
Chairmanship: Serbia**REPORT TO THE MINISTERIAL COUNCIL
ON STRENGTHENING THE LEGAL FRAMEWORK OF
THE OSCE IN 2015****Introduction**

1. From the 1973 Conference on Security and Co-operation in Europe (CSCE), to the 1994 name change decided by the Budapest Summit, the Organization for Security and Co-operation in Europe (OSCE) evolved over time to its present composition of 57 participating States, decision-making bodies and structures operating in 22 States as well as projects and mandated activities carried out in additional others.
2. The politically binding nature of the 1975 Helsinki Accords has been followed thereafter in the ensuing documents and decisions over the 40-year history of the CSCE/OSCE. The consequent absence of a recognized international legal personality for the OSCE has been the object of various efforts, since at least 1993, to secure across the OSCE region legal status, privileges and immunities for the Organization, its officials and the representatives of its participating States. These efforts have resulted in an incomplete patchwork of legal arrangements established by legislation or other national measures, memoranda of understanding or exchanges of letters between host States and the OSCE or, in one case, a United Nations Security Council resolution and mission-level regulations.
3. In 2009 the open-ended Informal Working Group on Strengthening the Legal Framework of the OSCE (IWG) was established to foster the necessary dialogue among participating States on this topic.
4. Convinced of its importance, the Serbian Chairmanship prepared for the 2015 IWG meetings and extended the mandate of Ambassador John Bernhard as Special Adviser to the Chairperson-in-Office and Chairperson of the IWG. Taking into account the outcome of the 2014 IWG meetings¹, the aim of the Chairmanship was to maximally reduce the number of options for strengthening the legal framework in order to focus deliberations only to those deemed to provide a basis for further discussion and possible consensus. However, as per request of the States participating in the work of the IWG the number of options was kept at four. The four options tabled in 2015 (attached hereto) are the following:
 - 4.1 Option 1: Adoption of the 2007 Draft Convention on International Legal personality, Legal capacity and Privileges and Immunities of the OSCE (2007 Draft Convention).

1 MC.GAL/5/14/Corr.1, dated 3 December 2014

The 2007 Draft Convention was drawn up by an informal Working Group at expert level under the Spanish Chairmanship.² Three footnotes were inserted during its elaboration at the request of certain participating States, making the conclusion of the 2007 Draft Convention conditional upon the existence of a “Charter of the OSCE”. Though the 2007 Draft Convention continues to enjoy very broad support among participating States, its adoption and signature have not been possible for the past seven years. This first option consists of: (a) removing the three footnotes from the 2007 Draft Convention; (b) adopting the text; and (c) opening it for signature to interested participating States;

- 4.2 Option 2: Parallel or consecutive adoption of a Constituent Document for the OSCE and the 2007 Draft Convention (“Draft Constituent Document”). In 2012, the Irish Chairmanship submitted a draft Constituent Document to participating States³. The draft was a short, technical text which illustrated concisely the functions and structure of the OSCE as it presently stands. The draft did not change the character of the OSCE as it has evolved by consensus or the mandate and attributions of its various bodies. After the circulation of the draft, a number of delegations submitted written and oral proposals on the text at that time. In order to facilitate further discussion, the Serbian Chairmanship incorporated some of those proposals into a revised draft Constituent Document and circulated it for consideration by the IWG in 2015.⁴ The changes to the draft Constituent Document (in track changes for ease of reference) included new provisions on reservations and denunciation and also concerned the existing provisions on OSCE commitments, decision-making and the OSCE Parliamentary Assembly.
- 4.3 Option 3: “Convention Plus” or “OSCE Statute.” This option involves the reopening of the 2007 Draft Convention with a view to including therein provisions that are of statutory/constitutional character for the OSCE, so that the new document (colloquially called “Convention Plus”) would contain provisions necessary for a Statute of the OSCE (e.g. functions and structure of the OSCE) in addition to the provisions on privileges and immunities contained in the 2007 Draft Convention. Due to its nature as a statute, the elaboration of the “Convention Plus” would also necessitate some amendments to the final provisions of the 2007 Draft Convention, including the consensus requirement for its entry into force. In 2014 the Swiss Chairmanship had circulated a draft “Convention Plus”/Statute.⁵ Taking into account the intervention of the OSCE Parliamentary Assembly at the meeting of the IWG held on 15 October 2014, the Serbian Chairmanship incorporated into the earlier draft suggested revisions to draft Articles 1(f) [addition], 1(k) [deletion], and 18 [addition]. Relevant additions were also inserted in Articles 13(4) and 23(b). The revised draft was recirculated in track changes as a Chairmanship non-paper,⁶ reflecting all changes made to the text of the 2007 Draft Convention in 2014 and 2015. In order to minimize the potentially adverse consequences of a wider re-negotiation of the 2007

2 CIO.GAL/48/07/Rev.6, dated 23 October 2007

3 CIO.GAL/68/11, dated 12 June 2012

4 Attachment 2 to CIO.GAL/46/15, dated 8 April 2015

5 CIO.GAL/173/14, dated 2 October 2014

6 Attachment 4 to CIO.GAL/46/15, dated 8 April 2015

Draft Convention, in considering this option the participating States could clearly define the scope of intervention into the text of 2007 Draft Convention, indicating that only amendments or additions necessary for its transformation into a statute be subject to further negotiations.

4.4 Option 4: Implementation of the 1993 Rome Council Decision through signature and ratification of the 2007 Draft Convention. In 1993, Ministers meeting in Rome adopted the Decision on Legal Capacity and Privileges and Immunities⁷ (“1993 Rome Council Decision”), noting the importance that all participating States provide appropriate treatment for CSCE institutions and their personnel, missions and the representatives of participating States. To assist national legislatures with harmonizing the rules to be applied, the Rome Council adopted the provisions and recommended that they be implemented. The Decision consequently left it to each participating State to determine the best means for implementing the relevant commitments at national level. The 1993 Rome Council Decision remains an ongoing commitment for OSCE participating States. In 2014 it was proposed that the 1993 Rome Council Decision could be implemented, *inter alia*, through signature and ratification of the 2007 Draft Convention without the footnotes attached. In this option, the 2007 Draft Convention would serve as a multilateral agreement among the participating States interested in implementing in this manner their commitments under the 1993 Rome Council Decision. This option was summarized in a non-paper circulated by the Swiss Chairmanship in 2014.⁸

5. To consider further the above four options, three meetings of the IWG were convened in 2015. The proceedings are reported below.

Activities of the Informal Working Group

First meeting: April 2015

6. The first meeting of the IWG in 2015 was held on 15 April. For discussion purposes, the Chairmanship had prepared and circulated in advance⁹ slightly revised versions of Options 2 and 3. The revised Option 2 reflected earlier discussions and proposals submitted in respect of the non-paper circulated by the Irish Chairmanship (i.e., the Draft Constituent Document for the OSCE).¹⁰ The revised Option 3 reflected earlier discussions and proposals submitted in respect of the non-paper circulated by the Swiss Chairmanship (i.e., “Convention Plus” or “OSCE Statute”).¹¹

7. The meeting was opened by the Chairmanship. Under the standing agenda item “Update on the operational consequences of the lack of a clear legal status of the OSCE,” the

7 CSCE/4-C/Dec.2, dated 1 December 1993

8 CIO.GAL/173/14, dated 2 October 2014

9 CIO.GAL/46/15, dated 8 April 2015

10 CIO.GAL/68/12, dated 12 June 2012

11 CIO.GAL/173/14, dated 2 October 2014

Secretariat presented an overview of the purpose of the grant of privileges and immunities to international organizations and to the international civil service. The patchwork system of national measures for OSCE legal status was discussed, along with its consequent gaps which do not relieve the OSCE of its duty of care as an employer and the right of OSCE officials under the Staff Regulations and Staff Rules to functional protection. As an example, the rapid deployment of the OSCE Special Monitoring Mission to Ukraine (SMM) was examined and the sharp focus it drew to the operational issues which can arise for the OSCE in such circumstances. It was noted that for the first three weeks after deployment, the SMM was operating with no legal status or legal capacity and for the first 12 weeks, the SMM members enjoyed no functional privileges and immunities. It was also noted that 12 weeks was an exceptionally short time period in which to accomplish: (a) the conclusion of an agreement; (b) ratification by parliament; and (c) entry into force. It was considered that it might not be possible to replicate such a short timeframe in every instance.¹²

8. An update was provided on the 14 responses received from participating States to the Survey of National Implementation Measures adopted by OSCE participating States.¹³ The Chairmanship invited participating States that had not done so, to submit their replies to the Survey to the Secretariat.

