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Debating Election and Election Monitoring Standards at the OSCE: Between Technical Needs and Politicization

Among the multiple items discussed in the ongoing debate on OSCE reform, the one related to the conduct and evaluation of democratic elections is of particular significance for at least three main reasons. First, given their role in ensuring that making the will of the people is the source of domestic governance, free and fair elections belong to the OSCE's most central values. Second, the issue of fair and free elections is directly linked to the set of complaints raised by the government of Vladimir Putin about the OSCE's "double standards" policy and the "unchecked autonomy" of ODIHR (as well as field missions). Third, contrary to most Russian demands for OSCE reform, Moscow's stands are here shared and backed by a number of participating States – namely the Central Asian republics, Belarus, and Armenia. In the case in point, Russia is questioning the relevance of the criteria for free and fair elections established by the 1990 Copenhagen Document on the human dimension and the objectivity of ODIHR's election monitoring activities. As a consequence, since 2001, the OSCE has been confronted with a delicate hybrid problem that has both a purely technical aspect (*election standards*) and a highly subjective political dimension (*monitoring standards*).

Updating OSCE Election Standards: A Technical Necessity

Although a domestic matter, the conduct of national elections is regulated by a number of legally and politically binding international norms. These norms find their most universal expression in Article 21 of the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights (Article 25).¹ They are also reflected in the Declaration on Criteria for Free and Fair Elections (26 March 1994) and the Universal Declaration on Democracy (16 September 1997), both issued by the Inter-Parliamentary Union. As to regional norms, their basic expression is to be found in Article 3 of the 1952 Additional Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms, Article 23 of the 1969 Inter-American Convention on Human Rights, Article 13 of the 1981 African Charter on Human and Peoples' Rights and – last but certainly not least – the 1990 OSCE Document of the Copenhagen Meeting of the Conference on the

¹ Article 25 of the Covenant has to be approached in the light of a special "general comment" emanating from the monitoring body of the Covenant (the Human Rights Committee), cf. UN Doc. CCPR/21/21Rev.1/Add.7 of 27 August 1996.

Human Dimension of the CSCE (paras 5 and 7). Whether universal or regional, all the instruments proceed from the premise that only free and fair elections (or sometimes “honest”, “genuine”, “impartial”, or “sincere” elections) provide legitimacy for a true democratic government.²

While the right to a representative government is thus firmly entrenched in international human rights law, there is no widely-accepted view on the exact meaning of the catchphrase “free and fair elections”.³ Arguably, however, elections can be considered as “free” when conducted in the absence of significant pressure on, intimidation of, or violence towards voters, and be labelled “fair” when all candidates are basically treated on a non-discriminatory basis.⁴ The prerequisites of freedom are easier to achieve (and to be better assessed) than those of fairness. Indeed, even in a well-established democracy an election cannot be fully fair (that is to say offer *absolutely* equal chances to all candidates or parties), while it can claim to be free. What is clear is that the combined conditions required by freedom and fairness are only to be met within states where the rule of law is effective. The Copenhagen Document, which was adopted in the aftermath of the collapse of Communism in Europe, has been built precisely on the assumption that elections cannot be separated from a context in which democratic institutions are fully operational.⁵

The Copenhagen Document Criteria

The Copenhagen Document offers a comprehensive list of criteria for the conduct of democratic elections. Combining the elements of freedom and fairness, the criteria prescribe:

1. *Periodicity of elections.* Democratic elections are expected to be held at “reasonable intervals”, as established by law (para. 7.1), it being also understood that the seats in at least one chamber of the national legislature have to be freely contested in a popular vote (para. 7.2).
2. *Guarantee of universal and equal suffrage to adult citizens* (para. 7.3). All citizens reaching the age of majority must be able to exercise the right to vote without any discrimination whatsoever.

2 For more details, see Guy S. Goodwin-Gill: *Free and Fair Elections. International Law and Practice*, Inter-Parliamentary Union, Geneva 1994, pp. xv-123.

3 According to Jon M. Ebersole, The United Nations Response to Requests for Assistance in Electoral Matters, in: *Virginia Journal of International Law*, Vol. 13, Fall 1992, p. 94, one of the earliest references to this catchphrase appeared in a 1956 United Nations report concerning Togo’s accession to independence.

4 See Jorgen Elklit/Palle Svensson, The Rise of Election Monitoring: What Makes Elections Free and Fair?, in: *Journal of Democracy*, 3/1997, pp. 33-35.

5 Since its adoption, the Copenhagen Document has inspired comparable developments in other regions: see for instance the 2001 Inter-American Democratic Charter issued by the OAS, at: http://www.oas.org/charter/docs/resolution1_en_p4.htm, and the 2001 Norms and Standards for Democratic Elections as framed within the Parliamentary Forum of the Southern African Development Community, at: <http://www.eisa.org.za/PDF/sadcpf.pdf>.

