

# Court of Conciliation and Arbitration

Annual Report 2022



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## FOREWORD by the President

For the fourth time, I have the honour of presenting the activity report of the Court of Conciliation and Arbitration within the OSCE, in accordance with Article 14 of the 1992 Stockholm Convention.

The year 2022 marked the 30<sup>ème</sup> anniversary of the adoption of this Convention at the Ministerial Council Meeting of the CSCE, on 15 December 1992, in the wake of the commitments taken in the Helsinki Final Act of 1975 and the Charter of Paris for a New Europe of 1990. Thirty years later, the Convention has been ratified by 34 States parties, the latest being Montenegro in 2016. However, none of the available means of peaceful settlement of disputes featured by the Convention, whether the establishment of a conciliation commission or the creation of an arbitral tribunal have been implemented to date.

This paradoxical situation is all the more surprising given that, after a series of crises and "frozen conflicts", Russia's war of aggression in Ukraine calls into question the principles and commitments enshrined in the UN Charter and the OSCE.

In this tragic context, the 30<sup>ème</sup> anniversary of the adoption of the Stockholm Convention presented the occasion to make a realistic review at a seminar that gathered academics and diplomats. The seminar was organised with the support of Sweden, as the Depositary State of the 1992 Stockholm Convention, and with the participation of the Representative of the Polish OSCE Chairmanship-in-Office.

Suffice it to say that the renunciation of the use of force and the peaceful settlement of disputes are the foundations of international security as emphasized in Article 2.3 of the UN Charter "all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". Article 33 of the Charter describes the different modalities of peaceful settlement, without omitting "regional arrangements". The mechanisms offered by the OSCE Court of Conciliation and Arbitration remain relevant today for both States Parties and participating States in terms of conflict prevention, confidence-building measures, crisis resolution and peace-building. This implies good faith and good will in respecting the commitments engaged into.

The Stockholm Convention is based on solid legal foundations, while offering great flexibility to States. After many missed opportunities and lost illusions, it remains for the political will of both the States Parties and the OSCE institutions to demonstrate that the age-old ideal of the peaceful settlement of disputes is not only a legacy of the past but the key to a future based on justice and peace.



Emmanuel Decaux  
President of the Court

## 1. INSTITUTIONAL MATTERS

### 1.1. Bureau of the Court

The Bureau of the Court met in February 2022 in a virtual setting to discuss current affairs and set the agenda for the year. The meeting also allowed to approve the financial statements established by the chartered accountant, Bonnefous & Audit SA (cf. financial and administrative matters). The members of the Bureau then agreed to a visit in Stockholm, on the invitation of the Ministry for Foreign Affairs in its capacity as Depositary State. The visit, which eventually took place on 3-4 May 2022, had been kept pending in the previous year due to the pandemic circumstances. A second meeting took place in-person in Stockholm which offered at the same time the opportunity to the Bureau of the Court for bilateral talks with Representatives of the Ministry for Foreign Affairs of Sweden (cf. point 2.1.). At its meeting held on 4 May, the Bureau discussed strategic questions, its preparedness for a potential case being submitted to the Court and the next election procedure of the Bureau of the Court, due to take place in November 2025.

The Bureau of the Court is composed as follows:

President :

**Emmanuel DECAUX** - France, conciliator  
 Professor emeritus, University of Paris II - Panthéon-Assas  
 President of the René Cassin Foundation – International Institute of Human Rights

Members:

*from among the conciliators*

**Christian TOMUSCHAT** (Germany)  
 Professor emeritus, Faculty of Law,  
 Humboldt University, Berlin  
 Former President of the Court

**Verica TRSTENJAK** (Slovenia)  
 Professor of European Law, University  
 of Vienna and Ljubljana, Former  
 Advocate General at the Court of  
 Justice of the EU

*from among the arbitrators*

**Erkki KOURULA – Vice-President**  
 (Finland)  
 Former Judge at the International Criminal  
 Court

**Vasilka SANCIN** (Slovenia)  
 Head of the Department of International  
 Law, University of Ljubljana  
 Member of the Advisory Committee of the  
 UN Human Rights Council

Alternate Members:

*from among the conciliators*

**Anne RAMBERG** (Sweden)  
 Attorney-at-Law,  
 Former Secretary-General of the  
 Swedish  
 Bar Association

*from among the arbitrators*

**Mats MELIN** (Sweden)  
 Former Judge and Chairman,  
 Supreme Administrative Court

**Silja VÖNEKY** (Germany)  
 Professor of Public International Law,  
 Comparative Law and Ethics of Law,  
 University of Freiburg

## 1.2. Members and Alternate Members of the Court - Appointment by Tajikistan

In April 2022, the Republic of Tajikistan has appointed Ms Nasiba ISLOMOVA as arbitrator, for a mandate of six years. Ms. Islomova is a leading expert at the Supreme Economic Court of the Republic of Tajikistan.

The Bureau congratulates Ms. Islomova for her appointment and welcomes her as a new member of the Court.

The Court is currently composed of 77 members, i.e. 38 conciliators, 22 arbitrators and 17 alternate arbitrators. The conciliators, the arbitrators and their alternates are appointed by the States parties for a mandate of six years, according to Articles 3 and 4 of the Convention on Conciliation and Arbitration within the OSCE. These members, who offer an outstanding expertise in the field of international law and diplomacy, can be appointed by the parties to a dispute to sit in the conciliation commission or respectively in an arbitral tribunal. The appointed members are also entitled to take part in the elections for the President of the Court and membership of the Bureau.