9. Following this, the Special Adviser to the Chairmanship presented the four options which had been retained for consideration by the IWG. The remainder of the meeting was devoted to an exchange of views on the options and possible further proposals.

Second meeting: July 2015

10. The second meeting of the IWG was held on 15 July 2015, upon invitation of the Chairmanship,¹⁴ with the aim of examining and discussing the four options for strengthening the legal framework of the OSCE.

11. The meeting was opened by the Chairmanship. Under the standing agenda item, "Update on the operational consequences of the lack of a clear legal status for the OSCE," the Secretariat presented a discussion of the impact on OSCE project implementation. Projects are part and parcel of the security and co-operation mandate and are implemented in places where the OSCE has an executive structure and also in countries where the OSCE does not have an established presence. Such activities include core activities of the project, capacity-building, workshops, trainings, etc., as well as other operational activities such as procurement of goods and services for project purposes. The planning stage for project generation can entail visits by OSCE officials for evaluation and needs assessment. The project agreements (e.g., implementing partner agreements, cost-sharing agreements, project memoranda of understanding, project registration) may be subject to the domestic law of conclusion. This raises: financial issues (indirect taxes and customs duties which may amount to 18–23 per cent of the total project funding in localities where the OSCE does not enjoy exemption); staff issues (i.e., functional protection of OSCE officials, project staff and participants in the project activities (trainings, workshops etc.)); and issues related to

12 Published as SEC.GAL/76/15, dated 22 April 2015

13 Survey issued as CIO.GAL/152/14, dated 29 August 2014

14 CIO.GAL/99/15/Rev.1, dated 30 June 2015

protection and inviolability of OSCE premises, archives and assets. In the absence of corporate (OSCE) legal personality, liability could arguably fall to the OSCE officials involved (project managers, personnel or the head of the executive structure implementing the project), the authorities of the beneficiary country, or all participating states jointly and severally. While the OSCE successfully implements projects, the uncertainties regarding legal status of the OSCE make project implementation more expensive, more cumbersome and riskier.¹⁵

12. Following this, the Delegation of the Netherlands (Ms Annemarieke Vermeer-Künzli, Legal Counsel, International Law Division, Ministry of Foreign Affairs) provided an overview and discussed the Netherlands Act of 31 October 2002 and Order of 29 May 2006 which established the legal personality, privileges and immunities of the High Commissioner on National Minorities (HCNM) and OSCE officials. It was pointed out that in addition to the HCNM and the OSCE officials employed there, the Act grants functional immunity to all OSCE officials who may be present in the Netherlands on official business. It was also pointed out that the territorial limitation on the privileges and immunities granted in the Act are necessarily, as national legislation, only enforceable in the Netherlands while the High Commissioner and her staff spend a large part of their time on duty travel elsewhere. In drafting the legislation, which in content is similar to a host State agreement, it was considered unacceptable to treat the OSCE differently than other international organizations. For the purposes of the Act, HCNM was considered to be an organ of the OSCE. In contrast to other cases however, the privileges and immunities were granted directly to HCNM, not derived from the original beneficiary, since OSCE does not have that status.

13. An update was provided on the 16 responses received from participating States to the Survey of National Implementation Measures adopted by OSCE participating States. Additional responses were encouraged.

14. The remainder of the meeting was devoted to an exchange of views, led by the Special Adviser of the Chairperson-in-Office, on the four options under consideration for strengthening the legal framework of the OSCE.

Third meeting: October 2015

15. The third meeting of the IWG was held on 5 October 2015, upon invitation of the Chairmanship,¹⁶ with the aim of consideration in more detail of the four options for strengthening the legal framework of the OSCE.

16. The meeting was opened by the Chairmanship. Under the standing agenda item, “Update on the operational consequences of the lack of a clear legal status for the OSCE,” the Secretariat presented a discussion of the possible issues which could arise, due to the legal status of the OSCE, if it were to proceed with peace operations. It was recalled that the previous week the Chairmanship had convened a Ministerial event on the topic of “OSCE Peace Operations” in the margins of the High-Level Segment of the 70th Session of the United Nations General Assembly in New York on 1 October 2015. In relation to the four

15 Published in SEC.GAL/204/15, dated 27 November 2015

16 CIO.GAL/139/15, dated 16 September 2015

topics considered at that event,¹⁷ the Secretariat pointed out that the legal obstacles that the OSCE status may give rise to in deploying an eventual peace operation could potentially be significant and might not be overcome with political willingness. It was foreseen in the 1994 Budapest Decision II on the Nagorno-Karabakh conflict that OSCE peacekeeping would involve a UN Security Council resolution. While such a resolution adopted under Chapter VII of the United Nations Charter might be sufficient to allow potential contributing States to authorize the secondment of military personnel or the loan of technology or equipment, it might not overcome national impediments to the conclusion of an agreement with the OSCE to receive them. It was clarified that “peace operations” does not necessarily mean peacekeeping. It also includes the more readily recognizable needs for effective operations, including: (a) a military field hospital operated by military personnel; unmanned unarmed aerial vehicle systems operated by military analysts; and small police contingents to assist in rule of law, particularly in post-conflict rehabilitation. Experience had shown that obtaining such services commercially comes at a premium price, is not always optimal, and gives rise to potential residual liability issues for the OSCE. Given the seriousness of the possible legal obstacles which could frustrate or delay the implementation of a mandated OSCE peace operation, and recalling that Permanent Council Decision 1117 of 21 March 2014 tasked the Secretary General with deploying to Ukraine within 24 hours, the Secretariat suggested that it may be advisable for participating States to scrutinize their respective legal systems to identify possible national impediments and possible solutions enabling legal arrangements to realize a mandated peace operation.¹⁸

17. In respect of responses received from participating States to the Survey of National Implementation Measures, it was reported that none had been received since the IWG’s previous July meeting. Additional responses were encouraged.

18. The remainder of the meeting was devoted to an exchange of views, led by the Special Adviser of the Chairperson-in-Office, on the four options. Option 4 was examined. Considering that consensus had been reached on the 1993 Rome Council Decision, which remains a valid commitment, a view was expressed that Option 4 is not ideal but for States which under their domestic systems require a treaty in order to provide a legal status to the OSCE, it could be a way forward if there continues to be no consensus in respect of Options 1, 2 or 3. According to another view, Option 4 was not considered a viable way forward.

Other relevant developments

Helsinki+40 Supplementary Seminar

19. On 27 April 2015 the OSCE Parliamentary Assembly and the Danish Institute for International Studies (DIIS) convened a Helsinki+40 Supplementary Seminar on “The OSCE’s Lack of Legal Status – Challenges in Crisis Situations.” Upon invitation, the Chairmanship, the Special Adviser to the Chairperson-in-Office and the Secretariat participated as panellists and discussed the question of legal status for the OSCE, the implications for Ukraine and the ways forward for strengthening the legal framework. The

17 CIO.GAL/141/15, dated 4 September 2015; summary of proceedings published in CIO.GAL/161/15, dated 22 October 2015

18 Published in SEC.GAL/205/15, dated 27 November 2015

proceedings, including a food-for-thought paper by the Secretariat, were published on the website of the OSCE Parliamentary Assembly.¹⁹

Conclusion

20. In conclusion, the Chairmanship notes that in 2015, the options under consideration have been reduced from six to four. It encourages these efforts to be continued with the aim of reducing the options even further. The OSCE at 40 is mature and, despite its status, is ever more expected to face challenges. Legal status, privileges and immunities for the organization, officials and delegations is what was called for in the 1993 Rome Council Decision. Such a grant is routinely given to other international organizations under public international law. Regulating the legal status of the OSCE would help to achieve the vision of 40 years ago: security and co-operation. Serbia will continue to invest in this ultimate goal for participating States and Partners for Co-operation.

