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OSCE Election Observation: Challenging the Norm and  
Standards

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Patrick Ager

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## **Abstract**

The Organization for Security and Cooperation in Europe (OSCE) has become a forerunner in election observation, establishing globally recognized standards for observing participating States commitments to 'free and fair elections'.

Considering the conclusive link between election observation and the promotion of democratic values, this thesis will closely examine important aspects of election observation and how the OSCE has established the norm 'free and fair elections' among its participating States. It will also analyze the particular roles that are attributed to the respective OSCE institutions and on what the 'standards' of OSCE election observation are really based on.

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# **Chapter One:**

## **Introduction**

## **Introduction**

Elections are important events in any country. In affirmed democracies such as in Western Europe, they are often perceived as a habitual system for the scrutiny or reaffirmation of the government in place, often marred however by both low voter turn out and an apathetic population. On the other hand in struggling democracies, often recovering from authoritarian rule and political conflicts, each election is perceived as a cornerstone and often a prominent indicator for measuring the countries consolidation process. Such elections are frequently regarded as an opportunity to make a new start and legitimate basis for a new government.

The aim of legitimacy and consolidation within the population, and, vis-à-vis the international community, necessitates a conduct of the election in line with particular norms and standards, established over the course of many years though intense international and intergovernmental cooperation in conferences, organizations and institutions. The establishment of the norm for free, genuine and democratic elections was followed shortly by an elaboration as to how to observe the implementation of the norm in States who committed themselves to conduct their elections according to this norm. Whilst the establishment of norms and standards for free elections is also due to the promotion of particular democratic core values and former western values, the elaboration of standards for observing elections followed as an interesting instrument, providing a concrete basis as to how to promote these values.

On another note, the establishment of such norms, standards and shared values is also due to the setting of common commitments in international relations. International organizations promoting such a development are active around the world. Prominent commitments in respect to elections and election observation were set within the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe. Interestingly and more recently, the Commonwealth of Independent States, in particular with its Convention on Standards of Democratic Elections, Electoral Rights and Freedoms, has also made important contributions to the establishment of the norm for free election among the CIS participating States.

This paper, entitled ‘OSCE election observation – Challenging the Norm and Standards’, aims to examine how the establishment of the norm and standards for both – free and fair elections and election observation – has occurred in the Organization for Security and Cooperation in Europe. Introducing what in fact constitutes the norm free and fair election and standards in election observation, the main argument of this paper establishes that the OSCE set standards in election observation during the 1990s that encompass the complementary activities of two

OSCE institutions, the OSCE Parliamentary Assembly (OSCE PA) and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). In comparison to the common arguments found in election observation literature stating that the OSCE's establishment of worldwide standards in election observation is a result of the comprehensive approach of the Office for Democratic Institutions and Human Rights, this thesis instead contends that the role of the OSCE PA in election observation should also be attributed equal importance in the setting of these OSCE standards. Therefore, the focus of the analysis is not only based on a deliberation of the actual standards of OSCE election observation (in relation to the norm of free and fair elections), but also, why (in particular from the perspective of promoting democratic norms), these standards encompass a complementary role of both the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights.

## **Methodology**

This thesis was written using four types of sources. Firstly, a consideration of democracy theorist literature was useful for examining the relationship of elections and democracy with respect to the link between election observation and democracy promotion. Important sources of inspiration include Wolfgang Merkel's 'Embedded and Defective Democracies', in particular, for analyzing the different regimes of democracies that would constitute a solid background for understanding the methodology of the OSCE Office for Democratic Institutions and Human Rights. At this point I would like to underline the importance of the paper by Guy S. Goodwin-Gill, entitled 'Free and Fair Elections', published in 2006 by the Inter-parliamentary Union, for establishing what constitutes the norm free and fair election. Secondly, an examination of election observation literature proved to be useful when attempting to define the exact nature of election observation. Of particular importance was Eric C. Bjornlund's book entitled 'Beyond Free and Fair – Monitoring Elections and Building Democracy'. Thirdly, primary literature such as Ministerial Council decisions, available on the OSCE website, proved to be useful for empirical analysis of both OSCE norms for free and fair elections and OSCE standards for election observation. Lastly, my personal experience in the organization's Parliamentary Assembly Vienna Liaison Office as Research Assistant in the year 2007, and in particular my interviews with respective officials of the OSCE Parliamentary Assembly and the OSCE secretariat, contributed to the subject area of the thesis.



## Chapter Outline

This thesis is composed of five Chapters. Constituting a more general outline of the relationship between election observation and the promotion of democratic core values, Chapter Two considers what is in fact implied by the norm free and fair elections and how elections are interlinked with other aspects of democracy. In addition Chapter Two considers election observation as a form of both developmental and political cooperation along particular democratic norms and values. Finally, Chapter Two examines election observers themselves and the standards they have established over the years.

Chapter Three considers the establishment of the norm for free and fair elections and their observation within the Organization for Security and Cooperation in Europe. Particular attention is paid to respective documents and participating States commitments for free elections and the invitation of elections observers. Furthermore, this Chapter focuses on how the collapse of the Soviet Union and the institutionalization of the OSCE resulted in the organizations most important activity of its third dimension of security. In this way the methodology and role of OSCE institutions deploying election observer are examined. Finally, Chapter Three also refers to the current problems and constraints of election observation efforts.

Chapter Four was written to reflect important conclusions established in Chapters Two and Three. Accordingly, the case study of the observation of the extraordinary Kazakhstan parliamentary elections in 2007 considers the contextual importance of election observation, in light of Kazakhstan's political dialogue with the OSCE and its bid for OSCE Chairmanship. Additionally, the case study closely examines how the OSCE election observation mission was composed and why OSCE election observation encompasses also in practice the complementary activity of the OSCE PA and the OSCE/ODIHR.

Chapter Five concludes the thesis and explains what OSCE election observation standards are really based on and why they *must* encompass a complementary activity of the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights.

## **Chapter Two:**

### **Election Observation – the Norm and Standards**

*While democracy must be more than free elections, it is also true... that it cannot be less.*<sup>1</sup>

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<sup>1</sup> UN Secretary General Kofi Annan, “Closing Remarks to the Ministerial” (Warsaw June 27, 2000)

## Introduction

Before analyzing how the norm '*Free and Fair*,' election emerged in the Organization for Security and Cooperation in Europe and how its observation is deduced institutionally, I would like to introduce election observation in a more theoretical manner and from a democracy theorist perspective. Thus, the analytical focus lies on what constitutes the relationship between election observation and the promotion of values, in particular fundamental democratic values such as free and fair elections. In this respect, this chapter considers various questions: first, what is the role of the election in democracy? Can democracy be reduced to the holding of periodical, free and fair elections? And finally, what aspects are necessary in the composition of free and fair elections?

This chapter therefore outlines the necessary elements for the holding of elections according to the norm free and fair. This includes aspects such as election laws, election management, electoral campaigns, the role of the media, and finally the Election Day itself. Interestingly, this examination implies to query further how election observers evaluate their assessment according to the norm. Therefore, considering the election observation endeavor as a tool for promoting democratic values and norms, the evaluation of an observation implies also a consideration of how the election itself contributes to the democratization process. In this respect, chapter two intends to understand election observation as an endeavor that has two main components: first, components of development cooperation and technical assistance when invited to do so, and second, international aspects of political cooperation and political pressure. This becomes especially visible when an election is evaluated according to the free and fair norm.

Finally, this chapter provides a general outline of the comprehensive election observation methodology, as established by the OSCE, which became through many years and missions a model for other international organizations deploying election observation missions. Standards were set by the OSCE/ODIHR and OSCE Parliamentary Assembly throughout the 1990s in the field of election observation. Since that time, many other international institutions have applied these standards as a model. In this regard, briefly, Chapter two also considers the role and the methodology of the Parliamentary Assembly of the Council of Europe, of the European Union and the Inter-parliamentary Assemblies of the Commonwealth of Independent States.

## Election Observation and the Promotion of Values

The study of election observation implies a necessity to link this with the broader issue of elections and their role within democracy. Undoubtedly, elections are of fundamental importance in any democratic society. For the government it is a day of accountability. For the people it is the moment to express their will on their society's political direction.

Genuine democratic elections are a requisite condition for democratic governance, because they are the vehicle through which the people of a country freely express their will, on a basis established by law, as to who shall have the legitimacy to govern in their name and in their interests.<sup>2</sup> In this regard, achieving genuine democratic elections is a part of establishing broader processes and institutions of democratic governance.<sup>3</sup>

Studying the role of elections in democracies implies a belief in the general nature of democracy. Indeed, this begs the question as to whether democracy can simply be reduced to the holding of periodical, free elections. The NGO Freedom House for example, a preferable source of data about democratization for journalists, essayists and political scientists, understands free and fair elections as a minimum requirement for a state to be listed as democratic.



Source: Freedom House

According to Freedom House, the world can be classified within the categories free, partly free and not free. The NGO implies therefore a political check list methodology. Regarding the electoral process, the main query is centered on the question as to whether or not the head of government or other chief national authority were elected through free and fair elections. Accordingly, the free and fair assessment of reputable national and international election

<sup>2</sup> UN. October 27, 2005. Declaration of Principles for International Election Observation. P.18

<sup>3</sup> Ibid.

monitoring organizations is required.<sup>4</sup> Thus, the minimum requirement for a State to be listed as democratic by Freedom House is that of so-called electoral democracy.<sup>5</sup>

However, it turned out to be too narrow and problematic to assume that the minimum requirement of democracy is the holding of free and fair elections. First of all, as argued by Wolfgang Merkel in his article “Embedded and Defective Democracies”, it is very difficult to prove empirically that elections were executed fairly and correctly. This presumption implies that empirical data collection cannot be handled in the same way for election observation as for classical areas of empirical research. Secondly, it does not examine the issue of whether elected officials rule the country by democratic and constitutional principles between each election.<sup>6</sup> Democracy seems to be periodical phenomena, occurring when elections are held, rather than a continual and omnipresent process of social order. Therefore, competitive and free elections appear insufficient for guaranteeing other relevant aspects of democracy, such as the rule of law, civil rights, and the accountability of its representatives for example.<sup>7</sup> Perhaps the formulation of former UN Secretary General Kofi Annan best describes the role of elections within democracies “While democracy must be more than free elections, it is also true (...) that it cannot be less”.<sup>8</sup>

Interestingly, when examining the relationship between elections and democracy, a fascinating interlink becomes evident. On the one hand, democracy cannot be reduced to the holding of periodical elections, however, free and fair elections cannot be held without the requirements that democracy implies. Therefore, as will be analyzed in this paper closely when outlining the norm free and fair elections, the characteristics of elections mirror many other aspects of democracy such as the rule of law, the political system, the integration of political parties within the population, freedom of the media, the participation of minorities, campaign issues, etc. The studying of elections and in particular election observation is hence strongly interlinked with a broader sense of the promotion of these values. This paper considers therefore that election observation is the promotion of democratic values, in particular the democratic norm of free and fair elections.

In this regard, OSCE’s endeavor in election observation is similarly interlinked with the broader issue of democratic assistance and democracy promotion. The dramatic global expansion of democracy and democracy promotion in the CSCE/OSCE area following the

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<sup>4</sup> Freedom House. [http://www.freedomhouse.org/template.cfm?page=351&ana\\_page=333&year=2007](http://www.freedomhouse.org/template.cfm?page=351&ana_page=333&year=2007); 25.7.08

<sup>5</sup> Wolfgang Merkel. Embedded and Defective Democracies, p.34; In: Democratization, Vol.11

<sup>6</sup> Ibid.

<sup>7</sup> W. Merkel and Aurel Croissant. Conclusion: Good and Defective Democracies, p.199; In: Democratization, Vol.11

<sup>8</sup> UN Secretary General Kofi Annan, “Closing Remarks to the Ministerial” (Warsaw June 27, 2000)

end of the cold war has led to an extraordinary focus on one democratic institution; in particular: elections.<sup>9</sup> In dozen of countries around the world, elections have been expected to initiate or consolidate transitions to democracy or to help resolve long standing conflicts. Elections have played a major role in the democratic transitions of the past two decades, and fair elections have become an increasingly critical requirement for governments to gain international legitimacy. The end of the Cold War facilitated an international consensus about the importance of genuine elections and international action to help bring them about.<sup>10</sup>

Furthermore, elections capture international attention. News about elections in far-flung lands – especially transitional elections in which struggling democrats challenge entrenched, autocratic regimes or elections that mark the end of conflicts – captivate international audiences. Hence, the international media routinely reports the conclusions of election observers; and foreign policy makers in the United States and Europe react strongly based upon their assessments.<sup>11</sup>

On another note, as described by Eric Bjornlund in his book “Beyond Free and Fair, Monitoring Elections and Building Democracy”, election monitoring is perhaps the most visible form of the broader phenomenon of democracy promotion. The OSCE Office for Democratic Institutions and Human Rights makes its understanding of election observation and democracy promotion available to the public, stating on its website that “election observation is one of the most transparent and methodical ways to promote and encourage democracy and human rights”.<sup>12</sup>

Nevertheless, it is also important to clarify the use of certain notions. Firstly, monitoring elections and observing elections do not imply the same thing. Monitoring implies a stronger notion and implies a certain capacity to interfere. In the case of the OSCE, “observing” is the usual notion for this endeavor. Secondly, election observation is not equal to electoral assistance, as this also implies that advice be given during the electoral process. Once an organization has been invited to do so by the participating State, this happens usually through the secondment of an expert team (prominent election assistance is often given by the Venice Commission of the Council of Europe and the OSCE/ODIHR). And thirdly, the Election Observation endeavor itself, implies the observation of the election itself and the preliminary conclusion afterwards. Interference in the electoral process itself is strictly prohibited when observing elections.

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<sup>9</sup> Eric C. Bjornlund. *Beyond Free and Fair, Monitoring Elections and Building Democracy*. 2004, p 7.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid. P.8

<sup>12</sup> OSCE. Office for Democratic Institutions and Human Rights. <http://www.osce.org/odihr-elections/17781.html>; 15.04.08

But how does the observation of elections by the international community affect the electoral process and the political system itself? Why do States invite foreigners to observe their elections? First of all, one has to bear in mind that according to the Westphalian principles of international relations that States are sovereign, legally equal, and do not interfere in the inner affairs of another State, accordingly the observation of elections by foreigners and their assertions about the conduct of the election appear contradictory. In fact, international election observation (concluding with explicit judgments about the freeness and fairness, and hence legitimacy, of a national election) has become one of the most common means by which international actors — such as the OSCE, the EU, the Council of Europe or the Commonwealth of Independent States, and NGOs—intrude without apology, into the internal politics of sovereign countries. These kinds of political intrusions are reshaping the very idea of Westphalian sovereignty, negating the longstanding presumption that states are free to do what they like within their own borders.<sup>13</sup>

In this regard, it might be interesting to query why foreign election observers are invited to observe domestic elections. On the one hand, this is closely related to the common commitment setting for standards in international relations. In the case of the OSCE, the most important document (committing participating States to invite foreign observers monitoring domestic elections) is the 1990 Copenhagen document, signed by all participating States of the CSCE. In this respect, the invitation of foreign observers is a political commitment of the organizations' participating States. On the other hand, a government may also have practical interests in inviting observers. Their presence can enhance the credibility and legitimacy of the elections and therefore, the legitimacy of the government in place, or of the following government. Especially in post-conflict countries with little economic growth, a positive judgment by international observers becomes an asset, and can encourage the international community to invest in that country, or at least, provide a solid basis for bargaining an accession to the international financial donor community. Furthermore, the observation of elections by international observers can help to rebuild confidence between previously adversary political parties. The presence of 'outsiders' during the elections and their judgment concerning the fairness of a vote might create confidence in the opposition that the government did not provoke election fraud.

But besides these factors, the invitation of election observers also reflects the will of a country to engage in a dialogue of values with the international community, with regard to one particular value of democracy – free and fair elections. The case study examining the

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<sup>13</sup> Larry Diamond. Can the Whole World Become Democratic? Democracy, Development, and International Policies, p.17; In: Center for the Study of Democracy, University of California, Irvine, 2003

observation of the extraordinary parliamentary elections in Kazakhstan will re-iterate this argument.

It is important to note that election observation has become an essential constituent of the promotion of democracy. As Thomas Carothers points out, “Elections observation is the best-established, most visible and often best funded type of democracy related assistance.”<sup>14</sup> Indeed, observing elections became an important tool to observe the implementation of one specific regime of democracy. Or in other words, election observation is the observation of the implementation of one particular norm and value of a States commitment. Hence, this endeavor was ambitiously wide throughout the 1990s, in trying to observe how the shortcomings of other aspects of democracy such as human rights, rule of law, media freedom etc. can influence the electoral process and the election itself.

### **The norm: Free and Fair Elections**

International consensus has more or less emerged on what constitutes free and fair elections. This section outlines the relevant aspects of the scope of an election, which should be considered when reflecting on what truly encompasses an election conducted according to the norm.

In addition to balloting and to counting, there must be opportunities for political parties to compete, reasonable and equal access to the media, impartial election administration, fair rules, a political environment free of intimidation and the prompt and just resolution of election related disputes and grievances. Elections that meet these standards are often referred to as “free and fair”.<sup>15</sup>

On another note, international norms set specific objectives with respect to the holding of periodic free and fair elections, laying down a variety of related obligations. The best example therefore, is the rule with respect to the secret ballot – alternatives are not permitted. Instead, the State is bound to take such steps as are necessary to ensure not only that secrecy is observed and maintained, but also that the integrity of the decision is protected in the count that follows on the implementation of the result.<sup>16</sup> But obligations in international law are not usually self executing – they require implementation on the domestic level. What is important is the final outcome. Hence, a tradition of free and fair elections must be maintained and

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<sup>14</sup> Thomas Carothers. *The Observer observed*, p.18; In *Journal of Democracy*, Volume 8, 1997

<sup>15</sup> Eric C. Bjornlund. *Beyond Free and Fair, Monitoring Elections and Building Democracy*. 2004, p 94

<sup>16</sup> Guy S. Goodwill-Gill. *Free and Fair Elections*; Interparliamentary Union 2006. p. 160



consolidated over the long term, based in the political culture and tradition of the respective State. To this extent, election observation and the goals of representative democracies have a programmatic dimension, anticipating progress in building democratic institutions, and strengthening the confidence of the people in the democratic process.<sup>17</sup>

Despite such consensus in theory, the standards by which international observers assess elections remain vague. In the case of the OSCE, the main document of commitment is the 1990 Copenhagen document. Although typically articulated as the minimum standards for free and fair elections, such criteria are usually broad aspirations. Assessing whether a given election has met such standards has proven to be extremely difficult, and external considerations often influence such assessments.<sup>18</sup> Hence, the terminology describing a ‘free and fair’ election has tended to be rather obscure and difficult to assess.

#### Electoral Law and political system

Electoral systems have usually proven to be the most stable democratic institutions. In the post-war period countries have occasionally switched electoral formulas between d’Hondt and LR-Hare, adjusted the effective threshold for election, and expanded their assembly size. However, radical reforms – i.e. the way votes are translated into seats – have been relatively rare.<sup>19</sup> The vacillation between proportional and majoritarian systems in France is the most significant exception. It is interesting to note, as pointed out by Lipset and Rokkan (1967) in their classic work on electoral cleavages, that electoral systems seem set and concrete. The parties in the government generally favored and maintained the status quo from which they benefited. The critical voices of those parties or out-groups systematically excluded from elected office rarely proved able to amend the rules of the game.<sup>20</sup> Hence, this stability suggests that electoral systems are inherently conservative. But elections and electoral systems matter. During the 1990s the debate about the electoral system moved from margin to mainstream on the political agenda. This shift produced awareness that electoral rules are not neutral: the way votes translate into seats means that some groups, parties, and representatives are ruled into the policymaking process and some are ruled out.<sup>21</sup> The core debate

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<sup>17</sup> Ibid. P.161

<sup>18</sup> Eric C. Bjornlund. *Beyond Free and Fair, Monitoring Elections and Building Democracy*. 2004, p 95

<sup>19</sup> Jean Laponce, Bernard Saint-Jaques. *Choosing Electoral Systems: Proportional, Majoritarian and Mixed System*. In: *Political Science Review*, 1997

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

encompasses the question as to whether countries should adopt majoritarian systems which prioritize government effectiveness and accountability, or proportional systems, which promote greater fairness to minority parties and more diversity and social representation.<sup>22</sup>

Even though it falls under the classic and exclusive domain of the State in choosing between a majoritarian or proportional system of representation, and, that ‘there is not a single political system or electoral method that is equally suited to all nations and their people...’<sup>23</sup>, it has a considerable determination on the electoral process, in particular the political campaigning and the political culture itself. Additionally, the choice of the electoral system and its implementation has an important effect on related political rights. Majoritarian systems tend to favor two parties;<sup>24</sup> this system tends to arrange the electoral districts according to the eligible voter number, in which one person is elected respectively – either with relative or with absolute majority of the votes. The absolute majority vote implies a run-off vote in the electoral districts when none of the respective candidates receives the absolute majority. For the run-off vote, either a relative majority suffices – or only the two candidates who received the most votes at the first voting can compete. In this way, the vote’s given for the non elected candidates are lost.<sup>25</sup>

The proportional system on the other hand assumes the existence of political parties. The percentage of the votes received by a party in the whole voting department shall be exactly consistent with seats contingent in the Parliament. Thus, smaller parties have better initial positions for acquiring seats in the Parliament under this system. The spirit of the proportional system deduces also the proportional compensation of votes: Hence, votes that didn’t result in seats on the regional/local level are used on the national level for the amelioration of the proportionality as whole.<sup>26</sup>

In general, it is consistent with the British and Anglo-American tradition to order Parliaments according to the majoritarian system. But it is important to note that the choice of electoral system has a determinant influence on the inner-state distribution of power. A good example therefore is the case of Northern Ireland: In Northern Ireland – with the background of conflict between a (narrow) pro-British protestant majority and an Irish-republican, catholic minority – the majoritarian electoral system resulted in the fact that the catholic minority had been only very weakly represented in the regional Parliament and never been represented in the regional government. Under this framework of the conflict, the 1998 agreement for a

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<sup>22</sup> Ibid.

<sup>23</sup> UNGA res. 46/137, ‘Enhancing the effectiveness of the principle of periodic and genuine elections,’ Dec. 1991

<sup>24</sup> Anton Pelinka. Vergleich Politischer Systeme. In: Böhlau 2005. p.55

<sup>25</sup> Ibid.

<sup>26</sup> Ibid. P. 67

proportional electoral system of the regional Parliament was negotiated, in order to assure the catholic minority co-determination.<sup>27</sup>

Finally, many newer systems, such as those recently adopted in Italy and Russia, use mixed systems, although with a variety of alternative designs. The Additional Member System used in Germany combines single member and party list constituencies. Electors have two votes. Half the Members of the Bundestag (328) are elected in single-member constituencies based on a simple plurality of votes. The remaining MPs are elected from closed party lists in each region (Land). Parties, which receive less than a specified minimum threshold of list votes (5 per cent) no longer entitled to any further seats. The total number of seats, which a party receives in Germany is based on the Niemeyer method which ensures that seats are proportional to second votes cast for party lists. Smaller parties which received, say, 10 per cent of the list vote, but which did not win any single member seats outright, are topped up until they have 10 per cent of all the seats in Parliament. It is possible for a party to be allocated 'surplus' seats when it wins more district seats in the single-member district vote than it is entitled to under the result of the list vote.<sup>28</sup>

Table 1

<b>Parliamentary Vote</b>	<b>OSCE participating States</b>
Majority Vote	United Kingdom, United States, Uzbekistan Turkmenistan, Finland, France, Azerbaijan, Canada
Modified Majority Vote*	Italy
Mixed Voting System**	Belarus, Greece, Hungary, Ireland, Poland Russian Federation, Lithuania, Spain, Tajikistan Ukraine, Luxembourg
Proportional Vote	Albania, Andorra, Armenia, Austria, Belgium Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia Georgia, Germany, Iceland, Kazakhstan Kyrgyzstan, Latvia, Liechtenstein, Malta Moldova, Montenegro, Netherlands, Norway, Portugal, Romania, San Marino, Serbia, Slovakia Slovenia, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Turkey

\* Three Fourths of the Deputies (both Chambers) are voted through the relative majority vote,

<sup>27</sup> Ibid.

<sup>28</sup> Jean Laponce, Bernard Saint-Jaques. Choosing Electoral Systems: Proportional, Majoritarian and Mixed System. In: Political Science Review, 1997

One Fourth through the proportional vote  
\*\* Proportionality is strongly alleviated – in particular through small electoral districts and absent (or not complete) proportional adjustment

Both systems, majoritarian or proportional, are legitimate frameworks of the electoral system. But their consideration when observing the electoral process and the political campaign is of great importance for the evaluation of the conduct of the electoral process. Finally, the general and distant objective set by international law – genuine periodic elections guaranteeing the free expression of the electors, which shall be the basis of the authority of the government, allows considerable room for variation and does not determine or dictate which system a country should indeed use. The same concerns the threshold, an important concept when analyzing the electoral system. It is a valuable concept, but also an elusive one. The concept derives from the fact that all electoral systems impose some kind of threshold that a party must exceed in order to gain representation. Sometimes this is explicit: the 5 per cent national-level threshold that a party must reach in Slovakia before it can earn any seats, or the 3 per cent constituency-level threshold imposed in Spain or the 7 per cent formal vote threshold in Poland with small electoral districts.<sup>29</sup> Some countries do not use explicit thresholds, but nonetheless their electoral system imposes an implicit threshold, based mainly on the district magnitude (number of seats per constituency). While there is no precise relationship between the two, the formulation proposed by Arend Lijphart is generally accepted as being as near as likely to get:

$$\text{eff thresh} = 75\% / (m + 1)$$

m equals district magnitude. Hence, the rationale, put simply, is that this is approximately midway between the threshold of representation and the threshold of exclusion. Thus, in a 4-seat constituency, the effective threshold is estimated to be  $75\% / 5$ , or 15% of the votes. A district magnitude of 4 seats is approximately as forbidding to a small party as an explicit threshold of 15 per cent of the votes.<sup>30</sup> It is obvious upon reflection that if the national-level effective threshold shall be estimated, the number of constituencies must be taken into account; whatever the effective threshold may be within each constituency, the more such constituencies there are, the lower the national-level effective threshold will be. Any formula

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<sup>29</sup> [http://www.tcd.ie/Political\\_Science/staff/michael\\_gallagher/EISystems/Docts/effthresh.php](http://www.tcd.ie/Political_Science/staff/michael_gallagher/EISystems/Docts/effthresh.php); 26.5.08

<sup>30</sup> Ibid.

for the national-level effective threshold needs to take account of the number of seats (or constituencies) as well as average district magnitude.<sup>31</sup>

Hence, the level and method of threshold has wide implications on the composition of the seats in a Parliament. The norm free and fair election does not define the level threshold, also because the level must be related to the whole electoral system as such and in particular with the political context and ethnical *passé* of the respective country. Thus, evaluating the free and fairness of an election simply using the benchmark of this threshold is rather problematic. In any case, the question of threshold and its relation when applied to a proportional, majoritarian or mixed system, clearly demonstrates how complex and wide-ranging this issue is when deducing it along the norm free and fair election.

Table 2

Threshold	OSCE participating State with proportional voting system
0%	Finland, Iceland, t.f.Y.R.o.Macedonia, Portugal, Switzerland, Netherlands
2%	Canada, Denmark
3%	Bosnia and Herzegovina, Greece, Montenegro, Spain
4%	Austria, Bulgaria, Italy, Lithuania, Slovenia, Sweden, Norway
5%	Armenia, Belgium, Croatia, Czech Republic, Estonia, Germany, Hungary, Latvia, Monaco, Serbia, Slovakia, Tajikistan, Romania, Poland
6%	Azerbaijan, Moldova,
7%	Georgia, Russia, Kazakhstan
8%	Liechtenstein
10%	Albania, Turkey

### Election management

At a practical administrative and oversight level, the institution of an independent Electoral Commission is widely adopted as an important step in building traditions of independence and impartiality, and the confidence of the electorate and the parties alike.<sup>32</sup> Eastern European

<sup>31</sup> Ibid.

<sup>32</sup> Guy S. Goodwill-Gill. Free and Fair Elections; Interparliamentary Union 2006. p. 121

countries, in particular Hungary, Slovenia, Romania and Poland, all established central commissions for the crucial elections of 1989-1990.<sup>33</sup>

In practice, the election machinery can either be impartial, or in balance; if impartial members who enjoy the confidence of all parties cannot be found then balance must be created by the appointment of party representatives. In this respect, the ideal or most effective model will depend on the relative maturity of the national system. Where election administration previously was in government hands within a one party or authoritarian system with no opposition, voter confidence will only likely be inspired if opposition party representatives are co-opted into election administration. They may not be 'independent', and indeed will usually remain partisan, though ideally in balance with competing interests; in such situations the issue is not so much independence as transparency and non-governmental involvement at national and polling district levels. Later, when other government institutions acquire a reputation for impartiality and integrity, for example, when judges are seen to stand for the rule of law and not the party line, then independence alone may be a credible criterion for electoral commission membership.<sup>34</sup> The OSCE 1990 Copenhagen document does not refer to the issue of partial or impartial election management.

### *Voter Registration*

Giving practical effect to the right of those eligible to vote raises more serious problems. Formally recognizing the right to vote is only part of the issue, for substantial opportunities exist to frustrate the exercise of that right, for example, by obstructing access to the necessary documentation, or otherwise interfering with or discouraging registration.<sup>35</sup>

The 'electoral list' is thus a crucial feature in the organization of free and fair elections. Such a system must be designed to enable all qualified citizens to be included, to prevent electoral abuse and fraud by individuals, special interest groups, political parties and governments; and be 'widely accepted as an authoritative and legitimate means of cataloguing the electoral population and of settling disputes'.<sup>36</sup>

Accuracy is important, especially so in proportional representation systems that employ multi-member constituencies, but how to ensure a credible registration system is no simple matter. Few countries will be able, like Denmark, to update their voting registers continuously and

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<sup>33</sup> Nadais, A., Choice of Electoral Systems. In: Gaber & Bjornlund, *New Democratic Frontier*. p. 190, 197-8

<sup>34</sup> Guy S. Goodwill-Gill. *Free and Fair Elections*; Interparliamentary Union 2006. p. 122

<sup>35</sup> Ibid.

