

ELECTION OBSERVATION AND ITS ROLE IN DEMOCRACY  
BUILDING: A CASE STUDY OF THE CANADIAN OBSERVATION  
MISSION TO THE SOUTH AFRICAN ELECTION, APRIL 1994

By

Martha Nelems

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Department of Political Science

The University of British Columbia  
Vancouver, Canada

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## ABSTRACT

The post-cold war era of the 1980s and 1990s has witnessed a rapid increase in the number of democratically elected regimes in the world. The steady growth of democratically elected regimes in the past five years has brought into focus the role of international observers in legitimizing the outcomes of these elections. This thesis explores the relationship between the practice of international election observation and the growth of democratically elected regimes.

In order to achieve this end, this thesis begins with a theoretical discussion of international election observation as understood by international lawyers Thomas Franck and Gregory Fox. After establishing an analytical framework, this thesis proceeds with a case study of the Canadian government's approach to international election observation, as evidenced by the work of Canada's official observation mission to the South African election in April 1994 (CANOMSA). This includes a discussion of Canada's foreign policy framework for this mission.

The case study of CANOMSA suggests there is what Franck refers to as 'an emerging right to democratic governance' which is validated by the international community. The Canadian government used its observation mission to South Africa to support that country's democratic transition; in doing so, it believed that democratic values would be better served in South Africa by a regime that was democratically elected. Implicitly, CANOMSA also served to build the norm that 'only democracy validates governance'. However, the experiences of CANOMSA suggest the practice of election observation is not yet standardized and much can be done to improve its effectiveness.

In order to further 'the global entitlement to democracy', Canada should be explicit in its support for this norm. Despite the risks involved in doing so, including a hardening of the division between liberal and non-liberal states, this is a laudable foreign policy goal which Canada should actively pursue through democratic development initiatives such as international election observation. To this end, it is important that one view the work of international election observation on the middle of a continuum which begins with activities such as peacekeeping and ends with what is increasingly referred to as 'peacebuilding'. The reason why Canada engages in all of these activities is the same; the belief that the international community has the moral authority to act because it has a profound stake in building an international order that promotes human security and furthers human dignity.

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## INTRODUCTION

There are moments in history when fundamental changes take place in the world. The world is presently going through one such moment when democratic values are being adopted by one country after another. This is a moment of democracy. (Institute for Democracy and Electoral Assistance, Report on Democracy Forum 1996, 1)

The question is not whether democracy has swept the boards, but whether global society is ready for an era in which only democracy and the rule of law will be capable of validating governance (Thomas Franck, Fairness in International Law and Institutions 1995, 88)

The post-cold war era of the 1980s and 1990s has witnessed a rapid increase in the number of democratically elected regimes in the world. According to one estimate, as of 1994 there were "130 national governments legally committed to permit open, multiparty, secret-ballot elections with a universal franchise" (Franck 1995, 85). Increasingly, even non-elected regimes are talking about holding elections in the near future; whether or not they actually achieve this goal, their public commitment to it is noteworthy.<sup>1</sup>

Obviously, truly democratic regimes require more than elections. Although the concept of democracy is a complex one which defies specific definition, an important distinction can be made between notions of political and popular democracy. Political democracy requires "regular and effective mechanisms to choose and to change representatives, governments, and policies by non-violent means; effective legal frameworks and social space to permit free political expression, association and dissent, and to guard against the abuse of state power" (Gillies and Schmitz 1992, xii). Popular democracy incorporates "the effective distribution of the material means for inclusive political participation (socio-economic rights); effective public control of the

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<sup>1</sup> For example, shortly after he seized power, Nigerian dictator General Sani Abacha announced a three year transition plan to return his country to civilian rule by 1998.

policy agenda to ensure maximum accountability during and between elections” (Gillies and Schmitz 1992, xii). However, as the primary means of ‘choosing and changing governments’, elections represent a critical element of any genuine democracy.

The steady growth of democratically elected governments in the past five years has brought into focus the role of international observers in legitimizing the outcomes of these elections. International observers are representatives of governments, multilateral organisations or non-governmental organisations who are invited by a country to monitor its electoral process. These observers then submit reports to their sponsoring government or institution in which they make judgments about the extent to which the individual’s right to free and fair elections was realized, as well as the overall legitimacy of the election. In so doing, observers become “the basis for international endorsement of the elected Government” (Franck 1992, 75).

Canada has been actively involved in the field of international election assistance, including election observation. According to Ron Gould, deputy chief electoral officer at Elections Canada, the Canadian government has sponsored approximately two hundred and fifty technical and observer missions to seventy-five countries since 1984 (IDEA 1996, 7).<sup>2</sup> In the past five years alone, Canadians have participated in observer missions to Albania, Angola, Armenia, Azerbaijan, Bangladesh, Benin, Bosnia, Burkino Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Comoros, Congo, Djibouti, Dominican Republic, El Salvador, Eritrea, Ethiopia, Gabon, Georgia, Ghana, Guatemala, Guinea, Guyana, Haiti, Honduras, Ivory Coast, Kenya, Latvia, Lesotho, Lithuania, Madagascar, Malawi, Mali, Mexico, Moldova,

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<sup>2</sup> This only includes official government observer and technical missions. Technical assistance to the election process can take many forms such as training electoral officers or helping to draft electoral laws.

Mozambique, Namibia, Nepal, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Romania, Russia, Rwanda, Senegal, Serbia-Montenegro, Seychelles, South Africa, Sri Lanka, Tanzania, Ukraine, Venezuela, West Territories and Gaza Strip, Yemen, and Zambia (Canada 1996, 1-21).<sup>3</sup>

This thesis will explore the relationship between the practice of international election observation and the growth of democratically elected regimes. In so doing, the role of international election observation in democracy building will be addressed. In order to achieve this end, this thesis will begin with a theoretical discussion of international election observation as understood by international lawyers Thomas Franck and Gregory Fox. After establishing an analytical framework, this thesis will proceed with a case study of the Canadian government's approach to international election observation, as evidenced by the work of Canada's official observation mission to the South African election in April 1994. This will include a discussion of Canada's foreign policy framework for this mission.

Although the practice of international election observation has rapidly expanded in the last five years, there has not been a commensurate growth in the academic study of this activity. As a result, there is now an urgent need for the practice of election observation to be better informed by theory and analysis. This makes it an important area of study for political scientists. It should be of particular interest to Canadian political scientists, given the reputation Canada is developing as a leader in the field of international election assistance.

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<sup>3</sup> This includes observation of the election by local Canadian embassy staff, or the participation of Canadians in government sponsored missions, multilateral missions with organisations such as the Commonwealth or the United Nations, as well as observation missions sponsored by non-governmental organisations such as the Carter Center or the National Democratic Institute.

## CHAPTER I: THE THEORETICAL IMPLICATIONS OF INTERNATIONAL ELECTION OBSERVATION

In order to understand the relationship between international election observation and democratization, it is useful to explore the work of two international lawyers, Thomas Franck and Gregory Fox. Franck argues that international election observing is an important element of “the emerging right to democratic governance” (Franck 1992, 46). Likewise, Gregory Fox views election observing as integrally linked to “the universal right to political participation” (Fox 1992, 607). Unlike Franck however, Fox believes this ‘right’ is already fully established in international law.

In his 1992 article, “The Emerging Right to Democratic Governance,” and his subsequent book Fairness in International Law and Institutions, Franck argues that “the international system is moving towards a clearly designated democratic entitlement, with national governance validated by international standards and systematic monitoring of compliance” (Franck 1992, 91). According to Franck, two ‘radical’ propositions stated in the American Declaration of Independence -- that “citizens should have unalienable rights protected by governments which derive their just powers from the consent of the governed” and “a nation earns separate and equal status in the community of states by demonstrating a decent respect to the opinions of mankind” (Franck 1995, 46) -- are now merging to become a single rule of international law.<sup>4</sup> According to this new rule, “the right to govern depends on governments having met both the democratic entitlement of the governed and also the standards of the international community” (Franck 1995,

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<sup>4</sup> Franck calls the first notion -- “that citizens should have unalienable rights protected by governments which derive their just powers from the consent of the governed” -- the democratic entitlement (Franck 1992, 46).

84). Franck writes:

The opinions of mankind have begun in earnest to require that governments, as a prerequisite to membership in the community of nations, derive 'their just powers from the consent of the governed'. Increasingly, governments recognize that their legitimacy depends on meeting a normative expectation of the community of states (Franck 1995, 84).

As a result, the democratic entitlement is emerging as a norm of the international system which the international community "promotes and protects by collective international processes" such as setting global standards and carrying out international monitoring (Franck 1995, 85).

According to Franck, the democratic entitlement has been created from the building blocks of "three generations of rights to political participation": the right to self-determination, to freedom of expression and association, and finally the right to participate in free and fair elections (Franck 1995, 91). Together these rights "constitute the matrix of the democratic entitlement" (Franck 1995, 91).

The democratic entitlement is evolving "both as a system of rules and in the practice of states and organisations" (Franck 1992, 90). These rules are evidenced in the treaties of the United Nations (UN) and of regional organisations such as the Organisation of American States (OAS) and the Conference on Security and Cooperation in Europe (CSCE). There is also a longstanding history of these rules being monitored by international and regional organisations.

Although the first two earlier rights (self-determination and freedom of expression/association) of the democratic entitlement have already gained legitimacy from the texts and practices of international and regional organisations, the final right to free and fair elections is still in the process of "becoming a requirement of international law" (Franck 1992,

47).<sup>5</sup> That the right is evolving as an international norm is evidenced by growing acceptance of global standards for open, multiparty elections and international monitoring of the election procedure.

As evidence of the international community's increasing commitment to democracy, Franck highlights the responses to the failed coup in Russia in 1991 and the successful coup in Haiti during the same year. Resolutions at the UN General Assembly and in Haiti's case, at the OAS, condemned these coups as illegitimate and called for an immediate return to representative democracy (Franck 1992, 47). Franck argues that in both cases, "the leaders of the states constituting the international community vigorously asserted that only democracy validates governance" (Franck 1992, 47).

The democratic entitlement is also being promoted by individual governments that want their power to be 'validated' by the international community. According to Franck, what these governments "seek is legitimation by a global standard monitored by processes of the international system" (Franck 1995, 90). To this end, national governments invite international observers to monitor their electoral proceedings. Reports on the legitimacy of the election by international observers become "the basis for international endorsement of the elected government" (Franck 1992, 75). Governments seek this validation from the international community because it strengthens their ability to govern. According to Franck, "the legitimacy bestowed by that [electoral] process gives back far more power to those who govern than they surrendered" (Franck 1992, 50). In some of the relatively new or fragile democracies, the

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<sup>5</sup> That this final right has lagged behind the other two rights is partly due to the fact that democratic elections and a universal franchise are a fairly recent development even in so-called western democracies.

international community may actually be better able to offer validation of the election process than the country's own national election machinery (Franck 1992, 51). In all countries, 'legitimate' governments decrease the likelihood of economic, political and social instability (Franck 1992, 51).

Franck argues that the concept of legitimacy has two aspects. First, there is the granting of 'legitimacy' to national governments by the international community as described above. Second, there is the 'legitimacy' of "the emerging rules and processes by which the governance of nations is increasingly being monitored and validated" (Franck 1992, 50). Franck argues that the international community's ability to validate national governance depends on how legitimate the process of doing so is:

The capacity of the international community to extend legitimacy to national governments, however, depends not only on its capacity to monitor an election or to recognize the credentials of a regime's delegates to the UN General Assembly, but also on the extent to which such international validating activity has evolved from the ad hoc to the normative: that is the degree to which the process of legitimation has itself become legitimate (Franck 1995, 91).

In other words, in order for the democratic entitlement to become a universal norm of the international system, the rules and processes for validating it -- global standards and international monitoring -- must themselves be legitimate. The yardsticks Franck uses to measure this legitimacy are pedigree, determinacy, coherence and adherence. He argues that "the extent to which a rule, or rule making process, exhibits these four qualities will determine the degree to which the rule or the process has matured and is perceived to be legitimate" (Franck 1992, 51).

Pedigree is defined as "the depths of the rule's roots in a historical process" (Franck 1992, 91). Consequently, the legitimacy of a rule is "signaled by its durability: the extent to

which it has the backing of long-standing and consistent practice” (Franck 1995, 92). Franck argues that it is the oldest norm of the democratic entitlement, the right to self-determination, which has the ‘best established pedigree’ (Franck 1995, 52). It is not however, the content of the right to self-determination but the means of validating it -- international monitoring of the transition process in colonies and trust territories -- which gives the democratic entitlement its ‘pedigree legitimacy’ (Franck 1995, 91)<sup>6</sup>: “self determination was seen to require democratic consultation with colonial peoples, legitimated by an international presence at elections immediately preceding the creative moment of independence” (Franck 1992, 5). As such, this practice lends pedigree to the act of observing elections in independent states. According to Franck, “...many of the contemporary standards for a democratic entitlement have their origins in the process by which persons were consulted, in internationally supervised or observed elections and plebiscites, to determine whether and how they wished to emerge from a pre-existing political context and to establish a new, civil association” (Franck 1995, 92).<sup>7</sup>

An international rule’s ‘determinacy’ refers to the extent to which a rule enunciates clear principles (Franck 1992, 51). According to Franck, “the determinacy of a rule directly affects its

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<sup>6</sup> The right to self-determination is not an earlier version of the individual’s right to free and fair elections: “democracy evokes the right of each person to participate in governance, self-determination is about the social right of a people to constitute a nation state” (Franck 1995, 92).

<sup>7</sup> The practice of monitoring and verifying standards of the international community has proud traditions beginning most explicitly with the practices of the international labour organisation created in the Treaty of Paris 1919. The monitoring and verification practices became more sophisticated in the post World War Two period, with the most intense activity in the military sector as for example, with confidence building measures entered into by NATO and the Warsaw pact. These practices reached their most sophisticated in the several arms control regimes. See, as one example of many, The Treaty on the Non-Proliferation of Nuclear Weapons, 729 U.N.T.S. 161.

legitimacy because in increasing the rule's transparency, its fairness is made manifest, and thus its compliance pull on members of the international community is increased" (Franck 1995, 99). Franck differentiates between 'textual determinacy', the clear enunciation of a rule in text, and 'process determinacy' whereby a rule is clarified through practice.

Franck considers the rights to self-determination and to freedom of speech/association determinate both in text and practice. They are clearly stated in the UN Universal Declaration of Human Rights of 1948, and are recognized as fundamental human rights in the UN Covenant on Civil and Political Rights (CCPR) in 1976.<sup>8</sup>

However, he argues that the right to free and fair elections (with global standards and monitoring of this right by the international community) does not exhibit the determinacy needed for it to be considered legitimate (Franck 1992, 63). This is largely because the textual determinacy of the right is more recent than its process determinacy (Franck 1992, 69). It is however, in the process of evolving:

To make a citizen's right to free and open elections a legitimate entitlement, its parameters need to be clear and specific. To that end, a robust repertory of practice, an express canon of principles, and an institutional framework for implementation is developing which is capable of increasing the determinacy of the entitlement (Franck 1995, 119).

The electoral right was first articulated in textual form in the United Nations Universal Declaration of Human Rights in 1948. Article 21 of this declaration states that all people have

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<sup>8</sup> With the advent of the CCPR, a new form of monitoring these rights was introduced in addition to traditional reporting structures of the UN. The Human Rights Committee, a body composed of eighteen independent experts, reviews the extent to which these and other rights articulated in the CCPR are realized or restricted by countries party to the Convention. The Optional Protocol of the CCPR gives individual citizens the opportunity to file complaints with the Human Rights Committee if they believe their state is violating the Covenant's provisions (Franck 1995, 99).

the right to participate in “periodic and genuine elections which shall be by universal and equal suffrage and shall be held in secret vote or by equivalent free voting procedures” (Franck 1992, 63). This right was given greater textual determinacy in 1976 with article 25 of the CCPR:

Every citizen has the right (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 (Franck 1992, 64).

