



Chairmanship: Switzerland

**REPORT TO THE MINISTERIAL COUNCIL ON STRENGTHENING THE LEGAL
FRAMEWORK OF THE OSCE IN 2014**

Introduction

1. The Swiss Chairmanship attaches great importance to the legal framework of the OSCE as a necessary tool for the effective and efficient implementation of the various tasks the participating States entrust to the Organization. The participating States have tried for many years to strengthen the legal framework of the OSCE in order to make the Organization more effective and more responsive to evolving needs. In 2007, a draft *Convention on international legal personality, legal capacity and privileges and immunities of the OSCE* (2007 Draft Convention) was agreed at expert level. While the general agreement on the contents of the 2007 Draft Convention has never been challenged, the Convention has not been adopted because of three footnotes, inserted by some participating States, predicating the adoption of the draft on the conclusion of an OSCE Constituent Document. Since then it has become clear that for a number of participating States the adoption of the 2007 Draft Convention was linked to the issue of an OSCE Constituent Document, while the start of discussion on such an OSCE Constituent Document could not attain consensus.

2. Meanwhile, the adverse practical effects of the uncertainty of the legal status of the OSCE continue to negatively impact on its effectiveness and efficiency, damaging efforts to fulfil its mandates, leading to additional expenditures and legal risk.

3. The consequences of that lack of clarity became sharply manifest during the involvement of the OSCE in the events occurring in Ukraine. The Permanent Council saw the urgent need to respond quickly in the crisis unfolding there, and requested the Secretary General to deploy advance teams within 24 hours. By applying urgent efforts, the appropriate legal status, privileges and immunities to enable the successful implementation of the mandate and the protection of the OSCE officials deployed, were concluded in record time. Nonetheless, a full 10 weeks passed before the legal arrangements were in place and in force. Events which occurred in Ukraine, made evident that the ambiguities surrounding the legal status of the OSCE lead to situations that can frustrate both the implementation of the mandate of the OSCE and the expectations of participating States for OSCE efforts to resolve crisis and conflict. As another example, a field operation in a different participating State is operating with no legal status for itself or its personnel and thus potentially exposed to legal risk.

4. In order to foster the necessary dialogue among participating States on these challenges and to search for a uniform and appropriate solution, the Chairperson-in-Office continued convening meetings of the open-ended Informal Working Group on Strengthening

the Legal Framework of the OSCE (IWG) in 2014 and extended the mandate of Ambassador John Bernhard as Special Adviser to the Chairmanship and as Chairperson of the IWG.

Activities of the Informal Working Group

First meeting: April 2014

5. The first meeting of the IWG was held on 11 April 2014. A cross-section of Secretariat departments presented case studies serving as examples of current challenges due to the lack of clarity of the legal framework of the OSCE. This was followed by presentations on international law approaches to the legal status of international organizations from a comparative perspective. It was deemed valuable that an update on the operational consequences of the lack of a clear legal status should be a standing agenda item at future meetings of the IWG. The Special Advisor of the Chairmanship concluded that more work on various possible models for the OSCE's legal framework was called for and announced that the main theme of the next meeting of the IWG would be to revisit all proposals tabled to date.

Second meeting: July 2014

6. The second meeting of the IWG was held on 11 July 2014. The main object of that meeting was to systematically present and discuss the various options that had been submitted to date to strengthen the legal framework of the OSCE. Five options were circulated: (Option 1) adoption of the 2007 Draft Convention; (Option 2) "Splitting up" the stages for the conclusion of the 2007 Draft Convention; (Option 3) adoption of an OSCE Constituent Document and the 2007 Draft Convention; (Option 4) the "Convention Plus" (incorporating the elements of an OSCE constituent document into the 2007 Draft Convention text; and (Option 5) an update of the 1993 Rome Decision on Legal Capacity and Privileges and Immunities of the CSCE. During the discussion an additional option was proposed, consisting of the implementation of commitments contained in the 1993 Rome Decision through signature and ratification of the 2007 Draft Convention by participating States interested in doing so (Option 6).

7. Following the discussions, the Chairmanship proposed to continue the consideration of all options. In respect of Option 5, it was considered that the Secretariat should strengthen the "OSCE Red Book" with additional text in the OSCE official languages drawn from the 1993 Rome Decision. This was proposed in order to support the usefulness of the document in resolving difficulties at borders, etc. as the "OSCE Red Book" is the only existing document which the OSCE can provide to its officials when on official mission.

