The Limits and Potential of Consensus in Times of Crisis

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Abstract

Rather than spelling the end of the OSCE, as many have suggested, the serious test posed by Russia's 2022 full-scale invasion of Ukraine has presented the OSCE with an opportunity both to reaffirm and to reimagine itself. In the process, the OSCE has shown that its greatest asset remains its foremost liability: the principle of consensus, by which all key decisions are unanimously agreed. This paper affirms the OSCE's unique and essential role and addresses both the limits imposed by consensus and the inventiveness that remains possible with respect to it. It then weighs the short- and long-term costs of adaptation with and around consensus and offers recommendations regarding new roles for the OSCE as it faces what may be its greatest challenge.

Keywords

OSCE consensus, institutional adaptation, Russian invasion, Ukraine

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Introduction

Rather than being defeated, the OSCE has adapted to the challenges presented by Russia's invasion of Ukraine. It can still do more, however, and continues to provide unique benefits. This is additionally remarkable given that it is an international organization with fifty-seven participating States who decide unanimously on all issues, great and small. In February and March 2022, in the face of Russia's full-blown invasion of Ukraine, the Organization seemed doomed; life-long supporters wrote it off. Although many peoples and states would be worse off without the OSCE, it continues to face its greatest challenge—and this after years of already having been deemed to be in crisis.[1]

This paper addresses the OSCE's continued utility since the Russian full-scale invasion of Ukraine on February 24, 2022, and identifies the inventiveness that has since helped to keep the Organization alive. The paper then assesses how the Organization can and should proceed in the frustrating situation of possible

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vetoes by one or two participating States (not only the Russian Federation and Belarus) while trying to observe consensus. It is often noted that "small" participating States venerate consensus because of the institutional ownership it affords. The case made here is twofold and asks us to take two very different perspectives. The first considers the ways in which the OSCE can continue to provide essential activities while respecting consensus. The second asks us to consider circumstances in which consensus might be abrogated. The paper concludes by identifying areas for future action.

Six cases for the continued utility of the OSCE

The OSCE's continued existence should not be taken for granted. Even those who support the OSCE have warned that the Russian invasion "compromised its ability to take decisions" and that Russia has plenty of opportunities to take the decision-making process hostage.[2] This section makes the case for the Organization against continuing doubts about its utility, which were many in 2022. Even though some worries have abated, arguments in support of the Organization deserve a hearing. This is not said from a position of naive nostalgia but as a response to unnecessary defeatism, against which supportive states and policymakers inside and outside the Organization should continue to fight.

First, the OSCE often works subtly, cumulatively, and over the long term. The human rights dimension of the precursor to the OSCE, the Conference on Security and Co-operation in Europe (CSCE), did not see immediate success; indeed, human rights initiatives such as Charter 77 and Solidarity in communist Czechoslovakia and Poland suffered more repression in the years immediately following the 1975 signing of the Helsinki Final Act. Yet these beneficiaries, dissidents in Eastern Europe, were adamant that the CSCE mattered fundamentally. Indeed, they became leading advocates of an enhanced CSCE that would become the OSCE of today.

Second, the OSCE continues to have value as a forum. Where and how else can engagement be achieved, beyond irregular bilateral and/or ad hoc limited multilateral engagement? The OSCE continues to serve as a central, unique medium in which all parties are present,[3] where meaningful negotiations can be immediately solidified, and where conflict parties and the vast core of concerned or affected states are involved.

Third, if left to wither, the OSCE (or any remotely comparable organization) would be almost impossible to resuscitate. Negotiations for the OSCE's precursor Conference format required years, its institutionalization decades. Veteran US diplomat William Hill observes that, well before 2022, US officials remarked on their return from OSCE headquarters in Vienna that Moscow would be unlikely to sign a renegotiated Helsinki Final Act.[4] After the Russian invasion, neither the Act nor the Paris Charter of 1990 could be expected to be signed.[5]

A fourth argument for the OSCE is its unique membership. It is true that the

OSCE's reach from "Vancouver to Vladivostok" had been put at risk even before Russia's full-blown invasion. While political synergies between the EU and NATO had been growing since their 2016 Joint Declaration of strategic co-operation prior to February 2022 and have intensified ever since,[6] these institutions continue to have dissimilar memberships. Even before 2022, French President Emmanuel Macron spoke of the need for a new European security architecture as part of a rapprochement with Russia.[7] Since then, European efforts have also included the formation of the European Political Community (EPC). Convened first in October 2022 and extending to two more summits in 2023, this new initiative used a self-defined "Europe" for a forum that "brought together leaders from across the continent" and has plans for further meetings.[8] This stated ambition belies the fact that not all OSCE states were included.