The Court encourages the States parties to keep the appointment of their members up-to-date and to renew mandates that have come to expiry in due time.

The list of appointed members and alternate members is attached in Appendix II. The regularly up-dated list is also available online at: [www.osce.org/cca](http://www.osce.org/cca) (key documents).

## 2. ACTIVITIES

### 2.1 Visit of the Bureau of the Court in Stockholm

On 3 and 4 May 2022, the Bureau members of the Court made a visit to Stockholm, which was organised upon the invitation of Ambassador Carl Magnus Nesser, Director-General for Legal Affairs of the Swedish Ministry for Foreign Affairs. Sweden, as Depositary State of the Convention on Conciliation and Arbitration within the OSCE, has provided a substantial support to the Court in recent years, which has proved very beneficial in its endeavor to increase awareness with the ultimate goal to become fully effective.

The Bureau members met with Representatives of the Ministry for Foreign Affairs and members of academia to discuss the potential of the OSCE Court of Conciliation and Arbitration in the realm of peaceful settlement of disputes. They also met with State Secretary Magnus Nilsson to address the Court's opportunities and current challenges. Discussions allowed an assessment of the current situation and consideration of new and innovative ideas on the Court's future role, in particular in view of the com-

memoration of the 30th anniversary of the Convention on Conciliation and Arbitration within the OSCE, adopted in December 1992 in Stockholm.

A seminar on conflict resolution within the OSCE was co-organised by the Swedish OSCE Network. Ambassador Anders Bjurner and Ambassador Petra Lärke spoke about conflict resolution in the OSCE region and the experiences of the Swedish Chairpersonship-in-Office in this regard.

In his keynote address, President Emmanuel Decaux stated: “We must invent the future together. In view of the 30th anniversary of the Stockholm Convention, we need to devise a “Stockholm+30” that is a real action plan, a comprehensive strategy involving all the “friends of the Convention”. This begins with small steps, and a positive signal that dispute settlement remains an integral part of the OSCE and a concrete sign of hope for the entire continent.”

The full text of President Decaux’s speech at the seminar “Conflict Resolution within the OSCE” is included in the appendix.

## 2.2. 30<sup>th</sup> Anniversary Seminar of the Convention on Conciliation and Arbitration within the OSCE: “The 1992 Stockholm Convention in a Europe in Crisis”

The seminar to mark the 30<sup>th</sup> anniversary of the Convention on Conciliation and Arbitration within the OSCE took place on 24 November 2022 at the campus of the University of Stockholm, in hybrid format allowing remote participation. The event was co-organised by the OSCE Court of Conciliation and Arbitration, the Ministry for Foreign Affairs of Sweden and the Stockholm Center for International Law and Justice (SCILJ) of the University of Stockholm, which provided logistical as well as a substantial financial support.

### **Great Expectations**

The first part of the seminar looked at the origins of the 1992 Stockholm and the great expectations it has generated. Ambassador Hans Corell who had been involved since the very beginning of the preparatory work and negotiations, recalled the very positive development experienced at that time, building up on the Charter of Paris for a New Europe of 1990, in which the Heads of the States participating in the CSCE declared that the ten principles of the Helsinki Final Act would guide them towards an ambitious future. In particular, they reaffirmed their commitment to settle disputes by peaceful means and decided to develop mechanisms for the prevention and resolution of conflicts among OSCE participating States.

Thirty years after the Ministerial Council meeting in Stockholm, 34 States have become parties to the Convention, without any dispute being submitted to the Court however. Therefore a critical review was needed to assess the Court’s role in today’s globalised world taking into account the geopolitical situation and the realm of inter-state dispute settlement in a larger context.

## **Challenges and Opportunities**

The second part of the seminar shed light on the challenges faced by the Court. Since its creation in 1995, the global structures of the international community had undergone a remarkable shift in the three last decades, which has seen a multiplication of available mechanisms and a move from sovereign States to civil society and private sector actors, as well as regional entities. In this context, the limits of inter-state disputes were underlined. As already identified earlier, the Court faced many competitors, mainly in European institutions. While the multiple structures proposing a vast array of procedures, be it mediation, conciliation or arbitration, have flourished in recent years, they could be seen as complementary and not necessarily as mere competitors. The fragmentation of the OSCE area and many absentees from the list of States parties did not help to bring the Court in the forefront of the mechanisms available within the OSCE, concluded Emmanuel Decaux. He questioned above all the lack of political will.

## **New Approaches**

While the Court yet needed to prove its effectiveness and efficiency, its existence and the available mechanisms remained still relevant. In her presentation, Vanda Lamm, underlined the specific characteristics of the OSCE Court as a court of arbitration, but also a forum for conciliation, which has a broad jurisdiction and very flexible mechanisms. Given the great flexibility of the Court, she presented the idea to set up a specific “model rules of procedure” for conciliation commissions and arbitral tribunals that would give the parties a clear support and expedite the setting up of the conciliation commissions and arbitral tribunals, resulting in a speedier ending of the cases.

