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**DECISION No. 383
REPORT ON OSCE LEGAL CAPACITY AND ON
PRIVILEGES AND IMMUNITIES TO THE MINISTERIAL COUNCIL**

The Permanent Council,

In accordance with paragraph 34 of the Istanbul Summit Declaration,

Acknowledging the intensive negotiations held in order to solve the open question of legal capacity of the OSCE and the granting of privileges and immunities,

- Endorses the annexed report.

OSCE LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES

REPORT OF THE PERMANENT COUNCIL TO THE MINISTERIAL COUNCIL

1. In the Istanbul Summit Declaration, the Heads of State or Government of the participating States of the OSCE noted that “a large number of participating States have not been able to implement the 1993 Rome Ministerial Council decision on legal capacity of the OSCE institutions and on privileges and immunities. With a view to improve this situation, a determined effort should be made to review issues related to the implementation of commitments under the 1993 Rome Ministerial decision. To this end, we task the Permanent Council, through an informal open-ended working group to draw up a report to the next Ministerial Council Meeting, including recommendations on how to improve the situation.”

2. Under Austrian Chairmanship the open-ended working group envisaged by the Istanbul Summit Declaration held an informal meeting on 3 July 2000 and three formal meetings on 21 and 22 September 2000, 16 and 17 October 2000 and 13 and 14 November 2000 with the participation of legal experts from capitals. The work of the group was carefully prepared by the following documents:

- Secretary General’s background report on the OSCE Legal Capacity and Privileges and Immunities (SEC.GAL/20/00 of 6 March 2000 and SEC.GAL/20/00/Add.1 of 22 March 2000, Attachment 1);
- Non-paper issued by the Austrian Chairmanship on the OSCE Legal Capacity and Privileges and Immunities (CIO.GAL/42/00 of 23 June 2000, Attachment 2);
- Secretary General’s paper on difficulties the OSCE has faced or may face due to the lack of legal capacity and privileges and immunities granted by all participating States (SEC.GAL/71/00 of 13 July 2000, Attachment 3).

3. During the work of the group there was a growing awareness among delegations that something ought to be done, but opinions differed as to the direction to be chosen. A first informal discussion of possible options, on the basis of the non-paper of the Chairmanship mentioned above, showed an overwhelming majority in favour of a convention on the legal personality and the privileges and immunities of the OSCE. The core issue is that the OSCE does not enjoy the legal status of an international organization.

4. Several delegations were willing to explore the option of a model bilateral agreement, but some other delegations rejected this option as they considered that international establishment of the legal personality of the OSCE was a precondition for the conclusion of bilateral agreements with the OSCE. There was little support for a revision of the 1993 Rome Ministerial decision without either a convention or a model agreement.

5. Subsequently, on a proposal from the Chair, the substance of future provisions on legal personality, legal capacity and privileges and immunities was discussed, irrespective of whether they would be included into a convention or a model bilateral agreement (CIO.GAL/70/00 of 22 August 2000, Attachment 4). These discussions were useful as they helped delegations to gain a clearer picture of the issues concerned. The state of this discussion, when it was interrupted without conclusion, can be seen in Attachment 5 (Annex 2 of document CIO.GAL/114/00 of 1 November 2000).

6. Intensive attempts were made to bridge the gap between the different options. In this spirit, it was suggested that the participating States be bound by identical political and legal obligations as follows: the same political obligations as those in the 1993 Rome Ministerial decision, with some extensions, and a convention which would be signed and ratified by those participating States wishing to do so, but the coming into force of which would depend on the implementation of the political obligations by all participating States (Annex 1 of document CIO.GAL/114/00 of 1 November 2000, Attachment 5). It was also discussed whether, instead, there should be two different ways of implementing the provisions of the convention (CIO.GAL/114/00/Add.1 of 13 November 2000, Attachment 6).

7. Alternatively, a short convention was proposed which would contain the substance of the 1993 Rome Ministerial decision, with some extensions, in an annex and which would be ratified or accepted either by all or by a certain number of participating States (new draft convention distributed on 22 November, Attachment 7). For the purposes of this alternative, amendments to the 1993 Rome Ministerial decision were proposed (Draft decision of the Ministerial Council, Attachment 8). These variants enjoyed the support of a substantial number of delegations, but could not obtain consensus, either.

8. In addition to the willingness to grant privileges and immunities through a convention, a majority of delegations pointed out the necessity that the OSCE be recognized as having the possibility of entering into bilateral arrangements with individual participating States in the context of the establishment of an OSCE Institution or Mission on their territories, particularly in order to be granted additional privileges and immunities. As this issue depends to some extent on the issue of the legal personality/capacity of the OSCE, it is also still open.

9. The Permanent Council is invited to continue its efforts with a view to achieving consensus before the next Ministerial Council, building upon the group's work outlined in this report.

**OSCE
LEGAL CAPACITY AND
PRIVILEGES AND IMMUNITIES**

1. In the Istanbul Summit Declaration, the Heads of State or Government of the participating States of the OSCE noted that “a large number of participating States have not been able to implement the 1993 Rome Ministerial Council decision on legal capacity of the OSCE institutions and on privileges and immunities. With a view to improve this situation, a determined effort should be made to review issues related to the implementation of commitments under the 1993 Rome Ministerial decision. To this end, we task the Permanent Council, through an informal open-ended working group to draw up a report to the next Ministerial Council Meeting, including recommendations on how to improve the situation.” (Point 34)
2. The present Secretariat’s contribution to the debate on the OSCE legal capacity and privileges and immunities aims to provide the participating States with the background to the question and with details about the difficulties encountered by the OSCE owing to the lack of legal capacity under national and international law and of privileges and immunities in most participating States.
3. At the outset, it is worth recalling that the OSCE was not established by a constituent treaty, which - as is the case for most intergovernmental organizations - would have contained general provisions about the Organization’s legal capacity and privileges and immunities. Moreover, the OSCE does not have an international convention ratified by its participating States to rely on, which would recognize its legal personality and grant the privileges and immunities it needs for the performance of its missions, as do conventions which exist for many international organizations (for instance, the Convention on the Privileges and Immunities of the United Nations or that of the Specialized Agencies).
4. In 1993, the question was raised as to whether - and how – to grant the OSCE legal capacity and privileges and immunities. During the discussion which took place, firstly within an ad hoc group of legal and other experts, and secondly with the CSCE Council, it appeared that the choice lay between elaborating an international legally binding instrument to be ratified by the participating States, and providing common legal capacity and privileges and immunities to be implemented by each participating State under its national legal system. Finally, the CSCE Council reached the conclusion that legal capacity and privileges and immunities should be granted to the OSCE institutions, though, not through a treaty, but under national law subject to the constitutional requirements of each participating State (see the 1993 Rome Council decision - Annex A to the present document).
5. In the present document, it will be pointed out that the Rome Council decision has been poorly implemented (Part I) and that this insufficient implementation raises problems for the OSCE’s smooth operation (Part II). It will be also demonstrated that the OSCE is, notwithstanding, developing as an intergovernmental organization (Part II.4).

I. BACKGROUND

6. When adopting the Rome Council decision, the CSCE Council recommended that participating States implement the provisions concerning CSCE legal capacity and privileges and immunities, "subject to their constitutional and related requirements" (see Annex A to the present document). The participating States were requested to inform the Secretary General of the steps taken in that respect not later than 31 December 1994.

7. Pursuant to that request, fourteen participating States¹ informed the Secretary General in 1994 and early 1995 of the steps they had taken or intended to take to implement the Rome Council decision. In 1998, the OSCE Secretariat was asked to prepare a report on the subject and, in order to update the information received, it requested participating States to inform it of the current status of the implementation of the Rome Council decision. No additional countries replied to this request. Only those of the countries where, in the meantime, there has been a change in implementation status provided the Secretariat with updated information (Part I.1).

8. On the other hand, in 1995, the Permanent Council considering the fact that the question of income tax on earnings received from the OSCE has not been addressed in the 1993 Rome Council decision, requested the Secretary General to study this issue (Part I.2).

I.1 Present status of implementation of the 1993 Rome Council decision

9. At the time of presenting this report, the situation is the following:

- (a) Between 1994 and 1998, only fourteen participating States replied to the question as to whether they had implemented or intended to implement the Rome Council decision.
- (b) Ten participating States have granted privileges and immunities to the CSCE/OSCE institutions:
 - (i) Four are host countries of OSCE institutions: Austria², the Czech Republic³, Netherlands⁴ and Poland⁵;

¹ Austria, Belgium, Czech Republic, Denmark, Finland, Germany, Hungary, Italy, Netherlands, Norway, Poland, Sweden, United Kingdom, United States.

² Federal Law 511/93 of 30 June 1993, Ordinance 663/93.

³ Law 125 of 5 March 1992.

⁴ Since February 1995, no information has been received by the OSCE Secretariat from the Netherlands regarding the adoption of the law on privileges and immunities of the OSCE institutions in preparation at that date.

⁵ Two decisions have been taken by the Polish Government in order to grant privileges and immunities to ODHIR, and a law was in preparation in 1994 aimed at regulating the legal capacity and privileges and immunities of the CSCE/OSCE institutions. Since December 1994, no information has been received by the OSCE Secretariat regarding the adoption of that law.

- (ii) The six other countries which have implemented the Rome Council decision are: Denmark⁶, Germany⁷, Hungary⁸, Italy⁹, Sweden¹⁰ and the United States¹¹.
- (c) One participating State, Norway, indicated in 1994 that - following the adoption of an amendment to the law on privileges and immunities of international organizations -, the Government was authorized “on certain conditions to grant privileges and immunities to international organizations also in cases where no agreement binding under international law has been entered between Norway and the organization in question”, and consequently, preparation to implement the Rome Council decision had been initiated. So far, no additional information has been received by the Secretariat concerning the completion of the process.
- (d) Three participating States replied to the request in the negative: Belgium, Finland and the United Kingdom.
- (e) For ten participating States, the adoption of a specific law or an amendment to the law on privileges and immunities of international organizations is (was) required in order to implement the Rome Council decision, while for four participating States, the Government is (was) able to take the necessary steps to implement the decision.

I.2 Taxation

10. On 2 March 1995, the Permanent Council requested the Secretary General to prepare an overview of current and possible future practices of participating States with regard to the taxation of OSCE officials (see Annex B to the present document).

11. In April 1995, a questionnaire was sent to all participating States for a reply not later than 15 May 1995. The OSCE Secretariat received the replies of seventeen participating

⁶ Denmark pointed out in its reply that “the Danish Government is able to implement the provisions [of the Rome Council decision] by administrative measures on the basis of existing legislation” and specified that “in order to grant privileges and immunities to representatives of participating States, officials and members of missions, it is essential for the Government to receive adequate information prior to the arrival of delegations in Denmark”.

⁷ Ordinance of 15 February 1996.

⁸ Act LXXXV of 1994 on extension to institutions, officers and employees of the CSCE, representatives of participating States and members of CSCE missions of the privileges, exemptions and immunities granted under the 1961 Vienna Convention on Diplomatic Relations.

⁹ Act adopted in 1998 regarding the legal capacity of the OSCE institutions and privileges and immunities.

¹⁰ Bill on CSCE institutions’ legal capacity promulgated on 9 June 1994.

¹¹ Executive Order signed by the United States President on 3 December 1996.

States¹². To the question as to whether or not “salaries and related allowances paid by the OSCE (including all its institutions) to its staff members are exempt from taxation”, six participating States replied in the affirmative with exceptions, however, for certain categories of staff.

12. The other countries - which actually do not host any OSCE institutions or missions - do not grant exemption from taxation, either because such exemption should be provided for in an agreement between the country and the Organization, or because they do not tax OSCE staff members. This is not because the staff members are paid by the OSCE, but simply because they do not meet the conditions for being taxed under the domestic law applicable. Most of these countries specified that they did not intend to take action in the future to grant tax exemption.

13. The last development concerning OSCE salary taxation occurred in December 1999 when the Permanent Council approved several amendments to the OSCE Staff Rules and Regulations, including the following provision: “In the event a staff member is subject to national income taxation with respect to the net salaries and emoluments paid to him/her by the OSCE, the Secretary General is authorized to refund him/her the amount of those taxes paid to the extent that such amounts have been reimbursed to the Organization by the State concerned.” Agreements for reimbursement of taxes paid on OSCE salaries will therefore have to be negotiated with the countries concerned.

II. OSCE NEED FOR HARMONIZED RULES GOVERNING ITS LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES

14. The legal capacity of an international organization is defined as its capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings. As far as the OSCE is concerned, neither the 1993 Rome Council decision nor national legislation foresee or grant legal capacity to the OSCE as such - i.e. as the entity including all bodies through which OSCE mandates are decided and implemented - but only to OSCE institutions. Moreover, it should be noted that the Rome decision refers only to the Secretariat and the ODIHR. Other OSCE institutions would be covered as “determined by the CSCE Council”. So far, no further determination has been achieved to enable the application of the Rome Council decision to the other OSCE institutions.

15. The OSCE legal situation is, therefore, far from clear because legislative or equivalent action to implement the Rome Council decision has been taken only by a few participating States, only two OSCE institutions are specifically covered and the status of the OSCE as such is not addressed. In addition, legal capacity granted to the OSCE by unilateral act of a participating State is not the same as that accorded to the OSCE under an international agreement (either multilaterally in the form of a convention or bilaterally under a headquarters agreement). As party to an agreement, the OSCE would have a contractual right to claim that status with all the consequences flowing from it; the same could not be said if

¹² Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Monaco, Netherlands, Norway, Poland, Spain, Switzerland, United Kingdom, United States.

such status and privileges and immunities were based on unilateral action by a State, even if based on a decision by an OSCE organ.

