



Exporting Legitimacy:

The Record of EU Election Observation in the Context of EU Democracy Support

Michael Meyer-Resende

Abstract

Over the last five years, the EU has sent more than 35 Election Observation Missions (EOMs) around the world. EOMs are often the most visible part of the EU's efforts to promote democracy abroad and carry consequences for the EU's overall policy towards a given country. While the methods and techniques of observing elections are well established, the linkage between the findings of observers and general political follow-up by the EU can be weak, in particular in cases where observers report significant flaws. The EU should be more coherent in these cases. The EU should also better address deterioration of democratic standards in its own member states, in order to maintain its credibility in this field. Given that the EU promotes a rule-based multilateral world order, it should have every interest in the legitimacy of its partner governments and the upholding of legally binding global standards for elections.

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EXPORTING LEGITIMACY: THE RECORD OF EU ELECTION OBSERVATION IN THE CONTEXT OF EU DEMOCRACY SUPPORT

MICHAEL MEYER-RESENDE

1. Introduction

Despite the renewed attention paid to democratisation issues in the wake of the ‘colour revolutions’,¹ one aspect of EU democracy support has received little attention, namely the deployment of Election Observation Missions (EOMs). In the last five years, the EU has sent more than 35 EOMs around the world. Election observation is located in the technical field of democracy support, but has to be seen in the context of the EU’s foreign policy, in particular because the EU deploys EOMs in its own name, rather than leaving this work e.g. to non-governmental organisations (NGOs), as is the practice in the US.²

While election observers usually receive a lot of media attention, their work is rarely analysed by academia. In this paper we try to answer why and how the EU is observing elections, to put this activity in the broader context of the EU’s efforts in democracy promotion and to look at challenges facing this policy.

Deploying election observers is an atypical form of democracy support: It is carried out within a short-time frame, requires large numbers of staff and implies significant political risks. EU EOMs may find that elections were flawed and the EU at large has to deal with the consequences of such findings. The greatest challenge to EU election observation is the relationship between the ‘technical findings’ of EU EOMs and the high-profile political follow-up to observers’ findings in cases where significant flaws are reported.

2. Why is the EU observing elections in other states?

One can distinguish three different contexts of EU democracy support, the first being in countries where there is an enlargement/integration rationale. Enlargements to Southern Europe (Greece, Spain and Portugal) and the East gave a prospect to and provided stability to young democracies. Short of enlargement, the logic of integration is applied in the EU’s new neighbourhood policy, whereby partner countries are offered closer political and economic integration in exchange for political reform,³ namely democratisation. Secondly, there is the context of development cooperation. Democracy is seen as a means to improve governance and

¹ See e.g. Alina Mungiu-Pippidi, “EU Enlargement and Democracy Progress”, in M. Emerson (ed.), *Democratisation in the Neighbourhood*, Centre for European Policy Studies, Brussels, 2005, p. 21.

² The US Government does not launch observation missions; instead, large US NGOs, such as the National Democratic Institute (NDI) and the Carter Center are deploying election observation missions. The NDI has also been instrumental in building and training domestic election observation organisations around the world. The UN has significant involvement in election assistance, but usually does not observe elections.

³ In the new neighbourhood policy, notions such as ‘political reform’, ‘good governance’, ‘shared values’ and ‘democracy and human rights’ are often used interchangeably to describe the EU’s expectations of reform.

attain the UN Millennium Development Goals, although, as we shall see later, democratisation is often perceived as being in conflict with stability in the context of development. Thirdly, democratisation is often a distinct objective in post-conflict situations, notably the holding of elections to establish a legitimate government.

The promotion of democracy, human rights and the rule of law are enshrined as foreign policy objectives in the EU's legal and political order, in particular in Art. 11 of the EU Treaty, in the European Security Strategy⁴ and in the Copenhagen criteria for EU accession. These have been made legally operational by democracy and human rights clauses in agreements with third states, such as the Cotonou agreement with African, Caribbean and Pacific states.

The observation of elections has become a 'standard tool' across the world in support of democratisation. While elections had been observed before, election observation, domestic and international, came into its own in the post-1989 transitions to democracy. Given the weaknesses of transitional elections, such as insufficient separation of powers, lack of a level playing field for contenders, lack of capacity of the state to manage elections, etc., observation became and has continued to be, a standard response to transitional elections. International election observers can add a layer of transparency to an election process, increase voters' confidence, deter fraud and in repressive countries they can create space for domestic observer groups to report more freely. Given that flawed elections carry a considerable risk of violence, election observers also contribute to conflict prevention. Election observation activities, which seemed initially a temporary fashion of the 'transitions euphoria' of the 1990s, remain undiminished.⁵

Academics have described elections as a vertical form of accountability – the people holding the government accountable – while the concept of horizontal accountability deals with the question of constitutional checks and balances, ensuring that elected authorities are checked by relatively autonomous institutions and obliged to act in a lawful manner.⁶ Seen in this framework, election observation missions focus primarily on vertical accountability, but they often touch on issues of horizontal accountability, e.g. when assessing how far the election administration or courts uphold the rule of law in election appeal proceedings, which becomes an issue whenever an election process is contested. Obviously election observation is an activity related to human rights, looking into the exercise of the right to vote and to be elected and freedoms of assembly, association and expression.

3. How is the EU observing elections?

EU election observers appeared for the first time in the Russian parliamentary elections in 1993 and the first elections in post-apartheid South Africa in 1994. This engagement continued throughout the 1990s (Mozambique 1994, Palestinian elections 1996, etc).⁷ It was not until the second half of the 1990s, however, that serious thought was given by international organisations to the methodology of election observation. In Europe the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) was particularly instrumental in promoting a more

⁴ See European Council website (http://ue.eu.int/cms3_fo/showPage.ASP?id=266&lang=EN&mode=g).

⁵ In the EU, the pressure tends to be towards observing more rather than fewer elections.

⁶ G. O'Donnell (1999), "Horizontal Accountability in New Democracies", in A. Schedler, L. Diamond and M. F. Plattner (eds), *The self-restraining state: Power and accountability in new democracies*, Boulder; CO: Lynne Rienner Publishers, pp. 29-51.

