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Two (or Five, or Ten) Heads are Better than One: The Need for an Integrated Effort to International Election Monitoring

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Two (or Five, or Ten) Heads are Better than One: The Need for an Integrated Effort to International Election Monitoring

ABSTRACT

Election monitoring efforts have a crucial role to play in attaining the goals of self-determination and democratic sovereignty. Yet current election monitoring practice suffers from variance in the goals, standards, and strategies employed by the many organizations that engage in election monitoring and observation programs. This Note examines the current state of election monitoring within the framework for analyzing the legitimacy of rules proposed by Thomas Franck in his 1992 article The Emerging Right to Democratic Governance, and concludes that the shortcomings of the current system fail to address many necessary aspects of legitimate self-governance of monitored nations. The Author advocates an integrated and coordinated approach between monitoring organizations and effective and appropriate use of developing technological tools in order to improve the ability of election monitoring to aid in attaining the goal of self-determination.

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I. INTRODUCTION

The recent elections in Iraq and Afghanistan, the highly publicized election cycle in Ukraine, and the spectacle of the 2000 U.S. presidential election have brought questions of electoral fairness and democratic legitimacy to the highest level of visibility in popular

culture since the wave of democratization in developing nations in the late 1980s. Media focus on these elections predictably centers on whether the outcomes of the elections were fair and whether they reflected the “will of the people.” Given our history of strong electoral democracy, it is not surprising that the U.S. bias on elections is to demand such standards. Not all nations, however, can be expected to understand this bias, much less produce election results in accordance with it.

A number of inter-governmental organizations (IGOs) and nongovernmental organizations (NGOs) have developed and published guidelines for the evaluation of election fairness. Too much is expected from these guidelines, however. Most monitoring organizations formulate a method of evaluation based on general standards geared to determine whether or not a particular election was “free and fair,”¹ or whether the result truly reflected the “will of the people.”² These monitoring organizations come in many shapes and sizes and differ in their biases, goals, strategies, and methodologies. This Note will analyze the current state of election monitoring under this panoply of monitoring organizations, including both its benefits and its downfalls, and will offer a proposal by which election monitoring can improve both its efficiency and effectiveness at meeting goals.

Part II of this Note examines the historical development of election monitoring and the evolution of monitoring as a vital tool in attaining democratic sovereignty. Part III analyzes the major actors involved in monitoring activities in terms of their legal bases, goals, and techniques. Part IV introduces Thomas Franck's theory on the right of self-determination and his framework of four indicators required for strong rules. It also details the shortcomings of the current state of election monitoring viewed in light of Franck's framework and explains how these shortfalls interfere with the goals of achieving democratic sovereign legitimacy. Finally, Part V offers a proposal for the future of election monitoring which addresses the downfalls of the current system and better focuses monitoring activities on attaining the underlying goal of democratic legitimacy.

1. See, e.g., Inter-Am. C.H.R., Inter-American Democratic Charter art. 3, Sept. 11, 2001, available at <http://www.cidh.org/Basicos/democratic.htm> [hereinafter Inter-American]; Declaration of Principles for International Election Observation art. 3, Oct. 27, 2005, available at <http://www.cartercenter.org/documents/2231.pdf> [hereinafter Declaration of Principles]; THEODOR HANF ET AL., OBSERVING DEMOCRATIC ELECTIONS: A EUROPEAN APPROACH 4 (1995); United Nations Electoral Assistance: Main Types of Assistance, http://www.un.org/Depts/dpa/ead/ea_content/ea_types_of_assist.htm (last visited Sept. 22, 2006) [hereinafter Electoral Assistance].

2. See, e.g., ERIC C. BJORN LUND, BEYOND FREE AND FAIR: MONITORING ELECTIONS AND BUILDING DEMOCRACY 118–21 (2004).

II. ORIGINS AND HISTORICAL DEVELOPMENT OF THE ELECTION MONITORING SYSTEM

Election monitoring organizations and missions have gradually developed since the first election observations occurred in the early twentieth century. As election monitoring has become more common, the techniques and uses have become more thorough and polished.

Various actors have monitored elections throughout the world for many years. The earliest election monitors were trusteeship nations, who observed and maintained some control over their colonies prior to the colonies' obtaining independence.³ These early observations gave rise to the first rules and guidelines for judging electoral processes and outcomes.⁴ The missions were usually performed by trustee nations, often with the aid of United Nations (U.N.) teams.⁵

At the end of the colonial era, the most difficult transitions to independence gave the U.N. its first opportunity to engage in more comprehensive election monitoring.⁶ The U.N. continued to be involved in transition elections for many years, and in 1989 and 1990 it began monitoring the elections of independent member states.⁷

In 1989, election observation began to develop into its current form with the U.N.'s monitoring of the Namibian elections for independence in November; this was the first comprehensive monitoring mission in the world's history.⁸ The following year, the U.N. monitored elections in its own member states for the first time: in Nicaragua in February and Haiti in December.⁹ By the mid-to-late 1990s, monitoring had become so common that hardly an election occurred without involvement by some type of monitoring organization.¹⁰

One of the most important developments in election monitoring was the realization that effective missions require involvement throughout the entire election process: from pre-election preparation, to election day, and throughout the post-election period.¹¹ Many early missions focused heavily on election day itself, ignoring the

3. Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46, 69 (1992).

4. *Id.* at 70.

5. *See, e.g., id.* at 69–70.

6. *Id.* at 70–71.

7. *Id.*; *see also* BJORN LUND, *supra* note 2, at 54–56.

8. Jennifer McCoy, *Monitoring and Mediating Elections during Latin American Democratization*, in ELECTORAL OBSERVATION AND DEMOCRATIC TRANSITIONS IN LATIN AMERICA 53, 57 (Kevin J. Middlebrook ed., 1998).

9. *Id.* at 58.

10. *Id.* at 59–60.

11. Santiago A. Canton & Neil Nevitte, *Domestic Electoral Observation: The Practical Lessons*, in ELECTORAL OBSERVATION AND DEMOCRATIC TRANSITIONS IN LATIN AMERICA, *supra* note 8, at 39–41.

importance of pre-election activities, such as voter registration and education, campaign publicity, and media coverage.¹² Post-election fallout, such as further media coverage and responses of elected officials, was also ignored.¹³ Maintaining a presence throughout all three stages of the process is crucial to a mission's success and must be incorporated into the formation of serious monitoring goals.¹⁴

Technological developments have also aided the evolution of election monitoring,¹⁵ with the most important advance probably being the parallel counting mechanism or "quick count." The quick count was first used in the Carter Center's Panama mission in 1989 and has revolutionized the effectiveness of monitoring missions in subsequent elections.¹⁶ It provides a way for independent organizations to check the accuracy of official vote results and to determine and have access to those independent results almost immediately following the close of the polls.¹⁷ As technology continues to advance, quick count techniques will become even more accurate and quickly available.¹⁸

Since the initial introduction of the quick count, technology has advanced in leaps and bounds. Perhaps surprisingly, less-developed nations' use of election monitoring technology has been far ahead of their European and North American counterparts.¹⁹ For example, electronic voter registration systems and computerized voting machines are already widespread in many Latin American and former Soviet Bloc nations.²⁰ A considerable number of those nations also use high-tech satellite transmission systems to obtain nearly instantaneous and accurate reporting of election day activities and results.²¹

III. MAJOR ACTORS IN ELECTION MONITORING

At present, the organizations that participate in election observation activities can be divided into five general categories: the U.N., regional IGOs, NGOs, domestic organizations within target

12. BJORN LUND, *supra* note 2, at 129–31, 139–49.

13. *Id.* at 144–46.

