

*Court of Conciliation and Arbitration
within the OSCE*

PERIODIC REPORT
2017 – 2019

to the States parties to the
Convention on Conciliation and Arbitration
within the OSCE

Periodic Report 2017 – 2019

General Observations

The Court of Conciliation and Arbitration within the OSCE, based on the Stockholm Convention of 1992, became operative in 1995 after elections for its Bureau had been successfully conducted. Given the international prestige of its first President, the former French Minister of Justice Robert Badinter, it was hoped that the new body for the settlement of international disputes would soon be entrusted by the OSCE participating States with taking care of any divergences that might arise between them. As a look back to the history of the past 24 years shows, however, this expectation has not materialized. Even during the last mandate of its Bureau members from 2013 to 2019, the services of the Court were not requested. The Court still waits to receive its first case. This situation might be considered to be good news as an indicator of the current peacefulness of the relations between the European States. On the other hand, the total lack of recourse to the Court may also be considered as a symptom of a crisis situation. In fact, conflicts have not totally disappeared from the European continent. It is true that some of the States that live with their neighbours in troubled relationships and that accordingly might benefit from the assistance of a neutral third party like the Court, have hitherto failed to ratify the Stockholm Convention and do not seem to be willing to join the group of 34 that has gathered under the Convention. On the other hand, the States parties, too, have demonstrated a clear reluctance to make use of the Court. Why does that discrepancy exist?

Obviously, inter-State relations, due to their very nature, are generally determined by a vast array of factors. Rarely is it possible to identify just one paramount element. The Bureau of the Court felt that it should on its part contribute to overcoming the present impasse by analyzing its own structure and procedures, providing the confidence that any conflict brought before it would be assessed with the utmost care under one of the procedures which the Court is called upon to handle, conciliation and arbitration. Since conciliation was little used in the last decades, it was found that this specific mode of settlement, because of its straightforward simplicity, deserves more attention than had been given to it in recent diplomatic practice. Consequently, a specific outreach activity was initiated particularly with an eye on diplomatic practitioners and scholars active in the field of international dispute settlement. Two colloquia were held on conciliation in order above all to allay the fears related to that procedure. The first colloquium was held in Vienna in May 2015, with a publication of the materials in 2016/17, and a second colloquium in Geneva in October 2018 that sought to enlarge and deepen the insights gained at the earlier meeting. The publication process for the new book was not yet finalized when this report was published in November 2019.

During its mandate, the Court deliberately refrained from establishing direct conversations with governments with a view to propagating the assistance which the Court might provide in conflictual situations. A judicial body or even a conciliatory institution can easily be criticized for taking initiatives from outside that eventually might compromise the position of a neutral and impartial third party. On the other hand, informal talks were not totally avoided. Unfortunately, although many interlocutors indicated to members of the Bureau that indeed controversial situations suitable for examination by the Court existed in many fields, political reasons were mostly mentioned as impediments that prevented any concrete reflection on submitting a dispute to it. Lastly, it should be mentioned that manifold contacts with the OSCE Secretariat in

Vienna were maintained. The Court is particularly grateful to the Secretary General of the Organization for having provided it with logistic facilities for its Bureau meetings and meetings with the representatives of the relevant States parties and participating States.

As a consequence of what was expounded above, this report has only a limited scope. It cannot enunciate far-reaching initiatives. A Court is not a political body that can acquire for itself new fields of activity. Its legal foundation, the Stockholm Convention, assigns to it its functions which it cannot enlarge and which it is required to perform according to what the relevant rules specify.

At the end of their terms of office in October 2019, having discharged their mandates to the best of their abilities, the members of the Bureau of the Court continue to nourish the hope that governments will sooner or later come to the conclusion that an independent and disinterested body for the settlement of disputes, as it is available at the European level for all States parties to the Stockholm Convention and could even be resorted to by other OSCE participating States, constitutes a most valuable asset whose benefits should not be ignored or downplayed. The Court continues to offer its services in the common interest of the States that through the OSCE have made a firm pledge for peace, security and human rights in Europe.