3. *Secrecy of ballots.* Votes are to be cast by secret ballot or by equivalent free voting procedure (para. 7.4).
4. *Transparency of vote counting and final results.* Votes must be counted honestly and the official results made public (para. 7.4).
5. *Guarantee of the right to be elected.* The right of citizens to seek political or public office, individually or as representatives of political parties, must be respected without any discrimination (para. 7.5).
6. *Guarantee of political pluralism and free competition of political parties on a non-discriminatory basis.* Individuals must be able to establish, in full freedom, political parties enjoying legal guarantees to enable them to compete with one another on a basis of equal treatment before the law (para. 7.6).
7. *Freedom from violence or intimidation.* Legislation must guarantee that political campaigning be conducted in an atmosphere in which neither administrative action, nor violence, nor intimidation (a) bar the parties and the candidates from freely presenting their views and qualifications, or (b) prevent the voters from learning about and discussing them or from casting their votes free of fear of retribution (para. 7.7).
8. *Non-discriminatory access to the media.* No legal or administrative obstacles should stand in the way of access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process (para. 7.8).
9. *Effective implementation and respect of the result of the election.* Candidates elected in conformity with electoral procedures must be duly installed in office and permitted to remain there until their term expires or is otherwise terminated in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures (para 7.9).

Russian Complaints and Demands

Russia and a number of CIS countries claim to be unhappy with the criteria established in the Copenhagen Document as they presently stand. In November 2000, in reaction to the controversial American presidential elections, Russia and Belarus tabled a proposal calling for a comparative review of electoral legislation of all of the 55 participating States of the OSCE (to be conducted by ODIHR) with a view to assessing their conformity with the Copenhagen Document.⁶ In the same spirit, during the debate on OSCE reform initiated by the Romanian Chairmanship in 2001, Russia proposed the “even application” of the Copenhagen Document criteria as a discussion

6 MC.DEL/24/00 of 20 November 2000 (Russia/Belarus proposal) and MC.DEL/41/00 of 24 November 2000 (Russian statement).

item.⁷ Going a step further, the Moscow Declaration on the State of Affairs in the OSCE, issued on 3 July 2004 by nine members of the CIS, channelled blunt and harsh criticisms *vis-à-vis* ODIHR's election-monitoring activities.⁸ A few months later, on the eve of the Sofia Ministerial Council Meeting, Belarus and the Central Asian states submitted draft proposals expressly aimed at stopping the "politicization" of election monitoring in the OSCE area.⁹ Soon after the Sofia Meeting, Russia and all the Central Asian states with the exception of Turkmenistan tabled a draft decision along the same lines at the Permanent Council on the "further improvement of OSCE election standards and election monitoring".¹⁰

Russia and most CIS member countries are criticizing the Copenhagen Document criteria on three main grounds.¹¹ First, those countries argue that the criteria (having been adopted a decade ago) do not address the problems of effective participation in elections by individuals belonging to such vulnerable groups as internally displaced persons, disabled people, and national minorities. Second, they allege that the criteria offer only vague guidelines rather than exact standards, allowing for different interpretations and hence double standards in practical monitoring. Third, they consider that the non-legally binding character of OSCE election-related commitments constitutes, under the present circumstances, an additional factor inhibiting both respect for the Copenhagen Document criteria and their effectiveness. In order to cope with the serious problems that currently exist, Russia, has argued that the elaboration of a "Code of international commitments of the OSCE participating States for the organization and conduct of democratic elections", entailing the fleshing out of the Copenhagen text in the format of a "Copenhagen 2 Document", is urgently needed. Beyond its intrinsic merits, a document of this kind would (according to Moscow) demonstrate the OSCE's capacity to improve its human dimension activities and even justify the Organization's continued relevance in the landscape of European security and co-operation.¹²

7 PC.DEL/971/01 of 27 November 2001 (earlier position: PC.DEL/2/01 of 8 January 2001); retained by the Romanian Chairmanship in the perspective of the Bucharest Ministerial Council Meeting (MC.DD/5/01 of 27 November 2001), the Russian suggestion was not accepted. Moscow adopted similar stands at the Human Dimension Seminar on Electoral Processes, ODIHR.GAL/39/01/Rev.1 of 19 July 2001, p. 5, and the 2001 Human Dimension Implementation Meeting, ODIHR.GAL/60/Rev.1 of 9 November 2001, p. 48.

8 See PC.DEL/630/04 of 8 July 2004 (a text endorsed by all CIS states except Georgia, Azerbaijan, and Turkmenistan).

9 See PC.DEL/1022/04 and PC.DEL/1023/04 of 27 October 2004 (Belarus), as well as PC.DEL/1025/04/Corr.1 of 17 December 2004 (Central Asian States except for Uzbekistan).