16. As far as privileges and immunities are concerned, those are granted according to the status of the beneficiaries in order to facilitate the performance of their functions. This is the reason why the 1993 Rome Council decision adopted “in order to assist in harmonizing the rules to be applied” (see Annex A, point 8) distinguished privileges and immunities to be granted:

- to the OSCE institutions (see Annex 1, paragraphs 4 to 10, in Annex A to the present document) from those to be conferred:
- to the permanent missions of the participating States (paragraph 11),
- to the representatives of participating States (paragraph 12),
- to the OSCE officials (paragraphs 13 to 14) and
- to the members of OSCE missions (paragraphs 15 to 16).

17. It is worth mentioning that the 1993 Rome Council decision was adopted at a time when the CSCE had three institutions (there are now four), only nine missions had been established (there are 21 missions in 2000), there were fewer than fifty mission members (in 2000, more than 3,000 people, including about 1,000 international staff, are working with the OSCE missions) and the Organization’s budget was the equivalent of twelve million Euros (the 2000 unified budget amounts to 192 million Euros).

18. In examining how the Rome Council decision has been implemented by participating States, it should be borne in mind that there is an understandable graduation in the granting of privileges and immunities by countries, depending on whether they host an OSCE institution which is normally established on a permanent basis (Part II.1) or an OSCE mission¹³ which is set up on a temporary/fixed-term basis (Part II.2), or do not host any OSCE institution or mission (Part II.3).

II.1 The situation in participating States hosting OSCE institutions

19. The 1993 Rome Council decision does not distinguish between host countries and other participating States although generally host countries grant more extensive privileges, immunities and facilities than other member countries of an organization. This also proves to be true in the case of the OSCE.

20. Among the four host countries of OSCE institutions, only Austria has fully implemented the Rome Council decision and granted full privileges and immunities, exemptions and facilities to the OSCE. However, this does not result from a specific headquarters agreement concluded between Austria and the OSCE, but from the adoption of a law (Federal Law 511/93, Ordinance 662/93) which provides that the OSCE shall enjoy privileges and immunities to the same extent as have been granted to the United Nations in Vienna according to its headquarters agreement.

¹³ For the purpose of the present study, the term “mission” comprises OSCE centres, presences and any field activities in locations other than those where OSCE institutions have been established.

21. In the Czech Republic, Law 125 of 5 March 1992 granted to the OSCE the same privileges and immunities as provided under the Convention of Privileges and Immunities of the United Nations, and in Poland, two governmental decisions dated 2 May 1991 and 5 June 1992 conferred on the ODIHR privileges and immunities provided for in the United Nations Convention. A law was then in preparation in order to implement the 1993 Rome Council decision. In the Netherlands, a law was under preparation in 1994, and in anticipation, a temporary arrangement has been made for the Office of the HCNM and its staff; however, so far, no formal act has been promulgated by the Netherlands.

22. In addition to the various stages of implementation of the Rome Council decision by the host countries, it appears that the situation varies as far as OSCE tax exemption (direct taxes, import duties, VAT, etc.) and staff tax exemption are concerned. Even among host countries of OSCE institutions, the harmonization sought by the CSCE Council in 1993 has not been achieved.

II.2 The situation in the host countries of missions

23. No participating State hosting a mission has implemented the 1993 Rome Council decision under its national law. However, some of them have agreed to refer to this decision in the Memorandum of Understanding (MoU) concluded with the OSCE for the establishment of a given mission. This is the case of the MoUs concluded:

- with Albania for the OSCE Presence in Albania (1997),
- with Belarus for the OSCE Advisory and Monitoring Group in Belarus (1997),
- with Bosnia and Herzegovina for the Mission to Bosnia and Herzegovina (1996) and
- with Georgia for the Personal Representative of the Chairman-in-Office on the Conflict Dealt with the OSCE Minsk Conference and his Field Assistants (1995).

Nevertheless, the reference to the Rome Council decision in the MoUs does not imply its application by the countries in question to the OSCE institutions, as requested by the Council decision.

24. In most cases, legal instruments establishing OSCE missions stipulate the application of the 1961 Vienna Convention on Diplomatic Relations (sometimes in addition to the application of the Rome Council decision). This reference, of course, constitutes a valuable legal basis in so far as the host country agrees to consider the Mission as having the status of a diplomatic entity and its staff as diplomatic agents. As the Vienna Convention does not specifically provide for legal capacity of the sending State or its mission, the application of the Convention presupposes the recognition of the sending State as a legal entity in the receiving State.

25. Accordingly, an OSCE mission to which the MoU concluded with the host country has granted the status of a diplomatic entity also enjoys legal capacity under the internal law of that country. This presumption, however, remains to be tested in practice especially in adverse or controversial situations. In view of the size and nature of OSCE field activities requiring a large number of contractual arrangements, the present situation is insecure and, as such, unsatisfactory. This problem cannot be remedied by the Rome Council decision, since the latter does not relate to the missions as such and does not therefore confer legal capacity

on them. Only “members of CSCE missions” are considered (see Annex 1, paragraphs 15 to 16 in Annex A).

26. In addition, the 1961 Vienna Convention on Diplomatic Missions does not contain any general tax exemption of foreign States and their diplomatic missions, except for diplomats and in respect of the premises of a diplomatic mission. Tax exemption for local purchases and services would depend on local legislation and practices of the country concerned, unless the exemption is specifically provided for in the MoU. On the other hand, it should be noted that the 1993 Rome Council decision foresees tax exemption for OSCE institutions (see Annex 1, paragraph 8, in Annex A). In the absence of a harmonized position on this issue, the situation varies greatly among the host countries of missions.

27. Lastly, since the Convention does not establish general immunity of foreign States and their diplomatic missions in the receiving States, the reference to it made in our MoUs does not ensure immunity of OSCE missions from local jurisdiction. The matter is left to general international law and local legislation or practice. On the other hand, the Rome Council decision provides that the OSCE institutions, their property and assets “...will enjoy the same immunity from legal process as is enjoyed by foreign States” (see Annex 1, paragraph 4 in Annex A). However, even the application of the Rome Council decision may in some cases be insufficient in the missions’ host countries where immunity from legal process is not granted to local staff. Some missions have already experienced cases of arrest and detention of local staff members while they were performing their official functions, and faced difficulties in obtaining their release. This situation may be detrimental to the mission’s smooth running in so far as local staff represent a large portion of staff working with the OSCE missions¹⁴.

28. To complete the picture, it is worth mentioning United Nations experience in this respect. As most United Nations Member States are parties to the Convention on Privileges and Immunities of the United Nations, the conclusion and implementation of agreements for the establishment of United Nations missions or field activities are made much easier, since it is only necessary to refer to its provisions for the granting of privileges and immunities. In addition, since the Convention has been ratified by the countries parties to it, in accordance with their constitutional requirements, the agreement for the establishment of the United Nations mission can enter into force upon the signature of the country’s representative and that of the United Nations representative. In the absence of such a convention applicable to the OSCE, certain countries with which a Memorandum of Understanding is negotiated for the establishment of a mission require ratification of the MoU by their Parliament, resulting in a delay of its entry into force.

II.3 The situation in other participating States

29. Participating States which do not host any OSCE institutions or missions are called upon to recognize the OSCE’s legal capacity and grant privileges and immunities to the OSCE and to the representatives of other participating States or OSCE officials for activities on their territories (attendance of meetings, contracts concluded with a local company, etc.). In addition, participating States which do not host any OSCE institution or mission may adopt

¹⁴ For the time being, the OSCE missions employ more than 2,700 local staff members.

some specific provisions related to their own nationals or permanent residents working with the OSCE institutions or missions.

30. As mentioned in paragraph 9 (b) above, six participating States other than those hosting OSCE institutions have so far implemented the 1993 Rome Council decision. However, since this implementation is “subject to the constitutional and related requirements” of the participating States, the privileges and immunities have not been granted to the same extent. The variation may concern, for instance, the treatment of the country’s nationals or permanent residents, or tax exemption.

31. The reasons why three of the participating States which replied to the 1994 questionnaire did not implement the Rome Council decision at that date are worth mentioning:

- (a) Belgium pointed out that, in the absence of an agreement for the conclusion of a treaty on OSCE privileges and immunities, it intended to apply the Rome Council decision by adopting unilateral legislative measures, while stating that the procedure was proving more complicated since it could not be based on the signature of a treaty.
- (b) Finland indicated that it “was not convinced whether there was a need to amend the existing legislation in order to confer special privileges and immunities to the OSCE” and that “the absence of such regulations seems to have caused no major problems in the practical co-operation with the OSCE institutions.” Nevertheless, Finland specified that OSCE staff members with diplomatic passports would be treated in the same manner as other persons with diplomatic status.
- (c) The United Kingdom indicated, first in 1994 and then in 1998, that because of constraints on parliamentary timetables, it had not been possible to pass the necessary legislation to implement the Rome Council decision.

No further information has since been provided by these countries concerning a change in the situation.

32. The lack of legal capacity in most participating States may have, in practice, negative consequences for the OSCE, as the Organization’s operations require, e.g., contracting and procurement in many States. As is easy to understand, the situation may be detrimental to the OSCE in the event that a complaint is filed by a contracting company with a local court in a country which has not granted the OSCE legal capacity and privileges and immunities under its national law.

33. In addition, the uncertain status of persons for the OSCE institutions or missions in their countries of origin is unsatisfactory, since it results in unequal treatment between staff members according to their nationality. This proves particularly true in respect of the taxation issue: some participating States tax their nationals’ OSCE salaries even when they are living and working in another country while other countries do not tax them because they are not living and working on their territories. It is clear that this problem could be solved by agreements for tax exemption or reimbursement of taxes paid on OSCE salaries, but a precondition for these agreements may be the recognition of the OSCE’s legal capacity under international or national law.

II.4 The legal status of the OSCE

34. To complete the picture, it is worth examining the question of the OSCE's legal status. The OSCE possesses the essential criteria to enable it to be categorized as an intergovernmental organization. While the traditional view regards the conclusion of a constituent treaty as essential for the creation of an intergovernmental organization, another school holds that the absence of a formal constituent legal instrument need not be an impediment for an international entity to possess or acquire the status of an international organization with its own legal capacity. The OSCE's structure and functions have undergone significant changes over the years, all in the direction of bringing it closer to other international organizations.

35. The functions of the OSCE fit into the typology of those of other organizations. They involve the authority of and actions by the organization as such, and are carried out at the international level and through internationally established mechanisms. The dimensions of the programme of the OSCE include the economic, environmental, human and political aspects of security and stability. Verification of compliance with international/OSCE commitments and co-operation with other intergovernmental organizations have become an essential aspect of the work of the OSCE, and the establishment of norms and rules of conduct in areas of concern to the OSCE form an important feature of OSCE activities.

36. In addition, the absence of a constituent treaty has not prevented participating States from endowing the OSCE over the years with the attributes usually regarded as those of an international organization:

- (a) A stable organizational structure with permanent organs acting on behalf of the organization which follows the classical structure: policy-making, political/executive and executive/administrative. Doctrine regards the establishment of such organs as a clear manifestation by States of their intention to create an organization, with the capacity to act in its own right.
- (b) The OSCE is no longer only a vehicle for meetings and the organization of co-operation between States; it acts as an organization with functions of its own entrusted to it by participating States. For doctrine, such autonomy presupposes that the organization has the necessary capacity to carry out its mandate at the international level and under public international law, i.e. that the organization has become a subject of public international law. The fact that the legal capacity to act is subject to the mandate and competence determined by the political organs does not change that situation. Functions and authority of international organizations can be laid down in various forms: a Charter, a Statute or a series of political decisions or specific mandates within the overall political framework determined by member States, and the manner of establishing the authority of and limitations on action by an organization is probably not a decisive factor.
- (c) Continuity in the functions of an organization is important; the creation of an entity for an ad hoc purpose of limited duration (such as a commission) would normally not meet an essential condition for the establishment of an international organization. There is no doubt that the OSCE shows such continuity.

- (d) The financial regime of the OSCE follows that of other international organizations, with a scale of contributions for participating States and supplemental financing according to agreed criteria.
- (e) The staff of the OSCE are employed by the organization (international and local staff) and not participating States. The OSCE makes considerable use of the mechanism of secondment of national staff, partly for budgetary reasons; however, during their period of secondment, such staff are answerable exclusively to the organization and not to their home State.
- (f) The OSCE has also established an internal legal structure and norms (Staff Regulations and Rules, Financial Regulations, Financial Instructions, Organization and Administrative Directives), and its own mechanism for settling employment disputes through a Panel of Adjudicators rather than national courts.
- (g) Lastly, although only in a limited number of States, the OSCE enjoys privileges and immunities comparable to those of other international organizations.

CONCLUSION

37. Six years after the adoption of the Rome Council decision, the situation is the following: the decision has been inadequately implemented by participating States and the rules governing the OSCE's privileges and immunities are far from having been harmonized. This is unsatisfactory since the lack of legal capacity and privileges and immunities in most participating States causes difficulties for the smooth operation of the OSCE institutions and missions.

38. There is therefore an evident need for the OSCE to have its legal capacity recognized in all participating States and to be granted privileges and immunities. To that effect, there are several solutions:

- (a) Multilateral action under international law through:
 - (i) The ratification of a constituent treaty which would contain detailed provisions regarding the OSCE's privileges and immunities¹⁵, or
 - (ii) The conclusion of a convention on the OSCE's legal capacity and privileges and immunities.