To the question of the adaptation of the Stockholm Convention to changed circumstances, Christian Tomuschat came to the conclusion that a dynamic process of consultations between the parties during the proceedings was perfectly perceivable in the current provisions of the Convention. This enhanced consultation process could conduct from conciliation to mediation, the momentum of which might generate a new spirit of confidence, he concluded.

To the question whether there have been any missed opportunities, Vasilka Sancin, addressed the subject from the point of view of “lessons learned” and potentials for a future proactive stance. While the Bureau members necessarily had to refrain to over-eagerly approach States in order not to jeopardize the Court's independence and impartiality as fundamental postulates of international adjudication, it needed to find the right balance in promoting the Court.

The findings brought about at the seminar will give some guidance to define the further strategy of the Bureau. It will endeavour to extend the number of States parties to the Stockholm Convention, engage on a more proactive path and seek a better integration in the mechanisms available within the OSCE for the resolution of conflicts and confidence-building measures.

The seminar was opened with welcome addresses of H.E. Tobias BILLSTRÖM, Minister for Foreign Affairs of Sweden and H.E. Ambassador Adam HAŁACIŃSKI, Chairman of the OSCE Permanent Council and Permanent Representative of Poland to the OSCE, as well as Emmanuel DECAUX, President of the OSCE Court of Conciliation and Arbitration.

Speakers at the seminar included:

- Emmanuel DECAUX  
Professor emeritus, University of Paris II Panthéon-Assis,  
President of the Court of Conciliation and Arbitration with the OSCE
- Laurence BOISSON DE CHAZOURNES  
Professor of International Law, Director of the Center for International Dispute Settlement, IHEID / University of Geneva
- Hans CORELL  
former Under-Secretary General for Legal Affairs and  
Legal Counsel of the United Nations
- Vanda LAMM  
Vice-President of the Hungarian Academy of Sciences, former Member of the Bureau
- Stelios PERRAKIS  
Professor emeritus, International and European Institutions, Panteion University,  
former member of the Court
- Inga REINE  
Judge at the General Court of the Court of Justice of the European Union,  
arbitrator appointed by Latvia
- Vasilka SANCIN  
Professor of International Law, Faculty of Law, University of Ljubljana,  
Member of the Bureau
- Christian STROHAL  
Former Director of the OSCE Office for Democratic Institutions and Human Rights
- Christian TOMUSCHAT  
Professor emeritus, Faculty of Law, Humboldt University, Berlin,  
former President of the OSCE Court, member of the Bureau
- Pål WRANGE  
Director, Stockholm Centre for International Law and Justice, University of Stockholm

Mats MELIN, former President of the Supreme Administrative Court of Sweden, and Anne RAMBERG, former Secretary-General of the Swedish Bar Association, who are both members of the Bureau, chaired the sessions.



Ambassador Carl Magnus NESSER, Director-General for Legal Affairs at the Swedish Ministry for Foreign Affairs, wrapped up the discussions with concluding remarks.

The proceedings of the seminar will feed into an on-line publication, to be released in spring 2023 on the Court's webpage.

### **2.3 Address of President Decaux at the Permanent Council of the OSCE at its 1374<sup>th</sup> Plenary Meeting**

Professor Emmanuel Decaux, addressed the Permanent Council on 19 May 2022 to present the Court's activity report 2021.

On the eve of the 30<sup>th</sup> anniversary of the 1992 Stockholm Convention, Decaux made an appeal to the States parties to use the mechanisms provided by the Convention. He reminded OSCE participating States that the Stockholm Convention was a common good for all members of the OSCE community and accessions to the treaty possible at any time, as well as ad hoc seizure by a bilateral agreement.

"We are reminded every day how fragile the law can be when faced with opposing, dominating power relations. In the dramatic context of today's war in Europe, the foundations of peace and international security, implemented by the UN Charter and the framework of the OSCE, are called into question. By establishing the Court of Conciliation and Arbitration within the OSCE, the Stockholm Convention offered an institutional structure, with both jurisdictional and diplomatic features," he said.

"These challenges and defeats make law even more precious and indispensable. I hope the anniversary of the Convention will be a wakeup call, to remind us that a peaceful settlement of disputes is preferable to violence and war. And, by its very existence, the Court of Conciliation and Arbitration is the crucial reminder that the ideal of "peace by law" constitutes the cornerstone of European security," Decaux concluded.

Decaux also highlighted that the Court's Bureau had the capacity to set up, in a flexible and confidential manner, two different methods of procedures - namely conciliation commissions or arbitral tribunals.

Ambassador Christine Fages, Permanent Representative of France to the OSCE, made a statement in reply, on behalf of France and the 18 EU members States which are parties to the Convention on Conciliation and Arbitration within the OSCE as well as of other 11 States parties (Albania, Austria, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, North Macedonia, Malta, Moldova, Monaco, Montenegro, Norway, Poland, Portugal, Romania, San Marino, Slovenia, Sweden, Switzerland and Ukraine. (Document reference PC.DEL/709/22 – 19 May 2022, OSCE+ - Original: French).