10 See PC.DEL/1225/04/Corr.1 of 17 December 2004.

11 The most recent exposition of Moscow's overall position is to be found in the keynote speech delivered by Alexander Veshnyakov, Chairman of the Central Election Commission of the Russian Federation, at the 2004 Supplementary Human Dimension Meeting on "Electoral standards and commitments", in: PC.SHDM.GAL/11/04, cited below (Note 20), pp. 24-28.

12 See *ibid.*, p. 28.

The OSCE Reaction

In November 2001, ODIHR undertook an inventory of existing election-related norms, commitments, principles, and best practices that have emerged since 1990 for democratic elections in the OSCE participating States. Issued in August 2002, the inventory proposed three clusters: human rights foundations of democratic elections, necessary ingredients of a democratic electoral system, and good practices in electoral matters.¹³ Commending the initiative, the Permanent Council tasked ODIHR to further develop the inventory and to report on progress made by 30 June 2003.¹⁴ In addition, the Porto Ministerial Council acknowledged (at the initiative of Russia) that “democratic elections can be conducted under a variety of electoral systems”¹⁵ and asked the Permanent Council “to consider the need to elaborate additional commitments on elections”.¹⁶

In its progress report, ODIHR offered a more sophisticated inventory, organized according to the functional components of an election process.¹⁷ The document identified four areas in which additional commitments (not explicitly referenced in the Copenhagen Document) could be envisaged: public confidence in elections, transparency of the election process, accountability of the electoral administration, and effective implementation of universal and equal suffrage. All four related to practical problems identified on the basis of ODIHR’s experience of a decade of election monitoring. The progress report also addressed emerging problems such as electronic voting, low turnouts, recall elections, and referenda (which should not be used to end or change a term of office), while acknowledging improvement of women’s participation, access for disabled voters to the election process, enhanced inclusion of national minorities, and the interaction between international and domestic observers. In December 2003, the Maastricht Ministerial Council endorsed the approach suggested by ODIHR. In a carefully balanced decision, it tasked the latter to “consider ways to improve the effectiveness of its

13 OSCE, Office of Democratic Institutions and Human Rights, *International Standards and Commitments on the Right to Democratic Elections. A Practical Guide to Democratic Elections Best Practice*, ODIHR.GAL/44/02 of 21 August 2002 and ODIHR.GAL/44/02/Rev.1 of 20 November 2002. The text was discussed at the OSCE Human Dimension Implementation Meeting on 18 September 2002.

14 See OSCE, Permanent Council, Decision No. 509, *International Standards and Commitments. A Practical Guide to Democratic Elections Best Practice*, PC.DEC/509 of 5 December 2002.

15 Organization for Security and Co-operation in Europe, Tenth Meeting of the Ministerial Council, Porto, 6 and 7 December 2002, MC.DOC/1/02, 7 December 2003, Decision No. 7, Election Commitments, MC(10).DEC/7, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2003*, Baden-Baden 2004, pp. 421-455, here: p. 452.

16 Ibid.

17 OSCE, Office for Democratic Institutions and Human Rights, *Existing Commitments for Democratic Elections in OSCE Participating States*, ODIHR.GAL/39/03 of 30 June 2003. This progress report was submitted for discussion to the 2004 Supplementary Human Dimension Meeting on “Electoral standards and commitments”.

assistance to participating States in following up [its own] recommendations”¹⁸ (a direct concern for the European Union and the United States), while asking once more that the Permanent Council consider the need to elaborate (as sought by Russia) additional commitments on elections aimed at “supplementing existing ones”.¹⁹

As a follow-up to the Maastricht Ministerial decision, two Supplementary Human Dimension Meetings took place in Vienna – on “Electoral standards and commitments” (15-16 July 2004)²⁰ and “Challenges of election technologies and procedure” (21-22 April 2005), respectively.²¹ Both addressed the central issue of a possible “Copenhagen 2 Document” and, in conformity with OSCE standard practice, issued only non-mandatory recommendations on the matter. The proceedings revealed an overwhelming current of opposition (led by the United States and the European Union) to the re-drafting of the Copenhagen Document.²² The idea of transforming the criteria contained in the Copenhagen Document into new legally binding commitments (another of Moscow’s preferred options) was also discarded by a clear majority of participants, who stressed that the political nature of the criteria made them more practical to address on a regular basis.²³ More positively, however, there was general recognition of the need for additional commitments based on elements not reflected in the Copenhagen Document and beginning with those identified in ODIHR’s inventory. In short, what seemed acceptable for all was a “Copenhagen Plus” and not a “Copenhagen 2” text.

In this connection, two areas of consensus emerged. The first was related to the specific needs of persons belonging to vulnerable groups, i.e. the extension of equal and universal suffrage to persons belonging to these groups, in particular to those that traditionally have low participation rates: women, young people, national minorities, disabled people, and internally displaced persons – with some isolated attempts as well to include legally incarcerated persons, migrant workers, and “non-citizens” of Russian ethnicity living in Estonia and Latvia.²⁴ The second area of general consensus con-

18 Organization for Security and Co-operation in Europe, Eleventh Meeting of the Ministerial Council, Maastricht, 1 and 2 December 2003, MC.DOC/1/03, 2 December 2003, Decision No. 5/03, Elections, MC.DEC/5/03, p. 81, at: <http://www.osce.org>.

