

*Court of Conciliation and Arbitration
within the OSCE*

Periodic Report
2013 – 2016

to the States parties to the
Convention on Conciliation and Arbitration within the OSCE

Periodic Report 2013 - 2016

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1. Election of the Bureau in 2013

a) Composition of the New Bureau

In 2013, the members of the Court elected a Bureau for a new mandate of six years. The election process was held in a written procedure following the provisions of Article 9 of the Rules of Procedure. The composition of the Bureau elected by the conciliators and the arbitrators appointed by the States parties of the Convention on Conciliation and Arbitration within the OSCE (Stockholm Convention) is as follows:

President:

Christian TOMUSCHAT (arbitrator, Germany)
Professor emeritus, Humboldt University Berlin

Bureau of the Court:

Members

Kimmo KILJUNEN (Finland)
Special Representative for Mediation of the Foreign Minister of Finland

Daniel THÜRER (Switzerland)
Former Professor, University of Zürich

Päivi HIRVELÄ (Finland)
Judge, Supreme Court of Finland

Riccardo PISILLO MAZZESCHI (Italy)
Professor, University of Siena

Alternate Members:

Vanda LAMM (Hungary)
Professor, Hungarian Academy of Sciences

Anna WYROZUMSKA (Poland)
Professor, University of Lodz

Oskaras JUSYS (Lithuania)
Ministry of Foreign Affairs of Lithuania

b) Institution of the New Bureau

The newly elected President as well as the elected members and alternate members of the Bureau met in Geneva in October 2013 for its operative establishment. During the meeting, the members of Bureau elected the Vice-President of the Court in accordance with the provisions of Article 9 of the Rules of Procedure. Kimmo Kiljunen was elected as Vice-President.

The meeting gave the opportunity to the new Bureau to make a general tour d'horizon on the Court and to assess the current situation. Professor Tomuschat and the members agreed on the unique features offered by the Convention on Conciliation and Arbitration within the OSCE providing flexible and cost-efficient tools for the peaceful settlement of disputes. The question why the Court had not been used so far was also discussed and the newly elected Bureau agreed to undertake promotion activities with a view to reactivating the interest among States parties and other OSCE participating States.

President Tomuschat and the elected members made individually the solemn declaration, according to Article 13 of the Rules of Procedures.

2. Activities

a) Visit to the OSCE Secretariat in Vienna

As decided at the first meeting of the newly elected Bureau members, President Tomuschat and Vice-President Kiljunen made a visit to Vienna where they met with the Secretary-General of the OSCE, Lamberto Zannier, and several senior officials of the Secretariat. In addition, meetings with Permanent Representatives of major States parties, including the United States and the Russian Federation, were arranged.

It emerged from the conversations conducted that the Court remained largely unknown among the national delegations and that there was a certain deficit of knowledge. After having enjoyed enthusiastic support at the beginning of its creation, but in light of the absence of any case, the political and intellectual interest for the Court has largely decreased over the past years.

Based on these remarks, the Bureau decided to take some measures with a view to creating confidence in the conflict-resolving capacity of the Court and to bridging the knowledge gap among States parties and other OSCE participating States.

Among the concrete measures, following actions were taken:

- Article in the OSCE Magazine "Security Community" (Issue 2 / 2014)
"The Sleeping Beauty" – by Christian Tomuschat
- Presentation of the Court before Permanent Council of the OSCE (5 June, 2014) and Meeting with Representatives of States parties (PC.DEL/616/14/Rev.1)
- Colloquium "Conciliation in the Globalized World of Today" (Vienna, 10-11 June 2015)

b) Article in the OSCE Magazine “Security Community” (Issue 2/2014)

In his article, President Tomuschat raised the question of why the mechanisms for the peaceful settlement of disputes provided by the Stockholm Convention have not been used in the past. The article gives a detailed oversight of the conciliation and arbitration procedure offered. While it is unlikely that the Court will be called to settle any major disputes, it is the appropriate mechanism for settling controversies which could not be resolved by diplomatic means and are negatively affecting good neighbourly relations. Even if the Court has lain dormant for a long time should not be taken to mean that it has lost its *raison d'être*.

c) Presentation of the Court before the Permanent Council of the OSCE (5 June, 2014) and Meeting with Representatives of States parties

