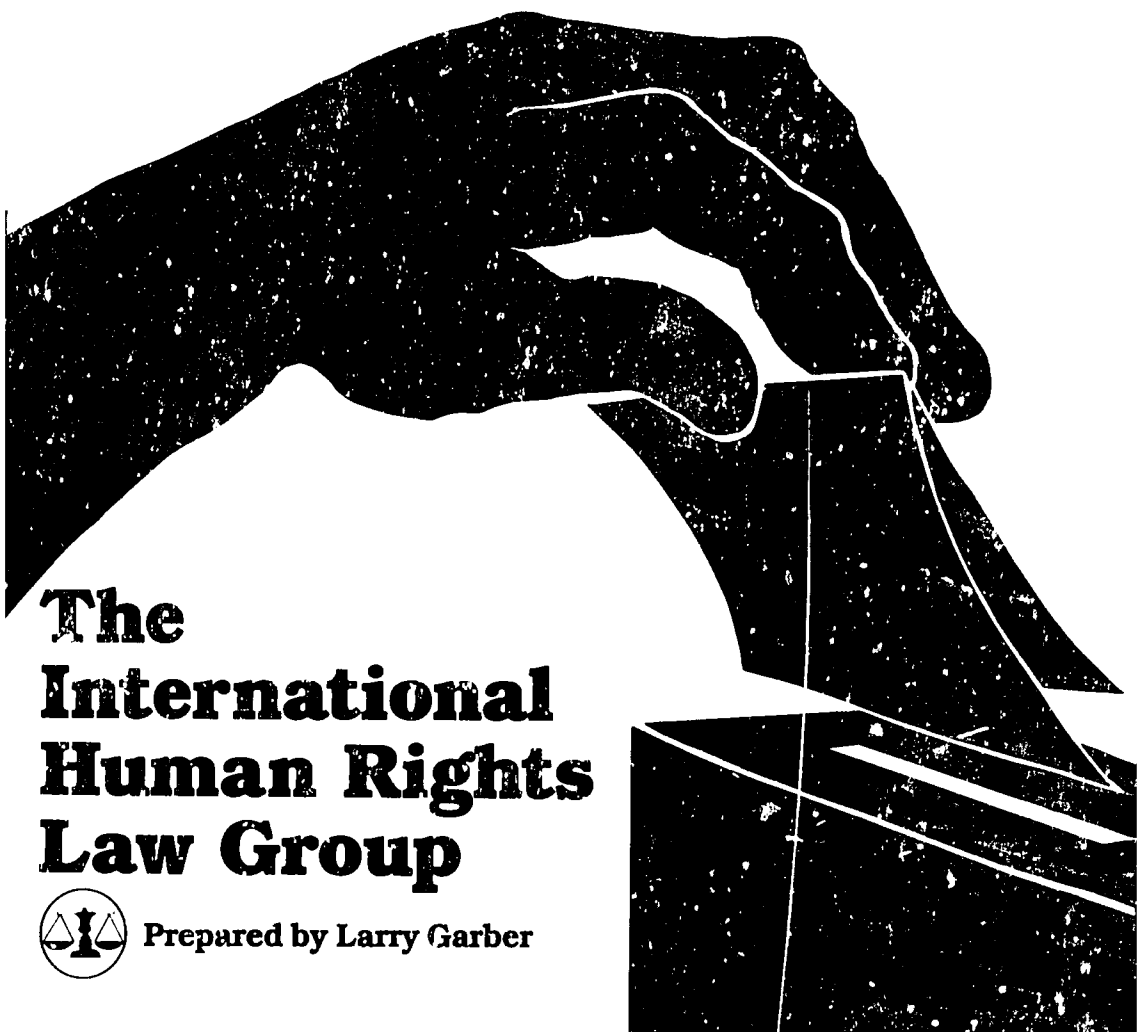


GUIDELINES FOR INTERNATIONAL ELECTION OBSERVING



**The
International
Human Rights
Law Group**



Prepared by Larry Garber

THE INTERNATIONAL HUMAN RIGHTS LAW GROUP, established in 1978, is a nonprofit, public interest law center concerned with the promotion and protection of international human rights. The Law Group provides information and legal assistance to organizations and individuals in cases of human rights violations. Funded by foundation grants and individual contributions and assisted in its work by attorneys in Washington, D.C., the Law Group offers its expertise on a *pro bono* basis.

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AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON D C 20523

November 18, 1985

TO: LAC and ARA Geographic Office Directors

FROM: LAC/AJDD, Roma D. Knee *de*

SUBJECT: International Election Observer Guidelines

With financing under an A.I.D. human rights grant from PPC, the International Human Rights Law Group prepared Guidelines for International Election Observing, which represents an attempt to develop uniform criteria for use by observers in assessing electoral processes, and to increase awareness of the role election observers can play in promoting human rights in a given country.

Heightened interest in providing support for the electoral process as a way of strengthening democratic institutions and processes has increased the likelihood of State and AID staff involvement in supporting election observer programs. We are therefore providing two copies of the Guidelines for each Desk Officer, with a request that he or she forward one of the copies to the mission for future reference.

(Note: Copies have already been provided to Desk Officers and Missions in Guatemala and Honduras.)

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PREFACE

The Law Group was established in September 1978 to provide legal assistance in implementing the growing body of international and domestic human rights law. The Law Group provides on a pro bono basis legal services, research and information in the human rights field to nongovernmental organizations and individuals. Through the Law Group's activities in norm-setting and implementation in the field of human rights, through its role in monitoring human rights developments in various countries and through the legal assistance it has provided to various nongovernmental organizations, the Law Group recognized the contribution election observer missions can make in promoting democratic forms of government and human rights generally in foreign countries.

All the major human rights instruments recognize a citizen's right to participate in his or her country's government. Moreover, the human rights instruments recognize the integral role elections play in ensuring political participation. However, beyond requiring "free", "genuine" and "periodic" elections, the human rights instruments are vague as to what constitutes adequate respect for the right of popular participation.

One impetus for the Law Group's election observer project was to develop uniform criteria for the assessment of electoral processes. The controversies surrounding the 1979 election in Rhodesia/Zimbabwe and the 1982 election in El Salvador highlighted the need for uniform criteria. In both instances, a number of election observer missions were dispatched by governments and by nongovernmental organizations to report on the elections. The conclusions of the missions, however, were wildly contradictory.

In part, these differing conclusions reflected different political biases; yet, in viewing the reports of the missions, it is also obvious that methodology and the application of varying criteria for evaluating electoral processes played a role in the conclusions reported. The Law Group's project, therefore, was designed to establish guidelines not only for the assessment of an electoral process, but also guidelines for the technical and procedural aspects of organizing an independent and credible election observer mission.

A second, and more significant, impetus for the project was the Law Group's recognition of the role an election observer mission can play in promoting human rights in a foreign country. The presence of an observer mission often will deter electoral fraud and manipulation of the electoral process. Thus, the mission promotes respect for the free and genuine elections required by the human rights instruments. The Guidelines developed by the Law Group also recom-

mend that observer missions, in evaluating an electoral process, consider other fundamental rights such as the right to free expression, the right to free association and the right to free assembly. These and other rights are recognized explicitly in international human rights instruments. Finally, the Law Group also believes that an election observer mission provides an opportunity to observe and report on other aspects of a country's human rights situation.

In support of political participation as a means for promoting human rights, and in the interest of developing norms by which the fairness of such participation could be judged, the Law Group in 1983 undertook a project to provide guidelines for observing elections.

The Law Group gratefully acknowledges the assistance of the U.S. Agency for International Development which funded this project under Section 116(e) of the Foreign Assistance Act which authorizes "funds . . . for programs . . . which will encourage or promote increased adherence to civil and political rights, as set forth in the Universal Declaration of Human Rights. . . ." We were particularly fortunate to be able to work with Ms. Marilyn Zak whose enthusiasm and guidance provided much support.

While election observing was not completely uncharted territory for the Law Group, which has sponsored many fact-finding human rights missions, the Law Group greatly appreciated the expertise of an outstanding group of people who served as Advisors to the project. Dr. Richard Scammon and Dr. Howard Pennington, two recognized experts in the field, were extremely generous with their time and knowledge. Mr. Clifton White, an experienced political consultant, also made a valuable contribution and gave a different perspective to the project. The Law Group is extremely grateful to Dean Robert Goldman and Professor David Weissbrodt whose creativity, insight and experience in the field of human rights played a key role in shaping the *Guidelines*.

The initial formulation of this project came from Professor David Weissbrodt of the University of Minnesota. He drafted the project proposal, which was eventually submitted to the Agency for International Development and accepted by them. The International Human Rights Law Group acknowledges its gratitude to Professor Weissbrodt for his contribution and assistance in connection with this project, as well as to the Stichting European Human Rights Foundation for their support of Professor Weissbrodt's efforts.

Special thanks go as well to Diane de Guzman of the National Law Center at George Washington University and Phillip Weintraub of the Washington School of Law at American University. While intern-

ing at the Law Group, these talented and amenable students played a variety of roles in preparing this publication from researchers to proofreaders. Additionally, without the creative efforts and endless patience for details of Kathleen Yancey and Lisa Maieriollo-Gallus, who managed the publication, the book would still be a good intention

Finally, the Law Group was extremely fortunate to have had as Project Director and author of the *Guidelines*, Mr. Larry Garber. First brought to the attention of the Law Group while at Steptoe and Johnson working on a *pro bono* project, Mr. Garber was recruited to perform a difficult and important task. We are indebted to Mr. Garber for the creativity and scholarship he brought to the project and the industry and enthusiasm which he applied to running an ambitious and successful conference. Mr. Garber has now become an expert on election observing in his own right. We hope that the *Guidelines for International Election Observing*, which he has so masterfully drafted, will serve as a valuable tool for the promotion of free and fair elections and for the protection of human rights.

August, 1984
Washington, D.C.

Amy Young
Executive Director

INTRODUCTION

Elections in foreign countries have always been subject to observation by outsiders. The staff of an embassy located in a foreign country, as part of its regular duties, has traditionally analyzed political developments in a country holding an election. Similarly, where the results of an election may impact on a country's relations toward other countries, journalists have monitored elections and reported on the results. Finally, political scientists and other academics have studied elections throughout the world, in order to gain an understanding of the political process in different countries. Part of the research has often included a visit on election day to the country being studied.

Since the second World War, the right to political participation in one's government has been recognized as a fundamental human right.¹ The role elections play in ensuring adherence to the right of political participation has also been recognized.² In part, as a result of these developments, the monitoring of overseas elections by institutional organizations has evolved.³

This monitoring has involved the dispatch of a mission to a country or territory holding an election, plebiscite, or referendum. These missions differ from previous examples of overseas election observing because they have as a prime focus an assessment of the fairness of the election process. This is true even where the sponsoring organization is also interested in an assessment of aspects of a foreign country's political, economic or human rights situation.

While the practice of sending election observer missions to assess the fairness of elections has developed rapidly, there is a great diversity in the types of missions that have been sent. The diversity is reflected in the nature of the institutions that have dispatched election observer missions. Over the past forty years, governments, intergovernmental organizations and nongovernmental organizations (NGOs) have all sponsored such missions. The diversity is also reflected in the size of different missions, the length of stay in the host country or territory, the nature of the report prepared following the mission, and in other technical and substantive areas.

Despite the diversity, election observer missions generally have gathered information relevant to an understanding of the political process in the host country, and have gained credibility in reporting on events in the host country. Before considering specific guidelines for election observer missions, however, a brief review of the history of election observer missions over the past forty years and the relationship between elections and human rights is appropriate.

REVIEW OF ELECTION OBSERVER MISSIONS

United Nations missions

The United Nations dispatched its first election observer mission to observe a by-election in Korea in 1948.⁴ Since that time it has dispatched over thirty missions to monitor elections, referenda and plebiscites.⁵ More than half the missions were sent to monitor plebiscites, referenda and elections held in "small" and trust territories.⁶

The United Nations authorizes an election observer mission in response to an invitation from the administering authority or power.⁷ The resolution authorizing the organization of an election observer mission specifies the composition of the mission and the mission's terms of reference.⁸ During their visit to the territory, the United Nations observers evaluate the political education campaign, the political campaign, the election day balloting procedures, and the counting of the votes.

Upon return to headquarters, a comprehensive report is prepared and then submitted to the appropriate United Nations organ for consideration.⁹ Although the missions are costly, the United Nations believes that they play a significant role in ensuring that the right to self-determination is respected in territories subject to the jurisdiction of the United Nations.

Organization of American States missions

Between 1962 and 1984 observers designated by the Secretary-General of the Organization of American States (OAS) have monitored elections in eight OAS member states.¹⁰ When a request for observers is made by a member state, the Secretary-General of the OAS designates a team of observers. The observers, although designated by the Secretary-General, serve in their individual capacities, and in theory are not OAS representatives. However, OAS observers generally are accompanied by officials from the OAS secretariat, are supported financially by the OAS, and submit a report to the OAS.

The procedures of the OAS for designating observers result from the objections of some member states to the practice of monitoring elections in foreign countries. Other OAS countries have objected to the lack of guidance provided to OAS designated election observers. In 1979, a working group was established to study procedures and

standards for the appointment of election observers.¹¹ Although the subject was subsequently debated by the Permanent Council of the OAS,¹² the recommendations of the working group were never adopted.

Commonwealth observer missions

Election observer missions have been organized by the Commonwealth in six instances.¹³ In each instance, the election was being held either in a territory controlled by Great Britain or, in the case of Uganda, in a former British colony. The Commonwealth observers have generally been chosen by the Secretary-General of the Commonwealth, and serve as representatives of the Commonwealth.

The two most recent Commonwealth observer missions were sent to observe elections in Zimbabwe and Uganda. In both instances, the observers were authorized to ascertain whether, in their judgment, the elections were free and fair.¹⁴ In their respective reports, the observers described the problems in the administration of both elections.¹⁵ With respect to Zimbabwe, the observers concluded that the election was a valid and democratic expression of the wishes of the people.¹⁶ With respect to Uganda, the observers were more circumspect, although they concluded that there too the results represented the political will of the people.¹⁷

Official country observer missions

In recent years, the practice of inviting official delegations¹⁸ to observe controversial or transitional elections has become an integral part of the electoral process. The most famous examples of these phenomena are the elections in Zimbabwe in 1980 and in El Salvador in 1982 and 1984. Thirteen countries sent official delegations to observe the 1980 Zimbabwe election.¹⁹ In 1982, seventeen countries were represented by official observer missions in El Salvador,²⁰ while for the March 1984 election, there were twenty-six official missions observing the election.²¹

The activities of official delegations vary. In some instances, the observers arrive two or three days prior to the election.²² Because of their limited visits, the reports prepared following these official missions often are limited to a description and brief analysis of the technical aspects of the voting process.²³ Although their presence in the country on election day deters manipulation and fraud by the

electoral authorities, their primary purpose often is to signify support for the electoral process.

The official delegations of some countries engage in a comprehensive evaluation of the political process, similar to that performed by United Nations and Commonwealth observer missions. By arriving sufficiently prior to the election, these delegations are able to travel throughout the host country prior to election day, and endeavor to meet with a cross section of the population. These delegations also generally remain in the country two to four days following the election, in order to monitor the vote count. Following the election, a comprehensive report is prepared, which describes the activities of the observers and relates their conclusions about significant aspects of the electoral process.²⁴

Nongovernmental organizations

NGOs send observers to monitor elections for a variety of reasons, including: a) a general interest in developments in a particular country; b) following a request by a fraternal organization within the host country; c) to evaluate the political and human rights situation in a country; or d) to provide a credible counter to the likely conclusions of an official delegation or other unofficial delegations. Whatever the motivations, NGOs were well-represented as unofficial observers in Zimbabwe²⁵ and El Salvador.²⁶ For less controversial elections, but which nonetheless involve a transition from colonial or non-democratic government to an independent democratic government, only one or two NGOs are likely to sponsor a mission to monitor the election.

The methodology of NGO missions also vary. Some missions engage in a comprehensive analysis of all aspects of the political process, others limit their observations to election day activities. Following the election, the members of the mission generally prepare a report for the sponsoring organization or organizations. The report often is used to influence legislators, foreign policy makers and public opinion as to the future course of relations between the home country of the sponsoring organization and the country holding the election.

ELECTIONS AND HUMAN RIGHTS

Human rights instruments

A citizen's right to participate in the government of his or her country is recognized in all of the major human rights instruments. For example, Article 21(1) of the Universal Declaration of Human Rights, adopted unanimously by the United Nations General Assembly in 1948 provides:

[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives.²⁷

The Universal Declaration further recognizes that elections play an integral role in ensuring political participation. Subsection 3 of Article 21 provides:

[t]he will of the people shall be on 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.²⁸

The term "genuine" was included to ensure that voters are free from coercion or pressure in exercising their right to vote.²⁹

Early drafts of the International Covenant on Civil and Political Rights (International Covenant) did not include a provision pertaining to political rights.³⁰ However, as adopted, Article 25 of the International Covenant parallels Article 21 of the Universal Declaration with minor modifications in organization and language.³¹

During the drafting process, some nations sought to include a definition of "genuine elections" in the International Covenant. One proposal defined a genuine election as an election involving "a choice between at least two parties, the right to organize a political opposition, [and] the right to freely exercise political control over any government."³² However, this proposal was not accepted.

Reference to political rights are also included in the American Declaration of the Rights and Duties of Man,³³ the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms,³⁴ the American Convention on Human Rights,³⁵ and the African Charter on Human and Peoples' Rights.³⁶ Although the specific formulae differ, all but one of the instruments explicitly recognize the role periodic, free and genuine elections play

in ensuring respect for political rights.³⁷ The scope of the political rights provisions included in the various human rights instruments have been considered by the United Nations Commission on Human Rights,³⁸ the Human Rights Committee established pursuant to the International Covenant,³⁹ the European Commission of Human Rights⁴⁰ and the Inter-American Commission on Human Rights.⁴¹

Election observer missions and promotion of human rights

The presence of an election observer mission in a country holding an election may assist in ensuring a fair and fraud-free election. An election observer mission also is in a position to report on the extent that the political rights specified by the various human rights instruments are respected in a given country. Providing assistance on human rights related matters and reporting on a country's respect for particular human rights are integral parts of the human rights process. To the extent that an election observer mission fulfills these goals, the mission contributes directly to the promotion of human rights.

