

Where do we go from now?

In the United States James Madison did not want at first any mention of human rights in the Constitution as a number of States had done in their own constitutions to preserve them against too much Federal power. The first amendment was written in 1789 influenced by the United Kingdom's Magna Charta (of 1215) where centuries later (in 1669) a link was established between the right to assemble and the right to prepare a petition. The US adopted the link but the courts decided differently and since 1937 (*deJonge v. Oregon*): People can get together peacefully without having to do it in order to present a petition to put an end to their grievance.

Since 1901 France has a very liberal law on associations (NGOs) but before that there had been 33 bills introduced to parliament from 1871 and 1901. Even then the reasons for the law had nothing to do with idealism : the government wanted to know more about the Catholic Church's congregations and their finances (*la main morte*).

The Germans put together a socialist oriented association in 1925. It was the wish of the first Weimar President Friedrich Ebert. The Nazis did away with it in 1933 but it was reborn in 1947. At first its activities were local and was joined by other associations (*Stiftungen*) from the two other main parties. The idea was to bring back Germany to the democratic fold. They are publicly-funded associations which are very close to the SPD, CDU-CSU and Liberal parties. In 1962 they got involved with German foreign relations. A new department came about : “The Ministry of Economic Cooperation and Development” (B.M.Z.) In 2007 the Friedrich Ebert Association had a workforce of 110,000 half of which worked abroad. The aim of these 3 associations is propagating democratic pluralism throughout the world.

Before democracy was an internal matter then Germany has the example of these well-intentioned associations eager to influence the world and which led in 1982 to President Reagan's Endowment for Democracy.

In the 1970s the idea was to bring back into the fold those countries that had strayed from the democratic path. At first, the West was very careful, as an elephant in a porcelain shop. Every

word in the Helsinki document was weighed and the process lasted 2 years. But in 1990 things had changed. Gorbachev had presented on December 1, 1988 the new law to elect the representatives of the Soviet Union and perestroika and glasnost lead to the Polish electoral law.

We will now look into some of the decisions taken by international organizations before or at the beginning of the end of the Soviet Union and reflect on what we have learned during these past twenty years because in the meantime the world has changed.

The OSCE (which at the beginning was the CSCE: Conference for the security and cooperation in Europe) included the Soviet Union, and the Helsinki Declaration was published August 1, 1975. The United States and Canada participated alongside Europe. All in all, there were 35 member States.

After stating the obvious wonderful and general principles the first five paragraphs of the Declaration deal with friendly interventions and borders. The title of the sixth paragraph is “non intervention in internal affairs.” The first article : “ The participating States, will refrain from any intervention, direct or indirect, individual or collective, in the internal or external falling within the domestic jurisdiction of another participating State, regardless of their mutual relations.”

Article three defines with more precision this notion by prohibiting actions against all inherent rights of the sovereignty of a State.

VIII Paragraph: “Equality of rights and self-determination of peoples...”

The first article associates the people’s right to self-determination and the territorial integrity of States. These two norms are, in theory, subject to United Nations principles and international law which regulate the questions. The way they are linked can only cause problems and complicate their application.

IX Paragraph: “Cooperation among States”

The States “... will endeavour, in developing their co-operation as equals, to promote mutual understanding and confidence...They will equally endeavour, in developing their co-operation, to improve the well-being of peoples and contribute to the fulfilment of their

aspirations through, inter alia, the benefits resulting from... progress and achievement in the ... social, cultural and humanitarian field.” The end of the paragraph “ They confirm that governments, institutions, organizations and persons have a relevant and positive role to play in contributing toward the achievement of these aims of their co-operation.”

The word “organisations” is a key word, which in the 1990s will be mentioned many times in the Copenhagen document, and will become “civil society, NGO”.

But let us not forget that the OSCE is only an agreement between States and Copenhagen is really one of the agreements which is not binding and does not have the legal validity of a treaty.