In effect, article 25 gave precedence to the concept of popular sovereignty over the more traditional notion of state sovereignty:

It [the Covenant] shifted the prior focus, from peoples to persons and from decolonization to personal political participatory entitlements in independent nations. It entitles peoples in all states to free, fair, and open participation in the democratic process of governance by each state (Franck 1995, 100).

This represented a significant shift and resulted in the right to free and fair elections entering “a new phase” of development (Franck 1995, 100).

The electoral right was next referenced in the General Assembly’s 1991 Resolution entitled “Enhancing the effectiveness of the principle of periodic and genuine elections.” This resolution states that:

Periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interest of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights (Franck 1992, 64).

It further commended the work of the UN in providing electoral assistance to requesting states (Franck 1992, 65). This was followed in December 1991 with a resolution which “established a procedure for authorizing the monitoring of national elections” and supported the UN’s decision

to establish an office for coordinating election monitoring requests (Franck 1992, 65).

Outside of the UN system, various regional bodies such as the CSCE and the OAS have made reference to the right to free and fair elections in their charters and resolutions. The OAS Charter “imposes a duty on member states to promote the effective exercise of representative democracy” (Franck 1995, 110). Another OAS resolution established a procedure to allow for the immediate convening of the region’s foreign ministers in the event of “a sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power” (Franck 1992, 65).<sup>9</sup> Franck considers this to be a “parallel and reinforcing norm generating activity” (Franck 1992, 65).

Of all the regional human rights instruments, Franck considers the series of treaties on electoral rights adopted by the CSCE to be the most far-reaching. The Copenhagen document of June 1990 not only defines the electoral right, it also “link[s] recognition of the democratic entitlement by governments to the validation of their right to govern: ‘the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government’ ” (Franck 1992, 67). This document also supports the role of international observers in monitoring elections within CSCE countries. The Paris Treaty of the CSCE goes even further than the Copenhagen document by agreeing “to build, consolidate and strengthen democracy as the only system of government of our nations” (Franck 1992, 67). As such, Franck considers the Paris Charter to be “deliberately norm creating” (Franck 1992, 67).

Although textual determinacy of the right to free and fair elections is a more recent

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<sup>9</sup> This provision was first invoked after Peruvian President Fujimori suspended Congress. It was again invoked after the coup in Haiti.

development, the right has a long history of process determinacy, as evidenced by the practice of sending monitors to observe democratic transitions. This is first evidenced by the involvement of the UN in monitoring transitions such as the 1956 plebiscite in British Togoland when people voted on whether or not to join Ghana (Franck 1992, 69). Franck argues that the UN's involvement in monitoring the transitions in trusteeships and colonies eventually "led to the case-by-case enunciation of principles applicable to the democratic entitlement" (Franck 1992, 71). In so doing, it actually "honed the normative content of the entitlement" (Franck 1992, 69). The practice of monitoring transitions in the colonies evolved into a role for the UN in monitoring transitions to democracy in independent states. Although the link between election observation and support for democratic elections was not made during the UN's monitoring mission to Nicaragua, its first experience in an independent state, this connection was made during subsequent monitoring missions. In the Haitian election of 1990, the UN explicitly stated that it was sending monitors to support the realization of the right to free and fair elections (Franck 1992, 73).

Regional organisations such as the OAS and CSCE have also added to this process determinacy by sending observers to elections held throughout their respective regions of Latin America and Eastern Europe. In fact, much of the election monitoring activity in support of the right to free and fair elections actually preceded textual declarations made in support of this right by the OAS and the CSCE (Franck 1992, 75).

The third criterion of a rule's legitimacy, 'coherence', refers to "the rule's internal consistency and lateral connectedness to the principles underlying other rules" (Franck 1992, 51). The degree of coherence that a rule exhibits depends on the extent to which "the parts gather

compliance pull from the purpose and meaning of a larger whole” (Franck 1992, 77). This is manifest in whether a rule is integrally part of a larger scheme such that the greater whole must be considered, whether it relies on a principle upon which other rules are built and whether it resembles other rules and is therefore to be treated like them (Franck 1992, 77).

Franck argues that the democratic entitlement is very much a part of the larger human rights framework. The rights to self-determination, freedom of speech and association, and to free and fair elections are all recognized in international law through global and regional human rights conventions and often share common processes for monitoring compliance (Franck 1992, 79). According to Franck, it is the ‘lateral connection’ to other fundamental human rights which strengthens the right to free and fair elections; “one can convincingly argue that states which deny their citizens the right to free and open elections are violating a rule that is fast becoming an integral part of the elaborately woven human rights fabric” (Franck 1992, 79). Franck concludes that “the democratic entitlement has acquired a degree of legitimacy by its association with a far broader panoply of laws pertaining to the rights of persons vis-a-vis governments” (Franck 1992, 79). For Franck, this legitimacy has at times been limited by the extent to which election monitoring is justified on the basis of the UN’s peace agenda rather than its human rights framework (Franck 1992, 80). This was the case in Nicaragua where the justification given for the electoral observation mission was the Secretary General’s important role in the Central American peace process (Franck 1992, 71).

Franck admits that the second part of coherence -- a rule’s reliance on the same principle that other rules rely on -- is still problematic for the democratic entitlement. The universal right to free and fair elections is based on the principle “that the participatory rights of persons in

shaping their civil society may not be abridged arbitrarily by governments”; this is coupled with “the still radical principle that the community of states is empowered to compose and apply codes governing the comportment of governments towards their own citizens” (Franck 1992, 78). This contrasts with the principle of state sovereignty underlying the right to non-intervention: as articulated in article 2 (7) of the United Nations Charter, the right to non-intervention “provides, as formal recognition of the centuries-old principle of state sovereignty, that the Organisation shall not interfere in matters essentially within the domestic jurisdiction of states” (Franck 1992, 78). According to Franck, the conflict between these principles (underlying the right to free and fair elections and the right to non-intervention) decreases the coherence of the democratic entitlement (Franck 1992, 82). The right to free and fair elections becomes progressively more ‘interventionist’ the more effective its application, beginning with calling for the right to a free and fair election, international monitoring of the election process and finally, “collective action” to enforce the right (Franck 1992, 78).

Franck argues that at regional forums such as the CSCE, “[the] democratic entitlement enhanced by linkage with other basic human rights and the accompanying international monitoring of compliance, has trumped the principle of non-intervention” (Franck 1992, 83). He concedes that this has not been the case with international organisations; “the clear cut supremacy of the entitlement is not yet apparent in the global context” (Franck 1992, 78).

Although Franck disagrees with those who use the right to non-intervention in order to oppose election monitoring, he believes they are “mostly motivated by fear that monitoring will be used to reimpose a form of neocolonialism under the banner of establishing democracy” (Franck 1992, 82). Concern that international election monitoring could result in unilateral

intervention in sovereign states was evidenced when the UN established its guidelines for the Haiti observation mission. This concern was also present during the General Assembly's 1990 debate on election assistance and resulted in representatives of the developing world "urg[ing] all states to respect the principle of non-interference in the internal affairs of States" (Franck 1992, 82).

The issue of 'treating like cases alike' is the final element of a rule's coherence. In order to establish greater coherence, the right "to establish, define and monitor a right to free and open elections needs to be applied universally" (Franck 1992, 87). Franck maintains that the current situation whereby election monitoring proceeds solely on the basis of an invitation reduces its legitimacy; "a rule that only applies self-selectively has far less legitimacy than one of general application" (Franck 1992, 81).

Whereas a rule's coherence relates to its internal consistency and lateral connection to other rules, the fourth criterion of adherence refers to "the rule's vertical connectedness to a normative hierarchy" (Franck 1992, 51). The legitimacy of a rule will increase the more that adherence is connected "to other higher principles that define the objectives of the rule system..." (Franck 1992, 87). According to Franck, the democratic entitlement is connected to the most important principle of the international community, the right to peace (Franck 1992, 87). This connection is based on the argument that countries that practice "domestic democracy" are less likely to war with one another (Franck 1992, 88). Where the democratic entitlement is not respected, the higher principle of peace may also be disregarded; "systemic totalitarian suppression of the democratic entitlement is an early warning that international peace will be threatened by those same forces" (Franck 1995, 137). Franck concludes that the democratic

entitlement's connection to the right to peace is important enough to warrant 'universal adherence':

If the end of global peace demands the means of global democracy, a Charter based system established to ensure peace must also be presumed to be authorized to ensure universal adherence to democratic political rights (Franck 1992, 90).

In order to enable this 'universal adherence', Franck suggests ways in which the criteria of determinacy and to a greater extent, coherence, can be strengthened.

Franck believes that in order to make the democratic entitlement more determinate, the UN should embrace the specific principles agreed to by the Copenhagen and Paris documents of the CSCE, and apply them to the more general article 25 of the CCPR (Franck 1995, 120). This would increase the democratic entitlement's textual determinacy.

In order to strengthen the coherence of the democratic entitlement, Franck proposes that 'older democracies' as well as 'newly democratic states' volunteer to be monitored (Franck 1995, 134). He hopes this will lead "the way to near-universal voluntary compliance, thus gradually transforming a sovereign option into a customary legal obligation" (Franck 1992, 91).

In order to encourage all countries to volunteer to be monitored, Franck believes the issue of non-intervention must be addressed head on:

The conflict of principles [underlying the right to free/fair elections and to non-intervention] must be recognized, made explicit, and reconciled to the general satisfaction of the large majority of states before the global legitimacy and fairness of democratic entitlements are demonstrated. That will require action to meet the practical concerns of states which still regard the non-intervention principle as having overriding importance to their national well being (Franck 1992, 123).

This means that ultimately, an obligation to be monitored must be accompanied by "a commensurate right to non-intervention by states acting unilaterally" (Franck 1992, 91).

According to Franck, "...this requires that all states unambiguously renounce the use of unilateral, or even regional military forces to compel compliance with the democratic entitlement in the absence of prior Security Council authorization under chapter 7 of the Charter" (Franck 1992, 84). This does not preclude the protection of democratic regimes "from overthrow by totalitarian forces" after agreement at the UN (Franck 1992, 91). Nor does it suggest that the international community will not apply other non-military measures such as economic sanctions against countries which disregard the democratic entitlement (Franck 1992, 85).

Franck's final suggestion for strengthening the democratic entitlement is to link compliance with representation in international organisations and access to a variety of international resources:

The right of each state to be represented in international organs, and to share in the benefits of international fiscal, trade, development and security programs should be dependent upon its government satisfying the system's standards for democratic validation (Franck 1995, 139).

Clearly, this is Franck's most controversial proposal as it would fundamentally change the makeup of international organisations. It also presumes that one standard can be achieved universally.

A second theorist who is concerned with the relationship between election monitoring and the development of democratic norms is an academic colleague of Franck, Gregory Fox. The main distinction between these two theorists is that while Franck describes the democratic entitlement as an emerging norm in international law, Fox refers to 'the universal right to political participation' as a right which already exists in international law (Fox 1992, 543). He believes the participatory right is the underlying "justification for the human right to participate

in government” as stated in article 21 of the Universal Declaration of Human Rights (Fox 1992, 551). The Covenant on Civil and Political Rights, which Fox considers “the most widely subscribed treaty guaranteeing participatory rights” (Fox 1992, 553), commits signatories to guaranteeing participatory rights by requiring them “to hold fair elections at regular intervals” (Fox 1992, 552). Fox concludes that “the constituent elements of the right to political participation can be derived from global and regional human rights treaties, thirty-five years of UN election monitoring reports, decisions of the United Nations Human Rights Committee and two regional tribunals and two new CSCE instruments which count among their signatories all the former Soviet bloc nations” (Fox 1992, 607).

Why has the right to political participation only recently been fully recognized? According to Fox, the “[t]he traditional exclusion of participatory rights from international law can be explained by two sets of factors; those generic to all human rights norms and others specific to the right itself” (Fox 1992, 545). International human rights law did not exist until after World War II; prior to this time, “individuals were not subjects of rights and duties under international law” (Fox 1992, 545). Specific to the right itself, it was not until the mid-19th century that elections even became a norm. Fox concludes that the recent growth of democratic regimes throughout the world must be understood within ‘a broader, international context’;

First, the codification of political rights in international and regional human rights treaties...reflects a growing international commitment to minimum standards of human rights generally and political rights in particular. Second, an increasing number of states have invited multinational organisations to monitor their elections, hoping that monitoring will bolster both the domestic and international legitimacy of their fragile governments (Fox 1992, 541).

Unlike Frank, Fox argues that there is coherence to participatory rights. He states that

“...the right is coherent as it is derived from concrete treaty language and the standards developed by international elections monitors” (Fox 1992, 552). The standards for a free and fair election as derived from UN and regional human rights treaties are summarized by Fox as including “universal and equal suffrage; a secret ballot; elections at reasonable periodic intervals; and an absence of discrimination against voters, candidates or parties” (Fox 1992, 570). Fox argues, however, that other important elements of the right to universal participation were left unclear in these treaties. For example, the International CCPR does not state whether a ‘genuine election’ requires party pluralism (Fox 1992, 556).

According to Fox, UN observer missions have clarified certain elements of the right to free and fair elections by “provid[ing] interstitial principles supplementing the rights outlined in the treaties” (Fox 1992, 543). This has occurred even though justification for UN monitoring missions was originally based “on the U.N.’s peacekeeping and decolonization powers and on mission specific resolutions reflecting the invitations of monitored states” (Fox 1992, 571). According to Fox, decolonization missions “constitute a substantial source of law, as they mark an area of consistent international consensus on participatory rights” (Fox 1992, 573).

Fox considers the UN’s involvement in the democratic transition in Namibia an important step in the evolution of standards for the right to political participation (Fox 1992, 579). Unlike some of the UN’s earlier efforts, “in Namibia, the U.N made clear that standards for electoral participation were articulated throughout the planning process...[and] refused to permit the South African administering authorities to deviate from the standards in practice” (Fox 1992, 577). The guidelines agreed to give every Namibian adult the right to vote, campaign and/or run for election in an environment free of violence and discrimination, made provisions for the secret

ballot and illiterate voters, established a time frame for campaigning, voter registration, and voting itself, permitted all political parties to participate, guaranteed freedom of speech, association and of the press, and allowed for "fair representation" in the Constituent Assembly of all those political parties who received "substantial support" (Fox 1992, 577). These guidelines were also explicit about the issue of party pluralism:

In insisting on party pluralism the United Nations made clear that the ambiguities of the Political Covenant on this crucial issue would not carry forward into the new era of participatory rights (Fox 1992, 579).

The electoral standards developed for Namibia ultimately became the basis for future election monitoring missions in independent countries. Even though "decolonization was no longer the rationale for the monitoring process, the missions applied and developed the same set of standards" (Fox 1992, 579). Subsequent UN monitoring missions to independent states further clarified the right to free and fair elections by looking at additional issues such as the process for compiling voting lists (Fox 1992, 581).

Fox concedes there is "no formal linkage" between the two sources of international law defining the universal right to free and fair elections - the human rights treaties and the principles derived from UN election monitoring missions (Fox 1992, 588). Fox argues however, that the Vienna Convention on the Law of Treaties allows for "the ordinary meaning of treaty terms" to be taken from sources other than the treaty itself (Fox 1992, 588). Ideally, these treaty terms should acquire "a universal understanding"; a process which Fox believes is now happening for participatory rights (Fox 1992, 588).

According to the governments of some countries, it is inappropriate to apply standards from monitoring missions to treaty rights because not every country volunteers to be monitored.

However, Fox justifies the application of UN mission guidelines to treaty norms on the grounds that “all member states have at some point participated in the formulation of such standards” (Fox 1992, 590). He further argues that the UN bodies responsible for these election standards “represent the opinion of the international community as a whole” (Fox 1992, 590).

