

The procedures and mechanisms of the OSCE

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The procedures and mechanisms of the OSCE

Decision-making procedures

Decision-making within the OSCE is governed by the **consensus rule**. 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’ (paragraph 69 of the Rules of Procedure).

In order to introduce a degree of flexibility into the consensus rule and ‘to develop further the CSCE’s capability to safeguard human rights, democracy and the rule of law through peaceful means’, the *Prague Document on Further Development of CSCE Institutions and Structures*, dated January 1992, introduced what is known as the **rule of consensus minus one**, whereby ‘appropriate action may be taken by the Council or 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’.

Meeting in December 1992, the Council introduced the possibility of a decision being taken in accordance with the **rule of consensus minus two** in regard to the peaceful settlement of disputes. Thus ‘the Council or the Committee of Senior Officials of the CSCE may direct any two participating States to seek conciliation to assist them in resolving a dispute that they have not been able to settle within a reasonable period of time’.

Finally, the **tacit approval** (or silence) procedure, which makes it possible for a decision to be adopted within a specific time limit, provided no objection is raised, is often used by the decision-making bodies when adopting administrative, budgetary or operational decisions, and particularly when officials are being appointed or their term of office extended. That procedure has developed since the adoption, in November 1990, of the Charter of Paris for a New Europe, which stipulates that it be used for the appointment of the first Director of each institution (paragraph 14 of the Procedures and Modalities concerning CSCE Institutions). Finally, the July 1992 Helsinki Decisions also make provision for the use of that procedure for the setting up of an ad hoc steering group on a proposal from the Chairman-in-Office (Chapter I, paragraph 18).

The control mechanisms

The control mechanisms for the implementation of OSCE commitments of a specialised nature have developed over time in regard to both the human and the politico-military dimension. They are based principally on diplomatic consultations, exchanges of information, good offices and mediation, as well as the sending of observers and the drafting of reports.

The mechanisms of the human dimension

The Vienna mechanism

The Concluding Document of the Vienna meeting of January 1989 on the CSCE follow-up established what is known as the ‘human dimension’ or ‘Vienna mechanism’, based on requests for information and bilateral meetings.

In an initial stage, the participating States exchange information and respond to the **requests for information** that they receive from other participating States on questions relating to the human dimension of the CSCE. Such communications can be forwarded through diplomatic channels or addressed to any agency designated for those purposes.

In a second stage, the participating States hold **bilateral meetings** with other participating States that so request in order to consider questions relating to the human dimension of the CSCE, including specific situations and cases, with a view to resolving them. The date and place of such meetings is arranged by mutual agreement through diplomatic channels.

Finally, any participating State which deems it necessary can provide information on the exchanges of information and the response to its requests for information and on the results of bilateral meetings, through diplomatic channels (third stage) as well as at the CSCE follow-up meetings on the human dimension — now the Annual Implementation Assessment Meetings within the specialist institutions — and at the main CSCE follow-up meetings — now the review conferences and meetings of the Senior Council and of the Permanent Council (fourth stage).

The Copenhagen Document of the second meeting of the Conference on the Human Dimension of the CSCE, dated June 1990, enhanced the effectiveness of the Vienna mechanism by, among other things, setting specific time-limits within which the procedure was to take place. In particular, the participating States agreed to provide a written response to requests for information in as short a time as possible, but no longer than four weeks, and to convene bilateral meetings as soon as possible, and, as a rule, within three weeks of the date of request. Furthermore, they were to refrain in the course of a bilateral meeting from raising situations and cases not connected with the subject of the meeting, unless both sides agreed to do so.

The Moscow mechanism

The Moscow Document of the third meeting of the Conference on the Human Dimension of the CSCE, dated October 1991, sought to strengthen the human dimension mechanism by consolidating and further developing it. For example, it improved the Vienna mechanism in regard to time limits and introduced the possibility of using expert missions and rapporteurs, a procedure known as the ‘Moscow mechanism’.

As far as the time limits in the Vienna mechanism were concerned, the maximum time limit of four weeks for responding to requests for information was cut to ten days, and the time limit of three weeks for convening a bilateral meeting reduced to one week.

As for the **missions of experts** — following a request for information or a bilateral meeting in accordance with the Vienna mechanism — a participating State may invite the assistance of an OSCE mission, consisting of up to three experts, to address or contribute to the resolution of questions in its territory relating to the human dimension of the CSCE. At the request, then, of the inviting State, that mission may gather the information necessary for the completion of its task and, where appropriate, use its good offices and mediation services to promote dialogue and cooperation among the parties. The State concerned will reach agreement with the mission on the latter’s precise terms of reference and may thus assign any further functions to the mission of experts, including fact-finding and advisory services. The observations of the mission and any comments of the inviting State may be discussed by the Committee of Senior Officials (now the Senior Council), which may consider any possible follow-up action.