The Council of Europe’s Convention 124 (April 24, 1986), to which it is still often referred, deals with the acknowledgement of the legal status of NGOs. Article 1 states that all members of the convention admit NGOs whose status has been approved by another member state.

The OSCE has gone much farther when it states “the right of everyone, individually or in association with others, to seek, receive and impart freely views and information ...”(Copenhagen meeting of 29 June 1990, article 10.1) It has also opened the door to “voluntary financial contributions from national and international sources as provided for by law.” This is a revolution.

At the October 3, 1991 Moscow meeting (Article 43.1) the OSCE declared that the participating states will recognize as NGOs those that declare themselves as such according to existing national procedures and will facilitate the ability of such organizations to conduct their activities freely on their territories.

The OSCE has followed the Council of Europe in a non-comital sort of a way. While studying NGOs participation (Vienna 1995) it accepts as a definition of an NGO “any organization declaring itself as such.” The only attempt at a classification is “cause-oriented activist groups” or “specific political interests.”

Step by step the OSCE has increased its role in the field of observation and assistance in all member states. ODIHR was created in November 1990 at the Paris meeting “To facilitate contacts and of exchange information”. It collects information and reports to concerned governments, parliaments and private organizations. The office (ODIHR) will carry out other tasks assigned to it by the Council : the door had been opened.

1999 Handbook states that the ODIHR will foster §6, 7 and 8 of the Copenhagen meeting.

At the 2006 meeting there was a reinforcement of the OSCE efficiency with Article 10: “ODIHR has to be invited to observe elections.”

We will concentrate on a question which could not have been foreseen not only in the Copenhagen document but in the early international documents of the United Nations: those of 1948, 1966, 1976, “The International Covenant on Civil and Political Rights”, article 21 of the implementation says “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society...”

Currently the United States has a tax code that gives deductions for the value of donations and avoiding the capital gains tax at the same time. This has lead also to a number of huge charitable fund organizations that advise and do the paperwork required. One of these organizations has assets of 98 billion US dollars (December 2007, The Vanguard Press).

Huge sums of money go to US NGOs and these tax exempt savers such as the Ford Foundation, Soros ... go freely into Eastern Europe and the Ex Soviet Union.

The introduction of a “civil society” independent of state control seemed like a good way of bringing freedom of association to countries where the population had been forced to belong to state-organized institutions. This was fine and should be kept. But time has gone by and after 20 years we can assess what has happened to our “civil society”. “Civil society” can be divided into three categories. The first consists of the humanitarian organizations, those developing individual initiatives in the fields of education, health, trade unions. The second category are the NGOs that are either public or privately funded and that help in organizing governments or political parties, general assistance in drafting laws, regulations. All this can be classified as “assistance”. The third consists of internationally funded domestic NGOs that

have political activities, mainly observation or organizing politically related matters such as public speaking, political demonstrations, publications before and, at times, after the election. The first two we mentioned represent the way the old democracies can work with evolving ones, together for the common good.

For the third category of NGOs more information is needed. How much money is involved? How does this relate with national political sovereignty? Have you heard of OTPOR, KMARA or PORA? Maybe not but you have seen these “spontaneous” gatherings or well organized youngsters parading in the streets of certain cities in Eastern Europe and the ex USSR? Well that’s it!

International assistance also has a tendency to favor parliamentary systems instead of presidential ones. Is this appropriate when applied to countries that were once governed by an all powerful and non democratic state? Citizens do not want powerless governments and this is what happens when governments cannot last the time of their mandate. The parliamentary systems of Western Europe can stay months without governments. Is this what we want to export?

Evolving democracies lack electoral influence structures which can limit the weak party effect of proportional systems. But are our drafters of electoral systems aware of this? Do they now that electoral systems can either insert (integrate) at party level (majoritarian systems) or reproduce the segregation that exists at societal level (proportional list systems).

The international organizations to which can be added public-funded NGOs, mostly from the United States, have done some good work but the performance is not without criticism (for example, underestimating the difficulties and the time needed to computerize at national level the voter register or a registration and appeals commission that was useless for the first election and had to be completely reorganized.) What is the value of preaching democracy if they cannot accept criticism?