A fifth feature concerns the international institutional division of labor among international organizations. On the one hand, values-based international organizations play an essential role in holding perpetrator states publicly accountable; on the other, they have the power to punish unacceptable behavior through expulsion. Neither option is sufficient in the face of vast and sustained human rights violations. A combination of both, however, allows for accountability and the expression of revulsion through expulsion. In terms of the latter, Russia has been expelled from bodies such as the Council of Europe and the Council of the Baltic Sea States, and it is no longer a party to the European Convention on Human Rights. The OSCE plays the former role as an essential forum for debunking and recording disingenuous claims.

Finally, the OSCE's operational costs are relatively low compared to the irreplaceable benefits it provides. The Organization's annual budget of approximately €140 million amounts to the cost of a dozen Leopard tanks. At $5 million one HIMARS system equates to many times the yearly cost of a Central Asia mission. Funding the OSCE is proverbial pennies compared to the material (let alone human) costs of the onslaught against Ukraine. Even if the OSCE feels intangible, a modest financial commitment will ensure the continued existence of a unique entity.

Many participating States have collectively launched initiatives to keep the Organization functioning. The following section assesses current OSCE innovations and offers further recommendations, including for how to preserve consensus in principle while introducing new, essential functions in practice.

OSCE functionality in wartime

The OSCE has been able to respond, and innovate, even while remaining hamstrung by its own laudable value of consensus. The Organization has also always lacked (and never intended to provide) the financial/market access incentivization offered by the EU and has never served as a major development agency. This makes participation retention poten-

tially more challenging for the OSCE, especially when values seem less important, if not disrespected. Consensus also generally means that the Organization relinquishes key means of coercion and punishment, even if a core argument for retaining consensus has been that "everything adopted by consensus [is] equally binding for all without exception."[9] It is even more remarkable that the Organization and its participating States have found ways to keep the system operating in the face of not only profound disagreement but also concerted efforts by its own members to undermine it.

Examples of working amid the limitations of consensus include the convening of an alternative version of what would have been the annual Human Dimension meeting in Warsaw in 2022, a regular activity that was blocked by Russia in 2021; the Support Programme for Ukraine, which operated at the physical premises of the former OSCE Project Co-ordinator and which was closed in 2022 due to Russia's refusal to permit its renewal; and the establishment of Groups of Friends to support OSCE activities and institutions, which was otherwise impaired by an abuse of consensus when it came to issues such as the safety of journalists and the territorial integrity of Georgia.[10]

The Vienna and Moscow Mechanisms demonstrated the OSCE's ability to adapt by permitting the investigation of a participating State's internal conduct if one state with the backing of at least nine others actively supported the measure.[11] This measure has rightly been used by forty-five states to investigate allegations of abductions of Ukrainian children by the Russian state. Other activities have been conducted without Russian consent. It is time to expand this practice. This can and should be done alongside a review and expansion of the OSCE's unique offerings to participating States in order to incentivize continued participation. Even in countries where the OSCE's human dimension is seen as threatening, the Organization has found means of meeting national needs, including in vital areas of national security such as border security and de-mining. Despite the many difficulties, no Central Asian state has refused engagement, and leaders continue to meet publicly with senior OSCE officials.

A considerable incentive for continued participation in the OSCE also comes from the signaled expectation that the OSCE will be a key forum for future pan-European, including Central Asian, security rules. Clear statements to that effect and the reiteration of an invitation to all states to contribute are the way forward.

The Russian crisis is an added call for the OSCE system and its supporters to strategize. As OSCE practitioner-author Walter Kemp observes, "the OSCE has consistently failed to adopt a longer-term strategy" and may even have "an aversion to thinking strategically," unlike other international organizations.[12] The use of, by whatever name, a strategic policy planning unit in the OSCE Secretariat is a good idea. In its absence, or parallel to it, interested participating States should gather and devise strategies. Such activities can be criticized, but they should not and cannot be abandoned.

Conclusion and recommendations

Having considered how the OSCE could continue to operate with limited consensus, this section recommends ways and areas in which the Organization can and should act.

The Western Balkans. A strong case can be made for the OSCE's contribution to reconciliation in the Balkans, a role in which it has stood out among other international actors.[13] A rapporteur for the OSCE Parliamentary Assembly asserted that, "mainly through its network of field operations," the OSCE "continues to ensure unmatched international presence in the region, including at the grassroots level."[14] Although the EU remains highly influential in this region due to the funding, market access, and education it offers, actual accession for all countries remains years away, and instability is rising. Region-wide measures against organized crime and corruption also remain essential, and the OSCE brings experience that aligns closely with EU initiatives.[15]

Central Asia. Bar the two parties to the war themselves, Central Asia faces perhaps the most significant consequences of Moscow's onslaught against Ukraine. Russia's demonstrated weakness and likely physical exhaustion have presented Central Asia with its greatest chance of securing geopolitical freedom of movement since 1991. However, it must also contend with the risk of erratic Russian behavior, regardless of the outcome in Ukraine.

