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Standardizing the Principles of International Election Observation

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Standardizing the Principles of International Election Observation

ABSTRACT

On October 27, 2005, thirty-two international nongovernmental organizations (INGOs) and intergovernmental organizations (IGOs) signed the Declaration of Principles for International Election Observation, drafted with the assistance of the United Nations. For nearly four decades before the signing of the Declaration, international election observation rapidly gained acceptance as a legitimate method of guaranteeing free and fair elections and thus promoting lasting democratic institutions. Many INGOs and IGOs conducting observation missions—including the Organization for Security and Cooperation in Europe, the Organization of American States, the South African Development Community, and the Carter Center—independently developed standards for their observers to follow. As international election observation became more prevalent and more organizations entered the fray, however, independent standards contributed to confusion. The Declaration thus sought to standardize election observation principles governing both international observation missions and host nations. Despite this noble goal, the Declaration falls short of providing a truly uniform and specific set of regulations that host nations, INGOs, or IGOs—if they so choose—can simply adopt. In seeking to remedy the shortcomings of the Declaration, this Note examines existing international principles and representative national laws and offers, in conclusion, a draft Annex to the Declaration that incorporates the most useful and effective of these provisions.

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I. INTRODUCTION

The international community has long considered free and fair elections a necessary element of fully-functioning democracies.¹ The right of citizens to vote in such elections is an internationally recognized basic human right.² For a variety of reasons, however, many states have proved incapable of establishing systems that allow

1. Declaration of Principles for International Election Observation, Oct. 27, 2005, at 1 [hereinafter Declaration], available at http://www.accessdemocracy.org/files/1923_declaration_102705.pdf ("Genuine democratic elections are a requisite condition for democratic governance.").

2. *Id.*

free and fair elections to take place.³ The reasons for these states' inability to construct functional electoral systems range from the existence of authoritarian regimes to the instability of governmental transitions. Rather than identifying and addressing the reasons certain states do not hold regular elections, several governments and organizations have taken on the more useful task of establishing norms and mechanisms designed to protect the integrity of the elections that do take place.

One of these mechanisms is nonpartisan election observation.⁴ Since the late 1980s, governments and nongovernmental organizations (NGOs) alike have spearheaded efforts to establish both domestic and international election observation bodies.⁵ In this time, over half of the world's elections have been observed by major international organizations.⁶ These groups have invested enormous amounts of energy in both observing and reporting on the fairness, accessibility, and overall outcomes of national elections.

Despite the increasing prevalence of election observation organizations,⁷ there have been few attempts⁸ to articulate formal, widely-accepted international *legal* principles to govern the various components of election observation. A detailed international statement should address: (1) the determination of how and when international election observers should be deployed; (2) the accreditation of observers; and (3) the observers' rights, duties, and obligations. Several states have determined that election observation would benefit the administration of their elections and have written or amended their electoral laws to include provisions governing

3. A 2008 index of democracy by *The Economist* identified fifty-one countries that function under an authoritarian regime without free and fair elections, including Cuba and North Korea. *The Economist Intelligence Unit's Democracy Index 2008*, ECONOMIST, Oct. 29, 2008, at 7–8.

4. See Declaration of Principles and Code of Conduct: A Q&A with Democracy Program Director David Carroll, Ph.D (Oct. 31, 2005), available at <http://www.cartercenter.org/news/documents/doc2232.html> [hereinafter Carroll Q&A] (discussing the emergence and practice of election observation). For the purposes of this Note, the terms "observation" and "monitoring"—as well as their derivatives—should be considered interchangeable and identical. They do not indicate different practices.

5. Judith Kelley, *Assessing the Complex Evolution of Norms: The Rise of International Election Monitoring*, 62 INT'L ORG. 221, 222 (2008); see also Carroll Q&A, *supra* note 4 (discussing the Carter Center's role in election observation since the 1980s).

6. Kelley, *supra* note 5, at 222.

7. See generally *id.* (describing the growth in the number of electoral observation bodies since the late 1980s).

8. Declaration, *supra* note 1; African Union, African Charter on Democracy, Elections, and Governance arts. 18–22, Jan. 30, 2007, available at <http://www.africa-union.org/root/AU/Documents/Treaties/text/Charter%20on%20Democracy.pdf>.

international election observers.⁹ Globally, however, there has been only one attempt to formulate similar principles.¹⁰ In October 2005, the United Nations helped facilitate over two dozen supranational organizations' joint endorsement of the UN Declaration of Principles for International Election Observation (Declaration).¹¹ The Declaration defines the general principles that all international election observers should follow,¹² but there remains much room for improvement. Above all, the Declaration lacks detail and offers feeble platitudes, leaving the specifics of international election observation governance up to individual nations, international nongovernmental (INGOs), and intergovernmental organizations (IGOs).¹³ For these reasons, an update to the Declaration is now necessary.

This Note examines international election observation principles and national electoral laws. The Note then presents a draft Annex to the Declaration that draws on the most useful and effective aspects of those provisions. Part II of this Note explores the history and contributions of international election observation and the promotion of democracy since the late 1980s. Part III outlines certain principles governing well-known international election observation bodies and

9. See *infra* Part IV (discussing national legal provisions recognizing international elections).

10. Declaration, *supra* note 1. This is not to say that other international nongovernmental organizations have *not* undertaken efforts to formulate principles and codes of conduct for international election observers; indeed, many have. *E.g.*, ELECTORAL COMM'N'S FORUM OF SADC COUNTRIES & ELECTORAL INST. OF S. AF., PRINCIPLES FOR ELECTION MANAGEMENT, MONITORING & OBSERVATION IN THE SADC REGION (2004), available at http://aceproject.org/ero-en/regions/africa/regional-resources-africa/ecf_eisa_princip.pdf/view (promoting such principles for fourteen African states). These organizations, however, tend to be regional and do not have the same ability to get a large number of states and organizations to sign on to their declarations that, for example, the United Nations has.

11. Declaration, *supra* note 1.

12. *Id.* para. 9 ("International election observation must be conducted with respect for the sovereignty of the country holding elections and with respect for the human rights of the people of the country.").

13. See *id.* para. 20 ("The intergovernmental and nongovernmental organizations endorsing this Declaration recognize that there are a variety of credible methodologies for observing election processes and commit to sharing approaches and harmonizing methodologies as appropriate."). INGOs and IGOs should be defined, as they are not as well known as more common NGOs. INGOs are simply NGOs whose goals and missions reach across international borders. Union of International Associations, What is an International Non-Governmental Organization (INGO)?, <http://www.uia.be/node/163571> (last visited Mar. 27, 2010). Like NGOs, they are not affiliated with any government but are privately funded and operated. *Id.* IGOs, unlike NGOs and INGOs, are organizations formed as a result of official, formal cooperation between state governments. Institute for Trade & Commercial Diplomacy, Glossary, Trade-Related Organizations, http://www.itcdonline.com/introduction/glossary3_fk.html (last visited Mar. 27, 2010).

reviews the UN Declaration of Principles for International Election Observation. Part IV addresses Russia's and Azerbaijan's electoral law provisions governing international election observation missions. Drawing on these national laws and international principles, Part V discusses the provisions necessary for a proposed Annex to the Declaration that would standardize the practice of international election observation. Finally, Appendix A offers a full draft of the proposed Annex.

II. THE HISTORY AND CONTRIBUTIONS OF INTERNATIONAL ELECTION OBSERVATION

Since the end of the Cold War, the prevalence of international election observation has increased dramatically.¹⁴ This expansion reached its peak in the late 1980s and early 1990s.¹⁵ Scholars continue to debate why many states have allowed international organizations to observe internal elections, which have long been considered the most important domestic expression of sovereignty.¹⁶ Judith Kelley, a preeminent scholar in the field, proposes that international election observation gained traction as a "mechanical function related to increasing democratic transitions."¹⁷ This argument contends that as more and more states transitioned to democratic forms of government, demand for aid in administering elections increased.¹⁸ This explanation, however, is insufficient on its own. As Kelley observes, transitions to democratic governments were more prevalent in the 1970s and early 1980s than in the late 1980s and 1990s; thus, if transitions drove international election observation, the number of observation missions should have begun to increase in earnest in the late 1970s.¹⁹ But this was not the case.²⁰

Another potential explanation rests on the diffusion model, which holds that election observation gained prevalence in Latin America and then "emanated from there."²¹ However, this explanation is also incomplete: INGOs have successfully conducted election observation missions outside of Latin America since as early

14. See generally Kelley, *supra* note 5 (describing the growth in the number of electoral observation bodies since the late 1980s).

15. *Id.* at 222.

16. See, e.g., *id.* (analyzing potential causes of the increase in election observation through the evolution of norms).

17. *Id.* at 224.

18. *Id.*

19. *Id.*

20. See *id.* at 222–23 (providing statistical evidence that the expansion of election monitoring peaked in the late 1980s and early 1990s).

21. *Id.* at 224.

as 1980—before the majority of the Latin American observation missions occurred.²²

Some argue that the “global normative environment about elections and human rights” simply shifted after the Cold War.²³ The director of the Democracy Program at the Carter Center has contended that “the end of the Cold War in the late 1980s triggered a dramatic expansion in the number of election observations missions.”²⁴ One might thus conclude that the Cold War encouraged countries to actually recognize the universal human right to vote that was guaranteed by Article 21 of the Universal Declaration of Human Rights and Article 25 of the International Covenant on Civil and Political Rights.²⁵ While more inclusive than other rationales, this explanation also has its shortcomings. As Kelley explains, “[t]he end of the Cold War alone . . . cannot explain the attention to elections, the framing of election monitoring as a human rights issue, or the specific choice of election monitoring as a favored tool of democracy promoters.”²⁶

For the purposes of this Note, it is sufficient to conclude this round of the debate by noting Kelley’s ultimate hypothesis. Recognizing the strengths of each explanation, Kelley adopts a broad approach that centers on the evolution of norms and the timing of the Cold War.²⁷ She concludes that

election monitoring initially emerged due to an evolving set of norms related to democracy, elections, and human rights. These norms interacted with post-Cold War changes in the international environment to create both a demand for and a supply of monitoring. . . . Thus, . . . international election monitoring . . . has become the norm for nonestablished democracies and transition states.²⁸

Whatever the reasons for the drastic increase in the number of international election observation missions, it is obvious that—at least for the foreseeable future—these organizations are here to stay.²⁹ The goals of these organizations are generally uniform and

22. *Id.*

23. *Id.*

24. Carroll Q&A, *supra* note 4.

25. International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), art. 25, U.N. Doc. A/6316 (Dec. 16, 1966); Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 21, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).

26. Kelley, *supra* note 5, at 225.

27. *Id.* at 225–26.

28. *Id.*

29. Well-recognized monitoring organizations include: the Organization of American States (OAS), the Organization for Security and Co-operation in Europe’s (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), the Carter Center, and the National Democratic Institute (NDI). Kelley, *supra* note 5, at 222; *see*

include (1) assisting member states in holding credible elections that conform to accepted international standards, and (2) contributing to the establishment of a lasting electoral program in the host nation³⁰ that has the capacity to administer free and fair elections.³¹

Equally important is the rationale behind the achievement of these objectives: establishing democracy and protecting sovereignty throughout the world. International organizations have widely recognized that democratic elections are “an expression of sovereignty, which belongs to the people of a country, the free expression of whose will provides the basis for the authority and legitimacy of government.”³² The hope is that once countries actually hold free and fair democratic elections, they will then be able to establish additional procedures and institutions integral to functioning democracies.³³

These goals also help explain why the international community has taken such a keen interest in ensuring free and fair domestic

also The Carter Center, The Carter Center Democracy Program, <http://www.cartercenter.org/peace/democracy/index.html> (last visited Mar. 29, 2010) (“The Carter Center has been a pioneer of election observation, monitoring more than 70 elections in Africa, Latin America, and Asia since 1989 and forging many of the techniques now common to the field.”); NDI, Elections, <http://www.ndi.org/elections> (last visited Mar. 29, 2010) (“The Institute’s approach to election-related programming seeks to maximize the opportunities presented by elections to help advance democratic progress.”); Organization of American States, Elections, <http://www.oas.org/en/topics/elections.asp> (last visited Mar. 29, 2010) (“The independent, impartial observation of elections lends transparency and confidence to the electoral process and is one of the basic tools the OAS has to help strengthen democracy in the region.”); OSCE, Office for Democratic Institutions and Human Rights, About Election Observation, <http://www.osce.org/odihr-elections/17781.html> (last visited Mar. 29, 2010) (“The OSCE’s Office for Democratic Institutions and Human Rights has extensive experience in observing elections. In the last decade, it has observed around 150 election processes, deploying thousands of experts and observers from the entire OSCE region.”). Although the United Nations itself does not usually engage in election observation efforts, its Electoral Assistance Division and its Development Program (UNDP) often assist regional organizations’ observation programs. Electoral Assistance Division, Department of Political Affairs, Overview Information, <http://www.un.org/Depts/dpa/ead/overview.html> (last visited Mar. 29, 2010).

30. For the purposes of this Note, the terms “host nation,” “host country,” or “host state” are used interchangeably and refer to a country in which international election observation has occurred, is occurring, or will occur.

31. U.N. DEVELOPMENT PROGRAMME [UNDP], DEPARTMENT OF POLITICAL AFFAIRS OF THE UNITED NATION SECRETARIAT AND THE UNITED NATIONS DEVELOPMENT PROGRAMME: NOTE OF GUIDANCE ON ELECTORAL ASSISTANCE para. 3 (2001), available at http://www.undp.org/governance/docs/Elections_Guides_Note%20of%20guidance.pdf.