What about domestic observation?

For the first two or three elections (parliamentary or presidential) of a young democracy many nationals who are interested in politics are wary of these new parties. On the other hand, it is obvious that democracy is there, whether in activity of the political parties, in their

posters or their varied discourse. It is quite clear in the main cities but in out of way places the old municipality members are still there and there is, of course, the police... Then, why not become an observer. It is considered to be above the fray, it involves you in this new thing called democracy and, last but not least, you are paid. If national observation becomes a permanent fixture of the democratic environment it drains it of potential political party members. This is too bad because it is political parties which are the pillars of democracy. And no national observation is neutral. Officially it is but as it becomes obvious when you interact with these NGOs they are not neutral. If there is a change in the elected authorities, you find some of the NGO leaders either part of the new government or in key positions.

So what happens?

We have found two consequences. First, the authorities will try to restrain their activities using legal means or a very liberal implementation of the rules . Second: the same authorities will start putting in place their own “civil society” associations.

So what can be expected in the foreseeable future? The NGOs of the authorities fighting it out against the opposition NGOs, report against report, declaration against declaration, demonstration against demonstration. The political arena becomes double:

NGOs VERSUS NGOs

They depend, of course, on ideology but also on funding from local sources and from abroad. It is undeniable that in many countries the international and foreign funding available is vastly superior to domestic possibilities. The fact that civil (political) society can be funded by foreign money make them indebted to them. Just now there is one country that has put itself in a situation where it has become a pawn in international politics while it is sinking in a deepening economic crisis. Can these pawns be taken as examples of furthering democracy?

POLITICAL PARTIES AGAINST POLITICAL PARTIES

They depend on the voters. When they are elected they are in power; when they loose, they are in opposition.

PROPOSITIONS

In 1990 there was no trust in the way members of the communist party could deal with democratic elections so the international community stepped in as a substitution.

The OSCE is a recognized and dynamic organisation. The 1975 Helsinki document was a for-runner. The 1990 Copenhagen document was there to apply it to a blossoming new world. Now, after 20 years the OSCE states will undoubtedly take the right steps to adapt to evolving conditions. What about suggestions on updating the 1990 Copenhagen document?

We have seen that the Copenhagen document can be considered as a landmark. It was a new era and no one could have predicted how the document would be implemented but we have to take into account that paragraphs 6, 7 and 8 are considered the foundation. Paragraphs 3, 5, 10 and 24 are also often mentioned.

Article 7.5

The word “organizations” would be left out and read thus: *“Respect the right of citizens to seek political or public office individually or as representatives of political parties without discrimination.”*

Reason: Parties are the pillars of democracy and the word “organizations” could bring confusion.

Article 7.6

The following words would be left out “or other political organization....and organisations.”

Reason : Same reason as for article 7.5 and the fact that 7.7, which deals with political campaigning, does not mention “organization”.

Article 7.6 would read this way: *“respect for the right of individuals and groups to establish, in full freedom, their own political parties and provide such political parties with the legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.”*

Article 7.8

The words “political groupings” would be replaced by “political parties” : *“Provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-*

discriminatory basis for all political parties and individuals wishing to participate in the electoral process.”

Reason: same reason as for 7.5 and 7.6.

Article 8

The whole article should be written thus: “The participating states consider that the presence of foreign and domestic observers can enhance the electoral process of states during the first three elections at whichever level they are being held. Participating states can ask the ODIHR, which has been given the function of election implementation by the supplementary document of the Charter of Paris (November 21, 1990), to organize the observation of elections and in every case provide reports of observation to the government and to the parliament. Such observers will undertake no to interfere with the electoral process.

Instead of systematic observation, which is qualified by many as “monitoring”, we will mention what the domestic institutional controls should be:

The procedural control of the electoral process can be through a central electoral commission, the Ministry of the Interior or a combination of both. In either case they will have specialized departments:

- I. Control for the equal access of parties to the media.
- II. Control of campaign finance.
- III. Control of the working methodologies of polling institutes.

