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Preface

I take great pleasure in presenting this volume on the first symposium organised by the Swiss Federal Department of Foreign Affairs and held under the auspices of the Court of Conciliation and Arbitration within the OSCE in this magnificent mansion made available by the Canton of Geneva with the very active support of the Swiss federal authorities.

On the Court itself, established by the Stockholm Convention of 15 December 1992, which has so far been signed by 34 States and ratified by 23, I need not dwell any longer, knowing the reader to be familiar with its structure and procedure. The Rules of Court are now in force and I should like to thank all those involved in the drafting process: once again a leading part was played by Ambassador Caflisch, to whom I wish to convey on the Court's behalf our particular appreciation for his special contribution in shaping and setting up the new body.

We should of course be under no illusions: the fact that the Court is now in a position to take its place within the OSCE does not imply that it will easily become a going, or indeed a growing, concern. While we deeply believe in the need to develop the means of conciliation and arbitration in order to improve the balance in, and progress of, international relations, especially on the European continent, we are well aware of the many obstacles remaining. The first is political: most States – or rather their leaders – remain hostile to anything they regard as liable to impinge on their sovereignty or their discretion on the international level. Where however, as under the Stockholm Convention, arbitration is optional and the only requirement is to submit to an attempt at conciliation, it is impossible to argue seriously that there would be any renouncement of sovereignty.

In this case, the reference to sovereignty is merely the expression of an approach to international relations traditionally opposed to the judicial set-

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tlement of disputes between States – not, I hasten to add, opposed to international law as a whole. Indeed, a fabric of increasingly complex international provisions is constantly being woven by a succession of international conferences and groups of experts and, judging by the number of new conventions drawn up, signed and even ratified, international law has made remarkable progress during the last decades. But law-making is one thing, ensuring compliance quite another. And while the enthusiasm and support for international law-making are considerable, caution and mistrust soon re-emerge when disputes arise over implementation. The fact remains that many States – or State representatives – still regard an equitable settlement worked out by neutral third parties, conciliators or arbitrators, as a form of *capitis diminutio*.

We should perhaps ask ourselves why this is so. Whereas politicians and diplomats are naturally suspicious of their antagonists, conciliation and arbitration are based on trust: trust in the moderating virtues of conciliators, in the legal abilities of arbitrators and, above all, in resorting to law and equity to settle disputes and maintain order at the international level.

The theme of the symposium thus acquires its full meaning. How, in the present international environment, can member States of the OSCE be persuaded to resort to international conciliation and arbitration ? It is not enough to provide instruments, such as those offered by our Court. There must also be the will to use the Court on the part of States. So we have to take stock of the obstacles, whether they be *institutional* (there are different mechanisms for the peaceful settlement of disputes), *structural* (there are actual limitations to the settlement of disputes between States) or relate to *competition* (between means of diplomatic settlement and adjudication). All these issues were the subject of reports and discussion.

The Geneva symposium was followed, under the chairmanship of Professor Skubiszewski, the former Minister for Foreign Affairs of Poland, whose commitment for the Court also deserves a special tribute, by a round table the very subject of which – how to assess the Court and ensure its success – is itself a programme of action. This round table has clearly charted the path to success, and it would now be unforgivable for us not to reach our goal.