8. In its presentation on the operational consequences of the lack of a clear legal status of the OSCE the Secretariat underscored the nearly universal character of functional privileges and immunities of international organizations. It informed the IWG that in the absence of any firmer arrangement to address operational needs, the Secretariat asserts the objective legal personality of the OSCE and functional privileges and immunities as a matter of custom, in particular when faced with the special exigencies of a legal framework for the OSCE in case of rapid deployment.

Third meeting: October 2014

9. The third meeting of the IWG was held on 15 October 2014. Discussion of the six options continued. The Chairmanship presented a draft non-paper containing the text of a rudimentary “Convention Plus/Statute” for Option 4, based on the text of the 2007 Draft Convention and incorporating elements of a constituent character. It was recognized that more elements, e.g. about the role of the PA, would have to be considered. A non-paper was also circulated with respect to Option 6. A summary, together with the documents related to all six options are attached to the present Report.

10. Consensus emerged that as there were many options on the table it would be advisable to reduce the number, setting aside some in order to focus on the options that seemed to offer more potential for reaching a compromise. Additional suggestions for future consideration by the IWG continue to be welcomed.

Other Relevant Developments

Swiss National Measures

11. Taking into account the convening of several OSCE conferences in Switzerland during the Swiss Chairmanship of the OSCE, including the Basel Ministerial Council meeting, together with the necessity to provide appropriate conditions for the work of the OSCE in the country holding the Chairmanship, the Swiss Government regulated the status of the OSCE conferences to be held during 2014 in Switzerland and of their participants, extending to those conferences, their premises, delegations of OSCE participating States and other international organizations attending, and OSCE officials, certain provisions of the 2007 Swiss Law and Ordinance on the Host State, the 1961 Vienna Convention on Diplomatic Relations and the 1969 United Nations Convention on Special Missions in respect of status, privileges and immunities.

Legislation Survey

12. In order to inform the IWG discussions with current information on the legal status of the OSCE, the Swiss Chairmanship distributed a Survey of National Implementation Measures adopted by OSCE participating States in respect of OSCE Legal Capacity, Privileges and Immunities. Participating States were asked to respond to a few questions regarding their implementation of the 1993 Rome Decision and aspects provided for in the 2007 Draft Convention. Within the relatively short deadline a number of participating States replied. The issue was considered by the IWG at its October meeting and participants were encouraged to send their responses by the end of 2014. The Incoming Chairmanship may wish to further extend the deadline to gain a greater sense of the general legal status of the OSCE in the OSCE region. An interim conclusion that can be drawn from the replies received so far reflects a lack of uniformity in application, despite the purpose of the 1993 Rome Decision to assist participating States in harmonising the rules concerning the legal status of the executive structures and privileges and immunities.

Chairmanship Conference on Local Staff Income Tax

13. The Swiss Chairmanship also convened on 2 September 2014 a Conference on OSCE Local Staff Income Tax. This conference was part of the ACMF-related activities of the Chairmanship, however, as part of the proceedings touched upon issues that arise partly due

to the lack of clarity of the legal status of the OSCE in some host States, a briefing was provided to the IWG of 15 October 2014.

Conclusion

14. The Swiss Chairmanship believes that the strengthening of the legal framework of the OSCE is a common goal shared by all participating States but divergences exist as to the way to achieve this goal. The IWG is a valuable forum for the discussion on the issue and it should continue its work. Currently, in particular, as a significant number of options have been tabled, the IWG should serve to explore which options may hold promise for achieving consensus on solutions, and proceed with further elaborating them with a view to pave the way to a concerted approach.

15. The commemoration of the 40 years since the signature of the Helsinki Final Act, the founding document of the OSCE, is well-timed for achieving progress on the issue of strengthening the legal framework of the OSCE. A clear legal status of the OSCE is critical for enabling the OSCE to perform effectively and efficiently the mandates assigned to it by its participating States, ensuring the centrality of its role in the European security architecture.

Attachments

1. Summary of the options pending in the IWG: Annotated Agenda attached to CIO.GAL/173/14, 2 October 2014.
2. 2007 Draft Convention, CIO.GAL/48/07/Rev.6, 23 October 2007 (+ MC.DD/28/07, 29 November 2007).
3. Non-Paper: Proposal for further work on strengthening the legal framework of the OSCE in 2013, CIO.GAL/118/13, 26 July 2013.
4. Draft Constituent Document, circulated by the Irish Chairmanship, CIO.GAL/68/12, 12 June 2012.
5. Chairmanship non paper on a possible “Convention Plus or OSCE Statute”, attached to CIO.GAL/173/14, 2 October 2014.
6. 1993 Rome Decision on Legal Capacity and Privileges and Immunities, CSCE/4-C/Dec.2, 1 December 1993.
7. Non-paper on the Option 6, attached to CIO.GAL/173/14, 2 October 2014.