

# *Court of Conciliation and Arbitration within the OSCE*

***Presentation / Consultation Session with Representatives of States Parties to the Convention on Conciliation and Arbitration within the OSCE in Geneva – 19 May 2011,  
chaired by Mr Luzius Wildhaber, Vice-President of the Court***

***Statement made by Mr Lucius Cafilisch – Member of the Bureau***

I should like to thank you for having accepted our invitation to the present session of information and consultation. The Court deemed it useful to meet with Representatives of the States Parties, for the first time, in Geneva. The Bureau meeting that took place earlier this morning has offered this opportunity.

The Court, instituted by the Convention on Conciliation and Arbitration, is headquartered in Geneva and one of the many intergovernmental organisations here. Switzerland played a key role in setting up the Convention. I take this opportunity to thank the host State for its continuous support since the creation of the Court.

As an institution created within the OSCE, the Court should be well known in Vienna and in OSCE circles. In these contexts, the Court has regularly participated in Permanent Council, ministerial and high-level review meetings. Promotion efforts that have been made to increase the number of ratifications and accessions were undertaken among OSCE-participating States. Let me remind you that currently thirty-three States are Parties to the OSCE Convention on Conciliation and Arbitration, which represents more than half of the OSCE-participating States.

The objective of the present information session is to increase States Parties' awareness of the Court's existence and to recall the services it may provide. I shall first talk briefly about the main features of the Convention. You are then cordially invited to ask any questions. If you wish to consult individually one of the Bureau members present today, that opportunity is offered as well.

The Court established by the Convention on Conciliation and Arbitration within the OSCE of 1992 has been set up to enable States to prevent and settle disputes rapidly, discreetly and with little outlay.

There are disputes between States over problems such as pollution, flood damage, border crossing or inland waterway traffic, over cultural questions such as the teaching of minority languages or the preservation of the historical or religious heritage, or over border adjustments, in other words over difficulties arising in the daily life of States, neighbours and in many cases friends.

These disputes may alter the relations between neighbouring States that have to live and work together in harmony. For this reason, the idea emerged of creating a viable and effective body to prevent and settle conflicts within the large community of different sovereign States that constitute the OSCE.

To this end, the Court offers two procedures: first of all, a **conciliation procedure**. Any State Party may request the constitution of an ad hoc conciliation commission for a dispute between it and one or more other States Parties. This means that a State may unilaterally activate the conciliation procedure. States Parties may also jointly request the Court to set in motion that procedure. Each party to the dispute appoints, from the list of conciliators of the Court, one conciliator to sit on the commission. After consulting the parties, the Bureau of the Court appoints the other members of the commission. The proceedings, which are confidential and in which all parties to the dispute have the right to be heard on a basis of equality, are conducted by the chairman of the commission in accordance with the Court's Statute and Rules of procedure. At the conclusion of the proceedings, the commission draws up a report containing proposals for the peaceful settlement of the dispute. The parties to the latter then have a period of 30 days during which to examine the report and to inform the commission whether they are willing to accept the settlement. ***The proposed solution becomes binding only after it has been accepted by all the parties to the dispute.***

The Court can also set up, by agreement, **arbitral tribunals** in accordance with the Statute and the Rules of Court. The national arbitrators appointed by the States parties to the dispute as members of the Court are *ex officio* members of the arbitral tribunal called upon to deal with the dispute. The Bureau of the Court then appoints the other members of the tribunal from among the Court's list of arbitrators. All parties to the dispute have the right to be heard during the proceedings, which are conducted in accordance with the principles of equality and fair trial. The proceedings consist of a written and an oral phase. The hearings are held *in camera* unless the tribunal decides otherwise at the request of the parties. The function of the tribunal is to decide, in accordance with international law, such disputes as are submitted to it. At the conclusion of the proceedings, the tribunal renders an award stating the reasons on which it is based. That award is final and not subject to appeal.

I should like to emphasize two important points.

- The high level of qualifications and international experience of the conciliators and arbitrators on the list; and
- the simplicity, discretion and economy offered by the Court's procedures.

The Court is an outstanding pool of experts. The diversity and experience of its arbitrators and conciliators allow the latter to give advice to participating States on problems of public international law and on the interpretation of commitments assumed in the framework of the OSCE. A State may notify the Secretary General of the OSCE in Vienna of the need for consultation and of the nature of that need. The Secretary General will then transmit the request to the Court, and the Bureau of the Court will appoint one or several qualified experts.

To conclude this presentation, I should like to draw your attention to the Court's current agenda: the present Bureau and its President have been elected in 2007 for a mandate of six years. Consequently, the Court will organise in Spring 2013 the election of a new Bureau. The members of the Court appointed by their home State are eligible for these functions and are entitled to participate in the election. Some mandates of appointed members have to be renewed. The Registry will contact the missions concerned on those issues.

I thank you for your attention and invite you to ask any question you may have. The members of the Bureau present here may also be consulted individually.