
Contested Compliance in a Liberal Normative Structure

The Western Hemisphere Idea and the Monitoring of the Mexican Elections

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I. Introduction

In August 1994, a vast network of national and foreign observers and United Nations (UN) officials—over 81,000 in total—was present at the Mexican presidential elections.¹ This throng was larger than in any previous monitoring experience. But more than the sheer number of monitors, it was their mere presence that was significant. No observation effort had taken

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¹ Instituto Federal Electoral, *Memoria del Proceso Electoral Federal* (Mexico City: IFE, 1995) at 259, 278.

place in the previous 1988 presidential elections. Moreover, in 1990 president Carlos Salinas had declared that Mexico's democracy was 'not subject to external evaluation.'² Similarly, the following year Mexico's representative at the Organization of American States (OAS) had stated, 'The Mexican government considers as a matter of national sovereignty the organization and vigilance of its electoral processes, and is opposed to the participation of foreign observers.'³ Thus, when in 1992 the OAS General Assembly voted to amend its *Charter* to allow suspension from the Organization of a government that has overthrown a democratic regime, Mexico cast the only dissenting vote. As late as December 1993, Mexico expressed its opposition to foreign election monitors at the UN. Even in early in 1994, Salinas' party turned down an American proposal to send observers to the upcoming Mexican elections.⁴ As Robert Pastor noted, 'There is no country in the world which is more sensitive to U.S. efforts to influence it than Mexico, and no country as successful in resisting American influence.'⁵ For Mexico, therefore, accepting foreign observers in 1994 was a major breakthrough. What accounts for this about-face of one of the staunchest supporters of the traditional conception of state sovereignty?

True, during the first months of 1994—with the Zapatista uprising and the assassination of the government party's presidential candidate—the Mexican regime faced one of its most serious credibility crises, and the acceptance of foreign monitors was no doubt a calculated move on the part of the Salinas government. It seemed logical to resort to an institutionalized network of foreign observers to enhance its legitimacy—domestically and internationally—by stamping a seal of approval on the impending electoral process. Interestingly, Mexico had consistently opposed the creation of the very network to which it was now reaching—but that is a paradoxical anecdote. What is more intriguing is that the Mexican government was able to resort to such a network. A decade earlier that network did not exist, at least not at the level of the mid-1990s. Likewise, at the global level, the monitoring norm had not developed to the extent it had by 1994. For

² Mark A. Uhlig, 'Mexico's Salinas Rains on His Own Parade' *New York Times* (25 November 1990), A3.

³ René Delgado, 'Observando a los observadores' in J. Alcocer and R. Morales, eds., *La organización de las elecciones. Problemas y proyectos de solución* (Mexico City: Porrúa 1994) at 131 [Delgado] [translated by author].

⁴ Jaqueline Mazza, *Don't Disturb the Neighbors: The United States and Democracy in Mexico, 1980-1995* (New York: Routledge, 2001) at 108 [Mazza].

⁵ Robert Pastor & Jorge Castañeda, *Limits to Friendship: The United States and Mexico* (New York: Vintage Books, 1989) at 10.

instance, UN Secretary-General Javier Pérez de Cuellar noted in 1988 that the UN 'does not send observers to elections' in sovereign states.⁶

Pérez de Cuellar's comment reflects the belief that in the modern state system issues of domestic governance in sovereign states have traditionally been placed outside the realm of international action. In the postwar period national elections are considered to fall within Article 2(7) of the UN *Charter*, which establishes that the organization and its member states cannot intervene 'in matters which are essentially within the domestic jurisdiction of any state.' However, this doctrine is not as strong in the Americas. The OAS has taken part in the domestic affairs of its member states through the monitoring practice since the early 1960s. Mexico had remained one of the unfaltering defenders of traditional conceptions of state sovereignty and so, as noted, had opposed foreign monitoring of electoral processes. By accepting the international monitoring norm by the time of the 1994 electoral process, therefore, Mexico can be considered to have transformed into a 'designated norm follower.'⁷ The questions that arise from this development relate not only to the swift diffusion of the monitoring practice, but also to the development of the inherent contestation process of this particularly difficult case.

The context of the 1994 Mexican elections, then, was framed in terms of the convergence of two usually separate international monitoring problematiques: a protracted transition to democracy and state sovereignty. Furthermore, the Mexican case study epitomizes the complex interaction of state and non-state actors, both at the domestic and international levels, characteristic of the normalization process of International Election Monitoring (IEM). I consider Mexico's acceptance of election monitoring in light of the wider normative structure of the western hemisphere, which I argue played an important role both in this specific development and in the emergence of IEM. My hypothesis is that by engaging in IEM in 1994, Mexico partially redefined its sovereignty. During this process, both state and non-state actors engaged in a two-level game; making strategic moves on the external front to use the gains obtained there on the domestic front,

⁶ Quoted in David Stoelting, 'The Challenge of UN-Monitored Elections in Independent Nations' (1992) 28 *Stan. J. Int'l L.* 371 at 372.

⁷ Antje Wiener, 'Contested Compliance: Interventions on the Normative Structure of World Politics' (2004) 10 *Eur. J. Int'l Rel.* 189 at 197 [Wiener 2004].

and vice versa.⁸ The tactical character of the endeavour, though, was consistently framed within the normative structure of the continent. Actors constantly resorted to the 'stock of interpretive patterns' developed in the region.⁹ The existence of this patterned practice made it possible for an international norm to spread—though not without contestation—in this groundbreaking way.

Furthermore, I argue that election monitoring partially altered Mexico's national interests. International norms do not just float over the international system; they are rooted in state practices and state interests. As the link between the international system and the sovereign states that compose it, norms affect the continuous process of mutual reconstitution in which they (the system and states) are engaged. A new international norm thus creates a new kind of relationship among the constitutive units of the system. Hence, I venture that sovereign states, including the hard cases of designated norm followers such as Mexico, have agreed in the last decades to have their elections monitored by international organizations both because of the pressure of non-governmental actors ('social influence'), and because they have come to conceive of the new contract among sovereign states as beneficial to their interests ('socialization').¹⁰ The last point is important; it suggests that learning exists and that actors' preferences do change. In the case at hand, Mexican authorities' conception of IEM was dramatically altered by the 1994 experience, as demonstrated by the four subsequent electoral processes in the country, as well as the participation of Mexican monitoring missions abroad ever since.

A focus on norm contestation usefully sheds light both on the changing meaning of norms and on the legitimacy-building process. It is, after all, primarily through conflicting interaction that the legitimacy of the normative structure—be it domestic, national or supranational—is created. As Wiener and Puetter note, 'norm contestation is a necessary component to improve norm acceptance.'¹¹ As Mexico was both a reluctant and a strategic norm follower, tracing the process of normative contestation should prove useful in elucidating the meaning of the monitoring practice. My approach echoes

⁸ Robert D. Putnam, 'Diplomacy and Domestic Politics: The Logic of Two-Level Games' (1988) 42 *Int'l Org.* 427.

⁹ Jürgen Habermas, *The Theory of Communicative Action, Volume Two. Lifeworld and System: A Critique of Functionalist Reason* (Boston: Beacon Press, 1989) at 10 [Habermas].

¹⁰ Alistair Iain Johnston, 'Treating International Institutions as Social Environments' (2001) 45 *Int'l Stud. Q.* 487.

¹¹ Antje Wiener and Uwe Puetter, 'The Quality of Norms is What Actors Make of It' (2009) 5 *J. Int'l L. and Int'l Rel.* 1. [Wiener and Puetter 2009].

what has been called 'critical' constructivism. In this framework, discursive interventions are constitutive of social norms and meanings; the emphasis is placed on interaction-based change.¹² It is through the interplay between norm-setters and norm-followers that social change occurs, and that a structure of meaning-in-use emerges.¹³ Therefore in the account below I stress discursive interventions such as policy statements, political debates and interviews with the central players of the Mexican experience with IEM.

I support the proposition that states, and more precisely Mexico, have accepted IEM both because of social influence and because of a novel understanding of their self-interest in two ways. First, I demonstrate how NGOs campaigned for international monitors before the Mexican government agreed to allow their presence. Second, I look for discursive interventions in which state officials justify their change of mind regarding international observers (either to hard-liners within the regime or to the public at large). The selection of both the Mexican election as the case study and the chosen interviewees was straightforward. The first was chosen because of the importance of the event, as the 1994 experience has been widely recognized as a watershed in the monitoring practice in Mexico. Regarding the second, the reconstruction of what transpired in order to make the foundational argument possible is best achieved by talking to its main actors. By means of a contextualized approach, I show how social practice contributed to the acceptance of the IEM norm by a designated norm follower.

This article is organized as follows. In the first section I introduce my general argument on the normative structure of the Americas as 'lifeworld', on state sovereignty, and on IEM as an issue area. In the second I look at the emergence of election monitoring in Mexico; considering the evolution of this practice is important because it sheds light on the specificities acquired by the 1994 election. In the third section I consider in more detail the 1994 electoral process, focusing on the three main actors involved in its monitoring: Alianza Cívica (Civic Alliance; henceforth AC), the UN, and the Carter Center (CC). In section four I briefly review the unfolding of this

¹² Antje Wiener, 'Constructivist Approaches in International Relations Theory: Puzzles and Promises', online (2006) ConWEB 5 at 12, 23 <<http://www.bath.ac.uk/esml/conWEB/Conweb%20papers-filestore/conweb5-2006.pdf>>. See also Karin Fierke, 'Constructivism' in Tim Dunne, Milja Kurki & Steve Smith, *International Relations Theory: Discipline and Diversity* (Oxford: Oxford University Press, 2006).

¹³ Wiener and Puetter 2009 *supra* note 11.

practice in the four ensuing electoral processes in Mexico (1997, 2000, 2003, and 2006). I conclude by highlighting the theoretical implications of this study.

II. The Western Hemisphere's Normative Structure, IEM, and State Sovereignty

The combination of a series of systemic and domestic factors in the Americas made the environment in that hemisphere particularly conducive to the emergence of IEM; and its claim to be the region where this practice emerged is noteworthy.¹⁴ The notion of the Americas as a region is closely related to what has come to be known as the 'Western Hemisphere Idea' (WHI). As early as 1813, Thomas Jefferson wrote that the governments to be formed in the nascent states

will be *American* governments, no longer to be involved in the never-ceasing broils of Europe. The European nations constitute a separate division of the globe; their localities make them a part of a distinct system... America has a hemisphere to itself. It must have a separate system of interest which must not be subordinated to those of Europe.¹⁵

According to Arthur P. Whitaker, Jefferson's statement was 'the first flowering' of the WHI.¹⁶

By WHI, Whitaker refers to 'the proposition that the peoples of this Hemisphere stand in a special relationship to one another which sets them apart from the rest of the world.'¹⁷ By producing and reproducing both the fundamental—and often contradictory—values holding the region together, and a social order among the members of the hemisphere, this interplay gave rise to a distinctive conception of state sovereignty. This idea of sovereignty allowed IEM to emerge in the Americas before anywhere else, because the composite understanding of sovereignty in the Americas had two constitutive elements: representative government (and later human rights broadly speaking) and non-intervention. For instance, for all the importance

¹⁴ Arturo Santa-Cruz, 'Constitutional Structures, Sovereignty, and the Emergence of Norms: The Case of International Election Monitoring' (2005) 59 Int'l Org. 663.

¹⁵ Quoted in Wilfrid Hardy Calcott, *The Western Hemisphere: Its Influence on United States Policies to the End of World War II* (Austin: University of Texas Press, 1968) at 14 [emphasis added].

¹⁶ Arthur P. Whitaker, *The Western Hemisphere Idea: Its Rise and Decline* (Ithaca: Cornell University Press, 1954) at 29 [Whitaker].

¹⁷ *Ibid.* at 1.

