In: IFSH (ed.), OSCE Yearbook 2002, Baden-Baden 2003, pp. 347-359.

Richard Müller[1]

Interpretative Statements at the Permanent Council: A Quantitative and Qualitative Analysis

Introduction

Decision-making within the OSCE is based on consensus. With a few notable exceptions, such as the Vienna and Moscow Human Dimension Mechanisms,[2] decisions still require - in the original language of 1973 - "the absence of any objection expressed by a Representative (of a CSCE participating State, R.M.) and submitted by him as constituting an obstacle to the taking of the decision in question".[3] Although consensus-based decision-making has its drawbacks, its most frequently cited merit is that states will more strongly support decisions to which they have given their (explicit or tacit) consent.[4] The OSCE Handbook describes the consensus principle as a reflection of the Organization's co-operative approach to security and the fact that all participating States have equal status.[5]

This original and fundamental principle of consensus, however, has come under increasing pressure recently by an uncontrolled proliferation of "interpretative statements" within the OSCE's most important operational body, the Permanent Council (PC) which meets weekly in Vienna. The instrument of interpretative statements goes back to paragraph 79 of the Final Recommendations of the Helsinki Consultations, the so-called "Blue Book", which reads:

> Representatives of States participating in the Conference may ask for their formal reservations or interpretative statements concerning given decisions to be duly registered by the Executive Secretary and circulated to the participating States. Such statements must be submitted in writing to the Executive Secretary.[6]

---

1 Richard Müller is Political Assistant at the US Mission to the OSCE. The views expressed are those of the author and do not necessarily represent those of the US government.

2 On the mechanisms and procedures of the human dimension see Arie Bloed (Ed.), The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993, Dordrecht/Boston/London 1993, pp. 40-44; see also ODIHR, OSCE Human Dimension Commitments: A Reference Guide, Warsaw 2001, pp. 123-127.

3 Final Recommendations of the Helsinki Consultations, Helsinki, 8 June 1973, para. 69 (Chapter 6), in: Bloed (Ed.), cited above (Note 2), pp. 121-140, here: p. 133.

4 For thorough discussions of the consensus rule see Erika Schlager, The Procedural Framework of the CSCE: From the Helsinki Consultations to the Paris Charter, 1972-1990, in: Human Rights Law Journal 12/1991, pp. 221-237, here: pp. 223-224; see also Bloed (Ed.), cited above (Note 2), pp. 18-22.

5 Cf. OSCE Secretariat, OSCE Handbook, Vienna 2000, p. 28.

6 Final Recommendations of the Helsinki Consultations, para. 79 (Chapter 6), cited above (Note 3), p.135.

My argument is developed in three parts: In a quantitative analysis, I show that the frequency of interpretative statements increased dramatically in 2001. Moreover, I identify those countries which have most often employed this instrument. In a second step, I argue that not all interpretative statements are equally prone to eroding the OSCE acquis. Therefore, I propose a typology of five categories of interpretative statements, distinguishing four "benign" types from one "malign" type. The term I use for this latter category is "corollaries and caveats". Again, I show which countries have used this type of statements most frequently. Finally, I discuss the possible effects of interpretative statements.[7]

Who Uses Interpretative Statements?

The Permanent Council was established by the Budapest Summit of 1994. Between 1994 and 2001, it adopted a total of 463 Decisions. These Decisions were accompanied by 79 "interpretative statements under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations".[8]
In analyzing the frequency of interpretative statements since the establishment of the Permanent Council, one can observe a worrying increase in their absolute and relative numbers in 2001 (see Chart on p. 349). Between 1994 and 2001, an average of ten statements were made, i.e. 17 per cent of the average number of 58 PC Decisions per year. In 2001, however, a total of 32 statements were registered, amounting to more than 50 per cent of the 63 PC Decisions adopted that year. In other words, on every second Decision one or more delegations thought it necessary to have the last word on the issue.
Yet, the dramatic increase in the number of interpretative statements in 2001 should not be mistaken as representing the highpoint of a continuous development: In fact, the percentage of statements increased steadily between 1994 and 1997, but decreased significantly in the years 1998 to 2000. In other words, the excessive use of interpretative statements in 2001 should be treated as a one-time aberration rather than be allowed to develop into a solidifying trend.

7 In the present paper, I limit myself to examining interpretative statements in connection with Permanent Council Decisions. Other OSCE decision-making bodies, such as Ministerials and Summits, or historical bodies, such as the Permanent Committee, fall outside the scope of this study.