In her declaration, Ambassador Fages welcomed the intervention of President Decaux, that was most relevant in the eve of the 30<sup>th</sup> anniversary of the adoption of the Convention on Conciliation and Arbitration within the OSCE, and three months after the aggression of Ukraine by Russia. As reminded by President Decaux, the peaceful settlement of disputes is the counter-part of the prohibition of the use of force. “We need to come back without delay to the founding principles of the OSCE”, she declared. She welcomed President Decaux’s introduction on the possibilities offered by the Court for the peaceful settlement of disputes, in accordance with international law and OSCE commitments, underlining that the mechanisms of conciliation and arbitration could without any doubt bring long-term solutions to different challenges. Ambassador Fages also encouraged States that have not yet ratified or acceded to the Convention to do so. A larger number of States parties could contribute to the full effectiveness of the Court and restore the “Spirit of Stockholm”, she concluded.

Ambassador Alexander Lukashovich, Permanent Representative of the Russian Federation, delivered a statement in reply (PC.DEL/731/22).

#### **2.4 Simulation of Arbitral Proceedings in the Framework of the MUNLawS Conference, Faculty of Law, University of Ljubljana**

The Faculty of Law of the University of Ljubljana hosted for the third time the simulation of arbitral proceedings under the Convention on Conciliation and Arbitration within the OSCE, in the framework of the MUNLawS conference, held from 11-13 November 2022. The conference was organised by Professor Vasilka Sancin, Head of the Department of International Law at the University of Ljubljana and a member of the Bureau of the Court. The MUNLaWs conference is set up as a forum for exchange for young students and future decision-makers on matters regarding international organisations. It offers a perfect setting to provide a practical training and build awareness on the features of the Convention on Conciliation and Arbitration within the OSCE.

This year’s imaginary case involved two fictional States, the Republic of Antlia and the Kingdom of Ruchbah. The case dealt with a joint space agency’s premature launch of a satellite operating software based on artificial intelligence and with allegedly inaccurate information on orbital parameters of space objects and debris. This caused the collision of two satellites, resulting in a loss of revenue for both States involved. Students acted as agents for the claimant and respondent as well as judges at the arbitral tribunal.

The conference was opened with a recorded address by H.E. Borut Pahor, President of the Republic of Slovenia, as well as welcome messages from H.E. Ambassador Juraj Chimel, Ambassador of the Czech Republic to Slovenia, on behalf of the Czech Presidency to the Council of EU, Dr. Marko Rakovec, Director General of the Department for International Law and Protection of Interests, Ministry of Foreign Affairs of the Republic of Slovenia; Christa Allot, Executive Officer, OSCE Court of Conciliation and Arbitration; and Gal Veber, Secretary General of MUNLaWs 2022.

The conference gathered more than 190 students from 26 countries who actively participated in the simulations of the different committees.

A story of the Moot Court was published by the OSCE on its website in November 2022. It can be found at the on the homepage of OSCE's website: [www.osce.org - newsroom / stories](http://www.osce.org - newsroom / stories).

### 3. COMMUNICATION AND OUTREACH

The active year was also reflected in terms of communication and awareness rising. Presentations, interviews in different media, OSCE internal newsletter, stories on the website of the OSCE, social media campaigns and newsletters sent to the members of the Court biannually contributed to increase the visibility of the Court.

#### 3.1 Study Visit in Geneva - University of Stirling (Scotland-UK)

Dr Clemens Hoffmann, Programme Director of the MSc in International Conflict and Cooperation, of the University of Sterling (Scotland-UK) and his group of 22 students enrolled in this master's programme, made a visit to the Court on 11 May 2022 during their study trip to Geneva. Christa Allot (Executive Officer) made a brief presentation of the Court, the background of its creation, purpose, current challenges and explained the main characteristics of conciliation and arbitration. A lively Q&A session and debate concluded the visit.

#### 3.2 Interview of President Decaux by the “Mediterranean University Laboratory”

In his interview with the Mediterranean University Laboratory, a peace research network associated to the “Università Mediterranea” of Reggio Calabria, President Decaux spoke about the particular characteristics of conciliation as featured by the 1992 Stockholm Convention and why the Court should be part of OSCE's toolbox for the prevention and resolution of conflicts. He also replied to questions related to fundamental and human rights and shared his personal views both as teacher and independent expert and how theory and practice nourish each other, with a perspective of creating a “culture of peace”. The interview was published online on 13 June 2022 on the website of RUNIPACE (Rete Universitaria per La Pace – University Network for Peace). The interview is available in Italian and English at: <http://runipace.unirc.it>

### 3.3 Interview with Professor Vasilka Sancin in “OSCE Beyond Borders”

In its edition of September 2022, the internal OSCE newsletter “OSCE Beyond Borders” featured an interview with Professor Vasilka Sancin, Head of the Department of International Law, University of Ljubljana and a member of the Bureau of the Court. To many OSCE staff members, the Court is a far distant and widely unknown institution. Through her talk in this newsletter, which is addressed to the 2500 staff members, Professor Vasilka Sancin, brought the Court closer to OSCE colleagues working in many different locations. To the question raised why the Court still had not been seized yet, she mentioned that States may be reluctant to pioneer the process. However, the Court yielded some very unique advantages. “As it does not have a permanent composition of judges, as is the case in some other international courts, it gives the States the opportunity to select conciliators and arbitrators with expertise in a wide range of issues. This Court could look at disputes regarding energy, environmental issues, or specific disputes on the use of new technologies, such as artificial intelligence. This provides the parties with great flexibility, unavailable in some other institutions”, she mentioned.