It is true that the mandates of the OSCE field operations and presences have been slimmed down to strip out human dimension activities and to that end have largely been reclassed to mere project management portfolios. With that said, such operations potentially provide essential help to local activists, who would be less resourced and even more beleaguered without them.[16] Even those who remain skeptical of the OSCE's ability to operate effectively in Central Asia recognize that Central Asian governments still value security co-operation and environmental assistance. To be sure, some Western civil society activists who are engaged with counterparts in Central Asia find that support for the OSCE is diminishing; nevertheless, the consensus is that every effort can and should be made to retain OSCE presences and engagement with Central Asian states and societies.

The South Caucasus. All three OSCE field operations in the South Caucasus—in Georgia, Azerbaijan, and Armenia—were closed (in 2008, 2015, and 2017), albeit for different reasons. Additionally, Azerbaijani frustration (and even animosity) towards the OSCE Minsk Group and its inability to bring a solution to the conflict in Nagorno-Karabakh may have contributed to the decision to use force.

Circumstances in the South Caucasus have changed since the closures of field operations. Since the 2020 war over Karabakh and surrounding Azerbaijani territories, Armenia has become more isolated and vulnerable than it has been for thirty years, bar—and also because of—its questionable relations with Iran. The OSCE Office in Yerevan was closed (not by Armenian objections), and the subsequent Armenia Co-operation Programme

continues to operate across the OSCE's three dimensions.[17] An interpretative statement issued by Armenia upon the acceptance of the Unified Budget in 2021 spoke to its desire to retain conflict-related OSCE mechanisms.[18]

An Office would be logical, as Armenia could and should be helped and encouraged to expand relations with the OSCE. For its part, Azerbaijan has affirmed "the need for OSCE support" in eliminating landmines.[19] Georgia, which embraced UN and OSCE presences and lost them after the war with Russia in 2008, would likely welcome them again. Tbilisi had the added imperative of finding alternatives to the 3+3 format, which combined the three South Caucasus states, Iran, Russia, and Turkey. Tbilisi dislikes the lack of Western participation in the format, which would otherwise give it leverage at the negotiating table with Moscow, in addition to fears that Russia will insist on including Abkhazia and South Ossetia as participating sides.[20] Field missions require consensus for their establishment and renewal. In the current circumstances, however, a lack of consensus should not be a barrier to deploying them, if there is willingness on the part of the host country and a majority of participating States.

The Group of Friends of Georgia has called on "OSCE Participating States to decide on the reopening of the OSCE cross-dimensional mission in Georgia."[21] There are possible alternatives, such as a de facto field mission on a roving basis.[22] These scenarios speak to the additional point that the OSCE should prepare to resume its capacities for post-conflict management.

Higher education, especially when embedded in OSCE values, empowers future generations. The OSCE Academy in Bishkek continues to educate dozens of master's students from each of the Central Asian states (and Afghanistan).[23] The OSCE Border Management Staff College in Tajikistan provides niche training, which Tajik officials continue to support. These initiatives can function and be funded even while the Organization remains deadlocked. Specifically, the Organization could consider similar initiatives in the Black Sea area, such as an OSCE Academy for countries of the region, with the eventual prospect of including Russian students.

Meeting certain Russian interests. Russia's continued participation in the OSCE meets some Russian interests, as well as the OSCE's interests. According to Putin's doctrine, Russia has an "absolute right to a seat at the table on all major international decisions."[24] William Hill has similarly chronicled Russian perceptions of exclusion from the Euro-Atlantic system.[25] Based on Russia's geographic size, demography, and nuclear and other arsenals, any future Russian government will want a forum for security. Justified or not, Putin's impression in 2007 was that the OSCE's agenda had been hijacked, shifting from security considerations to human rights.[26] Russian efforts to establish a new approach to European security in the years before the Ukraine invasion were proposed separately from the OSCE, for example in Russian President Dmitry Medvedev's 2009 European

Security Treaty.[27] Nevertheless, the Organization or like-minded states could signal that future European security discussions will take place not in an exclusivist great power condominium (even if such discussions initially occur) but multilaterally.

