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# Election Observation and Its Parliamentary Dimension: 15 Years of Co-operation

Introduction: The Origin and Purpose of International Election Observation

By providing legitimacy for government, elections are the linchpin of democracy. Hence, the observation of elections by international organizations and institutions has emerged as a major instrument for assisting states and societies in their efforts to develop and strengthen democratic institutions. A number of universal and regional human rights instruments and other documents that identify electoral good practices have been adopted. Unfortunately the quality of elections – worldwide and in the OSCE area – still varies considerably.

Most elections are, thankfully, conducted by honest, competent, and experienced administrations that enjoy the trust of the electorate. Then there are elections that are basically honest, yet flawed because the organizers lack competence or experience; international electoral assistance can help to eliminate such flaws. More serious are attempts to falsify results by electoral contenders or electoral administrators. Finally, there are elections where those in power lack the will to conduct them in an honest way, and the electorate consequently lacks confidence in the process.

Observers, for their part, need to be highly qualified. For the purposes of this paper, some qualifications may be singled out. Firstly, an observer has to be impartial, whatever his or her personal preferences and regardless of the election results. Problems arising from politically unwelcome results do not belong to the realm of election observation, but are matters of foreign policy and, possibly, of human rights protection. Secondly, an observer must report facts without fear or favour; particular cultural traditions or historical specificities cannot justify election fraud. Stealing an election cannot be seen as an aspect of national traditions worth preserving or tolerating. And finally, an observer must be knowledgeable about elections in all their complexity and able to deal rationally with numbers. For instance, the claim that an election is valid if 90 per cent of the vote counts are in order is a fallacy, because stealing ten per cent from the winner and giving it to the loser would, in most parliamentary elections, result in a different government.

<sup>1</sup> Cf. OSCE/ODIHR, Election Observation Handbook, sixth edition, Warsaw 2010, available at: http://www.osce.org/odihr/elections/68439, pp. 19-21, 100-108.

## Observation by ODIHR

ODIHR has an imperative mandate to observe elections before, during, and after election day. This was expressly stated by the OSCE participating States in the documents adopted at the 1993 Rome Meeting of the CSCE Council and the 1994 Budapest Summit. In 1990, the CSCE Paris Summit had established the Office for Free Elections, which was renamed the Office for Democratic Institutions and Human Rights (ODIHR) in 1992. Soon afterwards, the Office began to carry out small-scale election observation, which it has since developed into a highly professional operation, becoming a global leader in the field. ODIHR's Election Observation Handbook, now in its sixth edition, describes its methodology in detail.<sup>2</sup>

The personnel of an average, medium-sized ODIHR election observation mission (EOM) are drawn from many OSCE participating States. A typical operation may comprise, for example, a core team of twelve, led by a Head of Mission (HoM), 40 long-term observers (LTOs) and some 400 short-term observers (STOs). They are assisted by locally recruited personnel. A few experts from ODIHR headquarters support the EOM, particularly around election day.

The core team is recruited by ODIHR on the basis of public advertisement. LTOs and STOs are seconded by OSCE participating States, mostly from pools of experienced personnel. ODIHR maintains de facto disciplinary control over its personnel via certain clauses in their service agreements or by reporting back to the seconding state. ODIHR may ask the authorities of the host country to withdraw observer status from persons who seriously violate ODIHR's Code of Conduct (and has done so). This personnel structure allows ODIHR to base its methodology on three pillars: professional specialization, presence in space, and presence in time.

The HoM is an experienced specialist, often a senior ambassador. The core team analysts are specialists in their own areas of responsibility: An election analyst may be a member of the central election commission of his or her country; a legal analyst, a lawyer capable of reviewing domestic legislation against international standards; and a media analyst, an expert in media monitoring methodology. The team will also include a statistician and other specialists.

Presence in space means that an EOM is stationed all over the country and is in contact with medium- and lower-level election administrations and other stakeholders.

Since an election is not a one-day event, presence over an extended period of time is of particular importance. As a rule, ODIHR has longstanding relations with a host country, and may have analysed its electoral system and legislation long before the actual observation starts. The mission itself

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<sup>2</sup> OSCE/ODIHR, cited above (Note 1).