<sup>36</sup> Courtney, John C., 'Introduction,' in Courtney, John C., ed., *Registering Voters: Comparative Perspectives*, The Center for International Affairs. Harvard University, (1991), at 1-2.

automatically, as information is supplied by local authorities.<sup>37</sup> On occasion, ‘self-registration’ may be enough,<sup>38</sup> but positive governmental action will often be essential in situations of transition. In the United Kingdom, annual registers are compiled through forms sent to every household requiring all those living there and eligible to vote to be listed; house visits are also undertaken (and in Canada visits by ‘enumerators’ are the rule). Provisional lists are drawn up and published, subject to objections; these are decided by the electoral registration officer, from who appeal lies to the county court. The final list is then deposited in public libraries and some other public buildings.<sup>39</sup>

Voter registration and the publication of verifiable lists of electors have an important part to play in building and maintaining the confidence of the electorate, and thereby also contributing to ensuring free and fair elections.<sup>40</sup> Given the inherent opportunities for disenfranchising substantial portions of the population through manipulation of the registration process, transparency of process is called for. Political parties have a fundamental role in getting their supporters to register, double-checking provisional lists, and challenging errors. Practice varies between the State responsibility model of registration, through household surveys and visits, and the self-registration model, where the initiative lies with the voter.<sup>41</sup> No rule determines the choice, but circumstances may dictate a pro-active role for the State, for example, in transition situations where both the idea of voting and the possibility of a free choice may be novel experiences. Only if the population at large is aware of the procedures and effectively able to access them, will a resulting election likely be fair.<sup>42</sup>

### *Electoral Campaigns*

A successful election does not depend solely on what happens on ballot day; the totality of the process must be examined, including preliminary issues such as the nature of the electoral system, voter entitlement, voter registration, party organization and civic education. The indices of a free and fair election are especially important with respect to the conduct of the election campaign, at which point a number of fundamental human rights come into play, together with the responsibility of the State, as described in article 2 of the 1966 Covenant on Civil and Political Rights, ‘to respect and to ensure to all individuals within its territory and

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<sup>37</sup> Guy S. Goodwill-Gill. *Free and Fair Elections*; Interparliamentary Union 2006. p. 130

<sup>38</sup> Courtney, John C., ‘Introduction,’ in Courtney, John C., ed., *Registering Voters: Comparative Perspectives*, The Center for International Affairs. Harvard University, (1991), p.28

<sup>39</sup> *Ibid.*, 471

<sup>40</sup> Guy S. Goodwill-Gill. *Free and Fair Elections*; Interparliamentary Union 2006. p. 131

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’<sup>43</sup>

Specifically, national and international observers will need to know whether freedom of movement, assembly, association and expression have been respected throughout the election period; whether all parties have conducted their political activities within the law; whether any political party or special interest group has been subjected to arbitrary and unnecessary restrictions in regard to access to the media or generally in regard to their freedom to communicate their views; whether parties, candidates and supporters have enjoyed equal security; whether voters have been able to cast their ballots freely, without fear or intimidation; whether the secrecy of the ballot has been maintained; and whether the overall conduct of the ballot has been such as to avoid fraud and illegality.<sup>44</sup>

The CSCE/OSCE 1990 Copenhagen Document states in this respect that “*the participating States reaffirm that [1] everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...; [2] everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards; [3] the right of association will be guaranteed. ....*”<sup>45</sup>.

The Document states further, “*to ensure that the will of the people serves as the basis of the authority of government, the participating States will ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution; [and] provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.*”<sup>46</sup>

An Election Observation Handbook, published by the OSCE Office for Democratic Institutions and Human Rights, underlines that it is particularly important that campaigning should be free from violence or intimidation. There should be no disruptions of campaign

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<sup>43</sup> Ibid. P. 143

<sup>44</sup> Ibid.

<sup>45</sup> 1990 Copenhagen Document. 9

<sup>46</sup> Ibid, 7.8



meetings and Citizens should not fear retribution, such as loss of employment, for their campaign activities.<sup>47</sup> Additionally, all persons should be free from coercion by the authorities; special attention in this regard may be focused on such groups as students, soldiers, or local leaders. There should be no harassment of political activists, such as administrative detentions or sudden tax audits.”<sup>48</sup> In case candidate or party rights are violated during a campaign, or in case unreasonable restrictions are imposed on campaigning, the Handbook points out that there must be timely and effective judicial remedies available. If hate speech or speech that advocates violence is introduced into the campaign, such rhetoric should be censured and the perpetrators held accountable.

The Handbook outlines a detailed picture of how electoral campaigns should be conducted. Unfortunately there are no political commitments of OSCE participating States for the Handbook as noted by a Senior OSCE Official. In contrary to the 1990 Copenhagen Document, the Handbook had never been approved by participating States.

On another note, examining the condition of electoral campaigning for free and fair elections also implies a consideration of the party system itself and how its attitudes influence the electoral campaign as such. Thomas Carothers notes in his book “Confronting the Weakest Link – Aiding Political Parties in New Democracies” that a huge debate occurred in recent years about a possible “postparty” democracy, hence that a greatly strengthened civil society could take over from parties, redefining democratic politics as a complex set of disaggregated pluralistic interactions between highly empowered citizens and the state.<sup>49</sup> This viewpoint became especially clear after studying political party systems in new and struggling democracies. It became evident that the most negative consequence of problematic party development common to so many new or struggling democracies is the inadequate representation of citizens’ interests. Carothers points out that “the standard lament” (among others) about parties is that they are corrupt, self-interested organizations dominated by power-hungry elites who only pursue their own interests or those of their rich financial bankers, not those of ordinary citizens.<sup>50</sup> The relationship between the party and its followers becomes especially evident when the voter turnout is highlighted after an election. Although political parties are hardly the only problematic institution, given the crucial function that political parties are expected to play, the consequences of troubled political party development are especially important. This becomes evident during the political campaigning

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<sup>47</sup> OSCE/ODIHR. Election Observation Handbook; Warsaw 2005. P. 46

<sup>48</sup> Ibid.

<sup>49</sup> Thomas Carothers. Confronting the Weakest Link. Aiding Political Parties in New Democracies. Washington, 2006. P.9

<sup>50</sup> Ibid.

for an election, as the election is the most visible moment where the relationship between the party and its adherents is highlighted. In short, as Thomas Carothers points out, although democracy is of course an evolving corpus of political ideas and practices that will take on new forms over time, it is difficult now to envisage a genuine democracy-with real political alternatives open to citizens and broad representation of citizens' interests-without political parties or some organizations very much like them.<sup>51</sup>

Hence, considering the interrelation of political parties and citizens and how the relationship among parties is conducted, is a particular asset when studying the role of the electoral campaign within the norm free and fair elections. Particular attention should also be paid to the party history of the country, socioeconomic and cultural factors.

Finally, the campaign financing should be transparent and there should be clear legislation or rules governing campaign financing. These should apply equally to all candidates and parties. It is a good practice to require both pre- and post-election disclosure of campaign spending, where funds were raised and how they were spent. Where the government may provide funds for campaigning, this should be done on a fair and equitable basis.<sup>52</sup>

### *Candidates and Political Parties*

Another important index of free and fair elections is that of candidates, political parties and political organization. It falls more easily within traditional notions of human rights. Article 25 of the Covenant on Civil and Political Rights, for example, provides that every citizen has the right, without discrimination, to take part in the conduct of public affairs, to be elected, and to have equal access to public service in his or her country. Those rights are not absolute, however, and may be subject to a variety of reasonable limitations.<sup>53</sup> As already pointed out above, a State's choice of electoral system, for example, may directly affect the freedom of individuals to present themselves as candidates for election. Also in respect to threshold; threshold' requirements can also limit the representation possibilities for parties that fail to obtain a certain percentage of the vote and thus fail to have access to the Parliament Chamber. Registration criteria may effectively prevent the formation of political parties, while State monopolies over certain resources, such as funding, meeting places, transport, printing presses and the media may hinder even minimal political organization. Some of the limitations on individual candidatures are mentioned above, and other restrictions are dealt with below in the

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<sup>51</sup> Ibid.

<sup>52</sup> OSCE/ODIHR. Election Observation Handbook; Warsaw 2005. P. 47

<sup>53</sup> Guy S. Goodwill-Gill. Free and Fair Elections; Interparliamentary Union 2006. p.134

context of electoral campaigns.<sup>54</sup> The OSCE standard, for example, emphasizes the necessity for choice<sup>55</sup>, by requiring a clear separation between State and political parties, and in particular that political parties not be merged with the State.<sup>56</sup> However, the OSCE standard does not clarify the degree of election threshold in respect to the norm free and fair elections. It is hence within the domain of the participating States' sovereignty for defining their threshold.

Article 25 of the 1966 United Nations Covenant on Civil and Political Rights underlines the citizen's right to take part in the conduct of public affairs, to vote and to be elected: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

1. To take part in the conduct of public affairs, directly or through freely chosen representatives;
2. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
3. To have access, on general terms of equality, to public service in his country."

In turn, State practice demonstrates that this right is often subject to reasonable limitations, and the criteria for individual candidature commonly follow those necessary for voting: minimum age, residence and absence of disqualification.<sup>57</sup> The rationale for certain conditions such as age or residence is obvious: a sufficient level of maturity and connection to the community. Other limitations in turn may seek to protect the integrity of the system, for example, by excluding those whose independence may be threatened by legislative responsibilities, such as judges and civil servants.<sup>58</sup> In respect to the issue of candidature, the 1990 Copenhagen Document states that candidates seeking office must be permitted to run either as party candidates or individually.<sup>59</sup> In countries using proportionate representation based on party list voting, parties must be allowed to include persons who are not party members on the party lists. In addition, candidates cannot be discriminated against regardless of party affiliation or lack thereof.<sup>60</sup> Guy S. Goodwin-Gill, author of "Free and Fair

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<sup>54</sup> Ibid. p.135

<sup>55</sup> 1990 Copenhagen Declaration. Chapter I, Article 5.1

<sup>56</sup> Ibid. Chapter I, Article 5.4

<sup>57</sup> Guy S. Goodwill-Gill. Free and Fair Elections; Interparliamentary Union 2006. p.134

<sup>58</sup> Ibid. p 137

<sup>59</sup> 1990 Copenhagen Declaration. Chapter I, Article 7.5

<sup>60</sup> OSCE/ODIHR. Existing Commitments for Democratic Elections in OSCE participating States. Warsaw. 2003. p. 63

Elections” published by the Inter-parliamentary Union notes that democracy in practice, which requires choice between alternatives, needs at least two competing political parties, although competition that is too divisive defeats its purpose. In situations of transition, political parties often face difficulties in establishing themselves, or in engaging in meaningful campaigns in face of monopolies of power and resources. Neither public nor external aid can be ruled out as impermissible, provided that generally they contribute to healthy debate within a strengthening democratic process. The author notes further that where political parties become substitutes for grass roots support and effective local organization, then they may also cease to contribute to channeling the will of the people into genuine elections.

Finally, a free and fair election is less likely if the government denies financial resources to its opponents, while using all the resources at its disposal to put the opposition at a disadvantage. Equally, in theory at least, unlimited expenditure by any party can result in a distorted electoral process. The art is, according to Goodwin-Gill, to find a certain balance which best accommodates the objective of allowing each party a reasonable opportunity to put across its message; this may well entail a combination of public funding with election expenditure controls.

### *The Media*

Free and independent media is an essential element of democracy and is indispensable in a genuine and democratic election process. It is interesting to note that on the eve of an election campaign, the media is sometimes pressured or restricted by state authorities. This is particularly the case in authoritarian countries. Kurshed Atovullo outlined at the Seventh Central Asia Media Conference “Pluralism in the Media and the Internet”<sup>61</sup> in respect to the situation of the media ahead of the 2006 Presidential Elections in Tajikistan that the situation of the mass media of the Republic of Tajikistan has seriously deteriorated on the eve of the presidential elections. Several newspapers have stopped coming out, and two television channels have been shut down. For over a year, no licenses have been issued to the electronic mass media, and registration of new newspapers has actually been stopped in the past six months or so. In turn, the OSCE Election Observation Mission for the 2006 Presidential Elections in Tajikistan noted there was a general lack of analytical and critical reports or articles, which could indicate self-censorship and pressure on journalists. Furthermore, there

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<sup>61</sup> Published by the OSCE Representative on Freedom of the Media

was little media coverage of the election campaign and a high media profile of the incumbent, raising doubts as to whether voters had received sufficient information to make an informed choice.<sup>62</sup> Kimmo Kiljunen, a member of the Finnish Delegation to the OSCE Parliamentary Assembly, outlined in his statement delivered as OSCE Special Coordinator, that “the lack of any serious campaign and credible alternatives undermined this election to a degree that it did not provide an adequate test of Tajikistan’s commitments of democratic elections.”<sup>63</sup>

The 1990 Copenhagen Declaration states in this regard that the “*participating State provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;*”.

The media, taken as a whole, have a responsibility to provide sufficient and balanced information to enable voters to make a well-informed choice. If paid political advertising is permitted in the public or private media, then the costs and conditions should be reasonable and should be equally applied to all candidates.<sup>64</sup> State-owned media, or public media, have a special responsibility to provide balanced and neutral information on the election and the contestants. All contesting points of view should be fairly and equitably communicated. It is a good practice for the public media, at least, to provide free airtime or print space to the candidates or parties. While the incumbents may get media coverage concerning their official duties, this should not be misused as a means to give them an unfair advantage, and campaign events should not be confused with issues of state.<sup>65</sup>

In established democracies, the principle of equal access to the media is widely accepted. This access may vary, but the underlying premise is the same according to Goodwin-Gill. Danish radio and television guidelines, for example, assure equal access to all registered parties, and equal time, regardless of the size of the party; paid advertisements on radio and television, however, are not allowed.<sup>66</sup>

Access and fair and balanced coverage are thus the two main issues, with the ‘appropriateness’ of paid advertising finding different responses, both in established and emergent democracies.<sup>67</sup>

Generally, there is also a growing acceptance of the proposition that governments have a positive obligation to promote a diversity of viewpoints on matters of public interest in the

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<sup>62</sup> OSCE Election Observation Mission for the 2006 Presidential Election – Republic of Tajikistan, 6 November 2006.

<sup>63</sup> OSCE Parliamentary Assembly. A Second Decade of OSCE PA Election Observation. Copenhagen 2008

<sup>64</sup> OSCE/ODIHR. Election Observation Handbook; Warsaw 2005. P. 48

<sup>65</sup> Ibid.

<sup>66</sup> ECPRD, Electoral System Legislation, 62.

<sup>67</sup> Sandra Coliver and Patrick Merloe. Guidelines for Election Broadcasting in Transitional Democracies. p.14

media. This is especially true for issues under political debate. Further, where state-owned or state-controlled mass media exist, the government is obliged to ensure that there is no discrimination in programming, including on the grounds of political opinion. These obligations are applicable during election campaigns and help to ensure the conditions necessary for genuine, democratic elections.<sup>68</sup> State practice however demonstrates that the media's right to function freely during the electoral process is often circumscribed by restrictions on their ability to criticize activities or inaction by the government and the political parties, to investigate corruption and to operate independently of political pressures. In a significant number of transitional or struggling new democracies, broadcast and print media face government intervention through direct censorship and threats of censorship. They also face government-sponsored or government-tolerated physical threats and attacks. In these circumstances, censorship may significantly inhibit free and fair election campaign broadcasting.<sup>69</sup>

Finally, censorship includes a range of government-supported actions, from direct censorship to extreme cases such as murder. The term "direct censorship" refers to improper and unlawful prior restraints on publication. It also is used to refer to communications from government officials that explicitly or implicitly threaten direct censorship or some other consequence for publishing items unfavorable to the government.<sup>70</sup> Government action or inaction that places journalists in fear for their personal safety or the safety of their professional equipment constitutes a form of censorship which, though "indirect", is often even more powerful than the measures which are more traditionally viewed as censorship. Often measures of intimidation are coupled with more direct forms of censorship, such as detention of journalists, in order to drive home their meaning.<sup>71</sup>

### Balloting

Although the fairness of any election is unlikely to be determined solely by reference to what happens on Election Day, the actual process of balloting deserves particular attention. Among other issues, balloting raises the question of the location of polling stations, and their accessibility for the population; the presence of competent officials, versed in the procedure;

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<sup>68</sup> Ibid.

<sup>69</sup> Ibid, p. 19

<sup>70</sup> Ibid,

<sup>71</sup> Ibid.

the presence of party representatives; secrecy of the act of voting and the security of the ballot box; the integrity of the counting process and its translation into a genuine political result.<sup>72</sup>

The 1990 Copenhagen Document declares that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are (among others) *free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;*<sup>73</sup> The Document ensures further that *votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;*<sup>74</sup>

Balloting also involves the organization and management of voting, including the opening and closing of polling stations at stated times; the arrangement of booths and the orderly movement of voters; the identification and verification of voters (hence the importance of a credible registration system, discussed above); an established procedure for objection and challenge; the issue of ballot papers to recognized voters; the marking of ballot papers out of sight of officials or other electors; the deposit of marked ballots; and, in the absence of other sufficient guarantees, the identification of voters, for example, with indelible ink, in order to prevent double voting.<sup>75</sup>

The counting process in turn requires measures to ensure that ballot boxes are empty before voting begins, that they are secure when polling stations are closed, or during any period of transit, and that votes are tallied in a process that inspires confidence in the electorate.

Further fundamental rules related to the exercise of electoral rights centre on non-discrimination and access to the poll. Non-discrimination requires that no one shall be denied or prejudiced in the exercise of rights for reasons such as race, color, sex, language, religion, political or other opinion, national or social origin, birth or other status.<sup>76</sup> In turn, access means not only physical access, in the sense from freedom from violence or intimidation, or from obstruction by policy or other forces; but also access in the sense that polling booth should be so sited that voters do not have to travel far.<sup>77</sup>

The observation of the balloting by domestic election observers, for example local monitors that are either party representatives or recognized impartial officials, contributes directly to

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<sup>72</sup> Guy S. Goodwill-Gill. Free and Fair Elections; Interparliamentary Union 2006. p. 152

<sup>73</sup> 1990 Copenhagen Declaration. Chapter I, Article 5.1

<sup>74</sup> Ibid, Article 7.4

<sup>75</sup> Guy S. Goodwill-Gill. Free and Fair Elections; Interparliamentary Union 2006. p. 152.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

the strengthening of confidence among the political parties. Having party representatives in place for the observation of the balloting and the conduct of polling station officials with the local population may also enhance the confidence of the population in the administration of the polling station itself. The Handbook for Domestic Election Observers, published by the OSCE Office for Democratic Institutions and Human Rights in 2003, states that “the observation by domestic observer groups can help to deter violations and promote confidence in the honesty and integrity of the electoral process. This, in turn, serves to encourage popular participation.”<sup>78</sup>

### Counting

Finally, there is the count. Complementary to the principle of secret ballot is the integrity of the count, which looks both to ensure that the expressed wish of the elector is taken into account, and that the result declared corresponds with the totality of the votes cast.<sup>79</sup> Sometimes the ballots will be counted on the spot; sometimes the ballot boxes are transported to central regional counting stations. In general, there is a detailed standard procedure for closing a polling station and counting the ballots. The counting process usually begins with the sealing of the ballot-box slot once voting has ended; it should remain sealed while polling officials complete forms accounting for all ballot papers and other polling materials and verify that the number of ballots distributed to voters matches the number of voters recorded as having voted. This material should be sealed separately. Often, unused ballot papers are invalidated before the opening of the ballot box. The ballot box is then opened and the ballots counted according to the designated procedure.<sup>80</sup> Again, the presence of domestic and international observers during the count and transportation can enhance transparency of the process and monitor any fraud.

### Complaints and Dispute Resolution

Complaints and appeals are important aspects of any election and may arise at any moment of the relation process. The way in which authorities deal with complaints of citizens, political parties and NGOs during an election constitutes an important part of the free and fairness of an election. Hence, a free and fair electoral system does not only depend on voter registration,

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<sup>78</sup> OSCE/ODIHR. Handbook for Domestic Election Observers. Warsaw 2003, P.10

<sup>79</sup> Guy S. Goodwill-Gill. Free and Fair Elections; Interparliamentary Union 2006. p. 157

<sup>80</sup> OSCE/ODIHR. Election Observation Handbook. Fifth Edition. Warsaw 2005; p. 61



free campaigning and secret ballot; it must also be capable of dealing promptly and effectively with the different types of complaint that will inevitably arise.

This might include attempts to suppress voter turn-out, alleged misinterpretation of the electoral laws or procedures, alleged violations of the criminal law, disputes regarding the accuracy of the count, or claims that the cumulative effect of such irregularities is so extensive as to invalidate the elections.<sup>81</sup>

The integrity of the system requires not only that such issues be dealt with by an independent and impartial authority, such as the electoral commission or the courts, but also that decisions be reached in a timely manner, in order that the outcome of elections not be delayed. As with other aspects of the electoral process, the availability of such procedures must be open and known to the electorate and the parties.<sup>82</sup>

In practice, dealing with complaints and the appeals process by the respective authorities goes far beyond the Election Day. The OSCE/ODIHR Handbook for election observers states that the Election Observation Mission endeavors to arrange that observers remain and monitor these processes. Unfortunately the 1990 Copenhagen Declaration neither includes the issue of election complaints nor defines how this should be handled by respective state authorities.

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<sup>81</sup> Guy S. Goodwill-Gill. Free and Fair Elections; Interparliamentary Union 2006. p. 157

<sup>82</sup> Ibid.

## Evaluating elections according to the norm

Although this paper has so far listed the various conditions that characterize a free election, (such as secret balloting, non-discrimination etc.) the question remains as to whether international observers can actually assess the conduct of an election in accordance with the “free and fair” standard. Therefore another analytical approach is required. Evaluating elections according to this norm and making the assessment of the observations public implies two essential components: firstly, as introduced earlier, elements of development cooperation and secondly, aspects of international political cooperation and therefore opportunities for exercising political pressure.

Indeed, measuring elections against a free and fair standard suggests a dichotomy: that elections either pass or fail a test of legitimacy.<sup>83</sup> The focus on the norm free and fair has encouraged international election assessments to make categorical, “bottom line” judgments that fail to take other nuances into account. Such assessments are furthermore very hard to prove empirically.<sup>84</sup> In fact, the wording ‘free and fair’ has become something of a rhetorical touchstone and it has not been established how an empirical assessment can be realized in observation practice. In addition, despite the notorious usage of the phrase free and fair and the great significance which has been attached to it, there has been surprisingly little progress in the development of a practical set of criteria by which to judge whether an election has indeed been free and fair. Efforts to make the standard more precise have been largely unsatisfactory.<sup>85</sup>

However, references to the language of free elections are not a recent occurrence. The 1948 Universal declaration of Human Rights states in its Article 21<sup>86</sup> that

*(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*

*(2) Everyone has the right of equal access to public service in his country.*

*(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and of equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

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<sup>83</sup> Eric C. Bjornlund. *Beyond Free and Fair, Monitoring Elections and Building Democracy*. 2004, p 97

<sup>84</sup> Wolfgang Merkel. *Embedded and Defective Democracies*, p.34; In: *Democratization*, Vol.11

<sup>85</sup> Eric C. Bjornlund. *Beyond Free and Fair, Monitoring Elections and Building Democracy*. 2004, p 97

<sup>86</sup> Universal Declaration on Human Rights. *General Assembly resolution 217 A (III) of 10 December 1948*

Various documents, reports and publications still refer to the term “free and fair”. Indeed, it has become something of a legend. The OSCE Parliamentary Assembly also refers to this terminology. In its report for the General Committee on Democracy, Human Rights and Humanitarian Questions entitled “Transparency in the OSCE” presented at the Assemblies Annual Session in June 2008 in Astana, Kazakhstan, it states that *„Such transparency will contribute to election processes that must become better, more “Free and Fair” as the OSCE has stated in its election observation reports. If an election process really is free and fair there is no need to hide anything from the public eye. “*

However, this begs the question - why do institutions involved in election observation still evoke this terminology in spite of its hazy definition?

When election observation took off in the 1990s, international organizations such as the CSCE/OSCE attempted to better define the free and fair standard, and to articulate the standards various components. The 1990 Copenhagen Document of the CSCE commits participating States to hold free elections at reasonable intervals, guarantee universal and equal suffrage, and to ensure that votes are cast by secret ballot. Also, to ensure that law and public policy permits political campaigning to be conducted in a fair and free atmosphere, in which neither administrative action, violence, nor intimidation bars the parties and the candidates from freely presenting their views, or prevents the voters casting their vote free of fear of retribution;<sup>87</sup> Bearing these lines in mind, the 1990 Copenhagen Document deduces a definition of the notions of both free election and of fair election.

But it is interesting to note that contemporary observation practice generally avoids the “free and fair” formulation because it is more definitive than assessments typically can or should be.<sup>88</sup> Observers rather reflect upon whether the number and extent of irregularities exceed an acceptable level, thereby significantly affecting the outcome of the election.<sup>89</sup> It is important to distinguish between the individual verbal responses to journalistic questions by the Heads of the Institutions and the official preliminary statements of the Mission as a whole. These frequently encompass the findings of more than one institution – for example in the OSCE area these are often the European Parliament, the Parliamentary Assembly of the Council of Europe and the two OSCE institutions; the ODIHR and the OSCE PA.

A good example is the recent election in Serbia, where the statement of the International Election Observation Mission did not mention the notions of ‘free and fair’ in written text,

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<sup>87</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. 1990 Copenhagen

<sup>88</sup> Eric C. Bjornlund. *Beyond Free and Fair, Monitoring Elections and Building Democracy*. 2004, p 118

<sup>89</sup> Mair, Stefan. *International election observation : one form of democratization assistance*. Page 35

even though the election had been held mostly in line with the countries OSCE commitments. The International Election Observation Mission assessment stated that *“The 11 May early parliamentary elections in Serbia were overall in line with OSCE and Council of Europe commitments for democratic elections, although they were overshadowed, in part, by some negative aspects of the campaign. The elections were administered professionally and in an atmosphere of confidence in the process. They provided a genuine opportunity for the citizens of Serbia to choose from a range of political parties and coalitions, which vigorously competed in an open and overall calm campaign environment.”*<sup>90</sup> However, in response to a journalists question during the press conference as to whether the elections could be considered “free and fair,” the OSCE Short term observer Special Coordinator Mr. Battelli responded, “Yes, in my view they were free and fair”.

It is interesting to note that although observers principally avoid the free and fair assessment, analyzing to what extent the outcome of an election is affected by its irregularities, that the media and the international community still searches for this free and fair assessment.

In the case of the extraordinary Parliamentary elections in Kazakhstan, August 2007, an election that will be closely analyzed in Chapter Four, the IEOM main statement concluded that *“while the 2007 parliamentary elections in Kazakhstan reflected welcome progress, a number of international standards were not met, in particular with regard to elements of the new legal framework and the vote count;”*<sup>91</sup> In turn, BBC journalist Natalia Antelava reported from Astana that Kazakhstan has never held an election deemed free and fair by the international community.<sup>92</sup>

Over time, the notion of free and fair has become a myth and yet still the benchmark for any election intending international legitimacy. For struggling democracies with little economic growth and other internal problems, a positive election observation assessment and being labeled with a wide ranging semantic notion such as ‘free and fair’, could considerably influence the fostering of the countries’ inner politics and provoke a more optimistic attitude from the international community.

However, election observers have also adopted other semantic compromises in assessing elections. Often they will call a moderately flawed transition election a “step forward” towards democracy.<sup>93</sup> In the case of the OSCE observation missions, the assessments try to

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<sup>90</sup> OSCE. IEOM to Serbia. Early Parliamentary Elections, 11 May 2008. Statement of Preliminary Findings and Conclusions.

<sup>91</sup> OSCE PA. IEOM to Kazakhstan. Statement of Preliminary Findings and Conclusions.

<sup>92</sup> BBC. <http://news.bbc.co.uk/1/hi/world/asia-pacific/6952452.stm>; 12. Mai 2008,

<sup>93</sup> Eric C. Bjornlund. Beyond Free and Fair, Monitoring Elections and Building Democracy. 2004, p 118

reflect whether an election had been held in line with the participating States commitments. Hence, the missions generally try to balance whether the election (including the whole electoral process) was more or less in line with the countries 1990 Copenhagen commitments. Considering the critical Presidential Elections in Georgia January 2008, the International Election Observation Mission (IEOM) stated in its Preliminary Findings and Conclusions *“while the 5 January 2008 extraordinary presidential election in Georgia was in essence consistent with most OSCE and Council of Europe commitments and standards for democratic elections, significant challenges were revealed which need to be addressed urgently. This election was the first genuinely competitive presidential election, which enabled the Georgian people to express their political choice.”*<sup>94</sup>

The question of how the observation of an election can be assessed also reflects upon the role of elections within democracy. Accordingly, the belief that an election is part of the countries' democratization process and not an isolated event implies that election observers must consider how the election contributes to that process.<sup>95</sup> Thus, considering whether the election will stimulate further democratization, encourage political contestation, and involve the citizens of that country in the political process, according to the argument of Elklit and Svensson election observers, in making their evaluation, should make political judgments such as whether the election will further stimulate the democratization process or not. Therefore, as formulated earlier, a judgment of how the common values agreed upon have been implemented during an election, can also be used as an important tool for exercising political pressure within the international community.

In any case, the various arguments as to whether the assessments of election observers should be a political judgment on the countries democratization process, or rather a purely analytical and de-politicized assessment of the countries commitments to free and fair elections, reflects that such an undertaking is a sensitive and a unique situation where international institutions judge internal political events. Events which by definition will always rank prominently on the national political agenda.

Finally, the semantic implication when assessing an election along the “free and fair” dichotomy is also interlinked to the fact that free and fair election have proven to be extremely difficult to assess empirically. In particular, it is not possible to base the Statement of Preliminary Findings and Conclusions on an empirical fundament when it has been delivered the day after the election. This involves the question of timing - when should the

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<sup>94</sup> OSCE PA. International Election Observation Mission to Georgia - Extraordinary Presidential Elections, January 5th, 2008. Statement of Preliminary Findings and Conclusions.

<sup>95</sup> Elklit and Svensson. What makes elections free and fair? Journal of Democracy 8(3) 1997, P. 39

assessment actually be reported to the public? Typically, observer groups will make an initial public statement soon after the completion of the balloting.<sup>96</sup> The more experienced observation institutions call this a “preliminary” or “interim” statement, as they plan to issue a final statement or report some time later. It is interesting to note that the question of the assessment statement’s timing poses two problems. On the one hand, the delivery of the assessment immediately after the election, even before the results are known, will have the advantage that the assessment will be in the media spotlight. On the other hand, such early assessments may be based on limited and incomplete information and could subsequently be proven inaccurate if problems occurred during the counting process.<sup>97</sup> In particular, if these assessments are only based on telephone discourse, rather than extensive personal debriefings with all observers, (observers are usually deployed in different parts of the country and the spokespersons or leaders of observer groups are in the capital) then a time frame must be considered for all observers to commune for a debriefing that will constitute the basis of a more comprehensive assessment.

However, statements that are based on a thorough debriefing may lose impact through late delivery, as news cycles and journalists tend to draw quick conclusions based on early impressions.<sup>98</sup> The media spotlight always shines the brightest just after Election Day.

A further problem contributes to the timing the assessment’s statements issue: The correlation of the findings from both long-term and short-term observers. As described earlier, the free and fairness of an election comprises considerably more than the Election Day and the balloting itself. Thus whilst an election may be effectively organized and administered, the pre-election campaign may not have been carried out with such legitimacy. Bjornlund argues for instance, that problems arise when a separate group of observers - often larger, high profile groups – arrive in the country shortly before the Election Day. Because these observers, according to Bjornlund, have not been present in the country during the campaign and pre-election period, have considerably less experience for problems which may have occurred during that time. However, these factors will also depend on the country which is being observed. Comparing for example elections that were held in Serbia and Turkmenistan; The political situation in Serbia and its geographical position meant that the international community followed the election more closely than other elections of this scale. Hence, diplomatic representations, Parliamentary Assemblies, International NGO’s, the media, etc... had already gathered a great deal of information concerning the conduct of the electoral

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<sup>96</sup> Eric C. Bjornlund. *Beyond Free and Fair, Monitoring Elections and Building Democracy*. 2004, p 144

<sup>97</sup> *Ibid.* P.145

<sup>98</sup> *Ibid.*

process, including issues such as political campaigning. However, the elections were held in Turkmenistan, a country whose political situation had drawn considerably less international attention (in particular with respect to issues concerning Kosovo). In this regard, the presence of Long-term observers in Turkmenistan contributed significantly to such an in-depth assessment by the observation mission.

Spencer Oliver, Secretary General of the OSCE Parliamentary Assembly, in response to the question raised by a BBC journalist (with respect to the non observation of the election by the OSCE/ODIHR), as to whether the OSCE Parliamentary Assembly is able to “fill the gap” of observing the Russian Duma election in December 2007, said that all Parliamentarians<sup>99</sup> deployed to observe the election were provided with Russian news coverage, briefed by their Embassies and of course were able to access information provided by the large media contingent observing every aspect of the election.

It is thus arguable that in practice the deployment of Long term observers depends more on the country under observation. In the case of the Russian election, the media coverage of the entire pre-election period was extensive. Every single aspect of the political campaign and opposition criticism had been reported in detail by the media. Thus, it might be interesting to query whether the observation of Long-term observers would have brought new or different findings than the findings of journalists. This prompts further questions regarding who Long term observers are, the nature of long term observation, and what this entails.

## **The Observers**

Before introducing how the norm of free and fair elections had been established through participating States’ commitments within the Organization for Security and Cooperation in Europe- and how it is deduced in the organizations’ institutional architecture, I would like to briefly outline the notions of short term & long term observation. Furthermore I will examine the respective institutions that deploy election observers within the OSCE area. This is of particular importance since the OSCE frequently co-operates with these institutions during election observation missions.

The OSCE, in particular the OSCE/ODIHR, has set the standard for comprehensive election observation methodology. The methods applied by the ODIHR are accepted as the most comprehensive approach to Long term and Short term observation. This OSCE benchmark,

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<sup>99</sup> The second chapter will closely examine the methodology of the OSCE Parliamentary Assembly when deploying Parliamentarians as election observer.

coupled with the political role of OSCE Parliamentarians, has been adopted as election observation methodology by other international institutions, in particular by the European Union and also in part by the United Nations.

As will be outlined in detail later, the Commonwealth of Independent States has also increased its cooperation with the OSCE and is considering the deployment of election observation missions along a similar methodology.

Taking the increasing efforts of other institutions into account, OSCE election observation endeavors are often undertaken in cooperation with institutions of the Council of Europe and the European Union. The cooperation with these institutions, representing common values related to free and fair elections, has therefore lead to a cooperation within a framework entitled International Election Observation Mission. Usually encompassing the two OSCE institutions, the Parliamentary Assembly of the Council of Europe, the European Parliament and the NATO Parliamentary Assembly.

#### *Long Term Observers (LTO's)*<sup>100</sup>

The deployment of Long Term Observers several weeks before the Election Day reflects the will to properly observe the pre-electoral process. LTOs presence during the conduction of political campaigns and observing media and political group activity, implies that a great deal of information can be gathered. Their impressions, coupled with those of Short term observers, monitoring the conduct of the Election Day itself (including balloting, vote counting and transportation) should facilitate a balanced conclusion as to the free and fairness of the whole election.

Indeed, Long term Observation is deduced from the idea that information about the electoral process can only be gathered through a ground-level presence. Indeed, this presumption does not consider that information about the pre-electoral process can also be gathered through other channels, for example through the media, independent domestic election observer groups or domestic NGO's.

However, LTO Observation is carried out based on the different aspects of the norm free and fair elections outlined earlier in this Chapter. The OSCE/ODIHR Handbook for Long term Observers highlights the role of LTOs in observing the Election Administration, Complaints and Appeals, Voter Lists, Registration of Candidates, Election Campaign, Media, Gender and

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<sup>100</sup> A detailed outline of OSCE Long Term Observers will done in Chapter IV, when focusing the Office for Democratic Institutions and Human Rights. The description at this moment aims rather a general clarification of their role and purpose in the endeavour as such.



National Minorities. It is important to note that during their presence on the ground, they establish contact with the local population. Only through such contact can relevant information about the electoral process be obtained. Hence, contact with domestic election observation groups become important, as these independent domestic observer organizations can provide a wealth of information.<sup>101</sup>

Finally, the OSCE/ODIHR Handbook for Election Observation states that “*the substantive role of the LTO is to observe and assess the effectiveness and impartiality of the election administration, the implementation of the election law and regulations, the nature of the campaign, and the political environment. For this purpose, LTOs establish and maintain contacts with regional and local election administrations and government authorities, political parties and candidates, leaders of minority groups, and civil society organizations relevant to the elections. This includes human-rights groups, domestic election observer groups, women’s organizations, other NGOs, and media representatives. In co-ordination with the EOM media analyst, LTOs may be asked to follow coverage of an election in the regional media.*”<sup>102</sup>

#### Short Term Observers (STOs)

The voting and the counting are central acts of any electoral process. An election constitutes a unique moment of accountability for the government. There are important and often challenging administrative tasks and the manipulation of the processes of balloting and counting that can destroy the integrity of an election.

In theory, the number of STOs should depend upon geographic, demographic and political factors. Such factors include the size of the country, the degree of confidence the international community has in domestic sources of information (nonpartisan national monitors, media and parties/candidates), the extent of cooperation between international observers and domestic monitors, the extent of coordination among different international observation efforts, and the type of election problems feared.<sup>103</sup> In reality, the number of international observers is rather a reflection of the visibility and extent of overseas interest in a given election, not to mention the availability of funding (which is itself a function of visibility and interest).<sup>104</sup>

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<sup>101</sup> OSCE/ODIHR. Handbook for Long term Election Observation. Warsaw 2007. p.7

<sup>102</sup> OSCE/ODIHR: Election Observation Handbook, Fifth Edition, Warsaw 2005. P 30

<sup>103</sup> Eric C. Bjornlund. Beyond Free and Fair, Monitoring Elections and Building Democracy. 2004, p 143

<sup>104</sup> Ibid.

In the case of the OSCE, on the one hand there are the STOs seconded by participating States at the request of the ODIHR. The participating State (Ministry of Foreign Affairs) incurs all costs of the STOs. On the other hand there are STOs of the OSCE Parliamentary Assembly, hence Parliamentarians deployed as election observers.<sup>105</sup> STOs usually stay in-country for approximately one week. STOs are deployed in teams of two and observe voting and counting on Election Day. They are deployed according to a plan that provides a broad and balanced presence throughout the country on Election Day.<sup>106</sup> STOs begin work very early on Election Day by observing the opening of polling stations. In the course of the day, STOs usually visit some 10 polling stations. They then select one polling station at which to observe closing procedures and the vote count. In some cases, STOs may be required to remain at a single polling station, or they may be assigned to observe tabulation at a mid-level election commission and/or to perform other duties, such as observing special voting procedures (military or prison voting or following a mobile ballot box).<sup>107</sup> Attendance at the pre-election briefing is mandatory for all STOs; individuals who cannot arrive in-country in time for the briefing will not be accepted as members of the respective EOM. Even experienced observers need to be briefed on issues and procedures specific to a particular election.<sup>108</sup>

Finally, it is also the responsibility of Short term observers to be present during the count and to observe it carefully. The count is an important stage in the election process, and it should be closely followed and thoroughly observed. It normally takes place at the polling-station level and STOs should select one of their assigned polling stations at which to observe the closing procedures and then remain there for the vote count. In some instances, STOs may be asked to attend the count at a particular polling station. STOs are provided with special forms to complete that contain a number of specific questions about polling-station closing procedures and counting procedures.<sup>109</sup>

### *The Code of Conduct for Election Observers*

One particular aspect in respect to the work of observers is the Code of Conduct. Although international election observation are widely accepted around the world, much therefore depends on ensuring the integrity of international election observation, and all who are part of

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<sup>105</sup> The issue of Parliamentarians as election observers will be outlined in detail in Chapter IV

<sup>106</sup> OSCE/ODIHR: Election Observation Handbook, Fifth Edition, Warsaw 2005. P 30

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid. p.61

international election observation missions. This includes long-term and short-term observers, members of assessment delegations, specialized observation teams and leaders of the mission, must subscribe to and follow a Code of Conduct commemorated on October 27<sup>th</sup> 2005 in New York at the United Nations.

First of all, election observers must respect the sovereignty of the host country, as well as the human rights and fundamental freedoms of its people.<sup>110</sup> Observers must respect the laws of the host country and the authority of the bodies charged with administering the electoral process. Further, election observers must follow any lawful instruction from the country's governmental, security and electoral authorities and maintain a respectful attitude toward electoral officials and other national authorities. Observers must note whether laws, regulations or the actions of state and/or electoral officials, unduly burden or obstruct the exercise of election related rights guaranteed by law, constitution or applicable international instruments.

But observers must also respect and protect the integrity of the international election observation mission. This includes following the Code of Conduct, any written instructions (such as a terms of reference, directives and guidelines) and any verbal instructions from the observation mission's leadership. They must; attend all of the observation mission's required briefings, trainings and debriefings; become familiar with the election law, regulations and other relevant laws as directed by the observation mission; and carefully adhere to the methodologies employed by the observation mission. Observers must also report to the leadership of the observation mission any conflicts of interest they may have and any improper behavior they see conducted by other observers that are part of the mission.<sup>111</sup>

One of the core principles of the code of conduct is the impartiality of observers. They must maintain strict political impartiality at all times, including leisure time in the host country. They must not express or exhibit any bias or preference in relation to national authorities, political parties, candidates, referenda issues or in relation to any contentious issues in the election process. Observers also must not conduct any activity that could be reasonably perceived as favoring or providing partisan gain for any political competitor in the host country, such as wearing or displaying any partisan symbols, colors, banners or accepting anything of value from political competitors.<sup>112</sup>

Furthermore, election observers must not obstruct any element of the election process, including pre-election processes, voting, counting and tabulation of results and processes

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<sup>110</sup> UN. October 27, 2005. Code of Conduct for International Election Observers. P.1

<sup>111</sup> Ibid.

<sup>112</sup> Ibid. p. 2

transpiring after Election Day. Observers may bring irregularities, fraud or significant problems to the attention of election officials on the spot, unless this is prohibited by law, and must do so in a non-obstructive manner. Additionally, observers may ask questions of election officials, political party representatives and other observers inside polling stations and may answer questions about their own activities, as long as observers do not obstruct the election process. However, in answering questions observers should not seek to direct the election process. Observers may ask and answer questions of voters but may not ask them to tell for whom or what party or referendum position they voted.<sup>113</sup>

Of particular importance, especially for the evaluation of the whole election, is that election observers must ensure that all of their observations are accurate. Observations must be comprehensive, noting positive as well as negative factors, distinguishing between significant and insignificant factors and identifying patterns that could have an important impact on the integrity of the election process. Observers' judgments must be based on the highest standards for accuracy of information and impartiality of analysis, distinguishing subjective factors from objective evidence. Indeed, observers must base all conclusions on factual and verifiable evidence and not draw conclusions prematurely. Therefore election observers also must keep a well documented record of where they observed the observations made and other relevant information as required by the election observation mission and must turn in such documentation to the mission.<sup>114</sup>

Another important aspect of the Code of Conduct for Election Observers is that observers must refrain from making any personal comments about their observations or conclusions to the news media or members of the public before the election observation mission makes a statement, unless specifically instructed otherwise by the observation mission's leadership. Observers may explain the nature of the observation mission, its activities and other matters deemed appropriate by the observation mission and should refer the media or other interested persons to the those individuals designated by the observation mission.

Finally, election observers must maintain proper personal behavior and respect others, including exhibiting sensitivity for host-country cultures and customs, exercise sound judgment in personal interactions and observe the highest level of professional conduct at all times, including leisure time.<sup>115</sup>

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

### Relevant international institutions deploying election observer within the OSCE area

Before introducing how the norm free and fair election had been established within the OSCE and how the observation of this norm is deduced in the organization's institutional architecture, I would like to outline the relevant international institutions deploying election observers within the OSCE area. This is of particular importance, as the OSCE in most frequent cases cooperates with other institutions, in particular the Parliamentary Assembly of the Council of Europe and the European Parliament. Finally, this section outlines the work of the Inter-parliamentary Assembly of the Commonwealth of Independent States (IPA CIS), which has increased its activities in this field over the years. Usually, the Parliamentary Assembly of the Council of Europe, the European Parliament and the two OSCE institutions, the Office for Democratic Institutions and Human Rights and the Parliamentary Assembly, deliver a joint preliminary assessment in the framework of the International Election Observation Mission (IEOM). Although the IPA CIS has not until now integrated the IEOM framework, cooperation between these institutions is currently increasing.

#### *The Parliamentary Assembly of the Council of Europe (PACE)*

Being the oldest Parliamentary Assembly in Europe, the PACE has a long history of election observation and has been on the forefront of many developments in this field. The defining moment which laid down the basis for the structural observation of elections by PACE was the decision of the Parliamentary Assembly in June 1989 to introduce Special Guest Status for national legislative Assemblies in European non-member States in order to forge closer co-operation with those countries on their path to democracy.<sup>116</sup> Special Guest Status could be granted to “...national legislative assemblies of European non-members states which apply and implement the Helsinki Final Act of 1 August 1975 and the instruments adopted at the CSCE (later OSCE) conferences, together with the two United Nations International Covenants of 16 December 1966 on Civil and Political Rights and on Economic, Social and Cultural rights...” These criteria established the principle that national legislative Assemblies are chosen by regular, free and fair elections, a central precondition for any parliament seeking Special Guest Status in the Parliamentary Assembly.<sup>117</sup>

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<sup>116</sup> Bruno Haller. Election Observation by the Parliamentary Assembly of the Council of Europe . 2006, p.2

<sup>117</sup> Ibid.

The first PACE election observation mission was in Latin America, Chile, in 1989. The experience gained from this observation, as well as the positive reception given to it, not only by the Chilean political leadership and population, but also by the media, contributed to the agreement by the Assembly to introduce election monitoring as a mechanism for co-operation and assessment of compliance with the criteria for democratic elections in states seeking Special Guest Status in the Parliamentary Assembly or membership of the Council of Europe.<sup>118</sup>

Subsequently, the PACE observed Parliamentary elections in Hungary (25 March and 8 April 1990), the Parliamentary Elections of the German Democratic Republic of 18 March 1990 and elections in Romania, Bulgaria, and the Czech and Slovak Federal Republic in the course of the 1990s. From that moment on, legislative elections in states seeking or enjoying Special Guest Status in the Assembly and States applying for Council of Europe membership were systematically observed by the Assembly. In the first few years the decision to observe was formally taken on an ad hoc basis by the Bureau of the Assembly. The principle of systematic observation was formalised in June 1996 when the Bureau of the Assembly adopted a formal set of principles and criteria for the observation of elections by the PACE. Moreover, in this decision the Bureau of the Assembly also agreed to consider, on a case by case basis, the possibility of observing presidential elections in the states mentioned above, as well as parliamentary elections in existing member states.<sup>119</sup>

It is important to note that a unique feature of the commitments and standards against which PACE assesses elections is that these are not only political, but legally binding for both applicant and member states of the Council of Europe. For member States this principle is enshrined in Article 3 of Protocol 1 of the European Convention on Human Rights, which explicitly provides for the right to periodical elections by free and secret suffrage<sup>120</sup>.

The PACE Election Observation Missions are foremost political in nature. Firstly, this is the result of the specific objective of the election observation missions, namely to ascertain whether a country is making progress towards accession or honoring its commitments and obligations as a member state of the Council of Europe. Secondly, this is the result of the specific composition of the election observation missions deployed by the Assembly:

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<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Article 3 of Protocol 1, Right to free elections: "The High Contracting Parties undertake to hold free elections at reasonable intervals, by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of legislature."

Parliamentary observers who have a first hand experience of democratic systems and who are therefore well placed to give a knowledgeable political assessment of the elections.<sup>121</sup>

A second aspect of the nature of PACE Election Observation Missions is that in general they are part of an ongoing long-term process carried out in the framework of the accession and monitoring procedures of the Assembly. A four-phased approach is used: a preparatory phase, normally carried out by the Monitoring Committee, which focuses on the legal and contextual aspects of the elections; a pre-electoral phase, often carried out by a specific pre-electoral mission, which assesses the political climate and preparations in the run-up to the elections; the observation of the elections themselves; and lastly a post-electoral phase which monitors the response to recommendations made by the Assembly on the basis of the observation of the elections.<sup>122</sup>

Finally, the PACE officially endorsed on 27 October 2005 the “Declaration of Principles for International Election Observation” and the “Code of good Conduct for International Election Observers” which were initiated by the United Nations Electoral Assistance Division (UNEAD), the National Democratic Institute (NDI) and The Carter Center (TCC). This endorsement has led to an intensification of contacts between the PACE and these organizations, as well as other members of the United Nations family and the Organization of American States (OAS). In recent years the Assembly has widened and deepened its co-operation with parliamentary bodies in the African and Asian regions, which have expressed their strong interest in the experience of PACE in the field of parliamentary democracy and co-operation.<sup>123</sup>

### *The European Union (EU)*

The promotion of democracy is at the centre of the EU’s Common Foreign and Security Policy (CFSP), and relations between the EU and its partners are established in recognition that the consolidation of democratic institutions and human rights is of joint value and common interest. In line with this policy, the EU provides extensive support to initiatives and programs that seek to promote, develop and consolidate human rights, democratic institutions and the rule of law in partner countries. Since the early 1990s, a human rights clause has been included in all EU agreements with partner countries. The Cotonou Agreement (2000) signed

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<sup>121</sup> Bruno Haller. Election Observation by the Parliamentary Assembly of the Council of Europe . 2006, p.5

<sup>122</sup> Ibid. p.5

<sup>123</sup> Ibid. p.11

by the EU and partner countries in Africa, the Caribbean and Pacific (ACP) regions places strong emphasis on democracy, good governance and respect for human rights.<sup>124</sup> However, it is important to note that the EU subscribes to the viewpoint that a genuine and democratic election process - hence free and fair elections - can contribute to ensuring sustainable peace and stability. Elections provide groups with an opportunity to express their political voice in competition with their opponents without resorting to violence, and enable the peaceful transfer of political power. In this regard, election observation by the EU is understood as EU crisis management and peace-building initiatives in partner countries.<sup>125</sup>

Since the 1990s, the EU has increased its activities in election observation endeavors. Over the course of the years the EU has developed a similar methodology to the OSCE's. On another note, each EU Member State is also a participating State of the Organization for Security and Cooperation in Europe (OSCE). Election observation within OSCE participating States is undertaken by the ODIHR and by the OSCE Parliamentary Assembly, as will be described in more detail later. As the EU and the OSCE/ODIHR use a comparable methodology and as the OSCE/ODIHR has developed into the most active election observation institution engaged in this area, the EU does not deploy missions to observe elections in the OSCE region, as stated in the Handbook for European Union Election Observation.<sup>126</sup> Nevertheless, the European Parliament, whose members act as chief observers while Member States provide the long-term and short-term observers for an EU election observation mission, also sometimes decide to deploy an independent observation mission when there is no EU mission. This happens in most cases in the OSCE area and in cooperation with other international organizations.<sup>127</sup> The European Parliament, as the elected representative body of EU citizens, plays a prominent role in election observation, and deploys its own delegations to observe elections. It is of relevance that the European Parliament is the only EU institution deploying election observers in the OSCE area.

The European Parliament's focal point for elections is the Election Coordination Group (ECG), which is co-chaired by the Chairpersons of the Parliament's Foreign Affairs Committee and Development Committee and which was established by decision of the Conference of Presidents. The Election Coordination Group examines all general questions related to planning, organisation, evaluation and follow-up of Parliament's election observation missions. Furthermore, the Group is charged with establishing priorities for

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<sup>124</sup> EU Commission. Handbook for European Union Election Observation; Second Edition. P. 5

<sup>125</sup> Ibid.

<sup>126</sup> EU Commission.

<sup>127</sup> [http://ec.europa.eu/external\\_relations/human\\_rights/eu\\_election\\_observ/docs/handbook\\_en.pdf](http://ec.europa.eu/external_relations/human_rights/eu_election_observ/docs/handbook_en.pdf); 28.5.08

<sup>127</sup> European Parliament. [http://www.europarl.europa.eu/intcoop/election\\_observation/default\\_en.htm](http://www.europarl.europa.eu/intcoop/election_observation/default_en.htm); 28.5.08



election observation delegations of the European Parliament and presenting six month calendars to the Conference of Presidents, as well as specific requests for authorization to send delegations;<sup>128</sup> The Election Coordination Group has a six month program of election observation missions that consider the indicative number of five countries for every six month calendar and therefore ten countries every year, with the possibility of an additional two countries per year in exceptional cases.<sup>129</sup>

In order to avoid sending small delegations that might not be representative of the European Parliament's composition, a number of three Members per delegation is considered the minimum required for an election observation mission. Based upon a screening done by the responsible services fifteen days before the Election Day, the chairpersons of the Election Coordination Group will inform the Conference of Presidents if the participation threshold is not met and therefore the delegation could be cancelled.<sup>130</sup>

Table 3 summarizes EP election observation mission within the OSCE between 2004 and today.

Table 3

<b>Country</b>	<b>Nature of Election</b>	<b>Date</b>
Armenia	Presidential	19.02.2008
Georgia	Presidential	05.01.2008
Kosovo	Legislative	17.11.2007
Ukraine	Parliamentary	30.09.2007
Armenia	Parliamentary	12.05.2007
Montenegro	Referendum	21.05.2006
Ukraine	Parliamentary	26.03.2006
Kazakhstan	Presidential	04.12.2005
Azerbaijan	Parliamentary	06.11.2005
Kyrgyzstan	Presidential	10.07.2005
Albania	Parliamentary	03.07.2005
Moldova	Parliamentary	06.03.2005
Kyrgyzstan	Parliamentary	27.02.2005
Ukraine	Presidential, rerun 2nd round	26.12.2004
Ukraine	Presidential, 2nd round	21.11.2004
Ukraine	Presidential, 1 <sup>st</sup> round	31.10.2004
Kosovo	Parliamentary	23.10.2004

In general, EP EOM delegations arrive in the country where elections are taking place two to three days before Election Day. They should arrive sufficiently in advance and not to leave

<sup>128</sup> Guidelines for EP Election Observation Delegations;  
[http://www.europarl.europa.eu/intcoop/election\\_observation/guidelines\\_en.pdf](http://www.europarl.europa.eu/intcoop/election_observation/guidelines_en.pdf); 28.5.08

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

during the Election Day. In accordance to the principles of the Code of Conduct for Election Observers, they follow the agreed program, including briefings and organized meetings with election officials, political parties, NGOs, etc and refrain from publicity commenting on the organization of the elections, the candidates or political issues before the press conference at which the preliminary statement is issued.<sup>131</sup>

It is interesting to note that although the EP delegation represents an independent institution, the EP delegation should always work in the framework of Long-term Missions (EU-EOMs or OSCE/ODIHR). The guidelines state clearly that no official EP Election Observation Mission should be organized in countries where no long term observation is present. For a mission in an OSCE member country, EP delegations should integrate as fully as possible into the framework of an IEOM and should proceed to a joint statement at the end of the process.

Finally, the guidelines also stress that in the exceptional case of an EP delegation being sent to observe an election where there is no organization running Long Term Observation (i.e. an EU-EOM or OSCE/ODHIR mission), the delegation should avoid delivering a comprehensive assessment of the election. The credibility of such assessments requires a more comprehensive and long-term observation effort than the resources of an EP delegation, present for only two or three days in the country, permit.<sup>132</sup>

#### *The Inter-parliamentary Assembly of the Commonwealth of Independent States (IPA CIS)*

The Commonwealth of Independent States (CIS) was founded in 1991 after the dissolution of the Soviet Union. The CIS performs its activities on the basis of the Charter, adopted by the Council of Heads of States on 22 January 1993, which stipulates the goals and principles of the Commonwealth, and rights and obligations of the countries.<sup>133</sup> The Charter states that the Commonwealth was formed on the basis of sovereign equality of all its members and that the Member States were independent and equal subjects under international law. The Charter also states that the CIS serves the development and strengthening of friend-ship, inter-ethnic accord, trust, mutual understanding, and cooperation between States. Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan are member States.<sup>134</sup>

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<sup>131</sup> Ibid.

<sup>132</sup> Ibid. p.3

<sup>133</sup> Centre for Non-proliferation Studies. Inventory of International Non-proliferation Organizations and Regimes.

<sup>134</sup> Ibid.

In turn, the Inter-parliamentary Assembly of Member Nations of the Commonwealth of Independent States was founded on 27 March 1992 in the city of Alma-Ata/Almaty, Kazakhstan. The Agreement of the Inter-parliamentary Assembly, signed by the heads of parliaments of the Republic of Armenia, Republic of Belarus, Republic of Kazakhstan, Republic of Tajikistan, Republic of Uzbekistan, Kyrgyz Republic and Russian Federation, was established as an advisory body for preparation of draft legislative documents of mutual interest.<sup>135</sup>

In 1993-1995 the Inter-parliamentary Assembly also included the parliaments of the Azerbaijan Republic, Georgia, and the Republic of Moldova. In 1999 Ukraine joined the Alma-Ata Agreement. In May 1995 heads of the CIS states signed the 'Convention on the Inter-parliamentary Assembly of Member Nations of the Commonwealth of Independent States' that came into force on 16 January 1996. According to this Convention the Inter-parliamentary Assembly gained the official status as an inter-state body and occupied the leading role in the system of agencies of the Commonwealth of Independent States.<sup>136</sup>

For the purpose of democratization of social life in the CIS States, the Inter-parliamentary Assembly sends election observers to the parliamentary elections and the elections of heads of states. The IPA CIS had its first election observation on 6 March 1994, when the group of observers from the IPA CIS followed the election process to the Parliament of Kazakhstan. Since then, the CIS Inter-parliamentary Assembly members under the invitation of entitled power bodies, participate regularly in monitoring the electoral processes in member nations of the Commonwealth of Independent States. However, the CIS Inter-parliamentary Assembly also deploys election observation outside of the Commonwealth countries. Thus on 24 September 2000 the CIS Inter-parliamentary Assembly conducted the monitoring of elections of the President and the Parliament of Yugoslavia, and on 21 January 2007 — of parliamentary elections in the Republic of Serbia. The Commonwealth observers also followed the process of local elections in Great Britain.

It is interesting to note that the experience of election observation in Commonwealth countries and beyond their borders resulted in the adoption of the Convention on Standards of Democratic Elections, Electoral Rights and Freedoms in Member Nations of the Commonwealth of Independent States. This Convention, submitted to the Council of Heads of States by the CIS Inter-parliamentary Assembly on 7 October 2002 in Chisinau, was signed by the presidents of seven countries of the Commonwealth.

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<sup>135</sup> IPA CIS. <http://www.iacis.ru/html/index-eng.php?id=50>; 30.5.08

<sup>136</sup> Ibid.

Interestingly, this convention is unique globally. It clearly constitutes a framework for free and fair elections and is not only politically, but also legally binding. The Convention defines standards for democratic elections (also in reference to relevant OSCE documents), outlines the means of equal suffrage, direct suffrage, secret balloting and periodically and compulsory elections. Furthermore, the convention defines free, fair and authentic elections, the conducting of the election by electoral bodies (election commissions) and the financing of elections and of election campaign of candidates and political parties. Finally, the convention also clearly refers to the role of domestic election observation. In respect to the issue of international election observation, the convention states that “International observers shall receive the permission to enter the territory of the state in accordance with the procedure stipulated by the law, and they are accredited by a relevant electoral body upon presentation of a relevant invitation. Invitations may be sent by the bodies authorized by the law upon an official publication of the decision on setting of election. Proposals to send invitations may be submitted by charter bodies of the Member States of the Commonwealth of Independent States.”<sup>137</sup> Hence, the convention constitutes a solid reference for election in CIS participating States and demonstrates clear standards for the holding of elections within the CIS area.

The efforts of the IPA CIS within elections and parliamentarianism also resulted in the creation of the International Institute on Monitoring Democracy Development, Parliamentarianism and Suffrage Protection for the Citizens. It constitutes a supplementary consultative body of the IPA CIS created in accordance with the Convention on the Inter-parliamentary Assembly of Member Nations of the Commonwealth of Independent States and with the objective to assist the exchange of information, generalization of the advanced experience in democracy development, parliamentarianism and suffrage protection for citizens. This Institute’s Aspects of activities include: monitoring of research and elaborations in issues of democracy development, parliamentarianism and suffrage protection for citizens; coordination of researches on problems of development of the CIS election legislation; monitoring of legislation of the CIS member states in the sphere of democracy development, parliamentarianism and suffrage protection for citizens; analysis of international experience of parliamentarianism development, work of international parliamentary and non-governmental organizations in the sphere of democracy development; preparation of recommendations on implementation of settled norms of international law in model and national legislation of the CIS member states; monitoring of mass media information on election processes in the CIS member states; collection, maintenance and generalization of information related to the

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<sup>137</sup> Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States. p. 12

objectives and aspects of activity of the Institute.<sup>138</sup>

In respect to the issue of election observation, the institute shall provide methodical support for the work of the IPA CIS international observers and the CIS observer's missions in monitoring preparation and organization of elections.<sup>139</sup>

Finally, although the IPA CIS election observation delegations do not participate in the framework of the IEOM, between PACE, EP, and the OSCE PA/ODIHR and sometimes the Parliamentary Assembly of the North Atlantic Treaty Organization, contact between the OSCE and the IPA CIS is steadily growing. For example, the first meeting of the OSCE and IPA CIS delegations took place on April 2006 in Kiev. Previously, in February 2006 at the Winter session of the OSCE Parliamentary Assembly the acting OSCE Chairman, Minister of Foreign Affairs of the Kingdom of Belgium, Karel de Gucht, announced the intent of the OSCE to create a team of several competent parliamentarians to monitor the election processes in different countries, to analyze methods of work of the ODIHR and other organizations involved in monitoring as well as to prepare their own evaluation reports on activity of these organizations and proposals for their efficiency enhancement.<sup>140</sup>

At the beginning of the meeting the Head of the IPA CIS delegation, Svetlana Orlova, said that her colleagues were open to dialogue and stressed that the CIS Inter-parliamentary Assembly had long and fruitful cooperation with the OSCE. According to her these two organizations "always attached special importance to the protection of human rights and particularly of suffrage". This commonness of interests was fixed in the Joint Statement of the IPA CIS Council and the OSCE Parliamentary Assembly Bureau signed in 1998.<sup>141</sup>

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Finally, there are a wide range of aspects to consider when examining the role of observers and the sponsoring institutions. Evidently, election observation became a prominent means for promoting a particular value of democracy – free and fair elections. As the same value is composed of a wide range of other democratic regimes, election observation became the most effective way to promote democratic values and the exercise of political cooperation.

Thus, particular standards were set by the OSCE when deploying Long term and short term election observation. These standards, established throughout the 1990s, encompass a comprehensive election observation methodology, carried out by a high number of Short and

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<sup>138</sup> IPA CIS. Regulations on the international institute on monitoring democracy development, parliamentarisme and suffrage protection for the IPA CIS citizens. p.2 <http://www.iacis.ru/html/index-eng.php?id=84>;

<sup>139</sup> Ibid.

<sup>140</sup> IPA CIS. <http://www.iacis.ru/html/index-eng.php?id=49&nid=362>; 30.5.08

<sup>141</sup> Ibid.

long term observers and parliamentary observers. It is important to note that there are parliamentarians present as Short term observers, and one parliamentarian is appointed as OSCE Special Coordinator- as will be described later in more detail. The OSCE/ODIHR is the forerunner in the elaboration of comprehensive Long term and Short term election observation missions. This particular OSCE endeavor during the course of the years has become a model for other international institutions.

## Conclusion

This chapter has considered a wide range of aspects related to election observation, outlining the conclusive link between election observation and the promotion of democratic values. Particular importance was attached to the introduction of the idea of elections as an essential component of democracy. Interestingly, this reflection revealed an exciting relationship between elections and other democratic values such as the rule of law, media freedom and a broader sense of political governance. Bearing this in mind and perceiving election observation as the promotion of these values, this endeavor becomes an important feature of a pragmatic and interactive approach to the field of democracy promotion.

Assuming that an election is not simply an isolated event, but also an integral part of a country's democratization process, this Chapter further stressed that election observers should perceive the determinative influence of elections. Hence, election observation, and in particular the issue of assessing election observation, implies a subsequent component for the exercise of international political cooperation and pressure. International pressure which in turn, can encourage the motivation of a particular country to continue democratizing the political system - which is a key reason as to why election observation has become such an important instrument for exercising the promotion of democracy. However, election observation requires that standards be set for both, a free and fair election and its observation. The OSCE finally set the standards for election observation during the course of the 1990s, such as Long term, Short term and parliamentary election observation. Over the course of several years the elaboration of a comprehensive election observation methodology was developed by the ODIHR. Together with the political role of OSCE Parliamentarians, this methodology became the benchmark for election observation and served as a model for other international institutions. The European Union for example, has adopted a similar methodology. Hence, EU election observation missions are led by Members of the European Parliament, who act as chief observers, while Member States provide the long-term and short-term observers who take part in an EU Election Observation Missions.<sup>142</sup>

Therefore, the following Chapter will closely examine how norm free and fair elections had been established among the OSCE participating States, in conjunction with OSCE standards for election observation and their implications.

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<sup>142</sup> Handbook for European Union Election Observation. P. 7, EC 2008

### **Chapter Three: The Norm and Standards in the OSCE**



## Introduction

Chapter two examined in more general terms the role behind OSCE election observation, its relationship with the promotion of democratic values, important aspects of the norm free and fair elections and what is implied when election observers assess their observations. Additionally, it studied institutions deploying election observers in the OSCE area and the standards set by the OSCE. Chapter two concluded that the OSCE was the forerunner in establishing standards for election observation and that this process consists of two key components: Firstly, development cooperation and secondly, international political cooperation and pressure.

This section will focus on the inner-organization of election observation missions, considering in detail exactly how these standards have been established within the organization. This begs the question - are OSCE standards for election observation part of the organizations' *aquis*? In this respect, I will investigate how the norm of free and fair elections had been established during the course of the years and also how the organization has shifted its institutional focus to the third dimension of security since the collapse of the Soviet Union. Therefore I will outline a chronology of OSCEs relevant commitments and budget decisions and also examine the standards of OSCE election observation.

Assuming that OSCE standards encompass the scope of comprehensive Long term, Short term and parliamentary involvement in election observation, including the political leadership of the mission, this chapter will analyze the respective methodologies of the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights- exploring their respective institutional differences and why their roles are complementary within OSCE election observation endeavors.

Finally, this chapter will examine OSCE standards for election observation and the critical argument that OSCE election observation are inherently biased and only deployed fully in eastern countries, as has been suggested by some CIS States, who introduced their desire for OSCE reforms, in particular regarding the organizations' endeavors in election observation, including a reduction of both - the autonomy of the OSCE/ODIHR and the number of election observers deployed for each mission.

## Origins and Relevant Commitments

How did the norm free and fair election emerge within the CSCE/OSCE? What are the relevant decisions that created election observation endeavors and OSCE institutions, where does the responsibility lie for the deployment of election observation missions? To answer these questions, this section will consider relevant CSCE/OSCE documents that were integral in the development of what is generally known as election observation. Therefore, this section will briefly introduce how the Conference on Security and Cooperation in Europe came about, its implications to the geopolitical system of the two Cold War blocks and the desire to promote democracy in the CSCE area after the collapse of the Soviet Union.

The Organization for Security and Cooperation in Europe has its origins in the oft-repeated Soviet call for a pan-European security conference in the 1950s and 1960s. A collective security forum that excluded Canada and the United States would of course have decoupled Europe from the United States and would have undermined the North Atlantic Treaty Organization (NATO). Therefore, the West Europeans initially resisted the formation of such a conference. However, as the Warsaw Pact gathered steam in the second half of the 1960s and German “Ostpolitik” pressed ahead, NATO began to express more interest in creating a stable security environment. U.S. and Western European interests centered on the reduction of conventional military forces in Europe, also known as Mutual and Balanced Force Reductions in Europe, or MBFR.<sup>143</sup> Hence, the Conference on Security and Cooperation in Europe (CSCE) was conceived, born, and, as it were, raised in an environment of conflicting short-term and long-term views and interests. The CSCE's development and the role which it came to play in European security can be understood only in the greater context of this European security environment. If it was the East that conceived the idea of the Conference, then the West was initially the reluctant parent. The West agreed to the idea only because of linkage politics, and even then, was less than enthused.<sup>144</sup>

It is important to note, that there had been three main motivating considerations often attributed to the Soviet Union to understand its push for the conference. Firstly, the Soviet Union hoped that such a conference, along with the post-war division of Europe, would legitimize their global standing. Secondly, if the United States could be excluded, the

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<sup>143</sup> Robert Barry. *The OSCE: A Forgotten Transatlantic Treaty Organization?* Research Report 2002. P. 7

<sup>144</sup> Robert Dick. *Communities and Regimes: The CSCE/OSCE and the Future of European Security*. 1998, University of Manitoba, Winnipeg, Manitoba. P. 40

Conference could be used to weaken the trans-Atlantic link and the American role in Europe. Finally, the Soviet Union thought the Conference might give fresh stimulus to East-West economic cooperation and thus spur the economic development of the Soviet Union and its Allies.<sup>145</sup> The second point is of particular interest, as it reflects an important doctrine in Soviet Union foreign policy, namely isolating the United States' influence in Europe.

Initially, the West had little interest in working to develop the Conference. In the 1950s and early 1960s, the political climate between East and West was tense, and there appeared to be little to be gained from such a conference. The warming of relations between the East and the West which accompanied the period of *détente* changed the western attitude somewhat however, and it appeared tempting to exploit the strong Soviet desire for the Conference.<sup>146</sup>

The West wanted to give the Conference what is now labeled a "human dimension" to be a forum in which to deal with normative issues such as the free movement and exchange of people, free elections, and free information. These normative elements were codified in "Basket III" of the Helsinki Accords, and throughout the twenty years following their signing, the West rarely missed an opportunity to demonstrate that the Soviet Union was failing to live up to its commitments on human right matters.<sup>147</sup>

Finally, the group of neutral and non-aligned States (Austria, Cyprus, Finland, Liechtenstein, Malta, San Marino, Sweden, Switzerland and Yugoslavia) perceived the Conference as an opportunity to gain influence and to play a role in matters which were typically played out between the East and the West. However, the nine neutral and non-aligned States had different security concerns and reasons according to their respective geo-political situations that pushed them to lobby for the Conference.<sup>148</sup>

Furthermore, throughout the 1950s and 1960, talks of a European conference to discuss security issues became a recurring theme in Soviet and eastern European pronouncements.<sup>149</sup>

In 1964, a proposal by Poland that a conference be held, and that it include the United States, was endorsed by the Warsaw Pact. Later, in July of 1966, the Warsaw Pact issued the Budapest Declaration expanding on the idea of a conference and of collective security. In 1969, the same group of states issued the Budapest Appeal, an Appeal to all European

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<sup>145</sup> Lehne, Stefan. *The Vienna Meeting of the Conference on Security and Cooperation in Europe: A Turning Point in East-West Relations*. Boulder Westview Press, 1991. p. 1-2.

<sup>146</sup> Robert Dick. *Communities and Regimes: The CSCE/OSCE and the Future of European Security*. 1998, University of Manitoba, Winnipeg, Manitoba. P. 45

<sup>147</sup> Ibid. P.45

<sup>148</sup> Neuhold, Hampeter. "The Group of the N+N Countries Within the CSCE Process," in *CSCE: N+N Perspectives*. Ed. Hans Neuhold. Austria: Austrian Institute of International Affairs, 1987. P.24

<sup>149</sup> Maresca, John J. *To Helsinki. The Conference on Security and Cooperation in Europe, 1973-1975*. Durham and London: Duke University Press, 1985. P. 4.

Countries, renewing their efforts to assemble a “general European conference to consider questions of European security and peaceful cooperation”.<sup>150</sup>

Finally, the government of Finland invited all European States, and the United States and Canada in 1969, to preparatory talks in Dipoli, Helsinki. This was the beginning of the so called “Helsinki process” - preparatory talks from November 22, 1972 to June 8, 1973. These negotiations prepared the agenda and the Rules of Procedure for the Conference on Security and Co-operation in Europe, which opened at Helsinki on 3 July 1973 and continued at Geneva from 18 September 1973 to 21 July 1975. The Conference was concluded at Helsinki on 1 August 1975 by the High Representatives of 37 States.<sup>151</sup>

The Helsinki Final Act addresses military, economic and humanitarian concerns within the four "baskets". Although it is Baskets I, II and III which deal with the substantive issues of security, economic and environmental cooperation, and humanitarian cooperation respectively, it is Basket IV, the Follow-up to the Conference, which prevented the CSCE from becoming nothing more than "a historical footnote".<sup>152</sup> This basket considered that in order to achieve the aims sought by the Conference, participating States make “further unilateral, bilateral and multilateral efforts and continue, in the appropriate forms set forth below, the multilateral process initiated by the Conference.”<sup>153</sup>

Although the third basket of the Helsinki Final Act addresses humanitarian questions, the norm free and fair elections and respectively the invitation of election observers, had not yet been addressed. Nevertheless the invitation of foreigners as observers, “voluntarily and on a bilateral basis, in a spirit of reciprocity and goodwill” was a confidence building measure, which started with the Helsinki final act. Although these observers did not actually observe elections, their presence to attend military maneuvers<sup>154</sup> can be considered as a starting point for the idea that the invitation of foreign observers could create confidence among participating States. Election observation, which followed much later in the CSCE process, was also perceived in the beginning as a confidence building measure between CSCE participating States.

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<sup>150</sup> Ibid.

<sup>151</sup> Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Yugoslavia.

Conference on Security and Cooperation in Europe. Final Act. Helsinki 1975. P. 2

<sup>152</sup> Stefan Lehne. The Vienna Meeting of the Conference on Security and Cooperation in Europe, 1986-1989. P.3.

<sup>153</sup> Helsinki Final Act. 1975. P. 60

<sup>154</sup> Ibid, The Exchange of Observers. P. 12

Table 3<sup>155</sup>

<b>Date</b>	<b>Meeting</b>	<b>Location</b>	<b>Document</b>
4.10.1977 – 9.3.1978	First Follow up meeting on the CSCE	Belgrade	Concluding Document of the Belgrade Meeting
4.11.1986 – 9.1.1989	Third Follow-up Meeting on the CSCE	Vienna	Treaty on Conventional Weapons, signed in Paris
05-29.06.1990	Conference on the Human Dimension of the CSCE - 2nd meeting	Copenhagen	Copenhagen Document of the Copenhagen meeting
19-21.11.1990	Paris Summit	Paris	Charter of Paris for a New Europe

The other major innovation of the CSCE Helsinki Final Act, and hence also of relevance for the question of elections and election observation, was that it broadened the concept of security far beyond the way in which states and most experts thought about international security at the time.<sup>156</sup> Attributing economic, environmental and humanitarian issues to the idea of security was at that time revolutionary in international politics. In this way the CSCE was considered to have a ‘dual character...as an instrument of détente and as an agent for systemic change’.<sup>157</sup>

But the collapse of the Soviet Union and the German reunification dramatically changed the geopolitical landscape. The Copenhagen Document, a result of the Conference on the Human Dimension of the CSCE, and the Charter for a New Europe, adopted by the 1990 CSCE summit in Paris, marked the transition from the politics of the Cold war towards a new era. Democracy, human rights and peace are the central notions in both documents, clearly demonstrating enthusiasm for spreading democracy in the CSCE area. Prior to the Copenhagen Document, and the Paris Charter, the lesser known Bonn Conference on Economic Co-operation in Europe, was held in April 1990. The Conference resulted in the adoption of the “Document of the Bonn Conference”, a document that explicitly referred to the close relationship between economic progress and political pluralism, a relationship that had never before been accepted in the CSCE framework.<sup>158</sup>

<sup>155</sup> EDU. European Navigator. <http://www.ena.lu/chronology-csce-meetings-1972-1992-022100451.html>; 22. 3. 2008

<sup>156</sup> Paul Dunay. The OSCE in Crisis. In: Chaillot Paper n°88. 2006. P.20

<sup>157</sup> Stefan Lehne. The CSCE in the 1990s: Common European House or Potemkin Village? Vienna, 1991. P.5

<sup>158</sup> Arie Bloed and P.Dijk. The Human Dimension of the Helsinki Process. 1991, p.54

The Paris Charter enshrined the conscious agreement of the participating States with regards to two key principles: multi-party democracy and market economy.<sup>159</sup> Indeed, the Charter states “*we undertake to build, consolidate and strengthen democracy as the only system of government of our nations.*”<sup>160</sup> Indeed, such language could never have been found in an agreement during the two block system. Under these new circumstances on the European continent, with several new independent states striving for elections, the document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE was adopted in June 1990. As in the Charter, the language employed in the Copenhagen Agreement is very supportive of human rights and democracy. In its preamble it says “They (participating States) recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.”<sup>161</sup>

After the collapse of the Soviet Union, the former western allies had a strong bargaining position; it would otherwise have been difficult to include such a wide range of humanitarian issues in the Declarations. The Copenhagen document thus deals with various aspects of the third basket, such as human rights, the free and fairness of elections, rule of law and national minorities.

On another note, the Copenhagen Document constitutes the most remarkable human rights commitment thus far adopted in the framework of the CSCE. It is a result of the second meeting of the Conference on the Human Dimension of the CSCE, which took place in Copenhagen from 5 to 29 June 1990. It clearly reflected the new political situation in Europe brought by the total disintegration of the Eastern block: for the first time in CSCE history the Member States of the Warsaw Pact did not have regular meetings as a group for the preparation of joint standpoints.<sup>162</sup> This phenomenon also reflects the fact that the traditional purpose of the CSCE process to overcome the artificial division of Europe had apparently been achieved (the preamble of the First Basket of the Helsinki Final Act already stated that the CSCE “should lead to the development of better and closer relations among them in all fields and thus to overcoming the confrontation stemming from the character of their past

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<sup>159</sup> Paul Dunay. The OSCE in Crisis. In: Chaillot Paper n°88. 2006. P.21

<sup>160</sup> Paris Charter. Page 3

<sup>161</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. To be found on the OSCE webpage: [http://www.osce.org/documents/odihr/1990/06/13992\\_en.pdf](http://www.osce.org/documents/odihr/1990/06/13992_en.pdf) ; 11.4.08

<sup>162</sup> Arie Bloed and P.Dijk. The Human Dimension of the Helsinki Process. 1991, p.55

relations”).<sup>163</sup> Another interesting feature of the Copenhagen Document is that for the first time a human rights commitment had been laid down as a “confidence-building measure” (CBM).<sup>164</sup> Previously, confidence-building measures concerned only military aspects of security. Now the security CBMs had been supplemented with human rights CBMs.

The Copenhagen Document consists of a Preamble, five chapters of varying length and an annexed chairman statement. The Chapters concern the rule of law, the individual rights and related issues, the working of democratic institutions and the importance cooperation in this area, national minorities, and individual rights and related issues. In respect to the norm free and fair elections, chapter one is the most significant. Hence, a detailed provision concerning free elections was inserted. A striking feature of this first chapter is its detailed character. For example, paragraph 5 lists 21 sub-paragraphs about “those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable right of all human beings”.

According to the first sub-paragraph (5.1) of Chapter One, CSCE States entered into the obligation, *inter alia*, for “free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;”<sup>165</sup>

Another important commitment set in Chapter one is detailed in article 6 which states that the participating States declare that 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.” Furthermore and of equal relevance, participating States will accordingly “respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes.” Finally, participating States committed themselves to also “recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.”<sup>166</sup>

Finally, the norm free and fair election was established among CSCE participating States with the Copenhagen Declaration. This was defined in Article 7 of Chapter One, which states that

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<sup>163</sup> Ibid.

<sup>164</sup> Arie Bloed and P.Dijk. The Human Dimension of the Helsinki Process. 1991, p.63

<sup>165</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE; Chapter I, Para 5.1

<sup>166</sup> Ibid. Page 3

“to ensure that the will of the people serves as the basis of the authority of government, the participating States will

- hold free elections at reasonable intervals, as established by law;
- permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;
- guarantee universal and equal suffrage to adult citizens;
- ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
- respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
- respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;
- ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;
- provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process”.

In this regard, the Copenhagen Declaration in article 7 constitutes not only political commitments for OSCE participating States to the holding of free and fair elections, but also defines the various aspects of free and fair elections. There can be no justification for a particular election if that election does not respect all of these commitments.

The same document also connects the role of foreign and domestic observers with the rights to free elections. This resulted in the inclusion of paragraph 8 in which participating States agreed that “the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place.” It further states that “they therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law.” Finally, it also states that “they will also endeavor to facilitate similar access for election proceedings held below the national level.



Such observers will undertake not to interfere in the electoral proceedings.”<sup>167</sup> The birthplace of CSCE/OSCE election observation endeavors are hence found in Article 8 of Chapter One of the 1990 Copenhagen Declaration. Presumably, the fact that observers had already been invited to observe military maneuvers as committed by participating States in the Helsinki Final Act was a great asset when negotiating article 8.

Nevertheless, according to Bloed and van Dijk the provision contains two loopholes that could be used to obstruct the smooth implementation of the commitment. Firstly, the right to send observers is only granted to “*appropriate*” private institutions and organizations, which enables malevolent States to argue that organizations of which they do not approve, are thus “not appropriate”.<sup>168</sup> Secondly, the right to observe the election proceedings may be exercised only “*to the extent permitted by law*”, which affords CSCE States considerable discretion in restricting this right.<sup>169</sup>

Even though the Copenhagen Document, like all CSCE documents, is politically, but not legally binding, it has become the organization’s most important document of reference for the human dimension. In particular, the Copenhagen document became the CSCE/OSCE’s most important reference for the execution of its election observation undertaking. But when comparing article 8 for the invitation of foreign and domestic observers with article 7 for the holding of free and fair elections, some important aspects become evident. As noted above, the latter clearly describes what constitutes free and fair elections. Article 8 in turn, only constitutes a reference for the invitation of observers. However, the same article does not define the modalities and procedures for election observation on issues such as; how many observers shall be invited, how soon they should arrive in the country before the election and what rights they are finally granted for their observation.

Chapter three of the Copenhagen Declaration refers to another issue relevant to the OSCE and to this thesis. Article 27 requires particular attention. It states that the “participating States will also facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law, which may also serve as focal points for co-ordination and collaboration between such institutions in the participating States. They propose that co-operation be encouraged between parliamentarians from participating States, including through existing inter-parliamentary associations and, *inter alia*, through joint commissions, television debates involving parliamentarians, meetings and round-table discussions.” The role of parliaments in respect to issues such as democracy, political

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<sup>167</sup> Ibid. Page 7

<sup>168</sup> Arie Bloed and P.Dijk. The Human Dimension of the Helsinki Process. 1991, p.61

<sup>169</sup> Ibid.

pluralism and elections, had already been identified during the negotiations for the Copenhagen Declaration.

Finally, the Copenhagen Declaration brought substantive progress in the field of human rights and humanitarian issues. In respect to the norm free and fair elections and elections observation, the Copenhagen Document is of central importance and the main reference for participating States commitments. Following this Declaration, a Summit took place in Paris, adopting a Charter for a new Europe. The Charter is the first document establishing an institutional structure of the CSCE and thus creating bodies entitled to assist participating States in the realization of their commitments. It is interesting to note that the focus on the development of CSCE structures in the Charter is strongly interlinked with democratic aspects. On the one hand, the Paris Charter recalled that “democratic government is based on the will of the people, expressed regularly through free and fair elections” and that everyone has the right to “participate in free and fair elections”, (article 6 and 7 of Chapter one of the Copenhagen Document is therefore annexed to the Charter), on the other hand the Charter stresses “our common efforts to consolidate respect for human rights, democracy and the rule of law, to strengthen peace and to promote unity in Europe require a new quality of political dialogue and co-operation and thus development of the structures of the CSCE.”

In respect to the institutionalization of the CSCE, the Paris Charter created the Office for Free Elections and the CSCE Parliamentary Assembly. The Office for Free Elections should “facilitate contacts and the exchange of information on elections within participating States. Furthermore, the Office is tasked to foster the implementation of paragraphs 6, 7 and 8 of the Document of the Copenhagen Meeting, compile information, including information provided by the competent authorities of participating States, on the dates, procedures and official results of scheduled national elections within participating States, as well as reports of election observations, and provide these on request to governments, parliaments and interested private organizations.<sup>170</sup> Finally, the Office is also tasked to serve and facilitate contact among governments, parliaments or private organizations wishing to observe elections and competent authorities of the States in which elections are to take place.<sup>171</sup>

With respect to the CSCE Parliamentary Assembly, the Charter calls “for greater parliamentary involvement in the CSCE, in particular through the creation of a CSCE parliamentary assembly, involving members of parliaments from all participating States.” Furthermore, the Paris Charter “urges that contacts be pursued at parliamentary level to discuss the field of activities, working methods and rules of procedure of such a CSCE

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<sup>170</sup> CSCE. Charter of Paris for a New Europe. Paris 1990. p19

<sup>171</sup> Ibid.

parliamentary structure, drawing on existing experience and work already undertaken in this field.”

Thus, the creation of the CSCE Parliamentary Assembly and the Office for Free Election clearly demonstrates a conviction to “to build, consolidate and strengthen democracy as the only system of government of (our) nations”. These two institutions are both vital to the pursuit of this goal: Firstly, an institution to assist participating States to follow their commitments in the conduction of free and fair elections. And secondly, an institution which constitutes an indispensable pillar of democracy – parliamentarianism – and which also pursues this objective “on the parliamentary level”. This is also reflected in the Seminar of experts on democratic institutions, held on 4 November in Oslo 1991, as called for by the Summit. According to the agenda annexed to the Charter, Study Group A dealt with constitutional reforms, the rule of law and independent courts, and division of power between legislative, executive and judicial authorities. Study Group B in turn dealt with the organization of elections, the organization of political parties and the organization of independent non-governmental organizations.<sup>172</sup>

Finally, it is also important to stress the institutional difference between the CSCE Parliamentary Assembly and the Office for Free Elections. The latter, like the OSCE secretariat and the Conflict Prevention Centre, is accountable to the Council (Ministers of Foreign Affairs) and thus also to the Committee of Senior Officials, which is empowered to determine the tasks and methods of operation. The Parliamentary Assembly is an independent CSCE body acting in accordance with the protocol on the political level of the CSCE. This was alluded to at the second Meeting of the Council of Ministers which took place in Prague, January 1991, and established a cooperation between the CSCE PA and the CSCE Executive branch. Accordingly, the Declaration adopted by the Council states that “in the interest of encouraging an active dialogue with the CSCE Parliamentary Assembly, the Chairman-in-Office of the Council will be in contact with the Chairman of the Committee of Heads of Delegation of the Assembly in order to explore possible interest in the presence of the Chairman of the Council at the Budapest Meeting of the Assembly in July 1992.” Additionally, the declaration points out that “the Chairman of the Council will be prepared to make himself available to report on the work of the CSCE; to answer parliamentarians' questions in this regard; and to take note of parliamentarians' views for subsequent transmission to the Council.” This was the starting point for a regular co-operation between

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<sup>172</sup> Ibid. Annex II

the executive, intergovernmental bodies of the CSCE and the parliamentary dimension of the CSCE.

On another note, the Prague Meeting of the Council of Ministers renamed the Office for Free Elections as the Office for Democratic Institutions and Human Rights and also widened its mandate. Interestingly, this enlarged mandate does not refer to election observation explicitly or to its role in this endeavor mandated at the Paris Charter. However, the Declaration decided that the Office shall, under the guidance of the Committee of Senior Officials, “serve as an institutional framework for sharing and exchanging information on available technical assistance, expertise, and national and international programs aimed at assisting the new democracies in their institution-building;”<sup>173</sup> Furthermore, the decisions taken at the fourth meeting of the CSCE Council of Ministers in Rome, 1993, clearly enhanced the ODIHRs election observation program. Accordingly, the Ministers decided on the “enhancement of its (ODIHRs) role in comprehensive election monitoring,” without further defining “comprehensive election monitoring” The Committee of Senior Officials was therefore tasked to consider the financial and administrative implications of strengthening the ODIHR.<sup>174</sup>

An innovation in ODIHRs endeavor for observing participating States commitments to elections, was a decision made in 1994. The CSCE Budapest Summit, also famous for having relabeled the CSCE as the OSCE (Organization for Security and Cooperation in Europe), decided that “the ODIHR will play an enhanced role in election monitoring, before, during and after elections. In this context, the ODIHR should assess the conditions for the free and independent functioning of the media.” In fact, these three lines became the cornerstone of reference for the later development of the ODIHR methodology for election observation, which will be analyzed more closely at a later stage. However, the Summits participating States also requested “that co-ordination between the various organizations monitoring elections be improved, and task the ODIHR to consult all relevant organizations in order to develop a framework for co-ordination in this field.”

It is interesting to note, that the Budapest summit, although enhancing ODIHRs role in election observation, did not refer to the organizations Parliamentary Assembly activity in election observation. Despite the fact that the Parliamentary Assembly had recently observed the 1993 Russian Duma elections, the parliamentary elections in Moldova, Kazakhstan and Ukraine, and the parliamentary and presidential elections in the Former Yugoslav Republic of Macedonia..<sup>175</sup> The CSCE Parliamentary Assembly was already active as a deplorer of

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<sup>173</sup> Second Meeting of the Council of Ministers. Prague, 1992, P. 14

<sup>174</sup> Fourth Meeting of the Council of Ministers, Rome, 1993, p. 9

<sup>175</sup> OSCE PA. The First Decade of OSCE PA Election Observation.

parliamentarians as election observer. In turn, according to the election observation mission's reports published chronologically on the ODIHR website, the office had held practically no missions before 1996. Interestingly, although the Budapest mandate offered a wide range of possibilities for comprehensive election observation, the turning point, according to a Senior OSCE Official, was when the Office persuaded the Ministries of Foreign Affairs of OSCE participating States, to second observers according to the Office's demand – such as long term and a high number of short-term observers. This development granted the ODIHR the resources the CSCE PA had previously been accorded: voluntary observers and national institutions covering their travel costs.

The Lisbon Document, approved by the Heads of States and Governments at the Lisbon Summit in 1996 had no relevant decisions, neither for commitments in respect to free and fair elections, nor for OSCE election observation endeavor as such. However it stated that the OSCE's comprehensive approach to security required improvement in the implementation of all commitments in the human dimension, in particular with respect to human rights and fundamental freedoms. Among the acute problems within the human dimension, the Summit explores the continuing violations of human rights, such as involuntary migration, and the lack of full democratization, threats to independent media, electoral fraud, manifestations of aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism; all of which continue to endanger stability in the OSCE region. Finally, participating States stressed their commitment to continuing to address these problems.<sup>176</sup>

As previously mentioned, various international institutions participated in election observation missions within the OSCE area in 1996, most prominently, the Parliamentary Assembly of the Council of Europe and the European Parliament. Having several institutions observing the same election in one particular country, required professional cooperation in order to avoid overlap, unnecessary expense and confusion. Accordingly it was desired that the two OSCE institutions cooperate more closely in order to improve OSCE's performance in election monitoring. This resulted in the 1997 Cooperation Agreement between the OSCE/ODIHR and the OSCE PA. The Cooperation Agreement had been explicitly endorsed by the 1997 OSCE Ministerial Council in Copenhagen.

The participating States “welcomed the (Parliamentary Assembly's) agreement with the ODIHR on procedures to enhance co-operation in election monitoring.” Furthermore, the Ministerial Declaration stated that “in the area of Human Dimension/Democracy Building the exchange of information between the ODIHR and the various OSCE Missions etc.,

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<sup>176</sup> OSCE. Lisbon Summit Declaration. Lisbon 1996, p. 6

participating States and other OSCE institutions has increased, as has joint implementation of projects. Contacts with international organizations have been expanded at all levels in order to combine resources and develop mutually reinforcing programs. Thus, a formal co-operation framework has been established with the Council of Europe and is being discussed with the Commission of the EU. To improve OSCE's performance in election monitoring the ODIHR signed an agreement with the Parliamentary Assembly on closer co-operation, including on co-ordination of statements following elections."

Hence, the institutional cooperation procedures of CSCE/OSCE election observation between 1991 and 1996 were at times considered to be undefined and unclear. However in 1997 clear guidelines regarding the conduction of OSCE institutional cooperation in election observation were formalized. In its preamble the OSCE Ministerial Council in Copenhagen states that *"since the establishment of the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights following the Charter of Paris, both OSCE Institutions have engaged in various aspects of election assistance and observation. Experience has shown that it is both practical and desirable for these two OSCE Institutions to work more closely together on election projects. (...) In order to avoid overlap, redundancy, unnecessary expense and confusion it is agreed that the following procedures will be undertaken to enhance the capabilities and effectiveness of both of these OSCE Institutions in the future;"*

The Cooperation Agreement addresses nine issues for OSCE election observation cooperation. More specifically; the Needs Assessment Mission, where the ODIHR, in consultation with the OSCE PA, will initiate a preparatory Needs Assessment Mission prior to a long-term election observation. The Exchange of Information, where regular field reports from the ODIHR On-site Coordinator and long-term observers are sent to the OSCE PA. Observer Briefings, where the ODIHR will assist the OSCE in providing a separate briefing for parliamentarians whenever necessary. Logistical Support, where the OSCE/ODIHR will assist the parliamentary observer delegation with logistical support. The Deployment of observers, where the OSCE/ODIHR On-site Coordinator will provide the OSCE PA with a detailed deployment plan well in advance of the arrival of short-term observers.

Finally, the Co-operation agreement also tackled political issues, such as the function of the OSCE Special Coordinator, stating that the OSCE Chairman-in-Office may designate a political figure as a Special Coordinator to lead the short-term OSCE observer mission. This political figure should normally be the President of the OSCE PA or an OSCE PA senior official recommended by the OSCE PA in consultation with the Chairman in Office. This

Special Coordinator will work closely with the OSCE/ODIHR On-site Coordinator and will deliver the preliminary post-election statement in conjunction with other appropriate officials. In the event that other international parliamentary bodies are strongly represented in the short-term observer mission, the Special Coordinator may designate a Co-Chair or Co-Chairs of the observation mission, as appropriate.<sup>177</sup>

As already described in Chapter one, the question of when the Preliminary Post-Election Statement should be delivered, is of fundamental importance. According to the Cooperation Agreement, the preliminary post-election statement will normally be made on the afternoon following the election. This represents a compromise between the time constraints on parliamentarians requiring an early departure, and technical needs of the ODIHR, which often require 24-48 hours after Election Day for a full de-briefing and the comprehensive assessment of statistical data and vote count process.<sup>178</sup>

For the final report, the Cooperation Agreement states that the ODIHR and the OSCE PA will submit to each other preliminary drafts of their final reports for comment. While the ODIHR and OSCE PA reports may emphasize certain aspects of the election process in more or less detail, they should try to avoid direct contradictions without compromising the integrity of their independent observations and conclusions. It would be helpful if the reports could contain agreed upon recommendations from both the ODIHR and the OSCE PA.<sup>179</sup>

The 1997 Cooperation Agreement thus constitutes a formal agreement between the two institutions engaged in OSCE election observation. It is also notable that this agreement grants the political leadership to the OSCE PA in election observation missions. This will be analyzed later on, in particular when considering the PA and the ODIHR in their respective functions.

The Seventh Meeting of the OSCE Ministerial Council in Oslo 1998 also addressed the issue of free and fair election, particularly in relation to the conflicts in the Balkans, but did not decide on any new commitments or relevant decisions with respect to election observation. However, the Chairman's activity report states regarding human dimension related issues, that apart from assistance in the comprehensive implementation of commitments, the OSCE should put a strong emphasis on the supervision and monitoring of elections. Co-operation between the ODIHR and the Parliamentary Assembly of the OSCE on electoral observation

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<sup>177</sup> OSCE. 1997 Cooperation Agreement between the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights. Copenhagen, 1997

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

was strengthened and improved in several cases through joint efforts with the Council of Europe.<sup>180</sup>

Additionally, the report underlines that the new methodology for electoral assistance and observation developed by the ODIHR, which includes the monitoring of the entire election process, has proven to be efficient and reliable in terms of assessing compliance with OSCE commitments. Numerous projects were prepared and run by the ODIHR in co-operation with several OSCE missions and other international and national institutions. They strengthened the role of the OSCE in the promotion of democracy, the rule of law and respect for human rights, and helped in the build-up and consolidation of democratic institutions in several participating States.<sup>181</sup>

It is also important to point out that although the Chairman's activity report presents a certain perspective, which can influence other participating States, it is still not a decision that other OSCE participating States agreed on. However, important decisions and reaffirmations of election related commitments were later made at the organizations last Summit in Istanbul. The Meeting of the Heads of States and Governments in 1999 resulted in the Istanbul Document, which contains a Charter for European Security, the Istanbul Summit Declaration and the Istanbul Document.

It is interesting to note that contrary to previous documents, the Charter for European Security clearly endorsed the Parliamentary Assembly as the most important OSCE institution in the field of democracy development and election monitoring. In fact, the Charter states that *"the Parliamentary Assembly has developed into one of the most important OSCE institutions continuously providing new ideas and proposals. We (OSCE Heads of States and Governments) welcome this increasing role, particularly in the field of democratic development and election monitoring. We call on the Parliamentary Assembly to develop its activities further as a key component in our efforts to promote democracy, prosperity and increased confidence within and between participating States."*

But the Charter also reaffirms previous commitments related to free and fair election and for the invitation of election observers. In detail, it states that OSCE participating States "reaffirm their obligation to conduct free and fair elections in accordance with OSCE commitments, in particular the Copenhagen Document [of] 1990." Furthermore they "recognize the assistance the ODIHR can provide to participating States in developing and implementing electoral legislation." Finally, the Charter states that "in line with these commitments, participating States will invite observers to (our) elections from other participating States, the ODIHR, the

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<sup>180</sup> OSCE. Document of the Seventh Meeting of the OSCE Ministerial Council, Oslo 1998. p. 34

<sup>181</sup> Ibid.



OSCE Parliamentary Assembly and appropriate institutions and organizations that wish to observe our election proceedings.”

In turn, the Istanbul Declaration stated its appreciation of the work of the ODIHR and the Parliamentary Assembly before during and after the election. The declaration states therefore that *“with a large number of elections ahead of us, we (OSCE participating States) are committed to these being free and fair, and in accordance with OSCE principles and commitments. This is the only way in which there can be a stable basis for democratic development. We appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR’s election assessments and recommendations. We value the work of the ODIHR and the OSCE Parliamentary Assembly - before, during and after elections - which further contributes to the democratic process.”*

The Declaration also commits to secure the full right of persons belonging to minorities to vote and to facilitate the right of refugees to participate in elections held in their countries of origin. Furthermore, the Declaration underlines the necessity to ensure fair competition among candidates as well as parties, including through their access to the media and respect for the right of assembly.<sup>182</sup>

The Summit reaffirmed participating States commitments for the holding of free and fair elections according to the 1990 Copenhagen Document. It also confirms the role of the Parliamentary Assembly and of the ODIHR in election observation endeavors. However, as with the Copenhagen Document, the Istanbul Document contains no provision for the methods of an election observation regarding how many observers should be invited and when long-term monitoring should start. This begs the question, whether the confirmation of the role of the two OSCE institutions – the Parliamentary Assembly and the ODIHR – also constitutes a confirmation of the methodology employed by the ODIHR. A methodology that, as will be described later when outlining the ODIHR, is contested by several CIS countries.

Another relevant document regarding the norm free and fair elections and OSCE election observation, is decision number 7, entitled “Election Commitments”, of the tenth meeting of the OSCE Ministerial Council 2002 in Porto. The Ministers of OSCE participating States reiterated commitments previously stated in the 1990 Copenhagen Document and in the Istanbul Summit Declaration. Reaffirming the determination to implement these commitments and acknowledging that democratic elections can be conducted under a variety of electoral systems, the Ministerial Council takes into account Permanent Council (PC) Decision

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<sup>182</sup> OSCE. Istanbul Document. Istanbul 1999, p. 51

Number 509. This decision was an attempt to approve a document produced by the ODIHR entitled “International Standards and Commitments: A practical Guide to Democratic Elections Best Practice”. This document summarized election related commitments of OSCE participating States that were well beyond the scope of the OSCE. The idea was to extend election related commitments to other international organizations such as the UN, in order to widen the scope of reference when evaluating the subsequent findings of election observation missions.

However, the PC did not approve this document but simply tasked the ODIHR to further develop its current draft and to report on progress made to the Permanent Council by 30 June 2003. Therefore, considering the fact that MC decision number 7 only refers to PC decision 509, which was not approved, the MC decision in turn appears somewhat lacking with regard to new election related commitments. On the contrary, this simply tasks the Permanent Council to consider the need to elaborate additional commitments for elections. As has already been stated, that democratic elections can be conducted under a variety of electoral systems, one might get the impression that it is becoming ever more difficult to introduce new election related commitments in OSCE documents.

On another note the eleventh meeting of the OSCE Ministerial Council in Maastricht 2003 also adopted a decision on election related commitments, of less significance but worthy of mention. As with decision number 7 taken at the OSCE Ministerial in Porto, decision 5/03 entitled “Elections” acknowledged that democratic elections can be conducted under a variety of different electoral systems and laws. Further, the decision welcomed both the continuing efficient cooperation between the ODIHR and the OSCE Parliamentary Assembly, and the document “Existing Commitments for Democratic Elections in OSCE Participating States: A Progress Report”, which was prepared by the ODIHR and submitted to the participating States. Finally, the decision recognizes that there is a particular need for establishing confidence within the electorate, for transparency of election procedures, and for accountability on the part of authorities conducting elections. It also calls upon participating States to further enhance their co-operation with the ODIHR in this field. Again, as with decision number 7 taken at the OSCE Ministerial in Porto, the Ministerial Council also tasked the Permanent Council to draw on the ODIHR’s expertise in this field, to consider the need for additional commitments on elections, and to report to the next Ministerial Council.

It is also worth mentioning the decision 17/05 taken at the Ljubljana Ministerial Meeting entitled “Strengthening the Effectiveness of the OSCE.” This decision reaffirms the participating States full adherence to the norms, principles and commitments of all three

dimensions of the OSCE agreed since the 1975 Helsinki Final Act and the 1990 Charter of Paris for a New Europe. The decision further takes into account contributions of the Parliamentary Assembly and tasks the ODIHR to submit a report on the implementation of existing commitments and ways of strengthening its election-related activities to the next Ministerial Council.

The above mentioned documents and decisions draw a clear picture: OSCE election observation has been elaborated through independent action over the course of several years. The methodology was established through exercise and application and has since become customary practice among OSCE participating States. Interestingly, when analyzing Ministerial Council decisions in a chronological order, it becomes clear that election observation related commitments have not greatly increased during the course of the years, excepting those which have been confirmed as OSCE aquis.

\*Table 4 on next page summarizes relevant CSCE/OSCE decisions on election related issues.

Table 4

<b>Date</b>	<b>Document</b>	<b>Commitment, Decision, Mandate of ODIHR</b>
Jun. 1990	Copenhagen Document	Free and Fair Elections and Invitation of Invitation of Election Observer
Nov. 1990	Paris Charter	Democracy, Elections; establishment of the CSCE Parliamentary Assembly and Office for Free Elections
Jan. 1992	Prague Ministerial	Office for Free Elections renamed in Office for Democratic Institutions and Human Rights
Nov. 1993	Rome Ministerial	ODIHR receives mandate for “comprehensive” election monitoring; CSO shall work it out
Dec. 1994	Budapest Summit	CSCE renamed in OSCE; ODIHR mandate for election monitoring “before, during and after the election”
Sept. 1997	1997 Cooperation Agreement	Signing of the Cooperation Agreement between the OSCE Parliamentary Assembly and the OSCE/OIDHR
Dec. 1997	Copenhagen Ministerial	Endorsement of the 1997 Cooperation Agreement
Nov. 1999	Istanbul Summit	Participation of minorities and refugees in election; reaffirmation of previous commitments for free and fair elections; endorsement of the OSCE PA as the most important institution in democracy promotion and election monitoring.
Dec. 2002	Porto Ministerial	Decision Number 7: “Election Commitments”
Dec. 2003	Maastricht Ministerial	Decision Number 5/03: “Elections”
Dec. 2005	Ljubljana Ministerial	Decision 17/05: “Strengthening the Effectiveness of the OSCE”
Dec. 2006	Brussels Ministerial	Decision 19/06: re-endorsement of the 1997 Cooperation Agreement as the basis of OSCE Election observation activities

### *The Three dimensions of security and election observation*

Outlining the establishment of free and fair elections within the OSCE in chronological order and thus how this has resulted in OSCE election observation practice, implies further analysis of the organization's three dimensional approach to security. This section seeks therefore to clarify how the norm of free and fair elections and their observation are carried out by the OSCE on a thematically and institutional level.

As already mentioned above, two OSCE institutions engage in this endeavor – the OSCE Parliamentary Assembly and the ODIHR. However, the OSCE Parliamentary Assembly is autonomous in its nature, therefore acting independently and encompassing parliamentary delegations of 55 OSCE participating States. The ODIHR in turn, is an executive OSCE institution, interlinked with the organization's decision making bodies. Taking this into account, this section will briefly outline how elections and election observation are institutionally interlinked with the three dimensional approach of security.

It is important to note that the OSCE is understood as a collective security organization with a three dimensional security approach. The former three CSCE baskets became known after the transformation of the CSCE as an organization at the Budapest Summit, as the OSCE's three dimensions of security. Basket one contained confidence building measures and certain aspects of security and disarmament, later becoming the Politico-Military dimension. Basket two considered Cooperation in the Field of Economics, of Science and Technology and the Environment, subsequently it became the Economical and Environmental dimension. Basket three of the Helsinki Final Act addressed cooperation in the field of Humanitarian and Other Fields, later becoming known as the OSCE's Human Dimension.

In fact, the notion of “comprehensive security” was popularized towards the end of the Cold War, and is the result of a rethinking in strategical and security-political research. The subsequent geopolitical architecture of the world following the collapse of the Soviet Union, urged a redefinition of the traditional concept of security.<sup>183</sup> In other words, scholars and practitioners believed in the necessity to widen the notion of security above its traditional understanding of state and military security. Hence, the OSCE deduces its activities along the three dimensions of security, but how does the norm free and fair election and its observation correspond to this concept? What place and role has election observation within this three dimensional approach to security?

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<sup>183</sup> Heinz Gärtner. Konzepte Internationaler Sicherheit. Spezialvorlesung zur Internationalen Politik. SoSe: 2005

Table five outlines OSCE activities according to the organization's three dimensions. The table was drafted in accordance with information available on the OSCE website.

Table 5

<b>Dimension</b>	<b>Activity</b>
<b>I</b>	Arms control, Border management, Combating terrorism, Conflict prevention, Military reform, Policing
<b>II</b>	Anti-trafficking, Economic activities, Environmental activities
<b>III</b>	Anti-trafficking, Democratization, Education, <b>Elections</b> , Gender equality, Human rights, Media freedom, Minority rights, Rule of law, Tolerance and non-discrimination

According to the information provided by table 5, election (including election observation) does not play a particular role in the OSCE. Thus, thematically the place of elections is in the third dimension, as elections are considered to be a part of humanitarian issues. In this regard, elections activities are deemed of equal importance as education and gender equality for example, within the third dimension.

According to the argument of some participating States and OSCE Officials, the three dimensions do not receive a balanced representation in today's OSCE. Dr. Thomas Buchsbaum, Deputy Head of the Austrian Mission to the OSCE during the Austrian Chairmanship in 2000, perceived in his article on the "OSCE's Comprehensive Security: Integrating the Three Dimensions", that the OSCE is faced with the persistent criticism of certain features of the current shape of the organization, in particular from Russia and Belarus as well as by some other participating States from Central Asia. Buchsbaum outlines the main points of their criticism stating that "today's OSCE unduly privileges the Human Dimension against the other dimensions and is thus not respecting the comprehensive character of the OSCE security concept;"

This criticism partly relates to the issue of the organizations' Unified Budget for its institutions. It is important to note that the distribution of OSCE funds is considerably higher within the third dimension than funds distributed within the first and second dimensions. Table six contains a brief overview of budget distribution in relation to the three dimensions

within the organization's Secretariat and Institutions. The distribution of funds for OSCE Field Missions is not included in this table, as funds are reallocated diversely from Mission to Mission, according to their respective mandates. For example the funds allocated to the OSCE Mission in Kosovo (biggest OSCE Mission to date) within the third dimension, exceed the funds allocated for the Mission's first and second dimensions.

Table 6<sup>184</sup>

<b>Dimension</b>	<b>Unit/Institution</b>	<b>EUR</b>
<b>I</b>	Strategic Police Matters Unit	954,600
	Action against Terrorism Unit	740,000
	Conflict Prevention	3,348,400
	Total:	<b>5,043,000</b>
<b>II</b>	Economic/Environmental Aspects of Security	1,855,800
	Total:	<b>1,855,800</b>
<b>III</b>		
	Office for Democratic Institutions and Human Rights	14,939,900
	High Commissioner on National Minorities	2,852,800
	Representative on Freedom of the Media	1,260,200
	Total:	<b>19,052,900</b>

These figures outline a clear picture: the human dimension has become the organization's most important area of activities. The former Office for Free Elections, which in 1992 became the Office for Democratic Institutions and Human Rights, is today the most costly OSCE institution and the organization's most famous executive body acting in the third dimension. However, this also begs the question as to why the OSCE PA is not included in table 6. As already noted above, the OSCE PA, autonomous in its institutional nature, represents the parliamentary dimension of the OSCE. Thus, the OSCE PA cannot be attributed to any single dimension (as outlined in table 6) since the political activity of its committees encompass all three OSCE dimensions. Its budget is composed of the contributions from the Parliaments of OSCE participating States and not from the OSCE decision making bodies, such as the Ministerial Council or the Permanent Council.

<sup>184</sup> The figures were excerpted from Annex I of the Permanent Council Decision PC.DEC/780/Corr.1, published on the OSCE website. [http://www.osce.org/documents/pc/2007/02/23164\\_en.pdf](http://www.osce.org/documents/pc/2007/02/23164_en.pdf); 22.3.2008

When more closely examining the ODIHRs budget for election observation, it becomes evident that this practice has become the most costly activity within the OSCE's third dimension. Interestingly, the United States condition to include humanitarian related issues in the Helsinki process, after the collapse of the Soviet Union, shifted the organization's institutional focus towards these issues. Presumably, with the end of the Cold War and a perceived victory for democracy, an advantageous position was provided for former western allies to bargain the institutional and structural focus of the CSCE/OSCE towards the third dimension, in particular for activities related to the fostering of democracy within CSCE/OSCE participating States.

When examining Table 4, which lists funds of the Office for Democratic Institutions and Human Rights in the 2007 Unified Budget, it becomes evident that funds for election related activities largely over-ran funds related to other activities. This paper argues therefore, that election observation became not only the organizations most publicly known activity, but also the most important endeavor for the organization itself, in particular in demonstrating its values, norms and commitments in democracy promotion.

As already described in Chapter two, election observation is strongly interlinked with a broader sense of democracy promotion and is acknowledged to be the most effective instrument for its assistance and promotion. Taking this into account, it is logical that the organization has primarily focused on this endeavor.

Although, as highlighted in table 5, elections are only one activity within the third dimension, this endeavor has become the organizations most important and most visible endeavor in the promotion of its core values and norms.

Table 7<sup>185</sup>

<b><u>Office for Democratic Institutions and Human Rights</u></b>	
Direction and Policy	1,321,600
Fund Administration Unit	1,556,000
Common Operational Costs	818,900
Human Dimension Meetings	788,000
Democratization	1,330,700
Human Rights	1,076,100
Elections	6,529,800
Tolerance and Non-Discrimination	1,085,600
Roma and Sinti Issues	433,200
<b>Total</b>	<b>14,939,900</b>

<sup>185</sup> OSCE. Decision Nr.780. Approval of the 2007 Unified Budget.  
[http://www.osce.org/documents/pc/2007/02/23164\\_en.pdf](http://www.osce.org/documents/pc/2007/02/23164_en.pdf) ; 11.4.08



On another note, it is important to underline that a mandate was given with these ideas in mind. As already outlined in detail earlier, this third dimensional institutional focus was initiated with the signing of the 1990 Copenhagen Document and the Paris Charter clearly committing participating States to build, consolidate and strengthen democracy as the only system of government of our nations.<sup>186</sup> Hence, democratic government must also be based on the will of the people, expressed regularly through free and fair elections.<sup>187</sup>

Finally, it was the inherent link between elections and democracy that strongly influenced a shifting of the OSCE's focus towards election observation. Having observed one particular aspect of democracy— elections, the organization also began to recognize that other aspects such as political campaign issues, media, rule of law, minority rights, etc., must also be considered for a democratic election process.

Issues regarding democratic elections can sometimes be confused as was addressed in Chapter two. When considering election observation and in particular its corresponding assessment, this endeavor becomes far more than simply observing the balloting and the Election Day itself. Election observation can rather be seen as the assessment of a country's degree of democracy and implies a certain judgment concerning that country's political system.

Election observation and its subsequent evaluation have therefore received a prominent international role since its conception. It has become an important feature in the field of democracy promotion, facilitated by development cooperation and international political pressure. Therefore, election observation has become a fundamental activity within the organization to effectively promote its norms and values, and in particular to observe OSCE participating States commitments.

In this respect, when re-examining table 5, it is clear that the third dimension includes a wide range of humanitarian activities which are un-doubtable linked to the idea of democratic elections. Election observation endeavor, thus also implies the observation of these other aspects, as they are part of a free and fair election.

The following section will focus therefore institutions that deploy OSCE election observers. Particular attention is paid to the methodology of the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights. The central argument of this thesis, that OSCE election observation requires the complementary engagement of both institutions, will be further elaborated.

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<sup>186</sup> CSCE. Charter of Paris for a New Europe. Paris 1990. p. 3

<sup>187</sup> Ibid.

## OSCE Institutions deploying Election Observer

Before introducing the methodologies of the OSCE Parliamentary Assembly and the OSCE/ODIHR, I would like to re-stress that election observation, according to the 1990 Copenhagen Document, is based on participating States commitments to invite “appropriate institutions” to do so.

Therefore, OSCE election observation starts with the formal invitation to deploy a mission by the participating State. Once the date of the election itself is set, the participating State announces the election in the Permanent Council through a diplomatic representative. Subsequently, the same participating State forwards a Note Verbal to the Office for Democratic Institutions and Human Rights. This constitutes a formal invitation for the ODIHR to consider deploying an Election Observation Mission (EOM). In addition to this, the Parliamentary Assembly Secretariat (either at the Headquarters in Copenhagen or the Vienna Liaison Office) receives a letter from the Chairman of the respective Parliament, inviting the PA President to consider the deployment of an election observation mission. It is important to note that both letters, the Note Verbal from to the ODIHR and the letter from the Chairman of the Parliament to the Parliamentary Assembly President represent a formal invitation for the deployment of an Election Observation Mission. But even though a formal procedure of consultation between both institutions – the Office for Democratic Institutions and Human Rights and the Parliamentary Assembly - is defined in the 1997 Cooperation Agreement, practice has proven that the two institutions usually make their own independent decision, as to whether to deploy a mission or not.<sup>188</sup>

While the OSCE PA has engaged almost exclusively in the observation of parliamentary elections by short-term observers, the ODIHR has engaged in election assistance, long-term assistance, long-term observation and short-term observation of presidential, parliamentary and municipal elections, as well as referendums.<sup>189</sup> A practical example of the independence of both OSCE institutions is the recently deployed election observation delegation to the 2007 Duma election in Russia. While the OSCE/ODIHR declined the invitation on the grounds of Visa restrictions for their observers, the OSCE Parliamentary Assembly together with the

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<sup>188</sup> Interview with a Senior Official of the OSCE PA.

<sup>189</sup> Cooperation Agreement between the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights. Copenhagen, 2nd September 1997. OSCE PA.  
<http://www.oscepa.net/Activities/Election%20Observation/266-Election%20Observation>; 16.4.08

Parliamentary Assembly of the Council of Europe, deployed a delegation of 70 parliamentary observers.<sup>190</sup>

The following section constitutes a separate examination of both OSCE institutions, focusing on their different institutional characteristics and roles during election observation missions.

### *The OSCE Office for Democratic Institutions and Human Rights (ODIHR)*

As has already been outlined during the analysis of the relationship between election observation and the organization's comprehensive security approach, the former Office for Free Elections became over time the organization's most active executive institution in the third dimension. Executive, in so far as its mandate lays in the responsibility of the OSCE decision making bodies. This is currently the Permanent Council, who meets on a weekly basis in Vienna and the Ministerial Council, meeting annually in the country holding the Chairmanship. Before 1992, when the Office for Free Election was renamed as the Office for Democratic Institutions and Human rights by the Prague Ministerial Council, the Office for Free Election was accountable to the Committee of Senior Officials (CSO). Both the Committee of Senior Officials and the Permanent Council (the former Permanent Committee renamed as Council in 1994 at the Budapest Summit) are the OSCE's decision making bodies representing CSCE/OSCE participating States. This implies that the budget of the Office is composed of the participating States contributions in the framework of the Unified Budget decision, adopted by the PC every year for the incoming year.<sup>191</sup> In turn, the Director of ODIHR, appointed through consensus in the PC, usually a career diplomat, reports regularly to the Permanent Council on the institution's activities.<sup>192</sup> Hence, there is a direct link between the ODIHR and the Permanent Council - the main decision making body of the organization.

The primary building blocks of the Office are the Elections, Democratization, and Human Rights departments, along with the Contact Point for Roma and Sinti Issues and the Program on Tolerance and Non-Discrimination. As already outlined in table 7, the most costly department of the ODIHR is the election department. During the Ambassador Christian Strohal's tenure, who was Director of the ODIHR from 2003 to June 2008, the Office

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<sup>190</sup> OSCE PA. <http://www.oscepa.net/Activities/Election%20Observation/Past%20Missions>; 16.4.08

<sup>191</sup> OSCE. Decision Nr 780. 649th Plenary Meeting. PC Journal No. 649, Agenda item 1; [www.osce.org/documents/pc/2007/02/23164\\_en.pdf](http://www.osce.org/documents/pc/2007/02/23164_en.pdf); 16.4.08

<sup>192</sup> OSCE. PC Journal 700, 7. February 2008. [http://www.osce.org/documents/pc/2008/02/29647\\_en.pdf](http://www.osce.org/documents/pc/2008/02/29647_en.pdf); 16.4.08

established 79 election missions, deploying more than 19,000 election observers.<sup>193</sup> Bearing this in mind, it becomes evident that the Office has a substantial organizational workload, requiring a considerable budget and staff.

With respect to the Office mandate for election observation, it is important to reiterate table 4, which points out relevant OSCE decision since the 1990 Copenhagen Document. As has previously been stated, the 1990 Copenhagen Document contains very little in respect to the invitation of observers (as the Office did not exist at this time). Therefore, ignoring organizational decisions taken by the Permanent Council, the Office mandate is related to the Prague, Rome and Copenhagen Ministerial, to the Budapest and Istanbul Summit and to certain decisions taken at the Porto, Maastricht and Ljubljana and Brussels Ministerial. Most prominently the Budapest Summit, which tasked the ODIHR to monitor “before, during and after the election.” Considering this in relation to the commitments taken by participating States for free and fair elections in the 1990 Copenhagen Document, it is arguable that ODIHR’s mandate is constituted, together with the Budapest Summit task, along the definition of elections set forth in the 1990 Copenhagen Document.

However, although such a mandate as outlined above has never been formally accepted, in practical application the ODIHR deploys its mission in accordance with these commitments.

Therefore, the main methodology in election observation encompasses the argument that an election is more than simply a one-day event. Thus, the methodology aims to provide an in-depth insight into all elements necessary for a democratic electoral process, including the legal and regulatory framework, the election administration; the election campaign, including the media environment; the complaints and appeals process; voting, counting, and tabulation; and the announcement of results.<sup>194</sup>

This methodology was first developed nearly a decade ago; it has also served as a model for other international organizations. The ODIHR methodology has been adopted by the UN and EU, as well as various NGOs active in the domestic or international observation of elections.

In recent years, the ODIHR has adapted its methodology to permit a focused assessment of specific aspects of the electoral process, primarily in more-advanced democracies, through the deployment of election assessment missions.<sup>195</sup> The Needs Assessment Mission (NAM) typically considers the following issues:<sup>196</sup> Pre-election environment, including the general

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<sup>193</sup> OSCE. 716th Meeting of the Permanent Council. Address by Ambassador Christian Strohal, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR). P.5

<http://www.osce.org/odihr/documents.html?lsi=true&limit=10&grp=249>

<sup>194</sup> OSCE/ODIHR. <http://www.osce.org/odihr-elections/13748.html>; 17.4.08

<sup>195</sup> Ibid.

<sup>196</sup> OSCE/ODIHR; Election Observation. A decade of monitoring elections. The people and the practice. P.16

extent to which human rights and fundamental freedoms are being observed by the government in relation to the upcoming election; The legislative framework and any amendments since the last election; The status of the media; The degree to which interlocutors believe the establishment of an observation mission can serve a useful purpose. According to the 1997 Cooperation Agreement, the Needs Assessment Mission is carried out in consultation with the OSCE PA, which in turn may send a representative when it wishes to do so. In any case, the ODIHR will inform the OSCE PA of the results of the Needs Assessment Mission. Finally, the needs assessment will take into account any previous reports by the ODIHR and the OSCE PA regarding the country concerned, including progress made on any recommendations. Such missions will also assess the extent, needs and context of the observation and should serve to establish an early dialogue with the national election authorities.<sup>197</sup>

However, practice has proven that the ODIHR does not consult the OSCE PA before going on a NAM, the ODIHR only informs the OSCE PA of its intention to go.<sup>198</sup>

The Core Team comprises the On-side Coordinator (Head of the ODIHR Mission), the Deputy Head of Mission, Election-, Legal-, Political-, and Media Analysts, and the Co-coordinator of Long-term observers.<sup>199</sup> It is important to note that the range of analysts is selected according to the requirements of democratic elections and hence the argument - defectiveness in one particular regime has considerable influence on the holding of free elections. This constitutes the main methodology of the ODIHR. A good example is the work of a Media Analyst. He or she leads a team of four to eight individuals responsible for preparing both quantitative – the total amount of time and parties – and qualitative – whether the coverage is positive, negative or neutral - analysis.<sup>200</sup> Hence, this methodology is centered on the idea that defectiveness in one particular regime, for example in the regime of media, influences the election campaign and therefore the playing field of the election as such. These experts are appointed for each election observation mission by the Director of the Office and vary in number, depending on the country in which the election is observed. The recent ODIHR mission to the parliamentary elections in the Former Yugoslav Republic of Macedonia, encompassed Political, Legal, Election, and Media Analysts. Additionally, a Long-term Coordinator and Security Experts were deployed. Bearing in mind the relationship between elections and democracy as previously explained, the ODIHR's election observation

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<sup>197</sup> OSCE. Cooperation Agreement between the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights. 1997, Copenhagen.

<sup>198</sup> Interview with a Senior Official of the OSCE PA

<sup>199</sup> Ibid; P. 18

<sup>200</sup> Ibid; P.18

methodology reflects the necessity to observe the entire election process, including its wide range of components.

In addition to the Core Team, appointed by the Director of ODIHR, there are also the Long-term and Short-term observers seconded from OSCE participating States. It is important to note that these people are not usually election experts in a professional or academic sense. However, they have already completed several ODIHR election observation missions under and have submitted their application to the election experts' database.<sup>201</sup>

Long-term observers spend six to eight weeks observing and assessing the election administration, implementation of the law and other regulations, the conduct of the campaign, and the political environment - in essence, carrying out the same sort of observation and reporting activities in the regions that the core team is doing in the capital.<sup>202</sup> In turn, the Short-term observers, around four hundred people for every EOM, arrive several days before voting and are given a comprehensive briefing about their role, responsibilities, and expectations. They observe the polling, counting and tabulation procedures and report their findings. In particular, observers visit, on average, about ten polling stations on Election Day, where they fill out forms (each form containing general questions, as well as questions related to specific issues regarding that particular election) to gather detailed information about each polling station. Each form contributes to the overall statistical profile of how polling-station procedures are being conducted throughout the country, which the core team analyses and uses to draw conclusions about the Election Day process. This permits the observation mission to determine whether irregularities, when they occur, are of an isolated nature or are systematic.<sup>203</sup> An example of an OSCE/ODIHR form is annexed to this paper.

Finally, the idea of a wide range of observers who assess their findings according to forms, reflects the idea to base the assessment of an Election Day observation on an empirical fundament. Although this is not of central importance to this paper, it is worthwhile to emphasize that it is very difficult, if not impossible, to empirically prove whether an election was conducted in a free and fair manner. This would also imply the necessity to standardize the findings of Long term observers, which would be an equally if not more difficult undertaking.

Nevertheless, it is also important to stress that the ODIHR methodology for the statistical analysis of STO forms makes it possible to bring out the systematic and recurrent, or

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<sup>201</sup> OSCE/ODIHR: <http://elexperts.odihr.pl/>; 17.4.08

<sup>202</sup> OSCE/ODIHR. Election Observation. A decade of monitoring elections. The people and the practice. P.20

<sup>203</sup> Ibid. P. 21

otherwise, nature of certain malfunctions or frauds in the polling stations or during the counting and the results.

In sum, ODIHR's election observation has two principal objectives: first to determine whether a particular election meets OSCE commitments and other international standards for democratic elections, and also to be conducted in compliance with national legislation, which should reflect OSCE commitments; and second to offer recommendations, where necessary, to support governments in implementing improvements for future elections.<sup>204</sup> The purpose of election observation is not simply to commend those countries that conduct their elections well or to criticize those that fall short of meeting their commitments. Instead, ODIHR offers proactive and constructive input, whereby it not only calls attention to specific areas for possible improvement, but also makes recommendations and provides assistance to rectify any shortcomings.<sup>205</sup>

Again it is important to reiterate that the methodology of the ODIHR had been established through practice. These practices have been proven useful during the course of missions, and have become a standardized methodology in OSCE election observation.<sup>206</sup> It is important to note that the Budapest Summit entasked such ODIHR's methods, which in turn have been proven to be an effective feature of observation missions in struggling democracies. Indeed, the starting point for ODIHR's methodology was the Budapest Summit and the engagement of OSCE participating States to second Long term and Short term observers.<sup>207</sup> Before, the Office had no observers and a very small staff. Therefore, before 1994, the OSCE Parliamentary Assembly had more observers when deploying parliamentarians than the Office for Free Elections/ODIHR.<sup>208</sup>

### *The OSCE Parliamentary Assembly*

In addition to the Short-term Observers seconded by OSCE participating States, there are parliamentary observers sent by the OSCE Parliamentary Assembly. But before starting to outline the methodology and the history of the CSCE/OSCE Parliamentary Assembly when deploying parliamentarians as election observers, I would like to briefly highlight particular institutional and political characteristics of this Assembly. The OSCE Parliamentary

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<sup>204</sup> OSCE/ODIHR. Annual Report 2007. Warsaw 2008.p.12

<sup>205</sup> Ibid.

<sup>206</sup> Interview with a Senior Official of the OSCE Secretariat

<sup>207</sup> Interview with a Senior Official of the OSCE Parliamentary Assembly

<sup>208</sup> Ibid.

Assembly was created by the governmental structures of the organization. At the NATO Summit in July 1990, U.S. President George Bush urged the creation of a Parliamentary Assembly as part of the 'institutionalization' of the CSCE.<sup>209</sup> Included in his proposal was an idea to base the CSCE Parliamentary Assembly on the already existing Parliamentary Assembly of the Council of Europe. Many European countries argued that in order not to create more bureaucratic structures and to save money, the Council of Europe Parliamentary Assembly could transform into a CSCE Parliamentary Assembly when issues of relevance to the CSCE process were discussed.<sup>210</sup> However, during the preparatory meetings for the CSCE Summit in Paris in 1990, it was determined that the CSCE Parliamentary Assembly should be an independent parliamentary body. One main reason behind this was that major players in the CSCE at the time - such as the United States, Canada and the Soviet Union - were not Members of the Council of Europe and would inevitably be second-class members of a body made up of a majority of Council of Europe Parliamentarians.<sup>211</sup> In April 1991, the parliaments of participating States met in Madrid and adopted a resolution establishing such an assembly. The first OSCE Parliamentary Assembly formal meeting took place in Budapest in July 1992.

Today, the Parliamentary Assembly consists of 317 parliamentarians from all OSCE participating States, with the aim of promoting parliamentary involvement in the activities of the OSCE and facilitating inter-parliamentary dialogue and co-operation. Therefore, Parliaments of all OSCE States are entitled to be represented in the Parliamentary Assembly. As is usual for inter-parliamentary Assemblies, it has its own budget and Rules of Procedure. The Assembly at each Annual Session of the OSCE Parliamentary Assembly elects the President of the Parliamentary Assembly, who in turn acts as the highest representative of the Assembly and presides over the meetings of the Assembly. The President is elected for one year and can be re-elected for one more year.<sup>212</sup>

On another note, whereas OSCE institutions all have a certain level of independence, the PA is placed mostly outside the organizational structures and has its own budget. As the national legislators are not constrained by diplomacy or consensus, this gives the PA a lot of freedom to maneuver in monitoring the commitments.<sup>213</sup>

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<sup>209</sup> Spencer Oliver. The Parliamentary Assembly and its Political Influence in the OSCE. P.2

<sup>210</sup> Ibid.

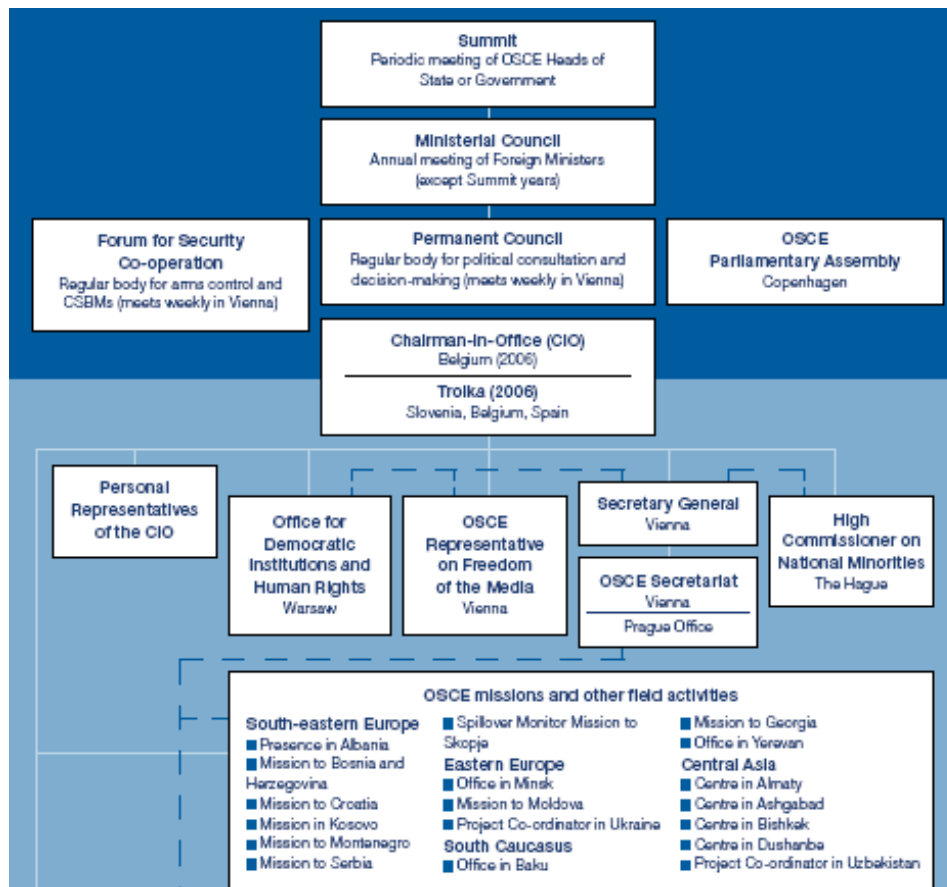
<sup>211</sup> Ibid.

<sup>212</sup> OSCE PA. <http://www.oscepa.net/Organization/President>; 18.4.08

<sup>213</sup> Jos Boonstra. OSCE Democracy Promotion: Grinding to a Halt? In: Fride, 44 Working Paper; P. 10



*Overview of the OSCE; Organigram excerpted from the OSCE Annual Report 2006, published by the OSCE Secretariat*



When examining this organigram, one significant institutional difference between the OSCE PA and OSCE/ODIHR becomes apparent. The OSCE PA, together with the Permanent Council and the Forum for Security Cooperation, is placed on the political level of the OSCE. The OSCE/ODIHR on the other hand, together with the Secretariat and other institutions is placed on the executive level of the organization. This implies that the OSCE PA, as is usual for inter-parliamentary Assemblies and Parliaments, acts independently and not on the instruction of the decision making bodies of the organization. Subsequently, the OSCE PA is an autonomous OSCE body representing an essential institution of democracy - parliamentarianism - in an organization, which has a strong intergovernmental background but simultaneously purports the promotion of democracy.

In an organization like the OSCE, whose participating States are at very different stages in the development of parliamentary democracy, the international level is often the only opportunity for some parliamentarians to receive important information that enables them to exercise their

control function.<sup>214</sup> Members of such inter-parliamentary assemblies have therefore an intermediary function. They pass information between the international and national levels, acting, where necessary, as ‘translators’ for colleagues that might be less familiar with the political processes taking place so that, jointly, they can be more effective in scrutinizing their national governments.<sup>215</sup> I

It is interesting to note, that although the OSCE PA is founded in the Paris Charter and reiterated in the Istanbul Document as one of the most important institutions of the OSCE, there is nearly no formal agreement between the OSCE governmental and executive bodies. The only formal relationship between the OSCE PA and an executive OSCE institution is based on the 1997 Copenhagen Cooperation Agreement. In fact, co-operation has to a large extent developed through practice and mutual agreement with the governmental side.<sup>216</sup>

When considering the methodology behind deploying Parliamentarians as OSCE election observers, it is important to examine the tasks of the OSCE PA as set forth in the Assemblies Rules of Procedure. The Assembly reflects the three OSCE dimensions in its committee structure, as does the OSCE governmental body. Therefore election observation is based thematically in the third dimension. Regarding the OSCE PA’s activities in election observation, Rule 2 is of relevance: In particular when stating to „*assess the implementation of the objectives of the OSCE*” and in addition “*to support the strengthening and consolidation of democratic institutions in the OSCE participating States*”;<sup>217</sup>

Thus the Assembly’s election observation is deduced along these two tasks as set forth within its Rules of Procedure. Furthermore, at the Annual Session of the Parliamentary Assembly of the OSCE in Helsinki (1993) the then Chairman-in-Office, Swedish Foreign Minister Baroness Margaretha af Ugglas, urged Parliamentarians to actively participate in election observation and monitoring. In response to this call, the OSCE Parliamentary Assembly has developed a particularly active program for observing elections in the OSCE area. The presence of parliamentary observers at elections emphasizes the importance of legislatures as institutions that must provide a balance to executive authority.<sup>218</sup>

Hence, the OSCE PA has been active in election observation since its conception. Beginning with the groundbreaking elections in Russia in December of 1993, at which the OSCE Parliamentary Assembly coordinated the monitoring activities of over 1,000 observers from

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<sup>214</sup> Andreas Nothelle. The OSCE Parliamentary Assembly – Driving Reform. P.2

<sup>215</sup> Ibid.

<sup>216</sup> Spencer Oliver. The Parliamentary Assembly and its Political Influence in the OSCE. P.2

<sup>217</sup> OSCE PA. Rules of Procedure; Rule 2 Responsibilities and Objectives of the Assembly

<sup>218</sup> OSCE PA. The first Decade of OSCE PA Election Observation

parliaments, governments and private institutions,<sup>219</sup> the OSCE PA deployed between 1993 and 2003, 1475 OSCE Parliamentarians to observe 60 elections.<sup>220</sup> A delegation of 36 CSCE parliamentarians from 21 participating States observed the first multi-party Duma elections and the referendum on the constitution in the Russian Federation on 12 December 1993. The Delegation concluded unanimously that based on their limited investigation, the elections and the referendum, were on the whole conducted in a free and fair manner.<sup>221</sup> The 36 Parliamentarians were accompanied by 21 staff of both, the national parliaments and the Headquarters of the CSCE/OSCE PA, based in Copenhagen. Starting with the Russian parliamentary elections in December 1993, the Parliamentary Assembly has, by now, led 93 election observation missions involving more than 2,700 parliamentarians.<sup>222</sup>

On another note, I would like to re-iterate table 4 as the source of a more general overview of OSCE documents highlighting the role of the OSCE PA in election observation. The 1997 Copenhagen Ministerial and the 1999 Istanbul Charter for European Security are of particular importance regarding OSCE PA's engagement in election observation. The Copenhagen Ministerial endorsed officially the 1997 Co-operation Agreement (examined earlier in this Chapter) between the Parliamentary Assembly and the OSCE/ODIHR. The Istanbul Charter, states that "*the Parliamentary Assembly has developed into one of the most important OSCE institutions continuously providing new ideas and proposals. We (Heads of States and Governments) welcome this increasing role, particularly in the field of democratic development and election monitoring.*" Thus, the Parliamentary Assembly's activity in election observation is solidly based on its own Rules and Procedures and on several documents of the organization's governmental body.

According to the 1997 cooperation agreement between the PA and the ODIHR, the Assembly plays a leading role in OSCE election observation endeavors. In particular, when the Chairman in Office appoints the OSCE Special Coordinator for Short term Observers - normally the President or a senior official of the PA - this individual will be tasked to deliver the preliminary post election statement on behalf of the OSCE.

It is important to note that whenever a judgment about elections and democracy is accorded by the international community, it gains greater legitimacy and credibility within the host population and political community, when delivered by Parliamentary election observers. Hence, the deployment of experienced Parliamentarians for the observation of elections

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<sup>219</sup> Remarks by Spencer Oliver, Secretary General of the OSCE Parliamentary Assembly to the CiO Seminar on Election Related Issues. [http://www.osce.org/odihr/item\\_1\\_32263.html](http://www.osce.org/odihr/item_1_32263.html); 23.7.2208

<sup>220</sup> Ibid.

<sup>221</sup> Ibid. P.1

<sup>222</sup> <http://modelosce.org/?q=node/73>; 2.7.2008

becomes of greater significance, when considering that the levels of scrutiny and international pressure on the host country will increase with the release of an election observation assessment statement.

Additionally, as already outlined earlier, election observation became a prominent international activity through the course of the years. It is not simply an occasion to assess the evaluation of an election, but rather the evaluation of a country's democratization process as such. Therefore it requires legitimacy, which is gained through the deployment of observers who are elected officials and represent one essential institution of democracy – parliamentarianism.

This composition together with the comprehensive methodology of the ODIHR regarding Long-term and Short-term observation constitutes the established OSCE election observation standards, which served as a model for other international institutions, most prominently for the European Union.

However, the deployment of Parliamentarians as OSCE election observers implies the need to have professionals on the ground. Observers who have fought elections themselves in their home countries are likely to have a greater insight into issues such as political campaigning and the course of the electoral process itself, than Short-term observers seconded for the mission and briefed by the ODIHR core team two days before the election observation. These Short-term observers would not have contested elections or gathered the relevant political experience, therefore lacking an important insight into the various characteristics of political campaigning, elections etc.

Hence, elected Members of Parliament provide unequalled credibility and visibility to election observation projects because of who they are and what they do. As elected officials, full practitioners in the process and dependent upon elections themselves, they are rightly presumed to know more about elections than anybody else. The fact that they have succeeded in being elected and hold public office gives them a certain standing to speak about elections, which obviously provides unequalled credibility in this field.<sup>223</sup>

Finally, the inclusion of experienced OSCE Parliamentarians in OSCE election observation as professionals with practical expertise in issues such as political campaigning and electoral processes can be understood as the methodology of the Parliamentary Assembly.

Thus, in my opinion the standard application of OSCE election observation encompasses the following aspects: The ODIHR's comprehensive methodological approach through the

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<sup>223</sup> Remarks by Spencer Oliver, Secretary General of the OSCE Parliamentary Assembly to the CiO Seminar on Election Related Issues. [http://www.osce.org/odihr/item\\_1\\_32263.html](http://www.osce.org/odihr/item_1_32263.html); 23.7.2008

deployment of long term observers on the ground weeks before Election Day, observing the whole electoral process including media, human rights, gender aspects etc. Additionally a high number of ODIHR Short term observers and several Parliamentarians of the OSCE PA for the observation of balloting and counting, including one OSCE Special Coordinator tasked to deliver the final assessment.

These methods are applied with the cooperation of other parliamentary bodies, such as the Council of Europe, the European Parliament and sometimes the NATO Parliamentary Assembly. However, it should be noted that the functional relationship between the ODIHR and the OSCE PA, during an election observation, is also dependent on the cooperation of other Parliamentary institutions.

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Since the institutionalization of the CSCE in the Paris Charter, creating both, the CSCE Parliamentary Assembly and the Office for Free Elections, both institutions – although very different in their institutional characteristics - have engaged in observing OSCE participating States commitments for free and fair elections. These institutional characteristics are also reflected in their respective duties regarding election observation.

However, this dual engagement led to the establishment of parallel structures for the observation of OSCE participating States' elections. With the mutual objective (the observation of the norm) both institutions deploy election observers along different methodologies. First the CSCE PA with the deployment of CSCE parliamentarians, later the OSCE/ODIHR with the deployment of long term and short term election observers. Particular attention should be paid to events such as the 1994 Budapest Summit mandating the ODIHR for monitoring before, during and after the election and the 1997 Copenhagen Ministerial Council endorsing the Cooperation Agreement between the OSCE PA and the OSCE/ODIHR. However, OSCE election observation standards have encompassed the complementary activity of both the OSCE PA and the OSCE/ODIHR (since it was formally endorsed in 1997). Their complementary roles are also due to their different institutional characteristics. In my opinion, as will be reflected in Chapter four, OSCE election observation must consider that international political pressure will be generated by their subsequent assessment. This necessitates that the assessment of the mission is delivered at the highest possible political level, a fact which is reflected by the appointment of the OSCE Special Coordinator – a member of the OSCE Parliamentary Assembly.

Therefore this thesis argues that any deliberation based on OSCE standards for election observation must consider the complementary roles of both, the OSCE PA and the ODIHR. In this regard, the argument that the ODIHRs methodology is the single reason why the OSCE has set the international standard for election observation, clearly ignores the complementary role of the OSCE PA. This is reflected, in particular, when examining the composition of EU election observation missions - which are led by Members of the European Parliament, who act as chief observers, while Member States provide the long-term and short-term observers.<sup>224</sup>

## **Problems and Constraints**

In reality, OSCE election observation currently faces various problems and challenges. First of all it is important to note that inner institutional cooperation does not always function according to the 1997 Cooperation Agreement. In fact, the level of cooperation between the two institutions differs from EOM to EOM. The ODIHR and some diplomats of the Permanent Council argue that Parliamentarians should not be election observers because parliamentarians often make politically motivated statements after elections and are mostly ignorant about the countries they briefly visited, while the ODIHR is well informed with the ins and outs of local legislation and traditions.<sup>225</sup>

In my belief it is also a matter of prestige. The ODIHR has sometimes been reluctant to yield information to the OSCE Special Co-ordinator, an individual not necessarily considered as a part of its team but who is tasked to deliver the OSCE final assessment statement. This individual will be in a position to claim subsequent international recognition, perhaps overshadowing the contribution of the ODIHR.

In addition to the problems related to the cooperation between the OSCE PA and the ODIHR, it is also important to note that the relationship between the OSCE governmental side and its parliamentary dimension is also occasionally problematic. As elaborated earlier when underlining the independent characteristics of both institutions, (with regard to whether an election observation mission should be deployed) the OSCE PA observed the 2007 Russian Duma elections while the ODIHR declined the invitation. Interestingly, OSCE Secretary General Marc Perrin de Brichambaut noted in a speech given at the European Humanities University and Institute of International Relations and Political Science in Vilnius on May 9<sup>th</sup>

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<sup>224</sup> Handbook for European Union Election Observation. P. 7, EC 2008

<sup>225</sup> Jos Boonstra. OSCE Democracy Promotion: Grinding to a Halt? In: Fride, 44 Working Paper; P. 10

2008, that “tensions led the OSCE to desist from sending an election observation mission to the Russian parliamentary elections (2007) and presidential elections (2008) because of undue restrictions placed on the size, duration and freedom of movement of the planned OSCE observation team.”<sup>226</sup> According to this statement there was no OSCE observation of the 2007 Russian Duma elections, although the organizations Parliamentary Assembly were present as observers together with the Parliamentary Assembly of the Council of Europe with over 70 Parliamentarians.<sup>227</sup>

Hence, over the years some tensions have grown between the PA and the OSCE Vienna institutions. The PA argues for instance that the relationship between the Assemblies President and Secretary General is comparable to that of the organizations Chairman-in-Office and Secretary General; something that is not recognized by the Permanent Council.<sup>228</sup> This refusal can be partly explained by the fact that the members of the Permanent Council, since they cannot treat the PA as a subordinate institution, e.g. on the same level of the ODIHR, wish to treat only the President as a full and equal partner, thereby putting themselves on an equal political level, whereas the PA argues that the President is on the level of the Chairman-in-Office and the PA Secretary General the equivalent of the OSCE Secretary General.<sup>229</sup>

But beside these inter-institutional problems, often caused by the lack of clearly defined roles and the status of the PA within the organization, OSCE election observation, in particular the ODIHR today faces other problems, constituting a threat to the whole endeavor. When considering table 4, which lists relevant OSCE election related commitments, it becomes evident that although the norm has been defined, issues regarding the invitation of observers have not. Although the Budapest Summit tasked the ODIHR to observe before, during and after the election, it did not define how many observers or how many days before the election these experts should be deployed. Hence, the entire ODIHR election observation methodology which has been established over the years, is based on practice and custom rather than on politically binding commitments of OSCE participating States. This problem became public before the Russian Duma elections in December 2007, when the ODIHR declined the invitation arguing that the Russian authorities had refused to give Visas to their experts and logistics officers. In turn, the Russian OSCE Ambassador Wladimir Woronkow underlined in

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<sup>226</sup> OSCE. [http://www.osce.org/documents/sg/2008/05/31768\\_en.pdf](http://www.osce.org/documents/sg/2008/05/31768_en.pdf); 25.6.08

<sup>227</sup> OSCE PA. <http://www.oscepa.net/Activities/Election%20Observation/242-Russian%20Duma%20Elections%20/>; 25.6.08

<sup>228</sup> Andreas Nothelle. The OSCE Parliamentary Assembly – Driving Reform. In: OSCE Yearbook 2006 (Hamburg 2007), 351

<sup>229</sup> Ibid.

an interview he gave for the Austrian newspaper Der Standard<sup>230</sup> that there is no OSCE document, which constitutes a timeframe for the deployment of a mission. The Ambassador elaborated further that although the ODIHR advocates the deployment of long term observers two month before the Election Day, some OSCE States, (believing themselves to be the ‘Avant-garde’ of Democracy) invite the Office only three weeks before elections. Additionally Mr. Woronkow pointed out that in Russia, there are approximately 100000 polling Stations and that it makes no difference whether there are 500 or 5000 observers present during the vote. Therefore, Russia suggests having the same number of observers for each country. According to the OSCE Budget, this should be 50. And finally, regarding the function of Long term observers and how they perceive media coverage of the election campaign, Mr. Woronkow stated that nowadays there is no need to be present in the country. The same can be said of the legal framework of the election, since all relevant information is available on the internet, according to the Russian OSCE Ambassador.

This interview outlines a clear picture. That some OSCE participating States are not satisfied with how OSCE election observation is carried out. In fact, Russia and several other CIS States have criticized the way in which OSCE/ODIHR election observation missions are implemented. They perceive an unbalanced approach, arguing that OSCE election observation missions are only properly deployed east of Vienna. In September 2007, seven CIS States presented “Basic Principles for the Organization of ODIHR Observation of National Elections”.<sup>231</sup> According to these principles, the size of election observation missions should be restricted to 50 persons, the heads of mission should be appointed by the Permanent Council, and all key decisions including those regarding the publication of election reports should be taken by the Permanent Council. With its decision to admit only 70 ODIHR observers to the Russian parliamentary elections in December 2007, the Russian Federation has underlined its position.<sup>232</sup>

In sum, as noted by a Senior Official of the OSCE Secretariat, from a legal perspective the Russian Federation is well within its rights. The Copenhagen Document states very little and the commitments made are very modest. Everything is built on custom.<sup>233</sup>

It may therefore be necessary to urge the reformation of the OSCE, or at least that a clear definition regarding the status quo and standard practices in election observation be established. The Russian Federation openly states that the OSCE needs a legal character. It is

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<sup>230</sup> DerStandard. „Wir brauchen eine Neue Philosophie“. [www.derstandard.at](http://www.derstandard.at); 2.6.08

<sup>231</sup> Wolfgang Zellner. Identifying the Cutting Edge: The future impact of the OSCE. P.24; Hamburg 2007

<sup>232</sup> Ibid.

<sup>233</sup> Interview with a Senior Official of the OSCE Secretariat



my belief that some western countries, especially the US, perceive a serious risk in the implementation of such an idea. When opening the debate over the issuing of clear commitments regarding the number of observers to be invited and at what particular date before the election, the established OSCE standards for election observation would be questioned. To date, the strategy of the US and some EU States is rather to have international standards established through practice and based on customary procedure, than to risk the endeavor of comprehensive long-term-, short-term- and parliamentary leadership in the pursuit of a legal definition and framework.

## Conclusion

During the course of the years, election observation has become the OSCE's most important activity in its third dimension of security, since it is most visible to the public and its most effective means for the promotion of democracy. The 1990 Copenhagen Declaration committed participating States to conduct elections according to the norm. Today, this norm has become one of the most important OSCE aquis in the human dimension and embraces 56 participating States, all with different political and electoral systems, traditions, cultural and ethnic backgrounds.

As an endeavor encompassing both, development cooperation and political cooperation, and can also be used for the exercising of international political pressure, OSCE election observation methodology became a benchmark for other international institutions deploying election observers during the course of the 1990s. OSCE standards for election observation encompass the complementary efforts of both, the OSCE PA and the OSCE/ODIHR. But it is important to point out that the elaboration of these standards, in particular of the ODIHR's comprehensive election observation methodology, was developed through practical application. Coupled with the contribution of the OSCE PA, this proved to be an effective approach and came to be accepted as the standard implementation of OSCE election observation missions. However, the concession of the ODIHR's autonomy was also of central importance for the development its methodology. Indeed, OSCE standards for election observation would not exist in their current form, had the decision making bodies of the organization interfered in the development of this methodology. Both, the autonomy of the OSCE PA (as part of the Assemblies institutional constituent) and the OSCE/ODIHR, are essential components for the continued impartiality of OSCE election observation missions.

Today, an OSCE election observation endeavor faces various constraints and problems. Amongst others, these problems comprise a contestation of the established standards, by a particular group of participating States, calling for OSCE reformations. However, fragile customs and commitments provide that the mission continue along the standards set. Until today, only the Russian Federation has openly refused these standards when imposing a limit on ODIHR observers during the Duma 2007 elections. It is worth questioning whether other participating States will follow this example or rather willingly accept established OSCE election observation standards.

## Chapter Four

### Case Study: OSCE Election Observation of the Extraordinary Parliamentary Elections in Kazakhstan, August 2007



## **Introduction**

The inclusion of this Case Study was intended to highlight two arguments outlined previously: That election observation missions cannot avoid considering the international pressure on the host country when releasing their assessment and that OSCE election observation is also in practice carried out as complementary activity of the OSCE PA and the OSCE/OIDHR.

In this regard, the context for the election observation shall be outlined with particular regard to the dialogue between Kazakhstan and the OSCE concerning democratic values and its subsequent OSCE Chairmanship bid. However, it is important to note that this paper does not intend to analyze Kazakhstan's political system as such, rather to examine the OSCE election observation mission and the implications of its assessment. Therefore an examination of why the election was called and a closer comparison between the Statement of Preliminary Findings and Conclusions, the OSCE/ODIHR Interim Report and the Final Report, this paper will demonstrate the roles and responsibilities of the respective OSCE institutions in this election observation mission.

However, in particular the examination and the comparison of the election observations assessments will reflect that election observation and in particular its evaluation related to Kazakhstan's political OSCE commitments for free elections, can generate important aspects of international political pressure. Pressure, which in turn constitutes the most effective feature of election observation in the promotion of democratic core values. The role of the two OSCE institutions will also be examined in the context of such international pressure, in particular the responsibility of the OSCE Special Coordinator when delivering the Statement of Preliminary Findings and Conclusions on behalf of the OSCE.

On another note but of equal importance, the case study will also demonstrate that OSCE election observation is based on a comprehensive methodology, encompassing the consideration of aspects such as media freedom, political campaign issues, candidates' registration, etc. Furthermore, that the assessment methodology focuses on whether the defectiveness of such regimes can influence the free and fairness of the whole election.

Finally, it is important to note that the Case Study does not intend to examine closely the findings of the election observation assessment; it rather aims to demonstrate particular aspects of relevance to the main argument of this paper. The Statement of Preliminary Findings and Conclusions of the International Election Observation Mission is annexed to this paper in case of further interest regarding the mission's findings.

## **The Context for the Election Observation**

First of all, I would like to point out that the Republic of Kazakhstan has for some time engaged in a dialogue with the OSCE regarding (among other issues) democratic values. This is reflected in particular with the establishment of an OSCE Mission in Almaty in 1998, with the mandate to promote the implementation of OSCE principles and commitments as well as the co-operation of the Republic of Kazakhstan within the OSCE framework. Special emphasis lies on the regional context encompassing all OSCE dimensions.<sup>234</sup> In 2007, the OSCE Mission in Almaty was renamed the OSCE Centre in Astana, a decision related to the relocation of the OSCE presence from the former to the new Capital of the country. However this had little impact on the mandate, which still aimed toward the promotion and implementation of OSCE principles and commitments, furthermore, stating that the Centre should establish and maintain contact with central and local authorities, universities and research institutes, as well as representatives of civil society and NGO's.<sup>235</sup>

On another note, the dialogue of values is also related to the invitation of OSCE election observers. The CSCE Parliamentary Assembly had already deployed an observation delegation to the parliamentary elections in 1994. The conclusion of the CSCE Observer Team was that the election process did not meet the standards which CSCE participated States had pledged to uphold. In particular the provision which allowed nearly one-quarter of the new Parliament to be virtually appointed by the President, combined with the widespread violation of Article 46 of the Electoral Code and apparent abuse of authority by local electoral commissions, made a positive conclusion by the CSCE PA Team impossible.<sup>236</sup>

Hence, since 1994, the OSCE continuously deployed election observers to monitor presidential and parliamentary elections in Kazakhstan. Interestingly, looking at the OSCE Statements of Preliminary Findings and Conclusions for the observation of parliamentary elections since 1999 chronologically, a positive trend of improvements in the legislative and regulative frameworks, in transparency of the overall election process and in the ability for political parties to convey their messages to voters, becomes evident.<sup>237</sup> Even though these statements also underlined that various OSCE commitments were not met, this trend clearly demonstrated the will of the country to increase its efforts for more genuine democratic

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<sup>234</sup> 179th Plenary Meeting of the Permanent Council. Decision Number 243;

<sup>235</sup> 671th Plenary Meeting of the Permanent Council. Decision Number 797;

<sup>236</sup> OSCE PA. The first Decade of OSCE PA Election Observation; In.

<http://www.oscepa.net/Activities/Election%20Observation>;

<sup>237</sup> Statement of Preliminary Findings and Conclusions; Parliamentary Elections 1999, 2004, 2007

elections. At this point it is also important to underline that the ODIHR worked throughout the course of these years, offering various recommendations for the improvement of the electoral law, which were in turn considered by the Kazakh authorities.

This continual cooperation with OSCE institutions and the OSCE's presence in Kazakhstan, led the Kazakh Republic to invite the OSCE to observe the August 2007 Parliamentary elections.

The countries bid for the OSCE Chairmanship demonstrates a further important aspect of the dialogue and cooperation between the OSCE and Kazakhstan. Kazakhstan's candidature to hold the chairmanship was first discussed at the 2006 Ministerial Council in Brussels. This bid was for the Chairmanship in the year 2009. However, due to the lack of consensus on the issue, the OSCE participating States decided to return to Kazakhstan's offer at the next Ministerial Council in Madrid at the end of 2007.<sup>238</sup> Subsequently Kazakhstan was entrusted with the OSCE Chairmanship for 2010, and when considering the timing of the election (August 2007), it is interesting to question whether the assessment of the election observation had an impact on the decision taken in Madrid. This paper therefore clearly argues that yes, the election observation assessment in August 2007 by the OSCE institutions, had a considerable influence on whether to entrust Kazakhstan the OSCE Chairmanship or not.

Hence, it might be important to further question why the elections were held at all. In fact, the elections were called in order to allow constitutional amendments into effect. In line with the constitution, the President of the Republic of Kazakhstan dissolved the Parliament and scheduled election of the Majilis (lower chamber of the Parliament) for the 18<sup>th</sup> of August. The Senate of the Kazakh Parliament, composed through the election of the Maslikhats, expired and had in regular terms elections on the 18<sup>th</sup> of August.<sup>239</sup> Hence, two elections were held on the 18<sup>th</sup> of August, an ordinary election of the Maslikhats (Senate) and an extraordinary election of the Majilis (lower chamber of the Parliament). Therefore, the early elections of the Majilis were needed to break a constitutional impasse. Under amendments approved in May 2007, changes in the legislature's authority could not take effect until a fresh body of deputies has been elected under the new system.

In this respect, under the new election system, 98 of the 107 deputies of the Majilis were elected via proportional representation in a single nationwide constituency. Voters voted for political parties, and those which surpassed the seven per cent threshold subsequently chose which candidates would receive mandates. The remaining nine deputies were not elected in a

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<sup>238</sup> OSCE Ministerial Council, 'Decision N. 20/06 Future OSCE Chairmanship', Brussels 2006

<sup>239</sup> Constitution of Kazakhstan, Article 44

popular vote but had been chosen by the Assembly of People, an unelected body, on 20 August.<sup>240</sup>

In May 2007, the Parliament adopted significant amendments to the Constitution, a number of which affected the election process. Inter alia, the constitutional amendments increased the number of Majilis deputies from 77 to 107 and introduced a number of additional changes, including a new electoral system, the reduction of the presidential mandate from seven to five years, removal of term limits for the first President of Kazakhstan, provision to permit the President to engage in political party activity during his/her tenure, and changes to the future composition of the CEC.<sup>241</sup>

On 19 June, the Election Law was amended, primarily to reflect the relevant changes to the Constitution and to define the election system. Previous Majilis elections were held under a predominantly majoritarian election system, with ten seats elected through a proportional system. Under the new legislation, 98 deputies of the Majilis were elected in a proportional, closed list system in one nationwide constituency. Voters voted for political parties, and the parties subsequently chose after the publication of final results which candidates would receive any mandates obtained.<sup>242</sup>

Following mergers, seven political parties submitted candidate lists to the Central Election Commission. In an inclusive process, the CEC registered all seven parties, with the following number of candidates: Ak Zhol (98 candidates), All National Social Democratic Party (ANSDP) (80 candidates), Auyl (33 candidates), the Communist People's Party of Kazakhstan (CPPK) (20 candidates), the National Democratic Party Nur Otan (126 candidates), the Patriots' Party (11 candidates) and Rukhaniyat (9 candidates). Of 400 nominated candidates, 23 were not registered by the CEC, either for not submitting the required documents or on eligibility grounds. There were no complaints from the parties regarding the registration process.<sup>243</sup>

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<sup>240</sup> OSCE/ODIHR. Election Observation Mission, Parliamentary Elections of the Republic of Kazakhstan, August 2007. Interim Report 16 July – 4 August 2007

<sup>241</sup> Ibid.

<sup>242</sup> Ibid.

<sup>243</sup> Ibid.

## The Election Observation Mission

As stated already, OSCE election observation missions usually occur in cooperation with other international institutions. In most cases, the Parliamentary Assembly of the Council of Europe, the European Parliament and the NATO Parliamentary Assembly participates. All together, they form the International Election Observation Mission, who agrees on a common statement delivering the assessment of their observations.

In the case of the observation of the August 2007 extraordinary parliamentary elections in Kazakhstan, three international institutions were present to observe the election. First in place was the OSCE/ODIHR, which arrived on the 17<sup>th</sup> of July for the deployment of its Long term observers. Second in place was the OSCE PA, which arrived on the 9<sup>th</sup> of August.<sup>244</sup> Finally, the Parliamentary Assembly of the Council of Europe arrived a few days later. These three institutions composed the International Election Observation Mission.

However, what was the composition and roles of the respective OSCE institutions? First of all, it is important to point out that the OSCE/ODIHR established its mission on 17<sup>th</sup> of July for the deployment of 36 Long term observers.<sup>245</sup> Together with the 36 Long term observers, the ODIHR core team with 19 members was deployed. This team was headed by Ambassador Lubomir Kopaj, OSCE On-side Coordinator, and by Paul O'Grady, Deputy Head of Mission.<sup>246</sup> Additionally, the ODIHR Core team was composed of two political analysts, two election analysts, one legal and two media analysts, one Long term observer Coordinator, one security expert, one gender analyst, one liaison officer, three electronic voting experts, one finance officer and two logistic experts.<sup>247</sup> Indeed, composing such a team of experts clearly demonstrate the Office's conviction that election observation must consider aspects of how the political system, the media freedom and the election law are constituted. Interestingly, these individuals, despite their expertise, are neither Long term, nor Short term observers; rather they are staff of the mission and responsible for the briefing of the observers according to their areas of proficiency. Subsequently, the 36 Long term observers, seconded from OSCE participating States, were briefed on 19<sup>th</sup> of July by the ODIHR Core team, before their deployment to the various regions of Kazakhstan.<sup>248</sup>

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<sup>244</sup> Klas Bergman and Urdur Gunnarsdottir. Managing the Mechanics of Election Monitoring. In: OSCE Magazine October-November 2007; [http://www.osce.org/publications/sg/2007/10/27195\\_938\\_en.pdf](http://www.osce.org/publications/sg/2007/10/27195_938_en.pdf)

<sup>245</sup> OSCE/ODIHR. [http://www.osce.org/odihr-elections/item\\_12\\_25488.html](http://www.osce.org/odihr-elections/item_12_25488.html); 7.7.08

<sup>246</sup> OSCE/ODIHR. [http://www.osce.org/documents/pdf\\_documents/2007/07/25488-1.pdf](http://www.osce.org/documents/pdf_documents/2007/07/25488-1.pdf); 7.7.08

<sup>247</sup> Ibid.

<sup>248</sup> [http://www.osce.org/odihr-elections/item\\_12\\_25488.html](http://www.osce.org/odihr-elections/item_12_25488.html); 7.7.08



A few weeks later on 9<sup>th</sup> of August, the OSCE PA Core team arrived in the country, headed by Ambassador Andreas Nothelle, who is the Vienna-based Special Representative of the OSCE PA. He immediately established contact with the ODIHR team, starting intensive communication and co-ordination.<sup>249</sup> This arrival was followed by eight staff members from the Parliamentary Assembly's International Secretariat in Copenhagen, who had been monitoring developments in Kazakhstan through the Internet and the media since the beginning of the campaign. They were instantly thrown into frenzied preparations for the arrivals of parliamentarians from OSCE countries. Details of hotel bookings, flight schedules, briefings, deployment on Election Day, and de-briefing the next day were organized and coordinated.<sup>250</sup> Before the arrival of the Short term observers and the OSCE Special Coordinator, both teams – the PA and the ODIHR – had meetings with representatives of the Kazakh political parties, NGOs and officials of the central, divisional and District election commissions. These meetings were sometimes held together, and sometimes separately. Bearing in mind that the OSCE PA staff had already arrived in the country on the 9<sup>th</sup> of August, almost ten days before the Election Day, this clearly demonstrated that the OSCE PA was engaged in more than simply the observation of the Election Day itself. Considering the political role of the OSCE PA according to the 1997 Cooperation Agreement, important aspects becomes evident: That the OSCE PA requires time for gathering its own impressions as to how the pre-election period is conducted, and to take into account the observation of the ODIHR, in particular the findings of the Long term observers. This is of particular importance, as the OSCE PA has the responsibility for delivering the election observation assessment on behalf of the OSCE. Therefore, the Canadian Senator Consiglio Di Nino and Vice Chair of the Parliamentary Assembly's first General Committee and Head of the Canadian Delegation to the OSCE PA, was appointed Special Coordinator by the OSCE Chairman-in-Office, Spanish Foreign Minister Miguel Angel Moratinos. Senator Di Nino arrived in Kazakhstan on 13<sup>th</sup> of August and heading the OSCE PA delegation, was hence responsible for delivering the post election statement on 19 August on behalf of the OSCE and the International Election Observation Mission.<sup>251</sup>

The 13<sup>th</sup> of August also marked the arrival of 390 Short term observers seconded by OSCE participating States plus 57 parliamentarians of the OSCE PA, representing 18 countries and five members of the Parliamentary Assembly of the Council of Europe. Separate briefings

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<sup>249</sup> Klas Bergman and Urdur Gunnarsdottir. Managing the Mechanics of Election Monitoring. In: OSCE Magazine October-November 2007; [http://www.osce.org/publications/sg/2007/10/27195\\_938\\_en.pdf](http://www.osce.org/publications/sg/2007/10/27195_938_en.pdf)

<sup>250</sup> Ibid.

<sup>251</sup> Ibid.

were organized for both, the Short term observers seconded by participating States and for the parliamentarians, deployed through the OSCE Parliamentary Assembly and the Parliamentary Assembly of the Council of Europe. These briefings covered several issues of importance for the election. They considered the political system and the election law (including how the constitutional amendments were affected), media freedom, the conduct of the election campaign and gender issues. It is important to point out that the briefings also constituted basic background information about the elections. Therefore observers attended these briefings in order to gather basic knowledge about the country's political system, election law and respective political campaign issues.

Finally, on Election Day, the International Election Observation Mission deployed 449 observers from 45 OSCE participating States, including: 381 OSCE/ODIHR observers, 61 OSCE PA observers and 7 PACE observers. The IEOM observed voting in 1,743 polling stations, vote counting at 174 polling stations and the tabulation of polling results at 123 Territorial Election Commissions (TECs).<sup>252</sup>

## **The Assessment**

First of all, it is important to point out that the International Election Observation Mission published only one common report. This was the Statement of Preliminary Findings and Conclusion. All three institutions therefore agreed to assess their observations together. This resulted in the Statement of Preliminary Findings and Conclusion. The OSCE/ODIHR in turn, published independently the Interim Report and the Final Report.

As already examined in Chapter two's section entitled "Evaluating According to the Norm", the evaluation of an election observation has to be carried out in accordance with the norm for free and fair elections defined in the respective OSCE commitments of participating States. The most important point of reference is therefore the 1990 Copenhagen Document, examined extensively in the previous chapters. A further aspect of central importance for the evaluation is the question of when the Statement of Preliminary Findings and Conclusions should be delivered. Most frequently this is done at a press conference with the issuing of the post-election statement. Normally this happens on the afternoon following the election.<sup>253</sup> As

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<sup>252</sup> OSCE/ODIHR. Final Report of OSCE/ODIHR Election Observation Mission to the Parliamentary Elections of 18th August in Kazakhstan. Warsaw 2007, p. 4

<sup>253</sup> OSCE. Cooperation Agreement between the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights. Copenhagen, 1997

media interest is most intense immediately after Election Day, the Statement of Preliminary Findings and Conclusion has a much greater impact than the Interim Report or the Final Report issued by the ODIHR. This is particularly the case for highly sensitive elections such as the extraordinary 2007 Kazakh parliamentary election, when considering that Kazakhstan had been strongly linked with the OSCE Chairmanship.

In this regard, the Statement of Preliminary Findings and Conclusions, representing the assessment of the three institutions – the OSCE/ODIHR, the OSCE PA and PACE - given on 19<sup>th</sup> of August, was of pivotal importance as the evaluation would certainly receive worldwide media coverage. Therefore, the huge significance of the language employed becomes evident. Hence, it is undeniable that the choice of words and phrases for the election observation assessment implies a great deal of international pressure on the State in which the election was held.

However what had the different OSCE institutions actually observed? What did the ODIHR observe in Kazakhstan in the weeks before the election according to its comprehensive election observation methodology?

Table 8 outlines the most important issues of concern,<sup>254</sup> as noted in the ODIHR Interim Report, in the Statement of Preliminary Findings and Conclusions of the International Election Observation Mission (OSCE institutions and PACE) and in the ODIHR's Final Report, issued several weeks after the election by the ODIHR.

When examining Table 8 more closely, various aspects become evident. In particular that election observation, as already outlined in Chapter two and Chapter three, is much more than the observation of the voting and the vote count. In fact, election observation encompasses components such as how the media covers the political campaign and election law issues such as candidate registration etc. With respect to candidate registration for example, the election observation missions were concerned about the fact that there were no provisions for individual or independent candidature. This is not in line with the 1990 Copenhagen commitments, which states that the participating State (Kazakhstan) “respects the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”.<sup>255</sup> On another note, the media did – according to the three reports – give preferential treatment to the governing party *Nur Otan*.

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<sup>254</sup> From the authors perspective

<sup>255</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. Copenhagen 1990

Table 8

Issues of concern	Reports published		
	<i>Interim Report 16<sup>th</sup> of July – 4<sup>th</sup> of August (OSCE/ODIHR)</i>	<i>Statement of Preliminary Findings and Conclusions (OSCE and PACE) 19 August 2007</i>	<i>Final Report (OSCE/ODIHR) 30 October 2007</i>
Calling for the Election	Concern because surprise for some parties. Little time to adjust their campaign	<i>Ibid.</i>	<i>Ibid.</i>
Candidate Registration	Concern because Candidature only possible through political parties, no provision for individual or independent candidates.	Ibid., concern because not in line with Copenhagen Commitments, paragraph 7.5	Ibid., concern because not in line with Copenhagen Commitments, paragraph 7.5
Media	Concern because news broadcasts were dominated a by positive coverage of <i>Nur Otan</i>	Concern because preferential treatment of the governing <i>Nur Otan</i> party in the State media	Concern because state media gave preferential treatment to <i>Nur Otan</i> in news coverage.
Threshold	Concern because high 7 per cent threshold for the representation in the Majilis	Concern because of the high 7 percent for the representation in the Majilis	Concern because additional constraint to pluralism
Counting	---	Concern because 40% of observer reports assessed the vote count negatively	Concern because 39% of observer reports assessed the vote count negatively
Assembly of the People of Kazakhstan	Concern because not in line with OSCE commitments	Ibid. not in line with paragraph 7.2 of Copenhagen Commitment	Ibid. not in line with paragraph 7.2 of Copenhagen Commitment

However, when analyzing Table 8 it also becomes evident that excepting the issue of counting, all other issues of concern as for example the early calling of the election, no provision for individual candidate registration, the preferential treatment of the governing party in the State media – had already been raised in the Interim Report published by the ODIHR.

In this respect, it is important to note that the Interim Report constitutes an important source of evaluation, as it already includes certain long term observation findings. Dissected further, this argument reflects the viewpoint that OSCE election observation is also in practice a complementary activity of the OSCE PA and the OSCE/ODIHR: because the Interim Report, encompassing the observation of Long term observers and ODIHR experts, constitutes an indispensable source of findings for the Statement of Preliminary Findings and Conclusions.

Hence, the OSCE Special Coordinator, as a member of the OSCE PA and appointed by the OSCE Chairman-in-Office, must take these findings into account before delivering the OSCE assessment.

Finally, having considered all the issues of concern raised in the three reports as summarized in Table 8, and evaluating these issues according to the norm Free and Fair Elections as outlined in Chapter Two, it is presumably arguable that the election was not free and fair.

However, Table 8 only raises the issues of concern and ignores the positive aspects of this election. In turn, balancing these concerns against such positive aspects as, for example, the fact that parties enjoyed greater access to media than in previous elections, that the Central Election Commission conducted its work in a transparent manner, that the mechanisms for hearing election complaints were more inclusive than in previous elections and that the Central Election Commission and local authorities made efforts to improve the quality of voters registers,<sup>256</sup> it becomes evident that the deliberation over how the evaluation should be concluded, ultimately reflects the choice between two possibilities: concluding that the election was predominated by either positive or negative aspects. Hence, it is this choice which ultimately influences how the conduct of the election is perceived by the international community at large. This is the moment when election observation becomes a tool for exercising international political pressure. It is therefore arguable, that the OSCE Special Coordinator, being himself elected and appointed by the OSCE Chairman-in-Office, is responsible for this decision and everything it entails.

Bearing this responsibility in mind and also the continuing cooperation between Kazakhstan and the OSCE coupled with its bid for Chairmanship, it is clear that a great deal of political pressure was generated by this decision. For some time the political agenda of the OSCE PA has supported Kazakhstan's dialogue of democratic values with the OSCE. The Assembly's President also expressed his support for the country's bid for OSCE Chairmanship several times, something, which is also reflected in the decision to hold the 2008 Annual session in Astana. Hence, it was of importance for the OSCE PA observation mission that (once the observation of the ODIHR had been taken into account) despite the fact that the election assessment contained both, positive and negative components, an encouraging rather than a discouraging assessment statement was finally issued. At least, a statement that provided motivation for continuing cooperation with the OSCE, and in particular with the ODIHR, in order to address the issues which were not in line with OSCE commitments. Therefore, the following passage seems to constitute a compromise between the shortcomings, already

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<sup>256</sup> International Election Observation Mission. Statement of Preliminary Findings and Conclusion. Astana, 2007

reflected in the Interim Report and the encouragement to continue the cooperation with the OSCE institutions.

*“While these elections reflected welcome progress in the pre-election process and during the conduct of the vote, a number of OSCE commitments and Council of Europe standards were not met, in particular with regard to elements of the new legal framework and to the vote count.*

*There was an increased ability for political parties to convey their messages to voters, including through the media, and the central election administration worked transparently. However, a number of the new legal provisions conflict with OSCE commitments. On election day, the voting was assessed in positive terms; however, the process deteriorated during the counting of the votes.”<sup>257</sup>*

When regarding this assessment, which was cited by a multitude of newspapers, reports and documents, the impact of such a statement becomes evident. In this regard, election observation and in particular its subsequent statement, implies an important normative strength because it will either motivate or discourage the respective national institutions responsible for the election. Furthermore it will also have a considerable impact on the population of the country and its political parties, as such an assessment cited through the national and international media is a significant judgment on the conduct of that country’s political activities.

Finally, the International Election Observation mission to the extraordinary parliamentary elections in Kazakhstan, comprising the OSCE/ODIHR, the OSCE PA and PACE, fulfilled its task with the observation of the Election Day and delivered its assessment. In turn, the ODIHR continued its observation after the election until the 30<sup>th</sup> of August.<sup>258</sup> Two months later the ODIHR published a Final Report. This report contains the entirety of its observations, since the deployment of Long term observers on 17<sup>th</sup> July. Interestingly the language employed in the Final Report is far more negative than in the Statement of Preliminary Findings, agreed by all three institutions. In fact, when examining the language employed in the Final Report, it becomes clear that the evaluation of the election by the ODIHR is more negative than positive:

*“The 18 August 2007 Majilis election resulted from the early dissolution of the parliament elected in 2004 and followed the adoption of significant amendments to the Constitution and Election Law, including a new proportional*

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<sup>257</sup> Ibid.

<sup>258</sup> Ibid. P.11

*representation system. However, some of the new amendments are contrary to the 1990 OSCE Copenhagen Document, marking a step backward in a number of provisions of the election legislation. Despite some progress in the process during the pre-election period and in certain aspects of voting, the election did not meet a number of OSCE commitments, in particular with regard to elements of the legal framework and to the vote count and tabulation.”*<sup>259</sup>

In this respect, comparing the conclusion of the Statement of the International Election Observation Mission, delivered right after the election, with the conclusion of the Final Report of the ODIHR, some confusion arises as the first report highlights “welcome progress” and the other highlights the election as “a step backward”. Why is this so? Why did the ODIHR agree on the language in the Statement of Preliminary Findings and Conclusions and then assess the election negatively in its Final Report? Although this essay subscribes to the viewpoint that election observation goes well beyond Election Day observation, including aspects such as voter turnout and the handling of complaints - it would be unrealistic to assume that the post election observation findings in Kazakhstan had such a negative affect on the overall election process, as to contribute to such a negative final conclusion of the election.

As described earlier, election observers must consider how their assessments influence the overall democratic reform process in transition countries. Kazakhstan, a former Soviet satellite state, began its cooperation with the OSCE in the 1990s. Taking this into account and the fact that the election conduct was observed to contain both, positive and negative aspects, it surely makes sense to have had an encouraging rather than a discouraging assessment whilst in the spotlight of national and international media. Thus, an assessment which would motivate the Kazakh authorities to continue their cooperation with the OSCE and in particular with the ODIHR.

The Final Report in turn, encompassing the findings of the Long term observation, the findings of Short term observation and the post election period, a document 33 pages long, constitutes the working document for the Kazakh authorities to address the shortcomings of the election.

Finally, the observation of the 2007 extraordinary parliamentary elections in Kazakhstan highlights one particularly important fact: That in light of the continued cooperation between Kazakhstan and the OSCE, and its bid for chairing the organization, a degree of political pressure was present during the election observation. In particular on the OSCE

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<sup>259</sup> OSCE/ODIHR Election Observation Mission Final Report. Warsaw, 2007, p.1

PA and the Special Coordinator, when considering to what extent the positive *or* negative aspects of the election should be highlighted. Undeniably, it was more judicious to give an encouraging assessment than a discouraging assessment. A negative judgment and its subsequent international attention might have provoked the Kazakh authorities to discontinue their cooperation with the OSCE, particularly with the ODIHR and to abandon their democratic reform process.

This election was not perceived to have been held in free and fair manner according to the norm outlined in Chapter two. Important shortcomings and problems were observed and reported in detail (see annex). However, Chapter two also stressed that it is inherently impossible to assess empirically whether an election had truly been held in a free and fair manner, as in fact, the notion of free and fair has become something of a misnomer through the course of the years.



## Conclusion

The election observation mission of the 2007 extraordinary parliamentary elections in Kazakhstan perceived the presence of both progress and problems. A number of OSCE commitments and Council of Europe standards were not met, in particular with regard to elements of the new legal framework and the vote count. The ODIHR Final Report noted that some of the new amendments (constitutional) were contrary to the 1990 OSCE Copenhagen Document, constituting a backward step in some provisions of the election legislation. However, progress was also noted, in particular an increased ability for political parties to convey their messages to voters, including through the media. The central election commission was also perceived to have worked transparently.

On another note, the examination of this election observation mission demonstrates some important issues to be considered when reflecting on the nature of OSCE election observation. Most obviously that election observation must commence well before the Election Day along the comprehensive ODIHR methodology for Long term observation. Another aspect highlighted in the case study is the importance of the political role of the OSCE Special Coordinator. Having taken into account the findings of the Long term observers and the observation of the Election Day, he or she must determine the degree of positivity or negativity that the preliminary assessment should reflect (this is the dichotomy implied when evaluating an election according to the norm free and fair). This is particularly the case when elections contain evidence of both, progress and problems.

Hence, the Special Coordinator, as an elected parliamentarian and appointed by the OSCE Chairman in Office, has the legitimacy for such a responsibility. In turn, when considering the level of international pressure surrounding the issue of the Statement of Preliminary Findings and Conclusions for the election observation in Kazakhstan, the Special Coordinator decided that an encouraging rather than discouraging message should be conveyed. Interestingly, as previously noted, the Madrid Ministerial Council decided to entrust Kazakhstan the OSCE Chairmanship in December 2007.

Finally, having taken all these aspects into account, this paper subscribes to the opinion that OSCE election observation must be a complementary activity of the OSCE PA and the OSCE/ODIHR. Since the OSCE PA does not have the technical expertise of the ODIHR with regard to comprehensive election observation, it is reliant upon the findings of the ODIHR's long term observation. The ODIHR in turn, as an unelected body is dependent on

the role of the OSCE Special Coordinator, who has the political legitimacy to make suitable judgments regarding the respective country's democratization process.

## **Chapter Five:**

### **Conclusion**

## Conclusion

Election observation during the course of the years became an important instrument in the broader domain of democracy promotion. Evidentially, when deliberating about the nature of democracy it become obvious that democracy cannot simply be reduced to the holding of periodical free elections. Democracy implies much more than this. The respect of fundamental human rights, the media freedom and the rule of law for instance, are likewise as important for democratic governance as the actual election of the political candidates. In turn, the deliberation about free and fair elections deduces an interesting relationship between elections and other regimes of democracy, such as media freedom, rule of law, party system, parliamentarianism etc. Hence, although democracy is much more than the holding of periodical elections, democracy also constitutes the preconditions for holding free and fair elections. Bearing this in mind and understanding election observation as the promotion of one particular democratic core value – free and fair elections - it becomes obvious why the same endeavor became over time a vital feature in a broader sense of democracy promotion.

The 56 participating States of the OSCE committed themselves to the holding of free elections, as defined in the 1990 Copenhagen document. In this respect, OSCE election observers assess their findings along the participating States common commitments. Interestingly, the above outlined relationship of democracy and free and fair elections implies that election observers, once they deliver their assessment, cannot avoid considering how the election itself contributes to the more general democratic landscape of a country. Taking this into account, election observation, being the promotion of one particular democratic core value, implies components of development cooperation and of political pressure. This becomes especially evident once the assessment of the election observers becomes public.

On another note, OSCE's endeavor in election observation, rooted in the 1990 Copenhagen Document and in the Paris Charter creating the CSCE Parliamentary Assembly and the Office for Free Elections, established important components of its methodology according to the above mentioned relationship between elections and democracy. At this point it is important to point out that the Office for Free Elections, renamed into Office for Democratic Institutions and Human Rights at the 1992 Prague Ministerial, developed a methodology for observing elections, which intends the observation of a wide range of preconditions for democratic elections, such as the earlier mentioned aspects including those of media freedom, minority rights etc. This is carried out through the deployment of Long term observation and

election experts, who are members of the ODIHR core team. The autonomy of the Office was of central importance for the elaboration of such a methodology.

Over the years a parallel structure in OSCE election observation endeavors has been established. As the oldest CSCE/OSCE institution, the Parliamentary Assembly has been active in deploying parliamentarians as election observers since the organization's conception. The deployment of elected parliamentarians is perceived as the need to have real professionals on the ground, as only parliamentarians having fought elections themselves have the necessary experience.

In this respect, since the institutionalization of the CSCE with the Charter of Paris and the rush for elections in a multitude of former soviet countries, the CSCE Parliamentary Assembly and the Office for Free Elections, renamed later as the ODIHR, engaged each other in election observation. This dual engagement had led to the establishment of parallel structures for the observation of OSCE participating States' elections. With the same aim (the observation of the norm) both institutions deployed election observers along different methodologies. First the CSCE PA with the deployment of CSCE parliamentarians, later the OSCE/ODIHR with the deployment of long term and short term election observation. Particular attention should be paid to the chronology of events such as the 1994 Budapest Summit mandating the ODIHR for monitoring before, during and after the election and the 1997 Copenhagen Ministerial Council endorsing the Cooperation Agreement between the OSCE PA and the OSCE/ODIHR. These two dates have had a considerable influence on the composition of what is today understood as OSCE standard application for election observation. Also, because of the parallel structures as pointed out above, OSCE election observation standards have encompassed this complementary activity (since 1997 formally endorsed) of both, the OSCE PA and the OSCE/ODIHR.

Another factor necessitating this complementary activity is related to the relationship between election observation and democracy promotion, thus including components of international pressure. As election observers cannot avoid considering how the election contributes to the general democratic landscape of the country – because of the fact that free and fair elections are interlinked with certain democratic preconditions – their assessment automatically implies an evaluation of the country's democratic landscape. Taking this into account and reiterating the feature of election observation as an instrument for promoting democracy, the entire endeavor becomes more effective and credible to the host country, when its internal composition represents a democratic structure. Therefore, it was decided in the 1997 Cooperation Agreement that it should be a member of the Parliamentary Assembly,

appointed by the OSCE Chairman-in-Office, who is tasked to deliver the Statement of Preliminary Findings and Conclusion on behalf of the OSCE. Because this Statement in particular, which represents the preliminary assessment of various international institutions and is in the spotlight of national and international media, it therefore contains the most important components of political pressure, which in turn is the main feature of election observation in democracy promotion. This was clearly reflected in the case study.

It is important to note that this architecture of OSCE election observation missions, encompassing the comprehensive election observation before, during and after the election by the OSCE/ODIHR and the role of OSCE parliamentarians for both, Election Day observation and the political leadership of the mission, have been taken up as a model by other international institutions for their respective activities in election observation. Most prominently by the European Union, when deploying election observation missions outside the OSCE area.

Interestingly, the elaboration of these standards, in particular the elaboration of ODIHR's comprehensive election observation methodology, has proven to be effective and was *ex post* taken into account by participating States. Both, the autonomy of the OSCE PA and the OSCE/ODIHR, are essential in their complementary application for impartial election observation regarding how the norm is implemented in OSCE participating States.

Today, a group of OSCE participating States are contesting these standards. Arguing that OSCE election observation missions are 'only deployed east of Vienna', they propose that election observation should henceforward be carried out with an agreed number of election observers for every mission and that the organizations Permanent Council rather than the Chairman-in-Office should decide who heads the mission.

This proposition would destroy OSCE standards which have been elaborated over the course of the years through practical application. Not only would the ODIHR be forced to abandon its established methodology, which has become the worldwide benchmark model for election observation missions, but also the democratic leadership role of OSCE parliamentarians would be denied as the Permanent Council would not select Parliamentarians for heading their missions. To date, the strategy among participating States believing in the importance of these established OSCE standards has been to support the implementation of such customs, choosing to adhere to the common commitments as set in the Copenhagen Document and in the Budapest Document, rather than opening negotiations for new principles in OSCE election observation, something which would ultimately throw all established OSCE election observation endeavors into doubt.

Although the cooperation between the OSCE PA and the ODIHR has been characterized by certain problems and constraints, the establishment of their parallel activities in election observation has proven to be effective when attributing their cooperation along their technical and political roles. Because election observation cannot simply be reduced to its analytical and technical aspects, or to its political aspects – it must equally encompass both of these components. Therefore, effective OSCE election observation must include the complementary activities of the OSCE Parliamentary Assembly and the Office for Democratic Institutions and Human Rights.

## **Annexes**



Danish Chairmanship of the OSCE  
Danish Ministry of Foreign Affairs

Copenhagen, 2<sup>nd</sup> September 1997

### **CO-OPERATION AGREEMENT**

BETWEEN  
THE OSCE PARLIAMENTARY ASSEMBLY  
AND  
THE OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND  
HUMAN RIGHTS

As signed by:

The OSCE Chairman-in-Office H. E. Niels Helveg-Petersen  
and  
The President of the OSCE Parliamentary Assembly Javier Rupérez



## **CO-OPERATION AGREEMENT**

### **BETWEEN THE OSCE PARLIAMENTARY ASSEMBLY AND THE OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**

Since the establishment of the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights following the Charter of Paris, both OSCE Institutions have engaged in various aspects of election assistance and observation. Experience has shown that it is both practical and desirable for these two OSCE Institutions to work more closely together on election projects. While the OSCE PA has engaged almost exclusively in the observation of parliamentary elections by short-term observers, the ODIHR has engaged in election assistance, long-term assistance, long-term observation and short-term observation of presidential, parliamentary and municipal elections, as well as referendums. In order to avoid overlap, redundancy, unnecessary expense and confusion it is agreed that the following procedures will be undertaken to enhance the capabilities and effectiveness of both of these OSCE Institutions in the future;

#### The Needs Assessment Mission

The ODIHR, in consultation with the OSCE PA, will initiate a preparatory Needs Assessment Mission prior to a long-term election observation. This will provide the ODIHR and the OSCE PA with a common reference point when embarking on an election observation project. The OSCE PA may send a representative on the Needs Assessment Mission if the OSCE PA wishes to do so and deems such participation to be appropriate. In any case, the ODIHR will inform the OSCE PA of the results of the Needs Assessment Mission.

The needs assessment will take into account any previous reports by the ODIHR and the OSCE PA regarding the country concerned, including progress made on any recommendations. Such missions will also assess the extent, needs and context of the observation and should serve to establish an early dialogue with the national election authorities.

#### Exchange of Information

Regular field reports from the ODIHR On-site Co-ordinator and long-term observers will be sent to the OSCE PA. These reports will include information about the conduct of the political campaigns, the role of the media, and the main issues of the campaign, as well as information about the candidates and political parties participating in the election process. In addition to these reports, the On-site Co-ordinator will provide copies of election laws and all relevant information on the election administration to the OSCE PA for inclusion in the briefing materials that the OSCE PA will prepare for the short-term observers. The International Secretariat of the OSCE PA will prepare briefing books well in advance of the election for distribution to short-term observers. Such materials will be shared with the ODIHR On-site Co-ordinator

(each observation mission will have one person specifically charged with the co-ordination of briefing materials) for the benefit of all observers.

The OSCE/ODIHR will inform the OSCE PA of the names and schedules of the short-term observers as well as the participating states willing to send such observers. The OSCE PA will provide the same information to the OSCE/ODIHR and to the On-site Co-ordinator. This information will be shared in advance as soon as information on short-term observers is received by both the ODIHR and the OSCE PA.

#### Observer Briefing

Recognizing that it is often difficult for parliamentarians to arrive in time for the OSCE/ODIHR general observer briefing, ODIHR will assist the OSCE in providing a separate subsequent briefing for parliamentarians whenever necessary. The OSCE/ODIHR On-site Co-ordinator, as well as when possible some long-term observers, will participate in the briefing. It is understood, however, that this briefing should not be a substitute for the provision of the continuous flow of information from the On-site Co-ordinator and the long-term observers to the OSCE PA for inclusion in the briefing books.

#### Logistical Support

Since the OSCE/ODIHR On-site Co-ordinator and long-term observers are in the field well in advance of the OSCE PA short-term observers, the OSCE/ODIHR will be in a position to assist the parliamentary observer delegation with critical logistical support, including identifying hotels or other accommodation and the engagement of cars, drivers and interpreters. This information will be provided to the OSCE PA in a timely manner in order that participating parliaments may be informed of the conditions and costs of sending short-term observers. In addition, the OSCE/ODIHR On-site Co-ordinator will provide a security assessment to the OSCE PA and make arrangements for the provision of such security as may be necessary for short-term observers participating in the election monitoring project.

The ODIHR also recognizes the fact that the OSCE PA, being a parliamentary body with short-term observers, cooperates closely during its election monitoring with the local Parliament's staff as regards the preparation of a pre-election programme and logistics. The exchange of information between the ODIHR and the OSCE PA on programme co-ordination and existing logistical arrangements will be mutually beneficial. The OSCE/ODIHR may make suggestions for the programme of the OSCE PA observers but will not interfere with or attempt to change or alter the OSCE PA programme without prior approval of the OSCE PA International Secretariat.

#### Deployment

With the objective to establish an integrated deployment plan, the ODIHR will inform the OSCE PA in advance about its deployment suggestions and recommendations. The OSCE/ODIHR On-site Co-ordinator will provide the OSCE PA with a detailed deployment plan well in advance of the arrival of short-term observers. In order that the OSCE PA may determine the manner in which their observers will be deployed it is desirable that short-term observer groups co-ordinate their observation activities in an overall deployment plan, in order to avoid duplication and to maximize overall efficiency. Organizations which send larger numbers of observers to participate in an overall effort may need to have their members



distributed across a deployment plan, in order to meet the specific interests or needs of their organization as a whole.

#### OSCE Special Co-ordinator

The OSCE Chairman-in-Office may designate a political figure as a Special Co-ordinator to lead the short-term OSCE observer mission. This political figure should normally be the President of the OSCE PA or an OSCE PA senior official recommended by the OSCE PA in consultation with the Chairman-in-Office. This Special Co-ordinator will work closely with the OSCE/ODIHR On-site Co-ordinator and will deliver the preliminary post-election statement in conjunction with other appropriate officials. In the event that other international parliamentary bodies are strongly represented in the short-term observer mission, the Special Co-ordinator may designate a Co-Chair or Co-Chairs of the observation mission, as appropriate.

#### Briefing and De-briefing

Whenever possible, common briefings and de-briefings for all observers should be organized jointly by the OSCE PA staff and the On-site Co-ordinator. It is understood, however, that the OSCE PA will have its own internal de-briefing prior to the common de-briefing for all observers. Such separate preliminary de-briefings may also be convened by other international parliamentary bodies or special groups of observers. The OSCE/ODIHR On-site Co-ordinator and other OSCE/ODIHR officials will normally be expected to attend and participate in such preliminary de-briefings. The Special Co-ordinator or other OSCE PA senior official will be expected to remain until the full de-briefing has taken place (within 24-48 hours).

#### The Preliminary Post-Election Statement

The preliminary post-election statement will normally be made on the afternoon following the election. This represents a compromise between the time constraints on parliamentarians requiring an early departure, and the technical needs of the ODIHR which often require 24-48 hours after election day for a full de-briefing and the comprehensive assessment of statistical data and vote count process. In the event that the Special Co-ordinator is not the President of the OSCE PA or a senior official, the OSCE PA will reserve the right to issue its own independent statement based on the observations of the delegation from the OSCE Parliamentary Assembly.

#### Final Report

The ODIHR and the OSCE PA will submit to each other preliminary drafts of their final reports for comment. While the ODIHR and OSCE PA reports may emphasize certain aspects of the election process in more or less detail, they should try to avoid direct contradictions without at the same time compromising integrity of their independent observations and conclusions. It would be helpful if the reports could contain agreed upon recommendations from both the ODIHR and the OSCE PA.

## Annex 2



### INTERNATIONAL ELECTION OBSERVATION MISSION PARLIAMENTARY ELECTION, REPUBLIC OF KAZAKHSTAN, 18 AUGUST 2007

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#### STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

**Astana, 19 August 2007** – The International Election Observation Mission (IEOM) for the 18 August parliamentary election in Kazakhstan is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), and the Parliamentary Assembly of the Council of Europe (PACE).

This statement of preliminary findings and conclusions is delivered prior to the completion of the election process, including the tabulation and announcement of final results, the handling of possible post-election day complaints or appeals, and the instalment into office of the newly elected *Majilis* of the Parliament of Kazakhstan.

The election is assessed in line with OSCE commitments and Council of Europe standards for democratic elections and national legislation. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the election process. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, approximately two months after the completion of the election process. The PACE delegation will present its report at its next plenary session.

The institutions represented in the IEOM stand ready to continue to support the authorities and civil society of Kazakhstan in the conduct of democratic elections.

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#### PRELIMINARY CONCLUSIONS

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The 18 August 2007 elections for the *Majilis* (lower house) of the Parliament of the Republic of Kazakhstan took place soon after major amendments to the Constitution and the Election Law, including the introduction of a new election system based on proportional representation. While these elections reflected welcome progress in the pre-election process and during the conduct of the vote, a number of OSCE commitments and Council of Europe standards were not met, in particular with regard to elements of the new legal framework and to the vote count.

There was an increased ability for political parties to convey their messages to voters, including through the media, and the central election administration worked transparently. However, a number of the new legal provisions conflict with OSCE commitments. On election day, the voting was assessed in positive terms; however, the process deteriorated during the counting of the votes.

The IEOM notes that the early elections interrupted an ongoing dialogue on election legislation, and the authorities have indicated that this process will be resumed.

Positive aspects included:

- In a noticeable improvement over previous elections, State authorities demonstrated a willingness to conduct a more democratic election process;
- Candidate list registration was inclusive, giving voters distinct electoral choices;
- Parties enjoyed greater access to media than in previous elections, in part due to initiatives by three media outlets to air debates and free airtime allocated by the Central Election Commission (CEC). This provided voters with increased access to diverse political views;
- The CEC conducted its work in a transparent manner, providing detailed information to observers on many aspects of the process, including the electronic voting system;
- The CEC adopted numerous decisions to regulate the election process, announced that it would post all results protocols on its website, and conducted an extensive voter education programme. Election administration and local authorities made efforts to improve the quality of voter registers;
- Mechanisms to hear election complaints were more inclusive than in previous elections, although their effectiveness was limited due to the fact that the CEC made few formal decisions on complaints received;
- Observers generally enjoyed good co-operation from State and electoral bodies.

However, the following issues raised concerns:

- A combination of restrictive legal provisions creates obstacles to the development of a pluralistic political party system, significantly decreases accountability of elected representatives to voters, and in some instances runs counter to international standards and commitments:
  - excessive requirements for registration of political parties as legal entities and administrative procedures which do not ensure registration in a timely manner;
  - undue limitations on the right to seek public office, including a ten-year residency requirement, a requirement for party membership for candidates, and lack of provision for independent candidates;
  - a high seven per cent threshold for representation in the *Majilis*;
  - provisions that political parties choose after the elections which candidates from their lists will become members of Parliament;
  - ownership of parliamentary mandates by political parties.
- Nine of the 107 seats in the *Majilis* were not contested by popular vote but will be chosen by the Assembly of People of Kazakhstan, an appointed body. This is not in line with OSCE commitments. Although the declared intention is to ensure a fair representation of national minorities, this objective could be achieved by other means;
- There were instances of favourable treatment of *Nur Otan* by authorities in the campaign, and there was not always a clear separation of local authorities, lower level election commissions, and the governing party. The composition of lower level commissions gave *Nur Otan* disproportionate representation in election administration;
- There was preferential treatment of the governing *Nur Otan* party in the State media, a case of censorship of an opposition party's free space in a State newspaper, and a decision to prevent airing some of the same party's campaign spots on television;
- There were concerns with the e-voting system, which was used only by approximately four per cent of voters who had the possibility of choosing e-voting.



Voting was conducted in a calm atmosphere, and observers assessed the conduct of voting positively at 95 per cent of the polling stations they visited. However, a variety of procedural and other shortcomings were noted, including polling stations missing the required number of ballots, the presence of unauthorised persons, and instances of multiple voting.

The counting of votes was not conducted transparently, and the counting process was assessed negatively in 43 per cent of polling stations visited. A wide range of irregularities were observed.

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## PRELIMINARY FINDINGS

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### Background

In May 2007, Parliament adopted significant amendments to the Constitution, a number of which affect the election process. These changes include: increasing the number of *Majilis* deputies from 77 to 107, increasing the number of appointed Senators, reducing the presidential mandate from seven to five years (at the expiry of the current term), removing term limits for the first President of Kazakhstan, permitting the President to engage in political party activity, and altering the future composition of the CEC.

The Election Law was amended on 19 June 2007, primarily to reflect the relevant changes to the Constitution and to define a new election system. After the passage of these amendments, the President dissolved the lower house of Parliament and called early *Majilis* elections for 18 August.

In a change from previous legislation, parties could not form election coalitions. As the calling of the election came as a surprise to some parties and as the deadline for submitting candidate lists fell less than one month after the election was called, parties had a short time to take decisions on merging party structures and adjust campaign strategies to the new electoral system. In June 2007, the opposition parties *Nagyz Ak Zhol* joined with the recently registered All National Social Democratic Party (ANSDP), and in July, *Ak Zhol* party merged with *Adilet*. In late 2006, well in advance of the changes to the election legislation, the *Asar*, Agrarian and Civic parties merged with the governing *Otan* party to become *Nur Otan*. The President of the Republic of Kazakhstan became the leader of the party on 4 July 2007.

The early *Majilis* election was held on the same day as the *Maslikhat* (local council) elections. The IEOM followed the *Maslikhat* elections only to the extent that they affected the *Majilis* election.

### Legal Framework

Under the amended legislation, 98 deputies of the *Majilis* are elected in a proportional, closed list system in one nationwide constituency, subject to a high seven per cent threshold.

The legislation requires that only the members of a party can be its candidates and offers no possibility for persons to seek election as individuals (independent) candidates in *Majilis* elections. These factors limit the right of individuals to seek election in a manner which is not in line with OSCE commitments<sup>1</sup> and Council of Europe standards.

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<sup>1</sup> Paragraph 7.5 of the 1990 OSCE Copenhagen Document states that: “the participating States will: respect the right of citizens to seek political or public office, individually or as representatives of political parties or

After the publication of final results, the parties passing the threshold choose which candidates receive mandates. Candidates are simply listed alphabetically on the list. Candidate lists are not displayed at polling stations, and official information about candidates provided to voters was minimal. These factors significantly lessen voters' knowledge of whom they are electing.

Following the amendments to the Constitution, *Majilis* deputies will lose their mandate if they resign from or are ejected from the party in whose name they were elected, as well as if the party terminates its activity. These provisions increase the dependency of elected representatives on their respective party leadership, giving the leadership a disproportionate level of control over their candidates. This also weakens accountability to the voters and decreases transparency in the parliamentary system.<sup>2</sup>

The amended Constitution increases from five to ten years the time that eligible candidates must have been permanently resident in Kazakhstan. The increase constitutes an unreasonable restriction on the right to seek public office.<sup>3</sup>

Nine *Majilis* deputies are not elected in a popular vote but will be chosen by the Assembly of People of Kazakhstan (APK) on 20 August. The APK is formed by the President of Kazakhstan, who is its Chair for life. The Council of the APK nominated only nine candidates to fill the nine seats. According to State authorities, these deputies will provide increased representation to national minorities. While the representation of national minorities is an accepted principle in a democracy, the mechanism chosen conflicts with paragraph 7.2 of the OSCE Copenhagen Document.<sup>4</sup>

Despite a constructive dialogue with the authorities, recommendations to improve the legal framework made on previous occasions were, in general, not addressed by the amendments. The CEC informed the OSCE/ODIHR EOM that it had drafted proposals that incorporate most of the recommendations made following previous elections but that the calling of early elections interrupted the process of putting the proposals into law. Issues identified previously include excessive restrictions on candidacy rights and disproportionate de-registration provisions, limitations on the rights to engage in political discourse and express opinions, as well as limitations on the right of peaceful assembly and freedom of speech.

However, a ban on public meetings between the end of the campaign period and the publication of final results was removed from the Election Law in December 2006, as previously recommended by the OSCE/ODIHR.

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organizations, without discrimination". Point 17 of UN HRC General Comment 25 states "The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties".

<sup>2</sup> Paragraph 7.9 of the Copenhagen Document states that participating States will "ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures".

<sup>3</sup> Venice Commission of the Council of Europe, Code of Good Practice in Electoral Matters, 2002.

<sup>4</sup> Paragraph 7.2 of the 1990 OSCE Copenhagen Document states that: "the participating States will: permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote".



One amendment from June 2007 provides that political parties not represented on an election commission may nominate a non-voting representative. The possibility to appoint a non-voting representative gave parties a chance to participate in CEC sessions. However, this option did not appear to be used below CEC level. The amendments did not change the system for composition of lower-level election commissions, and there are still insufficient guarantees for inclusive pluralistic representation on these commissions.

### Registration of Parties and Registration of Candidate Lists

In an inclusive process, the CEC registered all seven parties that submitted candidate lists as follows:<sup>5</sup> ANSDP (80 candidates), National Democratic Party - *Nur Otan* (126 candidates), the Patriots' Party (11 candidates), *Auyl* (33 candidates), *Ak Zhol* (98 candidates), *Rukhaniyat* (9 candidates) and the Communist People's Party of Kazakhstan (CPPK) (20 candidates). There were no complaints from the parties regarding the registration process. The Communist Party of Kazakhstan did not nominate candidates for the *Majilis* election in protest of the change to a proportional system in which parties decide which of their candidates will be seated in parliament.

To compete in elections, political parties must have previously registered with the Ministry of Justice, a process which includes the submission of signatures of 50,000 members. According to the Ministry, even if the number of signatures exceeds the required 50,000, a single error would be grounds for rejecting an application. This approach undermines the rationale for registering political parties that demonstrate significant levels of support. In addition there is no required timeframe for the Ministry to check signatures. Two prospective parties are still not registered and are not participating in the election.<sup>6</sup>

### Election Administration

The election administration comprises the CEC, 16 Regional Election Commissions (RECs), 205 Territorial Election Commissions (TECs) and 9,727 Precinct Election Commissions (PECs). All commissions have seven members appointed for five year terms.

The CEC was elected by the *Majilis* on the proposal of the President.<sup>7</sup> Commissions below the CEC are elected by local councils based on nominations from parties and public associations. Parties may nominate one member to each election commission. Some parties, notably *Nur Otan*, have considerably more representation on election commissions than other parties, due to the system for composition of election commissions.<sup>8</sup> In addition, many persons formally nominated by other parties or by associations are in fact *Nur Otan* party members. The ANSDP and *Ak Zhol* told the OSCE/ODIHR EOM that they are under-represented on commissions; the EOM is aware of two instances where regional/city councils did not include any of the parties' nominees. Almost all election commissions are chaired by *Nur Otan* representatives. The pluralism of PECs was

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<sup>5</sup> In the ballot order as established by lottery.

<sup>6</sup> Paragraph 7.6 of the Copenhagen Document states that participating States will "respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities".

<sup>7</sup> The amended Constitution provides for a new composition procedure to apply after the elections.

<sup>8</sup> Parties are represented in lower level commissions as follows: *Nur Otan* 19.7%, *Auyl* 12%, *Rukhaniyat* 10.5%, PPK 9.6%, *Adilet* 7.5%, *Ak Zhol* 4.7%, CPPK 6.1%, Communist Party of Kazakhstan 3%, *Nagyz Ak Zhol* 2.7%, and ANSDP 0.9%. Representatives of public associations comprise 22.8% of the membership.



affected on occasion by permitting the majority, or all members, of an election commission to be employees of a single employer.

The CEC was active and transparent in preparing for the extraordinary election. It elaborated numerous rules and regulations, maintained an updated and informative website, and conducted a voter information campaign, including regarding electronic voting. While the CEC held frequent sessions to which representatives of political parties, media and observers were invited, little discussion took place among members. In the pre-election period, most commissions were open to observers and provided observers with information as requested.

The CEC issued an instruction on 2 August that TECs should publish all PEC results for the *Majilis* election in a tabulated form no later than five days after election day, and that RECs should publish the TEC-level results within the same timeframe. In a welcome development, the CEC stated that it would publish all result protocols on its website.

The RECs organised training sessions for TECs and PECs, which varied in their effectiveness. The CEC published two separate guidelines for PECs, although neither was adopted as an official CEC document. The information contained in the two guidelines is not always consistent and consequently could cause a lack of uniformity in applying correct procedures.

In general, REC and TEC members appeared knowledgeable. RECs and TECs held few formal sessions and took very few formal decisions. In some regions, there did not always seem to be a clear separation between local authorities and lower level election commissions.

According to the CEC there are some 8.8 million registered voters. Voter lists were available for public inspection according to legal deadlines. On 9 August, in an additional effort to enhance the accuracy of the voter lists, the CEC enabled voters to check their voter registration details on its website. *Akimats* in Astana and Almaty established a telephone hotline for voter register information. In response to an OSCE/ODIHR recommendation, the CEC issued more detailed procedures for permitting voters who are temporarily away from their main residence to apply for a certificate to vote elsewhere.

### Electronic Voting

In 2004, Kazakhstan introduced electronic voting (e-voting) as a voting option. The CEC has provided the OSCE/ODIHR EOM with extensive access to technical information on the e-voting system. The system was changed prior to the presidential election in 2005 and remains substantially the same for the *Majilis* elections. While new components of the system have been individually certified, the system as a whole has not been re-certified since 2004. There have been no independent audits to verify whether the deployed voting machines comply with what was certified. Most parties expressed scepticism regarding e-voting.

E-voting was used in 1,512 polling stations. Approximately 33 per cent of the total electorate was registered at these polling stations. Voters could choose whether to cast their vote electronically or by paper ballot. The e-voting system features a touch screen voting terminal which records votes on an e-ballot. Votes are downloaded from the e-ballot to a personal computer that is also used to identify voters and transmit turnout data to the CEC during election day. The e-voting system does not include a voter-verified auditable paper trail.

The use of an optional four-digit code remains a concern. The code, meant to allow a voter to check that his/her vote was recorded correctly, if provided to a third party, would show how a voter voted. This has the potential for violation of the secrecy of the vote as well as intimidation.

### **Campaign Environment**

The election campaign took place in a generally calm environment. While initially the campaign was relatively low key, activity intensified during the latter stages of the one-month campaign period. All parties engaged in door-to-door canvassing, but relatively few rallies were held. *Nur Otan's* campaign material was by far the most visible and began to appear on the opening day of the campaign. Two parties complained that they were unable to place orders for campaign materials before the start of the official campaign. The majority of parties expressed concern regarding the high cost of campaigning, including deposits for candidates, advertising and material. Most parties claimed to have difficulty in securing billboard sites in central locations throughout the campaign, while *Nur Otan* managed to secure the majority of billboard sites. Observers noted various parties' campaign posters displayed at officially designated stands.

Political parties were able to conduct their campaigns largely without undue interference by local state authorities. However, the ANSDP filed complaints *inter alia* alleging delays by the local government authorities in designating meeting venues. The OSCE/ODIHR EOM verified that, in some cases, venues for campaign events were not provided in a central location. Conversely, *Nur Otan* filed complaints with the CEC claiming that printed material of some parties - ANSDP, CPPK, and *Auyl* - did not contain information on the size of the print-run, as required by law.

*Nur Otan* posters were seen inside polling station locations prior to election day in at least 7 regions, in contravention of the Election Law, and on other occasions displayed on public buildings. Several instances were observed where its campaign offices were located in buildings used by the local government administration. This can lead to a perception among voters that the party and State structures are insufficiently distinguishable.

The *Nur Otan* campaign was extensive. In addition to widespread billboards, posters and rallies there were numerous social, cultural and charitable events which promoted the party. During the campaign, a network of *Nur Otan* offices, on occasion with the presence of candidates, intervened with local authorities to address concerns of citizens. As part of his official duties, the President paid several visits to the regions, which were widely covered in the media, in which he spoke of the achievements of the authorities.

### **Media Environment**

The Constitution prohibits censorship and provides for free speech and the freedom of information. The Election Law requires media to provide "unbiased interpretation" of parties' campaigns. Nevertheless, some provisions of the media legislation are problematic, including provisions on libel and defamation.

Almost all parties complained about the high cost of advertising in the media. While no legal provision for free airtime exists for parties, the CEC adopted rules which *inter alia*, allow media to

hold debates. At the initiative of the CEC, parties were provided at no cost with 20 minutes on *TV Khabar*, one hour on state-funded radio, and space in both state-funded newspapers.

On 21 July, ANSDP complained to the CEC regarding *TV Khabar's* refusal to air some of its paid advertisements, consisting of previously aired news clips and the slogan "Return the Country to the People". The CEC media complaint body and an expert group of the Ministry of Justice gave opinions that the spots could foment social strife, which is prohibited by law. This interpretation of the law appeared to unduly limit freedom of expression in this case. On the basis of the opinion, the CEC issued a decision in favour of *TV Khabar*, which was upheld by the Supreme Court, and the advertisements were never aired.

The ANSDP filed an official complaint alleging the censorship of an article submitted to *Kazakhstanskaya Pravda* (a state-funded newspaper) under the CEC initiative to provide free space. The General Prosecutor sent the newspaper a clarification of the law, stating that the editing had been "conducted without any legal basis". Nevertheless, the CEC did not take a formal decision on the complaint, and the article was never printed in full in the paper.

In the months before the election, political programmes were cut from KTK's and Channel 31, while during the campaign period electronic media generally covered the campaign in a limited way. To varying degrees, all media monitored presented the views of all contesting parties.<sup>9</sup>

In the majority of TV stations monitored by the OSCE/ODIHR EOM, there was clear preferential treatment in favour of *Nur Otan*. In their prime-time news coverage, State funded TV channels *Kazakhstan 1*, *TV Khabar* and privately-owned TV Astana showed similar tendencies, allocating 17, 20 and 24 per cent respectively of their political coverage to *Nur Otan*. This coverage was highly positive in tone. In addition, a large proportion (36, 34 and 33 per cent) of the news broadcasts in these media covered the government and President giving them almost exclusively positive or neutral coverage (99.8 per cent). In contrast, ANSDP received little coverage on these three channels (four, three and four per cent respectively) of mainly neutral coverage. All parties except PPK received more airtime on State-funded TV than ANSDP.

News coverage on private *Channel 31* was more balanced, allocating 19 per cent of news coverage to *Nur Otan*, 17 per cent to ANSDP, and 12 per cent to *Ak Zhol*. The tone was mostly neutral but on occasion it criticised *Nur Otan*, ANSDP and *Ak Zhol*. Private channel KTK showed little interest in covering the campaign but regularly aired comments that portrayed ANSDP in a negative light.

From 20 July, *Channel 31* broadcast regular pre-recorded debates, each featuring two contesting parties. Although the pre-recorded format gave rise to claims of unfair editing of the programmes, they overall provided citizens an opportunity to receive information on the political platforms of all contesting parties. Additional debates, involving all seven parties, were broadcast on *Kazakhstan 1* and *Khabar*.

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<sup>9</sup> Television: State-funded - *Kazakhstan 1*, *TV Khabar*; Private - *Astana TV*, *Channel 31*, *KTK*.  
Newspapers: State-funded - *Egemen Kazakhstan*, *Kazakhstanskaya Pravda*; Private - *Aikyn*, *Express K*, *Liter*, *Nachnem s Ponedelnika*, *Novoe Pokolenie*, *Panorama*, *Respublika*, *Svoboda Slova*, *Vremya*.



Overall, print media monitored offered more diverse campaign coverage than broadcast media, although most of the print media, including both State-funded newspapers *Egemen Kazakhstan* and *Kazakhstanskaya Pravda*, showed clear bias in favour of *Nur Otan*.

### Complaints and Appeals

At the initiative of the CEC, two advisory bodies were established to consider complaints: the Working Group for Review of Complaints and the Public Council for Consideration of Media Disputes. These bodies held weekly sessions which were open to observers and party representatives and provided a forum to discuss numerous issues raised by parties. As of the end of campaign period, the CEC had received 61 complaints related to the *Majilis* election, as well as others related to the *maslikhat* elections. The most significant complaints in the pre-election period were related to campaigning in the media. In general, the CEC handled complaints transparently. However, it forwarded many complaints to prosecutors or other State bodies for clarification or investigation rather than taking decisions (see Media Environment section). Formal decisions were taken in two cases; in some cases, corrective action was taken without a formal decision.

### Participation of Women

Some 15 per cent of candidates in the *Majilis* election are women. The number of women in the incoming parliament will depend, in part, on decisions taken by parties after the election on which candidates receive mandates.

Women were under-represented in the outgoing *Majilis*. Nine of the seventy seven deputies were women (some 12 per cent). In the current government four of the sixteen ministers are women. Women are better represented in the election administration; three of the seven CEC members, 26 per cent of REC members and 43 per cent of TEC members are women.

### Participation of National Minorities

National minority issues have not played a significant role in the election campaign. National minorities are generally under-represented in candidate lists, with the share of Kazakhs in the lists being 1.5 to 2 times higher than in the population as a whole. Russians, the largest minority group (26 per cent), comprised 19 per cent of the outgoing *Majilis*. Given the overall percentage of ethnic Russians on party lists, this appears likely to decline further in the new *Majilis*.

The nine candidates for the nine *Majilis* seats chosen by the APK come from eight of the over one hundred minority groups in Kazakhstan, as well as from the Kazakh majority. While their presence may increase the overall representation of national minorities in the *Majilis*, it will not significantly increase the representation of the largest of these groups.

Although minority groups seem to be overall represented on election commissions, their participation in RECs and TECs in some regions appears to be low (e.g. West Kazakhstan, South Kazakhstan, Zhambyl). Minorities seem to be well represented on PECs in areas in which they are concentrated, for example Uighurs in Almaty region and Uzbeks in South Kazakhstan.

## **Election Observation**

The electoral framework overall provides for international and domestic election observation in accordance with OSCE commitments. However, a recent Election Law amendment requiring all international observers to have prior experience of election observation is unnecessary for the conduct of effective and impartial election observation, and is restrictive. The domestic NGO “Republican Network of Independent Monitors” (RNIM), the “Public Committee for the Control of the Election” and “Elections and Democracy” conducted long-term observation, and RNIM and the Public Committee observed on election day. These organizations appeared to have good access to the election process during the pre-election period.

The OSCE/ODIHR opened its election observation mission in Astana on 13 July 2007. It was composed of 22 experts and 36 long-term observers deployed in the capital and around the country. On election day 449 short-term observers were deployed in an International Election Observation Mission (IEOM), including 61 parliamentarians and officials from the OSCE Parliamentary Assembly, and 7 from the Parliamentary Assembly of the Council of Europe (PACE). In total, there were observers from 45 OSCE participating States. The IEOM observed voting at over 1700 stations and counting at 141 polling stations throughout the country (out of 9,727 polling stations countrywide) and the tabulation of results in 111 TECs after polling stations closed. The election day statistics below are provided as of 14:00, with 2,222 forms processed. The statistics are preliminary, but unlikely to change significantly.

## **Election Day**

### *Voting*

Voting was conducted in a generally calm environment and observers assessed the process positively in some 95 per cent of polling stations visited. Most PECs visited fully co-operated with IEOM observers, but in some instances observers were asked to sit at a distance from the proceedings or were refused information. Domestic party observers were present at some 90 per cent of polling stations, and domestic NGO observers in 61 per cent.

Almost all polling stations observed opened on time. In some 12 per cent of polling stations visited, the number of ballot papers received was not recorded properly in protocols, and observers noted cases where some polling stations had less than the required number of ballots.

While the secrecy of the vote was largely respected, observers noted occasions where ‘group’ (family) voting took place in 12 per cent of polling stations visited. There were 25 direct observations of persons casting multiple votes, and an instance of organized multiple voting was observed in Karaganda. In 14 per cent of polling stations, observers noted apparently identical signatures on the voter list. According to CEC data, there were at least 1,324 multiple votes cast electronically. Unauthorised persons, mostly from local authorities, were present in 6 per cent of polling stations visited, and in a few cases these persons directed the work of the PEC or sought to influence voters.

On election night, the CEC announced an unofficial voter turnout of 64.56 per cent. However, significant regional variations were noted; in Almaty City, only 22.5 per cent of registered voters

participated compared to 86 per cent in Almaty Region. While e-voting was an option for some 33 per cent of electors, only an estimated 4 per cent (124,671) of these used this voting method.

#### *Vote Count*

Over 40 per cent of observer reports assessed the vote count negatively. The vote count was less transparent than during the voting process: IEOM observers were restricted in their activity in 15 per cent of counts observed; voters' choices (as per the ballots) were not announced aloud in 78 per cent; and marked ballots were not shown to observers in 67 per cent. In 11 per cent of counts observed, IEOM observers noted that PECs falsified signatures on the voter list or on protocols. PECs often disregarded correct counting procedures, such as not counting the number of unused ballots before starting counting votes or establishing the number of voters that participated before opening ballot boxes. In a few cases, observers noted that votes cast for a different party were counted for *Nur Otan*. During the counting, unauthorised persons, including police, were present in larger numbers than earlier in the election day. In 25 per cent of observations, protocols were not filled out correctly. In 40 per cent of counts observed, results protocols were not posted publicly as required by law.

*This statement is also available in Russian and will be available in Kazakh.  
However, the English version remains the only official document.*

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#### MISSION INFORMATION & ACKNOWLEDGMENTS

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Senator Consiglio Di Nino (Canada), Head of the OSCE PA delegation, was designated by the OSCE Chairman-in-Office as Special Co-ordinator to lead the OSCE short-term observers. Mr. David Wilshire (U.K.) headed the delegation of the PACE. Ambassador Lubomir Kopaj is Head of the OSCE/ODIHR Election Observation Mission.

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#### **For further information, please contact:**

- Ms. Urdur Gunnarsdottir, OSCE/ODIHR Spokesperson, in Warsaw (+ 48 22 520 0600), or Mr Jonathan Stonestreet, Election Adviser, OSCE/ODIHR, in Warsaw (+ 48 22 520 0600);
- Mr. Klas Bergman, Director of Communications, International Secretariat of the OSCE PA, in Copenhagen (+45 60 10 83 80);
- Mr. Bas Klein, PACE Secretariat, in Strasbourg (+33 662 2654);
- OSCE/ODIHR EOM (until 30 August) +7 3172 245 140, fax: +7 3172 245 143, email: [office@odihr.kz](mailto:office@odihr.kz)

OSCE/ODIHR website: [www.osce.org/odihr](http://www.osce.org/odihr)

## **Abbreviations**

CEC	Central Election Commission
CIS	Commonwealth of Independent States
CORE	Centre for OSCE Research
CoE	Council of Europe
EOM	Election Observation Mission
EU	European Union
EP	European Parliament
IEOM	International Election Observation Mission
IPA CIS	Inter-Parliamentary Assembly of the Council of Europe
IPU	Inter-Parliamentary Union
NATO	Nord Atlantic Treaty Organization
NGO	Non Governmental Organization
LTO	Long Term Observer
STO	Short Term Observer
PACE	Parliamentary Assembly of the Council of Europe
OSCE	Organization for Security and Cooperation in Europe
CSCE	Conference on Security and Cooperation in Europe
MC	Ministerial Council
PA	Parliamentary Assembly
CIO	Chairman-in-Office
PC	Permanent Council
ODIHR	Office for Democratic Institutions and Human Rights

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Zellner, Wolfgang. Identifying the Cutting Edge: The future impact of the OSCE. Hamburg, 2007.

# CURRICULUM VITAE

Patrick Ager

Geboren 1983 in Salzburg, Österreich

## Arbeitserfahrung:

April 2007 – April 2008:	Forschungsassistent in der Parlamentarischen Versammlung der Organisation für Sicherheit und Zusammenarbeit in Europa (OSZE) – Wiener Verbindungsbüro
Februar 2007 – April 2007:	Praktikant in der Parlamentarischen Versammlung der Organisation für Sicherheit und Zusammenarbeit in Europa (OSZE) – Wiener Verbindungsbüro
Juni 2006 – September 2006:	Praktikant im Sekretariat des Internationalen Musikrat, UNESCO Hauptquartier, Paris
Mai 2004 – Oktober 2004:	Sicherheitskoordinator und Nachtwächter im Ferien Zentrum <i>Euronat</i> , Aquitaine, Frankreich
Juli 2003 – August 2003:	Rezeptionsdienst im Campingplatz <i>Camping Municipal du Gulp</i> in Aquitaine, Frankreich
July 2001 – August 2001:	Rezeptionsdienst im Campingplatz <i>Camping Municipal du Gulp</i> in Aquitaine, Frankreich

## Ausbildung:

November 2008:	Magister Phil. der Politikwissenschaften, Universität Wien; Diplomarbeit: <i>OSCE Election Observation – Challenging the Norm and Standards</i> .
September 2005 – Mai 2006:	Erasmus Studium an der Grande Ecole Sciences Politiques Bordeaux (IEP); Mit ‚gut‘ abgeschlossenes ‘Certificat d’Etudes Politiques’
März 2003 – Juni 2005:	Diplomprüfungszeugnis der ersten Diplomprüfung Politikwissenschaft <i>bestanden</i>
Februar 2002 – Jänner 2003:	Zivildienst im Diakonissen-Krankenhaus, Diakonie Zentrum Salzburg
September 2001 – Februar 2002:	Architektur Studium an der Technischen Universität Wien
Juni 2001:	Matura und Reifeprüfung am Musischen Gymnasium Salzburg in Deutsch, Englisch, Französisch, Chemie, Kunstgeschichte und zeitgenössische Kunst