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ADDRESS BY MR. EMMANUEL DECAUX, PRESIDENT OF THE OSCE COURT OF CONCILIATION AND ARBITRATION, AT THE 1374th MEETING OF THE OSCE PERMANENT COUNCIL

19 May 2022

Mr. Chairperson,
Madam Secretary General,
Permanent representatives,

It is a great honour for me to present the annual report on the activities of the Court of Conciliation and Arbitration within the OSCE for the second time in accordance with Article 14 of the Stockholm Convention. I presented a first activity report here on 27 February 2020 at the invitation of the Albanian Chairmanship. But last year, for obvious reasons, the Swedish Chairmanship organized a seminar on 1 June 2021 in the form of a videoconference. I thank the Polish Chairmanship for its invitation to present our 2021 activity report to you today. It allows me to renew close contacts with the OSCE institutions and structures and the delegations in Vienna in the spirit of legal diplomacy underlying our information and awareness-raising efforts.

Last year on 24 May 2021, in spite of the health constraints, the Vice-President of the Court, the judge Erkki Kourula, and myself were also able to speak in a videoconference to the Council of Europe Committee of Legal Advisers (CAHDI). We have also developed some practical tools on our website providing information about the Court by posting a collection of basic documents on the Convention and a general list of publications about the Court of Conciliation and Arbitration. We are aware that these are just small steps, but they are important for helping to recall the Court's potential role. We need to emphasize repeatedly that the Bureau of the Court is a permanent body capable at the request of the parties of implementing two classic procedures – conciliation commissions and arbitration tribunals – at any time in a flexible and confidential manner.

To be honest, for the past three months or so we have been light years from the situation that still prevailed when I signed the foreword to the report. The fragility of the law in a world dominated by power struggles can be seen on a daily basis. In the dramatic context of a new war in Europe, the very foundations of international peace and security established in 1945 by the Charter of the United Nations and of the co-operative security reaffirmed within the OSCE are now being called into question. In a direct line from the 1990 Charter of Paris for a New Europe, the Stockholm Convention offered a diplomatic and legal institutional framework for these commitments of principle through the establishment of a Court of Conciliation and Arbitration within the OSCE.

Thirty years on, we might ask what role our Court can and should play in the European security architecture. The Bureau of the Court of Conciliation and Arbitration, which held a meeting in Stockholm at

the beginning of the month, believes more strongly than ever that the principle of the peaceful settlement of disputes is part of the solution and not of the problems for our continent.

As we approach the 30th anniversary of the adoption of the Stockholm Convention on 15 December 1992, I should like to give a reminder and make an appeal.

A reminder

The Court of Conciliation and Arbitration within the OSCE has a dual role, which helps to make it an extremely valuable tool for the OSCE.

The Court is in effect the result of one of the rare treaties concluded within our Organization. The treaty now has 34 States Parties, which have undertaken legal commitments and assumed treaty obligations. Treaties are not pieces of paper but entail respect for the promises made and good faith. In that sense, the Stockholm Convention is only a step in the secular effort to replace might by right and to ensure the equality of States in their respect for the law. It should be seen as a reflection not only of a legal ideal but also of a practical reality. To make do with an "empty shell" would betray the dreams of the founding fathers of the Convention and the pioneer States that joined forces around the original initiative, which aimed at turning the commitments of principle anchored in Article 33 of the Charter of the United Nations into modalities implemented in practice. Unlike the 1957 European Convention for the Peaceful Settlement of Disputes, which is a simple routing tool, the Stockholm Convention represents a legal advance, a qualitative leap that gives the Court a concrete presence with not only two lists of mediators and arbitrators but also a Bureau responsible for guaranteeing the Court's independence and neutrality.

But the Convention is also embedded in the OSCE context. It is founded on Principle V of the Decalogue of the Helsinki Final Act of 1975, whose tenets – be it the principle of refraining from the threat or use of force, the inviolability of frontiers and the territorial integrity of States, equal rights and self-determination of peoples or the fulfilment in good faith of obligations under international law, not to mention respect for human rights and fundamental freedoms – are interdependent.

The Stockholm Convention continues the dynamic of the 1990 Charter of Paris for a New Europe and the first steps towards the institutionalization of the peaceful settlement of disputes outlined in Valletta. The aim of conciliation is to seek a solution in line with international law and OSCE commitments (Article 24), while arbitration is based on international law but may also, if the parties to the dispute agree, decide a case *ex aequo et bono* (Article 30). Above all, however, while the Convention binds the States Parties, its provisions are available to participating States on an ad hoc basis. Thus, while being completely independent with headquarters in Geneva, the Court is part of the OSCE's structures and instruments. I should also like regular contacts to be established with the various institutions – particularly the Secretariat and the Parliamentary Assembly – if only to improve the mutual exchange of information. The procedures offered by the Court should be part of the toolbox available to the Chairmanship for prevention, conciliation and reconciliation.

Finally, it should be remembered that the peaceful settlement of disputes is not in itself an unfriendly gesture. On the contrary, it is a sign of good-neighbourliness on the part of States governed by the rule of law that seek a solution in compliance with the commitments and principles – be it those of the United Nations or of the OSCE – that bind them.

An appeal

This appeal is also of a dual nature.

It is addressed first to the States Parties to encourage them to implement the mechanisms of the Convention for settling disputes at the early-warning stage before they have become more critical instead of allowing the conflicts to grow and create "fixation abscesses". The Court is well equipped to clear up the issues and propose ways of resolving conflicts through conciliation – with full discretion and without imposing anything. It is capable of defining the legal parameters at the end of an arbitration procedure between the States based on the adversarial principle and the equality of the parties. The effectiveness of the Convention depends above all on the States Parties, which must, through example, demonstrate their commitment to the principle of peaceful settlement of disputes. Between bilateral litigation that can be resolved by direct negotiation and open crises that do not meet the prerequisites for peaceful settlement, there is vast scope for simple, flexible and neutral conciliation and arbitration procedures. The quality and diversity of the profiles of the members of the Court ensure that our procedures are serious and balanced.

The appeal is also addressed to all of the participating States to the extent that the Stockholm Convention is an asset shared by all members of the community of common destiny forged by geography and history that constitutes the OSCE. They can accede to the Stockholm Convention at any time as an indication of their legal commitment to promote amicable solutions rather than foster political tensions. Thirty years on from the adoption of the Stockholm Convention, it is not too late – far from it. But participating States can also use the Court's procedures on an ad hoc basis, demonstrating in this way their trust in pragmatic solutions in a wide variety of fields, be it the challenges already identified thirty years ago with regard to national minorities or transborder pollution, or new problems that sometimes go beyond the inter-State framework, involving the civic responsibility of businesses, the information society or artificial intelligence. The 30th anniversary of the Stockholm Convention could also offer an opportunity for considering new areas for the peaceful settlement of disputes.

In that regard, I should like to thank Sweden, which, as depositary State, has invited the Bureau of the Court to take part in an initial joint consideration of present, past and future challenges. I hope that this anniversary, which in these tragic times will be anything but self-congratulatory, will allow us to rekindle the fragile hopes for the peaceful settlement of disputes. Victor Hugo wrote that "truth and liberty have this excellence, that all one does for and against them serves them equally well". The challenges and failures make the law, too often ignored or trampled on, even more valuable and indispensable. I hope that the anniversary of the Convention will give it the necessary jolt by recalling that the peaceful settlement of disputes is a concomitant to the prohibition on the use of force. Through its very existence the Court of Conciliation and Arbitration within the OSCE is a solemn and indispensable reminder that the ideal of "peace through law" is the cornerstone of the entire European security architecture.