14. *Id.* at 130.

15. Middlebrook, *supra* note 8, at 41–42 (discussing technological developments in election monitoring); *see also* BJORN LUND, *supra* note 2, at 280–81.

16. BJORN LUND, *supra* note 2, at 76.

17. *See* Middlebrook, *supra* note 8, at 41–42 (discussing "quick count" techniques).

18. Canton & Nevitte, *supra* note 11, at 41.

19. Julia A. Glidden, *Election Monitoring, Technology and the Promotion of Democracy: A Case for International Standards*, 19 WIS. INT'L L.J. 353, 358–61 (2001).

20. *Id.* at 359–60.

21. *Id.* at 360.

countries, and national organizations from states other than those targeted. The level, nature, and expertise of involvement vary among the categories, as does the definition of free and fair used to evaluate the outcome.

A. *The United Nations*

The primary U.N. subdivision involved in election monitoring is the Electoral Assistance Division (EAD), which was specially created for the purpose of observing and evaluating elections.²² The EAD was first created as the Electoral Assistance Unit by the General Assembly in 1991, and roots its authority in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.²³

The U.N. limits its involvement to only those elections that meet a specific set of conditions.²⁴ These prerequisites reflect the U.N.'s concern with the sovereignty of its member nations.²⁵ While this policy consciously defers to individual nations' sovereignty and ensures that U.N. resources are best spent in those countries determined to be most qualified, it also prevents the U.N. from being involved in a number of elections that are arguably in greatest need of improving their democratic legitimacy. For example, authoritarian governments intent on holding non-transparent elections to maintain their power monopolies have no reason to approach the U.N. to request election assistance or observation. The U.N. is also actively involved in monitoring when elections take place during its comprehensive peacekeeping missions in emerging or transitioning states.²⁶

22. G.A. Res. 46/137, ¶ 9, U.N. Doc. A/RES/46/137 (Dec. 17, 1991).

23. *Id.* ¶¶ 2–3 (underscoring “the significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which establish that the authority to govern shall be based on the will of the people, as expressed in genuine and periodic elections” and further stressing “its conviction that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed”); United Nations Electoral Assistance: Context and Objectives, http://www.un.org/Depts/dpa/ead/ea_content/ea_context.htm (last visited Sept. 22, 2006) [hereinafter Context and Objectives].

24. United Nations Electoral Assistance: Preconditions for Assistance, http://www.un.org/Depts/dpa/ead/ea_content/ea_preconditions.htm (last visited Sept. 22, 2006).

25. U.N. activities in the field of electoral assistance are conducted in conformity with the basic principles of the sovereign equality of states and respect for their territorial integrity and political independence, as enunciated in the UN Charter. Assistance activities are carried out only where requested by national authorities of Member States and broadly supported by the people of the country concerned. See Context and Objectives, *supra* note 23.

26. BJORN LUND, *supra* note 2, at 54.

Generally, the U.N.'s authority and goals for election involvement stem from other programs in place to guarantee human rights, since human rights are often necessary for legitimate democratic systems to exist.²⁷ As a result, the EAD tends to limit its involvement to transitioning states, or those in which there are obvious disputes over power monopolies or human rights abuses.²⁸ Consequently, the U.N. is not involved in some elections where there is an almost universal suspicion of illegitimate campaign tactics and abuse of power. Governments of those states often do not request the U.N.'s presence for the same reasons that abuses of power exist in the first place.²⁹

The U.N. often plays only a minimal role in elections that are part of peacekeeping missions or government transitions conducted by non-U.N. entities.³⁰ In such cases, elections typically proceed under the tight control of the nations or organizations in control of the mission, which sometimes have an obvious stake in electoral outcomes.³¹ For example, the post-conflict elections in Iraq and Afghanistan were conducted in the context of U.S. occupation of both countries. Since the U.S. had an obvious stake in the outcome of the election, its presence likely heavily influenced them.³² Had these elections been part of a larger U.N.-led mission, the U.N. may have played a greater monitoring role. The absence of the U.N. or other multilateral organizations arguably negatively affected the legitimacy of those elections.³³

B. Regional Inter-Governmental Organizations

A number of regional IGOs also play an active role in election observation in their own regions. The most active of these are the Organization for Security and Cooperation in Europe (OSCE) and the Organization of American States (OAS).³⁴ The European Union is also heavily involved in many elections.³⁵ The African Union and the Asia Foundation are involved in their member states' election

27. *Id.* at 57.

28. *Id.* at 57–58.

29. *See, e.g., id.* at 59–60.

30. *See, e.g.,* Iraq Electoral Fact Sheet, <http://www.un.org/news/dh/infocus/iraq/election-fact-sht.htm> (last visited Sept. 22, 2006) (stating that the U.N. had no supervisory role in the Iraqi elections but only provided limited support).

31. *See* Phyllis Bennis, *Iraqi Elections*, ZNET, Dec. 20, 2004, <http://www.zmag.org/content/showarticle.cfm?ItemID=6899>.

32. *See id.* (predicting strong U.S. influence over Iraqi election results).

33. *See id.* (comparing and contrasting the U.S. occupation of Iraq to the U.N.-monitored elections in East Timor in 1999).

34. BJORN LUND, *supra* note 2, at 63.

35. *Id.*

processes, but neither has developed as stringent a set of guidelines as their European and American counterparts.³⁶

In contrast to the U.N.'s deference to requests for assistance from target nations, regional organizations are generally more proactive in their decisions to monitor elections within their regional jurisdictions.³⁷ Most regional IGOs do not require the target country to request their presence and involvement.³⁸ In some cases, some form of election monitoring is mandated by the organizations' founding documents.³⁹

Most IGOs establish their authority for monitoring in their founding documents⁴⁰ as well as in universal agreements on human rights issues.⁴¹ It is important to keep in mind that these regional organizations have a particular stake in the elections taking place within their region.⁴² All regional IGOs state the existence of true democratic governance as a pre-requisite to membership.⁴³ Effective functioning of such organizations therefore relies on the truly democratic nature of their member countries. This creates an unavoidable bias toward finding legitimacy in election outcomes. Furthermore, regional IGOs often also are involved in other election-related programs, such as voter education, get-out-the-vote drives, and campaigns to deter violence and intimidation at the polls.⁴⁴ Because they are more than merely observers or providers of objective technical assistance, regional IGOs may manifest a concrete interest in the outcome of the elections they monitor.

Many regional organizations use similar techniques for monitoring, but it is important to note a few key differences in their observation methods and processes.

