

Special Representative

All
Delegations to the OSCE

Vienna

July 29, 2008

Dear Colleagues,

The U.K. delegation has circulated a non-paper by the Hon. Mr. Bruce George, MP, UK, member of the OSCE Parliamentary Assembly. The paper contains a number of inaccuracies and allegations which cannot be left unanswered. Mr. George has on several occasions made similarly unfounded attacks against the Parliamentary Assembly Leadership and its members in OSCE Parliamentary Assembly meetings, and they have been regularly rejected by all of its decision-making bodies. The paper therefore does in no way reflect the position of the OSCE Parliamentary Assembly, its President and Bureau, Standing Committee or any other official body. In fact, during the time period that he refers to in his paper, Mr. George has not participated in PA Election Observation in positions that would allow him to assess the latest developments correctly.

The many factual errors contained in the paper become obvious when taking a closer look at the actual procedures followed by the OSCE Parliamentary Assembly. The procedures, as well as a comparative chart of the complementary qualifications, which the Parliamentary Assembly, the ODIHR and the participating States (by seconding observers) contribute to Election Observation, are attached to this memo. Also attached is a detailed discussion of the 12 points made in the George paper.

The paper criticizes the discussions held between a delegation of the Parliamentary Assembly appointed by President Lennmarker (composed of the former President Emeritus Alcee Hastings - U.S.A. -, the new President João Soares – Portugal, Vice President Pia Christmas-Møller – Denmark, and Alexander Kozlovsky – Russia) and the CIS Interparliamentary Assembly. Both parliamentary bodies engage in election observation. All CIS members are OSCE participating States. Parliamentarians from CIS member States participate in election observation of both parliamentary assemblies. The CIS Interparliamentary Assembly, like the Parliamentary Assembly of the Council of Europe, the NATO Assembly, and the IPU, has an official observer status in the OSCE PA.

Various election observations, although all assemblies base them on the same Copenhagen Commitments, often result in diverging views, in particular in CIS countries. It is therefore only natural to make an effort to find out what this divergence of views is based on and in which way one might be able to reduce these divergences by applying more uniform methods – of course without watering down the Commitments. The confusion about the terms “Commitments” and methods, which the paper addresses under the term of “standards”, creates part of the inaccuracies and contradictions contained therein.

The Finnish Chairmanship had been consulted about the plans of the Parliamentary Assembly before the meetings with the CIS Parliamentary Assembly started, regularly informed about the discussions, and the delegation went straight from the meeting in St. Petersburg to Helsinki in order to thoroughly brief the Chairmanship about its results.

The Parliamentary Assembly is one of the strongest advocates of a strict adherence to and a full implementation of the Copenhagen Commitments. It criticizes all attempts to creatively interpret them in a way not agreed to by the participating States. The so-called "Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers", another paper circulated during the recent seminar upon request by ODIHR staff and which the George paper refers to, has been written by an NGO without any consultation of the Parliamentary Assembly. It calls for a signing of this document by state and non-state organizations regardless of which are the internal procedures of the statutory bodies of the signatories. It also contains a number of flaws which were specifically pointed out by the PA Secretary General in his closing remarks at the seminar, and does not even mention the role of parliamentarians in election observation. These are reasons why the Parliamentary Assembly has not signed the document, which is neither a legal nor a political document of the OSCE and therefore has no agreed standing as a measuring stick for election observation in the OSCE.

The institutional issues involved when a governmental structure is tasked by governments with observing elections, as well as some fundamental methodological issues linked to this concept which knows no legal or other remedies, have been discussed in the recent Election Seminar held by the OSCE Chairmanship. So have the advantages of a scrupulous division of labor with the inter-parliamentary body of the same organization, which observes the same elections.

The 1997 Cooperation Agreement, endorsed by MC Decision 19/06, if implemented fully to its letter and its spirit, establishes a division of labor which takes some of the issues involved into account. It also determines a mechanism to solve a conflict that might arise if the ODIHR and the Parliamentary Assembly cannot agree on certain aspects of the statements, however rare such disagreements may be. The Chairman-in-Office-appointed parliamentary Special Coordinator who has the backing both of the Chairmanship and of the Parliamentary Assembly and is mandated to deliver the preliminary post Election Statement would – if no agreement can be reached – have to take the final decision.