32. Declaration, *supra* note 1, at 1.

33. *Id.*; see also OSCE, ODIHR, ELECTION OBSERVATION: A DECADE OF MONITORING ELECTIONS: THE PEOPLE AND THE PRACTICE 1 (2005) [hereinafter OSCE MANUAL], available at http://www.osce.org/publications/odihr/2005/11/17148_478_en.pdf (“Election observation has thus emerged as a valuable tool to support and promote democratic elections as an essential element of sustainable democratic governance.”).

elections. Because most nations desire to interact with democratic governments, they encourage the realization of transparent elections as a vital step towards achieving widespread democracy.³⁴ Furthermore, “[i]nternational election observation expresses the interest of the international community in the achievement of democratic elections, as part of the democratic development, including respect for human rights and the rule of law.”³⁵ Observation organizations have called monitoring “one of the most transparent and methodical ways to promote and encourage democracy and human rights.”³⁶ In ideal circumstances, international election observation strives to expose irregularities in and to provide recommendations for improving the overall electoral process.³⁷ The hope is that international election observation will “promote public confidence, . . . promote electoral participation[,] and mitigate the potential for election-related conflict,” thus augmenting the integrity of the scrutinized electoral process.³⁸

While the number of election observation missions has increased over the last twenty to thirty years, no detailed, uniform rubric of rules—other than general principles—governing international election observers exists.³⁹ This void needs to be filled. Organizations engaging in international election monitoring have realized that they must balance a respect for national sovereignty and authority with election observers’ need for unfettered access to the election process.⁴⁰ The National Democratic Institute (NDI) has most eloquently articulated this dilemma:

All activities by international actors concerned with promoting legal frameworks for democratic elections and related democratic development need to conform to ethical standards that respect sovereignty, which belongs to and flows from the people of a country, by: (1) basing activities on international law—particularly the normative processes developing in international human rights law; (2) understanding that activities must serve the interests of the people of the country, rather than the interests of those who may be presently in power, who may be seeking it or other private interests; (3) employing best practices and lessons learned in offering knowledge, techniques and advice so that domestic actors can make the best decisions; and (4)

34. Declaration, *supra* note 1, at 1.

35. *Id.*

36. Christian Strohal, *Foreward to OSCE MANUAL*, *supra* note 33, at v, v.

37. Declaration, *supra* note 1, at 2.

38. *Id.*

39. See Carroll Q&A, *supra* note 4 (“The proliferation of observer organizations and election observation missions in the last decade led to varying methods and different standards of professionalism.”).

40. See *id.* (“The Declaration tries to reconcile the difficult tension between the imperative of respecting the sovereignty and authority of host governments and election officials, versus observer organizations’ need for adequate access to all key phases of electoral processes in order to conduct their activities credibly.”).

ensuring transparency in the activities so that citizens may have trust and confidence that those receiving assistance are being empowered to act in the public's interest[,] and those providing it are acting in accordance with international principles.⁴¹

When the rapid increase in the number of international election observation missions first began, INGOs such as NDI, the Carter Center, and the Organization for Security and Cooperation in Europe (OSCE) each addressed this balancing act by formulating their own standards and practices.⁴² But these independent approaches naturally resulted in the creation of several distinct norms of international election observation. David Carroll, Director of the Carter Center's Democracy Program, noted that "[t]he proliferation of observer organizations and election observation mission[s] in the last decade has led to varying methods and different standards of professionalism and to concerns that some organizations had conflicts of interest or political agendas."⁴³

For international election observation missions to be successful, these organizations needed to devise a common methodology. Drawing on existing approaches, the UN assisted a group of INGOs and IGOs conducting international election observation missions in drafting what remains the most complete articulation of guidelines designed to achieve a balance between international principles and national sovereignty: the UN Declaration of Principles for International Election Observation, approved by thirty-two organizations in October of 2005.⁴⁴

41. PATRICK MERLOE, NAT'L DEMOCRATIC INST., PROMOTING LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS: AN NDI GUIDE FOR DEVELOPING ELECTION LAWS AND LAW COMMENTARIES 7–8 (2008).

42. See *id.* (quoting NDI's standards); *infra* text accompanying notes 48–49, 56–58, 62 (discussing ODIHR, OAS, and SADC standards).

43. Carroll Q&A, *supra* note 4.

44. See Declaration, *supra* note 1, at 1 (“[The Declaration] assesses election processes in accordance with international principles . . . while recognizing that it is the people of a country who ultimately determine credibility and legitimacy of an election process.”); Kofi Annan, Remarks at Ceremony of Endorsement for Principles of International Election Observation (Oct. 27, 2005) (transcript available at <http://www.cartercenter.org/documents/nondatabase/annan's%20remarks%2010.27.05.htm>) (discussing how the Declaration assists observer missions in carrying out their responsibilities so that they are “always making a positive contribution”).

III. REGIONAL ELECTION OBSERVATION GUIDELINES AND THE UN DECLARATION OF PRINCIPLES FOR INTERNATIONAL ELECTION OBSERVATION

A. Foundational Election Observation Guidelines

Since 1990, several international and intergovernmental organizations have independently developed election observation guidelines, thus establishing a foundation upon which the UN Declaration could be built. This subpart examines the most notable of these efforts, which include: (1) the Copenhagen Document of 1990 and its related guidelines; (2) the Inter-American Democratic Charter of the Organization of American States (2001); (3) Principles for Election Management, Monitoring & Observation in the Southern African Development Community Region (2003); and (4) the National Democratic Institute's Guide for Developing Election Laws (2008).

In June 1990, the states participating in the Conference on Security and Co-operation in Europe (CSCE) adopted the Copenhagen Document.⁴⁵ Expressing the CSCE's belief that respect for human rights would foster international justice and security,⁴⁶ the Copenhagen Document specifically identified the right to vote and asserted that "the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place."⁴⁷ Nevertheless, although the Copenhagen Document

45. Conference on the Human Dimension of the CSCE, Copenhagen Meeting, Copenhagen, Den., June 5-29, 1990, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, pmbi., available at http://www.osce.org/documents/odihr/1990/06/13992_en.pdf [hereinafter Copenhagen Document]. The participating states were

Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the USSR, the United Kingdom, the United States of America and Yugoslavia.

Id.

46. *Id.*

47. *Id.* para. 8. More specifically, the Document goes on to require that all signatories

invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavor to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

Id.

generally sanctioned observers, the language indicated that the states themselves would still have to develop the laws and regulations governing observers.⁴⁸ The Office for Democratic Institutions and Human Rights (ODIHR) has since addressed the status, rights, and obligations of observers more specifically, promulgating in 2001 the *Guidelines for Reviewing a Legal Framework for Elections*.⁴⁹ The *Guidelines* provide national parliaments and electoral officials with advice on holding free and fair elections,⁵⁰ clearly delineating what a country's electoral observation laws should address: (1) the presence of both domestic and foreign observers, media, political parties, and candidates;⁵¹ (2) the accreditation and registration of observers;⁵² (3) the rights of observers to be unlimited in their work;⁵³ (4) the process through which observers may obtain relief if denied rights to observe;⁵⁴ and (5) the rules regarding what observers may *not* do.⁵⁵ Overall, however, the *Guidelines* presented general principles as opposed to specific regulations.

The Organization of American States' (OAS) support for election observation missions reached a peak in the 1990s, and since 1999, the OAS has observed several elections throughout Central America, South America, and the Caribbean.⁵⁶ The OAS' Inter-American

48. See *supra* note 47.

49. OSCE, ODIHR, GUIDELINES FOR REVIEWING A LEGAL FRAMEWORK FOR ELECTIONS (2001) [hereinafter OSCE GUIDELINES], available at http://www.osce.org/publications/odihhr/2001/01/13588_128_en.pdf.

50. *Id.* at 1

These guidelines are intended to set forth the basic components of a legal framework governing elections, and the minimum standard relevant to each component, that are necessary in order for a country's legal framework to ensure democratic elections. They are further intended to provide the examiner of the legal framework with an approach that will contribute to uniformity, reliability, consistency, and accuracy in the review of election related text. These guidelines will also provide guidance to national parliaments when they are drafting or amending election related text.

Id.

51. *Id.* at 23.

52. *Id.* at 24. The document addresses questions of what government organization holds the authority to accredit the observers, what the requirements for observer status are, and when observer status may be revoked. *Id.*

53. *Id.* Such rights include those "to inspect documents, attend meetings, monitor election activities at all levels at all times, including counting and tabulation, and to obtain copies of protocols at all levels." *Id.*

54. *Id.*

55. *Id.* Restrictions include interference with voting, counting, and voters' decision-making. *Id.*

56. ORG. OF AM. STATES, A MANUAL FOR OAS ELECTORAL OBSERVATION MISSIONS 5-6 (2007); see also Electoral Observation Missions Reports, http://www.oas.org/sap/english/txt_cooperacion_publicaciones_misiones.html (last visited Mar. 29, 2010) (providing reports from each mission).

Democratic Charter governs election observation missions undertaken by the OAS, directly addressing the responsibilities and rights of both member states and election observation missions.⁵⁷ It recognizes that voting is an expression of sovereignty belonging to each member state and, therefore, that “electoral observation missions shall be carried out at the request of the member state concerned.”⁵⁸ The Charter establishes both the post-invitation obligations of member states, namely guaranteeing “conditions of security, free access to information, and full cooperation with the electoral observation mission,”⁵⁹ and the duties of the OAS and the goals of the election observation missions themselves.⁶⁰ Finally, the Charter requires electoral observation missions to present detailed reports of their findings to the Permanent Council and General Secretariat of the OAS.⁶¹

The fourteen states of the Southern African Development Community (SADC), and their respective Electoral Management Bodies (EMBs), have also developed standards addressing election observation.⁶² The SADC’s recommendations address—among other parts of the process—the obligations of the host states and their EMBs,⁶³ the obligations of the observation missions,⁶⁴ general

57. Inter-American Democratic Charter, arts. 23–25, OAS Doc. OEA/Ser.P/AG/Res.1 (Sept. 11, 2001), available at http://www.oas.org/charter/docs/resolution1_en_p4.htm.

58. *Id.* art. 24.

59. *Id.* These guarantees and conditions should be codified, according to the Charter, in an agreement that specifies the reach of the mission. *Id.*

60. *Id.* The Charter notes broadly that the OAS must provide each mission with the resources necessary to allow the mission to conduct its work in an objective and transparent manner. *Id.*

61. *Id.*

62. ELECTORAL COMM’N’S FORUM OF SADC COUNTRIES & ELECTORAL INST. OF S. AF., *supra* note 10, at 1–2. Such standards are important, according to the SADC, because they allow the Community to

evaluat[e] and assess[] whether or not the electoral process in any given country has been conducted in a free, fair, transparent and credible manner. In addition, monitoring and observation can assist a country holding elections to prevent, manage or transform election-related conflicts through impartial and timely reporting as well as identifying strengths and possible weaknesses of the election process as a whole.

Id. at 30.

63. *Id.* at 31–32. The recommendations first place several obligations on host states, including the duties to (1) grant freedom of movement and association to all observation missions; (2) extend invitations to observer missions in a timely manner so that they may prepare properly; (3) ensure an efficient accreditation process; (4) provide the same protection of the laws to observers as to its own citizens; and (5) develop a code of conduct for individual observers that does not interfere with the observers’ ability to execute their mission. *Id.*

accreditation procedures,⁶⁵ the reporting responsibilities of the observation missions, and the conduct expected of individual observers.⁶⁶ The *Principles for Election Management, Monitoring & Observation in the SADC Region*, more than any other document before it, established specific rights and obligations of a broad range of actors in the electoral process, including the observation missions themselves.⁶⁷

Finally, in *Promoting Legal Frameworks for Democratic Elections*, the National Democratic Institute recognized that many countries and international organizations have entered into agreements binding them to permit election observation⁶⁸ and thus offered a checklist of several election observation-related questions that must be addressed in the administration of free and fair elections.⁶⁹ This checklist includes inquiries into countries' recognition of election observers, the access they grant to observers, and the restrictions they place on those observers.⁷⁰ Assuming that

64. *Id.* The document also places several responsibilities on the observation missions: (1) adequate preparation for the mission; (2) admission of any conflicts of interest; (3) possession of a general understanding of the SADC region and the country hosting elections; (4) drafting of a check-list establishing the scope of the mission; and (5) cooperation with local actors in the electoral process. *Id.*

65. *Id.* The document requires observation missions to satisfy several administrative procedures including gaining accreditation for their observers and producing impartial and credible reports of their findings. *Id.* More specifically, the recommendations state that any observer mission must be accredited by the EMB of the country hosting the election before conducting its work. *Id.* at 31. The document also strongly urges observer missions to "produce and distribute widely impartial, credible, professionally written press releases and interim and final assessment reports, which will help the EMB . . . identify any constraints on or shortcomings of the electoral process." *Id.* at 32.

66. *Id.* at 32–33. Finally, the recommendations require individual election observers to conduct themselves in a professional, impartial manner that respects national laws and cultures. *Id.* In particular, observers should (1) follow the laws of the country; (2) respect cultures and practices; (3) act impartially and without prejudice toward any party or part of the electoral process; (4) refrain from appearing to support a certain party; (5) contribute to the legitimization of and increased public confidence in the electoral process; (6) help enhance the political and social values of the host country; (7) report any irregularities of fraud in the election process; and (8) exercise good personal judgment. *Id.*

67. *See supra* notes 62–66 and accompanying text (discussing the rights and obligations created by the document).

68. MERLOE, *supra* note 41, at 45.

69. *Id.* at 53–88.

70. *Id.* at 60–61. The checklist reads, in pertinent part, as follows:

52. Are domestic nonpartisan election monitors recognized by law, regulation and/or any other means?

a. If so, are they provided access to all elements of the election process . . . ?

b. What is involved in the accreditation process?

the questions reveal that countries guarantee broad access, efficient accreditation procedures, and limited constraints, NDI concludes that international observation missions will be better able to foster fair and transparent elections.

B. The UN Declaration of Principles for International Election Observation

The international community took an unprecedented step forward with respect to election observation when the UN adopted the Declaration of Principles for International Election Observation.⁷¹ Then-Secretary General Kofi Annan hailed the document as a “pioneering initiative that should strengthen the role of the international community in supporting democratic elections around the world.”⁷² Secretary General Annan specifically emphasized the importance of providing a universal compilation of guidelines for international election observers, noting that despite the increasing number of international election observation organizations, “there has been no set of commonly held standards governing this important work. Now [there is]—and we must make full use of them.”⁷³

Secretary General Annan was not alone in recognizing the importance of uniformity in the field of international election monitoring. David Carroll also stated that one of the most important impacts of the Declaration would be to “ensure that election

c. Is accreditation required to be conducted in an effective and timely manner?

d. Is accreditation provided to organizations, which then accredit individuals under their mandate?

e. Is there a separate law on legal registration of nongovernmental organizations?

f. If so, does it contain any unreasonable restrictions that would hinder domestic election observation? (E.g., restrictions on receiving funding or assistance from international organization?)

