Court of Conciliation and Arbitration within the OSCE

Conflict Resolution within the OSCE – Opportunities of the OSCE Court of Conciliation and Arbitration

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KEYNOTE ADDRESS

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Madam Ambassador, Excellencies, Dear Participants,

I would like to thank the Permanent Delegation of Sweden for organising this event for exploring opportunities of the OSCE Court of Conciliation and Arbitration in the Conflict Resolution within the OSCE.

I would also like to thank the organisers for inviting me together with President Decaux briefly to address this august gathering before the panel discussion and exchange of views among the participants. I am looking forward to new interesting comments that I am sure will come from the panel.

There is a place in Europe for a court, the mandate of which is to settle, by means of conciliation and arbitration, disputes between States submitted to it. As given as instructive examples in the invitation to this event, they may include conflicts in respect of territorial integrity, maritime delimitation, as well as environmental and economic issues.

The Conciliation Commissions and Arbitral Tribunals are created on an *ad hoc* basis. Thus the Court is not a permanent body but rather a *stand by*-institution, which can be activated on request. Its structure in terms of personnel and finance is thus relatively modest.

The Court's added value is the flexibility of its main mechanisms. There is no single operating mode but rather several formulas to be resorted to.

Madam Ambassador,

I was asked briefly to recall some of the features of the Court.

As far as the structure is concerned, the Court has two kinds of members, appointed by States parties, in line with two different procedures, i.e. conciliators and arbitrators. As to the two avenues offered, the main emphasis is probably being put on conciliation. If an opportunity arises they can be complementary. Conciliation can be unilaterally activated, by application, by any State party to the Stockholm Convention for a dispute between two

States that have ratified it. In this manner conciliation became compulsory for all States parties of the Convention. That was regarded as a principal innovation.

One important point to note is that the procedures are open, on a voluntary basis, to all of the OSCE participating States that have not yet ratified the Convention, on the basis of an agreement between the States concerned.

The Commission helps the parties to find a settlement in accordance with international law and the OSCE commitments. The fact that it can also apply the OSCE commitments provides a special competence in the matter and greater flexibility than other conciliation procedures.

The work of the Conciliation Commission may or may not result in a mutually acceptable settlement. In the former case, the terms of settlement are recorded in a summary of conclusions. In the latter, the Commission prepares a final report with the proposal for a peaceful settlement. This is important, because the transmission of the report to the OSCE Council provides pressure on the parties to reconsider their positions. A state is obliged to explain its reasons for the rejection of the proposed settlement.

Madam Ambassador,

In contrast to conciliation, the nature of arbitration between States is to adjudicate the dispute submitted to the OSCE Court with the authority of a final decision. The arbitration procedure can be initiated by agreement between States parties to the Convention or by the OSCE participating States.

States can also declare that they recognise as compulsory the jurisdiction of an Arbitral Tribunal, which is subject to reciprocity. Such previously made declarations have, however, all expired.

Hearings during the arbitration proceedings are held in camera unless otherwise agreed. The Tribunal shall also have the necessary fact-finding and investigative powers to carry out its tasks. Thus it can also act as a commission of inquiry as provided in its rules of procedure.

The Tribunal takes its decision in accordance with the rules of international law. However, this does not prevent the Tribunal to show flexibility and decide a case *ex aequo et bono* if the parties to the dispute so agree. It is not clear whether the Arbitral Tribunal can also decide on the basis of the OSCE commitments. The text of the Convention seems to exclude this although rules of international law cover many commitments of the OSCE.

The award of the Tribunal is binding on the parties. It is final and not subject to appeal.

During the preparatory work of the Stockholm Convention it was stressed that existing methods for pacific settlement of disputes should remain open. In the Preamble of the Convention the States parties emphasise that they do not intend to impair other existing institutions and mechanisms. For the purpose of safeguarding the existing means of settlement, the Convention contains a number of cases when a Conciliation Commission or an Arbitral Tribunal shall not take further action.

Madam Ambassador.

The Court has a number of advantages. Recalling what our previous President, Professor Christian Tomuschat, has, *inter alia*, enumerated: modest cost of procedure; fairly low number of personnel; a certain measure of control of disputing States in the choice of conciliators and arbitrators; competence of the Conciliation Commission to decide also on the basis of the OSCE commitments; and possible involvement of the OSCE Council in the conciliation procedure.

The OSCE Court offers especially to the States parties, and perhaps in particular to the like-minded States a means of dispute settlement within the OSCE framework to be reckoned with.

So far no cases have been submitted to the Court. Thus the question is how to move from theory to practice. I am interested to hear how the panelists and other participants see that this can be done.

Thank you, Madam Ambassador