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ADDRESS BY MR. EMMANUEL DECAUX, PRESIDENT OF THE OSCE COURT OF CONCILIATION AND ARBITRATION, AT THE 1471st MEETING OF THE OSCE PERMANENT COUNCIL

2 May 2024

Mr. Chairperson,
Ambassadors,

I have the honour of presenting the annual report of the Court of Conciliation and Arbitration within the OSCE in accordance with Article 14 of the Stockholm Convention. For us it is a question of a transparency obligation – or might I say an accountability obligation – but it is also about being willing to inform, to raise awareness and to attract engagement. I thank the Maltese Chairmanship for its invitation, which has provided the Court with a most helpful opportunity for renewing contacts and exchanges of views with the OSCE institutions and structures and with the Vienna-based delegations.

Ever since the signature of the Helsinki Final Act in 1975, Principle V on the peaceful settlement of disputes has been indivisible from the other commitments forming part of the Decalogue, which have been undertaken by all the participating States, building on the principles of the Charter of the United Nations. Today, as in the past, that principle should constitute an essential pillar of security and co-operation in Europe. Nevertheless, it must be acknowledged that there is a wide gap between principles and realities.

Shortly after the Charter of Paris for a New Europe was signed in 1990, the Meeting of Experts held in Valletta, Malta, from 15 January to 8 February 1991 laid down "principles for dispute settlement" following on from the Meetings of Experts held in Montreux in 1978 and Athens in 1984. The report of the Valletta Meeting emphasized, in particular, that "the existence of appropriate dispute settlement procedures is indispensable for the implementation of the principle that all disputes should be settled exclusively by peaceful means. Such procedures are an essential contribution to the strengthening of the rule of law at the international level and of international peace and security ..." The report also reiterated that "international disputes are to be settled on the basis of the sovereign equality of States and in accordance with the principle of the free choice of means in conformity with international obligations and commitments and with the principles of justice and international law."

Less than two years later, the Stockholm Convention establishing the Court of Conciliation and Arbitration within the OSCE was adopted on 15 December 1992. It allowed these commitments of principle to be put into specific operation by organizing conciliation and arbitration mechanisms within the framework of an independent and impartial court. This was a step of great importance for going beyond the list of means for the pacific settlement of disputes given in Article 33 of the Charter of the United Nations, in that it enabled the establishment of institutions and procedures through the possibility of creating Conciliation Commissions and Arbitral Tribunals, at the request of States Parties, on the basis of the two

"constituencies" making up the Court, that is, conciliators and arbitrators. As for the Bureau of the Court, that is a standing body which acts as a guarantor of the independence and effectiveness of procedures.

The 30th anniversary of the adoption of the Stockholm Convention served as an opportunity, with the support of the Polish Chairmanship and of Sweden as the depositary State, to take serious stock of the challenges faced by the Court in a crisis-ridden Europe. The proceedings of the seminar organized by the Bureau of the Court together with the University of Stockholm have just been published and you all have access to them.

More than 30 years after the Court was established, now is not a time for resignation but one for resolve. As you know, the Stockholm Convention, which entered into force on 5 December 1994, has so far been ratified by 34 States Parties, the most recent being Montenegro in 2016.

It is worth emphasizing that the Stockholm Convention, which is one of the few treaties negotiated within the framework of the OSCE, constitutes an integral part of our Organization's structures and institutions. Not only is it open to all the participating States – which I hereby invite to ratify it so as to symbolically strengthen the role played by peaceful settlement of disputes in the OSCE area – but its mechanisms are also available, on a case-by-case, ad hoc basis, to participating States wishing to establish, in a very swift and flexible manner, a Conciliation Commission. This inter-State mission must be complementary to other legal obligations undertaken by the States Parties, as underlined by Article 19 of the Convention.

There is another dimension that is still only virtual but that was very much highlighted during the discussions at the Stockholm Seminar, namely the closer interaction that the Court should have with the other OSCE institutions. The Court forms part of the toolbox available to the OSCE bodies, especially the Chairmanship and the Secretariat but also the other institutions and offices. In this spirit of outreach, we appreciate the reference that was made to the Court in the Vancouver Declaration adopted by the OSCE Parliamentary Assembly during its Thirtieth Annual Session in July 2023. Paragraph 202 of the Declaration "recognizes the value, particularly at a time of geopolitical instability, of reinforcing and making full use of the OSCE Court of Conciliation and Arbitration". We hope that this emphatic call will be heeded.

