

REPORT TO THE MINISTERIAL COUNCIL ON STRENGTHENING THE LEGAL FRAMEWORK OF THE OSCE IN 2012

Introduction

1. In 2007, a draft convention on international legal personality, legal capacity and privileges and immunities of the OSCE (Draft Convention) was drawn up by an Informal Working Group at expert level. Three footnotes were included at the request of two participating States, making its agreement conditional on the existence of an OSCE Constituent Document.¹ Though the Draft Convention in itself continues to enjoy full support among participating States, repeated efforts have not resulted in agreement that would allow the Convention to be adopted by consensus, thereby changing status from a mere draft to an adopted text which participating States might choose to apply provisionally.

Practical effects of the lack of legal personality

2. The lack of clear legal status for the OSCE has led to administrative difficulties and financial implications for the day-to-day work of the Organization's executive structures, as well as to problems concerning the equal and uniform protection and status of OSCE staff, particularly in the field operations. Implementation of the Draft Convention would remove the current need to negotiate bilateral agreements with individual participating States and would save the OSCE a substantial amount of money. The amount lost annually as a direct result of its lack of uniform privileges and immunities is approximately 1 per cent of the total OSCE budget. The absence of a Convention has led to a situation where the status and treatment of the OSCE and its staff varies widely from one participating State to another.

3. The lack of legal personality causes reputational damage, since other regional or international organizations may fail to take the OSCE seriously as a proper organization or, in some cases, may be unable to deal with the OSCE as a partner. In addition, it is the view of international legal experts that the OSCE is a subject of international law in the sense that it can incur international responsibility for its acts, despite the lack of a clear internal legal status.² It may result in adverse consequences if the OSCE can incur responsibility, while still being unable to enjoy rights such as privileges and immunities. Perhaps most importantly, the impasse on this issue has contributed to an ongoing lack of progress in developing the operational capacity and progressing the aims of the Organization.

1 The footnotes make reference to a "Charter"; subsequent developments led to an indication that what matters is the character and contents of such a document, not its name. Therefore the neutral term "Constituent Document" has been in use since 2011, without prejudice to the outcome of consultations.

2 See ILC Draft articles on the responsibility of international organizations, adopted by the International Law Commission at its sixty-third session in 2011 (A/66/10, paragraph 87).

Meetings of the Informal Working Group in 2012

4. In 2012, the Irish Chairmanship put forward a number of options to strengthen the legal framework of the OSCE, circulating to participating States a food-for-thought paper (CIO.GAL/63/12 of 18 May) and a non-paper containing a draft Constituent Document for the OSCE (CIO.GAL/68/12 of 12 June 2012), both annexed. Discussion of these documents has taken place in bilateral consultations with participating States and at meetings of the open-ended Informal Working Group (IWG) on Strengthening the Legal Framework of the OSCE.

5. Two meetings of the IWG on Strengthening the Legal Framework of the OSCE were held in 2012, on 8 June and 21 September. Both IWGs were chaired by Ambassador John Bernhard, Special Adviser to the Irish Chairmanship on strengthening the legal framework of the OSCE.

6. The first meeting of the IWG took place on 8 June 2012. In advance of this meeting, the Irish Chairmanship circulated a food-for-thought paper on strengthening the legal framework of the OSCE (CIO.GAL of 8 May 2012). This paper put forward a number of options to participating States which could result in the removal of the three footnotes from the Draft Convention and allow for it to be adopted and opened for signature at the earliest possible opportunity. The paper proposed that progress towards the adoption of the Draft Convention would be facilitated by discussion of a short, technical draft Constituent Document for the OSCE, to be drafted by the Irish Chairmanship. The following conclusions were drawn from discussions at the first IWG:

- All participating States are in favour of the provisions of the 2007 Draft Convention in itself;
- All participating States are in favour of strengthening the legal framework of the OSCE;
- There is no consensus on the need to have a Constituent Document for the OSCE, though a number of participating States insist that, according to their internal legislative and constitutional procedures, privileges and immunities cannot be granted to an international organization without the adoption of a Constituent Document;
- The elaboration of a Constituent Document will require considerable work and not all participating States were convinced it would be a worthwhile exercise;
- The Chair of the IWG concluded that the Irish Chairmanship would circulate a short technical draft Constituent Document for the OSCE in advance of the next IWG.