List of reference documents

1. Option 1: Draft 2007 Convention on International Legal personality, Legal capacity and Privileges and Immunities of the OSCE (CIO.GAL/48/07 Rev.6, dated 23 October 2007)
2. Option 2: Chairmanship Non-paper on a revised Draft Constituent Document (CIO.GAL/46/15, Attachment 3, dated 8 April 2015)
3. Option 3: Chairmanship Non-paper on a revised possible “Convention Plus” or “OSCE Statute” (CIO.GAL/46/15, Attachment 4, dated 8 April 2015)
4. Option 4: Non-paper on option consisting in the Implementation of the 1993 Rome Decision through signature and ratification of the 2007 draft Convention (CIO.GAL/173/14, Attachment 2, dated 2 October 2014)

19 <http://www.oscepa.org/parliamentary-diplomacy/helsinki40/seminars/seminar-4-diis-copenhagen-april-2015>

**DRAFT CONVENTION ON THE INTERNATIONAL LEGAL PERSONALITY, LEGAL
CAPACITY, AND PRIVILEGES AND IMMUNITIES OF THE OSCE**

The States Parties to the present Convention,

[]¹

Recognizing the need for the OSCE to possess international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes², and

Recognizing the need for the OSCE and its staff to enjoy such privileges and immunities as are necessary for the exercise of the functions and the fulfilment of the purposes of the OSCE,

Have agreed as follows:

**Article 1
Definitions**

For the purpose of the present Convention:

- (a) “OSCE” shall refer to the Organization for Security and Co-operation in Europe.
- (b) “Participating States” shall refer to the OSCE participating States.
- (c) “States Parties” shall refer to the participating States for which the present Convention has entered into force in accordance with Article 22 below.
- (d) “Representatives of participating States” shall refer to participating States’ delegates, deputy delegates, advisers, technical experts and secretaries of delegations.
- (e) “Permanent Representations” shall refer to the Permanent Representations of the participating States to the OSCE.
- (f) “Institutions” shall refer to the Office for Democratic Institutions and Human Rights (ODIHR), the Office of the High Commissioner on National Minorities (HCNM), the Office of the Representative on Freedom of the Media (FOM) and any other institution established by OSCE decision-making bodies.

¹ Two delegations requested to insert as the first paragraph of the preamble [“Referring to the appropriate provisions of the OSCE Charter which require to define the privileges and immunities of the OSCE in a separate multilateral agreement,”].

² Two delegations requested to insert [“as they are set forth in the OSCE Charter”].

- (g) “Field Operations” shall refer to the OSCE Field Operations, including OSCE Missions, Centres, Presences, Offices, Project Co-ordinators and other types of field operations established by OSCE decision-making bodies.
- (h) “Secretary General” shall refer to the Secretary General of the OSCE.
- (i) “Members of the Secretariat and Institutions” shall refer to the Secretary General, the Heads of Institution, as well as to the staff members of the OSCE Secretariat and Institutions, but shall not include persons who are locally recruited and receive an hourly or daily rate of pay.
- (j) “Members of Field Operations” shall refer to staff members of Field Operations, including the Heads of Mission, but shall not include persons who are locally recruited and receive an hourly or daily rate of pay.
- (k) “Other Persons Performing Tasks of the OSCE” shall refer to:
 - i) OSCE experts on mission;
 - ii) representatives of the OSCE Chairmanship-in-Office;

but shall not include persons who are locally recruited and receive an hourly or daily rate of pay.

For the purposes of the present Convention, members of the OSCE Parliamentary Assembly, as well as officials of its secretariat, taking part in the work of the OSCE as identified by the OSCE Chairman-in-Office, shall be treated as Other Persons Performing Tasks of the OSCE.

- (l) “Premises of the OSCE” shall refer to the buildings, parts of buildings and the land, including installations, facilities made available, maintained, occupied or used by the OSCE in connection with its functions and purposes.

Article 2

OSCE Decision-Making Process, OSCE Commitments

1. Nothing in the present Convention shall affect the OSCE decision-making process.
2. Nothing in the present Convention shall be construed to create any legal obligation for any State Party other than the obligations expressly set forth herein, nor shall anything in the present Convention affect the political, non-legally binding character of the OSCE commitments of the participating States.

Article 3
International Legal Personality

The OSCE shall possess international legal personality.

Article 4
Legal Capacity

The OSCE shall possess such legal capacity as is necessary for the exercise of its functions³, including the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.

Article 5
OSCE Premises, Property and Assets

1. The premises of the OSCE shall be inviolable.
2. The property of the OSCE and its assets, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action, except insofar as in any particular case it has expressly waived its immunity.

Article 6
Archives of the OSCE

The archives of the OSCE, and in general all documents belonging to it or held by it, shall be inviolable wherever located and by whomsoever held.

Article 7
Immunity from Jurisdiction and Execution

1. The OSCE, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from any form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that such waiver of immunity does not extend to any measure of execution, for which a separate waiver shall be necessary.
2. The OSCE shall have insurance coverage against third party risks in respect of vehicles owned or operated by it, as required by the laws and regulations of the State where the vehicle is operated.

³ Two delegations requested to insert [“as they are set forth in the OSCE Charter”].

Article 8

Tax Exemptions

1. The OSCE, its assets, income and other property shall be exempt from all direct taxes; it being understood, however, that the OSCE shall not claim exemption from taxes which are, in fact, no more than charges for public utility services.
2. Where goods or services of substantial value necessary for the exercise of the functions of the OSCE are purchased, and when the price of such goods and services includes taxes or duties, the State Party that has levied taxes or duties shall grant, whenever possible, exemption or provide reimbursement of the amount of duty or tax.

Article 9

Customs Privileges

The OSCE, its assets, income and other property shall be exempt from customs duties on imports and exports in respect of articles imported or exported by the OSCE for its official use; it being understood, however, that articles imported under such exemption shall not be sold, leased or given away in the territory of the State Party into which they were imported except under conditions agreed with the competent authorities of that State Party.

Article 10

Financial Controls

Without being restricted by financial controls, regulations or moratoria of any kind, the OSCE shall be:

- (a) able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to its functions;
- (b) free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into another currency.

Article 11

Facilities in Respect of Communications

1. For the purpose of its official communications and correspondence, the OSCE shall enjoy in the territory of each State Party, treatment not less favourable than that which the State Party accords to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.

2. The OSCE may use all appropriate means of communication and make use of codes or cipher for its official communications or correspondence. The official communications and correspondence of the OSCE shall be inviolable.

3. No censorship shall be applied to the official communications and correspondence of the OSCE.

4. The OSCE Secretariat, Institutions and Field Operations shall have the right to dispatch and receive correspondence and other materials or communications amongst themselves by courier or in sealed bags, which shall have the same privileges, immunities and facilities as diplomatic couriers and bags.

Article 12 Flags and Symbols

The OSCE and representatives of the OSCE Chairmanship-in-Office shall have the right to use OSCE symbols and flags for official purposes, on their premises and vehicles.

Article 13 Permanent Representations

States Parties in whose territory Permanent Representations are located shall accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those representations and their staff.

Article 14 Representatives of Participating States

1. Representatives of participating States attending OSCE meetings or taking part in the work of the OSCE shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from personal arrest or detention.
- (b) Immunity from legal process, even after they are no longer the Representatives of participating States, in respect of words spoken or written and all acts performed by them in their capacity as representatives.
- (c) Inviolability for all papers and documents in whatever form.
- (d) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and alien registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions.

- (e) The same privileges in respect of currency and exchange facilities as are accorded to diplomatic agents of foreign States.
 - (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.
 - (g) The right to use codes and to receive papers or correspondence by courier or in sealed bags.
2. Applications for visas, where required, from Representatives of participating States attending OSCE meetings or taking part in the work of the OSCE, shall be dealt with as speedily as possible.
3. The provisions of paragraph 1 above shall not apply as between a representative and the State of which he or she is or has been the representative.

