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**Chairmanship: Austria****REPORT TO THE MINISTERIAL COUNCIL ON STRENGTHENING  
THE LEGAL FRAMEWORK OF THE OSCE IN 2017****Introduction**

1. The legal status of the OSCE, in particular its enjoyment of international legal personality, has been a longstanding discussion in the CSCE/OSCE for more than forty years. The CSCE was originally conceived as a diplomatic conference convening to discuss the politically-binding principles and commitments agreed at summit level in the 1975 Helsinki Final Act. The expanded functions and embryonic institutionalisation adopted at summit level in the 1990 Charter of Paris for a New Europe implied the need for legal status, capacity, privileges and immunities of the CSCE. The expanded institutionalisation, including field operations deployed in zones of armed conflict in the supervening years after the 1992 Helsinki Summit<sup>1</sup>, have served to underscore that need and have made it critical.

2. In 1993 in Rome the CSCE Council considered the relevance of an agreement granting internationally recognised status to the CSCE institutions and noted the importance of providing appropriate treatment for the CSCE institutions and personnel. It adopted model provisions for legal capacity, privileges and immunities but left it to the discretion of each participating State to separately determine how to implement those provisions at the national level, subject to their constitutional and related requirements. The Rome Council Decision was adopted without prejudice to the treatment granted by the Governments hosting the Secretariat, CPC and ODIHR, a treatment recognised by the CSCE Council as comparable to that granted by States to the United Nations.<sup>2</sup>

3. In addition to the name change CSCE to OSCE, the 1994 CSCE Summit in Budapest decided that implementation of the 1993 Rome Council Decision would be reviewed and declared that participating States would, furthermore, examine possible ways of incorporating their commitments into national legislation and, where appropriate, of concluding treaties.<sup>3</sup> The concerted effort in 2007 to reach a consensus text resulted in the *Draft Convention on the International Legal Personality, Legal Capacity and Privileges and Immunities of the OSCE*,

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<sup>1</sup> 1992 Helsinki Summit Decision III on “*Early Warning, Conflict Prevention and Crisis Management (Including Fact-Finding and Rapporteur Missions and CSCE Peacekeeping), Peaceful Settlement of Disputes*,” reinforced in 2011 by the Vilnius Ministerial Council Decision on “*Elements of the Conflict Cycle, Related to Enhancing the OSCE’s Capabilities in Early Warning, Early Action, Dialogue Facilitation and Mediation Support, and Post-Conflict Rehabilitation*” (MC.DEC/3/11)

<sup>2</sup> Rome Council Decision CSCE/4-C/Dec.2, dated 1 December 1993.

<sup>3</sup> 1994 Budapest Summit Decision I on Strengthening the CSCE.

agreed at expert level (2007 Draft Convention).<sup>4</sup> Adoption of the 2007 Draft Convention text remains pending, while discussions continue over whether a constituent document for the OSCE is a prerequisite.

4. In the meantime, consistent with the 1993 Rome Council Decision, legal status, privileges and immunities have been granted by various participating States through national legislation or under bilateral agreements/arrangements with the CSCE/OSCE. Consequently, the OSCE is operating under a variety of legal measures which has resulted in a fragmentation of its legal framework. The fragmented legal framework is precarious; experience has shown that national legislation and the bilateral arrangements/agreements can be amended or interpreted unilaterally with little notice given to the OSCE. The *ad hoc* nature of the arrangements also deprives the Secretary General of any leverage in negotiations of arrangements with other participating States.

5. Not only operational problems illustrate the need for a uniform solution. The OSCE Staff Regulations and Staff Rules explicitly require the OSCE to ensure the protection of its officials (Staff Regulations 2.03 and 2.07). They also stipulate that the Secretary General, heads of institutions and missions, staff and mission members *shall enjoy* privileges and immunities. These form the framework of the OSCE's duty of care for its officials.