7. The Irish Chairmanship circulated a non-paper containing a draft Constituent Document for the OSCE (CIO.GAL/68/12 of 12 June 2012), stressing that the final shape and character of this document had not been predetermined and remains open for discussion. Participating States were urged to consider the document carefully and submit written observations to the Chairmanship by the close of business on Friday 20 July 2012. A compilation of observations received from participating States was circulated by the Irish Chairmanship (CIO.GAL/117/12 of 6 September 2012), and is annexed.

8. The second meeting of the IWG took place on 21 September 2012. Discussions focused on the draft Constituent Document for the OSCE (CIO.GAL/68/12 of 12 June 2012). The Chair of the IWG aimed to promote confidence amongst participating States by demonstrating that a draft Constituent Document could be drafted in a way which would not affect the *acquis* of the Organization. The following conclusions were drawn from discussions at the second IWG:

- The majority of participating States continue to support the immediate adoption and opening for signature of the Draft Convention, without footnotes, but are open to continuing discussions concerning a draft Constituent Document;
- A group of participating States stressed that the adoption of the Draft Convention and the adoption of a Constituent Document must be parallel processes and that no progress could be made on one without corresponding progress on the other;
- One participating State said it could not engage with the substance of the draft Constituent Document circulated. It held the opinion that there was no need for a Constituent Document and that a discussion of it might be counterproductive for the Organization.
- The Chairperson of the Permanent Council concluded that the positions of certain participating States remain far apart and that the Irish Chairmanship would continue its efforts to chart a way forward.

Conclusion

9. Though the 2007 Draft Convention on international legal personality, legal capacity and privileges and immunities of the OSCE (Draft Convention) in itself continues to enjoy full support amongst participating States, it has not been possible to reach consensus on the removal of the three footnotes linking its adoption to that of a Constituent Document. The Irish Chairmanship has worked to resolve the current impasse in order to give the OSCE the tools it needs to function in an effective and efficient manner, while acknowledging that the legitimate concerns of all participating States must be addressed. It is clear to the Irish Chairmanship that unless progress is achieved with regard to the removal of these footnotes from the Draft Convention, the unsatisfactory situation that currently exists will remain unresolved.

10. The Irish Chairmanship holds the strong belief that the adoption of the 2007 Draft Convention on international legal personality, legal capacity and privileges and immunities of the OSCE is vital for this Organization. It is also clear to the Irish Chairmanship that progress will not be achieved without also discussing a Constituent Document for the OSCE. Though there has not been a breakthrough this year, the work done under Ambassador John Bernhard has been noteworthy in further clarifying the positions of participating States and options available. The options presented in 2012 should continue to be explored. The current lack of clarity regarding the legal status of the OSCE is damaging to the Organization. Endowing the OSCE with separate legal personality and the privileges and immunities it requires to function in an efficient and effective manner must remain a priority for the participating States.

- Annex 1. (CIO.GAL/63/12 of 8 May 2012)
- Annex 2. (CIO.GAL/68/12 of 12 June 2012)
- Annex 3. (CIO.GAL/117/12 of 6 September 2012)

CHAIRMANSHIP FOOD-FOR-THOUGHT PAPER Strengthening the Legal Framework of the OSCE

Background

In 2007, a draft convention on international legal personality, legal capacity and privileges and immunities of the OSCE (Draft Convention) was drawn up by an Informal Working Group at expert level. Three footnotes were included at the request of certain participating States, making its agreement conditional on the existence of an OSCE Constituent Document¹, on the grounds that under their internal legislative and constitutional procedures such privileges and immunities cannot be granted to an international organization without the adoption of a Constituent Document. Though the Draft Convention continues to enjoy broad support among participating States, repeated efforts have not resulted in agreement that would allow the Convention to be adopted by the OSCE.

Practical effects of the lack of legal personality

The lack of clear legal status for the OSCE has led to administrative difficulties and financial implications for the day-to-day work of the Organization's executive structures, as well as to problems concerning the status and protection of OSCE staff. Implementation of the Draft Convention would remove the current need to negotiate bilateral agreements with individual participating States and would save the OSCE a substantial amount of money. The estimated amount lost annually by the OSCE as a direct result of its lack of uniform privileges and immunities ranges from €1.5 million to €2 million, amounting to over 1% of the total budget. The absence of a Convention has led to a situation where the status and treatment of the OSCE varies widely from one participating State to another.