⁷ For full overview, see Annex 1 of the Commission Communication on EU Election Assistance and Observation (http://europa.eu.int/eur-lex/en/com/cnc/2000/com2000_0191en01.pdf). This Communication was subsequently endorsed by the Council and the EP.

systematic and credible approach to election observation. The EU initiated its reform of election observation in 2000.⁸ The thrust of the new approach, which is similar to that of the OSCE ODIHR, was to get away from election-day observation based on anecdotal evidence to a broader analysis of an election's context and the collection of empirically relevant data.

*Box 1. Key aspects of EU election observation**

Methodology

- EU EOMs, presence on the basis of invitation by authorities
- Long-term presence (starting some six weeks before elections) across country
- Analysis of political context, election laws and regulations, the campaign, quantitative/qualitative analysis of media coverage, statistical analysis of polling/counting; assessment of post-election process, notably complaints and appeals
- Assessment made on the basis of international/regional obligations and commitments a country has entered into, notably the International Covenant for Civil and Political Rights (ICCPR)

Political set-up

- EU EOMs financed by the European Initiative for Democracy and Human Rights, managed by the European Commission, in consultation with the Council and the EP
- Chief Observer, normally a Member of the European Parliament
- EU EOM politically independent. Chief Observer decides on the basis of observers' findings how to assess an electoral process

*For more details, see Commission Communication on EU Election Assistance and Observation (http://europa.eu.int/eur-lex/en/com/cnc/2000/com2000_0191en01.pdf), which was endorsed by the Council and the EP. See also Commission Staff Working Paper on the Implementation of the Communication on Election Assistance and Observation (http://europa.eu.int/comm/external_relations/human_rights/doc/sec_2003_1472_en.pdf).

There can be pressures to deploy smaller or shorter missions, but the EU has so far managed to maintain its approach. The thinking is that any precedent of 'lighter' missions could undermine the standards, allowing target countries to request smaller missions and be inherently unfair as some countries would be subject to more rigorous assessment than others. Different mission types could also undermine the EU's reputation and credibility.⁹

All significant international observer organisations (e.g. OSCE, Organisation of American States, National Democratic Institute of the US, Carter Center, Commonwealth, etc.) follow the model of comprehensive observation; albeit to different degrees.¹⁰ This methodology has recently been endorsed in the United Nations' framework.¹¹

By integrating the enjoyment of political rights and the strength of the rule of law in its analysis, this methodology presupposes a notion of liberal democracy, in line with international law.¹² This approach does not allow a neat categorisation into 'democracy' (as the mere process of voting) and 'liberalism' (enjoyment of fundamental freedoms, constitutional checks and

⁸ See note 5.

⁹ As one Sri Lankan politician put it recently to the author, "We want an EU election observation mission, because having observers all around the country they really know what is going on."

¹⁰ E.g. 'scientific' monitoring of media, i.e. measuring the time and tone given to candidates or parties in the media, is often only carried out by OSCE ODIHR and European Union EOMs.

¹¹ See http://www.accessdemocracy.org/library/1923_declaration_102705.pdf.

¹² Notably the UN's International Covenant for Civil and Political Rights.

balances). Some authors have lamented the rise of ‘illiberal democracies’ as a result of over-reliance by international actors on elections as opposed to broader political liberalisation.¹³ However, from the point of view of election observation, this term does not make sense, as election processes in illiberal circumstances are not considered to be democratic.¹⁴

Critical findings of EU EOMs show the variety of aspects that missions are looking into, e.g. the targeted exclusion of political competitors through selective law enforcement or on vague legal grounds (Rwanda 2003), ballot box stuffing and the manipulation of results during the process of vote aggregation (Nigeria 2003), the obfuscation of the vote tabulation process (Mozambique 2004, 2005 – otherwise a generally open electoral system), systematic state repression against political opposition in the post-election period together with a loss of transparency in the result aggregation and publication (Ethiopia 2005) or the restriction to parties and overall political-constitutional context of the elections (Pakistan 2002).

4. Why and where is the EU invited to observe?

While other governmental observation organisations are tasked to assess elections of their member states, the EU observes elections outside its territory. This means that the EU cannot rely on standard Terms of Reference but has to negotiate in each case Memoranda of Understanding guaranteeing that it can carry out its operation according to its methodology. The EU tends to be the only major international governmental player¹⁵ in regions that do not have regional bodies tasked with observing elections, notably Asia and the Middle East.

Somewhat paradoxically, EU EOMs have not been deployed to candidate or accession countries. They have been sent to countries of lesser strategic importance to the EU in Africa, the Caribbean, Latin America and occasionally in Asia. This reflects the fact that by its original purpose, the EU has not been an actor in this field, which has instead been covered by specialised organisations such as the Council of Europe with its Court on Human Rights and the Organisation for Security and Co-operation in Europe (OSCE). The OSCE systematically observes elections in its participating transition states. All EU member states participate in the OSCE, so there has been no reason for the EU to send parallel observer missions to the OSCE region. Somewhat curiously to some EU accession/candidate countries, no comprehensive OSCE or EU observation mission has ever been deployed in Poland¹⁶ or Turkey.¹⁷

¹³ See Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad*; New York, NY: W.W Norton and Co., 2003.

¹⁴ Based on his own categories, Zakaria concludes that in countries like Kyrgyzstan and Kazakhstan, elections were “reasonably free”, but that these countries are not actually liberal democracies. However, apart from Zakaria, no one considered elections in those countries free and fair. The OSCE EOM to Kyrgyzstan considered that “the ability of particular political parties and candidates to be represented was systematically undermined”, while in the case of Kazakhstan, the OSCE judged the problems to be so serious that it did not even deploy an OSCE EOM. See OSCE reports (<http://www.osce.org/odihr-elections/14207.html>). Zakaria thus creates a problem, which he then solves.

¹⁵ The non-governmental Carter Center and the National Democratic Institute of the US also tend to be present in those countries.

¹⁶ It should be noted, however, that Poland’s electorate has reliably dispelled any doubt one might have had about undue advantages of incumbency by changing the government in each election since 1990.

