

The Challenges of OSCE Electoral Assistance in the Former Soviet Union

Max Bader

Max Bader (PhD, University of Amsterdam 2010) is a postdoctoral researcher and lecturer at the University of Munich. He was a Research and Teaching Fellow at the OSCE Academy in Bishkek, Kyrgyzstan, in 2010. He was also an election observer for the OSCE/ODIHR in Moldova in 2009.

DOI: [10.1163/187502311796365808](https://doi.org/10.1163/187502311796365808)

Election-related activities through the Office for Democratic Institutions and Human Rights (ODIHR) have been one of the most visible elements of OSCE programming over the last two decades. The stated purpose of this election-related work is to assess the suitability of electoral legislation and the conduct of elections against international standards. Ultimately, however, it aims to contribute to an improvement of the quality and credibility of elections, and in this sense it is a type of electoral assistance. The OSCE's electoral assistance comes in two forms: the first is election observation missions that assess whether the conduct of an election corresponds with the standards for elections as can primarily be found in the 1990 Copenhagen Document, to which all OSCE participating states are formally committed. The second is reviews of the electoral legislation of OSCE states coupled with recommendations on how to improve the electoral legislation.

Electoral assistance, like any form of democracy assistance, appears particularly appropriate in a context of democratization: when political leaders in formerly authoritarian states are genuinely committed to holding democratic elections and consolidating democratic government, electoral assistance can achieve the greatest effect. A problem for the OSCE's electoral assistance is that there are few democratizing countries left among its participating states. On the one hand, most Central and Eastern European states have long consolidated their democracies, and the imperative for a major continued electoral assistance effort there is now questionable. On the other hand, eight states in the former Soviet Union – Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Tajikistan, Turkmenistan, and Uzbekistan – have not held a single election since independence that has not received serious criticism from OSCE observer missions. A ninth country – Russia – received a more favourable assessment of its elections until 2003 but has since been seen as consolidating authoritarian rule. These nine countries may yet experience a breakthrough to democracy, but for now they are led by consolidated authoritarian regimes. As such, these regimes range from 'soft' authoritarian regimes in which there is real political competition but a consistently uneven playing field nonetheless (Armenia and Georgia), to politically closed authoritarian regimes in which no true opposition parties are allowed to register and no opposition candidates and parties are allowed to run in elections (Turkmenistan and Uzbekistan). In the five remaining countries, political opposition can legally exist, but the regime-supported candidates and parties win overwhelming majorities, and the outcome of elections is deliberately a foregone conclusion. Until the April 2010 revolution, Kyrgyzstan's regime was also part of this group.

In the altogether ten countries of the former Soviet Union that have been continuously undemocratic over the past decade, election-related OSCE activities have proven an uphill battle. Specifically, OSCE electoral assistance in these countries is faced with at least three serious challenges: first, as data from OSCE election observation mission reports reveal, there has been no discernable improvement in the quality of elections for over ten years; second, recommendations by ODIHR on how to improve electoral legislation are routinely ignored in some of the countries, and acted upon to a (very) limited degree in other countries; and third, an alternative range of programmes and activities has been set up, mostly instigated by the Russian government, that closely mirrors, and competes with the OSCE's work. In this article I will discuss these three issues and consider possible changes to OSCE electoral assistance that may ameliorate the fallout from these issues and help to restore the effectiveness of the assistance.

Undemocratic elections

The free and fair conduct of an election can be undercut at all stages of the electoral process, from the drafting of electoral legislation to the handling of complaints and appeals after elections. The reports from OSCE observation missions to elections in the undemocratic countries in the post-Soviet area present a broad description of electoral manipulation at different stages of elections. The reports suggest that there is no

decisive decrease in the amount and seriousness of irregularities: elections across these countries still fall significantly short of international standards.

It has been argued by a range of authors that, regarding undemocratic elections, obvious fraud that can be readily observed on election day – such as ballot stuffing, vote buying, and tampering with ballots – will over time typically give way more and more to forms of ‘strategic manipulation’ – such as the manipulation of legislation, the use of ‘administrative resources’, and the intimidation of voters – that are less easy to directly observe, and that are more often committed before election day.¹ Undemocratic regimes, in other words, become more adept at rigging elections surreptitiously rather than overtly.