An OSCE that can once again, and uniquely, bundle together mutual interests across security fields will likely be attractive even to those who reject aspects of the Organization's human dimension. The OSCE offers a seat at the table, one that Moscow, even after February 24, 2022, still uses to some extent. In an October 2022 speech at the UN in which he unsurprisingly accused NATO of "provocations," Russia's representative reiterated his country's willingness "to maintain a pragmatic approach to the participation in the work within the OSCE Structured Dialogue."[28]

Strengthen the autonomous institutions. Among the issues that some states have raised regarding the OSCE system is the seeming independence of ODIHR, the Special Representative on Freedom of the Media, and the OSCE High Commissioner on National Minorities.[29] These are testing grounds for appointment by votes short of consensus. It is essential to keep them as such, and some participating States have openly asserted this. More should do so. The UK Permanent Delegation, for example, has stated outright that it "support[s] the OSCE's autonomous institutions."[30] This was echoed by the OSCE Parliamentary Assembly in Birmingham in 2022, in a resolution that welcomed "with appreciation the role and activity of the OSCE autonomous Institutions and structures."[31] So vital are these institutions that funding should be expanded as necessary beyond the OSCE's Unified Budget.

Appointments to these positions, and indeed to the position of OSCE Secretary General, risk continued contestation. In the extraordinary circumstances of war in the OSCE space, however, such appointments should be made by a majority vote, if need be. Participating States can recognize office holders, much as alternative governments have been recognized in other times of crisis. Each of these offices is vital not only in itself but for its expansive reach across the OSCE space, and given the fierce resistance and resentment that ODIHR has garnered from post-Soviet states, its election observation activities merit separate consideration—and commendation.

The importance of ODIHR election observation. The effectiveness of ODIHR's election observation missions has provoked the animus of the Russian Federation and several other post-Soviet states. They have been a significant contributor to Moscow's intensifying sense of Western double standards, earning particular attention in Putin's 2007 Munich Security Conference speech identifying Russian grievances, including the claim that the OSCE (and presumably ODIHR specifically, although it was not explicitly mentioned) was "interfering" in and "imposing" on the domestic affairs of states.[32] These rebukes only speak to ODIHR's importance and effectiveness.[33]

Despite hostility to ODIHR, and even in the face of the invasion of Ukraine, Russian participation in ODIHR

international election observation missions has continued. Engagement with ODIHR by other participating States is also an indication of where post-Soviet states stand on their internal and foreign policy priorities. Not only have Ukraine, Georgia, and Moldova snubbed Moscow-led alternative election observation missions, but they have arguably *over*-invited ODIHR to observe elections, including local ones.[34] ODIHR matters to individuals on the ground and to participating States across much of the OSCE area. Even with the Russian aggression against Ukraine, both Moscow and all other post-Soviet governments continue to engage with ODIHR.

Further open co-ordination among like-minded states. Measures that circumvent consensus are exceptional and could impact certain states. A statement by a representative of the Parliamentary Assembly of the Collective Security Treaty Organization warned in February 2023 of "Westernist" plans for the "destruction of the consensus principle," which would also "destroy the platform for dialogue in the OSCE."[35] This concern also presumably signals a desire to retain the OSCE and space for discussion.

Advertised meetings of all interested participating States (ideally initiated by both the Secretary General and the Chairperson-in-Office) should be called, with a stated intention to review their decisions later. That is to say, any decisions made without consensus should be done openly, and the rationale for taking such actions outside of consensus should be made clear. Groups of Friends have been created for specific purposes. More such groups—or a core Group of Friends—could follow. They should explicitly affirm, so as to dispel conspiracy theories, that they are not exclusive and remain open to others. Participation or parallel discussion groups could also be opened to non-diplomats, such as former practitioners and experts. Given the risk of over-participation, and then stalemate, convenors should limit participation at the outset, perhaps to three representatives per participating State. To ensure transparency and maximize opportunities for input, announcements about all meetings, including their findings and suggestions, should be routinely circulated to all participating States—regardless of their current engagement with the Organization. Plans for support for OSCE autonomous institutions, field offices, and other activities should continue, even in the face of a potential veto, as should open commitments to financial and staffing resourcing, including the appointment of deputy heads of missions as acting heads.

Actively canvassing participating States to identify unmet (or insufficiently met) needs and specifics. Many post-Soviet states have benefited from, and are now expressing interest in, specific security provisions. This interest can be met by the OSCE with extrabudgetary contributions. The aim should be to retain participating States and to convey that continued engagement, even of states with questionable records in the past, helps the politically vulnerable in those societies. The OSCE may risk further obfuscation or even the withdrawal of a state. If this occurs, resources should be redirected.

Activities for which there is a lack of consensus should be continued through innovative initiatives by Chairpersonships, including events and activities in the human dimension. The OSCE remains a forum in which to deal with current crises and with potential final outcomes. In several cases, the Organization can continue to function through determination and extrabudgetary contributions.

In other areas, and for other purposes, the Organization can and should adopt temporary measures to maintain its functionality. Consensus—or even consensus minus one—should not inhibit what is right and necessary, and atypical courses of action taken by a large majority of states can be justified as exceptional measures, much as when states have recognized alternative governments in the past. The OSCE serves a unique and indispensable purpose on the world stage, and it should continue to do so.[36]

Notes

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