Fox recognizes the weakness of existing institutional mechanisms for enforcing participatory rights such as the non-binding adjudications by human rights tribunals (Fox 1992, 596). In order to encourage greater enforcement through institutional mechanisms, Fox advocates that future UN electoral missions rely on treaty norms instead of separate mission guidelines. He writes:

Since treaties provide a far more permanent and universal foundation than customary monitoring guidelines, reliance upon the treaties will lend an additional degree of legitimacy to processes that invoke them. Therefore, the United Nations should take the logical step of invoking the treaties directly when sanctioning future monitoring missions. In so doing, the United Nations would help craft an institutionalized enforcement mechanism to hold states to their treaty obligations (Fox 1992, 544).

Fox also believes that the international community should use accreditation at the United Nations General Assembly to enforce participatory rights. For Fox, “us[ing] the recommendations of election monitors as a basis for seating delegates, [would] effectively combine the norms developed by the treaties and the mission guidelines with the ‘enforcement capability’ of the observer missions, and thereby enhance the international and domestic legitimacy of democratically elected governments” (Fox 1992, 544).<sup>10</sup> His justification for

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<sup>10</sup> Under the current arrangement, accreditation at the UN is generally an automatic approval process unless one of two situations arises: First, if “one state objects to the government of another” (Fox 1992, 598) and second “when rival factions from the same state contend to the General Assembly that each is the legitimate government” (Fox 1992, 599). In the case of the latter, the following criteria are used - none of which promote the recognition of participatory rights; “assessment of whether a particular government exercises effective control over the state;

accrediting only those regimes which are elected “lies in the new relationship between the United Nations and the citizens of states in which elections are monitored” (Fox 1992, 603).

According to Fox, the limitations of existing institutional mechanisms should not overshadow the possibility of other kinds of ‘enforcement opportunities’. For example, the act of withholding interaction through measures such as visa restrictions and sporting sanctions, is a powerful tool available to the international community. Fox believes that it should be used more frequently in order “to encourag[e] offending regimes that value their status in the international community to reform” (Fox 1992, 597). Fox explains that “participatory rights are based on an assessment that governments themselves result from prior, legally sufficient acts (ie. elections) by citizens who are the ultimate repositories of national sovereignty. Hence the international community must look first to individuals to determine whether any given government is lawfully constituted” (Fox 1992, 596). According to Fox, the case of South Africa was one example when many members of the international community did look to the rights of black South Africans and exercised their power to withhold ‘interaction’ with the apartheid regime.

Is there an underlying agenda which Franck and Fox hope will be served through realizing the right to democratic governance? According to Anne-Marie Slaughter Burley, now Professor of Law at Harvard University Law School, the importance of the theoretical contributions of Franck and Fox is twofold. First, they help to explain ‘a new fault line in international relations’ in which liberal states differ in their relations with one another as compared to their relations with non-liberal states. Slaughter Burly writes:

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determination of the proper representative according to the ‘Purposes and Principles of the Charter’; and consideration of whether a particular government can meet the obligations of membership” (Fox 1992, 600-601).

We are on the edge of a new fault line in international relations. The emergence of this line emphasizes the transnational ties between states that share political and economic values and institutions, states that both permit independent initiative by individuals and groups in domestic and transnational civil society and provide the political mechanisms to ensure representation of the resulting patterns of interest. Political, economic and ultimately legal relations among such states will increasingly differ in their modalities, consequences and implications from political, economic and legal relations between liberal and non-liberal states (Slaughter Burley 1993, 239).

Second, Franck and Fox are “working to establish the international legal pedigree for a right of democratic governance” (Slaughter Burley 1993, 236). By arguing that democratic governance should be one of the required criteria of statehood, Franck and Fox are themselves challenging traditional concepts of state sovereignty. As such, they are playing a more pro-active role in international relations than that of merely describing its trends. According to Slaughter Burley, their goal of democratic governance reflects ‘a new normative agenda’ in international law which is born out of the liberal approach to international politics (Slaughter Burley 1993, 235).<sup>11</sup> She maintains that Franck’s and Fox’s liberal agenda -- to promote the right to democratic governance -- ultimately serves to bolster the new fault line between democratic and non-democratic states; “...a norm of democratic governance helps to justify the positive Liberal distinction between liberal and non-liberal states” (Slaughter Burley 1993, 236).

Slaughter Burley describes Franck and Fox’s work as an inter-disciplinary approach to international law and international relations theory. She advocates this approach primarily as a

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<sup>11</sup> Rather than a coherent theoretical paradigm, Slaughter Burley defines liberalism as a ‘grab-bag’ of beliefs that includes the following: that members of domestic society, either individuals or groups, are the key actors in politics and state behavior is a function of the constraints imposed upon it by these actors, even though the state is still “the primary agent of international action”; that all governments, whether authoritarian or democratic, reflect the interests of a certain “segment of domestic society”; and that a state’s behavior in the international arena reflects the kinds of interests they represent (Slaughter Burley 1993, 227-228).

means of ensuring that the fields of international law and international relations theory better inform each other. She believes that political scientists should study international law because it does more than regulate behaviour; international law can actually “push the behaviour of states towards outcomes other than those predicted by power and the pursuit of national interest” (Slaughter Burley 1993, 206). In turn, international lawyers should learn from international relations theory because it “offers a way of conceptualizing the contributions of these bodies of [international] law to the traditional goals of international order” (Slaughter Burley 1993, 207).

In order to contextualize the contribution of Franck and Fox to the building of ‘an international order’, Slaughter Burley discusses the work of Professors Harold Lasswell and Myers McDougal and their historical contribution to this same goal. Like Franck and Fox, Lasswell and McDougal also used an interdisciplinary approach to encourage international lawyers to critique existing international law using the tools of political science. By promoting an activist role for international lawyers in the policy-making process, Lasswell and McDougal hoped to serve their ultimate goal of “inventing and promoting better law, a world public order that would advance human dignity” (Slaughter Burley 1993, 210).

Lasswell and McDougal’s theoretical paradigm began with the premise that unlike ‘a genuine community’ where law is ‘the authoritative expression’ of common values, no commonality of values exists in the international community. Consequently, international legal norms “support the realization of values rather than the restraint of behaviour” (Slaughter Burley 1993, 211). With this understanding, Lasswell and McDougal encouraged a process which would both identify the public order that best promotes human dignity, and create the processes its existence requires:

McDougal, Lasswell and their associates exhorted international lawyers to use a range of policy skills to determine which law, or which system of laws, best furthers 'human dignity' and to distinguish such systems (public orders) from those that deny human dignity. After classifying the public orders in the world on the basis of these criteria, they proclaimed that the next step was to invent and recommend the principles and procedures necessary to a world public order consonant with the dignity and desires of all mankind (Slaughter Burley 1993, 211).

Lasswell and McDougal's definition of human dignity "refers to a social process in which values are widely and not narrowly shared, and in which private choice, rather than coercion, is emphasized as the predominant modality of power" (Lasswell and McDougal 1987, 16). They later clarify the values to be widely shared as power, wealth, respect, well-being, skill, enlightenment, rectitude and affection (Lasswell and McDougal 1987, 17-19).

Like Lasswell and McDougal, Thomas Franck discusses the building of a new public order and the role of international law in shaping state behaviour. For him, the ultimate value is 'fairness to persons'. Although Franck assumes "that fairness incorporates an element of equalization: of life chances and of access to goods, a variation on Rawls' maxim principle", he suggests that there is no fixed definition as to what fairness looks like (Franck 1995, 83). More important than finding a set definition of this concept is that 'a fairness discourse' takes place at all: "what matters is the opportunity for discourse: the process and its rules" (Franck 1992, 83).

Although the fairness discourse is applied by the judicial and legislative bodies, "the most important instrument for fairness discourse is democratic electoral politics" (Franck 1995, 83). Franck argues that the newly emerging democratic entitlement is not just a reflection of one state's domestic social contract, but flows from a global discourse on fairness; "the rule emerging from the global discourse is rooted in a universal sense of fairness which is finding its way into codes of regional and global standards and into the practice and jurisprudence of international

institutions" (Franck 1995, 85).

In order to better understand the complex relationship between international election observation and the recent growth of democratically elected regimes, several questions which flow from the previous theoretical discussion will be revisited after the case study of the South African election. Was there a need in South Africa for the granting of legitimacy to the national government by the international community? Were there other objectives for international observers? Has the process for granting legitimacy itself become legitimate? To what degree were the criteria of pedigree, coherence, adherence and determinacy present in the South African example? With regard to the Canadian government's involvement in international election observation, is it promoting what Slaughter Burley refers to as the normative agenda of Franck and Fox? Is this a worthwhile objective of Canadian foreign policy? If this goal is considered worthwhile, how can it be better served, and what are the dangers inherent in doing so?

In responding to these questions, it will be argued that the international community has used its ability to confer legitimacy upon national governments as a means of ensuring that the right to free and fair elections is respected; to this end, international standards for elections and the practice of international election observation are promoted. Although international election observation contributes to democracy-building on a case by case basis, it can also be used as a means of promoting a global entitlement to democracy.

## **CHAPTER TWO: CANADA'S APPROACH TO INTERNATIONAL ELECTION OBSERVATION**

This chapter will include several elements; a discussion of the foreign policy framework for Canada's work in international election observation, an in-depth description of the Canadian government's official observation mission to South Africa, and a critique of this mission.

### **A. FOREIGN POLICY FRAMEWORK FOR CANADIAN ELECTION OBSERVATION**

Canada participates in bilateral observation missions, as well as multilateral missions with the UN, the OAS and the Commonwealth amongst others.<sup>12</sup> These missions are generally short term in length, focussing on the days immediately preceding, during, and following an election. Election observation is, however, only one element of Canadian election assistance. Canada is involved in all aspects of international election assistance including "designing, organizing and monitoring elections" (Canada 1995a, 35). Technical assistance for an election or election capacity building includes a variety of services such as helping to write a country's constitution or electoral laws, assisting in the development of civic education programs, training electoral officers, participating in pre-electoral missions to determine a country's electoral environment, and organizing certain aspects of an election process (Canada 1994a, 5).<sup>13</sup>

The Canadian government views international election assistance as a means of promoting democratic elections abroad. Democratic elections are considered a critical element

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<sup>12</sup> Under the leadership of the Minister of Foreign Affairs, the Department of Foreign Affairs and International Trade (DFAIT), specifically the Democratic Development Unit, usually takes the lead role in organizing bilateral observer missions and selecting Canadians to participate in multilateral observer missions.

<sup>13</sup> Although Elections Canada plays the primary role in providing technical assistance, the Canadian International Development Agency (CIDA) is also involved in this area.

of democracy: "elections are the most visible evidence of democratic development, and a condition essential to every democratic society" (Canada 1994b, 4). Elections are, however, only one component of democratic development.

Democratic development requires "the establishment and reinforcement of viable democratic institutions, and in particular of a national democratic culture" (Canada 1994a, 1). This democratic culture incorporates the rule of law, the independence of the press and freedom of speech and association, regular popular consultation and democratic government (Canada 1994a, 1). Thus, a key element of the democratization process is citizen participation:

Democratization builds the effective participation of individuals in decision making and the exercise of power in society, both through the formal processes of democracy [ie. elections], and through the organizations of civil society that give voice to popular concern (Canada 1995b, 3).

According to Joseph Stern, author of CIDA's "Guidelines for Canadian Support of Election-Related Activities", election assistance is distinct from other democratic development initiatives in that elections can be used as a measurement of the strength of a country's democratic development. Stern argues that "the manner in which elections are held is one of the best measures of how deeply a democratic culture has taken root" (Stern 1996, 3). This kind of measurement can then be used to determine priorities for future development assistance. The Canadian government's involvement in election assistance also sends 'important signals' which can be interpreted as "an expression of our bilateral relations with that country" (Stern 1996, 4).

DFAIT and CIDA carry out a wide range of programming initiatives in the field of democratic development. They do so in conjunction with provincial and federal government departments such as National Defence, Justice, Elections Canada, Statistics Canada and the

Solicitor General, as well as with non-governmental organizations, labour and church groups, educational institutions, indigenous organizations and professional associations. International partners include regional and global organizations, as well as civil society organizations and government departments in developing countries (Canada 1995b, 15).

The government's current programme initiatives in the field of democratic development are as follows: strengthening the advocacy and service role of organizations in civil society; increasing the participation of marginalised groups in civil society and the formal political process; supporting the development of an independent and responsible media; training for members of the legal system; assisting in the establishment or strengthening of national human rights institutions and various commissions of investigation; supporting efforts to create, reform or train police and security forces; supporting law reform and efforts to increase access to the law; helping to improve democratic institutions including legislatures; assisting the development of electoral processes; helping with post-secondary education programs in order to build expertise in human rights field; supporting conflict resolution work; assisting efforts to demobilize ex-combatants as part of the peace process; helping governments undergo democratic transitions through activities such as public sector reform and policy development; encouraging an increased emphasis on human rights, democratization and good governance in programs run by international financial institutions and regional development banks (Canada 1995b, 13).<sup>14</sup>

The end goal of Canada's democratic development initiatives frankly stated is the realization of 'Canadian values'. CIDA's Human Rights, Democracy and Good Governance

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<sup>14</sup> The field of democratic development is by no means a new focus for Canadian foreign policy; as a result, not all of the government's previous involvements in this field are referenced.

policy states that “dialogue and programme initiatives are important instruments for expressing Canadian values” (Canada 1995b, 3).<sup>15</sup> Although the Canadian government’s viewpoint is not monolithic, and there exist obvious distinctions both between and within government departments, there is an explicit value structure guiding Canada's foreign policy and its international development activities. This value system was most recently articulated in the Liberal Government's 1995 foreign policy statement, Canada in the World.

Canada in the World identifies the values to which the Canadian government is committed as “respect for human rights, democracy, the rule of law, and the environment” (Canada 1995a, ii). These values are later described as being rooted in “a commitment to tolerance; to democracy; equity and human rights; to the peaceful resolution of differences; to the opportunities and challenges of the marketplace; to social justice; to sustainable development; and to easing poverty” (Canada 1995a, 8). CIDA articulates the values underlying its work in the field of democratic development as “respect for human dignity, justice, equity, participation and accountability...” (Canada 1995b, 3). These values are themselves grounded in a fundamental acknowledgment of the “inherent dignity of the human person” (Canada 1995b, 3).

The Canadian government is explicit about its desire to promote the values described above. According to Foreign Minister Lloyd Axworthy, “one of the key elements of (Canadian) foreign policy is advancing our own values outside the country and to help other countries on the democratic side” (O'Neill 1996, 1[B]). In fact, the projection of Canadian values abroad is

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<sup>15</sup> CIDA’s democratic development initiatives fall under the mandate of ‘Human Rights, Democracy and Good Governance’, one of six programme priorities for administering Canadian development assistance. The six priorities are basic human needs, women in development, infrastructure services, human rights / democracy / good governance, private sector development, and the environment.

identified as one of the government's three fundamental objectives for Canadian foreign policy. These objectives are “the promotion of prosperity and employment, the protection of our security within a stable global framework, and the projection of Canadian values and culture” (Canada 1995a, i).

Why is the promotion of Canadian values such an important foreign policy objective? Although it is considered a valuable goal in itself, the promotion of Canadian values abroad is also viewed as a means of achieving the first two stated objectives of economic security at home and abroad, and global security. Canada in the World states that “the Government regards respect for human rights not only as a fundamental value, but also as a crucial element in the development of stable, democratic and prosperous societies at peace with each other” (Canada 1995a, 34). In the post cold war era, the concept of global security is not limited to the absence of war, but encompasses a much broader understanding of human security including freedom from problems such as hunger, disease, environmental degradation, crime and underdevelopment (Canada 1995a, 10).

The Canadian government also believes that the ability to protect Canadian values at home is fundamentally linked to their acceptance throughout the world: “their adoption internationally will also be essential to ensuring that they are viable in our own country. Canada is not an island able to resist a world community that devalued beliefs central to our identity” (Canada 1995a, 11). The Canada 21 Council agrees<sup>16</sup>; it believes that the new reality of the post

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<sup>16</sup> The Canada 21 Council is a group of prominent Canadians concerned about Canada's foreign and defence policy. Their 1993 report, Canada 21. Canada and Common Security in the Twenty-First Century, makes recommendations to the Canadian government on issues of common security.