Data from the reports of OSCE election observation missions in the undemocratic states of the post-Soviet area, however, indicate that even election-day irregularities are now as frequent, or almost as frequent, as a decade ago. Roughly since the turn of this century, each final report from OSCE observation missions contains information about the share of short-term observers who have positively (or negatively) assessed voting and counting procedures. These shares are derived from the percentages of observers who have replied ‘very good’ or ‘good’, or ‘very bad’ and ‘bad’ respectively, on their observation report forms in response to questions about the quality of voting and counting procedures. The percentages present the only numerical data from OSCE election reports that have remained constant for a prolonged period of time, and that can therefore be used to study trends and patterns in the incidence of election-day irregularities. The table below displays the percentages for all undemocratic elections in the region since 1998 for which these percentages were reported in the final reports of OSCE election observation missions. Voting procedures are typically observed in five to fifteen polling stations per observer team, while counting is only observed in one polling station per team. The number of observations that the percentages of positive assessments of counting procedures reflect, therefore, is the total number of short-term observers – which generally runs in the hundreds – divided by two, while the number of observations regarding voting procedures is many times greater, often amounting to thousands of individual observations. In case a second round was held in elections, only the data from the first round are displayed.

Table 1 – Percentages for all undemocratic elections in the region since 1998

	voting positively assessed (%)	counting positively assessed (%)
1998 presidential election in Armenia	84	84
1999 parliamentary election in Georgia	79	76
1999 parliamentary election in Armenia	87	78
2000 parliamentary election in Azerbaijan	74	48
2000 parliamentary election in Kyrgyzstan	90	74
2000 presidential election in Georgia	84	52
2001 presidential election in Belarus	69	no data available
2003 presidential election in Azerbaijan	74	45

1 E.g. Emily Bealieu and Susan D. Hyde, ‘In the Shadow of Democracy Promotion Strategic Manipulation, International Observers, and Election Boycotts’, in *Comparative Political Studies*, Volume 42 Number 3; Peter Eicher, ‘Improving OSCE election observation’ in *Security and Human Rights*, 2009 no. 4, p. 269.

2003 presidential election in Armenia	90	80
2003 parliamentary election in Armenia	90	67
2003 parliamentary election in Georgia	81	no data available
2003 parliamentary election in Russia	95	73
2004 presidential election in Georgia	76	68
2004 parliamentary election in Georgia	79	67
2004 parliamentary election in Belarus	90	38
2004 parliamentary election in Kazakhstan	87	72
2004 presidential election in Russia	95	76
2005 parliamentary election in Tajikistan	80	46
2005 presidential elections in Kazakhstan	92	72
2005 parliamentary election in Kyrgyzstan	89	89
2005 presidential elections in Kyrgyzstan	93	65

2005 parliamentary election in Azerbaijan	87 voting posi- tively assessed (%)	59 counting posi- tively assessed (%)
2006 presidential elections in Tajikistan	80	33
2006 presidential election in Belarus	90	50
2007 parliamentary election in Armenia	94	no data available
2007 parliamentary election in Kazakhstan	94	61
2007 parliamentary election in Kyrgyzstan	91	67
2008 parliamentary election in Belarus	95	52
2008 presidential election in Armenia	95	84
2008 presidential election in Georgia	92	77
2008 parliamentary election in Georgia	92	78
2008 presidential election in Azerbaijan	94	77
2009 presidential election in Kyrgyzstan	89	50
2010 parliamentary election in Tajikistan	74	44
2010 parliamentary election in Azerbaijan	89	68
2010 presidential election in Belarus	94	54

Voting was positively assessed by observers on average in 84 percent of instances in elections until 2005 (n=17), against 89 percent for elections since 2005 (n=19), suggesting a positive trend. Counting, on the one hand, was more often observed positively in elections until 2005 than in elections since 2005 - 67percent against 63 percent respectively. Overall, there does not appear to be a clear improvement in the quality of election-day procedures over the time span covered.