An advantage of these solutions is that the OSCE would have an international legal capacity that is explicitly recognized. It would be difficult to maintain that States require an organization to perform activities and carry out specific mandates at the international level without endowing the organization with the legal capacity to do so.

¹⁵ If the constituent treaty contains general provisions on the Organization's privileges and immunities only, it will then be necessary to supplement it by a convention on privileges and immunities.

Conferring international legal capacity upon the OSCE would be beneficial: there would be no doubt about the validity of agreements concluded by it; as a party to an agreement, the OSCE would also be in a stronger position to assert its status and the privileges and immunities of its staff in the duty stations of its institutions; a general agreement on privileges and immunities could be negotiated, removing not only any doubt about the OSCE's legal capacity under municipal law, but also ensuring the necessary protection of the OSCE, its staff and property. Appropriate headquarters agreements or equivalent arrangements covering all institutions and offices in a comprehensive way could be concluded. Legal personality under international law would also enhance the ability of the OSCE to co-operate on an equal footing with other international organizations and dispel any doubt about the OSCE's capacity to act in its own right.

- (b) Unilateral action under national law after the adoption of a new Ministerial Council decision covering legal capacity and privileges and immunities for the OSCE as such, including all its institutions and missions, as well as taxation issues and the issue of local staff. However, this solution will be efficient only if the participating States commit themselves to implementing the decision in a more effective manner than they did for the 1993 Rome Council decision.

In this respect, it should be emphasized that requesting overall, harmonized implementation of the Rome Council decision by all participating States does not appear as a valid solution, since, as previously mentioned, this decision is no longer sufficient in so far as it does not cover all the existing OSCE institutions or the missions, and does not address taxation issues and the issue of local staff.

39. The different options proposed may be regarded as realistic or not, according to the view of each participating State. However, it is clear that a solution has to be found since the situation cannot remain as it is at the present time.

Annex A: Rome Council decision No. 2 with Annex 1
Annex B: Permanent Council decision No. 25

Annex A

CSCE
FOURTH MEETING OF THE COUNCIL
ROME 1993

CSCE/4-C/Dec.2
Rome, 1 December 1993
Original: ENGLISH

LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES

1. At its Rome Meeting from 30 November to 1 December 1993, the CSCE Council considered the report submitted to the 24th CSO Meeting by the CSCE ad hoc Group of Legal and Other Experts on the relevance of an agreement granting internationally recognized status to the CSCE institutions.
2. The Ministers reaffirmed the importance of enhancing the ability of the institutions to better accomplish their functions, while preserving the flexibility and openness of the CSCE process. They agreed that, in order to help achieve a firmer basis for security and co-operation among all CSCE participating States, the CSCE would benefit from clearer administrative structures and a well defined operational framework.
3. The Ministers were encouraged by the fact that the Governments hosting the CSCE Secretariat, the Conflict Prevention Centre (CPC) and the Office for Democratic Institutions and Human Rights (ODIHR) have taken steps under their laws to confer upon these institutions and CSCE personnel as well as representatives of the CSCE participating States treatment comparable to that accorded to the United Nations and its personnel and to the representatives to it.
4. The Ministers noted the expanded operations within CSCE participating States of CSCE institutions and their personnel and of CSCE missions and the importance that all participating States provide for those institutions and individuals appropriate treatment.
5. The Ministers agreed on the usefulness of legal capacity being granted to the CSCE institutions in the territories of all the CSCE participating States, in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.
6. The Ministers further agreed that it was appropriate that certain privileges and immunities be granted to the CSCE institutions and their officers and staffs, as well as to the Secretary General of the CSCE and the High Commissioner on National Minorities and their staffs, members of CSCE missions and the representatives of the participating States to the extent necessary to the exercise of their duties.

7. In most participating States, however, the competence to make rules concerning the legal status of the CSCE institutions and privileges and immunities rests with the legislature.

8. In view of these considerations and in order to assist in harmonizing the rules to be applied, the Ministers adopted the provisions set out in Annex 1. They recommend that participating States implement these provisions, subject to their constitutional and related requirements.

The participating States will inform the Secretary General of the CSCE of the steps taken in this respect no later than 31 December 1994.

9. The Ministers agreed that the present decision supersedes paragraph I.1. (Legal Basis) of Recommendations of the ad hoc Group of Experts of the participating States on administrative, financial and personnel arrangements for the CSCE institutional structures created by the Paris Summit, adopted by the Committee of Senior Officials on 29 January 1991 (document CSCE/HB/Dec.1), and that it does not apply to other undertakings with respect to privileges and immunities made within the framework of the CSCE.

It is understood, however, that this decision does not affect the treatment conferred upon the CSCE institutions referred to in paragraph 3 above, to the CSCE personnel as well as to the representatives of the CSCE participating States by legislation or administrative measures taken by the host States in accordance with the above decision adopted by the Committee of Senior Officials (document CSCE/HB/Dec.1).

Annex 1 to Annex A

CSCE/4-C/Dec.2

PROVISIONS CONCERNING THE LEGAL CAPACITY OF THE CSCE INSTITUTIONS
AND PRIVILEGES AND IMMUNITIES

LEGAL CAPACITY OF THE CSCE INSTITUTIONS

1. The CSCE participating States will, subject to their constitutional, legislative and related requirements, confer such legal capacity as is necessary for the exercise of their functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings, on the following CSCE institutions:

- The CSCE Secretariat,
- The Office for Democratic Institutions and Human Rights (ODIHR),
- Any other CSCE institution determined by the CSCE Council.

PRIVILEGES AND IMMUNITIES

General

2. The CSCE participating States will, subject to their constitutional, legislative and related requirements, confer the privileges and immunities as set out in paragraphs 4-16 below.

3. Privileges and immunities will be accorded to the CSCE institutions in the interests of those institutions. Immunity may be waived by the Secretary General of the CSCE in consultation with the Chairman-in-Office.

Privileges and immunities will be accorded to individuals not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity will be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. Decision to waive immunity will be taken:

- with respect to officers and staff of the CSCE institutions and to members of CSCE missions, by the Secretary General of the CSCE in consultation with the Chairman-in-Office;
- with respect to the Secretary General and the High Commissioner on National Minorities, by the Chairman-in-Office.

The Government concerned may waive immunity with respect to its representatives.

CSCE Institutions

4. The CSCE institutions, their property and assets, wherever located and by whomsoever held, will enjoy the same immunity from legal process as is enjoyed by foreign States.
5. The premises of the CSCE institutions will be inviolable. The property and assets of the CSCE institutions, wherever located and by whomsoever held, will be immune from search, requisition, confiscation and expropriation.
6. The archives of the CSCE institutions will be inviolable.
7. Without being restricted by financial controls, regulations or moratoria of any kind:
 - (a) the CSCE institutions will be able to hold funds and keep amounts in all currencies to the extent necessary for the exercise of operations corresponding to their objectives;
 - (b) the CSCE institutions will be free to transfer their funds or currency from one country to another or within any country and to convert any currency held by them into another currency.
8. The CSCE institutions, their assets, income and other property will be:
 - (a) exempt from all direct taxes; it being understood, however, that the CSCE institutions will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (b) exempt from customs duties on imports and exports in respect of articles imported or exported by the CSCE institutions for their official use; it being understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.
9. Where goods or services of substantial value necessary for the exercise of the official activities of the CSCE institutions are made or used, and when the price of such goods and services includes taxes or duties, the State that has levied taxes or duties will grant exemption or provide reimbursement of the amount of duty or tax.

10. The CSCE institutions will enjoy for their official communications the same treatment as that accorded to diplomatic missions.

Permanent Missions of the participating States

11. Participating States in whose territory permanent missions to the CSCE are located will accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.

Representatives of participating States

12. Representatives of participating States attending CSCE meetings or taking part in the work of the CSCE institutions will, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) immunity from legal process relating to acts performed by them in their official capacity;
- (b) inviolability for all papers and documents;
- (c) exemption in respect of themselves and their spouses from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
- (d) the same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;
- (e) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.

The provisions of this paragraph will not apply as between a representative and the State of which he or she is or has been the representative.

In this paragraph the expression "representative" means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

CSCE Officials

13. CSCE officials will enjoy the following privileges and immunities:

- (a) immunity from legal process, in respect of acts, including words written and spoken, performed by them in their official capacity;
- (b) exemption from national service obligations;

- (c) exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
- (d) the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (e) the same repatriation facilities in time of international crisis in respect of themselves and their spouses and relatives dependent on them as diplomatic envoys;
- (f) the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.

No participating State will be obliged to accord the privileges and immunities referred to under items (b)-(f) above to its own nationals or to permanent residents of that State.

The question of exemption from income tax for CSCE officials is not covered by this paragraph.

In this paragraph the term "CSCE officials" means the Secretary General, the High Commissioner on National Minorities and persons holding positions determined by the appropriate CSCE decision-making body or designated by it.

14. The employees of the CSCE institutions will be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.

Provided that the employees of the CSCE institutions are covered by a social security scheme of the CSCE institution, or by a scheme to which the CSCE institution adheres, providing adequate benefits, they will be exempt from compulsory national social security schemes.

Members of CSCE Missions

15. Members of CSCE missions, established by the CSCE decision-making bodies, as well as personal representatives of the Chairman-in-Office, will enjoy the following privileges and immunities while performing their duties for the CSCE:

- (a) immunity from personal arrest or detention;
- (b) immunity from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;

- (c) inviolability for all papers and documents;
- (d) the right to use codes and to receive papers or correspondence by courier or in sealed bags, which will have the same immunities and privileges as diplomatic couriers and bags;
- (e) the same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;
- (f) the same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;
- (g) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
- (h) the same repatriation facilities in time of international crisis as diplomatic agents;
- (i) the right to use specific symbols or flags on their premises and vehicles.

Equipment used by the CSCE missions to accomplish their mandate shall enjoy the same treatment as provided for in paragraphs 4, 5, 8 and 9.

16. Members of other missions under the auspices of the CSCE than those mentioned in paragraph 15 will, while performing their duties for the CSCE, enjoy the privileges and immunities prescribed in paragraph 15 (b), (c), (e) and (f). The Chairman-in-Office may request that these members be granted the privileges and immunities prescribed in paragraph 15 (a), (d), (g), (h) and (i) in situations where such members may encounter specific difficulties.

CSCE IDENTITY CARD

17. The CSCE may issue a CSCE Identity Card to persons on official duty travel for the CSCE. The document, which will not substitute for ordinary travel documents, will be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.

18. Applications for visas (where required) from the holders of CSCE Identity Cards will be dealt with as speedily as possible.

Annex A to Annex 1 of Annex A

CSCE IDENTITY CARD

Name:

Surname:

Date of Birth:

National of:

Holder of passport/diplomatic passport no., issued on..... by ...

It is hereby certified that the person named in the present document is on official business of the Conference on Security and Co-operation in Europe ("CSCE") during the period from..... to in the following CSCE participating State(s).....

The CSCE hereby requests all whom it may concern that the person named herein

- be allowed to pass without delay or hindrance,
- in case of need be accorded all necessary lawful assistance and protection.

This document does not replace travel documents that may be required for entry or exit.

Issued in.....on..... by..... (relevant CSCE authority)

Signature:

Title:

Note: The document will be issued in the six official CSCE languages. It will also contain a translation into the language or languages of the country or countries which the holder of the document will visit as well as a translation into the language or languages used by those military or police forces which might be present in the area of the duty travel.

Annex B



**Organization for Security and Co-operation in Europe
Permanent Council**

PC.DEC/25
2 March 1995

Original: ENGLISH

10th Plenary Meeting
PC Journal No. 10, Point 5(c)

DECISION No. 25

The Permanent Council,

Bearing in mind that the question of income tax on earnings received from the OSCE was not addressed in the document on legal capacity and privileges and immunities, which was adopted by the Rome Council (see CSCE/4-C/Dec.2),

Recalling the Report on the Development of a Comprehensive System for Personnel Classification and Salary Structure for the CSCE adopted by the Permanent Committee on 21 July 1994, in which the Secretary General was requested to urgently address questions related to taxation with a view to ensuring equal treatment of nationals of all participating States and cost-effectiveness of the system (see CSCE/29-PC/Dec.1),

Requests the Secretary General to prepare, within existing resources, an overview of current and possible future practices of participating States with regard to taxation of OSCE officials and, *inter alia*, to look into the question of:

1. Whether they tax their nationals employed by the OSCE on income earned from the OSCE; and
2. Whether they are agreeable to reimbursing the OSCE for such taxes, if any, levied by them on their nationals employed by the OSCE.

In exploring the above issues, the Secretary General should include the questions attached to this decision (Annex).

The Secretary General is requested to report to the Permanent Council on the result of his efforts no later than 15 June 1995.

Questions regarding taxation

1. Do you tax the salary and other emoluments paid by the OSCE to officials or employees of the OSCE who are:

(a) your own nationals?

(b) foreign nationals?

If yes, do you tax all or a portion of the amounts paid?

2. Do you differentiate between those nationals who are resident in the country hosting an OSCE institution and those who are not?

3. Under what conditions would your country exempt OSCE officials and employees from taxation on amounts paid?

4. Can your country currently reimburse the OSCE for tax payments made by OSCE officials and employees?

If not, will it be possible to arrange for reimbursement in the future?



Organization for Security and Co-operation in Europe

The Secretary General

Vienna, 22 March 2000

To: All Heads of Delegation

Subject: Addendum to the Secretariat's background report (SEC.GAL/20/00 – 6 March 2000): OSCE Legal Capacity and Privileges and Immunities

Please be informed that, following recent information provided by the Russian Delegation to the OSCE, the Russian Federation must be listed among participating States which replied to the Secretary General's 1998 request for updated information on the implementation of the Rome Council Decision.