<sup>3</sup> Cf. ibid., back cover.

begins with a needs assessment mission (NAM), whose report deals with the size of the future EOM, among other things. The core team is deployed around two months before election day, the LTOs slightly later. The mission issues a continuous stream of reports. The STOs arrive a few days before polling and leave soon thereafter, followed by the LTOs. The core team stays as long as election-related events, such as complaints and appeals or the publication of results, are expected. After about two months, ODIHR publishes its final report. This normally contains recommendations, which may be followed by election assistance projects.

## Observation by the OSCE Parliamentary Assembly

The OSCE Parliamentary Assembly (OSCE PA) held its first session in 1992 and began observing parliamentary elections in December 1993. Since then, the PA has expanded the scope of its observation to presidential elections and referenda. The first recorded reference to the OSCE PA at summit level in relation to elections and election observation came during the 1999 OSCE Summit in Istanbul, notably in conjunction with its joint work with ODIHR. The PA has acquired considerable experience and expertise in election observation, although its personnel and methodology differ in important aspects from those of ODIHR. While the OSCE in general practises a system of personnel rotation, the PA Secretary General, R. Spencer Oliver, has been in his position for almost two decades, giving him a powerful influence on the conduct of election observation by the PA. He is supported in Vienna by his Special Representative, Andreas Nothelle.

The personnel of an OSCE PA election observation mission, with an average size of sixty to eighty participants, consists of parliamentarians from OSCE participating States plus a number of staff members from the Secretariat in Copenhagen or its liaison office in Vienna. The Head of Delegation, who acts as Special Co-ordinator and leads the OSCE short-term observation mission, is often the President of the PA or another OSCE PA senior official. The parliamentarians are appointed to the OSCE PA by their national parliaments, and may then participate in election observation missions. Professionally, parliamentarians may be career politicians or have backgrounds in other fields. Having been elected to their national parliaments, they possess special electoral experience from the contender's perspective and are familiar with the vicissitudes of campaigning.

4 Cf. Charter for European Security, sections 17 and 25; Istanbul Summit Declaration, section 26, both in: Organization for Security and Co-operation in Europe, *Istanbul Summit* 1999, *Istanbul Document* 1999, Istanbul 1999.

See OSCE, Co-operation Agreement between the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights, Copenhagen, 2 September 1997, at: http://www.oscepa.org/images/stories/documents/election\_observation/eo-osceodihr\_co-operation\_agreement.pdf.

As to deployment in space and time, parliamentarians are also dispatched to many parts of the observed country. They normally depart on the day after the elections. The PA does not carry out follow-up in the form of election assistance projects, but publishes a short final statement. It may, however, enter into long-term relations with the parliament of the host country.

### The Desirability of Joint Observation

Some elections are observed by a host of different observation missions. The danger exists that stakeholders may choose the assessment that fits them best from a variety of conflicting opinions. For voters in the host country, the long-term ODIHR EOMs are the most visible. The Commonwealth of Independent States (CIS) also deploys long-term missions in its member states, which echo the composition of ODIHR EOMs. Around election day, parliamentary observers may arrive from the OSCE PA, the European Parliament (EP), the Parliamentary Assembly of the Council of Europe (PACE), the NATO Parliamentary Assembly (NATO PA), the CIS Inter-Parliamentary Assembly (CIS IPA), as well as national parliaments. Finally, there are observer missions deployed by NGOs, both international and national. Joint assessments of elections by all these observers or assessments that come to identical conclusions are neither possible nor desirable.

It is desirable, however, that observers committed to identical democratic values should speak with one voice. This includes the two OSCE institutions, ODIHR and the PA, but also the EP, PACE, and NATO PA. Experience has shown that CIS missions' assessments often differ considerably from those of the aforementioned five institutions, although they subscribe to the same democratic values. Hence, there have been friendly contacts with CIS missions, but no division of labour or joint statements. For different reasons, the same attitude prevails with regard to NGO observers.

Co-operation between the five institutions, four of which are parliamentarian, not only serves to prevent the proliferation of potentially contradictory assessments, there is also added value in co-operation between parliamentarians and an executive institution such as ODIHR. Joining forces gives the overall effort more weight. Parliamentarians sometimes contribute a high political profile that increases media interest. ODIHR personnel, the HoM and the core team in particular, often possess appropriate expertise, including technical, diplomatic, geographic, and linguistic skills.

