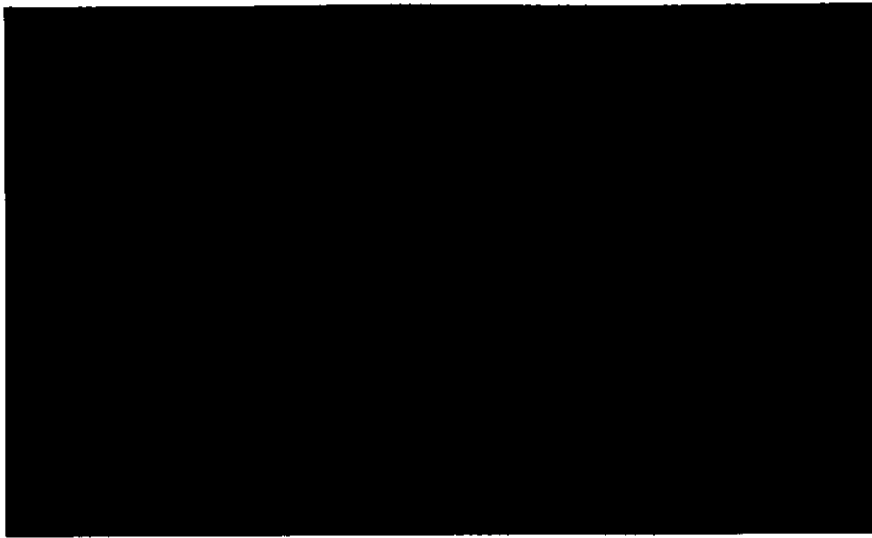


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Romania

Technical Assistance to the Central Election Bureau

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*International Foundation for Election Systems
Technical Assistance Project
Romanian Central Election Bureau
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List of Acronyms

CEB	Central Election Bureau
BEJ	District (<i>Judet</i>) Election Bureau
CENTRAS	Assistance Center for Nongovernmental Organizations
CDR	Romanian Democratic Convention (main opposition coalition of political parties)
IFES	International Foundation for Election Systems
LADO	League for the Defense of Human Rights (an NGO)
NGO	nongovernmental organization
PDA	ProDemocracy Association (an NGO)
PDSR	Party for Social Democracy in Romania
STC	State Technical Commission
USAID	U.S. Agency for International Development

Executive Summary

The Romanian national elections which occurred November 3 were conducted in a markedly improved atmosphere. Most observers characterized the elections as transparent and relatively fair, although many irregularities were reported. The administrative confusion noted in the past persisted but to a lesser extent. There were numerous reports of fraudulent activities but thus far no evidence of a widespread or systematic campaign of fraud has been detected.

For approximately one month, the International Foundation for Election Systems (IFES) provided technical assistance to the Romanian Central Election Bureau (CEB) through IFES consultant Daniel Finn who worked together with IFES local staff. The presence of Finn helped ease tensions in the CEB, a temporary body composed of seven judges and 16 party representatives, and helped it surmount several particularly difficult problems.

The main contribution made by the IFES team was in developing a sophisticated computer lottery system to accredit domestic observers whose names had been put forward by various nongovernmental organizations (NGOs). The principal Romanian NGOs had invested a considerable amount of time and effort to recruit thousands of potential observers and distribute them widely throughout the country.

The lottery became necessary when several bogus NGOs appeared in the weeks prior to the election and sought accreditation for thousands of observers. Under the 1992 Romanian law which governed these elections, only one domestic observer may be accredited to each polling station. In the event of multiple applicants, the assignment is made by lots.

At the request of the CEB President Ionescu, IFES developed a multi-stage lottery system that provided for an initial, random selection of observers from the names submitted by the various NGOs; a reassignment process by which unsuccessful nominees were awarded secondary assignments; and a third round in which surplus observers, if any, could be accredited as alternates.

The IFES proposal was accepted by the CEB and IFES was required to provide further support, including computer equipment and programming services, in order to conduct the lottery. In a highly public proceeding, over 13,000 domestic observers were assigned to a total of over 15,000 polling stations nationwide.

The presence of such a large amount of domestic observers, as well as the greater openness of the recent elections in other respects (i.e. debates in the CEB and press

reporting) played an important role in minimizing the potential for fraud and enhancing public confidence in the electoral process.

The success of the IFES technical assistance program to the CEB illustrates the importance of external assistance in the ongoing democratic transition of Romania.

With the elections recently concluded, IFES believes there is an important opportunity to advance electoral administration through supporting the creation of a permanent electoral body.

Since the elections have resulted in a considerable change of power, the present is also an appropriate time to consider support for democratic institution-building in other areas, including parliament, civil society and the judiciary.

The IFES consultant particularly wishes to express his sincere appreciation to Judge Costica Ionescu, President of the CEB, and other members of the CEB and its staff, for the extremely cordial treatment that was extended to him personally and the high level of professional confidence that was placed in his work. The consultant believes as a result of his contact with the CEB that the President and members did an outstanding job of attempting to create the conditions for transparent elections despite formidable legal, political and administrative obstacles.

I. Introduction

A. Scope of Project

In October 1996, the U.S. Agency for International Development (USAID) requested that IFES undertake a program of technical assistance to the Romanian Central Election Bureau. The CEB had recently been formed to supervise the conduct of national presidential and parliamentary elections on November 3. Daniel Finn, an IFES consultant, was duly recruited by IFES to provide legal and other related assistance to the CEB and spent October 11 - November 9 in Bucharest serving in this capacity.

Under his contract with IFES, the consultant was required to conduct the following primary activities:

Contractor will serve as technical advisor to the Central Election Bureau (CEB) for approximately one (1) month in Bucharest as the key technical advisor on election issues ranging from the administration of the ... election law ... and polling place procedures, underscoring the importance of election official training and selection of poll workers, administration of lower-level election commissions, responsiveness to mass media and international observations, general development concepts related to voter education and information, and other duties to be specified and determined based on immediate needs of the CEB and its leadership.¹

At the instigation of the USAID Democracy Officer in Bucharest, the relationship under which legal assistance would be provided to the CEB was formalized in a memorandum of understanding (MOU) between the CEB and IFES (see annexes).

B. Previous IFES Assistance

The International Foundation for Electoral Systems (IFES) first became involved in the electoral process in Romania in May, 1990, when it sent a team to observe the first multi-party elections held in over forty years. Despite an atmosphere of intimidation and violence, it was generally accepted by the international community that the conduct of those elections was the first stage in Romania's transition to democracy. However, the elections were considered administratively chaotic as there were no guidelines for voters, no written instructions or training of poll workers.

¹ Contract by and between the International Foundation for Election Systems, Inc. And Daniel Finn, October 9, 1996.

The February 1992 local elections showed little administrative improvement. The administration of the elections was left to the local commissions, some using their initiative others not, leading to inconsistencies. Again, there was no training or guidance provided to electors or officials.

In March, 1992, IFES sent a two-person team to undertake a comprehensive assessment of the election process in Romania and the ability and willingness of the Government to conduct parliamentary elections, which would be deemed to be free, fair and open by established international standards. Two experienced election consultants, Marta Maria Villaveces and Charles Lasham produced a report, *IFES Technical Election Assessment Project - Romania, March 1-9 1992*. This report made certain recommendations for the improvement of the administration of elections in Romania.

Ms. Villaveces remained in Romania until the September 27, 1992 parliamentary and presidential elections and, in the intervening period, worked closely with the Central Electoral Commission on matters relating to the administration of the elections and with NGOs and Government Ministries on civic education issues. She worked on the production of a poll worker guide and a voter education guide which were used in the September election. Ms. Villaveces also undertook training sessions for election officials in various parts of the country, which then cascaded to the members of the local election commissions.

It was noted that while technical problems still remained at the September 1992 elections, observers found that there was an "increased transparency in the organisation and administration of election day procedures". The IFES report, *IFES Technical Assistance Project - Romania, March 10 - September 1992*, made numerous recommendations (most of these were contained in the Lasham/Villaveces report referred to earlier).

In September 1995, IFES election consultants Paul DeGregorio and Charles Lasham traveled to Romania and met with a wide-range of people and organizations in five major cities to determine if progress had been made to improve the electoral process and if adequate preparations had begun for the upcoming 1996 elections.

The DeGregorio/Lasham team found that many of the recommendations contained in earlier IFES reports had not been implemented by the Romanian government. A principal example is the failure to establish a permanent electoral body to govern the elections. Likewise, there continued to be a need for a comprehensive voter education effort which was lacking.

A positive development, however, occurred with the greater involvement of the

NGO community, such as ProDemocracy, who worked to encourage greater participation in the political process.

In preparation for the November 3 1996 presidential and parliamentary elections, IFES technical advisor, Daniel Finn, was sent to Romania to serve in this capacity for the Romanian Central Election Bureau. Finn departed for Romania on October 10 and remained until November 9, after the completion of the first round of elections.

C. Background

(1) Country Background

Since the revolution of 1989, a myriad of political parties, both national and regional in scope, as well as various political alliances have developed in Romania. The country has been ruled by leaders belonging to what is now known as the Party of Social Democracy (PDSR). President Ion Iliescu was popularly elected in 1990 with 85% of the vote and re-elected in 1992 with 62% of the ballots cast. The Parliament, consisting of a House of Deputies and a Senate, has been dominated by Iliescu's party, which has formed a coalition with several extremist and nationalist parties of Romania, such as the Party of Romanian National Unity (PRNU), the Greater Romanian Party (GRP) and the former Romanian Communist Party (today's PSM).

The opposition consists of several parties and alliances, such as the Democratic Convention of Romania (CDR), whose strongest member is the National Peasant Christian Democratic Party (NPP-CD); the Hungarian Democratic Union of Romania (HDUR); and others. While they do not control the Chamber of Deputies nor the Senate, the Democratic Party (PD) did have relative success in the 1992 local elections by electing mayors and members of local councils, particularly in large cities.

(2) The Romanian Election Process

Under the 1992 laws under which the Romanian national elections were held on November 3, the highest electoral authority is a temporary Central Election Bureau (CEB), which is composed of seven judges from the Supreme Court, chosen by lottery, and sixteen representatives of the major participating parties. The chairman of the CEB is chosen from among the judges, also theoretically by lottery. In this case, however, Judge Costica Ionescu was selected by the judicial members through acclamation. The CEB was formed approximately two months prior to election day, when the elections were announced and the campaign period began.

The actual administration of the elections, in terms of logistical and other operational support, is provided by an organization formed by the government for this purpose again on a temporary basis. This organization, which is composed of officials on

assignment from various government agencies, is called the State Technical Commission (STC).

In addition to the CEB, electoral bureaus are formed for each district, or *Judet*, of which there are 41, plus the municipality of Bucharest, comprising 42 electoral districts in all. Like the CEB, the "BEJ's" are composed of judges (from regional tribunals) and party representatives.

The lowest level of election administration is, of course, the polling station committees, consisting of a chairman and vice chairman, and a number of party representatives. The chairman and vice chairman should be magistrates or other persons of good character. Any party that has nominated candidates for parliamentary seats in the relevant *Judet* is also entitled to place a member on the committee. There were 15,117 polling stations operating on election day.

Under the law, the polling stations open at 6:00 a.m. on election day and must remain open until 9:00 p.m. Their hours may be extended to midnight and, in fact, most stations remain open until that time. Counting of ballots and related procedures (such as reconciliation of the number of ballots supplied and used as well as voiding excess ballots) occur at the polling station after it closes.

After the count is completed, the polling station chairman is required to deliver the minutes (including tally sheets) and other materials (including used and unused ballots and supplies) to the BEJ in his district. Under the law, this must occur within 24 hours after closing of the polls, but in fact most chairmen try to dispense of this duty as quickly as possible.

At the BEJ, it is good practice for members of the Bureau to examine the tally sheets in order to see that the numbers are reconciled, including the number of ballots used and the votes cast for the various candidates. If these figures do not correspond, the bureau may interview the station chairman in order to determine the reason and instruct him to make the necessary corrections. The BEJ may also implement other safeguards, such as conducting an examination in the event the number of voided ballots exceeds a certain threshold.

Located at each BEJ is a technical team from the STC. The team reads the numbers off the tally sheets from each polling station and enters them into a database format. These entries are then double-checked against the numbers on the original tally sheet. Once this has been done, the BEJ Chairman, who has a special password, authorizes entry of data into the computers.

The 42 BEJ's are linked to the CEB by telephone lines, over which the computers may communicate by modem; an encryption protocol is applied. Every so often (every 2-

3 hours) the computers are put on-line to transmit results to the CEB, enabling it to compile partial results as they come in.

While impeded somewhat by the logistics of recovering tally sheets from the polling stations, these operations in fact resulted in the first returns being published by the CEB early Monday morning (the day after the election). Further results were published every few hours.

Final results awaited receipt of tallies from polling stations overseas (embassies and consulates), which took a few days. The assignment of legislative mandates were further delayed by the need to await determination of which parties fail to achieve the national threshold (3%) for representation. Validation of the election results occurred once the CEB responded to the various challenges that were filed.

At stake in the recent elections were the presidency and all seats in the Senate and House of Deputies, both of which were controlled by the ruling Party of Social Democracy for Romania (PDSR) under President Ion Iliescu. The presidency is decided on a direct vote basis nationwide; if a single candidate fails to win 50% of the votes, the top two contenders compete in a second round two weeks later.

For the houses of Parliament, representation is decided on a proportional basis. The various parties (as well as independent candidates) put forward lists of candidates in each district, and the outcome is tallied separately for each. Excess votes that are received in a district, but which are insufficient to gain another seat in that district, are applied by the CEB in such a way as to give the party additional seats in districts in which such seats are available and where the party has scored the highest number of such votes.

The number of legislative mandates assigned to each district is based roughly on population. The total number of seats in the House is currently 328 and in the Senate 143.²

(3) Past Experience and Pre-Election Conditions

Romanian elections unfortunately have a reputation for administrative confusion and sometimes more serious complications. During these elections, there were widespread suspicions circulating in the press and elsewhere that the ruling party was planning a systematic campaign of fraud at the polling station level. While various

² See Memorandum to the Honorable Costica Ionescu, President, Central Election Bureau, from Daniel Finn, Consultant, IFES, "Allocation of Legislative Mandates among Constituencies under Romanian Law on Elections to Parliament", 17 October 1996, *op. cit.*

methods were mentioned, some of the suspicions (based on previous experience) included multiple voting by groups of persons organized for this purpose, invalidation of ballots cast in favor of the opposition (especially through adding a second stamp), and ballot stuffing. These suspicions were enhanced by reports that the district prefects were appointing persons associated with the PDSR as polling station chairmen.

In fact, problematic conditions did exist. The national voter list, portions of which are supplied to the polling stations nearest the residence of voters as listed on their national identity cards, contains substantial defects. The total number of eligible voters, as determined by the CEB based on the list, is about seventeen and a quarter million. Some observers believe, however, that there may be a total discrepancy as large as two million. Discrepancies occur due to the failure to update and correct the list based on the results of the biennial national census and interim records maintained by the police and other local authorities. In particular, the police fail to deliver computerized data to election authorities.

As a result of the problems with the voters list, eligible persons have been permitted, during these elections, to vote anywhere - not only at the special polling stations traditionally operated at railway stations and other such places, as is traditional in Romania, but even at regular polling stations, other than those where they would normally be expected to vote. Similarly, voters, who should (according to their address) have voted at certain polling stations, were allowed to obtain ballots even if their names were not on the list there. In either case, the voter's name was simply added to the "special list" (also containing other personal information, including signature and national identity number) compiled at the station.

A further problem arose with the issuance of so-called voter cards. The 1992 law provided for issuance of these documents, but relatively few were actually issued by the authorities. As a result, the CEB instructed that voters be required to present their national ID cards in order to obtain ballots. After doing so, their IDs would be stamped "voted" for the current election. Voter confusion, however, might have lead certain officials to permit individuals to obtain ballots with voter cards. However, there is little evidence that this actually occurred.

Other problems that occurred in the past involved the supply and quality of ballot papers as well as other materials, including the stamps that are used for voting and ink pads.

II. Assistance to the Central Election Bureau (CEB)

A. Initial Inquiries

Operating under these terms of reference (TOR), the consultant was introduced to Judge Costica Ionescu, the President of the CEB, on October 16 and the relationship under which legal assistance would be provided was quickly established.³ In fact, Judge Ionescu provided the IFES technical advisor with his first assignment at their initial meeting.

The matter raised by Judge Ionescu on this occasion concerned the allocation of parliamentary mandates (seats in the House of Deputies and the Senate) as a result of the upcoming elections, being held under the provisions of the 1992 law on national elections (to the Parliament and Presidency). It seems that the law establishes a certain ratio of legislative representatives to population *per* constituency and specifies rules for achieving the applicable ratio. The law also, however, contained a detailed annex giving a precise number of seats for each constituency.

The CEB had previously considered this issue and decided that the number of mandates should be reduced to reflect the formulas contained in the law. The matter continued to provoke further discussions within the Bureau, however, and was also the basis of several appeals for reconsideration.

In order to respond in a timely manner, conclusions were delivered on October 17. The conclusion, documented in a separate memorandum⁴ (see annexes) was that the CEB not only was authorized to reduce the number of mandates in accordance with the formulas in the law, but was actually legally required to do so as a matter of statutory interpretation. In reaching this conclusion, IFES relied mainly on general legal principles of statutory interpretation and a detailed analysis of the provisions of the law. (The conclusion has since been strengthened by the discovery of Article 59[3] of the Constitution of Romania [1991], which also appears to support this conclusion.)

B. Issues Concerning Domestic Observers

The primary activity undertaken in connection with the legal assistance project concerned accreditation of domestic observers to polling stations for the elections. This

³ Memorandum by Daniel Finn, IFES Consultant, "Recent Developments at the Romanian Central Election Bureau," 24 October 1996, 11pp. The first part of this relationship, covering the period October 16-24 is chronicled in this memorandum, included in the accompanying annexes.

⁴ Memorandum to the Honorable Costica Ionescu, President, Central Election Bureau, from Daniel Finn, Consultant, IFES, "Allocation of Legislative Mandates among Constituencies under Romanian Law on Elections to Parliament", 17 October 1996, 5 pp., accompanied by Romanian translation.

issue appeared early in the period of the assistance mission as no effective process for the allocation of legitimate domestic observers had been developed. It resulted in a considerable investment of time and effort by the IFES advisor, local IFES staff and local consultants. It also attracted considerable press and public attention and continued to present difficulties right up to election day. IFES faced several issues and impediments, as described below, in the implementation of a domestic observer program.

(1) Appearance of the Phantoms

During the few days in Bucharest prior to meeting Judge Ionescu and visiting the CEB, with the assistance of the staff of the local IFES office, a schedule of briefings by persons knowledgeable about the elections process, particularly in the NGO community was undertaken. The very day (October 14) that IFES began to meet with NGOs, including the ProDemocracy Association (PDA) and the League for the Defense of Human Rights (LADO), there was a development at the CEB that threatened to politicize and even unravel the entire domestic observer situation.

That day, the CEB was informed that several other organizations had been registered with the Justice Ministry and would, therefore, have the right to have their representatives participate as observers in the elections. One of these organizations had existed, on paper, since 1992; the others were registered only shortly before the onset of the campaign period (during which registrations would not be accepted for observer purposes). In fact, a similar situation arose prior to the last national elections, in 1992, when so-called "phantom" organizations applied to field observers. To some degree, it seems that legitimate observers were displaced by the "phantoms", few if any of whom actually made an appearance on election day.