The judicial control and appeals procedure will either be in the hands of the judiciary or through an appeals system from lower commission to higher commission.

Reason: Election observation has never been part of the democratic history of old democracies, except in the present days. The control of election procedure is the task of political parties which are either in government or in opposition. Observation is an artificial mechanism and an inroad into a state’s political life which can lead to internal or external strife

Related commitments which are four other paragraphs should be written thus:

“They reaffirm that democracy is an inherent element of the rule of law. They recognise the importance of political pluralism.”

Reason: The word “organizations” is too vague. A stable party system is the root of a long-lasting democracy.

Article 10.3

The words “and human rights monitoring groups” which end the sentence should be left out.

Reason: The human rights and fundamental freedoms have already been mentioned in the same sentence. Monitoring has the meaning of authority and control that could create conflict.

Article 10.4

The words “voluntary financial contributions from national and international sources as provided by the law” should be omitted.

Reason: We have already provided arguments about the dangers of having disproportionate funding from international sources. It was considered in the early 90s but it is only now that we can grasp the dangers of these well-intentioned people who lack political competence who can make strategic mistakes and who only depend on those that pay them.

Article 10.4

“Financial contributions from national and international resources shall be limited to the cost of acquiring and keeping on a monthly basis an apartment in the capital city and of paying a staff of two people.” The expenditures will be based on local level prices. The competent authorities will be informed of all extraordinary funding be it national or foreign. All financial questions will be certified by a public accountant.

Let us cite some examples

Our international friends do not seem to know or have put aside these peaceful spontaneous revolutions that are everything but spontaneous and can at times degenerate into bloody battles. They are also called colour elections.

Regis Gente and Laurent Pouy wrote in 2005 in the *Monde Diplomatique*: “...these movements look as if they are spontaneous and that is where their power comes from, but every detail is well thought out...”

The basic idea comes from “The Politics of Non Violent Actions” (Porter Sargent 1973) by Gene Sharp. His book was translated with funds from IRI (Endowment for Democracy) but his institute is only a think tank and organizer while very rich NOGs like those of SOROS invests huge sums in order to topple a government or president which is not to their liking. His think tank includes Robert Helvey, a retired colonel of the US Army, Ackerman...Gene Sharp has a non violent bible of 198 articles.

The first example that comes to mind is Madagascar. Not now but in 1990 when the country decided it would leave the Soviet block and become a Western-style democracy. Communism was to be forgotten, President Ratsirak had obtained funding from the IMF and was trading with South Africa. Before elections could be held people started parading in the main streets in an orderly and quiet manner (articles 38-39: “Parades”). At first, it was every day then only on Saturdays. These parades went to the ministerial departments and told the holder of the ministerial post to leave and put another in place (articles 170-171: Non violent invasion and interjection). Ratsirak gave no orders to the police so the substitution went on. Article 27 says they have to find a title so they became “Les forces vives”. They then decided to march to the Presidential Palace which is outside Tananarivo. Now article 137 says “refusal of an assembly to disperse...” They were ordered to disperse but they marched on and an helicopter threw two grenades at them. Then they stopped. From the hospitals and the Red Cross we learned that 8 had been killed. The figure became hundreds (Article 42: Political Mourning, article 10-11: Newspapers, Journals and Radio)

Our non violent friends had to name a presidential candidate. Many articles are concerned : 18-19-33... Albert Zaf was their candidate. He won the election but lost the following to Ratsirak.