Cold War era -- globalization and growing interdependence -- demands an international arena in which Canada's values are respected and thereby protected:

Grave new threats to Canadian sovereignty and security cannot be addressed in Canada by Canadians alone...we require an international setting that is consistent with our fundamental values, for only in a civil world can we maintain and secure a civil community at home. Our security is necessarily common (Canada 21 Council 1994, 12).

According to Canada in the World, a commonality of values amongst countries will also make it easier for Canada to manage its relations with other nations. New approaches to managing international relations will "ultimately lack consistency and effectiveness in the absence of basic [common] values" (Canada 1995a, 7).

Although it is not given as a central reason for promoting values abroad, support from Canadian citizens for this goal is also referred to in Canada and the World: "Foreign policy matters to Canadians. They have deep rooted values that they carry over into the role they want Canada to play" (Canada 1995a, 8). This becomes an especially important argument for members of the Canadian government to reference when defending their foreign policy priorities in Parliamentary committees or in the House of Commons.

A concrete expression of these policy statements is the experience of Canada's official observation mission to the 1994 South African election.<sup>17</sup>

## B. CANADIAN OBSERVATION MISSION TO SOUTH AFRICA, APRIL 1994.

### (i). The South African Circumstances.

The first multiracial elections in the Republic of South Africa were held from April 26 to 29, 1994. It was, arguably, the most high profile election of the century. After decades of

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<sup>17</sup> The author was a participant in this mission.

struggle, the anti-apartheid movement had succeeded in building significant international interest in the plight of black South Africans. This global interest heightened in 1990 with the release of Nelson Mandela, the world's most famous prisoner, and continued with extensive media coverage of the 1994 South African election.

Before exploring the experiences of the Canadian Observation Mission to South Africa (CANOMSA), it is important that the reader has a very general understanding of the background leading up to the 1994 elections and the political climate in which these elections took place. This will help not only to illustrate the high stakes involved in the election and the many problems of democratization in a post-colonial society, but also to clarify the significance of the international observers' task in these elections.

After ruling without interruption since 1948, the Afrikaner created National Party (NP) fought in the country's first fully democratic elections in 1997. However, the process of political reform really began in February 1990, when Nelson Mandela walked free after a twenty-seven year incarceration for his role in advocating a non-racial political system. Shortly after Mandela's release from prison, the South African Parliament approved the dismantling of 'legal apartheid', including the racially discriminating legislation of the Native Land Act, the Population Registration Act, the Mixed Marriages and Immorality Act, the Bantu Education and Authorities Act, and the Group Areas Act. The African National Congress (ANC), which was founded in 1912 as a nationwide black organisation, was also legalised; by the end of 1990, several thousand self-exiled anti-apartheid activists returned to their homeland. The military wing of the African National Congress (Umkhonto we Sizwe) suspended the armed struggle, and the ANC assumed its role as 'the legitimate' voice of black South Africans in negotiations with the NP.

That the ANC effectively assumed the role of negotiating with the NP on behalf of black South Africans led to direct confrontation with the Inkatha Freedom Party (IFP) whose leader, Gatsha Buthelezi, claimed to speak for the Zulu people, the largest ethnic group in South Africa with a population of approximately six million. Even preceding 1990, there was a substantial number of violent conflicts in Natal between Inkatha's followers and members of the United Democratic Front, the umbrella organisation for the ANC and other mainstream members of the anti-apartheid movement. In July 1990, Inkatha was legally changed from a Zulu cultural organisation into the so-called national IFP. The IFP eventually formed a loose 'freedom alliance' with right wing separatist parties known collectively as the Afrikaner People's front, the Conservative Party, and the Black homeland leaders of the Ciskei and Bophutatswana, in order to protest against the frequent negotiating sessions and the bilateral accords made between the ANC and the NP.

The long and painful negotiating process which eventually resulted in the 1994 election process, began in December 1991 with talks between the ruling National Party, the African National Congress and some of South Africa's other political parties. These talks were known as the Convention for a Democratic South Africa (CODESA). CODESA's mandate was to discuss the transition period to a democratic system of one person/one vote and to consider the framework for a new constitution. In a referendum in March 1992, De Klerk gained the support of 68% of the white population to negotiate further political change. As President of South Africa during the time when Mandela was released from prison and the country's apartheid legislation was repealed, De Klerk was often lauded as 'an agent of change' in South Africa. Despite this reputation and his mandate to negotiate further change, De Klerk was charged by

the ANC with failing to make the minimum concessions necessary for the CODESA forum to progress. After various incarnations, CODESA finally broke down in early 1992 and was replaced by the Multiparty Negotiating Forum (MNF) in April 1993.

The goal of the MNF was “to hammer out draft framework legislation for the transition to democratic rule, an interim Constitution and entrenched Constitutional principles to guide the Constitutional Assembly after the first election” (United Nations 1994a, 4). By September 1993, the MNF had agreed on four inter-related pieces of legislation that were to govern South Africa's transition to democracy: the Transitional Executive Council (TEC) Act, the Independent Electoral Commission (IEC) Act, the Independent Media Commission (IMC) Act, and the Independent Broadcasting Authority (IBA) Act. Each of these pieces of legislation was subsequently passed by South Africa's Parliament.

The IMC and IBA respectively covered the monitoring of broadcasting services and state media during the election campaign, and the issuance of licences to radio and television broadcasting stations. The TEC was in operation from December 1993 until the April 1994 elections. It was composed of one representative from each of the political parties that had participated in the MNF, except the Freedom Alliance and the Pan Africanist Congress which both refused to participate. Originally, the TEC was the brainchild of the ANC which disagreed with the National Party's right to continue governing the country while simultaneously making preparations for the transition to democracy; the ANC argued that “the White-dominated government could not be both referee and player in the elections” (Harber and Ludman 1994, 229). The TEC was effectively seen as a means of ‘leveling the political playing field’ for free and fair elections. Although the TEC operated in conjunction with existing legislative and

executive branches of government, it was charged with the specific mandate of supervising all governmental actions and policies affecting election preparations and the broader transition process.

The IEC Act governed the election process and established the IEC as the central administrative body responsible for managing all aspects of the election. The IEC was created as a politically acceptable alternative to the Department of Home Affairs, an institution explicitly linked to the Apartheid regime. The Act set out guidelines for voter eligibility, as well as voting and counting procedures, and was generally responsible for the administration, supervision and monitoring of the elections. The Act also established a Code of Conduct for political parties, IEC officials and voters, including a list of rules about campaigning. The code explicitly condemned violence, voter intimidation and any form of bribe, and outlined penalties such as warnings and fines in the event that these rules were broken. According to the IEC manual, "the Code of Conduct [was] aimed at promoting and facilitating free and fair elections and at creating a climate of tolerance in which legitimate activity may take place without fear, coercion, intimidation or reprisals" (Adam and Moodley 1993, 13). The code also provided for a forum in which the electoral tribunals could adjudicate electoral complaints once mediation had failed. The ultimate court of appeal was the Special Electoral Court which could review decisions made by electoral tribunals as well as by the IEC and its commissioners.

The IEC's ultimate responsibility was to judge whether or not the election was free and fair and to announce the final election results. There was "no precedent for an independent commission with legal powers to proclaim on the outcome of an election" in South Africa (Laufer, 1994, 2). Nevertheless, the MNF gave this final responsibility to the Commissioners of

the IEC, who were to make their decision after taking into account the various reports of international and local observers as well as the number and nature of complaints about violations of the Electoral Code.

The IEC was chaired by Judge Kriegler of the Appellate Division of the Supreme Court of South Africa. He was assisted by Vice-Chair Advocate Moseneke, Senior Counsel at the Pretoria Bar. Eight other prominent South Africans were chosen as Commissioners: Rev. Chikane, General Secretary of the South African Council of Churches; Mr. Heyns, former Deputy Chairman of the President's Council; Ms. De Jager, local government administrator and former Member of Parliament; Ms. Mokhobo, Senior General Manager of Eskom; Mr. Nupen, National Director of the Independent Mediation Service of South Africa; Dr. Suzman, former Member of Parliament; Mr. Van der Ross, Executive Director of the Independent Development Trust of Housing; and Mr. Yacoob, Senior Counsel of the Durban Bar. The IEC Act also allowed for five international members or advisors of the Commission: Prof. Elklit, an election expert from Aarhus University in Denmark; Mr. Gould, Assistant Chief Electoral Officer of Elections Canada; Prof. Kamba, former Vice-Chancellor of the University of Zimbabwe; Ms. McDougall, Member of the Lawyers Committee for Civil Rights Under Law in the United States of America, and Dr. Teckle, former Referendum Commissioner of Eritrea. However, the international members were not given voting rights on the Commission.

Having only begun its work in February of 1994, the IEC was faced with major logistical challenges; "it ha[d] to arrange and oversee a process that might see as many as 23 million voters pass through 80,000 voting booths in 9,500 voting stations" (Oxfam 1993, 2509). This process was complicated by numerous factors including the lack of a voters list and the inability to

predict how many voters would show up at each station. Other complicating factors included a high illiteracy rate and a total lack of voting experience for black South Africans, as well as inadequate communication and transportation systems in the townships and rural areas.

The IEC was divided into four major sections. The Election Administration Directorate oversaw the overall administration of the election, including the provision of electoral supplies and temporary voting cards. The Election Monitoring Directorate was responsible for the accreditation and training of monitors and observers and their placement in different parts of the country; this was also the division which investigated complaints about violations of the Electoral Code and decided whether to forward them to the various Electoral Tribunals. The International Advisory Office was responsible for the accreditation of all international observers and, finally, the Voter Education Branch supervised all voter education programs. The IEC had its headquarters in Johannesburg, with nine provincial headquarters, and numerous district offices throughout the country.

As classified by the IEC, the term 'Monitor' referred to those South Africans employed by the IEC to monitor all aspects of the elections. Thousands of these monitors were employed at voting and counting stations throughout the country. 'Observers' were either domestic or international members of civil society, drawn from a wide variety of independent organizations such as church and labour groups, as well as from the NGO community. 'International Observers' were designated representatives of foreign governments or intergovernmental organizations such as the United Nations, the Commonwealth, the Organization of African Unity, and the European Union.

Shortly after the IEC and TEC Acts were approved, the MNF negotiated a transitional

constitution which was to come into effect on April 27, 1994. The interim Constitution “[made] provision for a non-racial, multi-party democracy, three tiers of government and a justifiable Bill of Rights applicable in a unitary South Africa, including the homelands” (Harber and Ludman 1994, 330). Apartheid legislation recognizing the so-called ‘independent homelands’ of Transkei, Bophuthatswana, Venda, and Ciskei and the ‘national states’ of Kwa-Zulu, Qwa-Qwa, Lebowa, Gazankulu, KwaNdebele, and KaNgwane was to be repealed. In its place would be a confederal arrangement with nine new provinces of the Eastern Transvaal, Northern Transvaal, Pretoria-Witwatersrand-Vereniging (PWV), North-West, Orange Free State, Natal, Northern Cape, Western Cape and the Eastern Cape. The new South African Parliament was to be composed of a 400 member National Assembly, and a 90 member Senate. According to a proportional representation system, members of the National Assembly were to be drawn from national and regional lists of each of the political parties. The Executive President was to be elected by a simple majority in the National Assembly and assisted by two Deputy Presidents drawn from those political parties who won more than 80 seats in the National Assembly. Provision was also made for ‘a National Unity cabinet’ with representation from all of the political parties who won more than 5% of the vote. Finally, the transitional Constitution mandated the next election for April 1999.

The sending of observers from intergovernmental organizations and national governments to the South African elections was approved by UN Security Council Resolution (SCR) 894 on January 14, 1994 (United Nations 1994a, 1). The IEC Act also made provision for international election observers. According to the IEC's monitoring division, there were over 2,500 international observers, between 12,000 and 22,000 observers (approximately 2,000 foreigners

and 20,000 South Africans) and 10,000 IEC employees and monitors.<sup>18</sup> This made the South African election “one of the most closely watched and carefully monitored elections in history” (United Nations 1994a, 1).

(ii). Contributions of Canada, and the International Community, to Democratic Change in South Africa.

Canada committed significant financial and human resources to the South African election process, resulting in Canada's largest package of election assistance to date, anywhere in the world. However, it was not only Canada that committed significant resources to the election but other members of the international community as well. South Africa received multilateral electoral assistance from the UN, from regional organisations such as the European Union and the Organisation of African Unity, as well as bilateral assistance from dozens of countries. It appears that the scale of the international assistance to South Africa was in direct proportion to the condemnation the former apartheid regime received from the international community in the years preceding the election.

The apartheid regime was declared ‘illegitimate’ in more international and regional forums than any other government in the world. This resulted in the case of South Africa being named the sole exception to the 1990 General Assembly resolution on election assistance which otherwise affirmed the right to non-intervention. This resolution stated that “only total eradication of Apartheid and the establishment of a non-racial democratic society based on majority rule, through the full and free exercise of adult suffrage by all the people in a united and

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<sup>18</sup> UN estimates suggest there were 3,000 international observers from international organizations and foreign governments, including 1,800 UN observers (United Nations 1994a, 1).

non-fragmented South Africa, can lead to a just and lasting solution to the explosive situation in South Africa" (Franck 1995, 129).

Throughout the 1980s, the Canadian government was lobbied by Canadian Parliamentarians from all political parties, and more importantly, by the Canadian public and civil society groups such as the Taskforce on Churches and Corporate Responsibility and the Canadian Labour Congress, to take a strong stand in condemning the apartheid regime (Grande 1995, 4). According to Grande, author of "Choosing the Right Policy Levers", 1984 represented a landmark year with "an escalation of resistance to apartheid in South Africa, and a consequent intensification of government repression" (Grande 1995, 4). This in turn, resulted in increased action on the part of the international community.

Within the Department of External Affairs and International Trade, the Southern Africa Task Force was established to respond to the situation. Canada also played a lead role in promoting concern about South Africa within the Commonwealth organisation. The Eminent Persons Group for South Africa created by the Commonwealth Heads of Government in the mid 1980s eventually resulted in the establishment of the Committee of Foreign Ministers on Southern Africa (CCFMSA). Despite the intransigence of the British government, the chair of the group, Joe Clark, the Canadian Secretary of State for External Affairs, used his position to encourage greater support in the group for anti-apartheid measures. The CCFMSA also established a dialogue fund for small scale projects in South African which were designed to break down racial barriers and supported training programs for members of the independent media in South Africa (Grande 1995, 9).

The measures taken by the Canadian Government in the mid to late 1980s, often in

concert with other Commonwealth members, included sports and visa bans, an end to air links, bans against arms sales, as well as “restrictions of cultural, scientific and military contact or exchanges” (Grande 1995, 11). During the late 1980s, the government proceeded with “the termination of Canada's Program for Export Market Development for the South African market; the termination of insurance provided by the Export Development Corporation to Canadian exporters to South Africa;...[and] the abrogation of the double taxation agreement” (Grande 1995, 8). Although they were difficult to monitor, the Canadian Government also imposed an “import ban on South Africa goods (eg. agricultural products, uranium, coal, iron and steel) and restrictions to economic transactions between the Canadian Government and South Africa” (Grande 1995, 7). In addition to these actions, the Canadian government developed a Code of Conduct for Canadian companies working in South Africa.

At the United Nations, the Canadian government developed an Anti-Apartheid Register which listed the various actions taken by companies and institutions within Canada to protest apartheid. All of these punitive measures by the Canadian government were coupled with government funding to groups such as the Canadian Education Program for South Africa, the Victims of the Apartheid Fund and Canadian Assistance to Black Business in South Africa.