*The Bureau of the Court of Conciliation and Arbitration within the OSCE,
from October 2013 to October 2019:*

Christian Tomuschat, President

Kimmo Kiljunen (Vice-President), Päivi Hirvelä, Riccardo Pisillo Mazzeschi and Daniel Thürer (*members*); Oskaras Jusys, Vanda Lamm and Anna Wyrozumska (*alternate members*)

Periodic Report - 2017 - 2019

Introductory Remarks

The present report covering the years 2017 – 2019 follows up on the previous activity report and is released under the responsibility of the Bureau of the Court headed by President Tomuschat, whose term of office came to expiry in October 2019. The report is meant to give an account of the activities that were carried out during the past three years and to present an overview of current affairs including institutional and financial matters.

Activities

Release of the Publication “Conciliation in International Law – The OSCE Court of Conciliation and Arbitration”

The volume, edited by Prof. Christian Tomuschat, Prof. Riccardo Pisillo Mazzeschi and Prof. Daniel Thürer, collects the materials underlying the International Colloquium “Conciliation in the Globalized World of Today” held in June 2015 in Vienna under the auspices of the Court of Conciliation and Arbitration within the OSCE. It was released in December 2016 by the publisher Brill / Nijhoff. The aim of the Colloquium was to examine the merits and possible shortcomings of this method of conflict resolution, and it concluded that the advantages heavily outweigh the weaknesses. This volume therefore draws the attention of everyone dealing with conflict management to those advantages (cf. Periodic Report 2013-2016). Given the importance of the subject, the Bureau of the Court had decided to widely disseminate the knowledge and expertise contained in this volume. Therefore, it was distributed to Legal Advisors and Permanent Representatives of the States parties, Legal Advisors of OSCE participating States and Senior Officials of the OSCE Secretariat.

Book Launch – University of Vienna

The volume on conciliation in international law previously mentioned was presented at a book launch on 20 March 2017 at the University of Vienna. The event was hosted by Professor August Reinisch, Professor of International Law. The programme featured introductory remarks by Ambassador Dr. Helmut Tichy, Head of the Legal Department, Federal Ministry for Europe, Integration and Foreign Affairs of Austria and presentations by Professor Tomuschat and Professor Thürer. The book launch was attended by Representatives of Permanent Delegations to the OSCE, staff members of the OSCE Secretariat, and scholars and students of the Faculty of Law of the University of Vienna.

Colloquium “Effectiveness through Flexible Procedures – International Conciliation in a Wider Context” - October 2018 – Geneva

Given the successful outcome of the first colloquium held in Vienna in 2015, the Bureau of the Court decided to address once again the subject of conciliation in international law with the aim to reach out to academia and the international community. The colloquium entitled “Effectiveness through Flexible Procedures – International Conciliation in a Wider Context”, held on 11 and 12 October 2018 in Geneva, was organised in cooperation with the Graduate Institute of International and Development Studies. It was designed as another step to bring once again to the attention of the OSCE participating States the existence of the Court as an institution established to settle any arising disputes among them under specific European auspices. The theory and practice of conciliation procedures in different international contexts were analysed by well-renowned legal experts. As a follow-up to the previous colloquium that focused on emerging trends in conciliation, the scope of this colloquium was enlarged in many respects, in particular by extending the research to Africa and Latin America and analysing furthermore the recent conciliation procedure between Australia and Timor-Leste. One of the main lessons to be drawn from the reports and the ensuing discussions was the recognition that successful conciliation requires flexible procedures that remain within adequate time limits.

The findings and the outcome of the research presented will be published in a volume to be released at the beginning of 2020. It should represent an encouraging signal to the OSCE community to activate the mechanisms for peaceful settlement of disputes provided by the Convention on Conciliation and Arbitration within the OSCE.

The colloquium was entirely sponsored by voluntary contributions provided by Germany, Italy, Liechtenstein and Switzerland.

Speakers included:

- Prof. em. Emmanuel Decaux (Université II, Panthéon-Assas)
- Prof. Malgosia Fitzmaurice (Queen Mary University of London)
- Prof. Serena Forlati (University of Ferrara)
- Ambassador Daniel Klingele (Swiss Federal Department of Foreign Affairs)
- Prof. Marcelo Kohen (Graduate Institute of International and Development Studies)
- Prof. Makane Mbengue (University of Geneva and Sciences Po Paris)
- Prof. Riccardo Pisillo Mazzeschi (University of Siena, Member of the Bureau)
- Prof. Pál Sonnevend (University of Budapest)
- Prof. em. Heinhard Steiger (University of Giessen)
- Prof. em. Daniel Thürer (University of Zürich, Member of the Bureau)
- Prof. em. Christian Tomuschat (Humboldt University Berlin, President of the Court)
- Prof. Jorge Viñuales (University of Cambridge and Graduate Institute of International and Development Studies)

The colloquium was attended by Representatives of Permanent Delegations to the UN and other international organisations in Geneva, staff members of UN agencies and non-governmental organisations as well as by academic members and students of the Graduate Institute. The programme offered space for a stimulating debate between speakers and the public on various aspects of conciliation procedures as provided in different treaties and other legal frameworks.

