

Court of Conciliation and Arbitration

Annual Report 2021



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FOREWORD

This is the third time that I have the honour of presenting the annual report on the activities of the Court of Conciliation and Arbitration within the OSCE, in accordance with Article 14 of the Stockholm Convention.

As with everyone else, the Court's activities have this year again been strongly impacted by the pandemic and the restrictions on travelling and meeting it has brought about. The Court's Bureau met remotely on two occasions, but had to cancel planned visits to Vienna and Stockholm. Thanks to the collegial spirit of all the members of the Bureau and with the support of the secretariat, we have been able to function with economy and efficiency.

The Court also continued its outreach efforts, with two online meetings. The first, organised on 24 March 2021 at the invitation of the Committee of Legal Advisers on Public International Law, made it possible to recall the potential of the Court before the jurisconsults of the Member States of the Council of Europe, as well as its original place in the pan-European space. The second, organised at the initiative of the Swedish Chairmanship-in-Office, was the occasion of a seminar held on 1 June 2021 on the opportunities for conflict resolution offered by the OSCE Court. These two virtual events gave rise to particularly useful exchanges of information, but their format did not allow for the bilateral contacts and informal meetings that are the basis of the quiet diplomacy that the Court seeks to promote.

It is to be hoped that the year 2022 will once again allow “real” meetings and in-depth contacts. This is all the more important as this year will mark the 30th anniversary of the Stockholm Convention, which was adopted on 15 December 1992. While the Convention is now binding on 34 States Parties, it remains open to all participating States and, more broadly, to all OSCE institutions and structures.

This anniversary should be an opportunity to recall the centrality of the peaceful settlement of disputes in the institutional architecture patiently put in place since the Final Act of the Helsinki Conference in 1975. The Court, which is fully part of the institutions and structures of the OSCE, has two assets that are too often overlooked. It is entrusted for enforcing international law, particularly in the context of arbitration, based on the principles and commitments of the OSCE, which are also the main principles of the Charter of the United Nations. It must do so with flexibility and pragmatism, in a spirit of conciliation and good offices, by establishing the facts and seeking concrete solutions for the settlement of disputes, which it limits itself to proposing to the States in dispute, in complete independence and in complete impartiality. In this sense, conciliation and arbitration are two complementary paths, as confidence-building measures in a spirit of good neighbourliness.

We believe that, in the context of the intertwined crises that the OSCE participating States are experiencing today, it is worth recalling, thirty years after the adoption of the Stockholm Convention, that the Court does not belong to the world of yesterday, but offers practical solutions for building a new and peaceful Europe. I hope that a meeting of all the members of the Court, arbitrators as well as conciliators, will make it possible to forcefully reaffirm this conviction and to share this commitment.



Emmanuel Decaux
President of the Court

1. INSTITUTIONAL MATTERS

1.1. Bureau of the Court

The Bureau of the Court met twice in 2021, in February and September, in a virtual setting to discuss current affairs. The February meeting allowed to approve the financial statements established by the chartered accountant (cf. financial and administrative matters). The members of the Bureau exchanged and reflected on further initiatives to promote the Court, with a prospect of the 30th anniversary of the adoption of the Convention on Conciliation and Arbitration within the OSCE in 2022. An in-person meeting, combined with several bilateral talks with OSCE senior officials and representatives of States parties, planned to take place in November 2021 in Vienna, had to be cancelled due to the pandemic situation and lockdown in Austria.

The Bureau of the Court as of March 2021 is as follows:

President :

Emmanuel DECAUX - France, conciliator
Professor emeritus, University of Paris II - Panthéon-Assas
President of the René Cassin Foundation – International Institute of Human Rights

Members:

from among the conciliators

Christian TOMUSCHAT (Germany)
Professor emeritus, Faculty of Law,
Humboldt University, Berlin
Former President of the Court

Verica TRSTENJAK (Slovenia)
Professor of European Law, University
of Vienna and Ljubljana, Former
Advocate General at the Court of
Justice of the EU

Alternate Members:

from among the conciliators

Anne RAMBERG (Sweden)
Attorney-at-Law,
Former Secretary-General of the
Swedish Bar Association

from among the arbitrators

Erkki KOURULA – Vice-President
(Finland)
Former Judge at the International Criminal
Court

Vasilka SANCIN (Slovenia)
Head of the Department of International
Law, University of Ljubljana
Member of the UN Human Rights
Committee

from among the arbitrators

Mats MELIN (Sweden)
Former Judge and Chairman,
Supreme Administrative Court

Silja VÖNEKY (Germany)
Professor of Public International Law,
Comparative Law and Ethics of Law,
University of Freiburg

1.2. Members and Alternate Members of the Court – Appointments by Lithuania, Luxembourg, Portugal and Sweden

Lithuania, Luxembourg, Portugal and Sweden have renewed the mandate, or alternatively appointed new members of the Court whose mandates run for six years. The appointments have been made in accordance with Articles 3 and 4 of the Convention on Conciliation and Arbitration within the OSCE.