¹⁷ With regard to Turkey, problems are generally considered to lie outside the election field. Short of sending an observation mission, the OSCE deployed an assessment team for the 2002 Parliamentary elections, which was generally positive, but highlighted the problem of political parties being dissolved and the 10% threshold for a party entering Parliament, which it considered “exceptionally high by European standards”. The OSCE pointed out that 45% of the electorate cast their vote for parties that

It is to be assumed that the EU will continue to refrain from sending EU EOMs to the OSCE region, at least as long as this task is credibly carried out by the OSCE. However, the Russian Federation, whose elections have been criticised by the organisation, is questioning the methodology. Russia has been particularly unhappy with the OSCE EOM's findings in Georgia and Ukraine and its Foreign Minister has questioned the whole principle of OSCE EOMs.¹⁸ In case of dilution of OSCE methodology, there would probably be pressure on the EU to deploy EU EOMs to the countries in the Eastern neighbourhood.

The Southern Neighbourhood is the one region of strategic importance that has recently been more in the focus of the EU's election observation. EU EOMs were present in Palestine for the 2005 presidential and 2006 parliamentary elections and in Lebanon for the 2005 parliamentary elections.¹⁹ Before 2005, the EU had only observed the post-Oslo Palestinian elections of 1996. Generally the EU has not been invited to observe elections in the region and most of them would not have been eligible given that they lacked the minimum conditions for democratic elections.

Since election observation carries the risk of a negative report for the receiving state, why are election observers invited? In regional organisations tasked with observing elections of its participating states, there tends to be a standing agreement to invite observers to their elections. Given the difficulties currently created for NGOs operating in Russia, it is noteworthy to recall the OSCE's Copenhagen commitment of 1990: "Participating States consider that the presence of observers, both foreign and domestic, 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 (...)."

Even if not obliged by regional agreements to invite organisations, states have different reasons to invite observers. Observers are primarily invited where governments want to increase the legitimacy of an election process. They may hope that international observers will help address the issue of losing parties' questioning the results or that a positive report will enhance the international standing of a country – a positive EU EOM report is one factor in the international image of a country with knock-on effects for political relationships, but probably also for a perception of political stability which favours foreign investment. In the case of the EU, the motivation may also be that a state has received significant *financial support* to hold elections and it would be strange not to invite the EU to observe those elections. International observers are sometimes invited by the election authorities of a given country; occasionally they may

were then not represented in Parliament and that the high threshold "virtually eliminates" the possibility of regional or minority parties entering Parliament (<http://www.osce.org/odihr-elections/14656.html>). The European Commission 2005 Progress Report on Turkey did not mention elections or the election system in its evaluation of democracy and human rights issues (see: <http://europa.eu.int/comm/enlargement/turkey/docs.htm>).

¹⁸ "La Russie se félicite qu'une nouvelle 'révolution de couleur' ait, pour l'instant, été évitée à Bakou", *Le Monde*, 11 November 2005. On this issue see Hrair Balian, "ODIHR's election work: Good value?", *Helsinki Monitor*, No.3, 2005.

¹⁹ The EU EOM's conclusion of the Lebanese elections may provide an answer to the debated question of the extent to which the elections represented a democratic breakthrough: "The elections were well-managed and took place in a generally peaceful manner within the existing framework for elections. However, there is an urgent need for complete reform of the election framework. While it was legitimate, in order to respect the Constitution, to organise elections according to legal deadlines under the existing election framework, it is now vital to address the fundamental shortcomings of the electoral system and bring it in line with international obligations, such as the UN International Covenant for Civil and Political Rights (ICCPR)" (see http://europa.eu.int/comm/external_relations/human_rights/eu_election_ass_observ/lebanon/prelim_stat_200605_en.pdf).

count on international observers to help them fend off political pressures on them.²⁰ In many parts of the world inviting international observers has become part of the ‘*bon ton*’ of an election process.²¹ Governments rejecting international observers may look as if they have something to hide in a process which, by definition, should be transparent. Reluctant governments occasionally refer to an infringement of their state’s sovereignty, but this is a circular argument: in exercising the state’s, sovereignty any government can decide to invite election observers.

The EU’s involvement in this field is a reflection of its being perceived as relatively neutral in many regions and as the successful co-operation of 25 functioning democracies. In this sense the EU serves as a provider of international legitimacy wielding significant ‘soft power’. It is inconceivable that any single state would deploy large-scale election observation missions, whether the US or any individual EU member state. It remains to be seen if the EU’s efforts to achieve more international coherence and the possibility of taking up military operations under the EU banner will change attitudes in the sense that the EU will be perceived more as a ‘unitary’ actor, like the US, and less like a ‘small UN’.

5. How do EU EOMs fit into the context of EU democracy support?

There are two layers of democracy promotion: first, through providing assistance to governments and NGOs and second through political responses to democratisation processes. As far as assistance is concerned, there is the European Initiative for Democracy and Human Rights (EIDHR).²² Far greater sums are spent, however, through other budget lines for co-operation (such as the European Development Fund), e.g. to support government capacities to hold elections. The EU is thus spending considerably more in supporting elections than in observing them. By way of example, the DR Congo elections were supported with €149 million, which is equivalent to the EU election observation budget of ten years. EU member states are also heavily engaged in democracy promotion, e.g. through the respective development agencies, the work of the German political party foundations, the UK Westminster Foundation, etc.

As far as political responses to democratisation are concerned, these occur at various levels of formality and consequence. At the more formal end of the scale, the EU can make democratisation issues part of its official dialogue with a given country, it can include democratisation issues in agreed action plans (as is the case now in some countries of the EU’s ‘new neighbourhood’), the European Commission will address democratisation issues in its official country strategy papers, etc. In cases of serious crisis, cooperation can be suspended (e.g. as the last resort under Art. 96 of the Cotonou agreement) and in case of ongoing violation, sanctions can be imposed (e.g. visa ban for Zimbabwean officials). On a more *ad-hoc* basis, the Union agrees on statements on elections or other democratisation issues, it may issue a demarche to a government if it is concerned with a particular situation or it may raise issues in

²⁰ E.g. international election observers regularly came out with public support for the election officer of Sri Lanka, who had to make difficult decisions during heated election campaigns. In the Palestinian presidential elections of January 2005, the EU EOM reported on undue pressures exercised by members of the Fatah party on the Central Election Commission on elections day. The presence and reporting of international observers may help to weaken such pressures.

