



first publication

Introductory note

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Last year I drank the water of Neretva to secure my return this year. But it wasn't only the water of the Neretva, but also the ongoing shift in International Relations and its frame, International Law that brought me to new thoughts. And despite many conferences having been held on this issue, I already know that if anyone wants to share new thoughts on the principles of democracy and human rights, he or she should do so in Konjic.

On an earlier occasion I stated that unfortunately only human rights abuses, as a failure of a state-, nation- and therefore sovereignty-focused human rights protection-system elevate international human rights protection to a higher level. To breach the gap between new protection mechanisms and eroding state sovereignty, I explained that there is a new concept of democracy under International Law¹. If we see this as a picture, in the first part of my paper I will give it a few more contours. In the second part, I will add a new figure: civil society.

Democracy under International Law

When the United Nations was founded in 1945, the only legitimate actors on the international agenda were states. Thus the United Nations was at first an organisation to secure state sovereignty by preventing war and securing peace through mutual cooperation and the development and protection of human rights. State actors were legitimised on principle and thus Art. 21 of the *Universal Declaration of Human Rights* of 1948 states, concerning democracy, that:

The will of the people shall be basis for the authority of government, this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting.

The same principle, that the ballot means democracy, was followed in Art. 25 of the *International Covenant on Civil and Political Rights* of 1966.

The first shift, deepening the meaning of democracy to a matter of state structure and representation of the public will by sovereign people came with the *Reconstruction of Haitian Democracy* by the Security Council in 1994 (SC/Res. 940/1994). As resolutions by the Security Council are binding, further steps were taken by the General Assembly and the Economic and Social Council, the Commission on Human Rights and the World Conference on Human Rights in Vienna in 1993. Even if it is contested, these resolutions are binding by a declaration of an already existing principle of democracy. It can be stated concisely here that we already have state practices of these principles, thus that even if they are only recommendations, we have to keep them in mind when examining a state or a society as democratic.

Within the *Vienna Declaration of the World Conference on Human Rights* it is firstly strongly outlined that:

Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.

By this interpretation, there is no democracy without human rights and there are no human rights without democracy. Thus democracy becomes a human right.

A resolution by the Commission on Human Rights titled *Promotion of the Right of Democracy* from April 28, 1999, (E/CN.4/RES/1999/57) defined democracy as the right to choose one's own form of governance, avoiding prescriptions and simplistic formulae. Governance, however, can only be democratic if it is based on human rights. In a second resolution titled *Promoting and Consolidation of Democracy* from April 25, 2000 (E/CN.4/RES/2000/47) the Commission on Human Rights discharged the newly invented definition of »democratic governance« and called for the consolidation of democracy by promoting pluralism, protecting human rights,

¹ Cf. Rosemann, Nils: Lessons from Bosnia and Herzegovina: Human Rights Protection at the National and International Level. Lecture Held at the Third International Seminar *Democracy and Human Rights in Multi-Ethnic Societies*, Konjic July 5, 2000. In: <http://www.kakanien.ac.at/beitr/theorie/NRosemann1.pdf>



maximizing the participation of individuals in decision-making processes and so forth. These principles were agreed on by the *General Assembly Resolution Promotion and Consolidating Democracy* of February 28, 2001 (GA/Res. 55/96). The General Assembly stated that:

there is no one universal model of democracy; [...]
[but] democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives, [...]
[and democracy needs guaranteed] [...] mechanisms for consultations with and the contribution of civil society in processes of governance and encouraging cooperation between local authorities and non-governmental organizations[.]

In another resolution by the Commission on Human Rights, called *Human Rights and Extreme Poverty* adopted on April 23, 2001 (E/CN.4/RES/2001/31), concerning the issue of poverty, the Commission on Human Rights called for:

participation by the poorest people in the decision-making process in the societies in which they live, in the realization of human rights and in efforts to combat extreme poverty and for people living in poverty and vulnerable groups to be empowered to organize themselves and to participate in all aspects of political, economic and social life, particularly the planning and implementation of policies that affect them, thus enabling them to become genuine partners in development.

From this point of view, participation as a genuine partner in these decision-making processes that affect a person within the enjoyment of his or her rights is a precondition for any enjoyment of human rights.

The last resolution I want to refer to is the Commission on Human Rights Resolution *Promotion of a Democratic and Equitable International Order* of April 25, 2001 (E/CN.4/RES/2001/65). The Commission on Human Rights stated that:

[D]emocracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives;
democracy is not only a political concept but also has economic and social dimensions;
[democracy includes] [...] the right to development, transparent and accountable governance and administration in all sectors of society, and effective participation by civil society;
democracy requires [...] solidarity, [...] self determination [...] and cultural diversity

Therefore a system can be called »democratic« if there is a proper participation of people in decision-making processes on political, economic, social and cultural matters that affect them, whether this be on a local, regional, national or international level.

Who Participates?

If, as outlined, democracy is participation, then the question I want to answer in the second half of my paper is: Who participates? Or: Who is entitled to participate in which processes and at which stage of that process? And: How so?

To put it briefly: Citizens are the only legitimate actors of participation. And whom do the citizens represent? They represent themselves within civil society. Since parliamentary democracy is about representation, civil society is about participation. Civil society is the puzzle of individuals, groups, families, religious communities and other groups of mainly specific interests. All together, they create the so-called third sector. I will not canonize or idealize civil society, but it is a fact that governments are not as close to the daily problems in communities as the local and affected people are. It is another fact that the main impact of the marginalization of such social groups as homeless and unemployed people takes place at the local level. Where else should problems be solved, than where they occur?

It can be stated that the Westphalian System (1648), with steady concentration of power in the hand of one sovereign or at least of the sovereign state, is weakened by deregulation of national and regional markets, globalization, international institutions, dominating global acting companies, alliances and states. States have lost a main area of their sovereignty: the economy. If there are only shared powers left, than the new actors and the new powers have to be legitimised by individuals. This process of legitimatisation by participation is nowadays called »governance«. Governance takes the explained power-shift into account by new processes and rules, new institutions and regimes as well as new informal arrangements. Thus, governance is the sum of many ways individuals and institutions, public and private, manage their common affairs, control resources and exercise power to achieve public purposes. However, civil society as a new-old actor and participator at the local, regional, national and international level has to be judged like the other legitimate actors. While the first sector, the state and its system of political and parliamentary representation is accountable to its electorate and the business-leaders to their shareholders, civil society is accountable to its »stakeholders« – the individuals – for transparency, high standards of performance and sustainability as well a mediation of shared values with other interest groups. If civil society and its action groups fulfil this pattern, then there is no further need for legitimatisation, because there is no longer a sovereign other than citizens who respect the rights of other individuals and cooperate in mutual respect to achieve a common aim.

Conclusion

For these reasons, democracy has shifted from a right to elect representatives to a right of participation within these processes that have a direct or indirect impact on individuals' lives and their self-determination.