



HELSINKI COMMISSION REPORT

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IN BRIEF

The OSCE Moscow Mechanism

Theory and Practice

The Moscow Mechanism is a tool allowing for the establishment of a short-term fact finding mission to address a specific human rights concern in the OSCE region. It grew out of the earlier Vienna Mechanism, which was designed as a vehicle to enable participating States to raise and address specific concerns in the human dimension. Together, the two today form what is generally referred to as the OSCE Human Dimension Mechanism, although in practice, the Vienna Mechanism has largely been overtaken by the Moscow Mechanism.

Background

During the Vienna Follow-up Meeting to the Conference on Security and Cooperation in Europe (1986-1989), a number of Western and Neutral and Non-Aligned countries sought to establish a mechanism to further legitimize the process of raising human rights cases bilaterally and multilaterally within the OSCE context. In particular, smaller countries (such as Denmark and Switzerland) argued that they needed this kind of tool to foster their ability to raise cases with larger nations, particularly the Soviet Union.

The Vienna Mechanism was adopted by consensus in the 1989 Vienna Concluding Document. It obliges participating States to respond in writ-

ing to formal requests for information made by other participating States within ten days, and—if requested—to hold bilateral meetings within one week of such a request.

Between its adoption in January 1989 and late 1991, the Vienna Mechanism was used in several instances. For example, in May 1989, after Czechoslovak authorities arrested playwright Vaclav Havel, approximately 16 countries coordinated their bilateral demarches in Prague and invoked the Vienna Mechanism. (Havel was released shortly thereafter.)

At the Moscow Meeting of the Conference on the Human Dimension, held in the immediate aftermath of the 1991 coup attempt in Russia and as conflict escalated in Yugoslavia, the participating States wanted to further develop the procedures for advancing compliance with OSCE human dimension commitments. They adopted a second element, now known as the Moscow Mechanism. Since the establishment of the Moscow Mechanism, the Vienna Mechanism has not generally been used in isolation, but instead as the first step in triggering the Moscow Mechanism. However, the Russian Federation invoked only the Vienna Mechanism in April 1999 in response to NATO air strikes in the Federal Republic of Yugoslavia.

How the Moscow Mechanism Works

The Moscow Mechanism allows for the establishment of a short-term fact-finding mission to help resolve a particular human dimension question or problem in a given country. Members of the fact-finding mission are chosen from a resource list that includes up to six experts—usually called rapporteurs—from each participating State.

The Moscow Mechanism results in a report by the rapporteurs concerning the specific human dimension issue and recommendations to address it. After the country that is discussed in the report is given a chance to comment, the report may be discussed in the OSCE Permanent Council. It is then up to the OSCE or individual participating States to take any action that may be required.

Invoking the Moscow Mechanism

There are several ways to invoke the Moscow Mechanism. First, the Mechanism can be self-invoked. A participating State may invite a mission of up to three rapporteurs to address or contribute to the resolution of questions in its territory relating to the OSCE human dimension. In this case, the State selects the rapporteur(s) from the resource list. The selected rapporteur(s) will not include anyone from the invoking state or more than one national of any other State.

Alternatively, one or more participating States, after having submitted a written request for information to another State under the Vienna

Mechanism, may request that ODIHR inquire whether that State would agree to invite a mission of experts to address a particular, clearly defined question.

If the other State agrees to invite a mission of experts, the procedure is the same as if that State had self-invoked the Moscow Mechanism. If, however, the State concerned has not established the mission after ten days, the State which originally made the inquiry may, with the support of at least five other participating States, initiate the establishment of a mission of up to three rapporteurs.

The Moscow Mechanism can also be invoked by a consensus decision of the Permanent Council¹. In this case, the Permanent Council will also decide how the rapporteurs will be chosen and the parameters of the mission.

The rapporteurs are chosen as follows:

- None can be from the invoking States or from the State against which the inquiry was made.
- One expert is chosen by the invoking States from the resource list.
- The State to which the inquiry was made then has six days to select a second rapporteur from the list.

The two selected rapporteurs then choose the third; if they cannot agree within eight days, the Chair-in-Office makes the selection instead.

How Does an Expert Get Added to the Moscow Mechanism Resource List?

The process of selecting of experts for the resource list is administered and supported by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Governments send up to six nominees to ODIHR, which then circulates the names and gives all other participating States four weeks to object to any nomination in a vetting procedure intended to prevent politicization of the list. A participating State can object to two experts nominated by any one country. If there is an objection, the nominating State can either nominate another expert or keep the nominee on the list. If kept on the list, the nominee cannot serve on a fact-finding mission involving the country that objected to him or her. Experts are appointed for a period of three to six years, and there must be 45 experts on the list for it to be active.

If the State to which the inquiry was made chooses not to select a rapporteur, then only the first rapporteur will be appointed.

If a participating State considers that the issue is a particularly serious threat to the implementation of OSCE human dimension commitments, it may, with the support of at least nine other participating States, invoke the same procedure and establish a fact-finding mission without the 10-day waiting period.

How the Fact-Finding Mission Works

The participating State or States that have requested the establishment of a fact-finding mission cover mission expenses. States must cooperate with the rapporteurs and refrain from any action against persons, organizations, or institutions because of their contact with the fact-finding mission.

The rapporteurs will establish the facts and may give advice on possible solutions to the question raised. Their report will be submitted to the participating State or States concerned and, unless all the States concerned agree otherwise, to ODIHR no later than two weeks after the last rapporteur has been appointed. The State against which the inquiry was made will submit any comments on the report to ODIHR no later than two weeks after the submission of the report.