While the Court had not dealt so far with any cases, it did not stand idle. Among the actions taken by her and her fellow Bureau members to make the Court better known, the interview portrays Professor Sancin’s initiative of a moot court, which was attended every year by around 150 law students from around the world. The interview also gave voice to Anže Mediževac, who has taken part twice, first as a participant and later, as one of the student organisers. “It is one thing to learn about procedures from books, but seeing the whole process in action, how the rules are applied and how we have to work to construct our arguments and our reasoning, this offers a different kind of knowledge to everyone involved, he said.

“Around the globe, we see examples of disputes that have resulted in armed confrontations. But there is no point in time before, during or after a conflict where you cannot try to resort to means of peaceful settlement of disputes, such as the Court. I believe we should do whatever we can to encourage states to resolve conflicts peacefully, providing them with the means they need to do so. This is also my message to the moot courts, to our future leaders and decision-makers”, Vasilka Sancin concluded.”

### 3.4 Communications Round Table

Christa Allot attended the communications round table organised by the OSCE Secretariat, which took place on 8 and 9 September 2022 in Vienna. The workshop gathered media and communications officers of all OSCE institutions, missions and field operations. The programme featured topics such as strategic communication, media training, crisis communication, with a special focus on social media. C. Allot had the opportunity to discuss specific aspects related to the Court individually with OSCE

COMMS team members. The workshop offered a good opportunity to exchange with colleagues of the OSCE and share their experiences and best practices. The Court will greatly benefit of this enhanced collaboration.

### 3.5 Visual Identity

The Court as an institution anchored at the OSCE has adopted its new logo, which reflects its identity. The logo was created by graphic designers of the OSCE Secretariat in accordance with its visual identity guidelines.



### 3.6 Website

The Court's webpages have been constantly enriched during the year. The individual profiles of the members of the Bureau are now visible on first glance. A story of the moot court with colourful snapshots of the opening ceremony reflecting the highly positive experience was published on the website of the OSCE. In terms of publications, the collection of key documents has been enhanced with a further language version, in Russian.

## 4. FINANCIAL AND ADMINISTRATIVE MATTERS

Overview of the financial statements:

Total net expenditures:	CHF 98'263
Contributions provided by States parties:	CHF 93'784
Total reserves	CHF 129'405

The expenditures realised in 2022 were in line with the budget forecast and comparable to those in previous, pre-pandemic years. The States parties provided a total amount of CHF 93'784. The timely payment of the regular contributions by the States parties can be seen as a sign of repeated support and commitment towards the OSCE Court.

During the year, the members of the Bureau were able to resume in-person meetings which greatly eased their awareness rising efforts. The culminating point was the 30<sup>th</sup> seminar of the 1992 Stockholm Convention. It has to be highlighted that the event could be arranged thanks to the initiative of the Ministry for Foreign Affairs of Sweden and

the extensive financial support of the Stockholm Center for International Law and Justice, University of Stockholm, which covered in substance the seminar's costs.

The administrative structure of the registry was still managed by one permanent employee, Christa Allot, who is working on a part-time basis. She ensures the day-to-day running of the office, relations with the Host State and States parties on institutional and financial matters as well as communications. The members of the Bureau of the Court, representing the Court's executive structure and ensuring the decision-making procedure are working on a purely *pro bono* basis. These members were active throughout the year in defining the future strategy, maintaining high-level contacts with the OSCE, and the Depositary State, liaising with academia and representing the Court in international fora.

The Court puts great efforts in keeping its current functioning cost at an extremely modest level. The Host State, the Swiss Confederation, greatly contributes to this effort by providing the Court's office spaces for free.

## 5. OUTLOOK AND CONCLUDING REMARKS

The year 2022 was particularly active in many aspects. It allowed to reach out again to its stakeholders and to pursue its efforts of "quiet diplomacy". The 30<sup>th</sup> anniversary of the 1992 Stockholm Convention represented the flagship event of the year. It featured many very precious contributions, not only from the academic point of view, but will also inspire the future strategy of the Court's Bureau.

The Bureau confidently looks forward to 2023, with a renewed energy deployed. Among its objectives is to make an approach with the Parliamentary Assembly of the OSCE, as well as other OSCE institutions in the realm of confidence-building measures and conflict prevention, where the Court could play a more prominent role. It also aims to speed up the ratification / accession process of OSCE participating States



Court of Conciliation and Arbitration

*English translation – Original in French*

*Stockholm, 3 May 2022*

**SEMINAR ON CONFLICT RESOLUTION WITHIN THE OSCE:  
THE ROLE OF THE COURT OF CONCILIATION AND ARBITRATION**

by Emmanuel DECAUX

*President of the OSCE Court of Conciliation and Arbitration*

I am particularly honoured to be opening this seminar and I am delighted to be here with you for several reasons.

First, it is an opportunity to thank our Swedish hosts and to pay tribute to Sweden's role as the depositary State of the Convention on Conciliation and Arbitration within the OSCE, which was adopted in Stockholm on 15 December 1992 and entered into force on 5 December 1994. The Convention has now been ratified by 34 States Parties, and Swedish diplomacy is to be commended for its commitment to encouraging further ratifications.

