SUMMARY OF DISCUSSIONS

EXECUTIVE WORKSHOP

on

‘ELECTION OBSERVATION AND ITS ENemies’

Organized jointly by the School of Public Policy (CEU), the European Stability Initiative (ESI) and the Open Society Foundations (OSF)

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I. Introduction

Comprehensive and long-term election observation is a complex activity that cannot be carried out in an ad hoc manner. Accordingly, monitoring activities have expanded over the past two decades and have been professionalized. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) developed an observation methodology that aims to hold states accountable to the democracy and human rights standards they have themselves embraced (in the context of this seminar the standards we look at in particular are those of the Council of Europe and the European Convention of Human Rights).

Injecting politics into election observation challenges its credibility and integrity and deprives civil society actors – domestic observers and human rights defenders – of an advocacy tool that should serve their demands for domestic reform. Examples from the recent past also underscore the sometimes problematic relationship between experts from ODIHR and parliamentary delegations which threatens the credibility of observation findings and undermines the sense of impartiality.

There is no future for effective election observation if departs from the facts and the evidence collected by observers. There is equally no future for the process if its conclusions are ambiguous and phrased in a way that prioritizes diplomacy or politics over truth. There is no future for the Council of Europe’s role in upholding its values and standards without taking a stronger position on problematic elections in some of its member states. A clear stance on elections and increasing the impact of election observation missions is also a vital element of a successful Eastern Partnership for the European Union.

Objectives of the Workshop

Working within a small group setting, this workshop sought to gather lessons from recent election observation missions. The group looked specifically at Albania in 2009 – a case study of a deeply contested election leading to post-election violence – and Azerbaijan in 2010 – an illustration of a stolen election where international observers disagreed widely about their findings.

The objective of the workshop was to discuss how international election observation missions can learn from, and overcome, shortcomings identified in the past. Senior election observation professionals, technical experts, and selected parliamentarians shared their views on how cases of political bias can be avoided. The goal was to formulate recommendations on how observers can contribute more effectively to conflict de-escalation and the mobilisation
Questions and issues that were explored:

- **The ‘red line’ issue**: When does an election not meet the basic democratic standards of the Council of Europe? Would it be useful to formulate ‘red lines’, which, if crossed, would automatically qualify an election as not having met basic standards?

- **Experts assessments vs. political bargaining**: What should the relationship be between parliamentary delegations and expert long-term observation missions led by ODIHR? How can the institutions involved in election observation prevent the post-election assessments from turning into a subject of political bargaining?

- **Longer-term impact**: How can it be ensured that observers’ findings – including the final expert assessment of ODHIR – have a political impact beyond the post-election press conference coverage – producing either domestic reform or possible consequences in the Council of Europe Parliamentary Assembly?

- **Clarity of communication**: Have observers been too timid to take a stance in contested elections in the way they formulate their conclusions in the Statements of Preliminary Findings? Has this been the problem in Albania in June 2009 or Moldova in April 2009? Could clear language help prevent post-election polarization?

- **Future role of the Council of Europe in elections**: How can the impact of Council of Europe institutions in the context of contested or problematic elections in member states be increased?
II. Election Observation: Main Issues

At the workshop, participants discussed the complexity of election observation activities. Two case studies were used to bring to the forefront key challenges to the credibility of election observation.

The case of Azerbaijan served to underline the problem of political bargaining among the international observers, which undermines the technical assessment of elections. The 2010 elections in Azerbaijan were among the most fraudulent ever observed in a Council of Europe (CoE) member state. There was no competition among political parties and the opposition was brutally repressed. Yet some CoE and OSCE parliamentarians who had observed the elections insisted that the report highlight only areas in which Azerbaijan experienced ‘progress’. ODIHR disagreed. Azerbaijan was not reprimanded for its bad elections and Members of Parliament (MPs) from Azerbaijan participated in the Parliamentary Assembly of the Council of Europe (PACE) with full voting rights. This raised questions about the standards that some election observers were upholding and the role of institutions like the CoE in inspiring democratic reform among its member states.

