



HELSINKI COMMISSION REPORT

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IN BRIEF

The Consensus Rule

The OSCE operates using a consensus decision-making process. Consensus fosters ownership of decisions by all OSCE participating States, enables them to protect key national priorities, and creates an important incentive for countries to participate in the OSCE. It also strengthens the politically binding nature of OSCE commitments; participating States cannot claim that they did not agree to or are not bound by decisions to which they have given explicit consent.

However, consensus can be difficult to achieve, and the rule allows a single state to block decisions on OSCE activities, new commitments, appointments, and budgets. Over the years, there have been calls to reform the consensus decision-making process. Although the consensus rule can only be changed by consensus, it could be improved by establishing greater transparency in the decision-making process.

What is “Consensus?” At the outset of the Helsinki process, the 1973 rules of procedure established that all decisions by the participating States shall be taken by consensus: “Consensus shall be understood to mean the absence of any objection expressed by a Representative and submitted by him as constituting an obstacle to the taking of the decision in question.”

All countries which joined the Helsinki process after 1975 pledged, as a condition of membership, to accept in their entirety all commitments and responsibilities of OSCE agreements. In other words, all participating States have given their consensus

to all OSCE commitments, whether they did so during the original negotiations or when joining the OSCE at a later stage.

Universality. A corollary of the consensus rule is that each participating State is equally bound by each agreement. Although the rules of procedure allow participating States to enter formal “reservations and interpretative statements” into the official Journal of the Day where consensus decisions are recorded, in the Helsinki process “reservations and interpretative statements” do not negate or limit consensus (unlike “reservations,” “understandings,” or “declarations” attached to treaties). Rather, they provide an opportunity for participating States to provide additional details on their interpretation of the decision (for example, an understanding of a technical term in the decision). Interpretative statements also are frequently used to formally record a country’s views on the subject of the decision (including issues that were proposed, but which did not gain consensus).

Consensus on Commitments versus Consensus on Operations. Some reform advocates have argued that the OSCE would be better served if consensus were not required for as many decisions as is currently the case, especially regarding the operational work of the organization.

From 1975 to around 1990, the consensus rule was used to adopt commitments on good behavior — the most famous being the Helsinki Final Act Ten Principles Guiding Relations Among States— and decisions on the dates and location of the next

meetings. (In those years, there was no regular schedule of meetings, but it was understood that no major meeting could end without a decision on the time and place of the next major meeting.)

After 1990, and in light of historic changes and challenges associated with the end of the Cold War and the emergence of hot conflicts in the Balkans and elsewhere, the participating States established a regular schedule of meetings, including annual meetings of a Ministerial Council; converted the “*Conference on Security and Cooperation in Europe*” into the “*Organization for Security and Cooperation in Europe*,” established permanent institutions to support the organization, anchored by a secretariat in Vienna; and dispatched field missions to countries which had newly joined the organization and/or to assist with conflict prevention or resolution.

Consensus is still required to adopt new commitments and to execute the organization’s operational work including, for example, appointing the four senior leadership positions in the OSCE; deciding whether to dispatch a field mission, the terms of a mission’s mandate, and who will head a mission; approving the budget of the OSCE; and determining the scales of contribution (the allocation of dues to be paid by the participating States).

It theoretically is possible that the participating States could agree, by consensus, that moving forward certain decisions could be taken by something other than consensus (consensus-minus-one, consensus-minus-two, “approximate” consensus, a weighted vote, etc.) and/or that some decisions could be delegated to a designated OSCE official. However, it is unlikely that the participating States would abandon the consensus rule for key matters, such as the budget, admission of new participating States or Partners, or adoption of additional commitments. Under such circumstances, countries still could withhold consensus on those matters as a form of hostage taking or retaliation against disfavored decisions on which consensus authority has been nominally relinquished.

Consensus-Minus-One. In January 1992, the Council of Ministers agreed to permit the adoption

of limited political decisions without the consensus of one country:

“The Council decided, in order to develop further the CSCE’s capability to safeguard human rights, democracy and the rule of law through peaceful means, that appropriate action may be taken by the Council or the Committee of Senior Officials, if necessary in the absence of the consent of the State concerned, in cases of clear, gross and uncorrected violations of relevant CSCE commitments. Such actions would consist of political declarations or other political steps to apply outside the territory of the State concerned. This decision is without prejudice to existing CSCE mechanisms.”

Reflecting the extraordinary nature of this decision-making tool, it has only been used once, in 1992, to suspend Yugoslavia from participating in OSCE decision-making. This reflects how difficult it is to isolate a single country in the decision-making process, as countries are often able to find at least one ally, and usually a few more. It also illustrates the reluctance of many participating States to take what is perceived as an extraordinary escalation that may run counter to a fundamental goal of keeping all parties at the table.

Approximate Consensus Proposal. In 1994, the OSCE Parliamentary Assembly advocated changing the OSCE’s consensus decision-making system to an “approximate consensus” system. Under approximate consensus, decisions could be adopted when 90% of both the membership and financial contributors are in agreement.

Transparency/Accountability for Denying Consensus. Currently, important decisions may be shelved by the Chair-in-Office without being formally tabled for consensus merely upon the threat by a participating State that it will deny consensus.

Even when a country formally denies consensus, it typically happens at closed-doors meetings of the Permanent Council. In its 2019 Luxemburg Declaration, the OSCE PA advised the OSCE that open-

ing Permanent Council meetings to the public would enhance the transparency of and countries' accountability for their role in OSCE's decision-making.

Is the OSCE Moscow Mechanism a Non-Consensual Tool? No. The Moscow Mechanism, established in 1991, permits an OSCE mission to be dispatched to a country upon that country's own request, by a decision of the Permanent Council or, under specified circumstances, by a smaller set of participating States. Consent to a mission is incorporated in the (previous) consent to the Moscow Document.

About the Helsinki Commission

The Commission on Security and Cooperation in Europe, also known as the U.S. Helsinki Commission, is an independent commission of the U.S. Government charged with monitoring compliance with the Helsinki Accords and advancing comprehensive security through promotion of human rights, democracy, and economic, environmental, and military cooperation in 57 countries. The Commission consists of nine members from the U.S. Senate, nine from the House of Representatives, and one member each from the Departments of State, Defense, and Commerce.

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