The Agreement also contains very clear rules about the amount of information sharing. For instance, the ODIHR has to provide the Special Coordinator with all long-term observer reports in a timely manner. The relevant rules are clear and not open to interpretation.

The George paper refers to efforts of the Spanish Chairmanship to further clarify the existing rules. Apparently, these efforts were not based on the findings by the two experts (De Donnea/Petersen) whom the Belgian Chairmanship had appointed for that purpose, because the guidelines that the Spanish Chair proposed contradicted the Cooperation Agreement. They would have reduced the rights of the Special Coordinator in the drafting to a right to make comments, and at the same time established that – if no agreement between the observers is reached – there should not be a statement at all. Consequently, the proposal was unanimously rejected by the OSCE Parliamentary Assembly Bureau (the Bureau comprises 21 parliamentarians) and not just – like the paper suggests – the OSCE Parliamentary Assembly Secretary General. Former President Lennmarker, when informing former Chairman-in-Office Spanish Foreign Minister Moratinos about the reaction of the Bureau, was assured that the proposal would not be repeated, which was highly appreciated by the Bureau.

The openness with which Director Ambassador Lenarcic engaged in discussions with the Parliamentary Assembly, and the support of the Finnish Chairmanship are promising. It remains to be seen whether all Vienna delegations are ready to equally support a further enhancement of confidence building and conflict resolution in their midst. The circulation by the UK Delegation in Vienna of a non paper of such polemic nature at this point does not help to further improve the situation.

Yours sincerely,



Andreas Nothelle
Ambassador

The past has shown a lack of knowledge about the actual procedures followed by the Parliamentary Assembly and the ODIHR in election observation missions and the qualifications both of them contribute to those missions, in accordance with the 1997 Cooperation Agreement. The following fact sheet aims at clarifying some of the issues.

Procedures of the Parliamentary Assembly in election observation

Phase 1: Collecting Information

a) Long-term observation

As soon as the Parliamentary Assembly learns about an upcoming election that it intends to observe, the President of the Parliamentary Assembly designates a leader of the parliamentary delegation, and delegations are asked to appoint interested members. For instance, for the September elections in Belarus, this appointment has already been made, and President Soares has announced that he will lead the U.S. election observation mission.

The designated leader, who the President then proposes to the Chairman-in-Office for appointment as Special Coordinator and leader of the OSCE Short Term Election Observers, in accordance with the 1997 Cooperation Agreement, will immediately prepare for his task by gathering the required information from all sources available to a parliamentarian. He is supported by an expert team in the International Secretariat in Copenhagen.

If the Parliamentary Assembly considers it necessary and is consulted by the ODIHR in a timely manner, it also participates in a Needs Assessment Mission.

The information gathered covers all areas of relevance for the assessment of the degree to which OSCE election related Commitments are implemented in the country, for instance electoral legislation, media access, political parties, voter lists, procedures to select candidates and candidate registration, freedom of assembly and association, electoral administration, campaigning, etc. Much of this increasingly vital information can be gathered before arrival in the country, as it is the practice of most observation missions.

In many cases, the leader visits the country – often in form of a Parliamentary Assembly delegation or together with PACE pre-assessment visits – in order to gather additional information. In the case of the recent Serbian elections, two of such pre-assessment visits have taken place, and the Special Coordinator was in place one week before the election. In the case of the upcoming U.S. elections, a series of seminars, the first of which will be held in September, will serve the same purpose.

In case there is an ODIHR Core Team already present in the country or ODIHR Long Term Observers are already in place (on average, ODIHR starts being on-site approx. six weeks before election day, however, the mission including LTOs is frequently not operable much later), the delegation consults closely with the team and requests all relevant information. It usually also gets intensive briefings from State Authorities, Political Parties, NGOs and the Media, as well as the ODIHR Field Mission – if there is any in the country – and other representatives of the International Community.

The International Secretariat prepares a briefing book and a comprehensive press compilation for all members of the Parliamentary Assembly observer delegation. The delegation also receives information that is sometimes made available by the ODIHR for this purpose.

b) Short-term observation

The leader of the parliamentary delegation usually arrives in the country at the beginning of the pre-electoral week and immediately engages in additional fact finding on the ground, which includes intensive meetings with the ODIHR. The Parliamentary Assembly has always requested – in accordance with the Cooperation Agreement – to be provided with all information gathered by the ODIHR and to have meetings with the Long Term Observers in order to be able to directly enter into an exchange of information, unfortunately often without success.

