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Democratic Elections and their Monitoring: Can this OSCE Success Story Be Sustained?

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Keywords

Human rights, democratic elections, monitoring, OSCE, commitments and implementation, Russian Federation, ODIHR, NGOs, EU

A Overview

Elections are an essential element of democracy. The 56 OSCE states have entered into strong commitments to hold democratic elections. These commitments and their monitoring continue to be crucially important to the entire international community not only for the consolidation and evolution of democratiza-

* This paper has been prepared, as so much else, with the valuable assistance of Bernhard Knoll and Maximilian Hennig, Special Advisers to the Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Its content, conclusions and possible shortcomings, however, are those of the author alone, who writes in his personal capacity, after having completed his function at the ODIHR in June 2008. An earlier, much shorter version has been presented at a conference of the Geneva Graduate Institute in September 2008 and is being published in the *Occasional Papers* series of its Centre for International Governance (formerly PSIO). I should also like to thank Gerald Mitchell, the Head of the ODIHR Election Department, all his team, as well as the numerous election observers and experts for their great dedication, professionalism, and cooperation, which made my five years at the ODIHR so special.

tion processes, but also for the broader objectives of national and international stability and security.

The emergence of comprehensive international election observation over the past decade is a prime example of how activities to promote and protect human rights have moved from conference rooms out into the field. Credible reports by monitoring missions, when objective, comprehensive and based on a strong methodology, in turn receive attention that shapes political debate both in the countries concerned as well as in international fora. Election observation has become a major international success story, in particular for the OSCE.

For this success, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), since its creation nearly two decades ago, can take much credit. It has not only developed an observation methodology which is widely seen as the determining international standard in this regard, it has also been able to maintain the high credibility of its election observation activities in the face of an increasingly heated discourse in some countries, both at the national as well as at the international levels.

Indeed, it is not only problematic elections, but election observation itself that has become the subject of growing international debate amidst criticism from a few governments, especially in the run-up to the recent parliamentary and presidential elections in the Russian Federation. Given the public interest this has created, it is necessary to distinguish reality from misconceptions created in this debate, in order to safeguard the future of this success story.

B Commitments and Accountability

With the landmark Copenhagen Document of 1990,¹ governments participating in the Conference on Security and Co-operation in Europe (CSCE)² set out strong and detailed commitments for democratic elections, and put them in the overall context of detailed human rights commitments. Subsequently, the ODIHR was established through the Paris Charter for a New Europe.³ First called the Office for Free Elections, it became the principal instrument to assist participating states in holding one another accountable to the standards they set for themselves. Since then, election observation has remained a cornerstone of this assistance.

Observing some 200 elections over the last decade has made a major contribution to developing, strengthening and securing democratic processes across the OSCE region. In addition to identifying weaknesses and shortcomings, it has allowed to identify best electoral practices for the global community. Furthermore, this process helped to develop a professional methodology for observa-

1 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, in OSCE Human Dimension Commitments, 2nd ed., OSCE/ODIHR 2005. All OSCE Documents and ODIHR Reports can be found at the ODIHR's website, www.osce.org/odihhr (Unless otherwise noted, all pages were last accessed on 27 May 2009).

2 Cf. Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents 1972-1993*, Dordrecht 1993.

3 Charter of Paris for a New Europe, adopted by the heads of state and government in November 1990.

tions (see section C). Overall, these observations have helped to ensure peaceful transition processes from Communist totalitarian pasts in a number of countries; they have also contributed in the wider region as a whole to professionalizing electoral legal frameworks and administrations, and to creating public awareness on electoral challenges.

Substantive challenges remain, however, and not all is moving in the right direction. Not only do technical difficulties persist and new challenges emerge, such as so-called 'e-voting'; we also see persisting cases of deliberate manipulation to create unfair conditions for elections and to alter their results. Institutions such as the ODIHR have been documenting such practices, which are no longer limited to election-day, but increasingly concern the whole electoral process, starting with unfair registration of voters and candidates, and going all the way through uneven campaign conditions, biased electoral administrations, intimidation of voters to ineffective complaints and appeals processes (see section F).

The identification of these trends has, more recently, led some governments to question not only the veracity of facts observed and reported, but even the political utility of election observation in its current, comprehensive form (see section D). This situation has culminated in the refusal, by the Russian Federation, to accept an observation of their parliamentary and presidential elections, in late 2007 and early 2008 respectively, in accordance with established observation practice. Other countries, however, have continued to invite OSCE observers.⁴ Obviously, they do not intend to participate in efforts to jeopardize a core element in international democracy cooperation.

An election, clearly, is not only a one-day event. Equally, an election is not only a logistical exercise involving supplying ballot papers and boxes: the electoral period, in any country in the world, is a moment when the exercise of all fundamental freedoms is at stake; it is a moment when free speech, the right to peaceful assembly, freedom of the media, among others, are tested to a high degree. These aspects are underscored in the 1990 OSCE Copenhagen Document. It defines the context in which an election takes place; without realising these democratic principles, each and every one, there can be no democratic election.

A democratic election does not guarantee, in itself, pluralistic democracy. It is just the tip of the democracy iceberg. The rule of law and an independent judiciary, the protection of all human rights, and an enabling political environment including free media are a complex mixture of necessary ingredients for "democracy", for a continuing process of governance, participation, and accountability. This is also why the Copenhagen Document puts election-related commitments firmly in the overall human rights context.

The core election commitments, as contained in the Copenhagen Document require states, in particular, to:

- hold free elections at reasonable intervals;
- permit all seats in at least one chamber of the legislature to be popularly elected;

4 Around the same time as the two elections in the Russian Federation, the ODIHR has been invited to observe elections in the following countries: Armenia, Belarus, Croatia, Georgia, Italy, Kyrgyzstan, Montenegro, Poland, Serbia, Spain, Switzerland and Uzbekistan.