²¹ Note that elections in EU member states are occasionally assessed by the OSCE; for all reports, see its website at <http://www.osce.org/odihr-elections/14207.html>.

²² The EIDHR has a budget of €100 million, some €14 million of which are usually earmarked for EU EOMs.

talks between government representatives at various levels. At the least-formal end of the scale, there are other ways of conveying political messages, by making phone calls, by inviting or not inviting officials to international summits and other meetings, etc. Various actors can be involved in this: the Commission, in particular through its cooperation policies, the Council in the CFSP (Common Foreign and Security Policy) framework and the EP (European Parliament), through its role in development cooperation and through its own relationships with third countries.

The standard immediate response to an election is an EU declaration, which is issued by the EU Presidency after consultation with partners. In cases where an EU EOM is deployed, this would usually occur after the mission has published preliminary findings. The EP sometimes adopts resolutions on elections.²³

6. Record and experiences of EU EOMs

Since 2000, some 35 EU EOMs have been deployed to some 30 countries (see the Annex). This has involved thousands of EU citizens travelling to far-flung places for months or weeks with the objective of assembling an accurate understanding of a given election process. Findings of EU EOMs have ranged from the positive (Guinea-Bissau 2005, Palestine 2005, Indonesia 2004,²⁴ Kenya 2003) via mixed findings (Sri Lanka progressively better 2001, 2002, 2004; Malawi 2004, Mozambique 2003, 2004) to the negative (Ethiopia 2005, Rwanda 2003, Nigeria 2003, Pakistan 2002).

EU EOMs' findings have often been criticised: invariably by governments that did not agree with negative findings, but also by opposition or the losing parties which may have thought findings were too positive. While overall conclusions have been challenged, detailed findings (e.g. on election-day statistics, media coverage, legal framework) have never been questioned with one exception.²⁵ The accusation most easily levelled at EU observers is that they apply European standards without understanding the context of a country. However, critical EU EOM findings have not been based on 'local' problems such as the lack of infrastructure, limited understanding of the polling process by officials or other problems inherent in any election process in transition countries,²⁶ but rather on such issues as ballot box stuffing, manipulation at the level of result aggregation, exclusion of political competitors by selective law-enforcement, etc. Manipulation of this type usually requires bureaucratic-administrative skills which are independent of a given cultural context.

Judging by the sample of elections observed by the EU, it appears that strong governments intertwined with dominant parties tend to be the greatest challenge to genuinely democratic

²³ See e.g. EP resolution of 10 October 2005 on recent elections in Ethiopia ([http://www.europarl.eu.int/registre/seance_pleniere/textes_deposes/prop_res_commune/2005/0540/P6_RC\(2005\)0540_EN.pdf#search='european%20parliament%20resolution%20ethiopia](http://www.europarl.eu.int/registre/seance_pleniere/textes_deposes/prop_res_commune/2005/0540/P6_RC(2005)0540_EN.pdf#search='european%20parliament%20resolution%20ethiopia)).

²⁴ References to specific elections in this paper are based on EU EOM findings, if not otherwise indicated. All EU EOM reports can be found on: http://europa.eu.int/comm/external_relations/human_rights/eu_election_ass_observ/index.htm.

²⁵ President Meles of Ethiopia published a series of long newspaper articles explaining, from his point of view, why the EU EOM arrived at the wrong conclusion.

²⁶ The EU EOM to Pakistan, for example, was explicit on this point in 2002: "(...), the EU EOM concluded that polling day itself had gone relatively smoothly and that any shortcomings were the consequence of inadequate training and administrative arrangements rather than the consequences of intended abuse".

elections.²⁷ In the absence of dominant governments/parties, even extremely fragile, poor and volatile countries have recently seen relatively credible competitive elections (Burundi, Guinea-Bissau, Liberia, all in 2005).

Post-conflict elections in countries where there continue to be high levels of violence have posed problems from a point of view of election observation. The EU did not consider the conditions suitable for deployment of EU EOMs for the Iraqi presidential elections in 2004²⁸ and the Afghan presidential elections in 2004.²⁹ In Iraq there have been reports recently that the 2004 elections were manipulated;³⁰ such allegations would be easier to deal with had there been independent observer groups.

7. Challenges

Methodology

While the main pillars of election observation methodology have been established and are recognised, there are areas for refinement and improvement. Election observation will be particularly tested in the coming years by electronic voting, which in many cases does not allow for direct observation. Organisations will have to negotiate meaningful ways of carrying out observation, e.g. review of software, permission to verify sample of results on a random basis, etc. The observation of election complaints and appeals are other areas that often cause difficulties. An election is only concluded and can only be fully judged once contestants have exhausted their remedies. This becomes difficult when court appeals take a long time. For example, after the Nigerian elections in 2003 appeals were addressed in the courts for a period of years, which in itself is a concern.³¹

Follow-Up to EU EOMs' findings

There can be a risk that EU Election Observation is seen as a useful contribution to an election process and an act of 'public relations' in which the Union is seen to be doing something ('raising the flag'), without however thoroughly following up on the findings of such missions and their political consequences. The deployment of missions raises great expectations with voters³² and other stakeholders in elections. They believe that the full weight of the EU stands behind these missions, that they report critically if need be and that political consequences are

²⁷ All critical EU EOM reports came from countries with dominant party conditions: Ethiopia 2005, Rwanda 2003, Pakistan 2002. Nigeria (2003) is a special case in that it is pluralistic in principle, but observers noted serious irregularities in states where President Obasanjo's People's Democratic Party (PDP) dominated.

²⁸ In this instance, the EU provided significant support for the UN to organise elections, assisted the Iraqi Independent Election Commission and trained domestic election observers.

²⁹ But the EU deployed a 'Democracy and Election Support Mission', in addition to giving significant financial support for UN efforts.

³⁰ Seymour M. Hersh in *The New Yorker*, 25 July 2005 (http://www.newyorker.com/fact/content/articles/050725fa_fact).