The peaceful settlement of disputes is more necessary than ever to prevent crises and mitigate conflict in a world tested by chaos, anarchy and violence. Between brinkmanship as a continuation of power relationships on the one hand, and judicial settlement on the basis of States' international obligations on the other (which is enjoying a new boom with the development of "lawfare"), there is room for flexible, swift and discreet procedures, for more modest, low-intensity means aimed at both preventing conflicts and de-escalating crises. This is very much the meaning of conciliation and arbitration as defined in the Stockholm Convention, to be conducted with respect for the principles of international law but also in a spirit of good faith, goodwill and good-neighbourliness.

The potential of the Court of Conciliation and Arbitration, as the Court was envisaged by its founding fathers, remains undiminished. In that regard, I trust you will allow me to recall the memory of Robert Badinter, who was the first President of the Court, serving from 1995 to 2013, and who constantly encouraged us in our efforts. The proceedings of the Stockholm Seminar are dedicated to his memory, with the aim being to deliver on the promise held out by the Court.

Even if the mechanisms provided for by the Convention have not – have not yet – been put into operation, the Court very much remains at the disposal of States for any conciliation and/or arbitration proceedings. The Court is in working order, in a state of permanent alert – dare I say it – ready for use. We

must be reactive but also proactive, while not neglecting any opportunity to make the Court's potentialities more widely known.

With the help of, *inter alia*, our very effective executive secretariat and in close co-operation with the OSCE's public information services, we have developed a communication policy that is bearing fruit; it includes our very own visual identity. On its website the Court has gradually posted online – accessible to everyone and in four OSCE official languages – reference documents, starting with a compilation of "key documents" and a bibliography on the Stockholm Convention, supplemented today by the publication in English of the proceedings of the recent seminar on "The Stockholm Convention in a Europe in Crisis". The updated lists of conciliators and arbitrators can be readily accessed on the website as well. We also intend to develop practical information sheets describing a kind of modus operandi of the Convention with a view to responding more effectively to questions or any doubts that potential users may have.

A second line of action that has been pursued for some years now, at the initiative of our colleague in the Bureau, Professor Vasilka Sancin, is an arbitration-related "Moot Court" organized at the Faculty of Law of the University of Ljubljana, which is enjoying growing success and attracting the interest of students from various countries. The Faculty's website similarly attests to the dynamism of the young teams involved.

However, what we are obviously striving for is to strengthen the positioning of the Convention in the European system for the settlement of disputes between States, as I emphasized when speaking before the Council of Europe Committee of Legal Advisers on Public International Law. Allow me to reiterate here with equal conviction that the Court cannot do anything without you, without the States Parties or the participating States. That involves taking some simple steps.

In closing, I should therefore like to underline three specific actions that would contribute to a fresh start.

– On behalf of the Court, I must issue an appeal to the States that have not yet ratified the Convention to consider constructively the possibility of doing so in order to reaffirm that the peaceful settlement of disputes retains all its validity in the Europe that we long to see. Thirty years later, it seems to me that the misgivings that characterized the birth of the Court no longer have any justification – the Court exists, it is up and running. The Court must not remain on the back burner but must, rather, be on standby mode, with the support of all States committed to co-operation based on the rule of law.

– Moreover, each of the States Parties should remain mindful of the need to keep the lists of arbitrators and conciliators up to date; these, in case you need reminding, are appointed for terms of office of six years that can eventually be renewed. This is essential to refresh our pool of diplomatic and legal expertise, and to diversify skills and experiences in the event that cases are submitted to the Court. But it is also highly valuable for the sake of independence and impartiality, with a view to having an "electorate" that is as representative as possible when the time comes to renew the Bureau of the Court at the end of 2025.

– Finally, I should like to recall the uniqueness of conciliation, which, unlike arbitration, does not obligate States to do anything other than to consider confidential recommendations presented by a Conciliation Commission that was established at their request. The procedure itself is in a certain sense co-created together with the parties to the dispute; the proceedings can be rapid when it is a question of overcoming an impasse or they can be gradual, involving various stages, so as to let matters take their course, but in all cases they are confidential and are left to the discretion of the parties. Where conciliation fails, the States that are party to a dispute can leave it at that or they may choose, by mutual agreement, to embark on compulsory arbitration based on international law. As

you will have gathered, it is our heart's desire to see the Court being called upon to examine a request for conciliation falling within its purview, so that it is able to prove its worth.

Mr. Chairperson,
Ambassadors,

Thank you for your attention.