Politically, the lack of legal personality causes reputational damage, since other regional or international organizations may fail to take the OSCE seriously or, in some cases, may be unable to deal with the OSCE as a partner. In addition, it is the view of international legal experts that the OSCE is a subject of international law in the sense that it can incur international responsibility for its acts, despite the lack of a clear internal legal status.² It may result in adverse consequences if the OSCE can incur responsibility for its acts, while still being unable to enjoy rights such as privileges and immunities.

Perhaps most importantly, the impasse on this issue has contributed to an ongoing lack of progress in developing the capacity and progressing the aims of the Organization.

Proposals for progress

In order to give the OSCE the tools it needs to function in an effective and efficient manner, it is proposed that the Draft Convention be *adopted* and *opened for signature* at the earliest possible opportunity. The Convention could be adopted by silence procedure before, or at, the Dublin Ministerial Council and opened for signature immediately. Signatories would then be encouraged to *ratify, accept or approve* the Convention, as laid out in draft Article 22(1), once the necessary

¹ The footnotes make reference to a "Charter"; subsequent developments led to an indication that what matters is the character and contents of such a document, not its name. Therefore the neutral term "Constituent Document" has been in use since 2011, without prejudice to the outcome of consultations.

² See ILC Draft articles on the responsibility of international organizations, adopted by the International Law Commission at its sixty-third session in 2011 (A/66/10, para. 87).

domestic steps have been taken to ensure compliance with its terms. However, the adoption and entry into force of the Convention cannot be seen in isolation from progress being achieved on a Constituent Document.

Draft Convention

It is clear to the Chair that the current impasse on this issue will not be resolved unless there is movement from all sides. Options have been identified that could perhaps result in the removal of the footnotes from the Draft Convention, and perhaps form the basis for movement towards its adoption by participating States:

- The threshold for the Convention's *entry into force* could be increased. Under its current provisions, the Draft Convention would come into force when it has been ratified by two-thirds of the participating States. An increase in this threshold would permit a smaller number of participating States to maintain a veto on the Convention's entry into force, while allowing for the removal of the footnotes. The exact nature of this increase would be a matter for negotiation.
- In addition, when the Convention is *adopted*, certain participating States might wish to make a *declaration* concerning a link to a Constituent Document. This declaration could take the form of a statement that these participating States will not ratify, accept or approve the Convention until a Constituent Document has been adopted.

As foreseen by Article 23 of the Draft Convention, the Convention could be *provisionally applied* by individual participating States immediately or upon ratification, acceptance or approval. Such provisional application would gradually lessen the disadvantages arising from the lack of an entered into force Convention.

Constituent Document

The Chair takes the view that the contents of a Constituent Document (CD) are also worthy of discussion. This would facilitate progress toward the implementation of the Draft Convention. It is also clear to the Chair that the topic of a CD has become overly politicised. It is proposed that, in parallel with steps being taken towards implementing the Draft Convention, discussions on a CD could commence along the following lines:

- The Chair-in-Office would draft a very short CD of a technical nature which would form the basis of further discussions. This draft would draw on elements of the 2011 principles for a discussion on a CD for the OSCE (CIO.GAL/169/11), the 2010 non-paper on a CD for the OSCE (CIO.GAL/103/10/Corr.1), the 2007 draft Charter for the OSCE (PC.DEL/897/07) as well as the OSCE Rules of Procedure and other relevant documents.
- This discussion would be without prejudice to the final shape and character of a CD. The final deciding authority will be the OSCE Ministerial Council, which would adopt the text. Its entry into force would necessarily require the consent of all participating States.

This draft CD would only be distributed after the Informal Working Group (IWG) has taken place on 8 June. A separate meeting of the IWG could then be held to discuss the contents of a Constituent Document.

The way forward

The Chair requests that participating States express their views on the above proposals at the meeting of the IWG on strengthening the legal status of the OSCE, scheduled to take place on 8 June 2012. On the basis of feedback from delegations, the Chair will decide how to take forward the above proposals relating to both the Convention and the Constituent Document.