³¹ For a list of other issues for improvement for OSCE EOMs see Hrair Balian, "ODIHR's election work: Good value?", *Helsinki Monitor*, No. 3, 2005. The list is equally valid for EU EOMs.

³² A rather strong expression of this was reported in the Lebanese newspaper *An Nahar*, 23 May 2005: "One shopkeeper in Barbour, Abdel-Rahim Zahed, 53, agreed with Khaleel, and got his wife a voter's card for the first time in her life. He said: I thought it was important to get the whole family involved in this election since the elections are now going to be clean with the EU observing that everything goes well and according to the law."

drawn where elections go wrong. However, there is no guarantee that their findings are fully taken into consideration politically.

The somewhat paradoxical finding of recent years is that those missions that reported very critically had less political follow-up than those whose findings were mixed. The EU EOM for the presidential and parliamentary elections in Rwanda in 2004 concluded that the election process, the first after the 1994 genocide, had resulted in less pluralism in the country. The main opposition party had been dissolved before the elections, opposition figures had disappeared, were arrested or forced into emigration, there appeared to be manipulation in a number of polling stations and the national tabulation of votes was not transparent. Nevertheless, the EU has not formally taken up the case in its dialogue with the Government of Rwanda. The EU EOM to the presidential, parliamentary and state elections in Nigeria 2004 concluded that the elections were manipulated in at least one-third of the country, which would affect the overall outcome of the elections. The issue was also not taken up in an official manner by the EU.

The EU EOM to the Pakistan elections of 2002, which came to negative conclusions about the process, was only followed up in the sense that the Chief Observer of the EOM, who was also the European Parliament rapporteur on the ratification of a 'third generation' cooperation agreement with that country, recommended not ratifying it. The EP ratified the agreement only in 2004.

In contrast to these negative findings, EU EOMs which came to mixed findings (Mozambique, Malawi) were properly followed up, primarily by their recommendations being integrated into the official EU political dialogue with those countries.

There are various explanations for this paradoxical situation. There are first of all competing foreign policy priorities, be they economic interests (Nigeria) or fear of internal and regional destabilisation (Nigeria, Rwanda, and Pakistan). Secondly, election observation is in many ways the most sensitive part of human rights work. While raising human rights concerns ordinarily does not question the legitimacy of one's interlocutor, serious election concerns do exactly that. Raising the problem of fraudulent elections implies that the population may not have actually elected the current president or parliament. It is difficult to make such a point with the government of a partner country and usually it takes the additional element of widespread repression and human rights violations for the Western governments to question the legitimacy of a government to represent their country (Zimbabwe, Belarus). While it should not be too difficult to call on a government to improve its human rights record, it is considerably more difficult to call on a government to hold new elections and put its own existence into question.

It is clear that foreign actors can only complement domestic pressures for political and judicial review of a flawed election process or to trigger re-elections. Foreign actors cannot single-handedly achieve these tasks and eventually often have to accommodate a government even though there may be doubts about its electoral legitimacy. However, this starting point cannot lead to the conclusion that the uncomfortable issue of flawed elections should be ignored altogether.

An actor such as the EU carries out foreign policy on multiple layers and has numerous ways to keep issues on the agenda: it can be made part of the political dialogue with a country, it can be raised in multilateral fora, the disbursement of development aid can be adjusted, there can be technical assistance to help prepare the next elections. Technical assistance is often the preferred option as it is inoffensive, while more political measures are uncomfortable. However, if progress is to be achieved, governments must feel that there are incentives for democratic elections and disincentives for falsifying election results. The urge to avoid the subject creates incentives for repetition. Democratisation and the running of genuinely democratic elections are long-term tasks. The best international contribution to such a process is consistency in dealings

with a country, making clear that this is a primary issue for the relationship, avoiding ambiguity and thus creating an environment in which poor elections become an obvious embarrassment. The steady improvement of elections in Albania is an example of how consistency and long-term engagement bears fruit: The OSCE deployed six EOMs to Albania over the course of eight years and had numerous discussions on electoral reforms with all players.³³

The difficulties in addressing flawed elections are not unique to the EU. The US and other actors struggle as much with follow-up to problematic elections.³⁴ However, there may be particular factors at work which particularly inhibit the EU in this field. There is first of all a cultural factor. Most European states existed for centuries without being democracies. Their identity is based on shared history, language, culture and less on a political community, which is the main layer of identity for the US.³⁵ For example, one of Europe's oldest states, Portugal, has been a democracy for barely 5% of its illustrious 1,000-year-history.³⁶ Thus the European reflex tends to be that 'life goes on', even though a partner government may suffer from problems of legitimacy. However, this attitude sits uneasily with the European ambition to build a legitimate multilateral world order: for how could this be possible without governments which enjoy internal legitimacy? The EU security strategy acknowledges as much:

The quality of international society depends on the quality of the governments that are its foundation. The best protection for our security is a world of well-governed democratic states.³⁷

A second reason for European reluctance, linked to the question of a pre-democratic perception of the state, is a concern with the functioning of states and the risks of failed states. One of the more impressive achievements of modern Europe has been the building of functioning states and bureaucracies that operate efficiently, and usually, neutrally, beyond the underlying power relations or legitimacy of a given government. The functioning of a neutral civil service is a less powerful idea in the US where many public functions are contested in elections and where the role of the state can be weak in the face of parties' influence and power struggles.³⁸ In European

³³ Re: Albania's improvements, see Mungiu-Pippidi, *op. cit.*, p. 21.

³⁴ For example, the US response to the recent election process in Ethiopia was more muted than that by the EU. The problems of the Ethiopian elections, involving killings of dozens and the arrest of thousands of opposition supporters were more serious than e.g. those in Ukraine last year.

³⁵ See Francis Fukuyama, *State Building: Governance and World Order in the 21st Century*, Ithaca, NY: Cornell University Press, 2004, p. 141.

³⁶ Another of Europe's old states, England/the UK, has a state history more intertwined with the development of democracy and is generally more at ease with democracy promotion, albeit with moderation. "Concerned, but not obsessed", as a UK diplomat put it.