- guarantee universal and equal suffrage;
- respect the right of citizens to seek office;
- respect the right to establish political parties, and ensure that the parties can compete on the basis of equal treatment before the law and by the authorities;
- ensure that political campaigning can be conducted in a free and fair atmosphere without administrative action, violence, intimidation or fear of retribution against candidates, parties or voters;
- ensure unimpeded access to the media on a non-discriminatory basis;
- ensure votes are cast by secret ballot, and that they are counted and reported honestly, with the results made public;
- ensure that candidates who win the necessary votes to be elected are duly installed in office and are permitted to remain in office until their term expires.

In particular, these commitments also require states to invite observers to their national elections.

The consensus of Copenhagen was inspired by the political changes of 1989 and was therefore aiming, it should be stressed, at creating democratic conditions across the whole continent and within a foreseeable future and not as a distant goal. Democratic elections are being put in the context of legitimizing government – “the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government”⁵ – and democracy is confirmed, subsequently, as “the only system of government of our nations”.⁶

Vice versa, without the Copenhagen Document, and subsequent decisions taken at Ministerial and Summit Meetings, there would be no specific OSCE standards against which the conduct of an election could be assessed for all its states, without distinction. OSCE states took a historic step in Copenhagen, committing to respect and protect fundamental civil and political rights, and thus providing a set of criteria for democratic elections that are more advanced than any undertaken by any other intergovernmental agreement to date.⁷

These commitments not only put an obligation on governments to implement them; they also establish a collective accountability, and, as a consequence, a comprehensive role for the ODIHR to provide follow up on its recommendations, to monitor progress, and to assist in closing identified deficits.

As the CSCE turned into the OSCE, the capacity of the ODIHR to assist states in the implementation of commitments was further increased, specifically with regard to elections. A key element was the resolve of member states that the ODIHR’s election monitoring activities should be “*comprehensive*”, taking place “*before, during and after elections*”.⁸ These decisions gave the ODIHR the

5 Copenhagen Document, para. 5.

6 Charter of Paris for a New Europe, chapter on a new Era of Democracy, Peace and Unity, 1990

7 Cf. for a comprehensive collection, Existing Commitments for Democratic Elections in OSCE Participating States, ODIHR 2003, giving a commented inventory organized along the different stages of an electoral process.

8 OSCE, Towards a Genuine Partnership in a New Era, Budapest Document of the Summit of Heads of State or Government 1994 (emphasis by the author); this document also mandates ODIHR, inter alia, with assessing “the conditions for the free and independent functioning of the media”.

mandate to assess the implementation of the full range of election-related commitments across the whole electoral cycle, thereby also enhancing its ability to support OSCE states.

As elections constitute only the tip of the democracy iceberg, election observation equally is only one of the most visible parts of ODIHR's portfolio of programmes of democracy support. Any such support needs the cooperation of governments, of course. While overall, such cooperation has been forthcoming, the last years have brought efforts by some governments to divert national and international attention away from the message of election observation to the messenger. In order to confront this challenge, maintaining the highest standards of professional observation is a key element, another one is continued political support for peer accountability among governments. Both these issues will be addressed in the following sections.

C ODIHR Observation Methodology: Comprehensive and Long-Term

Underlying this ODIHR mandate was, and remains, the conviction that such comprehensive, long-term observation is a sensitive and complex activity that cannot be accomplished in an *ad hoc* fashion. To underline this, states tasked the ODIHR with developing a methodology that would deliver the mandate in a systematic, unbiased and effective manner.⁹ Consequently, the ODIHR set out not only to develop such a methodology, but also to do so comprehensively and transparently. The methodology addresses all aspects of long-term observation and has been published fully. Key documents in this regard are in particular the so-called 'Blue Book', i.e. the ODIHR Election Observation Handbook,¹⁰ as well as a Handbook for Long-Term Observers¹¹ and more specialized documents, for assisting women's participation¹² and that of persons belonging to minorities.¹³ Additional handbooks on the observation of voter registration and on the monitoring of the media during the election period are currently being finalized by the ODIHR. Overall and where necessary, the ODIHR has been further updating and refining its observation methodology on the basis of practical experience and feedback.¹⁴

Refining ODIHR's observation methodology has become more topical as the implementation of commitments has been somewhat changing over the years:

9 Ibid.

10 OSCE/ODIHR, Election Observation Handbook, 5th ed., 2005, <http://www.osce.org/odihr/publications.html>.

11 OSCE/ODIHR, Handbook for Long-Term Election Observers, 2007, *ibid*.

12 OSCE/ODIHR, Handbook for Monitoring Women's Participation in Elections, 2004, *ibid*.

13 OSCE/ODIHR, Guidelines to Assist National Minority Participation in the Electoral Process, 2001, *ibid*.

14 See below, and OSCE/ODIHR, Common Responsibility – Commitments and Implementation. Report submitted to the OSCE Ministerial Council in Response to MC Decision No. 17/05 on Strengthening the Effectiveness of the OSCE, 10 November 2006, 51-55, and an earlier publication, OSCE/ODIHR Election Observation – A Decade of Monitoring Elections: the People and the Practice, 2005. Feedback is not only given by governments and other partners, but also solicited from election observers themselves, through de-briefings, questionnaires and other follow-up activities of the ODIHR.

transition processes have been conducted successfully in a number of OSCE States; a few governments, however, have, more recently, become increasingly adept at keeping up the appearance of meeting OSCE commitments while subverting the integrity of the electoral process. Electoral abuse, of course, happens worldwide, and is not restricted to one corner of the OSCE area. The advent of new voting technologies, for instance, has drawn increased attention to the ways in which systems are vulnerable to manipulation. But what remains crucial is a government's determination to fulfil its commitments in good faith, and the capacity to assess this credibly.