The conciliators and arbitrators may be appointed by the parties to a dispute to sit in the conciliation commission or respectively in the arbitral tribunal. The members of the Court constitute an extraordinary pool of outstanding experts for the benefit of the States parties and represent a network of its own. The appointed members are also entitled to take part in the elections for the President of the Court and membership of the Bureau.

The Court is regularly reminding its States parties to renew the mandates of their conciliators, the arbitrator and his/her alternate after a period of six years, and to ensure that each State party appoints its members in accordance with Articles 3 and 4 of the Convention on Conciliation and Arbitration within the OSCE.

PORTUGAL (January 2021)

Conciliators:

- Mr. Gonçalo Nuno DA CRUZ SARAIVA MATIAS
Professor, Faculty of Law, Portuguese Catholic University
- Mr. Gilberto Jorge DE SOUSA JERÓNIMO
Ambassador, Permanent Representative to the Council of Europe

Arbitrator:

- Mr. Manuel Jorge MAYER DE ALMEIDA RIBEIRO
Professor, Social and Political Sciences Faculty, University of Lisbon

Alternate Arbitrator:

- Mr. Mateus PEREIRA KOWALSKI
Professor, Autonomous University of Lisbon
Director of the International Law Department, Ministry of Foreign Affairs

LITHUANIA (March 2021)

Conciliators:

- Toma BIRMONTIENĖ
Professor, Institute of Public Law, Mykolas Romeris University Law School
- Vygantė MILAŠIŪTĖ
Professor, Faculty of Law, University of Vilnius

Arbitrator:

- Andrius NAMAVIČIUS
Ambassador, Director, Law and International Treaties Department,
Ministry of Foreign Affairs of the Republic of Lithuania

Alternate Arbitrator:

- Lyra JAKULEVIČIENĖ
Professor and Dean, Mykolas Romeris University Law School

LUXEMBOURG (June 2021)

Following the resignation of Mr Michel REIFFERS, Vice-President of the Supreme Court of Justice of Luxembourg, who was appointed as conciliator, the Grand-Duchy of Luxembourg has nominated Mrs. Danielle SCHWEITZER, Chamber President of the Appeal Court, to take over Mr Reiffer's mandate that runs until March 2025.

SWEDEN (October 2021)

Conciliators:

- Anne RAMBERG
Attorney-at-law,
former Secretary-General of the Swedish Bar Association
- Marie JACOBSSON
Ambassador, Principal Legal Adviser on International Law,
Ministry for Foreign Affairs of Sweden

Arbitrator:

- Mats MELIN
Former Justice and Chairman of the Supreme Administrative Court of Sweden

Alternate Arbitrator:

- Pål WRANGE
Professor of Public International Law, Stockholm University

Anne Ramberg and Mats Melin are also alternate members of the Bureau of the Court, elected in 2019.

The Court congratulates the appointed members and welcomes them among the Court.

2. ACTIVITIES

2.1. 60th Meeting of the Committee of Legal Advisers of the Council of Europe (CAHDI) – 24 March 2021 – Intervention of President Emmanuel Decaux and Vice-President Erkki Kourula

The Committee of Legal Advisers on Public International Law of the Council of Europe (CAHDI) has invited President Decaux and Vice-President Kourula at its 60th meeting on 24 March 2021, to speak about peaceful settlement of disputes and to present the features of the OSCE Court of Conciliation and Arbitration.

In his speech, President Decaux stressed that this invitation was particularly important to recall what the Court of Conciliation and Arbitration within the OSCE is and, above all, what it should be while approaching the 30th anniversary of the signature of the Stockholm Convention, which marked the creation of a legal and institutional framework in line with the OSCE principles of peaceful settlement of disputes as laid down in the Final Act of Helsinki. “In this sense, the Stockholm Convention not only constitutes a solemn commitment of the States parties but also an essential component of the cooperative security in Europe, a pledge of the political will to build “a united and free Europe”. “There is space in Europe committed to the rule of law for a Court of Conciliation and Arbitration, combining flexibility and pragmatism, while enshrined in a legal framework that guarantees its independence and impartiality”, he added.

Vice-President Kourula, who during his career has also been the Permanent Representative of Finland to the Council of Europe, recalled the mechanisms of the conciliation and arbitration procedures provided by the Stockholm Convention. He emphasized the role of the conciliation commission assisting the parties in finding a settlement in accordance with international law and OSCE commitments, which provides a special competence to the Court in the matter and greater flexibility than other conciliation procedures. He specified that in contrast to conciliation, the nature of arbitration between states was to adjudicate the dispute submitted to the Court with the authority of a final decision.