....

55. Are international observers granted access to the election process?

a. If so, what is the accreditation process?

b. What is the scope of their access?

56. Are any restrictions placed on . . . domestic election monitoring organizations . . . and/or international election observers?

a. If so, what are the restrictions and do they correspond to constitutional regulations and international principles?

Id. at 61.

71. Declaration, *supra* note 1.

72. Annan, *supra* note 44.

73. *Id.*

observation is carried out with greater consistency and credibility, thus promoting public and international confidence in election processes.”⁷⁴ The preamble of the Declaration itself recognizes that as international election observation has become a widely accepted practice, the importance of providing accurate and credible evaluations of electoral processes has exponentially increased.⁷⁵

The content of the principles articulated in the Declaration and adopted by the endorsing INGOs and IGOs are relevant to this Note. A basic understanding of the standards that the twenty-four numbered principles⁷⁶ espouse is critical to understanding the goals and components of international election observation. The principles are best understood when grouped into eight overarching themes: (1) the significance of free elections to host countries; (2) the definition, purposes, and objectives of international election observation; (3) the efficiency of international election observation missions and their respect for national law and sovereignty; (4) the actions required of countries before international election monitors agree to deploy missions; (5) the pre-mission and in-mission obligations of international election monitoring organizations; (6) the reporting standards applicable to international election observers; (7) the general responsibilities intrinsic to the election monitoring practice; and (8) the policies aimed at maintaining transparency and furthering judicious election monitoring procedures worldwide.⁷⁷

The Declaration’s list of principles first articulates the gravity of democratic electoral processes to nations holding elections.⁷⁸ It states that elections are “an expression of sovereignty,” and that all citizens hold a basic human right to “participate in the government and public affairs of his or her country[,]” which is manifested in the right to vote.⁷⁹

The drafters then provide a basic definition of international election monitoring and address the objectives of observation.⁸⁰ The Declaration characterizes international election observation as a systematic and comprehensive process that encompasses the pre-election, election-day, and post-election periods.⁸¹ Observers should monitor elements of elections including voter registration, delineation of election districts, and actual election-day voting.⁸² Whenever

- 74. Carroll Q&A, *supra* note 4.
- 75. Declaration, *supra* note 1, at 2.
- 76. *Id.* at 2–8.
- 77. *See id.* (explaining the principles in further detail.)
- 78. *Id.* at 2–3.
- 79. *Id.* at 2.
- 80. *Id.* at 2–3.
- 81. *Id.* at 3.
- 82. *Id.*

possible, international election observers should also provide recommendations for improving the efficiency of the scrutinized electoral process without interfering in the domestic administration of that process.⁸³ The Declaration also highlights the objectives of international election observation, emphasizing that missions are conducted for the “benefit of the people of the country” and, therefore, are to be concerned with process rather than with electoral results.⁸⁴ To guarantee this impartiality, the Declaration states that no one with any political preferences should be allowed to observe and that INGOs conducting observation missions must not accept funding from the governments of countries under observation.⁸⁵

The Declaration then requires that observers respect national laws and sovereignty and suggests that they seek cooperation with host countries.⁸⁶ It delineates an extensive list of responsibilities that the host country should perform before any observation body agrees to undertake a mission.⁸⁷ These responsibilities include (1) issuing an invitation or indicating its willingness to accept observers; (2) guaranteeing observers access to all steps of the election process, all individuals related to the electoral process, and all parts of the country; (3) guaranteeing observation organizations the right to choose its observers without interference by the host government; (4) guaranteeing observers the right to accreditation and the right to issue public statements of findings; and (5) guaranteeing observers that the host government will not interfere in any aspect of the process or seek reprisal.⁸⁸

As to the standards expected of international election observation organizations and their individual observers, the Declaration states that organizations should make their presence known not only to the nation’s government but also to all political parties or competitors involved in the election process.⁸⁹ Observers should then ensure that these political competitors have access to all processes related to the election structure in the country—including

83. *Id.* at 2.

84. *Id.*

85. *Id.* at 2–4.

86. *Id.* at 4.

87. *Id.* at 4–5.

88. *Id.* Invoking these preconditions, the Declaration notes that while an INGO’s choice to observe an election should not be interpreted as an indication that the election is necessarily credible, observers should nonetheless avoid situations where their presence might imply that a clearly undemocratic election is legitimate. *Id.* at 4. The Declaration, in fact, suggests that individual observation organizations may request a memorandum of understanding or similar document from the host country to ensure its cooperation with such principles. *Id.* at 5.

89. *Id.* In fact, acceptance of observers by those parties may even be required. *Id.*

the observers' own practices.⁹⁰ In so doing, observation missions should establish lines of communication with all political factions and use these contacts to gather information on the country's election processes.⁹¹ Once received, the mission should evaluate any such information and determine its value to the mission's assessment of the overall process.⁹² Following elections, international election observers should report their findings to the proper authorities by "issu[ing] timely, accurate[,] and impartial statements to the public . . . [in which they present] their findings, conclusions[,] and any appropriate recommendation they determine could help improve election related processes."⁹³

The Declaration next underscores several broad obligations of election observation missions stemming from international norms.⁹⁴ It asserts that all signatories commit to abiding by some statement of principles and complying with the Declaration's guidelines to the greatest practicable extent.⁹⁵ Signatory organizations also commit to providing their observers with an explanation of national election laws and information about standard methodologies and appropriate conduct.⁹⁶

Finally, the Declaration recommends that all endorsing organizations collaborate to carry out international election observation missions efficiently, transparently, and with an eye toward the future of election observation.⁹⁷ It provides an avenue for additional observation organizations to endorse the Declaration—either permanently or on an ad hoc basis—and it encourages further internal action by the political bodies of endorsing organizations.⁹⁸ Above all, however, the Declaration itself admits that, despite its own adoption, there still exists a variety of valid election monitoring

90. *Id.*

91. *Id.* at 6.

92. *Id.* International observation missions might also establish communications with *domestic* monitoring organizations—depending on such organizations' existence and credibility—in order to share important information on the electoral process. *Id.*

93. *Id.* at 3. The Declaration later notes that international missions should also report on whether *domestic* election monitoring organizations "are able, on a nondiscriminatory basis, to conduct their activities without undue restrictions or interference." *Id.* at 6. Such reporting may also be accompanied by advocacy from the international organizations on behalf of domestic groups or citizens wishing to engage in observation. *Id.*

94. *Id.* at 6–8.

95. *Id.*

96. *Id.* at 7.

97. *Id.* at 4, 7.

98. *Id.* at 8.

techniques that the international community should ultimately harmonize.⁹⁹

IV. NATIONAL LEGAL PROVISIONS GOVERNING INTERNATIONAL ELECTION OBSERVATION

In recognition of the success international and domestic election observation missions have had in ensuring free and fair elections and fostering the growth of lasting democratic institutions, several nations have adopted laws and regulations governing such missions in order to protect the nation's sovereignty and establish the rights, duties, and obligations of visiting observers. The reasons for the adoption of these laws at the national level vary. Many national governments undergoing transitions simply choose to write the provisions into their new constitutions or election laws; others choose to amend their constitutions or election laws to include the stipulations.

Certain nations' laws governing international election observation missions are more representative than others.¹⁰⁰ This Note focuses on the electoral laws of two countries: Russia and Azerbaijan. These countries not only have laws on international election observation that are illustrative of those found worldwide but they also represent distinct types and sizes of democratic governments. A careful examination of these laws ultimately provides important insight into what the most important tenets of comprehensive international election observation regulations should be.

A. *Russia*

The Russian law governing international election observation is set out in the Russian Federation Federal Law on the Election of the President of the Russian Federation (Russian Election Law).¹⁰¹

99. *Id.* at 7.

100. Professor Judith Kelley of Duke University has conducted extensive research on a variety of national election laws. The Author contacted her for advice in selecting countries with laws on international election observation that would be representative of laws throughout the world and contain rich detail. She suggested a wide variety of countries, and the ultimate decision to select Russia and Azerbaijan was affected primarily by the ability to find readily available primary source materials (namely election laws and principles).

101. On the Election of the President of the Russian Federation, Federal Law No. 19-FZ (2003), available at <http://www.cikrf.ru/eng/law/FL-19-FZ.jsp>. Originally adopted and approved by Russia's legislature in December 2002, the law was amended in July 2007. *Id.*

Articles 23 and 24 of the law address the rights, duties, and obligations of international election observers (as well as the Russian Federation's duty toward them), but provisions related to observation missions are embedded throughout the law.¹⁰² These various provisions are better understood when divided into manageable categories based on their objectives.

1. Sources of Law on the Participation of International Election Observers

The Russian Election Law identifies the sources of law governing international election observers in a short but wide-reaching provision. It states that the law on international election observation "shall be established by the international treaties of the Russian Federation, this Federal Law, [and] other federal laws."¹⁰³ Such encompassing language leaves open the possibility of further codification of the law—perhaps even through international lawmaking processes. Nevertheless, the Russian Election Law already provides useful detail governing several elements of international election observation.

2. Invitation, Recognition, and Accreditation of International Election Observers

Article 24 of the Russian Election Law recognizes international observers as legitimate elements in sovereign Russian elections, thus making it arguably the most important article of the law.¹⁰⁴ Article 24(2) states that the President, the Federation Council, the State Duma, the Government of the Russian Federation (generally), or the Central Election Commission (CEC) may extend invitations to international election observers.¹⁰⁵ Any international election observation mission must receive an invitation before observers enter the country, but any group granted such an invitation shall automatically obtain accreditation.¹⁰⁶ Proof of accreditation shall include an identification card granted upon reception of an accreditation application, a copy of the observer's invitation, and another identifying document.¹⁰⁷ Election officials may revoke the

102. *See generally id.* (constituting the main body of law governing elections).

103. *Id.* art. 11, § 2.

104. *Id.* art. 24.

105. *Id.* art. 24, § 2.

106. *Id.* art. 24, § 1.

107. *Id.* art. 24, § 3.

accreditation of any observer who “violates the federal laws or the universally accepted principles and norms of international law.”¹⁰⁸

3. Observatory Rights of International Election Observers

Article 23(5) of the Russian Election Law recognizes first and foremost that international observers “may be present at polling stations from the time a precinct election commission begins its work and until it is informed that the higher-level election commission has adopted a protocol on vote-returns, and also during vote recount.”¹⁰⁹ More specifically, before regular voting begins, international observers shall be invited to examine empty ballot boxes and ballot boxes containing the ballots of early voters.¹¹⁰ International observers may then remain at polling locations during the voting, the counting and bundling of votes, the counting of unused ballots, the preparation of any protocols related to the returns and results, and any recounts; they may also inspect the results of these various processes and, where appropriate, affix their signatures as a sign of approval.¹¹¹ The law also guarantees that international observers may receive certified copies of any protocols.¹¹² These monitoring rights also guarantee an international observer the ability to meet with candidates and their agents, official representatives of political parties, and groups of voters.¹¹³

4. Limitations Placed on the Work of International Election Observers

Despite this broad guarantee of rights, the Russian Election Law also places a variety of limitations on the rights of observers and requires those observers to fulfill certain obligations. First, the law allows observers to carry out their monitoring work only “from the day on which they receives [sic] accreditation . . . [through] the day of the official publication of the general results of the election”¹¹⁴ Second, the law requires that precinct voting commissions keep records of the presence of any international observers, based on the observers’ presented credentials.¹¹⁵ Third, observers may not work

108. *Id.* art. 24, § 11.

109. *Id.* art. 23, § 5.

110. *Id.* art. 69, § 4.

111. *Id.* art. 23, § 6; *id.* art. 69, § 14; *id.* art. 73, §§ 1, 3, 7, 22; *id.* art. 74, § 2; *id.* art. 75, § 2.

112. *Id.* art. 73, §§ 23, 26; *id.* art. 74, §§ 8, 17; *id.* art. 75, §§ 7, 12, 16.

113. *Id.* art. 24, § 9.

114. *Id.* art. 24, § 5.

115. *Id.* art. 69, § 14; *see also id.* art. 74, § 14.

with anyone else, and only their official parent organizations or their own resources may provide support for their work.¹¹⁶ Fourth, invoking the importance of national sovereignty, the law broadly proscribes international observers from abusing their position to affect the outcome of the elections: "Foreign (international) observers shall not take advantage of their status to carry on activities unrelated to monitoring" during either the campaign period or the preparation and execution of the election itself.¹¹⁷ Finally, with regard to observers who disrespect the sovereignty of the Russian Federation or violate the Russian Election Law, Russia may not only expel them from their respective polling stations but also subject them to any penalties that Russian law prescribes.¹¹⁸

5. Reporting Standards Expected of International Election Observers

When voting concludes, international observers have the right to publicly comment on the election process.¹¹⁹ This right extends from the time at which the Russian government adopts "the legislation on the election of the President of the Russian Federation" to "the preparation and conduct of the election" itself.¹²⁰ Observers may offer these public comments through both press conferences and the mass media.¹²¹

6. Actions Required of Russia with Respect to International Election Observers

The Russian Election Law also places certain obligations upon Russia as the host nation. The law recognizes all international observers as being "under the patronage of the government of the Russian Federation" and thus requires that all federal agents and election officials "render the necessary assistance to [those] foreign

The list of non-voting members of the territorial election commission and the list of other persons mentioned in Clause 5, Article 23 of this Federal Law, who were present at the determination of vote returns and preparation of the protocol, shall be kept by the secretary of the territorial election.

116. *Id.* art. 24, § 6.

117. *Id.* art. 24, § 10.

118. *Id.* art. 69, § 15.

119. *Id.* art. 24, § 8.