Soon after this development, intense public interest, fanned by media reports, focused on the issue. The impression was created that the government or ruling party had (re)activated the "phantom" NGOs in order to disrupt the plans of legitimate NGOs to field domestic observers, and possibly to displace *bona fide* domestic observers from polling stations where the ruling party was planning to conduct fraudulent activities.

The IFES advisor has described information concerning the rise of the phantoms in a more detailed memorandum,⁵ which is contained in the annexes.

(2) Development of the Observer Lottery System

On October 17, Judge Ionescu referred the matter of domestic observers to IFES.

⁵ Memorandum from Daniel Finn, Consultant, IFES, "Initial Meetings with NGO Representatives on Domestic Monitoring of the Upcoming Romanian Elections", 16 October, 1996, 3 pp.

He reported that a total of eight NGOs had approached the CEB for accreditation of their proposed observers, a total of perhaps 20,000 nominees. Provisions of the 1992 Election Law (which were made applicable to this election by government decree) limit domestic observers to one *per* station, with a "lottery" used for selection in case more than one apply.

By the next day, based on consultations with IFES local staff, IFES was able to develop a concept for a lottery system and also write it in memorandum form.⁶ In addition to being able to be performed on a computational basis, the IFES proposal was also designed to achieve other stated objectives:

- Nominees from the various groups should first be considered for accreditation at the polling stations for which they volunteered to serve as observers;
- To achieve maximum coverage, volunteers who were not selected for their original choice should still have the opportunity to be reassigned to another available polling station;
- Observers should ordinarily serve at a polling station that is convenient to them (usually their original choice or one that is nearby);
- Individuals who fail to be chosen as observers due to a surplus should have the ability to serve (as alternates) in the event the original assignee fails to appear for duty; and
- Individual observers should be able to remain throughout the election process, in order to observe all aspects, and should not be required to alternate with another observer except by mutual agreement.

Based on these considerations, IFES developed, in the following manner, a computerized program that was able to randomly select which nominees put forward by the various NGOs would be accredited as observers at particular polling stations:

1. For each polling station, a nominee would be randomly selected from among those put forward for that station; (The original proposal included a weighted process according to a preset factor to be accorded to each organization or group of organizations, but this element was eliminated by the CEB.)

⁶ Memorandum to the Honorable Costica Ionescu, President, CEB, from Daniel Finn, Consultant, IFES, "Proposed System for Accrediting Domestic Observers to Polling Stations", 18 October 1996, 5 pp., accompanied by Romanian translation.

2. The names of nominees who failed to be selected during the first round would then be reallocated to other polling stations in the same constituency (*Judet*) that continued to be available, again on the basis of random competition. In order to ensure that nominees may serve at stations which were geographically proximate to their original request, reassignments were to be performed based on the closest available polling station to their original choice. The reallocation process would be continued through successive rounds as many times as was necessary to assign all nominees.
3. In the event some nominees remained after all polling stations in a constituency were filled, they would be assigned on a random basis as alternate observers. (IFES also suggested that the assigned observers would have to show up at the polling station on the eve of election day at 6:00 p.m. in order to claim their accreditation, or be replaced by the alternate if one was present.)

This proposal was submitted to Judge Ionescu, pursuant to his request, on Monday, October 21.

When IFES staff arrived at CEB headquarters at midday October 22, we discovered that the CEB had already adopted the IFES proposal virtually *in toto*, with the single exception that the lottery operation would be conducted on a purely random and not weighted basis. (This is a small distinction in practice, since the reassignment process, undertaken in successive rounds, would correct any tendency for the system to permit less serious NGO's from being overrepresented in final assignments. It also appears to conform better to the law, which requires a "lottery", as well as theoretical principles which indicate that certain NGO's should not obtain a preferred position.)

Further details were worked out with a group of NGO representatives (from LADO, PDA and a regional organization), under Judge Ionescu's supervision. A detailed timeline was agreed upon for submission of data (on diskette) by the NGOs, leading to the actual lottery scheduled for October 26. With respect to the alternates question, it was decided that the only constraint on assignment of an alternate would be that the individual in question come from the other "group" of NGOs, i.e. if the original nominee was from LADO or PDA, the alternate would come from another organization, and *vice versa*.

(3) Implementation of the Domestic Observer Lottery

After acceptance of the IFES concept by the CEB, IFES local staff and consultants worked hard to implement it by designing and carrying out the necessary computer operations. This effort took literally hundreds of hours of effort by a team of local specialists. It was greatly complicated by defects (some accidental and others probably deliberate) in the data supplied by the various NGOs, particularly the phantoms. As a result, a series of data "filters" had to be run and other operations applied.

In addition to retaining the computer specialists, IFES supported this activity through policy direction by the IFES technical advisor and overall administration by IFES Office Manager Viorel Micescu. IFES also purchased a computer for this purpose; prior to being returned to the IFES office, this machine was used by the CEB to create an elections home page on the Internet, and for other electronic communications purposes.

The IFES lottery actually occurred on 28 October, in a highly-publicized event staged by the CEB at the national press center. Judge Ionescu made an opening statement that described the lottery and acknowledged IFES (including the IFES expert's) assistance. In describing the third stage (accreditation of alternate observers), he mentioned that observers (both original and alternate) would be expected to show up at the polling stations at 6:00 p.m. election eve in order to confirm their accreditation.

There were expected to be as many as 16,000 polling stations nationwide, including at precincts, special sites and overseas. By the time of the lottery, the various NGOs submitted 14,269 names of nominee observers. The first two stages of the lottery (initial selection and subsequent reallocation) assigned 13,462 observers in all. In constituencies (*Judet*) in which there were surplus observers, these could be further assigned as alternates.

The lottery worked more smoothly than even the programmers had expected, probably due to the fact that the computers were not networked and were simply applying the programs. As a result, the allocation of all the observer places was completed in slightly over one hour.

More detail concerning this phase of the lottery concept and other developments at the CEB during the period from October 25 to election day eve (November 2) is contained in a separate memorandum,⁷ included in the annexes. To recognize their hard work and achievement in designing and implementing the computerized lottery system, the IFES consultant drafted a letter of appreciation from IFES (see annexes).

(4) PDSR Challenge to NGO Observers

At the press conference and shortly thereafter, however, it emerged that the ruling PDSR had filed a sweeping complaint against the LADO and PDA observer programs. At a hearing the next morning, 29 October, the CEB heard from the PDSR, mainly through its campaign manager. The PDSR representatives played tape recordings of telephone interviews with LADO and PDA observers; they said that their representatives

⁷ Memorandum from Daniel Finn, Consultant, IFES, "Further Developments at the Romanian Central Election Bureau", 2 November 1996, 11 pp.

had called approximately 500 people out of the lists submitted by LADO and PDA. The PDSR also pointed out that some of the very lists of observers submitted to the CEB by PDA had identifying marks from the regional offices of political parties, especially the Peasants' Party (the main component of the opposition coalition CDR).

Throughout this whole performance, however, it was obvious that the PDSR representative was backtracking. Starting with sensationalistic testimony, including the telephone tapes, he ended up with gentle talk and withdrawing most of the complaint that his party had filed. He even finally suggested that he would be satisfied if the CEB simply removed 57 names from those submitted by LADO and PDA (primarily the former).

After conducting its hearing for most of the morning, the CEB retired into executive session to consider what action to take. The result was mild. Some 41 names (31 from LADO and 10 from PDA) were struck from the observer list. (Of course, these individuals if suitably requalified could have been reassigned prior to election day.)

(5) CEB Impediments to the NGO Observation Process

There was a surprising development on October 31 with respect to the domestic observer issue. Without warning, a debate reportedly arose in the CEB concerning whether domestic observers would be permitted to attend the counting process at polling stations. Reports from party representatives and others attending the meetings indicated that it was likely that the CEB would vote to exclude them during this phase of polling station operations.

The same day, the representative of the Organization for Security and Cooperation in Europe's Office for Democratic Initiatives and Human Rights (OSCE/ODIHR) was informed by fax (in response to an inquiry by him) that only international, and not domestic observers would be permitted to attend activities at the *Judet* Election Bureaus (BEJ).

Considerable activity resulted from these reports both domestically and internationally. The major NGOs (LADO and PDA) went public for support. Word reached the Helsinki Commission of the U.S. House of Representatives, and Congressmen Frank Wolf, Steny Hoyer and Christopher Smith sent a letter expressing their concern.

In response to a request from USAID Democracy Officer Roberto Figueredo, IFES wrote a memorandum on relevant provisions of the election law, which concluded that there was nothing in the law which excluded domestic observers either from the counting phase at the polling stations or tabulation at the BEJs, and that on the contrary

the law appeared to contemplate their presence there.⁸ (See annexes.) The purpose of this memo was to ensure that the legal case was in order in the event officials of the U.S. Embassy wished to take up this matter as a policy concern. (In addition, in the event the situation was not resolved, IFES drafted a letter that would disassociate IFES from this action and state its concern - see annexes.)

By the next day, November 1, however, the mood at the CEB had changed, presumably due to the pressure put upon it by public and international reaction. Though no order was apparently issued, the CEB decided not to issue a ruling that domestic observers could not be present during the counting phase of polling station operations. In addition, the CEB clarified its previous communication concerning observer presence at the BEJs. The CEB announced that domestic observers could attend meetings of the BEJs, but not be present at "technical operations" -- meaning, presumably, the receipt of polling station records and materials and entry of voting data into the computers.

Some members of the CEB, including Judge Ionescu, have indicated that there never was actual consideration of excluding the domestic observers from the counting process. It is expected that Judge Ionescu will be sending a letter to the PDA to this effect.

(6) Remaining Issues Affecting the Domestic Observer Program

Despite the above outcome, there was still reason for concern regarding the operation of the domestic observer program on election day. Despite attempts to raise this issue, IFES was not able to ensure that the CEB sufficiently clarified and effectively communicated its decision concerning the accreditation of primary and alternate observers at the polling stations.

In fact, IFES is not aware if any detailed ruling or effective communication ever went out on this point. There was, therefore, considerable reason to fear that there would be confusion, considerable misunderstanding and wasted effort. In the worst case, observers could fail to be accredited at a substantial number of polling stations.

However, nearly all observers who were qualified for accreditation through the IFES lottery and who showed up at polling stations either election day eve or on election day itself apparently were accredited without undue difficulty. There were, however, scattered reports of observers being questioned about their credentials or excluded from the counting process.

⁸ Memorandum from Daniel Finn, IFES Consultant, "Reported Decisions of the Romanian Central Election Bureau concerning the Role of Domestic Observers" (Halloween 1996), 3 pp.

Also, some with the major NGOs are now realizing that the reassignment process (as was generally understood beforehand) was less than perfect in selecting a nearby polling station. Some observers were undoubtedly deterred by the inconvenience of going to their secondary assignment, either as primary or alternate observers.

C. Other Legal Assistance

In addition to legal advice on the legislative mandates issue and legal, policy and operational support on the domestic observer issue, Judge Ionescu made a number of other requests for legal assistance:

(1) Broadcasting of Polling Data

On October 17, Judge Ionescu inquired as to how various countries, including the United States, control the broadcasting of polling data during the electoral period - especially of exit polling data while polls are still open. IFES responded that in the U.S. the practice varies from state to state, with some states actually prohibiting such practices. Everywhere, including at the federal level, there is an effort to obtain voluntary compliance by the press with a rule prohibiting the broadcasting of such information on election day, prior to the closing of the polls. Further information on this subject was sought from IFES/Washington in order to provide further detail.

Judge Ionescu also wondered whether the broadcasting of polling data during the period during which campaigning is prohibited under the Romanian Election Law (2 days) could constitute a violation of that prohibition, especially with respect to the broadcasting of exit polling data prior to the close of the polls. IFES agreed with him that the broadcasting of such information was somewhat different from normal news stories, which do not require control since the viewer (listener) is able to evaluate them independently (whereas polling data is passed off as "scientific").

Based on information received from IFES/Washington, the IFES technical advisor was able to supply a memorandum on this subject on 28 October.⁹ (See annexes.) The conclusions were as follows:

A small but increasing number of countries and other jurisdictions (such as U.S. states) have moved to limit or prohibit the broadcasting of polling data close to the time of elections, especially broadcasting of exit polling results on election day prior to the close of the polls. In many other places, voluntary compliance by the press has been sought on this issue.

⁹ Memorandum to Hon. Costica Ionescu, President, CEB, from Daniel Finn, Consultant, IFES, "Regulation of Press Reports on Polling Data during the Immediate Election Period", 28 October 1996, 4 pp.

Press reporting of polling data during the immediate election period is not usually viewed as a form of campaign activity, although such a charge might apply in the event the individuals or organization conducting the poll and reporting its results were found to have the intent to assist a political campaign or were actually cooperating with a political campaign.

Both the CEB and the Romanian National Audiovisual Council (CNA) took action to control broadcasting of polling data. The CEB issued a communique indicating that broadcasting of exit poll data on election day would be prohibited; the CNA also moved to limit coverage of the actual election process beyond reporting official communiques. Based on our observations on election day, the press throughout the day regularly reported the CEB's periodic communiques on the percentage of voters going to the polls, as well as news stories about election happenings including reported irregularities. At about midnight, after all polling stations would normally be closed, the press began to report exit polls.

(2) Examining Candidate Nomination Petitions

On October 24, Judge Ionescu inquired as to what liabilities should apply to independent candidates whose nomination petitions were found to contain defective signatures. (Some contained over 100,000 signatures in all.) He wondered about the comparative practice in the U.S. and other countries.

The problem for Romanian election administrators in this respect is made more difficult by the fact that there is only a 30-day period for submission of nomination petitions (this year, between September and October 4). Challenges had to be filed within ten days after that, i.e., by October 13. Candidates are required to submit a statement containing an affirmation of the signature list. As a non-permanent body on a tight schedule, the CEB would find it difficult to investigate and dispose of issues arising from this issue. Separate criminal investigations, on the other hand, would not be completed in time to take corrective action prior to the elections.

The situation could be greatly improved by the establishment of a permanent election commission. The CEB could hold proceedings prior to the election in situations which warranted them, or could take action later, i.e., prior to certifying the results. Such steps are common in the U.S. and most such matters are not turned over for criminal investigation.

IFES argued that the affirmation of the candidate could not really be taken literally, so as to create liability for minor defects in the list. If a candidate were shown not to have exercised "reasonable diligence" with respect to his organization's efforts to compile the list, however, civil action could be taken by electoral authorities, either before or after the election. Evidence of conspiracy or other serious infractions, on the

other hand, could be referred to the prosecutors.

Thereafter, considerable research material was received from IFES/Washington which addressed these issues. It seems that different jurisdictions approach this problem in very different ways. Some electoral authorities actually conduct full-scale, name-by-name signature checks; others do random checking; in a few, checking is only done upon demand (complaint). Aside from these choices, the key issue actually seems to be whether the jurisdiction in question has a voter registration requirement, and is therefore in a position to check names and signatures in a relatively expeditious way.

It would not appear productive to continue pursuing this point in the context of Judge Ionescu's original inquiry. It is really a matter for further investigation in connection with the establishment of more permanent electoral administration functions in Romania. This subject is therefore addressed in the recommendations section at the end of this report.

D. Other Forms of Assistance

In addition to the mainly legal assistance described in the previous sections, the project also included some other forms of assistance, largely undertaken by local IFES staff and consultants. The most significant, of course, was computer programming support to the domestic observer lottery, as previously described.

A related form of assistance was undertaken following the request of the PDSR representative on the CEB and with the approval of Judge Ionescu. This was to provide the facilities (computer with appropriate configuration and telephone lines) to support an Internet homepage for the CEB and provide direct computer linkage between the CEB and the government press center.

As part of this activity, the same computer that was acquired to run the observer lottery was made available to the CEB for an additional period in order to perform the specified Internet and communication functions. Some sensitivities were created among the CEB membership by the involvement of the PDSR representative, and the fact that the computer established a direct data link into the CEB (but not, of course, to the CEB's own computers which were performing electoral tabulations) and also contained in its memory the databases in which the results of the observer lottery were entered.

As a result, the computer was moved into Judge Ionescu's office, where an operator could, if desired, enter current data *via* diskette onto the homepage that had been created for this purpose. In the meantime, the Romanian government undertook its own effort to put background and current information about the elections on the existing national homepage.

III. Consultations with USAID and the U.S. Embassy

During his stay in Romania, the IFES advisor met with U.S. Ambassador Alfred Moses, Political Counsellor Bob Whitehead and other members of the U.S. Embassy political section; twice with USAID Mission Director Peter Lopera; and several times with USAID Democracy Officer Roberto Figueredo. IFES regularly provided information and written materials to the latter, including virtually all the documents contained in the annexes to this report.

IFES has also endeavored, at the encouragement of USAID and the U.S. Embassy, to provide suggestions for potential U.S. government action to ensure the success of the recent elections and address continuing problems. Among the suggestions that IFES made for possible action, either on a short-term basis or over the longer term, to improve the electoral process included the following:

- Recommendation that the CEB be urged to issue a directive that official tally sheets be posted outside polling stations at the conclusion of the count;
- Recommendation that the CEB be urged to call for the establishment of a permanent electoral authority, and the U.S. government commit itself to providing technical assistance in this respect; and
- Intervention at the appropriate point(s) to ensure the efficacy of the domestic observer program, which was maintained in great part due to a USAID project (the current project).

The CEB responded positively to the first recommendation by actually issuing a directive to post tally sheets outside polling stations. Likewise, the domestic observer program was successful once the initial impediments and challenges to it were resolved.

On November 5, Mr. Figueredo requested a preliminary assessment and observation report on the elections, addressing both the election process and emerging results, and including also initial recommendations on future programming (see annexes).¹⁰

¹⁰ Memorandum from Daniel Finn, Consultant, IFES, "Comments on Romanian National Elections", 5 November 1996, 13 pp.

IV. Election Observation and Assessment

A. Observations During the Election Period

Conditions on election day appeared to represent a marked improvement over past experience. Of course, at this point, the reports of the various international observer delegations have not all been filed.

It would appear that there were adequate ballots available for the polling stations. When additional supplies of voting materials were required, the BEJ was usually able to provide them.

Defects in the voters list available at polling stations did not unduly impede voting due to the special list procedure. There was little evidence that individuals were being permitted to vote on special lists without proper identification (or by presenting only a voter card).

There were some reports of insufficient supplies of other materials, including stamps and ink, at polling stations. But, the situation appears to have been markedly better than that reported in the past.

Notwithstanding the general normalcy of events on election day, numerous irregularities were reported. Some reported irregularities were as follows:

- There were numerous defects in the printing of ballot papers. Some ballots omitted pages (containing the names and lists of various parties) and others omitted symbols of some parties and independent candidates. Electoral authorities tried to respond by making extra supplies of properly printed ballot papers available to the polling stations. Some of the defects that could not be completely addressed through these means will, however, require the CEB to consider related complaints and how to remedy them.

Some presidential ballots in Bucharest and surrounding areas had a stray printing mark, in the form of the numeral "1" in the "000's" column, after the first name, that of President Iliescu. Local officials generally responded to this by entering a "0" or "X" in this box to ensure that the mark was not read as a "1". (Anyway, entering this figure would have been detected by the computer program used at the BEJ tabulation centers since it would have created a conflict in the ballot reconciliation subroutine for the individual tallies.)

