a decision on this point is purely one of policy, and he raises it merely to draw Government's attention to it.

6. This provision is not likely to have a practical application in Malta, and in view of the fact that the administrative order to be issued by the Secretary-General is subject to the approval of the Committee of Ministers, it is not thought that Malta should exclude the application of article 21. In this case the agreement could be signed without reservation.

7. Protocol to the General Agreement. This Protocol extends the provisions of the Agreement to officials of the Council of Europe not included in

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the General Agreement. The Malta Diplomatic Immunities and Privileges Act, 1966, covers adequately the provisions of the Protocol which may therefore be signed.

8. Second Protocol to the General Agreement. This Protocol specifies and defines the privileges and immunities to which members of the European Commission of Human Rights are entitled during the discharge of their duties. This Protocol may also be signed by Malta.

9. Third Protocol to the General Agreement. The question of Malta signing does not arise since the signatory must be a member of the Council of Europe Resettlement Fund for National Refugees and Overpopulation, which Malta is not.

10. Fourth Protocol to the General Agreement. This Protocol specifies and defines the privileges and immunities to which members of the European Court of Human Rights are entitled during the discharge of their duties and there is no objection to Government signing it. Such signing will render necessary the making of an order under Section 6 of the Malta Act.

11. Hon. Ministers are invited to agree to the signing of the General Agreement on Privileges and Immunities of the Council of Europe and to the Protocols above-mentioned. They are also invited to say whether a declaration should be made with regard to article 21 of the General Agreement concerning its applicability or otherwise to Malta.

13th April, 1966.