

# *Court of Conciliation and Arbitration within the OSCE*

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## **WORDS OF ADIEU**

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This is an important moment in the history of the Court of Conciliation and Arbitration within the OSCE. After a carefully organized election process, a new Presidency, called “Bureau” in the terminology of the Stockholm Convention, assumes the responsibilities for the discharge of the tasks entrusted to the Court. Obviously, the former members of the Presidency have to look back to the six years of their mandate, trying to establish a balance sheet of achievements and shortcomings.

This can be done in a summary fashion. Two of the former members of the Presidency, Riccardo Pisillo Mazzeschi and me, are here today. When we met for the first time in September 2013, the Court was new to all of us. The preceding members of the Presidency had not established any contact with us beforehand. None of them was present at that time in Geneva, on fully legitimate grounds. The only link to the past was embodied in the person of Christa Allot, our Executive Secretary, who provided us with a full basket of useful information for the start. The election of the Vice-President went ahead fairly fast, and then we had to sit down to reflect on a possible course of action.

The situation was unambiguously clear. No case was pending before the Court, and no proceeding was in sight. Yet the new members were not in the mood to accept this situation of stalemate as an unchangeable fact of life determining the fate of the Court forever. They noted that from 1995 to 2013 President Badinter had engaged his best efforts with a view to gaining the confidence of the States parties to the Stockholm Convention for the Court as a new institution ideally suited to serve the common interest of the European States, unfortunately without success. Several conclusions were drawn from the findings.

First of all, all members agreed that all of the Participating States of the OSCE should be reminded of the existence of the Court and of the invaluable services it could render. They felt that, on whatever grounds, the Court had nearly fallen into oblivion. There continued to exist a considerable number of divergences and tensions between European States that called for clarification or settlement. Europe was free from armed hostilities, but it had not turned into a human paradise where just everything fell into place. Thus, it was decided to write an article for the OSCE magazine

and to make a presentation to the Council of the OSCE, starting at the same time a dialogue with national delegations willing to engage in such an exercise. This was in fact done.

The second question that arose was whether the Court should seek active contacts with the governments of the States parties to the Stockholm Convention in respect of actual disputes with their neighbours in order to describe for them the role the Court in its different articulations could possibly play. After a lengthy debate, such an active role for the Court with regard to specific situations was rejected by a large majority. The members of the Presidency considered that the Court, a neutral and impartial body, should not imperil its authority by getting too close to any government. As a ground rule, courts do not hunt for cases, they sit and wait – however frustrating that may be. Of course, this determination did not prevent the members of the Presidency to raise, from time to time as appropriate, specific contentious issues in strictly informal conversations with representatives of governments.

Lastly, the members concluded that for the time being the best solution would be to pursue a number of academic studies, highlighting in particular conciliation as an activity that is less well-known in the whole array of methods of international dispute settlement but could experience a renouveau under the aegis of the Court. In fact, a first colloquium was organized in May 2015 in Vienna, the materials of which were published in a volume under the care of Brill publishers in early 2017. A second colloquium took place in October 2018 in Geneva, and the publication process is close to its final stage, thanks to the endeavours of some members of the Court but also of other eminent jurists who have shared with us their experiences from other forums where all of a sudden, almost miraculously, conciliation took center stage. The book collecting the materials of the 2015 Colloquium was sent to all OSCE delegation in Vienna and additionally to their legal departments in the capitals.

Let me emphasize that the colloquia were financed by additional financial resources, not from the regular budget of the Court. We are thankful in particular to Austria, Finland, Germany, Italy, Liechtenstein and Switzerland for that invaluable financial support. Furthermore, generous logistic support was given by the OSCE Secretariat in Vienna and by the Graduate Institute of International and Development Studies in Geneva.

One may say that this is a meager result of six years of activity. Yes and no. At least we can say that we did not sit idle. The Court has gained a specific profile thanks to the activities which were detailed a moment ago. It has escaped from the shadows and the dust of diplomatic archives, being available as an instrument that can be put into operation at any moment. Obviously, however, governments make the necessary determinations. They should realize that conciliation or arbitration under the Stockholm Convention constitutes an option to their advantage and not a threat that should be avoided at any cost.

Let me, last not least, thank all the members of the Bureau who worked with me for six years. Riccardo Pisillo Mazzeschi is here as a visible element of continuity while the other principal members of the Bureau – Päivi Hirvelä, Kimmo Kiljunen and Daniel Thürer – were prevented by earlier urgent commitments to join us. I should also mention and thank the alternate members of the Bureau – Oskaras Jusys, Vanda Lamm and Anna Wyrozumska --, who also participated in our activities from time to time. We demonstrated, as it is usual in the OSCE, that cooperation is possible, practicable and fruitful in particular beyond national borders. I am sure that the new team

will eagerly continue its efforts in the same spirit, and I hope and trust that they will soon be acknowledged as partners in the common quest for peace, security and cooperation in Europe. All my best wishes for their start into a future which does not yet reveal its secrets, but which should be bright and successful. Steady efforts will generate substantial results. The Court is ready to confront any challenges.