- Some ballots were reportedly stolen and it is not known whether they were somehow entered into the count. In one case, in Ilfov district, the perpetrator was apparently a polling station chairman; he is being sought by the police.

- There were reports on election day of organized groups of people, mainly military units, driving around in buses apparently in search of polling stations. In one polling station, a military unit was denied voting privileges and told to go to a special military station.
- A large number of "special list" voters materialized at many polling stations, often as many as 150 at polling stations that were generally equipped for 800-1,000 regular voters. In addition to creating supply problems, this created an impression that at least the conditions for significant fraud existed.
- Polling stations were generally tranquil and well-managed. There were some, however, where the chairman was overbearing or the atmosphere was influenced by an inexplicably high level of activity or the presence of persons who were not authorized to remain there.
- Some training had been received, through the BEJ, by many polling station chairmen. Recent directives, such as the order of the CEB that tally sheets should be posted outside the stations after the count, were not known to many chairmen. In addition, other important directives, such as on the accreditation of domestic observers, were only communicated through the mass media.

B. Party Representatives and Domestic Observers

For these elections, the political parties apparently did a much better job than in the past of mobilizing their members to serve on polling station committees throughout the country. While our own observations were limited to Bucharest and districts within a two hour drive, every polling station we visited was fully staffed -- having the full complement of nine (chairman, vice chairman and seven party representatives).

Another improvement with respect to these elections was the widespread presence of domestic observers. This was achieved mainly through the efforts of contributing organizations - particularly the two leading human rights organizations, the League for the Defense of Human Rights (LADO) and the ProDemocracy Association (PDA). Nearly all the polling stations we visited in Bucharest and surrounding districts either had a domestic observer present at the time, or at some point during the day.

C. Commentary

Many observers as well as participants, relatively pleased with the recent election process, feel that these elections have gone far toward dissipating the atmosphere of suspicion that has infected Romanian politics and, in particular, elections. Knowledgeable persons recognize, however, continuing serious problems in electoral administration,

primarily with defects in the voters list and the need to apply the special list voting procedure so broadly. For this reason, an increasing number of people in Romania are calling for the creation of a permanent electoral body. In addition to providing a better voter registration process, a regular electoral authority could provide better administration, training of election officials, and also conduct civic education programs.

Another precedent that has, I believe, been firmly established as a result of these elections lies in the principle of domestic observation. The involvement of IFES played a major role in "saving the day" for domestic observers. It will be very hard in the future for any Romanian government to further limit the presence of domestic observers at polling stations and other aspects of election operations. The widespread presence of domestic observers has presumably greatly increased public confidence in the administration of the elections and the integrity of their outcome.

Indeed, the next government should consider relaxing the rules on domestic observers, to permit observers to be mobile and be accredited to more than a single polling station. (It is a good practice for observers, if available in sufficient numbers, to remain at polling stations throughout the day. It is also important, however, to have a mobile capability in order to observe additional stations or conduct spot checks or responses to reported irregularities.)

It is difficult to say whether there was in fact an organized campaign of fraud being planned at some stage prior to the elections, as indicated by various press and other reports. In any event, the numerous irregularities observed in many places on election day did not appear to amount to a coherent or highly-organized effort. On the other hand, these irregularities do indicate the extent of technical deficiencies in the election process. Perhaps, certain political groups were assuming that the "usual" level of fraudulent activities would be sufficient to ensure their victory. During these elections, however, the circumstances may have changed sufficiently to prevent this result. Among other factors, one could point to improvements in electoral administration, the widespread presence of various party representatives and domestic observers at the polling stations, and a freer environment for the press (particularly for the independent media).

The period prior to the formation of a new government, and immediately thereafter, will be extremely challenging. It is not commonly realized that the Romanian political system, as established in the 1991 Constitution, is mainly a parliamentary or perhaps limited presidential one. The specific powers of the Presidency are limited if somewhat vague. The government, on the other hand, is clearly formed in Parliament, subject to the President's designation of the Prime Minister and approval of the Cabinet. This transitional period and the one thereafter will test and give meaning to the structure created in the Constitution which appears to provide a very effective basis for a fully democratic structure if its provisions are respected.

V. Recommendations

Based on the above observations and comments, IFES concludes that *international support to the development of democratic institutions in Romania should continue* despite the progress that the country is making toward fairer elections and a more open governmental system. In fact, in view of the results of the recent elections, it seems that *the time is right for a further investment in the process of democratic transition in Romania.*

This recommendation appears justified considering the experience of the elections just concluded, the national parliamentary elections and the first round of the presidential race. There will be considerable opportunity for the international community to assist Romanian leaders and the public in realizing the democratic ambitions and objectives enshrined in the Constitution.

The success of the current project - IFES technical assistance to the CEB - demonstrates that international involvement can play a productive role in reducing the political tensions in Romania by suggesting institutional means to facilitate the transition to a more democratic political system.

In this context, it should be possible for international assistance to play an important role in helping Romanians address their political differences in a constructive manner. In particular, support for the development of particular democratic institutions could be helpful in this regard. The following detailed recommendations correspond to this overall conclusion:

A. Election Administration: Establishment of a Permanent Electoral Authority

While the recent elections were free and relatively fair, there were numerous shortcomings and irregularities, many of which were serious. Regardless of the extent to which these difficulties affected the final outcome, it is clear that the continuation of this situation, reflected to an even greater degree in previous Romanian elections (in 1990, 1992 and the 1996 local elections),¹¹ can only reduce public confidence in the integrity of the electoral process and impede a successful democratic transition in other areas.

¹¹ Previous IFES consultants have addressed these issues in a series of useful reports. *See, e.g.,* C. Lasham & P. DeGregorio, "IFES Pre-Election Technical Assessment, Romania, September 8-28, 1995" (limited distribution); IFES, "Technical Election Assistance Project, Romania, March 1-9, 1992"; IFES, "Romania: A Dream Deferred; The 1990 Elections and Prospects for Future Democracy", June 1990. To purchase these publications, please contact IFES by fax at (202)452-0804 or by e-mail at pubs@ifes.org

Many observers, including international experts and domestic leaders and groups, have called for the establishment of a permanent electoral authority to address the severe administrative problems that have affected Romanian elections since the former communist regime was toppled. In the past, there was resistance to this step since it was widely assumed that any state organization would inevitably be co-opted. Partly as a result of the recent election process, these suspicions have dissipated and support for the creation of a permanent body has grown markedly.

This development should be supported in two principal ways:

- The establishment of a permanent electoral authority; and
- Assistance in designing and implementing a permanent electoral body.

In order to carry out the second of these recommendations, it is necessary to consider both the potential *structure* and *functions* of a permanent electoral authority for Romania:

(1) Structure

At the outset, the basic structure of election administration under existing Romanian law should be reexamined. It was understandable, considering the previous atmosphere of suspicion (that may now be easing), for the electoral authority to be constituted of judges and political party representatives and to be separated from the government officials who actually performed related administrative functions. As mentioned above, this was due to the high level of mistrust that existed in relation to the government that any body conducting election administration would probably be suspect.

Now, however, it would appear desirable to create a permanent election administration so that election administration functions can become more independent and less directly reliant on direct support and involvement by other government agencies. The creation of an independent body would also encourage officials associated with it to form institutional loyalties and become more autonomous in their professional functions.

At the same time, there would appear to be a need to examine alternatives to the selection of judges as electoral officials. While judges are generally considered to be distinguished and impartial people, they generally know little about elections and also do not always appear to understand the need for communicating their orders as well as implementing them administratively. (Most judges presumably simply assume that their edicts will be followed, as they are usually in the law.)

At the outset, a comparative study should be undertaken of the structure of election administration elsewhere in the world, including in the region. This would enable the Romanian government to examine viable alternatives to the current approach.

It may well be that further study would result in the recommendation of a system not unlike that which is created in Romania during an election period i.e., one could imagine a binary system composed of an elections commission as well as an administrative organization that reports either to or through the commission, or works in consultation with the commission while reporting directly to some other branch of the government.¹²

Once an appropriate structure is identified, then further work should be done to expand on it with an appropriate set of responsibilities. These would include components often cited (*e.g.*, administration, registration, training and education), but being moved onto a more organized, continuous and professional level. A number of functions that could be assigned to a permanent electoral administration are identified below, along with some recommended areas for external assistance.

(2) Functions

The experience of the recent and previous Romanian elections has suggested a number of areas that need special attention. It is recommended that Romania address these areas through specific technical assistance projects.

(i) Voter List / Registration

At the very least, Romanian electoral authorities should have access to an adequate voter list based on current census and other updated records. The absence of such a list has required recourse to the "special list" (*i.e.*, unregistered voters) procedure during the recent elections. This procedure reduces public confidence in the integrity of the elections and creates actual opportunities for fraudulent practices on election day. During the recent elections, a high percentage, perhaps 20%, of voters at certain polling stations were entered onto the special list.

In the past, the official records available to Romanian electoral authorities were sufficiently accurate that voters could be required to vote in the correct and nearby polling station. Voters who wished to vote elsewhere on election day had to obtain written permission from their own precinct. In order to ensure that they were on the precinct voter list, eligible persons were expected to check at their precinct some time prior to election day. In this manner, defects in the voter list could be corrected.

Correcting problems with the voter list is, of course, primarily a local affair.

¹² (In the U.S., for example, some jurisdictions [states] have election commissions and also designate other parts of the government, such as the Office of the Lieutenant Governor or Secretary of State to perform routine electoral functions, such as voter registration.)

Related issues could, however, be addressed as part of a program of assistance supporting the establishment of a regular electoral authority.

A related issue is whether Romania should move toward a system of voter registration instead of simply relying on census and other official information about eligible voters. A registration system, while onerous to construct, nevertheless has advantages, including with respect to the examination of candidate nomination petitions.

(ii) Review of Nomination Petitions

The CEB, as a temporary body on a very restrictive schedule, has had special difficulty in reviewing candidate nomination petitions and responding to complaints about defects in them. Voter registration would assist electoral authorities by creating a database against which the names and signatures on petitions can be checked.

Even in the absence of a registration system, a permanent body would be better equipped to review nomination petitions since it would be better able to maintain the permanent voter list and even examine nomination petitions on an ongoing basis. Once the nature of the voter list and registration process, if any, has been determined, then there should be further consideration of how to use this information to review nomination petitions in a more efficient and effective way.

(iii) Training of Election Workers

While many polling station chairmen received training from district (BEJ) electoral authorities prior to the recent elections, there is still a need for more extensive training. In the absence of further instructional materials, training often consists only of familiarization with the overall election law. Prior to an election, a manual should be developed which addresses polling station level concerns in more detail and incorporates the latest information on legal and administrative changes. External advice could be helpful in developing the manual and related training materials.

(iv) Civic Education

The temporary electoral authorities that preside over Romanian elections do not have the time or resources to conduct effective civic education programs. To the extent that civic education occurs, it is either offered voluntarily by the media or arranged through political parties or NGOs. While these approaches are undoubtedly useful, it would also appear desirable to have a regular, government-sponsored program of civic education. The Department of Education, likewise, needs to expand the limited civic education provided in schools through more extensive programs. External input could be valuable in designing such programs and developing appropriate materials.

(v) Consultation with Civic Organizations

During the recent elections, the CEB did not feel able to distinguish, either in fact or under the existing election law, among NGOs with respect to the appropriateness of including them in the election process, especially through the participation of their members as domestic observers. While the law is defective on this point, the situation is also exacerbated by the temporary nature of election administration.

Currently, electoral authorities simply have no opportunity to consult with civic organizations on an ongoing basis and assess their characteristics in terms of their suitability for participation in the formal electoral process. Regular consultations between electoral authorities and civic organizations, including between elections, could also help raise public confidence in the election process.

A permanent electoral authority would have the ability to work with civic organizations on a continuous basis. Assistance could be useful in establishing the standards for NGOs who wish to engage in civic work related to elections and in helping electoral authorities communicate more effectively with the NGO community.

(vi) Accreditation of Domestic Observers

The requirements of the existing election law and the constrained timetable for election organization caused the accreditation of domestic observers to be delayed and nearly stymied. Even after these difficulties were surmounted (with the assistance of the lottery system proposed by IFES), accreditations were issued only a few days before the elections. It was difficult for the sponsoring NGOs to distribute credentials to the observers in this short amount of time.

In addition, the lateness of the accreditation procedure resulted in the issuance of poor quality credentials. The accreditation documents that were finally issued were merely printed on regular paper, four to a sheet, with the credential on the left side and a restatement of the rules regarding observer conduct on the right. Some observers had their accreditations challenged as a result of this.

In the future, domestic observer credentials should be printed in card form, on higher-quality stock, and should be in two colors so that the CEB seal and President's signature appear more authentic. In addition, polling station chairmen should receive, in advance, a communication indicating that an observer has been accredited to their station, and the name of the observer.

(vii) Consultation and Communication with Political Parties and Independent Candidates

The creation of a permanent electoral authority would also enable ongoing consultation and communication with political parties and independent candidates about the election process in general, and any new requirements that have been incorporated through legislation or regulation. Such consultations would help create an atmosphere of trust between these political organizations and electoral administrators.

(viii) Ballot Printing and Distribution

Some of the most dangerous administrative problems in the recent elections were caused by distribution of defective ballot papers. The distribution of defective ballots raises questions about the fairness of the election, may deprive voters of the opportunity to vote for the parties and candidates of their choice, and are extremely difficult to remedy in terms of subsequent action.

It is presumed that the problems that arose recently in this respect were the result of mistakes committed by organizations working under tight time pressures and perhaps without adequate supervision. A permanent electoral organization would undoubtedly do better on this point than the current decentralized system.

(ix) Logistical Support to Polling Stations

Polling station committees, and particularly their chairmen, bear the brunt of the pressures and difficulties inherent in the Romanian elections system. The opening hours of polling stations are very long, and the committees are expected to remain afterward as long as necessary to count and tally the vote. Thereafter, the chairman must deliver the tallies and voting materials to the BEJ for tabulation.

A permanent electoral administration could address these issues through improved logistics and transportation arrangements. One step that should certainly be considered is for centralized organization of secure transportation arrangements for voting materials after the conclusion of the count.

B. Other Democratic Institutions

As commented previously, the current moment of political transition in Romania presents both challenges and opportunities for the development of other, non-election related democratic institutions. Particular attention should be paid to the relationship between the branches of government, and how the different branches should undertake their responsibilities under the Constitution.

(1) Parliament

It would appear appropriate and timely to institute a program of technical assistance to Parliament in order to assist it in developing greater autonomy while avoiding unnecessary conflict with the other branches, especially the Presidency. In this respect, external advisor(s) could be assigned to assist Parliament improve its basic functions: Legislative authorization; appropriations; and oversight and investigation. Proper conduct of the latter functions will be particularly important in ensuring that political conflict does not impede an orderly democratic transition.

It also seems likely that the future Parliament will be called upon to re-examine the laws affecting civil society, including the operation of NGO's and the conduct of the press. The assistance program to Parliament should also include a specific component on substantive issues in this and other key areas of the democratization process.

(2) Constitutional and Other Courts

The Romanian Constitutional Court has been widely criticized for being insufficiently independent; other Romanian courts have also been subject to criticism on this basis and are also faced with formidable institutional (including administrative) problems. Consideration should be given to a technical assistance program in this area, with external advisors being called in for consultations and training programs for judges of the Constitutional and other courts, and also broader programs on the role of the judiciary in society.

(3) Civil Society

There are already many NGOs in Romania, but the distinction between political and civic functions is not complete. Some of the NGOs which were active in the elections process, especially PDA, demonstrated their maturity in this regard. It might therefore be a good time to focus on the development of civic-oriented NGO's, including nonprofit social service organizations.

In IFES' experience, Romanian NGOs demonstrated their growing civic maturity in another respect. Through their civic education campaign, NGOs have been able to produce a fundamental change in the perceptions of the administration. Whereas previously NGOs had been viewed as antagonistic or contradictory to government objectives, they, in fact, have demonstrated their complementary nature.

IFES' association with the Romanian NGO community, in coordination with the newly-created organization CENTRAS, allowed IFES to cooperate better with the CEB. Because CENTRAS had already established a familiarity and knowledge of the electoral process and several government institutions, this background proved useful to IFES. In

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this way, IFES was able to use CENTRAS experience as a resource in facilitating the technical assistance project to the Central Election Bureau.

IV. CONCLUSION

The AID-funded technical assistance project to the CEB that was conducted by IFES came relatively late in the intensive and *ad hoc* administrative process leading to the November 1996 Romanian national elections. As a result, assistance was largely limited to legal and procedural advice provided by the IFES consultant as well as related support (such as computer programming and equipment) provided by IFES staff in order to help carry out the above recommendations.

Despite the limited nature and short duration of these activities, they had remarkable success in influencing conditions on election day as well as the perceived legitimacy of the entire voting process. This was due to the CEB's adoption of the system for allocating domestic observers to the polling station proposed by IFES in response to difficulties created under applicable national laws. If the IFES proposal had not been made and accepted, there is little doubt that the widespread presence of legitimate domestic observers at polling stations would have been jeopardized.

The success of this intervention demonstrated that, in Romania, external advice and support to the democratization process, and election administration in particular, can play a valuable role in ameliorating the conflict among various interests and groups and setting the stage for the adoption of improved procedures. Despite being at the forefront of the political changes that swept Central and Eastern Europe commencing in 1989, Romania lagged behind for years in moving toward fully democratic institutions and away from continued domination by the former Communists. Perhaps, as a result, there still appears to be a strong desire for outside models and external assistance. Respect and appreciation for advice and support from the United States is particularly high.

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Romanian Central Election Bureau
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ANNEXES

(N.B. -- Some of the material in these annexes reflects
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IFES *International Foundation for Election Systems*

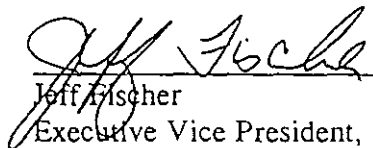
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MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE INTERNATIONAL FOUNDATION FOR ELECTION SYSTEMS
AND
THE CENTRAL ELECTION BUREAU


Taking into consideration the importance of the Parliamentary and Presidential Elections and previous collaboration between the CEB and IFES during the local and general elections held in 1992, CEB and IFES agree to cooperate on the following activity:

The IFES program will make available for the CEB a specialist in international electoral law and election management, who will carry on consultative activities for the CEB, as requested. The purpose of this activity is to improve CEB's technical capacity, by ensuring access to information regarding election management experience in Central and Eastern Europe. Also, IFES will ensure access to documentation in IFES Resource Center of Electoral Activities in Washington, D.C. IFES will fully compensate its Technical Advisor during the period of his stay in Bucharest. Neither the Romanian CEB, nor the Romanian Government, will be financially responsible for compensating Mr. Daniel Finn for services rendered during his short-term technical election service contract with IFES.

Acknowledging the above, the undersigned signed this agreement on October 16, 1996, in two copies. The agreement is effective the date of its signing.