Addressing the Legal Advisers on Public International Law of the Council of Europe, President Decaux and Vice-President Kourula insisted on the complementarity of both institutions and recalled that the procedures provided by the Stockholm Convention were available to States parties and, on an *ad hoc* basis, to OSCE participating States and thus open to all members States of the Council of Europe.

The intervention of President Decaux and Vice-President Kourula was followed by a an exchange with legal advisors participating in the online meeting.

The intervention at the CAHDI meeting was highly relevant since the Committee gathers legal advisers holding core functions at the Ministries of Foreign Affairs of the Council of Europe’s members states and thus offers an ideal setting to recall the

Court's procedures and opportunities. The Court had already been invited at this important forum in the past. Mr Robert Badinter, Mr Hans-Dietrich Genscher, Mr Lucius Caflisch and Mr Luigi Ferrari Bravo, respectively President, Vice-President and members of the Bureau held an exchange of views with the members of the CAHDI at its meeting in Berlin in 2000. Robert Badinter and Luigi Ferrari Bravo spoke again on the subject in 2005, in Strasbourg.

The speeches of President Decaux and Vice-President Kourula are published on the Court's website and can be found in the document library: www.osce.org/cca.

2.2. Seminar on Opportunities in Conflict Resolution Offered by the OSCE Court of Conciliation and Arbitration, organised by the Swedish OSCE Chairpersonship – 1 June 2021

The Swedish OSCE Delegation in Vienna, in collaboration with the Ministry for Foreign Affairs of Sweden, organised the seminar on the opportunities offered by the OSCE Court of Conciliation and Arbitration within the OSCE for the peaceful resolution of conflicts.

Sweden, which is the Depositary State of the Convention on Conciliation and Arbitration and therefore holds a particular responsibility with respect to the Convention, set up this seminar with the objective to explore and discuss the benefits of the Court, its mechanisms and procedures and to identify challenges that it faces to become fully effective.

H.E. Ambassador Ulrika Funered, Permanent Representative of Sweden to the OSCE, mentioned in her welcome address that the OSCE Court remains a well-crafted, but hidden tool for conflict resolution.

In his keynote address, Professor Emmanuel Decaux, underlined that the adoption of the Stockholm Convention in 1992 extended the political commitments of the OSCE participating States to legal obligations enshrined in one of the rare treaties concluded under the auspices of the OSCE. He stressed the importance to see the Court as an integral part of the "toolbox" available to participating States, even beyond the circle of States parties to the Convention that he wished to see extended. Judge Erkki Kourula, Vice-President of the Court, presented the main features of conciliation and arbitration, the two mechanisms laid down in the Stockholm Convention.

The keynote address was followed by a panel on the topic "From theory to practice – what would it take to activate the Court."

Panel speakers included:

- Professor Gerhard Hafner, Professor emeritus, Faculty of Law, University of Vienna, Member of the Court, former member of the International Law Commission;
- Ms. Alina Orosan, Director General, Department for Legal Affairs, Ministry of Foreign Affairs, Romania,
- Professor Vasilka Sancin, Faculty of Law, University of Ljubljana, Member of the Bureau.

H.E. Ambassador Carl Magnus Nesser (Director General for Legal Affairs, Ministry for Foreign Affairs of Sweden) wrapped up the panel discussion that allowed to identify obstacles to the effectiveness of the Court and to explore proposals on how to remedy the gridlock.

H.E. Ambassador Christine Fage, Permanent Representative of France to the OSCE, moderated the panel discussion and interaction with the participants.

The keynote addresses of President Decaux and Vice-President Kourula can be found in the document library of the Court's website: www.osce.org/cca

2.3. Simulation of Arbitral Proceedings in the Framework of the MUNLawS Conference, Faculty of Law, University of Ljubljana – 12–14 November 2021

The second student simulation of an arbitral tribunal under the Convention on Conciliation and Arbitration within the OSCE took place from 12 to 14 November 2021 in Ljubljana. The event was organised within the framework of the MUNLawS conference held by the Faculty of Law of the University of Ljubljana.

Vasilka Sancin, Head of the Department of International Law at the University of Ljubljana and organiser of MUNLawS conferences and a member of the Bureau of the Court, initiated the first student simulations in 2020, with the aim to build awareness of and prepare young students and future lawyers for the opportunities offered by the 1992 Stockholm Convention.

In the opening ceremony and panel titled "The Union of Tomorrow" reflections were shared by Dr Marko Rakovec, Director General of the Directorate for International Law and Protection of Interests at the Ministry of Foreign Affairs of the Republic of Slovenia, Janez Lenarčič, European Commissioner for Crisis Management, H.E. Adrian Pollmann, Ambassador of the Federal Republic of Germany and Igor Evgen Bergant, journalist and news anchor at Radiotelevision of Slovenia, and Gal Veber, a student Secretary General of the 2021 MUNLawS conference. President Emmanuel Decaux, delivered a video address to the participants.

