

ODIHR's election work: Good value?

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An election is a political tool with which societal conflicts can be managed, limiting such conflicts to the political arena and preventing them from spilling over into violence and instability. As such, elections are sensitive processes that can tip the balance towards the consolidation of stability if handled with care and if conducted in accordance with accepted criteria for democratic elections.

Conversely, the process can tip the balance towards the slippery slopes of violence if mishandled or if conducted in violation of accepted criteria. This equally holds true for presidential, parliamentary or local government elections, as well as for referenda. Whatever the context, the single most important factor that can promote or provoke crisis during or as a result of an electoral event is confidence in the process and its outcome.

If we accept the premise that electoral events are tools to manage societal conflicts, then the exercise of observing such events are also tools to ensure that the process remains within the political arena. Accordingly, the most important contribution that election observation missions can bring is to support the process by increasing the level of confidence in sensitive and highly contested elections. At times, opposition candidates would not take part in an election without the minimum margin of safety provided by the presence of international observers. International observer missions also make possible the participation of domestic civil society in electoral activities. Observation missions can also have a deterrent role. By their mere presence, they often discourage and, in some cases, deter the most blatant cases of fraud. If done properly and not merely to point fingers, observer missions can open the door to constructive contributions later, in the form of assistance. Accordingly, observation missions can increase the transparency and credibility of an election process, thus contributing to confidence in the outcome. Consequently, election observation exercises can be an important contributing factor to stability.

The OSCE/ODIHR has a well developed methodology for comprehensively observing the electoral process, before, during and after the event. This methodology is detailed in an 'Election Observation Handbook' that has served the institution well.² The Handbook has been recognised as a reference guide for election observation methodology within the OSCE area and beyond. The Handbook provides a sound methodology for the planning, deployment and implementation of an election observation mission, and for observing the campaign period, the registration of voters and candidates, the conduct of the media, the conduct of

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² *Election Observation Handbook*, Fifth Edition, OSCE/ODIHR, Warsaw, April 2005. ODIHR publications can be accessed through the Institution's website at www.osce.org/odihr.

election stakeholders and administration, the voting process, the vote count and the tabulation of the results, and the post-election dispute resolution process. This methodology has been further elaborated in a set of documents more specific to the monitoring of minorities' and women's participation in elections, the participation of domestic observers in the process, and the resolution of electoral disputes.³

Observation missions in the OSCE area compare the electoral events against a set of criteria agreed by all participating States and succinctly laid down in the 1990 Copenhagen Document.⁴ Therein the OSCE participating States have agreed that an election is democratic — or 'free and fair' — if it is periodic, universal, accountable, secret, free, fair, equal and transparent. These election criteria and the universal human rights and fundamental freedoms context within which the election must take place are further elaborated in a comprehensive working document published by the ODIHR.⁵

How effective has this methodology been and how clear are the criteria for democratic elections? With the exception of a few areas discussed in the next paragraph, the ODIHR has been able to diagnose the significant challenges of elections observed under its comprehensive methodology. This diagnosis has prompted ODIHR's subsequent assistance programmes. The methodology has also helped ODIHR document trends beyond elections in a given society, providing a sort of early warning to the political bodies of the organisation. More significantly, ODIHR observer missions have been instrumental in increasing the level of confidence in the process and outcome of elections in some countries, including Macedonia in 2002, Albania in 1997 and 2001, Tajikistan in 2000, thus helping in crisis mitigation or in consolidating peace-building efforts. While the methodology may be robust, does it mean that there is no room for improvement? Of course not.

With the experience of the past 10 years in observing elections comprehensively, an examination of how the methodology can be further developed can be useful. The first four areas of improvement identified below are already under scrutiny by ODIHR, the rest will require attention:

- First, ODIHR's media evaluation methodology requires further development. The current methodology is not convincing, it oversimplifies the media picture to the point of being simplistic.
- Second, ODIHR's observation methodology is completely inadequate concerning election campaign financing.

³ *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Disputes Monitoring System*, OSCE/ODIHR, Warsaw, August 2000; *Guidelines for Reviewing a Legal Framework for Elections*, OSCE/ODIHR, Warsaw, January 2001; *Guidelines to Assist National Minority Participation in the Electoral Process*, OSCE/ODIHR, Warsaw, January 2001; *Handbook for Domestic Election Observers*, OSCE/ODIHR, Warsaw, October 2003; *Handbook for Monitoring Women's Participation in Elections*, OSCE/ODIHR, Warsaw, July 2004.

⁴ *Document of the Copenhagen Meeting of the Human Dimension of the CSCE*, Copenhagen, 1990.

⁵ *Existing Commitments for Democratic Elections in OSCE Participating States*, OSCE/ODIHR, Warsaw, October 2003.