In a letter dated 28 August 1998, the Russian Federation stated that "privileges and immunities on the territory of the Russian Federation can be granted on the basis of an international treaty", and that "the fixation by means of international law of privileges and immunities would be a concrete step forward to provide the OSCE with appropriate capabilities in carrying out its large-scale tasks as a regional organization and especially in facilitating its field activities".

THE OSCE'S LEGAL CAPACITY
AND PRIVILEGES AND IMMUNITIES

NON-PAPER BY THE CHAIRPERSON-IN-OFFICE

6 June 2000

Introduction

1. Acknowledging “the tremendous developments and diversification of OSCE activities” and recognizing “that a large number of OSCE participating States have not been able to implement the 1993 decision of the Rome Ministerial Council and that difficulties can arise from the absence of a legal capacity of the Organization”, the Heads of State or Government of the participating States committed themselves to “seek to improve the situation” (Charter for European Security, point 18, Istanbul, November 1999) and directed “the Permanent Council, through an informal open-ended working group to draw up a report to the next Ministerial Council Meeting, including recommendations on how to improve the situation” (Istanbul Summit Declaration, point 34, November 1999).

2. In March 2000, the OSCE Secretariat provided a background paper¹ which pointed out the insufficient implementation of the Rome Council decision by most participating States and highlighted the difficulties faced by the Organization due to the absence of legal personality under international law², the lack of legal capacity³ and the insufficient and unharmonized granting of privileges and immunities.

3. To address this issue, two steps are to be undertaken:

- Identification of the best way to confer legal capacity/personality to the OSCE and to grant privileges and immunities to it.
- Identification of the privileges and immunities to be accorded by the participating States to the OSCE, its institutions, its missions, its staff members, the delegations to the OSCE and the personal representatives of the chairmanship.

4. The present paper focuses on the first step. Three main options may be considered:

¹ SEC.GAL/20/00, 6 March 2000.

² i.e. to be recognized as a subject of international law and, as such, to have the capacity independently to have rights and obligations under international law, e.g., to be a party to a treaty.

³ i.e. the capacity for the Organization to contract, to acquire and dispose of movable and immovable property, and to initiate and participate in legal proceedings.

- Unilateral action: this option was chosen by the CSCE Council in 1993.
- Multilateral action: this is the usual solution for international organizations, and as such was contemplated – but finally rejected – in 1993.
- Bilateral action: this could be an alternative solution in the event that both preceding solutions are not considered appropriate in the specific case of the OSCE.

1. UNILATERAL ACTION

1.1 Better implementation of the Rome Council decision

5. The Ministerial Council could call upon the participating States to implement this decision in a more effective way, with a new deadline. However, this option is not satisfactory because the Rome Council decision has important lacunae:

- The OSCE as such is not covered by this decision; this means that international legal personality, legal capacity and privileges and immunities are not granted to the OSCE as a whole.
- Only two institutions are covered: the Secretariat and the Office for Democratic Institutions and Human Rights. Neither the Office of the High Commissioner on National Minorities nor the Office of the Representative on Freedom of the Media are mentioned in the Rome Council decision, and neither the CSCE Council nor the Permanent Council have extended the application of this decision to these institutions.
- The OSCE missions are not covered: only mission members are granted privileges and immunities. Missions as such are not conferred legal capacity/personality, nor are they granted privileges and immunities. However, the OSCE has 21 missions operating in the field in 2000.
- Local staff working with the missions are not covered by the Rome Council decision; however, they represent more than 2,000 people working in the field and they need legal guarantees (such as immunity from jurisdiction) when performing their functions.
- The question of exemption from income tax for OSCE officials was not covered by the Rome Council decision; however, this issue, including the taxation of mission members and local staff, should be addressed in the future since the current situation is unsatisfactory and poses problems for an appropriate human resources policy.

6. An additional reason why this option is not opportune is that, following its adoption in December 1993, the Rome Council decision was implemented by fourteen participating States only, and it is doubtful whether the other participating States would be prepared to implement the decision in 2000.

1.2 Adoption of a new Ministerial decision to supersede the Rome Council decision

7. This option would entail drafting a new document covering the issues which were not dealt with by the Rome Council decision (see point 1.1 above) in addition to those which were handled by it, and submitting to the Ministerial Council for approval a decision which would call upon the participating States to implement it under their domestic law. The participating States would be invited to report on the measures taken for its implementation within a deadline to be fixed.

8. This option is obviously preferable to the preceding one but also presents some disadvantages:

- Firstly, in the light of the unsatisfactory implementation of the Rome Council decision, how can the participating States be brought round to implement this new decision in a more effective and timely way?
- Secondly, participating States which have implemented the Rome Council decision may have difficulty in persuading the competent authorities in their countries to take the necessary measures to replace the Rome decision and to implement the new decision.
- Finally, conferring legal capacity and privileges and immunities through unilateral action does not have the same legal strength as conferring them under an international agreement.

Conclusion

9. The risk of insufficient and not harmonized implementation of the new Ministerial decision would be the same as that for the Rome Council decision. Therefore, the “unilateral action” option, even with the replacement of the Rome Council decision, could hardly be regarded as satisfactory.

2. MULTILATERAL ACTION

2.1 Constituent treaty

10. This option would have been the best legal solution at the time of the creation of the Organization. It is questionable whether the option is still opportune, and whether it is appropriate for addressing the specific issue of the OSCE’s legal capacity and privileges and immunities.

11. Several factors may lead to the conclusion that it is no longer an adequate solution.

- A constituent treaty, with its designation, such as constitution, charter or statute is defined as an agreement under international law which is concluded by several States or subjects of international law to found an international organization. This legal instrument generally lays down the legal framework of the activities of the

organization, defines the mandate/missions/activities of the organization, determines the prerogatives of the organization's different bodies, and usually contains a provision on legal capacity and privileges and immunities to be conferred to the organization by its member States. As demonstrated in the Secretariat's background paper⁴, the OSCE exists despite the absence of a constituent treaty and can be defined as an intergovernmental organization; different political instruments, although not legally binding, define the mandate of the Organization and the prerogatives of its bodies.

- It could be assumed that the negotiation of a constituent treaty for the OSCE would be a long process since it would provide an opportunity to debate on issues which have already been discussed and on which consensus has been reached, sometimes with difficulty. Drafting and adopting a constituent treaty would certainly take more time than drafting and adopting a legal text with the purpose of addressing only the issue of the OSCE's legal personality/capacity and privileges and immunities.
- The entry into force of the constituent treaty of an organization which already exists would be problematic. Two options might be considered: either it would enter into force only when all participating States had ratified it (taking into account the large number of countries concerned, this option could considerably delay the date of entry into force of the constituent treaty), or it would come into force after a specified number of participating States had ratified it (but this would mean having two categories of members).
- It would, nevertheless, be necessary to conclude agreements or a convention on privileges and immunities, since the provision on that subject in the constituent treaty is usually not detailed.
- However, it is worth adding that the argument put forward in the past, according to which a constituent treaty recognizing the intergovernmental character of the OSCE would result in depriving it of its flexibility, is not regarded as relevant: it is not the legal instrument as such that confers flexibility to an entity, but the mandate attributed to this entity and the means given to it for the performance of its activities that make it flexible or not.

12. This being said, it appears that at the stage reached by the OSCE, having recourse to the conclusion of a constituent treaty only in order to address the issue of the OSCE's legal capacity and privileges and immunities would be a disproportionate and inadequate solution⁵.

⁴ See Point II.4, page 8.

⁵ Nevertheless, in view of the OSCE's increasing responsibilities, it might be useful to contemplate drafting a document in future which would summarize the responsibilities of the OSCE bodies/institutions and the institutional rules and regulations set up by the different bodies of the CSCE/OSCE over the years.

2.2 Convention on the OSCE's Legal Capacity and Privileges and Immunities

13. This solution would have the advantage of specifically addressing the issue of the OSCE's legal personality/capacity and privileges and immunities and constituting a unique, harmonized legal basis on which the OSCE could rely.

14. Member countries of international organizations usually have recourse to such a solution when they are prepared to confer legal capacity and privileges and immunities to these organizations (e.g., Convention on Privileges and Immunities of the United Nations, Convention on Privileges and Immunities of the Specialized Agencies, Supplementary Protocol No.1 to the Convention for European Economic Co-operation on the Legal Capacity, Privileges and Immunities of the Organisation (OECD)).

15. If this option were chosen, a draft Convention on the OSCE's Legal Capacity and Privileges and Immunities would be drawn up and submitted to duly authorized representatives of participating States for signature. This convention would grant the same kind of privileges and immunities as those which would be accorded through a Ministerial decision to be implemented under national law (see point 1.2 above). In addition, the issue of the OSCE international personality and, more particularly, its capacity to conclude treaties, could be addressed in the convention.

16. As the convention would be an instrument to be adopted under international law, consequently, the usual final provisions would have to be set up.

17. On the other hand, this solution would, in most cases, entail the ratification of the convention in conformity with the constitutional requirements of each participating State. This could be a lengthy process.

18. The entry into force may be problematic. As with the constituent treaty, there are two options: the convention may enter into force when all participating States have ratified it. The better option would be to consider the convention in force for the participating States which have ratified it; this would enable the OSCE to be granted legal capacity and privileges and immunities in these countries at least.

Conclusion

19. If a consensus is reached in favour of multilateral action, several arguments lead to conclude that, of the two options, the second one, i.e., the Convention on the OSCE's Legal Capacity and Privileges and Immunities, is the more appropriate.

3. BILATERAL ACTION

20. It could be interesting to study an alternative solution which would be a compromise between unilateral action (by granting legal capacity and privileges and immunities under domestic law) and multilateral action (by ratifying a convention on legal capacity and privileges and immunities).

21. This alternative solution would consist of the adoption by the Ministerial Council of a model bilateral agreement between the OSCE and each participating State, conferring legal capacity and privileges and immunities on the Organization. Provisions contained in the model agreement could be adjusted according to the privileges and immunities to be granted by the participating State, depending on whether or not it hosted an institution or a mission.
22. The Ministerial Council would call upon the participating States to enter into negotiation with the OSCE Secretariat and the Chairperson-in-Office for the conclusion of the bilateral agreement. It could fix a deadline for this negotiation and invite the participating States to report on the results achieved in the negotiation process.
23. This solution⁶ presents several advantages:
- By concluding such an agreement with the OSCE, the participating State concerned would implicitly recognize that the Organization has the capacity to conclude it. This would be an implicit recognition of the OSCE's legal personality under international law; in addition, this could be explicitly provided for in the agreement.
 - As a party to the bilateral agreement, the OSCE would be in a stronger position to request its due application.
 - In some countries, it would be possible to conclude such an agreement without the intervention of parliament; this would facilitate and speed up its entry into force.

Conclusion

24. It should be pointed out that, whichever option is chosen by the participating States with a view to conferring legal capacity and privileges and immunities on the OSCE, the

⁶ This solution was used by Switzerland in 1996. This country concluded an agreement with the International Federation of Red Cross and Red Crescent Societies (IFRC) with a view to determining the legal status of this Organization in Switzerland. Article 1 provides that "the Swiss Federal Council shall recognize, for the purpose of the present agreement, the international legal personality and legal capacity of the International Federation of Red Cross and Red Crescent Societies in Switzerland" (unofficial translation). This agreement was signed by the Head of the Federal Department of Foreign Affairs and the President of the Organization.

main difficulty will consist, not in drafting the appropriate provisions, but in having them implemented by all participating States in an effective and timely manner.

DIFFICULTIES THE OSCE HAS FACED OR MAY FACE DUE TO
THE LACK OF INTERNATIONAL LEGAL PERSONALITY,
LEGAL CAPACITY AND PRIVILEGES AND
IMMUNITIES GRANTED BY ALL
PARTICIPATING STATES

I. DIFFICULTIES RESULTING FROM LACUNAE OF THE 1993 ROME COUNCIL
DECISION

1. Lack of international legal personality

The Rome Council Decision does not confer international legal personality on the OSCE. From the strictly legal viewpoint, this lack of international legal personality has the following consequences:

- There may be substantial doubts on the OSCE capacity to conclude treaties, headquarters agreements¹, memoranda of understanding or other instruments governed by international law. When the OSCE has however concluded agreements or similar instruments, its capacity to do it may be questioned by the other party a posteriori in case of dispute relating to the application of the agreement;
- The OSCE capacity to file international claims against States may be put into question;
- In a case involving international liability, participating States may be held responsible for OSCE activities instead of the OSCE itself;
- The OSCE is not acting on the same level as other international organizations. Certain intergovernmental organizations have difficulties in entering into co-operation agreements with the OSCE, thus being prevented from carrying out joint actions and from funding specific OSCE activities. Such agreements would cover rights and obligations for both parties (e.g. financial obligations, responsibility and guarantees in case of financial irregularities, settlement of disputes).

2. No legal capacity of the OSCE as such

The Rome Council Decision does not confer legal capacity on the OSCE as such, i.e. as the entity including all bodies through which OSCE mandates are decided and

¹ This is why Austria and the Netherlands have not concluded a headquarters agreement with the OSCE Institution established on their territory, as they usually do with international organizations having their headquarters on their territory.

implemented. Only two Institutions are covered (the Secretariat and the ODHIR). This means that:

- The other Institutions (the Office of the High Commissioner on National Minorities² and the Office on Freedom of the Media) are not granted legal capacity and privileges and immunities;
- The OSCE Missions are not covered by Rome Council Decision.