The impact of an election observer mission, however, is not limited to its effect on political rights. In assessing whether an electoral process is free and genuine, other provisions of the various human rights instruments must be considered. Specifically, there is general agreement that the rights to hold opinions without interference, to freedom of expression, to peaceful assembly and to freedom of association are directly related to the right of participation in political processes and the right to vote in free and genuine elections. Moreover, respect for all the specific human rights covered in the various human rights instruments often will be a prerequisite for the holding of free and genuine elections. Thus, to the extent that a host government is concerned with the conclusions that an observer mission may reach, the presence of an election observer mission, in addition to encouraging a fraud-free election, may promote an improvement in the overall human rights situation in a country.

An organization may also utilize an election observer mission to investigate specific areas of concern to the organization. Governments that have been alleged violators of human rights often schedule elections in order to improve their country's image within the international community. Where this is a government aim, the government may provide access to institutions, such as prisons and refugee camps, and geographic areas within the country that previ-

ously have been off-limits to fact-finding missions. Thus, an election observer mission may take advantage of the openness provided by an election period to investigate specific cases involving allegations of human rights violations.

SUMMARY

The practice of sending election observers to monitor controversial elections is likely to continue. Moreover, there is increasing recognition of the role election observer missions can play in promoting human rights in all countries. Yet, if election observer missions are to fulfill this function, guidelines that are both practical and non-partisan must be utilized by election observer missions.

The Guidelines that follow are based on a study undertaken by the International Human Rights Law Group. As part of the study, the Law Group reviewed the relevant literature on elections and democratic processes, conducted interviews with individuals who had served as election observers in different countries, and collected reports prepared by election observers pursuant to their missions. The Law Group also sent representatives to three countries where elections were scheduled in order to monitor the activities of the various observer missions present in each country for the election. Finally, the Law Group organized a conference of experts to review a preliminary set of guidelines.

The Guidelines, as revised, provide a comprehensive set of recommendations for organizing an election observer mission and provide criteria for evaluating an electoral process. However, because every election is different, the recommendations included in the Guidelines should be modified, when necessary, in order to accomplish the specific objectives of the sending organization or government.

The Guidelines are designed for use by organizations and governments seeking an objective evaluation of an electoral process. As is true with other fact-finding missions, the composition and methodology of an election observer mission are significant factors in ensuring the success of the mission.

In the following chapter, Guidelines and Related Materials, the guidelines are listed separately for easy reference and then each guideline is repeated together with commentary. There are also five appendices at the end of this chapter: 1) provisions of various human rights instruments pertaining to political participation; 2) sample terms of reference; 3) a guide for planning election day observations;

4) a list of issues to assist observers in identifying areas of an electoral process warranting further investigation or in conducting a comprehensive analysis of an electoral process; and 5) practical suggestions for organizing an election observer mission.

Larry Garber
Elections Project Director

FOOTNOTES

1. See Universal Declaration of Human Rights, G.A. Res. 217A III, U.N. Doc. A/810 at 75, art. 21 (1948).
2. *Id.*
3. Even prior to 1945, elections were held subject to international supervision or observation. See D. D'Amato, *Elections Under International Auspices (Elections)* 2-9 (1970) (doctoral dissertation on file at the John Hopkins School for Advanced International Studies). For example, in 1857 elections in Moldavia and Wallachia were observed by an European Commission established by the Treaty of Paris. See S. Wambaugh, *A Monograph on Plebiscites* 101-118 (1920).
4. D'Amato, *Elections*, *supra* note 3, at 485-94. The initial United Nations mission was sent as part of the United Nations Temporary Commission on Korea. Subsequent elections in Korea were monitored by the United Nations Commission on Korea and the United Nations Commission on the Unification and Rehabilitation of Korea. *Id.* at 491-95.
5. See United Nations Department of Political Affairs, *United Nations Participation in Popular Consultations and Elections Annex* (1983).
6. Except for the elections involving Korea, United Nations Observation or Supervision of elections occurred in small or trust territories. *Id.*
7. *Id.* at 3.
8. See e.g. Report of the United Nations Visiting Mission to Observe Plebiscite in Palau, Trust Territory of the Pacific Islands, February 1983, U.N. TCOR Supp. (No.3) at 1, U.N. Doc. T/1851 (1983).
9. *Id.* at 10. For trust territories the report is submitted to the Trusteeship Council for consideration. For small territories, the report is submitted initially to the Committee of 24.
10. OAS missions have been sent to observe elections in Costa Rica (1962, 1966, 1970, 1978, 1982); Dominican Republic (1962, 1966, 1970, 1978); Ecuador (1968); Guatemala (1970, 1980); Panama (1978); El Salvador (1980, 1982); Honduras (1981). Department of State, *Research Memorandum No. 1304, International Observation of Elections in Latin America: A Listing 1962-1982*. The Secretary General of the OAS also designated a delegation to observe the 1984 presidential election in El Salvador.
11. OEA/Ser.G/CP/CG-1086/80 (April 10, 1980). The working group recommended that the OAS Secretary-General be authorized to select observers when requested by a government, but that the authorization stipulate that the observers are not representatives of the OAS. *Id.* at 3. The delegation of Ecuador abstained from voting on the recommendations.

- in part because the delegation did not view an OAS sponsored delegation as an act of intervention once an invitation had been issued. *Id.* at 4.
12. OEA/Ser.G/CP/CAJP-417/80 (August 1, 1980).
 13. Commonwealth election observer missions have been sent to Malta, British Guiana, Mauritius, Gibraltar, Zimbabwe and Uganda.
 14. Commonwealth Secretariat, *Southern Rhodesia Elections February 1980: The Report of the Commonwealth Observer Group on Elections Leading to Independent Zimbabwe* 1 (1980). Commonwealth Secretariat, *Uganda Elections, December 1980: The Report of the Commonwealth Observer Group* 7 (1980).
 15. *Rhodesia Commonwealth Report* at 73-74; *Uganda Commonwealth Report* at 34.
 16. *Rhodesia Commonwealth Report* at 74.
 17. *Uganda Commonwealth Report* at 34.
 18. An official delegation is one comprised of individuals designated by the government of a country or an intergovernmental organization to observe an election in a foreign country.
 19. See J. Boynton, *Southern Rhodesia Independence Elections 1980: Report of the Election Commissioner (Boynton Report)* 85-88 (1980).
 20. See J. Galsworthy and D. Bowett, *Report on the Election in El Salvador on March 28, 1982 (British 1982 Report)* 17 (1982).
 21. See J. Swaffield and D. Browning, *Report on the First Round of the Presidential Election in El Salvador on March 25, 1984 (British 1984 Report)* 26 (1984).
 22. See e.g. N. Kassebaum, *Report of the U.S. Official Mission to the El Salvador Constituent Assembly Elections of March 28 1982 (Kassebaum Report)* 1 (1982).
 23. See e.g. *id.* at 4-5; *Preliminary Report of Canadian Observers to El Salvador Election* 1-3 (1984).
 24. See e.g. *British 1984 Report*, *supra* note 21; *Netherlands Observers' Report on the Presidential Elections in El Salvador; British 1982 Report*, *supra* note 20; *Report on Findings of Dutch Observers During the 1980 Elections in Rhodesia; The Rhodesian Election 1980: Report by the Group of Independent British Observers Appointed by the United Kingdom Government; Rhodesia Elections February - March 1980: Report of New Zealand Observation Group*.
 25. See *Boynton Report*, *supra* note 19, at 87-91.
 26. See *Kassebaum Report*, *supra* note 22, at 32-33.
 27. G. A. Res. 217A (III), U.N. Doc. A/810 at 75 (1948) (Universal Declaration).
 28. *Id.*
 29. U.N. Doc. A/C.3/SR.133 at 462 (1948). See generally K. Partsch, *Freedom of Conscience and Expression, Political Freedoms*, in *International Bill of Rights* 239 (L. Henkin ed. 1981).
 30. *Id.* at 238.
 31. G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 54, U.N. Doc. A/6316, Article 25, adopted Dec. 19, 1966, entered into force March 23, 1976. Article 25 of the International Covenant provides: "Every Citizen shall have the right and opportunity, . . . without unreasonable restrictions:
 - a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors."
 32. U.N. Doc. A/C.3/SR.298, Para. 26 (1950).

33. Res. XXX, Final Act of the Ninth International Conference of American States, Bogota, Colombia, at 38 (PAU 1948).
34. 213 U.N.T.S. 262, First add'l protocol, Art. 3, signed March 20, 1952, entered into force May 18, 1954, (European Convention).
35. O.A.S. Treaty Series No. 36, at 1, O.A.S. Off. Rec. O.E.A./Ser.L/V/II.23 doc. rev. 2, Art. 23, signed Nov. 22, 1969, entered into force July 18 1978, (American Convention).
36. O.A.U. Doc. CAB/LEG/67/3 Rev. 51, Art. 13, adopted June 27, 1981 (African Charter).
37. The African Charter does not explicitly recognize a citizen's right to vote or a country's obligation to hold periodic elections. See generally Gittleman, *The African Charter on Human and Peoples' Rights: A Legal Analysis*, 22 *Va. J. Int'l. L.* 667, 699 (1982).
38. In addition to preparing the initial draft of the International Covenant, the United Nations Commission on Human Rights has also requested studies on various aspects of the political rights recognized by the International Covenant. Presently, a study is being prepared for the Commission on the "right to popular participation in its various forms...as an important factor in the full realization of all human rights." U.N. Doc. E/CN.4/1984/12 (1984).
Fact-finding missions established by the Commission have also considered the degree of respect for political rights as part of their evaluation of the general human rights situation in a country. See, e.g., *Final Report on the Situation of Human Rights in El Salvador*, U.N. Doc. E/CN.4/1984/25, Para. 25 (1984).
39. See e.g. *Massera v. Uruguay* (R.1/5) IIRC 34.124 (International Covenant is violated by prohibiting certain classes of citizens from participating in political activity for fifteen years).
40. See e.g. *Denmark, Norway, Sweden and Netherlands v. Greece*, (3321-3/67; 3344/67) Report: November 5, 1969 (the additional protocol implicitly requires a representative legislature); *X v. Netherlands* 6573/74 DR I, 87 (law depriving persons of vote based on past criminal behavior does not violate European protocol).
41. See e.g. *Annual Report of the Inter-American Commission on Human Rights, 1982-1983*, OEA/Ser.L/V/II.61/doc. 22/Rev. 24-28; *Report on the Situation of Human Rights in the Republic of Bolivia*, OEA/Ser.L/V/II.53/doc. 6, 72-90 (1981); *Report on the Situation of Human Rights in the Republic of Nicaragua*, OEA/Ser.L/V/II.53, doc. 25, 133-140 (1981).

PART I
GUIDELINES
and Related Materials

GUIDELINES FOR INTERNATIONAL ELECTION OBSERVING

I. PRELIMINARY CONSIDERATIONS

Guideline IA. Justifications for Sending An Election Observer Mission

An election observer mission may be sent: to ensure that an independent, impartial and objective report evaluating the electoral process in a particular country is prepared; to encourage participation in the electoral process by undertaking to report any significant manipulation of the electoral process; and/or to assist in ensuring the integrity of the electoral process. A further justification might be to evaluate the general human rights situation of a country, which may bear upon the legitimacy of the electoral process.

Guideline IB. Choice of Elections to Observe

An organization* should consider the following factors before determining whether to send an election observer mission: has there been a request for observers from the host country;** has the organization been monitoring political developments in the host country for a period of time; does the election represent a transition in power from a colonial or non-democratic government; have there been prior instances of fraud or manipulation in the electoral process of the host country; is there a debate surrounding the legitimacy of the election; and is the election occurring in a country where there have been serious allegations of human rights violations?

II. ORGANIZING A MISSION

Guideline IIA. Terms of Reference

1. The organization sponsoring an election observer mission should prepare the terms of reference for the mission.

* The term "organization", as used in the *Guidelines*, includes intergovernmental organizations, nongovernmental organizations and governmental bodies.

** The term "host country", as used in the *Guidelines*, refers to a country or territory holding an election, plebiscite or referendum. The term is not intended to connote sponsorship of a mission. See **Guideline IIIA**.

2. The terms of reference should include an explanation of the organization's objective(s) in dispatching the mission.
3. The terms of reference should be sufficiently specific to provide guidance to the observers, but also sufficiently flexible to allow the observers to deal with unforeseen circumstances.

Guideline IIB. Size of an Observer Mission

1. An election observer mission should consist of at least two observers. A larger mission will permit the inclusion of observers with expertise in more subject areas, will allow the observers to meet with a wider range of individuals in the host country, will ensure broader coverage of polling places on election day, and will ensure broader dissemination of the mission's conclusions.
2. Factors to be considered in determining the optimum size of a mission include: the size of the host country; the population of the host country; the nature and scope of the specific issues the observers will be investigating; the number and distribution of the polling sites; and the availability of financing.
3. When a mission consists of more than three observers, a chairperson should be selected.

Guideline IIC. Selection of the Observers

1. The primary factors to consider in selecting observers are a) an individual's reputation for independence, impartiality and objectivity and b) the individual's ability to speak the language of the host country.
2. Other factors to consider in selecting election observers include an individual's ability to understand and apply election laws, knowledge and understanding of international human rights norms, expertise in electoral administration, practical experience in politics, knowledge of the host country to be visited, participation in previous fact-finding missions, ability to conduct a factual investigation, and ability to report factual findings.
3. To the extent possible, an observer mission should include individuals from various countries, different races and different ethnic groups, and of both sexes.

Guideline IID. Financing a Mission

1. Although it may sometimes be necessary to rely on funding from a source within the host country, the better practice is to obtain funding from a source outside the host country.
2. When practical, an organization should consider disclosing the source of financing for a mission in a mission report.

III. PRE-DEPARTURE ACTIVITIES**Guideline IIIA. Notifying the Host Country**

1. In most situations, the sponsoring organization should notify the host government of its plan to send an election observer mission. The host government's assistance in facilitating meetings with government officials and in obtaining credentials should be requested, unless such a request would be inappropriate.
2. When the purpose of the mission is not being disclosed to the host country, the sponsoring organization should fully apprise the observers of the situation.

Guideline IIIB. Briefings

1. The sponsoring organization should ensure that the observers understand the objectives of the mission and the methods that the sponsoring organization expects the observers to utilize in achieving the stated objectives.
2. The observers should be provided with background materials on the country to be visited. This material should include information pertaining to the history of the host country, current political developments, and an analysis of the electoral process.

Guideline IIIC. Meetings

In appropriate situations, some or all of the observers should seek meetings with a representative of the host country's Embassy, a representative of the ministry responsible for foreign affairs in the home country, and representatives of knowledgeable non-governmental organizations.

IV. VISIT TO HOST COUNTRY

Guideline IVA. Length of Stay

1. Observers should visit the host country at least four days prior to the election, depending on the issues that the sponsoring organization anticipates will need investigation. When practical, at least one of the observers should remain in the host country until the results are known.
2. The following are factors that might be considered in determining the length of a mission's visit to a host country: the objectives of the sponsoring organization; the observers' previous relationships with the host country; the size of the delegation; the availability of qualified observers for more than a short visit; and the availability of funding.

Guideline IVB. Announcing the Mission's Presence

The observers should announce their presence, either through a press conference or press release, upon arrival. The statement to the press should identify the sponsoring organization and the specific objectives of the mission. The statement should also stress the impartiality of the observers, and the willingness of the mission to receive comments about the electoral process or other aspects of the human rights situation relating to the electoral process in the host country.

Guideline IVC. Collection of Information

1. Election observers should meet with a cross section of participants in the political process of the host country. Particularly important are meetings with government officials, party leaders and candidates, members of the government body administering the election, and representatives of the leading institutional organizations, such as labor unions, professional organizations, human rights groups and religious and ethnic organizations. These meetings should occur prior and subsequent to election day.
2. The observers should carefully monitor the local media during their visit to the host country.
3. The observers should travel widely in the host country to obtain an independent assessment of the situation surrounding the elec-

tion and to investigate complaints indicating a pattern of electoral manipulation.

4. In general, interviews should be conducted in circumstances that ensures a person's willingness to discuss openly any subject. Thus, during their travels, the observers should not be accompanied by government security forces, or others likely to intimidate the person(s) being interviewed. In addition, the observers generally should provide their own interpreters to minimize intimidation.

5. Observers should share information with observers sponsored by other organizations to increase the information available to all observers.

Guideline IVD. Election Day Activities

1. Prior to election day, a detailed plan should be developed to coordinate visits to different polling sites. The plan should identify the specific procedures each observer should utilize during a visit to the polling site. The plan should set forth how an observer should respond when confronted with complaints or problems at a polling site.

2. Observers should not interfere with the polling, even if serious problems are observed during the polling, unless assistance is specifically requested by the local authorities.

3. An observer mission should attempt to cover as many polling sites as possible on election day. Particularly important is the presence of observers at the closing of the polls and the counting of the ballots.

V. ASSESSING THE ELECTORAL PROCESS

Guideline VA. Sources

1. Observers should consider the provisions contained in the major international human rights instruments pertaining to popular participation and free and genuine elections, as interpreted by the relevant international organizations.

2. While acknowledging the principles of international law, observers should give due respect to specific electoral laws and procedures adopted by the host country that may reflect the historical development of the country or particular problems facing the country.

Guideline VB. Basis for Conclusion

1. In reaching an ultimate conclusion with respect to the electoral process, observers should evaluate whether imperfections in an electoral process actually resulted in thwarting the popular will of the citizenry. Nonetheless, even if the ultimate conclusion of the observers is favorable, an observer mission should report the imperfections in the electoral process.
2. The observers should consider all evidence presented, even if not based on first-hand observation, so long as its credibility is otherwise assured.
3. When faced with conflicting allegations pertaining to an issue affecting the mission's ultimate conclusion(s), the observers should undertake an independent investigation, if possible. While the investigation is being conducted, the observers may report the allegations, but no final conclusions should be announced until the investigation is concluded.

Guideline VC. Minimal Conditions for a Free and Fair Election

1. The following conditions should exist in a country holding an election: no unreasonable limitations placed on a citizen's ability to participate in the political process, including the right to a secret vote and the right to be elected to office; and respect for the rights of freedom of expression, freedom of association and freedom of assembly for a period adequate to allow political organizing and campaigning and to inform citizens about the candidates and issues.
2. For a free and fair election, it is also necessary that the integrity of the balloting process be respected, including consideration whether the candidate or party that receives the proportion of the vote prescribed by law is allowed to assume office and power.

