Court of Conciliation and Arbitration within the OSCE

English Translation
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Speech by Emmanuel DECAUX
President of the Court of Conciliation and Arbitration within the OSCE

Madam President, Ladies and Gentlemen,

I would first like to thank you personally for this invitation, which we particularly appreciate. It is a great honour for me to be welcomed by the CAHDI, together with Vice-President Erkki Kourula, to represent the Court of Conciliation and Arbitration within the OSCE. As you know, President Robert Badinter intervened on two occasions, the first in March 2000, during the 19th meeting of the CAHDI held in Berlin, with Vice-President Hans-Dietrich Genscher, and two other members of the Bureau, Lucius Caflish and Luigi Ferrari-Bravo. Robert Badinter was also invited to the 29th session of the CAHDI, in March 2005, with Luigi Ferrari-Bravo.

This new meeting is particularly important in my view to recall what the Court of Conciliation and Arbitration is, and especially what it could be, what it should be... We are approaching the 30th anniversary of the Stockholm Convention, which provided for the creation of the Court of Conciliation and Arbitration within the OSCE. The Convention was adopted on 15 December 1992 and today binds 34 States Parties. There are also five signatory States, Belgium, Bulgaria, the Russian Federation, Slovakia and Canada. Allow me to invite all Council of Europe Member States, in particular the signatories, to ratify the Stockholm Convention, which would create a positive dynamic on the eve of this important anniversary. It should be stressed as well that the Court is also open to all OSCE participating States - that is to say to all Council of Europe Member States - on an *ad hoc* basis.

The Court was created 'within the OSCE' and it is part of the OSCE's institutions and structures, presenting its annual report to the Permanent Council. However, at the same time it is an independent Court, which is at the service of all European organisations. In some ways it extends the effort undertaken for more than a century to promote the peaceful settlement of disputes throughout our continent. This legal framework is not only bilateral or multilateral, but it has become institutional. After the 1907 Hague Convention on Arbitration and the 1928 General Arbitration Act, revised in 1949, and after the 1957 European Convention for the Peaceful Settlement of Disputes, the Stockholm Convention marked a new stage, with the creation of a Court which is a two-headed Janus, combining conciliation and arbitration. The OSCE had constantly reiterated the principle of the peaceful settlement of disputes, which constitutes Principle V of the Decalogue of the Helsinki Final Act, before looking for specific manners of implementation, with meetings of experts in Montreux in 1978 and in Valletta in 1991, not to mention Athens in 1984. It was not until the turn of the nineties, in a context marked by great hopes for the whole of Europe, but also by regional crises, such as in the former Yugoslavia, that a treaty was adopted in due form within the framework of the OSCE.

The great novelty of the Stockholm Convention was that it provided for the establishment of a Court, without being satisfied with establishing lists of conciliators and arbitrators, such as the 17 examples mentioned in the 'list of lists', appended to Recommendation (2008)9 of the Committee of Ministers of the Council of Europe on 'the appointment of international arbitrators and conciliators'. Of course, these lists are regularly updated, as illustrated by the appointments made in 2020 by Austria, Belarus, Portugal, and most recently by Lithuania. But the members of the Court, even if they are too numerous to meet, have an important role in electing the President of the Court and the members of the Bureau. We were thus elected in November 2019, for a six-year term. Above all, they constitute a 'pool of expertise' for fulfilling the functions which may be entrusted to the Court. On this point, unfortunately, I can only use the words of our predecessors 20 years ago, when Mr Genscher appealed to the members of the CAHDI to *'awaken the courage of States to turn to the Court'*, considering that *'looking at the situation in the real world, it would not be justified for such a Court to remain unused'*…