The most important reason for co-operation, however, is that ODIHR's long-term observation of the entire territory of the host country is the basis on which meaningful joint observation is possible. The parliamentarians' stay in the country is generally too short for a meaningful assessment of the long-term aspects of an election process. When the parliamentarians arrive, sixty

or so ODIHR experts, supported by an equal number of carefully chosen national assistants, will already have spent some two months monitoring and analysing all aspects of the election process.

### The Co-operation Agreement of 2 September 1997

On 2 September 1997, the OSCE Chairman-in-Office (CiO) and the PA President signed the "Co-operation Agreement between the OSCE Parliamentary Assembly and the OSCE Office for Democratic Institutions and Human Rights" (CA).<sup>6</sup> The need to conclude an administrative agreement on procedures between two institutions belonging to the same organization may require some explanation. In its preamble, the CA calls for closer co-operation and avoidance of overlap, redundancy, unnecessary expense, and confusion. Its larger context concerns the PA's position within the structures of the OSCE as a whole.<sup>7</sup>

According to the Agreement, the CiO "may designate a political figure as a Special Co-ordinator to lead the short-term OSCE observer mission. This political figure should normally be the President of the OSCE PA [...] This Special Co-ordinator will work closely with the OSCE/ODIHR On-site-Co-ordinator and will deliver the preliminary post-election statement in conjunction with other appropriate officials."

Besides this regulation of the division of labour at the top, the Agreement contains obligations for the provision of information, mostly by ODIHR to the PA. These obligations include "regular field reports from the ODIHR On-site Co-ordinator and long-term observers"; copies of election laws and similar material; names and origin of STOs; deployment suggestions; a separate oral briefing for PA STOs; the draft final report; and participation in the NAM. For its part, the PA is obliged to share its briefing books and its draft final report with ODIHR; provide the latter with the names and origins of its STOs; inform ODIHR about any pre-election programme and logistical arrangements it might have agreed upon with the local parliament; invite the On-site Co-ordinator to its internal post-election debriefing; and co-organize, whenever possible, common briefings and de-briefings for all observers. Finally, the Agreement obliges the ODIHR EOM to assist the PA with critical logistical support concerning accommodation, cars and drivers, and interpreters, and to provide a security assessment.

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<sup>6</sup> Ibid.

<sup>7</sup> Cf. Andreas Nothelle, The OSCE Parliamentary Assembly – Driving Reform, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook* 2006, Baden-Baden 2007, pp. 347-373, here: pp. 357-358.

## Implementation of the Co-operation Agreement

The CA provides the basis for reasonable co-operation between the two OSCE institutions. The ideal EOM, as described by the CA, starts with a NAM, which is composed of Warsaw-based ODIHR election advisers and a representative of the PA. As a rule, the participants in NAMs know one another well and co-operate without difficulty.

After deployment, the ODIHR mission starts fulfilling its informational obligations towards the PA. The mission issues interim reports, which are made public, and provides the PA with a summary of LTO weekly reports, which are not publicly available. The summary contains the most relevant findings from the vast quantity of information provided by the LTOs every week. Each summary includes a cover note stating that it is an internal document and not for public consumption, and that the information contained therein has not been fully fact-checked and confirmed. This precaution is necessary because the leaking of sensitive or compromising information may impact upon the well-being, security, or livelihood of an interlocutor, a staff member, or even an EOM observer. However, the Special Co-ordinator or his or her designated representatives have full access to review all LTO reports, which they may do when they arrive to lead the short-term OSCE observer mission or during earlier visits. In the interest of secure management of information, this review takes place on EOM premises.

After the arrival of the Special Co-ordinator, there is an early meeting to discuss all issues of concern, in particular modalities of the preliminary post-election statement (PPS), to be delivered at a press conference on the day after the election. After this, the heads of the various observer delegations or missions that are to participate in the press conference (there may be as many as five) generally meet over dinner for an open discussion. Normally on the next day, the EOM, including most of its analysts, participates in an information briefing that the PA organizes for its mission members; this involves a series of meetings with key interlocutors to provide an overview of the situation. Discussions on the PPS continue at HoM and working levels. On the morning after election day, a representative of the EOM attends an internal PA debriefing and presents the mission's election-night findings. Afterwards, the HoMs attend a meeting held on the EOM's premises, where they discuss and adopt the final version of the PPS. A press release is then drafted, and the principals' personal press statements are co-ordinated.