6. Since 2009 the open-ended Informal Working Group on Strengthening the Legal Framework of the OSCE (IWG) has endeavoured to resolve this matter. It meets three times per year in the continuing effort to achieve progress on legal protection for the OSCE. Under the Austrian Chairmanship, led by the Special Adviser of the OSCE Chairperson-in-office on the Legal Framework, Ambassador Helmut Tichy, the IWG resumed its work at the outset of 2017 with the four options tabled for consideration, as detailed in the Chairmanship invitation and draft agenda for the first IWG meeting of 2017.<sup>5</sup> As in earlier years,<sup>6</sup> these four options are:

- Option 1: Adoption of the 2007 Draft Convention
- Option 2: Adoption of a constituent document prior to, or in parallel with, adoption of the 2007 Draft Convention
- Option 3: Development of a "Convention Plus" (a hybrid solution consisting of elements of a constituent document incorporated into the 2007 Draft Convention)
- Option 4: Implementation of the 1993 Rome Council Decision through signature and ratification of the 2007 Draft Convention by a group of interested participating States

7. The proceedings of the IWG meetings convened in 2017 are recorded below.

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<sup>4</sup> Letter from the Chair of the Informal Working Group at Expert Level to the OSCE Spanish Chairmanship dated 22 October 2007, annexing the Final Document of the Informal Working Group on the Draft Convention on the International Legal Personality, Legal Capacity, and Privileges and Immunities of the OSCE (CIO.GAL/159/07).

<sup>5</sup> CIO.GAL/8/17/Rev.1, dated 25 January 2017.

<sup>6</sup> Reports to the Ministerial Council on Strengthening the Legal Framework of the OSCE, respectively MC.GAL/5/14/Corr.1 dated 3 December 2014; MC.GAL/4/15 dated 1 December 2015; MC.GAL/7/16 dated 9 December 2016.

## Proceedings of the Informal Working Group in 2017

### *First meeting: February 2017*

8. The first meeting of the IWG in 2017 was convened by the Austrian Chairmanship on 10 February 2017<sup>7</sup> and was attended by over forty participating States. The Chairmanship encouraged delegations to continue discussing the four options for strengthening the legal framework of the OSCE.

9. In its update on the operational consequences of the lack of a clear legal status of the OSCE, the Secretariat noted that, despite the lack of clarity as to whether the OSCE enjoys “international legal personality”, the debate is occurring at the political level and has ultimately not prevented the OSCE at the operational level from pursuing the mandates assigned to it by the OSCE decision-making bodies. The Secretariat further explained that, due to the critical need for legal status, privileges and immunities in order for the OSCE to function, the Secretariat asserts that the OSCE enjoys them on a *de facto* basis, citing the 1949 Advisory Opinion of the International Court of Justice. In that Advisory Opinion, the Court concluded that the United Nations possesses international legal personality as a necessary consequence of the important tasks that its Member States had assigned to it, despite the lack of any express provision to that effect.<sup>8</sup> Lacking any better legal argumentation when faced with operational problems, the Secretariat is left with asserting that the OSCE possesses objective, *de facto* international legal personality and enjoys functional privileges and immunities on the basis of customary international law.

10. The Secretariat further pointed to the legal uncertainty inherent in the fragmentation of the OSCE legal framework, i.e., there are a small number of jurisdictions where the OSCE enjoys legal status, privileges and immunities by virtue of national measures; others where only a particular structure is granted status – not the entire OSCE; and the majority where no national measures have been adopted to formally recognize the OSCE (currently 29 participating States). As a result, there are broad differences in treatment with the various national measures (or lack thereof) leaving not only gaps but a lack of transparency vis-à-vis the enforceability of those national measures.

11. The Secretariat elaborated on the possible implications of operations in territories not under government control. OSCE officials have relied on legal advice that their status neutral engagements in such localities have no legal consequences since only States can recognise States, and the activities of international organisations have no effect under international law for the recognition of such non-recognized entities or disputed territories under international law. In that connection, it pondered the possibility that, if OSCE does not have international legal personality, the OSCE is carrying out its consensus-based activities purely as an instrument through which 57 participating States exercise their collective will. If that view is correct, the implications of the OSCE’s engagement may carry far greater significance than participating States may have intended.

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<sup>7</sup> CIO.GAL/8/17/Rev.1, dated 25 January 2017.

<sup>8</sup> International Court of Justice, *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion), 1949 ICJ Reports 183 et seq.

12. Participants were also presented with an update on responses received by the Secretariat to the Legislation Survey<sup>9</sup> and the Questionnaire on Supporting Security for Local Elections.<sup>10</sup> As no submissions had been received since the last IWG meeting in 2016, the Chairmanship announced that it would re-circulate both questionnaires in a single document and encourage more responses.

