

Court of Conciliation and Arbitration

Annual Report 2020



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

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FOREWORD

It is an honour for me to introduce the annual report of the Court for 2020, according to article 14 of the Stockholm Convention.

The current Members of the Bureau of the Court that were elected in October 2019 for a new mandate of six years combine change and continuity, with a spirit of collegiality in order to fulfil their duties and responsibilities. The various activities developed during the year 2020 translate the need to strengthen the visibility of the Court and the wish to demonstrate the diplomatic and legal potentialities of the Court within the OSCE.

Since my participation at the 1260th meeting of the Permanent Council of the OSCE in Vienna, on 27 February 2020, the pandemic has obviously impacted the programme of activities of the Court. The efforts of quiet diplomacy with other institutions and partners were put on hold, but thanks to video conferencing we were able to carry out our work of awareness raising.

The book "*Flexibility in International Dispute Settlement, Conciliation Revisited*," co-edited by President Christian Tomuschat, my predecessor, has been released in August 2020. The study examines conciliation in a wider context, including experiences outside Europe, in Africa and Asia. We hope that the publication will be a useful reference book for diplomats and legal advisers alike. A book launch webinar took place in November 2020 that gathered scholars and practitioners who commented the study and shared their experiences in the field of conciliation.

Another facet of our efforts is directed towards the younger generation and future jurists. A first moot court with a round of simulations of arbitral proceedings took place at the Law Faculty of the University of Ljubljana thanks to the initiative and commitment of our dear colleague, Professor Vasilka Sancin. This first, very positive experience will be developed in the future.

The Court's website as its prime communication tool has been substantially enriched throughout the year. We have launched a first video interview with president Robert Badinter, the "founding father" of the Convention, and will continue with other key testimonies until the 30th anniversary of the adoption of the treaty in 2022.

The horizon of the Convention's anniversary constitutes a reminder and an appeal to States parties and OSCE participating States. I would like to deliver the message: the Court is a flexible instrument built on strong principles, combining impartiality and efficiency, but to be useful, it ought to be used.



Emmanuel Decaux
President of the Court

1. INSTITUTIONAL MATTERS

1.1. Meetings of the Bureau of the Court

The members of the Bureau of the Court, elected in October 2019 for a new mandate of six years, met online in February and June 2020 to discuss current issues and to design the road map for the year ahead. President Decaux invited to new Bureau to continue the path initiated by the previous presidency and to intensify outreach activities keeping in mind the ultimate objective to see the Court fully deployed. The members discussed institutional matters and exchanged on the possibility to open up the Court's services to advisory opinions. The financial statements for the year 2019 and the budget proposal for 2020 were approved at the February meeting (cf. financial and administrative matters, page 12). However, the Covid-19 pandemic outbreak in March inevitably halted some of the projected endeavors.

1.2. Bureau of the Court – Assignment of Alternates to Individual Members

At its meeting held in June 2020, the Bureau, decided which alternate would be called upon to take the place of which member of the Bureau according to the provisions set forth by Article 9.4 of the Rules of Procedure of the Court. The assignation of alternates to each individual member of the Bureau took place by drawing of lots.

The composition of the Bureau in 2020¹:

President: Emmanuel Decaux (France), conciliator
Professor emeritus, University of Paris II - Panthéon-Assas

Conciliators:

member

Riccardo Pisillo Mazzeschi (Italy)
Professor emeritus, University of Siena

alternate

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

member

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

alternate

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

¹ For the up-dated list, view the Court's website: www.osce.org/cca

Arbitrators:

member

Erkki Kourula, Vice-President (Finland)
Former Judge at the International Criminal Court

alternate

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

member

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

alternate

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

1.3. Appointment of Members and Alternate Members of the Court by Austria and Belarus

According to the provisions set forth by Articles 3 and 4 of the Convention on Conciliation and Arbitration, the conciliators, the arbitrator and his/her alternate are appointed for a period of six years. With the mandate of the members of the Court appointed by Austria and Belarus coming to expiry, these States have appointed new members, or renewed the mandates of their appointed members.