120. *Id.*

121. *Id.*

(international) observers.”¹²² This also means, of course, that observers are subject to the laws of the Russian Federation.¹²³

B. Azerbaijan

In June 2008, Azerbaijan amended its election laws with the aid of the International Foundation for Electoral Systems (IFES), a non-profit organization “providing need-based assistance for election administration and sustainable democracy building.”¹²⁴ IFES has been present in Azerbaijan for more than ten years, providing “a range of election technical assistance to the country’s legislators, Central Election Commission and subordinate election commissions, candidates, observers, and voters.”¹²⁵ Among other changes, the amendments to Azerbaijan’s election laws facilitated the development of “handbooks and informational materials for international and local observation groups.”¹²⁶

The Election Code of the Republic of Azerbaijan (Azerbaijani Election Code or Election Code) establishes the official laws governing international election observation missions.¹²⁷ The provisions therein are further clarified in a document entitled *Instruction on Rules for Activity of International (Foreign) Observers in Presidential Elections of the Republic of Azerbaijan*.¹²⁸

Finally, it must be noted that Azerbaijan held municipal elections on December 23, 2009,¹²⁹ which were subject to the international election observation laws discussed in this subpart. Although the Central Election Commission (CEC) accredited over 49,300 international and domestic observers,¹³⁰ only one international mission—the Council of Europe—sent monitors.¹³¹

122. *Id.* art. 24, § 7.

123. *Id.* art. 24, § 11.

124. Dan Blessington, *Preface to the English-Language Edition of ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN*, at ii (Int’l Found. for Electoral Sys. Trans., 2008) (2008), available at http://www.cec.gov.az/en/cec/election_code_eng.pdf.

125. *Id.*

126. *Id.*

127. *Id.* arts. 40–42, 44.

128. CENT. ELECTION COMM’N OF THE REPUBLIC OF AZERBAIJAN, *INSTRUCTION ON RULES FOR ACTIVITY OF INTERNATIONAL (FOREIGN) OBSERVERS IN PRESIDENTIAL ELECTIONS OF THE REPUBLIC OF AZERBAIJAN (2008)*, approved by Decision 7/27-4 (July 18, 2008) available at <http://www.cec.gov.az/en/7president2008/instruction/instruction7-27-4.htm> [hereinafter Decision 7/27-4].

129. M. Aliyev, *Preparation for Municipal Elections in Azerbaijan Completes: CEC Head*, TREND NEWS, Dec. 19, 2009, <http://en.trend.az/news/politics/elections/1603972.html>.

130. *Id.*

131. *Fraud, Violations Observed in Azerbaijani Local Elections*, REUTERS, Dec. 23, 2009, http://www.rferl.org/content/Fraud_Violations_Observed_In_Azerbaijani_Local_Elections/1912202.html.

Although certain news reporters claimed to have heard reports of improper voting practices like carousel voting (i.e., voting in more than one precinct),¹³² the CEC reported receiving “no complaints regarding the election process.”¹³³ Additionally, APA, a news media outlet based in Azerbaijan, filed detailed reports from each polling station demonstrating that, except for one or two individualized instances of potential fraud witnessed and noted by observers, the elections ran smoothly.¹³⁴ At the time of this writing, it does not appear as though the Council of Europe has released a final report of its observation findings.¹³⁵ These observations confirm that Azerbaijan’s election codes represent an excellent example of laws and regulations that work. The CEC accredited observation missions without problems, the observers and news media were able to report freely on the elections, the elections themselves went smoothly, and the few instances of potential fraud were observed and reported. A further examination of the elections laws is thus useful for drafting the Annex.

1. General Background Principles of Election Observation

The Azerbaijani Election Code expressly recognizes the goals and principles underlying international election observation that are discussed above.¹³⁶ It emphasizes that election monitoring should be conducted openly and without regard to the interests of individual candidates or political parties.¹³⁷ The Election Code also stresses the importance of considering actual circumstances and facts when conducting election observation and presenting the results of that observation.¹³⁸

132. *Id.*

133. *Id.*

134. *No Serious Violation of Law Recorded in Local Elections in Azerbaijan*, AZERI-PRESS AGENCY (Baku, Azer.), Dec. 23, 2009, <http://en.apa.az/news.php?id=112952>.

135. See Council of Europe, <http://www.coe.int/> (last visited Mar. 29, 2010) (providing no final report).

136. See *supra* text accompanying notes 77–99.

137. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 41.1.1, 41.1.3; see also Decision 7/27-4, *supra* note 128, pt. IV, §§ 4.1.1, 4.1.3 (stating that the “election process should not be influenced for a candidate or political party” and the “observation should be conducted openly”).

138. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 41.1.2, 41.1.4; see also Decision 7/27-4, *supra* note 128, pt. IV, §§ 4.1.2, 4.1.4 (providing instruction on rules for activity of international foreign observers in Presidential elections of the Republic of Azerbaijan).

2. Invitation, Registration, and Accreditation of International Election Observers

The Azerbaijani Election Code requires that all international election observers “be registered with the Central Election Commission” according to invitation rules promulgated in subsequent legislation.¹³⁹ The Milli Majilis (Azerbaijan’s legislature), executive bodies, or the CEC may send invitations once the government makes an official decision to hold elections;¹⁴⁰ alternatively, the Election Code allows “influential non-governmental organizations, working in the field of protection of human and citizens’ rights and freedoms . . . [to] submit their proposals on inviting international observers.”¹⁴¹

International observers who accept invitations are required to register.¹⁴² From the day elections are announced until ten days prior to those elections, invited observers may submit applications to the CEC.¹⁴³ The Election Code requires applications to include the applicant’s “surname, forename, patronymic, place of residence, and ID card series and number[,]”¹⁴⁴ as well as two photos.¹⁴⁵ Applicants must indicate if they are planning to work on behalf of a candidate or political party, or are representing an INGO.¹⁴⁶ Accreditation of the observer must take place within three days of the submission of an application, and the election commission can only deny registration if it cannot confirm the applicant’s provided information.¹⁴⁷ Upon registration, observers shall receive an official badge—prepared according to CEC rules—in the national language of Azerbaijan and

139. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 44.1.

140. *Id.* art. 44.2; *see also* Decision 7/27-4, *supra* note 128, pt. I, § 1.1 (discussing the rules for inviting international observers).

141. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 44.3; *see also* Decision 7/27-4, *supra* note 128, pt. I, § 1.1 (discussing the rules for inviting international observers).

142. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 44.4.

143. *Id.* art. 40.6; *see also* Decision 7/27-4, *supra* note 128 pt. II, § 2.1 (describing the process for applying for international observer registration).

144. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 40.6; *see also* Decision 7/27-4, *supra* note 128, pt. II, § 2.1 (describing the process for applying for international observer registration).

145. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 40.6; *see also* Decision 7/27-4, *supra* note 128, pt. II, § 2.1 (describing the process for applying for international observer registration).

146. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 40.6; *see also* Decision 7/27-4, *supra* note 128, pt. II, § 2.1 (describing the process for applying for international observer registration).

147. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 40.6; *see also* Decision 7/27-4, *supra* note 128, pt. II, § 2.2 (discussing consideration and rejection of applications).

in one foreign language (likely that of the observer).¹⁴⁸ Only this badge—which must include the observer’s name, country of origin, address, assigned election commission(s), candidate, political party, or INGO represented (if necessary)¹⁴⁹—and an additional form of identification¹⁵⁰ will allow international observers to conduct election observation.¹⁵¹ Applicants denied accreditation may appeal to the Court of Appeal.¹⁵² Finally, the Election Code provides for the rescission of an observer’s registration if that observer fails to abide by established national laws or international legal norms.¹⁵³

3. Observatory Rights of International Election Observers

Both the Election Code and CEC regulations guarantee that international observers “may observe the implementation of election activities, the determining of voting results and election (referendum) returns, the completion of protocols of voting results and election (referendum) returns (overall returns) and the counting and recounting of votes in all election commissions.”¹⁵⁴ Clarifying these basic pronouncements, the Election Code goes on to guarantee international observers the rights to (1) study voter rolls; (2) be in the voting room of any precinct at any time on election day; (3) observe the distribution of ballots to voters; (4) observe the tallying of total voters; (5) order that observation results be included in final protocols of the CEC; (6) observe the counting of the votes and check the validity of votes; (7) view the protocol and other election day documents; (8) provide the person in charge at the precinct with constructive comments; (9) obtain a copy of all protocols and documents issued by the CEC; (10) observe any recounts; and (11) observe the transfer of all documents from local election commissions to the CEC.¹⁵⁵ The CEC regulations reiterate these rights and,

148. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 40.6; *see also* Decision 7/27-4, *supra* note 128, pt. II, § 2.3 (describing the documentation issued for approved applications).

149. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 40.16.

150. *Id.*

151. *Id.* art. 44.4; *see also* Decision 7/27-4, *supra* note 128, pt. II, § 2.3 (describing the documentation issued for approved applications).

152. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 40.6; *see also id.* art. 40.7 (noting that virtually identical rules apply for those candidates applying to regional election commissions, except that registration decisions must be completed within two days and appeals are made to the CEC rather than the Court of Appeals).

153. *Id.* art. 44.11.

154. *Id.* art. 40.12.

155. *Id.* art. 42.2; *see also* Decision 7/27-4, *supra* note 128, pt. V, § 5.1 (discussing the rights and duties of international observers).

additionally, guarantee that observers may monitor voter sign-in; partake in parallel, unofficial vote counting; and, in furtherance of these duties, meet with voters, candidates, commissions, political party representatives, and other government or campaign agents.¹⁵⁶

4. Limitations Placed on the Work of International Election Observers

Invoking the importance of national sovereignty, the Election Code places very specific limitations on observers' rights and draws a clear line between what observers may and may not do. The broadest limitation placed on observers is the time during which they may conduct their work. Article 41(3) of the Election Code allows observation missions to operate only "from the date the elections (referendum) are announced [to] the day when all disputes regarding elections (referendum) are heard by the relevant courts, and returns (overall returns) of elections (referendum) are officially published."¹⁵⁷ Addressing the work of observers during the election itself, the Election Code explicitly prohibits observers from (1) issuing ballots; (2) polling voters either before or after they have voted; (3) receiving ballots on behalf of voters; (4) marking a ballot for a voter, even if requested; (5) participating in official vote counting; (6) acting in any way that obstructs the election commission; (7) campaigning for candidates or parties; (8) affecting the decision making of election commissions; or (9) responding to questions posed by voters about anything other than the individual's status as an observer.¹⁵⁸ Observers must function independently and with the financial support of either their sponsoring organizations or themselves,¹⁵⁹ and they may not abuse their status as observers for purposes unrelated to the election.¹⁶⁰

156. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 44.9; Decision 7/27-4, *supra* note 128, pt. V, §§ 5.1.3, 5.1.9, 5.1.16.

157. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 41.3; *see also* Decision 7/27-4, *supra* note 128, pt. VII, § 7.1 (outlining the term of authority and termination of authorities of international observers). Of course, observers may not commence their work until they have been registered by the CEC. *See* AZERBAIJANI ELECTION CODE, *supra* note 124, art. 44.5 (noting the term of authority commences on the day of registration).

158. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 42.3; *see also* Decision 7/27-4, *supra* note 128, pt. V, § 5.2 (listing prohibited behavior).

159. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 44.6; *see also* Decision 7/27-4, *supra* note 128, pt. III, §§ 3.1–3.2 (discussing the status of international observers).

160. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 44.10.

5. Reporting Standards Expected of International Election Observers

As noted above, international observers in Azerbaijan enjoy the right to offer suggestions and comments to agents of the election commission *during* the administration of the election.¹⁶¹ The Election Code also requires commissioners to acknowledge receipt of such suggestions by attaching the international observer's "opinion . . . to the protocol on either voting results or election returns."¹⁶² Finally, observers are guaranteed the right to speak freely about the results of their missions, as both the Election Code and CEC regulations allow them to "address the mass media and conduct press conferences addressing election legislation, [as well as] the preparation and conduct of elections."¹⁶³

6. Actions Required of Azerbaijan with Respect to International Election Observers

Azerbaijan must fulfill certain obligations as the host country. The Election Code maintains that "[i]nternational observers shall be under the protection of the State while within the territory of the Republic of Azerbaijan. Election commissions, state government bodies[,] and municipalities shall be obliged to render the necessary assistance to them."¹⁶⁴ No provisions in the Election Code or CEC regulations, however, seem to subject international observers to the judiciary system of Azerbaijan.¹⁶⁵

V. PROPOSING AN ANNEX TO THE UN DECLARATION OF PRINCIPLES FOR INTERNATIONAL ELECTION OBSERVATION

A. *Concerns with the Declaration of Principles for International Election Observation*

The Declaration of Principles for International Election Observation represents a critical development in the standardization

161. *Id.* art. 42.2.8.

162. *Id.* art. 42.5.

163. *Id.* art. 44.8; *see also* Decision 7/27-4, *supra* note 128, pt. V, § 5.1.15 (explaining the rights and duties of international observers).

164. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 44.7; *see also* Decision 7/27-4, *supra* note 128, pt. III, § 3.1 (providing a similar provision).

165. *See generally* ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124 (lacking such a provision); Decision 7/27-4, *supra* note 128 (same).

of the governance of international election observation missions. Cameron Quinn argues that the Declaration has made international election observation “one area with substantial international agreement on standards. These agreements include the purpose of observation, the conduct of international observers, and the standards for observation.”¹⁶⁶ Notwithstanding these accomplishments, however, the Declaration still fails to provide useful specifics and ultimately leaves the international community—both states and INGOs alike—searching for further guidance.

Several concerns are evident. First, the Declaration is simply too broad. Rather than establishing specific and detailed regulations that states and international organizations can either use as guidelines for making laws or adopt in full as their own law, it offers a series of platitudes and aspirational goals. This breadth means that despite the fact that thirty-two INGOs and IGOs signed the Declaration, national laws and organizational regulations promulgated in accordance with the Declaration are often quite different.¹⁶⁷ Second, the organization of the Declaration is disappointing. In addition to the fact that it is presented as an unadulterated list of twenty-four principles that lacks subject-matter demarcations, the Declaration appends an equally general Code of Conduct for International Election Observers that the drafters could have integrated into the Declaration.¹⁶⁸

In response to these concerns, this Note proposes the addition of a detailed Annex to the Declaration that addresses all aspects of the international election observation process, from its objectives and purposes to the duties of host nations to the rights and obligations of observers and observer organizations. This Part augments the existing stipulations of the Declaration by using the best provisions of various codes promulgated by INGOs and IGOs and the national laws on international election observation discussed above. After this discussion, the Note submits a structured and detailed draft of the proposed Annex.¹⁶⁹

166. Cameron Quinn, *Conduct of Election Day*, in *INTERNATIONAL ELECTION PRINCIPLES: DEMOCRACY AND THE RULE OF LAW* 241, 265 (John Hardin Young ed., 2009).