It is not always easy for up to five HoMs to reach agreement, but it is generally feasible. At the subsequent press conference, the Special Coordinator delivers the PPS, after which he or she and the other HoMs make statements on behalf of their respective missions or delegations. Most of the parliamentarians and their support staff leave soon after the press conference, so that the debriefing of the seconded STOs and, later, LTOs takes place without them. The EOM stays on to observe post-election developments,

such as outstanding complaints and appeals and the announcement of results. As described here, this scenario of ODIHR/PA co-operation under the CA sounds satisfactory. It is therefore difficult to understand why there should be problems.

#### Points of Contention

In the past, differing views as to how the CA should best be implemented have led to disagreements among OSCE parliamentarians and between the OSCE PA and ODIHR that have impacted negatively on co-operation. There have been oral statements, position papers, and letters of complaint to the respective CiOs – some of it regrettably polemical. A number of recent OSCE Chairmanships have attempted to resolve some of the issues, but with little success. While constantly reassessing its own performance, ODIHR has made serious efforts to improve co-operation and find ways to address and accommodate PA requests.

By no means all of the joint ODIHR/PA observations have suffered from these disagreements. From his personal experience, the author would single out the OSCE observation of the 2004 Ukrainian presidential elections as an outstanding example of excellent ODIHR/PA co-operation. This was the time of the so-called Orange Revolution, when dangerous tensions in the country placed a heavy burden of responsibility on the OSCE observers, led by the Special Co-ordinator, Bruce George. Equally excellent was the co-operation in Belarus in 2010, which is described at the end of this paper. Alas, the author also witnessed a particularly low point: The joint observation of the parliamentary elections in Serbia 2007 culminated in an irresponsible letter of complaint about ODIHR by the Special Co-ordinator, which was even briefly placed online.

So what are these points of contention?

Some of them deal with technical aspects of ODIHR/PA co-operation, such as the exchange of information. The solution to such problems is contained within the CA and is discussed above in the section on "Implementation of the Co-operation Agreement". If unforeseen technical problems arise, both sides should feel responsible for discussing and solving them privately and in a non-confrontational manner. There are, however, two points of substantive disagreement, and these are addressed in the following two sections: the claim that there is a hierarchical relationship between the PA and ODIHR, and relations with Russia and the CIS.

#### A Hierarchical Relationship?

Claims have been made that the CA tasked the OSCE parliamentarians with taking the lead within an election observation operation; that the Special Co-ordinator has the final decision on the text of the PPS; and that the "On-site Co-ordinator", who must not call himself Head of Mission, is not entitled to make remarks at the post-election press conference. These interpretations of the CA are excessive and in direct contravention of the distinct election observation mandate that the OSCE participating States have given ODIHR.

While it is true that the OSCE should speak with one voice, ODIHR and the PA are two separate institutions with distinct mandates and methodologies and must be identifiable as such. The CA only states that the Special Coordinator is to lead the short-term OSCE observer mission and "will deliver the preliminary post-election statement in conjunction with other appropriate officials". It does not speak of "leadership" over the whole exercise, which includes both long-term and short-term components. Under the heading, "Exchange of Information," the CA speaks of "each observation mission", which indicates that there are two separate missions. Consequently, a key OSCE Ministerial Council Decision on this subject uses the term "partnership".8

Nothing in the CA prevents either mission from using, within the scope of its administrative autonomy, the term "head" for its leader. It makes no difference that the leaders' titles are, for the purpose of CA implementation, Special Co-ordinator and On-Site Co-ordinator, respectively. The contrary view, sometimes taken by PA representatives, neglects practical necessities that make the position of a Head of Mission imperative. ODIHR long-term missions are often of a considerable size, and they have to ensure high-level attention from authorities and stakeholders in the host country. 9