In most countries for which data are reported in this table, regimes have been in power throughout the past decade, and some even since the early 1990s. The finding that the quality of elections organized by these regimes does not improve can hardly be attributed to the growing pains of a political transition towards democracy, and instead points to a lack of political will on the part of the regimes.

Unsought advice

Electoral laws provide the indispensable framework for the conduct of elections. The electoral legislation that has been adopted in the states coming out of the former Soviet Union since independence typically shows

considerable shortcomings that render the organization of elections in line with international standards more difficult. Part of the explanation for why the electoral legislation is so defective is that much legislation, especially in Central Asia, Azerbaijan, and Belarus, was copied or adapted from the electoral laws of the late Soviet years or Russian laws from the 1990s. The governments of Tajikistan, Turkmenistan, and Uzbekistan have essentially not yet undertaken an effort to draft post-Communist electoral legislation: their electoral laws are almost entirely based on Soviet electoral legislation. The electoral codes of Belarus and Kazakhstan are hybrids, borrowing extensively from both the 1988 Soviet law on the election of People's Deputies and the Russian electoral laws of 1997 and 1995, respectively. The electoral codes of Azerbaijan and Kyrgyzstan are for the biggest part based on the Russian electoral laws of 1999 and 1997, respectively. Of the cases discussed here, only Armenia and Georgia have implemented electoral legislation that was largely drafted independently.

In an effort to help improve the legal framework of elections in the former Soviet Union, ODIHR, in recent years often in cooperation with the Venice Commission of the Council of Europe, has issued a large number of reports containing analyses of electoral legislation and detailed recommendations on how to improve the legislation. The electoral laws of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Kazakhstan, and Tajikistan in particular have been extensively scrutinized at least twice, and in some cases more than five times. Long lists of recommendations to improve electoral legislation are also included in the reports of election observation missions. Altogether, for each of the countries listed above, dozens and in some cases more than a hundred separate recommendations have been put forward by ODIHR and the Venice Commission. Recommendations that can be found in almost all OSCE assessments concern the composition of electoral commissions, which tend to favour incumbent forces, provisions for equal treatment in the media, and provisions for handling complaints and appeals. Also often noted in OSCE assessments are shortcomings in the provisions regarding observer rights, registration requirements, and provisions for early, mobile, and military voting.

In a separate study which I have conducted, I have looked at the extent to which OSCE recommendations have been implemented in the electoral laws of the post-Soviet states. In the Istanbul Summit Declaration of 1999, OSCE participating states have collectively agreed 'to follow up promptly ODIHR's selection assessments and recommendations'.² A careful examination reveals that, with the exception of the Armenian government, the governments routinely ignore the lion's share of OSCE recommendations. The government of Tajikistan has not implemented a single recommendation. The governments of Belarus, Kazakhstan, and Kyrgyzstan have implemented roughly one tenth of all recommendations. The governments of Azerbaijan and Georgia seem somewhat more receptive to the recommendations of ODIHR and the Venice Commission; still, only around a fifth of the recommendations have found their way into legislation. The Armenian government, finally, is a clear outlier in that it has implemented roughly half of all recommendations.

The OSCE, of course, is cognizant of the limited implementation of its recommendations. In a 2005 assessment of the election code of Azerbaijan, for example, it was noted: 'Unfortunately, the most important suggestions have not been implemented by the authorities of Azerbaijan in spite of the repeated recommendations from the Parliamentary Assembly and the Committee of Ministers of the Council of Europe'.³ A 2006 review of Belarusian legislation similarly remarked: 'Although recommendations were made to bring the Code more

2 OSCE Istanbul Summit Declaration, November, 1999, paragraph 26: '...we agree to follow up promptly ODIHR's election assessments and recommendations.' Cited in Eicher, 2009.