Once in the country, the delegation is intensively briefed by the groups mentioned above including ODIHR, usually over two days. Frequently, the leader also participates in the briefings the ODIHR arranges for non-parliamentary short term observers. In case of larger delegations, the leader creates an advisory group of experienced observers, made up of parliamentarians from different regions and political backgrounds, with whom he consults during the following days. He also continues to hold meetings with other parliamentary delegations and the ODIHR, and he uses the opportunity to observe the electoral campaign – which many of the other observers engage in as well. Parliamentarians also receive additional briefings from their embassies and NGOs or Media of their choice.

The Delegation leader has also requested an early involvement in the preparations for the preliminary statement – often without success. Once ODIHR is ready to talk about a draft statement, the actual drafting process on what is known so far starts in a drafting group made up of all delegations.

The other parliamentarians arrive in the second half of the week. Parliamentarians have other, more comfortable possibilities to spend several days, including a weekend, abroad, between meetings of their parliaments, than through the participation in election observations. They undertake this effort because they are convinced that their presence and experience can be beneficial for the people in the country the elections of which they observe, and on which many of them have special expertise.

On election day, parliamentarians – some of whom are deployed in remote areas of the country - fill in the questionnaires like other observers, and early in the morning after the election they participate in an intensive de-briefing (those who have not returned from their remote places of deployment do it by phone) in the presence of the ODIHR.

Phase 2: Evaluation and Preliminary Assessment

After this, the final negotiations on the Post Election Statement and on the Press Release take place, usually on two levels: A plenary comprising at least two observers from each delegation – in the case of the Parliamentary Assembly the Special Coordinator and the International Civil Servant tasked with the negotiations, on the side of the ODIHR the leader of the long-term observers and at least his/her deputy, as well as a specialist from Warsaw who comes in shortly before election day. There is also a negotiating team that does the detailed drafting and is composed of the same people minus the leaders of the parliamentary delegations. The drafting is usually done on the basis of texts proposed by one or more delegations; the ODIHR draft is often chosen as basis for the drafting.

Discussions usually turn around the following issues:

- Interpretation of Commitments
- Evenhandedness of their application
- Reliability and relevance of information that has been gathered
- The central conclusion drawn from all this

In the Press Conference that follows, the Special Coordinator reads out - on behalf of the OSCE - the statement agreed in the drafting, supplemented by the leaders of the other parliamentary delegations and by the leader of the ODIHR long-term observers.

Phase 3: Post-Election Observation

In rare cases, in particular partial reruns of the elections, a reduced Parliamentary Assembly Team returns to the country. The ODIHR Long-Term Observation stays until all parts of the electoral process, including the handling of complaints, have been finalized, publishing additional interim reports if necessary.

Phase 4: Final Report

The final report is prepared by the ODIHR and includes recommendations. If requested, it should also include contributions by the Parliamentary Assembly.

Complementary Qualifications of Participants in the Phases of the Observation

Phase 1a

<u>Parliamentary teams</u>	<u>Other participants</u>
<p><u>Parliamentarians:</u> Years of practical experience with all imaginable aspects of the electoral process, its organization and its scrutiny, both at home and as election observers Political adherence and national allegiance is totally transparent Unsteered plurality ensures broadest-possible coverage</p> <p><u>Staff (Core team and observers):</u> Comprises Legal, Media and Gender Experts, as well as experts with a long-standing political and/or parliamentary experience. All of them have a long practice of joint Parliamentary Assembly-ODIHR election observation missions, most are international or national parliamentary (= non partisan) civil servants</p>	<p><u>Core Team</u> Varying election-related qualifications: Background is often either that of active/retired civil servants or NGO activists Some Core Team members are experts in electoral law, Media, Gender or Statistics. Qualification is predominantly gained "on the job" as election observers</p> <p><u>LTOs</u> Seconded, without quality control by ODIHR. In few countries, LTOs receive additional training (Germany: 5 days) Political and national allegiance is not transparent, conflicts of interest in cases of seconded civil servants sometimes obvious</p>