13. The remainder of the meeting was devoted to discussion of the four options for strengthening the legal framework. Absent consensus, the four options remained on the agenda for the next meeting.

14. Following the close of the meeting the meeting documents were published as SEC.GAL/26/17, dated 15 February 2017.

### ***Second meeting: July 2016***

15. The second meeting of the IWG was held on 3 July 2017 upon invitation of the Chairmanship,<sup>11</sup> with the aim of identifying pragmatic solutions for legal issues occurring in the field in order to support the safety and security of OSCE officials deployed there. Special focus was given to the duty of care as a legal obligation of the OSCE as an employer.

16. Under the agenda item “OSCE Legal Personality: Implications for Field Operations,” presentations were given on practical issues arising in the field by a representative of the Austrian Ministry for Defense and Sports and a former Legal Adviser in the United Nations.

17. Under the agenda item “Duty of Care: Safety and Security” representatives of the German Center of International Peace Operations (German ZIF) and the Stabilisation Unit of the United Kingdom Foreign and Commonwealth Office (UK Stabilisation Unit) introduced the “*Voluntary Guidelines on Duty of Care for Seconded Civilian Personnel*”.<sup>12</sup> The *Voluntary Guidelines* were prepared by the German ZIF, the UK Stabilisation Unit and the Swiss Expert Pool for Civilian Peacebuilding and are aimed at harmonizing the approach to and implementation of the duty of care. The *Voluntary Guidelines* also can serve as a basis for clarification and exchange between seconding and receiving organisations as to their expectations from each other in this respect.

18. Under the same agenda item, the United Nations Department of Safety and Security (UNDSS) and the OSCE Legal Services presented the respective approaches to the duty of care in their respective organisations. The representative of UNDSS introduced the United Nations Security Management System (UNSMS) which encompasses policies, guidelines, processes and trained security personnel aimed at managing security risks in UN operations. Over the past decade, the challenges faced by the UN have changed significantly, requiring a more flexible, pro-active and responsive approach by UNDSS. A Working Group entitled “*Reconciling duty of care for UN personnel while operating in high-risk environments*” and a UN Duty of Care Coordination Committee have been established to address these challenges.

<sup>9</sup> *Survey of National Implementation Measures adopted by OSCE participating States in respect of OSCE Legal Capacity, Privileges and Immunities*, CIO.GAL/152/14.

<sup>10</sup> *Set of questions for OSCE participating States with regard to a possible OSCE contribution to supporting security for local elections*, CIO.GAL/132/16.

<sup>11</sup> CIO.GAL/85/17/Rev.1 dated 17 June 2017.

<sup>12</sup> [http://www.zif-berlin.org/fileadmin/uploads/experten-einsatze/Voluntary\\_Guidelines\\_on\\_the\\_Duty\\_of\\_Care\\_to\\_Seconded\\_Civilian\\_Personnel\\_Final\\_170420.pdf](http://www.zif-berlin.org/fileadmin/uploads/experten-einsatze/Voluntary_Guidelines_on_the_Duty_of_Care_to_Seconded_Civilian_Personnel_Final_170420.pdf)

On its part, the OSCE Legal Services outlined the approach followed by OSCE management to the duty of care concept, i.e., the elements of the duty of care are mainstreamed into policies, procedures and administrative and operational decision-making. The increase in the number of OSCE officials deployed in hazardous areas has augmented the demands for addressing the elements encompassed in the legal concept of duty of care.

19. Following the close of the meeting, the meeting documents were published as SEC.GAL/135/17, dated 5 October 2017.

### ***Third meeting: October 2017***

20. The third meeting of the IWG was convened on 6 October 2017 upon invitation of the Chairmanship.<sup>13</sup> In the opening remarks, the Chairmanship invited the delegations to move forward in their discussions and in particular, to give Option 4 serious consideration, i.e., an initiative by a group of interested States agreeing to the implementation the 1993 Rome Decision through signature and ratification of the 2007 Draft Convention.