1. The Organization of American States

The OAS is the most comprehensive and engaged of any regional organization. It developed as a major player around the same time

36. See African Union Declaration on the Principles Governing Democratic Elections in Africa, AHG/Decl.1 (XXXVIII) (2002) [hereinafter African Union], available at http://www.ohchr.org/english/law/compilation_democracy/ahg.htm; The Asia Foundation, Governance, Law, and Civil Society: Elections, <http://www.asiafoundation.org/Governance/elections.html> (last visited Sept. 22, 2006) [hereinafter Asia Foundation Elections].

37. See, e.g., Inter-American, *supra* note 1, art. 18; HANF ET AL., *supra* note 1, at 98; Electoral Assistance, *supra* note 1.

38. See United Nations Electoral Assistance, <http://www.un.org/Depts/dpa/ead/ead-main-page.htm> (last visited Sept. 22, 2006).

39. See *id.*

40. See *id.*

41. See *id.*

42. See *id.*

43. See *id.*; see also BJORN LUND, *supra* note 2, at 59–60.

44. See, e.g., Asia Foundation Elections, *supra* note 36.

that monitoring was embraced as an important tool for ensuring democratic governance.⁴⁵ Not coincidentally, the democratic wave of the 1980s had perhaps its strongest impact on Central and South American nations.⁴⁶ Before the democratic wave of 1989, the OAS's role as an election monitor was more or less to show moral support for democratic elections.⁴⁷ As the member nations of the OAS began to develop higher standards for legitimate democracy, the organization took a more active role and formed more comprehensive standards for the evaluation of election processes.⁴⁸

The Inter-American Democratic Charter of 2001 requires "free and fair elections" as a prerequisite for membership, as well as "transparency" and "accountability of governmental institutions."⁴⁹ Stating that "the effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of [its] member states,"⁵⁰ the Charter lists "the holding of periodic, free, and fair elections based on secret balloting and universal suffrage" as a requirement for such a representative democracy.⁵¹ The OAS observes elections only in its member states. Missions are led by the Department of Democratic and Political Affairs (DDPA), which evaluates elections against the constitutions and laws of target states.⁵² The DDPA's main activities are to observe and report on election processes,⁵³ both of which are conducted by large groups of observers who are present throughout the election process, from registration through tallying and verifying of results.⁵⁴

2. The Organization for Security and Cooperation in Europe

The OSCE rose to its prime in the wake of the fall of the Soviet Union and its involvement in transitional elections in Eastern and Central Europe.⁵⁵ The Office for Democratic Institutions and Human Rights (ODIHR) is the umbrella organization under which OSCE election missions take place.⁵⁶ The purpose of the ODIHR is two-fold: to evaluate elections based on OSCE standards and to offer "proactive

45. BJORN LUND, *supra* note 2, at 21.

46. *Id.*

47. McCoy, *supra* note 8, at 57.

48. *Id.* at 58–59.

49. Inter-American, *supra* note 1, arts. 3–4; BJORN LUND, *supra* note 2, at 63.

50. Inter-American, *supra* note 1, art. 2.

51. *Id.* art. 3.

52. Secretariat for Political Affairs, Electoral Observation Missions, <http://www.sap.oas.org/opd/electoral/default.htm> (last visited Sept. 22, 2006).

53. *Id.*

54. *Id.*

55. BJORN LUND, *supra* note 2, at 63.

56. OSCE Office for Democratic Institutions and Human Rights—Elections, Overview, <http://www.osce.org/odihr-elections/13748.html> (last visited Sept. 22, 2006).

and constructive input” and assistance to target nations to better attain those standards in the future.⁵⁷ The ODIHR draws its legal mandate for election monitoring from various international treaties on principles of human rights and democratic governance.⁵⁸ The ODIHR uses OSCE-formulated guidelines, rather than standards set by domestic law, to evaluate election procedures⁵⁹ and analyze election laws of the target nations.⁶⁰

The ODIHR prioritizes elections to best conserve and allocate their limited resources.⁶¹ Rather than demanding baseline guarantees and democratic freedom as do other organizations, it specifically focuses its attention on those nations most in need of monitoring and democratic support: new and developing democracies.⁶² The ODIHR identifies certain guarantees that it requests from the governments of target nations for election observation to be truly effective.⁶³ It also sends smaller, short-term “assessment missions” to play a more limited role in elections in more established democracies.⁶⁴ In some cases, the ODIHR also sends small “expert missions” when full-scale monitoring missions are not feasible.⁶⁵

3. The Organization of African Unity

In 2002, the General Assembly of the African Union released an official statement on the importance of democratic elections in Africa.⁶⁶ It stated that democratic elections are “the basis of the authority of any representative government” and “constitute a key element of the democratization process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development.”⁶⁷ The resolution requests that the OAU become more involved in monitoring the elections of its member states.⁶⁸ Monitoring is coordinated by the General Secretariat and governed by guidelines created for each particular mission in accordance with the internal

57. *Id.*

58. *See, e.g.*, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, art. 8 (June 29, 1990) [hereinafter Copenhagen], available at http://www.osce.org/documents/odihr/1990/06/13992_en.pdf#search=Document.

59. ORG. FOR SEC. & COOPERATION IN EUR. OFFICE FOR DEMOCRATIC INST. & HUMAN RIGHTS, ELECTION OBSERVATION HANDBOOK (5th ed. 2005).

60. *Id.* at 12.

61. *Id.* at 13.

62. *Id.*

63. *Id.* at 21.

64. *Id.* at 14.

65. *Id.*

66. African Union, *supra* note 36.

67. *Id.*

68. *Id.*

laws of the target nation.⁶⁹ The OAU requires invitations to elections to be sent by member states at least two months in advance and reserves the right to decline involvement when target nations do not meet specified criteria.⁷⁰ This filter creates similar problems to those encountered by other organizations that also impose prerequisites for monitoring.

4. The Asia Foundation

The Asia Foundation does not directly provide election monitoring missions, but rather it supports monitoring activities of both local and international NGOs in its member countries.⁷¹ The Asia Foundation's involvement mainly provides financial resources for various election programs.⁷² Assistance is not specifically directed at monitoring activities but rather is distributed generally to organizations at all levels of democracy-building.⁷³ In other words, the Asia Foundation does not treat monitoring as a distinct part of the process of ensuring democratic legitimacy.⁷⁴

5. The European Union

The EU takes a slightly different approach to election monitoring. The EU's Election Assistance & Observation Division (EAOD) focuses on assisting nations outside the reach of the OSCE's activities, specifically African and South American countries with particularly volatile political climates.⁷⁵ South Africa, Mozambique, and Palestine are three of the most self-touted examples of EU involvement, although it is often involved in efforts closer to home as well, such as in Russia, Chechnya, and Bosnia-Herzegovina.⁷⁶ The EAOD functions more like an NGO, except with additional legitimacy gleaned from the EU's character as a strong IGO. The EAOD has two tiers of involvement in elections: observation and assistance.⁷⁷ It applies different standards to determine whether to engage in one or

69. *Id.*

70. *Id.* (discussing UN standards for entering monitoring missions).