167. Compare, e.g., On the Election of the President of the Russian Federation, Federal Law No. 19-FZ (2003), available at <http://www.cikrf.ru/eng/law/FL-19-FZ.jsp> (discussing the role of the observer throughout the law), with *ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN*, *supra* note 124, arts. 41–44 (dedicating three sections of the code to the roles and responsibilities of observation missions).

168. See generally Declaration, *supra* note 1 (highlighting a series of values that should be upheld through the conduct of election observers).

169. See *infra* app. A.

B. *A Discussion of the Elements of the Proposed Annex
to the Declaration*

1. Purposes and Objectives of International Election Observation

The proposed Annex opens with an unambiguous statement of the direct and indirect objectives of international election observation. This provision recognizes first that the right to vote is a basic human right that cannot be denied. The existing Declaration notes this fact clearly, stating that individuals enjoy the basic right to “participate in the government and public affairs of his or her country,”¹⁷⁰ which necessarily manifests itself in the right to vote. This language is preserved.¹⁷¹ Second, the provision identifies the reason that free and fair elections are so important: they demonstrate sovereignty and legitimacy.¹⁷² Theodor Hanf has noted that “[m]ost lists of indicators [used to determine the democratic nature of a political system] give free and fair elections a prominent place. . . . [T]his is common sense inasmuch as elections are *the* fundamental decision-making process in any democracy worthy of the name.”¹⁷³ While the Declaration already recognizes that elections are “an expression of sovereignty” for the host country,¹⁷⁴ it is important to explain this objective further in order to provide background for the observation details that follow.

Moving beyond the theoretical objectives of international election observation, the opening provision of the Annex also recognizes the more concrete purposes of international election observation:¹⁷⁵ (1) helping host countries administer credible elections, (2) establishing lasting electoral programs that will enable host countries to hold free and fair elections in the future,¹⁷⁶ and (3) ushering “transitional democracies” through their first foray into the electoral process.¹⁷⁷

170. Declaration, *supra* note 1, para. 2.

171. See *infra* app. A, part I, § A.2 (“All citizens enjoy a basic human right to participate in the public affairs of his country, which manifests itself in the right to vote”).

172. See *infra* app. A, part I, § A.3.

173. THEODOR HANF ET AL., OBSERVING DEMOCRATIC ELECTIONS: A EUROPEAN APPROACH 4 (1995) (F.R.G.).

174. Declaration, *supra* note 1, at 1.

175. See *infra* app. A, part I, § B.1 (discussing concrete objectives of International Election Observation).

176. See *supra* Part II (discussing the history and contributions of International Election Observation).

177. See, e.g., Organización de los Estados Americanos, *Informe de la Misión de Observación Electoral Elecciones Generales de la República de Nicaragua*, ELECTORAL OBSERVATION MISSION REP., Mar. 3, 2008, available at http://www.oas.org/sap/english/txt_cooperacion_publicaciones_misiones.html (describing the observation mission of Nicaragua’s 2006 election during a time of extreme political fragility).

Countries seeking to affirm their status as international democracies have an interest in hosting elections widely recognized as credible: “[F]ree and fair elections are a crucial criterion of democracy. The external legitimisation bestowed on election outcomes declared ‘free and fair’ by credible international observer missions can contribute considerably to their acceptance by all political forces involved in the electoral process”¹⁷⁸ This principle is true for all countries, regardless of their established or transitional status. In addition to this general goal, international election observation serves the important purpose of assisting “the appearance of new states as former empires disintegrate. The desire to have elections legitimised as ‘free and fair’ is particularly strong in the cases of ‘transitional elections’ and ‘independence elections.’”¹⁷⁹

Finally, the opening provision of the proposed Annex addresses the broader international implications of international election observation.¹⁸⁰ It recognizes that the principles of sovereignty and democracy are relevant not only to the host nations but also to democratic systems worldwide, which “have an interest in healthy democracies beyond their immediate borders.”¹⁸¹ For this reason, the provision expressly recognizes both maintenance of peace and the promotion of democracy as goals of international election observation.¹⁸²

2. Respecting National Sovereignty

The proposed Annex next recognizes that the objectives of international election observation, however crucial, must never encroach on a state’s national sovereignty.¹⁸³ In other words, international election observers must refrain from interfering in internal decision-making processes reserved for the host state or its government.¹⁸⁴ While many of the other limitations that national

178. HANF ET AL., *supra* note 173, at 7.

179. *Id.* at 5.

180. *See infra* app. A, part I, § C.

181. HANF ET AL., *supra* note 173, at 5 (“Democratic elections are an infinitely more desirable form of conflict resolution than violence, both for those immediately affected and for the international community as a whole.”).

182. *See infra* app. A, part I, § C.2 (lauding democratic governments for their potential to “help resolve conflicts without violence” and “contribute to the maintenance of global peace”).

183. *See id.* part II (discussing the importance of maintaining national sovereignty).

184. Inter-American Democratic Charter, *supra* note 57, arts. 23–24 (providing that because elections are a matter of national sovereignty, observers shall only participate at the request of the host nation); Copenhagen Document, *supra* note 45, para. 8 (“[O]bservers will undertake not to interfere in the electoral proceedings.”); Declaration, *supra* note 1, at 2 (noting that observers must respect national

laws and INGO regulations place on observers imply the need to protect national sovereignty, the proposed Annex nevertheless includes an unambiguous statement that observers shall respect national sovereignty. Along with a broad statement that observers shall respect the sovereignty of the host state, this provision of the Annex provides two sub-provisions clarifying this obligation: (1) that all observers shall remain politically neutral,¹⁸⁵ and (2) that an observer's role is simply to observe passively rather than intervene.¹⁸⁶

3. Invitation of International Election Observers

International election observers should conduct their missions only if the host nation has extended them an invitation. Each invitation may differ in form—national election laws may provide for them or regional agreements between nations may mandate them¹⁸⁷—but the bottom line is that no organization or individual

sovereignty and domestic laws); ELECTORAL COMM'N'S FORUM OF SADC COUNTRIES & ELECTORAL INST. OF S. AF., *supra* note 10, at 30–31 (requiring observers to act impartially and refrain from interfering in the electoral process); OSCE GUIDELINES, *supra* note 49, at 24 (establishing that observers may not interfere in voting, counting, or voters' decision-making). National election laws with provisions pertaining to international election observation similarly confirm that observers have an obligation to respect state sovereignty. *See, e.g.*, Decision 7/27-4, *supra* note 128, pt. V, § 5.2.9 (prohibiting observers in Azerbaijan from “interfer[ing] in the adoption of the decisions of the relevant election commission”).

185. HANF ET AL., *supra* note 173, at 13 (“[O]bservers . . . are bound to maintain strict political neutrality They must make a point of concealing their attitudes. A fundamental rule of behaviour for all observers is impartiality towards all political groupings.”); *see also* Inter-American Democratic Charter, *supra* note 57, art. 24 (“They shall be conducted in an objective, impartial, and transparent manner and with the appropriate technical expertise.”); ELECTORAL COMM'N'S FORUM OF SADC COUNTRIES & ELECTORAL INST. OF S. AF., *supra* note 10, at 32 (stating that observers should strive “to act in a strictly impartial and unbiased manner”).

186. HANF ET AL., *supra* note 173, at 13–14. Defining the observers' function as follows:

[T]heir task is to observe, not to help or to intervene. Observers watch, ask questions, take notes and report to their organisation. . . .

. . . Observers can refer to and even quote the applicable statutory regulations, refraining from further commentary. In any event, they should point out that the responsible authorities alone are empowered to take decisions. Even if they observe occurrences that they feel are wrong or illegal, they may not intervene, but must restrict themselves to recording the incident. In short: observers should see themselves as chroniclers, not as electoral officials, and act accordingly.

Id. (second emphasis added); *see also* Copenhagen Document, *supra* note 45, para. 8 (“Such observers will undertake not to interfere in the electoral proceedings.”).

187. *See, e.g.*, On the Election of the President of the Russian Federation art. 10, § 2, Federal Law No. 19-FZ (2003), available at <http://www.cikrf.ru/eng/law/FL-19-FZ.jsp> (“The rules for the participation of foreign (international) observers in

may enter a nation to conduct election observation without the consent of the host nation.¹⁸⁸

The requirement that organizations and individuals possess invitations before entering a host nation not only protects national sovereignty but also ensures that the observation missions undertake all necessary preparations before beginning their work.¹⁸⁹ For this reason, some analysts have recommended that host nations “invite . . . observer mission[s] . . . at least four months before the election date. It is more difficult not only to make proper preparations for the mission at shorter notice, but also to adequately examine whether the other preconditions are met.”¹⁹⁰ In reality, the exact length of the advance notice required should depend on case-by-case analyses since different circumstances in host nations will require different preparations. Nevertheless, a minimum requirement is reasonable.

Finally, an invitation represents the crucial first recognition of the extent of an observer’s mandate.¹⁹¹ It binds the host nation to opening the electoral process to observers and ensures international election observation missions that they will be able to conduct their work freely.¹⁹² To achieve this dual objective, invitations must include language that goes beyond simple authorization of entry into the country; they should also include specific details about the steps of the electoral process over which observers may preside. Ideally, nations should grant observers access to the entire electoral process, extending from “creation of the election authorities, through voter registration, the nomination of candidates, the election campaign[,] and the ballot, to the counting of votes and the dealing with

monitoring the preparation and conduct of the election of the President of the Russian Federation shall be established by the international treaties of the Russian Federation, this Federal Law, other federal law.”); ELECTORAL COMM’N’S FORUM OF SADC COUNTRIES & ELECTORAL INST. OF S. AF., *supra* note 10, at 31 (“The EMB or relevant authority must invite observer missions.”).

188. See Declaration, *supra* note 1, at 4 (acknowledging that an invitation from the host country is a vital prerequisite for launching efforts to observe elections); HANF ET AL., *supra* note 173, at 9 (“The government concerned must invite the observer mission . . .”); MERLOE, *supra* note 41, at 7 (“Intergovernmental organizations typically require an invitation or request from member governments before they can engage in such matters.”).

189. HANF ET AL., *supra* note 173, at 9.

190. *Id.* For a more in-depth discussion of those “other preconditions,” see *infra* Part V.B.4.

191. See HANF ET AL., *supra* note 173, at 10 (stating that the host nation must guarantee certain preconditions for observer missions). For more on what obligations, rights, and duties are included in an observer’s mandate, see *infra* Part V.B.5–V.B.6.

192. See HANF ET AL., *supra* note 173, at 9–10 (listing preconditions meant to ensure the ability of observer missions “to go about their work unhindered and on reasonable technical facilities”).

objections.”¹⁹³ This list is certainly not exhaustive, but it highlights critical steps and reinforces that laws should not limit election observers only to the observation of activities occurring on voting days.

4. Obligations and Duties of Host Nations Requisite to the Acceptance of an Invitation

Before international election observers commit to undertaking observation missions in host nations, it is essential that those nations ensure the observation organizations that they will “be[] able to go about their work unhindered and on reasonable technical facilities. To ensure this, it is necessary to set strict preconditions for observer missions.”¹⁹⁴ It is particularly important that the observer missions obtain an assurance of “reasonable probability” that the election process will take place under peaceful circumstances (i.e., not during a national civil war).¹⁹⁵ Conducting election observation missions during violent conflicts would not only put the observers in grave danger but also be entirely ineffective since the national attention would be committed to resolving the conflict rather than completing the election.¹⁹⁶ Indeed, certain particularly vulnerable groups might also feel unable to express their true political will. While the international community may choose to address such conditions through other methods, the presence of international election observation missions alone will not accomplish that goal.

International election observation missions must also ensure that the host country possesses an electoral law that is conducive to free and fair elections. Critical to the definition of international election observation is the principle that election monitors observe the *implementation* of—and do not create or shape—already existing electoral laws.¹⁹⁷ For these reasons, election observers must make certain that the host nation’s “electoral laws and its implementing regulations . . . meet democratic standards. . . . Otherwise, the

193. *Id.*

194. *Id.* at 9.

195. *Id.*

196. *Id.* (“It is unlikely that elections held under conditions approaching civil war will be democratic. They are certainly not suitable for external observers.”).

197. *See, e.g.*, The Carter Center, Democracy Program, What is Election Observation?, http://www.cartercenter.org/peace/democracy/nav_question1.html (last visited Mar. 29, 2010) (“The overarching goal of election observation is to support efforts to strengthen democratic processes and institutions and to support the conduct of elections that meet international standards, are peaceful, and have credible results.”).

planned elections will, by definition, not be free and fair, and there is no point in sending observers.”¹⁹⁸

These very laws and regulations must also include assurances that host nations will meet certain specific preconditions, detailed explicitly in the Annex, that will make the process democratic. National election laws, international principles, and scholarly treatises provide detailed insight into what these preconditions should include. An initial prerequisite is that host nations must allow the observation organizations to choose their own observers.¹⁹⁹ Nations shall not discriminate—for any reason—against observers or preference certain observers over others.²⁰⁰

Second, as the invitation should indicate, the host nation must guarantee observers full access to the entire electoral process.²⁰¹ This unfettered access shall also extend to all electoral officials stationed throughout the observation area at any time during the process,²⁰² and host nations should ensure that “open and ongoing communication” can take place between their officials and the observation organizations.²⁰³ Some scholars have even recommended that host nations designate officials to act specifically as liaisons between the nation’s government and the observation missions.²⁰⁴

Finally, observation missions should only enter host nations if those nations pledge to provide vital services during the observation period. Such services include, but are not limited to, 1) means of transportation; (2) communication facilities and equipment; (3) equipment necessary to fulfill observation duties; (4) police protection; and (5) emergency medical care.²⁰⁵ In practice, guarantees to provide these services have been vague. Both Russia and Azerbaijan, for example, recognize that international election observers are under the patronage of their government and,

198. HANF ET AL., *supra* note 173, at 9.

199. *Id.* at 10 (“The dispatching body must be completely *free in its choice of observers*. Attempts to exclude or restrict the choice to specific persons or groups of persons must be decisively rejected.”).