21. In the update on the operational consequences of the lack of a clear legal status of the OSCE, the Secretariat presented an assessment of the problems concerning taxation of OSCE officials resulting from fragmentation of the legal arrangements granting the OSCE legal status, privileges and immunities (or absence thereof). It pointed out that the Secretariat and the three Institutions receive treatment comparable to that of the United Nations, and consequently the staff of all four structures have been granted exemption from national taxation by the host States (Austria, the Netherlands and Poland) with no discrimination on the basis of nationality. In contrast, the issue of “local staff income tax” has arisen in field operations and is reflected annually in the “Horizontals” section of the annual OSCE Unified Budget Proposal.<sup>14</sup> The source of the problem lies in the Memoranda of Understanding concluded with the States hosting the field operations which grant application *mutatis mutandis* of the 1961 Vienna Convention on Diplomatic Relations (VCDR), an instrument intended to regulate the relations between States, not with an international organisation. Over half of the VCDR cannot be applied to an international organisation (e.g., rupture of diplomatic relations etc.) and the customary practice of taxing the salaries of local staff in embassies is one of the provisions which cannot be applied to the international civil service.

22. The Secretariat traced the historical origin of the principle of tax exemption in the international civil service to 1919 with the establishment of the League of Nations in Geneva and the decision that the salaries of League personnel, including Swiss nationals, would be tax exempt. This was continued in the United Nations and in all other international organisations because of the three underlying principles:

- (1) **Principle of sovereign equality of states**, affirmed in Article 2 of the Charter of the United Nations and Principle I of the 1975 Helsinki Final Act. Consistent with that principle, sovereign states do not pay taxes to other states. The budget of an

<sup>13</sup> CIO.GAL/177/17 of 19 September 2017.

<sup>14</sup> Forecast of tax for 2018 has been published in the OSCE *Unified Budget Proposal*, ACMF/46/17, Section III, pages 432-433, paragraphs 89-92. While five field operations are listed as experiencing national taxation by the host States, the MOU for one (Bishkek) is presently being negotiated with a view to achieving tax exemption. In November 2017, another in the list (Uzbekistan) granted tax exemption to all officials, including their own nationals. Consequently, at the time of writing, out of 16 field operations, only three are being taxed by the respective host States.

international organization is drawn from the public funds of its member states, and these funds are intended for implementation of the agreed mandate of the organization and are not to be diverted to the treasuries of other States through taxation. Unlike in case of taxation of locally recruited staff of diplomatic representations when the sending state can invoke a principle of reciprocity to recover the funds paid to a treasury of a receiving state, member states of international organizations are stripped of any leverage other than refusing to pay assessed contributions to the budget of the organization, which may put at risk its operational activities. Beginning in 2017, one State has formally declared that it will no longer pay funding for taxes and others have orally indicated that they may do the same.<sup>15</sup>

- (2) **Principle of independence** of international organizations and their officials. This principle, recognized by the League of Nations and the United Nations, is implemented *inter alia* by granting immunity, inviolability and tax exemption to the organisations and their officials; taxation is viewed as a means of interfering with the functioning of the organisations and their officials; and
- (3) **Principle of equal treatment of staff** provides that no discrimination shall be made among officials of international organizations on the basis of nationality or any other personal characteristic. Subsidiary to this is the general principle of labour law, **equal pay for equal work**, which provides that officials of the same rank in the same category receive the same net salary. Taxation causes widely divergent net incomes from those who are not taxed.

23. The principle of tax exemption in the international civil service has been upheld by the Administrative Tribunal of the World Bank, the OECD Appeals Board and the European Court of Justice. The principle has been characterized by the Administrative Tribunal of the International Labour Organization as “*an essential condition of employment in the international civil service and is an important guarantee of independence and objectivity*”. The OSCE Staff Regulations and Staff Rules provides that OSCE officials shall conduct themselves at all times in a manner befitting the status of an international civil servant. (Staff Regulation 2.01). This status is reiterated in the OSCE Code of Conduct and also appears in the standards of remuneration with references to the United Nations Common System. This reflects unequivocally the intention to incorporate the staff component of the OSCE into the framework of the international civil service, with its own internal justice system, application of international administrative law, etc.