³⁷ European Council, *A Secure Europe in a Better World - The European Security Strategy*, 12 December 2003, Brussels, p. 10 (http://ue.eu.int/cms3_fo/showPage.ASP?id=266&lang=EN&mode=g).

³⁸ In the election field the weakness of the state could be seen in the dispute over the 2000 Presidential elections. At the outset the rules of the game were influenced by the Republican-controlled executive of Florida, after the elections the demands of the Democratic party were upheld by the State court of Florida (dominated by Democrats) and finally rejected by the US Supreme court (dominated by judges appointed by Republicans). Partisan struggle was clearly visible in the work of state institutions. An election with very close results poses a significant challenge to the election administration and the judiciary anywhere in the world. However, a US-type struggle is unlikely in Western-European democracies where civil services are better insulated, by law and by self-identity, against partisan influence. In the German federal elections of 2002 the Social-Democratic/Green Coalition won with the smallest margin of several thousand votes without the process being contested by anybody. The strong hand of the parties in the US can also be seen in the process of de-limiting electoral districts. The parties influence this in order to reduce the number of truly contested districts, thereby reducing campaign costs. This makes results in

development circles, there is a fear that the politicisation of development aid and elections are often intuitively considered a threat to stability, despite important findings that democracy and the general expansion of freedoms contribute to development, e.g. the much-quoted finding that famines have never occurred in democracies, as poor as they may have been.³⁹ It is noteworthy that the last Commission Communication on the 'EU strategy for Africa'⁴⁰ mentions variations of the word 'stability' 40 times, but variations on 'democracy' only 14 times and mainly in a specific sub-chapter on governance. Furthering democracy is mainly described as a means to achieve other goals, not as an objective in itself.

The pre-occupation with stability and conflict is justified. There have been elections that triggered the resumption of civil wars (Angola 1992, Burundi 1993). However, these cases cannot trump concerns in relation to a problematic election process. Election fraud that remains unaddressed has its own serious conflict potential. The less stakeholders trust the electoral process, the more likely they are to use extra-legal means to reverse the results. There should instead be more conflict assessment at the outset of democratisation processes and before elections as well as more in-depth analysis of the effects of electoral competition, elections systems, etc. Elections cannot be treated as a mere technical exercise. Any technical issue can have tremendous political implications. As a part of the pre-election analysis all EU institutions should consider options as to how to respond to an election process that goes wrong. While there may be competing foreign policy interests in each country, there should be a minimum degree of coherence between responses to elections, depending on their quality.

Coherence: External and Internal Dimension

In a world which is growing ever-smaller and where any kind of information may only be a few mouse-clicks away, it is even more important to operate coherently as a foreign policy actor. Looking at the issue of observing elections, there are two dimensions of coherence: external and internal. Externally it means that the Union must be careful to apply the same measures and to evaluate similar situations in a similar way even though countries may be far away from each other. It is easier for the OSCE to achieve this kind of coherence as its Office for Democratic Institutions and Human Rights is managing missions with permanent expert staff. It is a little more difficult in the EU context. As shown, EU EOMs operate independently under the Chief Observer, who may not have an overview of EU EOM assessments in other countries. The onus is therefore on the permanent staff in the institutions to convince EU EOMs to stay in line with earlier EU EOM 'case-load'.

There is also an internal dimension. While the EU deploys EU EOMs abroad, it has no powers to do so inside. Once candidate countries have passed the Copenhagen test and joined the club, the EU has lost most of its powers of looking into the democratic standards of its member states. As the media situation in Italy shows, this can become problematic. One mechanism that has been established by the European Commission on the recommendation of the European Parliament is an expert network reporting on the respect of human rights across the Union.⁴¹

many districts a foregone conclusion. The confessional voting system of Lebanon leads to a similar situation, where many seats are not genuinely contested.

³⁹ Re: the whole complex of development and democracy, see Amartya Sen, *Development as Freedom*, Oxford: Oxford University Press, chapter 6, 1999.

⁴⁰ Neither 'democracy' nor 'elections' is mentioned in the introduction or the conclusions of the Communication (for full text, see http://europa.eu.int/comm/development/body/communications/docs/eu_strategy_for_africa_12_10_2005_en.pdf#zoom=100).

⁴¹ See http://europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm. The EU intends to set up a European Human Rights Agency (see http://europa.eu.int/comm/justice_home/doc_centre/rights/doc/com_2005_280_en.pdf).

The network commented in its 2003 report in the context of the Italian situation that “the institutions of the Union, and in particular the Commission, if they consider it desirable, have the required powers to formulate rules imposing on the Member States to take measures ensuring that pluralism in the media is respected (...)”⁴². However, the European Commission declined to propose legislation on the issue.⁴³ The Council of Europe has been a little more forthcoming: “In Italy, the potential conflict of interest between the holding of political office by Mr Berlusconi and his private economic and media interests is a threat to media pluralism unless clear safeguards are in place, and sets a poor example for young democracies.”⁴⁴

The Mixing of Agendas: Democracy Support and Regime Change

In many Western policy circles, the ‘revolutions’ in Ukraine and Georgia are considered highly successful examples of coordinated local and international intervention to actively promote a transition agenda. Both cases produced what is generally elusive in democratisation work: concrete and highly visible results. Election observation played a key role in both cases. The OSCE observation missions found in both countries that the process and the official results lacked credibility and failed to meet OSCE standards. These findings backed the opposition’s position in both cases.

However, the effects of Georgia and Ukraine are mixed, because they have led to an excessive linkage of election observation (and other democracy support) with ‘regime change’. Election observation relies on strict impartiality and neutrality and the perception thereof. It will be important to continue stressing that election observation is occupied with process rather than results and that it is not designed to undermine governments. Not only are observer missions regularly positive about a process, they also occasionally explicitly defend it against criticism by the opposition.⁴⁵

8. Conclusions

Elections do not equate to democracy, but are a central concept of it. Elections carry the risk of instability, because any genuinely democratic election can upset vested political interests. A greater risk results, however, from flawed elections, because they offer little incentive for competitors to accept results and provoke extra-constitutional challenge. Increasing the quality of elections is thus a contribution to long-term stability and conflict-prevention. Election observation missions, by their presence, support the holding of genuinely democratic elections, but at the same time record the quality of the process.