200. *Id.*

201. *Id.*; *supra* Parts IV.A.3, IV.B.3 (discussing Russian and Azerbaijani election law provisions that grant access to observers at all stages of the election process).

202. HANF ET AL., *supra* note 173, at 10 (“The inviting government must guarantee that the observers will be *free to contact unmonitored any person at any time and anywhere* for the entire period of the electoral process.”); *see also* On the Election of the President of the Russian Federation art. 23, § 1, Federal Law No. 19-FZ (2003), available at <http://www.cikrf.ru/eng/law/FL-19-FZ.jsp> (“The relevant election commission shall make arrangements to ensure free access of these persons to its meeting and to the premises.”).

203. HANF ET AL., *supra* note 173, at 10.

204. *Id.*

205. *Id.*

therefore, are entitled to all necessary assistance.²⁰⁶ Neither nation's law, however, offers any specifics of what that assistance entails.²⁰⁷ The Annex to the Declaration both recognizes that observers are legally under the patronage of the host nation and delineates at least the most vital services that a host nation must provide.²⁰⁸

5. Accreditation of International Election Observers

Individuals participating in international election observation missions must receive accreditation.²⁰⁹ Accreditation procedures ensure that election officials can easily identify sanctioned observers, guarantee that observers are able to move freely throughout the observation area, and prevent fraudulent observation attempts. Indeed, the principles of OSCE,²¹⁰ SADC,²¹¹ and NDI,²¹² as well as the Declaration,²¹³ recognize that host nations *must* provide a proficient accreditation procedure for all rightfully invited observers. National laws should do more than just mandate accreditation—they should formally establish the requirements of observer status, the administrative procedures necessary to achieve such status, and the grounds for revocation of that status.²¹⁴

206. On the Election of the President of the Russian Federation art. 24, § 7, Federal Law No. 19-FZ (2003), available at <http://www.cikrf.ru/eng/law/FL-19-FZ.jsp> (“[Observers are] under the patronage of the government of the Russian Federation” and that Russian officials must “render the necessary assistance to [those] foreign (international) observers.”); ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 44.7 (“International observers shall be under the protection of the State while within the territory of the Republic of Azerbaijan. Election commissions, state government bodies and municipalities shall be obliged to render the necessary assistance to them.”).

207. See On the Election of the President of the Russian Federation art. 24, § 7, Federal Law No. 19-FZ (2003), available at <http://www.cikrf.ru/eng/law/FL-19-FZ.jsp> (lacking such specificity); ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 44.7 (same).

208. See *infra* app. A, part IV.A.

209. HANF ET AL., *supra* note 173, at 10.

210. OSCE GUIDELINES, *supra* note 49.

211. ELECTORAL COMM’N’S FORUM OF SADC COUNTRIES & ELECTORAL INST. OF S. AF., *supra* note 10.

212. MERLOE, *supra* note 41.

213. Declaration, *supra* note 1.

214. While some organizations’ principles suggest that accreditation should only be a formality (for example, the Declaration notes that host countries should guarantee observers the right to accreditation, Declaration, *supra* note 1, para. 12(g)), others seem to allow the host countries a more active role in establishing the procedures and requirements for accreditation, see, e.g., OSCE GUIDELINES, *supra* note 49, at 24 (stating that national laws should clearly specify which governmental organization holds the authority to accredit observers). As in all areas of international election observation, procedures must respect both national sovereignty and individual rights. See *infra* app. A, parts I–II (acknowledging the right to vote as a basic human right and the importance of respecting national sovereignty). Therefore, while countries

As this Note has emphasized, respect for national sovereignty is essential. For that reason, each host nation should have the ability—through its own laws—to establish the specific accreditation procedures required of observers. The Annex to the Declaration offers a set of standardized accreditation procedures.²¹⁵ Host nations and international election observation organizations referencing the Declaration may then easily choose either to adopt the procedures already set forth in the Annex or to use them as a foundation for their own procedures. The bottom line is that many nations—namely those with limited resources to develop their own laws—may benefit from standardized procedures that make the accreditation process more efficient. So long as the ultimate choice of procedures rests with the nation itself, sovereignty will remain unthreatened.

Drawing from the Russian Election Law and Azerbaijani Election Code, the proposed Annex divides accreditation procedures into two primary categories: (1) qualifications for obtaining observer status and (2) administrative measures. With respect to the first category, both Russia and Azerbaijan shift the burden of determining who may be accredited to the invitation phase, extending invitations only to those who—so long as they meet all other legitimate limitations—are qualified to observe.²¹⁶ Whether such a determination occurs before or after the host nation extends invitations is irrelevant;²¹⁷ what matters, however, is that the host nation's laws clearly articulate the qualifications for serving as an observer. Those qualifications include minimum age, a clean legal record in all previous election observation missions, lack of political affiliations with any groups or individuals within the host nation, and lack of financial associations with any political entities within the host nation.²¹⁸

The proposed Annex further establishes specific application requirements for invited observers. Completed applications both allow the host nation to prepare for the arrival of the observer and

should be granted as much autonomy as possible in devising general requirements for observers, there must also be oversight to ensure that countries do not selectively discriminate against certain classes of potential observers.

215. See *infra* app. A.

216. See *supra* Parts IV.A.2, IV.B.2 (discussing the components of this phase in both Russian and Azerbaijani law).

217. It should be noted, however, that it would seem to be more efficient to determine qualifications beforehand and invite only those generally meeting those qualifications (i.e., international election observation organizations the country deems to be fair and credible). A second round of background investigation can then be implemented during the administrative measures phase of the accreditation process to ensure, for example, that if there is an age limit for observers, no one under that limit is able to observe.

218. See *infra* app. A, part V.D (listing qualifications for obtaining observer status).

permit the host nation to conduct final background checks of individual observers to ensure that each meets any legitimately prescribed criteria, such as a minimum age restriction. The Azerbaijani Election Code provides an excellent guideline for the requirements of an application, including full name, nationality, place of residence, valid government identification (such as a driver's license), and two photographs.²¹⁹ The application should also provide space for the applicant to indicate whether he is working on behalf of a political party, specific candidate, or INGO.²²⁰ The Azerbaijani Election Code requires that applicants submit this information at least ten days before the start of the election.²²¹ While such deadlines are meant to allow the host nation time to confirm the credibility of both the information provided and the applicant, a stringent deadline of any kind risks diminishing or even eliminating election observation missions. In addition, modern technology could allow most governments to conduct their vetting process quickly and easily. Recognizing the importance of observation and the ever-increasing ability to use modern technology to confirm applicant information, the proposed Annex institutes a "recommended" deadline but also establishes a provisional application process whereby potential observers may apply at any time—even on the day of the election—and receive permission to commence observation as soon as the host nation can complete an expedited approval process.

To complete the accreditation process, the host nation must provide approved observers with identifying documents. The Russian Election Law requires only that the election commission provide the observer with an ID card and that he carry a copy of his invitation and a second identifying document.²²² The requirements of the Azerbaijani Election Code better represent what the Annex mandates.²²³ Election commissions should issue ID badges that (1) are printed in the languages of both the host country as well as the observer's native country; (2) include the observer's name, nationality, and local address; (3) indicate whether the observer represents any candidate, party, or organization; and (4) note where the observer may conduct his work.²²⁴ Furthermore, accreditation badges should display the observer's picture prominently and be

219. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 40.6.

220. *Id.*

221. *Id.*

222. On the Election of the President of the Russian Federation art. 24, § 3, Federal Law No. 19-FZ (2003), *available at* <http://www.cikrf.ru/eng/law/FL-19-FZ.jsp>.

223. Compare ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, arts. 40.6, 44.4 (detailing requirements for observer identity cards), *with infra* app. A, part V.H (envisioning similar requirements).

224. See *infra* app. A, part V.H.

printed on a material difficult to forge. Host countries may consider requiring that each observer also carry an additional, personal form of identification for clarification purposes.²²⁵

Finally, the Annex explains when host countries may revoke previously granted accreditation. In most cases, standards for revocation can be made simple by noting that a host nation may revoke accreditation at its discretion *if* an observer violates national law, international legal norms, or his individual mandate.²²⁶ Revocation of accreditation should not be understood to strip the host nation of the right to prosecute observers, where appropriate, for actual legal violations.

6. An Observer's Mandate: Rights and Reach of International Election Observers

Once observers successfully register to observe elections in a host nation, it is vital that they understand the reach and rights of their mandate. This substantive work is undoubtedly the most important part of the entire election observation mission, and observers must therefore know exactly what their status allows them to do. An observer's mandate includes both a general temporal tenure and more specific elemental rights. The Declaration makes this murky distinction, noting that observers (1) should conduct election observation over a timeframe that includes the pre-election, election-day, and post-election periods,²²⁷ and (2) shall monitor elements of the process such as voter registration, the delineation of election districts, and actual voting on election day.²²⁸

Given the scarcity of such important information in the Declaration, the proposed Annex not only includes a similar temporal mandate but also expounds on the ambiguous language of the Declaration by highlighting several specific elements of the entire electoral process over which observers' mandates should extend.²²⁹

The proposed Annex covers the time from which the precincts begin election-related work through the publication of election results.²³⁰ Although neither national election law discussed herein

225. See *infra* app. A, part V.I.

226. See *infra* app. A, part V.J.

227. *Supra* text accompanying note 81.

228. *Supra* text accompanying note 82.

229. See *infra* app. A, part VI (breaking down observer duties into specific elements of the electoral process).

230. See *infra* app. A; see also HANF ET AL., *supra* note 173, at 13 (stating that observers have unquestioned "rights to observe everything connected with the electoral process and to ask questions in this connection"); *supra* text accompanying notes 111–12, 154 (noting that both Russian and Azerbaijani election laws permit international

specifically recognizes the right to observe an election's preparatory stages, their general temporal provisions imply that observers should be present and working during the pre-election period²³¹ that includes voter registration, the nomination of candidates, campaigning, and election preparations.²³² Observers should also examine whether host nations are fulfilling their obligation to ensure that voter registration facilities or methods are available in all parts of the country and open at times that will give all interested persons the ability to register.²³³ In particular, observers must assess whether host nations (or other groups or individuals) are preventing specific classes of people from registering to vote²³⁴—a gross violation of free and fair election practices. If observers do witness such discriminatory practices, they should note them and any possible explanations.²³⁵

The proposed Annex next establishes an observer's mandate over the nomination of candidates, noting that host nations must allow anyone who wishes to run for election—and is otherwise legally eligible—to do so.²³⁶ Many countries have legitimate laws such as nationality requirements or age limits that candidates must meet,²³⁷ but observers should note any improper limitations on eligibility, such as those based on race or gender. Observers should also monitor whether the host nation adequately publishes and distributes details and deadlines related to the nominations process.²³⁸ The availability of such information is vital to ensuring that host nations provide all citizens—not just those attuned to the political process—an equal opportunity to participate in the electoral process. Observers should record any irregularities or ostensibly discriminatory practices and may choose to conduct background research or interviews to evaluate any potential irregularities.²³⁹

observers to inspect voting results, election returns, the completion of protocols of voting results, and the counting and recounting of votes).

231. See *supra* text accompanying notes 110, 154 (noting that Russian election law permits international observers to inspect empty ballot boxes and early returns, while Azerbaijani law and CEC regulations allow international observers to “observe the implementation of election activities”).

232. See HANF ET AL., *supra* note 173, at 20–22 (outlining general pre-election activities).

233. *Id.* at 20.

234. *Id.* at 20, 24.

235. *Id.* at 24.

236. See *id.* at 21 (“For elections to be equal, all candidates or list of candidates or parties that fulfil [sic] legal requirements must be allowed to run.”).

237. Cf. *id.* at 24 (noting that observation should monitor the “implementation of legal provisions”).

238. *Id.* at 24.

239. *Id.*

All candidates must also enjoy an equally free and fair right to campaign. To prevent certain political groups from facing unequal regulations, observers must above all monitor the host nation's commitment to guaranteeing "effective freedom of assembly and of opinion for all competing political forces."²⁴⁰ In practice, this means that every candidate and party must have the same access to venues and audiences.²⁴¹ Laws must prohibit and observers should note any tactics meant to limit a candidate's ability to campaign, such as fear and intimidation.²⁴²

The final element of the pre-voting period subject to the scrutiny of observers is the preparation of the polls for election day. Prior to the election, host nations afford observers stationed in that nation the right to "survey the state of [election] preparations approximately one month before polling."²⁴³ The proposed Annex recognizes that election-day voting observation would mean little if the preparations for election day failed to ensure an equal playing field for both candidates and voters. Thus, several pre-voting procedures that observers should monitor include the creation of national, regional, and local election authorities; the training of election personnel; the nomination and accreditation of candidates' and parties' agents; the choosing of polling stations; and the distribution of necessary equipment and election materials—including voting machines, ballot boxes, paper ballots, writing utensils, and other necessities—to those polling stations.²⁴⁴

Moving to election day, the proposed Annex recognizes that "close and extensive observation of what happens at polling stations on the polling days is the heart of any electoral observation."²⁴⁵ Election day observation, broadly speaking, should cover "[a]ll details of electoral procedures";²⁴⁶ indeed, even the national electoral laws this Note has examined identify the mandated rights of observers on voting days.²⁴⁷ Observers must first be able to determine whether polling stations are prepared to operate as soon as voters arrive. This includes examining empty ballot boxes and those containing ballots of

240. *Id.* at 21.

241. *Id.*

242. *Id.*

243. *Id.* at 22.

244. *See id.* at 27 (noting the importance of these activities in assuring a fair election process).

245. *Id.* at 22.

246. *Id.*

247. *See supra* text accompanying notes 111, 155 (noting, respectively, that Russian and Azerbaijani election laws provide observers the right to witness voting day activities).

early voters (where applicable) and studying voter rolls²⁴⁸ to ensure that when regular voting begins later in the day, the votes placed in the ballot box are legitimate and undiluted.