In particular, nothing in the CA gives the Special Co-ordinator the final decision on the text of the PPS. On the morning after the election, most of the text of the PPS relating to the long-term aspects of the election observation will have already been agreed upon, as it concerns elements prior to election day proper; these elements will have been reviewed and commented on by all observer delegations involved. What remains to be negotiated between the participants is mainly the section summarizing election-day observation, and they have to negotiate until they reach a decision. To give the final say to the Special Co-ordinator would risk downplaying the results of the negotiations and observation by all participants. To exclude the ODIHR HoM from the podium or from active participation in the press conference would be baffling

<sup>8</sup> Decision No. 19/06, Strengthening the Effectiveness of the OSCE, MC.DEC.19/06 of 5 December 2006, in: Organization for Security and Co-operation in Europe, *Fourteenth Meeting of the Ministerial Council, 4 and 5 December 2006*, Brussels, 5 December 2006, pp. 58-62, here: section 2, para. 15, p. 61.

<sup>9</sup> The title "On-site Co-ordinator" is not used by ODIHR. As the scope and nature of ODIHR election observation has evolved, the more accurate title "Head of ODIHR Election Observation Mission" has been in use for over a decade.

to representatives of the media, since they know the HoM from the press conference at the start of long-term observation and from numerous interviews given to both domestic and international media.

The claim of hierarchical relationship ignores the complex nature of the electoral process. This process involves what may be called "providers" and "users". "Providers" include the election administration and its voluntary helpers, the courts, public security officials, the media, the administrators of the electoral roll, statisticians, computer experts, and so on. An ODIHR core team is composed in such a way that each of these aspects is covered by a corresponding specialist. The "users" are primarily the voters, i.e., the sovereign people, and secondly the politicians seeking election. From this perspective, the valuable experience that parliamentarians have as "users" in their own countries is indeed essential. When it comes to practical work, however, some modesty is appropriate. Being human beings, neither parliamentarians nor ODIHR analysts are above making mistakes, and some may even consciously violate their code of conduct.

#### Relations with Russia and the CIS

A number of CIS countries, led by Russia, have in the past voiced dissatisfaction with OSCE election observation activities and have made proposals, some of which would harm OSCE commitments and observation by ODIHR. <sup>10</sup> This paper is not the place to discuss the Russian initiative, which has been the object of discussions among the OSCE participating States. Of interest here are some points on which representatives of the OSCE PA seem to support CIS positions that can be harmful.

One of the most frequent criticisms voiced by some CIS countries towards ODIHR is that of double standards. The allegation is that elections in CIS countries are observed according to stricter standards than those in Western countries. The OSCE PA has also used the term "double standards" in this context. It is correct that genuine double standards in observation must be avoided. However, if there is a double standard here, it is not in the observation, but in the elections observed. A dividing line runs through the OSCE participating States: Some states largely meet OSCE standards, while others generally fail to do so.

Russia has challenged ODIHR's observation methodology on a number of points arguing, for example, "that in order to avoid double standards, ODIHR should observe elections not only in one particular subregion, but

<sup>10</sup> Cf., e.g., Republic of Armenia, Belarus, Kazakhstan, Kyrgyz Republic, Russian Federation, Republic of Tajikistan, Republic of Uzbekistan, *Draft Decision on OSCE/ODIHR Observation of National Elections*, PC.DEL.898/07, 18 September 2007.

<sup>11</sup> Cf. R. Spencer Oliver, Remarks on Election Observation to the U.S. Helsinki Commission, Washington, DC, 17 September 2008, p. 4; see also Nothelle, cited above (Note 7), p. 365.

across the entire OSCE area. At a minimum, [Russia] argued, 'long-standing democracies' should not be shielded from an objective assessment of, and regular check-ups on, the state of their democracy, and particularly the state of their election-related procedures and practices. Excluding one group of countries by default from election-related scrutiny would run against the principle of sovereign equality of all states enshrined in the 1975 Helsinki Final Act". Some of these arguments, which are understandable in principle, are shared by representatives of the OSCE PA. Technically and financially, however, it is impossible to have full EOMs in all OSCE participating States. It is the purpose of the NAMs (in which PA Secretariat staff members participate) to identify the appropriate observation format for each individual case.