With a legal instrument conferring legal capacity on the OSCE as such:

- Negotiation of Memoranda of Understanding for the establishment of an OSCE Mission would be facilitated;
- Any new OSCE body created by the participating States would be granted legal protection under international law as of the date of its creation;
- The conclusion of headquarters agreements would be facilitated;
- Registration of property would be facilitated;
- The organization of OSCE meetings including the conclusion of conference agreements would be facilitated and the legal protection of the participants at these meetings would be guaranteed.

3. Taxation of OSCE incomes

The question of exemption from income tax for OSCE officials was not covered by the Rome Council Decision.

- In the case of international staff members and mission members, some participating States tax their nationals for incomes paid by the OSCE. This poses several problems:
 - There is inequality of treatment of OSCE international employees depending on their countries of origin;
 - This sometimes leads to difficulties in recruitment;
 - There are also cases of resignation for this reason.
 - By taxing OSCE salaries, the country indirectly recovers part of participating States' contributions to the OSCE budget;
 - Furthermore, the lack of international legal personality may prevent some States from entering into agreements for reimbursement of taxes levied on OSCE incomes, as provided for in new Staff Regulation 6.03.

² Several years after its establishment in the Netherlands, a bill endowing the HCNM with legal capacity and according privileges and immunities to the institution and its officials could eventually be adopted by the Dutch parliament at the end of this year.

- In the case of local staff, the host country of a mission does not usually exempt local staff from taxation of their OSCE salaries.
 - This leads to an increase in local staff salaries to take into account the amount of tax they have to pay;
 - This poses problems for recruitment, particularly when other international organizations (like the UN) – which have such exemption for their local staff – are operating in the mission area.

II. DIFFICULTIES RESULTING FROM THE DISCREPANCIES IN GRANTING LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES BY MOST PARTICIPATING STATES

1. Lack of legal capacity and privileges and immunities in most of the participating States

The OSCE, its Institutions, its Missions, its staff members and the delegations to the OSCE are treated in an unequal manner by the participating States:

- OSCE officials have no legal protection when travelling on official business in countries which have not granted privileges and immunities to the OSCE. Certain staff members may have diplomatic passports issued by their national authorities, but this may not provide sufficient protection;
 - Not all participating States treat the OSCE in the same way as other international organizations regarding expeditious handling of visa applications for persons travelling on official business and granting of visas free of charge;
 - Regarding contracting and procurement, the OSCE may face legal difficulties in the event that a complaint is filed by a contracting company with a local court in a State which has not granted legal capacity and privileges and immunities to the OSCE;
 - The OSCE is not exempt from VAT in all participating States. This increases the costs of OSCE Missions in countries which have not granted this exemption. In addition, in order to avoid payment of VAT, the OSCE could possibly be tempted to contract only with companies located in countries where VAT exemption is granted;
 - Lack of clarity on the status of missions has caused delays in and high costs for clearance of the importation of goods for missions.
2. Inadequacy of the reference to the Vienna Convention on Diplomatic Relations as far as OSCE Missions are concerned

Most Memoranda of Understanding for OSCE missions refer to the Vienna Convention on Diplomatic Relations. In the absence of any other international legal

instrument governing OSCE legal capacity and privileges and immunities³, this is a valuable reference but it is not ideal and appropriate for international organizations.

- The Vienna Convention does not provide for legal capacity;
- Privileges and immunities granted to diplomatic agents are wider than those usually granted to international civil servants;
- The Vienna Convention does not provide functional immunity to local staff, which is indispensable for OSCE Missions;
- According to the MoU concluded with the host country of a Mission, mission members are granted privileges and immunities on the territory of this country. However, when they have to travel to another Mission on official business (e.g. for regional or bilateral projects), they are not covered by privileges and immunities granted by the country hosting the other Mission. This creates obvious problems.

3. Local staff of the Missions

The OSCE Missions employ more than 2,700 local staff members, who do not usually have any legal protection under international law, or only to a limited extent. Moreover, the Vienna Convention provides that local staff enjoy privileges and immunities only to the extent admitted by the receiving States: usually countries confer no special status on national staff. Consequences of this lack of protection are, for example:

- Local staff may be summoned to provide evidence or testimony before local authorities even in respect of OSCE business; if they refuse to answer to summons as witnesses, they can be prosecuted (fines, imprisonment);
- The OSCE has experienced two cases in the past where exemption from legal process was not granted to local staff: Mr. Stetic from the Mission to Bosnia and Herzegovina was arrested in Croatia while on duty and sentenced to more than 10 years, and Mr. Kastrati from the former Kosovo Verification Mission (KVM) was sentenced to 14 years for alleged espionage.

³ As previously indicated, the Rome Council Decision does not cover the OSCE Missions.

**List of Provisions which could be included
IN A CONVENTION OR A MODEL BILATERAL AGREEMENT
ON THE LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES OF THE OSCE**

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
	<p><u>Preamble</u>¹</p> <p>[Purposes of the present legal instrument]</p>	
	<p><u>Article 1: Definition</u></p> <p>For the purpose of the present convention/agreement, the “OSCE” shall be defined as the entity including all bodies through which OSCE mandates are decided and implemented, such as decision-making bodies, institutions and missions.</p>	<p><i>This means that when the OSCE is mentioned within the document, all the OSCE Institutions and the OSCE missions and field activities are covered as well.</i></p>
<p><u>Legal Capacity of the CSCE Institutions</u></p> <p>1. The CSCE participating States will, subject to their constitutional, legislative and related requirements, confer such legal capacity as is necessary for the exercise of their functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings, on the following CSCE institutions:</p> <ul style="list-style-type: none"> - The CSCE Secretariat, - The Office for Democratic Institutions and Human Rights (ODIHR), - Any other CSCE institution determined by the CSCE Council. 	<p><u>Article 2: International Legal Personality and Legal Capacity of the OSCE</u></p> <p>1. The OSCE shall enjoy international legal personality.</p> <p>2. The OSCE shall enjoy in the territories of the participating States such legal capacity as is necessary for the exercise of its functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.</p>	<p><i>The OSCE as such should enjoy international legal personality and legal capacity, as is the case for other international organizations. [See Part I, paragraphs 1 and 2, of the Secretariat’s paper on difficulties the OSCE has faced or may face – SEC.GAL/71/00, 13 July 2000.]</i></p>

¹ Changes and additional provisions are highlighted in bold.