The rapporteurs' report and any comments by the State concerned may be discussed by the OSCE Permanent Council, which may consider possible follow-up action. The report and any comments by the inviting State will remain confidential until brought to the attention of the Permanent Council. Before circulation of the report and any comments, no other mission of experts may be appointed for the same issue.

Twenty-Five Years of the Moscow Mechanism

To date, the Moscow Mechanism has been used six times:

1992: By the then 12 states of the European Community and the United States concerning attacks on civilians in Croatia and Bosnia-Herzegovina.

The mission completed a visit to Croatia in October 1992, but was unable to go to Bosnia because of the lack of adequate security.

At the December 1992 Stockholm meeting, the Foreign Ministers of all CSCE participating States directed the mission members (led by Swedish Legal Advisor Hans Corell) to prepare a follow-up proposal to their report on Croatia. In February 1993, the mission issued a Proposal for an International War Crimes Tribunal for the Former Yugoslavia, which was then submitted to the United Nations by the Swedish CSCE Chair-in-Office as an official UN document. This was the first concrete proposal for such a tribunal and gave important impetus to lagging work in the UN on the Yugoslav crisis.

1992: By Estonia (self-invoked) to study Estonian legislation concerning citizenship and languages.

1993: By Moldova (self-invoked) to examine legislation and policies concerning minorities' rights.

The Mission considered and commented on laws on language, citizenship, and religious freedom.

1993: By a consensus decision of the OSCE Committee of Senior Officials to investigate human rights violations in Serbia and Montenegro, particularly the cases of Vuk and Danica Drašković.

2003: By 10 OSCE participating States (Germany, United States, Austria, Canada, United Kingdom, Greece, Ireland, Italy, Norway, Sweden) in relation to Turkmenistan to examine human rights concerns in the wake of the reported attack on 25 November 2002 on Presi-

dent Niyazov and subsequent investigation and arrests.

Turkmenistan chose not to select a rapporteur and then refused to allow the one selected by the invoking states to enter Turkmenistan for the mission. However, the rapporteur still was able to collect sufficient information about the situation, and Turkmenistan did comment on the resulting report and participate in the Permanent Council discussion of it.

The report and recommendations were directly promoted by the United Nations in several General Assembly Resolutions, including 58/194 (2003), 59/206 (2004), and 60/172 (2005), as well as several Commission on Human Rights resolutions, including 2003/11 and 2004/12.

2011: By 14 OSCE participating States (the Czech Republic, the United States, Germany, Canada, Denmark, Finland, the United Kingdom, Iceland, Norway, Netherlands, Poland, Romania, Slovakia, and Sweden) concerning human rights in Belarus following presidential elections in December 2010.

Belarus responded similarly to Turkmenistan and did not appoint a rapporteur and did not allow the one selected by the invoking states (the same rapporteur that served in the Turkmenistan case in 2003, Emmanuel Decaux) to enter Belarus.

The rapporteur report was discussed in the Permanent Council, with the participation of Belarus. The report was subsequently referenced in the United Nations Human Rights Council Resolution 17/24 in 2011, and fed into the establishment of the UN Special Rapporteur on Belarus in 2012.

Follow-Up and Current Issues

The Moscow Mechanism has often been criticized for its lack of impact. However, it is designed to result in a written report, intended as a tool for participating States to establish a fact-

ual basis—along with expert recommendations—to address a specific current human rights situation. It is up to participating States or the OSCE itself to take action to resolve it.

Ideally, the state concerned would address the situation itself. This is, of course, most likely if the Mechanism were self-invoked. If several OSCE States invoked the Mechanism regarding another state, most likely the country concerned has not adequately acknowledged the situation or demonstrated the political will to address it. In such instances, the country with which the Mechanism has been invoked also may not cooperate, either with the appointment or work of the experts, or with commenting on the report.

Nevertheless, as the experience with the Mechanism concerning Turkmenistan in 2003 and Belarus in 2011 has shown, just one expert can produce a valuable report and recommendations, even without being allowed into the country concerned. Contacts via telephone or the Internet, as well as information from persons or organizations outside the country, can provide solid information for the report. The resulting information is a well-researched, public record of the situation in question, and the recommendations provide a framework for discussions of next steps to address it.

In the cases of Turkmenistan in 2003 and Belarus in 2011, there was little follow-up to the reports by the countries concerned, although the information included in the reports and recommendations of the rapporteurs were used by various actors engaged with those countries to urge reform.

During the annual OSCE Human Dimension Implementation Meetings (HDIMs) in Warsaw, the United States continues to use the open-end “any other business” agenda item during the meeting’s concluding session to follow up on the issues that prompted the invocation of the Mechanism with Turkmenistan and Belarus.

The Moscow Mechanism, when not self-invoked, has been seen by some as confrontational and critical of the state it has been invoked against. As a result, some OSCE participating States have been reluctant to use it.

For example, although there were calls for international investigations into the 2005 violence in Andijan, Uzbekistan, and the 2010 inter-ethnic violence in southern Kyrgyzstan, the

Moscow Mechanism was not used in either case to trigger a fact-finding mission and report. Over the years, the reluctance to use the Mechanism had led to a decline in the number of experts on the list, which requires 45 experts in order to be operational. After being inoperative for more than a year, several states appointed new experts in early 2017, and the Mechanism is again available for use.

About the Helsinki Commission

The Commission on Security and Cooperation in Europe, also known as the U.S. Helsinki Commission, is an independent agency of the Federal 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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¹ The original decision of the 1993 Rome Council Meeting gives this ability to the Committee of Senior Officials, whose authorities have been taken over the OSCE Permanent Council.