Article 15

Members of the Secretariat and Institutions

1. Members of the Secretariat and Institutions shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded:
- (a) Immunity from legal process, even after the termination of their appointment with the OSCE, in respect of words spoken or written and all acts performed by them in their official capacity.
 - (b) Inviolability for all papers and documents in whatever form.
 - (c) Exemption from taxation on the salaries, allowances and other emoluments paid to them by the OSCE provided that these incomes are subject to a staff assessment for the benefit of the OSCE. However, States Parties may take these incomes into account in calculating the amount of tax to be levied on the taxable income originating from other sources.
 - (d) Exemption from the social security regulations of the host State as well as from all compulsory contributions to national social security schemes of any other State Party, provided that they are covered by the social security scheme of the OSCE. This exemption does not preclude any voluntary participation in a national social security scheme in accordance with the law of the State Party concerned neither does it require a State Party to make payments of benefits under social security schemes to Members of the Secretariat and Institutions who are exempt under the provision of this sub-paragraph.
 - (e) Exemption from national service obligations.

- (f) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and alien registration. Applications for visas, where required, shall be dealt with as speedily as possible.
- (g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.
- (h) The same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions established in the State Party concerned.
- (i) The same repatriation facilities in time of international crisis as diplomatic agents, in respect of themselves and their spouses and relatives dependent on them.
- (j) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.

2. States Parties shall not be obliged to accord to their own nationals or permanent residents the privileges and immunities referred to under paragraph 1, except those granted under item (a) for acts performed in their official capacity. States Parties which do not grant exemption from taxation under their national law shall consider concluding an agreement with the OSCE for the reimbursement of national income tax paid to them by the Members of the Secretariat and Institutions.

3. In addition to the privileges and immunities specified in paragraph 1 above, the Secretary General shall be accorded in respect of him/herself, his/her spouse and relatives dependent on him/her the privileges and immunities, exemptions and facilities accorded to heads of diplomatic missions in accordance with international law. The same shall apply to the Heads of Institution in respect of themselves, their spouses and relatives dependent on them in the country of their duty station.

Article 16

Members of Field Operations

1. Members of Field Operations shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions during the period of their mission. In particular, in the State Party in which the Field Operation is established, and in other State Parties when travelling in connection with their duties, they shall be accorded:

- (a) Immunity from personal arrest or detention.
- (b) Immunity from legal process, even after the termination of their appointment with the OSCE, in respect of words spoken or written and all acts performed by them in their official capacity.
- (c) Inviolability for all papers and documents in whatever form.

- (d) Exemption from taxation on the salaries, allowances and other emoluments paid to them by the OSCE provided that these incomes are subject to a staff assessment for the benefit of the OSCE. However, States Parties may take these incomes into account in calculating the amount of tax to be levied on the taxable income originating from other sources.
- (e) Exemption from the social security regulations of the host State as well as from all compulsory contributions to national social security schemes of any other State Party, provided that they are covered by the social security scheme of the OSCE. This exemption does not preclude any voluntary participation in a national social security scheme in accordance with the law of the State Party concerned neither does it require a State Party to make payments of benefits under social security schemes to Members of Field Operations who are exempt under the provision of this sub-paragraph.
- (f) Exemption from national service obligations.
- (g) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and alien registration. Applications for visas, where required, shall be dealt with as speedily as possible.
- (h) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.
- (i) The same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions established in the State Party concerned.
- (j) The same repatriation facilities in times of international crises as diplomatic agents, in respect of themselves and their spouses and relatives dependent on them.
- (k) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.

2. States Parties shall not be obliged to accord to their own nationals or permanent residents the privileges and immunities referred to under paragraph 1, except those granted under items (a) and (b) for acts performed in their official capacity. States Parties which do not grant exemption from taxation under their national law shall consider concluding an agreement with the OSCE for the reimbursement of national income tax paid to them by Members of Field Operations.

3. In addition to the privileges and immunities specified in paragraph 1 above, the Heads of Mission shall be accorded in respect of themselves, their spouses and relatives dependent on them in the country of their duty station the privileges and immunities, exemptions and facilities accorded to heads of diplomatic missions in accordance with international law.

Article 17
Other Persons Performing Tasks of the OSCE

1. Other Persons Performing Tasks of the OSCE shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

- (a) Immunity from personal arrest or detention.
- (b) Immunity from legal process, even after the termination of their appointment with the OSCE, in respect of words spoken or written and all acts performed by them in their official capacity.
- (c) Inviolability for all papers and documents in whatever form.
- (d) For the purpose of their communications with the OSCE, the right to use codes and to receive papers or correspondence by courier or in sealed bags.
- (e) Exemption from the social security regulations of the host State as well as from all compulsory contributions to national security schemes of any other State Party, provided that they are covered by the social security scheme of the OSCE. This exemption does not preclude any voluntary participation in a national social security scheme in accordance with the law of the State Party concerned neither does it require a State Party to make payments of benefits under social security schemes to Other Persons Performing Tasks of the OSCE who are exempt under the provision of this sub-paragraph.
- (f) Exemption from immigration restrictions and alien registration. Applications for visas, where required, shall be dealt with as speedily as possible.
- (g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.
- (h) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions.
- (i) The same repatriation facilities in time of international crisis as diplomatic agents.

2. States Parties shall not be obliged to accord to their own nationals or permanent residents the privileges and immunities referred to under paragraph 1 (a) except for acts performed in their official capacity, and paragraph 1 (e) to (i).

Article 18

Waiver of Immunities

1. Privileges and immunities are accorded not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions and in the interest of the OSCE.
2. The OSCE shall co-operate at all times with the appropriate authorities of the participating States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Convention.
3. A participating State not only has the right, but is under a duty to waive the immunity of its representative in any case where in its opinion the immunity would impede the course of justice and it can be waived without prejudice to the purpose for which the immunity is accorded.
4. Where the immunity would impede the course of justice and it can be waived without prejudice to the functioning of the OSCE, the following authorities shall have the right and the duty to waive immunities:
 - (a) The Permanent Council upon request of the Secretary General with respect to the OSCE.
 - (b) The OSCE Chairman-in-Office with respect to the Secretary General, the Heads of Institution, and the Heads of Mission and their deputies.
 - (c) The Secretary General in consultation with the OSCE Chairman-in-Office with respect to Members of the Secretariat and Institutions and Members of Field Operations other than those falling under (b).
 - (d) The OSCE Chairman-in-Office with respect to his/her representatives.
 - (e) The Secretary General with respect to Other Persons Performing Tasks of the OSCE other than those falling under (d), (f) and (g).
 - (f) The OSCE Chairman-in-Office upon request of the Standing Committee of the OSCE Parliamentary Assembly with respect to the members of the OSCE Parliamentary Assembly and the Secretary General of the OSCE Parliamentary Assembly.
 - (g) The OSCE Chairman-in-Office upon request of the Secretary General of the OSCE Parliamentary Assembly with respect to the other officials of its secretariat.

Article 19

OSCE Identity Cards

In order to assist States Parties in identifying individuals who are entitled to privileges and immunities set forth in this Convention, the OSCE may issue an OSCE Identity Card to

persons entitled to such privileges and immunities. The document, which shall not substitute for ordinary travel documents, shall be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified herein.

Article 20 Settlement of Disputes

The OSCE shall make provisions for appropriate modes of settlement of:

- (a) Disputes arising out of contracts or other disputes of a private law character to which the OSCE is a party, in circumstances where the waiver of immunity of the OSCE is not exercised by the Secretary General.
- (b) Disputes involving Members of the Secretariat and Institutions, Members of Field Operations or Other Persons Performing Tasks of the OSCE, who by reason of their official position enjoy immunity, if immunity has not been waived.

Article 21 Settlement of Disputes concerning the Convention

Disputes concerning the interpretation or application of the present Convention shall be settled by consultations or any other mode of settlement agreed on between the OSCE and the State(s) Party(ies) or between the States Parties involved in the dispute.

Article 22 Signature and Entry into Force

1. The present Convention shall be open for signature at ... by all participating States until It shall be subject to ratification, acceptance or approval.
2. The participating States which have not signed the present Convention may subsequently accede thereto.
3. The present Convention shall enter into force sixty days after the date of deposit of the instruments of ratification, acceptance, approval or accession by two-thirds of the participating States.
4. For every participating State which ratifies, accepts, approves or accedes to the present Convention after the date of its entry into force, the present Convention shall enter into force sixty days after the date of deposit of its instrument of ratification, acceptance, approval or accession.
5. The Secretary General shall serve as depositary of the present Convention.