Missions of rapporteurs take place, without the consent of the State concerned, where a participating State, with the support of at least five other participating States, requests the establishment of a mission of experts but the State concerned is not prepared to invite that mission into its territory, or the mission of experts has not resolved the question. Consisting of up to three rapporteurs, the mission will establish the facts, report on them and may deliver an opinion on possible solutions to the question raised. The report and any observations by the requested State are submitted to the Office for Democratic Institutions and Human Rights (ODIHR), which forwards them to all of the participating States. The report may be placed on the agenda of the next ordinary meeting of the Committee of Senior Officials (now the Senior Council), which may decide on any possible follow-up action.

Moreover, if a participating State considers that a particularly serious threat to compliance with the provisions of the CSCE human dimension has arisen in another participating State, it may, with the support of at least nine other participating States, initiate the procedure relating to rapporteur missions.

The sending of observers

The Copenhagen Document of the Second Meeting of the Conference on the Human Dimension of the CSCE, dated June 1990, provided, for the first time, for the possibility of observers being sent, in relation to the human dimension, in two specific cases: when elections were taking place and when proceedings had been brought before the courts.

First of all, the participating States were to invite observers from any other CSCE participating State — or any appropriate private institutions or organisations wishing to do so — to observe the conduct of their national election proceedings to the extent permitted by law. They were also to endeavour to facilitate similar access for election proceedings held below the national level. Observers had to undertake not to interfere in electoral activities.

In addition, the participating States decided to accept, as a confidence-building measure, the presence of observers sent by participating States and representatives of non-governmental organisations and other interested persons at proceedings brought before the courts, as provided for in national legislation and international law.

That mechanism was reinforced by the creation, in 1991, of the Office of Free Elections (OFE), which was to become the Office for Democratic Institutions and Human Rights (ODIHR).

The mechanisms of the politico-military dimension

Risk-reduction mechanisms

The risk-reduction mechanisms were first introduced in the Vienna Document of the negotiations on confidence- and security-building measures (CSBMs), dated November 1990. They were then further developed by the subsequent documents on CSBM negotiations in 1992, 1994 and 1999.

They include a mechanism for consultation and cooperation as regards unusual military activities, cooperation as regards hazardous incidents of a military nature and the voluntary hosting of visits to dispel concerns about military activities.

Under the **mechanism for consultation and cooperation as regards unusual military activities**, a participating State which has concerns about an unusual, unscheduled and militarily significant activity of the military forces of another participating State, outside their normal peacetime locations, may submit a request for an explanation to the participating State where the activity is taking place. The reply is to be forwarded within no more than 48 hours. The request and the reply are to be notified to all other participating States without delay.

Subsequently, after considering the reply provided, the requesting State may ask for a meeting with the responding State and, where appropriate, other interested participating States, to discuss the matter. That meeting is to be convened in not more than 48 hours. The meeting is to be chaired by the Chairman-in-Office of the OSCE or his representative. Following appropriate consultations, the Chairman-in-Office or his representative is immediately to draw up and submit a report of the meeting to all the participating States.

If the matter remains unresolved, in a third stage, either the requesting or the responding State or both may ask for a meeting of all participating States. That meeting is convened by the Chairman-in-Office or his representative within 48 hours. During the meeting, the requesting and responding States are to present their points of view and endeavour in good faith to contribute to a mutually acceptable solution. The Permanent Council and the Forum for Security Cooperation (FSC) serve jointly as the forum for such a meeting, jointly assess the situation and recommend appropriate measures for stabilising the situation and halting the activities that are giving rise to concern.

In the field of **cooperation as regards hazardous incidents of a military nature**, the participating States are to report and clarify hazardous incidents of a military nature within the zone of application for CSBMs so as to

prevent possible misunderstandings and mitigate the effects on another participating State. To that end, each participating State is to designate a point of contact for such hazardous incidents and to inform all other participating States. A list of such points of contact is kept at the Conflict Prevention Centre (CPC).

In the event of such a hazardous incident, the participating State whose military forces are involved must provide the information that it has available to the other participating States in an expeditious manner. Any participating State affected by such an incident may also request appropriate clarification. Such requests are to receive a prompt response.

Matters relating to information about such hazardous incidents may be discussed by the participating States in the FSC or at the Annual Implementation Assessment Meeting.