8 A detailed compilation of all 79 interpretive statements with references to the corresponding PC Decision, the participating State who submitted the statement and a description of each type of statement may be obtained from the author.

In: IFSH (ed.), OSCE Yearbook 2002, Baden-Baden 2003, pp. 347-359.

Interpretative statements were most often used by Russia, Turkey, Greece and the former Yugoslav Republic of Macedonia (FYROM). The unusually high ranking of Greece and FYROM is due to the conflict over the proper name of the "former Yugoslav Republic of Macedonia" and/or the "Republic of Macedonia". FYROM made six statements on this issue, which were rejected by Greece in four cases. Also contained in the list are six EU statements to which various other delegations subscribed. Table 1 depicts a ranking of participating States according to the number of interpretative statements made between 1994 and 2001.

Table 1: Number of Interpretative Statements by Country (1994-2001)[9]

Rank	Country	Statements
1.	Russian Federation	14
2.	Turkey	12
3.	Greece (6 EU plus 5 individual statements)	11
4.	FYROM	9
5.	Spain (6 EU plus 2 individual statements)	8
6.	Bulgaria, EU countries other than Greece and Spain (6 EU plus 1 individual statement each)	7
7.	US	6
8.	Albania, Malta, Poland	5
9.	Slovenia, Turkmenistan	4
10.	Belarus, Cyprus, Czech Republic, Estonia, Hungary, Kazakhstan, Latvia, Lithuania, Romania, Slovakia, Ukraine, Yugoslavia	3
11.	Croatia, Kyrgyzstan, Norway	2
12.	Armenia, Azerbaijan, Bosnia and Herzegovina, Canada, Liechtenstein, Moldova, Tajikistan, Uzbekistan	1
13.	Andorra, Georgia, Holy See, Iceland, Monaco, San Marino, Switzerland	none

What Do Interpretative Statements Say?

The proliferation of interpretative statements in 2001 could be seen as reflecting a growing difficulty to reach an authoritative or authentic interpretation of the meaning of PC Decisions. Good logic seems to suggest that not a single interpretative statement should have been necessary if it were not for the fact that delegations were unable to persuade others to incorporate their wishes into the Decision itself. Yet, there are indeed interpretative statements

9 As many of the statements represent joint statements, table sums would not depict the correct total of 79 interpretative statements.

the content of which could not possibly have formed part of a Decision, as they are, for example, responses to other previous interpretative statements. Moreover, there are interpretative statements the content of which theoretically *could* have formed part of a Decision, but which do not question the validity of the original Decision. This is mostly the case with statements of intent or policy, even if they frequently spread the *hautgout* of the "sore loser".

In short, not all statements are equally prone to eroding or undermining the OSCE acquis. There are, so to speak, "malign" and "benign" interpretative statements. In order to better gauge the dangers lurking in different kinds of statements, I propose to distinguish interpretative statements according to their purpose. While I do believe that my inductive typology moves beyond anecdotal evidence by adding some methodological stringency, I am fully aware that clear lines between statements are not easily drawn and that their wording can often be misleading. I have identified the following five major types of statements:

Table 2: Number of Interpretative Statements by Type (1994-2001)

Type of Statement	Number of Statements
A. Reaffirmation of consensus	9
B. Non-recognition of precedence	8
C. Statement of intent or policy	18
D. Technical statement	1
E. Corollaries and caveats	43

A. Reaffirmation of consensus: A total of nine interpretative statements merely respond to other statements. With the exception of one statement by the US in 1995 qualifying the Chairman's statement on a PC Decision,[10] all these statements call into question interpretative statements by other delegations. Also in 1995, the US rejected a Bulgarian statement on PC Decision No. 93 on the grounds that it merely represented "a statement of national intent or policy",[11] which would not affect the Decision taken by the Permanent Council. The main purpose of reactions to previous statements, therefore, has been a *reaffirmation of consensus*. One such statement was made by Albania, the remaining eight are equally divided between the US and Greece. It is interesting to observe that the US devoted three of its total of six interpretative statements at the Permanent Council to rejecting

10 Cf. Interpretative statements [sic!] under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, in: OSCE, Permanent Council, Journal No. 8, 16 February 1995, p. 3.

11 Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, OSCE, Permanent Council, Decision No. 93, PC.DEC/93, 5 December 1995, Annex 2.

interpretative statements by other delegations and one to replying to a Chairman's statement. All four Greek *reaffirmations of consensus* were provoked by FYROM's insistence that its constitutional name was "Republic of Macedonia".