Jeff Fischer
Executive Vice President, IFES



Central Election Bureau
President

10-22-96
Date

10-22-1996
Date

24 October 1996

MEMORANDUM

**FROM: Daniel Finn, Consultant
International Foundation for Election Systems***

**SUBJECT: Recent Developments at the Romanian
Central Election Bureau**

The following comments follow from working on a number of issues referred by the President of the Central Election Bureau (BEC), Judge Costica Ionescu, as well as related discussions with him and observations of other conditions at the BEC:

1. Initial Activities

My initial visit to the BEC occurred the afternoon of 16 October and was in company of the AID democracy officer in Romania, Roberto Figueredo. The purpose of the meeting was to introducing me and if possible actually commence our project of legal and related assistance to the BEC. Judge Ionescu greeted us warmly and we speedily got down to business. The meeting was also attended by the President's Secretary, Mihai Vasilei, who raised an issue concerning the need for signature of the memorandum of understanding (MOU) between IFES and the BEC that had been prepared previously.

At our initial meeting, Judge Ionescu stated that he was thankful to receive our assistance. Not only would my advice be valuable in itself, but the presence of an outside advisor would help to establish equilibrium in the BEC. This was thought to be needed since Romanian political culture is still characterized by such a high level of suspicion.

The initial substantive matter raised by Judge Ionescu concerned the allocation of parliamentary mandates (seats in the House of Deputies and the Senate) as a result of the upcoming elections, which are being held under the provisions of the 1992 law on national elections (to the Parliament and Presidency). It seems that the law establishes a certain ratio of legislative representatives to population *per constituency*, and specifies rules for achieving

* (IFES); the project under which this work was performed was funded by the U. S. Agency for International Development.

the applicable ratio. The Law also, however, contained a detailed annex giving a precise number of seats for each constituency.

Dispute arose concerning the application of these provisions, in view of the fact that certain constituencies have actually lost population in recent years. As a result, they would under the overall formulas established in the 1992 law stand to lose legislative representation; this situation would result in three constituencies: Cluj, Gorj and Satu Mare. On the other hand, as previously indicated, the three (similar to all the other constituencies) had an actual number of legislative mandates specified elsewhere in the law.

The BEC had previously considered this issue, and decided that the number of mandates should be reduced to reflect the formulas contained in the law. The matter was continuing to lead to further discussions within the Bureau, however, and was also the basis of several appeals for reconsideration.

In order to respond in a timely manner, and also to establish our credibility, I decided to turn this project around in a single day, and was able to deliver our conclusions on October 17. My conclusion, which is documented in a separate memorandum,¹ was that the BEC not only was authorized to reduce the number of mandates in accordance with the formulas in the law, but was actually legally required to do so as a matter of statutory interpretation. To reach this result, I relied mainly on general legal principles of statutory interpretation and a detailed analysis of the provisions of the law. (My conclusion has since been strengthened by discovery of Article 59[3] of the Constitution of Romania [1991], which also appears to support this conclusion.)

Judge Ionescu was pleased to receive this memorandum, which lent support to his earlier decision. In the event, all the members of the BEC who are judicial appointees (7) voted to reduce the number of mandates in question, while all the political party representatives (23), possibly save one, voted the other way; the party representatives therefore prevailed. Nevertheless, Judge Ionescu and his fellow jurists were said to have taken comfort in having an independent confirmation that the law was on their side. It is recognized, of course, that the BEC is a mixed commission in which political party representatives predominate.

Judge Ionescu subsequently informed us of another curious wrinkle in this matter. In one of the constituencies in question, Satu Mare, reduction of the number of mandates would have increased proportionally the number of mandates likely to be won by candidates representing the ethnic Hungarian

¹ Memorandum to the Honorable Costica Ionescu, President, Central Election Bureau, from Daniel Finn, Consultant, IFES, "Allocation of Legislative Mandates among Constituencies under Romanian Law on Elections to Parliament", 17 October 1996, 5 pp., accompanied by Romanian translation.

political association. In fact, the Hungarian bloc might even have won all the available mandates. All the non-Hungarian parties agreed that this would be an undesirable development; even the representative from the Hungarian association, the UMDR, is said to have recognized the potentially problematic nature of this result.

2. Accreditation of Domestic Observers

Prior to meeting Judge Ionescu and visiting the BEC, during the few days since my arrival in Bucharest on October 11, I had undertaken with the assistance of the staff of the local IFES office a schedule of briefings by persons knowledgeable about the elections process, particularly in the NGO community. The very day (October 14) that I began to meet with the NGO's -- including the Pro Democracy Association (PDA) and the League for the Defense of Human Rights (LADO) -- however, there was a development at the BEC that threatened to politicize and even unravel the entire domestic observer situation.

That day, the BEC was informed that several other organizations had been registered with the Justice Ministry and would therefore have the right to have their representatives participate as observers at the elections. One of these organizations had existed, on paper, since 1992; the others were registered only shortly before the onset of the campaign period (during which registrations would not be accepted for observer purposes). In fact, a similar situation arose prior to the last national elections, in 1992, when so-called "phantom" organizations applied to field observers. To some degree, it seems that legitimate observers were displaced by the "phantoms", few if any of whom actually made an appearance on election day.

This time around, the main NGO's (PDA and LADO) had already made considerable efforts to recruit observers; each organization had obtained the consent of several thousand people nationwide to serve in this capacity. The two organizations had also informed the BEC that they were cooperating in order to avoid overlap and duplication; the two were sharing responsibilities based on whether the number of a polling station was even or odd. The organizations were also trying to see to it that the distribution of their observers amounted to a representative cross-sample of stations nationwide. (While the organizations could not obtain total coverage, enabling them to make a parallel vote count nationwide, they could at least manage to observe a sufficient distribution of stations to give them the basis for complaint if nationally-reported voting trends did not reflect their own reports.)

Soon after this development, intense public interest, fanned by media reports, became focused on the issue. The impression was created that the government or ruling party had (re)activated the "phantom" NGO's in order to disrupt the plans of the legitimate NGO's to field domestic observers, and

possibly to displace *bona fide* domestic observers from polling stations where the ruling party was planning to conduct fraudulent activities. (There were also reports that the ruling PDSR was seeing to it that its own members or at least persons sympathetic to it were being selected as polling station chairmen, and that instructions how to commit election fraud at polling stations had gone out in certain parts of the country.)

Given the sensitivity of this issue -- not to mention IFES's well-known links to the NGO community in Romania -- I was a bit surprised when on October 17 Judge Ionescu referred the matter to us. He reported that a total of eight NGO's had approached the BEC for accreditation of their proposed observers, a total of perhaps 20,000 nominees. Provisions of the 1992 Election Law (which were made applicable to this election by government decree) limit domestic observers to one *per* station, with a "lottery" used for selection in case more than one apply.

Judge Ionescu mentioned that he was favorable toward the idea (somewhat distinct in nature) of permitting more than one observer take turns at a single polling station. This would be to enable them to fulfill their human needs during the lengthy voting and counting process.

While we had already given some thought to how a lottery could work, we did not at this point present a detailed concept. I did, however, mention that one thing that could be done with nominated observers who were displaced as a result of requests for observers filed by other organizations would be to allow the nominee to serve as an alternate observer at that or another polling station. (This idea was distinct from that of allowing observers to alternate their attendance at the polling stations during the course of the day.)

Despite his efforts, the NGO's which submitted requests to field observers would not agree on a voluntary allocation of spaces. Therefore, a lottery would be necessary, as provided for under the law. Such a procedure would be an immense undertaking, with perhaps 20,000 names to be assigned among some 15,200 polling sites. Should the lottery be based on drawing from a "single bowl" or "separate bowls" (figuratively speaking) for different polling stations; either way, the problem was enormous. Judge Ionescu asked for our help in designing the lottery system, presumably to be based on a computerized approach.

By the next day, based on consultations with IFES local staff (Viorel Micescu), I was able to develop a concept for a lottery system and also write it up in memorandum form.² In addition to being able to be performed on a

² Memorandum to the Honorable Costica Ionescu, President, BEC, from Daniel Finn, Consultant, IFES, "Proposed System for Accrediting Domestic Observers to Polling Stations", 18 October 1996, 5 pp., accompanied by Romanian translation.

computational basis, the IFES proposal was also designed to achieve other stated objectives:

Nominees from the various groups should first be considered for accreditation at the polling stations for which they volunteered to serve as observers;

To achieve maximum coverage, volunteers who were not selected for their original choice should still have the opportunity to be reassigned to another, available polling station;

Observers should ordinarily serve at a polling station that is convenient to them (usually their original choice or one that is nearby);

Individuals who fail to be chosen as observers due to a surplus should have the ability to serve (as alternates) in the event the original assignee fails to show up; and

Individual observers should be able to remain throughout the election process, in order to observe all aspects, and should not be required to alternate with another observer except by mutual agreement.

Based on these considerations, we proposed the following randomized system for selecting which nominees put forward by the various NGO's would be accredited as observers at particular polling stations:

1. For each polling station, randomly select a nominee from among those put forward for that station; (The original proposal included weighting the process according to a pre-set factor to be accorded to each organization or group of organizations, but this element was eliminated by the BEC.)
2. Take the names of nominees who failed to be selected during the first round and reallocate them to other polling stations in the same constituency (*Judet*) that continued to be available, again on the basis of random competition. In order to ensure that nominees may serve at stations which are geographically proximate to their original request, perform the reassignment based on the numerical distance between polling stations. (*i.e.*, reassign nominees to an available polling station as close in number as possible to their original choice.) Continue the reallocation process through successive rounds as many times as necessary to assign all nominees.
3. In the event some nominees remain after all polling stations in a constituency were taken, assign them on a random basis as alternate observers. (I also suggested that the original observers would have to

show up at the polling station election day eve at 6:00 p.m. in order to claim their accreditation, or be replaced by the alternate if one were present.)

We submitted this proposal to Judge Ionescu, pursuant to his request, on Monday, October 21. Prior to making our proposal, we (Viorel and I) had a discussion with Mihai Vasilei, who argued for a completely random system, with no weighting of the various organizations (and presumably no reallocation process). When Judge Ionescu, on the other hand, joined our discussion, he described a weighted system that would allocate the available places, perhaps on the basis of 35% for Pro Democracy, 35% LADO, and 5% each for the other groups.

Judge Ionescu said he had no grounds to exclude the other groups completely, since they were duly registered organizations (as required by the law) and there was no specific evidence that there were other grounds to exclude them. The BEC did, however, in response to complaints from Pro Democracy, delete the name of a single individual who was nominated by one of the "phantoms"; this person had appeared on TV and denied knowledge that her name had been submitted. The BEC also excluded the phantoms from one entire constituency (Satu Mare), based on a copy of a fax from the Prefect there to the ruling party (PDSR), telling them to "take care of the observer problem". (The BEC ruled that this showed that the phantoms in that constituency were not independent and apolitical as required by the law for participation as observers.) Without specific issues being raised against other organizations, Ionescu said he was not prepared to give "exclusive rights" to the well-known ones.

We then described our proposed system. When we got to the part about alternates, Judge Ionescu indicated that he had raised this idea in the BEC on Friday afternoon, and that it had already been approved! In fact, the media were also reporting this. In fact, the BEC had decided at that point that PDA and LADO would be given the right to send alternate observers if the phantoms failed to appear on election day. Judge Ionescu did not mention my involvement, but said he had received this idea from an outside source. The media, however, quickly discovered that there had been an international connection.

We then discussed the question of who would actually conduct a computerized lottery. Judge Ionescu informed us that, interestingly, the head of the State Statistical Institute did not want his organization to be involved. They would allow their computers to be used, if necessary, but did not want actually to conduct this politically sensitive work. The BEC was therefore interested in identifying another organization to do it.

We went around on this with Judge Ionescu and Mr. Vasilei. The upshot was that perhaps IFES could coordinate and perhaps actually implement whatever proposal was ultimately adopted. We would begin by identifying an appropriate consultant locally who had the necessary skills to design the computerized assignment process. IFES might also be able to provide equipment for this purpose.

We then had a lengthy and informal discussion of the role of NGO's in the democratic process, and with respect to election observation in particular. During this time, Judge Ionescu was also examining our proposal in greater detail. He asked that we keep it confidential, for now, and I readily agreed. I reassured him that I considered all my work for the BEC to be confidential, and that my work for the BEC required a careful distinction between IFES's different roles (as a provider of technical assistance and also in support to the NGO community). Ionescu said he would describe the concept of the lottery proposal to the BEC, and would also mention that IFES was involved in developing a plan so that people could contact us separately for further information or discussion.

When we arrived at BEC headquarters at midday on October 22, we discovered that the BEC had already adopted the IFES proposal *in toto*, with the exception that the lottery operation would be conducted on a purely random and not weighted basis. (This is a small distinction in practice, since the reassignment process, undertaken in successive rounds, would correct any tendency for the system to permit less serious NGO's from being overrepresented in final assignments. It also appears to conform better to the law, which requires a "lottery", as well as theoretical principles which indicate that certain NGO's should not obtain a preferred position.)

We then sat down with a group of NGO representatives (from LADO, PDA and a regional organization) to work out further details, under Judge Ionescu's supervision. We agreed on a detailed timeline for submission of data (on diskette) by the NGO's, leading to the actual lottery to be conducted on Saturday, October 26, at 11:00 a.m. With respect to the alternates question, we decided that the only constraint on assignment of an alternate would be that the individual in question come from the other "group" of NGO's. *I.e.*, if the original nominee was from LADO or PDA, the alternate would come from another organization, and *vice versa*.

At of this moment, IFES staff -- working with local consultants -- are developing the computerized lottery system for implementation on October 26. It would appear that a workable system will exist at that time. Subsequently, IFES will assist the BEC with equipment and supplies necessary for the next stage, which is to assign the specific names of observers for the various polling stations and issue accreditation documents. A card has been designed, bearing a scanned image of Judge Ionescu's signature and the BEC stamp as well a

paragraph, drawn from the election law, describing the role and responsibilities of observers. Each card will also contain the name of its recipient, his national identification number, the constituency and polling station number where he is assigned, and its location by municipality.

Meantime, Judge Ionescu has made a number of decisions on issues that have arisen during implementation, and as a result of the submissions by the NGO's to date. These decisions demonstrate that he is approaching the observer selection process in a principled and reasonable manner. Such decisions to date include:

Some organizations, LADO in particular, were experiencing difficulty in compiling the names of their proposed observers. Judge Ionescu told us that we could continue to accept names right up to the time of the actual lottery.

Other organizations, particularly some of the phantoms, submitted defective lists, including (a) the same names repeated over and over for different polling stations (which, if accepted, would ruin the lottery), (b) more than one name for particular polling stations, and (c) names not associated with any particular polling station. Judge Ionescu instructed us that in situation (a) we should accept such names only for the first polling stations for which they were proposed; in (b) we should enter only one name in the original lottery and enter the remainder in the reassignment process; and in (c) we should assign the names to any available polling station, either as original observers or alternates.

3. Broadcasting of Polling Data

On October 17, Judge Ionescu also referred to me the question of how various countries, including the United States, control the broadcasting of polling data during the electoral period -- especially of exit polling data on while polls are still open. I stated that in the U.S. the practice varies from state to state, with some states actually prohibiting such practices. Everywhere, including at the federal level, there is an effort to obtain voluntary compliance by the press with a rule prohibiting the broadcasting of such information on election day, prior to closing of the polls. I said that I would seek further information on this subject from IFES in Washington, and get back with further detail.

Judge Ionescu also wondered whether broadcasting of polling data during the period during which campaigning is prohibited under Romanian election law (2 days) could constitute a violation of that prohibition -- especially with respect to the broadcasting of exit polling data prior to the close of the polls. I agreed with him that the broadcasting of such information was somewhat different from normal news stories, which do not require control since the viewer (listener) is

able to evaluate them independently whereas polling data is passed off as "scientific".

I have now received some information from IFES/Washington and hope to obtain further information. I will be submitting a memorandum to Judge Ionescu on this subject in the very near future.

4. Voters Abroad

In our meeting on October 24, Judge Ionescu mentioned what the BEC was planning to do with respect to the possibility that Romanians in nearby countries could vote there (at polling stations set up in Romanian embassies and consulates, under the law) and again near their residences, if they returned home. They might be able to do this since while abroad they would use their passports to establish eligibility for voting, whereas within the country they would use their identity cards, which are stamped "voted" (with the date) afterwards. The BEC was about to issue a press release saying that citizens who exit Romania after October 26 would have to bring both passports and identity cards with them in order to vote. Still, many other people -- who left prior to this date -- would probably only have passports with them.

I responded that I understood and supported the BEC's action. I wondered, furthermore, if it wouldn't be desirable for the BEC -- which is entitled under the law to request the assistance of Romanian government agencies -- to ask the border police to take note of whether the passports of persons who return on election day contain the notation "voted" on that date, indicating that they had already voted abroad. The BEC could also announce this step. This would help create a deterrent to such action, as well as a basis for investigation in the event allegations were raised in this area. (A similar system could also be applied with respect to voters leaving the country on election day, but only if they were required to take their i.d. cards with them when leaving the country on that day.)

5. Candidate Petition Violations

During the same meeting, Judge Ionescu brought up the subject of what liabilities should apply to independent candidates whose nomination petitions turned out to contain defective signatures. (Some of the petitions contained over 100,000 signatures in all.) He wondered about the practice in the U.S. and other countries.

The problem for Romanian election administrators in this respect is made more difficult by the fact that there is only a 30-day period for submission of nomination petitions (this year, between September and October 4). Challenges had to be filed within ten days after that -- *i.e.*, by October 13.

Candidates are required to submit a statement containing an affirmation of the signature list. As an impermanent body on a tight timeline, the BEC would find it difficult to investigate and dispose of issues arising in this connection; separate, criminal investigations, on the other hand, would not be completed in time to take action prior to the elections.

I agreed that the situation could be greatly improved by the establishment of a permanent election commission. I said that the BEC could hold proceedings prior to the election in situations which warranted them, or could take action later -- e.g., prior to certifying the results. I said that such steps were common in the U.S., and that most such matters were not turned over for criminal investigation.

I argued that the affirmation of the candidate could not really be taken literally, as to create liability for minor defects in the list. If a candidate were shown not to have exercised "reasonable diligence" with respect to his organization's efforts to compile the list, however, civil action could be taken by electoral authorities, either before or after the election. Evidence of conspiracy or other serious infractions could be referred to the prosecutors.

Time permitting, I plan to do some further work on this issue. To respond more fully, however, I will first need to obtain some additional research support.

6. Other Issues

Two other issues have recently surfaced concerning the organization of the elections at the polling station level, and the potential for fraud at this level. There are press and other reports, especially from Bucharest, that the ruling PDSR is putting its members and supporters into polling station presidencies. Not only disturbing in itself, this practice would be a violation of Article 28(2) of the election law, which states that the president and vice president of a polling station bureau "shall, as a rule, be magistrates or jurists who do not belong to any party or political formation".

Another question is whether Judge Ionescu, similarly to Judge Paul Florea -- who served as BEC President during the 1992 national elections -- will order that official copies of the vote tallies be posted publicly at polling stations after completion of the count there. Judge Ionescu has indicated to us his willingness to do so, but to date we have not been informed that the BEC has ruled on this matter. In addition, there is a question of compliance: The election law does not contain this requirement, and in fact requires only two official copies of the results to be made, and transmitted by the polling station president. In addition, there was reportedly widespread noncompliance with Judge Florea's similar order in 1992.

I may have the opportunity to discuss these issues with Judge Ionescu in the future. At this time, I have judged it best not to seek information on politically charged topics.