The case of Albania illustrated the problem of unclear language used in election observation reporting, which raised questions about the clarity of election observation methodology and election standards. The 2009 parliamentary election results in Albania hung by a handful of votes. This led to the polarization of the ballot counting process, followed by a rejection of the final results and boycotting of the parliament by the opposition. The language used in the OSCE/ODIHR reports after the election made it difficult to objectively assess what had happened during the election and the ballot counting process. This in turn fueled the dispute between the two main political camps in Albania and enabled both sides to use the OSCE/ODIHR report to argue in their favor.

In the first part of the workshop participants raised the following questions:

- Can ODIHR become clearer and bolder in its reporting?
- Can ODIHR deliver some sort of judgment (not only facts) after they observe elections?

Participants noted that ODIHR staff is often not in a position to make a judgment call due to the nature of election observation process. In cases
when it is, it often chooses not to make one considering the polarized local political environment, such is the case of Albania.

- When is an election democratic?

- Can each ODIHR report be written in a clear and concise manner, considering the sheer volume of reports that have to be written each year (over 20 each year)?

- Can the relationship between parliamentarians and technicians (ODIHR staff) be made productive?

Participants noted that election standards exist and are enshrined in the OSCE Copenhagen Document (1990) and other documents (see Annex section of the Election Observation Handbook). It then becomes a question of how to use standards in a more precise way.

Participants agreed that it is often difficult for observers to know what standards to prioritize and what issues to really look into in order to judge any particular election. Standards are there, but observing and reporting becomes a question of how to assess whether the standards were met or not.

- Can the observing and reporting methodology become sharper (indicators, red-lines, scales of improvement) so it becomes clear when the standards have been met or not met?

Participants noted that the conclusions within a preliminary statement as well as the headlines of the press releases are worked out in the form of a negotiation between all groups of observers involved (PACE, OSCE PA, ODIHR and European Parliament, at times NATO PA), sometimes blurring the facts of the elections. In addition, a key component of the election, namely the counting process, is often concluded after the internationals hold the press conference, thus not reflecting the quality of elections in their entirety.

Other issues raised:

- How to move from election observation to democracy observation, namely observing developments in a country over a longer period of time?

- How can domestic observers become more professionalized?

- How to enhance the role of local media and civil society?
- How to make sure that there is a credible election observation mission in countries like Russia with 92,000 voting stations?

- What is the future of election observation in the era of such technological advances (smart phones, Facebook, Twitter) when anyone can observe elections?

**II.1 Azerbaijan and the Council of Europe**

Participants agreed that Azerbaijan is one of those clear cases where elections were simply not democratic. What can and should the CoE do in this case? Should the MPs from Azerbaijan in the Council of Europe, who have been elected through an undemocratic process, still have voting rights within PACE? The CoE should be able to reprimand countries that have had bad elections.

In the case of Azerbaijan, some PACE members did not want to be informed about the election process and the facts that ODIHR had found in the field. In preparation for the 2010 election observation mission, some members of PACE and OSCE PA delegations met business people in Azerbaijan instead of election contestants, civil society actors or media representatives. This pointed to their affiliation with business and possible corruption, which explains their relentless lobbying in favor of Azerbaijan even in the face of such fraudulent election.

Participants noted that there is solidarity among parliamentarians, which is hard to overcome in these cases.

ODIHR wrote in their final report that “Elections fail to meet a number of OSCE commitment and some Azerbaijani law.” This language is necessary, some participants claimed, in order to keep the relationship with both Azerbaijan and PACE smooth. If the ODIHR report had said bluntly that Azerbaijan “failed to meet OSCE standards and the Azerbaijani law”, a letter would be sent by the Azerbaijani president to the head of the OSCE about how ODIHR had it wrong. This questioning of ODIHR’s assessment could hurt its credibility.

**II.2 Albania and ODIHR**

In Albania, the 2009 election was very competitive and the results so close that a little manipulation at the end during the vote count could have
changed the results. Yet it was difficult to tell from the ODIHR report whether such manipulation had occurred or not.