Article 23
Provisional Application of the present Convention

A participating State may declare at any time that it will apply the present Convention provisionally until it enters into force for it in accordance with paragraphs 3 and 4 of Article 22.

Article 24
Amendments

1. Any State Party may, by written communication addressed to the depositary, propose amendments to the present Convention. The depositary shall circulate this communication to all States Parties.
2. If, within ninety days from the date of circulation of the proposal for amendments, one third of the States Parties notify the depositary that they agree to convene a conference of the States Parties to consider that proposal, the depositary shall convene such a conference. The text of any amendment adopted by the conference shall be forwarded by the depositary to States Parties for acceptance in accordance with their respective constitutional requirements.
3. Any such amendment shall come into force on the sixtieth day after all States Parties have notified the depositary of their acceptance thereof.
4. States Parties acceding to the Convention after any amendments thereto have entered into force shall be deemed to have acceded to the present Convention as amended.

Article 25
Denunciation

1. Any State Party may, at any time, denounce the present Convention by means of a notification addressed to the depositary.
2. Such denunciation shall become effective one year after the date of receipt of the notification by the depositary.

Done at ... on ... in the English, French, German, Italian, Russian and Spanish languages, all six language versions being equally authentic.

ANNEX A

OSCE IDENTITY CARD

Name:

Surname:

Date of Birth:

National of:

Holder of passport/diplomatic passport no. ..., issued on ..., by

It is hereby certified that the person named in the present document is on official business of the Organization for Security and Co-operation in Europe ("OSCE") during the period from ... to ... in the following OSCE participating State(s)

The OSCE hereby requests all whom it may concern that the person named herein:

- be allowed to pass without delay or hindrance,
- in case of need be accorded all necessary lawful assistance and protection.

This document does not replace travel documents that may be required for entry or exit.

Issued in ... on ... by ... (relevant OSCE authority)

Signature:

Title:

Note: The document will be issued in the six official OSCE languages. It will also contain a translation into the language or languages of the country or countries which the holder of the document will visit as well as a translation into the language or languages used by those military or police forces which might be present in the area of the duty travel.

CHAIRMANSHIP NON-PAPER
Draft Constituent Document for the OSCE
***(Revised version of CIO.GAL/68/11 of 12 June 2012,
following proposals received by participating States)***

(PREAMBLE)

[PM]

(TITLE: GENERAL PROVISIONS)

(Definitions)

*. The Organization for Security and Co-operation in Europe (OSCE) is a regional international organization.

(Legal personality)

* The OSCE shall possess international legal personality and legal capacity, including the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.

(OSCE Commitments)

*. Nothing in the present Document shall affect the politically binding character of the OSCE commitments of the Participating States.

(Principles and objectives)

*. The principles and objectives of the OSCE are set out in the Helsinki Final Act of 1975 and subsequent OSCE commitments.

(Decision-making principle)

*. ~~Nothing in the present Document shall affect the OSCE decision-making process. The OSCE decisions are adopted by consensus, unless otherwise stipulated in the Rules of Procedure.~~

(TITLE: ORGANS)

Chapter Decision-making and Subsidiary Bodies

(Summit)

*. The Meeting of the Heads of State or Government of the Participating States (Summit) is the highest decision-making body of the OSCE, which takes decisions, sets priorities and provides orientation at the highest political level.

(Ministerial Council)

*. The Ministerial Council is the central decision-making and governing body of the OSCE. It may consider and take decisions on any issue relevant to the Organization.

(Permanent Council)

*. The Permanent Council is the regular decision-making body for political consultations and for governing the day-to-day work of the Organization.

(Forum for Security Co-operation)

*. The Forum for Security Co-operation is an autonomous decision-making body whose mandate and chair are set in relevant decisions of the Summit and the Ministerial Council.

(Subsidiary Bodies)

*. Subsidiary bodies may be set up in accordance with the Rules of Procedure.

Chapter [Executive bodies]

(Chairmanship-in-Office)

*. The Chairmanship-in-Office, as designated in accordance with the Rules of Procedure, chairs the decision-making bodies and the subsidiary bodies of the OSCE and is responsible, on behalf of the Ministerial Council and the Permanent Council, for co-ordination and consultation on current OSCE business.

*. In performing its functions, the Chairmanship-in-Office is assisted by the preceding and succeeding Chairmanships, operating together as a Troika.

(Secretary General)

*. The Secretary General is the Chief Administrative Officer of the OSCE and the Head of the OSCE Secretariat and is appointed by the Summit or Ministerial Council.

*. In performing his/her functions, the Secretary General acts in accordance with the OSCE decisions under the guidance of the Chairmanship-in-Office and is accountable to Participating States.

(Institutions)

*. The Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities and the Representative on Freedom of the Media are OSCE Institutions and perform their functions in accordance with the decisions of the Participating States.

*. The Summit or the Ministerial Council may amend the mandate of the Institutions and establish new Institutions.

*. The Heads of institution are appointed by the Ministerial Council.

(Field Operations)

*. The Ministerial Council or the Permanent Council may, subject to the agreement of the host country, set up OSCE field operations and decide their mandate and functioning.

*. The appointment of Heads of field operations is the responsibility of the

Chairmanship-in-Office.

Chapter

Parliamentary Assembly of the OSCE~~Autonomous Bodies~~

*. The Parliamentary Assembly of the OSCE (OSCE PA); is an autonomous institution composed of members of parliament from the OSCE Participating States. The modalities for the participation of the OSCE PA in the work of the OSCE decision-making and subsidiary bodies and in OSCE meetings are set out in the OSCE Rules of Procedure.

Chapter

OSCE Court of Conciliation and Arbitration

1973
*. The OSCE Court of Conciliation and Arbitration acts in accordance with the Convention on Conciliation and Arbitration within the Conference for Security and Co-operation in Europe.

Chapter

Partners for Co-operation and association

*. The Rules of Procedure shall provide modalities for Partners for Co-operation and other forms of association.

(TITLE: FINANCIAL PROVISIONS)

(Budget of the OSCE)

*. The OSCE activities shall be funded through the Unified Budget of the Organization and extra-budgetary contributions.

(Contributions)

*. The Participating States contribute to the Unified Budget of the OSCE in accordance with the scales of contributions decided by the Permanent Council.

(TITLE: FINAL PROVISIONS)

(Regulatory Framework)

*. The decision-making bodies shall ~~adopt~~ apply the Rules of Procedure of the OSCE and other regulations and rules required for the management of the OSCE.

(Privileges and immunities)

*. The privileges and immunities of the OSCE, its Officials and the Representatives of the Participating States are set forth in the Convention on the international legal personality, legal capacity, and privileges and immunities of the OSCE.

(Settlement of ^{disputes} disagreements)

*. In case of a ^{dispute} disagreement between two or more Participating States concerning the interpretation or application of this Document, that has not been settled through consultations, any of the Parties involved may raise the issue at the Permanent Council for consideration and, if necessary, the disagreement may be submitted to any other mode of peaceful settlement agreed upon between the Parties to the disagreement.

(Reservations)

*. No reservation may be made to this Document.

(Signature and Entry into Force)

*. This Document shall be open for signature, ratification, accession, acceptance or approval to all Signatories of the Helsinki Final Act of 1975.

*. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depository.

*. The Document shall enter into force on the thirtieth day following the receipt by the Depository of instruments of ratification, acceptance or approval by all those States which at the time of the adoption of the present Document were OSCE Participating States.

(Amendments)

*. The text of any proposed amendment to this Document shall be circulated to the Participating States through the OSCE Secretariat. The proposed amendments shall enter into force on the thirtieth day following their approval by the Ministerial Council.

(Denunciation)

*. Any State Party may denounce the present Document by means of a notification addressed to the Depository.

*. Such denunciation shall become effective one year after the date of receipt of the notification by the Depository.

(Depository)

*. The Secretary General of the OSCE is the depository of this Document.