Guideline VD. Other Conditions Necessary for a Free and Fair Election

Observers should also identify and consider other specific aspects of the electoral process as warranted by the situation in the host country.

VI. DISSEMINATION OF THE MISSION'S CONCLUSIONS

Guideline VIA. Procedure

1. The announcement of the conclusions of an observer mission should be made after consulting with the sponsoring organization, unless the observers have been authorized to announce their conclusions without prior consultation.
2. A public statement by observers should be issued promptly where its issuance may deter attempts by the authorities to manipulate the electoral process or where it may inhibit ill-founded challenges to valid election results. Where a public statement is issued to influence the authorities, there should be a consensus among the members of the mission.

Guideline VIB. Form

1. Unless the sponsoring organization indicates to the contrary, a written report should be prepared following an election observer mission. The report should include: the name of the sponsoring organization; the names of the observers; the sponsoring organization's reasons for sending a mission; the mission's terms of reference; historical background to and the significance of the election; the itinerary of the observers in the host country; the fact-finding procedures utilized; the election results; and an evaluation of the electoral process, including evaluation of the specific issues identified by the sponsoring organization.
2. Other means available for the announcement of an election observer mission's evaluation of an electoral process include: distributing a press release; giving a press conference; testifying before a legislative body; lecturing at a public forum; and submitting an article for publication in a newspaper or journal.
3. A written report should be disseminated to interested governments, legislators, international organizations, nongovernmental organizations and academics.
4. Sponsoring organizations should continue to monitor the situation in the host country, to assure that persons interviewed are not subject to mistreatment, and to determine whether the electoral results are respected.

GUIDELINES WITH COMMENTARY

I. PRELIMINARY CONSIDERATIONS

Guideline IA. Justification for Sending An Election Observer Mission

An election observer mission may be sent: to ensure that an independent, impartial and objective report evaluating the electoral process in a particular country is prepared; to encourage participation in the electoral process by undertaking to report any significant manipulation of the electoral process; and/or to assist in ensuring the integrity of the electoral process. A further justification might be to evaluate the general human rights situation of a country, which may bear upon the legitimacy of the electoral process.

Commentary to Guideline IA.

Before deciding to dispatch an election observer mission an organization should identify its objectives. Guideline IA. provides several rationale that have been relied on by organizations in the past.

Acceptance of the various international human rights instruments by a country provides the legal basis for monitoring the electoral process of a foreign country. All the major human rights instruments contain provisions pertaining to participation in one's government,¹ and, all but one contain provisions pertaining to free and fair elections.² Commenting on the electoral process in a foreign country, including evaluations by international organizations,³ therefore, does not amount to interference in the domestic affairs of another country.⁴

An election period provides an excellent opportunity for a general human rights fact-finding mission, due to the likelihood that the host government will cooperate with the mission. However, when sending an election observer mission to investigate also the general human rights situation, the observers should be instructed as to the extent of their mandate. Otherwise, the observers may attempt too broad a fact-finding exercise, and completely ignore the electoral process.

A mission dispatched solely to signify political support of an electoral process in a foreign country is not an election observer mission, as that term is used in the Guidelines. However, if these "observers" also assist in ensuring the integrity of the process, by actively moni-

toring the election day procedures, then it is appropriate to categorize the mission as an election observer mission.

Guideline IB. Choice of Elections to Observe

An organization* should consider the following factors before determining whether to send an election observer mission: has there been a request for observers from the host country;** has the organization been monitoring political developments in the host country for a period of time; does the election represent a transition in power from a colonial or non-democratic government; have there been prior instances of fraud or manipulation in the electoral process of the host country; is there a debate surrounding the legitimacy of the election; and is the election occurring in a country where there have been serious allegations of human rights violations.

Commentary to Guideline IB.

The significance of the factors listed in Guideline IB, will vary from organization to organization. Nonetheless, an affirmative response to any of the factors listed is sufficient basis for sending observers to a particular election.

Before dispatching an official observer mission, a government or intergovernmental organization must arrange for an invitation from the authorities in the host country.⁵ No governmental organizations have more flexibility in deciding whether to send observers.⁶ However, in deciding whether to send observers, an organization might consider the degree of cooperation, or the extent of resistance and harassment, that the observers are likely to receive from the host government.

In recent years, there has been considerable controversy in various countries and among various nongovernmental organizations about the propriety of sending observers to an election where the legitimacy of the election is at issue because not all parties are participating in the process. For example, in 1982 Great Britain was the only Western European country to send official observers to the election in El Salvador. The argument against sending observers is that the mere dispatch of observers serves to legitimize a flawed process.

* The term "organization", as used in the *Guidelines*, includes intergovernmental organizations, nongovernmental organizations and governmental bodies.

** The term "host country", as used in the *Guidelines*, refers to a country or territory holding an election, plebiscite or referendum. The term is not intended to connote sponsorship of a mission. See **Guideline IIIA**.

The Guidelines adopt the position that the mere presence of observers does not provide legitimacy to a controversial electoral process; rather, it is the observers' methodology and the resulting conclusions that are relevant. So long as the observers are independent and objective, and are instructed to evaluate all aspects of the electoral process, an election observer mission can and should provide a critical appraisal of the electoral process, which will help clarify the issues being debated. Moreover, as a practical matter, not sending observers for fear of legitimizing a flawed process is often self-defeating because it results in a situation where the only observers present are those who endorse uncritically the electoral process.

Notwithstanding the above, an observer mission should not be dispatched to report on an election that is occurring in a manner contrary to international law. For example, it would be inappropriate to send election observers to monitor an election being held in Namibia without United Nations supervision, given the explicit Security Council resolutions on the issue declaring that all unilateral measures initiated by South Africa with respect to Namibia are illegal.⁷

II ORGANIZING A MISSION

Guideline IIA. Terms of Reference

1. The organization sponsoring an election observer mission should prepare the terms of reference for the mission.
2. The terms of reference should include an explanation of the organization's objective(s) in dispatching the mission.
3. The terms of reference should be sufficiently specific to provide guidance to the observers, but also sufficiently flexible to allow the observers to deal with unforeseen circumstances.

Commentary to Guideline IIA.

Terms of reference have been used by sponsoring organizations to serve as a letter of introduction, to recruit participants for an observer mission, to provide a framework for the activities of a mission, to assist in resolving disputes among observers over the scope of the mission's activities, and to delineate specific areas that the sponsoring organization would like investigated. The actual terms of reference used by sponsoring organizations and countries have varied greatly. Appendix II contains examples of terms of reference that have been used by sponsoring organizations in the past.

The terms of reference should not be phrased in a manner that prejudices the issues to be considered by the observers. Also to be

avoided are terms of reference that require a black or white answer to questions such as "were the elections free and fair"? As discussed *infra*, an election may be unfair in certain respects, but nonetheless represent a positive step towards respecting the right to popular participation in the government of a country.

Guideline IIB. Size of an Observer Mission

1. An election observer mission should consist of at least two observers. A larger mission will permit the inclusion of observers with expertise in more subject areas, will allow the observers to meet with a wider range of individuals in the host country, will ensure broader coverage of polling places on election day, and will ensure broader dissemination of the mission's conclusions.
2. Factors to be considered in determining the optimum size of a mission include: the size of the host country; the population of the host country; the nature and scope of the specific issues the observers will be investigating; the number and distribution of the polling sites; and the availability of financing.
3. When a mission consists of more than three observers, a chairperson should be selected.

Commentary to Guideline IIB.

Although there have been noteworthy observer missions consisting of a single observer, a minimum of two observers is recommended to balance inherent biases, and to provide each of the observers with a sense of security and companionship in a foreign country.

A very large team may be necessary if the observers are asked to assist in ensuring the integrity of the balloting process. For example, thirty-two observers were added to a Commonwealth observer team of thirty-three for the 1990 election in Zimbabwe, in order to provide adequate coverage of polling sites throughout the country.⁸ However, where a large team is dispatched, adequate staff assistance is necessary to coordinate the observers' activities.⁹

A chairperson is necessary to delegate specific tasks to the observers, and to serve as spokesperson for the observers during official meetings.

Guideline IIC. Selection of the Observers

1. The primary factors to consider in selecting observers are a) an individual's reputation for independence, impartiality and

objectivity and b) the individual's ability to speak the language of the host country.

2. Other factors to consider in selecting election observers include an individual's ability to understand and apply election laws, knowledge and understanding of international human rights norms, expertise in electoral administration, practical experience in politics, knowledge of the host country to be visited, participation in previous fact-finding missions, ability to conduct a factual investigation, and ability to report factual findings.

3. To the extent possible, an observer mission should include individuals from various countries, different races and different ethnic groups, and of both sexes.

Commentary to Guideline IIC.

Because an election observer mission is a form of fact-finding, the criteria used for selecting persons to conduct international human rights fact-finding missions are applicable to election observer missions.¹⁰ Thus, the independence, impartiality and objectivity of the observers are of primary importance. In this respect, individuals involved in designing or preparing an electoral system should not be selected as observers because their objectivity may be questioned.

Language skills are particularly important for election observers, because, in addition to formal meetings, where official interpreters may prove adequate, election observers must evaluate the local media and the political climate of a country, both of which require fluency in the language spoken in the host country. Language skills, therefore, have been listed as a primary factor to consider in selecting observers. However, the Guidelines recognize that for certain missions it may be impossible to recruit independent observers who speak the language of the host country, and that the background and reputation of certain individuals may outweigh their lack of fluency. In such circumstances, observers not fluent in the language of the host country would be appropriate.

The presence of observers with expertise in the areas listed in Guideline II.C.2 will provide a well-balanced team, allowing for more comprehensive coverage of the electoral process with only minimal briefings. Limiting the number of briefings is important because observers have responsibilities in their home countries, and thus often will be unable to devote time to the mission prior to their departure. The observers also will be able to divide areas of responsibility, including the drafting of sections of a written report, based on each observer's area of expertise.

A multinational, multiracial and multiethnic team should minimize the occasionally heard criticism that observer missions are

“western” oriented and fail to understand the complexity of foreign countries. Including members of both sexes increases the possibility of eliciting information from all segments of society in the host country. This is particularly important in traditional societies where potential voters may be uncomfortable talking with persons of the opposite sex.

Guideline IID. Financing a Mission

1. Although it may sometimes be necessary to rely on funding from a source within the host country, the better practice is to obtain funding from a source outside the host country.
2. When practical, an organization should consider disclosing the source of financing for a mission in a mission report.

Commentary to Guideline IID.

This Guideline recognizes that it is often difficult to secure funding from outside the host country, and that organizations in the host country often have legitimate motives in sponsoring independent outside observers. For example, an out-of-power party contesting an election may fear manipulation of the process by the party in power, and believe that the presence of outside observers will deter such manipulation. Thus, so long as the observers are independent and credible, the Guidelines do not preclude the use of funding or other assistance provided by organizations in the host country.

Disclosure of an observer mission’s source of funding, permits outsiders to evaluate a subject that may affect the mission’s credibility. However, in many instances, disclosure of a source of funding may be impossible because of constraints placed on disclosure by a funding organization or because of an established policy of a sponsoring organization. Because the independence, impartiality and objectivity of the individual observers should ensure the credibility of a mission whether or not the source of funding is disclosed, the Guidelines, while encouraging disclosure, recognize the practical problems that disclosure may raise.

III. PRE-DEPARTURE ACTIVITIES

Guideline I.IA. Notifying the Host Country

1. In most situations, the sponsoring organization should notify the host government of its plan to send an election observer

mission. The host government's assistance in facilitating meetings with government officials and in obtaining credentials should be requested, unless such a request would be inappropriate.

2. When the purpose of the mission is not being disclosed to the host country, the sponsoring organization should fully apprise the observers of the situation.

Commentary to Guideline IIIA.

This Guideline applies primarily to nongovernmental organizations as it is assumed that intergovernmental organizations and governments will dispatch an observer mission only in response to an invitation from the host country. Notifying the host country of a mission's planned presence is a practice that generally should be followed to avoid resistance or harassment from the host government. In addition, the host government, when aware of the mission's presence, may assist in facilitating meetings with key government and electoral officials. Finally, in some countries, official credentials may be necessary if observers are to visit polling sites on election day.

Under certain circumstances, however, notification of the host government or a request for assistance may be inappropriate. For example, in certain situations, a government may attempt to place unwarranted travel or other restrictions on an observer mission; if the observers can gather the necessary information, without breaking any laws, it may be more practical not to notify the host government. When the host government is not notified of the presence of a mission, Guidelines IIIC, IVB, IVC and VA should be modified accordingly.

When an organization sends observers without notifying the host government, a tourist visa will generally be sought. The observers, however, run the risk of being expelled from certain countries for misrepresenting the purpose of their visit. Thus, the sponsoring organization should be certain the observers understand the potential consequences of their visit.

Guideline IIIB. Briefings

1. The sponsoring organization should ensure that the observers understand the objectives of the mission and the methods that the sponsoring organization expects the observers to utilize in achieving the stated objectives.

2. The observers should be provided with background materials on the country to be visited. This material should include in-

formation pertaining to the history of the host country, current political developments, and an analysis of the electoral process.

Commentary to Guideline IIIB.

Frequently, observers selected for a mission will have had little contact with the sponsoring organization prior to the dispatch of the election observer mission. In these situations, observers should be briefed as to the general objectives of the sponsoring organization, because the observers will be representing the sponsoring organization during the observers' visit to the host country.

Observers frequently are selected who have limited familiarity with the host country. To permit the observers to engage in substantive fact-finding activities while in the host country, briefing papers should be prepared and distributed to the observers prior to their departure. The papers should be prepared by individuals affiliated with the sponsoring organization or experts in the field who are nonpartisan.

Guideline IIIC. Meetings

In appropriate situations, some or all of the observers should seek meetings with a representative of the host country's Embassy, a representative of the ministry responsible for foreign affairs in the home country, and representatives of knowledgeable non-governmental organizations.

Commentary to Guideline IIIC.

The meetings suggested in this Guideline are designed to familiarize the observers with the issues they will face when visiting the host country. Where the host country is not being informed of the mission's visit, the meeting with representatives of the host country's Embassy should be avoided.

IV. VISIT TO HOST COUNTRY

Guideline IVA. Length of Stay

1. Observers should visit the host country at least four days prior to the election, depending on the issues that the sponsoring organization anticipates need investigation. When practical, at least one of the observers should remain in the host country until the results are known.

2. The following are factors that might be considered in determining the length of a mission's visit to a host country: the objectives of the sponsoring organization; the observers' previous relationship with the host country; the size of the delegation; the availability of qualified observers for more than a short visit; and the availability of funding.

Commentary to Guideline IVA.

There has been a great deal of controversy surrounding the length of time that an election observer mission should visit the host country in order to report credibly on the electoral process. In most situations, a minimum seven day visit is recommended in order to permit the observers to meet the major actors participating in the political process, to visit areas outside the capital city, to observe the election day activity, and to monitor the vote count and the announcement of the results.

Because allegations of fraud frequently involve the counting of the ballots, this Guideline stresses the importance of having at least one observer remain in the host country until all the votes are counted. Failure to monitor the counting of the votes may result in the embarrassing situation where the observers announce their conclusions, assuming a certain set of facts, only to discover that their conclusions are challenged by developments occurring subsequent to election day. Having at least one observer monitor the vote count and the announcement of the results should mitigate this potential problem.

When the sponsoring organization is interested in a comprehensive analysis of the electoral process or, in addition to reporting on the process, the sponsoring organization is providing a "good offices" function to all parties in order to ensure a fair process, a stay of more than seven days is recommended. In addition to the activities described above, a lengthier stay will permit monitoring of the political campaign in all its aspects, and will allow the observers to meet with voters in circumstances where the voters can explain their attitudes towards the electoral process. As an alternative, a sponsoring organization should consider dispatching a mission approximately two months prior to the election in order to report on the political campaign.

Guideline IVB. Announcing the Mission's Presence

The observers should announce their presence, either through a press conference or press release, upon arrival. The statement

to the press should identify the sponsoring organization and the specific objectives of the mission. The statement should also stress the independence and impartiality of the observers, and the willingness of the mission to receive comments about the electoral process or other aspects of the human rights situation relating to the electoral process in the host country.

Commentary to Guideline IVB.

The Guidelines emphasize the role of observers as objective reporters on the electoral process. However, observers often have a dual role in that observers frequently are sent to encourage fairness. To ensure that the observers have an impact on the process, the presence of observers generally should be announced as soon as the observers arrive in the host country.

Guideline IVC. Collection of Information

1. Election observers should meet with a cross section of participants in the political process of the host country. Particularly important are meetings with government officials, party leaders and candidates, members of the government body administering the election, and representatives of the leading institutional organizations, such as labor unions, professional organizations, human rights groups and religious and ethnic organizations. These meetings should occur prior and subsequent to election day.
2. The observers should carefully monitor the local media during their visit to the host country.
3. The observers should travel widely in the host country to obtain an independent assessment of the situation surrounding the election and to investigate complaints indicating a pattern of electoral manipulation.
4. In general, interviews should be conducted in circumstances that ensure a person's willingness to discuss openly any subject. Thus, during their travels, the observers should not be accompanied by government security forces, or others likely to intimidate the person(s) being interviewed. In addition, the observers generally should provide their own interpreters to minimize intimidation.
5. Observers should share information with observers sponsored by other organizations to increase the information available to all observers.

Commentary to Guideline IVC.

In collecting information, observers must rely primarily on meetings with representatives of leading institutional organizations in the host country. During these meetings, the observers should inquire

as to specific complaints about the electoral process. Meetings following election day should focus on specific complaints pertaining to election day procedures and problems that may develop following announcement of the results.

Monitoring the local media will provide the observers with daily information about the host country. It also will permit the observers to assess whether the media is providing sufficient access to all participants in the political process, thus ensuring that all points of view are presented to the electorate.

Election campaign abuses and election day fraud are more likely to occur in areas outside the capital city. Thus, it is important for observers to travel outside the capital city both before and on election day. By traveling outside the capital city, election observers will be less inclined to rely exclusively on the prevalent wisdom of diplomats and journalists based in the capital city.

During their travels in the host country the observers must convey their independence to the persons with whom they meet. Thus, the Guidelines recommend that observers not be accompanied by security forces supplied by the government or by other individuals whose presence is likely to have an intimidating effect on the person(s) being interviewed. This might include government officials, party officials or representatives of groups advocating a boycott of the electoral process.