Participants agreed that the language used in ODIHR reports after the elections in Albania was unclear. The following are examples of unclear language used in the Final ODIHR Report (2009):

“While meeting most OSCE commitments, these elections did not fully realize Albania’s potential to adhere to the highest standards for democratic elections.” 1

What are the OSCE commitments? What does most mean? What are the highest standards? Who adheres to them? Any country in Europe? And if no country does – why mention them in Albania?

The vote count was assessed as bad or very bad in 22 of the 66 Ballot Counting Centers (BCCs). 2

But:

“There was no evidence of irregular counting or manipulation of results, and no major irregularities at the BCCs, apart from the blockage of the count in some BCCs.” 3

What is bad or very bad? And how can there not be any major irregularities if 1/3 of counting Centers were assessed as bad or very bad?

“IEOM observers assessed the voting process as good or very good in 92 per cent of voting centers visited.” 4

Does it mean that it was bad or very bad in 8%? And how negligible is this in a highly competitive election where a very small number of votes can change the result of the election?

The report also contained a few references to the fact that the Election Code was violated. How can elections still meet most “OSCE commitments” if the

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legal bases for the elections was not fully adhered to?

Participants noted that the opposition in Albania used the language of this report to build their whole post-election political strategy, namely not to participate in the work of the parliament. The opposition claimed that since in a third of ballot counting centers the count was Bad or Very Bad then they cannot accept this election.

But what is Bad of Very Bad? Was there ballot stuffing and manipulation? Or just disorganized counting?

One participant noted that both in Azerbaijan and in Albania the count was assessed as Bad or Very Bad in a third of counting centers. Yet only in Azerbaijan there was ballot stuffing. First time observers sometimes use these qualifications generously. How to account for that?

One way to overcome this problem of qualifying election processes Bad or Very Bad is to build better narratives into these reports. Diplomats in Albania need more precise reporting from ODIHR as they attempt to unite in their efforts to mediate the political fallout after each election in Albania.

III. Suggestions for Ways Forward

Participants explored the possibility of separating ODIHR from OSCE PA as they produce the statements or press releases after the election. Participants recognized that these statements are stronger when they are issued by both institutions jointly. However, the dispute between parliamentarians and ODIHR observers about the content of the joint statement after the 2010 election in Azerbaijan, underlined the necessity to explore issuing separate statements. In a fresh development, the OSCE PA had cancelled the 1997 Cooperation Agreement between itself and ODIHR, opening the door to this possibility.

Participants suggested that if separate statements may not be opportune, ODIHR could in addition to the press statement present a slide show with the facts from the ground, during the press conference. This way politicians could still give their ambivalent statements, but the facts would be presented as well.

Participants explored the notion of establishing ‘red lines’ for integrity in elections. Considering that ODIHR sends Needs Assessment Missions long beforehand, it could already note the most problematic areas in any given country and establish ‘red lines’ with this information. These ‘red lines’ would be communicated clearly to all stakeholders in the run up to the elections
(government, political parties, election administration). The international community would make it clear that if the ‘red lines’ are crossed, the election will not be consider democratic. In failing to organize democratic elections, a country’s relationship to the EU and other international bodies would suffer.

ODIHR should write better narratives so the reader can come to a clear conclusion about the election process.

### III.1 Concrete Suggestions: Azerbaijan Elections 2013

ODIHR could send Long Term Observers (LTOs) but would not deploy Short Term Observers (STOs) for Azerbaijan, unless LTOs see that the political environment has improved and the opposition was allowed to campaign fairly. Interim reports would be very important references. The statement could read similar to the one issued in Uzbekistan in 2009:

“In light of the lack of a genuinely pluralistic choice for voters and given the fact that most previous ODIHR recommendations remain unaddressed, the deployment of an election observation mission, even of a limited nature, was not considered meaningful.”