CIO.GAL/68/12
12 June 2012

Vienna, 11 June 2012

Excellencies,
Dear Colleagues,

Pursuant to the first meeting in 2012 of the open-ended Informal Working Group on strengthening the legal framework of the OSCE held on Friday 8 June, and as proposed in the Chairmanship food-for-thought paper (CIO.GAL/63/12 of 18 May 2012), I am attaching a draft Constituent Document prepared by the Chairmanship.

This document will form the basis for discussion at the next meeting of the Informal Working Group in September, chaired by Ambassador John Bernhard, Special Adviser to the Chairmanship on strengthening the legal framework of the OSCE. The time and date of the meeting will be determined in the coming weeks.

The final shape and character of this document has not been predetermined and remains open for discussion. Participating States are urged to consider this document carefully and submit written observations to the Chairmanship by the close of business on Friday 20 July 2012.

Yours sincerely,

Eoin O'Leary
Ambassador, Chairperson of the OSCE Permanent Council

To All Ambassadors/Delegations to the OSCE
c.c. The Secretary General of the OSCE
Director ODIHR
High Commissioner on National Minorities
Representative on Freedom of the Media

Permanent Mission of Ireland to the OSCE, Rotenturmstrasse 16-18, 1010 Vienna, Austria,
tel +43 (0)1 715769826, fax +43 (0)1 7155755, e-mail: Ireland-OSCE@dfa.ie

CHAIRMANSHIP NON-PAPER
DRAFT Constituent Document for the OSCE

(PREAMBLE)

[PM]

(TITLE: GENERAL PROVISIONS)

(Definition)

*. The Organization for Security and Co-operation in Europe (OSCE) is a regional international organization.

(Legal personality)

* The OSCE shall possess international legal personality and legal capacity, including the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.

(OSCE Commitments)

*. Nothing in the present Document affects the OSCE commitments of the Participating States.

(Principles and objectives)

*. The principles and objectives of the OSCE are set out in the Helsinki Final Act of 1975 and subsequent OSCE commitments.

(Decision-making principle)

*. The OSCE decisions are adopted by consensus, unless otherwise stipulated in the Rules of Procedure.

(TITLE: ORGANS)

Chapter
Decision-making and Subsidiary Bodies

(Summit)

*. The Meeting of the Heads of State or Government of the Participating States (Summit) is the highest decision-making body of the OSCE, which takes decisions, sets priorities and provides orientation at the highest political level.

(Ministerial Council)

*. The Ministerial Council is the central decision-making and governing body of the OSCE. It may consider and take decisions on any issue relevant to the Organization.

(Permanent Council)

*. The Permanent Council is the regular decision-making body for political consultations and for governing the day-to-day work of the Organization.

(Forum for Security Co-operation)

*. The Forum for Security Co-operation is an autonomous decision-making body whose mandate and chair are set in relevant decisions of the Summit and the Ministerial Council.

(Subsidiary Bodies)

*. Subsidiary bodies may be set up in accordance with the Rules of Procedure.

Chapter [Executive bodies]

(Chairmanship-in-Office)

*. The Chairmanship-in-Office, as designated in accordance with the Rules of Procedure, chairs the decision-making bodies and the subsidiary bodies of the OSCE and is responsible, on behalf of the Ministerial Council and the Permanent Council, for co-ordination and consultation on current OSCE business.

*. In performing its functions, the Chairmanship-in-Office is assisted by the preceding and succeeding Chairmanships, operating together as a Troika.

(Secretary General)

*. The Secretary General is the Chief Administrative Officer of the OSCE and the Head of the Secretariat and is appointed by the Summit or Ministerial Council.

*. In performing his/her functions, the Secretary General acts in accordance with the OSCE decisions under the guidance of the Chairmanship-in-Office and is accountable to Participating States.

(Institutions)

*. The Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities and the Representative on Freedom of the Media are OSCE Institutions and perform their functions in accordance with their mandates as adopted by decisions of the Participating States.

*. The Summit or the Ministerial Council may amend the mandate of the Institutions and establish new Institutions.

*. The Heads of institution are appointed by the Ministerial Council.

(Field Operations)

*. The Ministerial Council or the Permanent Council may, subject to the agreement of the host country, set up OSCE field operations and decide their mandate and functioning.

*. The appointment of Heads of field operations is the responsibility of the Chairmanship-in-Office.

