

Chapter 15

The Role of International Observers

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International observers¹ were present for all of the 1990 elections in Eastern and Central Europe. Their collective efforts highlight the growing acceptance and understanding of the roles that international observers can play in supporting free and fair election processes, especially in transition elections following years of nondemocratic rule. Moreover, these election observation experiences led to an institutionalization of the process among the countries party to the Conference on Security and Cooperation in Europe (CSCE) as reflected in the Copenhagen declaration adopted

¹ Defining the term "international observer" is not always easy. Generally, an individual's self-definition is accepted by both the domestic authorities and by the international community, including the media. Of course, such self-definition ignores the *bona fides* of an individual or group as a neutral and objective observer of the process.

on June 29, 1990, less than two weeks after the elections in Bulgaria marked the conclusion of the spring 1990 election season.

This chapter describes the attitudes exhibited toward observers in the different countries of the region and evaluates the contribution that the observers made to the election processes. The final sections comment on the lessons to be learned from the observers' experiences in 1990 and on the future direction of observation efforts in the region.

I

The different governments in the region all accepted the presence of international observers for the 1990 elections. For those who have worked hard to convince reluctant governments in other regions of the world to permit international observers, the warm welcome afforded international observers marked a surprising and positive development in Eastern and Central Europe. In some countries (*e.g.*, East Germany, Hungary, Poland and Czechoslovakia), the presence of observers was not seen as necessary to ensure a fair campaign environment or to deter fraud; indeed, for the 1989 Polish legislative elections, Solidarity and other groups discouraged the presence of large observer delegations because they believed that it would be more beneficial in the long term to develop and rely on local monitoring initiatives.

The Central European countries welcomed observers principally as a means of demonstrating international support for the dramatic changes occurring in these countries. In Hungary and Czechoslovakia, the National Democratic and Republican Institutes for International Affairs jointly sponsored large-scale international delegations that not only observed the elections, but also participated in post-election seminars, respectively, on "Mechanisms for Promoting a Transition Process" and a "Symposium on Democracy." The observation process became a learning experience, which was

particularly relevant for delegation members who were seeking to initiate democratic transitions in their own countries.²

In Romania and Bulgaria, where democratic traditions are much weaker, observers played the more traditional roles of encouraging a fair campaign and of deterring election-day fraud. No barriers were encountered by observation efforts in either country, although expectations varied as to the significance of their presence in encouraging fair elections. The quality of the evaluations issued by different observer groups also varied. Still, there can be no doubt that observers in both countries gave added confidence to populations participating in multiparty elections for the first time in more than a generation. Moreover, in several instances, the observers, during pre-election surveys, were able to suggest administrative reforms that improved the quality of the process.

In Romania, the government initially invited the United Nations to observe the May elections. The Secretary General declined the invitation, ostensibly because the election was occurring in a sovereign country and no regional security threat was at issue.³ The government then encouraged the presence of observers sponsored by governments and nongovernmental organizations. A far-reaching decree was adopted providing observers with free and unimpeded access to the observation process, from the beginning of the election campaign until the announcement of the election results.⁴ The

² The delegations in Hungary and Czechoslovakia included nationals from Bangladesh, Kenya, Liberia, Nigeria and South Africa.

³ The United Nations' attitude on the question of observers has been undergoing some evolution in recent years. Until recently, the U.N. would observe elections only in a decolonization situation. The February 1990 elections in Nicaragua represented the organization's first foray into observing elections in a sovereign country. The Secretary General explained the decision to observe the Nicaraguan elections as fulfilling the U.N. mandate to contribute to regional security. This rationale was more attenuated in Haiti, where again the U.N. decided to observe elections in a sovereign nation.

⁴ The decree provided observers unhampered access to information and documentation on the legal framework concerning the elections and on the norms governing basic human rights and freedoms, uninhibited travel and

Romanian government maintained this open attitude even after observers conducting pre-election missions issued statements critical of the campaign environment.⁵

Opposition supporters also encouraged the presence of observers, even while they discounted the possibility of fair elections. At times, opposition leaders and activists held quite unrealistic expectations about the contribution that international observers could make to a fair process. These activists, and also prospective voters, noted that observers would be present only for a short time and expressed fears regarding what might happen after the observers left the country. Indeed, the Romanian experience underscored the limited role that observers can play, particularly in a society where domestic groups are not well-organized.

In Bulgaria, the government's attitude toward observers was initially more ambivalent. While the election law adopted in April 1990, two months before the elections, authorized the presence of "guests," the government sought to confine the definition to a discrete group of legislators from neighboring countries. Under pressure from a variety of sources, the government ultimately acceded to permitting free access to all those who sought to be present for the elections.