The proposed Annex next recommends that observers be present at the polling station(s) throughout election day voting.²⁴⁹ This allows observers to monitor steps of the voting day procedures ranging from voter sign-in to the preparation of results protocols.²⁵⁰ The temporal mandate covers other steps including the counting of votes when polls close, the tallying of unused ballots, the preparation of any protocol or other documents related to voting or vote results, the obtaining of copies of such documents, and the transfer of those documents from local precincts to the national election commission.²⁵¹ Observers should, of course, record supportable assertions as to the validity and credibility of these procedures. Finally, observers must have the right to observe the tallying of any recounts, though likely not on election day itself.²⁵²

These rights represent the minimum that host nations should afford international observers. Many countries (including Azerbaijan) go one step further in including an important, yet still disputed, right: the right of observers to provide real-time constructive criticism to election workers.²⁵³ As stated throughout this Note, it is imperative that international observers avoid infringing on the sovereign rights of host nations. The question remains, however, whether the provision of advice or constructive criticism during the election period should be considered an interference with electoral procedures (“election assistance”) or

248. See, e.g., *supra* text accompanying notes 110, 155 (noting that Russian election law permits international observers to inspect empty ballot boxes and early returns and Azerbaijani law allows observers to examine ballot distribution and tallying).

249. See *infra* app. A, part VI.D.1.

250. See *infra* app. A, part VI.D.1.

251. See *infra* app. A, part VI.D.1; see also HANF ET AL., *supra* note 173, at 22 (“[T]he count and subsequent aggregation of election results . . . should be closely observed. Observer missions should be prepared for delays in counting and compiling results and not disband prematurely.”). An observer’s mandate *may* also include the right to affix his signature to any official documents (in essence, to confirm the accuracy and validity of those documents), see *supra* text accompanying note 111 (noting that Russian election law grants observers the right to sign election results to indicate their approval), but the host nation should exclusively make any decision to allow or require an observer’s signature on an official document. Given the importance of respecting national sovereignty, *infra* app. A, part II, a host nation’s decision not to include an observer’s signature should not affect that observer’s ultimate assessment of the fairness of the voting procedures.

252. See *infra* app. A, part VI.E.2; see also *supra* text accompanying notes 111, 155 (indicating that Russian and Azerbaijani laws grant this right).

253. See *supra* text accompanying note 155 (noting that Azerbaijani law allows observers to provide precinct directors with constructive comments).

simply real-time advice to workers that they can choose to accept or ignore. Hanf provides some insight into the difference between election assistance and election observation:

Election assistance can take many forms: drawing up an electoral law, planning and organizing an electoral authority, training electoral officers, etc. The wider the scope of assistance, the more advisable it is to maintain a strict separation between the organisation and personnel of observation, on the one hand, and assistance on the other, similar to the separation between the execution and evaluation of a project.²⁵⁴

Furthermore, observers have the right—even the obligation—to report fully the findings of their observation mission, including criticisms of the process and recommendations for the future.²⁵⁵ If observers are allowed to make such constructive suggestions *after* the election is over, then there seems no logical reason to forbid them from offering such advice *during* the voting. The right to do so would simply allow election officials from the host nation to correct errors immediately, thus making the very election being observed—not just *future* elections—more free and fair. The dispositive difference between interference and non-interference lies in the fact that observers offering real-time advice would simply be making on-the-spot judgments about the implementation of national laws; they would not be creating the laws, organizing the electoral authorities, or undertaking any other responsibility that one might construe as sovereign interference. For these reasons, the proposed Annex affords observers the right to offer officials at polling stations real-time advice if they realize that authorities are blatantly implementing a national election law improperly. Observers should record how officials had been implementing the law, the fact that they offered advice, and the effect, if any, of that advice.

If national election laws allow observers to monitor pre-election, election-day, and post-election procedures, observer missions will be able to execute their duties and fulfill the objectives of international election observation.

7. An Observer's Limits: Obligations of and Limits on International Election Observers

Understanding the limits on and obligations of the individuals undertaking the observation mission is also critical. Harkening back yet again to the notion of respecting national sovereignty, an observer's most important obligation is to respect and submit to the

254. HANF ET AL., *supra* note 173, at 15.

255. See *infra* Part V.B.8 (discussing duties of an international observer to offer accurate reports and provide recommendations).

laws of the host country.²⁵⁶ Furthermore, the requirement that observers obey national law extends to their dealings with officials of the state, demanding that observers cooperate with all local agents.²⁵⁷

A second obligation of international observers is that they remain completely neutral and unbiased throughout the electoral process. Indeed, the Declaration and every international declaration of principles, national election law, and treatise on the subject emphasizes the importance of observer neutrality.²⁵⁸ The proposed Annex thus requires observers to maintain strict neutrality at all times.

But it does not stop there. Because most specific limitations on election observers only state that they must remain uninvolved and impartial, the proposed Annex identifies more specifically those areas of the election process in which observers may *not* participate. These areas include voting,²⁵⁹ issuing ballots to voters,²⁶⁰ polling voters,²⁶¹ helping voters vote (such as by marking the ballot for them),²⁶²

256. On the Election of the President of the Russian Federation art. 24, § 7, Federal Law No. 19-FZ (2003), available at <http://www.cikrf.ru/eng/law/FL-19-FZ.jsp> (stating that observers are under the patronage of the Russian Federation, and subject to its laws and criminal prosecution if they are to break those laws); ELECTORAL COMM'N'S FORUM OF SADC COUNTRIES & ELECTORAL INST. OF S. AF., *supra* note 10, at 32 (mandating that observers must follow the laws of the country and respect cultures and practices); HANF ET AL., *supra* note 173, at 13 ("The observers are subject to the laws of the country in which they are operating. They do not enjoy diplomatic immunity. . . . [T]hey enjoy the same privileges as the citizens of the country.").

257. See HANF ET AL., *supra* note 173, at 55 ("The observer shall abide by the decisions of all electoral authorities, including requests to leave a voting station or any specific area."); *supra* note 66 (discussing the SADC principle mandating that observers follow the laws of the country and respect cultures and practices).

258. See, e.g., ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, arts. 42.3, 44.6, 44.10 (prohibiting observers from support or campaigning for a candidate or party); ELECTORAL COMM'N'S FORUM OF SADC COUNTRIES & ELECTORAL INST. OF S. AF., *supra* note 10, at 30–31 (emphasizing that observers must act impartially and without either prejudice or favoritism toward any party, individual, or part of the electoral process); HANF ET AL., *supra* note 173, at 55 ("Observers shall maintain strict neutrality in the conduct of their duties."); *supra* note 55 (noting that the OSCE prohibits interference with voting, counting, or voters' decision-making).

259. See *infra* app. A, part VII.B.2; see also *supra* note 55 (noting the OSCE's prohibition on observers' participation in voting activities); cf. *supra* text accompanying note 117 (stating that Russian election law prohibits observers from taking "advantage of their status to carry on activities unrelated to monitoring").

260. See *infra* app. A, part VII.B.3; see also *supra* text accompanying note 158 (noting that Azerbaijani election law prohibits observers from issuing ballots).

261. See *infra* app. A, part VII.B.4; see also *supra* text accompanying note 158 (noting that Azerbaijani election law prohibits observers from polling voters).

262. See *infra* app. A, part VII.B.5; see also *supra* text accompanying note 158 (noting that Azerbaijani election law prohibits observers from marking ballots for voters, even if so requested).

influencing or lobbying voters,²⁶³ partaking in the official vote counting,²⁶⁴ or responding to voters' questions about subjects unrelated to observation.²⁶⁵

Finally, the proposed Annex seeks to ensure that observers do not interfere with or obstruct the work of national election authorities. It thus includes provisions prohibiting general obstruction of the electoral authorities,²⁶⁶ forbidding observers from abusing their status for purposes unrelated to observation of the election,²⁶⁷ allowing precincts and polling stations to keep a record of the presence of election observers,²⁶⁸ and directing observers to work independently and without influence from groups or individuals besides their own observation mission.²⁶⁹

8. Reporting Duties of International Election Observers and Observation Missions

In its final article, the proposed Annex recognizes that an observer must report his findings at the conclusion of his mission. The Declaration provides only that observers should offer accurate and impartial reports to the public, the press, or both that announce their findings and offer recommendations for improving the electoral process.²⁷⁰ Similarly—although it is not in their power to dictate the

263. See *infra* app. A, part VII.B.6; see also *supra* note 55 (citing the OSCE's prohibition on observer interference with voters' decisions); *supra* text accompanying note 158 (noting that Azerbaijani election law prohibits observers from political campaigning).

264. See *infra* app. A, part VII.B.7; see also *supra* note 55 (citing the OSCE's prohibition on observer participation in vote-counting); *supra* text accompanying note 158 (noting that Azerbaijani law forbids observer participation in vote-counting).

265. See *infra* app. A, part VII.B.8; see also *supra* text accompanying note 158 (noting that Azerbaijani law prohibits observers from responding to voters' questions about anything other than the individual's status as an observer).

266. See *infra* app. A, part VII.C.1.

267. See *infra* app. A, part VII.C.2; see also *supra* text accompanying notes 117, 160 (explaining Russian and Azerbaijani laws contain similar provisions prohibiting abuses).

268. See *infra* app. A, part VII.D; see also *supra* text note 115 and accompanying text (citing the Russian election law provision that requires precinct record-keeping of observers). Such a provision not only ensures that the host nation maintains a record of potentially disruptive observers, but it also guarantees that the host nation and legitimate observation missions can work together to be certain that no fraudulent observers worked (or are working) the polls.

269. See *infra* app. A, part VII.C.3; see also *supra* text accompanying note 116 (noting the Russian law mandate that observers work only with their official parent organizations); *supra* text accompanying note 159 (citing the Azerbaijani requirement that observers act independently, using only their own money or funds of their organizations).

270. See *supra* note 93 and accompanying text (quoting the Declaration's reporting requirements).

questions on which observers should report—both the Russian Election Law and Azerbaijani Election Code permit observers to comment publically on the election process through press conferences and the mass media.²⁷¹ These provisions provide an important foundation for an observer's ability to comment on electoral processes, but they remain too broad and fail to offer even a sample of the questions that an observer's final report should answer. The proposed Annex remedies this shortcoming.

Hanf describes election observers as “instant administration[s]’ that ha[ve] to provide information for a final, substantiated evaluation of the election on the basis of defined criteria.”²⁷² Accurate and honest reporting is essential to the primary goal of international election observation: improving elections so that they may become free and fair.²⁷³ For this reason, it is vital that reporting not only occur but also be standardized so that observers answer critical questions about the electoral process.²⁷⁴ In order to fulfill these goals, the proposed Annex establishes two reporting techniques applicable throughout the observation period. First, observers conducting missions on the ground prior to election day should begin by reviewing the host nation's election laws and regulations to ensure that the franchise is universal, all votes are counted once, the ballot is secret, no one is improperly excluded from voting (i.e., on account of race, gender, etc.), all political parties are eligible to participate, and all candidates are able to campaign.²⁷⁵ Furthermore, these pre-election day observers should take notes that address these issues, as well as whether (1) all eligible parties are legally able to field candidates, (2) all candidates enjoy equal legal footing to run a campaign, (3) there is a fair voter registration process that does not improperly discriminate, and (4) there exists freedom of assembly and campaigning.²⁷⁶

271. *Supra* text accompanying notes 119, 121, 163. Indeed, Azerbaijani election law grants observers the right to offer suggestions and comments to election commissioners during the actual election regarding the implementation of the existing electoral laws. ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN, *supra* note 124, art. 42.2.8. For a discussion of this sort of real-time observation and reporting, see *supra* Part V.B.6.

272. HANF ET AL., *supra* note 173, at 52.

273. See Inter-American Democratic Charter, *supra* note 57, pt. V (requiring that observers or observation missions provide detailed reports of their findings to OAS leadership); ELECTORAL COMM'N'S FORUM OF SADC COUNTRIES & ELECTORAL INST. OF S. AF., *supra* note 10, at 31 (urging observers to create and distribute impartial and professional press releases as well as assessment reports meant to help host nations' election commissions identify and address concerns with the electoral process).

274. See, e.g., HANF ET AL., *supra* note 173, at 52 (“In most cases, . . . observer reporting will be a matter of filling in and filing . . . survey observation forms.”).

275. *Id.* at 18, 21.

276. *Id.* at 18.

Second, the proposed Annex exhorts observers to direct careful attention to election day proceedings. During this period, observers must not only continue to monitor whether the host nation fairly implements its election laws but also adjudge whether election officials improperly turn away voters at the polls, destroy or inappropriately handle or count ballots, or in any other way misuse their power in an effort to affect the outcome of the election.

Throughout the observation process, international election observation missions should provide observers with a standardized reporting form. Various missions may, as the proposed Annex encourages, work together to formulate a single form so that host nations and international organizations reviewing the findings from an election need only examine one template. As outlined in the proposed Annex, the forms should include both specific “yes or no” questions related to the various aspects of the election process and blank space for observers to provide additional commentary where necessary. Observation missions should then compile all reports that their respective observers file and create a formal report reviewing the scrutinized aspects of the election. Missions should distribute copies of all completed forms as well as this final report to—at a minimum—the host nation, other INGOs participating in observation of the election, and the United Nations Electoral Assistance Division.

C. Concluding Remarks on the Proposed Annex

By addressing in detail the preceding eight elements of international election observation, the proposed Annex offers what the Declaration alone does not—a clear, unambiguous statement of the rights, duties, and responsibilities of both international election observers and host nations. The proposed Annex gives INGOs and states alike the opportunity either to incorporate its provisions directly into their codes of conduct and election laws or to use its detailed stipulations as a guide for their own laws and regulations.

VII. CONCLUSION

International election observation is an efficient and increasingly prevalent tool for guaranteeing free and fair elections. When election observation missions succeed, all elements of election processes are more likely to adhere to national law and satisfy international democratic standards.