All colour revolutions fit the pattern set by this new bible: “Article 18: Displays of Flags and Symbolic Colours.” It is no use to go throughout the countries that have had such revolutions. The results of such elections are artificial and can lead to regular reversals or a hardline reaction. The last Armenian elections are interesting because they did not believe in the Sharpian Bible. We had told them in Yerevan to be careful but they were of little faith and our non-violent friends applied article 1, 2, 3 “boycott of legislative bodies” and article 196 “Civil

desobedience of neutral laws”, or article 125 “boycott of government employees”. Instead of Saakashvili to lead the mob they had chosen Ter Petrossian who had been president from 1996 to 1998. The authorities did not know that Article 137 “Refusal of assembly or meeting to disperse” and article 122 “...speeches advocating resistance”...8 people were killed. But the Armenian government was in line with article 22 of the United Nations resolution on civil and political rights and the Council of Europe’s on the right of association Article 11 all of which take into account public disorder.

It was a case of the Sharpian bible working against international law. What about the young people who organized those OTPOR, KMARA, PORA elections? They later presented themselves for elections without all the backing they had had. In the 2003 Serbian elections they obtained 0.6% of the votes and in 2006 in Ukraine 1.4% so they have become another NGO under the name “Export Democracy”.

The turmoil of the late 1980’s lead to the development of democracy in many countries. International organizations have offered a helping hand and we can now look back and see what should be done to continue the good work. For this we have to learn from our mistakes and adapt ourselves to situations which we could not foresee when the pioneers first hit the long and windy road of democracy. In this paper we have not dealt with the achievements but with the rest.

Why should we continue this way?

Final comments

Civil Society.

What we call “civil society” are actually politicized organizations that are well-funded and under the mantle of democracy allow themselves actions that in their own countries would not be accepted. Recent events have shown that they either experiment or apply solutions they themselves do not understand or foresee the side effects. An elected politician at any level is accountable to the people. He has power but when he loses the respect of the people he loses power. NGOs lack accountability. The focus of the international community should not be “civil society” which like “human rights” are consequences of an institutional system of checks and balances. The international community should focus on the building of a strong party system with moderate broadly-based parties that can serve as a “check” on strong executive.

Observation

Observation is not necessary after the a certain number of elections. Otherwise it is like a drug, the country becomes addicted and the role of the national political parties and institutions diminished.

International Assistance and observation

By drafting a law, emerging democracies cannot follow the path that has taken so long for Western nations to take. And then if one looks at the “old” democracies there is much variety. “Good governance” is not the rule in proportional Western Europe: as mentioned previously the “caretaker governments” that last would spell disaster in countries that have dramatic economic problems. Lack of government majorities makes “good governance” difficult in the best of times impossible in difficult economic conditions. These are some of the characteristics of the “old and experienced” democracies. One should really understand how these old democracies work before attempting to advise newer ones.

ATTACHMENT

Political parties are the pillars of a democracy and the observation reports that are published are a caricature of what should be done. The whole technique of electoral assistance and observation should be thought over and reorganized.

Some thoughts on the OSCE-ODIHR Preliminary Observation Report of the 2008 Armenian presidential elections.

Without going into the details let us have a look at the report. At the very beginning the OSCE states “The lack of public confidence in the electoral process...” How can they determine this when there was a 70% turnout ? Under the title “Preliminary findings” the OSCE again states “During the pre-election period a lack of confidence in the electoral process was noticeable ...” “Most could not be substantiated and in some instances appeared overstated...”

They reiterate the same type of accusations page 9 of the report: “unsubstantiated allegations of possible vote buying, lack of secrecy and impersonation of voters persisted throughout the campaign and affected public confidence.” How far will observation go with this type of statement ?

Was it useful to mention in a report events that “most could not be substantiated” ?

Observation reports will be analysed carefully by those that lost the election and every word should be placed in a context responsibly as they may cause irreparable damage.

The report also states that the election code provides a good basis to conduct democratic elections “if implemented in good faith.” We are surprised at this statement. Were observers trained with the idea behind that Armenians had a “good basis” ? The counting procedures are by far too complicated. We give the details later. Who was in charge of this observation mission? Last but not least : is the OSCE implying that the Armenian authorities did not implement the code with good faith ?