The observers in Bulgaria benefitted from the emergence of a nationwide civic organization, the Bulgarian Association for Fair Elections (BAFE) (see Chapter 8). Both in the pre-election period and on election day, BAFE facilitated the activities of the observers, without linking the observers to a particular contestant in the election process. Moreover, BAFE's network and its successful implementation of a parallel vote tabulation provided observers with reliable and immediate information regarding the overall process, thus

contacts with the leaders of any political group,...and unconditional access to electoral meetings and to monitoring the electoral process in any of the country's localities. The decree also provided that observers abide by their neutrality status and not interfere with the electoral process, and that the observers could convene press conferences at the end of their mission and request to be received by the Romanian authorities.

⁵ See, e.g., International Human Rights Law Group, *Report on the Romanian Campaign for President and Parliament* (May 9, 1990).

assisting the delegation's ability to issue a statement soon after the elections.

Bulgaria offers a good example of how observers contributed to the election process by more than just their presence on election day. During the pre-election period, observers from NDI and other organizations encouraged reforms in the administrative process relating to the tally sheets and the voter registration lists. On election day, the leaders of the NDI/NRIIA international observer delegation, building upon the goodwill established between government officials and participants in the pre-election missions, played a critical role in ensuring that the parallel vote tabulation was implemented as planned. And following the elections, some of the observers investigated complaints registered by the opposition, demonstrating a seriousness of purpose and adding substantive weight to their overall assessment of the process.

II

The Romanian and Bulgarian experiences highlight the difficulties that observers face in evaluating controversial elections. In Romania, observers confronted a situation in which the ruling National Salvation Front scored an overwhelming victory, following an election campaign marked by Front abuses of the perquisites of incumbency and serious acts of intimidation. In addition, the elections were fraught with administrative problems and in some cases outright fraud in the balloting process.

Some observers, most notably members of a British parliamentary group and an official delegation sponsored by the United States government, visited the country for only a few days and directed their attention primarily to the balloting process. Failing to observe systematic fraud, these delegations issued generally favorable statements.

Other observers were more skeptical. In its statement, the 60-member NDI/NRIIA international delegation stressed the problems that existed during the campaign as well as on election day. While recognizing that some democratic progress had been made, the

delegation emphasized that the elections had not demonstrated the democratic *bona fides* of the Front.

In Bulgaria, the situation was equally complicated. Here too, there was a serious imbalance in resources available to the contesting parties, although a much more meaningful campaign took place than in Romania. Moreover, pre-election and election-day visits throughout the country reported on the existence of a climate of fear, caused in large measure by the legacy of 45 years of totalitarian rule. Nonetheless, few administrative problems occurred on election day, and very few incidents of outright fraud were alleged. The parallel vote tabulations conducted by BAFE and by a West German polling firm detected no fraud in the tabulation of results.

In Bulgaria, as in Romania, some observers sought to emphasize the positive aspects of the process. For its part, the NDI/NRIIA international observer delegation drew a more subtle distinction, highlighting the existence of fear and its impact on the process but also recognizing that this factor in and of itself did not provide a basis for invalidating the elections. The delegation recognized that, despite the imperfections, the elections provided Bulgarians an opportunity to participate in a meaningful process and that the results reflected the will of the voters as expressed at the ballot box on election day.

III

Several lessons can be drawn from observing the 1990 elections in the countries of the region. Recognition was given to the different roles that observer missions can play in transition elections, ranging from demonstrating support for a democratic process (East Germany and Hungary) and celebrating the rebirth of democracy (Poland and Czechoslovakia) to evaluating elections occurring under difficult circumstances (Romania and Bulgaria).

The elections, particularly in Romania and Bulgaria, also highlighted the importance of adopting sound methodology in assessing election processes. Such a methodology includes conducting pre-election missions to identify problems and facilitate solutions; establishing contacts and informing the population of observer presence; maintaining a neutral and objective point of view; working

with local, nonpartisan organizations; and being prepared to conduct post-election follow-up investigations. Encouraging parties and other organizations to conduct parallel vote tabulations can also significantly enhance the observation process.

IV

On June 29, 1990, the 35 countries then party to the Conference on Security and Cooperation in Europe (CSCE) approved a lengthy document concerning the "human dimension" of the CSCE process. Influenced by the events of the previous months, the CSCE countries declared "that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government."