71. The Asia Foundation, Bangladesh: Overview, <http://www.asiafoundation.org/Locations/bangladesh.html> (last visited Sept. 22, 2006).

72. Asia Foundation Elections, *supra* note 36.

73. *Id.*

74. *Id.*

75. BJORN LUND, *supra* note 2, at 66; The EU's Human Rights and Democratisation Policy: EU Election Assistance & Observation, http://europa.eu.int/comm/external_relations/human_rights/eu_election_ass_observ/ (last visited Sept. 22, 2006).

76. *Communication from the Commission on EU Election Assistance and Observation*, COM(2000) 191 final, at 26-27 (Apr. 4, 2000), available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2000/com2000_0191en01.pdf [hereinafter *Communication*].

77. *Id.* at 15.

the other activity.⁷⁸ Historically, the EAOD has been most actively involved through its provision of technical and financial assistance, but it also has sent observers to directly monitor a few elections.⁷⁹ The EAOD's guidelines are detailed and complex, yet there is little evidence that it has successfully obtained its goals.⁸⁰

Like the U.N., the EU hesitates to involve itself in elections where certain basic thresholds of democratic governance are not met.⁸¹ EU participation must be advisable, viable, and useful under the 1998 EU Council Criteria on whether to send an EU observation mission.⁸² Thus, the EU suffers from problems similar to those that confront the U.N., i.e., being forced to abstain from monitoring those elections most in need of assistance.⁸³

C. *The International Institute for Democracy and Electoral Assistance*

Another international IGO deeply involved in elections throughout the world is the International Institute for Democracy and Electoral Assistance (IDEA). Unlike the OAS and the OSCE, IDEA's membership is not region-specific, and it was created specifically to work toward election fairness.⁸⁴ IDEA focuses on election processes, rather than concerning itself with other aspects of development or human rights.⁸⁵ It views itself as countering the influence of U.S. organizations and other powerful nations in election monitoring.⁸⁶ IDEA does not actually participate in any hands-on election monitoring, but rather it has simply formulated a detailed set of standards under which it argues that elections should be analyzed to determine if they were free and fair.⁸⁷ IDEA's standards are probably the most detailed, technical, and best articulated of any organizations.⁸⁸ However, theirs are also the loftiest goals and in the context of many less-developed nations, appear at least on their face simply to be unobtainable.

78. *Id.* at 16–19.

79. BJORN LUND, *supra* note 32, at 66.

80. *Communication*, *supra* note 76, at 35–42.

81. *Id.* at 16–17, 35.

82. *Id.* at 17–18.

83. *See supra* Part II.A (discussion on the U.N.'s decisions to enter monitoring missions).

84. BJORN LUND, *supra* note 2, at 66–67.

85. *Id.* at 66 (stating that no UN Security Council members are IDEA members).

86. *Id.*

87. *Id.* at 66–67.

88. Compare IDEA with the OAS, UN, OSCE, and Carter Center standards.

D. NGOs

The best known and highest reputed election monitoring NGO is the Carter Center in Atlanta, Georgia.⁸⁹ The Carter Center, led by former President Jimmy Carter, has established itself as a powerful and perhaps even vital ingredient to the legitimacy of elections throughout the world.⁹⁰ In addition to being a leader in developing election monitoring technology and effective publicity campaigns,⁹¹ Carter Center programs focus on ensuring other basic human and democratic rights necessary for democratic governance.⁹² These include programs to improve relations and communication between sectors of domestic society, programs focused on fairness in judicial branches, and other supervisory and monitoring programs to eliminate human rights abuses.⁹³ In this regard, the Carter Center understands and promotes the relationship between election fairness and other basic human rights guarantees, unlike those organizations that demand other guarantees before agreeing to engage in monitoring.⁹⁴ There are also a number of other U.S.-based groups such as the traditionally Republican-affiliated International Republican Institute (IRI), the traditionally Democrat-affiliated National Democratic Institute (NDI), and the International Foundation for Election Systems (IFES).⁹⁵

NGOs have less of a stake in election outcomes than some other monitoring organizations. Each has a stake in its own reputation as a neutral observer and important force in global democratic development, but the concerns of the U.N. and IGOs in legitimizing their own identities are not present for these groups. In addition, many NGOs have fewer political constraints than IGOs, allowing them to be more openly critical in many circumstances.⁹⁶ Furthermore, the structures of these organizations tend to be smaller and less bureaucratic, allowing them to respond more rapidly and effectively to last minute changes and needs.⁹⁷

89. BJORN LUND, *supra* note 2, at 74–94.

90. *Id.*

91. *Id.* at 74–94 (discussing the quick count, and Carter's early success in publicizing results).

92. Promoting Democracy, Election Monitoring, <http://www.cartercenter.org/peaceprograms/program10.htm> (last visited Sept. 4, 2006).

93. *Id.*

94. *See supra* Part III.A, B.5 (discussing EU and U.N. monitoring decisions).

95. BJORN LUND, *supra* note 2, at 67. For ease of analysis, this Note's focus will remain on the characteristics of those NGOs with the most thorough and universal reach.

96. Middlebrook, *supra* note 11, at 35; *see also* TIMOTHY C. EVERED, UNITED NATIONS ELECTORAL ASSISTANCE AND THE EVOLVING RIGHT TO DEMOCRATIC GOVERNANCE 44 (1996).

97. *See, e.g.*, BJORN LUND, *supra* note 2, at 77–78.

However, NGOs have less power to compel compliance or enforce their recommendations in target states, since they lack the international legal basis possessed by both the U.N. and regional organizations.⁹⁸ Another cause for concern is that such organizations often receive funding from individual nations or private sources that may have a bias or stake in election outcomes.⁹⁹

E. *Domestic Organizations within Target States*

Domestic monitoring organizations vary dramatically in the size, nature, and thoroughness of their involvement.¹⁰⁰ These groups tend to be the best equipped with on-the-ground information and resources due to their composition of primarily in-state actors.¹⁰¹ Domestic groups often collaborate or receive assistance from NGOs or IGOs but typically retain their independent identity and the implications for legitimacy that follow from it.¹⁰²

Such groups also have an obvious stake in the outcome of the elections they observe, as they are normally composed of citizens and institutions from within the target states themselves.¹⁰³ They are invested in obtaining legitimate election results yet do not necessarily have as strong a bias in favor of decreeing democratic legitimacy as do regional groups. However, because they are from within the target country, they do not enjoy the same force of international authority as do other monitoring organizations. Yet they are more directly in touch with the circumstances of target nations and thus have an advantage in evaluating whether election observation standards are reasonable or helpful for the particular situation at hand. They are also less susceptible to the perception of being "outsiders."

F. *National Organizations from States Other Than Those Targeted*

Many elections are monitored by groups or missions sponsored by other sovereign nations. This practice is especially common in the context of peacekeeping or other more comprehensive development missions. The most obvious examples of such monitoring are circumstances like the recent elections in Afghanistan and Iraq. In both nations' elections, the United States helped coordinate and

98. The exception to this in many cases is the involvement of the Carter Center. Former President Carter's prominent role and credibility as a former world leader has almost single-handedly resolved a number of electoral conflicts. See generally BJORN LUND, *supra* note 2, at 74-93.