19 Ibid.

20 Final Report of the meeting: PC.SHDM.GAL/11/04 of 28 October 2004. Actually, the idea of the supplementary meeting was proposed by Russia at the 2002 regular Human Dimension Implementation Meeting.

21 Final Report of the meeting: PC.SHDM.GAL/5/05 of 12 July 2005. Beside new election technologies, the meeting also re-opened the debate on updating the Copenhagen Document.

22 See, e.g., PC.SHDM.GAL/11/04, cited above (Note 20), p. 2; see also PC.SHDM.DEL/24/04 of 16 July 2004 (United States position).

23 See PC.SHDM.GAL/11/04, cited above (Note 20), p. 3.

24 The last category was referred to by Alexander Veshnyakov in his keynote speech to the 2004 Supplementary Human Dimension Meeting on “Electoral standards and commitments”, cited above (Note 11), p. 27. With respect to internally displaced persons, three million of whom are to be found in the OSCE area, it is to be noted that there are as yet no OSCE election-related commitments. On that issue, see the statement delivered at the

cerned a matter on which the Council of Europe has already adopted specific standards: *electronic voting*. The latter is emerging as a common preoccupation in the OSCE area because – besides offering the potential of increasing voter participation, producing faster and more accurate tabulation of results, and better meeting the special needs of persons belonging to vulnerable groups – it poses serious challenges to public confidence, transparency, and accountability. Another area of possible additional commitments, the effective implementation of OSCE election commitments, appeared to be less consensual. The need to ensure appropriate follow-up to ODIHR's election recommendations did lead to proposals, such as the discussion of these recommendations at Permanent Council meetings and a system of regular reporting by the participating States concerned. However, some voices (most predictably from the CIS member countries) considered that follow-up mechanisms should be “differentiated and adapted to various political contexts”.²⁵

At present, Russia is insisting that a blueprint for a “Copenhagen Plus Document” be rapidly elaborated (at expert level), drawing on the Venice Commission's Code of Good Practice in Electoral Matters as well as on two legally binding texts directly inspired by Moscow: the Convention on Standards of Democratic Elections, Electoral Rights and Freedoms in the States-Participants of the Commonwealth of Independent States and the Draft Convention on Election Standards, Electoral rights and Freedoms proposed by the Association of Central and Eastern European Election Officials (ACEEEO).²⁶ As they now pertain to the debate on election standards, those instruments deserve some brief comments:

- *Code of Good Practice in Electoral Matters*. The idea of this document emanated from the Parliamentary Assembly of the Council of Europe, which, in November 2001, called on the European Commission for Democracy through Law (Venice Commission) to create a special body to discuss electoral issues on a regular basis and to devise an instrument specifying the “common European electoral heritage”,²⁷ i.e. the underlying principles of European electoral systems. The Assembly argued that existing basic rules for the conduct of elections were dispersed among too many texts and piecemeal in nature. Thus a consolidated instrument

2004 Supplementary Human Dimension Meeting by Walter Kälin, UN Representative on the human rights of internally displaced persons, PC.SHDM.NGO/1/05/ of 22 April 2005.

25 PC.SHDM.GAL/11/04, cited above (Note 20), p. 10.

26 See Alexander Veshnyakov's keynote speech to the 2004 Supplementary Human Dimension Meeting on “Electoral standards and commitments”, cited above (Note 11), pp. 25-26). Initially, Russia favoured “either a European Convention [on election standards] or a compilation of commitments in a *Copenhagen-2* format”. PC.DEL/563/02 of 16 July 2002; see also PC.DEL/339/02 of 10 May 2002.

27 Parliamentary Assembly of the Council of Europe, Resolution 1264 (2001), *Code of good practice in electoral matters*, 8 November 2001. See also the Clerfayt Report on “Drafting a standard Code of Practice in electoral matters and the establishment of a permanent European control body”, Parliamentary Assembly of the Council of Europe, Doc. 8327 of 10 February 1999.

was needed for obvious reasons – at minimum to strengthen the credibility of election monitoring, as well as to offer a template to member states for drafting or revising electoral legislation. In fact, the initiative was also largely dictated by the endemic rivalry between the Parliamentary Assembly of the Council of Europe and the OSCE on several human dimension matters – and electoral monitoring, in particular. Given that ODIHR is generally present on the spot on a long-term basis (well before election day), it often assumes the natural role of coordinating the short-term monitoring missions deployed by other European bodies. Understandably, ODIHR's high-profile leading role frustrates the Council of Europe's parliamentarians, who feel that they cannot present their institutional opinion on equal terms with the OSCE.²⁸ Be that as it may, a Code of Good Practice in Electoral Matters was adopted by the Venice Commission in October 2002²⁹ and subsequently endorsed by the Committee of Ministers. The Parliamentary Assembly recommended that the Committee of Ministers transform it into a legally binding Council of Europe convention.³⁰ The Ministers did not follow suit. In a special declaration, they decided only to call on governments and parliaments to take the Code into account when drawing up and implementing electoral legislation and to disseminate it more widely in relevant circles.³¹