B. Non-recognition of precedence: I have found eight interpretative statements that fall into this category. In general terms, *non-recognitions of precedence* state that a specific PC Decision does not create a new general rule which would be binding for participating States in the future. A good example is the EU's interpretative statement in connection with PC Decision No. 250 of 1998: When the Post Table was adjusted in order to convert the post of the Migration Expert at the Office for Democratic Institutions and Human Rights (ODIHR) into a fixed-term, salaried one the EU noted: "It is the understanding of the European Union that where posts and activities are agreed on the basis of voluntary contributions, there can be no obligation for the OSCE to assume their continued financing on an assessed basis should sources of voluntary funding be exhausted."[12] Whereas a *reaffirmation of consensus* aims at preserving the original meaning of a Decision, a *non-recognition of precedence* does not touch upon the Decision itself, but points towards future Decisions. *Non-recognitions of precedence* were deposited three times by Russia, two times by the EU and one time each by Albania, Malta and Turkey.

C. Statement of intent or policy: All in all, there were 18 *statements of intent or policy*. Whether it be Bulgaria urging a separate scale for large missions, Turkey and the US proposing to elevate the post of ODIHR Director to the level of the Representative on Freedom of the Media, or Russia suggesting a theme for the 2003 Economic Forum, all these statements were limited to announcing intentions or policies of participating States without calling into question the validity of the respective PC Decision. However, this did not exclude threats to block consensus in the future. In connection with PC Decision No. 447 of 2001 on "Reaching an Interim Agreement on the Helsinki Scale of Assessments", the delegations of Azerbaijan, Belarus, Kazakhstan,

12 Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, OSCE, Permanent Council, Decision No. 250, PC.DEC/250, 23 July 1998, Attachment. It is interesting to note that PC Decision No. 250 itself contained a rejection of precedence. Similar to UN General Assembly resolutions, OSCE documents and decisions are non-binding under international law. The fact that participating States make the effort at all to preclude the possibility of setting an unwanted precedent could be interpreted as suggesting a hidden fear that OSCE commitments might develop into international customary law. Yet, rightfully so, the burden of proof lies with those asserting such a development. On the view that "the Helsinki agreements are international legal instruments *in statu nascendi* or *soft law*" see Bloed (Ed.), cited above (Note 2), p. 23. On the understanding of OSCE commitments as expressions of *opinio iuris* see Ulrich Fastenrath, The Legal Significance of CSCE/OSCE Documents, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (Ed.), OSCE Yearbook 1995/1996, Baden-Baden 1997, pp. 411-427, here: pp. 422-423. See also Miriam Shapiro, Changing the CSCE into the OSCE: Legal Aspects of a Political Transformation, in: American Journal of International Law 89 (1997), pp. 631-637, here: pp. 631-632, especially footnote 4.

Kyrgyzstan, Turkmenistan and the Ukraine stated that they would "not agree to adopt an OSCE budget for 2002 before the Permanent Council takes a decision on the new Scale of Assessments".[13] The joint statement in no way touched upon the Decision at hand. It merely reasserted the obvious right of each participating State to withhold agreement on any issue at any time. The main theme of the Russian statement regarding PC Decision No. 449 of 2001 on "Extension of the Mandate of the OSCE Mission in Kosovo" was Russia's "position of principle that the mandates of all OSCE field presences should be extended simultaneously for a period of one year".[14] Again, in no way did the interpretative statement add to or take away from the original thrust of the Decision. In both cases, delegations simply preferred paragraph 79 statements over corridor talks in order to relay their views to other delegations.

D. Technical statement: The Turkmen statement regarding PC Decision No. 446 of 4 December 2001 is the only statement of a purely technical nature I have been able to identify. Its purpose was to correct the Russian translation of a single sentence in the Bucharest Ministerial Declaration.[15]

E. Corollaries and caveats: Neither the nine *reaffirmations of consensus*, the eight *non-recognitions of precedence*, the 18 *statements of intent or policy*, nor the one *technical statement* call into question the consensus achieved by participating States. The very purpose of the first type indeed is to defend consensus against challenges. This is not the case for the remaining 43 interpretative statements. These *corollaries and caveats* more or less aim at modifying the original Decision. Some statements in this residual category are disguised as mere interpretations of text, others openly challenge the consensus just reached.[16] *Corollaries and caveats* are a sign of discord; their very existence suggests that the original consensus was somewhat faked. They may have merits of their own and even make rightful claims such as Russia's interpretative statement restating the prerogative of the Permanent Council, not the Chairman-in-Office or host government, to extend OSCE missions.[17]

---

13 Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, OSCE, Permanent Council, Decision No. 447, Reaching an Interim Agreement on the Helsinki Scale of Assessments/Corrected reissue, PC.DEC/447/Corr.1, 4 December 2001, Attachment 2.