24. Consistent with the practice of other international organisations, in nearly identical terms, the OSCE Staff Regulations and Staff Rules provide for remedies in order to ensure that taxation does not impact OSCE officials.<sup>16</sup> However, to prevent it impacting the budget of the OSCE, cooperation by the taxing authorities (tax exemption or tax reimbursement) is needed and is lacking in certain instances. The issue of “local staff income tax” has become increasingly contentious and acrimonious in the OSCE Advisory Committee on Management and Finance. On at least two occasions, the debate has been rejected as more appropriately brought to the IWG, which has been tasked with resolving the fundamental issue of international legal personality. It has been argued that resolution of that issue would enable respect for the tax exempt status of OSCE officials. In this regard it was noted that the 2007

<sup>15</sup> PC.DEC/1252/Corr.1, dated 1 June 2017, Attachment 2.

<sup>16</sup> OSCE Staff Regulation 5.02(c), Staff Regulation 5.05 and Staff Rule 5.05.1.

Draft Convention provides for tax exemption and a staff assessment system or reimbursement by taxing States.

25. An update was provided by the Secretariat on the seven additional responses to the Legislation Survey and two additional responses to the Questionnaire on supporting security for local elections. The Chairmanship invited participating States that had not yet done so to submit their responses to the Secretariat.

26. The remainder of the meeting was devoted to an exchange of views on the four options, in particular Option 4. The Chairmanship informed the participants that an informal meeting on Option 4 would be convened later in October to assess interest in pursuing that Option.

27. Following the close of the meeting, the meeting documents were published as SEC.GAL/165/17, dated 15 November 2017.

### **Further developments of relevance**

#### ***Agreement between the OSCE and Austria regarding the Headquarters of the OSCE***

28. As the 1993 Rome Council Decision noted,<sup>17</sup> the privileges and immunities of the OSCE have been regulated since 1993 by an Austrian federal law (“OSCE Law”), which refers, *inter alia*, to the Headquarters Agreement with the United Nations and grants application of the privileges and immunities provided in it to the OSCE and its officials.<sup>18</sup> At that time Austria had determined that it was not possible to conclude a headquarters agreement with the CSCE because the CSCE was not an international organisation within the meaning of international law.

29. However, although the CSCE/OSCE was not founded on the basis of an agreement under international law, through the creation and development at and since the 1990 Paris Summit of an institutional CSCE/OSCE structure including permanent institutions, Austria has noted that the OSCE now has its own decision-making apparatus separate from the participating States and concludes legally binding agreements with participating States. In Austria’s view, this demonstrates that the OSCE has increasingly acquired the status of a legal entity under international law and that the participating States increasingly accept this. Austria therefore now found itself in a position to recognize the OSCE as a legal entity under international law and hence to conclude a headquarters agreement with it – as with the other international organisations with headquarters in Vienna – to replace the OSCE Law. This is Austria’s prerogative as the 1993 Rome Council Decision places the responsibility upon each participating State to decide how to grant legal status, privileges and immunities to the OSCE, its officials and the representatives to it, in accordance with the State’s constitutional and related requirements, and the 1994 Budapest Summit declared that participating States will examine possible ways of concluding treaties.<sup>19</sup>

30. The existing privileges and immunities for the OSCE under the OSCE Law are maintained, except that they are now regulated by a headquarters agreement, as is customary

<sup>17</sup> CSCE/4-C/Dec.2, paragraph 3.

<sup>18</sup> Federal Law on the Legal Status of the OSCE Institutions in Austria, OSCE Law, Federal Gazette (BGBl.) No. 511/1993 as amended.

<sup>19</sup> 1994 Budapest Summit Decision I on Strengthening the CSCE.

for international organisations, rather than a federal law. The Agreement, which was signed on 14 June 2017 and whose basic principles, in accordance with the OSCE Law, correspond to those found in the Headquarters Agreement with the United Nations in Vienna therefore brings no change in the legal situation and practice concerning the status of the OSCE and its officials in Austria. However, the conclusion of a headquarters agreement with the OSCE represents an important contribution by the host State and current Austrian Chairmanship to consolidating the legal status of the Organization. At the time of writing the Agreement was pending submission for parliamentary approval.

### ***Arrangement between the OSCE and Poland***

31. On 28 June 2017, Poland concluded the *Arrangement between the OSCE and the Republic of Poland regarding the Status of the OSCE in the Republic of Poland*. The provisions of the new Arrangement provide comprehensive treatment of the OSCE, its officials and the representatives to the OSCE, as well as additional provisions necessary to cover the hosting of the headquarters of ODIHR in Warsaw. Negotiations of the Arrangement were initiated in order to replace the earlier national measures taken in 1991 to host the CSCE Office of Free Elections in Warsaw and in 1992 in respect of the hosting of ODIHR. As referenced in the 1993 Rome Council Decision,<sup>20</sup> the treatment granted by Poland was comparable to that accorded to the United Nations and its personnel and to the representatives to it. The same level of treatment has been maintained in the new Arrangement. At the time of writing the Arrangement was pending parliamentary approval.