Despite heavy lobbying to do otherwise, the Canadian government maintained its diplomatic presence in South Africa throughout the 1980's and 1990's; Canadian diplomats not only administered the dialogue fund but also acted as ‘witnesses’ at important “political rallies, funerals, marches and court trials” (Grande 1995, 12).

The international profile of the South African election, the large amount of international assistance it attracted, and the ‘illegitimacy’ of the apartheid regime in the eyes of the

international community are what make South Africa an important case study. However, these factors are not unique to the South African experience; for example, the ruling military regime in Guatemala was considered illegitimate and Guatemala's transition to democratic rule in 1995 was viewed as an important international event which deserved international assistance. It is instead, the degree to which these factors are present in the South African example which distinguishes it from other elections. As such, South Africa serves as an important example of less striking but equally important democratic transitions taking place elsewhere.

(iii). Canada's Contribution to the 1994 Elections in South Africa.

Although this chapter will focus on only one aspect of Canada's electoral assistance to South Africa -- the Canadian government's official observation mission to South Africa -- it is helpful to have a general understanding of Canada's overall contribution to the election process. Of approximately 4 million dollars budgeted, 2.5 million was spent bilaterally through the South African Elections Support Project. This project provided for technical assistance, long and short-term election observers, and voter education programmes. Technical assistance was provided in the form of personnel to the IEC. Several federal and provincial election experts from Canada were sent on long term missions to South Africa where they worked alongside local staff members of the IEC. The most senior expert on secondment to the IEC was Mr. Ron Gould, the Assistant Chief Electoral Officer of Elections Canada, who served as one of three international experts on the IEC's senior management board.

Of the long and short-term election observers, approximately fifty-five Canadians participated in United Nations-led election and violence observation missions, five Canadians joined the Commonwealth observation team, and eleven composed CANOMSA.

The final component of the South African Elections Support Project, voter education programs, was run by Canadian non-governmental organizations with a longstanding history of involvement in the anti-apartheid struggle. This included groups such as OXFAM Canada, the Canadian Labour Congress, the Anglican Church of Canada and the Southern Africa Education Trust Fund (Canada 1994c, 1). DFAIT viewed voter education in South Africa as an effective means of “developing a national democratic culture” (Canada 1994f, 1).

In addition to the Elections Support Project, Canada made financial contributions to multilateral organisations such as the UN which provided election assistance to South Africa. Canadian NGOs also developed electoral programs in cooperation with their South African partners by using their own programming funds. In one instance, representatives of Canadian churches worked with the South African Council of Churches to develop a monitoring team which visited ‘troubled areas’ in order to report on political violence. Another 60-75 Canadians from the NGO community and from organisations such as the Canadian Bar Association and the Canadian Labour Congress participated in their own observer programs to the South African elections. These programs were financed in part by CIDA’s South African Special Fund, a nine million dollar fund over three years for Canadian NGOs working in South Africa.

(iv). Preparations for the Canadian Observation Mission to South Africa.

CANOMSA, an eleven-member delegation led by the Honourable Christine Stewart, Secretary of State for Africa and Latin America, visited South Africa from April 18 until May 2, 1994. The mission included six Members of Parliament, Jean Augustine (Liberal), Reginald Belair (Liberal), Maud de Bien (Bloc Quebecois), Ovid Jackson (Liberal), Peter Milliken (Liberal) and Svend Robinson (New Democratic Party). Additional members of the mission

were Michelle Falardeau-Ramsay (Deputy Commissioner of the Canadian Human Rights Commission), Bob McLaren (former Canadian Ambassador to Zimbabwe), Christine Murphy (refugee worker) and Martha Nelems (University of British Columbia graduate student). The mission was assisted in its work by several DFAIT officials from Ottawa and from the Canadian Missions in Pretoria and Harare.

Members of the bilateral mission received instructions about their role as international observers from several sources. The Government of Canada offered all observers a training session in Ottawa on March 29 and 30, 1994 and provided more detailed reading materials from DFAIT, CIDA and Elections Canada. South Africa's IEC provided another set of directives during a training session for international observers in Johannesburg April 19-20, 1994, and in their IEC manuals for international observers.

The greater part of the first day of training in Ottawa was spent discussing the volatile security situation in South Africa. There had been a dramatic increase in politically motivated violence in South Africa in the months leading up to the election. On March 28 alone, 54 people were killed in politically motivated incidents in the province of KwaZulu-Natal and another 14 people were killed during a march on the Johannesburg city center by thousands of Zulus supporting an election boycott (Canada 1994e, 1).<sup>19</sup> As a result, violence was often identified as "the single greatest threat to the holding of free and fair elections" (Oxfam 1993, 3). During the

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<sup>19</sup> The Zulu marchers were members of the IFP which was part of the Freedom Alliance. This alliance supported an election boycott on the grounds that the interim constitution failed to provide significant powers to the newly created provinces. Good sources of information on the IFP include Heribert Adam and Kogila Moodleys' The Opening of the Apartheid Mind: Options for the New South Africa, and Gerhard Mare and Georgina Hamilton's An Appetite for Power: Buthelezi, Inkatha and South Africa.

second day of training, and to a much greater extent in the briefing books prepared for them, trainees learned about their role as international observers.

The first role identified for international observers was to ensure “a certain level of popular confidence in the [election] process”, and to make suggestions about the changes required in order to make the next election in South Africa “authentically democratic” (Canada 1994a, 3). This directive was identified in DFAIT's mission plan, “Electoral Experts and Observers Mission Plan for the South African General Elections (April 1994)”. This mission plan then tried to place the bilateral observation mission within the larger context of Canada's historical commitment to promoting democracy abroad: “The involvement of the Canadian Electoral Observation Mission is consistent with Canada's policy of supporting democratic development in Africa and throughout the world” (Canada 1994f, 2). Canada's longstanding support for the anti-apartheid movement in South Africa was also noted:

Since the beginning of the international efforts to dismantle Apartheid, Canada has provided an impartial and neutral support to the democratic development of this country (Canada 1994f, 1).

Consequently, the work of election observers was situated as part of Canada's historical engagement in the struggle against apartheid; a struggle which involved the churches, NGOs academics, and the Canadian government itself.

The second major role of international observers was to document their observations of the election process and make a final judgment call on whether the elections were free and fair. In The Reference Guide for Election Observers, Gould outlined the different kinds of reports which could be used for these purposes. The first type, ‘off the cuff’ reporting to members of the South African and Canadian media, was discouraged by Mr. Gould. Likewise, DFAIT's

communication plan for the South African elections suggested observers not make their personal perception of ongoing election events public, on the basis that the Canadian government “prefers to use quiet diplomacy rather than public diplomacy and media fanfare” (Canada 1994g, 3). The second type described by Gould, special or interim reports, served as a means of documenting any serious problems witnessed and were to be submitted to the IEC. The third type, the final report, offered both general information on the election process and a judgment call as to whether or not the elections had been ‘free and fair’.<sup>20</sup>

Both the Mission and Communication plans placed considerable emphasis on ‘the free and fair report’. The value of this final report to the Canadian government appears to be twofold. First, it served a political function by providing enough information for the Canadian government to evaluate for itself “the modalities and conditions surrounding the vote as well as the validation of the whole process and the intentions and commitments of the concerned South African authorities” (Canada 1994f, 3). Second, even if the report included some negative commentary on the election process, it symbolically represented “a further concrete manifestation of Canada’s support for the local efforts undertaken to engage the whole South African population on the path towards democratic development” (Canada 1994f, 2).

During training in Ottawa, CANOMSA members were informed that the Mission’s final judgment call on the free and fair issue should be made by consensus as a group after the election had ended. The report’s ‘free and fair’ conclusion would be supplemented by commentary about

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<sup>20</sup> In addition to these reports, the DFAIT official in charge of each team also prepared a nightly report on the major events of the day which was forwarded to DFAIT headquarters in Ottawa.

the election as a whole, and made public as the official report of the Canadian Government. This report would then be circulated to the IEC, as well as local and international media.

According to the Communications Plan, the observers and DFAIT officials preparing this final report would have to “distinguish between (a) fraudulent and serious intentions, (b) logistics constraints and manipulations, (c) the cultural context and ‘Western’ principles of democratic development, and (d) a combination of the above” (Canada 1994g, 3).

Gould’s Reference Guide for Election Observers also gave guidelines for assessing whether an election was free and fair. International observers were “to be impartial and non-partisan” in order to make a political judgement as to whether the elections were ‘free and fair’:

As a general rule, they [the observers] are asked to report on their observations of the election process and to reach conclusions as to whether the election process was administered freely and fairly, and whether the outcome was valid (Gould 1994, 6).

In order to make this assessment, members were directed to seek out the opinions of other fact finding teams, members of the country’s electoral body, representatives of political parties, NGOs, the general public, media, and public reports on the election (Gould 1994, 7). They were also admonished to become familiar with South Africa’s interim constitution and electoral law and to look at the “context of the legislative and political environment and any of the events preceding as well as following polling day, up to and including the announcement of the official results” (Gould 1994, 27).

Throughout his reference guide, Gould tried to moderate the importance of a final ‘free and fair’ ruling on the election by international observers. He acknowledged the great pressure observers would be feeling, especially from the media, “to render an absolute judgement as to whether the elections were free and fair” (Gould 1994, 27). He cautioned, however, that it was

ultimately not a 'yes' or 'no' answer but a question of judging the degree to which the elections were free and fair. Observers should consider "to what degree the will of the electorate was expressed freely, clearly, knowledgeably and in secret", and whether "the entire electoral environment and the election itself [was] substantially free and fair" (Gould 1994, 29). Only "major incidents of fraud, intimidation or disruption" merited a ruling of 'not free and fair' (Gould 1994, 27). To assist observers in this judgement call, the reference guide provided extensive definitions of the terms 'free and fair'.

Gould defined 'free' as an electoral process where fundamental human rights and freedoms are respected: freedom of speech and expression by the electors, parties, candidates and the media; freedom to form organisations such as political parties and NGO's; freedom of access to and by the elector to transmit and receive political and electoral information messages; freedom to register as a voter, political party or candidate; freedom from violence, intimidation and coercion; freedom of access to the polls by electors, party agents and accredited observers; freedom to exercise the franchise in secret; freedom to question, challenge and register complaints or objections without negative repercussions (Gould 1994, 28).

'Fair' was defined as an electoral process where the playing field is reasonably level and accessible to all electors, parties and candidates, and includes: an independent, non-partisan electoral organization to administer the process; guaranteed rights and protection through the constitution and electoral legislation and regulations; clearly defined universal suffrage and secrecy of the vote; equitable criteria and opportunities to register as an elector, a political party or a candidate; equitable and balanced reporting by the media; equitable access to financial and material resources for party and candidate campaigning; equitable opportunities for the electorate

to receive political and voter information; accessible polling places; equitable treatment of electors, candidates and parties by election officials, the government, the police, the military and the judiciary; an open and transparent ballot counting process; an election process which is not disrupted by violence, intimidation or coercion (Gould 1994, 28).

Members of CANOMSA received a final set of directives from the head of the IEC at a training session for international observers in Johannesburg. According to Justice Kriegler, the head of the IEC, the first function of international observers was to offer a show of solidarity and support for all South African citizens and in particular, to the IEC in its work coordinating the elections. Secondly, the visible presence of international observers on election days was to prove to South Africans that 'the world is watching'. Although no explicit linkage was made between the presence of international observers and the increased physical security of the voters, this was clearly an underlying assumption. Finally, observers were to act as a 'living endorsement' of the IEC policy of transparency; all of the problems witnessed by international observers were to be reported immediately to the IEC in order for them to be corrected as soon as possible. Once again, mention was made of the fact that international observers had no right to intervene.

In making their final judgment call about whether the election was 'free and fair', international observers were asked by the IEC to consider whether "(1) eligible voters have an opportunity to vote for whom they want without threat of reprisal; (2) every party contesting the election has the opportunity to canvass eligible votes for support; and (3) the votes are counted accurately, with integrity and according to agreed procedures" (IEC 1994c, 10).

Throughout the day's briefings, the IEC staff tried to balance their obvious concerns about the election's numerous logistical problems with a larger vision of what the elections meant to the

people of South Africa, the region of Southern Africa, and the whole world. However, it was soon clear that political imperatives such as reducing political violence, were more important to the IEC commissioners than a perfectly administered electoral process. This reality was particularly evident when Kriegler addressed the issue of the IFPs late arrival into the election process during the IEC's briefing session for international observers. Although the IFP's late entry was a much welcomed political development -- it almost certainly meant a decrease in the violence between the ANC and IFP in Natal Province -- it created a logistical nightmare in administrative terms because the ballots had already been printed. Although it was not yet clear how the IFP would be added to the ballot, one could easily foresee major administrative problems with any of the proposed solutions.<sup>21</sup> However, when one international observer questioned Kriegler as to whether or not this task could be accomplished, Kriegler responded by stating that 'the IFP will be added to the ballots, or there will be civil war' (Speech of J. Kriegler, April 19 1994).

After the IEC training session in Johannesburg, the bilateral mission was split into various groups in order to cover several different regions of the country, including the capital city of Pretoria in the Transvaal province, Pietermaritzburg in Natal, Pietersburg in the Northern Transvaal, and East London in the Eastern Cape.

#### (v). The Election

The team of three of which the author was a member was sent to the town of Pietersburg in the Northern Transvaal. The Northern Transvaal has historically been a wealthy Afrikaner

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<sup>21</sup> It was eventually decided stickers with the IFP logo would be added by hand at the voting stations to each of the ballots.

farming area and a stronghold for right-wing activity in the Afrikaner community. The team arrived in Pietersburg on April 21, highly concerned about the threat of violence and the possibility of significant disruptions to the election process by right-wing factions. In the months leading up to the election, many of the para-military groups based in the Northern Transvaal made open threats about disrupting the elections. Although team members stayed in Pietersburg until May 1, they spent the majority of their time outside of the town's limits, in the neighbouring townships and in the so-called independent homeland of Lebowa.

In the days following its arrival, it became clear to the team that administrative difficulties within the IEC posed as great a threat to the whole election process as did the potential violence. From April 22 to 25, a number of activities were undertaken: observation of IEC officials issuing temporary voting cards, visits to voter education displays, meetings with political party and IEC officials, attendance at political rallies, peace events, and meetings of the regional peace committee, and conversations about the upcoming election with as many people as possible.

On the first full day in the region, the team followed one of the IEC vans out to a very remote, rural part of Lebowa in order to watch the process by which temporary voting cards were issued. The lack of voter identification was a particular problem for the black population, as many of them had burned their passbooks in protest of the apartheid regime. Plastic identity cards were quickly produced by government officials with the use of high technology computer and photographic equipment. Although the Afrikaner officials carrying out the procedure were highly efficient and processed a large number of people, the team found their manner of officiating to be quite hostile. With the exception of the medical staff and patients visited at one

remote Catholic Mission station later on in the day, the team found that the majority of people who needed temporary voting cards were able to get them either from mobile IEC stations or local magistrate's offices. However, the Afrikaner officials refused to speak with team members throughout the day, and more importantly, failed to speak with the black men and women to whom they were issuing the cards. Instead, they choose to whistle and grunt at people as a means of telling them when to enter and leave the room.

In addition to visiting voter identification card stations, the team also attended political rallies such as the NP rally in Tzaneen and listened to guest speaker Pik Botha. As South Africa's well-known Foreign Minister, Botha had become a master of rhetoric. His address followed that of a young, black South African who spoke of 'the ANC torture camps' in exile and in the townships. Botha's speech was cleverly crafted to play up on 'the white fear' that the ANC leadership would make the white population suffer for the apartheid years. He even concluded his speech with the statement 'a vote for the ANC is a vote for death, a vote for the NP is a vote for life' (Speech of Pik Botha 1994). Observers were interested not only in the words spoken but also in the composition of the audience. On reaching the rally site, numerous white farmers were observed arriving with the back of their trucks full of black farmworkers. There had been rumours of farmers intimidating their workers and forcing them to attend NP events and although there was no proof that this was the case, it appeared to be a distinct possibility. The overwhelming majority of the black men, women and children present filled up the last third of the seats and proceeded to talk loudly amongst themselves, even interrupting the speeches at times. Although the black South Africans present took the free drinks offered to them, few of them appeared eager to take the NP propaganda.