The EU has a track record of successful election observation in recent years across the globe. This is politically sensitive work, as the findings of observers may strain the relationship of the EU with a given government or its opposition parties. A lot of effort has been made to

⁴² See EU Network of Independent Experts on Fundamental Rights, “Report on the Situation of Fundamental Rights in the European Union in 2003”, January 2004, p. 73, (see http://www.europa.eu.int/comm/justice_home/cfr_cdf/doc/report_eu_2003_en.pdf).

⁴³ “Concerning media pluralism, the public consultation [developed on the basis of the Green Paper on services of general interest of 21 May 2003 highlighted that, in the light of the differences that exist across the Member States, the issue should be left to the Member States at this point in time.” (see White Paper on Services of General Interest, COM(2004) 374 final of 12.5.2004, par. 4.6.

⁴⁴ Parliamentary Assembly of the Council of Europe Recommendation 1589 (2003), paragraph 12

⁴⁵ E.g. the EU EOM to Mozambique in 2004 confirmed some opposition concerns, as did the Constitutional Council subsequently, but did not subscribe to the overall negative assessment by the main opposition party which lost the elections.

professionalise this activity and after 15 years of global election observation, there is now an established methodology used by all major international election observation groups.

However, more efforts could be made to politically respond to flawed elections. Even before a difficult election process, potential political responses could be considered by all relevant EU institutions. In the case of flawed elections, the EU may not be able to remedy or reverse the process, but it should use its instruments of foreign policy to respond. While promotion of democracy and elections cannot be the exclusive objectives of foreign policy, they should nevertheless be given the priority that the treaties accord them. The EU should in particular continue to raise the issue of flawed elections with relevant governments and create incentives for better performance in the future. These responses should be coherent globally to make sure that the EU's interest in democracy and elections is not perceived as a selective one. The continuing attraction of the EU as a credible actor with considerable soft power providing 'international legitimacy', will depend on a coherent and systematic approach in this field too.

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Annex
EU Election Observation
Missions and Key Findings, 2002-05

Country/ Year	Type of Election	Findings
Venezuela 2005	Parliamentary	<p>“Wide sectors of the Venezuelan society do not have trust in the electoral process and in the independence of the electoral authority. The legal framework contains several inconsistencies that leave room for differing and contradictory interpretations. (...)</p> <p>The CNE, in a positive attempt to restore confidence in the electoral process, took significant steps to open the automated voting system to external scrutiny and to modify various aspects that were questioned by the opposition. (...) The EU EOM took note with surprise of the withdrawal of the majority of the opposition parties only four days before the elections.</p> <p>Election Day passed peacefully with a low turnout. (...) These elections did not contribute to the reduction of the fracture in the Venezuelan society. In this sense, they represented a lost opportunity.” Preliminary Statement</p>
Sri Lanka 2005	Presidential	<p>“Election day in the South proceeded satisfactorily and was an improvement on 2004. However voting in the North and East was marred by violence accompanied by an enforced boycott by the LTTE (Liberation Tigers of Tamil Eelan), resulting in extremely low voter participation in many areas.” Preliminary Statement</p>
Liberia 2005	Presidential & Parliamentary	<p>“The 11 October 2005 presidential and legislative elections and the 8 November 2005 presidential run-off election were peaceful, generally well administered and marked an important step forward in the process of returning Liberia to a normal functioning state. Voters were provided with a wide range of political contestants in a genuinely competitive election process, and in contrast to the elections of 1997 were able to cast their ballots free from fear.” Final Report</p>
Burundi 2005	Parliamentary	<p>“A long process of democratisation, a tense campaign, a people determined to regain peace and liberty: the ingredients of a successful vote, marginally disturbed but well organised to allow the expression of universal suffrage”. Preliminary Statement (translation from French by the author)</p>
Guinea-Bissau 2005	Presidential	<p>“The second round of the Presidential elections on 24 July 2005 was generally well organized, in a transparent and inclusive manner, and met essential international principles for democratic elections.” Preliminary Statement</p>
Afghanistan 2005	Parliamentary	<p>“Largely peaceful election day and generally well-administered election process so far, despite shortcomings and challenges ahead, mark an important step forward for Afghanistan.” Preliminary Statement</p>
Lebanon 2005	Parliamentary	<p>“The elections were well managed and took place in a peaceful manner within the existing framework for elections. However, there is a need for urgent reform of the legal and election framework”. Final Report</p>

Ethiopia 2005	Parliamentary & State	“On Sunday 15 May Ethiopian citizens turned out in massive numbers to vote in the most genuinely competitive elections the country has experienced in spite of a number of restrictions on the full exercise of political rights and some violations of human rights in the pre-electoral period.” First Preliminary Statement “Despite significant efforts by the election administration to establish a complex system to deal with complaints, overall the process failed to provide an effective remedy to the parties.” Statement on the Election Complaints Process
West Bank, Gaza 2004	Presidential	“The 9 January 2005 election for the president of the Palestinian Authority represented a genuine effort to conduct a regular electoral process. Despite the difficult and tense conditions, Palestinian electoral authorities made adequate and sufficient arrangements for voters and the public was enthusiastic to exercise its democratic rights. However, the occupation and continuing violence as well as restrictions on freedom of movement meant that a truly free election was always going to be difficult to achieve.” Final Report
Mozambique 2003	Presidential & Parliamentary	“The country benefits from a pluralistic political environment and relatively open media. The campaign and voting were orderly, but the election process was marked by serious shortcomings in the election administration, in particular as regards counting and tabulation of votes.” Final Report
Malawi 2003	Presidential & Parliamentary	“While the 20 May elections were conducted in a generally peaceful environment, voting proceeded smoothly, and they resulted in a change in the political composition of parliament, they fell short of international standards in a number of key areas.” Final Report
Sri Lanka 2003	Parliamentary	“Overall, it would be fair to conclude that the 2004 elections were largely conducted in a democratic manner, apart from the North and the East. If the election results in the North and East had been a critical factor in determining who formed the government, it would have raised questions about the legitimacy of the final outcome.” Final Report
Indonesia 2003	Presidential & Parliamentary	“The entire electoral process was conducted largely in line with democratic standards. However, some unnecessary restrictions of the right to vote and stand were still in place. Public confidence was facilitated by the clear-cut nature of the results.” Final Report
Mozambique 2003	Local	“Both the electoral campaign and the election day took place in a calm atmosphere free of intimidation, without any serious incidents or irregularities. The media covered the elections in an adequate manner. Nevertheless there were some shortcomings in the administration of the elections”. Final Report
Guatemala 2003	Presidential, Parliamentary & Local	“The results reflect the will of the people who could vote under free and secure conditions, but the election framework did not allow voters exercise their right to vote.” Preliminary Statement (translation from Spanish by the author)
Cambodia 2003	Parliamentary	“Elections well conducted but still some way to go to full democracy”. Press Statement