“The conduct of the count did not contribute to reducing an existing suspicion amongst election stakeholders.” “16% assessed the count as ‘bad’ or ‘very bad’” How many “bad” and

how many “very bad”? 18% reported “ ‘significant procedural errors’ indicating that some major problems remain”. We should be surprised by the small number of negative opinions (15% of PECs still faced difficulties in completing the result of protocols) because the counting procedures provided by the Armenian electoral law are one of the most complex and difficult to implement. It is nevertheless an improvement over the 1996-1998 law but is still used as an bad example for our students. After aligning figures they work out three figures of “inaccuracies” (article 62) which entail additions, subtractions and lead to the final figure of inaccuracies in the polling station. All this, of course, is useless and to make things worse, these inaccuracies are worked out when all commission members are tired. This of course should be eliminated from the law (the count also figured on page 3 of the ODIHR report)

“On election day, the conduct of opening and voting was assessed in positive terms in a large majority of polling stations visited.” We note that the report states that 97% of observers considered the opening of polling stations (PS) as positive and 95% that the voting was positive. Can one get better results than that?

Although tension and unrest were noted in some 6% of PS visited which on occasion “resulted in violent incidents”: “In some 3% of PS visited interference in the election process was noted mostly by candidate proxies.” “Tension and unrest” can be the result of two events. The first is overcrowding and we see that it was the case in 15% of PS. The second is political but here we find only 3% with interference in the election process. So that without precise correlation we can guess that 6% of the “tension and unrest” was the result of the 15% of overcrowding.

One last thing about overcrowding: we learn that domestic observers were present in 85% of polling stations visited. In other words, they were all over the country. The CEC had accredited 6 international organizations, over 12,000 observers from 39 Armenian NGOs including “It’s your choice” which intended to deploy 4,000 observers and Free Society Institute: 1,600 observers. Is this how you can develop a strong broad-based party system?

On the other hand, and that is a positive point, the election law entitles each candidate to appoint proxies and confers on them a wide variety of rights. “Some candidates ...registered high number of proxies.”

“The CEC and most TECs appeared well organized and well prepared to conduct the election.” “Comprehensive efforts were made at training PEC members before the election

and 164 training sessions were held.” “The CEC administered the election process in an overall transparent manner ...”

Voter registration: “Efforts continued to improve the accuracy and quality of the voter lists.” The lists were on public display on the CEC’s website and at polling stations with a hotline for voters to check. The observer mission has no comments on this and does not mention problems that could have arisen in polling stations for non registration. Of course, no country in the world has 100% correct voter registers so that it could be a good point for Armenia.

Regarding election campaign the report states that “Overall, candidates were able to convey their campaign messages without interference and freedom of movement and assembly were mostly respected”. Nevertheless, on 6 occasions citizens were unduly impeded to attend campaign event (!!!) This last statement should not have been included in an observation report without giving details.

“Posters were frequently placed in ‘non-designated’ locations and ... were systematically removed by unknown persons.” To rip and tear down opposing candidate’s posters is common in many democracies. It is part of the game. The report gives a very false image of democracy.

“Favourable treatment of a candidate by local self-government officials led to a blurring of the separation between state and political party functions.” Do our observer friends ignore that incumbency always has its advantages : a candidate is setting the first stone of a school, is opening a new road... We attended in Yerevan a conference on a report of media coverage of the election by the European Foundation for Democracy which gave rather different results than those given by the OSCE-ODIHR mission.

Let us end with a good American saying regarding campaign tactics : “mudslinging” and the later the better so the opposite candidate doesn’t have the time to fight back.

By drafting a law, emerging democracies cannot right away follow the path that has taken so long for Western nations to take. The way forward takes time and old democracies can help by telling emerging ones about their own mistakes, the way they dealt with them and those for which they have not found a solution: their six-month caretaker governments, their coalition governments that collapse after nine months, their minority governments. That, they can tell

them about but we now have other concerns. People in the streets shouting that the election results were flawed – “Deeply flawed” as was once heard at an observation press conference - National boundaries hardly exist and what succeeds in one country will be taken over by other election losers in other countries. The observation exercises as they are now run must stop right away as they are not helpful to democracies.

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