CIS EOMs do not normally question the legislation or official rules of the host country, and rather focus on violations of such rules by an opposition that is often fighting an uphill battle. Similar views have been taken by representatives of the PA regarding claims that OSCE EOMs should not question national legislation. The ODIHR Director disagrees: "There seems to have been a tendency lately to argue that international obligations are to be viewed through the prism of national legislation. National legislation cannot be the ultimate yardstick if that legislation is not in line with the international standards adopted by that country." <sup>14</sup>

In some countries, ODIHR long-term observers receive confidential information from individuals who fear sanctions from the authorities. For an EOM to protect such sources is not easy and makes necessary certain restrictions in the distribution of the information gathered. The authorities have been known to exert pressure on an EOM to disclose its sources. Criticism of such restrictions by PA representatives complicates source protection by ODIHR.

Jens-Hagen Eschenbächer/Bernhard Knoll, Observing Elections in "Long-Standing Democracies": Added Value or Waste of Money?. In: Institute for Peace Research and Security Studies at the University of Hamburg/IFSH (ed.), OSCE Yearbook 2010, Baden-Baden 2011, pp. 247-263, here: p. 252-253. Eschenbächer and Knoll add that "criticism of ODIHR observation activities began after its assessments of the Duma and presidential elections in the Russian Federation in 2003 and 2004, and its reporting on fraud in the Georgian parliamentary elections of 2 November 2003, and was reflected in the CIS Summit Document of June 2004 which claimed that ODIHR's election observation activities were politically motivated. Criticism towards ODIHR has largely focused on its election observation mandate and methodology, rather than on the substantive findings of its reports. Calls for more transparency and accountability, combined with allegations that ODIHR applies 'double standards' – i.e. a lack of 'geographic balance' or 'equal treatment of participating States' in regard to election observation – continue." Ibid., p. 253, Note 20.

<sup>13</sup> Cf. Oliver, cited above (Note 11), p. 5.

<sup>14</sup> Ambassador Janez Lenarčič, Remarks at the CIS IPA Conference on "International Electoral Standards and National Electoral Systems: Correlation of Development", 18 January 2011, on file with the author.

#### Coalition of the Like-Minded: Minsk 2010 – A Personal Account

I was pleased to be appointed Head of the ODIHR election observation mission to the 19 December 2010 presidential elections in Belarus. Having been the ODIHR EOM HoM in that country in 2006 and 2008, I had continued to entertain good and correct relations with both the authorities and the opposition. I hoped to see further improvements – if only in small ways – in the conduct of Belarusian elections, which had previously been unsatisfactory. I also looked forward to further improvement in co-operation with the PA, and, in this regard, was not disappointed.

The 2010 mission went well according to the rules of the CA, largely as described above. The PA received two interim reports and the summaries of LTO weekly reports. Upon arrival, the Special Co-ordinator, British parliamentarian Tony Lloyd, had a discussion with me, which showed a genuine will to co-operate on both sides and a meeting of minds regarding substance. Mr Lloyd visited the analysts and assistants in their offices. The PPS was discussed continuously and at different levels until the day after the election. On election day, 19 December, Mr Lloyd and I had a friendly meeting with the Head of the CIS mission, Sergei Lebedev, after which Mr Lebedev and I met media representatives, but did not make joint statements.

On 20 December, I participated in the 8:30 a.m. parliamentary debriefing, and, at 10:15 a.m., the discussion of the draft statement took place in a friendly and businesslike atmosphere. Good co-operation continued through the press conference until the end of the mission. Secretary General Oliver, when he took his leave from me, commented positively on this co-operation. The OSCE as a whole has profited. I see no reason why this should not always be the case.

The criticism of certain phenomena in this paper is meant to clarify problems to help overcome them. ODIHR and the PA are bound by the same democratic values based on the same OSCE commitments. Yet they have distinct roles and mandates, and their relationship cannot be hierarchical. It is not clear why there should be problems as long as ODIHR refrains from challenging the position of the Special Co-ordinator as provided for in the CA and informs the PA as it did in 2010 in Belarus, and as long as the PA refrains from challenging the role and the mandate of the ODIHR HoM. At the working level, ODIHR and the PA Secretariat have established friendly and co-operative day-to-day relations. If the leaders want to meet their high responsibility regarding the time-honoured human dimension of the OSCE, they have to co-operate in good faith. Belarus 2010 has shown that such co-operation is perfectly possible.