Latin American and Caribbean states attached to the non-intervention principle, at the 1928 Havana Pan-American Conference the Cuban representative warned that '[if] we declare in absolute terms that intervention is under no circumstance possible, we will be sanctioning all the inhuman acts committed within determined frontiers.'¹⁸ In a similar vein, Uruguayan Foreign Minister Alberto Rodríguez Larreta wrote in his famous 1945 note, 'The purest respect for the principle of non-intervention of one state in the affairs of another ... does not protect unlimitedly the notorious and repeated violation by any republic of elementary rights of man.'¹⁹ Article 5 of the 1948 OAS *Charter* makes this composite understanding of sovereignty explicit. While it notes that "[t]he solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy," it also states that "[i]nternational order consists essentially of respect for the personality, sovereignty and independence of States.' It was the OAS as the institutional manifestation of the continental normative structure that allowed the states of the hemisphere to become the pioneers in IEM. Not incidentally, Whitaker notes that the WHI was 'a laboratory and proving ground for policies, institutions, and experiences that were later applied with advantage in the broader field of world affairs.'²⁰

Since the early nineteenth century, the American states had been constructing what Jürgen Habermas calls a 'lifeworld'. By this the German political theorist means 'a culturally transmitted and linguistically organized stock of interpretive patterns.'²¹ In Habermas' conception, the lifeworld has three structural components. The first, culture, is 'the stock of knowledge from which participants in communication supply themselves with interpretations as they come to an understanding about something in the world.'²² Society, the second element, has to do with 'the legitimate orders through which participants regulate their membership in social groups and thereby secure solidarity.'²³ Personality, the third structural component of the lifeworld, refers to 'the competences that make a subject capable of

¹⁸ Quoted in Kathryn Sikkink, 'Reconceptualizing Sovereignty in the Americas: Historical Precursors and Current Practises' (1997) 19 *Hous. J. Int'l L.* 705 at 708.

¹⁹ Quoted in C. Neale Ronning, *Law and Politics in Inter-American Diplomacy* (New York: John Wiley and Sons, 1963) at 68.

²⁰ Whitaker, *supra* note 16 at 177.

²¹ Habermas, *supra* note 9 at 124.

²² *Ibid.* at 138.

²³ *Ibid.*

speaking and acting, that put him in a position to take part in processes of reaching understanding and thereby to assert his own identity.’²⁴ As Thomas Risse-Kappen notes, ‘the degree to which a common lifeworld exists in international relations varies considerably according to world regions and issue-areas.’²⁵ I would argue that the American states have developed not only a shared stock of knowledge and distinct and recognized personalities, but also a sense of belonging to a distinct society—the one demarcated by the WHI.²⁶

It was the ever-present tension between the two components of the regional understanding of sovereignty (representative government and non-intervention) that allowed the states in the hemisphere to embark early on in IEM. IEM thus emerged as an issue area specific to the region thanks to the WHI. Within this context, the agency of (state and non-state) actors acquired specific meaning. It was thus in the space created by the normative structure that the practice of IEM, which involved the network of INGOs as well as American states and intergovernmental organizations, emerged in the 1980s.

Within this issue area, states adopted specific identities and played certain roles. But these roles and identities were not merely idiosyncratic, nor did they correspond to completely discrete agents. They were part of a structure and therefore should be considered as a manifestation of structural determinants.²⁷ In this framework, the states’ foreign policy regarding IEM acquires a structural component. It ceases being mere process, as in most systemic IR theories. The state, or more concretely, its domestic structure,²⁸ becomes process—a process in which both state and non-state actors interact and contribute to create IEM as a new area of practice.

Thus, in the western hemisphere the regional organization—the OAS—sent groundbreaking missions to Costa Rica and the Dominican Republic in 1962.²⁹ The monitoring practice continued sporadically in the following

²⁴ *Ibid.*

²⁵ Thomas Risse-Kappen, ‘“Let’s Argue!” Communicative Action in World Politics’ (2000) 54 *Int’l Org.* 1 at 16.

²⁶ The WHI might be thought of as the Americas’ non-legalized version of the European *acquis communautaire*.

²⁷ Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999) at 258.

²⁸ See Thomas Risse-Kappen, ‘Bringing Transnational Relations Back In: Introduction’ in Thomas Risse-Kappen, ed., *Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures and International Institutions* (Cambridge: Cambridge University Press, 1995).

²⁹ Although, it should be noted, by current standards the observation carried out back then was more symbolic than real.

years, with the OAS having undertaken over twenty missions by the mid-1980s.³⁰ This tradition of continental engagement on issues of democratic governance allowed the OAS to establish the Unit for the Promotion of Democracy (UPD), in 1990. Among the UPD tasks is the monitoring of elections in member states that so request. Furthermore, at the twenty-first regular session of its General Assembly the following year, the foreign ministers of the OAS adopted a declaration entitled the *Santiago Commitment to Democracy and the Renewal of the Inter-American System*. Noting that the end of the Cold War had brought 'new opportunities and responsibilities', the member states declared their renewed and expanded commitment to the promotion and defense of representative democracy and human rights. Going further, the next day the organization passed Resolution 1080, which creates a mechanism to react to 'the sudden or irregular interruption of the democratic political institutional process' in any member state.³¹

With the 1991 Santiago Commitment and Resolution 1080, as Domingo Acevedo notes, 'For the first time, an international organization has explicitly ruled that governments should be held internationally accountable to the regional community for the means by which they have taken and secured power.'³² Among other things, the new institutional setting reinforced the underlying rationale for observing elections: issues of democratic governance are part and parcel of the continental understanding of state sovereignty. IEM's effect on the construction of sovereignty has thus been straightforward: the recognized rights of states are now explicitly delimited by an international element. As UN Secretary-General Boutros Boutros-

³⁰ See João Clemente Baena Soares, *Profile of a Mandate: Ten Years at the OAS* (Washington, D.C.: Organization of American States, 1994) at 141-151.

³¹ OAS, General Assembly, 5th Sess., *Representative Democracy*, OR AG/RES.1080 (XXI-0/91) (1991) at para.1.

³² Domingo E. Acevedo, 'The Haitian Crisis and the OAS Response: A Test of Effectiveness in Protecting Democracy' in Lori Fisler Damrosch, ed., *Enforcing Restraint: Collective Intervention in Internal Conflicts* (New York: Council on Foreign Relations, 1993) at 141. Emphasizing this trend, in December 1992 the OAS General Assembly approved the *Protocol of Washington*, which provides that a state 'whose democratically constituted government has been overthrown by force may be suspended' from participation in the regional organization by a two-thirds vote of the member States (entered into force in October 1997); OAS, General Assembly, 16th Sess., *Protocol of Amendments to the Charter of the Organization of American States "Protocol of Washington"*, OR OEA/Ser.A/2, add.3 (1992). Going even further, on 11 September 2001 the General Assembly of the OAS adopted the *Inter-American Democratic Charter*, OR OEA/Ser.P/AG/Res.1 (XXVIII-E/01), which establishes procedures to follow not only in the case of a democratic rupture, but also when a democratic regime is seriously altered or at risk.

Ghali put it in 1992, 'The sovereignty of states must be considered under the sovereignty of human rights.'³³

In the Mexican example, the right to free and fair elections was widely recognized by the early 1990s as a human right—and Mexico had implicitly become a designated norm follower. As noted, this change in the system-wide understanding of human rights and sovereignty had its origins in the Americas, where IEM resonated with the normative structure of the continent—the WHI. Furthermore, it was in the Americas where NGOs started to systematically monitor elections. For example, the Washington Office on Latin America (WOLA) began watching elections in 1978, sending observers to Bolivia. Two years later it observed the Guyana elections; in 1981 the electoral process in Honduras; and in 1983 WOLA observers monitored the elections in Argentina. That same year the International Human Rights Law Group (henceforth Law Group) established its Election Observer Project, working with activists in target states. In 1984, WOLA and the Law Group jointly observed the elections in Nicaragua and Uruguay.³⁴ The Law Group also observed the elections in Grenada that year and those in El Salvador and Guatemala in 1985. These organizations' pioneering work was in part made possible by the continental discourse on human rights and democracy.

It was only after the entrance of NGOs into IEM—often by interacting with inter-governmental organizations—that this practice became 'real' (in the sense of being performed thoroughly), and that an IEM network emerged. Further, by turning electoral processes into international events, sovereignty was partially redefined. Previous IEM practice, enshrined in the continental lifeworld, paved the way for the Mexican experience both by consolidating the network to which the Mexican government would subsequently resort, and more fundamentally, by pushing the monitoring norm to the international arena.

III. The Origins of Election Monitoring in Mexico

Election monitoring got off to a rough start in 1991. That year, the leftist Party of the Democratic Revolution (PRD) invited four members of Canada's

³³ Quoted in Inter-American Dialogue, *Convergence and Community: The Americas in 1993* (Washington: The Aspen Institute, 1992) at 31.

³⁴ International Human Rights Law Group and Washington Office on Latin America, *From Shadow into Sunlight: A Report on the 1984 Uruguayan Electoral Process* (Washington, D.C.: International Human Rights Law Group-Washington Office on Latin America, 1985).

New Democratic Party to observe the February 1991 elections in the southern state of Morelos. But the experience was hardly a success. The observers did not speak Spanish, their arrival to Morelos took place two days before the elections, and they did not even visit the polling sites. Nonetheless, the observers' presence caused strong adverse reactions. Alfonso Martínez Domínguez, a Senator of the ruling Institutional Revolutionary Party (PRI) and former party leader, said the observers were 'unacceptable'.³⁵ Antonio de Icaza, who had just left his position as Mexico's representative to the OAS declared, 'we do not have anything to hide, but we are not going to submit to anybody nor do we accept any kind of tutelage.'³⁶ Manuel Barquín, a magistrate counselor at the Electoral Federal Institute (IFE) went further, arguing, '[the observers'] presence can even be dangerous for the political process.'³⁷ After that first experience, the PRD—as well as other opposition parties—abandoned the idea of inviting foreign observers. But Mexican NGOs did not forget.

Later that year, a group of NGOs started election monitoring in a more consistent fashion. The Democratic Assembly for Effective Suffrage, the National Accord for Democracy, the Study Center for a National Project, and the Mexican Academy of Human Rights (AMDH), observed the 1991 electoral processes³⁸—some being inspired by the civic undertaking of the Chileans three years earlier. As two leaders of the Mexican monitoring efforts put it,

The success achieved by the Chilean civil society [in the 1988 plebiscite] contrasted with the experience of Mexican society, which in 1988 was subjected to the most incredible and huge vacuum of information decreed by the government ... Following the steps of the Chilean effort, several not-party affiliated citizen groups started to organize monitoring efforts [in 1991].³⁹

The monitoring practice in other latitudes thus had an effect in Mexico.

³⁵ Quoted in Homero Campa, 'Los observadores canadienses informarán de testimonios recibidos, pero no opinarán' *Proceso* 750 (18 March 1991) at 28.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Delgado, *supra* note 3 at 136-139.

³⁹ Enrique Calderón Alzati & Daniel Cazés, 'La observación ciudadana del proceso electoral' in Enrique Calderón Alzati & Daniel Cazés, eds., *Las elecciones presidenciales de 1994* (Mexico City: La Jornada Ediciones-UNAM, 1996) at 145 [Calderón Alzati & Cazés].

Of the organizations just mentioned, the AMDH would constitute itself into one of the leading actors in the 1994 monitoring exercise within the umbrella organization AC, having observed fifteen local elections between 1991 and 1993.⁴⁰ During its foundational experience as an election-watch organization in the state of San Luis Potosí, the AMDH joined forces with a local NGO, the Potosino Center for Human Rights, so that more than 300 domestic observers monitored the San Luis Potosí gubernatorial elections in 1991. Interestingly, part of the funding for that drive came from the Canadian International Centre for Human Rights and Democratic Development, with which Elizabeth Spehar, later head of the OAS' UPD, was involved.⁴¹ But perhaps more significant is the way the human rights agenda was expanded so as to include the electoral aspect. As AMDH's Sergio Aguayo recollects,

I had been candidate to the presidency [of the AMDH] with a platform in which I had spelled out very clearly that I wanted to be president to include the issue of civil rights, electoral rights, political rights. And that is the way I won. So I arrived [to the presidency] with the clarity that I was going to do something. Now, I did not have any idea of how I was going to push the agenda.⁴²

Then the CC invited him to observe the 1990 elections in Haiti. By then, the main rationale for election monitoring had settled in: 'the idea that elections could be an instrument for change.'⁴³ And in the process of recognizing the importance of elections as a means for change, according to Aguayo, the experiences of other countries was fundamental.⁴⁴

Thus, the next year Aguayo, on behalf of eight Mexican observer groups, invited the CC, through Robert Pastor, to accompany them in observing the state elections in Chihuahua and Michoacán.⁴⁵ But the CC also wanted a government invitation. Pastor tried to convince Salinas, whom he had met at Harvard when both were graduate students, to extend one, but Salinas

⁴⁰ Sergio Aguayo Quezada, 'A Mexican Milestone' (1995) 6 J. Democracy 6 157 at 159 [Aguayo Quezada 1995].