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p><u>Privileges and Immunities: General</u></p> <p>2. The CSCE participating States will, subject to their constitutional, legislative and related requirements, confer the privileges and immunities as set out in paragraphs 4-16 below.</p>	<p><u>Article 3: OSCE Privileges and Immunities: General</u></p>	<p><i>Final provisions will specify how to implement this legal instrument and their wording will depend on whether it is a convention or a model bilateral agreement.</i></p>
<p>3. Privileges and immunities will be accorded to the CSCE Institutions in the interests of those institutions. Immunity may be waived by the Secretary General of the CSCE in consultation with the Chairman-in-Office.</p>	<p>The OSCE shall enjoy in the territories of the participating States such privileges and immunities as are necessary for the fulfilment of its purposes.</p>	<p><i>The OSCE as such should be granted privileges and immunities. [See Part II, paragraph 1, of the Secretariat's paper on difficulties.]</i> <i>Article 105 (1) of the Charter of the United Nations.</i></p>
<p>Privileges and immunities will be accorded to individuals not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity will be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. Decision to waive immunity will be taken:</p> <ul style="list-style-type: none"> - With respect to officers and staff of the CSCE Institutions and to members of CSCE missions, by the Secretary General of the CSCE in consultation with the Chairman-in-Office; - With respect to the Secretary General and the High Commissioner on National Minorities, by the Chairman-in-Office. <p>The Government concerned may waive immunity with respect to its representatives.</p>		<p><i>Removed to Article 7, paragraph 2 (Representatives of the participating States) and to Article 8, paragraph 5 (OSCE officials).</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p><u>CSCE Institutions</u></p> <p>4. The CSCE Institutions, their property and assets, wherever located and by whomsoever held, will enjoy the same immunity from legal process as is enjoyed by foreign States.</p>	<p><u>Article 4: OSCE Property, Funds and Assets</u></p> <p>1. The OSCE, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from any form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.</p>	<p><i>Article II, Section 2, of the 1946 Convention on the Privileges and Immunities of the United Nations (UN Convention).</i></p> <p><i>This provision covers property and assets of the OSCE Institutions <u>and</u> Missions. [See Part II, paragraph 1. of the Secretariat's paper on difficulties.]</i></p>
<p>5. The premises of the CSCE Institutions will be inviolable. The property and assets of the CSCE Institutions, wherever located and by whomsoever held, will be immune from search, requisition, confiscation and expropriation.</p>	<p>2. The premises of the OSCE shall be inviolable. The property and assets of the OSCE, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation and expropriation.</p>	<p><i>No change except replacement of CSCE Institutions by OSCE, which covers Institutions <u>and</u> Missions.</i></p>
<p>6. The archives of the CSCE Institutions will be inviolable.</p>	<p>3. The archives of the OSCE, and in general all documents belonging to it or held by it, shall be inviolable wherever located.</p>	<p><i>Article II, Section 4, of the UN Convention</i></p>
<p>7. Without being restricted by financial controls, regulations or moratoria of any kind:</p> <p>(a) The CSCE Institutions will be able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to their objectives;</p> <p>(b) The CSCE Institutions will be free to transfer their funds or currency from one country to another or within any country and to convert any currency held by them into another currency.</p>	<p>4. Without being restricted by financial controls, regulations or moratoria of any kind:</p> <p>(a) The OSCE shall be able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to its objectives;</p> <p>(b) The OSCE shall be free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into another currency.</p>	<p><i>No change except replacement of CSCE Institutions by OSCE which covers Institutions <u>and</u> Missions.</i></p> <p><i>Similar to Article II, Section 5, of the UN Convention.</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p>8. The CSCE Institutions, their assets, income and other property will be:</p> <p>(a) Exempt from all direct taxes; it being understood, however, that the CSCE Institutions will not claim exemption from taxes which are, in fact, no more than charges for public utility services;</p> <p>(b) Exempt from customs duties on imports and exports in respect of articles imported or exported by the CSCE Institutions for their official use; it being understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.</p>	<p>5. The OSCE, its assets, income and other property shall be:</p> <p>(a) Exempt from all direct taxes; it being understood, however, that the OSCE shall not claim exemption from taxes which are, in fact, no more than charges for public utility services;</p> <p>(b) Exempt from customs duties on imports and exports in respect of articles imported or exported by the OSCE for its official use; it being understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.</p>	<p><i>No change except replacement of CSCE Institutions by OSCE which covers Institutions and Missions. [See Part II, Paragraph 1 of the Secretariat's paper on difficulties.]</i></p> <p><i>Similar to Article II, Section 6, of the UN Convention.</i></p>
<p>9. Where goods or services of substantial value necessary for the exercise of the official activities of the CSCE Institutions are made or used, and when the price of such goods and services includes taxes or duties, the State that has levied taxes or duties will grant exemption or provide reimbursement of the amount of duty or tax.</p>	<p>6. Where goods or services of substantial value necessary for the exercise of the official activities of the OSCE are made or used, and when the price of such goods and services includes taxes or duties, the participating State that has levied taxes or duties will grant exemption or provide reimbursement of the amount of duty or tax.</p>	<p><i>No change except replacement of CSCE Institutions by OSCE, which covers Institutions and Missions.</i></p>
<p>10. The CSCE Institutions will enjoy for their official communications the same treatment as that accorded to diplomatic missions.</p>	<p><u>Article 5: Facilities in respect of communications</u></p> <p>The OSCE shall enjoy for its official communications the same treatment as that accorded to diplomatic missions.</p>	<p><i>No change except replacement of CSCE Institutions by OSCE which covers Institutions and Missions. However, additional provisions could be envisaged:</i></p> <p><i>No censorship applied to official correspondence and communications [see Article III, Section 9, of the UN Convention].</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
		<p><i>Right to use codes and to dispatch and receive correspondence by courier or in bags that have the same privileges and immunities as diplomatic couriers and bags [see Article III, Section 10, of the UN Convention].</i></p>
<p><u>Permanent Missions of the participating States</u></p> <p>11. Participating States in whose territory permanent missions to the CSCE are located will accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.</p>	<p><u>Article 6: Permanent Missions of the participating States to the OSCE</u></p> <p>Participating States in whose territory permanent missions to the OSCE are located shall accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.</p>	<p><i>No change.</i></p>
<p><u>Representatives of Participating States</u></p> <p>12. Representatives of participating States attending CSCE meetings or taking part in the work of the CSCE Institutions will, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:</p> <p>(a) Immunity from legal process relating to acts performed by them in their official capacity;</p> <p>(b) Inviolability for all papers and documents;</p>	<p><u>Article 7: Representatives of Participating States</u></p> <p>1. Representatives of participating States attending OSCE meetings or taking part in the work of the OSCE shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:</p> <p>(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind, even after the persons concerned are no longer the representatives of participating States;</p> <p>(b) Inviolability for all papers and documents;</p>	<p><i>Article IV, Section 11 (a) and Section 12, of the UN Convention.</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p>(c) Exemption in respect of themselves and their spouses from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;</p> <p>(d) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;</p> <p>(e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.</p>	<p>(c) Exemption in respect of themselves and their spouses from immigration restrictions and aliens registration formalities as accorded to diplomatic agents of foreign States;</p> <p>(d) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;</p> <p>(e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.</p> <p>(f) The right to use codes and to receive papers or correspondence by courier or in sealed bags.</p>	<p><i>Article IV, Section 11 (c), of the UN Convention</i></p>
	<p>2. Privileges and immunities are accorded to the representatives of the participating States not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity shall be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. The Government concerned may waive immunity with respect to its representatives.</p>	<p><i>Previously in paragraph 2 of the Rome Council Decision.</i></p> <p><i>Article IV, Section 14, of the UN Convention.</i></p>
<p>The provisions of this paragraph will not apply as between a representative and the State of which he or she is or has been the representative.</p>	<p>3. The provisions of paragraph 1 above will not apply as between a representative and the State of which he or she is or has been the representative.</p>	<p><i>No change.</i></p> <p><i>Article IV, Section 15, of the UN Convention.</i></p>
<p>In this paragraph, the expression “representative” means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.</p>	<p>4. In this paragraph, the expression „representative“ means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.</p>	<p><i>No change.</i></p> <p><i>Article IV, Section 16, of the UN Convention.</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p>CSCE Officials</p> <p>7. CSCE officials will enjoy the following privileges and immunities:</p> <p>(a) Immunity from legal process, in respect of acts, including words written and spoken, performed by them in their official capacity;</p> <p>(b) Exemption from national service obligations;</p> <p>(c) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;</p> <p>(d) The same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;</p> <p>(e) The same repatriation facilities in time of international crises in respect of themselves and their spouses and relatives dependent on them as diplomatic envoys;</p> <p>(f) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.</p>	<p><u>Article 8: OSCE Officials</u></p> <p>1. OSCE officials shall enjoy the following privileges and immunities:</p> <p>(a) Immunity from personal arrest or detention and from legal process, even after the termination of their appointments with the OSCE, for acts, including words written and spoken, performed by them in their official capacity;</p> <p>(b) Exemption from taxation on the salaries and emoluments paid to them by the OSCE;</p> <p>(c) Exemption from national service obligations;</p> <p>(d) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration formalities as accorded to diplomatic agents of foreign States;</p> <p>(e) The same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;</p> <p>(f) The same repatriation facilities in time of international crisis in respect of themselves and their spouses and relatives dependent on them as diplomatic envoys;</p> <p>(g) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.</p>	<p><i>Staff members of OSCE Institutions <u>and</u> mission members, including local staff, should be granted the same privileges and immunities. [See Part II, paragraph 3, of the Secretariat's paper on difficulties.]</i></p> <p><i>This provision is inspired by paragraph 15 (a) and (b) of the Rome Council Decision.</i></p> <p><i>Article IV, Section 18 (b), of the UN Convention. [See Part I, paragraph 3 of the Secretariat's paper on difficulties.]</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
No participating State will be obliged to accord the privileges and immunities referred to under items (b) – (f) above to its own nationals or to permanent residents of that State.	2. No participating State shall be obliged to accord the privileges and immunities referred to under items (c) - (f) above to its own nationals or to permanent residents of that State.	<i>No change. However, exemption from taxation should be granted to nationals and permanent residents as well.</i>
The question of exemption from income tax for CSCE officials is not covered by this paragraph.		<i>See new 15 (b) above.</i>
In this paragraph the term „CSCE officials“ means the Secretary General, the High Commissioner on National Minorities and persons holding positions determined by the appropriate CSCE decision-making body or designated by it.	3. For the purpose of the present convention/ agreement, „OSCE officials“ are defined as staff members of OSCE institutions and OSCE mission members, including local staff.	
	4. In addition to the privileges and immunities specified in paragraph 1 above, the Secretary General, the Heads of Institution and the Heads of Mission shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.	<i>Article V, Section 19, of the UN Convention.</i>
	5. Privileges and immunities are accorded to officials of the OSCE in the interests of the OSCE and not for the personal benefit of the individuals concerned. The Secretary General shall have the right and the duty to waive the immunity of any official where the immunity would impede the course of justice and can be waived without prejudice to the interests of the OSCE. With respect to the Secretary General, the Heads of Institution and the Heads of Mission, the Chairman-in-Office shall have the right to waive immunity.	<i>Previously in paragraph 2 of the Rome Council Decision. Article V, Section 20, of the UN Convention. For discussion: Should the waiver concerning the Heads of Institution and the Heads of Mission not fall within the competence of the Secretary General?</i>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
	<p>6. The OSCE shall co-operate at all times with the appropriate authorities of the participating States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.</p>	<p><i>Article V, Section 21, of the UN Convention.</i></p>
<p>14. The employees of the CSCE Institutions will be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.</p> <p>Provided that the employees of the CSCE Institutions are covered by a social security scheme of the CSCE Institutions, or by a scheme to which the CSCE Institution adheres, providing adequate benefits, they will be exempt from compulsory national social security schemes.</p>	<p>7. OSCE officials shall be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.</p> <p>8. Provided that the OSCE officials are covered by a social security scheme of the OSCE, or by a scheme to which the OSCE adheres, providing adequate benefits, they shall be exempt from compulsory national social security schemes.</p>	<p><i>No change except replacement of employees of the CSCE Institutions by OSCE officials, which covers staff members of OSCE institutions and OSCE mission members (see paragraph 3 above).</i></p>
<p style="text-align: center;"><u>Members of CSCE Missions</u></p> <p>15. Members of CSCE missions, established by the CSCE decision-making bodies, as well as personal representatives of the Chairman-in-Office, will enjoy the following privileges and immunities while performing their duties for the CSCE:</p> <p>(a) Immunity from personal arrest or detention;</p> <p>(b) Immunity from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;</p> <p>(c) Inviolability for all papers and documents;</p>	<p><u>Article 9: Personal Representatives of the Chairman-in-Office</u></p> <p>Personal representatives of the Chairman-in-Office shall enjoy the following privileges and immunities while performing their duties for the OSCE:</p> <p>(a) Immunity from personal arrest or detention and from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;</p> <p>(b) Inviolability for all papers and documents;</p> <p>(c) The right to use codes and to receive papers or</p>	<p><i>Considering that mission members are officials of the OSCE, they will have the same privileges and immunities as other OSCE officials, i.e. those provided for in Article 8. Consequently, only personal representatives of the CiO have to be covered by this provision.</i></p> <p><i>Question: Would it be appropriate to have provisions dealing with experts on missions for the OSCE? (See Article VI of the UN Convention.)</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p>(d) The right to use codes and to receive papers or correspondence by courier or in sealed bags, which will have the same immunities and privileges as diplomatic couriers and bags;</p> <p>(e) The same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;</p> <p>(f) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;</p> <p>(g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;</p> <p>(h) The same repatriation facilities in time of international crisis as diplomatic agents;</p> <p>(i) The right to use specific symbols or flags on their premises and vehicles.</p>	<p>correspondence by courier or in sealed bags, which will have the same immunities and privileges as diplomatic couriers and bags;</p> <p>(d) The same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;</p> <p>(e) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;</p> <p>(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;</p> <p>(g) The same repatriation facilities in time of international crisis as diplomatic agents;</p> <p>(h) The right to use specific symbols or flags on their premises and vehicles.</p>	
<p>Equipment used by the CSCE missions to accomplish their mandate shall enjoy the same treatment as provided for in paragraphs 4, 5, 8 and 9.</p>		<p><i>Considering that missions are covered by the generic term „OSCE“, this provision is unnecessary as privileges and immunities of the OSCE apply to missions as well.</i></p>
<p>16. Members of other missions under the auspices of the CSCE than those mentioned in paragraph 15 will, while performing their duties for the CSCE, enjoy the privileges and immunities prescribed in paragraph 15 (b), (c), (e) and (f). The Chairman-in-Office may request that</p>		<p><i>Is it still necessary to distinguish different kinds of OSCE missions?</i></p>

1993 ROME COUNCIL DECISION	NEW PROVISIONS	COMMENTS
<p>these members be granted the privileges and immunities prescribed in paragraph 15 (a), (d), (g) and (i) in situations where such members may encounter specific difficulties.</p>		
<p><u>CSCE Identity Cards</u></p> <p>17. The CSCE may issue a CSCE Identity Card to persons on official duty travel for the CSCE. The document, which will not substitute for ordinary travel documents, will be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.</p>	<p><u>Article 10: OSCE Identity Cards</u></p> <p>1. The OSCE may issue an OSCE Identity Card to persons on official duty travel for the OSCE. The document, which shall not substitute for ordinary travel documents, shall be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.</p>	<p><i>See Article VII, Section 24, of the UN Convention: "The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of Members."</i></p>
<p>18. Applications for visas (where required) from the holders of CSCE Identity Cards will be dealt with as speedily as possible.</p>	<p>8. Applications for visas (where required) from the holders of OSCE Identity Cards shall be dealt with as speedily as possible.</p>	
	<p><u>Article 11: Final provisions</u></p> <p>[Settlement of disputes] [Accession, ratification, approval] [Depositary] [Languages] [Entry into force]</p>	

Annex 1

DRAFT

**CONVENTION ON THE LEGAL CAPACITY OF THE OSCE
AND ITS PRIVILEGES AND IMMUNITIES**

[Articles 1 to 9 are inspired by the Rome Council Decision; the changes are highlighted in bold.]

Article 1
Definitions

For the purpose of the present Convention:

- (a) **“OSCE” shall include its decision-making bodies, institutions and missions.**
- (b) **“Participating States” means the OSCE participating States.**
- (c) **“Representatives of the participating States” shall be defined as participating States’ delegates, deputy delegates, advisers, technical experts and secretaries of delegations.**
- (d) **“Institutions” shall refer to the OSCE Secretariat, the Office for Democratic Institutions and Human Rights (ODIHR), the Office of the High Commissioner on National Minorities (HCNM), the Office of the Representative on Freedom of the Media and any other OSCE institution determined by the Permanent Council.**
- (e) **“Missions” shall be defined as the OSCE Missions, including OSCE Centres, Groups, Presences, Offices and any other field operations.**
- (f) **“Secretary General” means the Secretary General of the OSCE.**
- (g) **“OSCE officials” shall mean the Secretary General, the other Heads of Institution, and persons holding positions determined by the appropriate decision-making body or designated by it.**
- (h) **“Members of OSCE missions” shall mean persons employed by the missions, but shall not include persons who are locally recruited and receive an hourly rate of pay.**

Article 2
Legal Capacity

The OSCE shall enjoy in the territories of the States parties to the present Convention such legal capacity as is necessary for the exercise of **its** functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.

Article 3
Privileges and Immunities: General

1. Privileges and immunities shall be accorded by the **States parties to the present Convention** in the interest of **the OSCE**. Immunity may be waived by the Secretary General in consultation with the Chairman-in-Office.
2. Privileges and immunities **shall** be accorded to individuals not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity **shall** be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. Decision to waive immunity **shall** be taken:
 - (a) With respect to **OSCE officials** and members of **OSCE** missions, by the Secretary General in consultation with the Chairman-in-Office;
 - (b) With respect to the Secretary General, **the other Heads of Institution, the Heads of Mission, the personal representatives of the Chairman-in-Office**, by the Chairman-in-office.

The Government concerned may waive immunity with respect to representatives of **the participating States**.

Article 4
OSCE Property and Assets

1. The **OSCE, its** property and assets, wherever located and by whomsoever held, **shall** enjoy the same immunity from legal process as is enjoyed by foreign countries.
2. The premises of the **OSCE shall** be inviolable. The property and assets of the **OSCE**, wherever located and by whomsoever held, **shall** be immune from search, requisition, confiscation and expropriation.
3. The archives of the **OSCE shall** be inviolable.
4. Without being restricted by financial controls, regulations or moratoria of any kind:

- (a) The **OSCE shall** be able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to **its** objectives;
 - (b) The **OSCE shall** be free to transfer **its** funds or currency from one country to another or within any country and to convert any currency held by **it** into another currency.
5. The **OSCE, its** assets, income and other property **shall** be:
- (a) Exempt from all direct taxes; it being understood, however, that the **OSCE shall** not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (b) Exempt from customs duties on imports and exports in respect of articles imported or exported by the **OSCE** for **its** official use; it being understood, however, that articles imported under such exemption **shall** not be sold in the country into which they were imported except under conditions agreed with the Government of that country.
6. Where goods or services of substantial value necessary for the exercise of the official activities of the **OSCE** are made or used, and when the price of such goods and services includes taxes or duties, the State **party to the present Convention** that has levied taxes or duties **shall** grant exemption or provide reimbursement of the amount of duty or tax.
7. The **OSCE shall** enjoy for **its** official communications the same treatment as that accorded to diplomatic missions.

Article 5

Permanent Missions of the participating States

States **parties to the present Convention** in whose territory permanent missions to the **OSCE** are located **shall** accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.

Article 6

Representatives of participating States

1. Representatives of participating States attending **OSCE** meetings or taking part in the work of the **OSCE shall**, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:
 - (a) Immunity from legal process relating to acts performed by them in their official capacity;
 - (b) Inviolability for all papers and documents;

- (c) Exemption in respect of themselves and their spouses from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
 - (d) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;
 - (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.
2. The provisions of paragraph **1 above shall** not apply as between a representative and the State of which he or she is or has been the representative.

Article 7
OSCE Officials

1. **OSCE officials shall** enjoy the following privileges and immunities:
- (a) Immunity from legal process, in respect of acts, including words written and spoken, performed by them in their official capacity;
 - (b) Exemption from national service obligations;
 - (c) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
 - (d) The same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
 - (e) The same repatriation facilities in time of international crises in respect of themselves and their spouses and relatives dependent on them as diplomatic **agents**;
 - (f) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.
2. No State **party to the present Convention shall** be obliged to accord the privileges and immunities referred to under items (b) – (f) above to its own nationals or to permanent residents of that State.

[The provisions on social security should be removed and dealt with in the model agreement since they concern the relationship with the host country.]