Finding interpreters who can be trusted to interpret accurately, and whose presence will not inhibit the person(s) being interviewed, also is crucial if the observers are to obtain an accurate understanding of the attitudes of persons in the host country toward the political process.

Although observers represent a particular organization or government, they should not hesitate to share information collected with other observers; their role is to promote fairness and to report objectively on the process. Because observers will seldom be able to visit all areas in a country, either before or on election day, the sharing of information is crucial.

Guideline IVD. Election Day Activities

1. Prior to election day, a detailed plan should be developed to coordinate visits to different polling sites. The plan should identify the specific procedures each observer should utilize during a visit to the polling site. The plan should set forth how an observer should respond when confronted with complaints or problems at a polling site.

2. Observers should *not* interfere with the polling, even if serious problems are observed during the polling, unless assistance is specifically requested by the local authorities.
3. An observer mission should attempt to cover as many polling sites as possible on election day. Particularly important is the presence of observers at the closing of the polls and the counting of the ballots.

Commentary to Guideline IVD.

Appendix III contains a guide for preparing observers for their election day observations.

A difficult question facing observers is how they should respond to complaints raised or problems observed during visits to polling sites. Although most observers acknowledge their role as "Observers", frequently they offer advice to the local electoral officials with respect to a particular problem the observers have noticed. The Guidelines suggest that observers refrain from offering advice, unless such advice is specifically requested, because the advice may be viewed as unwarranted interference by the local electoral officials. Nonetheless, the observers may draw the attention of the local officials to problems that the observers notice, allowing the local officials to correct the problems on their own. Admittedly, it is a fine line between drawing attention to problems observed and providing advice to local electoral officials. The observers must rely on their own good judgment. In any event, serious problems observed should be reported to the central electoral authorities.

V. ASSESSING THE ELECTORAL PROCESS

Guideline VA. Sources

1. Observers should consider the provisions contained in the major international human rights instruments pertaining to popular participation and free and genuine elections, as interpreted by the relevant international organizations.
2. While acknowledging the principles of international law, observers should give due respect to specific electoral laws and procedures adopted by the host country that may reflect the historical development of the country or particular problems facing the country.

Commentary to Guideline VA.

Virtually all countries have adopted or ratified at least one major human rights instrument.¹² These instruments provide standards

that observers can apply without imposing alien concepts on a host country. However, the provisions of the various human rights instruments generally are quite vague, requiring, for example, "free", "genuine" and "periodic" elections. To some extent, international organizations, such as the United Nations Human Rights Committee, the Inter-American Commission on Human Rights, and the European Commission on Human Rights, have interpreted the provisions contained in the various human rights instruments in specific cases.¹³ These interpretations provide guidance to observers in establishing benchmarks for evaluating an electoral process. The Guidelines below attempt to build on the provisions in these human rights instruments, and the relevant interpretations of these instruments.

The development of electoral laws in different countries reflects the history and culture of the country. For example, rules respecting voting by felons, non-citizens, and citizens outside the country on election day should not be judged by personal standards, but should be evaluated in the context of the country holding the election. Similarly, procedures developed to guard against fraud in one country may appear strange or unnecessary to observers unfamiliar with the specific procedures; after inquiry, however, the procedures may prove quite reasonable.

This Guideline, therefore, suggests that due respect be given to the specific laws of a country. This suggestion requires observers to accept the laws and practices of a country as they exist, and not criticize the specific choices made by a country, unless those choices are contrary to explicit international standards or are manifestly unfair to a segment of the population.

Guideline VB. Basis for Conclusion

1. In reaching an ultimate conclusion with respect to the electoral process, observers should evaluate whether imperfections in an electoral process actually resulted in thwarting the popular will of the citizenry. Nonetheless, even if the ultimate conclusion of the observers is favorable, an observer mission should report the imperfections in the electoral process.
2. The observers should consider all evidence presented, even if not based on first-hand observation, so long as its credibility is otherwise assured.
3. When faced with conflicting allegations pertaining to an issue affecting the mission's ultimate conclusion(s), the observers should undertake an independent investigation, if possible. While the investigation is being conducted, the observers may report the

allegations, but no final conclusions should be announced until the investigation is concluded.

Commentary to Guideline VB.

This Guideline is premised on the notion that electoral processes frequently have some elements of unfairness. Thus, simple black and white judgments about an electoral process may prove impossible. Nonetheless, because observers usually must provide some ultimate conclusion, this Guideline suggests that the observers assess whether the process permits the citizens of a country to effectively choose their leaders, or, in the case of a referendum, to effectively choose between options.

The observers should also evaluate whether the choice made by the citizens will be respected. If, notwithstanding whatever unfairness is observed, these criteria are met, the observers should report favorably, albeit with qualifications, on the electoral process. Guideline VC, further sets forth conditions that should exist in a country for an electoral process to be considered free and fair.

The Guidelines adopt a flexible approach toward fact-finding procedures.¹¹ This reflects the realities facing election observers. The Guidelines suggest that observers consider all evidence presented, even if not independently verified or subjected to due process requirements.

The Guidelines further suggest that observers attempt to independently verify allegations pertaining to ultimate conclusions. For example, an allegation that the vote count has been manipulated to an extent that the result of the election has been affected should be investigated and verified by the observers because the observers' ultimate conclusion will depend on the veracity of the allegation. When an investigation cannot be conducted, the observers should report the conflicting allegations. However, when an investigation is possible, the observers should refrain from announcing their assessment of the process until the investigation is completed.

Where possible, observers should attempt to verify allegations by obtaining signed affidavits. However, requiring signed affidavits in all situations where fraud is alleged will result in relevant information being ignored. In many countries there may be good cause for an individual to fear signing an affidavit.

Guideline VC. Minimal Conditions for a Free and Fair Election

1. The following conditions should exist in a country holding an election: no unreasonable limitations placed on a citizen's ability to participate in the political process, including the right

to a secret vote and the right to be elected to office; and respect for the rights of freedom of expression, freedom of association and freedom of assembly for a period adequate to allow political organizing and campaigning and to inform citizens about the candidates and issues.

2. For a free and fair election, it is also necessary that the integrity of the balloting process be respected, including consideration whether the candidate or party that receives the proportion of the vote prescribed by law is allowed to assume office and power.

Commentary to Guideline VC.

1. The conditions listed in this Guideline are designed to encompass those minimal conditions that should exist in a country if a free and genuine election is to be held. As to voter eligibility, the Guidelines follow the various human rights instruments in requiring that the right to vote need be extended only to citizens of a country.¹⁵ A country, however, may be more generous and permit noncitizen residents to vote.

The Guidelines reject limitations based on race, religion, ethnic origin or sex *per se*.¹⁶ In general the franchise should be extended as broadly as possible and voting should be practicable for those eligible to vote. This may require broad distribution of polling sites and special arrangements for the handicapped.

The term "reasonable limitations" recognizes that certain limitations on a citizen's right to vote traditionally have been deemed acceptable. These include minimum age requirements and denying the right to vote to felons, the military and nonresidents.¹⁷ However, observers should consider, particularly where the electoral law has recently been changed, whether even a reasonable limitation is being utilized in a partisan manner.

A secret vote is necessary to minimize the possibility of a voter being subjected to intimidation. However, the key factor for an observer to consider is whether the voter believes that his or her vote is secret. Observers also should recognize that intimidation is possible in certain circumstances, even where the vote is secret and the voter believes the vote is secret. For example, a voter may be intimidated into voting for a certain party or candidate because he or she fears that the entire community will be punished if the results in a particular community are deemed unsatisfactory.

Active participation in the political process also should not be subject to unreasonable limitations. However, the limitations on participation may be stricter than those limiting the right to vote. For example, minimum age requirements for holding office are often higher than the age requirement for voting. The observer's role is

to determine whether the limitation reflects a partisan decision or is being implemented in a partisan manner.

The second set of conditions included in this Guideline are designed to encompass political rights, broadly defined. Respect for freedom of expression will permit a robust campaign, where issues and ideas can be debated. The freedom of the media to report and comment on political developments is also included under freedom of expression.

Respect for freedom of association is necessary in order to permit parties to form and to compete in an election. Of equal significance is whether intermediary organizations, such as the press, religious groups, and labor organizations are permitted to form and to operate freely. The existence of such organizations will provide an indicator of the potential stability of the electoral process.

Freedom of association is obviously limited in a one-party state and elections in one-party states frequently serve merely to legitimize the authority of those in power. Nonetheless, in certain circumstances, elections occurring in a one-party state are politically meaningful and, hence, may warrant observation. For example, where the party provides voters with a genuine choice and free and open discussion of issues is permitted, then the right to popular participation in one's government through the use of an electoral process is being respected.¹⁸ When observing an election in a one-party state, observers should consider whether, notwithstanding the limitations placed on freedom of association, the electoral process permits significant choices by the electorate, including the freedom not to participate in the process.

Finally, respect for freedom of assembly is a necessary condition for a free election. This includes placing no unreasonable restrictions on large political rallies, in addition to allowing small groups to engage in non-violent political activities. Respect for this right is particularly important in countries where a large segment of the population does not have access to the media.

In considering whether a country respects the rights described above, observers must consider both the laws of the country and how they are implemented by the government in power. Equally significant, observers must consider whether conditions in the country permit the exercise of the rights described above by all interested in participating in the political process. Thus, for example, where the laws of a country permit participation by all parties that register with the authorities, but registration is either administratively impossible or will subject supporters of a party to violence, conditions may not be appropriate for the holding of elections that are completely free.

In evaluating whether conditions are appropriate for holding an election, observers might also consider the alternatives. In some situations, elections held under less than ideal conditions nonetheless evidence a degree of respect for the right of popular participation in one's government and are preferable to delaying elections until ideal conditions exist.

2. A manipulated balloting process frequently will retard the respect for political rights in a country and increase voter cynicism as to the possibility of honest elections in the future. Thus, the importance of a honest balloting process. To the extent that the presence of a large number of observers in a country on election day deters electoral fraud their presence should be encouraged.

The following are some of the practices that have been used to manipulate the balloting process: a) restricting the right of eligible voters to cast a ballot; b) double-voting; c) ballot stuffing; d) ballot-box switching; e) arbitrary invalidation of ballots cast; f) loss of ballot boxes; and g) dishonest counting or reporting of the ballots.

This Guideline also suggests that observers consider whether the election will allow for a transfer of power. If the electoral process does not permit a transfer of power, then, even if the election is conducted in a fair manner, the process does not evince a respect for the right of popular participation in one's government.

Guideline VD. Other Conditions Necessary for a Free and Fair Election

Observers should also identify and consider other specific aspects of the electoral process as warranted by the situation in the host country.

Commentary to Guideline VD.

An election is a very complicated process and observers cannot, and should not, be expected to evaluate all aspects of the process. This Guideline suggests that observers identify specific issues that are significant in view of the situation in the host country. Appendix IV provides a comprehensive list of subjects that may warrant investigation by an election observer mission sent to observe a particular election.

Observers should pay particular attention to issues raised by the non-participation of segments of a country in an electoral process and by an election involving a transition from military to civilian government. In the former instance, in addition to the conditions mentioned above, observers should consider voter turnout and the

number of spoiled ballots cast, and assess the significance of both these factors. In the latter situation, observers should consider the role that the military is playing either through participation in the campaign or through its administration of the process.

VI. DISSEMINATION OF THE MISSION'S CONCLUSIONS

Guideline VIA. Procedure

1. The announcement of the conclusions of an observer mission should be made after consulting with the sponsoring organization, unless the observers have been authorized to announce their conclusions without prior consultation.
2. A public statement by observers should be issued promptly where its issuance may deter attempts by the authorities to manipulate the electoral process or where it may inhibit ill-founded challenges to valid election results. Where a public statement is issued to influence the authorities, there should be a consensus among the members of the mission.

Commentary to Guideline VIA.

The observers owe their primary obligation to the sponsoring organization; thus, this Guideline suggests that an announcement should be made only after consultation with the sponsoring organization. However, the Guidelines recognize that observers may desire to evidence their independence by being assured that their conclusions will be made public. In such circumstances the observers should obtain from the sponsoring organization its authority to announce the conclusions of the observers whenever the observers deem it appropriate.

The second part of this Guideline reflects the dual role of observers as reporters on the process and as promoters of free and fair elections. When an action of the observers, such as a public announcement about observed irregularities in the vote count, may deter manipulation of the process, observers should be encouraged to speak out. Similarly, an observer mission's announcement that an election process is fair, if soundly based, may avert a potentially dangerous situation caused by unfounded allegations of electoral manipulation. However, a lack of consensus among the observers when speaking out will provide an excuse for ignoring the observer mission's conclusions.

Guideline VIB. Form

1. Unless the sponsoring organization indicates to the contrary, a written report should be prepared following an election observer mission. The report should include: the name of the sponsoring organization; the names of the observers; the sponsoring organization's reasons for sending a mission; the mission's terms of reference; historical background to and the significance of the election; the itinerary of the observers in the host country; the fact-finding procedures utilized; the election results; and an evaluation of the electoral process, including evaluation of the specific issues identified by the sponsoring organization.
2. Other means available for the announcement of an election observer mission's evaluation of an electoral process include: distributing a press release; giving a press conference; testifying before a legislative body; lecturing at a public forum; and submitting an article for publication in a newspaper or journal.
3. A written report should be disseminated to interested governments, legislators, international organizations, nongovernmental organizations and academics.
4. Sponsoring organizations should continue to monitor the situation in the host country, to assure that persons interviewed are not subject to mistreatment, and to determine whether the electoral results are respected.

Commentary to Guideline VIB.

The Guidelines recommend that a mission always prepare a written report. When necessary, individual observers should be permitted to append their personal opinions to the overall report.

In addition to the material listed under this Guideline, observers may consider including the following information in the report or attach the information as appendices: a) background of the observers; b) official correspondence between the observers and government, electoral, party or other officials in the host country; c) source of funding; d) charts detailing the results by geographic area; e) comparison of results with previous elections; f) miscellaneous material that will assist the reader of the report in understanding the electoral process in the host country (i.e. sample ballots; campaign material; etc.); g) list of other observer delegations present; and h) comments on the observation process.

In considering other means for disseminating the conclusions of an observer mission, the needs of the sponsoring organization and the particular situation facing the observers are factors to consider. The Guidelines suggest broad dissemination of the report in order to ensure that it has practical impact and educational benefit.

Because an election is only one part of an ongoing process, the

sponsoring organization should continue monitoring developments in the host country.

FOOTNOTES

1. Appendix I contains the provisions pertaining to political participation included in the following human rights instruments: Universal Declaration of Human Rights; American Declaration of the Rights and Duties of Man; International Covenant on Civil and Political Rights; First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms; American Convention on Human Rights; African Charter on Human and Peoples Rights; International Convention on the Elimination of All Forms of Racial Discrimination.
2. The African Charter does not explicitly recognize a citizen's right to vote or a country's obligation to hold periodic elections. See generally Gittleman, *The African Charter on Human and People's Rights: A Legal Analysis*, 22 *Va. J. Int'l. L.* 667, 699 (1982).
3. See generally *Final Report on the Situation of Human Rights in El Salvador*, U.N. Doc. E/CN. 4/1984/25, para. 25 (1984); *Annual Report of the Inter-American Commission on Human Rights, 1982-83* OEA Ser. L/V/II.01/doc. 22/Rev. 24-28.
4. See Introduction in *Guide to International Human Rights Practices XIII-XIV* (H. Hannum ed. 1984); P. Sieghart, *The International Law of Human Rights* 15 (1983).
5. See Weissbrodt, *International Trial Observers*, 18 *Stan. J. Int'l. L.* 49-50 (1982). See also Vargas, *Visits on the Spot: The Experience of the Inter-American Commission on Human Rights in International Law and Fact-Finding In The Field of Human Rights* 138 (B. Rameharan ed. 1982).
6. See Weissbrodt, *supra* note 5 at 50.
7. See, e.g., U.N. SCOR (2087 mtg.) at 1, U.N. Doc. S/Res/435 (1978).
8. Commonwealth Secretariat, *Southern Rhodesian Elections February 1980: The Report of the Commonwealth Observer Group on Elections Leading to Independent Zimbabwe* 3 (1980).
9. The Commonwealth observers in Zimbabwe, for example, were assisted by eight staff personnel provided by the Commonwealth Secretariat. *Id.* at 82. The much smaller election observer missions organized by the United Nations Trusteeship Council generally have as many Secretariat staff as there are observers accompany the observers during their visit to the host country. See, e.g., *Report of the United Nations Mission to Observe the Plebiscite in Palau, Trust Territory of the Pacific Islands, February 1983*, U.N. TCOR Supp. (No. 3) 1-2, U.N. Doc. T/1851 (1983) (Four observers were accompanied by four United Nations staff personnel).
10. See *Current Developments, The Belgrade Minimal Rules of Procedure for International Human Rights Fact-Finding Missions (Belgrade Rules)*, 75 *Am. J. Int'l L.* 163 (1981).
11. See *supra* note 5.
12. For a listing of countries that are parties to various human rights instruments, see United States Department of State, *Country Reports on Human Rights Practice for 1983* 1480-85 (1994); *Guide, supra* note 4 at 297-301.

13. See *e.g.* *Massera v. Uruguay*, (R. 1/5) HRC 34.124 (Article 25 of the International Covenant is violated by prohibiting certain classes of citizens from participating in political activity for fifteen years); *Report on the Situation of Human Rights in the Republic of Bolivia*, OEA/Ser. L/V. II.53 doc. 6, July 1, 1981 (concluding, that despite an announced political opening, the Government of Bolivia was not allowing for the full enjoyment of political rights); *Denmark, Norway, Sweden and Netherlands v. Greece*, (3321–3367; 3344/67) Report: November 5, 1969 (the protocol to the European Convention requires a representative legislature).
14. See Weissbrodt and McCarthy, Fact-Finding by International Nongovernmental Human Rights Organizations, 22 *Va. J. Int'l L.* 1, 17 (1981). The Guidelines recommend that even official missions adopt a flexible approach toward fact-finding in the context of an election observer mission because of differences in issues that need to be investigated by a mission depending on the circumstances in which an election is occurring.
15. See *e.g.* International Covenant on Civil and Political Rights, Article 25; American Convention on Human Rights, Article 23.
16. See *e.g.* International Covenant on Civil and Political Rights, Articles 2, 25; American Convention on Human Rights, Article 23(2); International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(c).
17. See *id.*
18. International Commission of Jurists, *Human Rights in a One-Party State* 109–10 (1978).