President Tomuschat and the Bureau were invited to make a declaration before the Permanent Council of the OSCE at its meeting 5 June 2014. In his statement (PC.DEL/616/14/Rev.1), President Tomuschat recalled that the Court was brought about by the Stockholm Convention of 15 December 1992, which entered into force on 5 December 1994. It was conceived in the midst of the euphoria as a mechanism under which European countries could settle their problems in a spirit of mutual understanding and symbolized the hope ushered in by the Paris Charter adopted by the CSCE in 1990. The ratification process, which started shortly after the signature of the Convention, went first ahead fairly smoothly, but slowed down considerably in the following decade. While the Court is well known to legal experts, diplomatic circles may lack awareness of the procedures featured by this jurisdictional body. In his statement, President Tomuschat described the functioning and purpose of the conciliation and the arbitration procedures. He stressed again the advantages of swift, cost-efficient and flexible procedures offered by the Court. He concluded: “In any event, the members of the Bureau of the Court are ready to put their best efforts in the service of the OSCE with a view to contributing to the main objectives of the Organization, the maintenance and promotion of peace and security, democracy and human rights in Europe.”

In response, the European Union in its statement (PC.DEL/644/14) welcomed the introduction on the functioning of the Court and reaffirmed that it could be a potentially useful instrument of preventive diplomacy. It affirmed that the signature and ratification by more States of the Stockholm Convention might contribute to the use of this instrument.

The Permanent Representative of Germany, Ambassador Rüdiger Lüdeking (PC.DEL/665/14), recalled in his statement in response that the OSCE participating States took the commitment in the Helsinki Final Act to settle peacefully any disputes that may arise, in the spirit of cooperation and based on international law. The Court offered instruments that correspond to these commitments. It was most regretful that no use had been made so far of its potential. He recalled also some ideas that Germany had developed together with France and Switzerland in the framework of the Corfu process: a) to further promote and showcase the potential of the Court; b) the possibility of the Permanent Council to advise States parties to consult the Court; c) to examine the possibilities to give advisory opinions in support of the executive structures of the OSCE institutions; d) to invite OSCE participating states to ratify / accede to the Stockholm Convention. These propositions and ideas being still valid nowadays, he wished that the Court was also integrated in the future reflections in the Helsinki+40 process.

d) Colloquium “Conciliation in the Globalized World of Today”

The international colloquium, organised by the Court, took place on 10-11 June 2015 at the OSCE headquarters in Vienna (Hofburg). It was designed as another step to bring once again to the attention of the States Parties the existence of the Court as an institution established to settle any arising disputes among them under specific European auspices. The colloquium focused on conciliation as a means of peaceful settlement of disputes. It aimed at elucidating the main factors that either favour conciliation or impede its acceptance.

The colloquium could take place thanks to generous financial aid by four States (Austria, Finland, Germany, Switzerland) and to the logistical support by the OSCE Secretariat. The theory and practice of conciliation procedures in different international contexts were analysed by ten well-renowned legal experts. Speakers included:

- Jean-Pierre COT
Judge at the International Tribunal for the Law of the Sea (Germany)
- Ulf LINDERFALK
Professor of International Law, Faculty of Law, Lund University (Sweden)
- Ruth MACKENZIE
Senior Lecturer in International Law, University of Westminster (UK)
- Lauri MÄLKSOO
Professor of International Law, University of Tartu (Estonia)
- Giuseppe PALMISANO
Professor of International Law, Director of the Institute for International Legal Studies on the National Research Council of Italy
- Edouard PLANCHE
Programme Specialist, Division for Heritage at the United Nations Educational, Scientific and Cultural Organization (UNESCO)
- August REINISCH
Professor of International and European Law, University of Vienna (Austria)
- Philippe SANDS QC
Professor of Law, University College London, Director of the Centre for International Courts and Tribunals
- Daniel THÜRER
Member of the Bureau of the Court, Former Professor at the University of Zurich, Member of the International Committee of the Red Cross

One of the main lessons to be drawn from the reports and the ensuing discussions was the recognition that successful conciliation requires flexible procedures that remain within adequate time limits. The Bureau of the Court will consider whether this conclusion should lead to any amendment of the existing procedural framework.

