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## The Court of Conciliation and Arbitration within the OSCE

Working Methods, Procedures and Composition

Working Paper 16



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## Foreword

The Court of Conciliation and Arbitration, which was set up under the CSCE Convention on Conciliation and Arbitration and which is based in Geneva, convened for the first time on 29 May 1995. Despite its exhaustive legal and practical functions, not a single case has been brought before the court thus far. With this in mind, the purpose of the following literature report is to closely examine the history of the Court. To this end, reference will be made to relevant expert reports which will help to support the authors' own views. Furthermore, the legal situation regarding the Court will be addressed. The *working methods, procedures and composition* of the Court will be comprehensively described and analysed. In addition, individual cases and subjects areas which could potentially form the basis for Court investigations into the legality of the OSCE's security efforts will be briefly examined. With regard to the multifaceted and complex political situation, this has proven itself to be the most complex issue. Finally, a comprehensive bibliography inclusive of cutting edge research has been provided. Further appendices display lists of reservations, statements and ratification status. Diagrams which should clarify the process are also included.

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## 1. History and Origins

An analysis of the history and development of the Court points to the fundamental problems involved in the establishment of such an institution, which result from the unwillingness of states to concede sovereignty.

States who participated in the Conference on Security and Co-operation in Europe (CSCE) adopted the Final Act and thereby agreed to the principle of the peaceful settlement of disputes as stipulated in the Decalogue:

“(1) The participating States will settle disputes among them by peaceful means in such a manner as not to endanger international peace and security, and justice. (2) They will endeavour in good faith and a spirit of cooperation to reach a rapid and equitable solution on the basis of international law. (3) For this purpose they will use such means as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice including any settlement procedure agreed to in advance of disputes to which they are parties. (4) In the event of failure to reach a solution by any of the above peaceful means, the parties to a dispute will continue to seek a mutually agreed way to settle the dispute peacefully. (5) Participating States, parties to a dispute among them, as well as other participating States, will refrain from any action which might aggravate the situation to such a degree as to endanger the maintenance of international peace and security and thereby make a peaceful settlement of the dispute more difficult.”

Prior to the launch of the conference on 3. July 1973, the Swiss government had considered expanding the principles to include a process for the peaceful settlement of disputes. As such *Switzerland* included its suggestion for a system of peaceful dispute settlement on the conference agenda during preliminary diplomatic talks in Dipoli. (Graber 1973: 469; cf. *Annuaire suisse de droit international* vol. XXIX (1973), pp. 373-377). To this end, on 18 September 1973, which marked the beginning of the second stage of the CSCE, the Swiss delegation submitted the “Draft Agreement on a European System of Peaceful Settlement of Disputes” for consideration by the participating States (see Bindschedler 1976). The draft was named after its author and spiritual father, Professor Rudolf L. Bindschedler, who was the primary legal adviser to the Swiss Foreign Ministry and head of the Swiss delegation. (Bindschedler had been long been an advocate of such a process and in fact, he originally unveiled the his vision in 1972, in a report to an international symposium. Cf. Bindschedler 1974: 144-145 and Münch 1980: 386 Fn. 6). The suggestion corresponded to the Swiss tradition of international relations which focuses on the peaceful resolution of conflicts. This tradition developed as a result of the Swiss commitment to neutrality (cf. Münch 1980: 387ff.). It also enabled the Swiss to take a pioneering role in the development of a system of peaceful dispute settlement for participating states within the framework of the CSCE, or the OSCE as it is now known. Switzerland thereby cemented her role as the champion of a peace policy driven by international law (Simma/Schenk 1979: 366).

Furthermore, the draft acted as an appropriate tool for the promotion of interests of small and in particular neutral or non-aligned states during the Cold War. Because of their lack of power, the only route open to such states for the protection of their interests was the law. (Cuny 1997: 18 and Graber 1976: 154). Furthermore, it could also be regarded as a test to see whether the larger participating States of the CSCE would submit to such an obligatory conflict settlement process, thereby taking a further step towards the goal of collective security (Bindschedler 1973 and 1976: 60). In any case, it was thought that an efficient system of dis-

pute settlement would strengthen security and peace, in the long run (see Bindschedler 1975; resp. “secure” security and peace : cf. Graber 1976: 154 – own translation).

### 1.1 *The Bindschedler Draft*

The so-called “Bindschedler Draft”, was a multilateral treaty consisting of 61 articles. It was conceived as an internationally binding legal document. Its basic principles are reminiscent of the German-Swiss Treaty of 3 December 1921 (Münch 1980: 396). Disputes were classified as either legal or political in nature (cf. to this Simma/Schenk 1979: 366-377). Due to the potential for overlapping, such classification was, however, controversial (see Lüthy 1998: 117). Almost all disputes can be concerned with both legal and political aspects (Jeannel 1978: 374). The draft dealt with legal disputes regarding the interpretation or use of international law, or conflicts between parties regarding the assertion of a particular right. All other disputes were considered to be political disputes in which a party demanded the alteration or regulation of a situation which was alleged to be unacceptable. The issue was law-making as opposed to law enforcement; the question for the presiding body was therefore whether and by what means a situation could be altered (see Bindschedler 1975: 107 and Bindschedler 1976: 60). The far reaching jurisdiction *ratione materiae* of this legally binding multilateral document would encompass all possible legal and political disputes. It should not be limited to the framework of, or the commitments to the CSCE (Simma/Schenk 1979: 365). Should a dispute not be resolved peacefully by other methods within a reasonable period, the dispute could be referred to the formal settlement process at the request of any single party to the dispute. The aim was to install an obligatory procedure for the settlement of disputes which could be initiated unilaterally should the conflict not be resolved within a reasonable period of time. Restrictions to the right of access to the settlement process were not provided for in the draft.

Legal disputes were to be dealt with by way of *obligatory* European arbitration proceedings, resulting in a final decision with *binding effect*. Disputes classified as political disputes were to be subject to *obligatory* European investigation, mediation and conciliation proceedings, which simply had the power to issue a report containing *recommendations* for the parties as to possible means of settling the dispute. The parties could then find a compromise by either accepting the report’s recommendations in spirit or by treating the report’s recommendations as binding. The obvious weakness of this concept was that political disputes could not be resolved with automatically binding decisions. A binding commitment was dependent on the will of the parties to the conflict. Without this voluntary commitment, the process was futile. Bindschedler explained that, state sovereignty necessitated the development of an institutionalised negotiations mechanism for the resolution of political disputes. He believed that submission to the binding jurisdiction of an Arbitration Tribunal was not realistic. Therefore he hoped that the introduction of this obligatory procedure, which could be unilaterally initiated, could have a tempering and balancing influence on the parties to a dispute. The classification of cases as either legal or political was completed on the basis of an interpretation and assessment of the statement of claim and the demands included therein. The Arbitration Tribunal therefore determined the nature of the dispute and thereby determined its own jurisdiction, should the respondent parties to the dispute were to appeal against the legal character of the case. *Actus popularis*, or the right of access to the court for citizens, was not permitted. A chamber would be appointed for each.

Both the Arbitral Tribunal and the Commission of Investigation, Mediation and Conciliation were conceived as permanent organs to be based in The Hague and to be presided over by non-permanent members; Bindschedler proposed that an office be established which could be

affiliated to the PCA bureau (see Bindschedler 1976: 63). The CSCE process was a political process, therefore the proposal for a binding treaty establishing a fixed institution was an extremely far-reaching project in contrast. The parties were to retain the opportunity to influence the constitution of the chambers. They could not only elect to appoint their own nominated members, but in order to strengthen the third party element they could also elect neutral members nominated by other contracting States parties by mutual agreement. These neutral members would outnumber the members directly elected by the parties to the dispute. The intention was to combine the advantages of a standing body, which would be available at any time, with the freedom of choice for the parties to the dispute with regard to the persons to be involved in the settlement of the conflict. Because both processes were constructed as obligatory dispute settlement processes the party named in the petition was compelled to mount a defense. According to the draft, *European regional organizations* could also participate in the action (Simma/Schenk 1979: 381-382 “innovative element” – own translation). Decisions of the Arbitration Tribunal were to be based on international law. On agreement by the parties, the chamber was authorised to make *ex aequo et bono* decisions. Norms established by international organizations, to which all parties to the dispute belonged could also be considered (see Lüthy 1998: 119). When dealing with political disputes, the *Commission* was not bound to international law. However, through the Treaty it was bound to the basic principles of equity and the equality of the parties. It was also bound to base its decisions on a just consideration of the facts.

According to the draft, the Commission and Arbitration Tribunal are charged with regulating their own adversarial proceedings in accordance with the following basic principles: the proceeding should be based on the principle of the equality of the parties; judgments should be based on the merits of the case and the arbitration proceedings should not be obliged to oversee *verbal* negotiations. In contrast, the Commission’s proceedings should contain both verbal and written segments in order to facilitate compromise. It was recommended that the Arbitration Tribunal and the Commission of Investigation comply with the principles set out in the Hague Convention of 18 October 1907, in so far as this was possible and advantageous (Convention on the Peaceful Settlement of International Disputes; RGBI. 1910: 5, international source: Marten NRG 3e sér. Tome 3: 360). According to the Bindschedler Draft following an application by a party to the dispute, preventative measures could be *recommended* by the Commission and regulated by the Tribunal of Arbitration. Participation by other contracting states was foreseen in both instances provided a specific interest in the outcome could be established. Finally, it should be mentioned that at all stages it was open to both parties to agree to pursue a different means of conflict resolution.

## 1.2 *Motivations and Reactions*

The aim of the Bindschedler draft as stated in the Preamble was the establishment of a system of collective security for the promotion friendly relations between states with differing political, economic and social systems irrespective of their size, wealth or power. The motivation behind the suggestions made by the Swiss was to interpret and *cement* the principles regarding the peaceful settlement of disputes among participating states as set out in the Helsinki Final Act. The Final Act simply restated the status quo of the pertaining system of international law. These principles were therefore perceived as being too abstract hence insufficient considering the ultimate goal of promoting and strengthening peace and collective security in Europe through the establishment of a peaceful dispute settlement process. The CSCE would only achieve its ends, if substantial progress was sought. Otherwise the participating states would have let an important opportunity for progress pass them by. In Bindschedler’s mind, it was crucial that the application and interpretation of the commitment to peace and security be

assigned to an *independent, neutral and international authority*, which would possess the legal means necessary to make decisions on the settlement of disputes. Contrary to the UN Security Council, the entity should consist not of states but of independent individuals in order to exclude the influence of power politics. Through the endorsement of the principle of sovereign equality, it would be possible to find the most objective and just solution.

The Swiss initiative was intended to offer an institutionalised system for the peaceful and obligatory settlement of European conflicts as well as a harmonisation of the law as a result of the involvement of all European states as well as the USSR, Eastern Europe, the USA and Canada. It should add to existing conflict resolution mechanisms and provide binding solutions to disputes. Without such supplementation, basic principles of international law such as the prohibition of violence and the threat of violence would ultimately lead to frozen conflicts rather than offering solutions. Furthermore, it was intended to interpret and substantiate terms such as “violence”, “intervention”, “attack” and “defense” before expanding on them. Moreover, an obligatory procedure should prevent the parties to the dispute from evading settlement by continually appealing to the principle guaranteeing the free choice of means, steering them instead towards a formal legal process. As is evident from the official submission of the draft binding treaty, the desire to provide a stable legal basis for the political tensions associated with the emergent diplomatic relationship lay in permanently in the background, as was the desire to engage a further constitutional dimension, which would also lead to the easing of tensions (see Bindschedler: 1973, 1975 and 1976; cf. Lüthy 1998: 116; see Ginther: 1977 for the international law implications). Bindschedler was well aware that the differences in existing political, ideological and legal standpoints which resulted in the formation of opposing alliances would hinder the establishment an effective European body. However, he believed that the sheer existence of such a body would to help achieve the aforementioned goals. The Swiss knew that it would take a long time to bring such a project to fruition. Therefore, Bindschedler added further steps, which would be necessary in order to overcome these obstacles (see Bindschedler 1976: 65). He believed that the project was invaluable, particularly for neutral states, and should be continued (Bindschedler 1973).

Although the proposal was not dismissed out of hand, it did not have the undivided support of the participating States at the CSCE (see Bindschedler 1976: 64). Support for the Swiss proposal came primarily from the neutral and non-aligned countries and also from a few small Western European States (Lüthy 1998: 121) because it offered them the opportunity to protect their interests. Considering the political climate at the time, during which the mere holding of the conference had to be seen as a success in itself, the proposal was very ambitious. Particularly so because of the fact that it foresaw a universal forum, before which every imaginable legal or political dispute could be raised, irrespective of the political or ideological differences. Therefore, even the Swiss considered its chances of success to be minimal. The obligations which would arise from the acceptance of the treaty were viewed by the majority of participating Eastern and Western States to be too extensive and to be contrary to their political interests (see Gaißmaier 2000: 14 and Jeannel 1978: 377). The ratification of a binding legal instrument regarding the peaceful settlement of disputes would have represented a major development, which many states were not yet ready to accept. The participating States were prepared to offer declarations of intent but were not prepared to conclude binding agreements. The USSR and eastern block countries rejected the plan because of its obligatory nature. The only acceptable option for these states, with the exception of Romania which was relatively independent in its foreign policy and supported the Swiss proposal, was a process of dispute settlement by means of direct negotiations. This was seen as a basic principle of dispute resolution in Socialist literature. These states were also sceptical of third party involvement. Direct negotiations also benefited the then powerful USSR. The Socialist states raised fundamental objections to this suggestion (cf. Mrásek 1991: 609 and Hafner 1988: 149). However,



Western powers such as France and in particular the USA also spoke out against the Bind-schedler-Draft. They favoured the use of power politics to protect their national interests as opposed to facing the far-reaching consequences associated with submission to a binding system of peaceful dispute settlement.

As a result, the draft was *not included* in the Final Act. However, the participating States did agree to continue working towards the development of a generally acceptable mechanism for the peaceful settlement of disputes on the basis of the Swiss proposal. As a consequence it was decided that a panel of experts from the participating states should be consulted during Belgrade follow up meeting, which was to take place from 4 October 1977 - 9 March 1978. The Swiss issued invitations to the conference in Montreux to experts from all of the participating states. The conference was to take place from *31 October to 11 December 1978*. This finally set the ball rolling on the Bind-schedler Draft.

### 1.3 *New Drafts*

At the beginning of the conference, a new draft was put forward for consideration by the Swiss (cf. CSCE/REM. 1, printed in: *Annuaire suisse de droit international*, vol. XXXV (1979): 228-232). This reflected the results of a survey of the broad interests of the participating states and their suggestions for development. The survey had been carried out by the Swiss in April 1978. Reactions evident from the survey demonstrated the difficulties involved in finding and developing a generally acceptable framework. The new draft was less ambitious than the previous version. Following their experience at Helsinki, the Swiss amended the original to take these political issues into account. It was seen as the first step on the long road towards the development of a system of peaceful dispute settlement. Due to the political differences between the participating states, general acceptance was considered a long-term goal (cf. Simma/Schenk 1979: 397; Aćimović 1980: 345). As such it stressed subsidiarity and complementarity in addition to existing means. At all times the parties would be free to agree on other methods of dispute resolution. The distinction between legal and political disputes was abandoned. Bona fide obligatory negotiations were introduced as a necessary precursor to formal proceedings as concession to the eastern block countries. This was necessary in order to overcome their reservations (Lüthy 1998: 122; Münch 1980: 387). Such preliminary negotiations could last for up to two years. Subsequently, either party could declare its wish to enter the final stage of negotiations. After a further period of one year, a party could initiate arbitration proceedings but the scope of such proceedings would be limited to certain legal areas as set out in the draft (see Caflisch 1993b:7). Meanwhile investigation, conciliation or mediation proceedings could be initiated unilaterally. Whilst only the proceedings were to be obligatory, parties could agree to accord partial or full obligatory status to the results of these proceedings. Furthermore, an evolutionary clause was inserted. Every five years, revision conferences would take place to evaluate working methods. Moreover, the catalogue of disputes, which could be subjected to the arbitration proceedings, could also be expanded to include new types of dispute. However, the arbitration proceedings were not to be political in character and should not affect the “*intérêts vitaux*”. With regard to all other issues, the draft referred back to the Bind-schedler draft.

There was little reason to believe that the USSR, the GDR, Poland and the CSSR would support the working paper, because of their particular conception of peaceful conflict resolution and in particular their reluctance to the idea of third party involvement in dispute negotiations. They therefore brought forth an alternative proposal of their own (cf. CSCE/REM. 4, Rev. 1 and Rev. 2 from 14, 15 and 16 November 1978), which proposed mutual obligatory consultations as a method of peaceful conflict resolution (see Rybakov/Vylegzhanina: 1979). It was

seen by researchers as the antipode to the “Western” draft (cf. Aćimović 1980: 346; Hafner 1988: 150; Lüthy 1998: 122; Münch 1980: 397). It was constructed to apply to all disputes with the exception of those belonging to the “*domaine réservé*“. An obligatory judicial or quasi-judicial procedure for the settlement of disputes was rejected (Münch 1980: 397). Third party involvement was only foreseen by consensus of the parties to the conflict, or in cases where third party territory was offered as a location for the negotiations. Scepticism regarding the involvement of third parties and the preference for direct negotiations remained in the background of this proposal. Smaller states were opposed to it because of their suspicions that larger states would take advantage of their stronger bargaining position. Furthermore, should the solution be rejected by the opposing party or should an unacceptable counter offer be submitted, the conflict would remain unresolved (Münch 1980: 397). At the end of the procedure, a report would be issued, which stated the conditions of the settlement or set out the measures to be taken by the parties. The draft faced strong opposition from the Western countries.

The Western states (*USA, Great Britain, Federal Republic of Germany, Canada, Denmark, Belgium, Italy, The Netherlands and Portugal*: all NATO-members; cf. CSCE/REM. 5 from 1 December 1978) responded with a suggestion of their own. It was to act as a compromise but the participating states still failed to reach consensus (Gaißmaier 2000: 18). It considered the principle of flexibility as the cornerstone of dispute settlement and emphasised the gradual development of dispute settlement methodology. At the core of this proposal was a tribunal of arbitration with binding authority. It foresaw third party involvement in relation to a specific range of disputes at the request of either party to the conflict. Similarly, other cases could be submitted to investigation, mediation and conciliation proceedings, the decisions of which would not be binding unless that was specifically agreed to by the parties to the conflict. (Münch 1980: 398). This proposal was deemed inappropriate by the Socialist countries.

Due to the extreme differences in political ideology regarding acceptable methods of peaceful conflict resolution, *no agreement* was reached in Montreux on this issue. The debate was driven more by the differences in political ideology than by the intention of finding an agreeable, efficient and practical system of peaceful conflict resolution. Nevertheless, the final report contained reference to eight *factors*, comprised by reference to the different views, on which a future *system* could be founded (see Bloed 1990: 105-106 and 1993: 225-227): Compatibility with the principles and goals of the UN Charter and the Helsinki Final Act, regard for the principles of the sovereign equality of all states and freedom of choice as regards the means of settlement, consideration of experiences, legal and diplomatic practice of participating States, subsidiarity vis-à-vis existing means and institutions, flexibility, gradual harmonisation and acceptance for all states regardless of political, ideological and social systems, size, geographical situation or state of development as complementarity based in good faith and in the spirit of cooperation in promoting rapid and just solutions based on international law (see Račić 1980:13). In addition, in order to expand and advance existing practices, the inclusion of more clauses enabling compromise was recommended. Furthermore, participating states were encouraged to participate in an additional expert meeting, which would continue efforts to establish a system of peaceful dispute settlement based on the common basic principles and the proposed suggestions and ideas as well as to continue pursuing the aims of the Final Act. The decision to convene a subsequent expert meeting was taken at the follow up meeting in Madrid (11 November 1980 - 9 September 1983). The expert meeting was scheduled to take place *from 21 March to 30 April 1984 in Athens* at the invitation of the Greek government.

The meeting in Athens was overshadowed by the unfavourable political context of the increased East-West tensions caused by the installation of US missiles in Western Europe and

the associated muscle-flexing by both superpowers. In addition, war had broken out in Afghanistan, martial law had been invoked in Poland and the time was also marked by human rights abuses in Socialist states. Political differences were extremely prominent at this time. Relations were also strained as a result of the shooting down of a South Korean airliner by the USSR, resulting in 269 deaths (see further events in world politics that influenced the situation in Sonntag 1994: 89). In addition to these events, fundamental differences in perspectives regarding the principles of dispute resolution and international law remained. In this context, it was unlikely that concrete results would emerge from the meeting. Nevertheless, several recommendations were put forward and discussed.

The Swiss again brought forth a working paper (CSCE/REA. 2) on 22 March 1984. As a result of the Montreux experience, the scope of the project and the associated time pressure, the Swiss considered the replacement of the binding arbitration process, which had previously been considered fundamental, with more practical mediation measures, which would have an unbinding and advisory character, to be an appropriate compromise (cf. Statement made by leader of the delegation from 26 March 1984 before the group of participants, in: *Annuaire suisse de droit international*, vol. XLI (1985): 219-222; see the draft *ibid.* on pp. 219-220). The concept of imposing a duty to appear at negotiations, which was put forward by the Swiss at Montreux, was abandoned as a result of resounding rejection by the Western states. A cooling-off period was introduced in its place (Hafner 1988:152). In addition, a precautionary measure was introduced to counteract the difficulties which would arise should agreement regarding the choice of mediator or the election of the Conciliation Commission president be blocked. According to the draft, in such cases a rotating council of representatives from each of the three groups of states (West, Socialist and neutral or non-aligned states) would undertake to carry out the appropriate appointment (cf. another Statement made by leader of the delegation in: *Annuaire suisse de droit international*, Vol. XLI (1985): 223; Lüthy 1998: 123 “remarkable”). Moreover, the draft outlined different examples of how to bring opposing sides to agreement if the recommendations of the confidential and unbinding report were not adopted within one year. This would bestow greater legitimacy on the Conciliation Commission. The outcome of the conciliation process was only binding when this was agreed to in whole or in part by both parties. This concept was constructed in the form of obligations, such as the duty to state reasons for the rejection of the recommendations, or a duty to reassess the situation after a certain period of time. However, it did not incorporate a duty to accept the recommendations of the reports as such. This could be agreed to by the parties in advance. Interestingly, should one party find itself unable to move from its original position, the other party had the right to publish the report in part or in whole. Given the political situation, this proposal represented an attempt to create a more realistic and acceptable foundation for all participating States (Cuny 1997: 26). It also stressed the concepts of subsidiarity and the free choice of dispute settlement means. It did not foresee the mandatory involvement of a third party with binding authority, which would have represented real progress. From the Swiss perspective mediation and conciliation could lead to the peaceful settlement of disputes. The draft was not accepted.