APPENDICES

APPENDIX I

Universal Declaration of Human Rights

Article 21

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 of equal access to public service 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.

American Declaration of the Rights and Duties of Man

Article XX. Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

Article XXXII. It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

Article XXXIV. It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.

Article XXXVIII. It is the duty of every person to refrain from taking part in political activities that, according to law, are reserved exclusively to the citizens of the state in which he is an alien.

International Covenant on Civil and Political Rights

Article 25. Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall

be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) To have access, on general terms of equality, to public service in his country.

Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol

Article 3. The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms

Article 16. Nothing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

American Convention on Human Rights

Article 23 (1) Every citizen shall enjoy the following rights and opportunities:

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and

(c) to have access, under general conditions of equality, to the public service of his country.

(2) The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

African Charter on Human and Peoples' Rights

Article 13 (1) Every citizen shall have the right to freely participate in the government of his country, either directly or through freely

chosen representatives in accordance with the provisions of the law.
(2) Every citizen shall have the right of equal access to the public service of his country.

International Convention on the Elimination of All Forms of Racial Discrimination

Article 5 In compliance with the fundamental obligations laid down in Article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

(c) Political rights, in particular the rights to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level, and to have equal access to public service.

APPENDIX II

Selected Terms of Reference Used by Organizations Sponsoring Election Observer Missions*

1. Freedom House Mission to El Salvador, March 28, 1982

The role of the Freedom House Mission in El Salvador was to examine in so far as possible the election and its context in order to make a judgment as to whether this election represented democratic progress.

2. United Nations Mission to Palau, Trust Territory of the Pacific Islands, February 1983

The Council directed the Mission to observe the plebiscite including the campaign and polling arrangements, the casting of votes, the closure of voting, the counting of ballots and the declaration of results. The Council requested the Mission to submit to the Council as soon as practicable a report on its observations of the plebiscite, containing such conclusions and recommendations as it might wish to make. Finally, the Council requested the Secretary-General to provide the necessary staff and facilities to assist the Mission in the performance of its functions.

3. Lord Chitnis for the Parliamentary Human Rights Group Mission to El Salvador, March 1982 (United Kingdom)

1. In particular I was asked: To assess the political conduct and atmosphere of the election campaign, including the freedom of expression and organization both of those in favour of the election and of those opposed to it, thus to determine the extent to which the election could be considered acceptable.

2. To assess the military and security context within which the election was taking place and the difficulties of holding an election in El Salvador amidst the war situation there.

3. To assess the electoral process itself.

4. Sir John Galsworthy and Professor Derek W. Bowett of the United Kingdom's official Observer Mission to El Salvador, March 1982

1. Terms of Reference

These were stated by the Lord Privy Seal in the House of Commons on 2 March as follows:

"We envisage that our observers will be in El Salvador for about two weeks to cover the election campaign, polling day and the immediate aftermath. They will be completely free to report without restriction on the circumstances in which they were allowed to observe the elections. They will be asked to report on the conduct of the elections, including the campaigning of the candidates, on the polling, and on the counting of votes. Most important, they will form a judgment as to whether the election constitutes a valid test of public opinion in El Salvador. As soon as possible after their return, they are to deliver a written report

* Copies of the election observer reports cited in this Appendix are on file with the International Human Rights Law Group

to my right hon. and noble Friend and Foreign and Commonwealth Secretary, and we shall arrange for that report to be published and made available to Parliament."

II. Our Conception of the Purposes of the Mission

We conceived our mission to have three main purposes. First, we were to study the preparations for the elections on 28 March. This involved familiarising ourselves with the Electoral Law embodied in Decree No. 914 of 18 December 1981, as amended, and ascertaining to what degree the procedures and mechanisms provided for in that Decree had been implemented and, above all, were understood by the people who, at all levels, were to conduct the election. In addition, we were to study the degree of freedom with which the political parties campaigned prior to the election. Second, we were to observe closely the actual conduct of the election on 28th March to see how far the system of the Electoral Law was implemented in practice. This involved an inspection of the actual polling stations and the making of some assessment of how far the people were able to vote freely. Third, we were to observe the immediate aftermath of the election to see how far it was recognized as a valid, free election or, conversely, challenged on the basis of fraud or coercion.

5. Parliamentary Human Rights Group of the United Kingdom-Mission to Guyana, December 1980

Bearing in mind the observer team's conviction that political rights are human rights, we set out to judge whether the elections of December 15 1980 were free and fair. In order to determine this we set ourselves the particular tasks of:

1. Assessing the political content and atmosphere of the election campaign, including the freedom of expression and organization both of those contesting the elections and for those parties who were boycotting it, thus to determine the extent to which the election could be seen as a test of the popular will.
2. Assessing the electoral process itself, including an analysis of the Representation of the People Act and an examination of the impartiality of the state machinery in the conduct of the election.
3. Assessing the legal and security context within which the election was to take place.

Criteria

Between us we had experience of participating in and observing elections in many countries on different continents. This gave us a set of implicit criteria for fair elections, and these included the following:

1. Where electoral registers are used every effort must be made to ensure their accuracy, and all parties must have access to them.
2. The polling process should be administered by persons generally accepted as impartial; the ballot should be secret, votes once cast should be kept secure, and observers from all parties should be allowed to attend the count.
3. There should be no intimidatory atmosphere or actions in the country during the period of the election.
4. Reasonably equal access to the media should be given to all parties.

5. Parties should be free to hold public meetings within common-sense limits, and the authorities should be impartial in authorising and protecting such meetings.
6. There should be limits on election expenditure so that no one party has an undue advantage.

6. Commonwealth Secretariat, Commonwealth of Nations, Mission to Uganda, December 1980

We were given the following terms of reference:

"The Observer Group will observe every relevant aspect of the organization and conduct of the elections by the Electoral Commission in accordance with the law of Uganda relating to elections. Their function will be to ascertain in their impartial judgment, whether, in the context of that law, the elections have been free and fair. In furtherance of this objective, it will be competent for the Group to bring to the attention of the Electoral Commission or the Ugandan authorities from time to time such matters as they consider pertinent."

APPENDIX III

Preparing for Election Day Observations

1. Be familiar with the relevant documents:

- a. registration book
- b. ballots—controls on number of ballots distributed
- c. voter I.D.card—stamping of I.D. Card
- d. complaint forms for voters

2. Be familiar with the actors at the polling site:

- a. local electoral administrators
- b. party poll watchers
- c. security or police officials

3. Other relevant information:

- a. What hours are the polls open?
- b. By law, are people in line at close of polls permitted to vote?
- c. What type of assistance is permitted for illiterate and disabled voters?
- d. What are procedures for challenging a ballot?

4. Ballot counting:

- a. Where does the counting take place?
- b. Who is present during the count?
- c. Who obtains an official copy of the vote totals?
- d. How are spoiled ballots accounted for?
- e. How are unused ballots accounted for?
- f. How are the official totals transported to central or national electoral authorities?

Form for Use by Election Observers

I. Background Information:

Name of observer: _____

Country holding election: _____

Type of election: _____

Date of election: _____

II. For each voting site visited:

	Site A	Site B	Site C	Site D
A. Location of site:				
B. Time of arrival at site:				
C. Time of departure from site:				
D. Time polls opened at site:				
E. Names of election officials:				
F. Names of party poll watchers:				

III. Voting arrangements at site:

	Site A	Site B	Site C	Site D
A. Are voters identified as prescribed by law?				
B. Are ballot boxes or machines arranged in a manner that ensures secrecy of the ballot?				
C. What is the average time voters spend in line?				
D. What is the average time it takes to vote?				

IV. Other factors to consider:	Site A	Site B	Site C	Site D
A. How many persons are not permitted to vote for whatever reason?				
B. How many persons require assistance?				
C. Are there any sources of intimidation present at the polling site?				

V. Observing the closing of the poll:

A. Location of Site: _____

- B. 1. How many people are in the line at the time the polls are scheduled to close? _____
 2. Are they permitted to vote? _____

C. If ballots are counted at the voting site:

1. Who counts? _____
 2. Who observes the counting? _____
 3. How long does the process take? _____
 4. How are unused ballots accounted for? _____

5. How are reports of the results transported to central headquarters? _____

D. If ballots are counted at a place other than the polling site:

1. How is the ballot box sealed? _____
 2. Who travels with the ballot box? _____
 3. How are unused ballots disposed of? _____

VI. General

- A. Evaluation of specific problems (e.g., late opening of polls; long lines; persons not permitted to vote; administrative snafus; intimidation):

-
- B. Recommendations for improving process:

-
- C. Describe any unusual occurrences seen or statements heard during the course of the day.

APPENDIX IV

Guidelines for an In-depth Analysis of an Electoral Process

Election observer missions, as the term has been used in the Guidelines, are not dispatched to conduct a comprehensive academic analysis of the political system of a foreign country. Nonetheless, in certain instances, various aspects of the electoral process may warrant an in-depth examination because they may affect the overall fairness of the process. This Appendix is designed to assist observers in identifying problems that may be present in an electoral process.

The Appendix is organized in outline form.* With respect to most of the subjects covered by the Appendix, there is no prescribed procedure for ensuring a fair election. This reflects the cultural and historical diversity that make the development of one ideal electoral system a practical impossibility. Observers must rely on their own judgment in evaluating whether a particular procedure in the context of an election in a particular country, is unfair, and, to the extent that the procedure is unfair, its impact on the overall process.

I. Evaluation of the Electoral Law

A. The Election Administrators

1. Who are the administrators? (e.g. civil servants, party appointees, political independents, etc.)
2. How are the election administrators appointed?
3. What is the specific authority of the election administrators?

B. Parties

1. What are the formalities for registering parties, if any?
2. Do the formalities operate to exclude certain parties from participating in the political process?
3. If parties are excluded, are there nonetheless electoral choices between candidates either within a prescribed party or between parties that are legally authorized to participate in the process?
4. Do the electoral laws govern internal party activities such as the nomination of candidates?
5. What is the role of parties in administering the election?

C. Voter Registration

1. Is pre-registration required?
2. If registration is required, how is it accomplished? (e.g. is it a continuing list? is it automatic upon reaching a certain age? etc.)

* This Appendix is based in part on a model developed by Mr. William Kimberling, whose assistance the Law Group gratefully acknowledges.

3. If pre-registration is not required, how is voter eligibility determined? (There are circumstances where pre-registration may be inappropriate; in such instances, the authorities must develop means to prevent double-voting and voting by those not eligible to vote.)
4. Who is excluded from voting? (e.g. felons, military personnel, citizens outside the country, etc.)

D. Election of Candidates

1. How are candidates elected? (majority or plurality vote per constituency or by some form of proportional representation.)
2. Does the system effectively disenfranchise voters in a discriminatory fashion?

E. Constituencies

1. Where constituencies are used, how are they established?
2. Do the constituency delineations respect consistent principles, such as: equality of voting power; geographic contiguity; and tradition?

F. Administration of the election at the local level

1. Who appoints local electoral officials? (e.g. the incumbent authorities, an independent electoral administrator, the parties.)
2. How are local officials trained?

G. Challenges

1. Who is authorized to file challenges? (e.g. voters, party poll watchers.)
2. What are the procedures for reviewing initial decisions made by local election officials?

H. Other aspects of electoral law

1. Are there provisions pertaining to media access?
2. Are there provisions pertaining to campaign financing?
3. Are there provisions pertaining to the holding of political meetings or rallies?

II. The Political Campaign

A. Political parties

1. Background information (should be provided to observers prior to arrival in host country)
 - a. names of parties;
 - b. political orientation;
 - c. participation in previous elections or governments;
 - d. leaders of parties;
 - e. sources of political support—e.g. ethnic, religious, education level, economic class;
 - f. affiliations within host country and with parties outside country.
2. Party participation in election
 - a. Are all political parties and political personalities participating in the electoral process?

- b. If parties are not participating, what are the reasons for non-participation?

B. Atmosphere during campaign

- 1. factors to consider
 - a. martial law in effect;
 - b. civil war;
 - c. war or serious threat of war between host country and another country;
 - d. persistent violations of human rights by government controlled or affiliated forces;
 - e. intimidation of voters or parties by supporters of competing party(ies);
 - f. rule of law not respected by government organs;
 - g. severe economic conditions.
- 2. Has there been an atmosphere in the host country that permits participation in the electoral process by all those interested in participating?

C. The Media

- 1. Background information
 - a. newspapers and magazines
 - i. names of major papers;
 - ii. affiliations of papers;
 - iii. circulation of major papers.
 - b. television and radio
 - i. licensing requirements;
 - ii. percentage of the population with access to television and radio.
- 2. Issues to be considered
 - a. censorship
 - i. is the media censored?
 - ii. if so, who has the authority to censor?
 - iii. what are the legal grounds for censoring articles or reports?
 - iv. what types of materials are censored in practice?
 - v. does the media practice self-censorship?
 - b. access
 - i. have the various newspapers and radio and television stations endorsed candidates and parties?
 - ii. do all components of the media support the same candidates and parties?
 - iii. do parties and candidates have equal access to the media in order to present their positions?
 - iv. if there is uniformity of viewpoints among the media, are there other means available for circulating information pertaining to the electoral campaign?
 - c. reporting — does the media report on the campaign in a balanced manner?

D. Methods of campaigning

1. types of campaign activities
 - a. advertising in public areas;
 - b. advertising in the media;
 - c. holding small political meetings;
 - d. holding mass political rallies.
2. issues to consider
 - a. are there limits on public advertising?
 - b. are there attempts to destroy campaign materials of competing parties?
 - c. does the media provide adequate access to all parties?
 - d. are meetings or rallies disrupted by security forces or competing parties?

III. Voter attitudes**A. Background factors**

1. literacy;
2. education levels;
3. voter access to media and campaign information;
4. prior electoral experience.

B. Issues to consider

1. Voter education campaign
 - a. who organized the voter education campaign?
 - b. how much time prior to election did it begin?
 - c. was it considered impartial?
2. Motivation for voting
 - a. are people enthusiastic about the electoral process?
 - b. is voting required by law?
 - c. do people view voting as a civil duty?
 - d. are people afraid of extra-legal adverse consequences that may result from not voting?
 - e. are voters aware of the significance of the election?

IV. Elections occurring under special circumstances**A. Evaluating nonparticipation by groups or organizations**

1. What are the grounds for nonparticipation? (e.g. partisan administration of electoral process, constitutional deficiencies, etc.)
2. Is the election notwithstanding the nonparticipation of certain groups meaningful?
 - a. Background factors
 - i. are groups not participating encouraging others not to participate?
 - ii. can groups not participating effectively communicate their position to the population?
 - iii. is there a government campaign encouraging voting?
 - iv. are there legal or extra-legal penalties for not voting?
 - b. Interpreting the results
 - i. what is the level of voter turnout?

- ii. how does voter turnout compare with previous elections?
- iii. what is voter turnout in countries with similar electoral systems?
- iv. how does the number of spoiled ballots compare with previous elections?

B. Transition from military to civilian government

- 1. Is the government or military participating in the electoral process by supporting a party or candidate?
- 2. Is the government or military using government monies or facilities in a partisan manner?
- 3. Is the government or military placing pressure on government employees to support government candidates? (e.g. by requiring that they: provide financial support; attend political rallies; or distribute government benefits in partisan manner)

V. Balloting Process

A. The polling site

- 1. Where is the polling site located?
- 2. How many people are authorized to vote at a polling site?
- 3. Who is the supervising authority at the polling site?
- 4. Who else is present in a supervisory or observer capacity at the polling site? (e.g. party poll-watchers, security forces, etc.)

B. Voting procedure

- 1. How is voter eligibility established? (e.g. voter list, I.D. card, other form of identification, etc.)
- 2. What are the mechanics for voting? (e.g. placing a mark on a paper ballot, voter machines, placing a ballot in a designated box, etc.)
- 3. Do the physical arrangements assure voter secrecy?

C. The ballot

- 1. What type of ballot is used?
- 2. Is the ballot comprehensible?

D. Counting of the ballots

- 1. Who is present during the counting?
- 2. How are disputes resolved?
- 3. How is the counting reported?
- 4. Who receives a copy of the record of the voting?

E. Fraud prevention

- 1. What safeguards are used to prevent double-voting and ballot stuffing?
- 2. If the counting of the ballots occurs at a place different from the polling site, how is the security of the ballot box assured?
- 3. If absentee balloting is permitted, how is voter eligibility determined?

VI. Post-Election Considerations

A. Announcement of results

- 1. Who is authorized to announce the results?

2. How quickly are the results announced?
3. If there is a delay in announcing the results, to what is it attributable?

B. Challenging the results

1. Who can challenge the results?
2. What is the procedure for challenging the results?
3. How long does it take for challenges to be resolved?

C. Transfers of Power

1. What is the length of period between the election and the assumption of power by the person elected?
2. What is the atmosphere in the country during this period?

VII. Prognosis

- A. Will the person(s) receiving the prescribed number of votes be able to assume office in the prescribed manner?**
- B. Will the person(s) receiving the prescribed number of votes be able to exercise the authority vested in his or her office?**
- C. Will the person(s) installed in office exercise power in the manner prescribed by the country's constitution, and in accordance with the country's international obligations?**
- D. Are future elections likely to occur as scheduled?**

APPENDIX V

Suggestions for Organizing an Election Observation Mission

The experiences of fact-finding missions, including election observer missions, over the last thirty-five years provide a wealth of knowledge on the practicalities involved in organizing and conducting fact-finding missions. Drawing on these experiences, this Appendix provides practical suggestions that should be useful in the context of an election observer mission, particularly for nongovernmental organizations.

I. Financing

A. For a nongovernmental organization, obtaining funding for a mission is often the most difficult aspect of the project. The sponsoring organization should expect to cover the following expenses of each observer: 1) travel to the host country; 2) accommodations and meals in the host country; and 3) miscellaneous expenses, such as travel within the host country. In addition, the sponsoring organization should expect to bear the administrative expenses inherent in organizing a mission, including preparing materials for observers, arranging meetings and publishing a report.

B. In order to reduce the financial burden on a single organization, co-sponsorship of a mission should be considered. Each organization interested in participating in the mission as a co-sponsor undertakes the responsibility of funding one or more observers. Where a mission is co-sponsored, the observers should be provided with precise instructions as to the nature of their relationship to the sponsoring organizations.