Chapter Autonomous Bodies

(Parliamentary Assembly of the OSCE)

*. The Parliamentary Assembly of the OSCE (OSCE PA), is composed of members of parliament from the OSCE Participating States. The modalities for the participation of the OSCE PA in the work of the OSCE decision-making and subsidiary bodies and in OSCE meetings are set out in the OSCE Rules of Procedure.

(OSCE Court of Conciliation and Arbitration)

*. The OSCE Court of Conciliation and Arbitration acts in accordance with the Convention on Conciliation and Arbitration within the Conference for Security and Co-operation in Europe.

Chapter

(Partners for Co-operation and association)

*. The Rules of Procedure shall provide modalities for Partners for Co-operation and other forms of association.

(TITLE: FINANCIAL PROVISIONS)

(Budget of the OSCE)

*. The OSCE activities shall be funded through the Unified Budget of the Organization and extra-budgetary contributions.

(Contributions)

*. The Participating States contribute to the Unified Budget of the OSCE in accordance with the scales of contributions decided by the Permanent Council.

(TITLE: FINAL PROVISIONS)

(Regulatory Framework)

*. The decision-making bodies shall adopt the Rules of Procedure of the OSCE and other regulations and rules required for the management of the OSCE.

(Privileges and immunities)

*. The privileges and immunities of the OSCE, its Officials and the Representatives of the Participating States are set forth in the Convention on the international legal personality, legal capacity, and privileges and immunities of the OSCE.

(Settlement of disagreements)

*. In case of a disagreement between two or more Participating States concerning the interpretation or application of this Document, that has not been settled through consultations, any of the Parties involved may raise the issue at the Permanent Council for consideration and, if necessary, the disagreement may be submitted to any other mode of peaceful settlement agreed upon between the Parties to the disagreement.

(Signature and Entry into Force)

*. This Document shall be open for signature, ratification, acceptance, approval or accession, to all Signatories of the Helsinki Final Act of 1975.

*. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depository.

*. The Document shall enter into force on the thirtieth day following the receipt by the Depository of instruments of ratification, acceptance or approval by all those States which at the time of the adoption of the present Document were OSCE Participating States.

(Amendments)

*. The text of any proposed amendment to this Document shall be circulated to the Participating States through the OSCE Secretariat. The proposed amendments shall enter into force on the thirtieth day following their approval by the Ministerial Council.

(Depository)

*. The Secretary General of the OSCE is the depository of this Document.



CIO.GAL/117/12
6 September 2012

Vienna, 6 September 2012

Excellencies,
Dear Colleagues,

I refer to the Irish Chairmanship's request for written observations on the Chairmanship non-paper containing a draft Constituent Document for the OSCE (CIO.GAL/68/12 of 12 June 2012). Please find attached, for information, a compilation of the written observations received to date.

The Irish Chairmanship looks forward to receiving further input from delegations at the next open-ended Informal Working Group on strengthening the legal framework of the OSCE on 21 September 2012 (PC.GAL/106/12 of 27 July 2012).

Yours sincerely,

Eoin O'Leary
Ambassador, Chairperson of the OSCE Permanent Council

**To all Ambassadors/Delegations to the OSCE
c.c. The Secretary General of the OSCE**



PERMANENT MISSION OF THE REPUBLIC OF TURKEY
TO THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE
VIENNA

Ambassador

Vienna, 16 July 2012

Dear Ambassador O'Leary,

Dear Lou,

With reference to your letter (CIO.GAL/68/12), dated 12 June 2012, which contained a draft Constituent Document (CD) prepared by the Chairmanship, I am pleased to provide herewith Turkey's observations regarding the document at this rather early stage of the discussions.

We understand that preambular part of the CD was deliberately left blank to be filled up following discussions at the meetings of the Informal Working Group. This approach is a reasonable one as it would drive discussions to concentrate on the substantial part of the document.

Though the third provision on OSCE Commitments states that "*Nothing in the present Document affects the OSCE Commitments of the Participating States*" it does not specify the nature of these commitments. We suggest a slight amendment to that provision which would make it read: "*Nothing in the present Document affects the politically binding nature of the OSCE Commitments of the Participating States.*"

The fourth provision on principles and objectives makes reference to the Helsinki Final Act and subsequent OSCE commitments. We would suggest that "Declaration on Principles Guiding Relations between Participating States" be included in the text rather than making an abstract reference to the Helsinki Final Act. This would be in line with the structuring of the Charter of the United Nations, which has provided a list of UN Principles (Article 2). We would like to bring to your attention that reference to "subsequent OSCE commitments" would render the principles and objectives of the OSCE unclear and introduce ambiguity. This would create debates in the future when it comes to interpret what the OSCE principles are.