Finally, there is considerable interest as to the extent of government or ruling party interest on Judge Ionescu and the BEC, either as a result of direct contacts or through the technical commission established to support its work. We are of course not in a position to observe this dimension directly. It would appear that Judge Ionescu is trying to maintain the autonomy of the BEC, and is constructively using our assistance, legal and otherwise, to do so. On the other hand, it may be significant that one of our meetings was attended by State Minister Mihai Unghean, who is thought to have close links to the ruling powers. (His presence could also be explained, however, by a desire simply to look us over and obtain some assurance that IFES was working in a truly technical capacity with respect to this project.)

17 October 1996

MEMORANDUM

**TO: The Honorable Costica Ionescu
President, Central Election Bureau
Republic of Romania**

**FROM: Daniel Finn, Consultant
International Foundation for Election Systems¹**

**SUBJECT: Allocation of Legislative Mandates among Constituencies
under Romanian Law on Elections to Parliament**

1. Question

Whether the Central Election Bureau is authorized to allocate legislative mandates among the various constituencies in accordance with the norms and methods contained in the current (1992) law or should instead follow the specific schedule attached to the law.

2. Conclusion

It is my conclusion that the Bureau is not only authorized to allocate legislative mandates in accordance with the norms and methods contained in the law, but is in fact legally required to do so as a matter of statutory interpretation.

3. Background

The Central Election Bureau is currently preparing to conduct the upcoming parliamentary elections in Romania based mainly on the existing Law on Election to the Chamber of Deputies and the Senate, Law No. 68/1992 ("the Law"). Article 3 of the Law provides for the allocation of legislative mandates to different regional constituencies with the objective of achieving the norms of one deputy to be elected *per* 70,000 residents and one senator *per* 160,000 residents. (See paragraphs [2]-[3] of the Article.)

A dispute has arisen, however, due to a conflict in applying paragraphs (4) - (6) of Article 3. Paragraph (4) states generally that the number of Deputies and Senators to be allocated for each constituency "shall be determined by relating the number of inhabitants of each constituency to the norms of representation" cited

¹(IFES); the project under which this work was undertaken was funded by the U.S. Agency for International Development.

above. Paragraph (5) states that "[t]he number of inhabitants taken into account" shall be that reflected in the applicable annual census. Despite these provisions, paragraph (6) states that "the number of Deputies and Senators which are to be elected in each constituency are those provided in Schedule No. 1" to the Law, which provides a specific number for each constituency and the overall numbers of Deputies and Senators to be elected nationwide.

Applying the formulas and methods contained in Article 3, pars. (4)-(5), would require the Bureau to determine the number of legislative mandates required both overall and *per* constituency to achieve the norms established in paragraphs (2)-(3). Following Schedule No. 1, in accordance with par. (6), would prevent the Bureau from reducing the number of mandates to be allocated to certain constituencies or increasing the total number of mandates to be awarded in each house of Parliament. Confronted with this problem, the Central Election Bureau decided to change the figures from those contained in the Schedule. This decision has led to considerable further discussion during proceedings of the Bureau, as well as formal appeals to the Bureau asking it to review and reverse its decision.

Several arguments can be made in support of the Bureau's previous decision to change the number of legislative mandates to be awarded through the upcoming elections:

First, the norms for representation contained in Article 3 (pars. [2]-[3]) can be most accurately achieved by following the methodology contained in paragraphs (4)-(5); applying the figures contained in the Schedule would cause deviations away from these norms.

Second, it can be argued that the detailed objectives and methods contained in all these paragraphs, which are an integral part of the Law, should take precedence over the Schedule, which is appended at the end. (This argument is weakened, however, by the observation that the Schedule is specifically mentioned in the Article itself, in paragraph [6] thereof, and furthermore that this paragraph states specifically that number of mandates to be allocated to the various constituencies "are as specified" in the Schedule.)

Additionally, and most interestingly, it can be argued that the figures in the Schedule were merely those applicable at the time of enactment of the Law in 1992, and the Parliament must have expected that it would revise the Schedule as necessary in the future in accordance with the principles contained in the other parts of Article 3.

Finally, it should be noted that a decision of the Bureau not to implement the other provisions of Article 3, and instead to rely on paragraph (6) and the Schedule, would no doubt result in complaints by other regions which were

prevented from increasing their legislative representation accordingly.

Several arguments can also be adduced on the other side, in support of continuing to apply the figures for legislative representation contained in the Schedule notwithstanding the above considerations:

First, it should be noted that Schedule No. 1 was adopted together with and as a part of the Law, and that paragraph (6) of Article 3 appears to require its application.

Second, it can be argued that it is not within the power of the Bureau to violate a clear provision of the Law. The job of the Bureau is to implement the Law, and if the Parliament wished to make such a change then it should do so itself.

4. Rationale

The Central Election Bureau has been established pursuant to Law No. 68/1992 and is responsible for conducting the parliamentary elections in accordance with the Law. In fact, Article 25, dealing with the powers and responsibilities of the Bureau, includes the following:

(a) ... it shall follow up the application of the legal provisions regarding the elections throughout the country's territory; it shall ensure their uniform interpretation[.]

In order to apply the law and determine the number of legislative mandates to be allocated to the various constituencies as a result of the upcoming election, the Board must decide what rules to apply. In the current circumstances, in which two relevant provisions are in conflict, the Board must therefore determine how to apply them in order to achieve the purposes of the Law.

It would of course be preferable for this issue of statutory interpretation to be addressed directly by the Parliament itself, through additional legislation. However, the Parliament has not so acted, despite ample opportunity to do so, and it is apparently unlikely to do so prior to the elections. In fact, the Parliament has refrained from taking action on a number of specific issues that have arisen under the Law, which dates from 1992. (Parliament did, however, change the law governing local elections in 1996, in time for those elections to be held under new legislation.)

In fact, the various provisions of Article 3 (including the reference to Schedule No. 1) are in conflict both in principle and in their application. The Board is therefore required to decide (subject to further action by the other branches of government, including the courts and legislature) how to interpret them in a way

which gives effect to their intended meaning and overall purpose.

While different legal systems vary somewhat on this point, the following rules of construction are often applied by official bodies (including the courts) which are empowered to apply and interpret statutes. These rules are furthermore usually applied in priority order:

1. Whenever possible, the clear meaning of statutory provisions should be adhered to.
2. When the meaning of statutory provisions is vague or inconsistent, either on their face or with respect to application, then the law should be read to minimize inconsistencies and give effect to its purposes.
3. Statutory provisions are to be read *in pari materia* -- *i.e.*, in such a way that they are each accorded specific meaning and independent effect.
4. Interpretations of statutes which result in certain provisions being considered redundant or superfluous are to be avoided.
5. Statutes should whenever possible be interpreted on their own terms. Only when statutory provisions cannot be reconciled should other sources be relied upon to interpret them. The most reliable external source of statutory interpretation is legislative history -- *i.e.*, contemporaneous parliamentary records concerning the drafting and consideration of the statute.

Applying these principles to this case favors the conclusion that the Central Election Bureau is both authorized and required to implement the other provisions of Article 3 and disregard paragraph (6) and the accompanying Schedule in determining the number of mandates to be assigned overall and to each constituency:

First, the clear meaning of the different statutory provisions in question cannot simply be applied directly, and the Board is therefore required to interpret them together. Second, the various provisions do actually contradict each other both on their face and in their application; they must therefore be read in a way which gives them effect and meaning consistent with the purposes of the statute. While there may be other purposes, the specific statutory purposes in question involve achieving the norms of legislative representation contained in paragraphs (2) and (3).

Third, following the figures for legislative representation contained in Schedule No. 1 -- seemingly as required by Article 3, paragraph (6) -- would deprive paragraphs (4)-(5) of their meaning and effect. It would also result in their being considered redundant or superfluous, or reduced to mere statements of fact or

purpose. In fact, however, it would appear that it is paragraph (6) which is properly intended to be a statement of fact, reflecting the specific population situation in 1992 when it was enacted. The specific language of that paragraph states that the figures for legislative representation "are as provided" (emphasis added) in the Schedule; it does not state that those figures "shall be" as provided therein. (On the contrary, both paragraphs (4) and (5) use the mandatory language "*shall*" [emphasis added] to describe the application of the allocation methods specified therein.)

Paragraph (6), however, was in fact superfluous even in 1992, at the time of its enactment. This is because the figures for legislative representation which it contains are simply those which would have resulted from applying the methods of allocation provided in paragraphs (4) and (5). Paragraph (6) should therefore not be relied upon to detract from application of the clear rules of assignment for legislative mandates contained in the other paragraphs.

The analysis presented here, which relies on the terms of the statute itself and the usual canons of statutory interpretation, appear adequate to resolve the question concerning the conflict between paragraphs (4)-(5) and (6). It would therefore not appear necessary to go beyond the statute to other sources of authority, including its legislative history.

The author is not aware of any reliable legislative history on this point, but the Commission may wish to investigate it further in connection with resolving this question of statutory interpretation. In this absence of such information, it seems fair to conclude that the intent of the Parliament in adopting Schedule No. 1 was probably to specify the number and allocation of legislative mandates that would result from the 1992 national elections. (Parliament may well have intended to change the Schedule in future years, in accordance with the norms and methods it had adopted through the other provisions of Article 3.)

16 October, 1996

MEMORANDUM

FROM: Daniel Finn, Consultant
International Foundation for Election Systems*

SUBJECT: Initial Meetings with NGO Representatives on Domestic
Monitoring of the Upcoming Romanian Elections

Yesterday, accompanied by Viorel Micescu of the IFES office, I met with representatives of two Romanian nongovernmental organizations that have been involved in organizing domestic election observers. The purpose of these meetings was to help familiarize me with the local situation with respect to NGO's and their election-related activities, and to bring me up to speed on developments in this area.

We met in the morning with Cornel Trasnea of Pro Democracy and in the afternoon with Nicolae Stefanescu, President, and others with the League for the Defense of Human Rights (LADO). The timing was significant, since between time the Central Election Bureau (CEB) met and considered some important issues pertaining to the role of domestic observers.

My discussions with these NGO representatives identified some key areas in which determinations by the CEB could affect the ability of domestic observers to monitor the elections in a manner which could help ensure their integrity and detect any irregularities. Several developments at the CEB meeting yesterday raise concern whether existing electoral laws and procedures will be applied in a way that limits the effectiveness of domestic observer efforts.

"Phantom" NGO's and Observers

According to Pro-Democracy, in 1992 one or more "phantom" NGO's were accredited to put forward observers. To allocate the available opportunities for observers (one only was permitted per polling station) a "lottery" system was used, in which a computer selected a single name from those submitted by the various NGO's for each station. In fact, however, the persons identified by the phantom NGO's never appeared on election day.

* (IFES); the project under which this work was performed was funded by the U. S. Agency for International Development.

The LADO representatives informed us that precisely this issue reappeared at the CEB meeting yesterday. It seems that the Justice Ministry has recently -- in August, just prior to the start of the campaign period in September -- registered three unknown NGO's the documents of which refer to human rights objectives. (To be permitted to participate in election observation, NGO's must perform human rights or democracy functions.) The CEB President indicated that these organizations have submitted over 4,000 names of proposed observers for polling stations.

In addition to the questionable nature of the new NGO's, their appearance creates formidable organizational as well as logistical difficulties, and could undermine effective domestic monitoring efforts. Since only one domestic observer will be permitted in a polling station at any time, the phantom observers could entirely displace legitimate ones at various polling stations, or in any event prevent legitimate ones from being present there throughout the election period. Organizations like LADO, which have already organized their observation activities, will be forced to re-do this entire process (which requires identifying the observer for each station, and obtaining his/her consent and signature).

Previously LADO and Pro-Democracy had reached an agreement, communicated to the CEB, to divide responsibilities for polling stations according to even and odd numbers. The idea was to arrange for domestic observers at as many stations as possible. In addition to observing other aspects of the election process, the domestic observers would pay special attention to obtaining the vote tally figures from the stations at which they were present. The idea was to cover a sufficiently large number of stations to constitute a representative sample; if the official figures subsequently released after counting differed substantially from the results of the sampling, there would be a basis to suspect manipulation.

At the meeting yesterday, the CEB President is said to have proposed that an arrangement could be made among accredited NGO's (including the phantom ones) to divide up polling stations 1/3 each -- presumably 1/3 for LADO, 1/3 for Pro-Democracy and 1/3 other. Pro-Democracy is reportedly willing to explore this possibility, but LADO is resisting based on the additional difficulties that it will experience with its observer program as a result. Also, LADO fears that at any time one of the phantom NGO's would be able to undo the deal and trigger a lottery simply by demanding it.

In addition to displacing real domestic observers, the appearance of phantom NGO's also tends to undermine the legitimacy of the domestic monitoring effort, even giving rise to the fear that the CEB could subsequently cancel their privileges. (The 1992 Electoral Laws under which the upcoming elections are being conducted did not authorize domestic observers except for those specific elections. The decision to permit them this time results from a

separate government determination, which could still be reversed or challenged.)

Continued reliance on the 1992 Laws (unlike for the local elections in 1996, for which special additional legislation was enacted) contributes to other, related issues. A 1996 provision requiring an NGO to have been registered for six months prior to requesting election observer status has not been made applicable. Unlike in 1996, domestic observers will not be not permitted to move among various polling stations. A procedure adopted by the CEB in 1992, requiring the posting of results outside polling stations after completion of the count, has also not been applied.

Finally, withdrawing a substantial number of polling stations from those available for legitimate domestic monitoring provides a clear potential for fraud. Combined with allocation of observer privileges in advance, it gives persons contemplating fraudulent activities knowledge of where to conduct such activities with the lowest probability of detection.

Creation of "Technical Commission"

The government has created a Technical Commission to support the Central Election Bureau. LADO and other organizations are concerned with the functions of this body, since the order creating it gives it broad power equivalent on its face to that of the CEB itself. (The same language is used as that in the statute under which the CEB was constituted.) One specific question is whether the CEB or the Technical Commission will actually operate the tabulation centers in each constituency (*Judet*). The CEB President indicated yesterday that the centers will be empowered to "correct and revise" the minutes and tallies received from polling stations. Similar to the situation regarding polling stations, only one observer will be permitted in the 41 (40 *Judets* plus Bucharest) tabulation centers.

Funding of NGO's

According to LADO, the CEB has put on its agenda an item concerning funding of LADO observation activities. It is not clear at this point what the issue is, since most knowledgeable persons say there is no specific prohibition against involved NGO's compensating observers or receiving outside funding. However, in formally socialist countries there are often other provisions of law (such as on foreign support, especially for anything deemed "political") which could be brought to bear to challenge the accreditation of NGO's or observers they have put forward.

18 October 1996

MEMORANDUM

TO: The Honorable Costica Ionescu
President, Central Election Bureau
Republic of Romania

FROM: Daniel Finn, Consultant
International Foundation for Election Systems*

SUBJECT: Proposed System for Accrediting Domestic Observers
to Polling Stations

1. Problem

The applicable law¹ on domestic (internal) observers creates certain limitations on the accreditation of individuals nominated as domestic observers by qualified non-governmental organizations (NGO's) to perform these functions at specific polling stations. The pertinent provisions with respect to domestic observers are as follows:

... Their accreditation shall be made for a single polling station. The Central Election Bureau may accredit to a polling station only one internal observer ... [I]f several persons are authorized for one and the same polling station, the accreditation shall be decided by lots.

Several registered NGO's have applied to the CEB for the right to send observers to polling stations. Two of these are well-established groups known as the Pro-Democracy Association and the League for the Defense of Human Rights (LADO). Three recently-formed groups have also applied to field observers. All the groups have presented lists containing the names of thousands of nominees. Following the request of the CEB, they have organized

* (IFES); the project under which this work was performed was funded by the U. S. Agency for International Development.

¹ The primary provision on this subject is Article 93 of Law No. 68/1992 on Election to the Chamber of Deputies and the Senate. Under paragraph (1) of this Article, the basic provision of the Law which provides for the presence of observers -- Article 51(3) -- was made applicable to domestic observers, but only for the elections that were conducted in 1992. The Romanian government has directed, however, that domestic observers will be permitted during the upcoming elections for the Presidency and Parliament on the same terms provided for under the 1992 Law.

their lists to submit the names of nominees according to polling station (identified by number) and also submitted information on the nominees themselves (including their addresses, telephone numbers and signatures).

The two well-established NGO's, Pro-Democracy and LADO, had previously informed the CEB that they would cooperate between themselves to prevent the situation from arising in which more than one nominee would be identified for each polling station. (They did this through dividing the responsibilities up according to whether the number of the polling station was even or odd.) These organizations developed their lists, each including several thousand names of individuals from whom signatures were also obtained, on this basis.

The new NGO's prepared their lists independently of the first two. As a result, there is considerable overlap among the lists, in terms of the number of individuals who have been nominated to cover particular polling stations. Despite the efforts of the CEB, the old and new NGO's have not been able to agree between themselves on the assignment of nominees to specific polling stations.

The old NGO's have asked CEB not to permit the participation of the new ones in domestic observation activities. They have also threatened to withdraw their own observers if nominees from the new groups are accredited. The CEB must separately decide the issue of participation by representatives of the new groups, and may also seek to persuade the various groups to agree to a division of responsibilities, at least on an overall numerical basis. *I.e.*, each group could be allowed a certain number or fraction of observers to be placed nationally.

2. General Considerations

If the CEB allows the new NGO's to participate in observation, it will in all likelihood also be required to make an assignment of nominees from the various groups to specific polling stations based on a random system -- the "lottery" described in the law. In addition, the random assignment system should be weighted to reflect the ratio in which each group will be permitted to assign observers. (This weighting could be based either on an overall rating -- *viz.*, some fraction for each group allowed to participate -- or on the number of valid nominees that each group has put forward.)

This memorandum presents a random system that could be used to achieve these objectives in a manner that is fair and also meets certain *desiderata* (including criteria and objectives) for domestic observation of the elections. Some of these *desiderata* include:

Nominees put forward by the various groups should first be considered for accreditation at the polling stations for which they volunteered to serve as observers, subject to random choice among their sponsoring organizations, based on an appropriate weighting as described above.

Individuals who have already been recruited with considerable difficulty by the groups, and who have volunteered to perform this valuable task, should still have the opportunity to serve as domestic observers in case they are not selected as observers at the polling station of their first choice.

Individuals accredited as domestic observers would ordinarily be expected perform this role at a polling station which is convenient for them, which is where they themselves would vote, or which is near their residences. This polling station can be assumed to be that for which they originally volunteered to serve.

Individuals who fail to be selected for their original choice of polling station and cannot be reassigned to a polling station anywhere else nearby -- at least in their own constituency (*Judet*) -- should have the opportunity to serve in such a polling station in the event individuals who have been selected as observers fail to appear to claim their privileges.

Finally, individuals accredited to serve as observers at specific polling stations should be permitted to be present throughout the operations of the polling station, including at the opening, during the voting period, and for the count, in order to ensure continuous observation of the stations. Observers should not be required to change places with other individuals during the day, except by mutual consent. (Any such individuals should also have been nominated by the same organization, or another organization which is cooperating with the first.)