Visit in Stockholm - Meeting with Representatives of the Depositary State

The Ministry of Foreign Affairs of Sweden, in its capacity as Depositary State, had invited President Tomuschat and Ms. Christa Allot (Executive Officer) to Stockholm for a meeting that took place on 24 April 2019 in order to discuss current affairs of the Court and in particular the election procedure of a new Bureau of the Court, whose mandate came to expiry in October 2019.

The visit offered a constructive exchange with Ambassador Elinor Hammarskjöld (Director-General for Legal Affairs) and Ambassador Marie Jacobsson (Principal Legal Adviser on International Law) and team members of the Department for International Law, Human Rights and Treaty Law. During the discussion, Ambassadors Hammarskjöld and Jacobsson highlighted the support of Sweden as Depositary State. The topic of a possible meeting with the States parties was furthermore approached.

The meeting also allowed to clarify practical aspects in relation with the election procedure of the new President of the Court and the other members of the Bureau (cf. election of a new Bureau – page 7/8).

Institutional Matters

Recent Appointment of Members of the Court / Renewal of Mandates

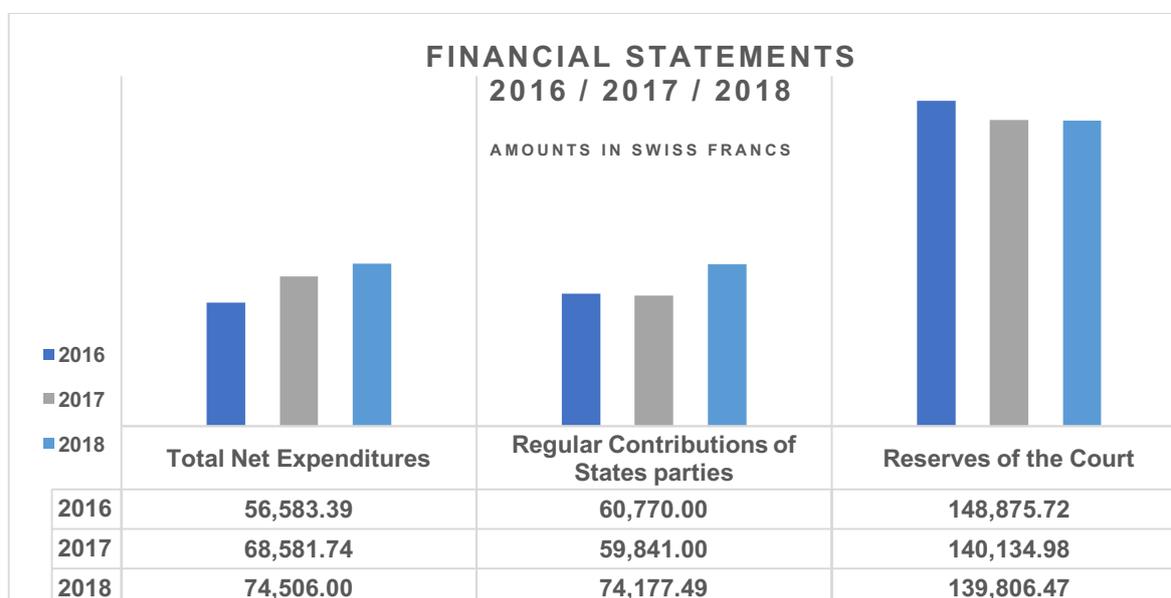
Between February and August 2019, several States parties concerned by the expiry of the mandates of their members have proceeded to make appointments. Accordingly, the following States parties have renewed the mandates of their conciliators, arbitrators and their alternates or, alternatively, have appointed new members: **Albania, Cyprus, Denmark, Finland, France, Germany, Hungary, Italy, Latvia, Luxembourg, Poland, Slovenia, and Switzerland.**

The list with the names of the conciliators, arbitrators and their alternates appointed by the latter can be found in Appendix I.

