Democracy and International Law

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The following considerations are meant as a warning against unexamined proclamations in international law. Academic discussions often suffer from the fact that concepts and terms, when used as the basis for argumentation, fail to be sufficiently interpreted, or are differently invoked. Even where those terms are introduced into legal codifications, no sufficient clearness is obtained as long as no definition is provided. In the field of international law, mainly two terms suffer from the lack of definition although they are permanently and strikingly presented. When, for instance, the “rule of law” is invoked, some are prepared to define this term as only guaranteeing the observance of positive law, whereas others see it as a guarantee of justice in an idealistic sense. Similarly, this is the case with the term “democracy”. Some regard it as no more than a formal participation in the formation of political decisions; whereas others see it the guarantee against a certain tyranny of the majority which could suppress the minority; some even see it as a guarantee of human rights. The following considerations are dealing solely with the problems arising when democracy is used as a legal requirement without clear definition of this concept.

Until now and continuing, no rule of international law exists expounding that a state in its capacity as a subject of international law is only recognizable when its government is legitimated in a democratic sense. Nevertheless, a tendency is obviously appearing in which only democratically established governments are internationally acceptable. Thus, for instance, the international treaty law seems more and more to incline to this view, in particular where

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those treaties relate to human rights. Already in the Universal Declaration of Human Rights (1948), it is stated that everybody should have the right to participate in the political development of his country, at least through participation in elections. The same principle is laid down in the Covenant on Civil and Political Rights (1966). However, nothing can be found in these texts about the question of what kind of elections are meant, regarding either the institutions to be elected or the period of time in which elections should be repeated; nor can there be found any advice on the position of the outvoted minority, and its protection. Although it is true that the right of self-determination is reposed in the democratic concept, so that one could take the position that democracy finds a certain acknowledgement in international law, no details of the performance of this right are ever developed. It should also be mentioned in this respect that membership in the European Union presupposes democratically legitimated governments.

So we can ascertain that in international law, many indications can be found qualifying democracy not only as a political but also as a legal goal of the world community. Nevertheless, a strict principle requiring the democratic legitimacy of all international subjects and institutions is not yet established; it is, rather, a kind of soft law which does not yet form part of positive international law.

The reason why the concept of democracy does not, up until now, belong to the basic principles of international law, may be found in the traditional idea that states are completely free to organise their internal legal system. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (1970) emphasises the freedom of states to shape autonomously their political and social life without interference from other states. One could, possibly, argue that this freedom is not unlimited, for instance in regard to the protection of human rights. So, one might argue that democracy as an element of human rights has to be respected when the organisation of the internal legal system of states is at stake. However, the difficulty in drawing this consequence arises from the fact that the community of nations has not, until now, succeeded in shaping a commonly accepted concept of democracy. Nearly all governments in the world pretend to be of a democratic nature or, at least, to be on the way to create a democratic legal system. Even dictators exercise their