⁴¹ Interview of Sergio Aguayo (8 May 2002) [Aguayo, Interview 2002]. See also *ibid.*

⁴² Aguayo, Interview 2002, *ibid.* [translated by author].

⁴³ *Ibid.* [translated by author].

⁴⁴ Interview of Sergio Aguayo, (16 August 2000) in Mexico City [Aguayo, Interview 2000].

⁴⁵ Interestingly, Genaro Arriagada, who played a crucial role both in the 1988 Chilean plebiscite in general and in its international monitoring in particular, was a mission-member. As he recalls, 'there were op-eds in the newspapers asking that we be expelled... Salinas' advisors met with us [but] it was a drag, with people following us, with guards at the hotel.' Interview of Genaro Arriagada (9 August 2001) in Santiago [translated by author].

would not accept foreign observers in a Mexican electoral process. Pastor suggested a compromise: the CC's group would simply 'witness the observation of the elections in Michoacán and Chihuahua' in July 1992, but it would not comment on the elections themselves.⁴⁶ By that time, the Mexican government was well aware that the idea of IEM was hovering around Mexico. In February 1990, President Salinas had declared that 'a Country that leaves the organization and sanction of its internal political processes to foreign forces, is giving away its sovereignty.'⁴⁷ More to the point, the day after Salinas' declaration appeared, the head of the IFE (the electoral body) asserted that 'nobody certifies Mexicans.'⁴⁸ It was, as Jorge Chabat put it at the time, 'as though the Mexican states's [sic] traditional concept of sovereignty has found its last refuge in the ballot box.'⁴⁹ And in October 1990, foreign minister Fernando Solana declared that the country's problems regarding democracy would need to be solved by Mexicans 'and not by importing specialized observers from Atlanta or Milwaukee who tell us how to do things.'⁵⁰

Nevertheless, people from Atlanta were present in Chihuahua and Michoacán two years later. Trying to persuade his former graduate fellow to let foreign observers in for future occasions, Pastor went back to Mexico City after the elections, and told Salinas that although in his judgment the elections had gone reasonably well, 'I can't say anything about the elections because you told me [not to comment on them], so all we can do is talk about the election observers, and that's what we are going to do.'⁵¹ Salinas was not moved. His government continued to refuse foreign observers in Mexico. For example, an electoral reform passed in 1993 did not even mention foreign observers.

But the government was not the only body resistant to receiving foreign observers. In a pioneering study, 'International Observers: The Citizenry's

⁴⁶ Todd A. Eisenstadt, *Electoral Justice in Mexico: From Oxymoron to Legal Norm in Less Than a Decade: A Case-Based Analysis of the Evolution of Mexico's Federal Electoral Courts (1988-1997)* (Atlanta: Carter Center Working Papers, 1998) at 4.

⁴⁷ Quoted in Rodrigo Vera, 'Ante la presión de Estados Unidos, Colosio anunció lo que rechazaba el presidente: se aceptarán observadores electorales extranjeros' *Proceso* (14 March 1994) 10 at 11 [translated by author].

⁴⁸ Quoted in Delgado, *supra* note 3 at 130 [translated by author].

⁴⁹ Jorge Chabat, 'Mexico's Foreign Policy in 1990: Electoral Sovereignty and Integration with the United States' (1991) 33 *J. Interam. Stud. & World Affairs* 1 at 17.

⁵⁰ Quoted in *ibid.* at 14.

⁵¹ Interview of Robert Pastor, (5 September 2000) in Atlanta [Pastor, Interview 2000].

Perception,' José Antonio Crespo found that 63 per cent of those polled (in November 1990) rejected the presence of foreign observers in Mexican elections.⁵² In this sense, as Crespo observes, 'the official [i.e. governmental] justification for rejecting foreign supervisors [*sic*] has fallen in fertile soil.'⁵³ As political analyst René Delgado put it in the early 1990s, 'promoting the presence of foreign observers in elections, at the moment, is not completely advisable ... the practice of election observing, for the moment, should be carried out by national groups.'⁵⁴ There was thus widespread suspicion of foreign monitoring.

Furthermore, the international environment was relatively benign vis-à-vis the Mexican government's position. This was not just the traditional benign neglect of the United States toward the state of democracy of its southern neighbour.⁵⁵ There was a true fascination in the United States with the Salinas administration's touted modernization of Mexico—and the Mexican president had explicitly noted that he did not want foreign 'meddling' in Mexican politics. As Crespo points out, 'the international pressure so that transparent electoral processes in our country take place, without being nonexistent, shows a much lower intensity than the one registered in other cases, such as that of Chile during the Pinochet dictatorship or that of Sandinista Nicaragua.'⁵⁶ Thus, in the dawn of the Salinas administration, as Crespo surmises, 'neither are the pressures on the government to invite international observers so strong, nor is the internal political situation so chaotic, nor is the PRI's confidence in winning over its competitors in a completely clean manner sufficient.'⁵⁷

As a matter of fact, in the early 1990s not even opposition forces were convinced about the advantages of inviting foreign observers to domestic elections. After the timid 1991 precedent in the state of Morelos, the PRD pretty much dropped the matter; hence, it did not invite foreign observers to that year's mid-term elections. Still, in May 1992, future presidential candidate (1988) Cuauhtémoc Cárdenas travelled to Atlanta, where he talked to former president Carter about international observers. Nevertheless,

⁵² José Antonio Crespo, *Observadores internacionales: la percepción ciudadana*, Documento de trabajo 3 (Mexico City: CIDE, 1992) at 9 [translated by author] [Crespo].

⁵³ *Ibid.* at 10.

⁵⁴ Delgado, *supra* note 3 at 140 [translated by author].

⁵⁵ Cf. Lorenzo Meyer, 'Mexico: The Exception and the Rule' in A. F. Lowenthal, ed., *Exporting Democracy: The United States and Latin America* (Baltimore: Johns Hopkins University Press, 1991).

⁵⁶ Crespo, *supra* note 52 at 8 [translated by author].

⁵⁷ *Ibid.*

inviting foreign observers was not popular in the PRD. Cárdenas did not pursue the issue further.⁵⁸

Similarly, the conservative National Action Party (PAN) took an ambiguous position vis-à-vis foreign observers—although in a way it was this party that introduced the issue, if indirectly.⁵⁹ After considering that it had been the victim of electoral fraud in the 1986 gubernatorial elections in the state of Chihuahua, and in the municipal elections in the capital city of the state of Durango, the PAN had taken an unprecedented action: to take its case to the Inter-American Commission on Human Rights. In 1990, the Commission ruled in favour of the PAN,⁶⁰ but by that time the PAN seemed to have decided not to emphasize the issue of foreign assistance anymore. Bringing electoral matters to an international forum had caused strife within the party. In 1991, Luis H. Álvarez, its national leader and one of the key figures in the 1986 Chihuahua protest movement, declared that the PAN had no official position regarding the presence of foreign observers in Mexico. He noted, however, ‘The issue is being amply debated by different groups, and it is understandable that it be that way, since the presence of observers in electoral processes is already a universal practice. Only very few countries are still reluctant to such vigilance.’⁶¹ The PAN’s ambivalence was in part due to fear that, as a co-architect of the 1990 electoral reform, its endorsement of external observers could somehow be taken as its recognition that the reform was flawed—as the PRD maintained.

In any case, Mexican NGOs continued their relationship with the CC. After Mexican observers pointed out to CC delegates during their 1992 visit to Mexico that, while the CC roamed the world observing elections and giving advice to others they had never invited foreigners to do the same in their country, the CC decided to invite a Mexican delegation to observe that year’s American presidential election.⁶² The CC intended the mission to be plural, so in addition to representatives from observer groups and an independent political analyst, it also invited representatives from Mexico’s

⁵⁸ Jorge Castañeda, *Sorpresas te da la vida: México 1994* (Mexico City: Aguilar, 1994) at 53 [Castañeda 1994].

⁵⁹ Rodrigo Morales, ‘Observadores electorales, una evaluación’ in J. Alcocer, ed., *Elecciones, diálogo y reforma* (Mexico: Nuevo Horizonte-CEPNA, 1995) at 145.

⁶⁰ Cases 9768, 9780 and 9828: *Mexico* (1990), Inter-Am. Comm. H.R. No.01/90, *Annual Report of the Inter-American Commission on Human Rights 1989-1990*, OEA/Ser.L/V/II.77/rev.1/doc.7.

⁶¹ Quoted in Delgado, *supra* note 3 at 132 [translated by author].

⁶² Aguayo, Interview 2002, *supra* note 41.

three main parties—PAN, PRD, and PRI. Significantly, the latter declined to send delegates.⁶³

But for the Mexicans who agreed to participate in the observation, this was not an easy decision. As they noted in their report, ‘Accepting this invitation in a country like Mexico is not exempt from complications.’⁶⁴ That was not an overstatement. One was advised by a high Mexican government official not to take part in the monitoring effort because his presence in the mission was ‘contrary to the [Mexican] national interest.’⁶⁵ Similarly, the government-owned newspaper *El Nacional* ran an article criticizing ‘our naïve observers’ whose ‘protagonic aim will not contribute at all to improve the quality of the electoral process in that country [the United States].’⁶⁶ It was clear the government did not want the delegation to be used as a stepping-stone by their hosts to make inroads in Mexico.

And that had been precisely the CC’s intention. As Pastor recalls, inviting the Mexicans to observe elections in the United States was the second step in a strategy he had devised to be able to observe elections in Mexico; the first being to invite them to observe elections elsewhere (e.g. AMDH’s Sergio Aguayo to Haiti in 1990; PAN’s 1988 presidential candidate Manuel Clouthier to Panama in 1990).⁶⁷ At least some of the Mexican observers were well aware of the way their visit could be construed. For instance, before departing for Atlanta, Aguayo told a Mexican newspaper that the AMDH’s position was ‘not to invite international observers to elections, because democracy is fundamentally the task of Mexicans.’⁶⁸ Once in Atlanta, he wrote an op-ed for another Mexican newspaper in which he rhetorically asked,

Could this observation mission be used in the future by the U.S. to interfere in our electoral affairs? The answer is negative since one of

⁶³ Eric Bord, *The International Observation of U.S. Elections* (Atlanta, GA: The Carter Center of Emory University, 1992) at 7 [Carter Center 1992], online: The Carter Center <<http://www.cartercenter.org/documents/1210.pdf>>.

⁶⁴ *Ibid.* at 31.

⁶⁵ *Ibid.* at 55.

⁶⁶ Miguel Ángel Velázquez, ‘Política: EU elige presidente; Mirones mexicanos’, *El Nacional* (3 November 1992) [translated by author]. ‘Protagonic aim’ is a literal translation from the Spanish that does not necessarily correspond directly to an English equivalent. It refers to a desire to ‘stand out,’ much like the protagonist in a play.

⁶⁷ Pastor, Interview 2000, *supra* note 51.

⁶⁸ Alfredo Grados, ‘Invitan a 15 mexicanos como observadores de los comicios de EU; los eligieron al azar’, *El Universal* (31 October 1992) [translated by author].

the criteria for carrying out an election observation in another country is that the mission be based on an invitation from the political parties and from the government.⁶⁹

And in a later article Aguayo openly stated his opposition to having foreign observers in Mexican elections.⁷⁰

In any case, when the time came to make an official pronouncement on the American presidential elections at the end of their brief (2-4 November) monitoring exercise, the Mexican observers were rather reluctant to express their opinion. Pastor had to insist, telling them that the CC would feel insulted if they did not present a report on the American election.⁷¹ In their report, the observers were careful to specify, 'We have no interest in interfering in the American political system. We offer these criticisms and suggestions in the same spirit of friendship and openness with which we were invited and with a strong belief that all sides benefit from the free flow of ideas and information.'⁷²

The government was adamant in its position regarding foreign observers. In October 1993, on the eve of the formal start of the 1994 presidential race, Foreign Minister Fernando Solana declared, 'the Mexican government will not allow foreign observers in the electoral processes, only Mexican ones. The most fundamental exercises of sovereignty are the elections, which should always be in the hands of the citizens of Mexico.'⁷³ But the momentum gained by IEM since the 1990 Nicaraguan elections was palpable. Thus, Rosario Green, a Mexican diplomat at the UN at the time, recognized, 'Even though Mexico has always been opposed to international organisms having the capacity to intervene on issues that are in the exclusive

⁶⁹ Sergio Aguayo, 'Observadores en EU: el interés mexicano', *La Jornada* (3 November 1992) [translated by author].

