



Permanent Council Meeting – 8 June 2023

Address of Judge Erkki KOURULA

Vice-President of the Court of Conciliation and Arbitration within the OSCE

Mr. Chairperson,

Madam Secretary-General,

Permanent Representatives,

It is a great honour for me to present the annual report of the activities of the Court of Conciliation and Arbitration within the OSCE in accordance with Article 14 of the Stockholm Convention. I thank the Chairpersonship of North Macedonia for its invitation to present our 2022 activity report to you today. It allows to maintain our contacts with the OSCE institutions and mechanisms as well as the delegations in Vienna in the spirit of cooperative diplomacy underlying our information and awareness-raising efforts.

Bearing in mind that we are a court based on a treaty, the Bureau of the Court has continued outreach activities in order to remind that we have some practical tools on our website providing information about the Court. For this purpose, we have posted a collection of basic documents on the Convention and a general list of publications about the Court. In terms of publications, the collection of key documents has been enhanced with a further language version, in Russian. Moreover, interviews given by President Emmanuel Decaux and Professor Vasilka Sancin are found on the website. Professor Sancin also organised, for the third time, the simulation of arbitral proceedings under the Convention in the framework of the MUNLawS conference at the University of Ljubljana. The Bureau, a permanent body, feels that these events are important to remind of the Court's potential role to implement two procedures – conciliation commissions and arbitration tribunals – in a flexible and confidential manner.

We are well aware that the current situation in Europe is dire. We are in the middle of an armed conflict, challenging the Court's role and assistance in the peaceful settlement of disputes. The foundations of international peace and security as established by the United Nations Charter and reaffirmed within the OSCE are indeed called into question. In line with the 1975 Helsinki Final Act

and the 1990 Paris Charter, the Stockholm Convention nevertheless offers an institutional structure for these commitments of principle, accepted by us all, through the establishment of the Court.

Thirty years after the conclusion of the Stockholm Convention, and not one case brought before the Court, one is admittedly entitled to raise the question what role the Court can have in the European security architecture. After an interesting Bureau visit in May 2022 and the 30th Anniversary Seminar of the Convention in November 2022, both held in Stockholm, we still strongly believe that the principle of peaceful settlement of disputes is part of the solution in Europe. As President Decaux stated in Sweden, the Court is in place, it exists, and recalled that the Permanent Court of Arbitration was dormant for a long time, the International Court of Justice went through quiet phases and the European Court of Human Rights was described as a "sleeping beauty" in its early days. Still, the situation is not satisfactory. It continues to be a challenge both to the members of the Court and the OSCE in general.

Mr Chairperson,

There are not many treaties concluded within this Organisation. The Stockholm Convention is one. It has presently 34 States parties out of 57 participating States. The Convention should not be considered only as a theoretical example of legal idealism but also a mechanism based on flexible models to achieve practical results.

The Court's title shows that it is "within the OSCE". It is founded on Principle V relating to the peaceful settlement of disputes of the Helsinki Final Act, as part of the comprehensive set of principles, including to refrain from the threat or use of force, the inviolability of frontiers and the territorial integrity of States, equal rights and self-determination of peoples and the fulfilment in good faith of obligations under international law, not to mention respect for human rights and fundamental freedoms. These principles are interdependent.

The purpose of conciliation is to settle disputes in accordance with international law and OSCE commitments. Arbitration is based on international law but can also, if parties to the dispute so agree, decide a case *ex aequo et bono*. Even though the provisions of the Convention are binding on the States parties, they can be used also by participating States on an *ad hoc* basis. While being an independent body, the Court is also part of OSCE's structures. Therefore, the Bureau finds it most important to have contacts with institutions of this Organisation as well as representatives of the participating States for the improvement of the mutual exchange of information. The procedures of the Court should also be part of the toolbox available to the OSCE Chairpersonship-in-Office.

Mr. Chairperson,

We would first of all appeal to the States parties of the Stockholm Convention and encourage them to resort to mechanisms provided by the Convention for settling disputes at an early stage before they

become more serious conflicts. Through the conciliation the Court offers means to sort out the issues creating conflicts between disputing parties and proposes ways of resolving them. All with discretion and without undue pressure. Likewise, it can assist to determine the facts at the end of arbitration procedure between States, as provided in the Convention, ensuring the equality of the parties. Unfortunately States parties have so far not been prepared to accept the potentials of the Convention as means of peaceful settlement of disputes. If negotiations do not bring about solutions between States parties, there are a good number of relatively simple, flexible and neutral conciliation and arbitration procedures to resort to. States parties are invited to use them effectively.

An appeal could also be addressed to all the OSCE participating States. The mechanisms provided in the Stockholm Convention are also available to all States that constitute our Organisation. They can accede to the Convention at any moment, and they are indeed invited to do so, to confirm their commitment to promote dispute settlement in a peaceful manner. Even after thirty years it is not too late.

Participating States can also use the Court's procedures on an *ad hoc* basis, be it environmental, trans-border pollution, national minority or delimitation questions. Such procedures could also benefit disputes relating to possibly new matters that may even go beyond the inter-State framework and include transnational disputes. They can be dealt with great flexibility and diplomacy. Benefitting a solid network of experts in international law, the Court could also act in an advisory function in new fields for the sake of OSCE institutions and structures. We would always welcome considerations of new fields of peaceful settlement of disputes.

Mr. Chairperson,

I would like to thank Sweden, which invited last May the Bureau of the Court to participate in a joint consideration of present and future challenges to the Court members. A seminar, in a hybrid format, was organised in November with the support of Sweden, as the depository State of the Stockholm Convention, and with the participation of the Representative of the Polish OSCE Chairpersonship-in-Office, to mark the 30th Anniversary of the Convention. The anniversary was anything but self-congratulatory. Realistic statements and suggestions made by the academics and diplomats, however, entail reasons for cautious optimism to keep alive fragile hopes for peaceful settlement of disputes within the OSCE region. The interventions will be published shortly.

Mr. Chairperson,

What is called for is the political will of States parties and the OSCE institutions to resort to the Court's mechanisms to promote peace and justice in our continent. A starting point to many participating States is to accede to the Stockholm Convention. We venture to suggest that the volatile situation in Europe underlines the need to maintain treaty-based mechanisms. The Court of Conciliation and Arbitration within the OSCE is one of such mechanisms.