As a consequence, the growing sophistication of electoral fraud has been matched by improvements both in ODIHR's election observation methodology, as well as by enhanced skills of its long- and short-term observers. Also, domestic observers have increasingly adopted a more comprehensive approach to election observation.

Election observation has become a highly professional activity, targeted to every individual situation, but, at the same time, following a standardized methodology. While all OSCE States have assumed the obligation to invite for observation for all elections at the national level, it is only after a thorough needs assessment that the ODIHR decides whether to embark on an observation mission, and in what observation format. That decision is always communicated in a detailed, and public, needs assessment report. The different stages relevant for a comprehensive observation, after the initial needs assessment and the development of an observation programme, are essentially the following:

- analysis of relevant legislation;
- monitoring of the electoral political environment and of election-disputes;
- assessment of voter registration and the delimitation of district boundaries;
- observing the election administration;
- candidate and party registration;
- election campaign;
- media monitoring;
- observing the voting and counting process;
- monitoring the tabulation, transmission and declaration of results;
- following the complaints and appeal processes.

Most of these stages are observed *in situ*, by a team of ODIHR experts, assisted normally by long-term and, in many cases, also short-term observers who are recruited through secondments from OSCE states.¹⁵ All these stages will have to be reflected also in the respective reports, for which there are established reporting criteria (interim reports before election day, a statement of preliminary findings and conclusions after election day, and a comprehensive final report after the completion of the whole electoral process) – and the recommendations contained therein. Since 1991, nearly 200 election observations conducted by the ODIHR have deployed over 40,000 long- and short-term observers and resulted in several hundred election reports about all stages of the respective electoral process.

As a result of these activities, significant changes have been secured in transition countries, across the whole spectrum of their commitments. In addition,

15 Cf. OSCE/ODIHR, Election Observation Handbook.

also mature democracies have adapted to challenges and international best practice. However, not all has been achieved in all places. It can be said that the following issues are among the principal and emerging areas where the conduct of democratic elections typically requires further attention and improvement in order to ensure that international standards are met:

- effective protection of basic fundamental freedoms, such as the freedoms of association, peaceful assembly, and expression;
- effective protection of the civil and political rights of candidates and voters, as well as of election workers and journalists;
- compilation of accurate and up-to-date voter lists;
- equal opportunities for candidates to campaign in a free environment;
- equitable access to the media for all candidates;
- unbiased coverage by the media, especially state-controlled media;
- unhindered access for international and domestic election observers;
- effective representation and participation of women;
- inclusion of national minorities;
- access for disabled voters;
- honest and transparent counting and tabulation of the votes;
- effective complaints and appeals processes through an independent judiciary;
- overall transparency and accountability that instils public confidence;
- development and implementation of new voting technologies in a manner that is transparent, accountable and in line with OSCE commitments.¹⁶

In order to effectively assess an electoral process in all these elements, the commitments of the Copenhagen document, and subsequent additions by ministerial decisions, remain the key standard. But as comprehensive as these standards are, there is scope for further development. In response to a request by OSCE states, the ODIHR has therefore prepared a background document listing the possibilities for the adoption of additional electoral standards, in order to specify explicitly three principles which are implicit in the Copenhagen document: transparency, accountability, and voter confidence.¹⁷ Also, the implications of electronic voting technologies are being examined, both with regard to standards and voter confidence, as well as with regard to their impact for observation.

As far as the observers themselves are concerned, they are bound by a Code of Conduct which has been developed by the ODIHR and which underscores objectivity and impartiality¹⁸. This Code is binding for every OSCE observer; it is also increasingly reflected in election observation activities of other international organizations.

In recognition of the importance of election observation through credible and independent *domestic* efforts, as a distinct but complementary exercise to international observation, the ODIHR has also developed a systematic outreach to domestic election observer organizations and networks. This has established a

16 Cf. ODIHR Annual Report 2007, 10

17 OSCE/ODIHR, Explanatory Note on Possible Additional Commitments for Democratic Elections, 11 October 2005, re-printed in OSCE/ODIHR, Common Responsibility (2006), 83-90. Governments have so far not acted on these proposals.

18 The Election Observation Handbook and the Code are handed to every single election observer. In the – very rare – cases of misconduct, individual observers have been repatriated and banned from subsequent observations.

regular and mutually beneficial dialogue with a broad network of domestic observer groups throughout the OSCE region, and helps to ensure that professional domestic observation is benefiting from the wide ODIHR experience.¹⁹

The ODIHR's approach has become a signature activity of the OSCE; it has, in addition, inspired other actors involved in election observation: particularly significant is the adoption, by the European Union, of a similar methodology for their global election observation activities.²⁰ Also a range of other international organizations active in election observation activities have co-operated to develop joint principles for observation which are largely inspired by ODIHR experience.²¹ And the ODIHR is often joined, in its observation missions, by parliamentary observers from the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, and the European Parliament, to form, for election day, an International Election Observation Mission. Their joint reports not only help to avoid "forum shopping", but also demonstrate a shared commitment to democracy- and observation principles,²² and should contribute to a more systematic follow-up to recommendations, especially with regard to the role of national parliaments and their monitoring and support by international parliamentary assemblies.²³

Overall, it is noteworthy that, in most cases, the ODIHR's observation activities are appreciated by authorities and civil society in the countries concerned; as a result, they have mostly led to a broad co-operation with the respective country on election-related reform issues.²⁴

Thus, election observation is being conducted within the overall framework for assistance by the ODIHR across the whole range of human rights commitments

19 See OSCE/ODIHR, Handbook for Domestic Election Observers, 2003, which was developed together with a range of domestic and international observer groups.