⁷⁰ Sergio Aguayo, 'Clinton y la unidad nacional' *La Jornada* (7 November 1992) at 5.

⁷¹ Interview of Robert Pastor (4 December 2001) in Atlanta [Pastor, Interview 2001]. Interestingly, Pastor notes that the observations the Mexicans made 'presage all the problems that occurred in 2000,' in the U.S. presidential elections.

⁷² Carter Center 1992, *supra* note 63 at 33.

⁷³ Raúl Benítez Manaut, 'La ONU en Mexico. Elecciones presidenciales de 1994' (1996) 36 *Foro Internacional* 533 at 539 [translated by author] [Benítez Manaut].

domain of states, it is a fact that the recent evolution of these fora tends to consolidate such tendency.⁷⁴

International pressure on the Mexican government was thus increasing. The North American Free Trade Agreement (NAFTA), on which Salinas had staked his presidency, was going to be voted on in the United States Congress in November. Moreover, by that time the bifurcated political economy of the Salinas administration (in which economic openness went hand-in-hand with political guardedness) was flagrant, thus creating problems for the Mexican government. As the IFE's director for international affairs remarked, around 1994 'we seemed very open in the economic aspect, very open in trade matters, but a dike in political-electoral matters.'⁷⁵ Nevertheless, as Monica Serrano has noted,

In spite of Salinas' efforts to administer and control political change, the opening and internationalization of domestic politics undermined the capacity of the system to respond, simultaneously, both to the demands by new actors as well as those of the *priista* family who had been affected by the new dynamics.⁷⁶

On the internal front, Salinas faced pressures to designate the PRI's candidate. But he did not want to do so before the fate of NAFTA was decided in the United States. Thus, it was only after the House of Representatives voted in favour of NAFTA that Luis Donaldo Colosio's nomination was announced.⁷⁷ Everything was going well for Salinas; with NAFTA scheduled to go into effect on 1 January 1994, and Colosio as his very likely successor, his legacy—and the permanence of the political system—seemed secured. As noted in the introduction, by December 1993—confident that he was in control of the political situation—Salinas' government expressed its opposition to foreign electoral assistance by voting for UN Resolution 48/124.⁷⁸ The designated norm follower was still able to

⁷⁴ Rosario Green, 'El debate ONU-OEA: ¿Nuevas competencias en el ámbito de la paz y la seguridad nacionales?' in O. Pellicer, ed., *Las Naciones Unidas hoy: visión de México* (Mexico City: Fondo de Cultura Económica, 1994) at 101 [translated by author].

⁷⁵ Interview of Manuel Carrillo (30 October 2001) in Mexico City [translated by author] [Carrillo, Interview].

⁷⁶ Mónica Serrano Carreto, 'La herencia del cambio gradual. Reglas e instituciones bajo Salinas' (1996) 35 *Foro Internacional* 440 at 453 [translated by author].

⁷⁷ Jorge Castañeda, *La herencia: Arqueología de la sucesión presidencial en México* (Mexico City: Alfaguara, 1999) at 288.

⁷⁸ Benítez Manaut, *supra* note 73 at 541. UN Resolution 48/124 reaffirms the UN principle of non-interference in domestic matters such as electoral processes, and explicitly affirms that 'there is no universal need for the United Nations to provide electoral assistance to Member States, except in special circumstances'; *Respect for the principles of national sovereignty and non-interference*

resist the dictates of the continental lifeworld as it regarded the monitoring practice. As I have shown, by this time state-sanctioned electoral observation of the 1994 electoral process was far from being a foregone conclusion—even if non-state actors were planning to engage on it. The next section will make clear that as political developments unfolded in the electoral year, the WHI would acquire new salience for both Mexico's conception of sovereignty and for its democratic transition.

IV. The Road to the 1994 Elections

Mexico's political environment was totally altered as election year opened. On 1 January 1994, the same day NAFTA went into effect, an armed uprising broke out in the southern state of Chiapas. As the Zapatista Front of National Liberation, named after 1910 revolutionary leader Emiliano Zapata, gained popular sympathy throughout the country, the Salinas administration was led not only to initiate peace talks with the guerrillas, but also to restructure his cabinet and eventually to offer a new electoral reform. Thus on 10 January, Salinas removed Interior Minister Patrocinio González, a hard-liner, and replaced him with Jorge Carpizo, a widely respected lawyer and human rights advocate with no party affiliation. At the same time, Salinas designated Manuel Camacho—whom after being passed over for the PRI's presidential candidacy had been appointed as foreign minister—as commissioner for peace negotiations with the rebels. To replace Camacho at the foreign ministry, Salinas appointed a career diplomat, Manuel Tello. Along with the cabinet reshuffle, Salinas also declared a unilateral cease-fire.

That same month, the main political forces and the government signed what came to be known as the Barcelona Agreements, in which they agreed to change the structure of the electoral bodies at the federal, state, and district level. The third electoral reform of Salinas' administration was pending.⁷⁹ Since the political campaigns had already started, this meant that the rules would be changed in the middle of the game.

The rationale for such an extemporaneous initiative was clear: the government wanted to restore the legitimacy of non-violent means for

in the internal affairs of States in their electoral processes, GA Res. 48/124, UN GAOR, Supp. No. 49, UN Doc. A/48/49 (1993) at para.4.

⁷⁹ Here I draw on Arturo Santa-Cruz, 'From Transition to Consolidation: Mexico's Long Road to Democracy' (2002) 22 *Revista de Ciencia Política* 90 [Santa-Cruz 2002].

political contestation. As Jorge Alcocer, then adviser to Interior Minister Carpizo, stated,

If the PRD, in its most radical wing, moved to positions openly supporting the Zapatistas, the August 1994 election could get enormously complicated. In those conditions... one of the first issues that Dr. Carpizo put forward was how to achieve an accord with the PRD and with the PAN without the PRI opposing it.⁸⁰

The electoral process needed to be presented as the only viable and acceptable way to gain power. Hence, in the next four months a constitutional amendment and forty-one changes to the electoral law were passed. Thanks to the former, the IFE was to be formed by six 'citizen counselors' (approved by consensus among the PRI, PAN, and PRD), two representatives from each house of Congress, and the interior minister. Neither the president nor his party controlled the electoral body anymore. Furthermore, the interior minister could not use his vote to break a tie. The electoral institution had thus become a different body, one in which independent citizens played a cardinal role. As a WOLA-AMDH joint report on the 1994 Mexican elections put it, 'The "citizenization" of the IFE is the most important reform of all.'⁸¹

The changes introduced to the electoral law were significant too. They improved the status of national observers and allowed the presence of foreign observers under the semantic guise of 'international visitors'. At this point, both NGOs and the Mexican government were deeply engaged in their respective two-level games. The rarefied political environment had made the potential validation that observers provided of the August electoral process a highly valued item for the government. For instance, Salinas, through an intermediary, sought the leadership of AC to ensure that their organization was going to monitor the elections. According to Aguayo, 'it is not that they [high governmental officials] were pleased with us, but they said, "well, there they are."⁸² Furthermore, in order to insure that domestic monitoring actually took place, the government set up public funding (more on this below) and allowed foreign financing of Mexican NGOs. As Aguayo recalls, 'in '94 the issue of foreign financing changes completely because the government stops worrying about it. There is a

⁸⁰ Interview of Jorge Alcocer (12 November 2001) in Mexico City [translated by author] [Alcocer, Interview].

⁸¹ Washington Office on Latin America and Academia Mexicana de Derechos Humanos, *The 1994 Mexican Election: A Question of Credibility* (Washington, D.C.: WOLA, 1994) at 19 [WOLA].

⁸² Aguayo, Interview 2002, *supra* note 41 [translated by author].

fundamental turn because of the Zapatista rebellion ... and because of the appointment of Carpizo as interior minister.⁸³ Thus, in February the IFE approved the 'Guidelines for the Accreditation and Development of the Activities of the Mexican Citizens who will act as Observers during the Electoral Process of 1994', and in May Article 5 of the electoral law was amended to extend the observing period from election day to the electoral campaign.⁸⁴

Regarding 'international visitors', the issue was more complicated. Although the change in the government's position seemed unavoidable, there was no consensus among high government officials and PRI leaders; Salinas' cabinet indeed debated the issue several times.⁸⁵ The eventual acceptance of foreign observers was not immediate. For instance, when in January Santiago Oñate, secretary of international affairs of the PRI, was approached by American government officials regarding the possibility of Mexico accepting OAS electoral monitors, he refused.⁸⁶ As Pastor notes, 'the Mexicans had always constructed an elaborate philosophical and legalistic basis' of national sovereignty; 'only the Mexicans do this kind of thing.'⁸⁷ 'Sovereignty' remained a principled issue for most of the Mexican political class.

But the topic of foreign observers was on the agenda right from the start of the new negotiations. According to Alcocer, 'what triggers the need for international observation is the EZ [Zapatista Army].'⁸⁸ In fact, the issue of foreign observers was on the forefront of Carpizo's agenda—even though he was personally averse to it. Alcocer, for example, recalls that despite resistance from both government and public opinion (due to sovereignty concerns), Carpizo devoted significant attention to the question of foreign observers.⁸⁹ But there were segments both within the opposition parties—particularly the PRD—and the government that favoured the IEM of Mexican elections. Interestingly, the single PRD member who most strongly

⁸³ *Ibid.*

⁸⁴ Eduardo Olguín Salgado, 'La observación electoral durante los comicios presidenciales de 1994' in by M. Larrosa and L. Valdés eds. *Elecciones y partidos políticos en México, 1994* (Mexico City: UAM-Iztapalapa, 1998) at 453.

⁸⁵ Pastor, Interview 2000, *supra* note 51. Pastor debriefed several cabinet members on this issue.

⁸⁶ Mazza, *supra* note 4 at 108.

⁸⁷ Pastor, Interview 2001, *supra* note 71.

⁸⁸ Alcocer, Interview, *supra* note 80 [translated by author].

⁸⁹ *Ibid.*

pushed for international observers—and indeed the one who came up with the idea of calling them ‘international visitors’ in order to get around constitutional Article 33—was Porfirio Muñoz Ledo, a former PRI president who had left the party with Cárdenas back in 1987.⁹⁰

Concurrently there was a team within the IFE that had been advocating a change of policy regarding IEM since late 1993. Manuel Carrillo, head of IFE’s international affairs office, states that Carpizo’s predecessor—Patrocinio González Garrido—on whose ministry the IFE still depended, ‘had a vision, let’s say strict, orthodox, of sovereignty.’⁹¹ But with the 1994 electoral reforms, the situation began to change for this group of people, headed by IFE’s director Arturo Núñez. During the IFE’s internal debate in late January, still in the midst of the political upheaval brought about by the Zapatistas, recalls Carrillo, ‘somebody comes and says: “look at this video, from El Salvador. Can you see that [foreign] observers are substituting the people at the [voting] tables? They say that is observation.” The reasoning was devastating.’⁹² Allowing foreign observers was still far from being a forgone conclusion.

However by that time it was not really up to Salinas (i.e. the government) to decide the issue.⁹³ As Alcocer has written,

‘Knowing that the eyes of the international community would continue to be focused on Mexico, and that the August elections had provided the impetus for the EZLN [the Zapatista Army] rebellion, Colosio recognized that it would be foolish to employ Mexico’s traditional attitude rejecting international election observers.’⁹⁴

Colosio had already sent some signals that he was more open to electoral observation than Salinas had been, at least regarding domestic observers. For instance, on 8 December, Colosio said, ‘I am in favor of a plural group of

⁹⁰ Alcocer notes that Muñoz Ledo was the one who brought the issue of international observers to the table; *ibid.*

⁹¹ Carrillo, Interview, *supra* note 75 [translated by author].

⁹² *Ibid.*

⁹³ According to Jorge Castañeda, Mexican writer Carlos Fuentes convinced Salinas to accept foreign observers on 23 December 1993. But subsequently, when Fuentes tried to arrange a meeting between Cárdenas and Colosio to talk about the issue, Cárdenas showed some resistance to meet with his counterpart, and the issue fell apart. Salinas did not pursue it further. Castañeda 1994, *supra* note 58 at 30-5.