99. See EVERED, *supra* note 96, at 44.

100. See Middlebrook, *supra* note 8, at 42-46.

101. *Id.* at 35.

102. *Id.*

103. *Id.*

monitor domestic elections while also maintaining its military occupation force in the region.¹⁰⁴ Such missions should be easy to coordinate, since the monitoring country is familiar with the target nation and often can rely on pre-existing knowledge and tools about the target nation.¹⁰⁵ However, allegations of bias often plague these missions.¹⁰⁶ Bias in the election missions is sometimes perceived as a continuation of the apparent bias in the overall occupations.¹⁰⁷

IV. ELECTION MONITORING STANDARDS AGAINST THEIR THEORETICAL BACKDROP

A. *The International Legal Right to Self-Governance and Self-Determination*

The rights to self-governance and self-determination form the theoretical basis for many election monitoring missions, and thus it is helpful to understand these concepts in order to comprehend the goals and operations of such endeavors. Self-governance is more than merely an academic theory. It is a right firmly established in multilateral treaties, founding documents of international organizations, and domestic constitutions, and is generally recognized as a binding obligation under customary international law.¹⁰⁸ Article 21 of the Universal Declaration of Human Rights most cohesively describes the right to self-governance:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public services in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.¹⁰⁹

All organizations dedicated to election observation formulate some set of rules under which to evaluate election processes and

104. See, e.g., Bennis, *supra* note 31.

105. See, e.g., U.S. GOV'T ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL COMMITTEES, REBUILDING IRAQ: U.S. ASSISTANCE FOR THE JANUARY 2005 ELECTIONS (2005), available at: <http://www.gao.gov/new.items/d05932r.pdf#search=%22U.S.%20involvement%20Iraqi%20election%22> (basing suggestions for effective assistance on knowledge gained from U.S. agencies, U.N. agencies, and others with on-the-ground knowledge and experience of the status in Iraq).

106. See, e.g., Bennis, *supra* note 31.

107. *Id.*

108. See EVERED, *supra* note 96, at 45; Gregory H. Fox, *Election Monitoring: The International Legal Setting*, 19 WIS. INT'L L.J. 295, 297-99 (2001).

109. U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 12, 1948).

results. In general, such rules aim toward achieving “free and fair elections.”¹¹⁰ According to the mission statements of many election monitoring organizations, such elections are necessary for self-governance to be achieved.¹¹¹ The free and fair standard is typically supported by the assertion of its potential assurance of concrete political legitimacy and the idea that elections must reflect the true “will of the people” if self-determination is to be reached.¹¹²

The free and fair standard began to develop as the right to self-determination became recognized as one of the human rights guaranteed by customary international law.¹¹³ The key scholarly analysis developing this theory is that of Thomas Franck, in his 1992 article *The Emerging Right to Democratic Governance*.¹¹⁴ Franck details the development of the self-determination requirement for nations wishing to achieve legitimacy in the international community.¹¹⁵ He also identifies both the right to free expression and to electoral participation as stemming from the notion of self-determination, and his thesis views all three rights as inextricably linked and fundamental to the self-determination goal.¹¹⁶

According to Franck, self-determination cannot be achieved without clearly understandable rules to define and guide nations toward it.¹¹⁷ Franck sets out a framework under which to analyze the legitimacy of rules by looking at four factors of each rule: pedigree, determinacy, coherence, and adherence.¹¹⁸ The following section analyzes the current state of election monitoring within the framework of Franck’s four indicators of the legitimacy of rules.¹¹⁹

B. *Election Monitoring Standards within Franck’s Framework for Legitimacy of Self-Determination Rules*

1. Pedigree

Pedigree refers to a rule’s basis in a historical process and the strength it draws from its historical development.¹²⁰ The pedigree of

110. Lara R. Corchado, Note, *Complying with International Law: A Call for Free and Fair Elections*, 30 BROOK. J. INT’L L. 1029, 1044–51 (2005); see also BJORN LUND, *supra* note 2, at 95 (discussing international norms and customs that must be taken into account in evaluating legitimacy of free and fair elections).

111. See, e.g., Inter-American, *supra* note 1, art. 3; Declaration of Principles, *supra* note 1, art. 3; HANF ET AL., *supra* note 1, at 4; Electoral Assistance, *supra* note 1.

112. Corchado, *supra* note 110, at 1064.

113. *Id.* at 1045 (citing Franck, *supra* note 3).

114. Franck, *supra* note 3.

115. *Id.* at 52–56.

116. *Id.* at 52.

117. *Id.* at 51.

118. *Id.*

119. *Id.*

120. *Id.*

rules for self-determination comes at least in part, Franck argues, from the historical circumstances through which international concern over domestic democratic activities arose and evolved.¹²¹ A large part of that historical development occurred through the introduction and maintenance of election observers.¹²²

This Note has briefly detailed the historical development of election monitoring and its standards.¹²³ Primarily, the pedigree of election monitoring rules comes from the growing understanding of the importance of democratic governance and the general acceptance of democracy as the most acceptable, if not the only acceptable, form of government in the modern era.¹²⁴ Each of the different organizations involved in modern election monitoring draws on different aspects of self-determination norms, given their different purposes and historical bases.

2. Determinacy

Determinacy measures how well a rule communicates its content.¹²⁵ Rules are significantly more difficult to obey when they lack sufficient clarity of language or judicial interpretation.¹²⁶ The more transparent a rule's meaning, the easier it compels behavior.¹²⁷

International election monitoring currently suffers from a lack of determinacy, mainly due to the panoply of varying standards proposed by the different organizations involved.¹²⁸ Not only are target elections being evaluated against often unattainable free and fair standards, but in each case, they are also evaluated against a number of such standards, proposed by a number of different organizations, which may result in a confusing amalgamation of expectations.¹²⁹ In addition, many free and fair standards are framed in vague terms that give little guidance without interpretation.¹³⁰

3. Coherence

Coherence measures a rule's internal consistency, as well as its consistency with other norms related to the rule.¹³¹ Franck's idea of

121. *Id.* at 52.

122. *Id.*

123. *See supra* Part II (discussing the evolution and history of election monitoring).

124. *See Fox, supra* note 108, at 295.

125. Franck, *supra* note 3, at 51.

126. *Id.* at 56.

127. *Id.*

128. *See supra* Part III (discussing the various organizations' standards).

129. Franck, *supra* note 3, at 56.

130. *Id.* at 56.