Article 8
Members of OSCE Missions and
Personal Representatives of the Chairman-in-Office

Members of **OSCE** missions, established by the **OSCE** decision-making bodies, as well as personal representatives of the Chairman-in-Office, **shall** enjoy the following privileges and immunities while performing their duties for the **OSCE**:

- (a) Immunity from personal arrest or detention;
- (b) Immunity from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;
- (c) Inviolability for all papers and documents;
- (d) The right to use codes and to receive papers or correspondence by courier or in sealed bags, which will have the same immunities and privileges as diplomatic couriers and bags;
- (e) The same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;
- (f) The same privileges in respect of exchange facilities as are accorded to diplomatic agents;
- (g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
- (h) The same repatriation facilities in time of international crisis as diplomatic agents;
- (i) The right to use specific symbols or flags on their premises and vehicles.

[The provision on equipment used by the OSCE missions is covered by Article 3 and will to be developed in the model agreement.]

[The provision on the members of other missions has been deleted since it is not clear what those missions are.]

Article 9
OSCE Identity Card

1. The **OSCE** may issue an **OSCE** Identity Card to persons on official duty travel for the **OSCE**. The document, which **shall** not substitute for ordinary travel documents, **shall** be issued in accordance with the form set out in Annex A **to the present Convention**, and **shall** entitle the bearer to the treatment specified therein.

2. Applications for visas (where required) from the holders of **OSCE Identity Cards shall** be dealt with as speedily as possible.

Article 10
Agreement between the OSCE and a Host Country

1. **In addition to the above provisions, where a decision has been taken to establish an OSCE institution or mission in the territory of a State party to the present Convention, that State shall conclude an agreement with the OSCE granting additional privileges and immunities as set out in Annex B to the present Convention, as soon as possible after the said decision.**
2. **If necessary, such agreements may be concluded in order to supplement privileges and immunities already accorded under national law or through Memoranda of Understanding in view of granting the additional privileges and immunities set out in Annex B to the present Convention.**

[The following provisions, except Article 12, are inspired by Chapter V of the Convention on the Court of Conciliation and Arbitration within the OSCE: changes are highlighted in bold.]

Article 11
Signature and Entry into Force

1. **The present** Convention shall be open for signature with the Government of by the participating States until It shall be subject to ratification.
2. **The present** Convention shall enter into force two months after the date of deposit **by all participating States of either:**
 - (a) **an instrument of ratification, or**
 - (b) **a notice of implementation of Annex 1 to the Rome Council Decision concerning the Legal Capacity of the CSCE Institutions and Privileges and Immunities of 1 December 1993 as expanded by the decision of the Permanent Council of .. November 2000.**
3. The participating States which have not signed **the present** Convention may subsequently accede thereto.
4. For every **participating** State which ratifies or accedes to the present Convention after **the date of its entry into force**, the **present** Convention shall enter into force two months after its instrument of ratification or accession has been deposited.
5. The Government of shall serve as depositary of the present Convention.

Article 12
Provisional Application of the present Convention

When a participating State signs or ratifies the present Convention, it may declare that it will apply this Convention provisionally as of the date of signature or ratification.

Article 13
Reservations

The present Convention may not be subject of any reservation [that it does not expressly authorize].

Article 14
Amendments

1. Amendments to **the present** Convention must be adopted in accordance with the following paragraphs.
2. Amendments to **the present** Convention may be proposed by any State party thereto, and shall be communicated by the depositary to the **Secretary General** for transmission to the participating States.
3. If the **Permanent Council** adopts the proposed text of the amendment, the text shall be forwarded by the depositary to States parties to **the present** Convention for acceptance in accordance with their respective constitutional requirements.
4. Any such amendment shall come into force on the thirtieth day after all States parties to **the present Convention** have notified the depositary of their acceptance thereof.

Article 15
Denunciation

1. Any State party to **the present** Convention may, at any time, denounce this Convention by means of a notification addressed to the depositary.
2. Such denunciation shall become effective one year after the date of receipt of the notification by the depositary.

Article 16
Notifications and Communications

The notifications and communications to be made by the depositary shall be transmitted to the **Secretary General** for further transmission to the participating States.

Article 17
Non-Parties

In conformity with international law, it is confirmed that nothing in **the present** Convention shall be interpreted to establish any obligations or commitments for participating States that are not parties to **the present** Convention if not expressly provided for and expressly accepting by such States in writing.

Done at

In the English, French, German, Italian, Russian and Spanish languages, all six language versions being authentic,

On

Annex A: OSCE Identity Card

Annex B: Model Agreement

Annex A to Annex 1

OSCE IDENTITY CARD

Name:

Surname:

Date of Birth:

National of:

Holder of passport/diplomatic passport no., issue on, by

It is hereby certified that the person named in the present document is on official business of the **Organization** for Security and Co-operation in Europe (**OSCE**) during the period from to in the following **OSCE** participating State(s)

The **OSCE** hereby request all whom it may concern that the person named herein:

- be allowed to pass without delay or hindrance,
- in case of need be accorded all necessary lawful assistance and protection.

This document does not replace travel documents that may be required for entry or exit.

Issued in on by (relevant **OSCE** authority)

Signature:

Title

Annex 2

OSCE Legal capacity
Meetings of
21 and 22 September and 16 and 17 October 2000

**DRAFT MODEL BILATERAL AGREEMENT OR CONVENTION ON THE
OSCE LEGAL CAPACITY AND PRIVILEGES AND IMMUNITIES**

Preamble

[Purposes of the present legal instrument]

..... **Recognizing the need for the OSCE and its staff to enjoy such privileges and immunities as are necessary for the exercise of its functions¹ ...** *(former Article 3)*

Article 1
Definitions

For the purpose of the present Agreement/Convention:

- (a) "OSCE" shall be defined as the **Organization as such** including its decision-making bodies, institutions and missions.
- (b) "**Missions**" shall be defined as the **OSCE Missions, including OSCE Centres, Groups, Presences, Offices and any other field operations.**
- (c) "Representatives of the participating States" shall be defined as participating States' delegates, deputy delegates, advisers, technical experts and secretaries of delegations.
- (d) "OSCE officials" shall be defined as staff members of OSCE institutions and OSCE mission members, ~~including local staff~~ **but shall not include persons who are locally recruited and receive an hourly rate of pay.**

¹

Changes made to the document CIO.GAL/70/00 of 22 August 2000 following the discussions at the meeting of 21 and 22 September are highlighted in bold; changes resulting from the discussions at the meeting of 16 and 17 October are highlighted in bold italic.

Article 2

Option 1

It is recognized that the OSCE enjoys international legal personality.

Option 2

It is recognized that the OSCE may conclude such agreements with other international entities as are necessary for the exercise of its functions.

Article 3 Legal Capacity

The OSCE shall enjoy in the **territory/ies** of the State/s **party/parties to the present Agreement/Convention** such legal capacity as is necessary for the exercise of its functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.

Article 4 Inviolability of the OSCE Premises, Property, Funds and Assets

1. The premises of the OSCE shall be inviolable.
2. The property of the OSCE and its assets, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation and expropriation.

Article 5 Inviolability of the archives of the OSCE

The archives of the OSCE, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Article 6 Immunity of jurisdiction and execution

The OSCE, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from any form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that **such** waiver of immunity **does not** extend to any measure of execution **for which a separate waiver shall be necessary.**

Article 7
Tax Exemptions

1. **The OSCE, its assets, income and other property shall be exempt** from all direct taxes; it being understood, however, that the OSCE shall not claim exemption from taxes which are, in fact, no more than charges for public utility services.

2. Where goods or services of substantial value necessary for the exercise of the official activities of the OSCE are made or used, and when the price of such goods and services includes taxes or duties, the State **party to the present Agreement/Convention** that has levied taxes or duties **shall grant exemption or provide reimbursement** of the amount of duty or tax.

Article 8
Customs Privileges

The OSCE, its assets, income and other property shall be exempt from customs duties on imports and exports in respect of articles imported or exported by the OSCE for its official use; it being understood, however, that articles imported under such exemption **shall not be sold, leased or given away** in the country into which they were imported except under conditions agreed with the Government of that country.

Article 9
Financial Controls

Without being restricted by financial controls, regulations or moratoria of any kind, the OSCE shall be:

- (a) able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to its objectives;

- (b) free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into another currency.

Article 10
Facilities in Respect of Communications

The OSCE shall enjoy for its official communications the same treatment as that accorded to diplomatic missions.

Article 11
Permanent Missions of the Participating States to the OSCE

Multilateral option

States parties to the present Convention in whose territory permanent missions to the OSCE are located shall accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.

Bilateral option

Country (*name*) in whose territory permanent missions to the OSCE are located shall accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.

Article 12 **Representatives of Participating States**

1. Representatives of participating States attending OSCE meetings or taking part in the work of the OSCE shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:
 - (a) Immunity from personal arrest or detention [...] and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind, even after the persons concerned are no longer the representatives of participating States;
 - (b) Inviolability for all papers and documents;
 - (c) Exemption in respect of themselves and their spouses ***and relatives dependent on them***, from immigration restrictions and aliens registration formalities as accorded to diplomatic agents of foreign States;
 - (d) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;
 - (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States;
 - (f) The right to use codes and to receive papers or correspondence by courier or in sealed bags.
2. Privileges and immunities are accorded to the representatives of the participating States not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity shall be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. The Government concerned may waive immunity with respect to its representatives.
3. The provisions of paragraph 1 above shall not apply as between a representative and the State of which he or she is or has been the representative.

Article 13
OSCE Officials

1. OSCE officials shall enjoy the following privileges and immunities:
 - (a) Immunity from personal arrest or detention and from legal process for *all* acts, including words written and spoken, performed by them in their official capacity, even after the termination of their appointments with the OSCE;
 - (b) Exemption from taxation on the salaries, *allowances* and *other* emoluments paid to them by the OSCE *as from the date on which such income is subject to taxation in favour of the OSCE. The host country may however reserve the right to take the said income into account when assessing the amount of tax to be applied to the beneficiaries' taxable incomes from other sources. The tax exemption referred to in this provision shall not apply to pensions and annuities paid by the OSCE to its former officials or to their beneficiaries. Participating State/s party/parties to the present Agreement/Convention which are unable to grant exemption from taxation under its/their national law shall consider concluding an agreement with the OSCE for the reimbursement of national income tax paid to the participating State concerned by the OSCE officials;*
 - (c) *Inviolability for all papers and documents;*
 - (d) Exemption from national service obligations;
 - (e) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration formalities as accorded to diplomatic agents of foreign States;
 - (f) The same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
 - (g) The same repatriation facilities in time of international crisis as diplomatic *agents envoys*, in respect of themselves and their spouses and relatives dependent on them;
 - (h) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.
2. *Participating State/s party/parties to the present Agreement/Convention shall not be obliged to accord the privileges and immunities referred to under items (b) and (d) to (h) above to its/their own nationals or to permanent residents of that State.*
3. In addition to the privileges and immunities specified in paragraph 1 above, the Secretary General, the other Heads of Institution and the Heads of Mission shall be accorded in respect of themselves, their spouses and *relatives dependent on them* ~~minor children~~, the

privileges and immunities, exemptions and facilities accorded to diplomatic *agents envoys*, in accordance with international law.

4. Privileges and immunities are accorded to officials of the OSCE in the interests of the OSCE and not for the personal benefit of the individuals concerned. The Secretary General, *in consultation with the Chairman-in-Office*, shall have the right and the duty to waive the immunity of any official where the immunity would impede the course of justice and can be waived without prejudice to the interests of the OSCE. With respect to the Secretary General, the other Heads of Institution and the Heads of Mission, the Chairman-in-Office shall have the right to waive immunity.

5. The OSCE shall co-operate at all times with the appropriate authorities of the participating States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

6. OSCE officials shall be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.

7. Provided that the OSCE officials are covered by a social security scheme of the OSCE, or by a scheme to which the OSCE adheres, providing adequate benefits, they shall be exempt from compulsory national social security schemes.

Article 14 **Personal Representatives of the Chairman-in-Office**

1. Personal representatives of the Chairman-in-Office shall enjoy the following privileges and immunities while performing their duties for the OSCE:

- (a) Immunity from personal arrest or detention and from legal process, in respect of *all* acts, including words spoken or written, performed by them in the exercise of their functions, even after the termination of their mission;
- (b) Inviolability for all papers and documents;
- (c) The right to use codes and to receive papers or correspondence by courier or in sealed bags, which will have the same immunities and privileges as diplomatic couriers and bags;
- (d) The same exemption from all measures restricting immigration and from aliens registration ~~formalities~~ as are accorded to diplomatic agents of foreign States;
- (e) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;

- (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
- (g) The same repatriation facilities in time of international crisis as diplomatic agents;
- (h) The right to use specific symbols or flags on their premises and vehicles.

[The provisions below were not discussed in detail at the second meeting of 16-17 October.]

2. *Privileges and immunities are accorded to personal representatives of the Chairman-in-Office in the interests of the OSCE and not for the personal benefit of the individuals concerned. The Chairman-in-Office shall have the right and the duty to waive the immunity of any personal representative where the immunity would impede the course of justice and can be waived without prejudice to the interests of the OSCE.*

Article 15
Experts on Missions for the OSCE

1. Experts (other than officials coming within the scope of Article 13 above) performing missions for the OSCE shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

- (a) **Immunity from personal arrest or detention and from legal process, in respect of *all* acts, including words spoken or written, performed by them in the course of the performance of their missions, even after they are no longer employed on missions for the OSCE;**
- (b) **Inviolability for all papers and documents;**
- (c) **For the purpose of their communications with the OSCE, the right to use codes and to receive papers or correspondence by courier or in sealed bags;**
- (d) **The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;**
- (e) **The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic *agents envoys*.**

2. Privileges and immunities are accorded to experts in the interests of the OSCE and not for the personal benefit of the individuals concerned. The Secretary General shall have the right and the duty to waive the immunity of any expert where the immunity would impede the course of justice and can be waived without prejudice to the interests of the OSCE.