DRAFT

Draft Convention on the International Legal Personality, Legal Capacity, and Privileges and Immunities of the OSCE, Final Document 22 October 2007 (OSCE Doc. CIO.GAL/48/07/Rev.6, 23 October 2007 = MC.DD/28/07, 29 November 2007)

**DRAFT ~~“CONVENTION PLUS”~~
~~[STATUTE] FOR THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE CONVENTION ON THE INTERNATIONAL LEGAL PERSONALITY, LEGAL CAPACITY, AND ITS PRIVILEGES AND IMMUNITIES OF THE OSCE~~**

Comment [IS1]: The terms do not prejudice the final name of the draft.

The States participating in the Organization for Security and Co-operation in Europe (OSCE) and Parties to the present ~~Convention~~[Statute],

[Preamble]

...

¶¹

Recognizing the need for the OSCE to possess international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes², and

Recognizing the need for the OSCE and its staff to enjoy such privileges and immunities as are necessary for the exercise of the functions and the fulfilment of the purposes of the OSCE,

Have agreed as follows:

**Article 1
Definitions**

For the purpose of the present ~~Convention~~[Statute]:

- (a) “OSCE” shall refer to the Organization for Security and Co-operation in Europe.
- (b) ~~“Participating Member States”~~ shall refer to ~~the OSCE participating States~~States Parties to the present [Statute].
- (c) ~~“States Parties Rules of Procedure”~~ shall refer to the ~~participating States for which the present Convention has entered into force in accordance with Article 22 below~~Rules of Procedure of the Organization for Security and Co-operation in Europe as adopted by the OSCE participating States on 1 November 2006 with such amendments which may be adopted subsequently.

¹ ~~Two delegations requested to insert as the first paragraph of the preamble [“Referring to the appropriate provisions of the OSCE Charter which require to define the privileges and immunities of the OSCE in a separate multilateral agreement.”];~~

² ~~Two delegations requested to insert [“as they are set forth in the OSCE Charter”].~~

(cd) “Representatives of ~~participating-Member States~~” shall refer to ~~participating-Member States~~’ delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

(de) “Permanent Representations” shall refer to the Permanent Representations of the ~~participating-Member States~~ to the OSCE.

(ef) “Institutions” shall refer to the Office for Democratic Institutions and Human Rights (ODIHR), the Office of the High Commissioner on National Minorities (HCNM), the Office of the Representative on Freedom of the Media (FOM) and any other institution established by OSCE decision-making bodies.

(g) “Field Operations” shall refer to the OSCE Field Operations, including OSCE Missions, Centres, Presences, Offices, Project Co-ordinators and other types of field operations established by OSCE decision-making bodies.

(h) “Secretary General” shall refer to the Secretary General of the OSCE.

(i) “Members of the Secretariat and Institutions” shall refer to the Secretary General, the Heads of Institution, as well as to the staff members of the OSCE Secretariat and Institutions, but shall not include persons who are locally recruited and receive an hourly or daily rate of pay.

(j) “Members of Field Operations” shall refer to staff members of Field Operations, including the Heads of Mission, but shall not include persons who are locally recruited and receive an hourly or daily rate of pay.

(k) “Other Persons Performing Tasks of the OSCE” shall refer to:

- i) OSCE experts on mission;
- ii) representatives of the OSCE Chairmanship-in-Office;

but shall not include persons who are locally recruited and receive an hourly or daily rate of pay.

For the purposes of the present Convention, members of the OSCE Parliamentary Assembly, as well as officials of its secretariat, taking part in the work of the OSCE as identified by the OSCE Chairman-in-Office, shall be treated as Other Persons Performing Tasks of the OSCE.

(l) “Premises of the OSCE” shall refer to the buildings, parts of buildings and the land, including installations, facilities made available, maintained, occupied or used by the OSCE in connection with its functions and purposes.

Article 2 **Principles, objectives and functions of the OSCE**

1. The OSCE is a regional international organization.

2. The principles, objectives and functions of the OSCE are set out in the Helsinki Final Act of 1975 and subsequent OSCE commitments.

Article 3 **Structure of the OSCE**

1. The decision-making organs of the OSCE are the Meeting of the Heads of State or Government of the Member States (Summit), the Ministerial Council, the Permanent Council and the Forum for Security Co-operation.

2. The Member States may establish new decision-making organs, abolish or merge existing decision-making organs.

3. Subsidiary organs may be set up in accordance with the Rules of Procedure.

Article 42 **OSCE Decision-Making Process, OSCE Commitments**

1. Nothing in the present Convention shall affect the OSCE decision-making process. The OSCE decisions are adopted by consensus, unless otherwise stipulated in the Rules of Procedure.

2. Nothing in the present ~~Convention~~ [Statute] shall be construed to create any legal obligation for any Member State ~~Party~~ other than the obligations expressly set forth herein, nor shall anything in the present ~~Convention~~ [Statute] affect the political, non-legally binding character of the OSCE commitments of the ~~participating~~ Member States.

Article 53 **International Legal Personality**

The OSCE shall possess international legal personality.

Article 64 **Legal Capacity**

The OSCE shall possess such legal capacity as is necessary for the exercise of its functions³, including the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and participate in legal proceedings.

Article 75 **OSCE Premises, Property and Assets**

1. The premises of the OSCE shall be inviolable.

³ ~~Two delegations requested to insert ["as they are set forth in the OSCE Charter"]~~.

2. The property of the OSCE and its assets, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action, except insofar as in any particular case it has expressly waived its immunity.

Article ~~86~~
Archives of the OSCE

The archives of the OSCE, and in general all documents belonging to it or held by it, shall be inviolable wherever located and by whomsoever held.

Article ~~97~~
Immunity from Jurisdiction and Execution

1. The OSCE, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from any form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that such waiver of immunity does not extend to any measure of execution, for which a separate waiver shall be necessary.

2. The OSCE shall have insurance coverage against third party risks in respect of vehicles owned or operated by it, as required by the laws and regulations of the State where the vehicle is operated.

Article ~~108~~
Tax Exemptions

1. The OSCE, its assets, income and other property shall be exempt from all direct taxes; it being understood, however, that the OSCE shall not claim exemption from taxes which are, in fact, no more than charges for public utility services.

2. Where goods or services of substantial value necessary for the exercise of the functions of the OSCE are purchased, and when the price of such goods and services includes taxes or duties, the Member State ~~Party~~ that has levied taxes or duties shall grant, whenever possible, exemption or provide reimbursement of the amount of duty or tax.

Article ~~119~~
Customs Privileges

The OSCE, its assets, income and other property shall be exempt from customs duties on imports and exports in respect of articles imported or exported by the OSCE for its official use; it being understood, however, that articles imported under such exemption shall not be sold, leased or given away in the territory of the Member State ~~Party~~ into which they were imported except under conditions agreed with the competent authorities of that Member State ~~Party~~.

Article 120
Financial Controls

Without being restricted by financial controls, regulations or moratoria of any kind, the OSCE shall be:

- (a) able to hold funds and keep accounts in all currencies to the extent necessary for the exercise of operations corresponding to its functions;
- (b) free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into another currency.

Article 131
Facilities in Respect of Communications

1. For the purpose of its official communications and correspondence, the OSCE shall enjoy in the territory of each Member State-Party, treatment not less favourable than that which the Member State-Party accords to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.
2. The OSCE may use all appropriate means of communication and make use of codes or cipher for its official communications or correspondence. The official communications and correspondence of the OSCE shall be inviolable.
3. No censorship shall be applied to the official communications and correspondence of the OSCE.
4. The OSCE Secretariat, Institutions and Field Operations shall have the right to dispatch and receive correspondence and other materials or communications amongst themselves by courier or in sealed bags, which shall have the same privileges, immunities and facilities as diplomatic couriers and bags.

Article 142
Flags and Symbols

The OSCE and representatives of the OSCE Chairmanship-in-Office shall have the right to use OSCE symbols and flags for official purposes, on their premises and vehicles.

Article 153
Permanent Representations

Member States-Parties in whose territory Permanent Representations are located shall accord diplomatic privileges and immunities in conformity with the Vienna Convention on Diplomatic Relations of 1961 to those representations and the members of their staff.

Article 164
Representatives of Participating Member States

1. Representatives of participating Member States attending OSCE meetings or taking part in the work of the OSCE shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

(a) Immunity from personal arrest or detention.

(b) Immunity from legal process, even after they are no longer the Representatives of participating Member States, in respect of words spoken or written and all acts performed by them in their capacity as representatives.