In the spirit of the Copenhagen Document, the Code identified (in addition to the principle of periodicity of elections) *universal, equal, free, secret, and direct suffrage* as the five pillars of the “common European electoral heritage”. It also stressed that democratic elections were not possible without respect for fundamental human rights (in particular freedom of expression, assembly, and association), the stability of electoral legislation, which must have at least the rank of statute law (as a protection against potential political manipulation) and, finally, procedural guarantees providing for the organization of elections by an impartial body, monitoring by both national and international observers, the effective management (including security) of polling stations, and, finally, the transparency of funding of political parties and electoral

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- 28 This argument is clearly mentioned in a subsequent Clerfayt Report on a “Code of good practice in electoral matters”, Parliamentary Assembly of the Council of Europe, Doc. 9267 of 15 October 2001, para. 50. Since 1997, as a general rule, ODIHR has coordinated its monitoring activities with the Parliamentary Assembly of the Council of Europe and the European Parliament, as well as with the OSCE's own Parliamentary Assembly.
- 29 Parliamentary Assembly of the Council of Europe, *Code of good practice in electoral matters*, Doc. 9624 of 13 November 2002. As requested by the Parliamentary Assembly, the Venice Commission also established a special working organ named “Council for Democratic Elections”.
- 30 See Parliamentary Assembly of the Council of Europe, Recommendation 1595 (2003), *Code of Good Practice in Electoral Matters*, 30 January 2003.
- 31 See Committee of Ministers of the Council of Europe, CM/AS (2004) Rec 1595 final of 21 June 2004. See also CM/AS (2003) Rec 1595 final of 13 October 2003.

campaigns. As recognized by one member of the Venice Commission, the Code and ODIHR's own inventory of commitments, though sharing a common objective (preservation and development of the European electoral heritage), differ in style and approach: ODIHR's inventory is focused on practical problems and the Code on basic principles.³²

- *The CIS Convention and the ACEEEO's Draft Convention.* These texts require joint consideration because of the shared legal approach that underpins them and the fact that both reflect Russia's political stance. The "Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States" was signed by seven CIS States on 7 October 2002; it entered into force on 24 November 2003, following ratification by three of them.³³ As to the Draft Convention on Election Standards, Electoral Rights and Freedoms, which the ACEEEO adopted at its eleventh annual conference (Moscow, September 2002), its elaboration was suggested and undertaken by the Central Election Commission of the Russian Federation.³⁴ It offers practically the same substance as the CIS Convention, with articles differently organized or presented in a different order.³⁵ For instance, both texts include similar provisions banning foreign financial assistance to political parties or candidates, strictly regulating the role of international observers and referring extensively to national minorities. The basic difference between the ACEEEO draft text and the CIS Convention is that the latter provides for an "Interstate Electoral Council", composed of national Central Electoral Commissions, tasked to assist in election observation, as well as to monitor the Convention's implementation (Article 21).

Asked to deliver legal advice on the ACEEEO Draft Convention, the Venice Commission reported a number of technical legal imperfections (absence of explicit mention of presidential elections, imprecise wording on remote voting, redundant reference to the principle of "genuine elections" which is an aspect of free suffrage, insufficient reference to the principle of proportionality with respect to the right to elect and be

32 For detailed differences between the two texts, see the comments made by Professor Christoph Grabenwarter at the 2004 Supplementary Human Dimension Meeting on "Electoral standards and commitments", in: PC.SHDM.GAL/11/04, cited above (Note 20), pp. 42-43.

33 See Alexander Veshnyakov's keynote speech to the 2004 Supplementary Human Dimension Meeting on "Electoral standards and commitments", cited above (Note 11), pp. 25-26.

34 See the Resolution of the Eleventh General Assembly of the ACEEEO on the adoption of the Draft Convention, Moscow, 28 September 2002.