Phase 1b

<p>Experience and transparency like in phase 1a High geographical and political diversity of observers (<u>plurality</u>)</p>	<p>STOs government seconded without ODIHR control of qualification. Few countries offer training (Germany: 3 days) Background and allegiances not transparent, conflicts of interest sometimes, in cases of seconded civil servants, obvious</p>
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Phase 2

<p><u>Assessment of facts</u> is everyday business: Parliamentarians are mandated by the people to take responsible decisions on the basis of information gathered Special Coordinator has a long-standing experience in election observation <u>High legitimacy:</u> Being elected parliamentarian, appointed by the elected PA President and mandated by the OSCE Chairman-in-Office Many politicians do political work in positions that require <u>impartial handling</u>: Presidents of parliaments, Chairpersons of Committees, etc. <u>Accountability:</u> Continues after the EOMs, with regard to other PA colleagues, national parliaments, and voters</p>	<p>Varying <u>election-related qualifications</u>: background is often either active/retired Civil Service or NGO activities Qualification is predominantly gained "on the job" as election observers Often, experience is gained in positions under instructions by hierarchical superiors or political bodies instead of being the result of autonomous accountable decision-making Political and national <u>allegiance</u> is not transparent, for seconded civil servants sometimes difficult, depending on national Civil Service Laws <u>Accountability:</u> To the Director of ODIHR. Ends after expiry of short-term contract concluded with him.</p>
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Division of Labor according to the Cooperation Agreement:

According to the 1997 Cooperation Agreement, the on-site long-term observation, the processing of the data coming from the short term observers, including parliamentarians, the post election observation and the final report are operated by the ODIHR. The Parliamentary Assembly Special Coordinator leads the OSCE Short Term Observers (Phase 1b) and delivers the preliminary post-election statement.

This arrangement, provided for by the Agreement, establishes the kind of partnership based on a clear division of labor as asked for in MC Decision 19/06, giving leadership to both institutions in different phases of the election observation, based on their different types of qualification, legitimacy and accountability.

This is what all resolutions by the Parliamentary Assembly refer to when they call for the Parliamentary Assembly to continue to provide leadership to OSCE EOMs on the basis of the 1997 Cooperation Agreement.

The 12 points of the paper in detail:

First of all, several of them deal with the same issues, only from different aspects or in a different wording. This is true for 2, 8, 9 and 12 (Preliminary Statement) and 4 and 7 (Press Conference).

Item 1 has sufficiently been addressed above.

Two, eight, nine and twelve (Preliminary Statement):

We are puzzled where the Cooperation Agreement indicates that the Preliminary Statement should be "ODIHR based". The statement should rather be founded on the observation by all observers, which of course gives the observations by the ODIHR a particular weight. But it is and remains a joint statement to be delivered by the Special Coordinator whose role should not be reduced to that of a narrator. There must be a way in which a total blockade by one side can be overcome, as long as the ODIHR does not accept the leadership of the Chairman-in-Office appointed Special Coordinator in the drafting. Issuing a separate statement is of course a last resort, but is not excluded by any reading of the Cooperation Agreement, although the Parliamentary Assembly has never resorted to this possibility. In 2007, the ODIHR issued an additional separate paper in Serbia without the support of the parliamentary assemblies of the OSCE, the Council of Europe and NATO.

There is no evidence of attempts by politicians to politicize a statement which had been agreed by the observers. On the contrary: The perhaps most frequent request by parliamentary Special Coordinators is to get some more fact-based evidence for an assessment contained in ODIHR's drafts, and a call to caution, when the evidence does not seem to be sufficient, or when it does not sufficiently link to OSCE Commitments. Sometimes participants in the post-election press conference, in reply to questions by journalists, make remarks that some may interpret as going beyond the agreed text. Until today the most frequently quoted case here in Vienna has been what Mr. George said after the Russian elections in 2003. The subsequent suggestion made by several delegations to separate the Parliamentary Assembly from the immediate ODIHR operations in order to satisfy the Russian wish to "de-politicize" election monitoring, laid the basis for a campaign against the full implementation of the Cooperation Agreement.

The memo of the Parliamentary Assembly's International Secretariat that the George paper quotes out of context discusses the possibilities that exist if ODIHR continues its refusal to implement the Cooperation Agreement.