A publication of the reports will be released in December 2016, which should serve as guidelines for States wishing to avail themselves of the opportunities provided by the procedural devices of the Court.

3. Prevention and Resolution of Conflicts in the OSCE and the Role of the Court of Conciliation and Arbitration – Report of Professor Riccardo Pisillo Mazzeschi

The Bureau of the Court entrusted Professor Riccardo Pisillo Mazzeschi (Professor of International Law, University of Siena and member of the Bureau) to draft a report on the mechanisms for the prevention and resolution of conflicts provided by the OSCE and the role of the Court of Conciliation and Arbitration. The report is meant to provide an input for reflection to the Bureau members to assess the different existing tools for the peaceful settlement of disputes and the role of the Court within this structure. The extensive report gives a detailed overview of the various organs and procedures set up by the OSCE in the realm of conflict prevention and resolution, both on a political and military level. The report analyses then the historical development of the OSCE competence on the peaceful settlement of disputes, anchored in the Helsinki Final Act (Principle V) and the ensuing “Valletta Mechanism” that emerged in 1991. The Stockholm Convention was instituted in 1992 to put a more structured and rigid mechanism and to formalise the OSCE member states’ commitment to peacefully settle disputes through an international treaty. A critical appraisal evaluates the assets and drawbacks of the conciliation and arbitral procedures provided by the Court. In his conclusions, Prof. Pisillo Mazzeschi makes some suggestions on how to remedy the inertia of the Court from an institutional angle. A better dialogue between the Court and other OSCE institutions could be a first step in this direction.

The full report can be provided by the registry of the Court upon request. It will also be available in the book on International Conciliation that will come out in December 2016 with Brill Publishers.

4. Institutional Matters: Appointment of New Members of the Court – Ratifications/Accessions

a) Appointment of Members to the Court / Renewal of Mandates

The conciliators, the arbitrators and its alternate are appointed by States parties for a mandate of six years according to the provisions of Articles 3 (3) and 4 (3) of the Stockholm Convention. Following the expiry of the mandate of their members, Belarus, Portugal, Austria and Sweden renewed the mandate of the incumbent members or respectively appointed new members.

Appointments*

Republic of Belarus (December 2013):

Conciliators:	Vladimir SENKO Chairman of the Standing Committee for Foreign Affairs and National Security of the Council of the National Assembly
	Sergei MARTYNOV Former Minister for Foreign Affairs of the Republic of Belarus (2003-2012)
Arbitrator:	Petr MIKLASHEVICH Chairman of the Constitutional Court
Alternate:	Andrei ZABARA Deputy Chairman of the Supreme Court

Austria (December 2014)

Conciliators: Johannes KYRLE
Ambassador, Federal Ministry of European and International Affairs

Gerhard HAFNER
Professor, University of Vienna

Arbitrator: Hans WINKLER
Ambassador, Federal Ministry for European and International Affairs

Alternate: Ursula KRIEBAUM
Professor, University of Vienna

Portugal (October 2014)

Conciliators: Mr Jónatas MACHADO
Professor, Faculty of Law, University of Coimbra

Mr João RAMOS PINTO
Ambassador, Ministry of Foreign Affairs of Portugal

Arbitrator: Ms Maria DE ASSUNÇÃO DO VALE PEREIRA
Professor, School of Law,
University of Minho

Alternate: Mr Mateus KOWALSKI
Professor, Autonomous University of Lisbon /
Legal Counsellor, Ministry of Foreign Affairs of Portugal

Sweden (June 2015)

Conciliators: Ms Anne RAMBERG
Attorney-at-Law,
Secretary-General of the Swedish Bar Association

Mr Rolf EKÉUS
Former Ambassador,
Former OSCE High Commissioner on National Minorities

Arbitrator: Mr Mats MELIN
Justice of the Supreme Administrative Court
Chairman of the Supreme Administrative Court

Alternate Arbitrator: Ms Marie JACOBSSON
Ambassador, Principal Legal Adviser on International Law,
Ministry for Foreign Affairs of Sweden
Member of the International Law Commission

*The functions and titles mentioned are those communicated at the time of the notification.