Austria (11 May 2020)

Conciliators:

Peter Launsky-Tieffenthal
Ambassador, Secretary-General for Foreign Affairs,
Federal Ministry for European and International Affairs

Gerhard Hafner
Professor emeritus of International Law, University of Vienna

Arbitrator:

Hans Winkler
Former Ambassador, former Director of the Diplomatic
Academy of Vienna

Alternate Arbitrator:

Ursula Kriebaum
Professor, University of Vienna

Belarus (28 September 2020)

Conciliators:

Vladimir Senko
Former Minister of Foreign Affairs
Former Chairman of the Committee for Foreign Relations and
National Security of the Council of the Republic of Belarus

Sergei Martynov
Former Minister of Foreign Affairs of the Republic of Belarus

Arbitrator: Petr Miklashevich
Chairman of the Constitutional Court of the Republic of Belarus

Alternate Arbitrator: Andrei Zabara
Deputy Chairman of the Supreme Court of the Republic of
Belarus

2. ACTIVITIES

2.1. 1260th Meeting of the Permanent Council of the OSCE, 27 February 2020 Visit of President Emmanuel Decaux and Vice-President Erkki Kourula in Vienna

Shortly after having taken their functions as President and Vice-President of the Court, Professor Emmanuel Decaux and Judge Erkki Kourula made a visit at the OSCE headquarters in February 2020.

The highlight of the visit was the address of President Decaux at the 1260th Meeting of the Permanent Council, on 27 February 2020. In his statement he underlined that the Court's founding at the 1992 Stockholm Conference was the culmination of long-standing efforts by participating States to strengthen the key element of co-operative security. He stressed that while a conciliation commission can be requested unilaterally by any State party, the Court's procedures remain at the disposal of all 57 OSCE participating States by agreement.

"The Stockholm Convention represents a great step forward in the institutionalization of alternative approaches to the peaceful settlement of disputes. Following on from the bilateral treaties negotiated over a century, and the multilateral treaties in the immediate post-war period, the Convention has made significant progress on several fronts. It established a genuine permanent court governed firmly by a collegial Bureau, which guarantees the effectiveness of the Court's procedures. Neutrality is the watchword in all commissions and arbitration tribunals, with the Bureau designating three of the five members. The Court's tasks are part of a wider framework in relation to the OSCE bodies, constituting part of the 'toolbox' available to the various protagonists", he said.

President Decaux concluded that the Court will work on making its procedures for the amicable settlement of disputes more visible and readable, by being proactive at all times to fully perform its duties in the service of peace, co-operation and good neighborliness throughout the OSCE area.

The Delegation of the Russian Federation (PC.DEL/194/20) responded by emphasizing the need to address the topic of the legal framework in the OSCE and invited the Chairmanship to study the subject and draft Charter presented in 2007 with the Informal Working Group on Strengthening the Legal Framework of the OSCE. The Delegation of Croatia, on behalf of those Member States of the European Union who have ratified or acceded to the 1992 Stockholm Convention, welcomed the intervention of President Decaux and the reminder of the possibilities offered by the Court to contribute to settling

disputes by peaceful and diplomatic means in a sustainable and effective manner, in accordance with international law and OSCE commitments.

The visit also offered the opportunity for bilateral talks with senior officials of the OSCE Secretariat and Representatives of States parties. A fruitful exchange took place to explore the expectations of the States parties and to find new avenues to make the Court better known to the OSCE community.

The presence in Vienna of President Decaux and Vice-President Kourula has been very promising. As a result, it has been decided to intensify the exchanges with the OSCE Secretariat and the Parliamentary Assembly as well as with Representatives of the States parties and OSCE participating States.

2.2. Visit of President Decaux with Representatives of the Host State

President Decaux made a visit of courtesy to H.E. Ambassador Corinne Cicéron-Bühler, Director of the Directorate of International Law, Federal Department of Foreign Affairs on 17 February 2020. He reiterated the gratitude of the Court for the continuous support provided by Switzerland as the Host State. The colloquium held in October 2018, co-sponsored by Switzerland, had received a very positive echo and allowed to gain visibility among the community of International Geneva. A further meeting took place with H.E. Ambassador Valentin Zellweger, Head of the Swiss Mission to the United Nations office and other international organisations in Geneva. The informal talks allowed also to exchange on practical and logistical matters in case the Court would be requested to set up a conciliation commission or an arbitral tribunal.