131. *Id.* at 51.

coherence most clearly demonstrates the connection of election monitoring standards and the free and fair standard to the rights of free expression and other basic rights.¹³² Such rights are highly valued and arise from a number of international treaties on human and democratic rights, some with fairly developed enforcement mechanisms.¹³³ A rule that is closely connected to these highly valued documents and institutions is more compelling.¹³⁴

Obviously, the multiple varying standards against which to measure election results presents a large obstacle to obtaining a coherent set of rules against which to measure the success of elections. Another obstacle to coherence of election monitoring standards is that the goals of democratic elections are necessarily intertwined with other human and democratic rights. Some organizations neglect this relationship, while others put too much emphasis on it.¹³⁵ Both approaches threaten the effectiveness of election monitoring as a tool for assisting the creation of self-determining democracies.

a. Blind Eye to the Dependency on other Basic Rights

Under most election monitoring standards, framing the requirement as one of free and fair assumes that other human rights, such as “freedoms of expression, thought, assembly, and association” already exist within the target country.¹³⁶ The OSCE recognizes the importance of the relationship between these rights and successful election monitoring and specifies the necessary guarantees in the 1998 Copenhagen Document.¹³⁷ The Document names such voting-related rights as universal and equal suffrage,¹³⁸ freedom of organization and assembly, legal guarantees protecting political parties and organizations,¹³⁹ separation between the state and political parties,¹⁴⁰ assurance of the lack of discrimination or intimidation for individuals and groups expressing political views,¹⁴¹ and equal access to the media.¹⁴² It also emphasizes other basic human and democratic rights such as non-discrimination and equal protection under the law.¹⁴³

132. *See id.*

133. Corchado, *supra* note 110, at 1046–51.

134. Franck, *supra* note 3, at 77.

135. *Id.* at 79.

136. Corchado, *supra* note 110, at 1045–46; *see also* EVERED, *supra* note 96, at 6.

137. Copenhagen, *supra* note 58, art. 7.3.

138. *Id.*

139. *Id.* arts. 7.6, 10.3, 10.4.

140. *Id.* art. 5.4.

141. *Id.* art. 7.7.

142. *Id.* art. 7.8.

143. *Id.* art. 5.9.

Given that truly free and fair democratic elections rely on these other rights, monitoring that demands very high standards serves little purpose in nations that do not guarantee them. True analysis under these standards leads to a foregone conclusion, since elections will necessarily fall short of the free and fair standards when basic democratic rights are not present. A more helpful system of election monitoring must recognize and address the lack of other democratic guarantees in target nations and also strive for more reasonable standards when the ideal of free and fair elections is not possible.

b. Recognizing When Higher Pressure is Necessary

The reverse problem also surfaces in many cases. Rather than recognizing and drawing attention to the nonexistence of such rights in certain countries, many monitoring organizations simply refuse to become involved in elections where these basic guarantees are lacking or where the target nation does not request their presence in some fashion.¹⁴⁴ Such absences can be just as harmful as insisting upon unattainable goals. Monitoring can effectively identify where such basic rights are not present and analyze how this absence affects election outcomes. This notion is especially true now that many monitoring organizations are present throughout all three stages of the election process. Extended presence allows insight through the pre- and post-election stages into other aspects of self-determination, such as freedom of expression via media coverage and freedom of assembly.

To wait on a request from the target nation effectively insulates many elections where monitoring is most needed, such as where parties or officials clearly usurp power by allowing only themselves to be placed on the ballot¹⁴⁵ or by fraudulently tampering with election counts or results.¹⁴⁶ When monitoring organizations fail to identify these practices, they lose the opportunity to hold such persons accountable in the eyes of their own citizens and the global community. Naturally, sovereignty concerns are one reason monitoring organizations decline involvement without some request or invitation.¹⁴⁷ Furthermore, limited funding and resources may discourage involvement in elections perceived as lost causes. However, election monitoring is continuously developing into a

144. See *supra* Part III.A, B.5 (discussing EU and U.N. monitoring decisions).

145. For example, the PRI's long reign in Mexico.

146. For example, the initial allegations concerning the outcome of the 2004 elections in Ukraine.

147. For a discussion of the effects of international election monitoring on national sovereignty, see ARTURO SANTA CRUZ, *INTERNATIONAL ELECTION MONITORING, SOVEREIGNTY, AND THE WESTERN HEMISPHERE IDEA: THE EMERGENCE OF AN INTERNATIONAL NORM* (2005).

recognized and independent part of the formation of democratic sovereign legitimacy.¹⁴⁸ Some involvement in even these lost-cause elections may at least draw the global community's attention to problematic situations.

4. Adherence

A rule's adherence is its place within a larger normative hierarchy of rules and objectives.¹⁴⁹ Placement within a larger system of norms and rules helps to ensure compliance with the rule at issue.¹⁵⁰ The standard of free and fair elections is best understood within the higher principle of self-determination. Thus, adherence should measure how well a particular election system reaches the overall normative goal of democratic governance and self-determination. The major problems for election monitoring standards are their lack of flexibility to adapt to the differing circumstances of target countries and the danger of false legitimacy from the presence of observers.

a. Lack of Flexibility

The key danger of stringent free and fair standards is their lack of flexibility and adaptability to different and continuously changing political, historical, and cultural contexts. While such standards may be helpful for nailing down specific benchmarks by which to judge elections, the narrowness of the requirements fails to account for vast differences between nations in terms of cultural backgrounds and varying stages of democratic development and political history.¹⁵¹ To buy into such strict standards creates a level of free and fair that is impossible for many nations to reach.

Beyond the obvious differences in democratic institutions, nations differ in their historical and cultural understandings of government, politics, and citizen participation. Even among the most developed Western nations, there is no one-size-fits-all formula for participatory government and electoral systems.¹⁵² It is also dangerous to overlook the impact on a nation of its history as a former colony or Soviet satellite, or its religious or cultural history. The combinations and permutations are nearly infinite. Yet in most

148. See *infra* Part IV.B.4.c (discussing the independent role of monitors).

149. Franck, *supra* note 3, at 87.

150. *Id.*

151. See generally BJORN LUND, *supra* note 2, at 121 (stating the need to look at elections in their political context without "lowering the bar" of universal democratic standards).

152. Consider, for example, the large differences between the U.S. system and Parliamentary systems of governance.

cases, outside individuals, whose ideas are necessarily shaped by their own different political and cultural backgrounds, create monitoring standards.

b. Danger of False Legitimacy

Furthermore, free and fair standards also can create a false sense of democratic legitimacy.¹⁵³ Elections which nominally meet the definition of free and fair may do nothing to advance the existence of democracy in the target country if the result is the election of candidates who are not committed to democratic governance.¹⁵⁴ In addition, because free and fair standards are often set so high that many nations are truly unable to reach them, many times the final judgment of an election is misleading. Results may be termed “substantially free and fair” or some other variation to that effect.¹⁵⁵ Using such terminology only confuses the issue by casting a false shade of pseudo-legitimacy on an election outcome, when in truth the election process did not rise to the level of the proposed standards. The EU, for example, recognizes the danger of legitimizing a suspect process and seeks to account for that danger in formulating its standards and processes of election monitoring.¹⁵⁶ Unfortunately for the EU, in many cases those good intentions operate to prevent the EAOD from any type of monitoring activities in particular circumstances.¹⁵⁷

Furthermore, as this Note has discussed, nearly all monitoring organizations have some stake in the outcome of the elections they observe.¹⁵⁸ Thus, the idea that monitoring missions can be truly neutral and evaluated based on neutral standards is somewhat misguided. A truly effective framework must take into account the danger of bias and neutralize it as much as possible so as to obtain results more accurately termed “legitimate.”

c. Monitors as a Recognized, Independent Entity

The known presence of monitors is a force unto itself in pressuring the outcome of the target election to be free and legitimate.¹⁵⁹ Election observers, by their nature, do more than

153. See BJORN LUND, *supra* note 2, at 97.

154. Corchado, *supra* note 110, at 1046.

155. HANF ET AL., *supra* note 1, at 17.

156. *Communication*, *supra* note 76, at 5.