In the ODIHR Handbook for Elections Observation, there is a provision on Limited Election Observation Mission which could be relied upon:

“Conversely, the decision to deploy an LEOM may be made when the NAM has concluded that conditions have not been established for a meaningful election-day process, primarily due to a lack of genuine political pluralism and distinct choice offered to voters, and that the deployment of STOs will not bring any added value. However, the electoral process may nonetheless benefit from a comprehensive assessment and subsequent recommendations, especially where there is a commensurate political will to engage in a post-election dialogue about recommendations for improving the general conduct of elections.”

If an decision could be taken not to send STOs, ODIHR could issue a statement on the day after election. It would not have to be a press

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5 OSCE, Parliamentary Elections, 27 December 2009
http://www.osce.org/odihr/elections/uzbekistan/69922

conference, a strong statement for the media stating the reasons for the lack of STOs would be sufficient.

Other suggestions on Azerbaijan:

- Azerbaijan will be chairing the Ministerial Committee of the CoE for 6 months next year. Before this date, opposition in Azerbaijan should send letters to demand CoE not to allow Azerbaijan to chair unless the election is free and fair. This will be hard to do but it is worth a try.

- Civil society in Azerbaijan could send a letter to PACE saying that they will not received PACE monitors to discuss the pre-election environment with them.

- Civil society in Azerbaijan could send a letter to CoE, PACE, EP where they stress the deterioration of democracy in the country, which is a member of CoE.

### III.2 Concrete Suggestions: Albania Elections 2013

Albania faces election-related issues in 2013 that are not much different from those it confronted in 2009. There is a small possibility that the opposition might boycott the election if ODIHR assesses the pre-election period as bad. What can be done there? Can observers do better than last time? Can the report be more precise and the message clearer, so the European Commission can then say: this country is not ready to start accession talks?

In Albania, international observers can prepare beforehand. Participants noted that judging from the parliamentary elections in 2009 and local elections in 2011, disputed will arise during ballot counting and the post election appeals process. These should be made into red lines.

A good place to start would be the conclusions from previous ODIHR reports. Pick the most important five recommendations. Make it clear to Albania that these are the areas that the international community will be looking at closely and will be judging Albania according to how they do in these areas.

Example: Recommendation 29 in the Final Report:

“The invalidation of results from one or more voting centers should not only be linked to the impact this may have on the allocations of seats.
Potential grave breaches of the law or other reasons which indicate that the result is seriously flawed should be sufficient reason to invalidate elections in voting centers and allowing for a potential recount. ”

This then is made clear through the Needs Assessment Process that it will be a red line.

Other suggestions on Albania:

- The EU and the EP can play a key role in Albania. The party blocks within the EP should refrain from supporting Albanian political party closest to them ideologically, by defending their positions during contentious post-election battles. Instead, they should support the notion of a democratic election process by insisting on the good will of their allies in Albania.

- Methodology has to be clarified before the election for Albania. Bad or Very Bad should be defined and observers should be trained to recognize what Bad and Very Bad is.

- Local observers should be better trained and strengthened.

IV. Reading List

Participants were sent the following reading list before the workshop.

Required reading - Azerbaijan


2. IEOM Press Statement, Baku, 8 November 2010 http://www.osce.org/odihr/elections/74100


   http://www.osce.org/odihr/elections/azerbaijan/75073

5. PACE, Observation of the parliamentary elections in Azerbaijan (7 November 2010), Doc 12475, 24 January 2011  


7. Letter of complaint from OSCEPA to OSCE Chairman in Office, 9 November 2010  

**Required reading - Albania**

8. IEOM Press Statement, Tirana, 29 June 2009  
   http://www.osce.org/odihr/elections/75232

   http://www.osce.org/odihr/elections/albania/37853

    http://www.osce.org/odihr/elections/albania/38598

**Suggested reading**

    http://aceproject.org/main/samples/em/emx_o010.pdf

   http://www.ndi.org/files/1923_declaration_102705_0.pdf


15. Letter of OSCE PA President to EP President, 11 December 2012