The following day (April 24), in response to recent, deadly car bombings in Johannesburg, a peace rally was organised at the Pietersburg stadium. Over 3,000 black and white South Africans attended the event in an emotional show of commitment to the election process. Everyone spoken to was determined to ensure that the election process would not be derailed by violence. One of the IEC Commissioners spoke at the rally and commented on 'the loyalty' of the South African Defence Forces to the election process. Although worried about the threat of further violence, the observer team became increasingly concerned about the management of the IEC office in Pietersburg.

By this time, members had met with enough people to confirm that the IEC staff in Pietersburg were under severe strain. Initial impressions were confirmed during a meeting with a Canadian technical advisor on secondment to the IEC in the Northern Transvaal. She told the team that the IEC had yet to produce a complete list of all the voting and counting stations in the province. The previous day they had printed an incomplete and in some cases, incorrect list in the local newspapers. This was causing enormous problems for political parties, for Telekom, the company installing the communications system, and for the security forces who were responsible for guarding the stations. From all accounts, the lack of organization was largely the fault of the provincial electoral officer, Enoch Mopanya, a black former director of education in the Lebowa government. Temporarily removed from his position after complaints from IEC staff and international observers, Mopanya was mysteriously restored amidst rumours of high level political interference. In defending Mopanya's reinstatement, the IEC's media spokesperson for the Northern Transvaal claimed the challenge against Mopanya had some racial overtones.

Some of the local IEC officials began to ask whether the international observers could

step in to help resolve some of the administrative problems. These problems were only compounded by the IEC's decision to hire striking Lebowa civil servants which "led to the occupation of its offices by other strikers on three occasions" (Perlman 1994, 7). The Lebowa police forces were also on strike. This was a very serious issue as over 70% of the voting stations were in Lebowa, and the Electoral Act called for at least one South African or homeland police member at every station during the voting and counting. Approximately 40 Telekom vans had also been stolen by members of the Afrikaner Weerstand Sbewing (AWB) and it was feared that these would be used for car bombs. It was only later that the team learned a political decision had been made to arrest many members of the AWB and other right wing groups under section 29 of the Internal Security Act.<sup>22</sup>

On April 25, members divided their time between visiting voting stations and attending meetings to discuss ongoing concerns about the IEC's administrative arrangements. At an emergency meeting of the Regional Peace Committee, many of the party agents from the region's Political Party Liaison Committee were present. The recent visit of IEC Commissioner Yacoob to the region had resulted in increased staff for the Pietersburg office from IEC headquarters in Johannesburg. Although well meaning, this act appeared to have done little to calm the party agents' fears about ongoing administrative problems in the IEC. As a result, there were continued grumbling about Mopanya's leadership throughout the meeting. According to one party agent, there was no personal accountability in the IEC and senior IEC management were not willing to accept responsibility. Although the party agents generally agreed that the IEC's

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<sup>22</sup> Ironically, this section was historically used as justification for arresting 'terrorist' anti-apartheid activists.

shortcomings were due to incompetency, the ANC agent feared his party's supporters might interpret the administrative errors as 'conscious manipulation'.

Concern about violence was again expressed at this meeting with regard to the real possibility of violence if 60,000 people converged on the city of Pietersburg to vote. The party agents eventually agreed to a list of demands to be met immediately by the IEC. One of their chief demands was the immediate identification of the remaining Presiding Officers (PO) for the Northern Transvaal. Only the day before, the IEC admitted that only 95% of the region's POs were in place.<sup>23</sup> After the meeting formally ended, some direct pressure was placed on observation teams, as members of the international community, to 'call off the elections' in the Northern Transvaal if these demands were not met promptly. Some of the party agents also inquired whether there would be one international observer for each voting station. They were told this was an impossibility given the limited number of international observers in the region, but observers would try to visit as many stations as possible.

In order to plan the team's route for the first day of voting, stations in rural Lebowa and the townships surrounding the Afrikaner town of Potgeitersrus were visited. All of the officers in the townships and rural areas were delighted to meet the observers and eager to discuss their election preparations. It was evident that many of the officers were highly capable and eager to perform their delegated tasks; at one station in Lebowa, 24 voting officers held a mock election with hundreds of local people in attendance. The PO asked the team to watch the proceedings and afterwards, enquired several times as to whether she had followed the correct procedures.

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<sup>23</sup> POs had responsibility for overseeing the administration of voting stations and were assisted by voting officers.

She had, and seemed reassured by the encouragement.

At other stations, however, it was observed that the officers needed further training. A clarification of the election rules by observers was sometimes needed. On one occasion, a PO was informed that the numbered IEC stickers which staff were proudly wearing on their backs as a form of identification were actually intended for the ballot boxes.

Some of the most serious problems encountered, however, were administrative. For example, there was a serious lack of the battery-operated UV lights which were used to scan a voters' hands for the invisible ink mark to tell if the person had already voted. Although it was well known that most townships were without proper electrical systems, many of the voting stations were sent UV equipment that needed to be plugged in rather than the battery operated model. Although this problem was reported to the nearest distribution office, it was generally not corrected and IEC staff had to cope with makeshift generators they assembled themselves with help from the community.

At other stations, none of the election materials had arrived yet. Nevertheless, the POs were always keen to walk team members around the room pointing out where the ballot boxes, the cardboard dividers, and other supplies would be laid out once they arrived. The voting station visited in the Afrikaner town of Potgeitersrus was bombed the night before but, fortunately, no-one was injured. Although the IEC staff were forced to work quickly to set up alternate voting stations in tents outside, their convenient location next to the electoral distribution center meant they did not lack election materials.

The threat of violence again greeted the team on the morning of April 26, with news of two new bomb threats against polling stations in the region, and repeated threats of roadblocks

by some of the right-wing Afrikaner elements. More car bombings in Pretoria brought the national death toll of the previous two days up to 21. Nevertheless, voting was to proceed as planned.

April 26 was created as a special day of voting for the elderly, the sick and for pregnant mothers, so they could avoid the long election lineups on the 27 and 28. The team arrived at a station early in the morning to find hundreds of elderly people ready to vote, but no ballots in sight. The IEC official had received no information whatsoever about when the ballots might arrive. Unfortunately, a lack of ballots at many of the voting stations in the rural and township areas was a trend that continued throughout the day.

Not only did almost all of the stations still lack ballots, but some still needed other important supplies. The mood, however, was one of disappointment rather than panic. There was little or no communication between voting stations and the IEC's regional headquarters, so IEC staff and voters alike just sat waiting for the ballots to appear. Through SABC reports on the radio, the team finally learned only 60% of the Northern Transvaal region would receive ballots by the end of the first voting day. The observer team was often the first to relay this information to the POs and other electoral staff. After hearing this news, one PO decided the elderly voters should leave their lineups and move out of the hot sun. Observers were amused to see that the voters thought otherwise; all of them refused to give up their spot and instead, waited agreeably in their lines, often building fires and cooking their meals.

On one of the many trips through the Afrikaner town of Potgeitersrus, a visit was made to the town's main voting station. There a predominately white crowd proceeded quickly through the voting process. While observing the voting, it was noticed that some election workers were

adding the IFP stickers only to the National ballot, not the Provincial ballot as well. This was quickly pointed out to the PO. Otherwise, voting was proceeding smoothly. The well-supplied voting station provided quite a contrast to the stations visited in the nearby townships and in the rural areas.

It was ultimately due to a shortage of the proper administrative supplies in the region that the election process was altered. When the team returned to IEC headquarters in Pietersburg around noon on April 26, it found Danny Adernoff, the former director of the Department of Home Affairs, had essentially taken over management of the election process in the Northern Transvaal. After consultation with IEC Commissioner Yacoob in Johannesburg, Adernoff issued a memo on emergency voting procedures to all of the POs in the Northern Transvaal. According to the memo, stations could stay open until midnight and special voters unable to vote on the 26 were to be given priority on the 27 and 28. The following additional changes were allowed if the PO and all the party agents present agreed to them: cardboard boxes could be used for the ballots if proper seals were used; in the event of a failed UV light, the PO must record the number of people who voted without it and continue to stamp the voters identification books; string could be substituted with wire for sealing purposes; if there was no stamp for sealing the full ballot boxes, then the PO could scratch a number on wax and record it; if there was no stamp for the ballot, then the PO could write her/his initials on each ballot by hand.

Unfortunately, these changes were not conveyed to all of the voting stations in the team's region. Copies of this memo were carried by team members to explain to all of the electoral officials and party agents encountered during the day. Surprisingly, the team often had a difficult time convincing some of the POs that these changes were legitimate. Many of the POs seemed

fearful of departing from the rules they had learned during training and instead, hoped the proper supplies would eventually arrive. For example, the senior IEC official at one station in Lebowa was in a quandary because the stamp pads had not arrived with the ballots, and there were several hundred people waiting to vote. When asked to decide whether or not the station should open, international observers told the PO that while it was his decision to make, it was the team's understanding that he would be allowed to mark the ballots with his initials instead of the stamp pad. He decided to wait until the official pads arrived.

Some of the IEC officials in the townships were more resourceful in responding to the lack of election supplies. At one station where there was only one stamp pad with invisible ink, the PO came up with a clever strategy to divide the voters into two lines once they had passed the stamping stage, including a separate stream for 'the special voters'. At another station where approximately 1,000 people were lined up to vote, IEC officials decided to proceed without the invisible ink used to mark people's hands; they did so on the rationale that 'no-one would bother lining up again'.

Later in the day, Justice Kriegler spoke on the SABC and acknowledged there had been only an 80% success rate in opening voting stations in the country. He felt there were two reasons for this including a major breakdown in the elections distribution systems, and major miscalculations of the numbers of people voting. To rectify these problems, thousands of new ballots were to be printed immediately and delivered to the regions as soon as possible with the help of the South African Defence Force (SADF). In the Northern Transvaal alone, over 500,000 ballots were to be flown in. In order to enable everyone to vote, April 28 was declared a second day of public holiday.

When the team returned to the distribution center at Potgietersrus, it found the supply rooms empty and the district IEC officials at the point of near collapse. They had been forced to turn away several POs who had driven to town on unsuccessful missions to collect ballots for their stations. There was growing resentment among some of the IEC staff because they had not yet been paid, and there were continuous bomb scare threats against the building.

On April 28, the team visited the main voting station in Pietersburg to follow up on a rumour about the occupation of the station by the AWB. The rumour proved untrue and voting proceeded without interruption. Throughout the morning hundreds of buses and minivans transported black men and women to Jack Botes Hall. According to the electoral act, people were allowed to vote wherever they wanted. So when ballots failed to materialize at voting stations in the neighbouring townships, voters simply flooded into Pietersburg. At one point, violence threatened to erupt when four buses of elderly black South Africans were escorted to the front of a line of white, mainly Afrikaner farmers. Fortunately, the volunteer peace monitors promptly intervened and interspersed the lineups with black and white voters following one another.

The majority of the voting stations in the Northern Transvaal received at least some ballots by the 28 of April. Nevertheless, at the day's end, the IEC confirmed the rumour that voting would be extended in certain areas for an extra day. The extended voting areas included the whole of the Northern Transvaal, parts of KwaZulu Natal, the East Rand townships near Johannesburg, and other selected areas in the PWV region. April 29 was spent farther up north in Giyanai where the team found the majority of the stations had finished their voting in the early hours of the morning. In some cases, they stayed open all night long. Observers talked with

people wherever they went and heard stories of remarkable resourcefulness. At one station no election supplies ever arrived, and after waiting for several days, the IEC staff decided to use their own pay to transport the 3,000 people waiting to the next voting station. Other people told stories of whole villages of people walking several kilometres over the hills to reach the next voting station.

Unfortunately, the extension of voting days meant the team was only able to observe the first day of counting, April 30. It visited the Nirvana counting station near Potgietersrus and the city of Pietersburg's main counting station. For reasons which were unclear, the district electoral officer in the Potgietersrus area choose to amalgamate five counting stations at Nirvana. As a result, there were hundreds of extra IEC employees waiting outside the building for their turn at counting the ballots. One of the IEC's investigators from Johannesburg was also present -- this suggested that there was real trouble in the counting process -- and was soon joined by several members of the Monitoring Division in Pietersburg. Due to several problems, reconciliation between the numbers on the books of ballots and the ballots inside the box was no longer possible. Furthermore, a total of 34 of the 893 boxes at Nirvana were declared invalid because no seal had been used to close them and there was a real possibility they had been tampered with en route to the counting station. The majority of these ballot boxes were from rural or township voting stations. In contrast to Nirvana, the Pietersburg station was a scene of total order. Approximately 100 tables were set up with the counting officers working quickly under the ever watchful eye of several party agents.

(vi). CANOMSA Reporting on the Election.

Members of CANOMSA gathered in Pretoria on May 1, in order to share election

experiences as a group and prepare a final report. After a lengthy discussion, it was concluded that “the election was essentially free and fair” (Canada 1994h, 5). Although “serious problems” were witnessed, the measure was not “whether the election was flawless in its execution, but whether at the end of the day, people were in general able to vote in secret, without intimidation, and in sufficient numbers to give a realistic picture of the popular will” (Canada 1994h, 2). It was agreed they had. Besides drawing general ‘free and fair’ conclusions, the report listed some of our specific findings. It was felt the complicated electoral framework and last-minute changes to the electoral rules may have been difficult for some voters to fully understand. The teams could not “assess the overall success of voter education programs, except to note the overall high voter turnout and the “bona fide intention to issue the necessary documents” for people to vote (Canada 1994h, 4). With regards to issues of security, it was recognized that parts of Kwa-Zulu Natal, the East Rand and the Transvaal experienced a significant increase in violence during the run-up to the elections (Canada 1994h, 6). This made the almost total absence of violence and intimidation during the election all the more amazing. For the most part, members of South Africa’s traditional security forces played a helpful role during the elections.<sup>24</sup>

In the final report, the team congratulated the IEC on its overall performance, but also commented on what were considered to be serious administrative problems:

There is no doubt that there have been problems in terms of electoral administration, in the sense of the very late placement of voting stations, appointment and training of electoral officials, and the inadequate supply of voting materials and equipment (Canada 1994h, 6).

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<sup>24</sup> The Northern Transvaal team heard unsubstantiated rumours that the SADF, which was responsible for delivering ballots, had in some instances intentionally stockpiled ballots at airforce bases.

These problems were particularly evident in the Northern Transvaal and the Eastern Cape. In the end, however, it was concluded that the problems were “largely of a logistical kind” (Canada 1994h, 6). Some team members found it difficult to understand why it was always the stations in the so-called black areas which were short of ballots and other electoral supplies.<sup>25</sup> Organizers may have chosen to supply the stations in town first because they were closer. Nevertheless, this gave the appearance the apartheid system was alive and well.

It often seemed that the IEC organizers failed to take the legacy of apartheid into account when making logistical arrangements. For example, the unequal infrastructure in black and white communities meant that the stations where most black South Africans voted were often more difficult to reach by road and received their supplies much later than those stations where white South Africans voted. The so-called black voting stations were also much more crowded given the huge discrepancy in population between the townships and the less populated urban centres. Lineups were longer in the townships because many of the black voters were illiterate and the voting process took much longer. It also appeared that black IEC staff sometimes lacked the confidence required for problem solving when election materials failed to appear and election procedures needed to be changed; this may have been the result of unequal education and lack of management opportunities for black South Africans under the apartheid regime.

The emergency measures introduced, including the additional voting days, did much to rectify some of the major problems witnessed. However, as the final report noted, the counting process became “more protracted and complicated than expected” (Canada 1994h, 6). The

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<sup>25</sup> Some members of the group felt this was more than coincidence. This was not, however, the assessment of the whole group and as a result the comment did not appear in the final report.

allegations of fraud which ensued underlined the need for “considerable improvement” in this respect for the next election (Canada 1994h, 6).