20 Cf. the Handbook for European Union Election Observation, 2nd ed., Brussels, 2008.

21 Declaration of Principles for International Election Observation endorsed, in a ceremony at the United Nations in 2005, by over 30 international bodies active in election observation, including, inter alia, the PACE, European Commission, the Venice Commission of the Council of Europe, the Secretariats of the UN and the Commonwealth, the African Union, IFES and the Carter Center. Addressing the meeting, UN Secretary-General Kofi Annan underlined: "The presence of international election observers, fielded always at the invitation of sovereign states, can make a big difference in ensuring that elections genuinely move the democratic process forward. Their mere presence can dissuade misconduct, ensure transparency, and inspire confidence in the process."

22 Especially the Council of Europe has been active in joining the OSCE in the development of democracy standards, cf. in particular the Code of Good Practice in Electoral Matters adopted by the Venice Commission in 2002.

23 Such support is not only of importance with regard to the legislative functions of parliaments, but even more so concerning their monitoring of the implementation of such legislation. Both can be problematic, especially in cases where the (main) political opposition is being kept outside of parliamentary structures.

24 On broader assistance, ongoing activities to support legislative reform should be noted, as reflected, in particular, in legislative reviews conducted mostly together with the Commission for Democracy through Law (the "Venice Commission") of the Council of Europe, and published on the ODIHR and CoE websites. Cf. also the ODIHR Guidelines for Reviewing a Legal Framework for Elections, 2001. More recently, this and related experience on legislative reform on other subject matters has led to projects which are currently conducted with several OSCE states and aim at the improvement of the legislative process as a whole.

and the monitoring of their implementation. In addition, it informs co-operation programmes developed by other parts of the OSCE family, in particular its field missions, and those of other international actors, both governmental and non-governmental.

D Calls for “Reform” and the Response of ODIHR

So with this unique development, one could have thought that all has been said already, over the past years, about the importance of democratic elections and their monitoring.²⁵ However, almost two decades after the Copenhagen Document, election-related commitments have not yet been implemented to a satisfactory degree throughout the region, and ODIHR reports continue to highlight this on a regular basis. Sadly, and despite the vast progress made by so many states across Europe since then, some states choose not to take this scrutiny as stimulus for improvement, but rather to double their efforts to distract attention, domestic and international, away from the result of observations – one way to do this has been by trying to turn the focus on observation instead.

At times, the discussion has veered off into criticism from a few states which lacks a factual basis and also misrepresents the extent to which the OSCE is contributing to the formation of what has been termed “regional custom”.²⁶ The assertion, for instance, that no standards on elections exist in the OSCE contradicts the language adopted by the latest Summit of Heads of State and Government in the OSCE, which contains a specific reference to “clear standards” governing the treatment of individuals on the territory of participating states.²⁷ Similarly, the argument that the OSCE’s commitments are not binding, as they constitute mere declaratory intentions of a political nature, may, if employed with the intention of justifying a material breach of commitments, defeat the purpose and nature of the OSCE as a whole. After all, the norm-setting nature of the OSCE and its commitments has been reconfirmed on frequent occasions, not least in Ministerial Council Decision 17/05.²⁸

25 Cf., e.g., Nicolas Kaczorowski, Election Monitoring: Lessons Learned and Possible New Orientations, in: Daniel Warner (ed.), Consolidating the OSCE, PSIO Occasional Paper 4/2006, 107-124, and Walter Siegl, The Issue of the Office for Democratic institutions and Human Rights, in: Daniel Warner (ed.), The OSCE at a Turning Point: OSCE Chairmanship and Other Challenges, PSIO Occasional Paper 4/2007, 135-159.

26 See Eric Manton, The OSCE Human Dimension Process and the Process of Customary International Law Formation, in: Institute for Peace Research and Security Policy at the University of Hamburg (ed.), OSCE Yearbook 2005, Hamburg 2005, 195-214.

27 Istanbul 1999 (Charter for European Security: II. Our Common Foundations) confirms that the UN Charter, the Helsinki Final Act, the Charter of Paris “and all other OSCE Documents” have established “clear standards for Participating States’ treatment of each other and of all individuals within their territories”, para.7.

28 OSCE, MC Decision No. 17/05 on Strengthening the Effectiveness of the OSCE, 6 December 2005.

Equally, efforts have been developed in the framework of the CIS²⁹ and its Executive Secretariat over the last few years to conduct some sort of “parallel” – or substitute? – monitoring activities in CIS countries. This not only contrasts somewhat oddly with the practice of other sub-regional groupings, in particular the EU, to entrust observation leadership within the whole OSCE region to the ODIHR. These CIS missions also are conducted on the basis of intransparent methodologies and arrive regularly at rather different conclusions than other observers, stressing mostly the legitimacy of the elections monitored (and their results) as well as their respect for national legislation (rather than international standards). For the ODIHR, election results are relevant, of course, only to the extent that they are reported correctly and faithfully.