⁹⁴ Jorge Alcocer, ‘The International Observation of Electoral Processes: The Mexican Experience in 1994’ (1997) 19 Hous. J. Int’l L. 689 at 696 [Alcocer 1997].

impartial and prestigious national observers, made up by citizens proposed by all parties.⁹⁵ However, international observers were never mentioned. But with the new political environment developing by the next year, Colosio (and Salinas) perceived the need to cooperate with international observers. Furthermore, by inviting observers rather late in the electoral process, as Jennifer McCoy—head of the CC's team for the 1994 elections—has noted, the government 'had the positive thing of getting international legitimacy, having observers coming to election day, and saying, "well election day looked very good." I think ... there was a emerging norm, and recognizing the practice ... [I]t was a recalculation of interests, of national interests.'⁹⁶

Colosio seemed to have made up his mind on the issue around February. Interestingly, during the negotiations held by the interior minister that month between the PAN, PRI, and PRD, only the last, through its representative Porfirio Muñoz Ledo, openly favoured the presence of international observers in the August elections. The PAN had no official position yet, and the PRI was still against it.⁹⁷ Toward the end of February or early March, though, Colosio went to Washington to meet with NDI leaders. Patrick Merloe, who participated in the meeting, recalls Colosio reiterating his view that 'there should be international observers in Mexico's elections', while he invited the NDI to help AC in the August elections.⁹⁸

Around that time, on 6 March, Colosio said in a campaign rally,

[The elections'] transparency demands the participation of observers, and it does not exclude the possibility that anybody gives an extensive testimony about it, not only on the part of our citizens but also on the part of international visitors. By no means should we regard with fear those that wish to learn about the nature of our democratic processes. Our elections, and I say this with full conviction, will have no shame to conceal.⁹⁹

From then on, there was a noticeable change in the government's position on foreign observers. A week after Colosio's speech, Mexico's ambassador to the UN declared that accepting foreign observers 'does not mean

⁹⁵ Quoted in *ibid.*

⁹⁶ Interview of Jennifer McCoy (8 September 2000) in Atlanta [McCoy, Interview].

⁹⁷ Alcocer 1997, *supra* note 94.

⁹⁸ Interview of Patrick Merloe (7 December 2001) in Washington [Merloe, Interview].

⁹⁹ Quoted in Benítez Manaut, *supra* note 73 at 547.

abandonment of sovereignty, but declaring that there is nothing to hide and that electoral processes in Mexico can be observed freely.¹⁰⁰ Nevertheless, not everybody within the government was equally convinced. Foreign Minister Tello declared in early April, 'I have yet to be persuaded about the necessity of having people from abroad coming to observe the [electoral] process.'¹⁰¹ In the end, the foreign minister did not need to be convinced; he was not involved in negotiating the issue of foreign observers, as his role was limited to issuing the invitations. As Tello put it, 'The one who negotiated everything was Carpizo.'¹⁰² The interior minister certainly played a key role in bringing about the acceptance of foreign observers ('international visitors')—although in his words, 'not without sadness.'¹⁰³ But even Carpizo's pragmatic position could not have materialized had Colosio not agreed to it. For Alcocer, 'If the PRI candidate had said no, not even Carpizo would have been able to pull the [international] observers issue off.'¹⁰⁴

By March, the political environment started to acquire a relative sense of calm again. During the first week, Peace Commissioner Camacho signed a preliminary peace agreement with the Zapatistas, and on the twenty-third, the constitutional reforms that came out of the negotiations among the main three parties and the government were approved by Congress. But then Mexico again entered a state of commotion, as Colosio was assassinated that same day. This was a most extraordinary event in Mexico; it had been seven decades since an event of equivalent import had occurred. As a result of the rarefied political environment, the rebels suspended peace talks. In the midst of internal strife, Salinas had to hurriedly designate a second PRI candidate: Ernesto Zedillo, a former cabinet member who had quit to become Colosio's campaign manager.

Nevertheless, the agreements regarding foreign observers remained untouched. Furthermore, in April the Mexican government officially approached the UN, inviting it to play a role in the forthcoming electoral process (more on this below). The reformed IFE decided to leave the drafting of the official invitation to the six citizen counselors, who took their seats on 3 June. Twenty days later, and only two months before election day,

¹⁰⁰ *Ibid.*

¹⁰¹ Judyth S. Guevara, 'Calificar las elecciones, exclusividad de mexicanos: Tello' *Excelsior* (10 April 1994) 4 at 47 [translated by author].

¹⁰² Interview of Manuel Tello (12 November 2001) in Mexico City [translated by author] [Tello, Interview].

¹⁰³ Jorge Carpizo, 'La reforma federal electoral de 1994' in J. Alcocer ed., *Elecciones, diálogo y reforma: México 1994 / I* (Mexico City: Nuevo Horizonte, 1995) at 30 [translated by author].

¹⁰⁴ Alcocer, Interview, *supra* note 80 [translated by author].

the IFE issued the guidelines for ‘international visitors’. As José Woldenberg—then one of the six citizen counselors and later counselor president of the IFE—recalls, the counselors decided to issue a ‘generic’ invitation (i.e. not to make a list of invited organizations) so as not to offend anyone; political parties and NGOs could then issue particular invitations.¹⁰⁵ The guidelines of course kept the term ‘international visitor’, which for Woldenberg was ‘an intermediate formulation’ between the guardedness mandated by constitutional Article 33 and complete transparency. Nevertheless, Woldenberg recognizes that ‘once groups or individuals from abroad come to follow the elections, what are they? Observers. They are international observers, there is no way around it.’¹⁰⁶

It is thus clear that the WHI as lifeworld, and more specifically electoral monitoring as a legitimate issue area, had permeated the Mexican political environment. I now turn to consider in detail the work of the three most prominent organizations in the monitoring of the 1994 Mexican elections: AC, the UN, and the CC. The work they developed—apart and in tandem—should illustrate the extent to which, in the monitoring practice, state and non-state actors, international and domestic, were interacting—and thus pushing the traditional meaning of state sovereignty.

1. *Alianza Cívica*

AC was established in April 1994 as an umbrella organization formed by more than 300 NGOs. But the decision to embark on an observation project had been taken months before, in November 1993, when the AMDH and five other organizations (Citizen Movement for Democracy, Convergence of Civil Organizations for Democracy, National Accord for Democracy, Council for Democracy, and the Arturo Rosenblueth Foundation) first had the idea to launch a monitoring effort for the August 1994 elections.¹⁰⁷ As Aguayo recalls,

We decided to monitor the 1994 elections in Yucatan. We were observing the [state] elections... it was the day Colosio was *destapado* [unveiled, i.e., nominated] ... those of us who would later form Alianza Cívica were talking and decided to do the

¹⁰⁵ Interview of José Woldenberg (30 October 2001) in Mexico City [Woldenberg, Interview]. The IFE was reformed again in the 1996.

¹⁰⁶ *Ibid.* [translated by author].

¹⁰⁷ Calderón Alzati & Cazés, *supra* note 39 at 146.

observation of the presidential election. Knowing that we would not have money, we said, "we have to do it, even if it is symbolic, even if Colosio is going to win, even if... it doesn't matter, let's do it anyway."¹⁰⁸

The founding NGOs were still trying to reach a consensus on a myriad of issues, such as whether or not to accept foreign funding, when the Zapatista rebellion broke out. Everything changed for the nascent monitoring project from then on. As noted earlier, president Salinas approached its leaders to make sure that they would carry out their monitoring project, to set up public funding for observation efforts, and to relax restrictions on foreign financing. Furthermore, the amendments to the electoral laws enhanced both the legitimacy and the opportunities to carry out observation activities. Suddenly, the long neglected and despised observer organizations seemed to have become the government's darlings. But while the enhanced legal status and more open access to external sources made the work of the still nascent AC and other monitoring organizations easier, the sudden change in the government's attitude toward them also entailed risks. The most obvious danger was potential government interference in what had originally been conceived of as an independent citizen effort.

But the leaders of the seven organizations continued to work on their own, building a consensus plan for the August elections. By the end of February 1994, the preliminary project was concluded and presented for discussion in several states. AC's legal establishment and a national meeting in Mexico City to approve the final scheme took place that April.

In the meantime, AC's project was also taken to Washington D.C., in order to request funds from sympathetic foundations and NGOs.¹⁰⁹ Thus, AC received an \$820,000 grant from NDI.¹¹⁰ That NDI gave financial aid to AC was rather unusual, since NDI usually provided technical rather than financial assistance. But the case of AC was different. Aguayo recalls his organization's dealing with NDI:

I told them, "we need support in cash, not in kind; we don't need training nor technical assistance, nor that you tell us how to observe elections. We know how to do that. What we need is that you support us financially." ... NDI understood that [and] they

¹⁰⁸ Aguayo, Interview 2002, *supra* note 41 [translated by author].

¹⁰⁹ Calderón Alzati & Cazés, *supra* note 39 at 147.

¹¹⁰ WOLA, *supra* note 81 at 34. Total foreign funding to AC reached \$2 million. Aguayo Quezada 1995, *supra* note 40 at 162.

even provided us with resources without providing technical assistance. I don't know how they managed [to do this] with their board of directors.¹¹¹

In fact, the decision to provide funds to AC through NDI seems to have come from higher up—from the State Department.¹¹²

AC's relationship with NDI was completely different from the one it had with the UN. For Enrique Calderón and Daniel Cazés, two of AC's leaders, the UN envoys 'thought they could manipulate' AC; Calderón and Cazés charge the UN with trying to make AC '[give] up on any serious observation effort.'¹¹³ Going even further, Aguayo characterizes the relationship with the UN as a 'nightmare'.¹¹⁴ The root cause of the problem, according to Aguayo, was that the world organization 'wanted to have a place under the universe of Mexico's democratization, and that we [AC] had taken that place that they in a natural manner, should have had.'¹¹⁵ The difficulties arose because the assistance that the government had requested the UN provide put the international organization in a position of power vis-à-vis domestic NGOs (below). AC resented this.

Nguyen Huu-Dong, who coordinated the 1994 UN mission, recognizes the problems his team had with AC. According to him, two factors underlay the heated discussions over methodological issues: the 'lack of communication and lack of trust' between AC and the UN mission, and that national observers tend to be inherently more aggressive or suspicious of the government's intention in the electoral process than international observers are.¹¹⁶

Nevertheless, working with the UN was important for AC, for two reasons. The most obvious was the financial support it would receive from the international organization. As noted, the government had set up a fund to be distributed among monitoring organizations—and the UN was in charge of managing the resources (more on this below). But arguably more important than the fund was the legitimacy with which the UN could invest

¹¹¹ Aguayo, Interview 2002, *supra* note 41 [translated by author].

¹¹² Mazza, *supra* note 4 at 113.

¹¹³ Calderón Alzati & Cazés, *supra* note 39 at 157 [translated by author].

¹¹⁴ Aguayo, Interview 2002, *supra* note 41 [translated by author].

¹¹⁵ *Ibid.*

¹¹⁶ Interview of Nguyen Huu-Dong, (22 November 2001) in Mexico City [Nguyen, Interview].

AC. The neutrality of AC had become an issue early on; it was constantly accused of being partial to the PRD. This kind of criticism led Aguayo to characterize the problem as a 'battle for legitimacy', and to realize that because of this, UN presence was necessary.¹¹⁷ AC was playing a two-level game.

AC focused its effort on putting together a comprehensive monitoring plan for the whole electoral project, which included the establishment of a media-watchdog project, opinion polls, a study of Mexican electoral laws, as well as a program to denounce illegal electoral activities (such as the use of government funds in political campaigns). AC actually mounted the largest organized, independent citizen effort in Mexico's history. The consolidation of Mexico's civil society since the late 1980s was crucial in this respect. It was the solidarity of Mexican civil society that made the monitoring effort in Mexico different from those carried out previously, such as the Nicaraguan experience in 1990. This solidarity reduced the centrality of the role played by international observers.¹¹⁸

The fact that Mexicans had the leading role in the monitoring effort was important for AC. As Aguayo explains, AC took the position that foreign observers were there only to complement its work, and not to direct its decision-making.¹¹⁹ This is not to say that AC was closed to foreign observers—only that it wanted to coordinate the activities of the foreign NGOs that had offered to work with it, such as WOLA. In fact, AC had invited about half of the 777 foreign observers present on election day. The profusion of invitations issued by AC was not accidental. It had to do with the work many of the NGOs of which it was composed had done to establish links with sister organizations abroad. Without these previous relationships, AC would have not invited foreigners to monitor the elections. 'If the '94 observation had taken place in '82, we would never have invited foreigners... it was unthinkable,' notes Aguayo.¹²⁰

On 21 August, AC had 18,280 Mexican observers, and 450 'foreign visitors' distributed throughout the country.¹²¹ By midnight that night, AC had put out its first report based on a sample of 2,168-polling places, assessing the legitimacy of the election. An hour after midnight, and based

¹¹⁷ Aguayo, Interview 2002, *supra* note 41 [translated by author].