The exhaustive and regularly up-dated list of appointed members and alternate members is available on the Court's webpage: [osce.org/cca](https://www.osce.org/cca)

Financial and Administrative Matters

Overview of the Financial Statement for the Years 2016, 2017 and 2018 – Key Results



The detailed financial statements for the financial years 2016, 2017 and 2018, approved by the Bureau of the Court, were transmitted to the States parties, along with the report of the auditors, Bonnefous Auditors SA, Geneva.

In 2016 and 2017, the Court made a request for an annual contribution of CHF 60'000. Given the increased reach-out activities of the Court and in order to safeguard the reserves of the Court, the annual budget was increased in 2017 to CHF 75'000.

The Court strives to keep its operational costs as low as possible. The administrative structure is kept at a strict minimum with one permanent employee working part-time. Equally, the travel expenses were limited to the attendance of the Bureau to the events organised by the Court and the annual meetings that took place on the same occasions. As a reminder, it is mentioned that the President and the members of the Bureau were fulfilling their functions on a purely honorary basis.

Voluntary contributions received by Germany, Liechtenstein, Italy and Switzerland made it possible to organise the colloquium held in 2018 in Geneva. The Court received a total amount of CHF 20'175, which allowed to fully cover the costs of the event.

It has also to be recalled that the Swiss Confederation as the Host State of the Court provides a continuous support by providing office spaces for free. The Court benefits of two offices and a shared conference room, located in a modern building, close to the *Place des Nations*, at the heart of International Geneva.

New Bureau of the Court

The mandate of the Bureau headed by President Tomuschat came to expiry in October 2019. Accordingly, the Court proceeded with the election of a new Bureau for a new legislative period of six years.

The elections were set up in a written procedure, in accordance with the provisions of Article 7 of the Stockholm Convention and Article 9 of the Rules of Procedure of the Court.

As a first step, the appointed members of the Court were invited to announce their nominations of candidates for President of the Court and/or membership of the Bureau to the Depositary State. Once the list of candidates was established, the members were then invited to cast their votes.

The voting process for the President of the Court and for membership of the Bureau took place in one round. In addition of casting their vote for President of the Court among the nominated candidates, the appointed conciliators and arbitrators were invited to elect two members and two alternate members from among their groups. The two candidates obtaining the highest number of votes were elected as members, the two candidates following them in the number of votes obtained as alternate members.

The election procedure generated vivid interest among the members of the Court entitled to take part in the election. Nominations included 3 candidates for President of the Court, 22 candidates for membership of the Bureau, of which 16 candidates from among the conciliators and 6 from among the arbitrators. A representative of the Ministry of Foreign Affairs of Sweden confirmed the ballot counting and the results of the election, as follows:

President of the Court:

Emmanuel DECAUX (France), conciliator
Professor emeritus, University of Paris II - Panthéon-Assas

Vice-President of the Court:

Erkki KOURULA (Finland), arbitrator
Former Judge at the International Criminal Court

Members:

from among the conciliators

Riccardo PISILLO MAZZESCHI (Italy)
Professor emeritus, University of Siena

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

from among the arbitrators

Vasilka SANCIN (Slovenia)
Head of the Department of International Law,
University of Ljubljana

Alternate Members

from among the conciliators

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

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

from among the arbitrators

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

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

The newly elected Bureau met on 6 November 2019 in Vienna for a transition meeting. At this occasion, the members of the new Bureau elected Mr. Erkki Kourula as Vice-President.

Geneva, November 2019

Appendix I: List of the members of the Courts appointed in 2019

APPENDIX I

List of members and alternate members of the Court appointed in 2019
for a new mandate of six years

ALBANIA

Conciliators: Armand SKAPI
Secretary General
Ministry for Europe and Foreign Affairs of Albania

Etleva HAKA
Ministry for Europe and Foreign Affairs of Albania

Arbitrator: Bruna MINAROLLI
Ministry for Europe and Foreign Affairs of Albania

CYPRUS

Conciliators: Antonis R. LIATSOS
Justice of the Supreme Court of the Republic of Cyprus

Andreas JACOVIDES
Former Ambassador
International lawyer and consultant

Arbitrator: Yiasemis N. YIASEMI
Justice of the Supreme Court of the Republic of Cyprus

Alternate: Tefkros Th. ECONOMOU
Justice of the Supreme Court of the Republic of Cyprus

DENMARK

Conciliators: Jonas BERING LIISBERG
State Secretary for Foreign Policy
Ministry of Foreign Affairs