This is also an opportunity to speak in an informal setting and to speak in a more personal capacity on a topic that is at the heart of our concerns. We are approaching the thirtieth anniversary of the adoption of the Stockholm Convention, and we must all make a clear assessment.

Have the promises, hopes and expectations raised at the time been fulfilled? Evidently not, if we look at the Court's "roll", its register having remained empty since the beginning. No case, however small or significant, technical, or political, has ever been brought before it. Yet the Court is in place, it exists, it is "up and running", ready to function, at the service of the States Parties as well as of all participating States and OSCE institutions. We can cite precedents: the Permanent Court of Arbitration was dormant for a long time, the International Court of Justice itself went through very quiet phases, the European Court of Human Rights was also described as a "sleeping beauty in its early days"... But clearly this is far from satisfactory, especially as these courts are now in full operation. What was a nagging question for the members of the Court has become a collective challenge.

In the dramatic context of a new war in Europe, the foundations of international peace and security laid down in 1945 by the Charter of the United Nations and the foundations of co-operative security reaffirmed in the framework of the OSCE are now being called into question. The peaceful settlement of disputes went hand in hand with the prohibition of the use of force, as recalled in the Decalogue of the Helsinki Final Act signed in 1975 by all Heads of State and Government of OSCE participating States. In line with the 1990 Charter of Paris for a New Europe, the Stockholm Convention provided a legal and diplomatic institutional framework for

these principled commitments by establishing a Court of Conciliation and Arbitration within the OSCE. Thirty years on, we must ask ourselves what the role of our Court can and should be in the structure of European security.

The collective assessment that is required as we approach the thirtieth anniversary of the Stockholm Convention involves three long-term dimensions, knowing that the time of States and treaties is not that of individuals. We must constantly confront the key elements of the long term and the constraints of current events, patience and urgency. Let us review together, if you will, the past, the present and the future.

### **I – First, it is about honouring the past.**

The idea of the peaceful settlement of disputes is an old one, a noble ideal that took its modern form more than one hundred and fifty years ago, in the 19th century. It led to the codification of international arbitration at the two Hague Peace Conferences of 1899 and 1907 and to the institutionalisation of international justice, with the creation of the Permanent Court of International Justice between the wars and then of the International Court of Justice under the 1945 Charter.

In this respect, the two world wars were terrible ordeals for civilisation. The violation of treaties, these "*scraps of paper*", and the regression into the most inhuman barbarism, led in 1919 as in 1945, to the creation of international organisations, opposing "*the force of law to the law of force*", in the words of Léon Bourgeois, one of the fathers of the League of Nations, and future Nobel Peace Prize winner. Each time, the ideal of peace through law was revived more vividly than ever. While peaceful means of settlement could not resolve political disputes and prevent wars, they had their place in the reconstruction of an international order, as shown by the role of bilateral arbitration or conciliation commissions in the two post-war periods. Article 33 of the Charter of the United Nations combines the principled commitment to the peaceful settlement of disputes with the enumeration of a wide range of means of settlement available to states, such as arbitration and conciliation, including on the basis of regional arrangements.

This is the essence of the efforts undertaken in the framework of the OSCE, with a series of thematic seminars held in Montreux in 1978, Athens in 1984 and Valletta in 1991. But it was necessary to go further, to go beyond the reminder of good practices to have effective tools. The Stockholm Conference marked a qualitative leap forward with the adoption of a formal treaty, which created a Court of Conciliation and Arbitration, even if it meant breaking the usual consensus within the OSCE. It is true that the Court is open on a voluntary basis to all OSCE participating States, whereas legal commitments are only binding on the States Parties. But the map of ratifications speaks for itself: neither the United States, Canada, nor the United Kingdom are parties to the Convention, nor is the Russian Federation...

The founding fathers of the Convention had the immense merit of combining political voluntarism and legal expertise to set up a model institution, a true "Swiss army knife". The Court itself has two lists of members, arbitrators, and conciliators, composed of distinguished figures.

In this à la carte system, States may engage in the original approach of conciliation, which is compulsory for the States Parties, with the establishment of a conciliation commission which,



at the end of a confidential procedure, proposes a solution to the parties which they are free to accept or refuse. The other, more traditional route is arbitration, based on an optional declaration of acceptance, again with the setting up of an ad hoc judgment body, an arbitral tribunal which issues an award that is binding for the States. As can be seen, both systems offer great flexibility in the procedure.

The same approach can be found in the mission of the bodies that have been established, allowing the arbitrators to combine the implementation of international law with the notion of equity, *ex aequo et bono*, if the parties so wish (Art.30). While the objective of conciliation is “*to assist the parties in the dispute to settle the dispute in accordance with international law and their CSCE commitments*” (Art.24).

Compared to other regional conventions for the settlement of inter-State disputes, such as the 1957 Convention within the framework of the Council of Europe, the Stockholm Convention has a strong institutional dimension: the Court is to function “*within the OSCE*”. It is fully independent, its composition being a guarantee of expertise and impartiality, but it is at the same time one of the “institutions and structures” of the OSCE, presenting its annual report to the Permanent Council in Vienna. But above all, it could be said to share the same DNA as the OSCE, with the OSCE's frame of reference of principles and commitments that must guide any conciliation efforts between the parties.

