IN AND AROUND THE BALLOT BOX: RECENT DEVELOPMENTS IN DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW PUT INTO CONTEXT

Daniel Thürer & Malcolm MacLaren*

1 INTRODUCTION

The Financial Times aptly dubbed 2004 the “Year of the Ballot”.¹ A recent series of national elections has brought balloting as a procedure and the formula “periodic, fair and free elections” (PFF) into sharp relief. Beyond these elections, novel fact patterns and shifts in international opinion concerning democracy are discernable. These developments are significant for the design and function of national political systems around the world. Accordingly, they call for renewed discussion of the prevalent values and rules that define democracy.² The following essay is intended to offer a conceptual framework for such a discussion. While there are no ‘hard and fast’

* Daniel Thürer, Dr. iur., LL.M., Dr. rer. publ. h.c., is Professor of Law and Head of the Institute for Public International and Comparative Constitutional Law at the University of Zürich. Malcolm MacLaren, M.A., LL.M., is a Research Fellow at the Institute. An earlier version of the following, entitled “Periodic, Fair and Free Elections: Important Elements for the promotion and protection of human rights”, was delivered at an expert seminar on democracy and the rule of law convened by the United Nations Office of the High Commissioner for Human Rights (OHCHR) in Geneva, 28 February–2 March 2005. (References to events and internet websites are up to date as of October 2005.)


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rules as to how a democracy is to appear, its quality may be assessed according to certain criteria. The latest developments in democratic practice and thinking worldwide will here be situated in the broader context of international law, constitutionalism and political theory.

Our starting point is an examination of how the developments relate to international law. To this end, the contemporary meaning of the single elements of the PFF formula will be analysed as international constraints on the design and function of national political processes and institutions. Focus on the conduct of elections should not, however, be to the exclusion of other considerations. As will be explained, this risks neglecting the constitutional conditions that optimize representative democracy, namely fundamental rights and freedoms, rule of law and federalism. Representative democracy is for its part but one form of democracy and, though dominant today, is not necessarily to be preferred as a model; the possibilities that direct democratic mechanisms may offer governments and citizens are also to be considered. Lastly, to ensure that a discussion of democracy’s values and rules remains grounded, attention must be given to the role of intergovernmental organizations (IGOs) in constructing the legal framework of democracy in national political systems. We will describe this role as we conceive it in particular in the concluding outlook.

2 THE DEVELOPMENTS IN QUESTION

Democracy as a form of government and as a concern of the international community has undeniably spread. Almost daily, news reports confirm the spread of democracy as a form of government. Free and fair elections were attempted with real success in several countries where no such elections had (ever or recently) been held and more, where they once seemed unimaginable. One thinks of Ukraine, the Palestinian Territories and Georgia in particular, where millions enjoyed the experience of voting in legitimate elections for the first time. The number of democracies in the world seems to be rising, resuming the trend that defined international politics in the late 1980s and early 1990s. Admittedly not all these countries are full-fledged democracies, and democratization has experienced some setbacks of late. None-

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4 E.g. in the suspension in February 2005 of democratic institutions in Nepal and arguably in the self-proclaimed ‘CEO-style’ of government of Thailand’s Prime Minister, Thaksin Shinawatra.