Peter TAKSØE-JENSEN
Ambassador

Arbitrator: Michael BRAAD
Ambassador
Director, Centre for Legal Services, Ministry of Foreign Affairs

Alternate: Tobias ELLING REHFELD
Ambassador

FINLAND

Conciliators: Kimmo KILJUNEN
Member of the Finnish Parliament

Sia SPILIOPOULOU ÅKERMARK
Associate Professor of International Law
Director, The Åland Islands Peace Institute

Arbitrator: Erkki KOURULA
Former Judge at the International Criminal Court

Alternate: Jan KLABBERS
Professor of International Law
University of Helsinki

FRANCE

Conciliators: Pierre BOUSSAROQUE
State Councillor
Deputy Legal Advisor, Ministry of Foreign Affairs

Emmanuel DECAUX
Professor Emeritus, Université Paris II, Panthéon-Assas
Former President and member of the UN Committee on
Enforced Disappearances

Arbitrator: Yves DAUDET
Professor Emeritus, Sorbonne Law School, Université Paris I,
Panthéon-Sorbonne
President of The Hague Academy of International Law

Alternate: Hervé ASCENSIO
Professor of Public International Law, Sorbonne Law School,
Université de Paris I, Panthéon-Sorbonne

GERMANY

Conciliators: Christian TOMUSCHAT
Professor emeritus
Faculty of Law, Humboldt University Berlin
Former President of the Court (October 2013 to October 2019)

Doris KÖNIG
Justice of the Federal Constitutional Court

Arbitrator: Silja VÖNEKY
Professor of Public International Law, Comparative Law and
Ethics of Law, Co-Director of the Institute for Public Law
University of Freiburg

Alternate: Christian WALTER
Chair of Public International Law and Public Law
Ludwig-Maximilians-Universität München

HUNGARY

Conciliators: Vanda LAMM
Professor, Institute of Legal Studies,
Hungarian Academy of Sciences

Pal SONNEVEND
Vice-Dean, Professor,
Faculty of Law, ELTE University of Budapest

Arbitrator: János BRUHÁCS
Professor Emeritus, Professor of International Law
University of Pécs

Alternate: László BLUTMAN
Professor, University of Szeged

ITALY

Conciliators: Riccardo PISILLO MAZZESCHI
Professor emeritus, University of Siena

Attila TANZI
Professor of International Law, University of Bologna

Arbitrator: Maria Chiara MALAGUTI
Professor of International Law,
Università Cattolica Sacro Cuore, Milano

Alternate: Ida CARACCIOLO
Professor of International Law, University of Napoli

LATVIA

Conciliators: Egils LEVITS
Former Deputy Prime Minister and Minister of Justice, Latvia
Judge at the Court of Justice of the European Communities

Mārtiņš PĀPARINSKIS
Reader in Public International Law, University College London

Arbitrator: Inga REINE
Judge at the General Court, Court of Justice of the European
Union

LUXEMBOURG

Conciliator: Michel REIFFERS
Vice-President of the Supreme Court of Luxembourg
Counsellor at the Constitutional Court

Arbitrator: Lynn SPIELMANN
Counsellor, Administrative Court, Luxembourg

Alternate: Annick EVERLING
Deputy Director, Justices of the Peace

POLAND

Conciliators:

Anna WYROZUMSKA
Professor, University of Lodz

Michał KOWALSKI
Professor, Jagiellonian University in Kraków

Arbitrator:

Roman KWIECIEŃ
Professor, Jagiellonian University in Kraków

Alternate:

Przemysław SAGANEK
Professor, Polish Academy of Science

SLOVENIA

Conciliators:

Verica TRSTENJAK
Former advocate general at the Court of Justice of the EU and
former judge at the General Court of the EU,
Professor of European Law, University of Vienna and
University of Ljubljana

Anton BEBLER
Professor Emeritus, Faculty of Social Sciences
University of Ljubljana

Arbitrator:

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

Alternate:

Jure VIDMAR
Professor of Public International Law,
University of Maastricht

SWITZERLAND

Conciliators:

Lucius CAFLISCH
Former Member of the International Law Commission of the
United Nations; former Judge at the European Court of Human
Rights; former Director of the Graduate Institute of International
Studies, Geneva

Daniel THÜRER
Consultant, Stiffler & Partner, Rechtsanwälte, Zürich
Professor emeritus, Faculty of Law, University of Zürich

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