

# Two Decades of International Electoral Support: Challenges and Added Value

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## I. Introduction

Electoral support activities by international actors have skyrocketed since the beginning of the 1990s. Today, a number of international organizations engage in election related activities, among them the United Nations (UN), the Organization of American States (OAS), the Organization for Security and Cooperation in Europe (OSCE), the European Union (EU) and, recently, the African Union (AU). A considerable range of support activities is possible. While election observation is, broadly speaking, the impartial assessment of the character and the quality of the electoral process by external actors; electoral assistance is of an advisory character, and may include, inter alia, legal and logistical advice, poll worker training and civic education. Another means of international electoral involvement is “election organization”, where the international community itself runs the election.<sup>1</sup>

The figures on democracy and electoral support account for the extensive international engagement in the field. Between 1987 and 2002, observers were present for 86 per cent of the national elections in 95 newly democratic or semi-authoritarian regimes.<sup>2</sup> As for electoral assistance, between 1989 and 2005, 363 official requests for assistance in electoral matters were referred to the UN. Of these, 275 requests were accepted, with assistance being provided to 96 different countries.<sup>3</sup> Most recently, in January 2009, the UN Security Council called upon the international community to support the electoral process in Côte d’Ivoire inter alia by providing electoral observation and related electoral assistance.<sup>4</sup>

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<sup>1</sup> “Democracy support” more broadly speaking does not focus on the election process itself but rather on the wider issue of democracy building and consolidation.

<sup>2</sup> E. Bjornlund, *Beyond Free and Fair. Monitoring Elections and Building Democracy*, 2004, 43.

<sup>3</sup> C. Binder/ C. Pippan, “Election Monitoring, International”, in: R. Wolfrum (ed.), *Encyclopedia of Public International Law*, Online Edition, 2008, para. 11. As of August 2007, the United Nations had already received 406 requests. *Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization*, Report of the Secretary-General, 23 August 2007, Doc. A/62/293, 2.

<sup>4</sup> S/RES/1865 (2009) of 27 January 2009, para. 5.

The remarkable increase of election related activities goes hand in hand with a renewed understanding of national sovereignty in international law which no longer is insensible to the way a regime is formed. Some talk about an “emerging right to democracy.”<sup>5</sup> An individual right to participate in elections is found in international human rights instruments (e.g. the International Covenant on Civil and Political Rights, CCPR, article 25) which provide for a right to political participation, including electoral guarantees. These treaties are widely ratified.<sup>6</sup> At the 1993 World Conference on Human Rights, the representatives of 171 states underlined the responsibility of the international community to “support the strengthening and promotion of democracy, development and respect for human rights and fundamental freedoms in the entire world.”<sup>7</sup> Thereby, the commitment to democracy and the recognition of the right to political participation can be viewed as almost universally shared and accepted.

Despite this widespread recognition, the worldwide realisation of democracy seems far from perfect. *Freedom House*, in its survey measuring political and civil liberties, indeed found “freedom in retreat” in 2008, for the 3rd year in a row.<sup>8</sup> Leaving aside obviously undemocratic states and dictatorships,<sup>9</sup> even in those states which periodically hold elections, serious flaws undermine electoral processes and impede the free expression of the will of the people as basis for the authority and legitimacy of their respective governments. Large scale incidents of fraud, such as during Azerbaijan’s parliamentary elections in 2005, taint

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<sup>5</sup> T. Franck, “The Emerging Right to Democratic Governance”, *AJIL* 86 (1992), 46 et seq.; T. Franck, “The Emerging Right to Democratic Governance”, in: R. Falk (ed.), *Human Rights: Critical Concepts in Political Space*, 2008, Vol. 11, 171.

<sup>6</sup> As of June 2009, the CCPR was ratified by 164 states; CERD by 173 states, CEDAW by 186 states.

<sup>7</sup> Vienna Declaration and Programme of Action, 25 June 1993, para. I/8.

<sup>8</sup> See A. Puddington, “Freedom in the World 2009. Setbacks and Resilience”, <[http://www.freedomhouse.org/uploads/fiw09/FIW09\\_OverviewEssay\\_Final.pdf](http://www.freedomhouse.org/uploads/fiw09/FIW09_OverviewEssay_Final.pdf), 2>.

<sup>9</sup> According to estimates of 2003, in 10-15 states worldwide elections had never been held at the national level; M. Suksi, “The Electoral Cycle: On the Right to Participate in the Electoral Process”, in: M. Suksi/ J. Lindblad (eds), *Election Elements: On the International Standards of Electoral Participation*, 2003, 1 et seq. (44).

electoral results.<sup>10</sup> Restrictions on media and civil society, as was the case in Russia,<sup>11</sup> undermine the essential preconditions for pluralist elections and indicate a worrying shift towards “directed democracies” where elections become only a façade. Finally, a lack of transparency may undermine confidence in the results, as evidenced in the 2007 Kenyan presidential elections as well as in Iran’s Presidential elections of June 2009 with outbursts of violence in the aftermath of the elections.<sup>12</sup> These examples confirm that the peoples’ ability to genuinely choose their government or head of state is not always achieved, even in those states which regularly hold elections.<sup>13</sup>

Against this background and after roughly two decades of international electoral support, it is thus necessary to ask: what role can such support play to further the quality of electoral processes? Can it live up to the expectations put forward in the Declaration of Principles for International Election Observation,<sup>14</sup> which affirms the potential of international election observation to enhance the integrity of electoral processes?<sup>15</sup>

In order to adequately set in context the role of international electoral support, Part II. of this article will discuss the applicable stan-

<sup>10</sup> See in this sense, International Election Observation Mission, *Statement of Preliminary Findings and Conclusions, Republic of Azerbaijan, Parliamentary Elections*, 6 November 2005, <[http://www.osce.org/documents/odihr/2005/11/16889\\_en.pdf](http://www.osce.org/documents/odihr/2005/11/16889_en.pdf)>.

<sup>11</sup> See for instance BBC News, “Russia closer to controlling NGOs” of 27 December 2005, <<http://news.bbc.co.uk/1/hi/world/europe/4562278.stm>>. More generally A. Aslund, “Democracy in Retreat in Russia”, <<http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=16550>>.

<sup>12</sup> <[http://www.eueomkenya.org/Main/English/PDF/Final\\_Report\\_Kenya\\_2007.pdf](http://www.eueomkenya.org/Main/English/PDF/Final_Report_Kenya_2007.pdf)>, 3, *EU EOM, Kenya General Elections*, 27 December 2007; BBC News, Iran Crisis, 6 July 2009, <<http://news.bbc.co.uk>>.

<sup>13</sup> On the basis of criteria such as a competitive multi party system, universal adult suffrage and regular elections, Freedom House considered only 119 out of 193 countries as “electoral democracies”, Puddington, see note 8, 3. Countries such as Russia and Azerbaijan were qualified as “not free”, Kenya as partly free, Freedom House, *Map of Freedom 2009*, <<http://www.freedomhouse.org/template.cfm?page=445>>.

<sup>14</sup> *Declaration of Principles for International Election Observation*, New York, 27 October 2005, <<http://www.cartercenter.org/documents/2231.pdf>, 2>.

<sup>15</sup> *Ibid.*, 1.

dards: election related elements of the right to political participation, as stipulated in core human rights documents and central political commitments adopted in the ambit of international organizations. Part III. will deal with election observation and assistance by international organizations as major electoral support activities. It will outline the organization and methodology of election observation missions (EOMs) and explain the tasks of electoral assistance. The fourth Part will analyse to what extent international electoral support may be considered an adequate tool to improve the quality of elections and to promote democracy. The added value as well as the limitations and challenges of relevant electoral support activities will be discussed in detail accordingly. A final fifth Part will summarise the main findings and evaluate the impact of international electoral support in light of current developments.

## II. Applicable Standards<sup>16</sup>

The election related aspects of the right to political participation are set out in two major bodies of international law: human rights instruments and the election observation practice of international organizations. The latter is conducted on the basis of political commitments of Member States which are informed by international human rights standards. For instance, according to OSCE methodology, in areas where they are conducted, EOMs assess whether the electoral process is in line with OSCE commitments, universal standards for democratic elections and other international obligations of the respective state.<sup>17</sup>

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<sup>16</sup> For further reference see C. Binder, "International Election Observation by the OSCE and the Human Right to Political Participation", *European Public Law* 13 (2007), 133 et seq.

<sup>17</sup> See OSCE/ODIHR, *Election Observation Handbook*, 5th edition, 2005, 15. The Handbook cites article 21 UDHR, article 25 CCPR, article 5 CERD and article 7 CEDAW as "universal principles", *ibid.*, 15-16.