These developments have been carried, through a reform debate, into the inter-governmental structures of the OSCE. Consequently, the promoters of this debate have been calling not for the reform of election processes to ensure that they are fully democratic, but rather, oddly, for reforming election *observation*.³⁰ The purpose of these proposals has been described, by a well-informed observer in Moscow, as seeking to “significantly curb, if not abolish, the ODIHR’s autonomy”,³¹ and to seek “an overhaul of their operations in order to be able to exercise political control over them, or at least neutralize their effect.”³² Or as a senior parliamentarian and former president of the OSCE Parliamentary Assembly put it: “This is part of an overall strategy to emasculate ODIHR. Russia does this because it knows full well that, with the methodology and professionalism of ODIHR, there is no way that it will find that Russia’s elections meet international standards.”³³

The ODIHR took this debate, within its responsibilities, seriously, introducing improvements in good faith, aimed at further improving the effectiveness of election observation and preparing observation for new challenges in the 21st century.³⁴

A key development in this regard (after some previous attempts at addressing reform of the organization in a comprehensive manner³⁵) was the task given to ODIHR, after some discussion, by the Ljubljana Ministerial Council 2005, to present to the next Ministerial Council a report on:

29 Commonwealth of Independent States, a regional organization whose members are 11 of the 15 former Soviet republics; however, the status of some of the ratification processes of its founding charter remains somewhat unclear. Its election monitoring activities are headed by its Executive Secretary, a post occupied previously by a former Russian minister of the interior, and now by a former Russian army general, based in Minsk.

30 Especially in several declarations and working papers submitted by certain members of the CIS since 2004.

31 Andrei Zagorski, *Election Observations in the OSCE Area: Political Challenges*, in Daniel Warner/Vesna Marinkovic (eds.), *OSCE Future Operations and Leadership*, CIG Occasional Paper 2/2008, 134-159 (136).

32 *Ibid.*, 138.

33 Bruce George, M.P. (UK), as quoted in: C. J. Chivers, *Russia Working to Limit Election Observers*, *The New York Times*, 25 October 2007.

34 Cf. Christian Strohal, *Consolidation and New Challenges: The ODIHR in the OSCE’s 30th Anniversary Year*, in: Institute for Peace Research and Security Policy at the University of Hamburg (ed.) (2005), 303-320.

35 Cf. in particular a Report by a Panel of Eminent Persons, *Common Purpose: Towards a More Effective OSCE. Final Report and Recommendations of the Panel of Eminent Persons On Strengthening the Effectiveness of the OSCE*, June 2005.

- the implementation of existing commitments;
- possible supplementary commitments;
- ways of strengthening and furthering its election-related activities;
- improving the effectiveness of its assistance to participating states,
- taking into account and answering questions put by participating states and in close consultation with them.³⁶

The ensuing work involved all departments of the ODIHR as well as a number of consultations with the OSCE Permanent Council in Vienna and resulted in a comprehensive report entitled *Common Responsibility – Commitments and implementation*.³⁷ This report aimed at helping the OSCE community

“to again underscore its core collective values and recommit to them. It re-inforces earlier calls to redevelop a common responsibility of participating States not only towards each other, but, even more importantly, towards their citizens as primary beneficiaries.”

as was put in its executive summary. It provides an overview on key challenges in the four areas identified by the ministers and contains concrete recommendations on how best to address them.

The report was well received by the Ministers at their Brussels Council in 2006³⁸ as well as by delegations to the OSCE Permanent Council (PC). The PC was tasked by the ministers to ensure the necessary follow-up.³⁹ So far, however, such follow-up at the PC level has been neither comprehensive nor systematic. Electoral implementation challenges continue to be addressed, first and foremost, at the annual Human Dimension Implementation Meeting in Warsaw: This meeting, which brings together about 1,000 participants, representing governments, non-governmental organizations, and international organizations, for a two-week period, has been created to review the implementation of all commitments in the human dimension.⁴⁰ Only one of its 18 substantive sessions, each lasting for three hours, specifically focuses on elections. In addition, election-

36 OSCE, MC Decision No. 17/05 on Strengthening the Effectiveness of the OSCE, 6 December 2005.

37 OSCE/ODIHR, *Common Responsibility* (2006). On elections, see in particular Chapter D, 33.

38 By Decision of the Ministerial Committee 19/06 (2006), Strengthening the Effectiveness of the OSCE, thanks the ODIHR for the work carried out in this context; it took note of the report, without any further qualifier, however, given that a few countries resisted efforts by the Chairmanship to express appreciation for it.

39 Ibid.: “tasks the Permanent Council, taking into account the recommendations by ODIHR and other relevant OSCE institutions, to address the implementation challenges in the areas outlined in the report, considering making better use of ODIHR assistance”.

40 These meetings aim at covering the whole range of human rights related commitments, and at providing an in-depth and forward-looking debate on three subject changing from year to year. In addition, dozens of so-called “side events” provide opportunities for additional focus on specific issues and situations. All documents and the reports are published on the ODIHR website. Three further, “supplementary” two-day meetings across the year provide additional thematic focus. Numerous recommendations emanating from these discussions are published on the ODIHR’s website.

related issues have been a topic at a number of two-day Supplementary Human Dimension Meetings, three of which are organised every year.⁴¹

Given this situation, some have argued for a more comprehensive and systematic approach to discussing follow-up to election reports, in particular involving the governmental representatives at the PC.⁴² The PC is meeting behind closed doors in the Vienna Hofburg, at least once per week in formal sessions. Despite this lack of access for media and civil society representatives to the PC, some states remain recalcitrant to engage substantively in election-related shortcomings that have been observed by the ODIHR. This, in turn, has made it difficult, so far, to ensure such a sustained approach.