### ***Option 4***

32. Given the increased interest in Option 4 that was articulated to the Austrian Chairmanship as the year progressed and specifically in the third meeting of the IWG, representatives of those participating States that are considering Option 4 were invited to an informal meeting convened on 18 October 2017 in the premises of the Permanent Mission of Austria to the OSCE. Twenty-nine participating States were present. Of those, nine indicated that they are seriously considering Option 4, fourteen are considering it; two are not considering it and four had no instructions.

33. Option 4 consists of a group of participating States which would agree to amend slightly and conclude the 2007 Draft Convention and bring it into force between themselves. In that way, the group would accord identical treatment of the OSCE, its officials and the representatives to it, rather than further fragmenting such treatment by each separately adopting national legislation or concluding bilateral agreements with the OSCE. All interested participating States could join the Draft Convention if they wish, leaving those participating States which are not interested in Option 4 free to meet their commitments concerning the 1993 Rome Council Decision in some other way.

### ***Other State Practice***

34. The most serious challenges facing the Austrian Chairmanship in 2017 concerned issues arising in the field operations, in particular the safety and security of OSCE officials in fluid environments. A landmine explosion which resulted in the death of a member of the Special Monitoring Mission in Ukraine and the injury of two other mission members on 23

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<sup>20</sup> CSCE/4-C/Dec.2, paragraph 3.



April 2017, was a tragedy unparalleled in CSCE/OSCE history. From a legal point of view, it is notable that **participating States turned to the OSCE – as an international organisation – to manage the responses and subsequent measures**, not the States of nationality of the victims. This is significant, as it is indicative of the recognition by the participating States that, consistent with its status and general principles of international civil service law, it is the OSCE which is under the primary obligation of duty of care in respect of OSCE officials. In other words, the OSCE has the capacity to protect an injured official and it is the OSCE which is accountable in the first place, not the State of nationality of the injured official or other State that may be entitled to bring a claim on his/her behalf. This is precisely the situation that led to the 1949 Advisory Opinion on *Reparation for Injuries in the Service of the United Nations*, in which the Court concluded that the United Nations enjoys international legal personality.

### *International Organisation practice*

35. In contrast to the ongoing internal debate on the legal status of the OSCE, other international organizations recognise the international legal personality of the OSCE by routinely concluding agreements with it on an equal basis.

36. Most notably, the United Nations<sup>21</sup>, building on previously concluded 1993 “Framework for Cooperation and Coordination between the United Nations Secretariat and the Conference on Security and Co-operation in Europe” (1993 Framework) and the observer status that the OSCE enjoys in the United Nations,<sup>22</sup> the United Nations Secretariat and the OSCE Secretariat concluded Letters of Understanding on 20 September 2017. Pursuant to the Letters of Understanding, the United Nations and the OSCE will deepen their collaboration in the areas of OSCE’s access to the United Nations Systems Contracts, technical trainings arranged by the Department of Field Support and other areas, as may be expanded by mutual agreement.

37. To respond to the 23 April 2017 landmine explosion discussed above, in May and June 2017 the OSCE concluded necessary legal arrangements with the International Humanitarian Fact-finding Commission (IHFFC), a body established under Article 90 of the Additional Protocol I to the 1949 Geneva Conventions, to use its good offices to set up an independent forensic investigation (IFI) into the incident. The IHFFC and the OSCE concluded a series of agreements to establish the IFI, providing *inter alia* for absolute confidentiality requirements which would not expire upon completion of the IFI and specifying the OSCE as the sole possessor of the archives related to the IFI upon completion.