¹¹⁸ Aguayo, Interview 2000, *supra* note 44; McCoy, Interview, *supra* note 96; Pastor, Interview 2000, *supra* note 51.

¹¹⁹ Aguayo, Interview 2002, *supra* note 41.

¹²⁰ *Ibid.*

¹²¹ Aguayo Quezada 1995, *supra* note 40 at 165.

on a smaller sample, AC released the results of its quick count: Ernesto Zedillo—the PRI candidate—was well ahead in the electoral race, with a 20-point difference from his closest competitor, the PAN candidate. Although the election was certainly far from being a model one, it was the most open Mexico had ever had. Tellingly, there was no widespread post-election mobilization, as had happened six years before. Furthermore, on this occasion the irregularities did not seem to have affected the outcome of the presidential election. The results for the presidential election were: 48.7 percent for Zedillo (PRI), 25.9 percent for Fernández de Cevallos (PAN), and 16.6 percent for Cárdenas (PRD). As AC's report put it,

The quantitative impact of [the documented irregularities] cannot be calculated with certainty and precision. It is likely that they did not alter the outcome of the presidential election. Nevertheless, they did alter the correlation of the national forces at the national, regional, and local levels, the composition of the Chamber of Deputies, and possibly that of the Senate, generating an overall impression of governing-party predominance.¹²²

Thus, while certainly not perfect, at least the most important election in a country with a tradition of having a strong executive power—the president—received the approval of the most important monitoring groups.

2. *The United Nations*

Around February 1994, the Mexican government, through the IFE, furtively approached the UN about the August general elections. As Manuel Carrillo—since that time head of IFE's international affairs office—recalls,

We got in touch with the United Nations around February '94, in order to have a first approach [in which] we arranged a visit by a UN team to Mexico ... we were having meetings. Imagine, in February and March [1994] I was having breakfast with somebody at the United Nations in order to talk about the monitoring issue; I mean, I was not going to do it just like that. I had to have important [political] support.¹²³

¹²² *Ibid.* at 166.

¹²³ Carrillo, Interview, *supra* note 75 [translated by author].

Nguyen Huu-Dong, then director of the UN Electoral Assistance Division, subsequently visited Mexico. As he remembers, 'I talked with the authorities at the Interior Ministry... because at that time IFE's president was the Interior Minister.'¹²⁴

According to Carrillo, by mid-March negotiations with the UN were going well, if slowly. The UN's reaction when the Mexican government first approached it was one of caution, if not reluctance. As the PRI's foreign affairs secretary said in a forum in Washington two months before the elections, the UN had advised Mexico not to present a formal request for electoral support, citing bureaucratic reasons.¹²⁵ The UN stated that it would not consider sending an observation delegation to Mexico because it was too late, because the country was too big, and because it was not clear that Mexico met the criteria required by the UN for countries to receive observer missions.¹²⁶ Similarly, Jorge Alcocer, who along with Interior Minister Carpizo wrote the letter asking for UN assistance in the electoral process, notes that when the Mexican ambassador to the UN presented the letter to Boutros Boutros-Ghali, the Secretary-General asked, 'Are you sure you want to do this? We don't really want to be in Mexico.'¹²⁷ Huu-Dong confirms this account, adding that the UN was reluctant to get involved in a constitutional election where the problem was one of mistrust rather than illegitimacy or illegality.¹²⁸

Nevertheless, the assassination on 23 March of the PRI's candidate hastened the negotiating process. According to Carrillo, it 'initiate[d] a process of acceleration ... by that time [Interior Minister] Carpizo was much more flexible.'¹²⁹ In a preliminary visit to Mexico, UN Electoral Assistance Officer Horacio Boneo told Carrillo that UN observation of the Mexican elections was out of the question because the country was so large. This was despite Carrillo's concerns about what to do with the numerous national and international observers already there.¹³⁰ Thus, in his 10 May letter to the UN Secretary-General, Carpizo requested the UN, (a) 'to send a mission of experts in electoral matters so that it can know the Mexican electoral system, and it can put out a technical report' on the matter, and (b) 'to collaborate by

¹²⁴ Nguyen, Interview, *supra* note 116.

¹²⁵ Castañeda 1994, *supra* note 58 at 53.

¹²⁶ The Carter Center, *Elections in Mexico: Third Report* (1994), online: The Carter Center <<http://www.cartercenter.org/documents/1154.pdf>> at 29.

¹²⁷ Alcocer, Interview, *supra* note 80 [translated by author].

¹²⁸ Nguyen, Interview, *supra* note 116.

¹²⁹ Carrillo, Interview, *supra* note 75 [translated by author].

¹³⁰ *Ibid.*

providing technical assistance to the groups of national observers that request it ... in order to ensure their professionalism, independence, and impartiality.¹³¹ In the end, Mexico did not request the UN to send an election-monitoring mission. Nevertheless, the mere act of contacting the world organization in order to request its assistance in an electoral matter was a turning point in Mexico's foreign policy.¹³² Manuel Tello, foreign minister at the time, accepts that inviting the UN was a qualitative change for Mexico.¹³³ Without approval from the General Assembly, the UN accepted Mexico's request for the technical assistance described above.¹³⁴

The five-member UN team conducted its mission from 28 June to 9 July. In its report, it stated that 'Mexico has lived in a permanent reform on electoral matters' since the late 1970s, and noted that the last electoral reform—the one carried out as a result of the Zapatista uprising—'has been the only one of the three [during the Salinas administration] approved with the support of the [political] forces with the greatest electoral power.'¹³⁵ The evaluation of the Mexican electoral system, in which the latest electoral reform weighed heavily, was positive. Thus, the UN team concluded that 'the structure of the electoral system is able to carry out free and fair elections' in August 1994.¹³⁶ This view obviously irritated opposition parties and some observer groups. But as Horacio Boneo, co-leader of the UN mission, noted before the elections, there was no way to prevent the Mexican government from using the report from the UN experts to legitimize the electoral process.¹³⁷ Nevertheless, the UN mission was careful to point out that although the Mexican electoral system possessed a rather complex and well articulated legal structure, 'it has to be taken into account that the norm, by itself, does not presuppose that the situation which it aims to regulate and

¹³¹ 'Carta de Jorge Carpizo, secretario de Gobernación, a Boutros Ghali,' *La Jornada* (12 May 1994), 3; quoted in Benítez Manaut, *supra* note 73 at 551 [translated by author].

¹³² As the *New York Times* put it: 'Trampling an ancient political taboo in pursuit of new legitimacy, for Mexico's coming presidential vote, the Government has invited the United Nations to evaluate its electoral system and help organize independent groups of election observers.' Tim Golden, 'Mexico Invites U.N. to Attend Election to Observe the Observers' *New York Times* (13 May 1994), A9.

¹³³ Tello, Interview, *supra* note 102.

¹³⁴ No General Assembly authorization was required because no electoral observers were being sent.

¹³⁵ United Nations, *Análisis del sistema electoral mexicano. Misión técnica de la ONU* (México: Instituto Federal Electoral, 1994) at 38 [translated by author] [United Nations].

¹³⁶ *Ibid.* at 60.

¹³⁷ Benítez Manaut, *supra* note 73 at 559.

the objective it pursues will take place by the established and desired means.’¹³⁸

More conspicuous than the UN five-member team, though, was ETONU-MEX, the UN group set up in early June to provide assistance to domestic observers.¹³⁹ With a staff of about fifty, ETONU-MEX provided assistance to sixteen organizations—the most important of which was AC.¹⁴⁰ As noted, the government entrusted a fund to assist monitoring groups to the UN mission. Thus, ETONU-MEX managed about three million dollars, of which AC received half.¹⁴¹ The UN sent an expert to each state of Mexico to serve as its representative with local and electoral authorities, and as a liaison with local NGOs. As Aguayo noted, this expert presence caused irritation among AC activists. On election day, UN representatives did not visit the polling places; instead they visited the offices of the domestic observers.

With the exception of AC, the relationship between the UN mission and Mexican monitoring NGOs was smooth. The performance of the UN mission is generally considered a success, cited by people both within and outside the UN as the birth of a ‘Mexican model’. ETONU-MEX co-leader Huu-Dong recognizes that ‘this was a new experience’ for the UN, while Boneo pointed out that the UN Electoral Assistance Unit would be able ‘to use [the kind of tasks assigned to it in Mexico] in the future as one of our tools.’¹⁴² The Mexican experience thus had a qualitative impact on the nature of IEM. However, talking about the effectiveness and legitimacy of AC, Vikram Chand notes, ‘Had Mexican civil society not been as developed, it is unlikely that [the UN] mission would have been as successful.’¹⁴³ Paradoxically, then, the success of the UN effort was directly related to the success of the organization with which it experienced conflict: AC.

¹³⁸ United Nations, *supra* note 135 at 59 [translated by author].

¹³⁹ ETONU-MEX stands for ‘Equipo Técnico de las Naciones Unidas en México.’

¹⁴⁰ Other monitoring groups included Coparmex—an umbrella business organization, the Teachers National Organization for Electoral Observation, the Education Workers’ National Union—an organization closely associated with the PRI, and the Institute for Democratic Transition Studies, an independent think tank.

¹⁴¹ Benítez Manaut, *supra* note 73 at 559; Vikram K. Chand, ‘Democratization from the Outside in: NGO and International Efforts to Promote Open Elections’ (1997) 18 Third World Q. 543 at 553 [Chand].

¹⁴² Nguyen, Interview, *supra* note 116; Boneo quoted in Pedro Enrique Armendares, ‘Horacio Boneo: Mirones de Palo’ *Voz y Voto* (August 1994), 52 [translated by author]. Alcocer similarly agrees that the Mexican elections provided a new model for the UN; Alcocer, Interview, *supra* note 80.

¹⁴³ Chand, *supra* note 141 at 553.

Therefore, due to the existence of AC and other domestic monitoring groups, ETONU-MEX became a prominent actor in the Mexican electoral process. That is, by putting the UN between the state and civil society, in 1994 the Mexican government transformed the traditional role of the UN as external judge, into one of being another player in the elections. This is not to suggest that the UN mission played a leading role in the electoral process—far from that. But it did become an actor alongside the government, the political parties, and civil society. The pull that held the relationship among the domestic actors in 1994 was, of course, the deep suspicion of the fairness of the electoral process. And it was that pull that brought the UN into Mexico. As Huu-Dong said at the time, ‘The fraud hypothesis is the basic reason of electoral observation.’¹⁴⁴

The UN was in Mexico to vouch for the fairness of the electoral process. That is why it became another political actor, although of a peculiar nature, in the electoral process. This was certainly not an easy job for ETONU-MEX. On the one hand, it had to deal with leaders of NGOs such as AC claiming that it had an ignoble pact with the government, or that the fairness of the election was not its main concern; and on the other it had to be vigilant to not offend the Mexican government.¹⁴⁵ As Huu-Dong later commented, ‘The relationship with each of the governments represents ... a problem: how to convince them that we work for them.’¹⁴⁶ In the final analysis, according to Huu-Dong, ‘I would say that our contribution [was] not to improve the Mexican system at all, but to shed a little bit of light into the system.’¹⁴⁷

3. *The Carter Center*

The CC’s involvement in the 1994 Mexican electoral process was very different from the other experiences of the semi-official organization, or at least from what could have been expected at the time. On the one hand, the prestige and international authority of its head, Jimmy Carter, as well as the impressive record the CC had built by 1994 in the field of election

¹⁴⁴ In Alberto Aguirre *et al.*, ‘Las elecciones del 21 de agosto bajo el signo de la sospecha’, *Proceso* No. 928 (15 August 1994), at 7 [translated by author].