157. See *supra* Parts II.A, B.5 (discussing EU and U.N. monitoring decisions).

158. See *supra* Part II.B (discussing the stake of regional organizations in monitoring elections).

159. See Eric Brahm, *Election Monitoring*, Sept. 2004, available at http://www.beyondintractability.org/essay/election_monitoring/.

simply stand by and passively observe a process external to them. The very presence of outsiders who, by active observation at the very least, are invested in the election process lends another level of legitimacy to each election.¹⁶⁰ It is at least partially for this reason that a number of international organizations refuse to enter and observe elections unless certain very basic preconditions are met.¹⁶¹ Such organizations are concerned about lending an air of legitimacy to a process that they believe cannot possibly come close to producing legitimate results.¹⁶²

Election missions that take a more active role in all steps of the election process further demonstrate the impact of this presence. As a number of monitoring organizations move to a more comprehensive monitoring approach, it becomes even more important to defer to their unique role in the process. Every level of involvement should be recognized as important enough to require denying assistance if truly comprehensive aid cannot be successful due to time or other constraints.¹⁶³

However, since an end goal is to obtain democratic and self-determining societies, the legitimacy gained from effective monitoring missions is greatly needed. Monitoring organizations can be extremely helpful in signaling to the international community that the target nation is at least somewhat democratic,¹⁶⁴ which may change the treatment of that nation in the global community.

V. PROPOSED SOLUTION: A MONITORING SYSTEM THAT ATTAINS LEGITIMACY AND GUIDES NATIONS TOWARD SELF-DETERMINATION

The process of election observation has evolved greatly and now includes outsiders' presence at all stages of the electoral process and the involvement of many actors. However, the evolution has yet to reach the point that the power of election observation can be fully realized as an effective tool for promoting democratic governance and peace. The next stage in the evolution of election monitoring should be a successful integration of efforts of the various organizations.

160. *Id.*

161. See HANF ET AL, *supra* note 1, at 9–11 (discussing the necessary preconditions to be analyzed by both the examining mission and the examinee nation).

162. See *supra* Parts II.A, B.5 (discussing U.N. and EU monitoring decisions).

163. EVERED, *supra* note 96, preface (discussing U.N. decisions to turn down in these instances).

164. See BJORN LUND, *supra* note 2, at 148 (discussing when such initial statements grant an air of legitimacy to the global community and in some cases later are contradicted by more detailed reports indicating the true nature of the elections was inefficient and illegitimate).

Going forth into the twenty-first century, we also must be aware of the opportunities afforded by available technology.

A. *Integration of Organizations*

Various monitoring organizations must integrate and cooperate to present a united effort in each monitoring program. The idea of integration and cooperation is not novel in the world of election observation. For example, the EU identifies cooperation and assistance with other groups as an important goal of their missions, and it and other groups have actually collaborated on various missions in the past.¹⁶⁵ But such cooperation must in the future rise to a higher level than merely something to be considered by each individual group in developing their own monitoring strategy. An integrated and comprehensive effort should be the primary goal of all organizations as they go forward into each particular election.

This integration must not devolve into a mere delegation of responsibilities instead of a truly coordinated partnership effort.¹⁶⁶ The key to success in an integrated system will be coordination with domestic groups, who in many cases are significantly advantaged in understanding and formulating goals and methods for particular elections.

Such coordination will require the formulation of comprehensive budget and contribution agreements. Past coordinated efforts have resulted in disagreement about funding, allocation of resources and duties, treatment of monitoring personnel, and visibility of different actors.¹⁶⁷ Past efforts have also resulted in contradictory assessments of election outcomes.¹⁶⁸ To address these problems, it is necessary to integrate all steps of the process, including the formulation of goals and strategies, the development of on-the-ground operations, the creation of evaluation standards, the formulation of final assessments, and the publication of the results.

Given the intricacy and complexity of the electoral process, cooperation and integration will not be possible by merely holding one or two preliminary planning meetings. For such a system to be successful, it must also utilize the latest technological developments. Technological innovations will be critical to integrated and cooperative observation efforts. Advancing technology allows for better communication and sharing of resources, as well as more efficient and rapid election processes.¹⁶⁹ Given the rapid development of new technology, it is important to ensure that such

165. *Communication, supra* note 76, at 23.

166. *Id.* at 9.

167. *Id.*

168. *Id.*

169. Glidden, *supra* note 19, at 366.

tools are not used to perpetuate the typical problems that plague developing nations, such as monopolizing or purposefully changing election results, obscuring transparency, or otherwise being exploited by illegitimate regimes wishing to keep themselves in power.¹⁷⁰

Technology also provides the means for an integrated monitoring effort to be successful. For example, Professor Julia Glidden profiles the Organization for the Advancement of Structured Information Systems (OASIS) project, an international alliance of organizations and private actors dedicated to developing an effective election technology system.¹⁷¹ OASIS proposes developing a common Election Markup Language (EML) to allow different software and systems to communicate election data with one another.¹⁷² In addition to providing an easy way for ballot distribution and for results and information to be shared between organizations, a common EML would allow new processes and systems to develop uniformly.¹⁷³ The project intends to allow for “complete interoperability” among computer applications of all types involved in election monitoring.¹⁷⁴ This would simplify the election process, allow for fuller and more efficient integration of organizations, aid in clarifying guidelines, and develop trust in the tools and methods of election monitoring.¹⁷⁵ OASIS or a similar project should significantly advance the development of an integrated system.

B. *An Integrated System Within Franck’s Framework of Analysis*

1. Pedigree

Integration will enhance the pedigree of election monitoring rules because it incorporates the historical development of the various organizations and therefore includes the goals and methods that have developed out of different historical circumstances. Thus, it broadens the pedigree and thereby the legitimacy of the election monitoring effort.

2. Determinacy

On its face, an integrated effort may seem to harm determinacy because it ensures that standards will change for each particular election and destabilizes the underlying consistency of each organization’s dedication to its free and fair standards. However,

170. *Id.* at 361.

171. *Id.* at 365.

172. *Id.*

173. *Id.* at 365–66.

174. *Id.* at 366.

175. *Id.*

given the amalgamation of organizations and standards that already exists, integration will not worsen the determinacy problem. In fact, integration of organizations will mitigate the problems of differing standards by encouraging communication and collaboration. The application of monitoring standards to each particular election will be more uniform than in the current system where each organization clings to its own standards. A unified effort will bring about more uniform standards and methods.

Each organization has a different stake, role, and set of goals for each election's outcome.¹⁷⁶ Nearly all articulations of the free and fair standard are unobtainable in a number of circumstances, and what results from this vast variety of approaches is a number of determinations that an election was "substantially free and fair" or "sufficiently reflect[ed] the will of the people."¹⁷⁷ Such statements do no more than reflect that elections were not entirely up to par with what is truly free and fair. However, as long as these organizations continue to judge using their own particular guidelines, without presenting any universal and coherent message of what needs to be done for target nations to improve, it will be nearly impossible for target states to understand and comply with lofty free and fair standards.