14 Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, OSCE, Permanent Council, Decision No. 449, Extension of the Mandate of the OSCE Mission in Kosovo, PC.DEC/449, 10 December 2001, Attachment 2.

15 Cf. Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, OSCE, Permanent Council, Decision No. 446/Corrected reissue, Forwarding of Draft Documents to the Ministerial Council, PC.DEC/446/Corr.2, 4 December 2001, Attachment 1.

16 Readers should be aware that I identify *corollaries and caveats* by way of exclusion: All statements that cannot be clearly identified as "benign", therefore, are counted as "malign". This is not, however, to deny the immense differences among "malign" statements. Again, those 43 statements "more or less" threaten consensus in the Permanent Council.

17 Cf. Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, OSCE, Permanent Council, Decision No. 263, PC.DEC/263, 25 October 1998, Attachment.

Yet, as the US put it once in one of its *reaffirmations of consensus*, these *corollaries and caveats* "simply do not mean the same thing"[18] as the original Decision. Take, for instance, the three separate statements by Turkey, Russia and Kazakhstan regarding PC Decision No. 408 of 2001 on the "Scale for Large OSCE Missions and Projects": Turkey supplants the Decision's criteria of "capacity to pay" by its own criteria,[19] Russia equally challenges those criteria and puts forward the principle of "nothing is agreed until everything is agreed"[20] and Kazakhstan "does not consider itself bound"[21] by those criteria. The US rightfully rejected the Russian and Kazakh statements.[22] It is unclear why the Turkish statement was not rejected as well.

A few substantial areas can be identified to which *corollaries and caveats* were frequently applied: Nine such statements were made by FYROM and other participating States in order to have the "Republic of Macedonia" recognized under its constitutional name. More importantly, in eight cases host governments attempted to regulate the mandate or duration of OSCE field operations through interpretative statements. There can be no question about the sovereign right of participating States to decide whether or not to invite field operations onto their territory. However, their mandates need to be approved by the Permanent Council as a collective body, not just the host government. Interpretative statements are an improper means for host governments to assert themselves vis-à-vis the other 54 participating States. But not just field operations have frequently been the target of interpretative statements. In three cases each, participating States attempted to put their own special mark on the mandate of OSCE institutions or the agenda of OSCE meetings.

Another important question is which countries most often resorted to this category of interpretative statements. Table 3 depicts the number of *corollaries and caveats* by country and thus gives an even more exact picture than Table 1, which does not differentiate between "benign" and "malign" types of interpretative statements. Leaving aside the Macedonia problem, it is again the Russian Federation and Turkey which rank highest among participating States. Interestingly, not a single statement by the US has ever been prone to undermining consensus. In fact, four of the six interpretative statements by the US can be classified as *reaffirmations of consensus*, two as *statements of intent or policy*.

18 Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, Decision No. 93, cited above (Note 11).

19 Cf. Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, OSCE, Permanent Council, Decision No. 408, Scale for Large OSCE Missions and Projects/Corrected reissue, PC.DEC/408/Corr.1, 5 April 2001, Attachment 2.

20 Ibid., Attachment 3.

21 Ibid., Attachment 4.

22 Cf. ibid., Attachment 5.

Table 3: Number of Corollaries and Caveats by Country (1994-2001)[23]

Rank	Country	Statements
1.	FYROM	8
2.	Russian Federation, Turkey	7
3.	Bulgaria	5
4.	Belgium	4
5.	Albania, Malta, Poland, Slovenia, Ukraine	3
6.	EU countries (other than Belgium), Belarus, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Kazakhstan, Latvia, Lithuania, Norway, Romania, Slovakia, Turkmenistan, Yugoslavia	2
7.	Armenia, Bosnia and Herzegovina, Canada, Kyrgyzstan, Liechtenstein, Moldova, Tajikistan, Uzbekistan	1
8.	Andorra, Azerbaijan, Georgia, Holy See, Iceland, Monaco, San Marino, Switzerland, US	None

What Are the Effects of Interpretative Statements?