*Two further recommendations were submitted from the Western perspective* (the EC-States and the US could not agree on a common proposal): Following the experience in Montreux, the EC proposal emphasised the need for compromise clauses. It foresaw an obligatory mediation and conciliation procedure for matters which had not been expressly excluded from such processes in the past, which would take place if direct negotiations failed. All disputes were subject to direct negotiations. Only expressly stipulated forms of dispute would be subject to arbitration proceedings (cf. CSCE/REA. 3 from 28 March 1984; see Račić 1984: 13-14). This compromise was not accepted. The US proposal similarly limited the scope of arbitration proceedings *ratione materiae* to specifically stipulated forms of dispute. It referred spe-

cifically to disputes regarding international treaties not excluded by way of unilateral declaration (Hafner 1988: 153). Direct negotiations, good services, investigation, mediation and conciliation should be carried out in advance. Furthermore, the results of the arbitration proceedings were not binding (cf. CSCE/REA. 5 from 05 April 1985). This US proposal was also rejected.

Within the Communist Bloc, there were no drastic changes at the expert meeting in Athens. The *CSSR draft* repeated their preference for mutual consultations (cf. CSCE/REA. 4 and Rev. 1 from 3 April 1984). This advice was not obligatory but it did require that the existence of the dispute be recognised. A request could be submitted unilaterally. The engagement of a third party was prefaced on the agreement of both parties. Surprisingly, the *Romanian recommendation* (Lüthy 1998: 124 “vague” – own translation; Gaißmaier 2000: 20 “obviously inspired by the Manila Declaration” – own translation; according to Hafner 1988: 153 and Račić 1984: 13 by the Permanent Committee for good services, mediation and conciliation that was drawn up by Nigeria, the Philippines and Romania in the UN Charter Committee), suggested the establishment of a mechanism that would enable the settlement of disputes by way of negotiations, good services, mediation and conciliation. Furthermore, it foresaw the direct involvement of states from affected regions, who were not actually a party to the dispute but who had an interest in its settlement. Such involvement would be supported in the form of a council (cf. CSCE/REA. 6 from 6 April 1984).

This expert meeting did not bring tangible results or substantial developments. The opposing views were still too far apart to agree on a common obligatory process. The USSR had previously excluded the possibility of an obligatory arbitration tribunal. However, during informal negotiations on the last day of the conference 25 April, they indicated their willingness to make a concession in a “non-paper”. Should the consultation process fail, they would be willing to subject certain disputes to obligatory conciliation proceedings. This change of attitude was remarkable. However, the US refused to accept this proposal. They believed that arbitration proceedings should form the core of a pan-European dispute settlement mechanism (cf. Caflisch 1993a: 8; 1993b: 440; Caflisch/Godet 1992: 967; Ghebali 1989: 137, Cuny 1997: 27 “regrettable” – own translation). Thus, in the final report (see Bloed 1990: 155 and 1993: 289), it was merely mentioned that general views had been exchanged and that recommendations had been presented and discussed. It stated that differing opinions had been expressed and that no consensus had been reached. Some new perspectives and discreet convergence was evident between the opposing blocs, but agreement on a common goal was nowhere in sight. According to the communiqué, progress had been made on the investigation into an appropriate method for the peaceful settlement of disputes. It was suggested that the issue would be discussed further within the framework of the CSCE process rather than by way of another expert meeting. For the first time, the integration of a third party into the process was expressly mentioned. (Particular emphasis was placed on the ways and means in which the involvement of a third party could be integrated into the process.) Negotiations were at a critical point and the results of this round of discussions were considered to be more disappointing than the Montreux meeting (Tanja 1994b: 45).

Until this point in the mid-1980s, the reservations of the *communist states* regarding the involvement of a third party or the international law in obligatory dispute settlement system were obvious (cf. Royen: 1979). No Socialist state had agreed to voluntarily accept the optional compulsory jurisdiction of the ICJ under Art 36, para. 2. However, it should also be noted that the Western states also had reservations regarding the legal jurisdiction of the ICJ. The Socialist reservations could be explained not only by reference to the prevailing realpolitik and Socialist internationalism but also by reference to Socialist teachings on international law. These teachings rejected the idea of subservience to a Western dominated legal

authority. In the east, the attitude towards treaties on the peaceful settlement of disputes was one of reservation. In addition to the Soviet principles of sovereignty and non-interference in internal affairs and the fact that the USSR was at that time a global power also contributed to their lack of interest in such agreements. Their preference was therefore for direct negotiations as opposed to obligatory dispute settlement processes (cf. Hafner 1988: pp. 160ff.; Lüthy 1998 124-125). It was only at the end of the 1980s and the collapse of the Eastern Bloc that this approach to the settlement of disputes was revised (for details see: Góralczyk 1991; Caflisch 1993a).

Mikhail S. Gorbachev encouraged this trend. In articles which appeared in *Izvestija* and in *Pravda*, he declared his intention to give greater support to the International Court of Justice (ICJ) in the future. He also emphasised his belief in the primacy of international law. On 7 December 1988, he repeated these convictions before the United Nations General Assembly. Furthermore, following the landmark ICJ decision in the Nicaraguan case, the communist states began to reconsider their categorical rejection of the ICJ's obligatory jurisdiction (cf. Hafner 1994: 118). At this time it became clear, that the applicable international law was not exclusively designed to protect the interests of Western industrial nations. (The ICJ ruled against the USA on the basis of their unlawful military intervention.) On the other hand, this ruling led the US to withdraw from the obligatory arbitration clause granting competence in such matters to the ICJ. They first withdrew their endorsement of ICJ competence regarding regional disputes in Central America (on 6 April 1984, during the expert meeting in Athens), and later they withdrew their endorsement of ICJ competence as regards all other disputes (7 October 1985). The US was following in the footsteps of France, who had withdrawn its endorsement of the ICJ as of 10 January 1974. (The background to this withdrawal was in the context of French nuclear testing in the South Pacific).

The follow up meeting in *Vienna (4 November 1986 - 15 January 1989)* was boosted by the changes in the Socialist countries which were occurring at this time. Bearing in mind the experience gained from the process to date, the Vienna final report reinforced the intention to continue the search for a generally acceptable means of peaceful dispute settlement through the development of existing methods. The participating states declared their acceptance of mandatory third party involvement in cases where a dispute could not be settled by other peaceful means. This declaration was astounding in itself. After 15 years of negotiations, it raised hopes that a settlement mechanism would finally be accepted within this framework. Furthermore it was the first express acceptance of obligatory third party involvement. However, the ultimate aim, including obligatory third party involvement as a first step, would only be reached gradually. Therefore a mandate for a new expert meeting was invoked. This meeting would take place in La Valetta, the capital of Malta. Prior to the Valetta Convention a special summit of the CSCE Participating States took place in Paris from 19 to 21 November 1990. At this summit, the mandate was confirmed within the "Charter of Paris for a New Europe" (Bloed 1993: 537-566). The participating States agreed to:

"define, in conformity with international law, appropriate mechanisms for the peaceful resolution of any conflicts which may arise. Accordingly, we undertake to seek new forms of cooperation in this area, in a particular range of efforts for the peaceful settlement of disputes, including mandatory third-party involvement."

Against this background the expert meeting carried great expectations. The La Valetta meeting, which took place *from January to 9 February 1991*, aimed to categorise various forms of dispute and to devise appropriate processes and means for the settlement of same. This list would consequently be extended. Furthermore, the possibility of creating a mechanism whereby binding decisions could be made by third parties was to be considered. The interna-

tional political situation had improved since the Vienna meeting, as a consequence of the changes brought about by the *collapse of the USSR* and the subsequent *formation of a range of small and medium-size states*. The latter naturally had an interest in the peaceful settlement of disputes and in using law as a substitute for their lack of power (Caflisch 1993c: 453). In addition the changing environment had brought about new points of conflict (Lüthy 1998: 127). In a similar vein to the post-colonial era, these issues included inter alia: boarder issues, state succession, the right to self-determination and the protection of minorities (cf. Caflisch 1993b: 13). These conflicts contained the inherent potential for peaceful settlement.

#### 1.4 *La Valetta Negotiations: An Agreement*

Despite the range of global political transformation taking place with the changing stance of the Eastern states and the associated depoliticising of relations, which were no longer primarily moulded by ideological differences, the Western states were reserved during the La Valetta negotiations. They demonstrated a weakened support for a process aimed at the peaceful settlement of disputes. The reason lies not only in their renunciation of their support for an obligatory dispute settlement process in favour of a return to power politics, but also in consideration given by the allied forces to Turkey regarding engagement in the Gulf war, which had broken out shortly before the official opening of the conference (cf. Oellers-Frahm 1991: 88) (cf. Caflisch 1993a: 32ff.; 1993c: 441). Similarly, the repression of the central government of the USSR of the Baltic States, who were seeking independence clouded hopes of a successful negotiation process. Finally, the US, as the world's only remaining super power, had *no special interest in limiting* the scope of its power within an institutionalised CSCE framework (Lüthy 1998: 130). At the Valetta Convention eight different recommendations were introduced. (see Lüthy 1998: 128-130; Gaißmaier 2000: 31ff.). In light of the above, the states could not agree on an internationally binding treaty regarding the peaceful settlement of disputes within the framework of the CSCE, therefore mere political obligations were adopted.

As a result, a simple dispute settlement mechanism was introduced (cf. *Revue générale de droit international* vol. XCV (1991), pp. 605-616 and Bloed 1993: 567-581; further Hillgenberg: 1991; Kooijmans: 1992; Lüthy 1998: pp 131ff. or Oellers-Frahm 1991). It would act as a subsidiary procedure to which all disputes could be referred. Decisions would be made by a panel of one or more members, selected by common agreement of the parties from a list of candidates compiled by one of the parties to the dispute. This mechanism was designed to *initially* provide details or advice on a suitable process for settling the dispute. *Furthermore*, the substance of the dispute could only be dealt with if the parties were neither able to settle the dispute within a reasonable timeframe nor able to agree on a settlement procedure. In this case, the mechanism is also restricted to “provide[ing] general or specific comment or advice on the substance of the dispute, in order to assist the parties in finding a settlement in accordance with international law and their CSCE commitments”. The parties are therefore not legally obliged to comply with these suggestions or advice unless they had agreed otherwise. Thus, there was no obligation to use the mechanism or to comply with its finding. Important issues could be excluded from the process by way of a declaration from either party (cf. Section XII).

Although the details of the mechanism were very complex, experts believed that it did not live up to expectations. The result of the negotiations process was considered to as a missed opportunity. It could hardly be said that the experts had fulfilled the mandates set forth in either Vienna or Paris (Tanja 1994b: 46). The procedure was too lengthy and contained too many blocking possibilities. The political character of the mechanism meant that it lacked effective-

ness and as a result it rendered unattractive (cf. Caflisch 1993c: 452). However, having generated a consensus, the process was acknowledged as a confidence-building measure between East and West. This ensured that the relevant parties could not avoid the obligation to regulate the peaceful settlement of disputes from the outset (cf. Oellers-Frahm 1991: 86-88). However, the procedure was “hardly applicable” (Caflisch 1993b: 12 – own translation) and “entirely impractical and obviously not intended for use” (Pellet 1993: 196 – own translation). The procedure has never actually been used.

The inclusion of the evolution clause, as suggested by the Swiss, was positively assessed in the literature (cf. Caflisch 1993c: 453, Tanja 1994b: 47). It allowed for periodical investigation into the effectiveness of the procedure and allowed for adaptation in view of the changing political environment. At this time, the political situation in the Balkans was to the fore. Initial plans for a convention were thus drafted (cf. Cuny 1997: 39). It should be emphasized, that this was the first time that the CSCE States were in able to agree on a document regarding the peaceful settle of disputes (cf. Lutz 1996a: 208).

### 1.5 *The Pan-European Convention on the Peaceful Settlement of Disputes*

The idea of a *pan-European convention on the peaceful settlement of disputes* was strongly advocated by Senator *Robert Badinter*, the current president of the OSCE Court of Conciliation and Arbitration, former French Minister of Justice and former President of the Conseil Constitutionnel (cf. Badinter 1991a, 1991b and 1992). Based on the new political situation in Europe, he saw that the time was ripe to institutionalise a European Court of Justice based on international law, which could deal with disputes regarding: *linguistic, religious, cultural and environmental issues, as well as cases concerned with education, freedom of movement, access to energy sources and resources, migration and the economy*. This was now possible because the States had overcome their ideological and political differences. For the first time, they acknowledged common principles such as human rights, democracy, and the market economy. For the first time, the peoples of Europe saw their future from a European perspective. At the same time, the danger of a return to nationalism and the associated dangers of a return to the system of alliances remained. These dangers had to be countered.

At that point in time considerations were also influenced by the conflict in Yugoslavia (Robert Badinter chaired the Arbitration Commission which was established as part of the Peace Conference on the former Yugoslavia) and the crises in the former-USSR. Badinter believed (possibly idealistically) that the outbreak of violent conflict in Yugoslavia could possibly have been prevented, had the appropriate conflict management institutions been available politically. A Court of Justice could have guaranteed the safeguarding of the peace. In this way, protecting the peace would not only be a question of political power, but also of legal negotiation. Small States would hold the same weight as the larger States.

The idea of a *pan-European convention* received prominent support from President *Vaclav Havel* in March 1991. President *François Mitterrand* also viewed the establishment of a permanent European system for the peaceful settlement of disputes as worthwhile. The French Foreign Minister, Roland Dumas, was of the same opinion. However, the idealisation of the CCA was criticised (Heraclides 1993: 199, Fn 44: Badinter sees the Court as a political “panacea”). *Hans-Dietrich Genscher*, the Foreign Minister, expressed interest in the idea at a meeting in July 1991. Subject to US participation, he recommended the CSCE as an organization suitable for the safeguarding of trust.

Consequently, the Paris proposal for the drafting of a document regarding the development of CSCE Court of Conciliation and Arbitration was supported at the Prague Conference at the end of January 1992. In February and March of 1992, a group of legal experts convened in Paris under the chairmanship of Robert Badinter to work out the legalities of the project. (For details on the composition of the group of experts see Lüthy 1998: 138, Fn 7; Cuny 1997: 45; Caflisch 1993b: 13; and also Nesi 1993: 239.) On 9 April 1992, the resulting document, which was supported by a further 14 states, was presented to Working Group No. 1 “Institutions and Mechanisms” (cf. CSCE/HM/WG1. 2, quoted after Cuny 1997: 45) at the follow-up Conference in *Helsinki* (from 24 March to 10 July 1992) (lists in Caflisch 1993b: 13; Caflisch 1993c: 454, who puts emphasis on the fact that 7 of the states were states from the former Socialist bloc; Lüthy 1998: 139, Fn 4; Cuny 1997: 45). From 11 to 22 May it was reviewed by a group of legal experts. The outcome cannot be considered as a comprehensive security treaty. France maintained its distance, as resistance from the Anglo-Saxon countries became clear. Yet, the institutions were granted far-reaching competences such as the authority to take precautionary measures and the ability to provide legal recommendations to the CSCE Ministerial Council (cf. Badinter 1993: 21; CSCE/HM. 6 from 3 July 1992, quoted after Cuny 1997: 46). During the year, the *US and Great Britain*, who like Canada, were critical of the institutionalisation of the CSCE and as such were critical of the draft, introduced their own recommendations such as the Provisions for Directed Conciliation and Provisions for a CSCE Conciliation Commission. At the last minute, an *American-Swiss recommendation* was also proposed, which would enhance the La Valetta-mechanism.

In the US, Great Britain and Turkey, Robert Badinter’s suggestion, which was supported by central and Western European states, was generating concern (cf. Tanja 1994b: 48): *Canada* worried about financing. As in La Valetta, where they had been supported by the other Benelux states, *The Netherlands* (cf. Tanja 1993: 24) worried about the future of the ICJ and the Permanent Court of Justice (PCA). Some participating states such as *Norway, Denmark, Turkey and Portugal* had general concerns or concerns regarding specific provisions (cf. Cuny 1997: 46). However, most States saw the need for a more effective and more accessible mechanism than that which had emerged from La Valetta. A mechanism was needed which would not only be able to deal with potential conflicts, such as those emerging in Eastern and South-Eastern Europe, but also existing disputes within an international law framework. The main points of critique (cf., e.g. Lucas/Mietzsch 1993: 96, Pellet 1993: 195-198; Tanja 1994b: 48-49) dealt with the adoption of an agreement within the framework of the CSCE which was characterised by a soft-law political process and based on political commitment. If all participating states did not ratify the convention, which was intended as an internationally binding treaty, fragmentation of the CSCE could result as the level of binding authority would differ from state to state. This would be particularly problematic due to the fact that the development and strength of the convention was linked to the unity of the participating states. Furthermore, there was a strong disapproval of the sheer quantity of mechanisms for the peaceful settlement of disputes (for more on the proliferation of these mechanisms, see Hafner 1998 who states a right to exist despite a possible “embarras du choix”). Existing mechanisms which were not used adequately should be improved, as otherwise they would only represent a squandered expense. Furthermore, the unity and development of international law, which focussed on the harmonisation of the legal system, would be threatened (cf. Lutz 1996a: 208). Bindschedler had already commented that each of the existing mechanisms contained different degrees of “insuffisances et lacunes” and that they were incapable of fulfilling the European need (Bindschedler 1975: 105). Neither the European Court of Justice (ECJ) nor the European Court of Human Rights (ECHR) could fulfil all of these requirements either as these institutions were not open to all of the participating States. They were, after all, concerned with the organs of the European Community and the European Council respectively (see also research on the existing mechanisms, concerning *ratione personae* and *ratione tem-*



*porae* in Pellet 1993; Pellet also comes to the conclusion that a new convention is necessary.).

Robert Badinter claimed that experience had shown that international legal adjudication is more successful when it is limited to one region of the globe. Sir Robert Jennings, the then-president of the International Court of Justice, countered this assertion in favour of regionalism and argued that, bearing the universal competence of the ICJ in mind, there was no need to establish an OSCE Court of Conciliation and Arbitration. Furthermore, the ICJ could form *ad-hoc* chambers to guarantee a regional outlook if necessary (see Jennings). However, the CCA was founded with the aim of settling “disputes arising between the participating States on a regional level” (own translation; Caflisch/Cuny 1997: 375).

As no consensus was reached in Helsinki, a further Expert Meeting was scheduled to take place in Geneva from 12 to 23 October 1992. In advance of this meeting, the proposing states of *France* and *Germany* reached an informal agreement with the *US* and *Great Britain* in Paris on 16 and 17 September (cf. Tanja 1994a: 463). The US and Great Britain were sceptical of establishing a formal legal authority within the CSCE. They feared that it would endanger the character and comparative advantages of the CSCE. However, the prevailing political situation in the former-Yugoslavian region made any opposition to the establishment of a regulatory mechanism difficult. No one wanted to reach a stalemate between competing proposals.

Nevertheless, two issues still posed problems. On the one hand, was the question of the competence to issue legal advice to the council of ministers. This could pressurise states which did not wish to accede to the convention. On the other hand, was the question of finance. The costs represented an obstacle. Fears were raised, primarily by delegates from the former Yugoslavia and the USSR, that other CSCE projects, such as CSCE field missions, would suffer as a result. The OSCE budget for 2004 amounted to 179 million Euros to which Germany contributed 10 per cent. This should be compared to the minor costs involved in maintaining the CCA. The CCA represents a lean institution, which only becomes active when needed. Accordingly, from a finance perspective the permanent structure of the Court is relatively frugal. It consists solely of the Bureau, which is presided over by the Registrar. According to the financial protocol, only the Registrar and the officers of the court receive an annual salary. All other arbitrators and conciliators are paid at a daily rate for their services. Members of the Executive Committee receive a nominal annual package (cf. Hafner 1994). According to the Convention the costs of maintaining the court are to be met by the member states. The disputing parties as well as those who join the proceedings must bear their own costs. Further regulations regarding costs and related issues are clarified within the Financial Protocol of 28 April 1993, which binds each state as soon as it becomes a party to the convention.

In response to pressure from the US, the competence to provide legal advice was relinquished. (Cuny sees this as the abandonment of a very important function; see Cuny, 1997: 51). The US wanted reassurance within the text of the Convention that it could not impose obligations on non-participating States. Although the authors pointed out that this would be superfluous, in light of Art. 34 of the Vienna Convention on the Law of the Treaties of 1969 (and customary law), which states that international treaties cannot create obligations for non-participating states, the principle was inserted into the treaty as Article 38 (on the US attitude see Sapiro 1995).

*Great Britain* wanted to incorporate the *Valetta* exemption. This met the resistance of the authors and of many Central and Eastern-European states, who were in favour of a comprehensive process. Otherwise, it would have been possible to exclude many disputes from the regulations, which would have reduced the effectiveness of the forum. Ultimately, no exceptions,

other than those previously agreed, were included the final text. However, the original draft was modified in the manner indicated above.

At the Third Meeting of the OSCE Council in Stockholm on 14-15 December 1992 all recommendations presented were finally accepted. At the recommendation of the Geneva Expert Meeting, the *Franco-German proposal* on Conciliation and Arbitration Proceedings within the CSCE was incorporated. It was presented in the form of an international treaty. Under the heading of “Decision on Peaceful Settlement of Disputes”, the following proposals were individually adopted:

1. Modification to Section V of the Valletta Provisions for a CSCE Procedure for Peaceful Settlement of Disputes (Annex 1);
2. Convention on Conciliation and Arbitration within the CSCE (Annex 2);
3. Provisions for a CSCE Conciliation Commission (Annex 3);
4. Provisions for Directed Conciliation (Annex 4).