2.3. Release of the Book *“Flexibility in International Dispute Settlement – Conciliation Revisited”*, edited by Christian Tomuschat and Marcelo Kohen

The publication *“Flexibility in International Dispute Settlement – Conciliation Revisited”*, by Christian Tomuschat (former President and member of the current Bureau) and Marcelo Kohen (Professor of International Law, the Graduate Institute of International and Development Studies) has been released in August 2020 by the editor Brill/Nijhoff. It assembles the papers originally presented at a colloquium held in October 2018 in Geneva, which explored conciliation in a wider context. The authors examine conciliation in selected fields of activity of the international community and encompass in their scope of research also experiences outside Europe by reaching out to geographical areas in Africa and Asia. The study takes stock of the successful revival of conciliation by looking closer to the case of Timor Leste v. Australia. The practices of inter-state disputes within human rights treaty bodies are highlighted. The publication also portrays the potential of the OSCE Court of Conciliation and Arbitration which still remains to be fully activated.

The book represents an additional means to showcase the potential of conciliation as a flexible method of interstate dispute settlement. Therefore, it has been largely

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

A webinar followed in November 2020 to launch the book and to discuss the topic of conciliation with distinguished panelists.

2.4. Webinar – Virtual Book Launch and Panel Discussion

This webinar was organised in collaboration with the Graduate Institute of International and Development Studies in Geneva on 13 November 2020 to launch the book on conciliation as a flexible method to settle disputes peacefully. Marcelo Kohen, co-author of the book, hosted the event. The online event featured a book presentation by Christian Tomuschat and a panel discussion where eminent practitioners and scholars commented various aspects of the publication in light of their experience. The programme featured:

Opening Address and Moderation:

Emmanuel Decaux
Professor emeritus, University of Paris II, Panthéon-Assas
President of the Court

Book Presentation :

Christian Tomuschat
Professor emeritus, Faculty of Law, Humboldt University, Berlin
Former President and Member of the Bureau of the Court
Co-editor of the Book

Panel Discussion:

Marc Bossuyt
President emeritus, Constitutional Court of Belgium,
Professor emeritus, University of Antwerp,
Member of the UN Committee on the Elimination of Racial Discrimination

Marie Jacobsson
Ambassador, Principal Legal Adviser on International Law,
Ministry for Foreign Affairs of Sweden

Guido Raimondi
President of the Social Chamber, Court of Cassation, Italy,
Former President of the European Court of Human Rights

Hélène Ruiz Fabri
Director of the Max Planck Institute Luxembourg for International,
European and Regulatory Procedural Law

In his address, Christian Tomuschat emphasized “the aim is simple: to demonstrate that this Court constitutes a hidden treasure whose advantages should finally be acknowledged”. He mentioned conciliation being at the crossroad of judicial tradition

and diplomacy. “Conciliation does not aim at ensuring legal perfectionism, it looks rather for pragmatic solution within a legal framework. From this perspective, conciliators should embody at the same time the qualities of a judge and a politician, personalities who are able to look beyond the legal horizon without, however, yielding to the pressure of the relevant facts”.

Emmanuel Decaux underlined in his opening address that since the creation in 1957 of the European Convention for the Peaceful Settlement of Disputes, the 1992 Stockholm Convention had added a systematic frame to conciliation, with the creation of the Court. This institutional step forward remained filled with hopes, but one could ask the question what participating States had made of their commitments in this respect.

The book presentation was followed by a panel discussion that screened different experiences of conciliation in interstate disputes.

Hélène Ruiz-Fabri, Director of the Max Planck Institute Luxembourg, opened the discussion and mentioned that most authors insisted that the objective of conciliation was to find a solution to which the parties to the dispute could or would agree. She mentioned in particular the practice of the General Agreement on Tariffs and Trade whose practice in dispute settlement could be considered as judicial conciliation.

Guido Raimondi, former President of the European Court of Human Rights (ECHR), has presented the experience and possibilities offered by Article 39 of the European Convention on Human Rights with regards to conciliation in interstate disputes. Even though the Strasbourg Court was obviously a jurisdictional body, the procedure of conciliation was well-known in this Court. In this regard, he highlighted the potential complementary of the ECHR and the OSCE Court. Since the entry into force of the Convention, twenty-eight interstate disputes have been submitted to the ECHR.