3 The Venice Commission and OSCE/ODIHR, Final Opinion on the Amendments to the Election Code of the Republic of Azerbaijan, Adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005).

closely in line with OSCE commitments for democratic elections, the Belarusian authorities have not, to date, appeared willing to consider them. The Election Code has not been amended significantly since 2000.⁴ The OSCE and the Venice Commission often find that amendments address mostly technical and minor issues instead of core, substantive shortcomings of electoral legislation.⁵ In some cases, amendments, instead of repairing defective electoral legislation, even create new defects, thus making a bad situation even worse.⁶ Next to the lack of progress in the quality of elections, the refusal to follow up on the recommendations from the OSCE and the Venice Commission is a second indication of the absence of a genuine political will to live up to international standards with respect to elections.

Alternative electoral assistance

A third challenge facing OSCE electoral assistance in the former Soviet Union is presented by alternative forms of electoral assistance that do not subscribe to the international standards which underpin OSCE electoral assistance, and that are not aimed at promoting free and fair elections, and with that democracy. The alternative efforts have multiplied over the past decade and in the majority of cases are undertaken within the framework of the Commonwealth of Independent States (CIS). The driving force behind the efforts is the Russian government, which in a more general sense is believed to prop up authoritarian rule in its neighbourhood.⁷

CIS electoral assistance takes a number of forms. First and most prominently, the CIS and its Parliamentary Assembly have organized observation missions for elections in the post-Soviet area since 2001. Compared to OSCE missions, the CIS missions are not informed by an elaborate and transparent methodology that is consistently applied from election to election. The reports with findings and observations that the CIS missions issue are brief and generally do not contain serious criticism of the conduct of the elections. This even applies to elections in Turkmenistan and Uzbekistan, whose political systems are widely considered to be among the most unfree and repressive worldwide.⁸ By contrast, elections that were assessed more positively by OSCE missions, such as the third round of the presidential election in Ukraine in 2004, were criticized by CIS missions. Next to the CIS, a range of other international organizations and representatives from foreign states grant legitimacy to the undemocratic elections in the post-Soviet area. The 2007 elections in Kazakhstan, for example, were monitored, and praised, by observers from India, Turkey, and from the Shanghai Cooperation Organization.⁹ The 2009 elections in Uzbekistan similarly received accolades from observers from countries as diverse as Austria, China, Egypt, Japan, Malaysia, and Pakistan.¹⁰ OSCE observers in all states discussed here

4 The Venice Commission and OSCE/ODIHR, Joint Opinion on the Electoral Legislation of the Republic of Belarus, Adopted by the Council for Democratic Elections at its 18th meeting (Venice, 12 October 2006) and the Venice Commission at its 68th plenary session (Venice, 13-14 October 2006).

5 E.g. The Venice Commission and OSCE/ODIHR, Final Opinion on the Amendments to the Election Code of the Republic of Azerbaijan, Adopted by the Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005); The Venice Commission and OSCE/ODIHR, Joint Assessment of Amendments to the Electoral Code of the Republic of Armenia, Adopted in the First Reading on 7 May 2002.

6 E.g. The Venice Commission and OSCE/ODIHR, Joint Opinion on the Amendments to the Electoral Code of the Republic of Belarus as of 17 December 2009; OSCE/ODIHR Kyrgyz Republic. Assessment of the Election Code, 2006.

7 E.g. Thomas Ambrosio, *Authoritarian Backlash. Russian resistance to Democratization in the Former Soviet Union*, Franham, 2009.

8 See, for instance, the Freedom House Freedom in the World Index at: <http://freedomhouse.org/template.cfm?page=15>.

9 Daniyar Sikhimbaev, *Mezhdunarodnye nablyudateli vysoko otsenili uroven' provedeniya vyborov v RK*, Kazinform, Retrieved 1 March 2011, <http://www.nomad.su/?a=3-200708191256>; *Vybory v Kazakhstane byli legitimnymi i svobodnymi*, Kazakhstan Segodnya, Retrieved 2 February 2011, <http://www.nomad.su/?a=3-200708191127>.

10 Foreign observers share impressions on parliamentary election process, Uzreport.com. Retrieved 4 February 2011, <http://vibori-2009.uzreport.com/news.cgi?lan=e&id=70616>.

are clearly no longer the only players. The presence of many other international observers has the effect that attention to OSCE missions is diluted. National media often focus their reporting on the positive assessments of the alternative observers at the expense of the OSCE mission. Besides, when national media report about the OSCE mission, statements issued by the mission have frequently been misrepresented. Also, the benign assessments of a range of alternative election observers provide the undemocratic regimes with an argument to criticize the much more critical statements of the OSCE about the elections as resulting from 'double standards'.