The Helsinki Process has evolved from a series of conferences into a permanent institution. OSCE practice continues to evolve. A quote from Arie Bloed's standard reference manual of 1993 serves to illustrate this point:

> In practice, interpretative statements and reservations play a rather limited role, which is partly due to the fact that the texts are only incorporated in the daily journals of the CSCE meetings concerned. They are not included in the official publications of the texts of the CSCE documents. This explains why it appears to be extremely difficult to lay one's hands on the text of these interpretative statements and reservations, in particular because the daily journals have never been officially published. Even the "inner circles" of the CSCE process have difficulty in obtaining these texts.[24]

This is no longer the case. All the above-mentioned documents, including interpretative statements, nowadays are accessible to the public either through the OSCE's public website[25] or the annually published OSCE Deci-

23 As many of the statements represent joint statements, table sums would not depict the correct total of 79 *corollaries and caveats*.
24 Bloed (Ed.), cited above (Note 2), p. 19.
25 The OSCE's public website can be found at: www.osce.org. PC documents are available electronically back to 1999.

sions reference manual.[26] Another example for the OSCE's ongoing institutionalization is the designation of paragraph 79 statements. In her in-depth analysis of procedural aspects, Erika Schlager noted in 1991:

> The issue (of interpretative statements and reservations, R.M.) is further muddled in that statements entered into the journal of the day by the executive secretariat are not identified as either "reservations" or "interpretative statements", they are just identified as falling under the scope of recommendation 79.[27]

Today's practice at the Permanent Council is different. All 79 recorded statements that include a reference to paragraph 79 are designated as "interpretative statements under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations". Not a single statement recorded in the Journal of the Day is designated as a "reservation." A few recorded statements do not refer to paragraph 79 at all.[28]

OSCE practice regarding interpretative statements is more formalized than ever. Still, there remains enough ambiguity to allow for abuse. Can interpretative statements in any way derogate from the meaning of an original PC Decision? Do participating States have to accept statements such as the one by Kazakhstan that it "does not consider itself bound" by certain provisions, or are such statements to be considered "absurd and void", as the Romanian reservation at the Vienna Follow-up Meeting of 1989 was termed by Western states?[29]

The Blue Book provides no further guidance as to what exactly interpretative statements and formal reservations are. In order to better understand the meaning of the two terms, one cannot avoid consulting international law. Although OSCE commitments are only "politically binding",[30] it is obvious that OSCE documents borrow their language from international law. This is also true regarding paragraph 79.

International law in state practice and doctrine has long seen a dichotomy between formal reservations and interpretative statements or "interpretative declarations", as they are most often called.[31] Both legal instruments spring from multilateral treaty-making and can be traced back to the Vienna Con-

---

26 The annual reference manuals go back to 1993-94. The latest available edition is OSCE Secretariat, OSCE Decisions: Reference Manual, Vienna 2001.

27 Schlager, cited above (Note 4), p. 224.

28 Recorded statements without any reference to paragraph 79 are not considered in this article. It is unclear whether these statements fall under paragraph 79 and are not designated as such or they are outside the scope of paragraph 79.

29 Cf. Bloed (Ed.), cited above (Note 2), p. 19. For a detailed account of the "Romania episode" see Schlager, cited above (Note 4), p. 225.

30 Cf. Bloed (Ed.), cited above (Note 2), pp. 22-25.

31 For the most authoritative account of the dichotomy between formal reservations and interpretative declarations in international law see: Alain Pellet, Third Report on Reservations to Treaties: Addendum 4, International Law Commission, UN Doc. A/CN.4/491/Add.4 of 2 July 1998, New York 1998.

gress of 1815.[32] Even without access to the Blue Book's *travaux préparatoires*, it appears reasonable to assume that, in 1972 and 1973, its drafters had this legal dichotomy in mind when agreeing on the OSCE's rules of procedure. As opposed to interpretative declarations, formal reservations are regulated in treaty law. The most important source in this respect is the Vienna Convention on the Law of Treaties of 1969. Article 2, paragraph 1 (d) defines a reservation as

> (…) a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.[33]

Article 19 of the Vienna Convention, moreover, stipulates that reservations must not be "incompatible with the object and purpose of the treaty".[34] Alain Pellet, the International Law Commission's Special Rapporteur on Reservations to Treaties, concedes that, from the standpoint of applicable law, formal reservations and interpretative declarations were not clearly distinguished in state practice or doctrine.[35] The Special Rapporteur's report leaves no doubt, however, that it was high time to separate the two concepts unambiguously. From the standpoint of what the law ought to be, there can only be one useful distinction: Interpretative declarations and/or statements "do not (…) seek to modify or exclude the legal effect of certain provisions of the treaty and thus do not constitute reservations".[36]