Shortly after the reports of the Canadian and other bilateral and multilateral delegations were made public, some South Africans expressed concern that the international community was ‘pushing’ the IEC to declare the election ‘very direct pressure has been placed on the IEC by politicians, the international community and democrats in South Africa to declare the election free and fair’ (Stober 1994a, 5). Although the IEC Commissioners rejected these allegations, they acknowledged that the terms ‘free and fair’ were relative rather than absolute in nature. As stated by the head of the IEC's Information Unit:

Free and fair is an attempt to discern if the results are a reflection of the will of the people. The most crucial determinant is whether the process is legitimate...violations of election rules would have to substantially affect the outcome of the poll before the IEC would declare the election null and void (Stober 1994a, 5).

Ultimately, the IEC determined that the will of the South African people had been reflected in the election process, and declared the election “substantially free and fair” (IDEA 1996, 12).

Norman du Plessis, one of the IEC's South African Commissioners, argued that “despite great logistical problems, legitimacy and democracy were not compromised” (IDEA 1996, 10).<sup>26</sup>

Before the final tallies were in, De Klerk conceded defeat and Mandela claimed what ultimately proved to be a massive victory for the ANC. After a series of lengthy delays, the IEC released the following election results on May 6: 62.6% for the ANC, 20.3% for the NP, and

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<sup>26</sup> Although the vast majority of South Africans accepted the legitimacy of the election process and the final election results, a minority of South Africans continued ‘to cry foul’ in regards to irregularities in the counting process and the delay in posting final election results.

10.5% for the IFP<sup>27</sup>. As Veronica Mayila, resident of Khayalitsha township said; 'We were all watching; couldn't even eat. No one was on the street'. And on May 10, 1994, as South Africans and the rest of the world continued to watch, Nelson Mandela was installed as South Africa's first-ever democratically elected President.

### C. ASSESSMENT OF CANOMSA.

In assessing CANOMSA, several conclusions can be made about the training given to observers and the directives they received. Firstly, members of CANOMSA were not given a single set of directives for their work but received several sets of guidelines from DFAIT and Elections Canada, as well as from the IEC in Johannesburg. Although these directives generally overlapped, there was a somewhat different emphasis given to each of them by the various agencies. For example, DFAIT and to a lesser extent, Elections Canada, emphasized the significance of the free and fair election call, whereas the IEC placed greater importance on supporting the IEC and showing solidarity with the South African people.

The lack of formal discussion between government officials and observers about what constitutes a free and fair election call was one of the most serious oversights in the training process. This was especially surprising given the importance attached to this directive by the Canadian government. The article by Ron Gould of Elections Canada, which was included in the

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<sup>27</sup> The regional breakdown of the ANC vote is as follows: Western Cape 33.6%, Eastern Cape 84.4%, Northern Cape 49.8%, North West 83.5%, PWV 59.1%, Northern Transvaal 92.7%, Eastern Transvaal 81.9%, Orange Free State 77.4%, KwaZulu Natal 31.2%. The regional breakdown of the National Party vote is as follows: Western Cape 56.2%, Eastern Cape 10.6%, Northern Cape 41.9%, North West 10.1%, PWV 27.6%, Northern Transvaal 3.6%, Eastern Transvaal 10.3%, Orange Free State 14.5%, KwaZulu Natal 16.2%. The regional breakdown of the Inkatha Freedom Party vote is as follows: Western Cape 0.7%, Eastern Cape 0.2%, Northern Cape 0.5%, North West 0.5%, PWV 4.1%, Northern Transvaal 0.2%, Eastern Transvaal 1.6%, Orange Free State 0.6%, KwaZulu Natal 48.4%.

briefing books, was the most comprehensive source on this subject. It did an excellent job of contextualizing the free and fair election call, as well as emphasizing the need to judge the degree to which the free and fair criteria were met. However, this article was never debated or even referred to in the training session. Nor was there any discussion about how the Canadian understanding of 'free and fair' corresponded to the IEC's definition of this same concept.

The Canadian government emphasized that the work of observers was part of a much larger commitment to democratic change in South Africa. However, the political context for the election -- the apartheid system -- and the impact it might have on the election process were largely neglected. This neglect may have been caused by an excessive emphasis on personal security issues and the ongoing violence in South Africa. Although violence posed a real threat to the South African election process, the security briefing and, in particular, the presentation of crisis management techniques, were given far too much consideration in the training session. Ultimately, the legacies of apartheid, including unequal access to resources and differing levels of infrastructure, proved to be as significant a threat to the election process as was violence.<sup>28</sup>

The failure to explore how the politics of South Africa would affect the elections meant observers were ill-prepared for some of the problems they encountered and unsure of how they should respond to these problems. Given the wealth of expertise in Canada about the apartheid system and its impact on South Africans, Canadian observers should have been better prepared for the logistical breakdowns and administrative delays they witnessed.

Notwithstanding these shortcomings in preparation, CANOMSA members largely

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<sup>28</sup> One exception to this was the province of Natal where up until the voting days, violence surrounding political campaigning threatened to derail the election process altogether (IDEA 1996, 11).

fulfilled the mandate given to them by the Canadian government and by the IEC. First, the team offered much-needed support to the election process by clarifying rules for IEC staff and by providing black IEC staff members with encouragement. Second, international observers were a highly visible presence during the elections and provided an important show of solidarity with the South African people. Beyond the symbolic importance of this, there is anecdotal evidence to suggest that the presence of international observers made black South Africans feel more confident in the fairness of the electoral process. Although unsubstantiated, it is likely that the presence of international observers also diminished the amount of election-related violence and corruption of the electoral process.

Finally, CANOMSA members made the important 'free and fair election call' in a report which was made public at a media briefing by Secretary of State Christine Stewart. The report concluded that millions of first time voters, many of them illiterate, and a complex voting process had complicated the free and fair judgement call. Although team members acknowledged real administrative problems, particularly in the counting procedures, they were confident that major voting trends were picked up. For example, in the Northern Transvaal region, the tallied ANC vote was over 90%; the team felt that even with a 10 percent margin of error these results adequately reflected the will of the people - overwhelming support for the ANC. As a result, CANOMSA declared the election 'essentially free and fair'.

The author remains uncertain about whether the CANOMSA report should have been more detailed in highlighting the administrative problems witnessed. There was a strong moral imperative to welcome Nelson Mandela as the new President and an underlying fear that any

serious criticism of the election process might tarnish his victory.<sup>29</sup> This may have been a contributing factor in deciding to make CANOMSA's final report less critical of the IEC and its administrative failings than it might have been.

The major element of the mandate which CANOMSA members were unable to fulfil was the IEC's directive for observers to act as a 'living endorsement' of the IEC policy of transparency by reporting problems to them as soon as possible so they could be corrected. This was not however, CANOMSA's fault; nor was it specific to the Canadian government's observer mission. It was instead, a result of the weakness of local IEC structures and a widespread problem wherever electoral chaos reigned.<sup>30</sup> Although the Northern Transvaal team initially reported problems to the IEC headquarters in Pietersburg, it was soon evident that the IEC was unable to respond to these 'problem reports' in a systematic manner. The senior management crisis in the Northern Transvaal headquarters, coupled with undertrained local IEC staff, meant many of the IEC employees were overwhelmed much of the time.

The Canadian government also hoped that observers would make suggestions for improving the next election in South Africa. However, it is highly unlikely that any of the reports made to the IEC about the elections organisational shortcomings were compiled in a user friendly way for future reference by electoral administrators.

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<sup>29</sup> This fear may have been specific to government-sponsored observer missions.

<sup>30</sup> In particular, the Northern Transvaal, the East Rand near Johannesburg, and parts of Natal Province.

### CHAPTER THREE: ANALYSIS

What does the case study of CANOMSA tell us about the relationship between the practice of international election observation and the growth of democratically elected regimes? Was there a need in South Africa for the granting of legitimacy to the national government by the international community? Were there other objectives for international observers? Has the process for granting legitimacy itself become legitimate? To what degree were the criteria of pedigree, coherence, adherence and determinacy present in the South African example? With regards to the Canadian government's involvement in international election observation, is it promoting what Slaughter Burley refers to as the normative agenda of Franck and Fox? Is this a worthwhile objective of Canadian foreign policy? If this goal is considered worthwhile, how can it be better served, and what are the dangers inherent in doing so? In order to respond to these questions, it is helpful to return to some of the theoretical arguments posed by international lawyers Franck and Fox.

Franck argues there is an emerging norm of international law whereby the individual's right to free and fair elections is protected by national governments. The legitimacy of these governments derives from consultation with their citizens and is validated by the international community which monitors compliance of the right to free and fair elections through election observation.

The case study of Canada's Observation Mission to the 1994 South African election suggests there is an emerging right to democratic governance that is validated by the international

community.<sup>31</sup> In April 1994, for the first time in South Africa's history, all of its citizens exercised their right to vote in democratic elections. This landmark event was witnessed by record numbers of international observers who ultimately judged the electoral process as 'free and fair'. In so doing, CANOMSA and other election observers gave international legitimacy to the new government of South Africa. CANOMSA's free and fair election call, combined with those of other international observer teams, also helped to legitimize the electoral process for all South Africans.

The need for legitimacy to be granted by the international community was particularly acute in the case of South Africa. The apartheid regime had been condemned as one of the most illegitimate regimes in the world. As a result of its 'pariah' status, the South African government, and to a large extent the South African people, had been cut off from the global community in a multitude of ways including sanctions. The symbolic importance of the international community to be seen supporting South Africans in their transition to democracy cannot be underestimated, especially in light of the isolation South Africans experienced during the latter apartheid years. The international community's involvement in the election marked a welcoming of South Africa back into the community of nations.

Beyond the symbolic value of international observers, there is anecdotal evidence to suggest that external validation of the election process by the international community made black South Africans feel more confident in the fairness of the electoral process. Given the racially divisive history of apartheid, it was especially important for black South Africans to

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<sup>31</sup> Obviously, to prove the emergence of a norm one needs further case studies. Nonetheless, the South African example suggests this norm is on the way to becoming an established rule of international law.

know 'world was watching'. Although it was ultimately the IEC's responsibility to declare the election 'free and fair', it took into account the assessments of the international community. These assessments took on added importance in light of weaknesses in the IEC structure, especially at the local level, which were apparent to party agents and individual citizens. In this regard, external validation of the election process by the international community was crucial to popular confidence in that process; the IEC considered this popular confidence to be fundamental to any democratic transition.

The task of 'granting legitimacy' to national governments is undoubtedly the most important role for international election observers. Franck can be criticized, however, for ignoring altogether the other functions that international observers perform. According to the experiences of CANOMSA members, moral encouragement and confidence building of IEC workers were very much needed. Likewise, the process of clarifying rules for IEC employees, including those rules which changed mid-stream through the election process, was an important task which helped the election to run more smoothly. In this regard, the IEC would have benefitted from even greater assistance.<sup>32</sup>

According to Franck, the right to democratic governance will only emerge as a norm of international law if election observing and other means of validating national governance are themselves legitimate. To what extent were those criteria which determine the legitimacy of election observation and the standards for free and fair elections present in South Africa?

Franck's first criterion of pedigree -- "the depth of the rules roots in a historical process" -

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<sup>32</sup> As a more activist role is outside the scope of international election observation, it would have been helpful for the IEC to have additional technical assistants from the international community on hand.

- is not strengthened by the South African example (Franck 1992, 91), as there was no monitored transition in South Africa from a colony to an independent state.<sup>33</sup>

The criterion of coherence -- whether a rule is integrally part of a larger scheme such that the greater whole must be considered, whether it relies on a principle upon which other rules are built, and whether it resembles other rules and is therefore treated like them -- is evident in the South African case study.

First, the individual's right to free and fair elections was only one of many human rights which needed to be realized in South Africa. Likewise, international observers' commitment to ensuring the right to democratic governance was respected was part of a much larger agenda to promote human rights in South Africa. Second, the South African situation was used as the sole exception to the principle of non-intervention as debated at the General Assembly of the UN in 1990. Third, as monitors were voluntarily invited, the South African example helped to build the case for the universal application of the international community's right "to establish, define and monitor" a free and fair election process (Franck 1992, 87).

The criterion of adherence, which refers to the rules 'vertical connectedness to a normative hierarchy', was also present in the South African situation. For example, on numerous occasions the apartheid regime was condemned as a destabilizing force in the frontline states of Southern Africa, and democratic elections were upheld as a means of ensuring greater peace both

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<sup>33</sup> Shortly after the Boer war of 1899-1902, the British granted the Afrikaner farmers of the Transvaal and Orange Free State the status of self-governing colonies of the British empire. With the South Africa Act of 1910, British Parliament established the dominion of South Africa. However, it was not until the 1948 electoral victory of the Afrikaner based National Party that the succession of pro-British leaders of South Africa ended. Once in power, the National Party government immediately began to legalise apartheid.

within South Africa and throughout the region.

With regards to the criterion of determinacy, Fox argues, unlike Franck, that the universal right to political participation already exists in international law and that those elements of this right which were unclear in the convention have been clarified by observer missions. However, the example of CANOMSA suggests the practice of election observing is not as standardized as Fox suggests. This is evidenced by that fact that CANOMSA relied on mission specific guidelines in order to frame the requirements for its 'free and fair' judgement call. Although these guidelines were generally complementary to those of the UN, they were not identical. Furthermore, the Canadian guidelines were presented to CANOMSA members in a somewhat ad hoc manner with a different emphasis given to each of them by the various departments involved. This suggests that the practice of election observing is not entirely determinate; it is not wholly consistent even within the Canadian context, let alone standardized with the practices of other members of the international community.

Fox's argument begs the question as to whether international election observation should be standardized to a greater extent. Should all observer missions, including Canadian sponsored missions, rely 'on treaty norms which are universally understood'?

The experience of CANOMSA suggests that, at the very least, Canadian observers should not be given several sets of directives in a piecemeal fashion. They should, instead, receive one clear set of instructions from the Canadian government, to be revisited by a group discussion after learning of the host country's expectations of international observers.<sup>34</sup> There should be a

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<sup>34</sup> It appears that the need for greater consistency in the materials given to Canadian observers may soon be rectified. CIDA is currently in the process of approving a comprehensive set of election assistance guidelines.

lengthy discussion of the guidelines for observers during the training session, with particular attention given to the free and fair judgement call. With regard to this judgement call, it should be explicitly acknowledged that this is a complicated issue and although there are checklists for criteria, there are currently no "standardised assessment criteria" (IDEA 1996, 17). The Canadian government may also want to encourage a process at the UN whereby "any outstanding element of the right to free and fair elections" is clarified on the basis of the guidelines for previous UN missions (Fox 1992, 588). In the meantime, observers could act on the suggestions made by participants at a recent 'Forum on Democracy' sponsored by the IDEA Institute by "stat[ing] their criteria as clearly as possible while at the same time admitting that their conclusion is based on an estimate, a mixture of representative and unrepresentative elements" (IDEA 1996, 19).

Despite the need for greater standardization of election observation, international observers must be able to accommodate some criteria from the host country's electoral commission in making their free and fair election call. For example, the IEC in South Africa made a decision to include the IFP in the electoral process after the scheduled deadline; they did so because they believed it was better to risk a flawed electoral process, than hold a perfectly administered election without one of the major players involved. By including the IFP in the electoral process, the IEC Commissioners hoped the IFP would gain a vested interest in making the government of national reconciliation succeed. They also hoped there would be less election-related violence between the IFP and ANC forces. Clearly, international observers must be able to balance respect for important political imperatives such as these, with basic standards for electoral fairness. The end goal for observers should not be to witness a flawless election process

but to be able to say truthfully that a democratic process has begun; that 'the will of the people was expressed freely, clearly, knowledgeably and in secret' and that major voting patterns were reflected in the final results. Ideally, it should be citizens themselves -- not election observers -- who call for the perfecting of a country's electoral process. As citizens adjust to their right to vote, they should begin to make more sophisticated demands upon their governments for improving or reforming the electoral process. This was already somewhat evident in South Africa when think tanks and individual voters criticised the delay in announcing the election results (Stober 1994a, 5).