Rwanda 2003	Constitutional Referendum Presidential & Parliamentary	“Generally the elections were well organised from a logistical point of view and the election days were calm. Nevertheless, serious problems affected the election campaign and the election days. Competition was unequal and without real opposition. The FPR (Rwandan Patriotic Front) and its candidate Paul Kagame dominated in both election campaigns which were furthermore marked by a climate of intimidation, interrogations and arrests. On election days numerous irregularities and instances of fraud took place and there was a manifest lack of transparency in the process of the consolidation of results”. Final Report Presidential and Parliamentary Elections (author’s translation from French)
Nigeria 2003	Presidential, Parliamentary & State	“The National Assembly Elections (12 April) took place in a generally peaceful manner. However, the process was marked by serious shortcomings and delays in the electoral preparations. (...)The Presidential and Gubernatorial Elections (19April) were marred by serious irregularities and fraud. In a number of States the minimum standards for democratic elections were not met. (...).The States’ House of Assemblies elections (3 May) were marred by serious electoral fraud (ballot box stuffing, multiple voting and forgery of results) in Cross River, Delta, Edo, Enugu, Imo, Kaduna and Rivers.” Final Report
Kenya 2002	Presidential, Parliamentary & Local	“In conclusion, the EU EOM was impressed by the conduct of the 2002 elections. However, it wishes to re-iterate its concerns with regard to the instances of violence and disturbances which were observed during these elections and it wishes to stress the importance of addressing the shortcomings in the electoral framework.” Final Report
Madagascar 2002	Parliamentary	“Given the globally positive evaluation by the EOM (...) it is nevertheless useful to highlight a certain number of problems in order to offer valuable recommendations.” Final Report (author’s translation from French)
Pakistan 2002	National & Provincial Assembly	“The holding of a general election does not in itself guarantee the restoration of democracy. The unjustified interference with electoral arrangements, as detailed above, irrespective of the alleged motivation, resulted in serious flaws being inflicted on the electoral process.” Final Report
Ecuador 2002	Presidential & Parliamentary	“Despite various irregularities, especially during the first round of 20 October, the elections in Ecuador can be considered acceptable in terms of electoral procedures and a further step in the consolidation of democracy.” Final Report
Sierra Leone 2002	Presidential & Parliamentary	“The peaceful 2002 elections mark a first step to return to democracy in Sierra Leone, but the peace and the democratic process remain fragile.” Preliminary Statement
East Timor 2002	First Presidential	“Overall, as we said in our preliminary statement after the declaration, this was an election result in which we could have full confidence.” Final Report
Congo-Brazzaville 2002	Presidential	“The most positive aspect observed was the calm throughout the election process, including on election day. (...) In this post-conflict period this could not be understood as a classical election with candidates and political programmes.

		The implementation of various stages of the election process (voter registration; campaign; participation of the opposition in the electoral bodies; media; civic education; voting and consolidation of results) must be improved". Final Report (translation from French by the author)
Cambodia 2002	Communal (local)	"To conclude, whilst the EU EOM has noted some consolidation of various aspects of the democratic process, it also noted some serious irregularities and malpractices which continue to blight elections in Cambodia. It must be stressed that the concerns identified in this report need to be dealt with to ensure that future elections are not similarly blighted. If such corrosive practices are left unaddressed this might limit the democratic possibilities in Cambodia." Final Report, 03.02.02
Nicaragua 2001	Presidential & Parliamentary	"The national elections of November 4 in Nicaragua can be considered a success in the sense that they took place timely and peacefully, and that candidates without major complaints accepted the results. But the picture seems less convincing from the broader perspective of the consolidation of democracy and the role of international assistance in democracy building." Final Report
Sri Lanka 2001	Parliamentary	"In delivering an overall verdict on the election two fundamental issues need to be addressed. Firstly did the violence, abuses and attempted malpractice prevent the people of Sri Lanka from exercising their democratic rights? Secondly, did these and other factors distort the election result? The answer to the first question is no. (...) As regards the second question, although the EUEOM would have preferred that the Election Commissioner should have been supported by all the political parties in his desire to re-poll affected districts, we recognise that any re-poll would not have significantly affected the overall outcome which in our view did reflect the will of the electorate". Final Report, 01.02.02
Bangladesh 2001	Parliamentary	"The electoral process in Bangladesh was marred by several serious problems. (...) However, the bodies responsible for the conduct of the election demonstrated impartiality; (...) The EU EOM confirms its assessment that sufficient conditions of fairness for the participants and of freedom of choice for the electorate were guaranteed." Final Report
Guyana 2001	General & Regional	"In general these elections have met most of the international benchmarks to which the election commission has acceded". Guyana Long Term Observation Group & European Union EOM, 21.03.01
East Timor 2001	Constituent Assembly	"As one of the major donors to East Timor, the European Union is glad to note the remarkable success of this election." Summary of Provisional Findings of EU EOM, 31.08.01
Zambia 2001	Presidential & Parliamentary	"In view of the administrative failures on polling day, the serious flaws in the counting and tabulation procedures, together with the close outcome of the elections, we are not confident that the declared results represent the wishes of the Zambian electors on polling day." Final Statement, 05.02.02
Peru 2001	Presidential & Congressional	"The 2001 elections have fully conformed to international electoral standards." Final Report

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