The document sets forth standards for free and fair elections in CSCE countries. The standards require that CSCE countries: hold free elections at reasonable intervals; permit all seats in at least one chamber of the national legislature to be freely contested; guarantee universal and equal suffrage to all adult citizens; ensure that votes are cast by secret ballot or by equivalent free voting procedure; ensure that the votes are counted and reported honestly; respect the rights of citizens to seek political office, individually or as representatives of political parties; ensure that law and public policy permit a free campaign environment; provide for unimpeded access to the media; and guarantee that the candidates who obtain the necessary number of votes are duly installed in office. These standards reflect a broad consensus on what constitutes free and fair elections and should serve as a model for the development of similar standards by other inter-governmental organizations.

With respect to international observers, the CSCE document provides:

The participating States consider that the presence of observers, both domestic and foreign, can enhance the electoral process for States in which elections are taking place. They therefore *invite* observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to

observe the course of their national election proceedings, to the extent permitted by law. They will also endeavor to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

This is the first international document to recognize the status of international observers. By virtue of its very explicit language, the document should help deflect arguments that election observing constitutes interference in the internal affairs of CSCE countries. This provision also may help overcome the resentment felt in some countries regarding the willingness of developed countries, which are advocates of election observing, to welcome observers for elections in their own countries.

Several questions remain to be addressed in order to determine the future role of observers in CSCE countries. First, the CSCE must decide whether to establish a mechanism for observing elections itself rather than simply encouraging member states to do so. The advantage of CSCE observer missions would be their ability to formally represent the entire CSCE community, thereby adding international encouragement for free and fair elections.

Establishing such a mechanism, however, would raise a host of additional questions. Are all CSCE states eligible for representation on an observer mission? Which elections would be observed by CSCE observer missions? How long would an observer team be authorized to spend in the country (and who would pay for the mission)? Would the observer missions be limited to a reporting role or would they be instructed to facilitate the resolution of difficult legal, administrative and political issues? Finally, what weight would CSCE observer missions have on the issue of government recognition and bilateral relations in the case of a critical evaluation of the election process? Similar questions are currently under consideration by other intergovernmental organizations, including the United Nations,⁶ the Organization of American States and the Commonwealth nations.

⁶ See, G.A. Resolution 45/150 (adopted December 18, 1990). See also, *Response of the National Democratic Institute for International Affairs to United Nations General Assembly Resolution 45/150: Developing a United Nations Elections Assistance Capability* (submitted to the Secretary General, June 15, 1991).

Assuming CSCE observer missions prove impossible to organize, at least in the short term, government and nongovernmental organization observer missions will continue to play key roles. The CSCE document assures such delegations access to the election process but does not spell out in detail what that access entails. In keeping with the trend exhibited in Eastern and Central Europe during the spring of 1990, and in other parts of the world during the past five years, observer missions, at a minimum, should be authorized: to monitor all aspects of the election process from the beginning of the campaign through the installation of a new government; to travel and communicate freely within the country; to visit polling sites on election day and vote tabulation centers after the polls close; and to issue public statements before and after the elections. The decree adopted by the Romanian government before the May 20, 1990 elections could serve as a model in this regard. The observers, of course, would be obliged to abide by all domestic laws and regulations and to avoid interfering in the domestic political process.

Governments and nongovernmental organizations sponsoring observer missions should comprehensively brief their designees on what is expected of them and should set forth terms of reference reflecting the complexities involved in evaluating an election process. At the very least, the terms of reference should require objective standards and the requirement that the observers evaluate the three critical phases of an election process: 1) the election campaign; 2) the balloting and counting processes; and 3) the post-election disposition of complaints.

Observer groups sponsored by different organizations should be prepared to share information regarding the process, although it will be difficult to coordinate the post-election statements issued by various observer groups. The domestic and international media, which serve as the principal vehicles for disseminating the views of international observers, should be selective in their reliance on information from observer groups, relying, to the extent possible, on those groups that are observing elections in a manner consistent with evolving international standards.⁷

⁷ See, L. Garber, *Guidelines for International Election Observing* (International Human Rights Law Group, 1984).

V

Given the role that observers played in Eastern and Central Europe in 1990, it is not surprising that there are high expectations for continued observer involvement in future elections. While the allocation of resources for observer missions can almost always be justified for transition elections, the direct benefits become less obvious as elections become more institutionalized and fears of fraud and intimidation become less severe. In such circumstances, other forms of political development assistance — directed at newly established legislatures, independent judicial systems, free media outlets, local governments and other institutions — become more relevant.

Still, a trustworthy election system is critical to ensuring the existence of a democratic form of government. When questions arise regarding the quality of the election system, governments and nongovernmental organizations should be prepared to sponsor international observer delegations that can then determine whether a commitment to free and fair elections exists and, where appropriate, encourage ways to improve the electoral process.