What lessons can be learned from this brief excursion into international law? *First*: The drafters of paragraph 79 have adopted a long-established, but ambiguous legal dichotomy from international law. They may have been aware of these ambiguities, but it is unreasonable to assume that they intended to adopt them as well. The OSCE's negotiating and decision-making bodies, therefore, should stick to their practice of treating interpretative statements as distinct from formal reservations and of rejecting their abuse. *Second*: Whereas interpretative declarations and/or statements and their relationship to reservations await further clarification through codification, there can be little doubt about reservations. As opposed to interpretative declarations and/or statements, reservations are regulated in the Vienna Convention on the Law of Treaties and related conventions. It is difficult to argue that the drafters of paragraph 79 had a different understanding of reservations in mind than that existing in international law.

---

32 Cf. ibid., p. 3.
33 Vienna Convention on the Law of Treaties, 1969, opened for signature on 23 May 1969, Article 2, Use of terms, at: http://www.un.org/law/ilc/texts/treatfra.htm.
34 Ibid., Article 19, Formulation of reservations.
35 Cf. Pellet, cited above (Note 31), p. 5.
36 Ibid., p. 3.

This, then, is the crux of the matter: By introducing formal reservations into the Conference's rules of procedure, the Recommendations of the Helsinki Consultations opened the gates to a Trojan horse. The critical problem with paragraph 79 is that it allows for both interpretative statements as well as formal reservations. Even if certain interpretative statements were deemed inappropriate, participating States might be tempted to fall back upon the argument, *first*, that their statements actually represent formal reservations mislabelled as interpretative statements,[37] and, *second*, that paragraph 79 foresees such formal reservations.

OSCE practice has never accepted this historical mistake. "A country cannot take back with one hand what it has given with the other."[38] Be it the rejection by Western states of Romania's reservation at the Vienna Follow-up Meeting as "absurd and void" or the frequent rejections by the US of interpretative statements that "simply do not mean the same thing", participating States have persistently objected to giving with one hand and taking back with the other.

Indeed, one could argue that the introduction of the instrument of formal reservations into paragraph 79 was based on a misunderstanding: The drafters must have overlooked that multilateral treaty-making and consensus-based decision-making adhere to different logics. In consensus-based decision-making, states consider themselves bound by any given decision only if *all states* consider themselves bound. In multilateral treaty-making, states consider themselves bound by any given multilateral treaty only if *a predefined minimum number of states* consider themselves bound. The number of ratifications or accessions required for a multilateral treaty to enter into force usually falls far short of even a majority of potential parties to the treaty. It is, therefore, within the logic of multilateral treaty-making to facilitate additional ratifications or accessions by allowing potential parties to register reservations. The effect of reservations is that a multilateral treaty between the entire set of parties is transformed into a multitude of multilateral and bilateral treaties between different subsets of those parties. What makes sense for multilateral treaty-making, undermines the very foundations of consensus-based decision-making. Within the OSCE, there can only be one common set of commitments.

Conclusion

The mistake of 1972 and 1973 either needs to be remedied, or its cancerous consequences must be controlled. It is in the interest of all participating

37 Note the formulation "a unilateral statement, however phrased or named" in Article 2 of the Vienna Convention on the Law of Treaties, cited above (Note 33). See also Alain Pellet, Third Report on Reservations to Treaties: Addendum 3, New York: International Law Commission, UN Doc. A/CN.4/491/Add.3 of 19 June 1998, New York 1998, pp. 30-32.

38 Schlager, cited above (Note 4), p. 225.

States to safeguard the consensus principle and to protect the OSCE acquis. In 2001, too many PC Decisions were called into question by interpretative statements. Participating States, including the US, should be even more forceful in rejecting interpretative statements that are a mockery of the original Decision arrived at by consensus. The Chairman-in-Office might also assume a stronger role in this respect. Participating States that see themselves unable to support a given Decision should withhold consensus. Presumptuous statements such as those by Turkmenistan and Turkey, which pretended to exclude certain topics from discussion at the Tenth Economic Forum in Prague,[39] should be called what they are: void and without any consequence.

39 Cf. Interpretative statement under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, OSCE, Permanent Council, Decision No. 429, Place, Date and Overall Theme for the Tenth Meeting of the Economic Forum, PC.DEC/429, 19 July 2001, Attachments 1 and 3.