(c) Inviolability for all papers and documents in whatever form.

(d) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and alien registration or national service obligations in the Member State they are visiting or through which they are passing in the exercise of their functions.

(e) The same privileges in respect of currency and exchange facilities as are accorded to diplomatic agents of foreign States.

(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents of foreign States.

(g) The right to use codes and to receive papers or correspondence by courier or in sealed bags.

2. Applications for visas, where required, from Representatives of participating Member States attending OSCE meetings or taking part in the work of the OSCE, shall be dealt with as speedily as possible.

3. The provisions of paragraph 1 above shall not apply as between a representative and the State of which he or she is or has been the representative.

Article 175
Members of the Secretariat and Institutions

1. Members of the Secretariat and Institutions shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded:

(a) Immunity from legal process, even after the termination of their appointment with the OSCE, in respect of words spoken or written and all acts performed by them in their official capacity.

(b) Inviolability for all papers and documents in whatever form.

(c) Exemption from taxation on the salaries, allowances and other emoluments paid to them by the OSCE provided that these incomes are subject to a staff assessment for the benefit of the OSCE. However, States Parties may take these incomes into account in calculating the amount of tax to be levied on the taxable income originating from other sources.

(d) Exemption from the social security regulations of the host State as well as from all compulsory contributions to national social security schemes of any other Member State Party, provided that they are covered by the social security scheme of the OSCE. This exemption does not preclude any voluntary participation in a national social security scheme in accordance with the law of the Member State-Party concerned neither does it require a Member State-Party to make payments of benefits under social security schemes to Members of the Secretariat and Institutions who are exempt under the provision of this sub-paragraph.

(e) Exemption from national service obligations.

(f) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and alien registration. Applications for visas, where required, shall be dealt with as speedily as possible.

(g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

(h) The same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions established in the Member State-Party concerned.

(i) The same repatriation facilities in time of international crisis as diplomatic agents, in respect of themselves and their spouses and relatives dependent on them.

(j) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.

2. Member States-Parties shall not be obliged to accord to their own nationals or permanent residents the privileges and immunities referred to under paragraph 1, except those granted under item (a) for acts performed in their official capacity. Member States-Parties which do not grant exemption from taxation under their national law shall consider concluding an agreement with the OSCE for the reimbursement of national income tax paid to them by the Members of the Secretariat and Institutions.

3. In addition to the privileges and immunities specified in paragraph 1 above, the Secretary General shall be accorded in respect of him/herself, his/her spouse and relatives dependent on him/her the privileges and immunities, exemptions and facilities accorded to heads of diplomatic missions in accordance with international law. The same shall apply to the Heads of Institution in respect of themselves, their spouses and relatives dependent on them in the country of their duty station.

Article 186
Members of Field Operations

1. Members of Field Operations shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions during the period of their mission. In particular, in the Member State-Party in which the Field Operation is established, and in other Member States Parties when travelling in connection with their duties, they shall be accorded:

- (a) Immunity from personal arrest or detention.
- (b) Immunity from legal process, even after the termination of their appointment with the OSCE, in respect of words spoken or written and all acts performed by them in their official capacity.
- (c) Inviolability for all papers and documents in whatever form.
- (d) Exemption from taxation on the salaries, allowances and other emoluments paid to them by the OSCE provided that these incomes are subject to a staff assessment for the benefit of the OSCE. However, States Parties may take these incomes into account in calculating the amount of tax to be levied on the taxable income originating from other sources.
- (e) Exemption from the social security regulations of the host State as well as from all compulsory contributions to national social security schemes of any other Member State Party, provided that they are covered by the social security scheme of the OSCE. This exemption does not preclude any voluntary participation in a national social security scheme in accordance with the law of the Member State-Party concerned neither does it require a Member State-Party to make payments of benefits under social security schemes to Members of Field Operations who are exempt under the provision of this subparagraph.
- (f) Exemption from national service obligations.
- (g) Exemption in respect of themselves and their spouses and relatives dependent on them from immigration restrictions and alien registration. Applications for visas, where required, shall be dealt with as speedily as possible.
- (h) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.
- (i) The same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions established in the Member State-Party concerned.
- (j) The same repatriation facilities in times of international crises as diplomatic agents, in respect of themselves and their spouses and relatives dependent on them.

(k) The right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to export the same free of duty when they leave their post.

2. ~~Member States-Parties~~ shall not be obliged to accord to their own nationals or permanent residents the privileges and immunities referred to under paragraph 1, except those granted under items (a) and (b) for acts performed in their official capacity. ~~Member States-Parties~~ which do not grant exemption from taxation under their national law shall consider concluding an agreement with the OSCE for the reimbursement of national income tax paid to them by Members of Field Operations.

3. In addition to the privileges and immunities specified in paragraph 1 above, the Heads of Mission shall be accorded in respect of themselves, their spouses and relatives dependent on them in the country of their duty station the privileges and immunities, exemptions and facilities accorded to heads of diplomatic missions in accordance with international law.

Article 197 **Other Persons Performing Tasks of the OSCE**

1. Other Persons Performing Tasks of the OSCE shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

(a) Immunity from personal arrest or detention.

(b) Immunity from legal process, even after the termination of their appointment with the OSCE, in respect of words spoken or written and all acts performed by them in their official capacity.

(c) Inviolability for all papers and documents in whatever form.

(d) For the purpose of their communications with the OSCE, the right to use codes and to receive papers or correspondence by courier or in sealed bags.

(e) Exemption from the social security regulations of the host State as well as from all compulsory contributions to national security schemes of any other State Party, provided that they are covered by the social security scheme of the OSCE. This exemption does not preclude any voluntary participation in a national social security scheme in accordance with the law of the State Party concerned neither does it require a State Party to make payments of benefits under social security schemes to Other Persons Performing Tasks of the OSCE who are exempt under the provision of this sub-paragraph.

(f) Exemption from immigration restrictions and alien registration. Applications for visas, where required, shall be dealt with as speedily as possible.

(g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

(h) The same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions.

(i) The same repatriation facilities in time of international crisis as diplomatic agents.

2. States Parties shall not be obliged to accord to their own nationals or permanent residents the privileges and immunities referred to under paragraph 1 (a) except for acts performed in their official capacity, and paragraph 1 (e) to (i).

Article 2018 **Waiver of Immunities**

1. Privileges and immunities are accorded not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions and in the interest of the OSCE.

2. The OSCE shall co-operate at all times with the appropriate authorities of the participating Member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Convention.

3. A participating Member State not only has the right, but is under a duty to waive the immunity of its representative in any case where in its opinion the immunity would impede the course of justice and it can be waived without prejudice to the purpose for which the immunity is accorded.

4. Where the immunity would impede the course of justice and it can be waived without prejudice to the functioning of the OSCE, the following authorities shall have the right and the duty to waive immunities:

(a) The Permanent Council upon request of the Secretary General with respect to the OSCE.

(b) The OSCE Chairman-in-Office with respect to the Secretary General, the Heads of Institution, and the Heads of Mission and their deputies.

(c) The Secretary General in consultation with the OSCE Chairman-in-Office with respect to Members of the Secretariat and Institutions and Members of Field Operations other than those falling under (b).

(d) The OSCE Chairman-in-Office with respect to his/her representatives.

(e) The Secretary General with respect to Other Persons Performing Tasks of the OSCE other than those falling under (d), (f) and (g).

(f) The OSCE Chairman-in-Office upon request of the Standing Committee of the OSCE Parliamentary Assembly with respect to the members of the OSCE Parliamentary Assembly and the Secretary General of the OSCE Parliamentary Assembly.

(g) The OSCE Chairman-in-Office upon request of the Secretary General of the OSCE Parliamentary Assembly with respect to the other officials of its secretariat.

Article 219 **OSCE Identity Cards**

In order to assist Member States ~~Parties~~ in identifying individuals who are entitled to privileges and immunities set forth in this Convention ~~[Statute]~~, the OSCE may issue an OSCE Identity Card to persons entitled to such privileges and immunities. The document, which shall not substitute for ordinary travel documents, shall be issued in accordance with the form set out in Annex A and will entitle the bearer to the treatment specified herein.