3. Proposed Solution²

The following system is intended to form the basis of a computerized lottery that could be run automatically based on the submissions already made to the CEB by the various NGO's (*viz.*, lists of names organized by proposed polling station location). The data would be specially entered in that form and several computer operations (or algorithms) would be run to process it in a way which makes individual assignments based on the system. The output would be

² The proposal made here is based on an analysis the problem described in section 1 and the general considerations cited in section 2. The author has also contacted IFES in Washington for further references and examples of situations in which similar issues have arisen. This information will be supplied when it becomes available.

the names of individuals who should be accredited to the various polling stations, including as the primary candidates and, if desired, as alternates.³

Steps:

1. For each polling station, randomly select the name of an individual based on the organization that nominated him/her and the weighting accorded to that group.
2. Take the names of individuals who have not been selected as observers for the polling stations of their choice and reassign them on the same basis (*i.e.*, randomly, subject to the weighting accorded to their organization) to another available polling station in the same constituency the number of which nearest to that which they originally requested. (In case two available numbers are equally near to the first, always choose either the next highest or next lowest.) So, for example, if number 33 is not available, then pick 32 or 34 if one of these is available; if both are available, pick the one which is highest or lowest according to the rule that is adopted. This procedure is recommended since adjacent polling stations are consecutively numbered, and the stations with the nearest numbers should also be roughly the closest geographically to the originally-requested available station.
3. Repeat step 2 as many times as necessary to exhaust the pool of eligible observers; if potential observers remain after all the polling stations have been selected, then randomly (on a weighted basis) designate these individuals as alternate observers, first if possible at their original choice of station and otherwise at the station with the nearest number (subject to the usual rule).

The system described above would begin by assigning nominees to specific polling stations. So that the efforts of the NGO's in recruiting individuals to serve in this capacity are respected, and maximum coverage is obtained for this important component of the elections process, steps have been added to ensure that to the greatest extent possible the entire available pool of observers is assigned to various polling stations. The numerical proximity system is designed to make the second choice of polling station as convenient and feasible as possible for individual observers.

Finally, the alternate system will help ensure that (a) if an individual is likely not to materialize on election day, he/she may be replaced; (b) domestic observer coverage is retained in such situations; (c) individuals who have volunteered for this important role are given the opportunity to fulfill it; and (d)

³ Upon subsequent request by the CEB, IFES may be able to provide additional support for the development and application of this system as part of its program of assistance to the CEB.

the NGO's who have recruited thousands of such individuals do not have their efforts negated. In order to implement the alternate system, I would recommend that nominees for domestic observer status be required to go to their assigned polling station at 1800 hours the day before election day in order to register with the polling station bureau president. (The polling station presidents are required to be present at the polling stations at this time, for certain other purposes, under Article 49[5] of the election law.) In the event the first nominee does not come, the alternate should be registered as the observer if he/she is present.

The system of alternates proposed here would be in conformance with the requirement of Article 93(2) that only a single observer may be accredited to a polling station. Accreditation of the alternate would actually occur only in the event the original assignee did not appear at the polling station on election eve, as required; thus only one observer would actually be accredited as an observer for election day.

The type of alternate observer proposed here differs from the arrangement for alternates that the CEB has entertained previously. The CEB has also considered interpreting the election law to permit individuals to take turns at the polling station in order to fulfill their human needs and allow them to maintain the greatest possible vigilance at all times. Such an approach could also be a desirable part of the domestic observer system, provided the alternate in question was from the same sponsoring organization or another group with which his/her sponsor is cooperating.

2 November 1996

MEMORANDUM

FROM: Daniel Finn, Consultant
International Foundation for Election Systems

SUBJECT: Further Developments at the Romanian
Central Election Bureau

This memorandum continues the chronicle on this subject that was commenced in a memo dated 24 October. The primary area of concern during the intervening time was further action on issues related to the attendance of domestic observers at polling station and other parts of election operations. From this perspective, it was a very lively week.

1. Domestic Observer Lottery and Subsequent Developments

As indicated in the previous memorandum, the Central Election Bureau (BEC) had accepted a proposed lottery system developed by IFES in order to accommodate the wishes of the various nongovernmental organizations (NGO's) to have representatives at the polling stations. (The lottery was provided in the election law and was necessitated by the last-minute appearance of several "phantom" NGO's -- presumably linked with the ruling party or government -- which also requested accreditation.)

(a) Observer Lottery

After acceptance of the IFES concept by the BEC, IFES local staff and consultants worked hard to implement it through designing and carrying out the necessary computer operations. This effort took literally hundreds of hours of effort by a team of local specialists. This effort was greatly complicated by defects (some accidental and some probably deliberate) in the data supplied by the various NGO's, particularly the phantoms. As a result, a series of data "filters" had to be run and other operations applied.

In addition to retaining the computer specialists, IFES supported this activity through policy direction by myself and overall administration by IFES

^{*} (IFES); the project under which this work was performed was funded by the U. S. Agency for International Development.

local staffer Viorel Micescu. IFES also purchased a computer for this purpose; prior to being returned to the IFES office, this machine will be used by the BEC to create an elections home page on the Internet.

The IFES lottery culminated on 28 October, in a highly-publicized event staged by the BEC at the national press center. Judge Ionescu made an opening statement that described the lottery and acknowledged IFES (including my) assistance. In describing the third stage (accreditation of alternate observers) he mentioned that observers (both original and alternate) would be expected to show up at the polling stations at 6:00 p.m. election eve in order to confirm their accreditation.

There are approximately 16,000 polling stations nationwide, including at precincts, special sites and overseas. By the time of the lottery the various NGO's submitted some 14,269 names of nominee observers. The first two stages of the lottery (initial selection and subsequent reallocation) assigned 13,462 observers in all. In constituencies (*Judet*) in which there were surplus observers, these could be further assigned as alternates.

The lottery worked more smoothly than even the programmers had expected, probably due to the fact that the computers were not networked and were simply applying the programs. As a result, the allocation of all the observer places was completed in slightly over one hour.

At the beginning of the week, Judge Ionescu made another favorable decision, which was to permit the NGO's to continue to submit names as long as possible, probably until the day before e-day. (He had announced at the press conference that accreditation would continue, at least for a few more days.) Meanwhile, the other steps in the observer accreditation process, including the printing of identification cards, was proceeding expeditiously.

(b) PDSR Challenge to NGO Observers

At the press conference and shortly thereafter, however, it emerged that the ruling PDSR had filed a sweeping complaint against the LADO and PDA observer programs. At a hearing the next morning, 29 October, the BEC heard from the PDSR, mainly through its campaign manager. The PDSR representatives played tape recordings of telephone interviews with LADO and PDA observers; they said that their representatives had called approximately 500 people out of the lists submitted by LADO and PDA. The PDSR also pointed out that some of the very lists of observers submitted to the BEC by PDA had identifying marks from the regional offices of political parties, especially the Peasants' Party (the main component of the opposition coalition CDR).

The PDSR representative said he supported having domestic observers at the polls, but claimed to be concerned with the possibility for impropriety or fraud resulting from the wrong people. The PDSR was also claimed to be offended by the charge that it was linked to the so-called "phantom" organizations -- GADDO, LIRDOCT and AROLID -- as well as to other dirty tricks such as a bogus telephone poll. On the other hand, the PDSR representative actually claimed to "love" PDA and its commitment to democracy. His point, he said, was merely to prevent partisanship from infecting the observer process.

In response, PDA read a statement attacking PDSR's techniques and characterizing the maneuver as an attempt to place further obstacles in the way of domestic observation. The LADO president, Mr. Stefanescu, took the same tack in more forceful terms. Both NGO's stated that they had evidence that the information obtained by PDSR from the telephone calls, etc., was incorrect; PDA also adduced signed statements from the witnesses to this effect. Questions were also raised concerning the propriety of the taping, and also the techniques used by the interviewers. Some persons who were called claimed that they had been threatened; others said that the callers misidentified themselves as belonging to their parent NGO's. (On the subject of the faxes, PDA said that their local representatives, lacking fax machines, had simply availed themselves of those at the political party offices.)

LADO had a slightly bigger problem with its list, and had to admit certain defects. It turns out that in one region (*Judet*) a young and inexperienced person had simply listed names alphabetically, and without identification numbers. Mr. Stefanescu offered to strike these names; in addition, he indicated that he was withdrawing the names of more than 50 PDSR members who had somehow gotten onto the LADO observer lists from Brasov.

Throughout this whole performance, it was obvious that the PDSR representative was backtracking. Starting with sensationalistic testimony, including the telephone tapes, he ended up with gentle talk and withdrawing most of the complaint that his party had filed. He even suggested toward the end that he would be satisfied if the BEC simply removed 57 names from those submitted by LADO and PDA (primarily the former).

After conducting its hearing for most of the morning, the BEC retired into executive session to consider what action to take. The result was mild. Some 41 names (31 from LADO and 10 from PDA) were struck from the observer list. (Of course, these individuals if suitably requalified could have been reassigned prior to e-day.)

(c) Further Attack in the BEC on the NGO Observation Process

There was a surprising development on Halloween with respect to the domestic observer issue. Without warning, a debate occurred in the BEC concerning whether domestic observers would be permitted to attend the counting process at polling stations. Reports from party representatives and others in the meetings indicated that it was likely that the BEC would vote to exclude them during this phase of polling station operations.

The same day, Peter Hatch of OSCE/ODIHR was informed by fax (in response to an inquiry by him) that only international, and not domestic, observers would be permitted to attend activities at the *Judet* Election Bureaus (BEJ).

Considerable activity was caused by these reports. The major NGO's (LADO and PDA) went public for support. Word reached the Helsinki Commission of the U.S. House of Representatives, and Congressmen Wolf, Hoyer and Smith sent a letter expressing their concern.

In response to a request from AID Democracy Officer Roberto Figueredo, I wrote a memorandum on the relevant provisions of the election law, which concluded that there was nothing to exclude domestic observers either from counting at the polling stations, or tabulation at the BEJ's, and that on the contrary the law appeared to contemplate their presence there.¹ The purpose of this memo was to ensure that the legal case was in order in the event officials of the U.S. embassy wished to take up this matter as a policy concern. (In addition, just in case the situation were not resolved, I drafted a letter for the use of IFES in Washington that would disassociate IFES from this action and state IFES's concern.)

By the next day, November 1, the mood at the BEC changed, presumably due to the pressure put upon it by public and international reaction. Though no order was apparently issued, the BEC decided not to issue a ruling that domestic observers could not be present during the counting phase of polling station operations. In addition, the BEC clarified its previous communication concerning observer presence at the BEJ's. The BEC announced that domestic observers could attend meetings of the BEJ's, but not be present at "technical operations" - meaning, presumably, the receipt of polling station records and materials and entry of voting data into the computers.

(d) Remaining Issues affecting Domestic Observation

Despite the outcome on the points described above, I am still concerned with how the domestic observer program will work on e-day. First, in our

¹ Memorandum from Daniel Finn, IFES Consultant, "Reported Decisions of the Romanian Central Election Bureau concerning the Role of Domestic Observers" (Halloween 1996), 3 pp.

meeting Halloween morning, Judge Ionescu seemed evasive. He particularly failed to respond when I raised the issue concerning whether the BEC had sufficiently clarified and effectively communicated its decision concerning the accreditation of primary/alternate observers at the polling station. The idea was that if the primary designee failed to appear at 1800 hours on election eve, the alternate could claim the accreditation for that station. We had also proposed, in somewhat more detail, that the primary observer should show up between 1800 and 2000, and the alternate between 2000 and 2200; if neither materialized on election eve, then whoever reached the polling station earliest on e-day should be accredited.

I am not aware that any detailed ruling or effective communication has gone out on this point. There are therefore considerable grounds to fear that there will be confusion, and considerable misunderstanding and wasted effort. At worst, observers could fail to be accredited at a substantial number of polling stations.

Also, some people with the major NGO's are now realizing that the reassignment process (as was generally understood beforehand) was less than perfect in selecting a nearby polling station. Some observers will undoubtedly be deterred by the inconvenience of going to their secondary assignment, either as primary or alternate observers.

(e) Observations on Domestic Observer Issue

The pushing and pulling on the issue of the presence of domestic observers, primarily at the polling stations, is quite curious. It is hard to explain why this issue continues to be the subject of so much attention and contention. Plainly, it is a "losing" issue from the political point of view for the PDSR, since it can only create an impression that fraudulent activities are being planned. (On the other hand, given the nature of Romanian thinking about politics, PDSR activists may feel exactly the opposite and believe that they should alert the public to fraud by their opponents, not only among political parties but also by so-called "nonpartisan" groups, which are of course mainly associated with the opposition.)

I may be worthwhile to recount my suspicions on this point: There are many reports of planned fraudulent activities, most of which have little factual basis and could even be laughable if there were not some reason to believe that they had occurred in the past (e.g., with respect to double stamping of ballots, leading to the high rate of ballot invalidity; and also reported multiple voting). While polling station-based fraud is a difficult approach to take on a widespread basis, one must also understand the political culture of the country, and allow that it is a possibility or even has been a reality to a certain extent.

Judging by the performance of the PDSR, there may well be two camps, or operating divisions, inside the organization. There are some extreme partisans who wish to discredit their opponents and others linked with the opposition, whose activities during the election (*viz.*, observation at the polling stations) may be inconvenient; we have been informed, for example, that the individual who originated the complaint against LADO and PDA in the BEC was the vice chairman of the PDSR. These same partisans may also be linked to, or have knowledge of, planned fraudulent activities. On the other hand, there may be a "softer", public image-conscious side of the organization, which understands the political downside of always making these extreme charges and taking confrontational actions; this side may be unaware (at least in part) of the existence of a campaign of fraud.

Similarly, especially in relation to those possibly associated with planned fraudulent activities, there could be two motivations in attempting to exclude domestic observers. The first is the simple one of getting an additional pair of eyes (and ears) out of the polling stations, thereby making it more difficult to detect fraud. The second is a more complex attempt to keep throwing mud at the observation process so that some of it sticks, making it easier later to dismiss allegations of fraud made by domestic observers.

Another disturbing part of this series of events is that I am forced to wonder about the ability of the BEC, including its judicial members, to resist government pressure. Previously, the actions of the BEC and its President – even while not standing up to pressure (or even provocation) by the ruling party – had at least managed to preserve an element of autonomy. While it required a lot of handstands (especially by IFES) to provide a technical basis for this autonomy, still it appeared productive to proceed and hope that a level of assistance as well as international presence would help the BEC make decisions that preserved its own independence and the integrity of the elections process.

Clearly, the last go-round with respect to the presence of domestic observers during counting leads to question about the independence of the BEC and the ability of technical assistance to make a real difference, especially in a difficult situation. It is to be hoped that at least the observer program has squeaked through, and additional difficulties do not appear on election day and its aftermath.

2. Posting of Tally Sheets

On the same day that it softened its proposed decisions on observer presence, the BEC also decided to order the posting of official tally sheets outside the polling stations after completion of the count. Judge Ionescu had previously indicated to us informally that he was willing to take such a step.

A similar move was made by Judge Paul Florea, BEC president for the 1992 national elections. While the order was followed in many places, there was also widespread noncompliance.

As with the decisions on accreditation of observers, I am not aware of any definite communication by the BEC to polling station chairmen on this point. It remains to be seen whether the order will be effective, therefore, especially as this requirement is not contained in the applicable election law. (The law requires two official copies of the minutes to be made, with one going to the BEJ and the other the local tribunal, or court.)

3. Meeting with Judge Ionescu on BEC Experience

In my capacity as technical advisor to the BEC, I had been careful not to use my position directly to obtain information about Judge Ionescu's attitudes and BEC activities. Fortunately, on 30 October, I had the chance to accompany Mr. Svante Renstrom, representing the Swedish organization IDEA on an assessment mission, to a meeting with Ionescu. (I introduced Svante to Judge Ionescu based on our association during the preparations by OSCE for the elections in Bosnia and Herzegovina last Fall.)

Svante especially asked about the State Technical Commission (STC) which had been formed to conduct election operations, and also about its relationship to the BEC. Judge Ionescu began his response generally, stressing the need for social dialogue in light of the country's 45 years of suffering. This increased the need to see to it that the upcoming elections were truly free and fair.

Ionescu pointed out that the STC was established, and exercises certain functions, under the 1992 election law. (It does not, however, exist or conduct functions unless activated in connection with a national election.) The government created by STC this time by edict.

Judge Ionescu said that in light of the distrust of official institutions in the country he was careful to keep a distant relationship from the STC. He said that he barely any more sees his friend who is the director; they only talk by phone. Once he was invited to pay a visit to the STC, but refused for appearance reasons!

Curiously, Ionescu commented that the closer the election came, the role of the BEC was increasing and that of the STC decreasing. The "housekeeping" tasks -- ballot printing and the like -- were done. BEC, on the other hand, will be in continuous (*pro forma*) session around election time. The STC will do nothing but bring food.

Ionescu noted the complaints that the STC had exceeded its powers. In his view, however, they have stayed within their proper sphere, handling administrative and technical matters. It is the job of the BEC to apply the law.

In response to Svante's question, Ionescu said that it was actually an advantage under current circumstances to split election administration between separate components which apply the law, and conduct administrative, operations. Defects in the 1992 legislation, which was not amended for this election, have required many determinations and also innovative measures. As a result, a lot of effort has gone into legal issues; the BEC would therefore not have had the time to manage the technical side. As an example, he mentioned the situation with respect to the non-issuance of the voter cards called for in the law.

Ionescu said it is the job of the BEC to apply the law, whatever the level -- national, regional (*Judet*) and even for the polling stations. Operational matters are conducted by the STC, mainly including support and logistics.

In response to another question, Ionescu indicated that the temporary nature of the BEC and STC alike was a "enormous disadvantage" and had created numerous concrete difficulties:

1. The BEC, upon learning that only perhaps 14% of voter cards had been distributed by the government, through local administrations, under the law decided that the national ID card instead would be the basis for voter eligibility. Any attempt to apply the law, e.g., through issuance of the voter cards on e-day, would have led to double queueing and disarray at the polling stations. The government and Parliament subsequently endorsed the BEC's approach.

Ionescu stated he also felt the voting card issue should be re-examined. The form specified in the law is poorly designed, and there are no security devices in the "card", which is really just a piece of paper.

2. Another major problem was failure to update the Voters List.
3. A third problem was with respect to the number and quality of observers, and their assignment to polling stations.
4. There was also a problem with the number and locations of polling stations, especially special ones.

Ionescu mentioned that there were numerous other issues. The domestic observer issue especially took a long time to work out.

Another major problem was with the checking of names/signatures on lists supplied with candidate nomination petitions, especially those of the independent candidates for president (who require 100,000 signatures). After the brief period (one week) for review of these lists had expired, a newspaper began to publish stories about problems with the signature lists. It was difficult for the BEC to respond at this point, and the stories tended to tarnish its image.

Ionescu believes, therefore, that a permanent electoral body would be highly desirable. Another function it could address is that of civic education, which has been episodic and mostly conducted by the media themselves. The recommendation for a permanent body could be included in the final report of this BEC; a similar recommendation was made by the BEC who supervised the local elections earlier this year:

Svante asked particularly about training of polling station workers. Ionescu said that the current approach is based on press communiques, rulings which are distributed by the BEC (and also printed in the official national monitor), some training by officials at the *Judet* (BEJ) level, and voluntary activities by NGO's. The STC has no responsibility in this area.

4. Regulation of Exit Poll Broadcasts

Sometime earlier, as described in the previous memorandum in this series, Judge Ionescu had asked for information, as well as my opinion, on whether and how reporting of polling data should be regulated, especially with respect to broadcasting of exit polling data on e-day. Based on information received from IFES in Washington, I was able to supply a memorandum on this subject on 28 October.² The conclusions were as follows:

An small but increasing number of countries and other jurisdictions (such as U.S. states) have moved to limit or prohibit the broadcasting of polling data close to the time of elections, especially broadcasting of exit polling results on election day prior to the close of the polls. In many other places, voluntary compliance by the press has been sought on this issue.