This Note has reviewed existing international election observation standards, examined a selection of national election laws, and proposed a detailed Annex to the leading source of international election observation principles—the UN Declaration of Principles for International Election Observation. The proposed Annex is wide in

scope and rich in detail. It addresses the objectives of observation, the importance of respecting national sovereignty, the invitation and accreditation of observers, the obligations of host nations requisite to the acceptance of invitations to observe, the rights of and limits on election observers, and those observers' duty to report their findings. Rather than offering generalized principles that election observers *should* follow, the proposed Annex enriches existing standards of international election observation and offers specific provisions that nations and INGOs can adopt outright or use as a detailed guideline.

The proposed Annex promotes efficient and standardized international election observation practices worldwide. It will not only clarify the rights and obligations of observers but also provide states with a set of easily adoptable standards. Never before has the international community espoused a platform that moves its members—as a whole—so much closer to a uniform scheme for international election observation. The adoption of the proposed Annex to the UN Declaration of Principles for International Election Observation would do just that.

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Appendix A

Proposed Annex to the UN *Declaration of Principles for International Election Observation*

- I. Objectives and Implications of International Election Observation
 - A. Theoretical Underpinnings of International Election Observation
 1. **The Right to Vote:** The right of all citizens to vote is a basic human right guaranteed by the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights.
 2. **Participation in Public Affairs:** All citizens enjoy a basic human right to participate in the public affairs of his country, which manifests itself in the right to vote.
 3. **Free and Fair Elections:** Elections are the fundamental decision-making process in all democracies and represent any state's foremost expression of national sovereignty. For this reason, free and fair elections serve the important goal of demonstrating sovereign authority and legitimacy.
 - B. Concrete Objectives of International Election Observation
 1. Properly executed international election observation missions have the ability to—
 - a. help host countries administer credible elections;
 - b. usher “transitional democracies” through their first foray into the electoral process; and
 - c. establish lasting electoral programs in host countries that are conducive to continued free and fair elections.
 2. International election observation missions' external legitimization of national elections is critical to ensuring the broad acceptance of the outcome of those elections.

C. Broader Implications of International Election Observation

1. The principles protected by international election observation—namely, sovereignty and democracy—are relevant not only to host nations but also to democratic governments worldwide.
2. Democratic governments have an interest in healthy democracies throughout the world because they—
 - a. can help resolve conflicts without violence; and
 - b. contribute to the maintenance of global peace and promotion of egalitarian principles.

II. Respecting National Sovereignty

- A. Notwithstanding the objectives and implications of international election observation established in Article I of this Annex, observers may take absolutely no action that threatens the national sovereignty of a host nation by interfering in decision-making processes that should be left to the discretion of that nation.
- B. In furtherance of this regulation, observers must—
 1. remain politically neutral throughout the observation mission;
 2. monitor elections passively and record their observations rather than intervening.
- C. The prohibitions of certain activities in this Article shall not be construed to exclude other prohibitions of actions that may threaten national sovereignty enumerated in the following provisions of this Annex.

III. Invitation of International Election Observers

- A. International election observation missions and individual election observers must receive an invitation to observe from the host nation before entering that nation.
- B. The purposes of invitations include but are not limited to—
 1. protecting the sovereignty of the host nation;
 2. ensuring that observation missions may have adequate time to undertake all necessary preparations before beginning their work; and
 3. establishing the extent of an observation mission's or an individual observer's mandate

and binding the host nation to opening the entire electoral process to observers.

- C. Content of Invitations
1. Invitation should make clear that observers will be entitled to monitor all the steps of the entire electoral process, including but not limited to—
 - a. the creation of election authorities;
 - b. voter registration;
 - c. the nomination of candidates;
 - d. campaigning;
 - e. voting;
 - f. the counting of votes; and
 - g. the handling of objections.
 2. The enumerations in this section shall not be construed to exclude other steps that make up part of a nation's electoral process.
- D. Invitations may take various forms, including but not limited to—
1. permanent provisions of international law permitting observers to participate in all (or certain specified) elections;
 2. provisions of regional agreements between nations permitting observers from states parties to the agreement to participate in the observation of elections in any of the other states parties;
 3. case-by-case invitations extended by the host nation to international election observation organizations or individual observers;
 4. any other form of invitation that makes absolutely clear that the host nation consents to international election observation missions.
- E. Host nations should extend invitations at a reasonable time prior to election day. As a general rule, the amount of time before the election that host nations should allow when extending invitations should—
1. be based on the situation on the ground and the presumed difficulty of preparing an election observation mission;
 2. never be shorter than one month.

IV. Obligations and Duties of Host Nations Requisite to the Acceptance of an Invitation

- A. Host nations have an obligation to assure international election observation organizations that—
1. the election process will be carried out in peaceful circumstances;
 2. the national election law is conducive to the free and fair elections and meets widely accepted democratic standards;
 3. the observation organizations may choose their own observers without discrimination or preferences by the host nation;
 4. observers will have full access to the entire electoral process and all election officials in the observation area;
 5. observers may engage in open and ongoing communication with national officials specifically designated as election liaisons;
 6. observation organizations shall be considered to be under the patronage of the host nation while conducting its observation activities;
 7. they will provide all vital services including but not limited to—
 - a. means of transportation;
 - b. communication facilities and equipment;
 - c. other equipment necessary to fulfill observation duties;
 - d. police protection; and
 - e. emergency medical care.
- B. International election observation organizations should conduct preliminary research independently to determine that any guarantees made by the host nation are actually true. If organizations have any reason to believe that the host nations will be incapable of meeting these preconditions, they reserve the right to decline to conduct election observation in that host nation.

V. Accreditation of International Election Observers

- A. Any individual participating in international election observation must receive accreditation from the election commission of the host nation before commencing any procedures related to election observation.
- B. Accreditation satisfies two primary purposes—

1. Ensuring that sanctioned observers are easily identifiable and able to move freely throughout the observation area; and
 2. Preventing fraudulent observation attempts.
- C. Accreditation procedures may be divided into two primary categories—
1. Qualifications for obtaining observer status; and
 2. Administrative measures.
- D. Qualifications for obtaining observer status include but are not limited to—
1. a minimum age requirement that matches the minimum voting age in the host nation;
 2. the lack of political affiliations with any groups or individuals within the host nation;
 3. the lack of financial associations with any political entities within the host nation;
 4. the lack of familial relationships with any political entities within the host nation; and
 5. any other situation that may lend itself to bias.
- E. All invited observers must complete an application to obtain accreditation that requires them to provide—
1. their full name;
 2. their nationality;
 3. their home address;
 4. their place of residence within the host nation;
 5. a copy of valid government identification (such as a passport or driver's license);
 6. two photographs; and
 7. an indication of whether they are working on behalf of a political party, specific candidate, or INGO.
- F. Applicants should submit applications to the host nation's election commissions according to the following timeline—
1. It is recommended that applicants file all necessary paperwork at least 10 days before election day;
 2. If applicants fail to file paperwork according to the deadline established in subsection (1) of this section, they may still apply for accreditation under a provisional procedure.
 - a. Under the provisional procedure, applicants provide the same information as normal applicants as

- well as an explanation for the delay in their submission.
- b. Host nations are encouraged to expedite the approval process so that provisional applicants may begin observation as soon as possible.
 - c. Provisional applications may be filed at any time after the initial recommended deadline and until polls open on election day.
 - d. Host nations should face no legal obligation to approve provisional applications, but they should not fail to approve such applications simply because of the time at which the applications were submitted.
- G. Applicants denied accreditation may appeal the denial first to the national election commission and then, if denied again, to the federal trial court of the host nation. In all cases, host nations reserve the right to determine the details of procedures within their judicial system.
- H. Approved applicants shall receive an identification card—
1. printed in the language of the host nation and in the observer's native language;
 2. including the observer's name, nationality, and local address;
 3. indicating whether the observer represents any candidate, party, or INGO;
 4. noting where the observer may conduct his work;
 5. displaying the observer's photograph prominently;
 6. printed on a material difficult to forge.
- I. Host nations may, according to their discretion, require that observers carry a second form of personal identification such as a passport or driver's license.
- J. Host nations may revoke an observer's accreditation if that observer is found to have violated national law, international legal norms, or regulations established with regard to that observer's individual mandate. Revocation of accreditation shall not be construed to strip the host nation of the right to prosecute an observer who has committed legal violations.

VI. An Observer's Mandate: Rights and Reach of International Election Observers

A. Temporal Mandate

1. Accredited observers enjoy the right to observe *everything* related to the electoral process and may ask questions related to their mission.
2. Accredited observers shall have the right to observe all parts of the electoral process, lasting from the day that national authorities announce an election through the day the final administrative actions related to that election are complete.

B. The rights of observers during election observation may be broken down into three, shorter temporal periods: pre-election day, election day, and post-election day.

C. During the pre-election day period, observers shall have the right to observe voter registration, nomination of candidates, campaigning, and other pre-election preparations.

1. As to voter registration, observers shall ensure that—
 - a. host nations make registration facilities or methods available in all parts of the country at convenient times; and
 - b. specific classes of people are *not* prevented from registering to vote.
2. As to the nomination of candidates, observers shall ensure that—
 - a. all legally eligible individuals desiring to run for office are able to do so;
 - b. illegitimate limitations based on immutable characteristics such as race or gender are not placed upon potential candidates; and
 - c. the host nation makes information about the nomination process, deadlines, and other important dates readily available.
3. As to campaigning, observers shall monitor whether—
 - a. the host nation affords all groups and individuals equal freedom of assembly and opinion;

- b. all candidates enjoy the same access to venues and audiences;
 - c. tactics meant to limit a candidate's ability to campaign—such as fear and intimidation—are prohibited.
 4. As to preparations for election day, observers shall observe processes including but not limited to—
 - a. the creation of national, regional, and local election authorities;
 - b. the training of election personnel;
 - c. the nomination and accreditation of political agents;
 - d. the identification of polling stations; and
 - e. the distribution of necessary equipment and election materials—including voting machines, ballot boxes, paper ballots, and writing utensils—to those polling stations.
- D. Election Day Observation
 1. On election day, observers shall monitor procedures including but not limited to—
 - a. the preparation of empty ballot boxes;
 - b. the storage of early votes in appropriate ballot boxes;
 - c. the preparation of voter rolls;
 - d. voter sign-in at the polling station;
 - e. the conduct of poll workers throughout election day;
 - f. the counting of votes;
 - g. the tallying of unused ballots;
 - h. the preparation of any protocol or other statements related to voting or election results; and
 - i. the transfer of those documents to the national election commission.
 2. It should be noted that election observers have the right to provide real-time constructive criticism and advice to election workers who appear to be improperly enforcing national electoral laws and regulations. Observers may only offer judgments about the implementation of national laws. Given the importance of national sovereignty, observers should *not* provide recommendations they feel

proper but that are not mandated by existing laws.

- E. During the post-election day period, observers shall have the right to monitor procedures including but not limited to—
 - 1. the preparation of protocols related to voting and election results that have not been completed on election day; and
 - 2. any recounts or related procedures.

VII. An Observer's Limits: Obligations of and Limits on International Election Observers

- A. Observers are subject to all laws of the host nation and may not claim immunity in any circumstances. This obligation to follow national laws also demands that observers cooperate with all national officials.
- B. Observers must remain strictly neutral and impartial throughout the election process. They may not engage in any activities that could interfere with the ultimate result of the election. Such activities include but are not limited to—
 - 1. campaigning;
 - 2. voting;
 - 3. issuing ballots to voters;
 - 4. polling voters;
 - 5. helping voters vote (even if requested);
 - 6. influencing or lobbying voters;
 - 7. partaking in the official vote counting; and
 - 8. responding to voters' questions about subjects unrelated to observation.
- C. Observers may not obstruct the work of national election authorities by engaging in activities including but not limited to—
 - 1. generally interfering with electoral officials;
 - 2. using one's status as an observer for purposes unrelated to observation;
 - 3. working with other individuals or groups besides one's own observation mission.
- D. Electoral officials of the host nation reserve the right to record the personal information of any observer present at a polling station at any point during the election observation period.

VIII. Reporting Duties of International Election Observers and Observation Missions

- A. Observers should view themselves as providers of substantiated evaluations of the observed election based on raw data and anecdotal evidence.
- B. Observers should thus make available to the public accurate and impartial reports that include not only the evidentiary findings of their election observation missions but also recommendations for improving the electoral process.
- C. Reporting can be divided into two manageable periods: pre-election day reporting and election day reporting.
 - 1. As to reports on pre-election day proceedings, observers should include but not be limited to—
 - a. reviews of national electoral laws undertaken to ensure that—
 - i. the franchise is universal;
 - ii. all votes are counted only once;
 - iii. the ballot is secret;
 - iv. no person is improperly excluded from voting based on immutable characteristics such as race or gender;
 - v. all political parties are eligible to participate in the election; and
 - vi. all candidates are equally free to campaign; and
 - b. reviews of the actual application of these laws undertaken to ensure that—
 - i. all eligible parties who wish to do so are able to field candidates;
 - ii. all candidates have equal ability to run a campaign;
 - iii. there is a fair voter registration process that does not improperly discriminate; and
 - iv. there exists freedom of assembly and campaigning.
 - 2. As to election day proceedings, observers should include but not be limited to—
 - a. continuing reviews of all aspects of the election process laid out in subsection (1) of this section;
 - b. reviews of the behavior of national election officials at polling stations

- including but not limited to whether those officials—
- i. improperly turn voters away at the polls;
 - ii. destroy or inappropriately handle ballots;
 - iii. in any other way misuse their power in an effort to affect the outcome of the election.
- D. International election observation missions should provide their observers with a standardized reporting form for all parts of the observation period that are developed in accordance with the following procedures—
1. Missions should work together—to the extent possible—to formulate a standardized reporting form so that host nations, individuals, and other organizations reviewing the findings from any particular election have only one template to examine;
 2. The reporting forms should include both specific “yes or no” questions that address the subjects outlined in section (C) of this Article as well as blank space for observers to provide additional commentary as necessary.
- E. International election observation missions shall then compile the reports from all respective observers and draft a formal report that reviews each scrutinized aspect of the election.
- F. Copies of the final report required in section (E) of this Article shall be distributed—at minimum—to the host nation, other international organizations participating in observation of the election in question, and the United Nations Electoral Assistance Division. Copies shall also be made available to the public upon request.