II. Selection of Observers

A. Individuals with personal or institutional contacts in the host country should be considered as potential observers. They often will be able to facilitate meetings with key individuals or representatives of institutional organizations, who otherwise might be inaccessible.

B. Observers should be informed of potential risks that may be involved in undertaking certain observer missions. In addition, observers should be warned that they will be engaging in fairly strenuous activity, often in an unfamiliar environment.

C. Before selecting an observer who is a “celebrity” figure, an organization should consider the possible advantages and disadvantages of including such a person. A celebrity figure will undoubtedly increase the impact of a mission report, and may provide access to individuals and institutions that would otherwise be inaccessible. On the other hand, the presence of a celebrity figure may result in excessive media coverage in the host country, thus hampering the mission in its fact-finding activities. Furthermore, celebrity figures are often too busy to prepare reports.

D. Although often overlooked, an organization should recognize that the success of a mission is often dependent on the ability of the members of the mission to cooperate among themselves. Members of an election observer mission spend a considerable amount of time together; thus it is crucial that the members of the mission respect each other’s independence and ability if the mission is to succeed.

III. Materials to be Provided to Observers Prior to Departure

A. Observers should be provided with a plan of action prior to departure. The plan should include a schedule of activities in the host country and suggestions of specific subjects of inquiry that should be investigated by the mission. The plan also should include suggestions for election day and post-election day activities.

B. Each of the observers should be provided with an Order of Mission. The Order of Mission should identify the observer as a representative of the sponsoring organization. It should also provide a brief biography of the observer.

C. Observers, particularly those who have not previously observed an election, should be provided with copies of reports prepared following previous election observer missions. In addition, fact-finding reports by intergovernmental and nongovernmental organizations often provide current information on the host country, and identify problems previous missions have encountered.

D. A sponsoring organization should consider the possibility of providing insurance for the observers for claims arising out of the conduct of the mission.

IV. Visas and Entry Formalities

Where visas are necessary to enter a country, they should be obtained as early as possible. Where the cooperation of the host government will be sought, it is best to inquire of the host country Embassy whether the observer should request a "tourist" or "business" visa.

V. Accommodations

A. The members of an observer mission generally should stay in the same hotel in the capital city. This will facilitate meetings among the observers and will provide a neutral address for visits by persons seeking to register complaints. Because the hotel will serve as a base and meeting place, it should be reliable for relaying messages and respectable in appearance.

B. Occasionally, observers will have to spend an overnight outside the capital city. Accommodations are likely to be less luxurious, and an observer should be forewarned before setting out to remote areas of the host country for an overnight stay.

VI. Interpreters

A. Relying on interpreters is extremely problematic when attempting to conduct informal interviews. There is a lack of spontaneity in the conversation, and, more important, the person being interviewed is less likely to confide in the observer. Hence, the importance of choosing at least some observers who are fluent in the language of the host country.

B. Relying on members of the observer mission to interpret for those members not fluent in the local language is often a solution to the problems inherent in relying on hired interpreters. However, it limits the effectiveness of the observer who is fluent in the local language, and may create resentment if the fluent observer believes his or her role is becoming that of an interpreter.

VII. Meetings Among Observers

A. It is very important for a team of observers to meet daily to review their respective impressions of the day's activities. Although this is particularly crucial if the observers have visited different sites or met with different people, it is also quite useful where the observers have spent the day together in a series of meetings. The meetings provide an opportunity for each of the observers to express their

particular concerns with respect to what has been observed, and may assist in dividing responsibility for the preparation of a report.

B. At the daily meetings, the observers also should discuss the schedule for the following day, and the types of inquiries that should be pursued at each meeting. Frequently, the meetings will provide an opportunity for observers to consider additional individuals or representatives of institutions with whom meetings should be arranged.

VIII. Meetings in the Host Country

A. Before each meeting, one member of the team should be designated as spokesperson. The spokesperson should explain the reasons for the mission, introduce the mission members, and make the initial inquiries. If possible, copies of the mission's terms of reference and biographies of the mission members should be made available before or at the meeting. At the close of the meeting, the spokesperson should thank the persons who have attended the meeting for their time and cooperation, and offer to schedule further meetings as warranted.

B. The parties, as the major actors in the political system, will be the primary source of information about the electoral process. In meeting with party representatives, information pertaining to the platform of the party, the differences between the competing parties, and the party's commitment to respecting the electoral process should be sought.

C. The observers should have a basic understanding of the electoral process prior to visiting with the election administrators. They should utilize the meeting to inquire about particular features of the electoral process that may be unfamiliar. Observers also should inquire as to what role the election administrators would like the observers to play, if problems develop on election day.

D. There often will be a number of foreign journalists based in a country that has been the subject of an armed conflict or is an important actor in the international community. These journalists should be contacted and their assessment of the situation should be sought. Because they have lived in the host country for a consid-

erable period of time, but are still outsiders, they may be able to provide a more objective assessment of the situation in the host country. They may also provide leads as to subjects warranting further investigation by the observer mission.

E. The observers should attempt to meet informally with people on the streets or in shops. Ideally, the observers should be in small groups and engage in a conversation with an individual person or a small group of persons. After the observer is confident that the person with whom he or she is talking feels comfortable with the observer, the observer should inquire as to the person's attitude toward the political process. Examples of relevant inquiries include: a) whether the person will be voting on election day and, if he or she will not be voting, why not? b) whether the person is satisfied with the choices presented? c) whether the person understands the voting process? d) where the person has acquired information about the parties or candidates? and e) whether the person believes voting is secret?

F. In addition to conducting meetings with citizens throughout the country, the observers should encourage persons with complaints about particular aspects of the political process to contact the observers.

G. Because the parties have information from sources covering the entire country, observers should meet with a representative from each party after the election to inquire as to the irregularities that have been reported by the poll-watchers. The observers should inquire as to the significance of the irregularities, whether they are likely to effect the results, and whether the party will file an official complaint with the authorities in the host country responsible for hearing election-related complaints.

IX. Preparing a Written Report

Where the goal of a mission is to prepare a written report, it is important for the mission to begin work on the report before departing the host country. The members of the delegation should reach tentative decisions on what should be included in the report, and responsibility for preparing particular sections of the report should be decided upon. Because the mission members may not live in the same cities or countries, one person should be designated as responsible for editing the drafts, circulating a revised draft and ensuring that the report is finally published.

PART II
CONFERENCE ON
INTERNATIONAL
MONITORING OF ELECTIONS
May 20-22, 1984

CONFERENCE MATERIALS

List of participants:

Ms. Frances Arbour, Executive Director, Interchurch Committee on Human Rights in Latin America, sponsor of observers to Guyana Election in 1980.

Ms. Ginny Bouvier, Washington Office on Latin America; organizer-observer mission (Uruguay, 1984).

Sir Carlisle Burton, Barbados-Commonwealth Observer—Zimbabwe; technical advisor on election laws in Barbados.

Mr. David Carliner, Chairman, International Human Rights Law Group; Counsel, unofficial observer group—Dominican Republic (1966).

Lord Pratap Chitnis, British Parliamentary Human Rights Group; observer—Zimbabwe (1979 & 1980), Guyana (1980), and El Salvador (1982 & 1984).

Ms. Christina M. Cerna, Secretariat of the Inter-American Commission on Human Rights, participant in IACHR fact-finding missions to Nicaragua, Surinam, etc.

Professor William Crotty, Northwestern University; observer—Honduras (1981), Argentina (1983) and El Salvador (1984); author of books and articles on electoral procedures and political party operation.

Father Robert Drinan, Professor, Georgetown University Law School; President, Americans for Democratic Action; observer—Panama (1984).

Mr. Joseph Eldridge, Executive Director, Washington Office on Latin America, sponsor of missions to Bolivia (1978), Guyana (1980), Honduras (1981), and Argentina (1983).

Mr. Gordon Fairweather, Chairman, Canadian Commission on Human Rights; Commonwealth observer—Zimbabwe; Canadian observer—El Salvador (1984).

Professor Thomas J. Farer, Rutgers Law School; former Chairman Inter-American Commission on Human Rights; participant in fact-finding missions for the Inter-American Commission.

Dr. Felice Gaer, Executive Director, International League for Human Rights; sponsor of fact-finding missions to South Korea, El Salvador, etc.

Mr. Larry Garber, Project Director, Election Observer Project, International Human Rights Law Group.

Dr. Raymond Gastil, Director, Comparative Survey of Freedom, Freedom House; observer—Zimbabwe (1979 & 1980), El Salvador (1982), and Panama (1984).

Dean Robert K. Goldman, American University Law School; observer—Bolivia (1978).

Dr. Jo Marie Griesgraber, formerly Deputy Director of Washington Office on Latin America; organizer, observer and consultant—Argentina (1983) and Panama (1984).

Mr. Hurst Hannum, Executive Director, Procedural Aspects of International Law Institute; participant in fact-finding missions to Morocco, Malaysia, and South Korea.

Mr. William Kimberling, Deputy Director of the National Clearing House on Election Administration; provided technical assistance on election procedures to El Salvador, Liberia, Panama, and Philippines.

Mr. Stephen Marks, Program Officer, Human Rights and Governance, Ford Foundation; former staff member of the Division of Human Rights and Peace of UNESCO.

Mr. Peter Nelissen, Netherlands official observer—El Salvador (1984).

Professor John Plank, University of Connecticut; observer—Guatemala (1978) and Honduras (1981).

Mr. Jeremy Pope, Legal Adviser, Commonwealth Secretariat; observer—Zimbabwe (1980) and Uganda (1980).

Mr. Bertie Ramcharan, Special Assistant to the United Nations Assistant Secretary General for Human Rights; author of *International Law and Fact-Finding in the Field of Human Rights* and other books and articles pertaining to human rights.

Mr. Jack Sangster, Disarm Education Fund; observer—El Salvador (1982 & 1984).

Professor Leon Weaver, Election Research Project, Michigan State University; observer—Zimbabwe (1979).

Professor David Weissbrodt, University of Minnesota Law School; participant in fact-finding missions; author of *Articles on Fact-Finding by Non-Governmental Organizations*.

Mr. F. Clifton White, Political consultant—Venezuela, Italy, Portugal, Spain and Greece.

Professor David Wurfei, University of Windsor; observer—Viet Nam (1967); political expert—Philippines.

Ms. Amy Young, Executive Director, International Human Rights Law Group; participant in fact-finding missions to Japan, Yugoslavia, South Africa and Sri Lanka.

Ms. Marilyn Zak, Project Director, Agency for International Development; supervisor of programs providing technical assistance on elections to El Salvador and Liberia.

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AGENDA

May 20

12:00-5:00 Registration

5:00-6:00 Reception

6:00-7:30 Dinner

8:00-9:00 Meetings: a) conference chairman and working group chairpersons and introducers
b) conference rapporteur and working group rapporteurs

May 21

8:30-9:30 Breakfast

9:30-10:30 Opening Session:

A. Introduction—Mr. David Carliner

B. Keynote Speech—Dr. Jo Marie Griesgraber

C. Remarks—Mr. Larry Garber

10:30-1:00 Working Groups: Review of Guidelines

A. Organizing a Mission

B. Dissemination of Mission's Conclusions

1:00-3:00 Lunch

3:00-6:00 Working Groups: Review of Guidelines

C. Assessing the Fairness of an Election

D. Visit by Mission to Host Country and Fact-Finding Activities

6:00-7:00 Banquet

8:00-10:00 Preparation of Reports by Working Group Rapporteurs

May 22

8:30-9:30 Breakfast

9:30-12:00 Plenum Session

Panel Discussion: Criteria for Selecting Elections to Observe

12:00-1:30 Lunch

1:45-4:00 Plenum Session

A. Institutionalizing the Election Observer Process

B. Review of Conference

C. Rapporteur's Report

D. Closing Remarks

The International Human Rights Law Group is a non-governmental organization having consultative status with the United Nations (ECOSOC).

WORKING GROUP ASSIGNMENTS

WORKING GROUP A: ORGANIZING AN ELECTION OBSERVER MISSION

CHAIRPERSON: Professor Leon Weaver
RAPPORTEUR: Dr. David Wurfel
INTRODUCTION BY: Mr. Jeremy Pope

PARTICIPANTS: Sir Carlisle Burton
Professor William Crotty
Dr. Felice Gaer
Mr. Larry Garber
Dean Robert Goldman
Dr. Jo Marie Griesgraber
Mr. William Kimberling
Mr. Steven Marks
Professor John Plank
Mr. Bertie Ramcharan
Professor David Weissbrodt
Ms. Marilyn Zak

WORKING GROUP B: DISSEMINATING THE CONCLUSIONS OF AN ELECTION OBSERVER MISSION

CHAIRPERSON: Mr. J. Clifton White
RAPPORTEUR: Mr. Christina Cerna
INTRODUCTION BY: Mr. Gordon Fairweather

PARTICIPANTS: Ms. Frances Arbour
Mr. David Carliner
Lord Pratrap Chitnis
Father Robert Drinan
Dr. Raymond Gastil
Mr. Hurst Hannum
Mr. Peter Nelisson
Mr. Jack Sangster
Ms. Amy Young

WORKING GROUP C: CRITERIA FOR ASSESSING AN ELECTION

CHAIRPERSON: Professor William Crotty
RAPPORTEUR: Mr. Hurst Hannum
INTRODUCTION BY: Mr. William Kimberling
Professor John Plank

PARTICIPANTS: Sir Carlisle Burton
Lord Pratrap Chitnis
Father Robert Drinan
Mr. Gordon Fairweather
Mr. Larry Garber
Dr. Raymond Gastil
Mr. Peter Nelisson
Mr. F. Clifton White
Ms. Marilyn Zak

**WORKING GROUP D: VISIT BY MISSION TO HOST COUNTRY
AND FACT-FINDING ACTIVITIES**

CHAIRPERSON: Professor David Weissbrodt
RAPPORTEUR: Mr. Jack Sangster
INTRODUCTION BY: Mr. Bertie Ramcharan
Dean Robert Goldman

PARTICIPANTS: Ms. Fran Arbour
Mr. David Carliner
Ms. Christina Cerna
Ms. Felice Gaer
Dr. Jo Marie Griesgraber
Mr. Steven Marks
Mr. Jeremy Pope
Professor Leon Weaver
Professor David Wurfel
Ms. Amy Young

PLENUM SESSIONS

CHAIRPERSON: Mr. David Carliner, Chairman,
Board of Directors, International
Human Rights Law Group
VICE-CHAIRPERSON: Ms. Amy Young, Executive Director,
International Human Rights Law
Group
5/21 KEYNOTE SPEAKER: Dr. Jo Marie Griesgraber
5/22 PANEL
DISCUSSION: "Choice of Elections to Observe"
CHAIRPERSON: Dean Robert Goldman
PANELISTS: Professor Tom Farer
Dr. Raymond Gastil
Lord Pratrap Chitnis
CLOSING SESSION:
CHAIRPERSON: Mr. David Carliner
SPEAKER: Mr. William Kimberling,
"Institutionalizing The Election
Observer Process"
RAPPORTEUR'S
REPORT: Professor David Weissbrodt
CLOSING REMARKS: Mr. Larry Garber

PLENARY SESSIONS

Mr. David Carliner:

Because I am the Chairman of the International Human Rights Law Group, which has convened this conference, it is my pleasure to welcome you and to wish you a good morning in this lovely setting. As you can see, we have gathered together a very diverse and highly specialized group of experts in the field of elections and of people concerned with human rights.

One introduction that remains is that of the International Human Rights Law Group, which is the sponsor of this function. It is a nonprofit, public interest law center based in Washington, DC, which provides *pro bono* legal services to nongovernmental organizations and individuals seeking information and assistance in cases of human rights violations. Thus, it approaches the subject of human rights in a non-political and non-polemical way, in a manner that is intended to be dispassionate, but not without concern. The Law Group appears before the United Nations, the Human Rights Commission of the Organization of American States, the Inter-American Court of Human Rights, the United States Congress, various Congressional Committees, and numerous courts in the United States in attempting to assert the role of human rights in the solving of individual, ethnic, and national problems.

It has been said that the twentieth century is the century of the common man. As one looks around the human landscape, one must wonder whether the common man in this century has been more victim than beneficiary. Nonetheless, in our century, we have seen the development of various human rights instruments.

In the Universal Declaration of Human Rights, adopted following the end of the second World War, the right of every person to participate in his or her government and to share in the selection of the government through free choice was proclaimed. One must be aware that the many nations which adopted the Universal Declaration of Human Rights did not have a universal definition of what the political processes should be in their respective countries. Nonetheless, the United Nations adopted the International Covenant on Civil and Political Rights several years later, which again reiterates the right to participate in one's government.

The specific relationship of this concept to our function today arises because, as we know, there are many nations which do not have free elections. However, there also are nations which are attempting to have free elections, following a period of dictatorial military rule, or following a period when there were legal restrictions which excluded participation of the people in determining their country's policies.

What has been lacking is criteria/guidelines, a 'specification recipe' if you will, for determining how to evaluate elections, and for determining the way observers should be observing elections. This is the void the International Human Rights Law Group is seeking to fill. With the assistance of the Agency for International Development, which granted the International Human Rights Law Group funds to carry out this project, the Law Group has developed guidelines and criteria for observing of elections. We believe this work could help implement the broad principles which were set forth in the various human rights instruments.

Now it is my pleasure to introduce our keynote speaker, who will set the theme for the conference. Dr. Jo Marie Griesgraber has been working in the field of human rights for a number of years. She was formerly the Deputy Director of the Washington Office on Latin America. From this vantage point, Dr. Griesgraber acquired a great wealth of experience. She obtained a Doctor of Philosophy Degree recently from the Georgetown University in which her study was a subject of great interest and some controversy, "The Role of the Carter Administration and Human Rights Policies." It is my pleasure to present Dr. Griesgraber.

Dr. Jo Marie Griesgraber:

Thank you very much, David.

Good morning. I was so bold as to accept this invitation to speak with you this morning not because I am wiser, more erudite, or more experienced than those of you listening. Rather, I accepted because this is very much a gathering of peers, all of us students. Certainly, some have a wealth of experience in human rights, others are trained political scientists or technical election experts. What brings us together is not the novelty of elections, nor of human rights, nor of observing elections. Rather, it is a growing awareness within the human rights community that elections can assist in moving toward a society where, through the exercise of civil-political rights, all other rights are more likely to be respected and promoted.