- Third, there is an urgent need to develop ODIHR's methodology to cover e-voting and electronic results aggregation from precinct to national levels. E-voting throughout countries with long-standing democracies promises very quickly to become a disaster in the making. With respect to the electronic aggregation of election results, in too many States what matters is still who counts the votes and not how votes are cast. Without proper safeguards and transparency, e-voting and the electronic aggregation of results can be subject to abuse.
- Fourth, the ODIHR must look more thoroughly into voter registration issues.
- Fifth, the ODIHR should consider developing better cooperation and coordination between international observation missions and independent domestic observers. Indeed, this is an area fraught with risks, as truly independent domestic observers are rare. But, if limited to the compilation of objective data and with proper safeguards, the cooperation can be productive, giving international observers access to a large number of observers and information not otherwise available. Also, the more the ODIHR works with independent domestic observers, the more quickly the presence of international observers becomes redundant.
- Sixth, certain aspects of an election may require special attention. This has already been acknowledged in the ODIHR methodology with respect to minorities and women. The presence of non-citizen long-term residents may be an issue in some countries. Refugees and internally displaced persons may be a concern in others. These issues may require special attention during an election.
- Seventh, the ODIHR could improve the observation of the post-election-day phase, including the implementation of results.
- Eighth and not least, the ODIHR should ensure that observation missions monitor not merely technical aspects of elections, but also take into account the political context. However, this should not be turned into a licence for politicised statements not based on facts and findings.

Beyond observation exercises and underpinning elections more fundamentally, the international standards for democratic elections require attention. Here too, during the last three years the ODIHR has expanded a pioneering effort in elaborating these standards.⁶ The effort should continue and should be brought to fruition when the time is ripe, perhaps with a 'Copenhagen II' document within the OSCE context and a convention on election standards and beyond. The Council of Europe and the Commonwealth of Independent States (CIS) parliamentary assemblies have made progress in the development of election standards.⁷ These

⁶ *Existing Commitments for Democratic Elections in OSCE Participating States*, OSCE/ODIHR, Warsaw, October 2003.

⁷ *Code of Good Practices in Electoral Matters, Guidelines and explanatory Report*, Opinion No. 190/2002, European Commission for Democracy Through Law (Venice Commission), Venice, October 2002, adopted by the Parliamentary Assembly of the Council of Europe, Resolution 1320 (2003), Strasbourg, January 2003; *Draft Convention on Election Standards*,

two institutions' and ODIHR's efforts in this field must be closely coordinated. More importantly, the risk cannot be underestimated that the outcome of these efforts may be a regression from the standards and commitments currently agreed upon.

Another area requiring attention is participating States' political follow-up to observation missions. The ODIHR observation effort is largely wasted if there is no political follow-up to implement the recommendations of observation missions. Without any follow-up, there is often no political will to remedy the problems diagnosed and ODIHR observation missions return to the country once every few years to repeat the same messages, but to no avail. Yet, despite the highest political organ of the OSCE addressing the matter at the 1999 Istanbul Summit of Heads of States and Governments,⁸ to date no serious action has been taken by the Permanent Council in Vienna to implement these commitments. In countries where key international players have recognised an urgent need for concerted political action to improve electoral practices, the ODIHR together with the parliamentary assemblies of the OSCE and the Council of Europe as well as some key bilateral Embassies have been able to follow up very effectively on election observation recommendations. Albania after the 2001 parliamentary elections is one such rare example. This kind of concerted effort must be made more systematic and must be joined by the OSCE Chair-in-Office and the Permanent Council.

During the past three years, the ODIHR has come under intense pressure from CIS representatives, culminating in rancorous exchanges at the OSCE Sofia Ministerial Council in December 2004. The ODIHR has been singled out for its election observation activities and stands accused of using double standards and publishing biased election observation reports.⁹ The ODIHR has been urged 'to conduct a comprehensive analysis of election laws in the participating States and draw up unified standards, common criteria and a methodology for objective election monitoring and unbiased evaluations of election results'.¹⁰ More spuriously, some have even accused the ODIHR of 'frequently politicizing and failing to take into account the specifics of individual countries', of 'unwarranted criticism of the domestic political situation', and of publishing 'irresponsible election monitoring conclusions' that in turn 'encourage destructive elements' presumably in Georgia, Ukraine and Kyrgyzstan to justify 'lawless actions'.¹¹

The last accusation does not merit serious consideration. In the case of all

Electoral Rights and Freedoms, February 2002, submitted by the CIS to the Council of Europe for consideration.

⁸ '... we agree to follow up promptly ODIHR's election assessments and recommendations', Istanbul Summit Declaration (para 26) and Charter for European Security (para 25), Istanbul, 1999.

⁹ *Rift between Russia and the OSCE*, Liz Fuller, Strategy Page — <http://strategypage.com>, 25 July 2004.

¹⁰ Statement by the Delegation of the Russian Federation, OSCE Ministerial Council, Sofia, 7 December 2004.

¹¹ *Russia Picking a Fight Over Kyrgyzstan*, democracy guy — <http://democracyguy.typepad.com>, 22 March 2005.

three countries, the ODIHR long-term observation missions convincingly documented the uneven playing fields in which the elections were prepared, the unfair and illegal advantages that the incumbents enjoyed, and the unprecedented level of manipulations during the voting, the vote count and the tabulation of results. In all three cases, the ODIHR had documented the same practices during previous elections, had recommended constructive changes and offered its assistance, but nothing or little had been done to improve the processes. The exception was Ukraine where a number of election-related ODIHR projects had been implemented, including a multi-year programme on improving the way in which electoral disputes were addressed by the country's election administration bodies and the judiciary.