## 2. The Convention on Conciliation and Arbitration within the CSCE

The Ministerial Council adopted the resolution on 15 December 1992. The “Convention on the Conciliation and Arbitration within the CSCE” was immediately signed by 29 states. In accordance with the provisions of the agreement, the Convention came into force two months after the deposit of the twelfth instrument of ratification (by Italy) on 5 December 1994 (cf. Art 33 para. 3 of the Convention). The Finance Protocol setting out the cost allocation formula came into force on the same day (cf. *Revue générale de droit international* vol XCIX (1995), pp 237-241). 20 years after the submission of the Bindschedler Draft, the Court of Conciliation and Arbitration of the CSCE had become a reality. According to Article 1 of the convention, the Court would be located in Geneva. (Vienna and Venice were considered; however, because of the particular efforts of the Swiss in promoting the peaceful settlement of disputes, the Swiss bid was accepted). Nevertheless, at the request of the parties, the court can also convene at other locations (Art. 10, para. 2). On 29 May 1995, the Court of Conciliation and Arbitration was inaugurated in Geneva.

The decision to establish an internationally binding treaty as the foundation on which the Court of Conciliation and Arbitration of the OSCE was built has been viewed positively. The only other treaties within the CSCE framework are the CFE-Treaty (Treaty on Conventional Armed Forces in Europe) and the Open Skies-Treaty.

The treaty has been ratified by 33 signatories out of a total of 56 participating States within the OSCE (see appendix no. 1). To date, the jurisdiction of the Court has never been invoked. According to information obtained from the Bureau of the Court, no cases are pending at present. (This was confirmed in e-mails from the Registrar of the CCA).

*The fact that not all OSCE States have ratified the treaty is problematic.* This list of non-participating states includes several important States such as the *US* and *Great Britain* (see appendix.). For those states which have not ratified the treaty, the only way to enter into a settlement procedure is by way of the Valetta Mechanism or under the provisions of the CSCE Conciliation Commission. Therefore, the Conciliation Commission recruits its members from the list compiled within the framework of the Valetta Mechanism and not from the CCA list. Decisions of the Commission are only legally binding if this has been agreed by way of reciprocal declarations between the parties. Other forms of conciliation also lack the necessary binding authority available under Convention on Conciliation and Arbitration (cf. Kokott 1997: 261). This is demonstrative of a lack of coherence. Within the framework of the OSCE different mechanisms are applicable in the peaceful settlement of disputes. The resistance of certain states toward the CCA results in the weakening of the CCA. Therefore, it cannot be considered to be a generally acceptable method of peaceful dispute settlement.

The Court is responsible for all kinds of inter-governmental disputes within the sphere of the OSCE. Its establishment is considered as an important milestone in the development of a pan-European Peace and Security Community. By opening its doors to the possibilities of international jurisdiction and arbitration, it marked an important institutional step towards the development of civilised system of conflict resolution (cf. Lutz 1996a: 213).

However, the founding agreement (The Convention on Conciliation and Arbitration within the CSCE) is also open to criticism. Criticisms relate in particular to the *modus operandi*, procedures and the composition of the court. The CCA combines conciliation and arbitration procedures, whereby the conciliation process is obligatory and the arbitration process op-

tional. The CCA differs from other courts in that it has no permanent organs and the parties to the proceedings have a definite influence the composition of the court.

### *2.1 Composition of the Conciliation Commission and Arbitration Tribunal*

Conciliation Commissions and Arbitration Tribunals are newly constituted for each individual dispute (Art. 2, para. 1 and 2). For this purpose, conciliation and arbitration personnel should be recruited from a list, compiled by reference to Art 3 and 4 respectively. The names of the nominees are passed to the Registrar of the CCA, who then administers the list through the Bureau. Each state, which is a party to the convention must appoint two conciliators, at least one of whom must be a national of that state. In addition each state must appoint one arbitrator and an alternate, who may either be nationals of that state or of any other participating State. Conciliators and arbitrators must act independently in the performance of their functions. Before taking office they must make a declaration stating that they will exercise their power impartially and conscientiously (Art. 5). The pool of personnel stands ready for employment when cases arise.

The current German personnel pool is as follows (last access on 22 March 2007):

#### *GERMANY*

*Conciliator: Mr Hans-Dietrich GENSCHER, Former Federal Minister of Foreign Affairs, Former Member of the Bundestag*

*Mr Rupert VON PLOTTNITZ, Former State Minister of Justice and European Affairs of Hessen, Member of the Landtag of Hessen*

#### *MEMBERS AND ALTERNATE MEMBERS OF THE COURT*

*Arbitrator: Mr Helmut STEINBERGER, Professor, University of Heidelberg and Max-Planck-Institut für öffentliches Recht und Völkerrecht, Vice-President of the Court*

*Alternate: Mrs Juliane KOKOTT, Advocate-General, Court of Justice of the European Communities*

The nominated conciliators hold high national or international positions and must be recognized experts in the fields of international law, international relations or the settlement of disputes (Art. 3, para. 2). They can be appointed for two terms of six years duration. Their appointment cannot be terminated during their term of office (Art. 3, para. 3). Arbitrators and their alternates must be qualified for appointment to the highest judicial offices of their country or be lawyers with recognized competence in international law (Art. 4, para. 2). They are also appointed for a period of 6 years, which can be extended to one further term (Art. 4, para. 3).

Should a Conciliation Commission be appointed, each party nominates one conciliator from the list (Art. 21, para. 1). The five-person Bureau appoints an additional three conciliators (Art. 21, para. 5). The Commission elects its Chairperson from among the members appointed by the Bureau (Art. 21, para. 6). In this way, the parties to the dispute have a direct influence on the composition of the Court. This should provide an incentive for others to refer matters to the Court. However, the influence of the neutral Bureau outweighs that of either party, so as to minimise the risk of conscious or unconscious bias on the part of any conciliator influencing the final decision. The influence of the parties cannot therefore be compared with that which they possess in other methods of peaceful dispute settlement. For this reason, Art 21, para. 5 may not suit the parties and could affect their acceptance of the Court (see Vajić 1998: 23).

However, it is worth noting that according to Art. 21, para. 4, the parties should be consulted before the neutral members of the Commission are nominated.

The members of the *Arbitration Tribunal* are also chosen from the list. The arbitrators, which are nominated by parties to the dispute, are considered to be *ex officio* members of the Court (Art. 28, para. 2). Similar to process described above, should a request for arbitration be submitted, the Bureau appoints a number of members to sit on the Tribunal so that the number of members appointed by the Bureau amounts to at least one more than the number of *ex officio* members (Art. 28, para. 3). This ensures that the Bureau's "neutral" influence predominates. The influence which can be exerted by the parties in this case also serves to make the arbitration process potentially more acceptable than the court model. One drawback to this kind of *ad-hoc appointment* is that it can render the development of a consistent jurisprudence more difficult, as the panel of adjudicators changes with each case. Furthermore, the question of the *de facto* neutrality of the process needs to be considered by the parties to a potential action. The Bureau appoints the majority of Tribunal members, one of whom is then appointed Chairman (Art. 28, para. 6). However in contrast to the Conciliation process, no provision is made for consultation with the parties prior to the appointment of a judge by the Bureau. Experts believed that this would benefit the acceptance of the court (see Oellers-Frahm, 1998). This confers the characteristics of an international court on the CCA because the influence of the parties on the constitution of the board of arbitration is characteristic of that arbitration process. In addition, the Arbitration Tribunal is only permitted to decide cases *ex aequo et bono* if this has first been agreed by the parties. This would usually be regarded as a basic competence of an arbitration body. This provision bestows the Court with the traits of an international Court, since it is the very influence of the parties on the constitution of the Tribunal, which is characteristic for arbitral jurisdiction. Similar to an international court, it is bound with the task of deciding cases on the basis of international law (Art. 30). Arbitration Tribunals are usually subject to apply the law as determined by the parties to the conflict. This has the advantage that the parties can declare their CSCE or OSCE obligations as applicable. This could contribute to further flexibility and legal authority.

Decisions of the Conciliation Commission and the Arbitration Tribunal are taken by majority vote. Abstention from the vote is not permitted (Art. 8, para. 3). This strengthens the influence of the neutral third party, but is also a clear detour from the principle of consensus. According to the Court Rules of Procedure the working languages are the official languages of the OSCE (English, French, German, Italian, Russian and Spanish; Art. 12 and Art. 3 Rules of Procedure). However, the parties have the right to express themselves in another language once they are prepared to bear the resulting costs themselves (Art. 3, para. 3 Rules of Procedure).

## 2.2 *Procedures, Functions and Working Methods of the Conciliation Commission*

According to Art. 18, a dispute may be submitted to the Conciliation Commission if the parties are unable to settle the dispute by negotiation within a reasonable period of time.

The Conciliation Commission should "assist the parties to the dispute in finding a settlement in accordance with international law and their CSCE commitments" (Art. 24). The Conciliation Commission is charged with impartially clarifying the factual or legal aspects of a dispute in order to assist the parties in finding a solution to the conflict. If the parties are not in the position to find a solution on their own, the Commission should make recommendations regarding a solution (cf. Steinberger 1998). The recommendations are not legally binding.

Every State, which has ratified the convention, can unilaterally lodge an application with the Conciliation Commission provided the other state has also ratified the convention. It is therefore an obligatory conciliatory procedure for all disputes which could not be settled through negotiation. Provided at least one party to the dispute has ratified the convention, a Conciliation Commission may be constituted by special agreement with the OSCE participating states (Art. 20, para. 1 and 2).

“If the constitution of a Conciliation Commission is requested by means of an application, the application shall state the subject of the dispute, the name of the party or parties against which the application is directed, as well as the name of the conciliator or conciliators appointed by the requesting party or parties to the dispute. Furthermore, the application shall also briefly indicate the means of settlement previously resorted to. As soon as an application has been received, the Registrar shall notify the other party or parties to the dispute mentioned in the application. Within a period of fifteen days from the notification, the other party or parties to the dispute shall appoint the conciliator or conciliators of their choice to sit on the Commission” (Art. 22, para. 1 and 2).

“If the constitution of a Conciliation Commission is requested by means of an agreement, the agreement shall state the subject of the dispute. If there is no agreement, in whole or in part, concerning the subject of the dispute, each party thereto may formulate its own position in respect of such subject. At the same time as the parties request the constitution of a Conciliation Commission by agreement, each party shall notify the Registrar of the name of the conciliator or conciliators whom it has appointed to sit on the Commission” (Art 22, para. 3 and 4).

“The conciliation proceedings shall be confidential and all parties to the dispute shall have the right to be heard” (Art. 23, para. 1). “If the parties to the dispute agree thereon, the Conciliation Commission may invite any State party to this Convention which has an interest in the settlement of the dispute to participate in the proceedings” (Art. 23, para. 2).

During the process the parties are bound by certain rules regarding conduct. During the proceedings the parties must avoid behaviour or actions designed to aggravate the situation or to impede settlement (Art 16 para. 1). It is open to the Conciliation Commission to point the parties towards certain measures which would help to prevent escalation and help to avoid obstacles to settlement (Art 16 para. 2). The fact that these measures are not binding is a negative factor, this could assist in the settlement of the dispute.

“If, during the proceedings, the parties to the dispute, with the help of the Conciliation Commission, reach a mutually acceptable settlement, they shall record the terms of this settlement in a summary of conclusions signed by their representatives and by the members of the Commission. The signing of the document shall conclude the proceedings. The CSCE Council shall be informed through the Committee of Senior Officials of the success of the conciliation” (Art. 25, para. 1).

Alternatively, if agreement is not reached in advanced, “when the Conciliation Commission considers that all the aspects of the dispute and all the possibilities of finding a solution have been explored, it shall draw up a final report. The report shall contain the proposals of the Commission for the peaceful settlement of the dispute” (Art. 25, para. 2). Thereafter, the parties to the dispute “have a period of thirty days in which to examine the report and inform the Chairman of the Commission whether they are willing to accept the proposed settlement” (Art. 25, para. 3). “If a party to the dispute does not accept the proposed settlement, the other

party or parties are no longer bound by their own acceptance thereof” (Art. 25, para. 4). “If the parties to the dispute have not accepted the proposed settlement within the period prescribed, the report is to be forwarded to the CSCE Council through the Committee of Senior Officials” (Art. 25, para. 5). A report shall also be drawn up should a party fail to appear for conciliation or leave a procedure after it has begun (Art. 25, para. 6).

“Political” disputes can therefore be settled within the framework of a legally regulated procedure. The conciliation procedure is particularly suitable in this context (Lüthy 1998: 233).

### 2.3 *Procedures, Functions and Working Methods of the Arbitration Tribunal*

The function of the Arbitration Tribunal is to decide disputes, which are submitted to it, in accordance with international law or *ex aequo et bono* on the agreement of the parties (Art. 30). Such a request can be set before the court by means of petition or agreement.

“If a request for arbitration is made by means of an agreement it shall indicate the subject of the dispute. If there is no agreement, in whole or in part, concerning the subject of the dispute each party thereto may formulate its own position in respect of such subject” (Art. 27, para 1).

“If a request for arbitration is made by means of an application, it shall indicate the subject of the dispute, the States party or parties to this Convention against which it is directed, and received, the Registrar shall notify the other States party or parties mentioned in the application” (Art 27, para 2).

According to Art. 26, para. 2, arbitration proceedings require both ratification and a declaration recognizing the compulsory jurisdiction of the Arbitration Tribunal in certain areas and setting out matters to be excluded from the jurisdiction of the tribunal from the exhaustive list provided in the subsection. This declaration may be provided *ad hoc*. This is an expression of the principle of consensus as recognized in the jurisprudence of international arbitration bodies albeit subject to the principle of reciprocity. To date only six states (see appendix) have declared themselves to be subject to the compulsory jurisdiction of the court pursuant to Art. 26, para. 2, none of whom are among the most politically influential participating parties: Greece (valid for a period of five years; excluding disputes concerning national defense); Denmark, Finland and Sweden (all for 10 years – an notable number of Scandinavian states) as well as Malta and the Former Yugoslav Republic of Macedonia (both five years, excluding disputes on matters of territorial integrity and national defense). Apart from that, a request for arbitration may be made at any time by agreement between two or more States who are parties to the convention or between one or more States who are parties to the convention and one or more other OSCE participating states. (Art. 26, para. 1). Therefore, it is required that at least one party to the dispute must be a party to the convention. This measure was supposedly introduced to make accession more attractive (see Kokott 1997: 266).

The hope that a quasi-compulsory jurisdiction could be achieved through the inclusion of the optional clause under Art. 26, para. 2 seems unrealistic, given the experiences of the ICJ, where only a third of the states have subjected themselves a similar measure (see Schneider 2003).

According to Art. 26, para. 3, “A request for arbitration against a State party to this Convention which has made the declaration specified in paragraph 2 may be made by means of an application to the Registrar only after a period of thirty days after the report of the Concilia-

tion Commission which has dealt with the dispute has been transmitted to the CSCE Council in accordance with the provisions of Article 25, paragraph 5”.

The States parties to the convention cannot make any reservations that are not expressly authorized by it (Art. 34). These are as follows: questions concerning a State’s territorial integrity or national defense, the right to sovereignty over land territory, or disputes concerning sovereignty over other areas. These controversial issues, which bear a large potential for conflict, have been excluded from arbitration proceedings in an effort to encourage States to recognise the compulsory jurisdiction of the court. In the context of the accession of the new Eastern European states, the matter of territoriality was particularly important. It was also one of the main motives behind the ratification of the convention (cf. Oellers-Frahm: 1998). The granting of reservations is always problematic because complete jurisdiction in the area of competence is desirable.

According to Kooijmans and Leben commenting on the La Valetta negotiations, this regulation has its roots in the dispute over Gibraltar, the French interest in the non-justiciability of questions concerning national defense and the Greek-Turkish feud over maritime borders in the Aegean Sea (see Kooijmans 1992: 95 and Leben 1991: 864). It should however be noted that this regulation is not as extensive as its counterpart under Art. 36, para. 3 of the ICJ Statute which allows reservations generally. Reservations in the context of the Arbitration Tribunal are confined to those expressly listed in the statute. The potential to lodge reservations should encourage participating states to submit to the jurisdiction of the tribunal. However, the issues listed include issues of fundamental importance in interstate relations, which are prone to cause conflict and which are of great importance within the framework of the OSCE. Yet, it is regrettable that states remain indisposed to the idea of a compulsory and binding method of peaceful dispute settlement.

The arbitration proceedings consist of both an oral and a written section. The proceedings must conform to the principles of a fair trial and all parties to the dispute have the right to be heard (Art. 29, para. 1). “The Arbitral Tribunal shall have, in relation to the parties to the dispute, the necessary fact-finding and investigative powers to carry out its tasks” (Art. 29, para. 2). “The hearings in the Tribunal shall be held *in camera*, unless the Tribunal decides otherwise at the request of the parties to the dispute” (Art. 29, para. 6). The fact that the proceedings are not held in public represents an advantage for the states in comparison to the ICJ proceedings, which are primarily held in public (Art. 46 ICJ statute; a comparison between the rules of procedure can be found in Oellers-Frahm: 1998). For diplomatic reasons, proceedings before the arbitration tribunal can be more discrete. “In the event that one or more parties to the dispute fail to appear, the other party or parties thereto may request the Tribunal to decide in favour of its or their claims. Before doing so, the Tribunal must satisfy itself that it is competent and that the claims of the party or parties taking part in the proceedings are well-founded” (Art. 29, para. 7).

“During the proceedings, the parties to the dispute shall refrain from any action which may aggravate the situation or further impede or prevent the settlement of the dispute” (Art. 16, para. 1). “When a dispute is submitted to an Arbitral Tribunal in accordance with this article, the Tribunal may, on its own authority or at the request of one or all of the parties to the dispute, indicate interim measures that ought to be taken by the parties to the dispute to avoid an aggravation of the dispute, greater difficulty in reaching a solution, or the possibility of a future award of the Tribunal becoming unenforceable owing to the conduct of one or more of the parties to the dispute” (Art. 26, para 4). These measures are not binding and this should be considered a negative aspect.



“The award of the Arbitral Tribunal shall state the reasons on which it is based” (Art. 31). Divergences of opinion among the tribunal members may be expressed. The award is final and is not subject to appeal. The award is only valid in this particular case and as regards the parties to it or parties who have joined the action under Art. 29, para. 4. The affected parties can however request that the Tribunal interpret its award as regards its precise meaning or the scope of its application. The request for clarification should be made within six months of the communication of the award, unless otherwise agreed by the parties. The interpretation should follow as quickly as possible (Art. 31, para 3). “An application for revision of the award may be made only when it is based upon the discovery of some fact which is of such a nature as to be a decisive factor and which, when the award was rendered, was unknown to the Tribunal and to the party or parties to the dispute claiming revision. The application for revision must be made at the latest within six months of the discovery of the new fact. No application for revision may be made after the lapse of ten years from the date of the award” (Art. 31, para 4). “As far as possible, the examination of a request for interpretation or an application for revision should be carried out by the Tribunal which made the award in question. If the Bureau should find this to be impossible, another Tribunal shall be constituted in accordance with the provisions of Article 28” (Art. 31, para 5). Under Art. 32, the award should be published by the Registrar. This should lead to acceptance in the countries involved.

#### 2.4 *Subsidiarity*

The element of *subsidiarity* was already stressed by Bindschedler in the early days (on this matter with regard to the CCA see Cafilisch 1998b and Jacobi 1997a). Existing methods of dispute resolution should remain open. In addition to the hesitant attitudes of many states, this represents a difficulty as it can detract from the jurisdiction of the court.

In the Preamble to the Convention, the participating states have emphasized that they do not intend to impair the competence or operation of other existing institutions or mechanisms, such as the ICJ, the ECHR, the ECJ and the PCA. To this list one should add the International Tribunal for the Law of the Sea (ITLOS) and the Dispute Settlement body (DSB) of the World Trade Organization (WTO), which deals with trade-related matters. The European Convention on Peaceful Settlement of Disputes, which entered into force on 30 April 1958, binds a comparatively low number of states (only 13 states ratified it; an additional five states signed but did not ratify it). It does not include any of the former Eastern bloc states. Furthermore, many of the states which ratified the Convention, did so subject to a caveat which excluded the chapter concerning arbitration proceedings (cf. Miesler 1977: 353).

Art. 19, para. 2 contains the provision that a “Conciliation Commission constituted for a dispute shall take no further action if, even after the dispute has been submitted to it, one or all of the parties refer the dispute to a court or tribunal whose jurisdiction in respect of the dispute the parties thereto are under a legal obligation to accept”. Furthermore, a “Conciliation Commission shall postpone examining a dispute if this dispute has been submitted to another body which has competence to formulate proposals with respect to this dispute” (Art. 19, para. 3).

A State can also “make a reservation in order to ensure the compatibility of other mechanisms of dispute settlement that the Convention establishes with other means of dispute settlement that are the result of an international legal obligation upon States parties” (Art. 19, para. 4; see annex). According to *Treves*, this provision was introduced in order to avoid harmful competition in the relationship between the CCA and pre-existing means of peaceful disputes settlement (cf. *Treves*: 1998). Germany delivered a corresponding statement (see also *Leben* 1996: 140).

The following matters are also withheld from the jurisdiction of the Court:

Disputes, which have been submitted to a tribunal or court prior to having been submitted to the CCA or disputes which have already been decided (principles of *lis pendens* and *ne bis in idem* apply). However, this does not exclude cases which have been submitted by one party to another such a body provided the other party to the dispute is not bound by the jurisdiction of that entity and has not agreed to subject itself to the jurisdiction of that court or body (Art. 19, para. 1a).

In addition, according to Art. 19, para. 1b, the CCA is also precluded from action if the parties to the dispute have previously accepted the exclusive jurisdiction and binding authority of a particular body to settle the dispute, or if the parties have expressly agreed to settle the dispute exclusively by other means.

### 3. Current Developments

Some experts believe the reluctance of many states can be explained by the lack of jurisprudence which would provide an indication of the likely course and outcome of proceedings before the CCA. The Eastern states could be more inclined to make use of the CCA because of their influence on its development and on the elaboration of the convention. The CCA could benefit from the role played by the CSCE in the transformation of these countries. The confidence built up in favour of the CSCE as a result is greater than the confidence which these countries have in the other existing mechanisms (see: Kokott, 268f.). Following remarks expressed in 1998 by *Györgi Szénási*, the head of the International Law department of the Hungarian Ministry of Foreign Affairs, a lack of confidence in peaceful dispute settlement mechanisms involving a third party became evident among the countries of Eastern Europe. For historical reasons, this distrust also applied to conciliation and arbitration processes. These countries first had to be convinced that the establishment of an arbitration tribunal was in their interest. It therefore had to be demonstrated, that it was intended as a truly pan-European instrument and not merely as an instrument beneficial for the West alone (see Caflisch 1998: Table ronde). According to Badinter, this was demonstrative of a deep deficit within the legal culture of the Eastern states, which could be remedied through integration into the OSCE system (cf. Badinter: 1991a). Many of these states have ratified the convention. As a result of these developments in Europe, an all-European mechanism of peaceful settlement of disputes possesses a real chance for success for the first time.

In his speech on 22 April 2004 at the 504<sup>th</sup> Plenary Meeting of the Permanent Council, *Lucius Caflisch* remarked that one possible reason why the CCA had never been used by the member states, was that in the time from 1992 to date, no cases have arisen which merited referral to the CCA. Furthermore, he stated, that “*direct negotiations were the best method of settling disputes, and that a third side was involved when direct negotiations failed.*” In this context, he stressed, “*that an excellent way of settling disputes was through maintaining a high quality of relations between parties and their respect for international law*”. Furthermore, states were reluctant to submit *frozen conflicts*, i. e. conflicts that could not be resolved by direct negotiations, to the CCA. However, Caflisch emphasized that he remained convinced that the CCA is a “*powerful tool for conflict prevention*”, which is important within the framework of the OSCE and which offers „*minimum limitations and maximal flexibility*” to the participating states through its use of “*modern means of dispute settlement*”. It is also recognized in the *OSCE Strategy to Address Threats to Security and Stability in the 21<sup>st</sup> Century* as an instrument capable of resolving disagreements peacefully. Many delegates made positive statements regarding, and called for the use of the CCA. *Liechtenstein* reminded those attending the meeting of the fact that the importance of this body had also been mentioned in the *Charter for European Security* of 1999 and the *St. Petersburg Declaration of the PA OSCE* of 1999 (cf. OSCE 2004).

In addition, President Badinter sent a letter to the Secretary General in which he offered the services of the CCA as a *consultative body operating in a confidential manner*, which could provide *OSCE-member states and OSCE-institutions* with advice and opinions on matters of international law. This represents an interesting opportunity to broaden the activities of the institution. As Caflisch notes, it is comprised of extremely competent experts, who as the *best experts in international law* could guarantee the quality of the service. Confidentiality would certainly contribute to the attractiveness of this offer. Confidence in the judicial capacities of the CCA, developed by way of these advisory services could finally encourage states to use the CCA. A further advantage of this practice would be its applicability to all member states

and not only the states who are party to the convention (cf. OSCE 2004). In this way, the CCA could play an important role in situations where states, involved in bilateral talks, are unable to reach agreement and are unable to combine their diverging positions. In an interview on 7 June 2005, Robert Badinter, President of the OSCE Court of Conciliation and Arbitration stated (see CCA 2005) that the purpose of the Convention was to “equip Europe with an efficient dispute settlement mechanism comprising adjudication and conciliation, i. e. judicial as well as diplomatic means. The Convention is thus intended to occupy a central function in the framework of the OSCE, one of whose principle aims is the maintenance of peace in Europe.” He added that the lists comprises of “some of the best and most experienced European minds in the area of inter-State dispute settlement by diplomatic and adjudicatory means(...). They can also be asked by participating States to provide advice in international matters.” The ultimate efficiency of the institution depends upon the willingness of the member states to avail of it.

## 4. Conclusions and Recommendations

### 1. *Use is desirable.*

With the establishment of the CCA, the OSCE has at its disposal an instrument for the regulation of all types of inter-state disputes arising within the OSCE area. The court is ready to act but has yet to be introduced into the legal practices of the OSCE. Its use would be a complement to the classic diplomatic approach to conflict management within the OSCE and the concept of comprehensive and sustainable security-building.

The comparative advantages of the CCA can be seen in its potential to improve the legal framework and activities of the OSCE, as well as in strengthening legal certainty. In addition, through both the provision of legal opinions as well as through its conciliation and arbitration procedures, the CCA can contribute to political positioning within conflicts and to the balancing of political interests.

The operation of the CCA is marked by its flexibility and its confidentiality. It is effectively a *Stand-by Institution*, which can be activated on demand. Moreover, its outlay in terms of personnel and finance is relatively low.

### 2. *Reasons for reluctance*

Not all of the member states have ratified the convention. The reluctance of OSCE-participating States to invoke the jurisdiction of the CCA is partly caused by the constellations of global politics (US and Russia). The actual or desired competence of other bodies also plays a role. Furthermore, uncertainty about course and outcome of potential proceedings represents a major obstacle. Reasons may also be found in the limited right to determine the identity of the presiding judges, upon whom the final decision will rest.

### 3. *Use is unrealistic*

It is unlikely that the CCA will find its first use in a dispute over important issues of national security. Such questions touch on the territorial integrity and national sovereignty of participating States. For example, it can hardly be expected that the *frozen conflicts* between Armenia and Azerbaijan or Georgia and Moldova, which are of such fundamental importance to the parties involved, would be brought before the court. Of a similarly fundamental nature are issues regarding minorities, at least in areas where these issues are perceived as conflicts. Often, these conflicts involve not only issues of internal domestic concern, but rather also issues of state-building (similar to the situation regarding particular titular nations), and consequently the territorial integrity of the States especially in areas densely populated by minorities.

### 4. *Use possibly conceivable*

The use of the CCA is most likely in relation to matters which do not challenge the territorial integrity or the nature of the states concerned. Such issues could include, for example, disputes regarding resources, such as disputes between states over common water sources or the common use of aquifers. Disputes concerning economic or environmental matters generally could also be included provided they are not already under the jurisdiction of another body (such as the WTO that is occupied with economic disputes). Another potential area is the regulation of maritime boundaries or the demarcation of territorial seas (which are possibly

under the jurisdiction of the ITLOS or ICJ, respectively). Finally, the CCA acts in relation to regulations in the areas of migration and freedom of movement where the relevance of the subject matter has to be investigated, such as the legal status of migrants or the details of visa regimes.

President Robert Badinter recently proposed a role for the CCA in preparing legal advice for OSCE-participating States and OSCE-Institutions on questions of international law. This role is relatively low key and should therefore be rather unproblematic. This practice could act as a confidence-building measure which eventually helps to stimulate interest in using the court.

#### 5. *Disputes within the EU*

Many states would find it desirable that the CCA be given the opportunity to take on its first case. It is important that it should finally become legally active within the OSCE. However, it is unlikely that this first dispute will be a dispute emerging from the EU. The background to this observation is the pre-existence of conciliation, arbitration and other remedies within the EU. It would thus be difficult to convince the EU institutions of the benefits of CCA competence in these areas. Nonetheless there may be a willingness among EU-members to submit single *low-profile* cases to the CCA and this possibility should be examined.

#### 6. *Disputes on the borders of the EU*

The jurisdiction of the CCA could be invoked in order to resolve disputes on the borders of the EU, particularly in the context of pre-accession procedures for current or future EU-candidates. The current dispute between Italy, Croatia and Slovenia regarding ecological matters and fishery zones could contain a real potential for conflict. Recent reports in the Slovenian media have stated that the government was considering the involvement of the CCA in a number of issues concerning Croatia over maritime borders and territorial seas. The dispute between Romania and Ukraine over Snake Island should be examined to find out whether it is potentially eligible for submission to the court. Relations between Romania and Moldova, concerning the less critical issues, could also offer an attractive starting point for the CCA..

#### 7. *Disputes outside the EU*

Outside of the EU, only lower-tension disputes should be brought before the court. A few years ago, water management issues were unsuccessfully tackled by traditional means of OSCE-mediation. Kazakhstan's presidency of the OSCE in 2009 could encourage it to submit certain aspects of its relations with Kyrgyzstan to the CCA. It is also conceivable that the dispute between Kyrgyzstan and Uzbekistan concerning the disposal of atomic waste could be brought before the court.

#### 8. *Disputes involving the USA*

The generally skeptical attitude of the USA towards international courts added to the fact that it has not ratified the convention, means that it is very unlikely that the USA would initiate the first use of the CCA. Furthermore, the US is also capable of maintaining its predominant status in the European security framework and its quasi-monopolistic role as a "mediator" within Europe without the need to submit itself to the jurisdiction of the CCA (Caflisch 2001: 362).

9. *Disputes among of the Group of Like-Minded Countries*

Should a relevant case arise involving the *Group of Like-Minded Countries* (Canada, Switzerland, Iceland, Liechtenstein and Norway) they could probably be persuaded to bring a case before the CCA. Switzerland's founding role in the establishment of the CCA makes it the most likely candidate to invoke such an action.

10. *Scant acceptance of obligatory arbitration*

So far only six states have declared themselves to be subject to the compulsory jurisdiction of the court. These states are as follows: Greece (valid for 10 years; subject to a reservation with regard to national defense); Denmark (10 years) Finland (10 years) and Sweden (10 years), Malta (5 years) and The Former Yugoslav Republic of Macedonia (5 years; subject to a reservation concerning matters of national defense and territorial integrity). The hope that, quasi-compulsory jurisdiction would be achieved through the introduction of this optional clause is hardly realistic considering the experiences of the ICJ. The award of the arbitration tribunal would be binding on the parties. The unwillingness to accept the compulsory jurisdiction of the CCA poses the greatest obstacle to an efficient OSCE system of conflict resolution.

11. *Use of conciliation for political matters*

Political disputes can also be resolved within the framework of a legally regulated procedure. Conciliation procedures are particularly suitable for this constellation. Each state which has ratified the Convention can unilaterally initiate a conciliation procedure provided the other state has also ratified the Convention. Thus, it acts as an obligatory conciliation procedure for all disputes that have not been resolved by direct negotiations. However, acceptance of the recommendations of the conciliation commission is optional. This is not conducive to implementation. As long as at least one of the parties to the dispute has signed the convention, a conciliation procedure is possible subject to the agreement of OSCE-participating states.

12. *Germany*

It should be remembered that Art. 24, para. 3 German Basic Law states that "For the settlement of disputes between states, the Federation shall accede to agreements providing for general, comprehensive, and compulsory international arbitration." The CCA could be used as for this purpose.

The unresolved issue between Germany and Russia regarding looted artistic and historic materials could open up the possibility of bringing the first case before of the CCA. Given that both states have ratified the Convention, conciliation proceedings could be initiated unilaterally.

## Bibliography

- Académie de droit international (Ed.)* 1991, Le règlement pacifique des différends internationaux en Europe. Perspectives d'avenir – The Peaceful Settlement of International Disputes in Europe, Colloque La Haye, 6-8 Septembre 1990, Dordrecht/Boston/London.
- Aćimović, Ljubivoje* 1980, Peaceful Settlement of Disputes – Current Initiatives and Perspectives, in: Diez, Emmanuel/Monnier, Jean/Müller, Jörg P./Reimann, Heinrich/Wildhaber, Luzius (Eds): Festschrift für Rudolf Bindschedler, Bern, pp. 335-349.
- Andrés Saénz de Santa María, María de la Paz* 1992, Nuevas perspectivas del arreglo pacífico de conflictos en Europa. Teoría y práctica, in: Revista de instituciones europeas, vol. 19/1992, pp. 461-490.
- Badinter, Robert* 1999, La Cour de conciliation et d'arbitrage au sein de l'OSCE, in: International Law Forum du Droit International, vol. 1/1999, pp. 99-102.
- Badinter, Robert* 1993, L'Europe de droit, in: European Journal of International Law, pp. 15-23.
- Badinter, Robert* 1992, Pour une Cour européenne de conciliation et d'arbitrage, in: Le Monde, 25. Juni 1992.
- Badinter, Robert* 1991a, Un Tribunal pour le continent, in: Liberation, 4. Oktober 1991.
- Badinter, Robert* 1991b, Pour une Cour de la grande Europe, in: Le Monde, 21. Juni 1991.
- Barberini, Giovanni/Ronzitti, Natalino* (Eds) 1994: La nuova Europa della CSCE. Istituzioni, meccanismi e aspetti operativi della Conferenza sulla sicurezza e la cooperazione in Europa, Lo Spettatore Internazionale 10, Collana di studi e documentazione di politica, economia e strategia internazionale a cura dell'Istituto Affari Internazionale, Franco Angeli.
- Bindschedler, Rudolf L.* 1976, Der schweizerische Entwurf eines Vertrages über ein europäisches System der friedlichen Streitbeilegung und seine politischen Aspekte, in: Europa-Archiv, vol. 2/1976, pp. 57-66.
- Bindschedler, Rudolf L.* 1975, La Conférence sur la sécurité en Europe et le règlement pacifique des différends, in: Comunicazioni e studi, vol. XIV, pp. 101-108.
- Bindschedler, Rudolf L.* 1974, To what Extent and to which Questions is it Advisable to Provide for the Settlement of International Legal Disputes by other Organs than Permanent Courts? Report, in: Mosler, Herman/Bernhardt, Rudolf (Eds), Judicial Settlement of International Disputes, International Court of Justice – Other Courts and Tribunals – Arbitration and Conciliation. Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht Band 62, An International Symposium, pp. 133-145, Berlin/Heidelberg/New York.
- Bindschedler, Rudolf L.* 1973, Ein europäisches System der friedlichen Streiterledigung. Der schweizerische Vorschlag zuhanden der Sicherheitskonferenz, in: Neue Zürcher Zeitung und schweizerisches Handelsblatt (Fernaussgabe Nr. 106), 18. April.
- Bloed, Arie (Ed.)* 1993, The Conference on Security and Co-operation in Europe. Analysis and Basic Documents 1972-1993, Dordrecht/Boston/London.
- Bloed, Arie (Ed.)* 1990, From Helsinki to Vienna, Basic Documents of the Helsinki Process, Dordrecht/Boston/London.
- Borchert, Heiko* 1996, Friedenssicherung im Rahmen der OSZE, ETH Zürich, Forschungsstelle für internationale Beziehungen, Beiträge Nr. 2/1996.
- Bothe, Michael* 1997, The Various Dispute Settlement Procedures – General International Law and OSCE Practise, in: Bothe, Michael/Ronzitti, Natalino/Rosas, Allan (Eds), The OSCE in the Maintenance of Peace and Security. Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes, The Hague/London/Boston, pp. 367-380.



- Bothe, Michael/Ronzitti, Natalino/Rosas, Allan (Eds)* 1997, *The OSCE in the Maintenance of Peace and Security. Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes*, The Hague/London/Boston.
- Caflisch, Lucius* 2001, Cent ans de règlement pacifique des différends Interétatiques, in: *Recueil des Cours de l'Académie de Droit International*, pp. 245-467.
- Caflisch, Lucius (Ed.)* 1998a, *Règlement pacifique des différends entre États. Perspectives universelle et européenne – The Peaceful Settlement of Disputes between States: Universal and European Perspectives*, Nijhoff Law Specials, vol. 36, The Hague/London/Boston.
- Caflisch, Lucius* 1998b, La subsidiarité des mécanismes de la convention de 1992, in: *Caflisch, Lucius (Ed.)*, *Règlement pacifique des différends entre États. Perspectives universelle et européenne – The Peaceful Settlement of Disputes between States. Universal and European Perspectives*, pp. 55-66.
- Caflisch, Lucius* 1997b, *The OSCE Court of Conciliation and Arbitration. Some Facts and Issues*, in: *Bothe, Michael/Ronzitti, Natalino/Rosas, Allan (Eds)*, *The OSCE in the Maintenance of Peace and Security. Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes*, The Hague/London/Boston, pp. 381-408.
- Caflisch, Lucius* 1995, *The OSCE Court of Arbitration. Necessary or Redundant?*, in: *American Society of International Law Bulletin*, no. 9/1995, pp. 23-27.
- Caflisch, Lucius* 1993a, Le règlement pacifique des différends internationaux à la lumière des bouleversements interveus en Europe centrale et en Europe de l'Est, in: *Anuario de derecho internacional* 9/1993, Pamplona, pp. 17-39.
- Caflisch, Lucius* 1993b, Vers des mécanismes pan-européens de règlement pacifique des différends, in: *Revue Générale de Droit International Public*, pp. 1-38.
- Caflisch, Lucius* 1993c, *Règlement pacifique des différends en Europe. La procedure de La Valette et les perspectives de l'avenir*, in: *Christian Dominicé/ Patry, Robert/Reymind, Claude (Eds)*, *Études de droit international en l'honneur de Pierre Lalive*, Basel, pp. 437-456.
- Caflisch, Lucius* 1993d, *Friedliche Streitbeilegung im gesamteuropäischen Rahmen*, in: *Zeitschrift für schweizerisches Recht*, vol. I/1993, pp. 307-325.
- Caflisch, Lucius* 1993e, *Le règlement pacifique des différends internationaux. Nouvelles tendances*, in: *Conférence commémorative Gilberto Amado*, Genève, Nations Unies.
- Caflisch, Lucius/Cuny, Laurence* 1997a, *Der Vergleichs- und Schiedsgerichtshof. Aktuelle Probleme*, in: *Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg/IFSH (Ed.)*, *OSZE-Jahrbuch 1997*, Baden-Baden, pp. 373-382.
- Caflisch, Lucius/ Godet, Blaise* 1992, *La Suisse et le règlement pacifique des différends internationaux*, in: *Neues Handbuch Aussenpolitik*, pp. 957-971.
- Condorelli, Luigi* 1994, *Diritto e non diritto nella CSCE*, in: *Barberini, Giovanni/Ronzitti, Natalino (Eds)*, *La nuova Europa della CSCE. Istituzioni, meccanismi e aspetti operativi della Conferenza sulla sicurezza e la cooperazione in Europa*, *Lo Spettatore Internazionale* 10, Collana di studi e documentazione di politica, economia e strategia internazionale a cura dell'Istituto Affari Internazionale, Franco Angeli, pp. 47-62.
- Condorelli, Luigi* 1993, *En attendant la „Cour de conciliation et d'arbitrage de la CSCE”*. Quelques remarques sur le droit applicable, in: *Christian Dominicé/Patry, Robert/Reymond, Claude (Eds)*, *Études de droit international en l'honneur de Pierre Lalive*, Basel, pp. 457-468.
- Court of Conciliation and Arbitration*, 2005, *Interview with Robert Badinter, President of the OSCE Court of Conciliation and Arbitration*.  
[http://www.osce.org/cca/item\\_2\\_14744.html](http://www.osce.org/cca/item_2_14744.html).
- Cuny, Laurence* 1997, *L'OSCE et le règlement pacifique des différends. La Cour de conciliation et d'arbitrage*, *Publications de l'institut universitaire de Hautes Etudes Internationales*, Genève.

- Christian Dominicé/ Patry, Robert/Reymont, Claude (Eds)* 1993, *Études de droit international en l'honneur de Pierre Lalive*, Basel.
- Decaux, Emmanuel* 1998, *La place de la Convention au sein de l'OSCE?*, in: Caflisch, Lucius (Ed.), *Règlement pacifique des différends entre États. Perspectives universelle et européenne – The Peaceful Settlement of Disputes between States: Universal and European Perspectives*, Nijhoff Law Specials, vol. 36, pp. 45-54.
- Decaux, Emmanuel/ Sicilianos, Linos-Alexandre (Eds)* 1993, *La C.S.C.E.. Dimension humaine et règlement des différends*, Paris.
- Diez, Emmanuel/Monnier, Jean/Müller, Jörg P./Reimann, Heinrich/Wildhaber, Luzius (Eds)* 1980, *Festschrift für Rudolf Bindschedler*, Bern.
- Eisemann, Pierre* 1993, *La convention de Stockholm relative à la conciliation et à l'arbitrage au sein de la C.S.C.E. Quelques observations iconoclastes*, in: Decaux, Emmanuel/Sicilianos, Linos-Alexandre (Eds), *La C.S.C.E.: Dimension humaine et règlement des différends*, Paris, pp. 219-230.
- Europa Archiv* 1976, *Der Schweizerische Vorschlag in der KSZE für ein europäisches Verfahren der friedlichen Streiterledigung*, in: *Europa-Archiv* vol. 2/1976, pp. D 38-52.
- Gaißmaier, Thomas* 2000, *Der OSZE-Gerichtshof – Stärken, Schwächen, Verbesserungsvorschläge*. Magisterarbeit, Universität Hamburg.
- Ghebali, Victor-Yves* 1996, *L'OSCE dans L'Europe post-communiste. Vers une identité paneuropéenne de sécurité*, Bruxelles.
- Ghebali, Victor-Yves* 1989, *La Diplomatie de la Détente. La CSCE, D'Helsinki à Vienne (1973-1989)*, Collection Organisation Internationale et Relations Internationales No. XVIII, Bruxelles.
- Ginther, Konrad* 1977, *Die Grundzüge des schweizerischen Entwurfs eines Vertrages über ein europäisches System der friedlichen Streiterledigung – Überlegungen zur völkerrechtlichen Bedeutung von „Entspannung“*, in: *Archiv des Völkerrechts* vol. XVII (1977/1978), pp. 295-332.
- Góralczyk, Wojciech* 1991, *Changing Attitudes of Central and Eastern European States Towards the Judicial Settlement of International Disputes*, in: *Le règlement pacifique des différends internationaux en Europe. Perspectives d'avenir - The Peaceful Settlement of International Disputes in Europe*, Colloque La Haye, 6-8 Septembre 1990, Dordrecht/Boston/London, pp. 477-496.
- Graber, Pierre* 1976, *Extrait de la réponse donnée le 30 Septembre 1975 par M. Graber, président de la Confédération et chef du Département politique fédéral, à l'interpellation de M. Hefti, député au Conseil des Etats, du 18 Septembre 1975*, in: *Annuaire suisse de droit international* XXXII/1976, pp. 153-155).
- Graber, Pierre* 1973, *Erklärung des Chefs des Schweizer Politischen Departements, Pierre Graber, am 05. Juli 1973*, in: *Europa-Archiv* vol. 16/1973, pp. D 468-471.
- Hafner, Gerhard* 1998, *Should One Fear the Proliferation of Mechanisms for the Peaceful Settlement of Disputes?*, in: Caflisch, Lucius (Ed.), *Règlement pacifique des différends entre États. Perspectives universelle et européenne – The Peaceful Settlement of Disputes between States. Universal and European Perspectives*, Nijhoff Law Specials, vol. 36, pp. 25-44.
- Hafner, Gerhard* 1994, *Das Streitbeilegungsabkommen der KSZE. Cui bono?*, in: Ginther, Konrad et al.(Eds), *Völkerrecht zwischen normativem Ausgleich und politischer Realität*, Berlin, pp. 115-154.
- Hafner, Gerhard* 1988, *Bemühungen um ein gesamteuropäisches Streitbeilegungssystem im Rahmen der KSZE*, in: Böckstiegel, Karl-Heinz et al. (Eds) *Law of Nations, Law of International Organizations, World's Economic Law*, Köln, pp. 147-171.
- Heraclides, Alexis* 1993, *Helsinki-II and its Aftermath. The Making of the CSCE into an International Organisation*, London/New York.

- Herzog, Roman* 1996, Zur Friedenspolitik und internationalen Gerichtsbarkeit, in: S+F, vol. 4/1996, pp. 227-230.
- Hillgenberg, Hartmut* 1991, Der KSZE-Mechanismus zur friedlichen Beilegung von Streitigkeiten, in: German Yearbook of International Law XXXIV/1991, pp. 121-137.
- International Commission of Jurists* 2005, Press Release 2005/4 – Certain Property (Liechtenstein v. Germany) – Preliminary Objections – The Court finds that it has no jurisdiction to decide the dispute.
- Irmscher, Tobias* 2005, Anmerkung zur Liechtenstein-Entscheidung des Internationalen Gerichtshofs, in: Archiv des Völkerrechts XLIII, vol 3/2005.
- Jacobi, Susanne* 1997a, Subsidiarity and Other Obstacles to the Use of the OSCE Dispute Settlement Procedures, in: Bothe, Michael/Ronzitti, Natalino/Rosas, Allan (Eds), The OSCE in the Maintenance of Peace and Security. Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes, The Hague/London/Boston, pp. 425-458.
- Jacobi, Susanne* 1997b, The OSCE Court. An Overview, in: Leiden Journal of international law, vol. 10/1997, pp. 281-294.
- Jeannel, Roger*, 1978: La conference de Montreux sur le règlement des différends dans le cadre de la CSCE, in: Anuaire français de droit international vol. XXIII/1978, pp. 373-378.
- Jennings, Sir Robert Y.* 1991, The “World Court” is Necessarily a Regional Court, in: Le règlement pacifique des différends internationaux en Europe. Perspectives d’avenir - The Peaceful Settlement of International Disputes in Europe, Colloque La Haye, 6-8 Septembre 1990, Dordrecht/Boston/London, pp. 305-313.
- Heinz-Gerhard Justenhoven* 2006, Internationale Schiedsgerichtsbarkeit. Ethische Norm und Rechtswirklichkeit (Reihe Theologie und Frieden, 30), Stuttgart.
- Kirchhoff, Lars* 2000, Der Beitrag der OSZE zur Konfliktbewältigung in Europa, in: Die Friedens-Warte, Band 75 Heft 1/2000, pp. 53-80.
- Klee, Bettina/ Lutz, Dieter S.* 1995, Ein Schiedsgerichtshof für Europa, in: S+F, vol. 2/1995, pp. 104-109.
- Kooijmans, P. H.* 1992, The Mountain Produced a Mouse – The CSCE Meeting of Experts on Peaceful Settlement of Disputes, Valetta 1991, in: Leiden Journal of international law, pp. 90-97.
- Kokott, Juliane* 1997, Der Vergleichs- und Schiedsgerichtshof der OSZE – internationale Schiedsgerichtsbarkeit zwischen Politik und Recht, in: Lhotta, Roland/ Oebbecke, Janbernd/ Reh, Werner (Eds), Deutsche und europäische Verfassungsgeschichte. Sozial- und rechtswissenschaftliche Zugänge. Symposium zum 65. Geburtstag von Hans Boldt, Baden-Baden, pp. 253-270.
- Leben, Charles* 1996, La mise en place de la cour de conciliation et d’arbitrage au sein de l’O.S.C.E., in: Revue Générale de Droit International Public, pp. 136-148.
- Leben, Charles* 1991, La création d’un organisme CSCE pour le règlement pacifique des différends, in: Revue Générale de Droit International Public, pp. 857-880.
- Leue, Michael* 1999, Die Organisation für Sicherheit und Zusammenarbeit in Europa (OSZE) und ihre Instrumente zur friedlichen Streitbeilegung, Frankfurt am Main.
- Lohmann, Torsten* 1997a, Dispute Settlement in the OSCE – Genesis and Overview, in: Bothe, Michael/Ronzitti, Natalino/Rosas, Allan (Eds), The OSCE in the Maintenance of Peace and Security. Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes, The Hague/London/Boston, pp. 343-366.
- Lohmann, Torsten* 1997b, The Role of Conciliation and Similar Proceedings in International Dispute Settlement and the OSCE Procedures, in: Bothe, Michael/Ronzitti, Natalino/Rosas, Allan (Eds), The OSCE in the Maintenance of Peace and Security. Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes, The Hague/London/Boston, pp. 409-424.

- Lucas, Michael R./Mietzsch, Oliver* 1993, Peaceful Dispute Settlement and the CSCE, in: Lucas, Michael R. (Ed.), The CSCE in the 1990s. Constructing European Security and Cooperation, Baden-Baden, pp. 83-109.
- Lutz, Dieter S.* 1998, Internationale (Schieds-)Gerichtsbareit und der Verfassungsauftrag des Artikel 24 Absatz 3 des Grundgesetzes der Bundesrepublik Deutschland, in: S+F, vol. 2/1998, pp. 69-74.
- Lutz, Dieter S.* 1996a, The OSCE Court of Conciliation and Arbitration, in: International Politics, vol. 33/1996, pp. 205-214.
- Lutz, Dieter S.* 1996b, The OSCE Court of Conciliation and Arbitration, in: "Arbitration Court" and "Security Model". Two Aspects of the OSCE Discussion, Hamburger Beiträge zur Friedensforschung und Sicherheitspolitik, Band 99, pp. 31-47.
- Lutz, Dieter S.* 1995, Der OSZE-Gerichtshof, in: Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg/IFSH (Ed.), OSZE-Jahrbuch 1995, Baden-Baden, pp. 241-253.
- Lüthy, Cornelia* 1998, Verfahren zur friedlichen Beilegung internationaler Streitigkeiten im Rahmen der OSZE, Schweizer Studien zum internationalen Recht Band 103, Zürich.
- Miehler, Heinz* 1977: The European Convention for the Peaceful Settlement of Disputes, in: Kipp, Heinrich/Mayer, Franz/Steinkamm, Armin (Eds), Um Recht und Freiheit, 1. Halbband. Festschrift für Friedrich August Freiherr von der Heydte zur Vollendung des 70. Lebensjahres, Berlin, pp. 335-361.
- Mràsek, Josef* 1994, European Security and the Peaceful Settlement of Disputes, in: Coexistence, vol. 31, No. 3/1994, pp. 221-240.
- Mràsek, Josef* 1991, Third Party Element in the Peaceful Settlement of International Disputes in the Framework of the CSCE Process, in: Le règlement pacifique des différends internationaux en Europe. Perspectives d'avenir - The Peaceful Settlement of International Disputes in Europe, Colloque La Haye, 6-8 Septembre 1990, Dordrecht/Boston/London, pp. 609-626.
- Müller, Erwin/Schneider, Patricia* 2003, Optimierte Modelle der Friedenssicherung durch internationale Rechtsprechung und Rechtsdurchsetzung, in: Patricia Schneider/Thony, Kristina/Müller, Erwin (Eds), Frieden durch Recht. Friedenssicherung durch internationale Rechtsprechung und Rechtsdurchsetzung. (Frieden durch Recht V) Baden-Baden, pp. 214-233.
- Münch, Fritz* 1980, Zur schweizerischen Initiative für die friedliche Beilegung von Streitigkeiten in Helsinki und Montreux, 1973 und 1978, in: Diez, Emmanuel/Monnier, Jean/Müller, Jörg P./Reimann, Heinrich/Wildhaber, Luzius (Eds), Festschrift für Rudolf Bindschedler, Bern, pp. 385-405.
- Nasi, Giuseppe* 1993, Soluzione pacifica delle controversie in Europa. Recenti sviluppi nella CSCE, in: La Comunità Internazionale, vol. 48/1993, pp. 235-277.
- Oellers-Frahm, Karin* 1998, The Arbitration Procedure Established by the Convention on Conciliation and Arbitration within the OSCE, in: Caflisch, Lucius (Ed.), Règlement pacifique des différends entre États. Perspectives universelle et européenne – The Peaceful Settlement of Disputes between States. Universal and European Perspectives, Nijhoff Law Specials, vol. 36, pp. 79-94.
- Oellers-Frahm, Karin* 1994, La composizione pacifica delle controversie, in: Barberini, Giovanni/Ronzitti, Natalino (Eds), La nuova Europa della CSCE. Istituzioni, meccanismi e aspetti operativi della Conferenza sulla sicurezza e la cooperazione in Europa, Lo Spettatore Internazionale 10, Collana di studi e documentazione di politica, economia e strategia internazionale a cura dell'Istituto Affari Internazionale, Franco Angeli, pp. 123-140.
- Oellers-Frahm, Karin* 1991, Die obligatorische Komponente der Streitbeilegung im Rahmen der KSZE, in: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, pp. 71-89.

- OSCE 2004*, 504th Meeting of the Permanent Council on 22 April 2004 (504<sup>th</sup> Plenary Meeting): Address on behalf of the President of the OSCE Court of Conciliation and Arbitration, by Mr. Lucius Caflisch, Member of the Bureau of the Court.
- Pellet, Alain* 1993, Note sur la cour de conciliation et d'arbitrage de le C.S.C.E, in: Decaux, Emmanuel/Sicilianos, Linos-Alexandre (Eds), *La C.S.C.E.. Dimension humaine et règlement des différends*, Paris, pp. 189-218.
- Peters, Anne* 2003, International Dispute Settlement. A Network of Cooperational Duties, in: *European Journal of International Law*, vol. 14/2003, no. 1, pp. 1-35.
- Račić, Obrad* 1996, Conciliation and Arbitration. From the Hague Conventions to the Convention on Conciliation and Arbitration within the CSCE, in: *Jugoslavenska revija za međunarodno pravo*, vol. 43/1996, Beograd, pp. 323-343.
- Račić, Obrad* 1984, KSZE-Expertentreffen über friedliche Beilegung von Streitigkeiten, in: *Internationale Politik Band XXXV*, vol. 828/1984, pp. 12-16.
- Royen, Christoph* 1979, Die Einstellung der Sowjetunion und der übrigen osteuropäischen Staaten zu obligatorischen (gerichtlichen und schiedsgerichtlichen) Formen der friedlichen Streitbeilegung, in: *Simma, Bruno/Blenk-Knocke, Edda* (Eds), *Zwischen Intervention und Zusammenarbeit. Interdisziplinäre Arbeitsergebnisse zu Grundfragen der KSZE*, Berlin, pp. 401-438.
- Rybakov, Y./Vylegzhanina, Y.* 1979, Settling Disputes, in: *International Affairs*, June/1979, pp. 67-72.
- Sands, Philippe/MacKenzie, Ruth/Shany, Yuval* (Eds) 1999, Chapter 4 – Court of Conciliation and Arbitration within the Organisation for Security and Co-operation in Europe (OSCE), in: *Manual on International Courts and Tribunals*, London/Edinburgh/Dublin, pp. 62-67.
- Sapiro, Miriam* 1995, Changing the CSCE into the OSCE. Legal Aspects of a Political Transformation, in: *American Journal of International Law* vol. LXXXIX/1995, pp. 631-637.
- Schindler, Dietrich* 1938, *Die Schiedsgerichtsbarkeit seit 1914*, Stuttgart.
- Schneider, Patricia* 2003, Der OSZE Vergleichs- und Schiedsgerichtshof, in: *Schneider, Patricia*, *Internationale Gerichtsbarkeit als Instrument friedlicher Streitbeilegung. Von einer empirisch fundierten Theorie zu einem innovativen Konzept (Frieden durch Recht IV), Demokratie, Sicherheit, Frieden*, Bd. 154, Baden-Baden, pp. 71-75.
- Sicilianos, Linos-Alexandre* 1993, Le mécanisme de règlement des différends au sein de la CSCE approuvé à Stockholm, in: *Annuaire Francais de Droit International*, pp. 899-918.
- Simma, Bruno/Blenk-Knocke, Edda* (Eds) 1979, *Zwischen Intervention und Zusammenarbeit. Interdisziplinäre Arbeitsergebnisse zu Grundfragen der KSZE*, Berlin.
- Simma, Bruno/Schenk, Dieter* 197, Der schweizerische Entwurf eines Vertrages über ein europäisches System der friedlichen Streiterledigung, in: *Simma, Bruno/Blenk-Knocke, Edda* (Eds), *Zwischen Intervention und Zusammenarbeit. Interdisziplinäre Arbeitsergebnisse zu Grundfragen der KSZE*, Berlin, S. 363-400.
- Sonntag, Ansgar* 1994, *Die Konferenz über Sicherheit und Zusammenarbeit in Europa – Versuch einer Gesamtdarstellung. Dissertation*, Ludwig-Maximilians-Universität zu München.
- Steinberger, Helmut* 1998, The Conciliation Procedure Established by the Convention on Conciliation and Arbitration within the OSCE, in: *Caflisch, Lucius* (Ed.), *Règlement pacifique des différends entre États. Perspectives universelle et européenne – The Peaceful Settlement of Disputes between States. Universal and European Perspectives*, *Nijhoff Law Specials*, vol. 36, pp. 67-78.
- Szafarz, Renata* 1996, OSCE Procedures for Peaceful Settlement of International Disputes, in: *Polish Yearbook of International Law*, vol. 22, 1995-1996, pp. 95-106.

- Tanja, Gerard J.* 1994a, Peaceful Settlement of Disputes within the Framework of the CSCE. A Legal Novelty in a Political-Diplomatic Environment, in: Bloed, Arie (Ed.), The Challenges of Change. The Helsinki Summit of the CSCE and its Aftermath, Dordrecht/Boston/London, pp. 67-94.
- Tanja, Gerard J.* 1994b, Peaceful Settlement of Disputes within the Framework of the CSCE, in: Helsinki Monitor, vol. 5/1994, No. 3 pp. 42-55.
- Tanja, Gerard J.* 1993, Peaceful Settlement of Disputes within the CSCE. Bridge over Troubled Water, in: Helsinki Monitor, vol. 4/1993, No. 1, pp. 22-33.
- Treves, Tullio*, 1999, Le controversie internazionali – Nuove tendenze, nuovi tribunali, Milano.
- Treves, Tullio* 1998, Règlement des conflits interétatiques. Possibilités et limites à l'aube du système de Stockholm, in: Caflisch, Lucius (Ed.), Règlement pacifique des différends entre États. Perspectives universelle et européenne – The Peaceful Settlement of Disputes between States: Universal and European Perspectives, Nijhoff Law Specials, vol. 36, pp. 3-16.
- Tudyka, Kurt P.* 2002, Vergleichs- und Schiedsgerichtshof, in: Das OSZE-Handbuch, Opladen, pp. 218-221.
- Vajic, Nina* 1998, Diplomatic Settleback or Adjudication?, in: Caflisch, Lucius (Ed.), Règlement pacifique des différends entre États. Perspectives universelle et européenne – The Peaceful Settlement of Disputes between States. Universal and European Perspectives, Nijhoff Law Specials, vol. 36 pp. 17-24.
- Voss, Hans* 1994, Problems of Arbitration within the CSCE, in: Peace and the Sciences, vol. XXV/1994, pp. 25-27.
- Wenig, Markus* 1996, Möglichkeiten und Grenzen der Streitbeilegung ethnischer Konflikte durch die OSZE – dargestellt am Konflikt im ehemaligen Jugoslawien, Berlin.

## Appendix 1: Caveats and Statements

### *Reservations Made on the Basis of Article 19(4)*

Austria (14 November 1995)

«Conformément à l'article 19, paragraphe 4, de la Convention relative à la conciliation et à l'arbitrage au sein de la CSCE, la République d'Autriche déclare que, compte tenu de la compétence de la Cour internationale de Justice fondée sur l'Accord modifiant l'article 27, lettre a, de la Convention européenne pour le règlement pacifique des différends, l'article 19, paragraphe premier, lettre b, première hypothèse, de la Convention relative à la conciliation et à l'arbitrage au sein de la CSCE n'est pas applicable dans les rapports entre l'Autriche et l'Italie.»

Denmark (23 August 1994)

«In conformity with Article 19, paragraph 4, the Kingdom of Denmark reserves the right to the conciliation and jurisdictional procedures established in bilateral treaties concluded or to be concluded by the Kingdom of Denmark, provided that these procedures can be set in motion unilaterally. The Kingdom of Denmark also reserves the right to the conciliation and jurisdictional procedures agreed on or to be agreed on ad hoc for a specific dispute or a series of specific disputes.»

Germany (27 September 1994)

«In conformity with Article 19, paragraph 4, of the Convention on Conciliation and Arbitration within the CSCE, the Government of the Federal Republic of Germany reserves the right to submit disputes to dispute settlement procedures established in bilateral or multilateral treaties concluded or to be concluded by the Federal Republic of Germany, provided that these procedures can be initiated unilaterally. The Federal Republic also reserves the right to submit a specific dispute or a series of specific disputes to dispute settlement procedures agreed or to be agreed on an ad hoc basis.»

Liechtenstein (28 June 1994)

«In accordance with article 19, paragraph 4, the Principality of Liechtenstein reserves the right to the conciliation and jurisdictional procedures established in bilateral treaties concluded or to be concluded by the Principality of Liechtenstein, provided that these procedures can be set in motion unilaterally. The Principality of Liechtenstein also reserves the right to the conciliation and jurisdictional procedures agreed or to be agreed on ad hoc for a specific dispute or a series of specific disputes.»

Lithuania (24 November 1997)

«As provided in paragraph 4, Article 19 of the Convention on Conciliation and Arbitration within the OSCE, the Republic of Lithuania reserves the right to the conciliation and jurisdictional procedures established in bilateral and multilateral treaties concluded or to be concluded by the Republic of Lithuania, provided that these procedures can be initiated unilaterally. The Republic of Lithuania also reserves the right to submit a specific dispute or a series of specific disputes to dispute settlement procedures agreed or to be agreed on an ad hoc basis.»

Malta (20 March 2001)

«In conformity with Article 19, paragraph 4, Malta reserves the right to the conciliation and jurisdictional procedures established in bilateral treaties concluded or to be concluded by Malta, provided that these procedures can be set in motion unilaterally. Malta also reserves the right to the conciliation and jurisdictional procedures agreed on or to be agreed on ad hoc for a specific dispute or a series of specific disputes.»

Poland (16 December 1993)

«In conformity with Article 19, paragraph 4, the Republic of Poland reserves the right to the conciliation and jurisdictional procedures established in bilateral treaties concluded or to be concluded by the Republic of Poland, provided that these procedures can be set in motion unilaterally. The Republic of Poland also reserves the right to the conciliation and jurisdictional procedures agreed or to be agreed on ad hoc for a specific dispute or a series of specific disputes.»

Romania (22 May 1996)

«By applying the provisions of Article 19, paragraph 4, Romania reserves the right of option to use the conciliation and arbitration proceedings provided in bilateral and multilateral treaties it already concluded or it will conclude».

Switzerland (17 December 1993)

«En application de l'article 19, paragraphe 4, le Conseil fédéral suisse réserve les procédures de conciliation et juridictionnelles prévues dans les traités bilatéraux conclus et à conclure par la Suisse, pour autant que ces procédures puissent être unilatéralement déclenchées. Il réserve également les procédures de conciliation et juridictionnelles convenues ou à convenir ad hoc pour un différend particulier ou une série de différends particuliers.»



## Appendix 2: Ratifications<sup>1</sup>

List showing signatures and ratifications or accessions with respect to the Convention on Conciliation and Arbitration within the OSCE

26 juin 2003

Number of signatures: 33

Number of ratifications / accessions: 33

Conditions for entry into force: 12 ratifications / accessions

Entered into force: 5 December 1994

State	Signature	Ratification/Accession	Entry into Force
Albania	15 December 1992	10 June 1996	10 August 1996
Armenia	15 December 1992	8 October 2001	8 December 2001
Austria	15 December 1992	14 November 1995 Rest. Art. 19.4	14 January 1996
Belarus		7 February 2000	7 April 2000
Belgium	15 December 1992		
Bosnia and Herzegovina	15 December 1992	14 November 2000	14 January 2001
Bulgaria (decl. made upon signature)	15 December 1992		
Canada	31 March 1993		
Croatia	15 December 1992	4 November 1993	5 December 1994
Cyprus	15 December 1992	16 February 1994	5 December 1994
Denmark	25 March 1993	23 August 1994 Res. Art. 19.4, Decl. Art. 26.2	5 December 1994
Finland	15 December 1992	20 February 1995 Decl. Art. 26.2	20 April 1995
France	15 December 1992	13 August 1993	5 December 1994
Germany	15 December 1992	29 September 1994 Res. Art. 19.4	5 December 1994
Greece	15 December 1992	22 August 1995 Decl. Art. 26.2	22 October 1995
Hungary	15 December 1992	2 June 1995	2 August 1995
Italy	15 December 1992	5 October 1994	5 December 1994
Latvia	15 December 1992	25 July 1997	25 September 1997

<sup>1</sup> Source: [http://www.osce.org/documents/cca/2003/06/4121\\_en.pdf](http://www.osce.org/documents/cca/2003/06/4121_en.pdf)

<b>State</b>	<b>Signature</b>	<b>Ratification/Accession</b>	<b>Entry into Force</b>
Liechtenstein	15 December 1992	15 July 1994 Res. Art. 19.4	5 December 1994
Lithuania		19 December 1997 Res. Art. 19.4	19 February 1998
Luxembourg	15 December 1992	18 June 2003	18 August 2003
Former Yugoslav Republic of Macedonia		21 April 1998 Decl. Art. 26.2	21 June 1998
Malta	15 December 1992	6 April 2001 Res. Art. 19.4, Decl. Art. 26.2	6 June 2001
Moldova	15 December 1992	1 February 1999	1 April 1999
Monaco	15 December 1992	14 October 1993	5 December 1994
Norway	15 December 1992	8 September 1998	8 November 1998
Poland	15 December 1992	9 December 1993 Res. Art. 19.4	5 December 1994
Portugal	15 December 1992	9 August 2000	9 October 2000
Romania	15 December 1992	22 May 1996 Res. Art. 19.4	22 July 1996
Russian Federation	15 December 1992		
San Marino	15 December 1992	18 November 1994	18 January 1995
Slovak Republic	31 March 1993		
Slovenia	29 March 1993	11 May 1994	5 December 1994
Sweden	15 December 1992	25 November 1993 Decl. Art. 26.2	5 December 1994
Switzerland	15 December 1992	23 December 1993 Res. Art. 19.4	5 December 1994
Tajikistan		24 March 1995	24 May 1995
Ukraine	15 December 1992	12 December 1995	12 February 1996
Uzbekistan		24 January 1996	24 March 1996

## Appendix 3: Convention on the court of Conciliation and Arbitration within the CSCE<sup>2</sup>

### CONVENTION ON CONCILIATION AND ARBITRATION WITHIN THE CSCE

The States parties to this Convention, being States participating in the Conference on Security and Co-operation in Europe,

Conscious of their obligation, as provided for in Article 2, paragraph 3, and Article 33 of the Charter of the United Nations, to settle their disputes peacefully;

Emphasizing that they do not in any way intend to impair other existing institutions or mechanisms, including the International Court of Justice, the European Court of Human Rights, the Court of Justice of the European Communities and the Permanent Court of Arbitration;

Reaffirming their solemn commitment to settle their disputes through peaceful means and their decision to develop mechanisms to settle disputes between participating States;

Recalling that full implementation of all CSCE principles and commitments constitutes in itself an essential element in preventing disputes between the CSCE participating States;

Concerned to further and strengthen the commitments stated, in particular, in the Report of the Meeting of Experts on Peaceful Settlement of Disputes adopted at Valletta and endorsed by the CSCE Council of Ministers of Foreign Affairs at its meeting in Berlin on 19 and 20 June 1991,

Have agreed as follows:

#### CHAPTER I - GENERAL PROVISIONS

##### Article 1

###### Establishment of the Court

A Court of Conciliation and Arbitration shall be established to settle, by means of conciliation and, where appropriate, arbitration, disputes which are submitted to it in accordance with the provisions of this Convention.

##### Article 2

###### Conciliation Commissions and Arbitral Tribunals

1. Conciliation shall be undertaken by a Conciliation Commission constituted for each dispute. The Commission shall be made up of conciliators drawn from a list established in accordance with the provisions of Article 3.

2. Arbitration shall be undertaken by an Arbitral Tribunal constituted for each dispute. The Tribunal shall be made up of arbitrators drawn from a list established in accordance with the provisions of Article 4.

3. Together, the conciliators and arbitrators shall constitute the Court of Conciliation and Arbitration within the CSCE, hereinafter referred to as "the Court".

##### Article 3

###### Appointment of Conciliators

1. Each State party to this Convention shall appoint, within two months following its entry into force, two conciliators of whom at least one is a national of that State. The other may be a national of another CSCE participating State. A State which becomes party to this Convention after its entry into force

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<sup>2</sup> Source: [http://www.osce.org/documents/mcs/1992/12/4156\\_en.pdf](http://www.osce.org/documents/mcs/1992/12/4156_en.pdf)

shall appoint its conciliators within two months following the entry into force of this Convention for the State concerned.

2. The conciliators must be persons holding or having held senior national or international positions and possessing recognized qualifications in international law, international relations, or the settlement of disputes.

3. Conciliators shall be appointed for a renewable period of six years. Their functions may not be terminated by the appointing State during their term of office. In the event of death, resignation or inability to attend recognized by the Bureau, the State concerned shall appoint a new conciliator; the term of office of the new conciliator shall be the remainder of the term of office of the predecessor.

4. Upon termination of their period of office, conciliators shall continue to hear any cases that they are already dealing with.

5. The names of the conciliators shall be notified to the Registrar, who shall enter them into a list, which shall be communicated to the CSCE Secretariat for transmission to the CSCE participating States.

#### Article 4

##### Appointment of Arbitrators

1. Each State party to this Convention shall appoint, within two months following its entry into force, one arbitrator and one alternate, who may be its nationals or nationals of any other CSCE participating State. A State which becomes Party to this Convention after its entry into force shall appoint its arbitrator and the alternate within two months of the entry into force of this Convention for that State.

2. Arbitrators and their alternates must possess the qualifications required in their respective countries for appointment to the highest judicial offices or must be jurisconsults of recognized competence in international law.

3. Arbitrators and their alternates are appointed for a period of six years, which may be renewed once. Their functions may not be terminated by the appointing State party during their term of office. In the event of death, resignation or inability to attend, recognized by the Bureau, the arbitrator shall be replaced by his or her alternate.

4. If an arbitrator and his or her alternate die, resign or are both unable to attend, the fact being recognized by the Bureau, new appointments will be made in accordance with paragraph 1. The new arbitrator and his or her alternate shall complete the term of office of their predecessors.

5. The Rules of the Court may provide for a partial renewal of the arbitrators and their alternates.

6. Upon expiry of their term of office, arbitrators shall continue to hear any cases that they are already dealing with.

7. The names of the arbitrators shall be notified to the Registrar, who shall enter them into a list, which shall be communicated to the CSCE Secretariat for transmission to the CSCE participating States.

#### Article 5

##### Independence of the Members of the Court and of the Registrar

The conciliators, the arbitrators and the Registrar shall perform their functions in full independence. Before taking up their duties, they shall make a declaration that they will exercise their powers impartially and conscientiously.

#### Article 6

##### Privileges and Immunities

The conciliators, the arbitrators, the Registrar and the agents and counsel of the parties to a dispute shall enjoy, while performing their functions in the territory of the States parties to this Convention, the privileges and immunities accorded to persons connected with the International Court of Justice.

#### Article 7

##### Bureau of the Court

1. The Bureau of the Court shall consist of a President, a Vice-President and three other members.

2. The President of the Court shall be elected by the members of the Court from among their number. The President presides over the Bureau.

3. The conciliators and the arbitrators shall each elect from among their number two members of the Bureau and their alternates.

4. The Bureau shall elect its Vice-President from among its members. The Vice-President shall be a conciliator if the President is an arbitrator, and an arbitrator if the President is a conciliator.

5. The Rules of the Court shall establish the procedures for the election of the President as well as of the other members of the Bureau and their alternates.

## Article 8

### Decision-Making Procedure

1. The decisions of the Court shall be taken by a majority of the members participating in the vote. Those abstaining shall not be considered participating in the vote.

2. The decisions of the Bureau shall be taken by a majority of its members.

3. The decisions of the Conciliation Commissions and the Arbitral Tribunals shall be taken by a majority of their members, who may not abstain from voting.

4. In the event of a tied vote, the vote of the presiding officer shall prevail.

## Article 9

### Registrar

The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary. The staff regulations of the Registry shall be drawn up by the Bureau and adopted by the States parties to this Convention.

## Article 10

### Seat

1. The seat of the Court shall be established in Geneva.

2. At the request of the parties to the dispute and in agreement with the Bureau, a Conciliation Commission or an Arbitral Tribunal may meet at another location.

## Article 11

### Rules of the Court

1. The Court shall adopt its own Rules, which shall be subject to approval by States parties to this Convention.

2. The Rules of the Court shall establish, in particular, the rules of procedure to be followed by the Conciliation Commissions and Arbitral Tribunals constituted pursuant to this Convention. They shall state which of these rules may not be waived by agreement between the parties to the dispute.

## Article 12

### Working Languages

The Rules of the Court shall establish rules on the use of languages.

## Article 13

### Financial Protocol

Subject to the provisions of Article 17, all the costs of the Court shall be met by the States parties to this Convention. The provisions for the calculation of the costs; for the drawing up and approval of the annual budget of the Court; for the distribution of the costs among the States parties to this Convention; for the audit of the accounts of the Court; and for related matters, shall be contained in a Financial Protocol to be adopted by the Committee of Senior Officials. A State becomes bound by the Protocol on becoming a party to this Convention.

## Article 14

### Periodic Report

The Bureau shall annually present to the CSCE Council through the Committee of Senior Officials a report on the activities under this Convention.

## Article 15

### Notice of Requests for Conciliation or Arbitration

The Registrar of the Court shall give notice to the CSCE Secretariat of all requests for conciliation or arbitration, for immediate transmission to the CSCE participating States.

## Article 16

### Conduct of Parties - Interim Measures

1. During the proceedings, the parties to the dispute shall refrain from any action which may aggravate the situation or further impede or prevent the settlement of the dispute.
2. The Conciliation Commission may draw the attention of the parties to the dispute submitted to it to the measures the parties could take in order to prevent the dispute from being aggravated or its settlement made more difficult.
3. The Arbitral Tribunal constituted for a dispute may indicate the interim measures that ought to be taken by the parties to the dispute in accordance with the provisions of Article 26, paragraph 4.

## Article 17

### Procedural Costs

The parties to a dispute and any intervening party shall each bear their own costs.

## CHAPTER II - COMPETENCE

## Article 18

### Competence of the Commission and of the Tribunal

1. Any State party to this Convention may submit to a Conciliation Commission any dispute with another State party which has not been settled within a reasonable period of time through negotiation.
2. Disputes may be submitted to an Arbitral Tribunal under the conditions stipulated in Article 26.

## Article 19

### Safeguarding the Existing Means of Settlement

1. A Conciliation Commission or an Arbitral Tribunal constituted for a dispute shall take no further action in the case:
  - (a) If, prior to being submitted to the Commission or the Tribunal, the dispute has been submitted to a court or tribunal whose jurisdiction in respect of the dispute the parties thereto are under a legal obligation to accept, or if such a body has already given a decision on the merits of the dispute;
  - (b) If the parties to the dispute have accepted in advance the exclusive jurisdiction of a jurisdictional body other than a Tribunal in accordance with this Convention which has jurisdiction to decide, with binding force, on the dispute submitted to it, or if the parties thereto have agreed to seek to settle the dispute exclusively by other means.
2. A Conciliation Commission constituted for a dispute shall take no further action if, even after the dispute has been submitted to it, one or all of the parties refer the dispute to a court or tribunal whose jurisdiction in respect of the dispute the parties thereto are under a legal obligation to accept.
3. A Conciliation Commission shall postpone examining a dispute if this dispute has been submitted to another body which has competence to formulate proposals with respect to this dispute. If those prior efforts do not lead to a settlement of the dispute, the Commission shall resume its work at the request of the parties or one of the parties to the dispute, subject to the provisions of Article 26, paragraph 1.
4. A State may, at the time of signing, ratifying or acceding to this Convention, make a reservation in order to ensure the compatibility of the mechanism of dispute settlement that this Convention establishes with other means of dispute settlement resulting from international undertakings applicable to that State.
5. If, at any time, the parties arrive at a settlement of their dispute, the Commission or Tribunal shall remove the dispute from its list, on receiving written confirmation from all the parties thereto that they have reached a settlement of the dispute.
6. In the event of disagreement between the parties to the dispute with regard to the competence of the Commission or the Tribunal, the decision in the matter shall rest with the Commission or the Tribunal.

## CHAPTER III - CONCILIATION

### Article 20

#### Request for the Constitution of a Conciliation Commission

1. Any State party to this Convention may lodge an application with the Registrar requesting the constitution of a Conciliation Commission for a dispute between it and one or more other States parties. Two or more States parties may also jointly lodge an application with the Registrar.
2. The constitution of a Conciliation Commission may also be requested by agreement between two or more States parties or between one or more States parties and one or more other CSCE participating States. The agreement shall be notified to the Registrar.

### Article 21

#### Constitution of the Conciliation Commission

1. Each party to the dispute shall appoint, from the list of conciliators established in accordance with Article 3, one conciliator to sit on the Commission.
2. When more than two States are parties to the same dispute, the States asserting the same interest may agree to appoint one single conciliator. If they do not so agree, each of the two sides to the dispute shall appoint the same number of conciliators up to a maximum decided by the Bureau.
3. Any State which is a party to a dispute submitted to a Conciliation Commission and which is not a party to this Convention, may appoint a person to sit on the Commission, either from the list of conciliators established in accordance with Article 3, or from among other persons who are nationals of a CSCE participating State. In this event, for the purpose of examining the dispute, such persons shall have the same rights and the same obligations as the other members of the Commission. They shall perform their functions in full independence and shall make the declaration required by Article 5 before taking their seats on the Commission.
4. As soon as the application or the agreement whereby the parties to a dispute have requested the constitution of a Conciliation Commission is received, the President of the Court shall consult the parties to the dispute as to the composition of the rest of the Commission.
5. The Bureau shall appoint three further conciliators to sit on the Commission. This number can be increased or decreased by the Bureau, provided it is uneven. Members of the Bureau and their alternates, who are on the list of conciliators, shall be eligible for appointment to the Commission.
6. The Commission shall elect its Chairman from among the members appointed by the Bureau.
7. The Rules of the Court shall stipulate the procedures applicable if an objection is raised to one of the members appointed to sit on the Commission or if that member is unable to or refuses to sit at the commencement or in the course of the proceedings.
8. Any question as to the application of this article shall be decided by the Bureau as a preliminary matter.

### Article 22

#### Procedure for the Constitution of a Conciliation Commission

1. If the constitution of a Conciliation Commission is requested by means of an application, the application shall state the subject of the dispute, the name of the party or parties against which the application is directed, and the name of the conciliator or conciliators appointed by the requesting party or parties to the dispute. The application shall also briefly indicate the means of settlement previously resorted to.
2. As soon as an application has been received, the Registrar shall notify the other party or parties to the dispute mentioned in the application. Within a period of fifteen days from the notification, the other party or parties to the dispute shall appoint the conciliator or conciliators of their choice to sit on the Commission. If, within this period, one or more parties to the dispute have not appointed the member or members of the Commission whom they are entitled to appoint, the Bureau shall appoint the appropriate number of conciliators. Such appointment shall be made from among the conciliators appointed in accordance with Article 3 by the party or each of the parties involved or, if those parties have not yet appointed conciliators, from among the other conciliators not appointed by the other party or parties to the dispute.

3. If the constitution of a Conciliation Commission is requested by means of an agreement, the agreement shall state the subject of the dispute. If there is no agreement, in whole or in part, concerning the subject of the dispute, each party thereto may formulate its own position in respect of such subject.

4. At the same time as the parties request the constitution of a Conciliation Commission by agreement, each party shall notify the Registrar of the name of the conciliator or conciliators whom it has appointed to sit on the Commission.

#### Article 23

##### Conciliation Procedure

1. The conciliation proceedings shall be confidential and all parties to the dispute shall have the right to be heard. Subject to the provisions of Articles 10 and 11 and the Rules of the Court, the Conciliation Commission shall, after consultation with the parties to the dispute, determine the procedure.

2. If the parties to the dispute agree thereon, the Conciliation Commission may invite any State party to this Convention which has an interest in the settlement of the dispute to participate in the proceedings.

#### Article 24

##### Objective of Conciliation

The Conciliation Commission shall assist the parties to the dispute in finding a settlement in accordance with international law and their CSCE commitments.

#### Article 25

##### Result of the Conciliation

1. If, during the proceedings, the parties to the dispute, with the help of the Conciliation Commission, reach a mutually acceptable settlement, they shall record the terms of this settlement in a summary of conclusions signed by their representatives and by the members of the Commission. The signing of the document shall conclude the proceedings. The CSCE Council shall be informed through the Committee of Senior Officials of the success of the conciliation.

2. When the Conciliation Commission considers that all the aspects of the dispute and all the possibilities of finding a solution have been explored, it shall draw up a final report. The report shall contain the proposals of the Commission for the peaceful settlement of the dispute.

3. The report of the Conciliation Commission shall be notified to the parties to the dispute, which shall have a period of thirty days in which to examine it and inform the Chairman of the Commission whether they are willing to accept the proposed settlement.

4. If a party to the dispute does not accept the proposed settlement, the other party or parties are no longer bound by their own acceptance thereof.

5. If, within the period prescribed in paragraph 3, the parties to the dispute have not accepted the proposed settlement, the report shall be forwarded to the CSCE Council through the Committee of Senior Officials.

6. A report shall also be drawn up which provides immediate notification to the CSCE Council through the Committee of Senior Officials of circumstances where a party fails to appear for conciliation or leaves a procedure after it has begun.

### CHAPTER IV - ARBITRATION

#### Article 26

##### Request for the Constitution of an Arbitral Tribunal

1. A request for arbitration may be made at any time by agreement between two or more States parties to this Convention or between one or more States parties to this Convention and one or more other CSCE participating States.

2. The States parties to this Convention may at any time by a notice addressed to the Depositary declare that they recognize as compulsory, *ipso facto* and without special agreement, the jurisdiction of an Arbitral Tribunal, subject to reciprocity. Such a declaration may be made for an unlimited period or for a specified time. It may cover all disputes or



exclude disputes concerning a State's territorial integrity, national defence, title to sovereignty over land territory, or competing claims with regard to jurisdiction over other areas.

3. A request for arbitration against a State party to this Convention which has made the declaration specified in paragraph 2 may be made by means of an application to the Registrar only after a period of thirty days after the report of the Conciliation Commission which has dealt with the dispute has been transmitted to the CSCE Council in accordance with the provisions of Article 25, paragraph 5.

4. When a dispute is submitted to an Arbitral Tribunal in accordance with this article, the Tribunal may, on its own authority or at the request of one or all of the parties to the dispute, indicate interim measures that ought to be taken by the parties to the dispute to avoid an aggravation of the dispute, greater difficulty in reaching a solution, or the possibility of a future award of the Tribunal becoming unenforceable owing to the conduct of one or more of the parties to the dispute.

#### Article 27

##### Cases Brought before an Arbitral Tribunal

1. If a request for arbitration is made by means of an agreement, it shall indicate the subject of the dispute. If there is no agreement, in whole or in part, concerning the subject of the dispute, each party thereto may formulate its own position in respect of such subject.

2. If a request for arbitration is made by means of an application, it shall indicate the subject of the dispute, the States party or parties to this Convention against which it is directed, and the main elements of fact and law on which it is grounded. As soon as the application is received, the Registrar shall notify the other States party or parties mentioned in the application.

#### Article 28

##### Constitution of the Arbitral Tribunal

1. When a request for arbitration is submitted, an Arbitral Tribunal shall be constituted.

2. The arbitrators appointed by the parties to the dispute in accordance with Article 4 are *ex officio* members of the Tribunal. When more than two States are parties to the same dispute, the States asserting the same interest may agree to appoint one single arbitrator.

3. The Bureau shall appoint, from among the arbitrators, a number of members to sit on the Tribunal so that the members appointed by the Bureau total at least one more than the *ex officio* members. Members of the Bureau and their alternates, who are on the list of arbitrators, shall be eligible for appointment to the Tribunal.

4. If an *ex officio* member is unable to attend or has previously taken part in any capacity in the hearings of the case arising from the dispute submitted to the Tribunal, that member shall be replaced by his or her alternate. If the alternate is in the same situation, the State involved shall appoint a member to examine the dispute pursuant to the terms and conditions specified in paragraph 5. In the event of a question arising as to the capacity of a member or of his or her alternate to sit on the Tribunal, the matter shall be decided by the Bureau.

5. Any State, which is a party to a dispute submitted to an Arbitral Tribunal and which is not party to this Convention, may appoint a person of its choice to sit on the Tribunal, either from the list of arbitrators established in accordance with Article 4 or from among other persons who are nationals of a CSCE participating State. Any person thus appointed must meet the conditions specified in Article 4, paragraph 2, and for the purpose of examining the dispute, shall have the same rights and obligations as the other members of the Tribunal. The person shall perform his or her functions in full independence and shall make the declaration required by Article 5 before sitting on the Tribunal.

6. The Tribunal shall appoint its Chairman from among the members appointed by the Bureau.

7. In the event that one of the members of the Tribunal appointed by the Bureau is unable to attend the proceedings, that member shall not be replaced unless the number of members appointed by the Bureau falls below the number of *ex officio* members, or members appointed by the parties to the dispute in accordance with paragraph 5. In this event, one or more new members shall be appointed by the Bureau pursuant to paragraphs 3 and 4 of this article. A new Chairman will not be elected if one or more new members are appointed, unless the member unable to attend is the Chairman of the Tribunal.

## Article 29

### Arbitration Procedure

1. All the parties to the dispute shall have the right to be heard during the arbitration proceedings, which shall conform to the principles of a fair trial. The proceedings shall consist of a written part and an oral part.
2. The Arbitral Tribunal shall have, in relation to the parties to the dispute, the necessary fact-finding and investigative powers to carry out its tasks.
3. Any CSCE participating State which considers that it has a particular interest of a legal nature likely to be affected by the ruling of the Tribunal may, within fifteen days of the transmission of the notification by the CSCE Secretariat as specified in Article 15, address to the Registrar a request to intervene. This request shall be immediately transmitted to the parties to the dispute and to the Tribunal constituted for the dispute.
4. If the intervening State establishes that it has such an interest, it shall be authorized to participate in the proceedings in so far as may be required for the protection of this interest. The relevant part of the ruling of the Tribunal is binding upon the intervening State.
5. The parties to the dispute have a period of thirty days in which to address their observations regarding the request for intervention to the Tribunal. The Tribunal shall render its decision on the admissibility of the request.
6. The hearings in the Tribunal shall be held *in camera*, unless the Tribunal decides otherwise at the request of the parties to the dispute.
7. In the event that one or more parties to the dispute fail to appear, the other party or parties thereto may request the Tribunal to decide in favour of its or their claims. Before doing so, the Tribunal must satisfy itself that it is competent and that the claims of the party or parties taking part in the proceedings are well-founded.

## Article 30

### Function of the Arbitral Tribunal

The function of the Arbitral Tribunal shall be to decide, in accordance with international law, such disputes as are submitted to it. This provision shall not prejudice the power of the Tribunal to decide a case *ex aequo et bono*, if the parties to the dispute so agree.

## Article 31

### Arbitral Award

1. The award of the Arbitral Tribunal shall state the reasons on which it is based. If it does not represent in whole or in part the unanimous opinion of the members of the Arbitral Tribunal, any member shall be entitled to deliver a separate or dissenting opinion.
2. Subject to Article 29, paragraph 4, the award of the Tribunal shall have binding force only between the parties to the dispute and in respect of the case to which it relates.
3. The award shall be final and not subject to appeal. However, the parties to the dispute or one of them may request that the Tribunal interpret its award as to the meaning or scope. Unless the parties to the dispute agree otherwise, such request shall be made at the latest within six months after the communication of the award. After receiving the observations of the parties to the dispute, the Tribunal shall render its interpretation as soon as possible.
4. An application for revision of the award may be made only when it is based upon the discovery of some fact which is of such a nature as to be a decisive factor and which, when the award was rendered, was unknown to the Tribunal and to the party or parties to the dispute claiming revision. The application for revision must be made at the latest within six months of the discovery of the new fact. No application for revision may be made after the lapse of ten years from the date of the award.
5. As far as possible, the examination of a request for interpretation or an application for revision should be carried out by the Tribunal which made the award in question. If the Bureau should find this to be impossible, another Tribunal shall be constituted in accordance with the provisions of Article 28.

## Article 32

### Publication of the Arbitral Award

The award shall be published by the Registrar. A certified copy shall be communicated to the parties to the dispute and to the CSCE Council through the Committee of Senior Officials.

## CHAPTER V - FINAL PROVISIONS

### Article 33

#### Signature and Entry into Force

1. This Convention shall be open for signature with the Government of Sweden by the CSCE participating States until 31 March 1993. It shall be subject to ratification.
2. The CSCE participating States which have not signed this Convention may subsequently accede thereto.
3. This Convention shall enter into force two months after the date of deposit of the twelfth instrument of ratification or accession.
4. For every State which ratifies or accedes to this Convention after the deposit of the twelfth instrument of ratification or accession, the Convention shall enter into force two months after its instrument of ratification or accession has been deposited.
5. The Government of Sweden shall serve as depositary of this Convention.

### Article 34

#### Reservations

This Convention may not be the subject of any reservation that it does not expressly authorize.

### Article 35

#### Amendments

1. Amendments to this Convention must be adopted in accordance with the following paragraphs.
2. Amendments to this Convention may be proposed by any State party thereto, and shall be communicated by the Depositary to the CSCE Secretariat for transmission to the CSCE participating States.
3. If the CSCE Council adopts the proposed text of the amendment, the text shall be forwarded by the Depositary to States parties to this Convention for acceptance in accordance with their respective constitutional requirements.
4. Any such amendment shall come into force on the thirtieth day after all States parties to this Convention have informed the Depositary of their acceptance thereof.

### Article 36

#### Denunciation

1. Any State party to this Convention may, at any time, denounce this 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.
3. This Convention shall, however, continue to apply for the denouncing party with respect to proceedings which are under way at the time the denunciation enters into force. Such proceedings shall be pursued to their conclusion.

### Article 37

#### Notifications and Communications

The notifications and communications to be made by the Depositary shall be transmitted to the Registrar and to the CSCE Secretariat for further transmission to the CSCE participating States.

### Article 38

#### Non-Parties

In conformity with international law, it is confirmed that nothing in this Convention shall be interpreted to establish any obligations or commitments for CSCE participating States that are not parties to this Convention if not expressly provided for and expressly accepted by such States in writing.

### Article 39

#### Transitional Provisions

1. The Court shall proceed, within four months of the entry into force of this Convention, to elect the Bureau, to adopt its rules and to appoint the Registrar in accordance with the provisions of Articles 7,

9 and 11. The host Government of the Court shall, in cooperation with the Depositary, make the arrangements required.

2. Until a Registrar is appointed, the duties of the Registrar under Article 3, paragraph 5, and Article 4, paragraph 7 shall be performed by the Depositary.

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

## Appendix 4: Rules of Procedure<sup>3</sup>

RULES OF THE COURT OF CONCILIATION AND ARBITRATION WITHIN THE OSCE of 1 February 1997

### CHAPTER I: GENERAL AND INSTITUTIONAL PROVISIONS

#### 1. General Provision

##### Article 1: Rules of the Court

1. The present Rules, adopted by the Court of Conciliation and Arbitration (hereinafter: the Court) and approved by the States Parties to the Stockholm Convention of 15 December 1992 on Conciliation and Arbitration within the OSCE (hereinafter: the Convention), shall govern, in accordance with Article 11, paragraph 1, of the Convention, the activities of the Court and of the organs established within the Court.

2. In the event of a conflict between provisions of the Convention and of the Rules, the former shall prevail.

#### 2. The Court

##### Article 2: Solemn Declaration

Upon taking up their duties, conciliators, arbitrators and their alternates shall make the following solemn declaration: "I solemnly declare that I shall fulfil impartially and conscientiously, to the best of my ability, my duties as member of the Court of Conciliation and Arbitration established by the Convention on Conciliation and Arbitration within the OSCE."

##### Article 3: Working Languages

1. The languages of the Court and of the organs established within the Court shall be the official languages of the OSCE (English, French, German, Italian, Russian and Spanish).

2. From among those languages, in each case, the conciliation commission or the arbitral tribunal concerned, after hearing the parties, shall determine, in its rules of procedure, the language or languages to be used.

3. Any party to a dispute may however request to express itself in another language. In that event, it shall bear the additional expenses arising from the use of that language.

##### Article 4: Notice of Requests and List of Cases

1. In accordance with Article 15 of the Convention, all requests for conciliation or arbitration addressed to the Court shall be communicated by the Registrar to the Secretariat of the OSCE, which shall transmit them forthwith to the States participating in the OSCE.

2. The Court shall establish a list of the cases brought before it. The List shall be kept by the Registrar.

##### Article 5: Decision-Making

1. The decision-making procedure of the Court, the Bureau and the organs established within the Court shall be governed by Article 8 of the Convention.

2. The Court, the Bureau and the organs established within the Court may decide to take decisions by correspondence or facsimile.

##### Article 6: Procedural Costs

1. In accordance with Article 17 of the Convention, the parties to a dispute and any intervening party shall each bear their own costs.

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<sup>3</sup> Source: [http://www.osce.org/documents/cca/1997/02/4120\\_en.pdf](http://www.osce.org/documents/cca/1997/02/4120_en.pdf)

2. This rule shall apply to the circumstances contemplated in Article 23, paragraph 2, of the Convention.

#### Article 7: Publications of the Court

1. In accordance with Article 32 of the Convention, the Court shall publish the awards rendered by arbitral tribunals established within it.
2. The Court may also publish the Annual Report on its activities submitted by the Bureau to the OSCE Council pursuant to Article 14 of the Convention.
3. The Court shall not publish the final reports of conciliation commissions established within it, unless the parties so agree.

#### 3. The Bureau of the Court

#### Article 8: Composition

1. The Bureau of the Court shall consist of the President of the Court, the Vice-President of the Bureau and three other members of the Court.
2. The alternates of the four members of the Bureau other than the President shall participate in the work of the Bureau without vote.

#### Article 9: Election of the President of the Court, the Other Members of the Bureau and the Vice-President of the Bureau

1. Nominations for President of the Court and for membership of the Bureau may be submitted by any member of the Court. They shall be announced to the Depository State twenty days at least before the date set for the election.
2. In accordance with Article 7, paragraph 2, of the Convention, the President of the Court shall be elected for a six-year term by all the members of the Court. The candidate obtaining the highest number of votes shall be elected. In the event of a tie, a second ballot shall be held. In the event of a further tie, the election shall be decided by lot. The election of the President shall take place under the chairmanship of a representative of the Depository State.
3. In accordance with Article 7, paragraph 3, of the Convention, the conciliators and the arbitrators shall then each elect, from among their number, two members of the Bureau for six-year terms. The two candidates obtaining the highest number of votes shall be elected. In the event of a tie, a second ballot shall be held. In the event of a further tie, the election shall be decided by lot. Elections under this paragraph shall take place under the chairmanship of the President of the Court.
4. Two alternates each shall be elected by the conciliators and by the arbitrators from among their number, following the procedure laid down in the preceding paragraph. The Bureau shall subsequently indicate which alternate would be called upon to take the place of which member of the Bureau.
5. The Vice-President shall be elected by the Bureau from among its members, in accordance with Article 7, paragraph 4, of the Convention.
6. The President, the other members of the Bureau and the alternates may be re-elected.
7. In the event of the death, resignation or prolonged inability of the President to fulfil his or her duties, a new President shall be elected, following the procedure laid down in paragraphs 1 and 2 of this Article, to serve out the term of the former President.
8. In the event of the death, resignation or prolonged inability of a member of the Bureau other than the President to fulfil his or her duties, the alternate appointed under paragraph 4 of this Article shall serve out the term of the member concerned. In the event of the death, resignation or prolonged inability of an alternate to fulfil his or her duties, a new alternate shall be elected, following the procedure laid down in paragraph 4 of this Article, to serve out the former alternate's term.

#### Article 10: Functions of the Bureau

1. The Bureau is the permanent executive body of the Court. It shall meet regularly to ensure the satisfactory operation of the Court and carry out the duties entrusted to it under the Convention, the Financial Protocol and the present Rules.
2. The Bureau shall appoint the conciliators and arbitrators as provided by Articles 21 and 28 of the Convention.

3. An exchange of letters shall take place between the Bureau and the host State concerning the obligations assumed by that State in accordance with Article 1 of the Financial Protocol. A further exchange of letters between the Bureau and that State shall specify the legal status, on the territory of the host State, of the members, the Registrar and the officials of the Court, as well as of the agents, counsel and experts of the States parties to a dispute brought before the Court. Such exchanges of letters shall be approved by the States Parties.

4. The Registrar

Article 11: Appointment of the Registrar and of Registry Officials

1. The Registrar shall be appointed by the Court for a maximum term of six years on the proposal of the Bureau of the Court.

2. The Court may appoint such other officials as it requires and its financial resources permit. It may delegate that function to the Bureau.

Article 12: Functions of the Registrar

1. The Registrar shall supervise the Court's officials under the authority and control of the Bureau of the Court.

2. The Registrar and, under his or her authority, the officials of the Court shall perform all the duties laid upon them by the Convention, the Financial Protocol and the present Rules.

3. The Registrar shall serve as secretary of the Court, of its Bureau, and of the conciliation commissions and arbitral tribunals established within the Court. The Registrar shall draw up the minutes of the meetings of such organs.

4. The Registrar shall be responsible for the Archives of the Court.

5. The Registrar shall fulfil such other duties as may be entrusted to him or her by the Court, its Bureau or the conciliation commissions and arbitral tribunals established within the Court.

6. The Registrar may, as necessary, delegate duties to other officials of the Court.

Article 13: Solemn Declaration

Upon taking up their duties, the Registrar and the other officials of the Court shall make the following solemn declaration: "I solemnly declare that I shall fulfil impartially and conscientiously, to the best of my ability, my duties at the Court of Conciliation and Arbitration established by the Convention on Conciliation and Arbitration within the OSCE."

## CHAPTER II: CONCILIATION

Article 14: Purpose

1. The purpose of conciliation is to assist the parties to a dispute in finding a settlement in accordance with international law and their OSCE commitments. The conciliation commission may submit to the parties proposals with a view to bringing about a settlement of the dispute.

2. The parties may request the conciliation commission to clarify questions of fact. Its findings shall not be binding upon the parties, unless they otherwise agree.

3. Conciliation proceedings may be initiated only after a fact-finding procedure set in motion under paragraph 2 of this Article has been concluded.

Article 15: Request for Conciliation

1. Any dispute between States Parties to the Convention may be submitted to conciliation by unilateral or joint application, as laid down in Articles 18, paragraph 1, and 20, paragraph 1, of the Convention. The application shall specify the facts, the subject of the dispute, the parties thereto, the name or names of the conciliator or conciliators appointed by the applicant or applicants, and the means of settlement previously used.

2. Disputes between two or more States Parties to the Convention, or between one or more States Parties to the Convention and one or more other OSCE participating States, may be submitted to conciliation by an agreement notified to the Registrar, in accordance with Article 20, paragraph 2, of the Convention. That agreement shall specify the subject of the dispute; in the event of total or partial disagreement concerning the subject of the dispute, each party shall state its own position. When notify-

ing the agreement, the parties shall inform the Registrar of the name or names of the conciliator or conciliators appointed by them.

#### Article 16: Composition and Constitution of Conciliation Commissions

1. The conciliation commission shall be composed and constituted in accordance with Articles 21 and 22 of the Convention.
2. If more than two States are parties to a dispute, and the parties in the same interest are unable to agree on the appointment of a single conciliator, as contemplated by Article 21, paragraph 2, of the Convention, each of the two sides shall appoint the same number of conciliators, up to a maximum decided by the Bureau of the Court.
3. If more than two States are parties to a dispute, and there are no parties in the same interest, each State may appoint one conciliator.
4. In accordance with Article 21, paragraph 5, of the Convention, the Bureau shall appoint three conciliators. It may increase or decrease this number after consulting the parties. If more than two States are parties to the dispute, the number of members appointed to the conciliation commission by the Bureau shall total one more than the members appointed by the parties.
5. When all its members have been appointed, the conciliation commission shall hold its constitutive meeting. At that meeting, it shall elect its chairman in accordance with Article 21, paragraph 6, of the Convention.

#### Article 17: Objection and Refusal or Inability to Sit

1. If a party to the dispute objects to a conciliator, the Bureau of the Court shall rule on the objection. Any objection shall be made within thirty days of the notification of the conciliator's appointment. If the objection is upheld, the conciliator concerned shall be replaced according to the provisions laid down for his or her own appointment.
2. If a conciliator, having previously taken part in the case or for any other reason, refuses to sit, he or she shall be replaced according to the provisions laid down for his or her own appointment.
3. In the event of death or of a prolonged inability or refusal to sit during the proceedings, the conciliator concerned shall be replaced according to the provisions laid down for his or her own appointment if this is considered necessary by the Bureau.

#### Article 18: Safeguarding Existing Means of Settlement

1. In the situations referred to by Article 19, paragraphs 1 and 2, of the Convention, the conciliation commission shall take no further action and have the case removed from the List.
2. In the situation referred to by Article 19, paragraph 3, of the Convention, the commission shall suspend the conciliation proceedings. The proceedings shall be resumed, at the request of the parties or one of them, if the procedure resulting in the suspension failed to produce a settlement of the dispute.
3. In the situation referred to by Article 19, paragraph 4, of the Convention, the commission shall take no further action and have the case removed from the List upon the request of one of the parties if it is satisfied that the dispute is covered by the reservation.

#### Article 19: Rules of Procedure

In accordance with Article 23, paragraph 1, of the Convention, the conciliation commission shall determine its own rules of procedure after consulting the parties to the dispute. The rules of procedure laid down by the commission, which are subject to approval by the Bureau of the Court, may not derogate from the following rules:

- (a) Each party shall appoint a representative to the commission no later than at the time of its constitution.
- (b) The parties shall participate in all the proceedings and co-operate with the commission, in particular by providing the documents and information it may require.

#### Article 20: Interlocutory Matters

1. The conciliation commission may, proprio motu or at the request of the parties to the dispute or one of them, call the parties' attention to the measures they could take in order to prevent the dispute from being aggravated or its settlement made more difficult.



2. In accordance with Article 23, paragraph 2, of the Convention, the commission may, with the parties' consent, invite to participate in the proceedings any other State Party to the Convention which has an interest in the settlement of the dispute.

#### Article 21: Result of Conciliation

1. The conciliation proceedings shall be concluded by the signature, by the representatives of the parties, of the summary of conclusions referred to in Article 25, paragraph 1, of the Convention. The summary of conclusions shall be tantamount to an agreement settling the dispute.

2. Failing such an agreement, the conciliation commission shall draw up a final report when it considers that all possibilities of reaching an amicable settlement have been exhausted. The report, which shall be communicated to the parties, shall include a statement of the facts and claims of the parties, a record of the proceedings and proposals made by the commission for the peaceful settlement of the dispute.

3. The parties may agree in advance to accept the proposals of the commission. Failing such an agreement, they shall, within thirty days of the notification of the report under Article 25, paragraph 3, of the Convention, inform the chairman of the commission whether they accept the proposals for a settlement contained in the final report.

4. The acceptance of such proposals by the parties shall be tantamount to an agreement settling the dispute. If one of the parties rejects the proposals, the other party or parties shall no longer be bound by their own acceptance, in accordance with Article 25, paragraph 4, of the Convention.

5. In the event of a party failing to appear, the commission shall draw up a report for the OSCE Council in accordance with Article 25, paragraph 6, of the Convention.

### CHAPTER III: ARBITRATION

#### Article 22: Purpose

The role of an arbitral tribunal is to settle, in accordance with international law, such disputes as are submitted to it. If the parties to the dispute agree, the tribunal may decide *ex aequo et bono*.

#### Article 23: Institution of Proceedings

1. Any dispute between two or more States Parties to the Convention, or between one or more States Parties to the Convention and one or more States participating in the OSCE, may be submitted to arbitration, as provided by Article 26 of the Convention.

2. When a request for arbitration is made by means of an agreement, in accordance with Article 26, paragraph 1, of the Convention, such agreement, notified to the Registrar by the parties to the dispute or by one of them, shall indicate the subject of the dispute. In the event of total or partial disagreement concerning the subject of the dispute, each party may state its own position in that respect.

3. When a request for arbitration is made by means of an application addressed to the Registrar, in accordance with Article 26, paragraphs 2 and 3, of the Convention, the application shall indicate the facts giving rise to the dispute, the subject of the dispute, the parties, the means of settlement previously used and the main legal arguments invoked.

#### Article 24: Composition and Constitution of Arbitral Tribunals

1. The arbitral tribunal shall be composed and constituted in accordance with Article 28 of the Convention.

2. If more than two States are parties to a dispute and the parties in the same interest are unable to agree on the appointment of a single arbitrator, as contemplated by Article 28, paragraph 2, of the Convention, the arbitrators designated by each party under Article 28, paragraphs 2, 4 or 5, of the Convention shall be *ex officio* members of the tribunal.

3. In accordance with Article 28, paragraph 3, of the Convention, the Bureau of the Court shall appoint a number of members to sit on the tribunal totalling at least one more than the *ex officio* members under paragraph 2 of this Article. The Bureau may consult the parties in this matter.

4. When all its members have been appointed, the tribunal shall hold its constitutive meeting. At that meeting, it shall elect its chairman in accordance with Article 28, paragraph 6, of the Convention.

#### Article 25: Objection and Refusal or Inability to Sit

1. If a party to the dispute objects to an arbitrator, the Bureau of the Court shall rule on the objection. Any objection shall be made within thirty days of the notification of the arbitrator's appointment. If the objection is upheld, the arbitrator concerned shall be replaced according to the provisions laid down for his or her own appointment, except for ex officio members of the tribunal who shall be replaced by their alternates. If the alternate is in the same situation, the State concerned shall appoint a member according to the procedure laid down in Article 28, paragraph 5, of the Convention.
2. If an arbitrator, having previously taken part in the case or for any other reason, refuses to sit, he or she shall be replaced according to the procedure laid down for his or her own appointment, except for ex officio members of the tribunal who shall be replaced by their alternates. If the alternate is in the same situation, the State concerned shall appoint a member according to the procedure laid down in Article 28, paragraph 5, of the Convention.
3. In the event of death, or of a prolonged inability or refusal to sit during the proceedings, an ex officio member of the tribunal shall be replaced by his or her alternate. If the alternate is in the same situation, the State concerned shall appoint a member according to the procedure laid down in Article 28, paragraph 5, of the Convention. A member appointed by the Bureau shall only be replaced, in accordance with Article 28, paragraph 7, of the Convention, if the number of members appointed by the Bureau falls below the number of ex officio members or members appointed by the parties to the dispute under paragraph 5 of the same Article. If the member concerned was the chairman of the tribunal, a new chairman shall then be elected.

#### Article 26: Safeguarding Existing Means of Settlement

1. In the situations referred to by Article 19, paragraph 1, of the Convention, the arbitral tribunal shall take no further action and have the case removed from the List.
2. In the situation referred to by Article 19, paragraph 4, of the Convention, the tribunal shall take no further action and have the case removed from the List upon the request of one of the parties or if it is satisfied that the dispute is covered by the reservation. To be admissible, the request must be formulated within the time-limit set under Article 29, paragraph 1, of the present Rules.

#### Article 27: Rules of Procedure

1. The arbitral tribunal shall lay down its own rules of procedure after consulting the parties to the dispute. The rules of procedure laid down by the tribunal, which are subject to approval by the Bureau of the Court, may not derogate from the rules that follow.
2. All the parties to the dispute shall have the right to be heard in the course of the proceedings, which shall conform to the principles of a fair trial
3. Each party shall appoint an agent to represent it before the tribunal no later than at the time of its constitution.
4. The parties shall participate in all the proceedings and co-operate with the tribunal, in particular by providing the documents and information it may require.
5. A certified copy of every document produced by one party shall immediately be communicated to the other party or parties.
6. The proceedings shall consist of a written phase and hearings. The hearings shall be held in camera, unless the tribunal decides otherwise at the request of the parties.
7. The tribunal shall have all the necessary fact-finding and investigative powers to carry out its task. It may, in particular:
  - (a) make any orders necessary for the good conduct of the proceedings;
  - (b) determine the number and order of, and the time-limits for, the written phase;
  - (c) order the production of evidence and make all other arrangements for the taking of evidence;
  - (d) refuse to admit, after the closure of the written phase, any new documents a party may wish to submit without the consent of the other party or parties;
  - (e) visit the site;
  - (f) appoint experts;
  - (g) examine witnesses and request clarifications from the agents, counsel or experts of the parties.

8. As soon as the hearings have been completed, the tribunal shall declare the proceedings closed and begin its deliberations. It may however, during its deliberations, request the parties to provide any additional information or clarification it considers necessary.

#### Article 28: Interim Measures

1. Before indicating any interim measures under Article 26, paragraph 4, of the Convention, the arbitral tribunal shall hear the parties to the dispute.
2. The tribunal may at any time request the parties to provide information on the implementation of the measures indicated by it.
3. The tribunal may at any time examine, proprio motu or at the request of the parties or one of them, whether the situation requires the maintenance, modification or cancellation of the measures indicated. Before taking any decision, it shall hear the parties.
4. The measures indicated by the tribunal shall cease to apply upon the rendering of the arbitral award.

#### Article 29: Objections Concerning Jurisdiction and Admissibility

1. Any objection concerning jurisdiction or admissibility shall be made in writing to the Registrar within thirty days of the transmission of the notice of the request for arbitration referred to in Article 15 of the Convention. The preliminary objection shall set out the facts and the law on which the objection is based, the submissions of the objecting party and any evidence it may wish to produce. The other party shall have a period of thirty days to communicate its written observations on the objection.
2. The tribunal shall decide, in an order, whether it upholds or rejects the objection, or declare that the objection is not, in the circumstances of the case, exclusively preliminary in character. If it upholds the objection, the tribunal shall have the case removed from the List. If it rejects the objection or considers that it is not exclusively preliminary in character, the tribunal shall fix timelimits for the further proceedings.

#### Article 30: Counter-claims

1. The tribunal may examine counter-claims directly connected with the subject-matter of the main claim if they are within its jurisdiction.
2. Counter-claims shall be submitted within the time-limit set for the filing of the Counter-Memorial.
3. After hearing the parties, the tribunal shall decide on the admissibility of the counter-claim in the form of an order.

#### Article 31: Intervention

1. In accordance with Article 29, paragraph 3, of the Convention, any OSCE participating State which considers that it has a particular interest of a legal nature likely to be affected by the award of the tribunal may, within fifteen days of the transmission of the notice of the request for arbitration, as referred to in Article 15 of the Convention, address to the Registrar of the Court a request to intervene indicating the legal interest concerned and the precise object of its intervention. Such request, which shall be immediately transmitted to the tribunal and the parties to the dispute, shall also include, as appropriate, a list of the documents submitted in support of the request and which shall be attached to the request.
2. The parties shall have thirty days to comment in writing on the request for intervention.
3. The tribunal shall decide on the request for intervention in the form of an order. If the request is granted, the intervening State shall participate in the proceedings to the extent required to protect its interest. The relevant part of the award shall be binding upon the intervening State in accordance with Article 29, paragraph 4, of the Convention.

#### Article 32: Failure to Appear

In the event that one or more parties to the dispute fail to appear, the tribunal shall apply Article 29, paragraph 7, of the Convention.

#### Article 33: Discontinuance of Proceedings

1. If, at any time prior to the rendering of the arbitral award, all the parties to the dispute, jointly or separately, notify the arbitral tribunal in writing that they have agreed to discontinue the proceedings, the tribunal shall make an order noting the discontinuance and have the case removed from the List.

2. If, in the course of proceedings initiated by an application, the applicant informs the tribunal that it wishes to discontinue the proceedings, the tribunal shall set a time-limit for the respondent to state its position. If the respondent does not object to the discontinuance, the tribunal shall make an order noting the discontinuance and have the case removed from the List.

#### Article 34: The Arbitral Award

1. When the tribunal has concluded its deliberations, which shall be secret, and adopted the arbitral award, it shall render the award by communicating to the agent of each party to the dispute an authentic copy bearing the seal of the Court and the signatures of the chairman of the tribunal and the Registrar of the Court. A further authentic copy shall be placed in the Archives of the Court.

2. The award, which shall mention the names of all the arbitrators, shall state the reasons on which it is based. Any member of the tribunal may, if he or she so desires, attach a dissenting or separate opinion. The same shall apply to the orders of the tribunal.

3. The award shall have binding force only between the parties to the dispute and in respect of the case to which it relates, subject to Article 29, paragraph 4, of the Convention and Article 30, paragraph 3, of the present Rules. The same shall apply to the orders of the tribunal.

4. The award shall be final and not subject to appeal. The same shall apply to orders made by the tribunal under Articles 2, 30, paragraph 3, 31, paragraph 3, and 37, paragraph 3, as well as to the awards rendered under Articles 35 and 36 of the present Rules.

#### Article 35: Interpretation of the Arbitral Award

1. Any request for interpretation of the arbitral award the meaning or scope of which is in dispute shall be in the form of a written application made under the conditions laid down by Article 31, paragraph 3, of the Convention. The application shall indicate the precise point or points in dispute.

2. Requests for interpretation shall be examined by the arbitral tribunal which rendered the award. If the Bureau of the Court should find this to be impossible, a new arbitral tribunal shall be constituted in accordance with Article 28 of the Convention and Article 24 of the present Rules.

3. Before interpreting the award by means of an additional award, the tribunal shall set a time-limit for the parties to communicate their written observations.

4. It is up to the tribunal to decide whether and to what extent the implementation of the award is to be suspended pending the communication of the additional award.

#### Article 36: Revision

1. Any request for revision of the arbitral award shall be in the form of a written application made under the conditions laid down by Article 31, paragraph 4, of the Convention. The application shall indicate the precise grounds for revision according to the party claiming revision.

2. A request for revision shall be examined by the arbitral tribunal which rendered the award. If the Bureau of the Court should find this to be impossible, a new arbitral tribunal shall be constituted in accordance with Article 28 of the Convention and Article 24 of the present Rules.

3. The other party or parties may, within a time-limit set by the tribunal, make written observations on the admissibility of the request for revision.

4. If the tribunal, by an order, declares the application admissible, it shall set time-limits for the subsequent proceedings on the merits.

5. At the request of the party claiming revision, and if the circumstances so justify, the tribunal may suspend the implementation of the award pending its revision.

6. The tribunal shall decide on the merits in the form of a new arbitral award.

### CHAPTER IV: FINAL PROVISIONS

#### Article 37: Amendments

1. The Court, any member of the Court and any State Party to the Convention may propose amendments to the present Rules.

2. Proposals for amendment shall be communicated to the Court for comment and approved by consensus of the States Parties to the Convention.

3. Amendments shall come into force upon their approval by the States Parties to the Convention but shall not apply to cases pending at the time of their entry into force.

Article 38: Entry into Force of the Present Rules

The present Rules shall enter into force on 1 February 1997, date of their approval by consensus of the States Parties to the Convention.

Appendix 5: Charts

Chart 1: Composition of the Court and Bureau

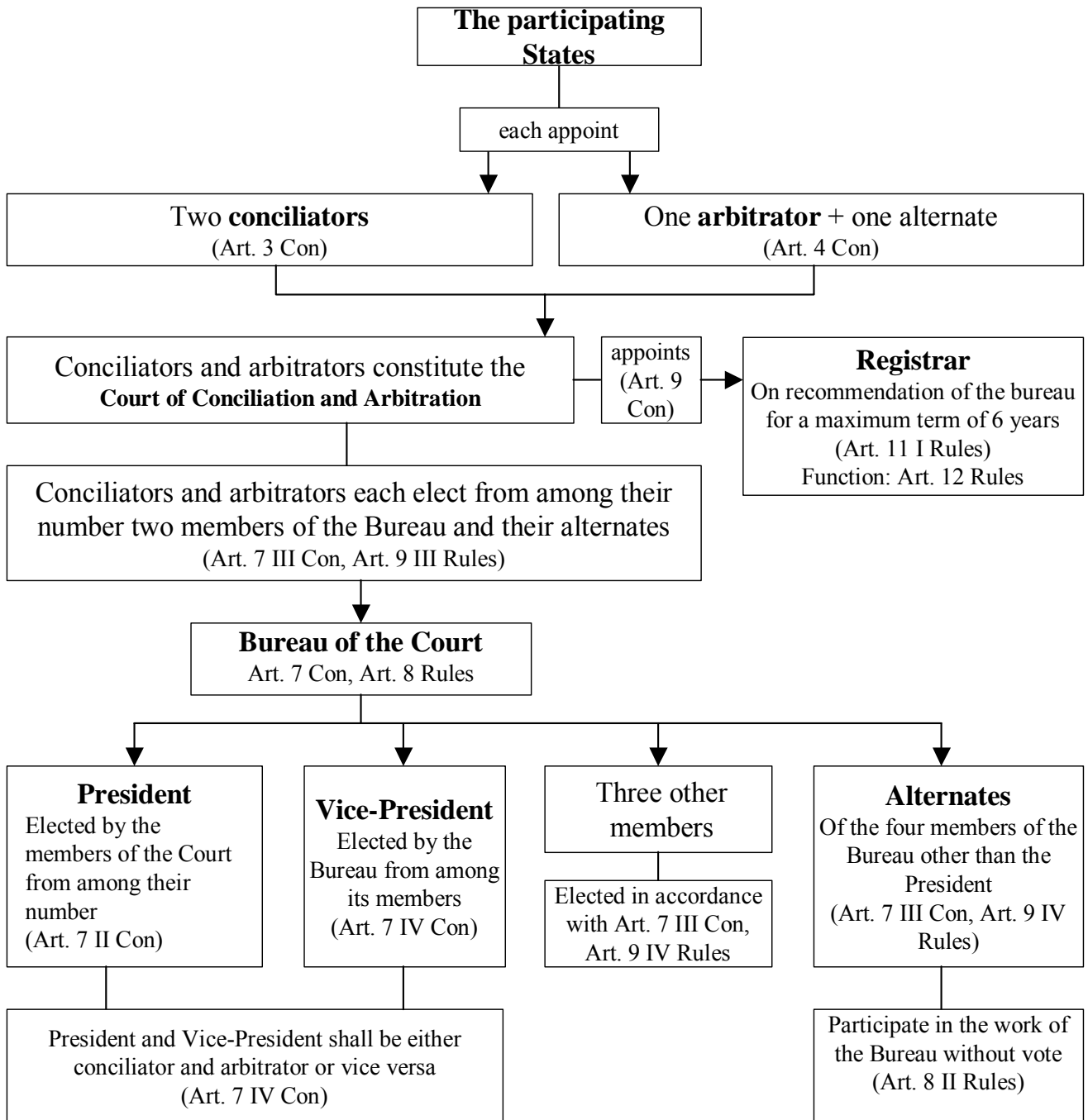


Chart 2: Rules of Procedure

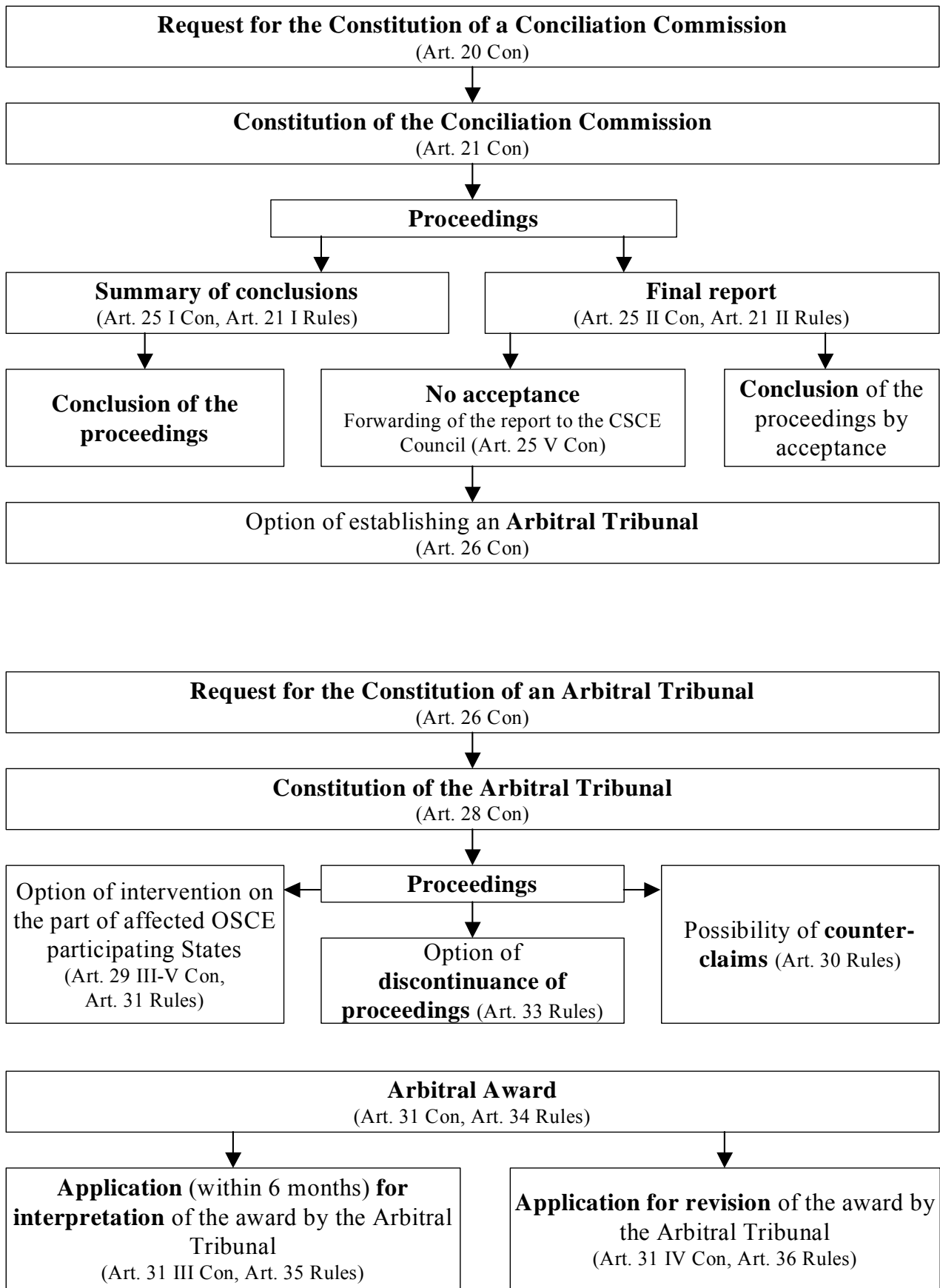


Chart 3: Conciliation

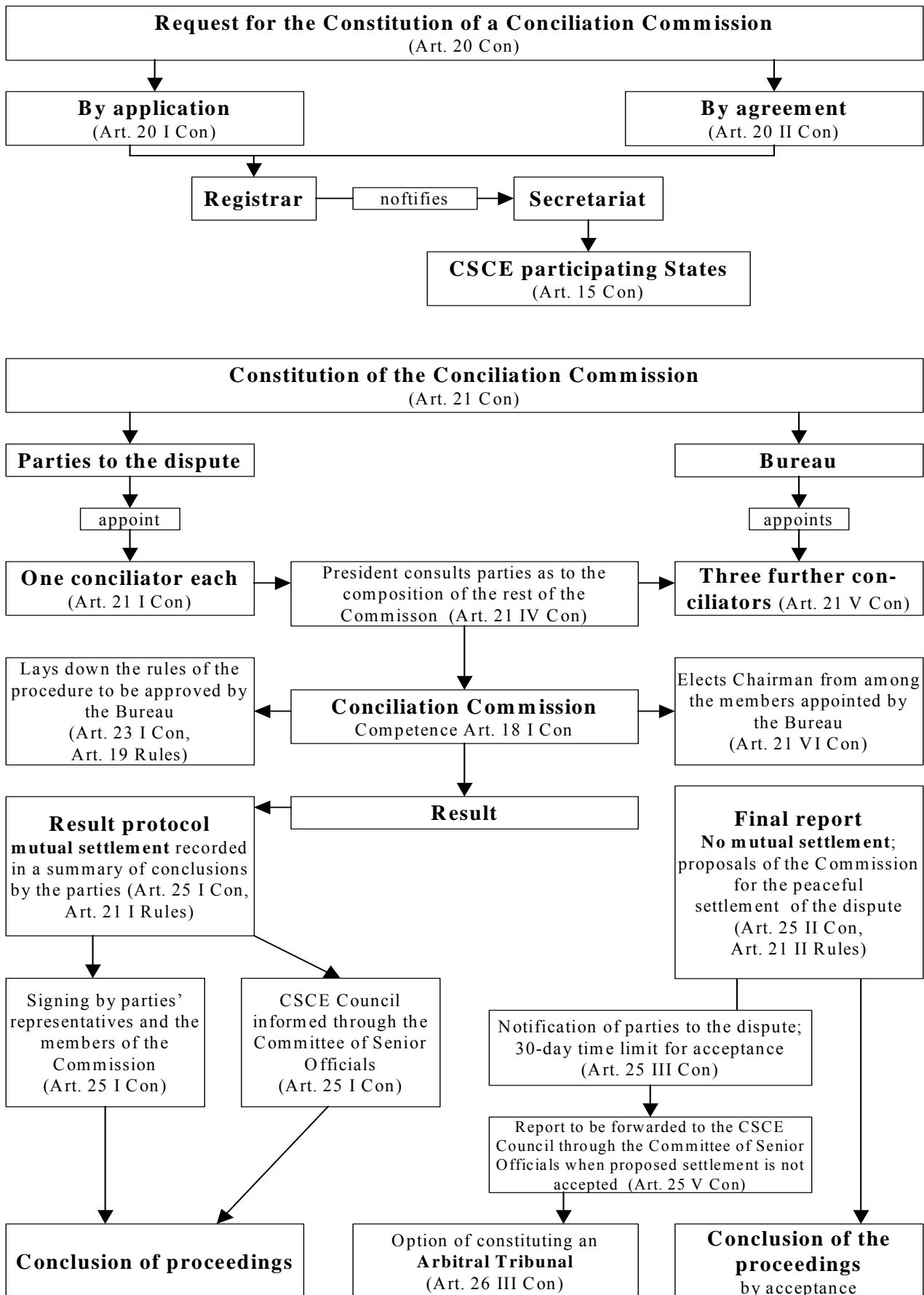
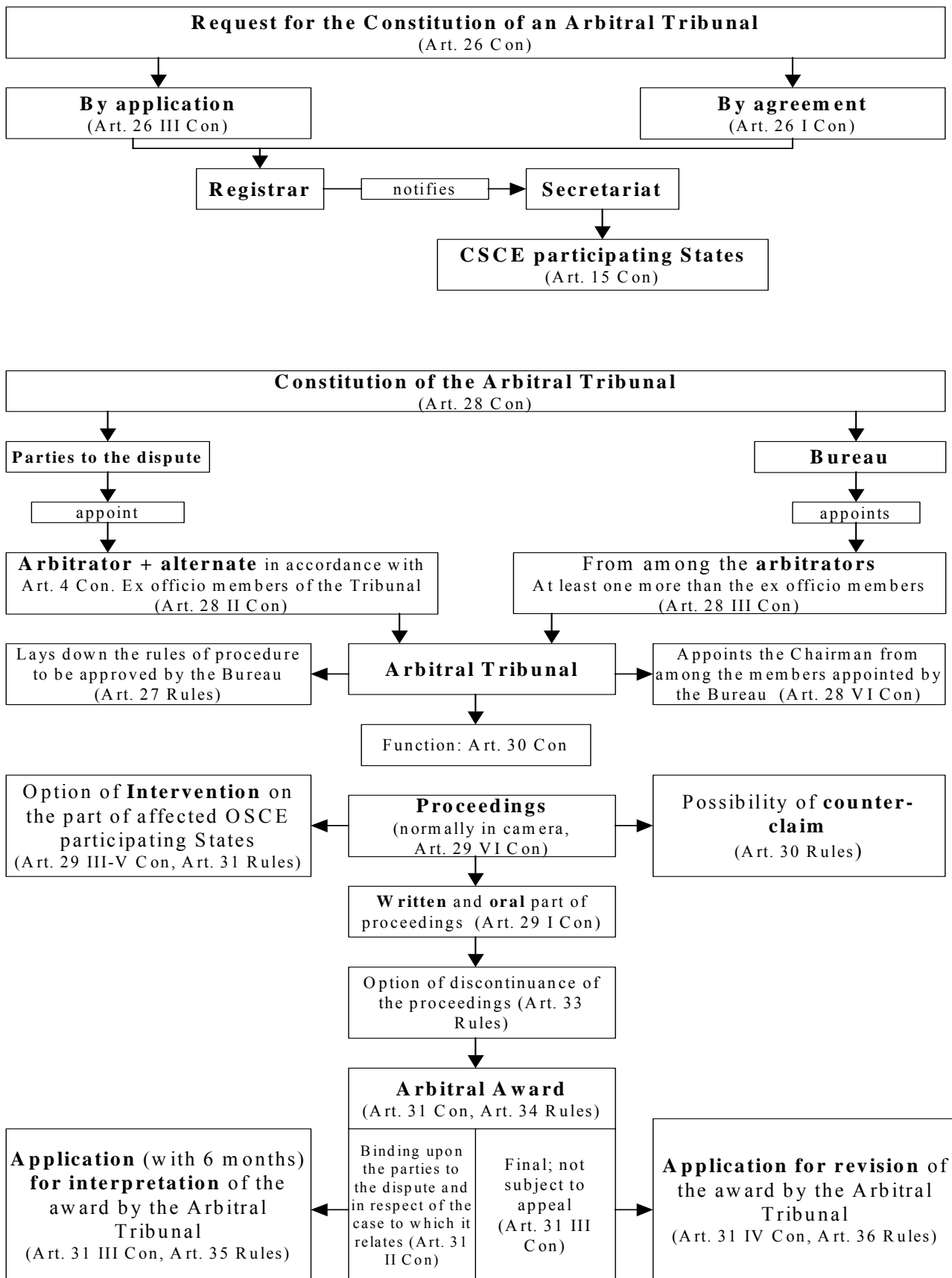




Chart 4: Arbitration



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