Finally, as regards the **voluntary hosting of visits to dispel concerns about military activities**, participating States are encouraged to invite other participating States, particularly those which have concerns, to take part in visits in zones situated in the territory of the host State in which the military activity in question is taking place. The host State and the States which provide visiting personnel may forward joint or individual comments on the visit to all other participating States.

The emergency mechanisms

The Berlin mechanism

In June 1991, the first meeting of the Council in Berlin saw the adoption of a consultation and cooperation procedure concerning emergency situations which may arise from a violation of one of the Principles of the Final Act or as a result of major disruptions endangering peace, security or stability.

If any participating State concludes that an emergency situation is developing, it may seek clarification from the State or States involved. Those States are to provide within 48 hours all relevant information in order to clarify the situation. The request and reply are to be notified to all other participating States without delay.

Should the situation remain unresolved, any of the States involved in the procedure may submit to the Chairman-in-Office a request for an emergency meeting of the Senior Council. The Chairman-in-Office is to inform all participating States immediately.

Before 1994, a request by a requesting State as well as the support of 12 other participating States was required before the 'Berlin mechanism' could be triggered. The emergency meeting thus took place within a period of between two and three days. Following the December 1994 Budapest Decisions, which provide that the Permanent Council may be convened in an emergency situation, it is, in practice, the Permanent Council that manages emergency situations without having formally to set in motion the Berlin mechanism.

Early warning and preventive measures

The July 1992 Helsinki Decisions established the arrangements relating to early warning and preventive measures so as to enable the participating States to be rapidly alerted in cases where, within the CSCE area, situations have the potential to develop into crises, including armed conflicts. In those cases, the participating States are, wherever possible, to hold in-depth political consultations within the structures and institutions of the CSCE, including implementation review meetings.

The Committee of Senior Officials (now the Senior Council), acting on behalf of the Council, was given primary responsibility in this regard. Without prejudice to the right of any State to raise any issue, the attention of the Senior Council may be drawn to such situations by the Chairman-in-Office, *inter alia*, by:

- any State directly involved in a dispute;
- a group of 11 States not directly involved in the dispute;

- the High Commissioner on National Minorities in situations which he deems to be escalating into a conflict or exceeding the scope of his action;
- the Consultative Committee of the CPC following the application of the mechanism for consultations and cooperation as regards unusual military activities (it should be pointed out here that, following the dissolution of that Committee, it is the Permanent Committee which is responsible for summoning the participating States to meetings which may be held under this mechanism);
- the use of the Human Dimension Mechanism or of the Valletta Principles for Dispute Settlement and Provisions for a CSCE Procedure for Peaceful Settlement of Disputes.

The establishment of a Permanent Council has boosted the OSCE's early warning capabilities, because, since its creation, the participating States have been able to draw attention to potential crisis situations at any time.

Furthermore, the Helsinki Decisions make it clear that fact-finding and rapporteur missions may be used as an instrument of conflict prevention (and crisis management), without prejudice to the provisions of paragraph 13 of the Moscow Document in respect of Human Dimension issues and of paragraph 29 of the Prague Document in respect of Unusual Military Activities.

The peaceful settlement of disputes

The Valletta mechanism

Established by the report of the Valletta meeting of experts on the peaceful settlement of disputes, dated February 1991, and adopted at the first meeting of the Council in Berlin in June 1991, the Valletta mechanism consists in the selection of one or more individuals, from a register of qualified candidates maintained by the CPC, and in the setting-up of a CSCE body for the peaceful settlement of disputes, responsible for advising the parties in their choice of an appropriate dispute settlement procedure and, in addition, for helping the parties find a solution to the dispute. The premises and facilities of the International Bureau of the Permanent Court of Arbitration may be used for those purposes.

The Convention on Conciliation and Arbitration

The Valletta mechanism was modified at the December 1992 Stockholm Ministerial Council. On that occasion, the Ministers adopted the text of a Convention on Conciliation and Arbitration within the CSCE. It was open for signature by all interested participating States and entered into force on 5 December 1994. It provides for a general conciliation and arbitration procedure on the basis of ad hoc agreements or, in advance, on the basis of reciprocal declarations.

They also adopted a conciliation procedure as an option available to participating States on the basis of ad hoc agreements or, in advance, on the basis of reciprocal declarations.

Finally, by opening the door to decision-making on the basis of 'consensus minus two', they decided that the Council or Committee of Senior Officials (now the Senior Council) may direct any two participating States to seek conciliation so as to assist them in resolving a dispute that they have not been able to settle within a reasonable period of time.