35 For the text of the Draft Convention, see Parliamentary Assembly of the Council of Europe, Draft Convention on election standards, electoral rights and freedoms, Doc. 9646 of 20 December 2002. The ACEEEO is a Budapest-based NGO set up in 1991 at the initiative of the International Foundation for Electoral Systems (IFES). Its main aim is to encourage information exchange and to promote the conduct of fair, open and democratic elections in Central and Eastern European countries.

elected) and signalled that, contrary to current international law practice, Article 3 para. 3 imposed prohibitions on individuals. It also expressed reservations about Article 2 para. 7, which, by providing for a general prohibition on participation of foreigners in electoral campaigns, conflicted with the law of the European Union. The Commission did admit that the proposed Convention reflected the essential features of the European electoral heritage. However, it pointed out that its drafters seemed to have been more preoccupied with establishing how democratic elections must be conducted than with defining the detailed features of the democratic vote. In short, the text privileged election standards more than voting rights.³⁶

Updating OSCE Election Monitoring Standards: A Politicized Issue

International monitoring aims to assess the extent to which an election complies with international standards for free and fair elections. As such, it is especially critical for emerging democracies, where traditions of impartiality are lacking. Since the success of an election is dependent upon acceptance of its outcome by all the actors involved, confirmation of its lawfulness by international monitors (if not formal certification, the promotion of which ODIHR has carefully been avoiding) represents a confidence-building measure that enhances trust in the system of access to power and contributes to political stability under normal conditions. Furthermore, in conflict situations, certification can serve conflict prevention purposes or, more often, crown post-conflict peacebuilding programmes. The OSCE can be credited (through ODIHR) with playing a pioneering role in this connection, since it is the only intergovernmental organization whose participating States are committed to both the conduct of free and fair elections and to acceptance of international monitoring.

ODIHR's Pivotal Role

Monitoring of free and fair elections is certainly the most high-profile activity performed by ODIHR. However, under para. 8 of the Copenhagen Document, the participating States committed themselves to inviting only observers representing other participating States (as well as interested NGOs) to monitor the elections taking place on their territory. ODIHR gradually came into the picture later. In 1993, the Rome Ministerial Council Meeting agreed on the general principle of strengthening ODIHR's election monitoring func-

36 See Venice Commission, Opinion No 253/2003, CDL-EL (2004) 006 of 1 March 2004. For a comparative table of the draft Convention and the Venice Code of Good Practice, see Opinion No 253/2003, CDL-EL (2004) 008 of 4 March 2004.

tion.³⁷ Next, the Budapest Summit (1994) decided that the ODIHR would play “an enhanced role in election monitoring, before, during and after elections”³⁸ and, in this context, would assess the conditions for the free and independent functioning of the media; it also instructed ODIHR to devise a handbook for OSCE election monitors.³⁹ Finally, the Istanbul Charter for European Security reaffirmed the commitment to conduct free and fair elections and *expressly* obliged participating States to invite observers from ODIHR.⁴⁰

ODIHR monitors elections (generally parliamentary and presidential) using a methodology developed in its Election Observation Handbook, which includes a formal “Code of Conduct for OSCE/ODIHR Observers”.⁴¹ A number of other practical reference guides supplement the Handbook. They deal with specific issues, such as the resolution of election disputes, participation of persons belonging to special categories of people (national minorities and women), legal electoral frameworks, and domestic observation.⁴² Arguably, ODIHR makes use of a transparent methodology for both long-term and short-term election monitoring. Regularly adapted to respond to the normal evolution of electoral contexts and new challenges, that methodology has (after over 150 observed elections) certainly stood the test of time. It contributed to establishing ODIHR as the leading regional body for election monitoring with a high-profile image of professionalism and impartiality.⁴³

Russian Politically Motivated Accusations against ODIHR

However, ODIHR has been (and still is) the direct target of harsh criticism from Russia and other CIS member states under the generic argument of “double standards”. In the Moscow Declaration on the State of Affairs in the OSCE, ODIHR has bluntly been accused of violating its mandate by “giving

37 See CSCE, Fourth Meeting of the Council, Rome, 30 November-1 December 1993, Decisions of the Rome Council Meeting, para. IV.4, in: Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe, Basic Documents, 1993-1995*, The Hague/London/Boston 1995, pp. 192-214, here: p. 203.

38 Budapest Document 1994, Budapest, 6 December 1994, Budapest Decisions, para. 12 of chapter VIII, in: *ibid.*, pp. 145-189, here: p. 177.

39 See *ibid.*

40 See Organization for Security and Co-operation in Europe, Charter for European Security, Istanbul, November 1999, para. 25, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2000*, Baden-Baden 2001, pp. 425-443, here: p. 433. The text also committed the participating States to securing the full right of persons belonging to national minorities to vote and to facilitating the rights of refugees to participate in elections taking place in their home countries.

41 The Handbook was first published in 1997. Its fifth edition was published in 2005.

42 *Resolving Election Disputes in the OSCE Area. Towards a Standard Election Dispute Monitoring System* (2000), *Guidelines to Assist Minority Participation in the Electoral Process* (2001), *Guidelines for Reviewing a Legal Framework for Elections* (2001), *Handbook for Domestic Election Observers* (2003) and *Handbook for Monitoring Women's Participation in Elections* (2004).