As I see it, the Court thus offers essential advantages, enshrining the institutionalisation of flexible procedures, available to both States Parties and participating States, in a dual system, combining conciliation and arbitration, under the aegis of the Court's office, which ensures independence and impartiality, continuity and consistency. It also offers the guarantee of close integration into a pan-European system built step by step over nearly fifty years, on the basis of the principles of the Helsinki Final Act of 1975 and the Charter of Paris for a New Europe of 1990. In other words, the founding fathers designed the Court of Conciliation and Arbitration as a permanent tool, available to States, in the context of “*a new era of democracy, peace, and unity*” to quote a subtitle of the Paris Charter, where States reaffirmed their “*commitment to settle disputes by peaceful means*”, deciding “*to develop mechanisms for the prevention and resolution of conflicts among participating States*”.

However, this promising tool has since remained a mere legal virtuality - a Rolls-Royce in the garage, to put it mildly - even as crises have multiplied. Without resigning ourselves, we must confront this hopeful past with the realities of the present day with lucidity and demand. What have we done with this precious inheritance over the past 30 years?

## **II – We must ask ourselves about the present.**

The peaceful settlement of disputes has never been a smooth ride. If it is to be effective, we must also be aware of its limitations.

In a classic article, Michel Virally considered that the technical field of international justice was an intermediate zone: for cases of minor importance, States could settle their dispute directly and find a mutually acceptable compromise through negotiation. However, for cases that are rightly or wrongly considered to be of vital interest, states would never agree to submit to the decision of an impartial third party. This was an empirical reiteration of the old distinction

between legal and political disputes, even though international law is itself a component of the "external legal policy" of states. In an original manner, Lucius Caflisch, who was one of the main drafters of the Convention, often stated that the peaceful settlement of disputes implied a situation of peace and that once an armed conflict started, one was in a situation where any form of conciliation or arbitration was impossible.

There are of course a whole series of intermediate situations between war and peace, with "frozen conflicts", and processes for ending the crisis, but the goodwill and good faith of States seem to me to be essential for the effectiveness of amicable settlement procedures, avoiding any risk of instrumentalisation of the law. I believe that a concrete example of this is the inter-state conciliation procedures set up under the 1965 Convention on the Elimination of All Forms of Racial Discrimination, which were recently launched. In one case, with the communication filed by the State of Palestine against Israel, the admissibility decision adopted on 12 December 2019 by the Committee on the Elimination of Racial Discrimination (CERD) led to a legal impasse. In another, the political dispute between two neighbouring Gulf States was suddenly settled by political reconciliation, without any intervention by the CERD, which was seized and divested, without any further process...

With regard to the Stockholm Convention, there are undoubtedly also limits inherent in its nature. By definition, the Court's jurisdiction is limited to inter-state disputes, which is in the tradition of international public law, but today we are in a multi-party world, with a multiplicity of *stakeholders*. This is the case for companies, particularly multinational companies, and the success of the International Centre for Settlement of Investment Disputes (ICSID) and the Permanent Court of Arbitration (PCA) both show that transnational arbitration has a bright future. Moreover, the good practices of the Organisation for Economic Co-operation and Development (OECD) - with its national contact points - and the ongoing negotiations on business and human rights in the Human Rights Council illustrate the need for independent *monitoring* mechanisms and impartial dispute resolution. This is also the case for environmental disputes, which the founding fathers of the Convention already had in mind, as President Robert Badinter has often said. The discrepancy with current emergencies seems particularly striking to me.

It seems that other constraints are linked to the Court's generalist vocation. It is true that states are traditionally wary of specialised bodies that may exercise a methodological bias, which explains the lack of success of "thematic chambers" within the International Court of Justice. At the same time, however, a wide-ranging jurisdiction and a variable-geometry composition can give rise to a natural reflex of fear in the face of the unknown. States like to find themselves on familiar ground, with well-established precedents and familiar faces, if I may say so, in this game of musical chairs between judges, arbitrators and counsel, this "small world" is not very different from the *Small World* described by David Lodge. By necessity, however, the Court was unable to 'prove itself'.

The first step is always the hardest, but no state has taken this first step in the last thirty years, despite all the efforts to raise awareness and provide information made by all our predecessors over the years, President Robert Badinter and President Christian Tomuschat. The first Court, with its particularly prestigious composition of former ministers and top diplomats, could impress and dissuade States, following on from the Arbitration Commission of the European Conference for Peace in former Yugoslavia. Since then, the composition of

the Court has evolved with a stronger academic dimension, but also practitioners, jurists, and experienced judges. Professor Tomuschat has organised two seminars which have resulted in reference publications to raise awareness of conciliation by highlighting recent experiences and highlighting the advantage of flexibility. For almost thirty years, the Court has endeavoured to be present, to be reactive, if not proactive, since the principles of independence and impartiality prevent us from doing anything that might resemble *forum shopping* or "comparative advertising" in an increasingly competitive legal market. Without renouncing the inherent dignity of our functions, should we not be more visible in order to recall, time and time again, the added value of the Convention, bearing in mind that there is room for everyone, given the pressing need for law?