The popular impression of a human rights agenda would tend to stay with the most egregious violations of the physical integrity of the person—torture, disappearance, extra-judicial execution, and prolonged detention without a trial. Those of us who have been working on human rights issues over the years know well Helsinki's three baskets of rights: integrity of the person, civil-political and socio-economic. We know too the philosophical debates regarding the relative priority among those baskets.

Practically, we have learned that violations of the integrity of the persons are symptomatic of deeper, more systemic problems. While we work furiously for the individual victim of the moment, we yearn to be more effective, to prevent the violations in the first place, and to care for those many other people whose names never reach our first world offices. For this reason, we turn with great hope to any effort that will further the instrumental rights, that is the basic civil and political rights. When people are free to exercise these rights, they can build a society that, under the rule of law, prevents the violations of the integrity of the person, and strives toward the fulfillment of the socioeconomic rights.

Those who are interested in observing elections can expect to confront the same arguments used against human rights fact-finding groups: interventionism, cultural arrogance, and the tendency to focus on the problems in one's own backyard. The universality of human rights in principle and their recognition as part of international law renders these protestations moot. I should point out though that even as one recognizes the universality of civil-political rights, it is necessary to acknowledge the multiplicity of expression, unique to each nation, that these rights assume. Thus, concern for elections grows out of a concern for universal human rights, and observing elections requires both sensitivity to the local history and customs, and fidelity to universal standards.

If we accept this rather lofty theoretical justification for observing elections, what are some of the practical issues involved in such a project?

The basic thesis of the Law Group's Project, as I have come to understand it, is that procedurally correct elections are a necessary but not sufficient ingredient for democracy. Elections are not co-extensive with democracy. That is, the rules governing election day, and the execution of those rules is terribly important, but they are not the whole story. As Mr. Richard Scammon is wont to say, the cleanest elections, where everyone votes in secret, ballots are tallied, and winners take office, occur in the Soviet Union and Eastern Europe.

To illustrate this point still further, let us consider the case of Argentina. Since 1943, Argentina had elections that were almost flawless procedurally. Fraud did not occur on election day nor in the counting of ballots. Rather, at least from 1955 to 1973, over forty (40) percent of the electorate was disenfranchised before the campaign began because the Peronist Party was not allowed to compete. Political forces then resorted to extrademocratic ways to compete for power, and military coups became a regular feature on the political landscape. Thus, for electoral observers to visit Argentina just for

the casting and counting of ballots it would be, at best, a marginally useful exercise.

The electoral process begins with the determination of which parties may compete and how those parties select their candidates. It encompasses the voter registration process, and the freedoms intact during the campaign. Questions of censorship, media access, and campaign financing are critical in assessing the quality of the election. Especially at a moment when a military government is preparing to leave office, it is essential to determine whether all parties are able to hold rallies, to organize their parties, and to be free from intimidation and violence.

At least as important as pre-election day events is what happens afterwards—not only must the ballots cast be counted, and the winner be permitted to take office, but the winner must be able to assume power as well as office. Also to be considered are the difficulties that any democratic government must surmount if democracy is to survive. Thus, in every electoral process there are three moments or phases that an election observer must consider: pre-election campaigning; election day procedures; and post-election counting and implementation of the results.

Political scientists devote their lives to evaluating a nation's whole political panorama; election specialists spend years devising electoral codes and techniques to ensure fraud-free elections. What role, if any, is there for election observers? Let us consider a few of the many possible roles observers might play.

The conference paper refers to the Commonwealth observers and their role in the Zimbabwe election. Given the large number of observers and the length of time they were present, they were able to observe the electoral process in full, and access the electoral process, *per se*. In addition, they had a policy function because they reported their assessment to the Commonwealth nations, with direct policy outcomes based on their report. Finally, they had a good offices function, serving as ombudsmen and technical advisors to promote fair elections.

Rarely do election observers have such clear policy related functions. Nonetheless, any observer mission will attempt to focus international attention on an election and to reduce the most blatant forms of fraud and violence. Observers to the 1978 election in the Dominican Republic were able to enlist international pressure to ensure that the stolen ballot boxes were returned and the counting completed. Fraud in the 1978 Bolivia election was so outrageous that outcries by international observers convinced the Electoral Court to cancel the elections and to order a new election.

The mere presence of observers, however, does not guarantee that fraud will be diminished or that bad elections will be cancelled. The 1980 Guyana election was replete with fraud; the international observers could only inform the outside world regarding the caliber of government that continued in power. Paraguay's elections do not even attract observers: technically clean, they are a transparent sham, not worthy of the price of an observer's airplane ticket.

Election observers frequently have a role to play in their home country's policies toward the host country. U.S. observers frequently report back to Members of Congress, not in the interest of "pure science", but to promote some policy position. The positive comments of official U.S. observers with respect to El Salvador's elections in 1982 and 1984 were expected to convince the American public and reticent Members of Congress of the correctness of U.S. policy toward El Salvador.

During the recent elections in Panama, unofficial international observers and U.S. Embassy staff observing the elections served as lightning rods for people with complaints. The Embassy staff had the in-depth knowledge of the process and the infrastructure of radios and vehicles to serve a limited "rumor control" role, checking specific complaints quickly and expertly. This function filled a void left by an institutionally weak Electoral Tribunal which had the authority to investigate complaints, but no resources to obtain the information or to implement a decision.

Besides these fairly forthright functions for election observers, observers can be used either by an inviting government to gain an imprimatur of legitimacy on a less-than-pure event or by an inviting organization to serve as an amplifier for the organization's grievances. Thus, in addition to serving as ombudsmen, on-site technicians, and reporters of the fairness of the elections, observers may be misused to serve partisan ends. Or, they may be superfluous. One thinks particularly of what have been called "relampago" or lightning-quick visits—the public relations equivalent of a blitzkrieg.

Again, referring to the Argentina observer mission, the group arrived too late to observe the important early stages when parties were organized and candidates selected. Because of Argentina's size, few people knew of the mission's existence. However, Argentina's leading human rights groups were eager for the group to be present on election day because everyone expected a very close vote that would give the final decision to the electoral college. Many scenarios suggested that the candidate with fewer votes could carry the college. People feared violence—as well as backroom 'horse-trading' resulting in the selection of a government lacking full legitimacy.

For just such an eventuality, Argentine human rights organizations wanted international observers available to diminish any possible violence and to bring international pressure to bear so that the legal winner would be allowed to assume office. However, because one candidate gained a clear majority, the observers became almost irrelevant witnesses to Argentina's fiesta of democracy.

The Panama elections presented other questions. An unofficial observer mission was invited by a Panamanian organization which explained that it was not partisan in favor of the opposition candidates, but that as a human rights organization it had opposed the government because only the government can violate human rights. In fact, it was biased toward the opposition candidates. The sponsors of the mission were adamant in presenting many allegations of fraud, but could supply little concrete evidence. The mission participants were leery of being used, and attempted to safeguard their independence and integrity.

Clearly the campaign had been unbalanced. To that extent, the elections were unfair. However, did the unfairness make the elections fraudulent? On election day and during the prolonged counting, it is probable that some fraud occurred. From the observers' vantage point, the fraud that occurred was too subtle to be detected, and the count was so prolonged that no observer was able to stay through to the end.

When fraud is less than blatant, what can observers do? Without concrete evidence, how can observers speak, especially when almost all the allegations are unsubstantiated or partisan? At a minimum, however, the observers can be counted on to retain an interest in that country.

Once convinced of the appropriateness of observing elections, we should be clear about the many roles that observers may fill. We must also recognize that many of the concrete, nitty-gritty details of such missions have symbolic and hence political ramifications.

Who pays? Who provides hospitality? Who translates?

As we work these two (2) days to consider criteria for observing elections, allow me to suggest a few ingredients essential to any observer mission:

- 1. Organize well in advance;**
- 2. Recognize the diversity of the situation and strategize accordingly;**

3. **Send an on-site observer six (6) months before the election to:**
 - secure copies of the electoral code; and
 - note the quality of the campaign climate, including the access of all parties to the media, the ability of all parties to organize, and sources of party financing;
4. **Provide for some mission members or staff to stay through the vote count. (Ideally they would remain until inauguration);**
5. **Select mission members with reputations for credibility and independence—as well as a variety of experience and skills such as law, language, and culture.**

Finally, in closing, allow me to suggest that this conference might consider recommending the establishment of an elections center to collect and analyze mission reports, advise mission organizers, train observers and finance independent observer missions. In the U.S., such a center might be an appropriate project for the National Endowment for Democracy.

Thank you very much.

Mr. David Carliner:

Mr. Scammon, who Dr. Griesgraber mentioned in her speech, has played a major role in observing elections for many years, through his Election Research Center in Washington, D.C., through his association with the American Enterprise Institute, and through his work as the former Director of the Census. He has assisted the Law Group as a member of the Election Observer Project Advisory Panel, and was scheduled to deliver the keynote speech. However, he became rather ill, and is in the hospital at this moment. We regret, of course his absence, and the fact that he cannot share his wisdom with us.

I would now like to introduce Mr. Larry Garber, who has served as the Law Group's Election Observer Project Director, and who is the author of the conference working paper that is before you.

Mr. Larry Garber:

Thank you very much, David. I would also like to thank Dr. Griesgraber for having agreed on relatively short notice to deliver the keynote address, when it became evident that Mr. Scammon would be unable to participate in the conference. I would also like to thank the Advisory Panel that was established for this project. They have been most helpful in offering advice on particular substantive issues pertaining to the project and on the organization of this conference.

I would like to address briefly why the Law Group organized this conference. The Law Group has been involved in this project for the past six months—identifying where election observers have been

sent, reviewing reports prepared following election observer missions, and interviewing individuals who have participated in election observer missions, as well as focussing on broader issues pertaining to elections and election procedures and administration. The working paper that is before you is the product of this work.

As I have explained to virtually everyone, this conference is designed to review the working paper that has been prepared, with the hope that we can reach a consensus on specific issues relating to the process of election observing. Dr. Griesgraber, in her keynote address, identified some of the issues we will be addressing over the next two days.

What does the Law Group hope will result from the conference? We anticipate publishing a report on the conference, which will include a final version of the guidelines. We hope that by developing guidelines, which are considered non-partisan in content, to encourage the dispatch of election observer missions that will assist in ensuring free and fair elections. This is a goal which I believe everyone in this room, regardless of political orientation, agrees can play an important role in promoting human rights.

In addition, we anticipate the practice of sending election observers will continue. For example, there are a number of elections scheduled for this year which will be controversial and may result in the dispatch of election observer missions. The Guidelines, therefore, should have immediate practical impact.

Today, we will meet in working groups to discuss specific aspects of the guidelines. The organization of the working groups is as follows: for each individual working group there will be a chairperson, who will be responsible for organizing the discussion. I have asked one or two individuals from each working group to serve as "introducers"; their task is to focus on one or two points to initiate the discussion. However, everyone should feel free to address other points in the course of the ensuing discussion.

There will also be a rapporteur for each working group. The reports of the working group rapporteurs will be synthesized by our conference rapporteur, Professor David Weissbrodt. Professor Weissbrodt will prepare the conference report, which will be presented tomorrow after the plenary session.

I would like to reiterate what I mentioned last night to the chairpersons of the different working groups. Our purpose here is not to critique particular observer missions, nor is the conference designed to be a partisan or political debate about particular elections, nor a critique of U.S. foreign policy. Rather, it is designed to improve a process that has been the subject of some criticism.

SUMMARY OF PANEL DISCUSSION ON "CHOICE OF ELECTIONS TO OBSERVE"

Dean Goldman, serving as chairperson, introduced the subject. He noted that, as compared to 1982, more governments and nongovernmental organizations were willing to send observers to El Salvador in 1984. He further noted that elections warranting observation are scheduled in a number of countries in the next year, and that, given limited resources, nongovernmental organizations in particular often have a difficult time deciding where observers should be sent.

Professor Farer was the first speaker. He explained that he was dubious about election observing in general, because often one's attitude towards an election tends to be a function of one's political views.

In explaining why he opposed sending observers to Rhodesia in 1979, Professor Farer commented that when elections are held during a civil conflict, the party organizing the election seldom loses. For a fair election, following a civil war situation, there must be a neutral administrator of the electoral process. In Rhodesia, this occurred only in 1980, when the British were responsible for administering the process.

Professor Farer also explained why, as a member of the Inter-American Commission on Human Rights, he opposed having the Commission observe the 1982 Salvadoran election. First, he did not believe the Commission had adequate resources to observe the electoral process in El Salvador in an appropriate manner. Second, although the election was being advertised as a reallocation of power in the society, he did not see any possibility ultimate power would shift from the hands of the parties that had traditionally held power (i.e. the oligarchy and the army), regardless of the election outcome. Finally, Professor Farer noted he was concerned about the inability of certain parties to participate in the process, except on suicidal terms.

In closing, Professor Farer suggested attention be given to the question "who wants the observation." Where the incumbent government seeks observers, and the opposition is not participating, observers function to legitimize a result that is preplanned.

The second speaker was Dr. Raymond Gastil of Freedom House. Dr. Gastil conceded observers may legitimize an electoral process. However, he noted that by legitimizing an election, observers might also be able to impact on distribution of power following an election in a positive manner.

In addressing the issue of choosing elections to observe, Dr. Gastil pointed out that organizations often do not have a choice of elections

to observe; rather they send observers only when funds are available. He also noted the focus of the conference was on monitoring elections for human rights purposes, a process quite different from monitoring elections in order to objectively study an electoral process and report on the process.

The final speaker of the panel was Lord Pratap Chitnis. He explained his two criteria for selecting elections to observe: 1) Has the host country invited official observers? and 2) Does he have a particular interest in observing the election? If either question is answered affirmatively, he will observe the election.

Lord Chitnis explained he did not worry about legitimizing the process because he viewed his role simply as an "observer", not as a missionary for democracy. Lord Chitnis further suggested the appropriate question to discuss is how the observers operate. His rule is never to accept hospitality, transportation or protection from the government, and to assert the right to travel anywhere in a country and to speak with anyone. If the latter conditions are met, he would observe elections anywhere in the world.

The Chairman asked two of the conference participants who served as official observers for the 1984 election in El Salvador to comment on why their governments sent observers in 1984 after declining to send observers in 1982. Mr. Nelissen, who served as an official observer for Holland, responded that the government of Holland wanted information about what was happening in El Salvador, and about the possibility of the election contributing to a political solution. Mr. Nelissen explained that the government of Holland appointed independent observers to report objectively on the election.

Mr. Fairweather, who served as an official observer for Canada, also responded to the Chairman's inquiry. He stated that the Canadians sent observers, in part, because they were invited and, in part, to obtain an independent assessment of the process.

SUMMARY OF PRESENTATION BY MR. WILLIAM KIMBERLING ON "INSTITUTIONALIZING THE ELECTION OBSERVER PROCESS"

During the final session of the conference, Mr. Kimberling addressed the topic "institutionalizing the election observer process." He began by noting that election observer teams, to date, have been organized on an ad-hoc basis. Teams have been dispatched, in general, as dictated by political needs.

As a result of the ad-hoc process, problems arise. For example, Mr. Kimberling explained that before organizing an official team in the United States several considerations must be taken into account, including relations between the executive and congressional branches of government and relations between political parties. Other countries face similar problems in organizing official teams. In addition to official teams, Mr. Kimberling commented on the proliferation of non-official teams representing diverse political and professional interests.

Mr. Kimberling suggested the proliferation of teams is proving counter-productive to the purpose of ensuring a free and fair electoral process. Often it appears observers argue more among themselves than do the parties competing in the election. These conflicts among observers occasionally result in bloodshed in the host country because they exacerbate serious existent emotional divisions.

In addition to adoption of uniform criteria for evaluating elections, Mr. Kimberling suggested institutionalizing three other aspects of the election observer process. First, institutionalizing the process of obtaining source material on the electoral laws of foreign countries. A document center that would collect and translate relevant foreign election material would be ideal.

Second, Mr. Kimberling suggested institutionalizing the process of sending observers. This could be accomplished by establishing a fund to be administered by an international advisory board, whose purpose would be to organize independent observer missions. The fund would select observers with diverse interests from an international list. In time, as the objectivity and independence of these international observer missions were accepted, their existence would reduce the number of teams that are now sent to observe certain controversial elections.

Finally, Mr. Kimberling suggested institutionalizing the process of selecting elections to observe. While emphasizing that all elections are interesting, and hence worthy of observation, Mr. Kimberling recognized the number of elections to be observed would be limited by resources available; thus, criteria for selecting elections to observe should be developed.

THE PROCESS OF OBSERVING ELECTIONS— RAPPORTEUR'S REPORT OF THE CONFERENCE ON INTERNATIONAL MONITORING OF ELECTIONS

Over thirty individuals, who have served as election observers, who have studied the election observation process, and who have otherwise been involved in sending observers, met at the Airlie Conference Center, Warrenton, Virginia, May 20-22, 1984, to discuss their diverse experiences in monitoring foreign elections and to critique proposed guidelines which observers may consider and utilize in the future. Participants in the conference have observed elections in a considerable number of countries, including Argentina, Bolivia, El Salvador, Guatemala, Guyana, Honduras, Panama, the Republic of Korea, Uganda, Viet Nam, and Zimbabwe. Participants have also engaged in a wide range of similar fact-finding missions.

At the inaugural meeting, Mr. David Carliner, Chair of the Board of Directors of the International Human Rights Law Group, opened the conference and introduced its purpose. Dr. Jo Marie Griesgraber gave the keynote address in which she discussed the significant relationship between the right to free participation in periodic and genuine elections and the achievement of other international human rights. Dr. Griesgraber noted that properly conducted elections are a necessary, but not a sufficient condition of democracy. Even the electoral process is far broader than the casting of votes and the counting of the ballots; it includes voter registration, participation of political parties, selection of candidates, campaign financing, election regulations, media access, and election complaints procedures.

Dr. Griesgraber set forth the various functions which observers serve including assessment of fairness of elections, advising election managers about problems which may arise, encouraging participation in the election, informing the world as to their assessment, and fostering an international awareness which assists the legitimate winner to assume office. Dr. Griesgraber then presented a number of concrete suggestions for how election observer missions should be organized; these suggestions were discussed in the working groups of the conference.

Larry Garber, Election Observer Project Director, explained the organization of the conference, which was divided into working groups on four principal issues:

- 1. Organizing an Election Observer Mission**
- 2. Visit by the Mission to the Host Country and Fact-Finding Activities**

3. Assessing the Fairness of an Election

4. Dissemination of the Mission's Conclusions

The conference also included a panel discussion on factors to be considered in selecting elections for observation and some discussion of how the election observer process might be institutionalized or better coordinated.