Press reporting of polling data during the immediate election period is not usually viewed as a form of campaign activity, although such a charge might apply in the event the individuals or organization conducting the

² Memorandum to Hon. Costica Ionescu, President, BEC, from Daniel Finn, Consultant, IFES, "Regulation of Press Reports on Polling Data during the Immediate Election Period", 4 pp.

poll and reporting its results were found to have the intent to assist a political campaign or were actually cooperating with a political campaign.

5. Checking for/Responding to Defects in Nominating Petitions

Judge Ionescu had also asked earlier for information and views on how the voter name/signature lists submitted by candidates should be checked, and also what the response of electoral authorities should be to complaints or other charges of defects or fraud. I have now received information on this point from IFES, and may submit a memorandum on this subject if there is time prior to the end of my assignment. (It is unlikely that any information provided at this time could be directly applicable, however.)

6. Meeting at BEC Statistical Office

On Halloween morning, I also had the chance to interview Alexander Vaida, Deputy Head of the BEC Statistics Bureau. He described the computer operations by which tabulation and aggregation would be done, at the BEJ and BEC levels.

The BEJ's (42 in number) all have computers, which contain a tabulation program and are linked by modem to the BEC. The BEJ chairman has a password, without which data cannot be entered into the computer there. After entry of the password, BEJ staff can enter data from polling station tally sheets.

Every so often, perhaps every couple hours, the data being compiled in the BEJ computers will be relayed to the BEC computers. Commencing sometime Monday (perhaps midday), partial data will begin to be made available by the BEC, based on inputs from the BEJ's. BEC will update the data every few hours.

Final results, however, will probably not be available nationwide until Thursday or Friday. This is due in part to the need to retrieve votes cast overseas.

7. Suggestions for U.S. Action

Throughout my work with the BEC, I have tried to relay useful suggestions to USAID and the embassy for actions that they might take, either on a short-term basis or over the longer term, to improve the elections process. Among these actions have been:

- Recommendation that the BEC be urged to direct that official tally sheets be posted outside polling stations at the conclusion of the count;

1992 Romanian election law. This success will do much to ensure that future elections in your country benefit from the involvement of a similarly large number of domestic observers.

You must already have the satisfaction of knowing that you and your fellow computer specialists surmounted challenging technical difficulties. I also want to emphasize as well that you made an important contribution to the democratic political development of your country.

Thank you again for your superlative efforts in connection with the IFES program of technical assistance to the BEC.

Sincerely,

DRAFT LETTER OF APPRECIATION TO IFES:

This is to express my personal thanks and professional commendation for your work on the recent successful project by the International Foundation for Election Systems to assist the Romanian Central Election Bureau (BEC) in devising a system for the accreditation of domestic observers to polling stations during the recent national elections.

The IFES activity, which involved the development of a complex lottery system for the accreditation of the domestic observers, was required under the existing national election laws and the circumstances that occurred in the weeks prior to the elections. During this period, several nongovernmental organizations (NGO's) applied to field extensive lists of observers and, under the law, a random system had to be followed in selecting among their nominees.

In order to permit the BEC to accredit the largest possible number of observers, a multi-stage lottery concept was developed. The first stage involved a random competition among the names put forward as nominees for each polling station. The second involved an ongoing process of reassignment so that nominees who were unsuccessful in the first stage were nevertheless given the opportunity to observe at other, nearby polling stations. The third stage resulted in the identification of alternates who would be accredited as observers in case the primary nominee did not actually appear at the polls.

Implementation of the IFES concept, which was adopted by the BEC, turned out to be an extremely challenging task technically. Not only did the necessary computer protocols have to be developed in order to reach the results specified. But defects in the data supplied by the various NGO's necessitated the development of many additional programs to ensure that the lottery operated smoothly and effectively.

The actual lottery was operated publicly under the supervision of the BEC on October 28, and was well covered in the Romanian press. As a result of the lottery operation, 13,462 of the 14,269 names of potential observers submitted by the NGO's were granted accreditation as either primary observers or alternates to the 15,117 polling stations.

I know that the development of this system, with its associated subroutines, was an extremely challenging task that required considerable skill as well as a high level of energy and commitment. You and the other specialists spent literally hundreds of hours over a period of approximately one week in developing, testing and running the final programs. Without your hard work, this project could not have been successful.

I believe that the presence of large numbers of domestic observers at polling stations greatly increased the accountability of the elections process as well as public confidence in the outcome. It also demonstrated that a domestic observer program could be made to work even under the tight restrictions in the 1992 Romanian election law. This success will do much to ensure that future elections in your country benefit from the involvement of a similarly large number of domestic observers.

You must already have the satisfaction of knowing that you and your fellow computer specialists surmounted challenging technical difficulties. I also want to emphasize as well that you made an important contribution to the democratic political development of your country.

Thank you again for your superlative efforts in connection with the IFES program of technical assistance to the BEC.

Sincerely,

Halloween, 1996

MEMORANDUM

FROM: Daniel Finn, Consultant
International Foundation for Election Systems

SUBJECT: Reported Decisions of the Romanian Central Election
Bureau concerning the Role of Domestic Observers

We were informed this afternoon that the Central Election Bureau (BEC) has made two decisions that affect the role of domestic observers during the upcoming national elections. The first has apparently been issued, but the second – while also taken today – has not yet been released.

1. Exclusion of Domestic Observers from Polling Stations during the Counting Process

The second and more important of the two decisions is to exclude domestic observers – who were recently assigned to polling stations through a laborious (and U.S.-supported) lottery system – from the counting phase of operations at the polling stations. Not only is this decision likely to provoke a strong domestic reaction (as well as lessen confidence in the integrity of the election process), but most international observers agree that it would greatly hinder effective observation of this crucial aspect of polling station activities.

Domestic observers are being permitted to participate in the upcoming elections by a government decision reinstating the relevant rules which were adopted for the 1992 national elections and included in the laws from that year governing elections to Parliament (Law No. 68/1992) and the Presidency (Law No. 69/1992). The relevant provisions are as follows:

Article 93.

1. The provision of Article 51, paragraph (3) shall also apply to the delegates accredited by the Central Electoral Commission as internal observers only for the 1992 elections. As internal observers there can be accredited only voters authorized by a non-governmental organization whose single aim is to defend the rights of man, lawfully constituted by the opening date of the electoral campaign.
2. The persons designated as internal observers cannot be members of a party or of a political formation. The Central Electoral Commission may accredit to a polling station only one internal observer, on the basis of his or her written declaration to strictly observe the conditions of the accreditation. The declaration shall be given on his or her own

responsibility, and it shall constitute a public document, with all the consequences provided by the law. The conditions of the accreditation shall be specified in the accreditation deed; if several persons are authorized for one and the same polling station, the accreditation shall be decided by lots.

3. The provisions of Article 45, paragraph (3), and of Article 51 paragraph (5) shall be correspondingly applicable to nongovernmental organizations provided under paragraph (1).

Article 51.

3. Except members of the electoral commission, candidates and accredited delegates, no other person shall remain in the public places from the polling zone or in the polling station more than the necessary time for voting.

5. Accredited observers may attend the voting only if they produce the accreditation document. They shall in no way intervene in the organization and proceeding of the voting, having only the right to inform the president of the electoral commission in case irregularities [sic] of which they have become aware. ...

Article 45.

3. The funds of the electoral campaign, either directly or indirectly, by natural or legal persons from abroad shall be prohibited. ...

Under the law and Romanian election process, actual counting of ballots occurs at the polling stations. This aspect is governed by Chapter IX, Section 1 of the law, entitled "Tabulation of Votes at the Polling Stations". There is nothing in this section that suggests that this aspect of polling stations operations should be differentiated with respect to the presence of observers. In fact, Article 61 appears specifically to contemplate their presence:

1. After conclusion of the voting, and in the presence of the members of the commission and, as the case may be, of the candidates and persons accredited to assist in [attend] the voting, the president of the polling station shall proceed to [undertake counting and related operations].

The remaining paragraphs of the article describe the various steps involved in the counting process at the polling stations. There is nothing that suggests that observers who have been admitted to the station should or could be excluded from observing these activities.

2. Exclusion of Domestic Observers from Constituency Election Bureaus

The decision announced today was to the effect that domestic observers will not be permitted to attend activities at the tabulation centers operated by the *Judet*, or Constituency, Election Bureaus (BEJ). It is true that Article 93(2) (see above) refers to the accreditation of domestic observers as being "made for a single polling station". But Article 65(3), on tabulation of votes by the BEJ's, states:

Candidates and accredited persons shall also have the right to assist at the proceedings of the constituency commission.

It appears most reasonable to read the latter provision, taken together with the other provisions cited above, as authorizing the presence of domestic observers at the BEJ tabulation centers notwithstanding the reference in Article 93(2) to their accreditation to a single polling station. In this connection, it seems that this reference should be read as applying to the accreditation of observers for this purpose, and not other purposes such as attendance at the tabulation process at the BEJ's.

DRAFT --- NOT USED

November 1, 1996

The Honorable Costica Ionescu
President
Central Election Bureau
Republic of Romania
Bucharest
Romania

Dear Judge Ionescu:

Since 1992 the International Foundation for Elections Systems (IFES) has undertaken programs in Romania to support the development of democratic political institutions, including free and fair elections. Operating through visiting as well as resident staff and consultants, IFES has conducted a number of activities in this connection, including monitoring national and local elections, conducting technical assessments, and assisting in the development of civil society including through support to nongovernmental organizations (NGO's).

Since last month, IFES has had the privilege of working directly with the Central Election Bureau (BEC) in a technical assistance project. Specifically, under a memorandum of understanding (MOU) concluded between our organizations, IFES has made available the services of an experienced international attorney, Dr. Daniel Finn, and has also provided other support to the BEC. These activities have been funded by the U.S. Agency for International Development.

I understand that Dr. Finn and other IFES staff have provided valuable assistance to the BEC during this period. In particular, IFES representatives were instrumental in designing the recent, successful computer operation under which thousands of domestic observers were chosen for accreditation at particular polling stations after being nominated by various NGO's, including the two well-established national human rights organizations -- the League for the Defense of Human Rights (LADO) and the Pro Democracy Association (PDA).

As you are well aware, shortcomings in the 1992 laws on national elections, which continue to apply for the current elections, limit the activities of domestic observers in various ways. Only one domestic observer is permitted at each polling station, and in case more than individual applies, a lottery must be used to choose among them. This year, as during the 1992 national election cycle, a demand for accreditation of observers by several unknown but legally registered organizations threatened to disrupt the careful plans of the established NGO's to field a large number of observers and actually to undermine the entire observer effort by displacing observers from the polling stations.

In this context, the lottery system designed and implemented by IFES

representatives in Romania provided a basis for an effective domestic observer presence despite the shortcomings of the law and political efforts to impede effective observation. Its adoption by the BEC appeared to allow for a widespread and vigilant observer presence at the polling stations on election day. IFES put considerable effort and resources into designing and implementing this program, and I was proud of the ability of our representatives to assist the BEC in achieving this outcome.

I was therefore both surprised and extremely concerned by information received from IFES representatives in Bucharest that the Central Election Bureau (BEC) has moved to limit the presence of domestic observers during the vote counting and tabulation processes. Specifically, it has been reported that the BEC has decided to exclude the domestic observers, who have already been accredited to attend operations at polling stations, from remaining at the stations during the counting of ballots. The BEC has also announced that domestic observers will not be permitted to attend the subsequent vote tabulation process that occurs at the *Judet*, or Constituency, Electoral Bureaus (BEJ).

IFES believes that these actions would greatly impede the ability of domestic observers to help ensure the transparency and integrity of the upcoming national elections. They would run contrary to the principles of civil society and electoral openness which are being widely adopted throughout the world, particularly in societies in transition toward more democratic political processes. In my personal estimation, these measures could even tend to call into question the fairness of the elections. I reach this conclusion particularly in light of the public suspicions created by previous attempts by certain interests to create obstacles to the effective participation of domestic observers.

I am particularly concerned that these important interpretations of the election law were made without consulting the expert that IFES has provided, by mutual agreement, to assist with legal matters. Enclosed with this letter is a memorandum on this matter prepared by Dr. Finn. To my mind, the memo makes a strong case that the applicable election laws do not call for the exclusion of domestic observers from the polling stations during the counting process, nor from the BEJ's during the tabulation process, but rather indicate rather clearly that their presence was provided for.

It has been our pleasure to assist the BEC in preparing for the upcoming national elections. IFES stands ready to assist in any way we can, under our MOU and other programs, in helping to ensure the success of the electoral process. I would strongly urge you, therefore, not to support any action by the BEC that could undermine the effectiveness of the domestic observer effort which has been facilitated by our assistance up to this time.

Sincerely,

28 October 1996

MEMORANDUM

TO: The Honorable Costica Ionescu
President, Central Election Bureau
Republic of Romania

FROM: Daniel Finn, Consultant
International Foundation for Election Systems^{*}

SUBJECT: Regulation of Press Reports on Polling Data
during the Immediate Election Period

Issues

What is comparative international practice concerning the regulation of press reporting of polling data during the immediate election period, and especially broadcasting of exit polling results on election day prior to the close of the polls?

Could reporting of polling data be construed as a form of prohibited campaign activity if undertaken during the immediate election period?

Conclusion

An small but increasing number of countries and other jurisdictions (such as U.S. states) have moved to limit or prohibit the broadcasting of polling data close to the time of elections, especially broadcasting of exit polling results on election day prior to the close of the polls. In many other places, voluntary compliance by the press has been sought on this issue.

Press reporting of polling data during the immediate election period is not usually viewed as a form of campaign activity, although such a charge might apply in the event the individuals or organization conducting the poll and reporting its results were found to have the intent to assist a political campaign or were actually cooperating with a political campaign.

Discussion

^{*} (IFES); the project under which this work was performed was funded by the U. S. Agency for International Development.

On October 17, you asked about comparative international practice concerning the regulation of press reporting of polling data during the immediate campaign period, especially broadcasting of exit polling information prior to the close of the polls on election day. You noted that, unlike other reports which the viewer (or listener or reader) could evaluate independently, polling data appears to carry scientific weight. You also wondered whether in appropriate circumstances reporting of polling data during the immediate election period could be construed as a form of prohibited political campaign activity.

At our earlier meeting, I indicated my belief that press reports concerning polling data are regulated in certain jurisdictions, including some states of the United States. For the most part, however, voluntary compliance is sought to prevent the reporting of polling data that could have an effect on the final stages of the campaign, or how voters actually behave on election day. The major U.S. news organizations -- such as the big TV networks -- for example, have committed themselves not to broadcast predictions of national results prior the closing of polls everywhere in the nation. (Canada, another country with multiple time zones, takes similar approach, but through legislation.)

At our meeting, I indicated that I would seek further information from IFES in Washington concerning how this issue is treated in various places. I have now received some information¹ from IFES on this subject, which I would like to report to you at this time. Should further information become available, I will report further later.

Since our earlier discussion it has been reported by the Romanian press that the National Audiovisual Council (CNA) has already taken action with respect to this issue. Under the headline "No Partial Election Result to be Released on November 3 before the Last Polling Station is Closed", *Evenimentul Zilei* reported on 25 October that the CNA had announced with respect to certain planned programming that it intended to apply its Decision 88 of 2 September 1996, under which it had directed that: "Before and during polling day, all state or private radio and TV stations may broadcast only communiques released by the election bureaus and information on the voting process. Programs with an electoral coloration are forbidden."

It is often argued that press reporting of polling data toward the end of the campaign period can influence voter behavior, both with respect with whether to go to the polls and even with respect to how to vote. As a result, there have been efforts in many jurisdictions to control such practices, either through regulation (direct or indirect) or voluntary agreement.

¹ Specifically, I have received an excerpt from the volume *Polls and the Media in Canadian Elections* by Guy Lachapelle, Vol. 16 of the Research Studies of the Royal Commission on Electoral Reform and Party Financing (Dundurn Press, Toronto), as well as some other information.

Some jurisdictions prohibit the broadcasting of polling data around election time, especially exit polls conducted on election day. Germany, for example, prohibits broadcasting of exit polling data prior to the close of the polls. Several other countries, including France, prohibit the reporting of any polling data around election time; Portugal actually prohibits the practice during the entire campaign period.

A number of other jurisdictions attempt to control reporting of polling data indirectly, e.g., by requiring press and other organizations involved in polling to file technical information about the polling methodology with electoral authorities. Some jurisdictions that fall into the latter category include France, Belgium and New York State (U.S.). The information that is required to be disclosed varies from place to place. In the U.S., political parties who commission polls themselves must generally report related expenses.

One question that arises is the competence of the BEC or similar electoral authorities elsewhere to apply election-related restrictions to the press, in the absence of clear statutory authorization to do so. The Romanian Election Law does not specifically grant power to control press activities to the BEC. To the extent that this power exists under Romanian law, it may actually be in the hands of the relevant broadcast authorities and, of course, the criminal prosecutors.

The BEC would of course be free to seek voluntary agreements with press organizations concerning their reporting of polling data just prior to or during election day. As mentioned previously, this procedure is common elsewhere in the world. In Britain, the press is supposed to refrain from reporting exit polling data while the polls are still open.

With respect to whether press reporting of poll results, especially broadcasts of exit polls on election day, could be interpreted as a campaign activity within the purview of the Election Law, this would appear to be primarily a factual matter. If such an activity by the press were shown to be actually part of the political campaign of a particular party, coalition or candidate, then the BEC would be in a position to take action against it, including through the imposition of appropriate election-related sanctions. Similarly, action could be taken by the BEC if it were shown that a political organization (party or candidate) conspired with elements of the press in order to use the publication of polling data for campaign purposes during the period during which campaigning is prohibited.

In either case, the primary sanction that could be imposed by the BEC would be against the political organization; not the press. Of course the BEC could also refer the case, including any allegations of press involvement in

prohibited political activities, to the criminal authorities for prosecution if that were warranted.

5 November 1996

MEMORANDUM

FROM: Daniel Finn, Consultant
International Foundation for Election Systems

SUBJECT: Comments on Romanian National Elections

1. Process

Under the 1992 laws under which the Romanian national elections were held on November 3, the highest electoral authority is a temporary Central Election Bureau (BEC), which is composed of seven judges from the Supreme Court, chosen by lottery, and sixteen representatives of the major participating parties. The chairman of the BEC is chosen from among the judges, also supposedly by lottery. In the event, Judge Costica Ionescu was selected by the judicial members through acclamation. The BEC was formed approximately two months prior to election day, at the time the elections were announced and the campaign period began.

The actual administration of election functions, in the sense of logistic and other operational support, is provided by an organization formed by the government for these purposes, again on a temporary basis. This organization, which is composed of officials on assignment from various government agencies, is called the State Technical Commission (STC).

In addition to the BEC, electoral bureaus are formed for each district, or *Judet*, of which there are 41, plus the municipality of Bucharest, making 42 electoral districts in all. Like the BEC, the "BEJ's" are composed of judges (from regional tribunals) and party representatives.

The lowest level of election administration is of course the polling station committees, consisting of a chairman and vice chairman, and a number of party representatives. The chairman and vice chairman should be magistrates or other persons of good character; any party that has nominated candidates for parliamentary seats in the relevant *Judet* is also entitled to place a member on the committee. There were 15,117 polling stations operating on election day.

(IFES); the project under which this work was performed was funded by the U. S. Agency for International Development.