Whether or not the practice of election observing is standardized to a greater extent, all training sessions for observers should begin with a discussion of the political context for the election they are observing.<sup>35</sup> An in-depth, country-specific analysis of socio-political developments will not only sensitize observers to the electoral context, it will also help them predict what electoral problems may occur. This, in turn, will allow observers to focus on the larger issues at hand.

Slaughter Burley argues that Franck and Fox have a normative agenda to establish the right to democratic governance in international law. As such, Franck and Fox are using international law as a means of building a public order rather than just restraining state behaviour. For Franck, the ultimate value which will be served through this endeavour is 'fairness to persons'.

Is the Canadian Government using the practice of election observation in order to serve

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<sup>35</sup> Ideally, Canada should send observers who already have a good understanding of a country's political development as well as language capability. It can be problematic however, to send former nationals who may have biases about the preferred outcome of an electoral process.

this same agenda? The case study reveals that the Canadian government views election observation as one type of electoral assistance which can be used effectively to promote democratic elections abroad. The end goal of this and other democratic development initiatives is the realization of values - "respect for human dignity, justice, equity, participation and accountability" (Canada 1995b, 3).

Despite its shortcomings, CANOMSA was an effective means of validating a government which will better promote democratic values than did the previous regime. However, by sending observers to the South African election, the Canadian government did more than promote democracy in one country; it also implicitly encouraged the development of the democratic entitlement as a norm of the international system. Given its high profile and its symbolic importance as a transition to democracy, the case of the South African election may have served this goal better than other elections elsewhere.

Although the Canadian government is outspoken in its support for democratic values and democratic transitions abroad, it is not explicit about its support for the emerging norm whereby 'only democracy validates governance'. In practice, however, the Canadian Government is promoting this norm through its many election observation missions; it is using the activity of election observation to legitimize governments that undergo democratic transitions. It is important to note, however, that the Canadian government is promoting this norm while maintaining full diplomatic relations with non-democratic regimes such as Saudi Arabia, and in the case of communist China, is developing an ever strengthened trading relationship as well.

Assuming that the promotion of the democratic entitlement as a global norm is a laudable objective of Canadian foreign policy, how can this goal be better served? Canada should be

more explicit in its support for this norm. It could do this by acting on some of Franck's suggestions for increasing the entitlement's coherence -- coherence being the weakest element in Franck's opinion.

Firstly, the Canadian government should work to ensure that all of the UN's election monitoring missions are justified on the basis that democratic elections are part of a larger human rights framework, not just a part of the UN's peace agenda.<sup>36</sup> Secondly, at the UN and in other regional fora, Canada should promote "the clear-cut supremacy of the entitlement" over the right to non-intervention (Franck 1992, 78). As a leading practitioner of election observation, Canada is well-placed to reassure others that election observation will not be used "to reimpose a form of neocolonialism under the banner of establishing democracy" (Franck 1992, 82). To reinforce this message, Canada must ensure that any future obligation to be monitored is accompanied by what Franck refers to as "a commensurate right to non-intervention by states acting unilaterally" (Franck 1992, 91).

In order to strengthen the final element of coherence -- the need to treat like cases alike -- Franck proposes that older democracies volunteer to be monitored. Canada should welcome international election observers to monitor Canadian electoral processes, such as a future referendum in Quebec. Surely, the possibility of redefining Canada's borders and the creation of a new country are matters of 'international importance'. Furthermore, the presence of international electoral observers during the 1995 referendum may have reduced instances of alleged electoral fraud.

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<sup>36</sup> In the case of South Africa, the lack of voting rights was viewed as one of many human rights denied under the apartheid system.

The author does not endorse the proposal of Franck and Fox to link the criteria of democratic elections to representation in international organisations and access to international resources. She sees merit, however, in stiffening the penalties for those countries where democratic regimes are overthrown. Morton Halperin, a member of the United States National Security Council, suggests that "action could take the form of suspension of regional memberships, flight bans, prohibition of travel by illegal rulers into the democratic world, and the seizure of assets owned by the regime and its leaders" (Beigbeder 1994, 25). If Canada were to pursue actions such as these in a systematic fashion, it would be important to make a distinction between countries where democracy has been overthrown and countries where democracy has never been the norm.<sup>37</sup> Participants at the IDEA workshop agreed:

The view was put forward that if the international community had certified a free and fair election, and that elections had been thwarted by a coup, then sanctions were legitimate. If a society had not yet attained any democratic standard, then there was no justification for the international community to intervene with force. But if a people had opted for democracy, and that act had been internationally certified, the international community had a right and duty to become involved (IDEA 1996, 29).

Are there dangers involved if the Canadian government is more explicit about promoting the democratic entitlement as a norm of international law? Canada and other members of the international community need to be careful about the nature of the democracy they are promoting through election observing and other forms of election assistance. The assumption is implicitly made that a Western-style democratic electoral process is normative for developing or newly independent countries. Clearly, this is not always the case. For example, 'the winner takes all'

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<sup>37</sup> The Canadian government has made this distinction with regards to Nigeria; when justifying the application of sanctions against Nigeria in June 1996, the Canadian government referenced the annulment of the 1993 election results as well as on-going human rights abuses.

approach whereby the party that garners the majority of votes is given complete political power may be totally inappropriate in the African context where parties are often divided along ethnic lines. In this regard, the South African model of a government of national reconciliation appears to be useful and could be replicated elsewhere.

While promoting the democratic entitlement, Canada must continue to engage others in the debate between the right to free and fair elections and the right to non-intervention. This is especially important because of the debate's North-South dimension. In this regard, "some critics have labeled international election monitoring as an unwanted interference into the internal affairs of poor and weak developing countries, an interference from which rich and powerful states are protected" (Beigbeder 1994, 15). For example, in defending his decision to maintain government control over his country's electoral commission, President Lissouba of Congo argues that "there is nothing African, nothing from us, in the values of this imported democracy...We need a long transition to democracy, as long as possible so that we may assimilate and adapt it" (French 1996, 3[A]). Although Lissouba's critics argue that this is only an excuse "for perpetuating his grip on power" (French 1996, 3[A]), Canada will have to continue to be vigilante in countering the argument that the North is using election observation to impose its democratic standards on the South.

It will also be important for the Canadian government to continue emphasizing that holding democratic elections is no guarantee that democratic values will prevail. It is very possible "to have elections without sustainable democracy" (IDEA 1996, 2). This was the case in the Gambia where citizens identified several decades of democratic rule with corrupt leadership. Given this reality, observers must always emphasize that the election process is only

one step in the path towards democracy. There is also no guarantee that 'living democracies' will continue as evidenced by "the hollowing out of formally democratic institutions" in Zimbabwe (Southern Africa Report 1995, 2). Likewise, recent elections in 'democratic' Zambia were judged 'not free and fair' by observers from the Commonwealth Secretariat.

If the Canadian Government really believes that democratic elections are only one element of a democracy, then it should work to build greater continuity between the practice of election observation and other democratic development initiatives. To this end, observers should be encouraged to comment on the degree to which democratic development is being achieved in a certain country. A former Canadian election observer, Senator Al Graham, has advocated such a view, stating that:

The assessment of free and fair elections is then only part of the task of observer missions. More importantly, perhaps, observers must measure the nature and extent of progress towards democratic development. That includes ascertaining degrees of political repression, evaluating the plurality of political parties, assessing the inequities of the playing field, distinguishing between pre-meditated fraud and chaos due to institutional weakness, and sizing up the political will of the authorities in question to move towards democratic practices instead of simply going through the motions (Canada 1993, 3299).

After an election is over, the Canadian government should facilitate a process whereby observers reflect on their electoral experiences in order to identify those elements of the broader democratic development framework which require priority attention. Perhaps a more critical report by Canadian observers, one that details the problems encountered, could be read not as an attempt to de-legitimize an election result, but as a guidepost for what problems still remain.

If, as has been suggested, elections are a good measurement of the strength of a country's democratic development, the South African election reveals that the country has a long way to

go. Clearly, the right to free and fair elections was not 'institutionalized' in South Africa by the time of the election. The weaknesses of the electoral system serves as a reflection of larger problems which still need to be tackled; for example, the difficulties encountered in distributing electoral supplies underscores the need for a transportation system which serves all South Africans equally.

In this regard, it will be important for Canadians to be actively engaged in the work of building democratic institutions in South Africa and elsewhere; it would be unfair for the Canadian government to promote elections and then not help in supporting and strengthening the institutions and human resources needed to sustain the democratic gains made during the election process. To quote Lee Kuan Yew, the Senior Minister for the government of Singapore, "the real objective is good government" (Yew 1993, 36).

In promoting the norm that 'only democracy validates governance', Canada and the international community also need to be watchful that non-democratic regimes do not use elections to their advantage in order to gain approval and funding from the international community without implementing legitimate reforms. This appears to be the case in countries such as Chad where a military leader recently succeeded in winning an election by "barring major opponents from running, muzzling critics ... and maintaining tight state control over the administration of the election" (French 1996, 3[A]). According to Stern, "if elections clearly have more to do with appearance than substance, we may do more to contribute to popular participation by supporting projects in areas such as civic education that will lay the foundation of a democratic society" (Stern 1996, 10). Although international observers can be sent to an election to prove the country is not democratizing, this option has been criticized "on the grounds

that to officially monitor would be to acknowledge the government, and even give status to the exercise by treating its claims seriously" (IDEA 1996, 36).

The international community's inability to enforce the results of the elections it observes poses a final danger. This may cause cynicism among voters and, worse, create tremendous instability. In Angola, rebel leader Jonas Savimbi resumed the civil war after the election results proved unfavourable to him. Likewise, the winner of the 1993 Presidential elections in Nigeria was jailed and replaced by a military leader. These examples emphasize the need to ensure 'the ground' is prepared for all of the political actors involved to accept the election results. In South Africa, a pre-election agreement provided for a government of national unity to be composed of all the major political parties. The failure to make similar provisions for Angola has been identified as one of the major reasons for a return to civil war there (Anglin 1995, 37).

What are the implications if the international community succeeds in establishing the democratic entitlement as a global norm which is validated by international standards and processes such as election observation? Canadian foreign policy makers believe that the triumph of democratic values abroad will ensure the viability of these same values at home, and will result in a more just world which is free of war.

Along with securing democratic values at home and building greater global security, Canadian foreign policy makers believe that a commonality of values abroad will make it easier for Canada to manage its international relations with others. Again, a note of caution needs to be injected here. If Canada is to actively promote the democratic entitlement, it too could contribute to a hardening of what Slaughter Burley refers to as 'the new fault line' in international relations between liberal and non-liberal states. Although this 'line' may ease Canada's relations with

other liberal states, it could actually make our relations with non-liberal states more difficult. For example, a firm line between liberal and non-liberal states may make it difficult for us to acknowledge those states which are further along on 'the democratic continuum' and even harder for us to reward them for progressing towards democracy. Canada may also discover that newly elected members of 'the club' of liberal states do not always prioritize so-called liberal values in their foreign policy. This appears to be the case in 'the new South Africa' where a commitment to solidarity with African states, including non-liberal African states, often trumps other 'more liberal' considerations in determining their foreign policy.<sup>38</sup>

Despite the risks, the author believes that the goal of promoting democracy as a global entitlement is a laudable one which should be explicitly promoted by the Canadian government through foreign policy tools such as election observation. It is our best option for ensuring that the values of human dignity and fairness to all people are realized.

This chapter set out to explore what the case study tells us about the relationship between the practice of international election observation and the promotion of democratically elected regimes. The analysis shows that in the South African example, validation of the election process by the international community played an important role in ensuring that the right to free and fair elections was respected. With regard to the 'legitimacy' of the practice of election observation, the criteria of coherence, adherence and determinacy are all evident in varying degrees in the South African example. However, the experiences of CANOMSA do not confirm

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<sup>38</sup> A good example of this is South Africa's foreign policy towards Nigeria. Immediately after the execution of Nigerian human rights activist Ken Saro-Wiwa in November 1995, President Mandela called for sweeping measures against the Nigerian regime including an oil embargo. However, soon after Mandela discovered that he was isolated in this position from the majority of African leaders, the South African line on Nigeria softened considerably.

Fox' argument that election observation is a standardized activity. Instead, it revealed that the process of election observing has yet to evolve from the ad hoc to the norm. The second part of this analysis undertook the task of assessing the extent to which the Canadian government is promoting the normative agenda that 'only democracy validates governance'. It was argued that although the Canadian government uses election observation to promote democratic values and democratic transitions abroad, it does not explicitly support this agenda. Ways in which this agenda could be explicitly supported by the Canadian government and the dangers inherent in doing so have been suggested. Finally, some of the possible consequences that may emerge if the international community succeeds in establishing the right to democratic governance as an international norm have been explored.

## CHAPTER 4: CONCLUSION

This thesis has explored the role of international election observation in democracy building. In the changing world order, where the old ideological borders are being reconfigured, the right to free and fair elections is seen as one step towards realizing democratic values. The international community has used its ability to confer legitimacy upon national governments as a means of ensuring that this right is respected; to this end, it is establishing national standards for elections and promoting the practice of international election observation. Although election observation contributes to democracy building on a case to case basis, it can also be used as a means of promoting a global entitlement to democracy.

The case study of Canada's Observation Mission to the 1994 South African election suggests that there is an emerging right to democratic governance which is validated by the international community. The Canadian government used its Observation Mission to South Africa to support that country's democratic transition. It believed that democratic values would be better served in South Africa by a regime that was democratically elected. The Canadian government believes the promotion of democratic values abroad will not only secure the viability of these values at home, it will also promote greater global security and improve Canada's ability to manage its relations with other members of the international community. Implicitly, CANOMSA also served to build the norm that 'only democracy validates governance'. However, the experiences of CANOMSA suggest that the practice of election observation is not yet standardized and much can be done to improve its effectiveness.

What is the future of election observing? In the short term, international election

observers will continue to have an important role to play. Many countries have yet to undergo democratic transitions and countries which have already done so may “slip back to dictatorship and internal conflict” (IDEA 1996, 16). However, democratic gains are being made as evidenced by recent events in Belgrade where a coalition of Serb opposition parties protested in the streets until the results of the municipal elections were honoured by the government (Freeman 1997, 11[A]). In the not too distant future, it is foreseeable that election observation could be transformed into what has been referred to as ‘democracy observation’. The IDEA workshop concluded that “the challenge is to build upon such [election observing] experience and move one step forward: towards periodical observation also in the periods between elections. There is a need for observing the transition to and the consolidation of democracy, using the methods and the experience achieved in the observation of elections” (IDEA 1996, 16).

To this end, it is important that one view the work of international election observation on the middle of a continuum between activities such as peacekeeping and democracy observing, or what is increasingly referred to as ‘peacebuilding’.<sup>39</sup> The reason why Canada engages in all of the activities on this continuum is the same; the belief that the international community has the moral authority to act because it has a profound stake in building an international order that promotes human security and furthers human dignity. Or as Franck describes it, the fairness of the electoral exercise and the subsequent legitimacy of the regime are ultimately about fairness to people.

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<sup>39</sup> Under the auspice of Foreign Affairs Minister Lloyd Axworthy, the Canadian government recently created a peacebuilding fund to support conflict resolution initiatives and the strengthening of democratic institutions as a preventative action, as well as in post conflict situations.

In any event, there remains an urgent need to develop a stronger theoretical framework for election observation as practiced by Canada and others. A stronger framework would not only clarify the Canadian government's agenda for election observation, it would also enable individual observers to view their work in a broader theoretical context. This requires a closer dialogue between theorists and practitioners, those studying democracy and those promoting it through activities such as election observation.

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