In the end, the judiciary in Ukraine fulfilled its mandate by rendering an independent decision on the election and the outcome was the rerun presidential election. Thus, criticising or blaming the bearer of bad news serves only the purpose of absolving the wrongdoers. If anyone is to be blamed for the upheavals in Georgia, Ukraine and Kyrgyzstan, it is the previous leaders themselves for not mustering the political will required to clean up the electoral processes so that the will of the people was respected.

The remaining criticism is more substantive, including that the ODIHR:

1. uses double standards when observing elections; and
2. its evaluation of elections is biased because it has failed 'to conduct a comprehensive analysis of election laws in the participating States and draw up unified standards, common criteria and a methodology for objective election monitoring and unbiased evaluations of election results'.

The double standards criticism stems from the fact that, in the first ten years of its existence, the ODIHR focused on elections 'east of Vienna', in States that emerged from the Soviet Union, other Warsaw Pact countries governed under single-party rule and the Socialist Federal Republic of Yugoslavia. Understandably, the challenges of establishing democratic rule and the total absence of civil society in those States as well as the limited resources available to the international community necessitated the ODIHR's exclusive focus.

However, as some of the States rapidly developed their democratic institutions and a viable civil society emerged, the ODIHR withdrew from those States, freeing valuable resources. Also, repeated critical comments of double standards and significant electoral hiccups in some long-established democracies (i.e., the 2001 US presidential elections) influenced a change of policy. Thus, starting in 2001, the ODIHR deployed missions to assess specific aspects of elections in States 'west of Vienna', States with long-standing democratic traditions and institutions. In the past four years, the ODIHR has assessed elections in the US, UK, France, Spain, Turkey, and in a number of countries for the elections to the EU Parliament. This new policy could be further expanded in the future to include other States where elections and related activities (the media, campaign financing, vote counting methodology etc.) could be problematic. However, human and financial resources must be augmented accordingly to ensure that the ODIHR is capable of fulfilling its mandate without diminishing its activities in transition countries.

The second substantive criticism that ODIHR observation exercises are not objective and are biased deserves closer scrutiny. Aside from some post-election ODIHR reports at times using overreaching formulations that are difficult to justify or are inconsistent with the characterisation of similar phenomena in other reports,¹² in general and in the majority of cases these reports are factual, thorough and the conclusions are convincingly based on specific findings. The suggested remedy for alleged lapses of ODIHR is not convincing. While some aspects of the ODIHR election observation methodology requires improvements as detailed above, generally the methodology is well developed, has served the institution well, and has been adopted by other organisations in Europe and outside the OSCE area.

With respect to the suggested 'unified standards' and 'common criteria' for democratic elections, the ODIHR, in collaboration with the Russian Central Election Commission and other institutions, has compiled a comprehensive document enumerating 'Existing Commitments for Democratic Elections in OSCE Participating States'. This is the first step in a long-term project at the ODIHR to take stock of existing OSCE commitments and universal standards for democratic elections, to identify lacuna in these commitments and standards, and to start addressing these lacuna through the political bodies of the Organisation. This progressive and patient development of additional commitments and standards cannot be done in haste without the considerable risk that the end-product may be an erosion of existing commitments and standards.

The suggested 'comprehensive analysis of election laws in the participating States' could be informative and could add value only if done selectively by examining, comparing and analysing certain problematic aspects of electoral legislation in participating States (i.e. media regulation, political party laws, campaign financing, the transparency of results tabulation, etc.). Moreover, this effort must be coordinated with other institutions engaged in similar work, including the Council of Europe's Venice Commission and International IDEA.

Finally, some of the CIS criticism could be remedied through enhanced cooperation with election observers from States 'east of Vienna'. Those States cannot afford the high cost of deploying election observers, especially long-term. The ODIHR already includes election experts from those States in its long-term observation teams, made possible through a special voluntary fund created for the purpose. This programme could be expanded. Another area requiring improvement is the cooperation between ODIHR and CIS election observer missions. Here, too, the ODIHR has taken some steps to improve cooperation, but more can be done. Such cooperation can go a long way to remedy the often justified perception that the 'West' is always criticising the 'East'.

Thus, despite areas of its electoral work with room for improvement and

¹² 'This ... calls into question Russia's fundamental willingness to meet European and international standards for democratic elections', *Statement of Preliminary Findings and Conclusions, Russian Federation State Duma Elections*, International Election Observation Mission (includes the OSCE/ODIHR), Moscow, 8 December 2003. This formulation was not repeated in the final report on the same election.

despite some of the justified criticism levelled against the institution, the ODIHR has built an impressive expertise and record of excellence in the field of electoral observation and assistance in the OSCE area. This expertise can be used more effectively within the OSCE participating States. But equally significantly, the electoral expertise, standards, best practices and methodology acquired by the OSCE and the ODIHR can be exported to other regions of the world experiencing growing pains in democratic development or post-conflict State reconstruction. The important resources invested in ODIHR's efforts during the past 15 years will then have the multiplier effect they deserve.