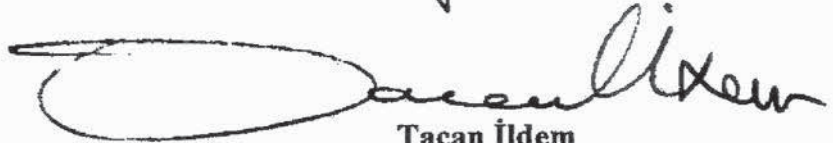
The fifth provision on the "decision-making principle" provides that "*The OSCE decisions are adopted by consensus, unless otherwise stipulated in the Rules of Procedure*", leaving the door open for non-consensual decisions. However, the OSCE Rules of Procedure

Ambassador Eoin O'Leary
Chairman of the OSCE Permanent Council
Vienna

(RoP) lay down that "*Decisions of the OSCE shall be adopted by consensus*" (Rule II (A) 2). On the other hand, the draft Convention on the International Legal Personality, Legal Capacity, and Privileges and Immunities of the OSCE stipulates that "*Nothing in the present Convention shall affect the OSCE decision-making process*". In accordance with RoP as well as the current practice, therefore, it is our preference that the second part of the provision on the "decision-making principle" (*unless otherwise stipulated in the Rules of Procedure*) be deleted.

Yours sincerely,

Best regards.

A handwritten signature in black ink, appearing to read "Tacan İldem". The signature is fluid and cursive, with a large, sweeping initial letter 'T'.

Tacan İldem
Ambassador
Permanent Representative

Special Representative

Chairman of the
OSCE Permanent Council
H.E. Amb. Eoin O'Leary
Vienna

July 20, 2012

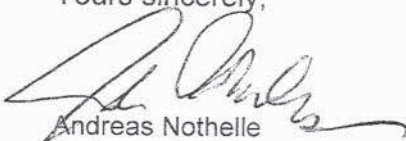
Dear Chairman,

I thank you for giving me the opportunity to advance a first preliminary comment on the non-paper containing a possible draft Constituent Document. Please note that I have to reserve my right to come back to the issue later, since the PA's political bodies have not yet had an opportunity to have a detailed discussion of the text.

I appreciate very much the efforts Amb. Bernhard's has put into this exercise. You have heard my first oral reaction in the meeting of the informal working group. For now I would like to specify: It would be regrettable if the PA as the body that assembles the elected representatives of the peoples of the OSCE was mentioned on page four of a five-page document only, in a chapter together with another body that has not been active over decades. Additionally, the text - as it stands - does not reflect the many MC Documents that define the PA as an OSCE institution. Of course there is a difference between institutions that are part of the executive structures and report to the MC/PC and an autonomous parliamentary institution acting on the political level, and this difference needs to be reflected, but the PA, because of past negative experience, attaches high importance to the fact that it is an integral and operational part of the OSCE. This is best reflected in the word "institution". Finally, the text - by its link to the Rules of Procedure of the OSCE, the legal status of which is at least questionable - does not stipulate with sufficient clarity that the PA is entitled to participate in the work of the decision-making and subsidiary bodies of the executive structures.

Without prejudging a formal comment by the PA's decision-making bodies and pending final instructions, I would therefore express my hope that the PA will have a chapter of its own in the document and that it will be defined as "the OSCE's autonomous parliamentary institution, which contributes to and participates in the meetings and the work of the OSCE decision-making bodies, as well as their subsidiary and other informal bodies". A short paragraph at the beginning of the document listing the components of the OSCE could - by including the PA - do away with the problem that it appears very late in the text.

Yours sincerely,



Andreas Nothelle
Ambassador

OSCE PA Headquarters

Vienna Liaison Office

ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ
ВЕНА ҚАЛАСЫНДАҒЫ
ХАЛЫҚАРАЛЫҚ ҰЙЫМДАР
ЖАНЫНДАҒЫ ТҰРАҚТЫ ӨКІЛДІГІ



PERMANENT MISSION OF THE
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№ 31-227/830

31 July, 2012

Excellency,

Dear Eoin!