Marc Bossuyt has spoken in his capacity as a member of the UN Committee for the Elimination of Racial Discrimination (CERD), the first human rights treaty body to deal with conciliation in interstate disputes. He has presented the recently submitted interstate communications: State of Qatar vs. Kingdom of Saudi Arabia, State of Qatar vs. United Arab Emirates and State of Palestine vs. State of Israel.

Ambassador Marie Jacobsson spoke in her threefold function, as a Representative of the Depositary of the Stockholm Convention, as an alternate arbitrator under the Convention and as a Member of the Swedish Women Mediation Network. Ambassador Jacobsson reminded that conciliation was a method whereby the parties listen to each other and try to manage or solve a conflict through a common approach and agreement, with the assistance of a conciliator. In her view, the reference to conciliation in the UN Charter and the Helsinki Final Act based on the assumption that it is solely a tool for interstate dispute settlement procedures needed to be looked at through fresh eyes. She mentioned the advantages of conciliation to facilitate the inclusion of women in conflict management and dispute settlement procedure. While many opportunities existed to involve women, their involvement needed to be made more visible and formalised, she concluded.

Marcelo Kohen, co-editor of the book, wrapped-up the presentation and panel discussion. He mentioned the paradox of conciliation as mentioned in the title of his introductory chapter. Although conciliation was the youngest means of dispute settlement chronologically speaking, the question whether it was obsolete or *démodé* has been asked. There was however room for conciliation when governments were unable to reach a solution, when the idea of adjudication was difficult to accept, or for reasons of internal politics and public opinion, he added. The second element of this paradox, was that many organs and committees were “speaking” conciliation without knowing it. Conciliation was still largely unknown and he pointed to the question on how to fill the knowledge gap, be in the academic and diplomatic world, or as members of jurisdictional bodies. He also highlighted that many conventions included conciliation as a compulsory means to resolve disputes and, even though conciliation did not end with a binding decision, it could be triggered in an unilateral manner. He insisted that “it is our responsibility to explain this possibility and it will be in this manner that we will see conciliation more widely used”. He concluded with the wish to the OSCE community to soon discover the hidden treasure that is the Court of Conciliation and Arbitration within the OSCE.

The webinar was attended by 65 participants: Representatives of States parties and OSCE participating States, members of the Court, legal advisers as well as senior officials of the OSCE and the Council of Europe.

2.5. Simulation of Arbitral Proceedings in the Framework of the MUNLawS Conference 2020, Faculty of Law, University of Ljubljana

A moot court on arbitral proceedings before the Court of Conciliation and Arbitration within the OSCE took place between 13 and 15 November 2020 in the framework of the MUNLawS 2020 Conference, organised by the Faculty of Law of the University of Ljubljana. The proceedings were based on a fictional case between the Republic of Aesthetica and the Kingdom of Reagnalia, two fictional parties of the Convention on Conciliation and Arbitration within the OSCE, which submitted their dispute, by agreement, to be resolved through arbitration. The dispute concerned the exploitation of underwater natural resources of the Great Sea and marine environmental harm that ensued from such exploitation.

The case was heard by three arbitrators coming from both civil and common law backgrounds. Based on written memorandums prepared by agents of both parties and oral hearings that were held via Zoom and included the examination and cross-examination of witnesses. The arbitral tribunal issued an award in conclusion. Throughout the simulation, all participants showed impressive knowledge of international law and the arbitral process. Both their written and oral presentations before the tribunal were well thought-out, prepared and executed. While agents of neither state could claim total victory at the end, the tribunal decided to grant the following awards:

- Best Agent award to Anže Mediževc (Agent for the Respondent)
- Outstanding Agent Award to Nika Pavlica (Agent for the Applicant)
- Best Arbitrator to Ross Faulds
- Outstanding Arbitrator award to Antoine Bruglemans

The participants noted their appreciation of their newly obtained understanding of how the Court of Conciliation and Arbitration within the OSCE is structured and how it operates. Given the very positive experience for both the organisers and participating students, the Faculty of Law of the University of Ljubljana will reiterate the exercise in 2021 with a new fictional case.