Second, the CIS and the Parliamentary Assembly of the CIS occasionally publish documents that promulgate a common vision of democratic elections. Most notable among these are the 2002 Convention on Standards of Democratic Elections and Electoral Rights and Freedoms in the CIS Member States, and the 2008 Declaration on Principles of the International Observation of Elections and Referendums in the CIS Member States. These documents, in terms of their subject-matter, replicate the 2002 Code of Good Practice in Electoral Matters of the Venice Commission and the 2005 Declaration of Principles for International Election Observation and the Code of Conduct of the United Nations. The 2002 Convention does not contain provisions that directly contradict the Venice Commission document. The Convention, however, is couched in general terms and does not provide an adequate framework for assessing the quality of electoral legislation. The 2008 Declaration on Principles of the International Observation of Elections and Referendums appears to contain implicit criticism of OSCE election observation, as it stresses that observers should respect the national sovereignty of the country where the observation is conducted, and should remain politically impartial. Nine CIS member states, including Russia in 2004, following the Rose Revolution in Georgia, had previously criticized OSCE election observation practices for interfering in domestic affairs and applying 'double standards'.¹¹

Third, the Parliamentary Assembly of the CIS has, so far on a limited scale, conducted reviews of the electoral laws of CIS member states. As with CIS election observation, it is unclear what methodology is used for these reviews, if an elaborate methodology is used at all. A second parallel aspect to CIS election observation is that the written reviews, compared to similar assessments by the OSCE and the Venice Commission, are largely descriptive of the electoral laws and contain few concrete recommendations or points of criticism.

The legal reviews by the CIS, like its election observation and the publications of common standards, replicates an effort already undertaken by another intergovernmental organization, in this case the OSCE. Since all CIS member states are also OSCE participating states, the CIS effort appears superfluous. Implicit in the CIS efforts, however, is a claim to an alternative set of standards regarding the conduct of elections which rival those to which the OSCE and its participating states officially subscribe. The autonomous CIS efforts in the field of electoral assistance make clear that Russia and other CIS members view the OSCE standards on elections as primarily the standards of the more 'Western' participating states. Effectively, two different and essentially incompatible sets of standards regarding elections exist side by side in the OSCE area.

The road ahead

The previous three sections have demonstrated that, among the undemocratic states of the former Soviet Union, the political will to comply with OSCE standards and procedures falls short: there has been no improvement in the quality of election-day procedures over the past decade; recommendations by the OSCE to improve electoral legislation are routinely disregarded in most countries; and, within the framework of the CIS,

¹¹ Eugen Tomiuc, OSCE: Several CIS States Rebuke Democracy Watchdog. Radio Free Europe / Radio Liberty, July 09, 2004. Retrieved 8 March 2011, <http://www.rferl.org/content/article/1053776.html>

the countries have stepped up a range of alternative electoral assistance activities that replicate and in large part contradict analogous OSCE efforts.

These findings, however, do not have to discourage the OSCE from continuing its activities in the field of electoral assistance. Even if the electoral assistance is not successful in contributing directly to the improvement of the quality of elections and electoral legislation, the overall effort can still yield less direct positive effects. At least three such positive effects can be distinguished.