Article 220 **Settlement of Disputes**

The OSCE shall make provisions for appropriate modes of settlement of:

(a) Disputes arising out of contracts or other disputes of a private law character to which the OSCE is a party, in circumstances where the waiver of immunity of the OSCE is not exercised by the Secretary General.

(b) Disputes involving Members of the Secretariat and Institutions, Members of Field Operations or Other Persons Performing Tasks of the OSCE, who by reason of their official position enjoy immunity, if immunity has not been waived.

Article 231 **Settlement of Disputes concerning the Convention ~~[Statute]~~**

Disputes concerning the interpretation or application of the present Convention ~~[Statute]~~ shall be settled by consultations or any other mode of settlement agreed on between the OSCE and the Member State(s) ~~Party(ies)~~ or between the Member States ~~Parties~~ involved in the dispute.

Article 242 **Signature and Entry into Force**

1. The present Convention ~~[Statute]~~ shall be open for signature at ... by all ~~participating Member~~ States until ~~....it enters into force.~~ It shall be subject to ratification, acceptance or approval.

2. The ~~participating Member~~ States which have not signed the present Convention ~~[Statute]~~ may subsequently accede thereto.

3. The present Convention ~~[Statute]~~ shall enter into force sixty days after the date of deposit of the instruments of ratification, acceptance ~~or~~ approval ~~or accession~~ by ~~two thirds of the participating all Member~~ States.

~~4. After entry into force of the present [Statute], a State may, upon invitation by an OSCE decision-making organ, become a Member State after accession to the [Statute].~~

~~45. For every participating a State which ratifies, accepts, approves or accedinges to the present Convention[Statute] after the date of its entry into force, the present Convention[Statute] shall enter into force sixty days after the date of deposit of its instrument of ratification, acceptance, approval or accession.~~

5. The Secretary General shall serve as depositary of the present ~~Convention~~[Statute].

Article 253

Provisional Application of the present ~~Convention~~[Statute]

A ~~participating~~ Member State may declare at any time that it will apply the present ~~Convention~~[Statute] provisionally until it enters into force for it in accordance with paragraphs 3 and ~~4-5~~ of Article ~~252~~.

Article 264

Amendments

1. Any ~~Member State~~ Party may, by written communication addressed to the depositary, propose amendments to the present ~~Convention~~[Statute]. The depositary shall circulate this communication to all ~~Member States~~ Parties.

2. If, within ninety days from the date of circulation of the proposal for amendments, one third of the ~~Member States~~ Parties notify the depositary that they agree to convene a conference of the ~~Member States~~ Parties to consider that proposal, the depositary shall convene such a conference. The text of any amendment adopted by the conference shall be forwarded by the depositary to ~~the Member States~~ Parties for acceptance in accordance with their respective constitutional requirements.

3. Any such amendment shall come into force on the sixtieth day after all ~~Member States~~ Parties have notified the depositary of their acceptance thereof.

4. States Parties acceding to the ~~Convention~~[Statute] after any amendments thereto have entered into force shall be deemed to have acceded to the present ~~Convention~~[Statute] as amended.

Article 275

Denunciation

1. Any ~~Member State~~ Party may, at any time, denounce the present ~~Convention~~[Statute] by means of a notification addressed to the depositary.

2. Such denunciation shall become effective one year after the date of receipt of the notification by the depositary.

Done at ... on ... in the English, French, German, Italian, Russian and Spanish languages, all six language versions being equally authentic.

ANNEX A

OSCE IDENTITY CARD

Name:

Surname:

Date of Birth:

National of:

Holder of passport/diplomatic passport no. ..., issued on ..., by ...

The Organization for Security and Co-operation in Europe requests all those whom it may concern to extend to the bearer the courtesies, facilities, privileges and immunities which pertains to the bearer's office, and to facilitate by all suitable means the journey and mission on which the bearer is engaged. It is hereby certified that the person named in the present document is on official business of the Organization for Security and Co-operation in Europe ("OSCE") during the period from ... to ... in the following OSCE participating State(s)

This OSCE Identity Card is issued under the authority of Article 22 of the [Statute] for the Organization for Security and Co-operation in Europe, and its Privileges and Immunities and entitles the bearer to the privileges and immunities specified therein and reproduced in pages ...-... of the present document.~~The OSCE hereby requests all whom it may concern that the person named herein:~~

~~be allowed to pass without delay or hindrance,~~

~~in case of need be accorded all necessary lawful assistance and protection.~~

~~This document does not replace travel documents that may be required for entry or exit shall not substitute for ordinary travel documents.~~

Issued in ... on ... by ... (relevant OSCE authority)

Signature:

Title:

Note: The document will be issued in the six official OSCE languages. It will also contain a translation into the language or languages of the country or countries which the holder of the document will visit as well as a translation into the language or languages used by those military or police forces which might be present in the area of the duty travel.

Comment [IS2]: This is the language used in Art. 21 of the [Statute], which is the legal basis for issuing the OSCE Identity Card

Vienna, 2 October 2014

Excellencies,
Dear Colleagues,

We are pleased to announce that the third meeting this year of the **open-ended Informal Working Group on Strengthening the Legal Framework of the OSCE (IWG)** will be held on **Wednesday 15 October 2014**, from **09:30 until 12:45**, in the **Ratsaal** of the Hofburg.

The meeting of the IWG will be chaired by Ambassador John Bernhard, Special Adviser to the Chairmanship for the Legal Framework of the OSCE.

Building on the presentations and exchange of views at the last meeting of the IWG on 11 July 2014, this meeting will continue discussions of the possible options for achieving concrete progress towards the strengthening of the legal framework of the OSCE. Particular emphasis will be placed on presenting and discussing the two most recent proposals, viz. a Chairmanship non-paper concerning the text of a possible "Convention Plus" or an "OSCE Statute", and a non-paper regarding the sixth option suggested at the last meeting. Both documents are attached to this invitation letter. For the remaining four options, kindly refer to the documentation provided for the last IWG meeting (CIO.GAL/108/14, 30 June 2014).

The discussion of the options and proposals for the way forward will again be supplemented by an update on the operational consequences of the lack of a clear legal status for the OSCE. In addition, there will be a short summary provided about the Chairmanship Conference on Local Staff Income Tax, held in Vienna on 2 September 2014, as well as a first feedback from the Survey of National Implementation Measures (CIO.GAL/152/14).

Last but not least, under "Any other business" it will be briefly discussed how the work on Strengthening the Legal Framework of the OSCE can be organized for the remainder of the year.

Yours sincerely,



Ambassador Thomas Greminger
Chairperson of the OSCE Permanent Council

Attachments

1. Chairmanship non-paper on a possible "Convention Plus" or "OSCE Statute"
2. Non-paper on the 6th option

6th Option: Participating States may sign and ratify the Draft Convention as a means of implementing the commitments made in the 1993 Rome Ministerial Decision without further Ministerial action.

The 1993 Rome Ministerial Decision articulated the participating States' consensus on the need to provide privileges and immunities for the OSCE and its personnel and their commitment to do so. A uniform method of implementation was not required. The Rome Decision left it up to each participating State to determine the best means for meeting its commitment, and the 14 participating States that have done so to date have not done so in a uniform fashion.

If any of the remaining participating States should now decide to meet their 1993 commitment by means of an international agreement with like-minded participating States, no additional Ministerial action would be required. Similarly, if any participating State that has previously amended its domestic law to meet its 1993 commitment now wishes to update that implementation through entry into an international agreement with others, it is equally free to do so.

Most participating States agree that adoption of the 2007 Draft Convention on the International Legal Personality, Legal Capacity, and Privileges and Immunities of the OSCE, without footnotes, would fulfill their 1993 commitments and effectively address the pressing needs of the Organization. Unfortunately, it appears that consensus on adopting the Draft Convention, at least at this point in time, is not a practical possibility.

Because each participating State has an ongoing duty to meet its 1993 commitment, because an international agreement is an acceptable means of fulfilling that commitment, and because the Draft Convention, without footnotes, provides effective means for doing so, any participating State may enter into the Draft Convention now with as many other participating States as wish to do so. Those participating States that find the Draft Convention problematic – for whatever reason – are of course under no compulsion to become a party and remain free to meet their 1993 commitment in some other fashion.