The simulated dispute in the fictional case between two States, the Republic of Arcturus and Rastaban, involved space activities, national minorities and environmental damage. Students participating in the simulation had to prepare a written memorial and counter-memorial, followed by an oral presentation of their legal arguments to arbitrators.

The MUNLawS conference gathered participants from 18 European countries and 159 students actively participated in the simulations.

3. COMMUNICATION AND OUTREACH

3.1. Video Talk with Professor Lucius Caflisch

Professor Lucius Caflisch is a conciliator appointed by Switzerland and was an active member of the Bureau since the creation of the Court in 1995 until 2013. He had been at the forefront of the negotiations and preparatory meetings that lead to the adoption of the Convention in 1992 in Stockholm. In these videos, recorded in both English and French, he presents the main features of the Convention, its objectives and challenges faced at the time of its signature and subsequent ratifications.

He recalls that the binary mechanism of the 1992 Stockholm Convention was conceived in a period of profound change in inter-European relations and in a context that made it important to establish and solidify European unity and peace. One of the ways to do that was the prevention or removal of discord among European nations of the East, the Centre and the West, particularly by offering a mechanism of dispute settlement in the particular context of the Conference on Security and Cooperation in Europe (CSCE), later to become the Organisation of the same name (OSCE). The initiator of the idea of a specifically European regime of dispute settlement, Robert Badinter, was of the view that conciliation was a means of settlement everyone could accept: proceedings before a panel of experts which would ascertain the facts of the case and issue recommendations for its settlement, but not hand down binding decisions.

“In my view, the States of the OSCE which have not already done so would be well advised to accept this settlement mechanism. And the States which are already part of it would do well to use it, as it is specially conceived for, and adapted, to their needs”, he concludes.

Professor Caflisch was Director of the Graduate Institute of International and Development Studies in Geneva between 1984 and 1990. In 1991, he became legal advisor for the Swiss Federal Department of Foreign Affairs and represented Switzerland at several international conventions. He also participated in the negotiations creating the constitution of the International Criminal Court. Between 1998 and 2006, he acted as judge for the Principality of Liechtenstein at the European Court

of Human Rights. In 2006 Professor Cafilisch was appointed to the Geneva-based United Nations International Law Commission.

The videos can be viewed on Court's website: www.osce.org/cca

3.2. Communication Tools

The Court seeks to propose hands-on information to its web users and is keen to develop the available information in a user friendly and easy-to-grasp manner. The compilation of the basic documents, which contains the full text of the Convention, the Rules of procedure, the Financial Protocol and the list of accessions / ratifications is now also available in French and German. The Court aims to propose this collection in all official OSCE languages.

In addition to the its website as primary source of public information, the Court sends out regular newsletters to its members and subscribers.

4. FINANCIAL AND ADMINISTRATIVE MATTERS

Overview of the Financial Statements – Financial Year 2021

Total Net Expenditures	CHF 83'753.00
Regular Contributions of States parties	CHF 94'178.00
Reserves	CHF 133'752.00

The financial statements at 31.12.2021, which give a detailed account of the Court's expenditures, income as well as assets and liabilities, have been approved by the Bureau of the Court at its meeting held on 9 February 2022. The financial statements for the financial year 2021, along with the audit report, have been transmitted to the States parties for further information.

As in previous years, the Bureau of the Court is attentive to the cautious use of the available resources and strives at keeping the budget at the lowest possible level, while assuring the smooth running of its registry and ensuring its outreach strategy.

The States parties to the Convention provided a total amount of CHF 94'178 to cover the Court's current expenses. The request for contributions addressed to the States parties amounted to CHF 95'000. The distribution among States parties is made in accordance with Article 2 of the Financial Protocol and based on the scale of distribution applicable within the OSCE, adjusted to take into account the difference between States parties and OSCE participating States.

The fulfilment of the States parties obligation to provide their contributions in a timely manner can be interpreted as a renewed sign of adherence and confidence in the Court.

The expenditures of the Court realised in 2021 were slightly below the anticipated costs of the budget and those of the previous year. The pandemic circumstances in 2021 that prevented in-person meetings and events mostly contributed to this fact.

It is again highlighted that the Court's President and members of the Bureau are carrying out their duties and tasks on a honorary basis. The Court's staff is limited to a permanent part-time employee who takes care of the administrative and financial matters as well as of the communication.

The Court is benefitting from office spaces provided for free thanks to the continuous support of the Host State. Based on the headquarter agreement with Switzerland, the Court would also benefit from its logistical support in case a conciliation commission or arbitral tribunal would be set up.

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