I believe that non-judicial and judicial forms of dispute settlement are complementary. In this respect, the contacts established with the Council of Europe bodies have been very promising, in particular before the Committee of Legal Advisers on Public International Law (CAHDI). However, we must also be aware of the Achilles' heel of the Stockholm Convention, which is Article 19 on "*safeguarding existing means of dispute settlement*". Beyond the very technical aspects of divestiture, in order to avoid duplications and contradictions, a more constructive reading of these provisions is needed to highlight the notions of complementarity and subsidiarity, to enable States to favour the solution that is the most rapid and effective in their eyes. In this respect, the Court of Conciliation has many advantages that make it the 'best bid' in terms of cost and adaptability, as well as time management, with a "tailor-made" procedure. It only lacks the effectiveness to show its efficiency.

Finally, we must take into account the geopolitical dynamics that have occurred over the last thirty years. To put it briefly, and perhaps too bluntly, far from the dream of a "free and united Europe", the OSCE area is being driven by contradictory forces. The European States are engaged in a historic process of unification based on law, with the role played by the European Union. At the same time, the divides in Eastern Europe are multiplying, with "frozen conflicts", undermined by violence, leading to military interventions and inter-state wars. The scope for the peaceful settlement of disputes is shrinking, on both sides, despite the Court's pan-European vocation.

I believe that these observations are necessary in order to look to the future in a pragmatic manner, beyond the nostalgic memories and pious wishes that are customary on anniversaries.

### **III – Now we must invent the future together.**

In view of the 30<sup>th</sup> anniversary of the Stockholm Convention, we need to devise a "Stockholm +30" that is a real action plan, a comprehensive strategy involving all the "friends of the Convention".

This begins with small steps, positive signals that dispute settlement remains an integral part of the OSCE and a concrete sign of hope for the entire continent.

The narrow circle of States Parties is still marked by the antagonisms that plagued the preparatory work for the Stockholm Convention. A generation later, is it not time for all participating States to reflect on their commitment, not only in theory but also in practice, to

what is now called "*law-based multilateralism*"? It would be a strong gesture if new States ratified the Convention on the occasion of this anniversary, as Luxembourg and Montenegro did a few years ago. To date, ten or so EU Member States have not yet ratified the Convention, so one must ask the reason for this wait-and-see attitude, when the European mantra is *Leading by Example*? In a time of crisis, when the very principle of the peaceful settlement of disputes is under threat, it would be a very positive contribution if signatory states such as Belgium, Bulgaria or the Czech Republic, not to mention various third countries, took the step and ratified the Stockholm Convention.

The basic commitment of the Convention, as has been said, is to compulsory conciliation, the outcome of which remains optional. Arbitration, on the other hand, whose outcome is a binding award, remains optional in principle. It requires an optional declaration of acceptance, according to the classic formula in Article 26. To date, the optional declarations that have been made have come to an end. In other words, a request for arbitration can only be made to the Court on the voluntary basis of a bilateral agreement. Updating the unilateral declarations of acceptance would also be a sign of confidence in the Court and of effective adherence to the principle of inter-state arbitration.

But obviously the key to everything remains the referral of a case to the Court in a concrete situation, otherwise the Court will remain a nice list of names of arbitrators and conciliators, like the lists provided for in many other instruments, starting with the Vienna Convention on the Law of Treaties of 1969. And we will remain "*characters in search of an author*" like Pirandello's actors. But the Court has not been idle. In addition to our communication efforts - which include the enrichment of our official website - we have ensured that the Court is in a position to proceed, by considering various scenarios for the establishment of a commission or a court, with different parameters, variants and options. We could go further and post the practicalities of implementing the Convention, as the Permanent Court of Arbitration does, although there is a need for confidentiality and flexibility. One of the essential elements seems to be the time factor, with the necessary hindsight to calm passions, but the imperatives of early warning and rapid response, so as not to let "*malevolent obsessions*" fester.

In an original way, the Court also supported the *Moot Court* organised on the initiative of our colleague from the Bureau, Professor Vasilka Sancin. We hope that an academic network will be able to contribute to the expansion and strengthening of this initiative, which has already been a great success when aimed at students. Perhaps it would also be useful to have seminars or training modules on conciliation and arbitration for future users, diplomats and jurists.

Can we go further without stepping out of our role as "*honest intermediary*"? One can imagine regular contacts with other OSCE bodies such as the Parliamentary Assembly or the Office for Democratic Institutions and Human Rights. We are constrained by the legal framework of the Convention, but the Court could take on extra-conventional functions, in the advisory field, for example, as has sometimes been suggested. In this sense, the success of the Venice Commission for Democracy through Law, an open agreement of the Council of Europe, is quite remarkable and synergies could be found.

To go further would require the Stockholm Convention to be reopened, which does not seem appropriate in a period as uncertain as the one we are going through. At the very most, we can imagine an additional protocol to go beyond the inter-state logic of thirty years ago and take into account the new transnational issues involving companies or civil society players.

I hope that other ideas will emerge on the occasion of this thirtieth anniversary, far from any self-congratulation. Bringing together the members of the Court to benefit from their very varied and rich professional experience would be excellent, but the indispensable revival, the "reset" of the Stockholm Convention can only come from the States.

As for us, we must keep the flame of the peaceful settlement of disputes alive with conviction, resolution, and determination. It is when the very foundations of law and peace are threatened that we must safeguard the instruments that guarantee international legality. While the Stockholm Convention may have lain dormant for thirty years, it must now be used to the full, wherever possible and necessary. As Léon Bourgeois said in uncertain times, "*Peace is the duration of law.*"

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