43 An official of the European Commission has recently recognized that “it is from ODIHR that the European Union drew inspiration when developing its own important capacity in the area of election observation”, PC.SHDM.GAL/5/05, cited above (Note 21), p. 52.

selective, intensified attention to some countries while ignoring the problems of other participating States”, displaying “unwillingness to take into account the realities and specific features of individual countries”, and frequently muddling through “politicization”.⁴⁴ In the following months, Belarus and the Central Asian states charged ODIHR with using inconsistent monitoring standards, establishing Election Observation Missions that were imbalanced in terms of the composition of their staff (i.e. with overwhelmingly English-speaking monitors recruited from the same restrictive list of participating States), taking unilateral stands, and, above all, issuing assessment reports devoid of balance or objectivity, which amounted to interference in the internal affairs of sovereign States.⁴⁵ Moscow attributes such trends to the excessive autonomy enjoyed by ODIHR (because of insufficient control from the OSCE’s political decision-making bodies) and, to the lack of an exact OSCE monitoring methodology. It calls accordingly for the development of “uniform criteria” based on “objective standards”, which would compel ODIHR to adhere strictly to the principles of political neutrality and impartiality and, thus, perform “unbiased evaluations” across the OSCE area.⁴⁶

At first sight, the Russian demand seems to concern a technical revision of ODIHR’s election observation methodology with a view to its harmonization with the CIS standards outlined in the 2002 Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States and developed through special “Regulations on the observation mission” approved at Ministerial level (December 2002).⁴⁷ However, the Russian argumentation should not be taken entirely at face value. Complaints about political bias and monitoring methodology form only the visible tip of the iceberg. The real problem is fundamentally political in nature and one in which ODIHR does not represent the direct or real foe. It has to do with the bald fact that ODIHR and Russian-controlled CIS observer groups arrive at diametrically opposed evaluations of elections taking place in the CIS space. A number of cases of conflicting assessments have unfolded in the last couple of years. Thus, in March 2004, while ODIHR concluded that the presidential elections in Russia “did not

44 PC.DEL/630/04, cited above (Note 8).

45 See PC.DEL/1022/04 and PC.DEL/1023/04 of 27 October 2004 (Belarus), and PC.DEL/1225/04/Corr.1 of 17 December 2004 (Central Asian states, except Uzbekistan). See also MC.DEL/61/04 of 7 December 2004 (Russian position at the Sofia Ministerial Council).

46 The Russian and CIS position was announced by Alexander Veshnyakov and Assan Kozhakov, Deputy Chairman of the CIS Executive Committee, at the 2005 Supplementary Human Dimension Meeting on “Challenges of election technologies and procedure”, PC.SHDM.GAL/3/05 of 21 April 2005.

47 Noticeably, the CIS Convention reserves the right of the states parties “to deprive of accreditation those international observers who are breaching the laws, generally accepted principles and the international law standards” (Article 15 para. 7). An identical provision is also included in the ACEEEO Draft Convention under Article 19 para. 8.

adequately reflect principles necessary for a healthy democratic election”,⁴⁸ CIS monitors gave a laudatory evaluation. Similarly, ODIHR reported that the parliamentary elections held in Belarus (October 2004), Uzbekistan (December 2004), and Tajikistan (February 2005) fell significantly short of OSCE standards – while the CIS monitors hailed them as “transparent”, “free”, and “legitimate”. In the same vein, the second round of the Ukrainian presidential elections of November 2004 was found massively fraudulent by ODIHR, but credited with transparency and fairness by the CIS monitoring group. Even more significantly, while ODIHR considered the repeat second round of the Ukrainian presidential elections of December 2004 as free of major irregularities, the CIS group considered its outcome “illegitimate”. An analogous scenario developed with respect to the March 2005 parliamentary elections in Moldova, which were considered by ODIHR to be in general compliance with most international commitments, but were stigmatized by the CIS as a rigged consultation in favour of a pro-Western (though Communist-style) government. All these examples tend to demonstrate that the crux of the matter is not standards, but high political stakes. It can be argued that Russia is less angered by ODIHR as such than by the undermining of its foreign policy in the politico-strategic backyard of the CIS.

The OSCE Reaction

At the OSCE, positions on the issue of election monitoring are much more rigid than those on election standards. Indeed, from the proceedings of the two Supplementary Human Dimension Meetings organized in 2004-2005 on election matters, one conclusion clearly emerges: General opinion (here again led by the United States and the European Union) does not concur with the Russian/CIS criticisms and continues to praise ODIHR for its impartiality and professionalism.⁴⁹ Apart from the generalization of ODIHR’s monitoring operations across the whole OSCE area,⁵⁰ the only main element of consensus concerns the geographical diversification of the composition of OSCE’s Election Observation Missions through an extra-budgetary fund specially set up in 2001 for this purpose.⁵¹ However, the problem is complicated by the fact that not all participating States seem willing or able to second observers at any given time.⁵²

48 OSCE, Office for Democratic Institutions and Human Rights, Russian Federation, Presidential Election, 14 March 2004, OSCE/ODIHR Election Observation Mission Final Report, ODIHR.GAL/39/04 of 2 June 2004, page 1.