## 1. International Human Rights Law

### a. Universal Instruments

A number of major universal human rights instruments stipulate elections as central to realise the right to political participation. These include the Universal Declaration of Human Rights (UDHR), the CCPR but also – with a particular view to empower marginalised groups or women – the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities. The necessary features of elections are further detailed by the Human Rights Committee (HRC) in General Comment No. 25 from 1996<sup>18</sup> as well as by the CEDAW Committee in General Recommendation No. 23.<sup>19</sup> Although neither the General Comment nor the General Recommendation is legally binding on the states that have ratified the CCPR or CEDAW, they serve as powerful guidelines for the realisation of the right to political participation.

The 1948 UDHR refers in article 21 (3) to essential election elements such as universal and equal suffrage and the necessary secrecy of the vote. It also states that elections must be periodic and genuine.<sup>20</sup> The first legally binding stipulation of a right to political participation in an international treaty<sup>21</sup> and a further elaboration of election elements is contained in article 25 of the 1966 CCPR.

According to article 25:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: a) To take part in the conduct of public affairs, directly

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<sup>18</sup> HRC, General Comment No. 25 of 12 July 1996, Doc. CCPR/C/21/Rev.1/Add.7, “The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25).”

<sup>19</sup> CEDAW Committee, General Recommendation No. 23, 16th Sess., 1997, <[www.un.org/womenwatch/daw/cedaw/recommendations/index.html](http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html)>.

<sup>20</sup> Article 21 (3) UDHR: “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 equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

<sup>21</sup> The UDHR is as General Assembly resolution in principle not legally binding.

or through freely chosen representatives; b) 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; [...].”

The HRC’s General Comment clarifies that the CCPR does not give preference to a specific electoral system, which is left to the discretion of national states as long as the equality of votes (equal weight of votes) is respected (para. 21). The Comment outlines, however, that periodic elections must be held at intervals which are not unduly long (para. 9) and establishes that the election process must be supervised by an independent electoral authority (para. 20). Regarding a person’s right to vote and to stand for elections, it states that it may be subject only to reasonable and non discriminatory restrictions such as a minimum age limit (paras 10, 15). Furthermore, the General Comment refers to the election campaign, the election itself and also stresses the necessary due implementation of its results (para. 19). It states the importance of other rights (freedom of expression, assembly and association) as essential preconditions for the effective exercise of the right to vote (para. 12), stresses that voters must be able to exercise their right free from intimidation or fear (paras 19, 20) and underlines the importance of the secrecy of the vote (para. 20). The HRC outlines, furthermore, that the realisation of the right to political participation not only requires non-interference on the part of the state but also that effective measures (e.g. the establishment of voter registers) are enacted to enable persons to exercise their voting rights (paras 1, 11).

Treaties such as CERD (article 5c), the Convention on the Political Rights of Women of 1952<sup>22</sup> (articles I-III), CEDAW (article 7), and the Convention on the Rights of Persons with Disabilities (article 29) guarantee a non discriminatory participation in the electoral process which may benefit particular vulnerable groups such as disabled persons, minorities or women. In addition, an encouragement and even an obligation of states to adopt special measures in order to achieve not only a *de iure* but also a *de facto* equality of disadvantaged groups in regard to participation in the political process and representation may be deduced from these instruments.<sup>23</sup>

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<sup>22</sup> Convention on the Political Rights of Women, A/RES/640 (VII) of 20 December 1952.

<sup>23</sup> See article 2 (2) CERD, article 3 CEDAW and article 5 of the Convention on the Rights of Persons with Disabilities. See also General Recommendation No. 23, where the CEDAW Committee encourages states to take tem-

Further, human rights standards which set the very preconditions for elections are established with the right to freedom of expression, assembly and association.<sup>24</sup> These rights are of relevance for the entire electoral process: during the pre-election period (e.g. as regards the election campaign or the establishment of political parties); on election day; and in the post-election phase (e.g. in case of public demonstrations or manifestations; or public criticism of the results). Fair trial standards as contained in article 14 CCPR are crucial for the assessment of specific aspects of the electoral process, such as for election dispute resolution mechanisms.

### b. Regional Instruments

In the regional context of the Americas, article 23 American Convention on Human Rights enshrines a right to political participation which is largely similar to article 25 CCPR. In Europe, the first Protocol to the European Convention on Human Rights (ECHR) contains a slightly weaker provision: article 3, 1st Protocol to the ECHR.<sup>25</sup> One weakness with article 3 is that, instead of stipulating individual rights, it only states the obligation of States Parties to hold free elections at reasonable intervals by secret ballot. This weak formulation, however, has been strengthened by the dynamic interpretation of the Strasbourg organs which made it justiciable as individual right.<sup>26</sup> In the African context, article 13 of the Banjul Charter does not directly mention elections, but merely states that “Every citizen has the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.” In the interpretation of the African Commission on Human and

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porary special measures to ensure the equal representation of women in all fields covered by arts 7 and 8, CEDAW General Recommendation, see note 19, para. 15.

<sup>24</sup> See e.g. arts 19, 21, 22 CCPR.

<sup>25</sup> Article 3, 1st Protocol to the ECHR: “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 their legislature.”

<sup>26</sup> Council of Europe, *Digest of Strasbourg Case Law relating to the European Convention on Human Rights*, Vol. 5, 1985, 829 et seq. See also A. Rosas, “Article 21”, in G. Alfredsson/ A. Eide (eds), *The Universal Declaration of Human Rights*, 1999, 431 et seq. (443-444).



Peoples' Rights, this power involves nonetheless legitimising a sovereign power through elections.<sup>27</sup>

## 2. Political Commitments Adopted in the Ambit of International Organizations

The binding standards in human rights instruments are further developed and concretised by political commitments and best practices adopted and developed in the context of international organizations. Although formally, these commitments and best practice models are not legally binding, they serve as common standards of reference and are supposed to foster implementation in a similar way as obligatory standards.<sup>28</sup>

Due to the plurality of actors involved, the regulatory framework so developed is not based on one single text or instrument. Relevant documents include, inter alia, the biannual General Assembly Resolutions "Enhancing the effectiveness of the principle of periodic genuine elections" ("Enhancing Resolutions"), the 1990 CSCE Copenhagen Document<sup>29</sup> (paras 6-8), the Inter-American Democratic Charter (arts 23-25)<sup>30</sup> and the 2002 OAU/AU Declaration on the Principles Govern-

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<sup>27</sup> African Commission on Human and Peoples' Rights, *Constitutional Rights Project and Civil Liberties Organization v. Nigeria*, 31 October 2008, Doc. ACHPR/102/93 paras 49-50. Cited after N. Petersen, "The Principle of Democratic Teleology in International Law", *Brook. J. Int'l L.* 34 (2008), 35 et seq. (67).

<sup>28</sup> See in this sense the statements made at the OSCE Supplementary Human Dimension Meeting "Electoral Standards and Commitments", 15-16 July 2004, Final Report, <[http://www.osce.org/documents/odhr/2004/10/3765\\_en.pdf](http://www.osce.org/documents/odhr/2004/10/3765_en.pdf)>, 8. See also Fox: "While CSCE States did not intend for the Helsinki process to produce legally binding treaties, provisions in these subsequent agreements read as obligatory rather than merely hortatory standards", G.H. Fox, "The Right to Political Participation in International Law", in: G.H. Fox/ B.R. Roth (eds), *Democratic Governance and International Law*, 2000, 48 et seq. (68).

<sup>29</sup> Conference on Security and Co-operation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, *ILM* 29 (1990), 1305 et seq. The CSCE was renamed OSCE in 1994.

<sup>30</sup> *Inter-American Democratic Charter*, 12 September 2001, *ILM* 40 (2001), 1289 et seq.

ing Democratic Elections in Africa (paras II-IV),<sup>31</sup> as well as the 2007 African Charter on Democracy, Elections and Governance (article 17).<sup>32</sup> At expert/technical level, the Venice Commission of the Council of Europe assembled principles of European heritage concerning elections in the 2002 Code of Good Practice in Electoral Matters.<sup>33</sup>

Notably, the General Assembly “Enhancing Resolutions” are rather vague on relevant standards and also stress the necessary autonomy of states by affirming that the primary obligation to organise elections is with the respective governments.<sup>34</sup> The level of concretisation of the relevant electoral commitments in the regional documents differs. Whereas the Inter-American Democratic Charter contains rather broad references to the necessary promotion of democracy, the CSCE Copenhagen Document<sup>35</sup> and the instruments adopted in the African context (OAU/AU Declaration on the Principles Governing Democratic Elections in Africa and the 2007 African Charter on Democracy, Elec-

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<sup>31</sup> Organization of African Unity, *OAU/AU Declaration on the Principles Governing Democratic Elections in Africa*, 8 July 2002, Doc. AHG/Decl. 1 (XXXVIII).

<sup>32</sup> *African Charter on Democracy, Elections and Governance* of 30 January 2007, not yet in force.

<sup>33</sup> European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters*, 5-6 July and 18-19 October 2002, CDL-AD(2002)023.

<sup>34</sup> See e.g. A/RES/60/162 of 16 December 2005 titled “Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization”. The General Assembly resolutions which emphasise the necessary respect for national sovereignty (“Respect Resolutions”) and may somehow be considered as reply to the “Enhancing Resolutions”, will be discussed in more detail in Part IV. 2. a.

<sup>35</sup> For example, in addition to detailing the single commitments of universal and equal suffrage (7.3), secrecy of the vote (7.4), the necessity of free elections at reasonable intervals (7.1) where the seats of at least one chamber of the national legislature are contested by popular vote (7.2), para. 7 of the CSCE Copenhagen Document goes further and explicitly refers to the need for freely established political parties (7.6), the need to ensure that campaigning is conducted in a free and fair atmosphere (7.7) and the essential unimpeded access to the media for all political groupings (7.8) in the election related context. Finally, para. 7.9 affirms that the elected candidates have to be duly installed in office.

tions and Governance)<sup>36</sup> outline the election related commitments of Member States in considerable detail.

Further concretised and developed in the election observation practice of international organizations, the following standards may be deduced and guide the relevant electoral support activities (election observation and assistance):<sup>37</sup> universal and non-discriminatory voter registration; effective guarantee of equal voting rights; creation of a level playing field for parties and candidates, including adequate access to the media and to public funds; existence of a transparent legal framework and a neutral and impartial election administration, usually implying the establishment of an independent electoral commission; the freedom of voters to form and express their opinion without intimidation; the secrecy of the vote; correct counting of votes and publication of the results; guarantee of an effective complaints and appeals procedure; and due installation in office of those validly elected. At the same time, however, these standards are always to be viewed against the background of diverging country situations and the countries' varying stages in the process of democratic transition. This contextualisation allows for a certain flexibility and opens a possibility to accommodate different country situations.<sup>38</sup>

In short, the electoral support activities by international organizations take place against the background of a detailed set of international standards and best practices which governs and guides these activities. In the following, the potential of electoral support to enhance the quality of electoral processes and to promote democratic consolidation will be examined with a view to the realisation of these international standards.

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<sup>36</sup> The 2002 *OAU/AU Declaration on the Principles Governing Democratic Elections in Africa* and the 2007 *African Charter on Democracy, Elections and Governance* inter alia emphasise the necessary establishment of independent and impartial national electoral bodies; timely election disputes resolution mechanisms; media access to candidates; and a code of conduct for the relevant stakeholders, in which all parties and candidates commit themselves, among others, to accept the results.

<sup>37</sup> See also Binder/ Pippan, see note 3, para. 21.

<sup>38</sup> A country is thus assessed not only against the scale of absolute values but also as to its proper progress made.

### III. International Electoral Support Activities

#### 1. Overview

Electoral support activities are conducted by the UN as well as by an ever increasing number of (sub-)regional organizations. Among the most active are the OAS, the OSCE, the EU, the Commonwealth and recently, the (AU) African Union and the Commonwealth of Independent States (CIS).<sup>39</sup> The OAS, the OSCE, the AU, the CIS and the Commonwealth thereby limit their engagement to Member States, whereas the EU is the only organization that observes elections and conducts electoral assistance projects exclusively in non-member countries. Unlike Eurasia, the Americas and Africa, Asia lacks a regional organization engaging in electoral support.

The analysis here will be limited to the activities conducted by these governmental organizations. Election support by international non governmental organizations (NGOs) will not be discussed as this would go beyond the scope of this Chapter. Note, however, that numerous NGOs such as the Carter Center, the National Democratic Institute, the European Network of Election Monitoring Organizations (ENEMO), or the International Foundation for Electoral Systems (IFES) are frequently engaged in EOMs and relevant electoral assistance projects.

Furthermore, and in line with what was said in the introduction, this section will refer only to the electoral support activities which are most widespread, namely election observation and assistance. Election observation is generally defined as the “purposeful gathering of information regarding an electoral process, and the making of informed judgements on the conduct of such a process on the basis of the information collected, by persons who are not inherently authorized to intervene in the process [...]”<sup>40</sup> Put differently, in an EOM, independent observers are

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<sup>39</sup> In Africa, also sub-regional organizations, such as the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC), are increasingly becoming involved in election related activities.

<sup>40</sup> International IDEA, *Glossary of Electoral and Related Terms*, <[http://www.idea.int/publications/ace/electoral\\_glossary.htm#e](http://www.idea.int/publications/ace/electoral_glossary.htm#e)>. See also the similar but more detailed definition of “international election observation” of the *Declaration of Principles for International Election Observation*, see note 14, 2.

deployed who assess whether an election was conducted in accordance with international standards. Electoral assistance, on the contrary, may comprise a broad range of activities with technical advice and support provided to the national election authorities being the most common. The difference between electoral observation and assistance is thus based in the role they play for/in the electoral process. While election observation is based on the principle of non interference and – in the end – takes a position and issues a statement on whether the electoral process was conducted in line with international standards, electoral assistance directly supports national electoral authorities but does not publically comment on the quality of the electoral process.

The importance of international electoral support is generally recognised. In the ambit of the above-mentioned regional organizations (OSCE, OAS, AU), states usually commit themselves to receive observers, stressing the importance of election observation for the quality of the electoral process.<sup>41</sup> The relevance of electoral assistance is emphasised especially by the UN, and more particularly in the “Enhancing Resolutions” of the General Assembly.<sup>42</sup> Furthermore, most of the above-mentioned organizations have established proper institutions to promote democracy and conduct electoral support activities.<sup>43</sup>

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<sup>41</sup> The OSCE participating states recognise election observation as a tool to promote and support democratic elections. Accordingly, the Copenhagen Document affirms: “The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for states in which elections are taking place. They therefore invite observers from any other CSCE participating States [...] to observe the course of their national election proceedings [...]” *Copenhagen Document*, see note 29, para. 8. Likewise, in the ambit of the OAS and the AU the importance of receiving election observers is recognised. Arts 24, 25 of the 2001 *Inter-American Democratic Charter*; article V of the 2002 *OAU/AU Declaration on the Principles Governing Democratic Elections in Africa*.

<sup>42</sup> See e.g. A/RES/62/150 which stresses the usefulness of electoral assistance, A/RES/62/150 of 18 December 2007, para. 5.

<sup>43</sup> The principal institution mandated to conduct electoral support in the framework of the OSCE is the ODIHR, in the ambit of the OAS it is the Department for the Promotion of Democracy, and in Africa, it is the Democracy and Electoral Assistance Unit. Within the United Nations, the UN Electoral Assistance Division is responsible for assisting the Under-Secretary-General for Political Affairs, who serves as the focal point for UN electoral assistance activities. Likewise, the UNDP Bureau for Development Policy at HQ and the UNDP offices are important actors in the electoral assistance field.

In the following, an overview of the relevant electoral support activities will be given: the methodology and conduct of EOMs will be discussed and the most important electoral assistance activities outlined. The focus will concentrate on the OSCE and EU as regards EOMs and on the UN with respect to electoral assistance.

## 2. Methodology and Organization of an Election Observation Mission (EOM)<sup>44</sup>

EOMs for a particular election are deployed at the invitation of the country concerned.<sup>45</sup> While organizations usually focus on new democracies and countries in transition; as a response to criticisms, some organizations also started to deploy (targeted) missions<sup>46</sup> to long standing democracies.<sup>47</sup> Primarily, direct elections for state institutions at the national level are observed. At times, an organization may also decide not to observe an election or to deploy only a limited mission either because the legal framework or the overall conditions for genuine democratic elections are not in place or because security factors do not permit the necessary minimum conditions for effective election observation. For instance, in the region of the OSCE, the Office for Democratic Institutions and Human Rights (ODIHR) has never sent an EOM to Turkmenistan<sup>48</sup> and only limited missions were deployed to Uzbekistan<sup>49</sup> because preconditions essential to free and fair elections were lacking. Likewise, only a limited mission was sent to observe the 2003

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<sup>44</sup> See also Binder, see note 16, 145.

<sup>45</sup> For instance, all OSCE participating states have been requested to inform the ODIHR of their upcoming elections and to issue an official invitation to the ODIHR in a timely manner, Election Observation Handbook, see note 17, 13.

<sup>46</sup> These assessment missions usually comprise a team of experts who visit a country shortly before an election and on election-day. They focus on specific issues and the implementation of best practices, *ibid.*, 14.

<sup>47</sup> See for instance the OSCE/ODIHR mission to the United States presidential elections in 2008, and the assessment missions to the United Kingdom in 2003 and 2005, to France in 2002 and 2007 and to Italy in 2006 and 2008; reports available at <<http://www.osce.org/odihr-elections/14207.html>>.

<sup>48</sup> An election support team was sent to the 2007 Turkmenistan presidential elections.

<sup>49</sup> Uzbekistan parliamentary elections 1999 and 2004, reports available at: <<http://www.osce.org/odihr-elections/14681.html>>.

referendum in Chechnya.<sup>50</sup> The EU withdrew missions from the 2002 Zimbabwe presidential elections and Côte d'Ivoire because the national situations impeded effective observation.<sup>51</sup>

EOMs generally consist of two components: long term and short term observation.<sup>52</sup> The Core Team (8-12 persons) and a limited number of Long Term Observers (LTOs usually around 14-20) are deployed ideally five to six weeks (six to eight weeks for the Core Team) before election-day.<sup>53</sup> The Core Team (presided over by a Head of Mission) is composed of experts in different areas, such as a legal and a political expert, a media analyst and in some cases also a gender or a minority expert. The Core Team will assess the overall framework for and the conduct of the elections from the respective capital city, which may be viewed as the host site of the mission's "headquarters". The LTOs are deployed in the different regions to observe the various phases of the election (pre-election phase, election-day, the immediate post-election phase and the extended post-election phase) throughout the country.<sup>54</sup> They are mandated to monitor the registration of voters and candidates, the effectiveness and preparedness of the national election commissions, the election campaign, the conduct of the media and the election disputes resolution through administrative and/or judiciary processes (monitoring possible court trials).

A large number of Short Term Observers (STOs between 40 and 1300,<sup>55</sup> depending on the organization<sup>56</sup> and on the country situation) is deployed immediately before the election. On election-day, they visit various polling stations (usually around 10) and talk to election officials

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<sup>50</sup> OSCE/ODIHR, Council of Europe, *Joint Assessment Mission, Preliminary Statement, Russian Federation Chechen Republic, Referendum of 23 March 2003*, <<http://www.osce.org/odihr-elections/14525.html>>.

<sup>51</sup> Email correspondence with Patrick Dupont, EU Commission, of 4 April 2007. See also, M. Asser, "Zimbabwe Rewrites Observer Rules", *BBC News*, 26 February 2002.

<sup>52</sup> For details see Election Observation Handbook, see note 17, 25 et seq.

<sup>53</sup> A needs assessment mission will assess extent, needs and context of the intended EOM two to three months prior to the effective deployment of the mission, *ibid.*, 23-24.

<sup>54</sup> For further details, *ibid.*, 29 et seq.

<sup>55</sup> 1300 STOs observed the Repeated Second Round of the Ukraine Presidential Elections on 26 December 2004, International EOM, *Preliminary Statement*, <[http://www.osce.org/documents/odihr/2004/12/4007\\_en.pdf](http://www.osce.org/documents/odihr/2004/12/4007_en.pdf), 14>.

<sup>56</sup> For instance, the OSCE tends to deploy more STOs than the EU.

as well as to other observers and voters<sup>57</sup> in order to assess how voting and counting is conducted. Questionnaires (report forms) guide their observations and provide for a mainly statistical/quantitative assessment of the election.<sup>58</sup>

To publicise the observations made by the observers, immediately after election-day, a statement of preliminary findings and conclusions<sup>59</sup> is presented at a press conference. A comprehensive final report is prepared approximately six weeks after the election.<sup>60</sup> It contains the overall assessment whether an election process was conducted in accordance with international standards and also includes country-specific recommendations to improve future elections.

In conclusion, EOMs are organised in such a way as to permit a comprehensive picture of an election. The widespread and lasting presence of observers stationed throughout the country documents the entire election process in a manner not possible with traditional human rights monitoring mechanisms.<sup>61</sup> Furthermore, the publication of the mission's findings immediately after election-day considerably enhances the impact and the attention it receives from the public.

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<sup>57</sup> For more details, see Election Observation Handbook, see note 17, 51 et seq. and 65-66.

<sup>58</sup> The questions asked refer to the polling station committee (composition, preparedness), the setting of the polling station (presence of campaign material etc.), the presence of local observers, party representatives and unauthorised persons such as the police or the military. Further questions concern the accuracy of the voter lists and the conduct of the polling.

<sup>59</sup> For more details, see Election Observation Handbook, see note 17, 66-67.

<sup>60</sup> See in this sense, *ibid.*, 77.

<sup>61</sup> For instance, by means of in-depth media monitoring, observers will note irregularities such as a clear bias in favour of the incumbent party. Likewise, observers may be able to detect cases where a deviating local or national practice violates international standards despite appropriate national laws. For Example, the *de facto* lack of independence of the election commissions was deplored during the 2005 parliamentary elections in Tajikistan. OSCE/ODIHR, *Statement of Preliminary Findings and Conclusions, Republic of Tajikistan*, <[http://www.osce.org/documents/odihhr/2005/02/4333\\_en.pdf](http://www.osce.org/documents/odihhr/2005/02/4333_en.pdf), 4>. Parliamentary Elections - First Round, 27 February 2005.



### 3. Electoral Assistance

Electoral/technical assistance missions tend to be smaller than EOMs. Being targeted, expert missions, especially missions with a long-term component remain in the country a considerable time. In 2007, UNDP provided electoral assistance to an annual average of 40 to 50 countries as diverse as Armenia, Bhutan, Cambodia, Democratic Republic of the Congo (DRC), Mexico, East Timor, Togo, Yemen and Zambia.<sup>62</sup> Of this assistance, approximately half was focused on an election event and half on longer-term support.

Generally, eight phases of the electoral cycle<sup>63</sup> may be distinguished. During these, different kinds of electoral assistance activities are of varying relevance.<sup>64</sup>

The assistance provided during phase 1, the adjustment of the legal and constitutional framework to the needs of a given society, will address issues such as the design of the electoral system, composition and competences of the election administration as well as boundary delimitation. A strengthening of the organisational and planning capacities of the electoral management bodies will be at stake especially during phase 2, which comprises all preparatory activities for the forthcoming elections.<sup>65</sup> A frequent field of electoral assistance is also phase 3, the capacity building/training of electoral staff; voter information and civic education campaigns;<sup>66</sup> as well as the training of domestic observers. Sup-

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<sup>62</sup> UNDP, 2007, <<http://www.undp.org/governance/docs/UNDP-Electoral-Assistance-Implementation-Guide.pdf>, 5>, *Electoral Assistance Implementation Guide*.

<sup>63</sup> For further reference on the electoral cycle and relevant electoral assistance activities <[www.ec.europa.eu/europeaid/multimedia/publications/publications/thematic/evaluation-methodology-external-assistance\\_en.htm](http://www.ec.europa.eu/europeaid/multimedia/publications/publications/thematic/evaluation-methodology-external-assistance_en.htm)>, European Commission, *Methodological Guide on Electoral Assistance*, October 2006, 45, see also UNDP-Implementation-Guide, see note 62, 5.

<sup>64</sup> Ibid.

<sup>65</sup> These activities include budgeting, recruitment of electoral staff, procurement of the electoral material and security etc.

<sup>66</sup> A differentiation between civil education and voter information may be made in so far as civil education focuses on broader issues of civil engagement, thus laying the basis for an informed participation; whereas voter information provides information on the electoral process (e.g. on how to vote).

port for the registration of voters, political parties and candidates<sup>67</sup> (phase 4) is especially important, as inclusiveness and transparency in the establishment of the voter and candidate lists are essential for the legitimacy of an election.

A particular challenge to electoral assistance activities may then be posed during phase 5, the electoral campaign, which is usually a period of high tension and strong political messages. Issues to be addressed during this phase include campaign coordination; media access; party/campaign financing; enforcement of campaign regulations; and dispute resolution. Electoral assistance provided during phase 6 (polling procedures on election-day (e-day)) may include support to address the operational needs on e-day. Assistance during the results verification phase (phase 7) is of especial relevance as poorly managed results – even without fraud/political interference or bias – can impact negatively the entire electoral process. The post elections phase (phase 8) – or “in between election period” – is the ideal period to address all issues which appeared problematic or were not tackled previously. Being also the start of a new electoral cycle, it likewise offers the possibility to appreciate elections not as a short-term event but as cycle or as a development process and to channel assistance accordingly.

Generally, electoral assistance will not only have to focus on electoral authorities but also address other electoral stakeholders, such as political parties, civil society, domestic observers and the media. Political parties will need to be informed about relevant campaign regulations or available complaints mechanisms; civil society may be addressed via voter information and civic education campaigns; domestic observers should be trained and media monitoring projects given technical assistance. Types of assistance range from technical advice, as regards the most appropriate IT technology for the establishment of voters and candidates lists<sup>68</sup> to expert support in the drafting of the regulatory

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<sup>67</sup> There are basically three different kinds of voter register: a periodic list which is established on the basis of an active registration process for a specific election (usually used in post conflict elections); a permanent/continuous list of voters which is maintained and regularly updated by the election administration; and voter lists which are passively drawn from the civil registry (mostly used in western democracies and Latin America).

<sup>68</sup> Choices to be made will concern the level of technology used: low tech implies paper lists in voter registration centres at local/provincial level; medium tech: voter data which are scanned or entered with easy software with

framework governing the elections, logistical and operational support during all phases of the electoral cycle, the capacity building of the relevant electoral stakeholders or also the provision of direct funding.

Electoral assistance may thus be provided during all phases of the electoral circle. It addresses a wide range of electoral stakeholders and includes a broad array of activities. Direct technical and financial assistance are thus particularly crucial forms of support for governments which are politically willing to improve the quality of their electoral processes.

#### **4. Résumé**

This appraisal evidences the complementary function of international election observation and assistance activities. Problem areas which are indicated in the reports of EOMs may, for instance, subsequently be taken up and addressed by means of electoral assistance. In so doing, electoral assistance activities can use the recommendations of the EOMs as starting point and for further guidance during the project. Subsequent EOMs, in their findings and reports, can then assess the impact of the relevant electoral assistance activity.

### **IV. Impact of International Electoral Support**

#### **1. Added Value of International Electoral Support**

International electoral support may enhance the quality of electoral processes in particular by means of 1.) precise standards; 2.) the presence of observers; 3.) technical and/or financial assistance and support; 4.) a (de-)legitimation of results by observers who assess the elections; and 5.) detailed recommendations. These will be examined in the following.

##### **a. Precise Standards**

Electoral support (election observation and electoral assistance) has produced an extensive set of standards and best practices which influ-

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voter lists normally maintained at central level; high tech: electronic forms with immediate data entry, digital picturing etc.

ence and further detail human rights standards. For instance, human rights law does not establish which electoral system (majority, semi-proportional or proportional representation system) should be adopted or what the regulatory electoral framework should look like. Best practices nonetheless maintain that it might be most appropriate for developing democracies to choose a system which stimulates the development of political parties and thus prefer a proportional representation system to a strict majority system.<sup>69</sup> Likewise, excessively high thresholds for parties to enter parliament were not considered appropriate in proportional representation systems set up in young democracies.<sup>70</sup> This detailed set of standards permits to draw a clear picture of a country's electoral performance and facilitates exact recommendations for further improvement as well as targeted support by means of electoral assistance. Precise standards and best practice models also make it easier for national governments to improve their electoral performance.

#### **b. Presence of Observers**

Furthermore, the very presence of EOMs should improve the quality of the election process. During all relevant electoral phases (pre-election period, election-day, post-election phase), international observers monitor the situation throughout the country. Opposition candidates or national observers may report alleged irregularities of the election process to them. The mere presence of international observers strengthens the position and improves the security of local actors.<sup>71</sup> On e-day, the pres-

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<sup>69</sup> See for instance <[http://www.osce.org/documents/odihr/2006/07/20020\\_en.pdf](http://www.osce.org/documents/odihr/2006/07/20020_en.pdf)>, OSCE/ODIHR, *Assessment of the Law on Election of the President, Republic of Tajikistan*, 26 July 2006.

<sup>70</sup> For instance, a six per cent threshold to enter parliament was considered high in Moldova, OSCE/ODIHR, *Final Report, Republic of Moldova, Parliamentary Elections*, 25 February 2001, <[http://www.osce.org/documents/odihr/2001/04/1280\\_en.pdf](http://www.osce.org/documents/odihr/2001/04/1280_en.pdf)>, 3>.

<sup>71</sup> See for instance Balian who maintains: "At times, opposition candidates would not have taken part in an election without the minimum margin of safety provided by the presence of international observers. Likewise, domestic observers would not have been able to function as effectively or at all without the presence of international observers", H. Balian, "Ten Years of International Election Assistance and Observation", *Helsinki Monitor* 3 (2001), 197 et seq. (199-200).

ence of international observers in a considerable number of polling stations deters overt acts of electoral fraud.<sup>72</sup>

Furthermore, the immediate publication of the EOM's preliminary findings usually attracts considerable attention from national as well as from international media. The instant publicity drawn to the election is therefore a strong instrument to pressure national authorities to conduct elections that are in conformity with international standards. Accordingly, in most cases, the electoral process as such is improved by the presence of an impartial and objective third party which observes how the elections are conducted.

### c. Technical and/or Financial Assistance and Support

The provision of technical and/or financial support through means of electoral assistance facilitates the implementation of the respective international standards in a more direct way.<sup>73</sup> The broad knowledge of the electoral assistance teams, whose advice is guided by comparative experience and detailed best practice models, may thus be an invaluable help for a country to bring its electoral process in line with international standards.<sup>74</sup> For example, UNDP has organised a wide range of activities to support the independence of media and journalists in countries such as Liberia, Sierra Leone, East Timor, Cambodia and Kenya. The playing field for contestants during the election campaign should be levelled accordingly, when objective reporting on the election campaign is improved.<sup>75</sup> Financial assistance, on the other hand, delivers funds, which evolving democracies, in particular, might need. For instance, the international community provided 1.6 million Euro mainly through the OSCE Election Assistance Programme to finance the Central Election Commission and electoral bodies during the parliamentary elections in Georgia 2004.<sup>76</sup> For the Rwandan elections 2008, UNDP

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<sup>72</sup> Ibid.

<sup>73</sup> Various reports directly refer to the possibility of electoral assistance. See for instance the OSCE/ODIHR, *Final Report, Russian Federation, Presidential Election*, 14 March 2004, <[http://www.osce.org/documents/odhr/2004/06/3033\\_en.pdf](http://www.osce.org/documents/odhr/2004/06/3033_en.pdf), 2>.

<sup>74</sup> For further information on election assistance see e.g. OSCE/ODIHR's website, <<http://www.osce.org/odhr-elections/13411.html>>.

<sup>75</sup> UNDP-Implementation-Guide, see note 62, 48.

<sup>76</sup> See in this sense OSCE/ODIHR, *Final Report, Georgia, Extraordinary Presidential Election*, 4 January 2004, <[http://www.osce.org/documents/odhr/2004/02/2183\\_en.pdf](http://www.osce.org/documents/odhr/2004/02/2183_en.pdf), 7 and 10>.

went one step further and attributed the administration of funds directly to the Rwandan electoral commission. This considerably increased the electoral commission's competence to decide autonomously upon the allocation of funds. In Azerbaijan and Armenia the legislative framework was considerably improved through assistance projects conducted by the OSCE Office for Democratic Institutions and Human Rights.<sup>77</sup>

A long-term approach in respect of electoral assistance will go beyond a specific electoral event and may be linked to broader government/democracy support. In this way, especially long-term electoral assistance promotes an election process in the sense of Suksi's ideal view: "Each turn of the electoral cycle should bring the process to a higher level of perfection so that the election elements are ever better implemented and realised."<sup>78</sup>

#### d. (De-)Legitimizing Process and Results

International election observers should furthermore contribute to the electoral process by means of their independent judgements. The mission's findings enjoy considerable credibility due to the multinational character of EOMs.<sup>79</sup> Accordingly, depending on whether the findings signal compliance with international standards or state the contrary, they either legitimate or de-legitimize the electoral process.<sup>80</sup>

Hence, if an election is considered to have been conducted in accordance with international standards, legitimacy will be added to the re-

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<sup>77</sup> A complete list of countries where the ODIHR conducted analyses of election legislation is available at <<http://www.osce.org/odihr-elections/13438.html>>.

<sup>78</sup> Suksi, see note 9, 34.

<sup>79</sup> Normally OSCE Member States second their observers. Since not all states have sufficient funds at their disposal, a voluntary fund for EOMs was established in 2001 in order to diversify EOMs. The fund proved particularly useful to include observers from Central and Eastern Europe as well as from the CIS, Election Observation Handbook, see note 17, 25. In EU missions, the European Commission pays the observers. The aim is that as many observers from the 27 Member States as possible participate.

<sup>80</sup> As to this objective of election observation, see A. Tostensen, "Election Observation as an Informal Means of Enforcing Political Rights", *Nordic Journal of Human Rights* 22 (2004), 330 et seq. (335 et seq.). See also International IDEA, *Glossary of Electoral and Related Terms*, <<http://www.idea.int/esd/glossary.cfm>>.

sults, public confidence raised and the political actors are encouraged to accept the outcome of an election. The “installation in office” of the newly elected contestants should thereby be facilitated. On the contrary, if an election is criticised for having violated international standards, the mission’s findings will give voice and weight to allegations of national actors who claim that electoral fraud has occurred. For instance, in Georgia (2003), Ukraine (2004) and also Kyrgyzstan (2005) ODIHR found that the elections had fallen short of international standards.<sup>81</sup> Thereby, they strengthened the position of the national opposition and finally contributed to new elections which resulted in a peaceful change of power.<sup>82</sup> Likewise, after the contested parliamentary elections in Azerbaijan (2000), the results were partially annulled in some constituencies due to large-scale incidents of fraud. This measure was welcomed by ODIHR.<sup>83</sup> In Nigeria (2007), EU EOM reports were used and relied upon as evidence in court cases. In Ecuador (2009), opposition candidates brought their fraud allegations to the attention of the EU EOM as an independent external actor.

Accordingly, international election observation has value to add particularly in the aftermath of an election. A mission’s findings may either facilitate a peaceful installation in office of fairly elected candidates or

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<sup>81</sup> See the OSCE/ODIHR, EOMs’ Final Reports: *Georgia, Parliamentary Elections, 2 November 2003, 1; Ukraine, Presidential Election, 31 October, 21 November, 26 December 2004, 1 et seq.; The Kyrgyz Republic, Parliamentary Elections, 27 February and 13 March 2005, 4*; reports available at <<http://www.osce.org/odihr-elections/14207.html>>.

<sup>82</sup> After contested parliamentary elections 2003 in Georgia, incumbent President Shevardnadze stepped down in November 2003 and opposition candidate Sakashvili was confirmed in office in January 2004 by a wide majority of voters (“rose revolution”). Likewise, the second round of the Ukraine presidential election of October/November 2004 was annulled because of massive allegations of corruption, voter intimidation and fraud. A second run off election was held in December 2004 which confirmed opposition candidate Yushchenko (“orange revolution”) by a large majority of votes. In Kyrgyzstan, contested parliamentary elections of March 2005 resulted in the stepping down of President Akayev (“tulip revolution”).

<sup>83</sup> See OSCE/ODIHR, Press Release, *International Election Observers in Azerbaijan welcome CEC Decision to investigate Allegations of Fraud*, Baku, 7 November 2000, <[http://www.osce.org/odihr-elections/item\\_1\\_5505.html](http://www.osce.org/odihr-elections/item_1_5505.html)>.

support the contesting of results in cases of fraud.<sup>84</sup> Democratic consolidation is therefore supported.

At the international level, the assessments of EOMs serve as yardstick to evaluate a country in terms of democratic performance. Possible follow up options (“carrots and sticks”) might be considered by the international community accordingly. For instance, a positive assessment of the 2008 Rwandan elections by the EU EOM was crucial for the decision on the allocation of development funds which were conditional upon, *inter alia*, the respect for human rights and democracy.<sup>85</sup> On the other hand, when the March 2006 presidential elections in Belarus had been found fundamentally flawed by the OSCE/ODIHR, the EU Council adopted restrictive measures, including a visa ban and the freezing of assets, against the Belarusian leadership and the persons “who are responsible for the violations of international electoral standards.”<sup>86</sup> While still not adopted on a systematic basis,<sup>87</sup> such external “incentives” or follow up measures tend to considerably reinforce a mission’s findings.

#### e. Recommendations

EOMs, furthermore, support national authorities by improving the conduct of an election through their recommendations. The statements and recommendations contained in the final reports indicate deficiencies and serve as a valuable basis to bring election processes in line with international standards.<sup>88</sup> This is well evidenced by the Ecuadorian electoral cycle with elections (including one referendum) in 2007, 2008 and

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<sup>84</sup> As stated by Balian, “... international election observation missions have been an important element for stability in some sensitive and highly contested elections”, Balian, see note 71, 200.

<sup>85</sup> See <[http://www.ec.europa.eu/development/policies/consensus\\_en.cfm](http://www.ec.europa.eu/development/policies/consensus_en.cfm)>, the European Consensus on Development. For the period 2008-2013, the 10th European Development Fund (EDF) foresaw a total of 290 million Euro for Rwanda; see EU Relations with Rwanda, <[http://www.ec.europa.eu/development/geographical/regionscountries/countries/country\\_profile.cfm?cid=rw&type=short&lng=en](http://www.ec.europa.eu/development/geographical/regionscountries/countries/country_profile.cfm?cid=rw&type=short&lng=en)>.

<sup>86</sup> Council Common Position 2006/276/CFSP of 10 April 2006, Concerning Restrictive Measures Against Certain Officials of Belarus, 2006 OJ L101/5.

<sup>87</sup> See below, Part IV. 2. c. for further details.

<sup>88</sup> The objectives of the ODIHR election observation activities are posted at the OSCE/ODIHR’s website, <<http://www.osce.org/odihr-elections/13748.html>>.



2009. Problem areas concerning the formula for the assignation of seats (“factor ponderador”), the disenfranchisement of prisoners without conviction as well as of security forces, and the disproportionate powers of the election administration were criticised in the 2007 final report. Following this, these issues were addressed by the national authorities. As a result, the EU EOM which observed the 2009 general elections was able to ascertain the implementation of their previous recommendations.<sup>89</sup>

International electoral support has thus considerable value to add, especially when a country is willing to bring its electoral process in line with international standards. However, a number of obstacles may hinder effective support or reduce its impact.

## 2. Limitations/Challenges to International Electoral Support

The limitations encountered by electoral support activities may be divided into four main areas: 1.) general considerations of national sovereignty; 2.) obstacles which are related to the political situation in the country; 3.) intra-organizational problems in the respective organization and 4.) inter-organizational problems between different international organizations which are active in the field of election observation.

### a. General Considerations of National Sovereignty

Assertions of national sovereignty and a rejection of interference by international/external actors which may affect electoral support activities exist at two levels. First, electoral support may – as a matter of principle – be rejected as “undue interference” with the national sovereignty of a country. Second, specific recommendations made or advice provided may be criticised as inappropriate interference or implementation/manifestation of a “hidden agenda” of international organizations in a given situation.

A general rejection of electoral support might be read into some resolutions of the General Assembly, which evidence the concern raised

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<sup>89</sup> See EU EOM Ecuador, Presidential and Parliamentary Elections, 26 April 2009, *Statement of Preliminary Findings and Conclusions*, Quito, 28 April 2009, 1. The new Ecuadorian electoral code which will be applicable to future elections implements the recommendations of the EU EOMs even more broadly.

by certain UN Member States (particularly developing countries) regarding a potential interference in their internal affairs. At the initiative of some of these countries, the UN General Assembly has repeatedly adopted resolutions entitled “Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral process” (“Respect Resolutions”), which affirm, *inter alia*, “the right of peoples to determine methods and to establish institutions regarding electoral processes and, consequently, that there is no single model of democracy or of democratic institutions.”<sup>90</sup> Were they shared by too many countries, such statements could challenge the very basis of electoral support. As electoral support is provided only with the consent of the countries concerned<sup>91</sup> – and therewith upholds the principle of national sovereignty – an unwillingness of countries to receive support would impede it. However, as a matter of fact, there are more requests and invitations for electoral support than the respective organizations are able to accept.<sup>92</sup> Moreover, the broad acceptance of international electoral support increasingly makes domestic electoral processes, as well as, more generally, the transition to and consolidation of democracy within sovereign states, a legitimate concern of the international community. It thus contributes to the revision of traditional conceptions of national sovereignty and counters perceptions as evidenced in the General Assembly’s “Respect Resolutions”.

A government’s firm rejection of specific electoral support as undue interference or for alleged partiality is a more widespread problem. For instance, the final report of the EU EOM on the 2003 Rwandan elections was strongly criticised by Rwandan authorities as unduly biased; as was the EU EOM assessment of the Ethiopian elections in 2005 by Ethiopian stakeholders. Likewise, the Nigerian electoral commission rejected the EU EOM’s assessment of the Nigerian 2007 elections and accused EU observers of being “electoral tourists.”<sup>93</sup> Such rejections, if

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<sup>90</sup> A/RES/60/164 of 16 December 2005, para. 3.

<sup>91</sup> The United Nations only provide electoral assistance on the basis of a written request and EOMs are sent only to countries which invited them and after the signing of a Memorandum of Understanding with the respective government.

<sup>92</sup> As stated before, out of the 363 official requests for assistance in electoral matters received by the United Nations between 1989 and 2005, only 275 requests were accepted.

<sup>93</sup> <[http://www.monstersandcritics.com/news/africa/news/article\\_1347017.php/Nigerian\\_electoral\\_commission\\_rejects\\_EU\\_observers\\_report\\_\\_Round](http://www.monstersandcritics.com/news/africa/news/article_1347017.php/Nigerian_electoral_commission_rejects_EU_observers_report__Round)

not carefully handled, may seriously affect the (positive) impact of a report/an EOM, which in the perception of the population and the relevant electoral stakeholders, will lose its credibility. Even worse, the reputation of the international organization itself may be at stake, as – notwithstanding the fact that formally EOMs are independent – they are mostly conceived as representing the respective organization. While an EOM can never prevent allegations of bias or “hidden agendas”, carefully drafted assessments with due reference to international standards and best practices are a certain safeguard against criticism.

#### **b. Political and Human Rights Situation in the Country**

The lack of political will of the incumbent party/government to improve the electoral process is much more difficult to overcome than technical insufficiencies or the lack of experience of national authorities. In extreme cases, EOMs have not been deployed at all because the minimum conditions for democratic elections were not in place and a deployment of observers would have given false and unintended legitimacy to the process. As stated, as of May 2009, OSCE/ODIHR had never deployed an EOM to Turkmenistan. Furthermore, EU observer missions were withdrawn from Côte d’Ivoire and Zimbabwe.<sup>94</sup>

The risk that complying with a government’s request to send international observers may be interpreted as giving undeserved legitimacy to a flawed electoral process must, nonetheless, be balanced against the potential benefits of engaging the country in question in an ongoing dialogue and of keeping the process under international scrutiny. As a middle course, international organizations have at times opted for a reduced mission, comprised of only a small number of long term observers, such as OSCE/ODIHR in case of the parliamentary elections in Uzbekistan in 1999 and 2004. In worse cases, where the international organization does not want to comment on the electoral process at all, there is always the possibility to offer a minimum component of electoral assistance (such as media advice or poll worker training). Therewith, the organization avoids issuing a statement on the elections (and therefore giving false legitimacy to a flawed process) without cut-

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up>, A.Hakeem, *Nigerian Electoral Commission Rejects Observers’ Report*, 23 August 2007.

<sup>94</sup> See above Part III. 2.

ting all communication channels with the country concerned.<sup>95</sup> In fact, while no EOM has ever been deployed to Turkmenistan, an electoral support team was sent to the 2007 Turkmenistan presidential elections.

Other fundamental limitations encountered in numerous states which hamper the impact of electoral support activities include a general erosion of human rights.<sup>96</sup> If basic human rights such as the right to freedom of expression, assembly and association, as well as the right to freedom of movement are not guaranteed, the electoral process will be seriously tainted and the presence of observers or the provision of technical advice of only limited added value. For example, the training of political parties and candidates will be of no use where the right to freedom of assembly is lacking; and support concerning operational needs on e-day will be worthless, if voters are not free when casting their vote for reasons of intimidation. In fact, serious violations of human rights were reported prior to the 2004 Belarus parliamentary elections where, in the pre-election period, the police conducted raids on campaign offices of opposition candidates and even detained a candidate.<sup>97</sup>

Unequal campaign conditions were criticised during the 2003 presidential elections in Azerbaijan when opposition candidates were denied permission to hold election rallies and public buildings deployed posters of ruling party candidates only.<sup>98</sup> And the 2007 elections in Nigeria

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<sup>95</sup> As stated by Ludwig in a slightly different context: “The most difficult cases for international donors are those in which an incumbent government is systematically dismantling the institutions and mechanisms of democratic governance while requesting international assistance with elections. Arguments are sometimes made that without a UN presence, the opposition will become violent, unrest will spread and the country (and potentially the region) will be destabilised. A possible solution may be the granting of minimal assistance for a technical component of the electoral process (such as media advice or poll worker training). Election observation however will not be offered [...]”, R. Ludwig, “The UN’s electoral assistance: Challenges, accomplishments, prospects”, in: E. Newman/ R. Rich (eds), *The UN Role in Promoting Democracy. Between Ideals and Reality*, 2004, 169 et seq. (182).

<sup>96</sup> See in this sense Balian, see note 71, 203.

<sup>97</sup> OSCE/ODIHR, *Final Report, Republic of Belarus, Parliamentary Elections*, 17 October 2004, <[http://www.osce.org/documents/odihr/2004/12/3961\\_en.pdf](http://www.osce.org/documents/odihr/2004/12/3961_en.pdf), 2>.

<sup>98</sup> OSCE/ODIHR, *Final Report, Republic of Azerbaijan, Presidential Elections*, 15 October 2003, <[http://www.osce.org/documents/odihr/2003/11/1151\\_en.pdf](http://www.osce.org/documents/odihr/2003/11/1151_en.pdf), 11>.

were criticised for their “very poor organisation, lack of essential transparency, widespread procedural irregularities, substantial evidence of fraud, widespread voter disenfranchisement at different stages of the process, lack of equal conditions for political parties and candidates and numerous incidents of violence” as “falling far short of international standards.”<sup>99</sup> In all these cases, the presence of independent observers neither impeded electoral fraud nor prevented human rights violations.

Accordingly, the “success” of electoral support activities depends to a large extent on the national situation and, also, on the receptiveness and willingness of the national authorities to hold elections in accordance with international standards. In cases where the political will and the basic pre-conditions for free and fair elections in a country are missing, electoral support activities have little chance of helping to improve the quality of the elections and, therefore, to further democratic governance.

### c. Intra-Organizational Problems

Also, intra-organizational problems reduce the impact of electoral support activities. First, international standards – though increasingly established – still fail to tackle the totality of ongoing processes as well as emerging challenges. These include the participation of women in the election process, the inclusion of national minorities, the accommodation of internally displaced persons, full access for disabled persons and the question of party and campaign financing. Furthermore, additional standards are necessary to cope with the challenges arising from new technologies such as e-voting. In fact, e-voting might have considerable impact on the transparency of the vote and may therefore reduce voter confidence in the process. For instance, in the 2004 parliamentary elections in Kazakhstan and the 2005 parliamentary elections in Venezuela, e-voting/IT technology was partly (Kazakhstan) and widely (Venezuela) used. When casting their vote, many voters did not understand the procedure and seemed unsure whether their vote was going to be kept secret. This may easily induce voters to support the ruling/most powerful party, due to the subtle psychological pressure they are exposed to. International electoral support activities have only started to

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<sup>99</sup> EU EOM, *Nigeria, Final Report, Gubernatorial, State Houses and Assembly Elections*, 14 April 2007 and *Presidential and National Assembly Elections*, 21 April 2007, 1.

tackle these problems and to deal with their consequences for the election process.

Further questions are related to the follow-up which is given to the reports and recommendations issued by EOMs. While it is obviously the primary task of an EOM to issue an impartial and independent statement on an election, unwilling governments may considerably reduce or even prevent the potential of EOMs to foster democracy. Accordingly, a certain follow-up may prove useful to pressure governments to implement the findings of the missions and to continue their way towards democratic consolidation. The follow-up – if there is any – depends on the organization (and its legal capacities) as well as on the international community. In the framework of organizations such as the OSCE or the OAS, the findings of EOMs are reported to the respective Permanent Council which is composed of all Member States. Being one of the organizations' major decision making organs, in theory, the Permanent Council should discuss and follow up on the reports of the missions. However, in practice, this mechanism has proved insufficient and adequate follow-up is not provided. The EU enters into a political dialogue with the country concerned which – although rather successful with respect to the ACP states – is conducted in a fairly informal manner. Only exceptionally, targeted measures are taken, such as the visa ban and the freezing of assets which were adopted by the EU Council in response to the flawed 2006 presidential elections in Belarus.<sup>100</sup> Apart from such *ad hoc* responses, no systematic follow-up to fraudulent elections can so far be detected.

Finally, the choice of countries EOMs are deployed to, was criticised.<sup>101</sup> Such selectivity may be detrimental to an organization's reputation and discredit the observation process. The (positive) impact of EOMs on the process of democratic consolidation would be reduced accordingly. Clearly, international organizations lack capacities and funds to send observers everywhere and understandable emphasis is given to developing democracies.<sup>102</sup> However, in particular the fraud allegations which were raised during the 2000 US Presidential elections indicated the necessity to observe compliance with electoral standards also in so-called "established democracies". Some diversification of

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<sup>100</sup> See above Part IV. 1. d. for details.

<sup>101</sup> EOMs are generally more "apprehended" by the countries concerned than electoral assistance activities for their public assessment of the electoral process.

<sup>102</sup> See also Part III. 2. above.

EOMs has been conducted in response to this criticism: the OSCE/ODIHR sent an EOM to the US Presidential elections in 2008 as well as (more limited) assessment missions to countries such as Italy (2006, 2008), Canada (2006), Iceland (2009) or France (2002, 2007).<sup>103</sup> In order to enhance the EOMs' impact and credibility and to avoid the reproach of applying "double standards", international organizations might consider further diversifying the range of countries EOMs are sent to.

#### d. Inter-Organizational Problems

The variety of organizations which engage in election support activities call for a good cooperation and division of tasks in order to avoid duplications and contradictions, among international actors as well as between international and domestic organizations. Recently, cooperation between the different international actors has improved. Arrangements include a division of tasks already in the forefront of the election (e.g. the referral of requests to competent regional organizations by the UN which concentrates on the provision of electoral assistance); forms of cooperation for particular observation missions, either in form of information sharing arrangements (e.g. on deployment plans) or in an institutionalised form, with a secretariat/office established by one organization to coordinate the observers; or, as the closest form of cooperation, joint observation missions where the organizations speak with one voice and issue joint statements.

While these arrangements have proved beneficial, diverging methodology, capacities and expectations, a fight for visibility as well as different political agendas of monitoring organizations still lead to cooperation failures, with, as most crucial, diverging assessments of the election process. These diverging assessments enable the relevant actors (governments) to practise "forum shopping" and to rely on those statements which are the most convenient for them. This reduces the impact of EOMs and prevents the beneficial effect these missions may have for the process of democratic consolidation. Typical examples include the diverging statements of CIS and OSCE/ODIHR observers regarding the parliamentary elections in Uzbekistan (2004)<sup>104</sup> and in Tajikistan

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<sup>103</sup> For further information see OSCE/ODIHR Website, <<http://www.osce.org/odihr-elections/14207.html>>.

<sup>104</sup> Ministry of Foreign Affairs of the Russian Federation, Information and Press Department, Interview with Yakovenko, Spokesman of Russia's Min-

(2005).<sup>105</sup> Likewise, European and African observers arrived at different conclusions as to whether the 2002 presidential elections in Zimbabwe had been conducted in line with international standards.<sup>106</sup> As regards coordination between electoral assistance and observation, tensions may arise when an EOM comments negatively on an electoral process which was implemented according to the advice and with the aid of electoral assistance.

### e. General Limits of International Electoral Support

There are, finally, also some general limits of international electoral support. Electoral processes in line with international standards, to be sure, greatly enhance the chance of a peaceful hand over of power and further the progress of countries on their road to democratic consolidation. However, elections as inherently political phenomena make the impact of electoral support activities, in the end, uncertain. Post electoral violence in countries such as Kenya (2007/2008) and authoritarian overthrows of democratically elected regimes in Fiji (2007) and Mauritania (2008) raised doubts about the possible sustainability of electoral support as such.

These doubts about the impact of electoral support are increased in cases of a disproportionate emphasis on the electoral event rather than on the longer-term process of democratic institution building. The exclusive emphasis on elections, as the most important institution of democracy available to citizens, cannot answer the question of good governance and the quality of democracy.<sup>107</sup> Ottaway, for instance, talks of

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istry of Foreign Affairs, regarding international observers' conclusions on election results in Ukraine and Uzbekistan <[http://www.ln.mid.ru/brp\\_4.nsf/0/030111d3b474a94cc3256f790042f6f9?OpenDocument](http://www.ln.mid.ru/brp_4.nsf/0/030111d3b474a94cc3256f790042f6f9?OpenDocument)> Moscow, 28 December 2004. See also Y. Glumskova, "Foreign observers differ in their evaluation of the election in Uzbekistan", *Central Asia News*, 29 December 2004.

<sup>105</sup> See generally M. Baker, "Why do OSCE, CIS observers rarely agree on elections?", 12 April 2005, <<http://www.rferl.org/content/article/1058403.html>>.

<sup>106</sup> BBC News, "Head to Head: Zimbabwe Election Observers", 14 March 2002, <<http://www.news.bbc.co.uk/1/hi/world/africa/1873438.stm>>.

<sup>107</sup> See e.g. G. O'Donnell, "Human Development, Human Rights, and Democracy", in: G. O'Donnell/ G. Cullell et al. (eds), *The Quality of Democracy. Theory and Applications*, 2004, 9; L. Diamond/ L. Morlino, *Assessing the Quality of Democracy*, 2005.



“limits of electoralism”, as it provides inadequate criteria for categorising regimes as democratic and distinguishes between “the ritual of democracy” and its “substance”, given that “many African leaders are learning to play the election game—giving aid donors an election barely clean enough to receive a low-passing grade, but dirty enough to make it difficult for the opposition to win.”<sup>108</sup> For this reason, scholars<sup>109</sup> have repeatedly criticised an exaggerated focus by international actors on elections rather than on the long-term democratisation process.

Means and strategies to reduce the political – and therefore volatile – element linked to electoral support are the adoption of a long-term approach to electoral assistance and the avoidance of putting disproportionate emphasis on a specific electoral event.<sup>110</sup> Such long term approach should further the process of democratic institution building and thus enhance the sustainability of the respective electoral support activity.

## V. Conclusion

Despite its limitations and challenges, during the last two decades, international electoral support has proved to be a valuable instrument to improve the quality of electoral processes. The comprehensive documentation of the entire election process, the immediate political pressure exercised by a mission’s findings and/or the technical and financial assistance offered to countries truly present an “added value”. In particular in “evolving democracies” and in countries in transition, appropriate electoral support should thus constitute a viable tool to enhance elections.<sup>111</sup> This is evidenced in the Eastern European, the Baltic and

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<sup>108</sup> M. Ottaway, “Should Elections Be the Criterion of Democratization in Africa?”, *CSIS Africa Notes* 145 (1993), 3 et seq.

<sup>109</sup> Ibid.

<sup>110</sup> This general statement does not apply to cases where electoral assistance is provided on a particular basis to improve specific shortcomings of the electoral process.

<sup>111</sup> See on this Tostensen, who distinguishes four categories of situations where election observation is particularly relevant: “(1) The emergence of new state formations resulting either from decolonialisation, secession or from the dissolution of federations; (2) the reconstitution of war torn societies after protracted internal conflict or civil war; (3) transition from long-standing authoritarian rule to a democratic system of governance; (4) Re-

some of the Balkan states such as Croatia, where a successful combination of appropriate support with other (economic, etc.) factors furthered the process of democratic consolidation. The former emphasis given to these countries by OSCE/ODIHR electoral support activities has thus been gradually reduced with the consolidation of their democracies.<sup>112</sup>

Still, it should always be kept in mind that elections do not equate with democracy. Elections are an essential, but only one of the elements which are constitutive for a functioning democracy. Other relevant elements include human rights, the rule of law and the separation of powers. That elections are only one step on the road to democracy is demonstrated by the fact that just 47 of the 81 countries that have embarked on democratic transitions since 1980 had become full democracies in 2002.<sup>113</sup> It remains therefore essential to link electoral support to a broader process of democratic institution building which presupposes long term approaches to electoral assistance. UN Secretary-General Kofi Annan recognised in 2000 the crucial importance of elections by stating: “While democracy must be more than free elections, it is also true ... that it cannot be less.”<sup>114</sup> An integrated approach to electoral support, which effectively combines election observation with long-term electoral assistance programmes, allows us, however, also to address the “more” of democracy. It thus, without neglecting the crucial importance of elections, truly turns out to be “democracy support”.

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covery from serious internal tension towards a more stable situation”, Tostensen, see note 80, 335.

<sup>112</sup> Details about the different missions can be found at the OSCE/ODIHR’s website, <<http://www.osce.org/odihr-elections/14207.html>>. For details, see Balian, see note 71, 197 and 202 et seq.

<sup>113</sup> <[http://www.hdr.undp.org/en/media/HDR\\_2002\\_EN\\_Complete.pdf#10](http://www.hdr.undp.org/en/media/HDR_2002_EN_Complete.pdf#10)> UNDP, *Human Development Report 2002, Deepening Democracy in a Fragmented World*.

<sup>114</sup> UN Secretary-General Kofi Annan, address at the International Conference “Towards a Community of Democracies”, Warsaw, 27 June 2000, see Press Release SG/SM/7467, <<http://www.un.org/News/Press/docs/2000/sgsm7467.htm>>.