3. COMMUNICATION

In line with the objective to make the Court's mechanisms more visible, the Bureau of the Court has intensified its communication efforts through different means and media. The Court's website has been substantially enriched to offer hands-on information available to a larger public: <https://www.osce.org/cca>

3.1. Video – Talk with Robert Badinter, First President and Founding Father of the Court

A video recording was realised with Robert Badinter, who was the first President of the Court since its creation in 1995 until 2013. He has been instrumental in the conception of the Convention on Conciliation and Arbitration, adopted at the OSCE Ministerial Council at Stockholm in 1992. He was convinced that a pan-European regime of dispute settlement, with conciliation as a core feature, would substantially solidify European unity and peace. In this video, he shares his personal view and experience.

Further video recordings featuring major key actors are planned in near future.

3.2. Interview with President Decaux in the Magazine “Security Community”

In April 2020, President Decaux spoke in an interview published in the OSCE's online magazine “Security Community” about the objective of the Court and its challenges as a jurisdictional body within the OSCE. He outlined the roadmap to increase knowledge and awareness among its States parties and OSCE participating States.

“In my opinion, the Court is at the crossroads of law and diplomacy: it is a Court; it is a jurisdiction, offering its good offices to settle pragmatically, quickly and efficiently, disputes that poison bilateral relations”, he said. He furthermore mentioned that from the institutional point of view, it was important to increase the number of States parties to the Convention on Conciliation and Arbitration among the OSCE participating States.

As to the question whether the Court could see a case submitted in near future, he replied “The 1992 Stockholm Convention marks a new step with the institutionalization of a Court with a pan-European vocation, offering not only abstract mechanisms but a framework of principles and commitments. With this in mind, the law can be very effective, with fair trial guarantees for all parties, and rules that apply to all. It remains for States to have the wisdom and patience to seek solutions, and implement confidence-building measures. In any case, the OSCE Court will do everything to be ready. If it takes two to tango, it takes three to complete conciliation or arbitration”, he concluded.

3.3. Factsheet – Who We Are – How We Work

In collaboration with the OSCE Secretariat, the Court has set up a factsheet aimed as a public information tool to explain in short what the Court is and how the conciliation and arbitration procedures work. For the time being, the factsheet is available in English only, adaptations in further official languages of the OSCE are to follow.

3.4. Bibliography

Abundant studies, articles published in peer reviewed journals, books, and contributions to colloquiums have been devoted so far to the Convention on Conciliation and Arbitration and the topic of peaceful settlement of disputes in the framework of the OSCE. An inventory of all these scattered sources seemed essential. Thus, a first general bibliography has been established. It is the work of Denis Neselovskyi, enrolled in a Master’s programme in international law at the University of Paris 2, Panthéon-Assas. The bibliography has been reviewed by the members of the Bureau. It is meant as a useful working tool for diplomats and jurists, and in particular, legal advisers of the participating States. Additionally, it should encourage further scientific research. The bibliography is available on the Court’s website: osce.org/cca.

4. FINANCIAL AND ADMINISTRATIVE MATTERS

Overview of the Financial Statements – Financial Year 2020

Total Net Expenditures	CHF 94'129.33
Regular Contributions of States parties	CHF 96'684.00
Reserves	CHF 123'459.41

The financial statements 2020, approved by the Bureau of the Court at its meeting held in February 2021, are transmitted to the States parties, along with the report of the auditors, established by Bonnefous Auditors SA, Geneva.

In 2020, the contributions of the States parties have been increased in order to cover the current functioning costs of the Court, thus allowing to safeguard the Court's reserves, which are vital in case that a conciliation commission or arbitral tribunal would have to be established at short notice. The outreach activities have been substantially intensified in 2020, which resulted in higher communication costs.

As in the previous years, the Court strives to function with a budget limited to the essential. The travel expenses are restricted to the annual meeting of the Bureau members, when possible, and official visits of the President of the Court. The Court employs only one permanent staff member, on a part-time basis. The President of the Court and the members of the Bureau are fulfilling their functions and tasks on a purely honorary basis. Thanks to the continuous support of the host State, the Court benefits of office spaces in Geneva and the possibility to use conference rooms for free.

The Bureau noted with satisfaction that the States parties have provided their contributions in a timely manner, which can be interpreted as a renewed sign of confidence and steady commitment to the principle of peaceful settlement of disputes.