49 PC.SHDM.GAL/5/05, cited above (Note 21), p. 12.

50 Initially, on the basis of an “added value” argument (according to which monitoring elections in mature democracies would only be an unduly costly formality), the ODIHR abstained from operating in Western Europe and North America. However, as from 2002, the trend was reversed with the monitoring of elections in Spain, the United States, France, the United Kingdom, Turkey, and of the June 2004 European Parliament elections.

51 See PC.SHDM.GAL/5/05, cited above (Note 21), p. 4.

52 See PC.SHDM.GAL/5/05, cited above (Note 21), pp. 4. and 12.

Conclusion

During its OSCE Chairmanship in 2005, Slovenia has rightly set election issues among its priority concerns.⁵³ For its own part, the 2005 Panel of Eminent Persons on Strengthening the Effectiveness of the OSCE addressed the issue in its final report.⁵⁴ The report's recommendations reflect the two elements of what could be the basis of a forthcoming compromise between the dissatisfied CIS countries and the rest of the participating States: development of additional *election commitments* (in particular to take due account of the challenges raised by new technologies) and of *election monitoring standards* guaranteeing equal status to all participating States versus fresh commitments on post-election follow-up to ensure better implementation of ODIHR's recommendations. The report proposed that "special attention should be devoted to election monitoring standards based on experience acquired. Criteria and methodology that ensure objectiveness, transparency and professionalism should be further developed and an approach taken that guarantees equal treatment of all participating States"⁵⁵ – while also suggesting that "the existing handbook on election monitoring and other election mechanisms and practices should be periodically updated with the active involvement of election practitioners from various election monitoring bodies".⁵⁶ On the other hand, it has encouraged governments and ODIHR "to pay more attention to post-election follow-up through dialogue and practical cooperative support"⁵⁷ and has called upon ODIHR to "report to the Permanent Council (PC) on election follow-up"⁵⁸ after consultation with the participating State concerned.

The latest development in the general field of election standards and monitoring has been, on 27 October 2005, the endorsement by ODIHR (together with some 20 intergovernmental and non-governmental organizations) of a Declaration of Principles for International Election Observers and a related Code of Conduct for International Election Observers jointly framed by the United Nations Electoral Assistance Division, the Carter Center, and the National Democratic Institute for International affairs.⁵⁹ While a number of options remain open, four interim conclusions can be advanced at this stage:

1. The adoption of additional *election commitments* supplementing existing ones and reflecting evolving election issues is legitimate, provided

53 See CIO.GAL/64/05 of 9 May 2005 and CIO.GAL/104/05 of 4 July 2005.

54 *Common Purpose. Towards a More Effective OSCE, Final Report and Recommendations of the Panel of Eminent Persons on Strengthening the Effectiveness of the OSCE*, 27 June 2005, CIO.GAL/100/05 of 27 June 2005, reproduced in this volume, pp. 359-379.

55 *Ibid.*, pp. 368 (para. 24c).

56 *Ibid.* (para 24c).

57 *Ibid.* (para 24d).

58 *Ibid.* (para 24d).

59 Available at: http://www.accessdemocracy.org/library/1923_declaration_102705.pdf.

that the aim is to arrive at a “Copenhagen Plus” and not a “Copenhagen 2 Document”.

2. As to additional *monitoring standards*, their development is also not superfluous: By definition, democracy and the standards of democratic processes are always perfectible.⁶⁰ Nevertheless, additional standards could only be welcome to the extent that they do not have a straitjacketing effect by allowing a monitored state’s self-judgment to prevail over the conclusions arrived at independently by ODIHR. It is worth noting that during the 2005 Supplementary Human Dimension Meeting on “Challenges of election technologies and procedure”, some participants (most predictably from the CIS) raised the idea that ODIHR could submit its final election reports to the Permanent Council *prior to release*.⁶¹ ODIHR’s autonomy of judgment must be preserved at all costs, lest the credibility of the OSCE in election monitoring be doomed.
3. Russia’s insistence on strengthened *OSCE-CIS relationships* is perfectly acceptable. However, the fostering of co-operation and co-ordination between the OSCE and the CIS in the field of election monitoring should not be achieved at the price of lowering the OSCE’s demanding monitoring standards under the guise of “harmonization”.
4. Election standards and election monitoring standards are no doubt essential for ensuring that free and fair elections are possible, but equally crucial is the prompt and effective *compliance with ODIHR’s recommendations*. No reform of the OSCE election regime would be meaningful without an agreed-upon procedure for follow-up to ODIHR’s post-election reports.

60 For a critical approach towards ODIHR’s methodology, see Hrair Balian’s sharp analysis, “ODIHR’s Election Work: Good value?”, in: *Helsinki Monitor* 3/2005, pp. 169-75.

61 PC.SHDM.GAL/5/05, cited above (Note 21), p. 12.