In response to the letter of the Irish Chairmanship dated June 11, 2012 (CIO.GAL/68/12), which set out proposals for a draft constituent document of the OSCE, I have the pleasure to forward to you the joint position of CSTO member-states' representations to the OSCE, namely Republic of Armenia, Republic of Belarus, Republic of Kazakhstan, Kyrgyz Republic, Russian Federation and Republic of Tajikistan on the draft.

Yours sincerely,

Best wishes as ever,

Kairat ABDRAKHMANOV
Ambassador, Permanent Representative
to the International Organizations in Vienna

H.E. Mr. Eoin O'LEARY
Ambassador
Permanent Representative of the Republic of Ireland to the OSCE

Vienna

Vienna, “ 30 ” July 2012

In response to the letter of the Irish Chairmanship dated June 11, 2012 (CIO.GAL/68/12), which set out proposals for a draft constituent document of the OSCE, CSTO member-states' representations to the OSCE, namely Republic of Armenia, Republic of Belarus, Republic of Kazakhstan, Kyrgyz Republic, Russian Federation and Republic of Tajikistan, would like to bring to the Chairmanship's attention the following joint position on the draft.

“We are grateful for the initiative of the Chairmanship to prepare the draft constituent document of the OSCE, which is required for its transformation into a fully fledged international organization, operating on the basis of a legally binding international treaty agreed by all participating States. In this regard, we find the Chairmanship's "Non-Paper" as a starting point for further discussions on the content of a constituent document.

Our delegations are ready to participate constructively in the discussions based on the proposed draft at the upcoming open-ended informal meeting of the working group on strengthening the legal framework of OSCE in September. We hope that during these discussions our proposals to a draft Charter of the OSCE, which were distributed on September 18, 2007 (PC.DEL./897/07), as well as the position of our countries on the problem of granting the OSCE international legal personality, will be duly taken into account. We trust that the constituent document, among other aspects, will set out goals and principles of OSCE's activities, confirm principle of consensus in adopting all decisions of the Organization, identify criteria for membership, terms of acceptance and withdrawal as well as the OSCE's area of responsibility.”.

Permanent Mission of the Republic of Armenia to OSCE

Permanent Mission of the Republic of Belarus to the OSCE

Permanent Mission of the Republic of Kazakhstan to OSCE

Permanent Mission of the Kyrgyz Republic to the OSCE

Permanent Mission of the Russian Federation to the OSCE

Permanent Mission of the Republic of Tajikistan to the OSCE

UNITED STATES

Comment on a Draft Constituent Document for the OSCE

-- The United States recognizes the need for participating States to make a clear statement as to the legal personality and legal capacity of the OSCE, and to provide a sound legal basis for the extension of appropriate privileges and immunities (Ps&Is) for the Organization and its personnel.

-- As we have stated previously, the United States therefore supports the adoption of the 2007 Draft Convention on international legal personality, legal capacity, and privileges and immunities, and believes that this agreement would meet all the needs of the Organization in this regard.

-- The United States appreciates the efforts of the Irish Chairmanship with respect to the legal personality and capacity of the OSCE, and the need to secure appropriate Ps&Is for the Organization and its staff.

-- However, the United States does not recognize the need for and does not support discussion of a constituent document. We believe discussion of such a document would be not merely fruitless, but actually counterproductive.

-- Therefore we will not engage on or submit observations on the draft Constituent Document for the OSCE prepared by the Chairmanship.

-- The United States will not support any recommendation to adopt such a document that might come to the Permanent Council or the Ministerial Council on such a subject.

REPUBLIC OF SLOVENIA

As regards the draft Constituent Document for the OSCE (CIO.GAL/68/12 of 12 June 2012), the Republic of Slovenia proposes the addition of the following provisions:

1. A provision stipulating that no reservations may be made to any of the provisions contained in the constitutive agreement;
2. A provision providing for the denunciation of the constitutive agreement (the same wording as in Article 25 of the Draft Convention on the International Legal Personality, Legal Capacity and Privileges and Immunities of the OSCE);
3. A provision regarding the registration of the constitutive agreement with the United Nations in accordance with Article 102 of the Charter of the United Nations (e.g.: the depositary shall transmit a certified copy of the original of the constitutive agreement to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations).