

Rules of the Court of Conciliation and Arbitration within the OSCE (1 February 1997)

Caption: Rules of the Court of Conciliation and Arbitration within the OSCE, dated 1 February 1997, adopted by the Court of Conciliation and Arbitration and approved by the States Parties to the Stockholm Convention of 15 December 1992.

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Rules of the Court of Conciliation and Arbitration within the OSCE (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.

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 notifying 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.