E Misconceptions and Reality

In spite of this report to the MC and its related activities, a number of misconceptions regarding ODIHR election observation work continue to be circulated – whether out of some genuine misunderstanding or in order to discredit election observation. The key issues in need to be reflected correctly are the following:

- The starting point for any discussion of election observation is, of course, that responsibility for conducting elections in line with international obligations remains solely with the respective government; therefore, the ODIHR is not an “election police” – and the same holds true for any observer. The ultimate purpose of election observation, beyond instilling public confidence in the process, is to assist states in improving the conduct of their elections in line with the commitments they themselves have entered into freely.
- ODIHR’s election observers follow, and objectively comment on, a political process, in a factual manner and following standardized procedures. They are not “politicized”, or biased. Political judgments should continue to be left for others to make outside the framework of an election observation mission; the political interpretation of election observation findings is not for the observers to undertake. There would be no credibility for this activity if the ODIHR were forced by political processes, such as those conducted in the OSCE Permanent Council, to depart from the facts and evidence collected in detail by observers – this includes all observers, long and short-term observers, and parliamentarians.
- The ODIHR is observing across the whole OSCE region of 56 states. With more than forty elections in the region each year and a budget to cover little more than a dozen, conscious choices must be made: ODIHR’s attention must be focused on countries where it can contribute most and add real

41 See, for instance, the Final Report of the Supplementary Human Dimension Meeting on challenges of election technologies and procedures, 12 July 2005, www.osce.org/documents/odihr/2005/07/15658_en.pdf, as well as the Final Report on the Supplementary Human Dimension Meeting on Electoral Standards and Commitments, 15-16 July 2004, www.osce.org/documents/odihr/2004/10/3765_en.pdf.

42 The recent creation of a Sub-Committee of the Permanent Council dedicated to the human dimension would potentially provide the framework for a more systematic discussion of follow-up measures to election observation reports, and also for a more significant outreach to civil society by the governmental delegations in Vienna.

value.⁴³ Originally, there has been a focus on countries of the CIS and of South-Eastern Europe: Given the non-democratic past of these countries such a focus must have been not only quite understandable, it was even implicit in the creation of ODIHR as, originally, the Office for Free Elections. Recent criticism of a continuing one-sided focus towards these countries (“double-standard”) is, however, unfounded: On one hand, the effects of the totalitarian past are not yet fully overcome in all of these countries, so that they indeed need continued, and sustained, support; on the other hand, the ODIHR has expanded its activities over the last years in order to follow electoral developments in a much broader range of participating states, so as to provide a comprehensive picture of election-related developments in the whole region. Since 2002, the ODIHR has assessed elections also in countries such as the United States of America, Canada, the United Kingdom, Ireland, Italy, France, Belgium, the Netherlands, Switzerland, Spain or Turkey.

- Even when critics give credit to this geographic spread of ODIHR observation today, some governments have criticized what they see as a numerically imbalanced deployment of observers. This approach, trying to simplify complex observation exercises for equally complex electoral processes in vastly differing political and administrative environments into a purely quantitative argument (X observers per Y voters), would appear to be a more self-serving argumentation, rather than a constructive rationale.⁴⁴ Furthermore, it cannot be left to the intergovernmental political processes in the PC, as these governments might wish to, to determine the scope and practicalities of an observation – this decision must be left to the professionals at the ODIHR.
- All 56 OSCE states are equally invited to provide election observers. Observers, contrary to the arguments put forward by some, are not solely drawn from Western countries. Not all countries, however, make use of this opportunity in equal measure. Election experts recruited by the ODIHR in 2000 came from 16 OSCE states. This number has increased to 38 in 2007. The average number of states represented in election observation missions was 43.⁴⁵ A few participating states, from all parts of the OSCE region, do not provide ODIHR with observers on a regular basis.⁴⁶

43 For instance, a Needs Assessment Mission sent ahead of the 18 March 2007 Parliamentary Elections in Finland recommended that “no OSCE/ODIHR election observation or assessment activity shall be undertaken [...] a tradition of democratic elections in Finland is accompanied by a commensurate level of public trust”. In its recent assessment ahead of the 6 and 8 February 2009 parliamentary elections in the Principality of Liechtenstein, ODIHR came to similar conclusions. Consequently, no observation activity was undertaken in either case.

44 Some states have even argued for an overall maximum of 50 observers to any country, independent of the size of the country and the nature of the electoral contest, as proposed in a working paper submitted by some CIS countries to the PC.

45 In a total of 2,900 observers in 2007.

46 This is even more regrettable in view of a Voluntary Fund created by the ODIHR in 2002 in order to enhance the diversification of participation in election observation missions; thanks to continuing contributions to this fund, some 1000 observers from new democracies have been able to be deployed since. In 2006, the Russian Federation requested ODIHR to be removed from the list of beneficiaries of the fund. In a number of countries, the ODIHR is also involved in training of election observers at the national level.

- ODIHR chooses its core team experts carefully on the basis of their personal qualifications through a recruitment process open to the public.⁴⁷ It recruits independent experts who answer to the ODIHR and are not subject to instructions from their respective government authorities. Vacancy announcements can be found on the ODIHR website before every election observation. So the lack of transparency in the recruitment process for observers which is alleged by the same small number of governments, is a misrepresentation, too.
- All ODIHR reports – before, during and after an election – are fully published on the ODIHR website in English and in the official language of the country concerned.⁴⁸ The observation methodology is publicly available, and the activities of long-term observers are conducted in full transparency. Observation missions are therefore not a “black box”, as some want to portray them.
- Contrary to other ODIHR activities, the Office does not accept voluntary financial contributions for its election observations – these are exclusively funded through the OSCE unified budget agreed to by all participating states.⁴⁹

F A Brief Reality Check and the Need for Positive Political Will

As necessary as this debate about election observation, maybe sadly, still is, we should not allow it to distract from the real issues of democratic elections. As the ODIHR highlighted in its 2006 Common Responsibility Report, there are trends in a number of countries of the OSCE region that need urgent attention; these are worrying trends that emerge from observation missions in some OSCE States. While many issues are country- and context-specific, a number of challenges observed by the ODIHR are common to some parts of the region. They do not reflect mere technical difficulties, but rather point to an intention to manipulate elections fraudulently, through a mix of legislative, administrative, and other measures that deliberately thwart an effective implementation of international commitments. Their negative effects can be observed across the whole electoral process, in particular in the following ways:

- *Voter registration*: obstruction of eligible voters to register; outdated voter lists that increase the risk that fraudulent ballots are cast; double registration, allowing double-entered voters to collude with polling-station officials to cast multiple ballots; ‘phantom’ voters or registration of dead people; removal/

47 As of 1 September 2008, the ODIHR election experts database contained a total of over 2,500 entries.

48 Cf. OSCE/ODIHR, www.osce.org/odihr.

49 A number of ODIHR assistance programmes requested by participating states depend, as in other international organizations, on voluntary funding; this holds also true for some programmes relating to improving the electoral framework in certain countries. Election observation, however, has always been excluded from voluntary funding in order to avoid any possible argument about its complete independence. In the annual OSCE budgetary process in the PC, separate arguments have been brought forward by a few delegations which would aim at reducing the volume of the ODIHR budget relative to elections. These arguments are at odds with efforts advocated by the same governments to further expand the geographical scope of observation activities.

misspelling of voters belonging to certain demographic groups or living in a certain area; unexpected closure of registration centres in certain areas, or short supply of crucial forms/materials.

- *Candidate registration*: overly cumbersome support/signature verification procedures as means to limit participation; exclusion of 'non-partisan' candidates; exclusion of national minority candidates; discriminatory requirements for ballot access or mandate allocation; disqualification/de-registration of candidates and removal from ballot, often under pretext of minor administrative demeanours; registration of unknown candidates with the same or similar name as the candidate whom the incumbent seeks to defeat.
- *Electoral competition*: obstruction/fragmentation of campaigning, including excessive limitations to freedom of peaceful assembly; banning of opposition rallies from central areas; abuse of tax investigations against candidates; abuse of state resources to support incumbents; preferential access to advertising space for incumbents; unbalanced coverage in electronic media and lack of enforcement of equal access; intimidation of journalists and abuse of state-controlled media; abuse of tax investigations against private media; confiscation of campaign material; excessive fining of media based on defamation laws; issuance of 'guidelines' to media instructing how to report on electoral issues.
- *Electoral administration*: overwhelming presence of ruling party members or sympathizers on election commissions that, as a result of being non-inclusive, cannot command public confidence; mobilization of state employees and use of government-owned property for the ruling incumbent; pressure by state authorities on election officials; intransparent or irregular proceedings at electoral commissions and closing-off of key elements of the electoral process from scrutiny by the opposition and the public; last-minute changes in election-day procedures; unregulated, and therefore intransparent and unaccountable, early voting periods prior to election day.
- *Election day*: manipulative election management and/or rules; ballot box stuffing/destruction/snatching; multiple voting; vote-buying; 'carousel voting'; pressure on voters, especially students, civil servants, or soldiers; biased explanations or actions by election officials; interference by unauthorized persons and security officials (intimidation); manipulation of mobile ballot boxes; abuse of postal ballot system.
- *Vote count and tabulation of results*: biased application of what constitutes a valid ballot; inflating/changing results on election protocols; programming of voting machines to alter the vote count; theft/destruction of ballot boxes during transportation to higher level counting centres; falsification of records in the aggregation of polling station's results; wholesale vote theft (converting defeat into victory by reverse tabulation at provincial/national level).
- *Complaints and appeals*: absence of effective or timely judicial remedies; intransparent processes; administrative measures to preventing victors from taking office.

These are real problems. They do not concern, in the final analysis, technical problems which can be found, of course, in practically all electoral processes. Rather, they reflect a lack of the political will which would be necessary to address deliberate manipulation of electoral processes – governments, however, have an obligation to do so, as such manipulations aim to fraudulently alter their

results and can constitute grave attacks upon the fundamental freedoms of association, assembly and expression. The conclusion is clear: there is no crisis of election observation; the focus needs to be put on the real challenges to democracy and free elections. These problems should not be ignored or denied. They ultimately constitute a real threat to security and stability, at the national and at the international level.

This is also why the practical activities of the ODIHR overall are tailored to address the legal, institutional and practical framework necessary for a genuine democratic process. The monitoring of elections constitutes an important, indeed essential, element in these efforts, as they perform democratization support not only of the ODIHR and the OSCE as a whole, but also of a wider international community. Participating states themselves have recognized this context when they called for giving more systematic follow-up to election observation.⁵⁰

It was therefore particularly unfortunate that the Russian Federation, in the run-up to its parliamentary elections in 2007, as well as the presidential election in 2008, made it impossible for the ODIHR to observe these elections, by trying to introduce, unilaterally, a number of restrictions and conditions negating, in essence, the long-term and comprehensive nature of election observation as prescribed by the Budapest Summit (and as accepted, on previous occasions, also by the Russian Federation).⁵¹ Many saw this as a move that violated also the commitment by all OSCE States, declared “categorically and irrevocably” in Moscow in 1991, “that the commitments undertaken in the field of the human dimension [...] are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned”.⁵²

G Security and Co-operation: a Common Responsibility Shared by All?

As already stated at the outset, the evolution of election observation is an extraordinary success story in which the ODIHR has played an important part. For this success to continue it is crucial that observation missions, including those of the ODIHR, are freely able to make their findings, to draw conclusions based on them, and to formulate appropriate recommendations to follow up on. For each election, observations must reflect the situation as it is, not as some would like it to be. An ODIHR independent from political *agendas* is a prerequisite for this.⁵³

50 Cf. Summit Declaration, Charter for European Security, para. 25, 1999, and a number of subsequent Ministerial Decisions. Cf. also the ODIHR discussion paper, Follow up on the implementation of OSCE/ODIHR Recommendations, 24 May 2007.

51 See, in particular, two ODIHR press releases on this subject: “OSCE/ODIHR regrets that restrictions force cancellation of election observation mission to Russian Federation”, 7 February 2008, and “ODIHR unable to observe Russian Duma Elections”, 16 November 2007. See also the Election Observation reports about the 2003/2004 elections, reflecting the standard ODIHR procedures.

52 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991, 29.

53 As a Senior Parliamentarian and Veteran Election Observer, Kimmo Kiljunen from Finland, put it in a speech to the Chairmanship Seminar on elections of July 2008:

The years 2007-2008 saw an unprecedented challenge to comprehensive international election observation, a challenge which has remained, so far, without overall negative consequences beyond the one country concerned. There is some hope that this period of attempts to inject politics into election observation is drawing to a close, that all OSCE states appreciate the efforts ODIHR has consistently made to improve its work and to provide the public with an accurate assessment of elections. Regrettably, some of the current challenges to professional long-term election observation have come from rather unexpected quarters, as the OSCE's own Parliamentary Assembly – apparently under the mistaken notion of possessing a political supremacy over the ODIHR and of the need for a “strong political message” from observations – on occasion chose not to follow established practice and refused its cooperation to ODIHR. Such pretence to assert institutional control (“leadership” is the term used) over an independent and professional institution only draws energy and focus away from the true object of election observation, the quality of elections themselves.⁵⁴ It also does a disservice to the important contribution parliamentarians can, and should, make to election observation and follow-up. The longstanding co-operation with the European Parliament and also the Parliamentary Assembly of the Council of Europe, on the other hand, continues well.

There are positive signs: no other state has followed the Russian Federation in trying to redefine unilaterally the OSCE commitments or the election observation methodology, and the new ODIHR Director, Ambassador Lenarčič, when visiting Moscow in September 2008, has called for turning the page and renewing co-operation in a constructive approach.⁵⁵

The turn of 2008-2009 is seeing, again, a busy election calendar for the ODIHR: It continues to be invited to all elections in the OSCE region and, for example, has responded positively to such invitations to observe in Belarus, Azerbaijan, the United States of America, the former Yugoslav Republic of Macedonia, Montenegro as well as Moldova; it has also sent an election assessment mission to Iceland, and declared its intention to follow developments in at

“What has made election observation a success story is the autonomous way it is conducted – autonomous vis-à-vis the host country, where the elections are taking place, but also vis-à-vis all participating states and other actors with specific political goals.”

54 After trying for quite some time to reduce the importance of long-term and professional observation, the PA refused to follow the ODIHR's approach to the Russian Duma elections and conducted a short-term observation visit. Three months later, they replicated the ODIHR in not participating in monitoring the presidential elections. In November 2008, the PA refused to follow standard practice and join the ODIHR in the observation of the presidential elections in the USA; they sent their own mission separately and issued, one day after the ODIHR, their own (similar) statement. In spite of sustained efforts by subsequent OSCE chairmanships to remind the PA of their obligation to work in partnership with the ODIHR, the situation has been further exacerbated by talks between the then President of the PA and its Secretary with the leadership of the Parliamentary Assembly of the CIS conducted in spring 2008 on strengthening cooperation in electoral matters, efforts which finally came to nothing in view of the refusal by the PA of the CIS to sign a Memorandum to this effect. Cf. J.C. Peuch, *Russia and Kazakhstan strive to put OSCE democratization arm in a sling*, Eurasianet.org, 14 July 2008.

55 ODIHR Press Release, “Time to open new chapter in relations, OSCE Human Rights chief tells Russian Officials”, 9 September 2008.

least some of the EU member states with regard to the June 2009 elections to the European Parliament.⁵⁶ It continues to publish its reports, to follow-up on them with the countries concerned⁵⁷, and to discuss its findings with all OSCE States that show the desired political will for dialogue to further improve electoral processes or to address shortcomings.⁵⁸

Overall therefore, one can remain moderately optimistic that the necessary political will can be assured in order to maintain the success of the OSCE's election observation. Governments do realize that the real challenges faced by democracy today can be addressed effectively only if the picture remains accurate. The ODIHR will continue to need support in order to continue to provide such a picture of achievements, as well as failures, to implement commitments for democratic elections. Governments owe it to their citizens to ensure that they live up to their commitments, including the commitment to implement. Nowhere is this more immediate and comprehensive than in the field of elections. As the OSCE put it the "Common Responsibility" report:

"It is for the OSCE community as a whole to consider how to renew our commitments to democratic governance and the concept of comprehensive security in order to consolidate progress across the whole OSCE region and prevent the erosion of the rule of law and human rights. To make the right choice, OSCE participating States need to muster the courage to assume their common responsibilities in an imperfect world. [...] Mutual trust, as well as confidence in the institutions and jointly developed procedures, is an essential prerequisite to undertake this work."⁵⁹

In order to preserve a unique success story which has a professional and political impact far beyond the OSCE region, this remains a common responsibility of all OSCE states.

56 At the time of writing, March 2009.

57 Cf., e.g., the visit to Belarus by ODIHR Director Lenarčič, ODIHR Press Release, 23 January 2009.

58 Cf. e.g. an Election Seminar conducted in Vienna in July 2008: OSCE Press Release, "OSCE Chairmanship holds seminar on elections", 21 July 2008, and various speeches published with it, at http://www.osce.org/odihr/item_1_32263.html.

59 OSCE/ODIHR, Common Responsibility (2006), 81.