

The rule of consensus is mitigated to certain extent by the provision that States are allowed to make reservations or interpretative statements.² In this way, states may avoid becoming bound to certain agreements without formally blocking the decision-making process. It should be noted however, that this provision has rarely been used.

Legal Character of the CSCE Documents

The CSCE documents do not have the legal character of treaties. This was explicitly stated by the heads of state at the end of the 1975 conference. The Helsinki Final Act was considered to be a political rather than a legal document.

Although the Final Act of Helsinki and the other Helsinki agreements are not legally binding, they contain numerous clauses which can be traced to legally binding international agreements to which a great number or all of the CSCE states are bound. The main example in this respect is the Charter of the United Nations: the Helsinki agreements contain numerous references to the purposes and principles of this Charter. In addition, references are frequently made to more specific treaties, for instance the 1966 International Covenant on Human Rights. Moreover, the Principles guiding the relations among the participating states contain several provisions which are binding upon states as principles of international law.³

The fact that the Helsinki Final Act is not legally binding has had little affect on its political authority. This becomes evident from the fact that the Helsinki Final Act is very frequently invoked as an authoritative source of obligations in order to substantiate that the CSCE states are obliged to adopt certain behaviour or to refrain from certain actions. The great political authority of the Final Act of Helsinki also ensues from the fact that it has been signed by the highest political representatives of the CSCE participants.

In fact, the Helsinki agreement is so often invoked by the CSCE states as an authoritative source of obligations, that now and then the opinion is defended that this agreement is in a process of developing into customary law. In other words, from this point of view the Helsinki agreement is an international instrument in "statu nascendi" or soft law.⁴

² Recommendation 79 of the Final Recommendations of the Helsinki Consultations.

³ Op Cit., Arie Bloed, From Helsinki to Vienna: Basic Documents of the Helsinki Process. pg. 11.

⁴ Ibid., pg. 11.