¹⁴⁵ Cf. ‘Informe Alianza Cívica – Observación 94. La elección presidencial; entre el escepticismo y la esperanza’ *La Jornada* (21 August 1994). See also Aguayo Quezada 1995, *supra* note 40 at 162; Pedro Enrique Armendares, ‘Sergio Aguayo ¿Alianza para qué?’ *Voz y Voto* (November 1993), 54-5.

¹⁴⁶ ‘Nguyen Huu Dong (interview)’ *Voz y Voto* (July-August 2000), at 9 [translated by author].

¹⁴⁷ Nguyen, Interview, *supra* note 116.

monitoring, suggested the organization could play an important role in Mexico during that momentous year. Furthermore, the personal relationship between Carter's chief aide on election monitoring matters, Robert Pastor, and Mexico's president Carlos Salinas, as well as the vast network of contacts Pastor had with academics, activists, and political leaders from the opposition parties reinforced the expectation of a leading role for the CC in the monitoring of the 1994 elections.

But on the other hand the CC had an indelible mark that made playing a visible role in any Mexican elections extremely unlikely: Carter himself. As president, he had a few unfortunate experiences and a series of disagreements on a number of issues with his Mexican counterpart López Portillo that made the bilateral relationship rather sour.¹⁴⁸ From then on, as Aguayo puts it, Carter 'produced urticaria' in the ruling party. Aguayo notes that Pastor was part of the problem as well. Pastor was not particularly appreciated by many in the NGO community, perhaps because of his closeness to Salinas: 'He caused animadversion in some people; I knew him and I know the kind of character he is, so he did not cause me problems, but he did indeed generate tensions.'¹⁴⁹

Immersed in this contradictory environment, the CC ended up playing a relatively discreet role in the Mexican 1994 elections. As Vikram Chand, a member of the CC delegation to Mexico that year, has put it,

[The CC] council's approach was low-key ... [it] chose not to bring Carter to Mexico at all ... Of all the three major political parties, only the PRD was willing to consider inviting Carter ... Mexican political actors ... were simply unwilling to turn to an ex-US President to sort out their differences. What was possible in Nicaragua was impossible in Mexico; and the Council had to adjust its strategy accordingly.¹⁵⁰

The CC involvement in the August 1994 elections began almost a year in advance. In September 1993, a four-person team visited Mexico in order to analyze the electoral reforms being discussed at the time. Two months later, it published a report, *Electoral Reform in Mexico*. The document included specific recommendations, some of which were later enacted. Therefore, the CC was already involved in the Mexican electoral process by the end of 1993,

¹⁴⁸ See Sergio Aguayo Quezada, *Myths and [Mis]Perceptions*, trans by J. Brody (San Diego: University of California, San Diego-El Colegio de México, 1998).

¹⁴⁹ Aguayo, Interview 2002, *supra* note 41 [translated by author].

¹⁵⁰ Chand, *supra* note 141 at 555.

albeit more as a bona fide consulting firm or a think tank than as a monitoring organization. But then came the Zapatista uprising in January 1994, which pulled the CC closer to the action. Salinas himself contacted his former graduate fellow to request the presence of the CC in the electoral process. As Pastor recollects, around March or April Salinas called him and, repeating by heart an argument Pastor had used (unsuccessfully) in the past to convince him to invite foreign observers to Mexican elections, told him, 'I think you have a point, but you know we can't invite international observers because the Mexican people won't accept it, you know it will offend their nationality [*sic*], but what we'll do, we'll permit international visitors.'¹⁵¹ With that decision, as Pastor notes, Salinas had 'obviously crossed the threshold.'¹⁵²

At that time, though, it was too late for the CC to form the large monitoring team that the Mexican case required, so it did not properly monitor the elections—at least not to the extent to which the organization was accustomed. Instead, it sent 'study missions', produced four reports on Elections in Mexico, and carried out a reduced monitoring effort. For this, the CC joined forces with NDI and the International Republican Institute (IRI), 'because we knew we would be too small for a big country like Mexico to have the same effect that we had in Nicaragua or Panama,' recalls Jennifer McCoy.¹⁵³ Part of the strategy of the combined mission was to work in tandem with Mexican observers. As NDI's Merloe, a 1994 delegation-member, puts it, 'When we engage in a country like Chile or a country like Mexico ... where civil society is extraordinarily well organized [NDI offers its assistance] on any terms, whatever the terms.'¹⁵⁴ The joint CC/NDI/IRI delegation totalled eighty members from seventeen countries.

Interestingly, although the IFE was supposed to issue only a 'generic' invitation and not individual ones, NDI was specifically invited by the electoral organization to attend the general elections. As Merloe recalls, Carrillo called them to tell them the IFE would appreciate their presence in Mexico, and then faxed the invitation.¹⁵⁵ The CC team was composed of eleven members, including former Costa Rican president Rodrigo Carazo,

¹⁵¹ Pastor, Interview 2000, *supra* note 51.

¹⁵² *Ibid.*

¹⁵³ McCoy, Interview, *supra* note 96.

¹⁵⁴ Merloe, Interview, *supra* note 98.

¹⁵⁵ *Ibid.*

former Guatemalan president Vinicio Cerezo, former Canadian prime minister Joseph Clark, and Harry Barnes, the former ambassador to Chile at the time of the 1988 plebiscite. It arrived in Mexico City four days before the election, and then most members joined with NDI/IRI mission-members to travel in pairs to twenty-five states, while a few stayed in the Federal District. In total, the combined delegation visited about 500 polling places, and witnessed the vote count in thirty-four polling sites.¹⁵⁶ Two days later, it issued a favourable preliminary report, noting, 'This election represents a significant step forward for the Mexican democratic process.'¹⁵⁷

Five months later, the CC issued its own detailed report on the Mexican elections.¹⁵⁸ Although mostly approving of the way the electoral process had been conducted, the CC report was guarded in its endorsement of the Mexican political system. Referring to the AC electoral report on the election, the CC report notes that, 'a number of irregularities were observed which may have had an effect on congressional or local races, and which continue to raise questions about the legitimacy of the outcome.' Nevertheless, and also in keeping with the tone of AC report, the CC's account recognizes, 'Our delegation received no evidence that irregularities were sufficiently serious or widespread to have affected the outcome of the presidential race.' The report states that 'further reforms were needed to raise credibility and address the inordinately unequal campaign conditions in the future,' and it underscores 'the active and effective role played by civic groups in election-monitoring.'¹⁵⁹ Regardless of the specific weight of the CC or of any other foreign mission in Mexico, it is important that they were involved in the monitoring effort at all. As McCoy notes, 'For Mexico [the electoral process of] '94 was landmark ... in terms of Mexico inviting observers ... the international observers didn't play a crucial role ... but for Mexico, one of the most nationalistic states, to allow what they call visitors, to witness the election' was what made it a milestone.¹⁶⁰

V. IEM in Mexico after 1994

Although the watershed for electoral observation in Mexico was the 1994 electoral process, election monitoring also figured prominently in the

¹⁵⁶ The Carter Center, *The August 21, 1994, Mexican National Election: Fourth Report* (Atlanta: The Carter Center, 1995) at 8 [Carter Center 1995].

¹⁵⁷ Preliminary report reproduced in *ibid.* at 31.

¹⁵⁸ The NDI-IRI delegation, on the other hand, did not deliver its final report. Mazza, *supra* note 4 at 122.

¹⁵⁹ Carter Center 1995, *supra* note 156 at 11-12.

¹⁶⁰ McCoy, Interview, *supra* note 96.

congressional mid-term elections, and particularly in the inaugural (and concurrent) election for the mayorship of Mexico City in 1997. In order to monitor the electoral process in the capital city, Civic Alliance obtained a \$300,000 grant from the European Union. Significantly, after the Ministry of Foreign Affairs tried to prevent the funds from reaching the NGO, the IFE was able to assert its autonomy (see below) and jurisdiction over electoral observation, thus allowing the funds to flow.¹⁶¹ In any case, the overall 1997 electoral process involved 391 accredited international visitors from thirty-three countries, and 24,291 national observers registered at the IFE—considerably less than in 1994.¹⁶²

But before the mid-term elections took place, the manufacturing of another electoral reform had been necessary. After August 1994, there was still a widespread perception that the electoral process had not been fair.¹⁶³ Thus, Ernesto Zedillo suggested in his 1 December 1994 inaugural address the need for yet another electoral reform. Less than two months into his administration, and less than a month after the devaluation of the peso had sparked the worst economic crisis in post-revolutionary Mexico, a document called 'Commitments for a National Political Accord' was signed by the political parties and the government.

Nineteen months later, all political parties represented in Congress passed by consensus an initiative amending the constitution in order to make possible the farthest-reaching electoral reform ever. Among the most significant changes of this amendment was the exclusion of the executive branch of government from the IFE. Rather, the IFE's governing body—the General Council—is comprised of eight 'citizen counselors', a president (an independent citizen approved by two-thirds vote of the lower house), and two representatives from the legislature—one from each house. The 1996 constitutional amendments also established that in the 1997 elections the

¹⁶¹ Jean-Francois Prud'home, 'The Instituto Federal Electoral (IFE): Building an Impartial Electoral Authority' in Mónica Serrano, ed., *Governing Mexico: Political Parties and Elections* (London: Institute of Latin American Studies, 1998) at 153-4.

¹⁶² Luisa M. Parraguez Kobek, 'The Electoral Process in Mexico: An Analysis from an International Visitor's Point of View' (1997) 5 J. Latin Amer. Affairs 26 at 27.

¹⁶³ President Zedillo himself would later recognize that the 1994 electoral process had been clean but not fair; see Jaime Sánchez Susarrey, 'El santo grial' *Reforma* (19 January 2008), online: Grupo Reforma <<http://www.reforma.com/editoriales/nacional/424/846202/default.shtm>>.

mayor of Mexico City would be chosen by the people for the first time, rather than appointed by the president.

The mid-term elections that took place on 6 July 1997 completely transformed the political landscape of Mexico, arguably ending the country's protracted transition to democracy.¹⁶⁴ With 39 per cent of the congressional vote, for the first time the PRI no longer held an absolute majority in the lower house: it had only 239 of the 500 seats. The PAN obtained 121 seats, the PRD 125, and the recently created Green Party 8. Thus, by making a congressional alliance, these three parties were able to effectively prevent the PRI from taking control of the government bodies of the lower chamber, and to vote as a bloc on some issues. With the principle of proportional representation having been introduced in the Senate in the last reform, the opposition came to control 53 of its 128 seats. Furthermore, Cárdenas won the election in Mexico City with more than 40 per cent of the votes, and his party (the PRD) won 38 of the 40 plurality-winner seats on the city council.

It has been widely recognized that the IFE successfully organized its first elections as an autonomous body. Days after the 1997 elections, 85 per cent of those polled expressed their satisfaction with the performance of the IFE.¹⁶⁵ Furthermore, more transparent electoral processes have effectively served to bring out Mexico's plurality. Whereas in 1982 the PRI controlled 91 per cent of elected positions (including the presidency, seats in congress, governorships, local congresses, and mayoralties), in 1997 it controlled only 54 per cent.¹⁶⁶ Thus, as John Bailey and Arturo Valenzuela pointed out shortly after the mid-term elections,

Mexico, in contrast to the transitional regimes of Eastern and Central Europe and South American countries such as Brazil and Peru, is experiencing a democratic opening that features fairly coherent parties. The three largest parties—the PRI, the PAN, and the PRD—combined for more than 80 percent of the vote in July 1997, heralding the emergence of a “three-plus” party system that will serve as a stabilizer of political expression.¹⁶⁷

This emergent plurality and consolidation was corroborated in the 2 July 2000 elections. Not only did Vicente Fox, as the candidate of the combined

¹⁶⁴ Santa-Cruz 2002, *supra* note 79.

¹⁶⁵ IFE poll in 'Prueba superada' *Voz y voto* (September 1997), 35.

¹⁶⁶ María Amparo Casar & Ricardo Raphael, 'Las elecciones de 1998: La distribución del poder político en México' *Nexos* (July 1998) 41 at 42.

¹⁶⁷ John Bailey & Arturo Valenzuela, 'The Shape of the Future' (1997) 8 *J. Democracy* 43 at 47.