Article 16
OSCE Identity Cards

1. The **OSCE** may issue an **OSCE** Identity Card to persons on official duty travel for the **OSCE**. The document, which **shall** not substitute for ordinary travel documents, **shall** be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.

2. Applications for visas (where required) from the holders of OSCE Identity Cards **shall** be dealt with as speedily as possible.

Article 17
Saving Clause

The provisions of the present Agreement/Convention shall not affect other international agreements in force as between States parties to them.

Article 18
Final provisions

[Settlement of disputes]
[Accession, ratification, approval]
[Depositary]
[Languages]
[Entry into force]

Article 11

Signature and Entry into Force

1. The present Convention shall be open for signature with the Government of by the participating States until It shall be subject to ratification.
2. The present Convention shall enter into force two months after the date **of deposit of an instrument of ratification or acceptance by all participating States.**
3. The participating States which have not signed the present Convention may subsequently accede thereto.
4. For every participating State which ratifies or accedes to the present Convention after the date of its entry into force, the present Convention shall enter into force two months after its instrument of ratification or accession has been deposited.
5. The Government of shall serve as depositary of the present Convention.

Article 11a

Implementation

Each participating State shall make a declaration at the time of signature, ratification, acceptance or accession either:

- (a) **that the present Convention will be implemented through direct application or through national legislation, or**
- (b) **that it has implemented in its domestic jurisdiction the provisions of Annex 1 of the Rome Council Decision concerning the Legal Capacity of the CSCE Institutions and Privileges and Immunities of 1 December 1993 as expanded by the decision of the Permanent Council of ... November 2000.**

DRAFT (14/11/00)

CONVENTION ON THE LEGAL CAPACITY OF THE OSCE
AND ITS PRIVILEGES AND IMMUNITIES

Article 1

Legal Capacity and Privileges and Immunities

States parties to the present Convention shall implement the Provisions concerning the Legal Capacity of the OSCE Institutions and Privileges and Immunities contained in the Annex to the present Convention. **This annex forms an integral part of the present Convention.**

Article 2

Privileges and Immunities granted by a Host Country

In addition to the provisions of the Annex to the present Convention, where a decision has been taken to establish an OSCE institution or mission in the territory of a State party to the present Convention, **facilities and technical arrangements as well** as additional privileges and immunities may be laid down by the said State either:

- (a) **by an agreement with the OSCE, for the purposes of which the State shall recognize the legal capacity of the OSCE to enter into such an agreement, or**
- (b) **by a memorandum of understanding, or**
- (c) **through a unilateral declaration.**

Article 3

Signature and Entry into Force

1. The present Convention shall be open for signature with the Government of (*depository*) by the participating States of the OSCE until It shall be subject to ratification or acceptance.
2. The present Convention shall enter into force two months after the date of deposit of an instrument of ratification or acceptance by all participating States.
3. The participating States which have not signed the present Convention may subsequently accede thereto.

4. For every participating State which accedes to the present Convention after the date of its entry into force, the present Convention shall enter into force two months after its instrument of ratification or accession has been deposited.
5. The Government of shall serve as depositary of the present Convention.

Article 4
Provisional Application of the present Convention

When a participating State signs, ratifies **or accepts** the present Convention, it may declare that it will apply this Convention provisionally as of the date of signature, ratification **or acceptance**.

Article 5
Reservations

The present Convention may not be subject of any reservation.

Article 6
Amendments

1. [...] Amendments to the present Convention must be adopted in accordance with the following paragraphs.
2. Amendments to the present Convention may be proposed by any State party thereto, and shall be communicated by the depositary [...] to the **other States parties**.
3. If the **Conference of the States parties** adopts the proposed text of the amendment, the text shall be forwarded by the depositary to States parties to the present Convention for acceptance in accordance with their respective constitutional requirements.
4. Any such amendment shall come into force on the thirtieth day after all States parties to the present Convention have notified the depositary of their acceptance thereof.

Article 7
Denunciation

1. Any State party to the present Convention may, at any time, denounce this Convention by means of a notification addressed to the depositary.
2. Such denunciation shall become effective one year after the date of receipt of the notification by the depositary.

Done at

In the English, French, German, Italian, Russian and Spanish languages, all six language versions being authentic,

On

Annex: Provisions concerning the Legal Capacity of the OSCE Institutions and Privileges and Immunities

**DRAFT DECISION ON THE OSCE LEGAL CAPACITY
AND PRIVILEGES AND IMMUNITIES**

The Ministerial Council,

Considering the Rome Council Decision concerning the Legal Capacity of the CSCE Institutions and Privileges and Immunities of 1 December 1993,

Bearing in mind the Convention on the legal capacity of the OSCE and its privileges and immunities to be adopted by the Ministerial Council on ... November 2000,

Recalling that Annex 1 to the Rome Council Decision applies to the CSCE Secretariat, the Office for Democratic Institutions and Human Rights (ODIHR) and “any other CSCE institution determined by the CSCE Council”,

Taking into account the extension of the OSCE activities and the subsequent development of the OSCE structure,

Recognizing the need for the OSCE including its decision-making bodies, institutions and missions to be granted such legal capacity and privileges and immunities as are necessary for the exercise of its functions,

1. Decides that:

Section 1 of the Annex 1 to the Rome Council Decision shall read as follows:

“Legal capacity of the OSCE

1. The OSCE participating States **shall**, subject to their constitutional, legislative and related requirements, confer such legal capacity as is necessary for the exercise of their functions, and in particular the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings, on **the OSCE including its decision-making bodies, institutions and missions.**”

Section 2 of the Annex 1 to the Rome Council Decision shall read as follows:

“Privileges and immunities: General

2. The OSCE participating States **shall**, subject to their constitutional, legislative and related requirements, confer the privileges and immunities as set out in paragraphs 4-15 below.”

Section 3 of the Annex 1 to the Rome Council Decision shall read as follows:

“3. Privileges and immunities **shall** be accorded in the interest of **the OSCE**. Immunity may be waived by the Secretary General of the OSCE in consultation with the Chairman-in-office.

Privileges and immunities **shall** be accorded to individuals not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions. Immunity **shall** be waived in any case where the immunity would impede the course of justice and can be waived without prejudice to the purpose for which the immunity is accorded. Decision to waive immunity **shall** be taken:

- With respect to **OSCE officials** and to members of OSCE missions, by the Secretary General of the OSCE in consultation with the Chairman-in-office;
- With respect to the Secretary General, **the other Heads of Institution and the Heads of Mission, the personal representatives of the Chairman-in-Office**, by the Chairman-in-office.

The Government concerned may waive immunity with respect to its representatives.”

Section 4 of the Annex 1 of the Rome Council Decision shall read as follows:

“OSCE Property and Assets

4. The OSCE, **its** property and assets, wherever located and by whomsoever held, **shall** enjoy the same immunity from legal process as is enjoyed by foreign countries.”

Section 5 of the Annex 1 of the Rome Council Decision shall read as follows:

“5. The premises of the **OSCE shall** be inviolable. The property and assets of the **OSCE**, wherever located and by whomsoever held, **shall** be immune from search, requisition, confiscation and expropriation.”

Section 6 of the Annex 1 of the Rome Council Decision shall read as follows:

“6. The archives of the **OSCE shall** be inviolable.”

Section 7 of the Annex 1 of the Rome Council Decision shall read as follows:

“7. Without being restricted by financial controls, regulations or moratoria of any kind:

- (a) The **OSCE shall** be able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to **its** objectives;
- (b) The OSCE shall be free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into another currency.”

Section 8 of the Annex 1 of the Rome Council Decision shall read as follows:

“The **OSCE**, its assets, income and other property **shall** be:

- (a) Exempt from all direct taxes; it being understood, however, that the OSCE shall not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) Exempt from customs duties on imports and exports in respect of articles imported or exported by the OSCE for its official use; it being understood, however, that articles imported under such exemption shall not be sold in the country into which they were imported except under conditions agreed with the Government of that country.”

Section 9 of the Annex 1 of the Rome Council Decision shall read as follows:

“9. Where goods or services of substantial value necessary for the exercise of the official activities of the **OSCE** are made or used, and when the price of such goods and services includes taxes or duties, the State that has levied taxes or duties **shall** grant exemption or provide reimbursement of the amount of duty or tax.”

Section 10 of the Annex 1 of the Rome Council Decision shall read as follows:

“10. The **OSCE shall** enjoy for its official communications the same treatment as that accorded to diplomatic missions.”

Section 11 of the Annex 1 of the Rome Council Decision shall read as follows:

“Permanent Missions of the participating States

11. Participating States in whose territory permanent missions to the **OSCE** are located **shall** accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those missions and their members.”

Section 12 of the Annex 1 of the Rome Council Decision shall read as follows:

“Representatives of participating States

12. Representatives of participating States attending **OSCE** meetings or taking part in the work of the **OSCE shall**, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from legal process relating to acts performed by them in their official capacity;
- (b) Inviolability for all papers and documents;

- (c) Exemption in respect of themselves and their spouses from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
- (d) The same privileges in respect of exchange facilities as are accorded to diplomatic agents of foreign States;
- (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.

The provisions of this paragraph **shall** not apply as between a representative and the State of which he or she is or has been the representative.

In this paragraph, the expression “representative” means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.”

Section 13 of the Annex 1 of the Rome Council Decision shall read as follows:

“OSCE Officials

13. OSCE officials **shall** enjoy the following privileges and immunities:

- (a) Immunity from legal process, in respect of acts, including words written and spoken, performed by them in their official capacity;
- (b) Exemption from national service obligations;
- (c) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and aliens registration as accorded to diplomatic agents of foreign States;
- (d) The same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (e) The same repatriation facilities in time of international crises in respect of themselves and their spouses and relatives dependent on them as diplomatic agents;
- (f) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.

No participating State **shall** be obliged to accord the privileges and immunities referred to under items (b)–(f) above to its own nationals or to permanent residents of that State.

The question of exemption from income tax for OSCE officials is not covered by this paragraph.

In this paragraph the term “OSCE officials” means the Secretary General, **the other Heads of Institution**, and persons holding positions determined by the appropriate OSCE decision-making body or designated by it.”

Section 14 of the Annex 1 of the Rome Council Decision shall read as follows:

“14. The OSCE **officials shall** be exempt from the social security regulations of the host State provided that they are subject to the social security law of their home State, or participate in a voluntary insurance scheme with adequate benefits.

Provided that the OSCE **officials** are covered by a social security scheme of the OSCE, or by a scheme to which the OSCE adheres, providing adequate benefits, they **shall** be exempt from compulsory national social security schemes.”

The last paragraph of Section 15 of the Annex 1 of the Rome Council Decision shall be deleted; Section 15 shall read as follows:

“Members of OSCE Missions and Personal Representatives of the Chairman-in-Office

15. Members of OSCE missions, established by the OSCE decision-making bodies, as well as personal representatives of the Chairman-in-Office, **shall** enjoy the following privileges and immunities while performing their duties for the OSCE:

- (a) Immunity from personal arrest or detention;
- (b) Immunity from legal process, even after the termination of their mission, in respect of acts, including words spoken or written, performed by them in the exercise of their functions;
- (c) Inviolability for all papers and documents;
- (d) The right to use codes and to receive papers or correspondence by courier or in sealed bags, which **shall** have the same immunities and privileges as diplomatic couriers and bags;
- (e) The same exemption from all measures restricting immigration and from aliens registration formalities as are accorded to diplomatic agents of foreign States;
- (f) The same privileges in respect of exchange facilities as are accorded to diplomatic agents;
- (g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
- (h) The same repatriation facilities in time of international crisis as diplomatic agents;
- (i) The right to use specific symbols or flags on their premises and vehicles.”

Section 16 of the Annex 1 of the Rome Council Decision shall be deleted.

Section 17 of the Annex 1 of the Rome Council Decision shall read as follows:

“OSCE Identity Cards

16. The OSCE may issue a OSCE Identity Card to persons on official duty travel for the OSCE. The document, which **shall** not substitute for ordinary travel documents, will be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified therein.”

Section 18 of the Annex 1 of the Rome Council Decision shall read as follows:

“17. Applications for visas (where required) from the holders of OSCE Identity Cards **shall** be dealt with as speedily as possible.”

Annex A to Annex 1 to the Rome Council Decision shall remain unchanged.

2. Specifies for the purposes of the application and interpretation of the Annex 1 of the Rome Council Decision that:

- “Institutions” shall refer to the OSCE Secretariat, the Office for Democratic Institutions and Human Rights (ODIHR), the Office of the High Commissioner on National Minorities (HCNM), the Office of the Representative on Freedom of the Media and any other OSCE institution determined by the **Ministerial** Council,
- “Missions” shall include OSCE Centres, Groups, Presences, Offices and any other field operations,

3. Invites the participating States which have implemented the Rome Council Decision to take the appropriate steps under their national law to expand its application according to the present decision,

4. Urges the participating States which have not implemented the Rome Council Decision to implement the provisions of its Annex 1 expanded according to the present decision, subject to their constitutional and related requirements,

5. Requests the Chairperson-in-Office to submit a report to the next meeting of the Ministerial Council on the steps taken by the participating States in application of the present decision.