Under the law, the polling stations open at 6:00 a.m. on election day and must remain open until 9:00 p.m.; their hours may be extended to 12:00 midnight and, in fact, most stations remain open until that time. Counting of ballots and related procedures (such as reconciliation of the number of ballots supplied and used, as well as voiding excess ballots) occur at the polling station after it closes.

After the count is completed, the polling station chairman is required to deliver the minutes (including tally sheets) and other materials (including used and unused ballots, and supplies) to the BEJ in his district. Under the law, this must occur within 24 hours after closing of the polls, but in fact most chairman try to discharge this duty as quickly as possible.

At the BEJ, it is good practice for members of the bureau to examine the tally sheets in order to see that the numbers are reconciled, including the number of ballots used and the votes cast for the various candidates. If these figures do not jibe, the bureau may interview the station chairman in order to determine the reason, and instruct him to make necessary corrections. The BEJ may also implement other safeguards, such as conducting an inquiry in the event the number of voided ballots exceeds a certain threshold.

Located at each BEJ is a technical team from the STC. The team reads the numbers off the tally sheets from each polling station and enters them into a database format. These entries are then double-checked against the numbers on the original tally sheet. Once this has been done, the BEJ Chairman, who has a special password, authorizes entry of data into the computers.

The 42 BEJ's are linked to the BEC by telephone lines, over which the computers may communicate by modem; an encryption protocol is applied. Every so often (every 2-3 hours) the computers are put on-line to transmit results to the BEC, enabling it to compile partial results as they come in.

While impeded somewhat by the logistics of recovering tally sheets from the polling stations, these operations in fact resulted in the first returns being published by the BEC early Monday morning (the day after the election). Further results have been published every few hours, with the current totals being presented below.

Final results will await receipt of tallies from polling stations overseas (embassies and consulates), which will take a few days. Assignment of legislative mandates will be further delayed by the need to await determination of which parties fail to achieve the national threshold (3%) for representation. Validation of the election results will occur after the BEC decides how to respond to the various challenges that undoubtedly will be filed.

2. The Stakes

At stake in the recent elections were the presidency and all seats in the Senate and House of Deputies, both of which are currently controlled by the ruling Party of Social Democracy for Romania (PDSR) under President Ion Iliescu. The presidency is decided on a direct vote basis nationwide; if a single candidate fails to win 50% of the votes, the top two contenders compete in a second round two weeks later.

For the houses of Parliament, representation is decided on a proportional basis. The various parties (as well as independent candidates) put forward lists of candidates in each district, and the outcome is tallied separately for each. Excess votes that are received in a district but which are insufficient to gain another seat there are applied by the BEC to give the party additional seats in districts in which such seats are available and where the party has scored the highest number of such votes.

The number of legislative mandates assigned to each district is based roughly on population. The total number of seats in the House is 328 and in the Senate 143.

3. Results

The public release of any data on the recent elections, including exit polling by the press and public opinion sampling organizations, was prohibited until the polls closed at midnight. Shortly thereafter, exit polling data was broadcast which showed that it was likely that the opposition could form a coalition with a parliamentary majority but that President Iliescu would lead his main challenger, Emil Constantinescu of the Romanian Democratic Convention (CDR), by several points.

The results currently available (released at 10:00 a.m. on November 5, based on 95.34% of the precincts reporting) are as follows:

Presidency

(Main candidates)

Ion Iliescu	32.45%
Emil Constantinescu	27.70
Petre Roman (USD)	20.61
Gyorgy Frunda (UDMR, Hungarian)	6.19

¹ It is noteworthy that neither the Socialist Party nor the National Liberal Alliance appear likely to clear the 3% threshold.

C.V. Tudor (PRM, ultranationalist) 4.71
 Gheorghe Funar (PUNR, nationalist) 3.30

Parliament

(Parties likely to achieve 3%
 threshold for representation)¹

	<u>Senate</u>	<u>House of Deputies</u>
CDR	30.19%	29.61%
PDSR	23.26	21.73
USD	13.17	12.97
UDMR	7.01	6.84
(PRM)	4.50	4.45 (PUNR)
(PUNR)	4.32	4.42 (PRM)

It is probable that the above results will swing somewhat further in favor of the opposition prior to completion of the count. This is because the lowest number of precincts reporting -- 66.9% -- is in Bucharest, where the vote is expected to run toward the opposition. The reason for the delay is that votes from polling stations located overseas will be applied in Bucharest, and that following the standard procedure their tabulation will await receipt of the tally sheets and other materials which are being returned by express air transport services.

4. Election Day Experience

a. Past Experience

Romanian elections have a reputation for administrative confusion and sometimes worse. This time, there were widespread suspicions circulating in the press and elsewhere that the ruling party was planning a systematic campaign of fraud at the polling station level. While various methods were mentioned, some of the suspicions (based on previous experience) included multiple voting by groups of persons organized for this purpose, invalidation of ballots cast in favor of the opposition (especially through adding a second stamp), and ballot stuffing. These suspicions were enhanced by reports that the district prefects were appointing persons associated with the PDSR as polling station chairmen.

In fact, problematic conditions did exist. The national voters list, portions of which are supplied to the polling stations nearest the residence of voters as listed on their national identity cards, contains substantial defects. The total

number of eligible voters, as determined by the BEC based on the list, is some seventeen and a quarter million; some observers believe, however, that there may be a discrepancy as large as two million. Discrepancies occur due to the failure to update and correct the list based on the results of the biennial national census and interim records maintained by the police and other local authorities; in particular, the police fail to deliver computerized data to election authorities.

As a result of the problems with the voters list, eligible persons have been permitted during these elections to vote anywhere -- not only at the special polling stations traditionally operated at railway stations and the like, as is traditional in Romania, but even at regular polling stations other than where they would normally be registered. Similarly, voters who should (by address) have voted at certain polling stations were allowed to obtain ballots even if their names were not on the list there. In either case, the voter's name was simply added to the "special list" (containing name, signature and national identity number) compiled at the station.

A further problem arose with the issuance of so-called voter cards. The 1992 law provided for issuance of these documents, but in the event relatively few were issued by the authorities. As a result, the BEC instructed that voters be required to present their national ID cards in order to obtain ballots. After doing so, their ID's would be stamped "voted" for the current election. Voter confusion, however, might have lead certain officials to permit individuals to obtain ballots with voter cards; there is little evidence that this actually occurred, however.

Other problems that occurred in the past involved the supply and quality of ballot papers as well as other materials, including the stamps that are used for voting and also ink pads.

b. The Reality

In the event, conditions on election day appeared to represent a marked improvement over past experience. Of course, at this point, the reports of the various international observer delegations have not all been filed; also, the press continues to uncover a substantial number of irregularities. Finally, the period for formal complaints and challenges to the various electoral commissions (including the BEC and BEJ's) remains open.

It would appear that this time around there were adequate ballots available for the polling stations. When additional supplies of voting materials were required, the BEJ was usually able to provide them.

Defects in the voters list available at the polling stations did not impede voting due to the special list procedure. There was little evidence that

individuals were being permitted to vote on special lists without proper identification (or by presenting only a voter card).

There were some reports of insufficient supplies of other materials -- including stamps and ink -- at polling stations. But the situation appears to have been markedly better than that reported in the past.

Notwithstanding the general normalcy of events on election day, numerous irregularities were reported. Further information on these will become available as the reports of various observer organizations and the press are received. Some reported irregularities were as follows:

- There were numerous defects in the printing of ballot papers. Some ballots omitted pages (containing the names and lists of various parties) and others omitted symbols of some parties and independent candidates. Electoral authorities tried to respond by making extra supplies of properly printed ballot papers available to the polling stations. Some of the defects that could not be completely addressed through these means will, however, require the BEC to consider related complaints and how to remedy them.

Some presidential ballots in Bucharest and surrounding areas had a stray printing mark, in the form of the numeral "1" in the "000's" column, after the first name, that of President Iliescu. Local officials generally responded to this by entering a "0" or "X" in this box to ensure that the mark was not read as a "1". (Anyway, entering this figure would have been detected by the computer program used at the BEJ tabulation centers, since it would have created a conflict in the ballot reconciliation subroutine for the individual tallies.)

- Some ballots were reportedly purloined and it is not known whether they were somehow entered into the count. In one case, in Ilfov district, the perpetrator was apparently a polling station chairman; he is being sought by the police.
- There were reports on election day of organized groups of people, mainly military units, driving around in buses apparently in search of polling stations. In one polling station, a military unit was denied voting privileges and told to go to a special military station.
- A large number of "special list" voters materialized at many polling stations, often as many as 150 at polling stations that were generally equipped for 800-1,000 regular voters. In addition to creating supply problems, this created an impression that at least the conditions for significant fraud existed.

- Polling stations were generally tranquil and well-managed. There were some, however, where the chairman was overbearing or the atmosphere was influenced by an inexplicably high level of activity or the presence of persons who were not authorized to remain there.
- Some training had been received, through the BEJ, by many polling station chairmen. Recent orders, such as the order of the BEC that tally sheets should be posted outside the stations after the count, were not known to many chairmen, however. In addition, other important directives -- such as on the accreditation of domestic observers -- were only communicated through the mass media.

c. Presence of Party Representatives and Domestic Observers

For these elections, the political parties apparently did a much better job than in the past of mobilizing their members to serve on polling station committees throughout the country. While our own observations were limited to Bucharest and districts within a two hour drive, every polling station we visited was fully staffed -- having the full complement of nine (chairman, vice chairman and seven party representatives).

Another improvement with respect to these elections was the widespread presence of domestic observers. This was achieved mainly through the organizational efforts of contributing organizations -- particularly the two leading human rights organizations, the League for the Defense of Human Rights (LADO) and the Pro Democracy Association (PDA). Nearly all the polling stations we visited either had a domestic observer present at the time, or sometime during the day.

The presence of domestic observers had been secured through a decision of the BEC, assisted by a USAID-funded project conducted by IFES. The situation developed in the following manner:

Under the 1992 law and a government directive applying it, domestic observers are limited to one per polling station and, in the event more than one organization applies for a particular station, accreditation is decided by lots. Two and a half weeks prior to election day, the efforts of the NGO's were threatened when three additional, unknown ("phantom") organizations applied to field observers. (A similar situation had occurred in 1992, when a "phantom" group was awarded accreditations but its observers failed to appear on election day.) If a simple lottery had been conducted, the phantoms could have largely displaced legitimate observers.

Since IFES was providing legal and other assistance to the BEC, on October 17 Chairman Ionescu asked us to propose a lottery system to address the problem of observer assignment and accreditation. Such a procedure would be an immense undertaking, with perhaps 20,000 names to be assigned among some 15,200 polling sites.

By the next day, based on consultations with IFES local staff (Viorel Micescu), I was able to develop a concept for a lottery system and also write it up in proposal form.² In addition to being able to be performed on a computational basis, the IFES concept was also designed to achieve other stated objectives:

Nominees from the various groups should first be considered for accreditation at the polling stations for which they volunteered to serve as observers;

To achieve maximum coverage, volunteers who were not selected for their original choice should still have the opportunity to be reassigned to another, available polling station;

Observers should ordinarily serve at a polling station that is convenient to them (usually their original choice or one that is nearby);

Individuals who fail to be chosen as observers due to a surplus should have the ability to serve (as alternates) in the event the original assignee fails to show up; and

Individual observers should be able to remain throughout the election process, in order to observe all aspects, and should not be required to alternate with another observer except by mutual agreement.

Based on these considerations, we proposed the following randomized system for selecting which nominees put forward by the various NGO's would be accredited as observers at particular polling stations:

1. For each polling station, randomly select a nominee from among those put forward for that station; (The original proposal included weighting the process according to a pre-set factor to be accorded to each organization or group of organizations, but this element was eliminated by the BEC.)

² Memorandum to the Honorable Costica Ionescu, President, BEC, from Daniel Finn, Consultant, IFES, "Proposed System for Accrediting Domestic Observers to Polling Stations", 18 October 1996, 5 pp., accompanied by Romanian translation.

2. Take the names of nominees who failed to be selected during the first round and reallocate them to other polling stations in the same constituency (*Judet*) that continued to be available, again on the basis of random competition. In order to ensure that nominees may serve at stations which are geographically proximate to their original request, perform the reassignment based on the numerical distance between polling stations. (*i.e.*, reassign nominees to an available polling station as close in number as possible to their original choice.) Continue the reallocation process through successive rounds as many times as necessary to assign all nominees.
3. In the event some nominees remain after all polling stations in a constituency were taken, assign them on a random basis as alternate observers. (We also suggested that the original observers would have to show up at the polling station election day eve at 6:00 p.m. in order to claim their accreditation, or be replaced by the alternate if one were present.)

In the event, the BEC speedily adopted the IFES lottery proposal. On this basis, it was possible for the NGO's to field a large number of observers, with some 13,462 receiving accreditation as a result of the first run of the lottery. Additional names were added subsequently, on an ongoing basis, as they were received by the BEC from the sponsoring organizations.

Two subsequent developments at the BEC prior to election day seemed to pose further threats to the observer program. The first involved a broad challenge to NGO observer accreditation that was filed by the PDSR. In the event, much of the challenge was subsequently withdrawn, and the BEC ultimately responded by striking just over 50 names (which of course could be resubmitted if they turned out to be eligible). A more threatening development was represented by reports just two days before the elections that the BEC was considering excluding the domestic observers from the counting process. Apparently as a result of public and international pressure, this proposal was not adopted, however.

5. Perspective

The BEC President, Judge Ionescu, is very pleased by how the elections process went, and feels that the elections have gone far toward dissipating the atmosphere of suspicion that has infected Romanian politics, and elections in particular. He believes it is unlikely, therefore, that the BEC will respond to whatever challenges are inevitably filed by cancelling parts of the elections which are significant enough to affect the outcome measurably or require re-doing races on a large scale. At the same time, Ionescu believes that certain

challenges will inevitably have to be disposed of prior to certification of the results by the BEC.

Ionescu acknowledges continuing serious problems in electoral administration, however, primarily having to do with defects in the voters list and the need to apply the special list voting procedure so broadly. He believes that this and other factors call out for the creation of a permanent electoral body, and hopes that the BEC will adopt such a recommendation in its final report. In addition to providing a better registration process, Ionescu believes that a regular electoral authority could provide better administration, training and also conduct civic education programs.

Another precedent that has, I believe, been firmly established as a result of these elections lies in the principle of domestic observation. The involvement of the U.S. government, through a project involving IFES, played a major role in saving the day for domestic observers. It will be very hard in the future for any Romanian government to limit further the presence of domestic observers at polling stations and other aspects of election operations. The widespread presence of domestic observers has presumably greatly increased public confidence in the administration of the elections and the integrity of their outcome.

Indeed, the next government should consider relaxing the rules on domestic observers, to permit observers to be mobile and be accredited to more than a single polling station. (It is a good practice for observers, if available in sufficient numbers, to remain at polling stations throughout the day. It is also important, however, to have a mobile capability in order to observe additional stations or conduct spot checks or responses to reported irregularities.)

It is difficult to say whether there was in fact an organized campaign of fraud being planned at some stage prior to the elections, as indicated by various press and other reports. On a related but different point, Judge Ionescu believes that the ruling party this time was somewhat prepared to step back and let the opposition have its chance to face the enormous problems confronting the country. The PDSR may well have decided to try to follow the path blazed by other former communist parties in Eastern Europe, and hope for a return to power after a period of rule by anti-communists.

As far as the immediate future is concerned, there will undoubtedly be a lively transitional period in which the parties trade charges over the elections and jockey for position in terms of forming a government and establishing relations between the Parliament and Presidency. While broad challenges to the results of the elections are unlikely to succeed, they will nevertheless undoubtedly be made, as acts of political warfare.

The period prior to formation of a new government, and immediately thereafter, will be extremely interesting. It is not commonly known that the Romanian political system -- as established in the 1991 Constitution -- is a mainly Parliamentary or perhaps limited Presidential one. The specific powers of the Presidency are limited if somewhat vague. The government, on the other hand, is clearly formed in Parliament, subject to the President's designation of the prime minister and approval of the Cabinet.³ The coming transitional period and the one thereafter will test and give meaning to the structure created in the Constitution, which appears to provide a very effective basis for a fully democratic structure if its provisions are adhered to. Respect of the Constitutional provisions will be particularly important in a period in which the branches of government are in different political hands, as currently appears likely.

6. Future Programming

Despite the relative success of the recent elections -- perhaps because of it -- the situation would appear to be right for continued U.S. support to the electoral process and other aspects of the development of democratic political institutions in Romania.

a. Election Administration

The U.S. should support the establishment of a permanent electoral authority by the future government. Certain functions have been identified above that would be appropriate to include in the mandate of this body; these include voter registration, election official training and civic education.

I believe, however, that first another look must be taken at the basic structure of election administration under Romanian law. It was understandable, in the period of suspicion that may now be ending, for the BEC to be constituted of judges and political party representatives and to be separated from the government officials who actually performed related administrative functions. This was because there was such a high level of mistrust of the government that any body conducting election administration would probably be suspect.

In future, however, it would be desirable to take another look at this structure. It would undoubtedly be desirable to create a permanent election administration, so that officials associated with this body would form institutional

³ The President could refuse to name an opposition government, or attempt to name a government on some other basis -- say, a "national unity" government or a technocratic cabinet. But if Parliament refused to go along, the President would have little choice but to call new elections. There would undoubtedly be a price to pay, as the voters would probably not be pleased to be called to the polls again after having expressed their will.

loyalties and election administration functions become more autonomous and less directly reliant on government support.

At the same time, there is a need to examine alternatives to the selection of judges as electoral officials. While judges are generally considered to be distinguished and impartial people, they generally know little about elections and also do not always appear to understand the need for communicating their orders and implementing them administratively. (Most judges presumably simply assume that their edicts will be followed, as they are usually the law -- at least in the particular case in question!)

I would recommend, therefore, that at the outset a comparative study be undertaken of the structure of election administration elsewhere in the world, including in the region. This would enable the Romanian government to examine workable alternatives to the current approach.

Once an appropriate structure is identified, then further work should be done on fleshing it out with an appropriate set of responsibilities. These would include the components mentioned above (administration, registration, training and education), all of which should be moved onto a more organized, continuous and professional level.

b. Support to Other Democratic Institutions

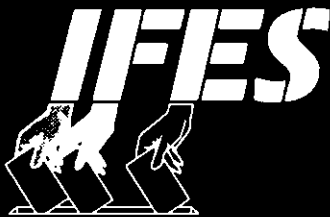
The political transition cited above might also indicate that this would be a good time to consider expanding U.S. support to the development of other democratic institutions in Romania, possibly including the Parliament. This could help enable the new Parliament to exercise its powers more effectively, as well as wisely.

c. Support to Civil Society

There are already many NGO's in Romania, but the distinction between political and civic functions is not complete. Some of the NGO's which were active in the elections process, especially PDA, demonstrated their maturity in this regard. It might be a good time to focus on the development of civic-oriented NGO's, including nonprofit social service organizations.

In my experience Romanian NGO's demonstrated their growing civic maturity in another respect. IFES was able to gain credibility and acceptance in its support for the BEC despite its close links with Romanian NGO's through the service organization CENTRAS. I believe that the IFES local staff successfully trod the narrow path between their interests in providing support to an intergovernmental technical assistance project and also maintaining close ties to

the NGO community. This was an absolute prerequisite to the success of this phase of IFES programming on election administration in Romania.



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