Dear Madam President,

Our priority first of all is to make the Court more present, more visible, and more understandable, which requires efforts in communication and awareness-raising, but also to make it more reactive and more 'proactive', if I may say so. In February 2020, just before the health crisis, I was able to present a report on the activities of the Court to the Permanent Council of the OSCE in Vienna, thanks to the chairmanship of Albania, and I hope to return to Vienna as soon as possible to meet the States Parties. We have modernised the Court's website, uploading practical tools, in particular for diplomats and legal advisers, such as the collection of basic documents, as well as a general bibliography on the Stockholm Convention. The activity report for the year 2020 is also published on-line. Finally, we must highlight the publication of the work edited by my predecessor, President Christian Tomuschat, under the title *Flexibility in International Dispute Settlement, Conciliation Revisited*, which was sent to the States Parties and gave rise to a webinar organised last autumn with the Graduate Institute of International Studies in Geneva.

The objective of all of these steps is to make the Court's potential better known, and to encourage European states to make *'better use of existing mechanisms'*, to use a phrase from the explanatory memorandum to recommendation (2008)9 of the Committee of Ministers. A political leap is necessary to give full meaning to the collective commitment assumed thirty years ago. Since then the world has undoubtedly changed a lot, not necessarily for the better, as clearly demonstrated by the crises we have had to face of a very different nature. It seems to me, however, that the 'spirit of conciliation' is more necessary than ever across the whole of the European continent.

The Stockholm Convention only targets interstate disputes, but its role can be preventive by avoiding the radicalisation of crises and the escalation of antagonism. Some political disputes are undoubtedly too complex to be resolved by resorting to third parties, but in many crises, resorting to conciliation, or even arbitration, would be a gesture of good faith and a sign of appeasement, allowing the subjects of conflict to be reduced, on the basis of the principles of the Helsinki Final Act and the Charter of Paris for a New Europe, and in respect for international law. In this sense, the Stockholm Convention, which is one of the very few treaties concluded under the auspices of the OSCE, constitutes not only a solemn commitment by the States Parties, but also an essential component of cooperative security in Europe, a pledge of political will to build 'a united and free Europe'.

The Court must be ready to function at all times, according to the two main formulas of conciliation commissions and arbitration tribunals, which Judge Kourula will present to you in a few moments. There is a place in a Europe of the States of law for a Court of Conciliation and Arbitration, which finds itself at the crossroads of law and diplomacy, associating a great deal of flexibility and pragmatism with an institutional framework guaranteeing its independence and its impartiality. The list of its members, in its diversity, offers a wide range of experiences and expertise, which should reassure the parties here today.

Dear Madam President,

In spite of the health crisis, which has slowed down our first steps of 'judicial diplomacy', to use a phrase of President Jean-Paul Costa, we are particularly pleased to meet the legal advisers who sit on the CAHDI, some of whom are undoubtedly also members of the Court of Conciliation and Arbitration. It was most natural to come here and remind you of our determination, our commitment, and our availability.

It is no coincidence that I made my first visit to Strasbourg in December 2019 to meet the President of the European Court of Human Rights, Linos-Alexandre Sicilianos, and I was particularly pleased that his predecessor, President Guido Raimondi, participated in our autumn webinar. In my mind, there is no contradiction, no competition between the institutions of the Council of Europe and the Court of Conciliation and Arbitration within the OSCE: while the European Court of Human Rights, at the end of a public trial, renders judgments with the authority of res judicata, the Court of Conciliation for its part responds above all to the need for amicable settlement, through the good offices of a neutral third party, making it possible to conciliate, if not to reconcile the parties. Unlike the Venice Commission, whose legal expertise is to be commended, the Court does not issue a public opinion, but must attempt, in a confidential manner, to practise 'quiet diplomacy' in order to promote the first steps towards a way out of a crisis. Our ambition is modest, but it is strong, combining impartiality and pragmatism, at the service of an amicable solution.

As you will have understood, our wish is not only to be on permanent alert, to maintain a tireless vigil, like a 'melancholy lookout' or, worse, like a canary in a mine, but above all to be useful, that is to say to be - finally - used.

With your permission, Madam President, I would like to give the floor to Judge Kourula, Vice-President of the Court.