b) Accession to the Convention by Montenegro

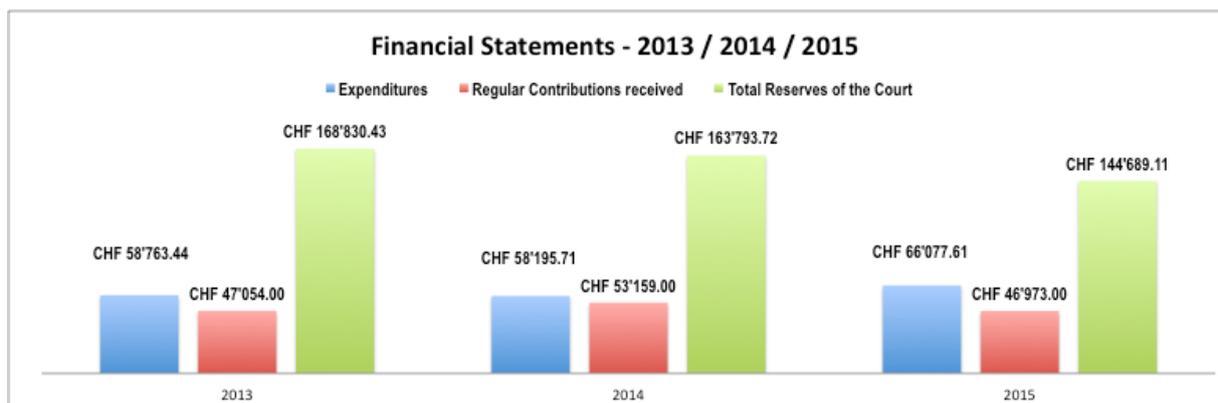
On 15 April 2016, Montenegro deposited its instrument of ratification with the Depository of the Stockholm Convention, the Government of Sweden. According to the provisions set forth by Article 33(4) of the Convention, the accession entered into force on 15 June 2016, Montenegro thus becoming the 34th State party. President Tomuschat welcomed Montenegro among the States parties who have recognised the jurisdiction of the Court and placed confidence in its flexible procedures. The accession of Montenegro can be considered as a very positive signal in favour of the mechanisms of peaceful settlement of disputes within the OSCE and the Court in particular.

5. Financial Matters

With regard to financial matters, the Financial Protocol, established in accordance with Article 13 of the Convention on Conciliation and Arbitration within the OSCE, contains the requisite rules. Accordingly, the Court makes an annual request of contribution to the States parties to the Convention. The annual contribution to the budget is divided among the States parties to the Convention according to the scale of distribution applicable within the OSCE, adjusted to take into account the difference in number between the OSCE participating States and the States parties to the Convention. In 2013, 2014 and 2015, the Court made a request for an annual contribution of a total amount of CHF 50'000.

In the absence of any operative activity of the Court, the responsibility for the budget has been delegated to the Bureau of the Court. The accounts and financial statements are audited at the closing of every budget year by chartered accountants. The financial statements, approved by the Bureau, as well as the relevant audit report are regularly transmitted to the States parties.

Overview of the Financial Situation



Since its creation in 1995, the Court is functioning with a basic administrative structure at its headquarters in Geneva. The Court employs an executive officer, Christa Allot, on a part time basis. The President and the members of the Court are fulfilling their duties on an honorary basis, although the Financial Protocol provides for an annual retainer fee for the President and the Bureau members. The question was raised at the beginning of this year by President Tomuschat who took up the matter by writing a letter to the Permanent Representatives of the States parties to the OSCE. The consultation and/or approval process is currently under way.

It has to be highlighted that Court benefits from a headquarter agreement concluded with the Host State, the Swiss Confederation. Accordingly, Switzerland is generously providing office spaces for the Court for free.

6. Outlook

The current Bureau is well engaged to pursue its efforts in making the procedures offered by the Convention on Conciliation and Arbitration better known, not only to the States parties, who could make a valuable use of these tools, but also to the other OSCE participating States who are invited to join the Convention.

Hence, the Bureau will continue its efforts to raise awareness also in the future, while safeguarding the financial balance and available funds. Voluntary contributions to specific projects, as this has been the case for the colloquium in 2015, where Austria, Germany, Finland and Switzerland allocated generous financial support, may help to implement the ambitious goal to activate the Court.

Geneva, December 2016