First, continued observation reinforces the existing norms about free and fair elections and election monitoring that have evolved in the international community until what they are today.¹² The progressive evolution of the norm of free and fair elections is reflected in the adoption of a range of documents in recent decades, including the Copenhagen Document and the Vienna Commission's Code of Good Practice in Electoral Matters. These documents spell out, in ever greater detail, what it takes for an election to be considered free and fair, and they demonstrate that there exists a shared understanding about this. Continued observation signals that governments and intergovernmental organizations, just as before, attach great significance to free and fair elections, and that violations of international standards by regimes such as those in the former Soviet Union are illegitimate. Second, the conduct of election observation missions and legal reviews expose a large and varied audience in recipient countries to the norm of free and fair elections. A typical OSCE observation mission involves large numbers of meetings with election administrators, officials at the central government, local officials, and politicians. In addition, voters learn about international standards concerning the conduct of elections through the media. The collective knowledge and insights of all these individuals may in the long run prove beneficial, especially once a democratic breakthrough is achieved. Third, election observation helps to remind us what the difference is between a free and fair election, on the one hand, and an election in which the regime creates a significant advantage for itself, as is the case in most of the former Soviet republics, on the other hand. By extension, election observation prompts people to acknowledge the difference between democracy and authoritarian rule by shedding light on an important, if not the most important prop of modern authoritarian rule: fraudulent elections. Many regimes in the former Soviet republics have been increasingly assertive over the past decade in arguing that they are democratic while rejecting outside criticism. Election observation helps to expose the true colours of authoritarian regimes. And although quite a few governments in the former Soviet Union have become less concerned about negative assessments, an element of 'shaming' is still notable in election observation: undemocratic governments are displeased with the negative assessments of observation missions.


The practice of OSCE election observation has not been substantively reformed for over a decade, and any progressive reform effort in the future will prove difficult. In light of the challenges facing electoral assistance, however, the OSCE should consider reassessing some of its principles and practices. The following suggestions for improving the practice of election observation in the former Soviet Union may in particular be worth considering. Depending on the political situation in recipient countries of observation and the availability of a political will to organize credible elections, more variation could be introduced in the size and scope of observation missions. Turkmenistan and Uzbekistan have traditionally not been visited by full observation missions because the conditions for credible elections in these countries were too obviously missing. Due to obstruction on the part of the Russian authorities, a full mission has not been sent to Russia since 2004. The OSCE may consider expanding the range of countries to which a full mission, including short-term observers, is

12 On the evolution of the norm of election monitoring, see Judith Kelley, 'Assessing the Complex Evolution of Norms: The Rise of International Election Monitoring', in *International Organization*, 62, Spring 2008, pp. 221–55.

not dispatched because the political will to organize free and fair elections is noticeably lacking. This could apply to countries where the authorities perpetually do not take heed of OSCE recommendations to improve electoral legislation, or where, in the run-up to elections, it is clear that there will be no competition in the election due to manipulation of the political playing field by the authorities. On the other hand, the OSCE could step up electoral assistance to countries where there appears to be a fresh momentum for political reform, such as after the regime change in Georgia, Ukraine, and Kyrgyzstan in recent years, or after a substantial effort to improve electoral legislation has been undertaken by the authorities.

Relating to this, decisions about whether to send a mission and about the size and scope of a mission could be more explicitly tied to a conditionality mechanism. The circumstance that full missions have been sent to countries that over the years have systematically disregarded OSCE and other international standards sends a signal that non-compliance with those standards is met with impunity. Sometime ahead of an election, the decision about sending a mission could be tied to a concrete concession on the part of the recipient country, for example to adopt new legislation or to allow for the inclusive registration of candidates. Decisions not to send a mission, to decrease the size of a mission, or to revoke a mission should be more clearly presented as measures that are taken because the relevant OSCE participating state fails to fulfil its obligations. In all, a greater degree of flexibility regarding decisions whether or not to dispatch a full mission and about the size and scope of missions may help OSCE electoral observation to maintain its relevance and credibility.





This article was first published with Brill | Nijhoff publishers, and was featured on the Security and Human Rights Monitor (SHRM) website.

Security and Human Rights (formerly Helsinki Monitor) is a journal devoted to issues inspired by the work and principles of the Organization for Security and Cooperation in Europe (OSCE). It looks at the challenge of building security through cooperation across the northern hemisphere, from Vancouver to Vladivostok, as well as how this experience can be applied to other parts of the world. It aims to stimulate thinking on the question of protecting and promoting human rights in a world faced with serious threats to security.

Netherlands Helsinki Committee
Het Nutshuis
Riviermarkt 4
2513 AM The Hague
The Netherlands

© Netherlands Helsinki Committee. All rights reserved.

www.nhc.nl