Separate reports were prepared about the discussion in each of the four working groups. This summary reflects those elements of the deliberations which appeared to achieve some consensus. There was a degree of overlap in the discussions of the working groups; this summary attempts to organize the material and does not entirely respect the divisions among the subjects considered by the working groups.

The conference commended the thorough and perceptive working paper prepared by Larry Garber, which discussed the practice of monitoring foreign elections and outlined tentative guidelines for observers to use in the future. Much of the discussion of the conference revolved around the views expressed in the working paper so that the paper could be adapted to reflect consensus views and the election observer guidelines could be further elaborated.

There is a considerable diversity of election observer experience undertaken by intergovernmental organizations, governments, and nongovernmental organizations. The principal purpose of election observation missions includes assessment of whether the election complies with international standards as to "freely chosen representatives" in "periodic and genuine elections" with "universal and equal suffrage" and secrecy of the vote. Election observer missions may be initiated for other diverse purposes, for example, to indicate support for elections which comply with international standards; to encourage participants in the election process including voters, parties, and candidates with a greater assurance of fairness; etc. These varying objectives may have a considerable influence upon the terms of reference of the particular election observer mission, the selection of the observers, the duration of the mission, other arrangements for the mission, the nature of the report to be prepared, and the dissemination of the mission's conclusions.

With such a diverse experience, it would not be easy to establish fixed rules which could apply across the board to governments, intergovernmental organizations, and nongovernmental organizations mounting observer missions for a variety of purposes. Nonetheless, conference participants found it useful to pool their accumulated experience and to share ideas as to how they might provide some guidance for future election observer endeavors.

Despite the diversity of election observer missions, conference participants with relevant experience agreed that an election observer mission should be preceded by a statement of the objectives, terms of reference, and selection of observers. The sending government or organization should inform the government of the country to be visited about these salient aspects of the election observer mission and may, if it will assist the mission and is otherwise appropriate, seek credentials from the officials administering the election.

In selecting appropriate terms of reference, the sending organization or mission participants could usefully refer to the terms of reference used by previous election observer missions. These terms of reference might include assessment of the election under relevant standards, a good offices function to permit the observers to make suggestions to election officials on the spot, if necessary, etc. Terms of reference should be sufficiently specific and realistic to provide guidance to the observers, the receiving government, and others; but should be sufficiently flexible to allow the observers to deal with unforeseen difficulties and to interpret their mandate accordingly. There was a consensus among participants in the relevant working group that the conference paper should discuss terms of reference more fully and sample terms of reference from previous missions should be appended to the guidelines.

As to the selection of election observers, one conference participant analogized the process to the selection of a jury in a criminal case in that observers should be found who are independent, impartial, and objective. To the extent possible, observer teams should include respected individuals from various countries, different races, different cultures, and of both sexes. Among those who might be selected are lawyers, individuals with experience in election administration and politics, and persons with knowledge of the country to be visited and its language.

Election observers should be selected who can not only assess the election laws, but also analyze how those laws are applied in practice as well as the broader political context of the election. While some conference participants suggested that the credibility of an election observer endeavor might require inclusion of country specialists, others thought this expertise could be acquired through research staffing or by close links with local organizations and contacts. (It was noted with regret that present conference participants did not include more election specialists from countries which had been observed, so as to provide their perspective on the observer process and the composition of observer teams.)

With respect to financing an observation mission, some thought host country support was inappropriate, while other participants

believed government financing was becoming more prevalent and would not necessarily undermine credibility of the mission. In any case, it was the view of a majority of participants in the relevant working group that sources of funding and assistance to the mission should appear in the mission's final report. Similarly, the degree of cooperation offered, sought, or received from the host government should be indicated in the report.

At the working group which discussed fact-finding and procedures for on-site visits by election observers, there was a consensus that election observation is a species of fact-finding in which issues are determined based on evidence and observation, and evaluated on the basis of consistent standards in making findings and judgments. Among established principles of fact-finding applicable to election observation are the need for independent, objective, and impartial fact-finders, who use a flexible standard of admissibility of all relevant evidence and consider information, even if not based on first-hand observation, so long as its credibility is otherwise assured, according to fair procedures.

Participants in relevant working groups expressed concern that election observer missions of only a day or two run the risk of having very limited value as fact-finding exercises. Indeed, some participants suggested an observer team which, for foreign policy reasons, attended an election to put an imprimatur on a government regardless of the actual electoral process should not be identified as "observers." Another participant stated that the conclusions of an observer mission with a bias against the host government should also be rejected.

It may be possible for some fact-finding to be accomplished by very short-term observer missions if their terms of reference require an assessment solely of events on the day of election, if defects in the election process are sufficiently patent, or if adequate information is available from well-organized and knowledgeable local contacts. However, in ordinary circumstances, it would be desirable for election observers to spend an adequate period of time in the observed country to engage in reliable fact-finding.

Several conference participants stressed the need of election observers to remain in the country until the end of the count and the announcement of results to encourage and assure fairness. Indeed, it was suggested the ultimate sanction an observer team might use would be their refusal to continue the mission, and publicly announce their departure.

A number of other relatively detailed suggestions were made for inclusion in the guidelines. For example, prospective observers should

be warned about physical risks they might encounter; should be provided insurance (even though intentional physical harm to observers appears to occur rarely, if ever); should be encouraged to avoid the presence of armed escorts while talking with witnesses; should be warned against relying upon the prevalent wisdom among diplomats and other foreigners in the capital city; should be encouraged to share information with other observers; should be provided with staff assistance for investigating problems which may arise; and should consider the possibility of coordinating observation work with observers sent by other organizations. It was agreed observers should not get bogged down with investigation of each individual complaint of election irregularities, but should investigate particularly significant complaints which might bring the election into question or which form a consistent pattern. Individual complaints should be referred to appropriate election officials for investigation and resolution.

Principal criteria discussed for assessing observed elections derived from international human rights instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It was stressed that when a government becomes a party to a human rights treaty, it accepts an obligation to adhere to the provisions of that treaty. It thus becomes appropriate for observers to evaluate whether a country is adhering to the specific obligations undertaken, including recognition of rights pertaining to free political participation in "periodic and genuine elections."

One conference participant suggested that it was unrealistic to imagine that all peoples had either experience or knowledge of free elections. Another participant pointed out that the concept of free elections was not recognized in practice by most countries and was initially a Western idea which some countries were trying to impose on others, however desirable it might be. It was the consensus of the conference participants, however, that governments have become bound by international human rights instruments guaranteeing the right to participate in "periodic and genuine elections."

Evaluating whether a country was respecting the international norms it has actually or implicitly accepted pertaining to political participation, the relevant working group concurred on certain basic conditions for a properly conducted election: there must be respect for the right to vote; the right to be elected; freedom of expression; freedom of assembly; and freedom of association. Another working group added election observers should consider whether people have the ability to participate without undue outside influence, whether

there exist adequate procedures for dealing with complaints of election irregularities, and whether in the final analysis the totality of all defects identified were such that they could affect the result. The working group on fact-finding discussed at some length difficulties in determining whether defects could affect the result, based on estimates of the magnitude of the problem, the impact of defects upon the perception of the voters and other election participants, and the use of sampling techniques, anthropological approaches for gauging popular perceptions, and public opinion polling.

Some participants believed an election could not be evaluated adequately without reference to the broad socio-political context, particularly in situations in which the legitimacy of the entire electoral process was at issue. Other participants indicated the principal task of an election observer mission is to evaluate election procedures and not to look at broader issues. There was, however, a consensus in the working group considering standards to be applied that an election process involves more than what happens on election day, and the entire election process should be evaluated—though not necessarily including the socio-political context.

One participant suggested a ten part model for evaluating an electoral process. Most participants agreed this model was quite useful. The model required consideration of the following issues:

1. **Legislation**—How and by whom were electoral laws prepared?
2. **Structure of administration**—How independent are those who actually administer the elections and by whom are they appointed?
3. **Voting districts**—How are the boundaries of constituencies and voting precincts determined?
4. **Access to the ballot**—How do political parties and/or individuals obtain access to the ballot?
5. **Mechanics of voter registration**—Who registers the voters and how are registration lists updated?
6. **Campaign regulations**—How are campaign activities regulated, including financing, time limits for the campaign, and means of assuring fair campaign practices?
7. **Voter information**—What are the methods of informing voters of the issues?; are the ballots comprehensible?
8. **Election day balloting**—What are the number and kind of party poll watchers?; what are the procedures for absentee ballots, if any?; what assistance is available for disabled voters?
9. **Tabulation and reporting of the vote**—Where are votes counted? who has access to the counting procedures?

10. Certification of the results—How are the results certified?; what are procedures for challenging aspects of the process?

There was a consensus that guidelines for election observers should have appended a detailed list of issues to be considered by observers, such as those mentioned in the conference working paper. Observers might use this list to identify issues which require particular attention during their visit. The working group on criteria identified a considerable number of additional issues which should eventually be listed in an appendix to the election observer guidelines.

It was further agreed that certain elections require consideration of particular issues. For example, such issues may be at stake where one or more groups are not participating in the electoral process and/or where the military is supervising the electoral process in anticipation of a transition to civilian rule.

The majority of the working group on dissemination recommended that an extensive report, with a political and historical analysis, in addition to an evaluation of the election procedures, be prepared following an election observer mission. A minority of that working group suggested observer reports should be brief, politically value-free, and stress the relevant election procedures. The nature of a report would be influenced by objectives of the particular observer mission.

Missions which may have some impact upon governmental policy should try to issue their reports promptly—preferably while they remain in the country which is observed in order to obtain maximum visibility. Other missions may wish to wait until they return home and prepare a more comprehensive analysis. The report should provide conclusions addressing the issues identified in the terms of reference; for example, whether an election was free and fair, whether there was progress toward respect for the right to political participation, etc.

There was consensus that the election report should be disseminated as broadly as possible, including particularly interested governments, international organizations, academics, etc. Election observer reports should also be placed on file with the International Human Rights Law Group, to provide a data base for the use of future observers and those interested in the electoral process.

Several participants made further suggestions for the form of the guidelines which will be ultimately issued by the International Human Rights Law Group. They suggested that a relatively brief set of guidelines be prepared for broad dissemination with appendices. These appendices should include a comprehensive list of issues to be

considered by observers, examples of terms of reference used by observer missions, practical suggestions for arranging missions, and an account of the previous practices which formed the basis for the guidelines. In addition, a number of relatively detailed comments were made by participants concerning the conference working paper and these comments were communicated directly to the Election Observer Project Director.

Using a panel format conference participants discussed factors to be considered in determining which elections should be observed. One speaker drew attention to situations in which the government is dominated by the military or an armed conflict is occurring, and an election is being planned. He questioned whether the government would hold an election in which there is significant risk power would be transferred to a real opposition. Therefore, the speaker suggested there might be too great a risk of legitimizing an election which did not present a real choice, so observers should not be sent.

Participants in the ensuing discussion suggested possible qualifications to this thesis. For example, there might be a real election if the government had a strong tradition of electoral democracy. One participant described a situation where despite the armed conflict, there was a potential for real electoral choice and this would constitute a possible choice for election observation. Another participant suggested that election observation might be appropriate if the election might represent a step toward real democracy, at least in the long term.

A second speaker on the panel stated that election observers can be useful if they take a sufficiently broad view of the electoral process to determine if there is a genuine election. Although there is a risk of unduly legitimizing an election by the presence of an observer mission, even if the observers report the serious defects that are found, the speaker favored observing a larger number of elections in order to provide experience about what elements of elections should be scrutinized. However, the speaker also identified several factors which limit the number of elections which can be observed, including the lack of an invitation to observe and the lack of finances to make it possible to send observers.

The third speaker on the panel suggested that the significant issue was not the criteria for deciding which elections to observe but how the observers go about their work. Another participant explained that observers are sent because their government or organization have a political, human rights, or other interest in the country or region, and because the sending organization or government wants to be better informed about the election. At the same time, the

government or organization should expressly state that the observer's presence does not represent an endorsement of the election or of the government.

Several further situations were suggested which may influence whether election observers are sent, including countries raising international concern (particularly where there have been widespread allegations of human rights violations and a new government is being established), countries which are making a transition to independence, countries where there exist insufficient local human rights or other organizations which monitor the elections, and generally where the presence of observers can make a real difference. Several participants in the discussion commented that observers do not always have much impact, given the presence of media, other observers, etc. Another participant mentioned that some nongovernmental organizations often send observers to elections because their government has sent observers.

There appeared to be a consensus that the conference working paper and the discussion had identified many particular situations and factors which sending governments and organizations consider. It was suggested further that these factors and situations may influence intergovernmental organizations, governments, and nongovernmental organizations in different ways. Several participants expressed concerns that *ad hoc* decisions about which elections to observe have led to occasions where election observers are sent only for narrow political purposes. Therefore, the working paper could make a useful contribution in beginning to develop guidelines on the choice of elections to observe.

The discussion turned to the need for some international mechanism for institutionalizing the process of election observation. Such an idea could help avoid *ad hoc* decision by a multitude of different organizations with narrow perspectives on the election process. Some participants suggested such institutions might consider observing all national elections. Others suggested that there are too many elections, that election observers' missions are very expensive, and observing all elections would be a waste of resources.

Nonetheless, there are several organizations concerned with other issues, such as the Center for the Independence of Lawyers and Judges, upon which institutionalization of election observation might be modeled. Two major functions were suggested for any election observation institution: First, the institution could collect information about upcoming elections, election laws, their national contexts, and previous observer reports. Second, the institution could solicit funding for a block grant to support a considerable number

of election missions, could establish an advisory board for selecting elections to observe, and could select observers—possibly based upon a list of potential observers.

Several participants stressed the need for an international board of directors, or at least the option of selecting observers from different countries, in order to make the institution acceptable to countries which might be receiving election observer missions. The International Human Rights Law Group is also considering a project to collect and make available election observer reports and to offer advice to organizations and governments interested in organizing election observer missions.

By institutionalizing the process, one could not prevent other organizations and governments from sending election observers. Nonetheless, such an institution could help to provide an exchange of information for organizations and governments sending observers, could serve as an appropriate follow-up to the study undertaken by the International Human Rights Law Group, and would help assure a more reliable basis for sending election observers to more elections.

Participants also identified the need for broader institutions to promote elections, to foster exchange of information among those who supervise elections, to help train election supervisors, and to help identify individuals who might serve as election observers. The Inter-American Institute of Human Rights has just begun to organize a center for these broader purposes in the Americas. The International Institute of Elections in Washington, D.C. has been initiated to provide similar services.

At the conclusion of the conference, the participants thanked the sponsors for giving them an opportunity to meet, share experiences on the fascinating topic of international election observing, and to contribute to the very worthy effort of developing guidelines for future observers.

Professor David Weissbrodt
(University of Minnesota Law School)
General Rapporteur

ANNEX I

LIST OF ELECTION OBSERVER REPORTS ON FILE WITH INTERNATIONAL HUMAN RIGHTS LAW GROUP

I. Missions Organized by Intergovernmental Organizations

A. League of Nations Reports

1. Saar Territory, 1935—First Monthly Report of the Plebiscite Commission; Third Report of the Plebiscite Commission; Seventh Report of the Plebiscite Commission (1935).
2. Sanjak of Alexandretta, 1937—Commission Appointed by the Council of the League of Nations to Organise and Supervise the First Elections in the Sanjak of Alexandretta.

B. United Nations Reports

1. General Assembly Missions

- a. British Togoland, 1956—Reports of the United Nations Plebiscite Commissioner and of the Trusteeship Council. (U.N. Doc. A/3169)
- b. French Togoland, 1958—Report of the United Nations Commissioner for the Supervision of the Elections. (U.N. Doc. A/3958)
- c. British Cameroons, 1959—Report of the United Nations Plebiscite Commissioner on the Plebiscite in the northern part of the Territory and Report of the Trusteeship Council. (U.N. Doc. A/4314)
- d. British Cameroons, 1961—Report of the United Nations Plebiscite Commissioner for the Cameroons under United Kingdom Administration. (U.N. Doc. A/4727)
- e. Western Samoa, 1961—Report of the United Nations Plebiscite Commissioner for Western Samoa. (U.N. Doc. A/4840)
- f. Ruanda-Urundi, 1961—Report of the United Nations Commission for Ruanda-Urundi. (U.N. Doc. A/4994)
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Rights Group
Freedom House
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Freedom House
The Netherlands
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Washington Office on Africa

ANNEX II

MEMBERSHIP OF ELECTION OBSERVER PROJECT ADVISORY PANEL

Dean Robert V. Goldman—Assistant Dean of Washington College of Law of American University; formerly with the firm of Arnold and Porter. Consultant to the Inter-American Commission on Human Rights of the OAS (1977). Participant in election observer mission to Bolivia (1978). Participant in fact-finding missions to Uruguay and Guatemala.

Dr. Howard R. Penniman—General editor of American Enterprise Institute's *At the Polls* series; co-director of the program in Political and Social Process at the American Enterprise Institute; election consultant to the American Broadcasting Company. Author of *Elections in South Vietnam* (1972) and other books and articles on elections. Participant in official election observer missions to Vietnam (1967), El Salvador (1982 & 1984) and Freedom House observer missions to Zimbabwe/Rhodesia (1979 & 1980).

Dr. Austin Ranney—Co-director of the program in political and social processes at the American Enterprise Institute. Former president of the American Political Science Association. Author of books on the American political process and contributor to the American Enterprise Institute's *At the Polls* series.

Dr. Richard M. Scammon—Director of the Election Research Center in Washington, D.C.; editor of the biennial series *America Votes*; elections consultant to the National Broadcasting Company. Participant in official election observer missions to Soviet Union (1958), Vietnam (1967) and El Salvador (1982).

Professor David Weissbrodt—Professor of Law, University of Minnesota; formerly with the firm of Covington and Burling. Author of articles on "Fact-finding by International Nongovernmental Organizations" and "International Trial Observers". Participant in fact-finding mission to Guyana.

Mr. F. Clifton White—Political strategist and consultant in public affairs and government relations; advisor to two national broadcast networks for election coverage; director of the International Association of Political Consultants. Participant as consultant in international campaigns in Venezuela (1972 & 1978), Italy (1973), Portugal (1974), Spain (1977) and Greece (1981).

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