38. The actions taken independently by the OSCE as an international organisation in respect of the tragedy were as follows: the Permanent Council adopted a *Declaration of Support for the Special Monitoring Mission in Ukraine*<sup>23</sup> and called for a swift, thorough and

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<sup>21</sup> The relationship between the OSCE and the United Nations was formalized during the period of transformation of the (then) CSCE from a periodic conference with mere deliberative functions to an international organisation entrusted with operational activities. The CSCE 1992 Helsinki Summit solemnly declared its “*understanding that the CSCE is a regional arrangement in the sense of Chapter VIII of the Charter of the United Nations. As such, it provides an important link between European and global security. The rights and responsibilities of the Security Council remain unaffected in their entirety. The CSCE will work together closely with the United Nations especially in preventing and settling conflicts.*”

<sup>22</sup> United Nations General Assembly granted observer status to the CSCE as an international organisation, UN Doc. A/RES/48/5, 13 October 1993.

<sup>23</sup> PC.DOC/1/17, dated 27 April 2017.

impartial investigation into the incident and accountability. The OSCE Chairperson-in-Office tasked the Secretary General to form and deploy an independent team of experts to conduct a forensic post-blast scene investigation of the incident and compile a report for the Secretary General, to be shared with the Chairmanship. On his part, the Secretary General had already immediately tasked the Office of Internal Oversight (OIO) to carry out an internal investigation to determine whether regulations, rules policies, procedures, instructions and best practices had been followed, in particular applicable security procedures. As mentioned above, in respect of the Chairmanship's tasking, the Secretary turned to the IHFFC at that point. The IFI was independently composed by the IHFFC in June 2017. The IFI report was submitted to the Secretary General in August 2017 and presented to the Permanent Council in September 2017. The OIO Report was distributed to participating States in October 2017. Throughout this period continuous contact was maintained by the OSCE with the injured officials and the family of the deceased, as well as the States of nationality of the victims, to keep them informed of the status of the investigation.<sup>1</sup> Presently the Secretary General, in consultation with the Chairmanship, is considering, so as not to impede the course of justice, a (partial) waiver of immunity to allow co-operation with the criminal investigation opened by Ukraine into the incident.

39. In the past year, as it was the case in previous years, the OSCE also concluded a number of agreements with the European Union for extrabudgetary financing of programmes and projects of the OSCE. INTERPOL and OSCE concluded a joint action plan that enables a closer co-operation between the two organisations.

## Conclusion

40. While consensus could not be achieved in the IWG in 2017 on the current four options for strengthening the legal framework of the OSCE, the level of participation in the meetings, including from capitals, and the depth and breadth of the discussion of the legal framework in all its aspects, demonstrates the active pursuit of this matter as a common goal. The consideration being given to Option 4 by over half of the participating States suggests that the issue may be ripening for placing the OSCE on a firmer legal footing, at minimum by consolidating a core group of participating States which agree on granting legal protection identical to that conceptualised in the 2007 Draft Convention on the International Legal Personality, Legal Capacity, Privileges and Immunities of the OSCE.

41. The recognition of the international legal personality of the OSCE through multilateral or bilateral treaties incontrovertibly establishes the OSCE as a subject of international law, a status which the Austrian Chairmanship has concluded the OSCE already enjoys on a *de facto* basis. Even if the original intention of the participating States was *not* to create an international legal person, the acts of the CSCE/OSCE decision-making bodies have had the consequence of creating one, as its operations and its treatment are otherwise not explainable in legal terms. In fact the mandates and tasks assigned by consensus to the OSCE have clear *operational* aspects which manifest on the territories of OSCE participating States. The operational dimension of OSCE activities is, at least, equally important as the deliberative ones. That view is consistent with the unanimous recognition of OSCE participating States that the field operations are the strength of the OSCE and its added value in the European security architecture.

42. The Austrian Chairmanship, as Host State, has taken the step of recognising the status of the OSCE as a subject of international law by concluding a headquarters agreement with

the OSCE which, when it enters into force, will replace Austria's federal law on the OSCE. Austria will continue to foster the realisation of Option 4, in order to take its status further through a multilateral treaty, in which States Parties will adopt the provisions agreed at expert level in 2007, and thus contribute towards defragmenting and consolidating the status and treatment of the OSCE, its officials and the representatives to it, giving the OSCE the status it merits and needs to function.

43. Again in 2017 the Informal Working Group on Strengthening the Legal Framework has proven itself to be an appropriate mechanism and a valuable forum for dialogue where this core aspect of the OSCE's existence can be discussed, co-ordinated and addressed.