PAN and Green Party's 'Alianza por el Cambio', win the presidency with only a plurality;¹⁶⁸ as well, no party emerged as the absolute winner in Congress.¹⁶⁹

Lending credibility to this process was again a myriad of national and international observers. Over 30,000 national and 862 international observers distributed all over the country monitored the elections. By this time the government's attitude vis-à-vis foreign observers had changed substantially. For instance, the Zedillo administration explicitly requested the presence of Carter himself in the electoral process.¹⁷⁰ Leading the CC's mission, Carter met in the days previous to the elections with the three main contenders to the presidency, and was assured that they would respect the election results.¹⁷¹ This time the CC developed a new monitoring strategy, working closely with the three main political parties.¹⁷² Global Exchange, WOLA, and other international NGOs, on the other hand, did not engage in a comprehensive effort to monitor the presidential elections.

But by this time the Mexican understanding of sovereignty had also changed. As Shelly McConnell, assistant Director of the CC's Latin American Program and a member of the its 2000 delegation, said,

the elections are only a signal of what had taken place between '94 and 2000, which is a reformulation of what is Mexican sovereignty ... Mexico's sovereignty today is so strong that they can have a former US president show up and render an opinion about a sovereign process, an election, symbolic of sovereignty in a sense, and they are glad to have him there.¹⁷³

¹⁶⁸ 42.5 per cent, vs. 36.1 per cent for the PRI's candidate Francisco Labastida, and 16.6 per cent for Cárdenas, running as the candidate of the 'Alianza por México', formed by the PRD and four small parties.

¹⁶⁹ In the lower chamber the PRI won 211 seats, the PAN 207, the PRD 50, and the Green Party 17 (the other four small parties that supported Cárdenas got 15 seats all together). In the Senate, the PRI received fifty-nine seats, the PAN forty-five, the PRD seventeen, and the Green Party five (two of the small parties that joined the PRD got one seat each). Similarly, the PAN won the two governorship elections on 2 July (Guanajuato and Morelos), and the PRD kept Mexico City (although it lost the majority in the legislative body).

¹⁷⁰ Interview of Shelly McConnell (4 December 2001) in Atlanta [McConnell, Interview].

¹⁷¹ 'Los candidatos aceptarán los resultados, dice Carter' *Público* (2 July 2000), 18.

¹⁷² Robert A. Pastor, 'Exiting the Labyrinth: Mexico's Path Toward Democratic Modernity' (2000) 11 *J. Democracy* 20 at 21.

¹⁷³ McConnell, Interview, *supra* note 170.

Accordingly, by the end of the twentieth century the presence of foreign monitors at an electoral process no longer stirred passions. Merloe noted that in fact, the presence of internationals felt 'superfluous' because of the generally high level of confidence in the process, and suggested the FDI would probably decline to even participate in future observation missions.¹⁷⁴ Pastor concurs: 'You don't need to observe elections everywhere, you just need the right to do so ... I dare say Mexico is not going to need international observers in six years ... because people trust the system; IFE passed the test, the PRI passed the test.'¹⁷⁵ And Woldenberg adds that while the IFE will continue to issue generic invitations to international monitoring organizations, as the election process in Mexico normalizes, he suspects that the attention on Mexico will decrease.¹⁷⁶

It surely did. In the 2003 mid-term (lower house) elections, only a few foreign observers were present on election day, and their presence was hardly noticed. The IFE did issue a call for foreign visitors after November 2002, having asserted in a previous resolution that it 'values, in all its extension, the interests of representatives of diverse institutions and foreign organizations in knowing and learning' about the 2003 elections.¹⁷⁷ But few foreign observers came. For instance, neither the CC nor the NDI sent missions, nor did the OAS, and the UN played only a limited role in coordinating registered observers (as it had done in 2000). The work of domestic observers was also rather modest. AC, for example, did not mount a comprehensive network of observers as it had done in the past. It monitored elections in only ten states and Mexico City.¹⁷⁸ The electoral results confirmed once again both the plurality of the Mexican electorate and the consolidation of a three-party system, with the PRI, the PAN and the PRD winning 94 per cent of the seats.¹⁷⁹

¹⁷⁴ Merloe, Interview, *supra* note 98.

¹⁷⁵ Pastor, Interview 2000, *supra* note 51.

¹⁷⁶ Woldenberg, Interview, *supra* note 105.

¹⁷⁷ See 'Acuerdo del Consejo, General del Instituto Federal Electoral por el que se establecen las bases y criterios con que habrá de atender e informar a los visitantes extranjeros que acuden a conocer las modalidades del proceso electoral federal de 2003', online: IFE <http://www.ife.org.mx/documentos/TRANSP/docs/consejo-general/acuer-resol/21OCT02/211002ap5_1.htm>.

¹⁷⁸ See Alianza Cívica, 'Boletín de Prensa. Observación de la Calidad de la Jornada Electoral', online: Alianza Cívica <<http://www.alianzacivica.org.mx/>>.

¹⁷⁹ The PRI won 222 seats, the PAN 151, and the PRD 96. The Green Party got seventeen seats, whereas Labor and Democratic Convergence received five seats each. Four seats were not assigned, since the elections in two districts were annulled (which affected also the distribution of proportional representation seats).

Further, with only 693 international observers present, the 2006 presidential elections confirmed that Mexico's democratic transition had reduced international interest in the country. Whereas in 1994, 653 observers came from the United States alone to monitor the electoral process, and 415 came for the 2000 elections, by 2006 there were only 219.¹⁸⁰ Beyond the especially pronounced decrease in American interest in Mexico, it is clear that the country no longer elicits as much interest as it used to as an IEM target.¹⁸¹ Further, it is arguable that the domestic value of foreign observer opinion has actually increased. This may seem ironic, given the extremely close results of the 2006 presidential election, in which PAN's presidential candidate Felipe Calderón beat PRD's Andrés Manuel López Obrador by a mere 0.58 per cent of the vote.¹⁸² López Obrador refused to accept the election results, and after the head of the European Commission observers declared that the electoral process had developed 'satisfactorily' in a 'transparent and competitive environment', and called on the parties to abide by the IFE's results, López Obrador retorted that the European observers 'had not observed anything.'¹⁸³ Because the margin of victory was so small, it was especially important to Calderón and to the IFE, as the arbiter, that outside parties validated the election as free and fair. With this validation, and despite López Obrador's objections (and those of his supporters—about a third of the electorate), the election results were accepted and Calderón declared the winner. Thus it seems clear that in the volatile post-electoral political environment, the relative political weight of the monitoring missions has grown. In any case, the main monitoring missions concurred that the elections had been free and fair.¹⁸⁴ Leaving aside the role of foreign observers in Mexican politics, the last electoral process does suggest that Mexico has largely 'graduated' from IEM.

¹⁸⁰ Instituto Federal Electoral, *Elecciones Federales 2006. Encuestas y Resultados Electorales* (Mexico City: IFE, 2006) at 46, 50, 51 [IFE 2006a].

¹⁸¹ Likewise, the number of domestic observers was less than half that of twelve years earlier: 25,321.

¹⁸² The PRI's Roberto Madrazo came a distant third, with 22 per cent of the votes (thirteen points behind both Calderón and López Obrador). In the Senate, the PAN obtained fifty-two seats, the PRI thirty-three, and the PRD twenty-nine (and fourteen went to the other four parties). In the lower chamber, the PAN got 206 seats, the PRD 126 and the PRI 104 seats (with sixty-four seats assigned to five other parties). IFE 2006a, *supra* note 180.

¹⁸³ In Sergio Ramos, 'Presenta AMLO nuevos videos con presuntas irregularidades' *El Universal* (11 July 2004) [translated by author], online: *El Universal* <<http://www.el-universal.com.mx/notas/361634.html>>.

¹⁸⁴ Instituto Federal Electoral, *Elecciones Federales 2006. La Jornada Electoral del 2 de Julio de 2006* (Mexico City: IFE, 2006) at 54-9.

Moreover, and also attesting to the change in the understanding of the country's identity and national interests, Mexico started sending observers abroad—a significant departure from its traditional policy. Hence, since 1996 the IFE has sent sixty-six missions to twenty-three countries (eighteen in the western hemisphere), and democracy has become an important item on the foreign ministry's agenda since 2000.¹⁸⁵ It has thus become clear that the protracted contestation process with which the country had been involved regarding the monitoring field had translated into increased legitimacy for the emergent norm. As Antje Wiener notes, 'contestation is central for establishing the legitimacy of compliance processes; indeed, it is constitutive towards social legitimacy.'¹⁸⁶

VI. Conclusions

The 1994 Mexican elections epitomize the nature of IEM. State and non-state actors in both the domestic and the international contexts interacted intensively to make the monitoring of the electoral process possible. The most interesting part of their interaction, though, was the novel normative structure in which it was inscribed. Only six years before, this structure was not present—and no interaction leading to a monitoring effort took place. For instance, there was no UN Electoral Assistance Office for de la Madrid's administration to resort to. Furthermore, the Mexican experience is interesting not only because domestic observers took the leading role in the monitoring of the electoral processes, but precisely because, despite their late entrance into electoral monitoring, they were able to play such a prominent role. But again, it was the international structure that made the entrance of Mexican NGOs into monitoring activities possible in the first place.

The Chiapas rebellion was certainly what triggered monitoring of electoral processes, but the issue was already in the air—and even without the uprising some independent groups would undoubtedly have monitored that election. (It should be remembered that the organizations that eventually formed AC decided to watch the election in November 1993, and that the CC initiated its involvement in the 1994 electoral process in September 1993). Just as certainly, though, the UN would have not been present in Mexico. Nevertheless, it was the institutionalization of IEM at the international level that allowed the government to respond to the challenge

¹⁸⁵ See Instituto Federal Electoral, 'Relación de participaciones del IFE en misiones de observación electoral', online: IFE <<http://www.ife.org.mx/portal/site/ife/menuitem.24>>.

¹⁸⁶ Wiener 2004, *supra* note 7 at 218.

posed by the rebels. So the trigger itself, important as it was for this and other events in the Mexican political economy, was a contingent factor.

By this time, an IEM network was already active, becoming an important actor in the Mexican electoral process—and in its foreign policy. That is why the international monitoring of the 1994 electoral process marked a breakthrough in Mexico's history—and why it meant so much more for Mexico than the subsequent four electoral experiences with this practice. After 1994, the Mexican state not only started to see the practice of election monitoring differently, but also came to conceive of its sovereignty as being partially defined by the international community. In other words, as mentioned in the introduction, a socialization process had taken place. Thus, 1994 was the turning point. By the mid-1990s the understanding of sovereignty enshrined in the WHI and instantiated in IEM as an accepted issue area had permeated the international system; after an extended contestation process the designated norm follower simply caught up. Foreign observers are now fully recognized in Mexican politics.

The Mexican case was of course part of a wider context in which state and non-state actors made both principled and strategic use of the discursive resources (culture, society, and personality) with which the continental lifeworld had endowed them. Arguments consistent with this stock of knowledge figured prominently in the actualized notion of sovereignty. Absent this hemispheric understanding, IEM would most likely not have emerged in the Americas earlier than anywhere else—and in Mexico later than in most other cases on the continent. This is not to suggest that without the WHI, IEM would have never taken place in the western hemisphere. After all, activists, states, and intergovernmental organizations in other regions also got in the habit of monitoring elections in the late 1980s and early 1990s. In the same way that IEM became an 'export' commodity of the new 'system of interests' (that is, of the Americas), it could just as well have been imported by this region had it emerged elsewhere.

But it did not—and that is my point: the regional lifeworld that is capable of accounting for the emergence of IEM at the time it did is the WHI and no other. Only the western hemisphere lacked any ontological gap between this practice and the wider normative structure. IEM did not occur when the WHI was absent. It is in this sense that the WHI was a necessary condition for the development of IEM; the practice is indeed contextually

linked to it. I do not claim that the hemispheric normative structure was a sufficient condition for the appearance of international observation; this case study shows that the emergence of IEM was contingent on the actions of a myriad of actors. Whitaker's remark on the WHI being a 'laboratory' for novel practices later tried somewhere else does indeed seem prescient.¹⁸⁷ As the approach used here suggests, the analysis of social practice in context allows us to draw meaning out of the discourse, and, perhaps more importantly for students of international politics and international law, to assess the legitimacy of international norms.

¹⁸⁷ See Whitaker *supra*, note 16 at 177.