The global election monitoring effort would benefit from the presentation of a common front in each election that articulates a set of standards and overreaching goals rather than confuses matters with a splintered hodgepodge of standards and assistance. Some monitoring groups have recognized the importance of coordinating a unified voice and have already begun to focus on it.¹⁷⁸ Coordination will also ensure that more elections actually receive comprehensive monitoring teams. Since some organizations demand underlying conditions or guarantees before agreeing to monitor, and others specifically focus on those elections most in need of assistance,¹⁷⁹ currently only some organizations are involved in certain elections. Integration will ensure that all viewpoints are better represented in the monitoring of each election.

An integrated approach to election monitoring will also help to neutralize the various biases brought by different monitoring groups. This Note has examined the differences in monitoring approaches from the various actors involved,¹⁸⁰ and the proposed solution aims to combine the strengths of the different groups to capitalize on the

176. See *supra* Part III (explaining the various groups involved in election monitoring).

177. HANF ET AL, *supra* note 1, at 17.

178. *Communication*, *supra* note 76, at 7.

179. See *supra* Parts II.A, B.5 (discussing EU and U.N. monitoring decisions).

180. See *supra* Part II (discussing the various groups involved in election monitoring).

different viewpoints, legal bases, and particularized goals of each. For example, the U.N. and regional organizations may continue to provide concrete guideposts against which to analyze election processes and provide outside observers to evaluate election processes. NGOs may serve as a check on the natural biases of regional IGOs. Domestic organizations can focus on the need for democratic legitimacy without a bias toward a particular finding to legitimize their own existence.

3. Coherence

Integration aids in coherence of election monitoring standards by helping to mitigate the dual-edged problems identified as plaguing the decision to monitor elections in the first place.¹⁸¹ While currently some groups refuse to enter without certain baseline guaranteed freedoms in target nations¹⁸² and others enter and give a false sense of legitimacy when target nations are incapable of meeting the lofty free and fair standards,¹⁸³ an integrated effort would encourage communication and collaboration to eliminate the problems caused by one approach or the other. Organizations with gate-keeping standards may aid other organizations and domestic groups with different approaches and more short-term, attainable goals. In the long term, the latter types of organizations would, by interaction with the gate-keeping groups, have more experience and understanding of the long-term results they seek, and domestic groups could gear their other day-to-day operations toward attaining those goals.

4. Adherence

An integrated effort improves adherence, because it addresses problems of inflexibility and false legitimacy. It is inadvisable to establish a permanent super-organization for election observation. The key to an effective, cooperative, and integrated mission is its flexibility to respond to nations' various stages of development and differing political and cultural histories. Successful monitoring must consider that governments operate at different stages of development. Some organizations already recognize that situations like initial or post-conflict transitional elections require looser standards.¹⁸⁴ Even further flexibility is needed, since the varying cultural and historical stages of different countries pervades nearly all cases and therefore

181. See *supra* Part IV.B.4.a-b (discussing the two-sided problem to entrance requirements).

182. See, e.g., Inter-American, *supra* note 1, art. 3; Declaration of Principles, *supra* note 1, art. 3; HANF ET AL., *supra* note 1, at 4; Electoral Assistance, *supra* note 1.

183. See *supra* note 1 and accompanying text.

184. See *Communication*, *supra* note 76, at 22.

must be accounted for. The key to success of an integrated effort in this aspect is to rely on the expertise of domestic organizations to create effective goals suited to the particular historical and cultural circumstances of each target nation.

An integrated effort should recognize that delegations of election monitors serve as independent and influential forces in the outcome of domestic elections and therefore must be considered as active participants in establishing democratic governance in target nations. From which group a particular part of a mission hails should be irrelevant, because election monitors themselves should be recognized as an independent and integral part of the process.¹⁸⁵ Presentation of a unified front of monitors establishes the monitoring effort as an independent and more objective force. Furthermore, a unified force provides much more continuity across nations and election cycles, helping to establish monitors as an identifiable force throughout the world.

It is important, however, that observers avoid presenting an air of "outsider" superiority that might have a detrimental effect on their legitimacy in the eyes of voters.¹⁸⁶ Full inclusion of domestic organizations in all elections can mitigate this effect in part, so as to avoid the "outsider" persona as much as possible.¹⁸⁷ Just as a truly integrated approach will neutralize the biases of various actors, so should it also neutralize the influence of their origins, cultural baggage, and preconceptions. This shift transforms election monitoring from a segmented bilateral or limited multilateral operation to one that is truly international in nature, relying on experiences and opinions from various stages of development and expertise.

C. *Pragmatic Advantages of an Integrated Effort*

For obvious reasons, requiring cooperation and integration will also help to conserve resources. The efficiency of the overall effort should improve by each group focusing on those activities it does best. For example, the EU can focus on its expertise in providing technical assistance.¹⁸⁸ Regional IGOs may send observers for the entirety of the process, from pre-election to final reporting and implementation.

185. EVERED, *supra* note 96, at 6.

186. Joao Cravino, Vice President, European Parliament, Address at La Laguna University, in FREEDOM OF ELECTIONS AND INTERNATIONAL OBSERVATION OF ELECTIONS 19, 23 (proceedings of International Conference, La Laguna, Tenerife, Feb. 27–Mar. 2, 1994).

187. *See id.*

188. *See generally Communication, supra* note 76 (discussing the EU's decision-making and election monitoring systems).

Such a policy also allows each organization to capitalize on and dedicate concentration to its own strengths, leaving other aspects of the process to other groups more equipped to deal with them. For example, domestic organizations will play an important role in creating attainable standards for evaluation, while more idealistically focused groups can ensure that such standards are still meaningful in terms of the goals of freedom, fairness, and democratic self-governance.

VI. CONCLUSION

Democratic legitimacy is central to twenty-first century notions of national sovereignty. Such legitimacy depends on the holding of free and fair elections in some meaning of that term. As election monitoring garners more respect as a fundamental part of obtaining democratic legitimacy, it is crucial to ensure that election monitoring is conducted in a way that truly aids the goal of free and fair elections rather than distracts or even deters from it. This Note has examined the current state of election monitoring and analyzed the need for an integrated effort of various monitoring organizations so as to best attain the goals of election monitoring and move the nations of the world toward legitimate democratic governance.

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* J.D. Candidate, 2007, Vanderbilt University Law School; B.A. St. Olaf College. I would like to dedicate this note in memory of my grandfather, Richard Ricker, who taught me by example never to be shy in striving to change the world for the better, and in honor of my parents and grandparents who have always maintained that I can accomplish anything I truly put my mind and effort to. Special thanks to Faye Johnson, without whose hard work and unwavering dedication the Journal would not succeed. I also wish to thank Professor Larry Helfer for his guidance in this note topic, and my fellow members of the Executive Board and the entire VJTL staff for their patience and cooperation.