It is simply untrue that the Parliamentary Assembly's early drafts, which it sometimes has to elaborate and provide the ODIHR with because the ODIHR is reluctant to include the Parliamentary Assembly at an early stage of the drafting, are not based on the facts. All drafts elaborated by the Parliamentary Assembly were based for the largest part on what ODIHR had so far delivered in its interim reports and in its oral briefings and the Parliamentary Assembly has always underlined that this is preliminary and will be updated in line with any further information that ODIHR would provide. In particular, the Parliamentary Assembly has requested access to the long-term observer reports in order to bring the draft even closer in line with ODIHR's long-term mission. For most of the past two years the ODIHR has consistently restricted access to these reports by the Parliamentarians.

Three:

The interest of having an early press conference is justified, when there are other observers who want to shape public opinion before the OSCE statement comes out. What is not known in the early afternoon after the election will usually be known in its totality only many days later. If the observers have to wait until all aspects have been settled, in some countries they will have to abandon the idea of a preliminary statement altogether. The chief statistician of ODIHR has stated that in most of the elections he can make a sound assessment of the observation forms at the latest at six o'clock on the morning after. As it is well known, in most and especially many problematic countries it is not so much Election Day or counting which makes an election irregular, but much more the legislation and the campaign environment.

Sometimes, the request for a late Press Conference entails the danger of creating the impression that it is motivated by the interest of knowing the results before drafting the main concluding sentence; some observers might want to make the general thrust of the statement dependent on how their capitals like the outcome. This is not the position of the Parliamentary Assembly, and any such impression should be avoided. We pronounce our assessment once we are sure we can build it on a solid fact-based foundation.

For all these reasons, the statement, which in its substance and in its title is of only preliminary nature, should come out within three hours of the end of the final negotiations between the participants in election observation. The three hours are what ODIHR has frequently stated is the time they need to produce a statement. If relevant things are still going on in the electoral process and there is reason to expect major problems, it does not hurt if the ODIHR issues a second preliminary post-election statement when and if such facts are established several days later, and in exceptional cases the Press Conference might have to be delayed.

Four and seven (Press Conference):

It makes a lot of sense to separate – for the purpose of the preliminary statement – the detailed description of observations, many of which have been made prior to the arrival of parliamentarians, from the conclusions that the IOEM has come up with. The so-called “findings” is a document, which is compiled by ODIHR as a sort of an executive summary of the reports of the experts in the mission. It is the main basis for the preliminary verdict, and it should therefore be attached to it. But it remains a document of the ODIHR. We know no example in which a commission hears an expert and then signs his statement, even if it entirely bases its conclusions on this document. In no way would this format damage the credibility of the statement. It would, on the contrary, free the negotiations from unnecessary drafting of textual parts which are irrelevant for the immediate post-election conclusions and enable it to focus more on the substantial issues.

Five:

In line with the Cooperation Agreement the Chairman in Office tasks the Special Coordinator with delivering the Preliminary Statement. The Special Coordinator usually reads out the decisive parts of the conclusions. Why should there be an additional person who on behalf of the OSCE makes additional remarks that the press could easily misuse in a divisive manner? Such practice has no basis in the Cooperation Agreement, and is clearly wrong to keep the OSCE from speaking with one voice. It is, however, necessary and welcome to have the ODIHR person be present on the podium, because ODIHR's team leader is the only one who can inform in detail and answer questions about the observations made by the long-term observers, the statistics etc.

Ten: This point has already been dealt with.

Eleven:

This is a remarkable misunderstanding. In line with the unanimous decision by the participating States we are calling on ODIHR to find a common position with the OSCE Parliamentary Assembly before entering into negotiations with other parliamentary assemblies which might have different standards, different agendas, and methodologies that don't fully match ours.

The PA has not issued a separate statement in many years. The case that is sometimes referred to, the Serbian elections in 2007, misrepresents the facts. There had been a joint statement of conclusions subscribed by everybody, including ODIHR. The statement was primarily based on the ODIHR's findings, which the statement stated explicitly. A late distribution of the draft had made thorough examination of these findings impossible. No agreement could be found on the form in which the detailed findings should be attached to the document or otherwise distributed. It was, therefore, agreed that ODIHR should distribute the findings during the press conference, simultaneously with the agreed Joint Statement. Instead, ODIHR produced a paper in its usual format, reprinted in its first part the joint conclusions and then went on with the findings, thus confusing the journalists, and apparently also Mr. George, about the nature of the agreed statement.