

Maria Zandt: Theory and Practice of the Democracy Clause in the EU's Relations with Third Countries: The Example of Mexico

In its foreign relations, the EU accords priority to promoting and consolidating democracy, the rule of law, and human rights in its partner countries. More than that, its partners must acknowledge these principles to be granted assistance and to benefit from trade liberalisation. At the time of the Cold War, it was difficult to communicate these values in European political cooperation without conflict. However, only a few years after the fall of the Wall and of communism in Europe, the 'democracy clause' became a permanent feature of all treaties concluded between the former European Community and third countries. It also is part of the general agreement concluded between the EU and Mexico in 1997.

Prerequisites for the development of a uniform democracy clause in the agreements of the EU included first, a shared consciousness and second, the political will to pursue a uniform policy in questions of human rights and democratisation. However, homogenous action against human-rights violations in partner countries could only be taken after 1989. In this context, the Council's resolution on human rights, democracy, and development of November 1993 was a landmark for Europe's future policy. With the Maastricht Treaty of 1993, human rights even became one of the Union's official goals.

The content of the democracy clause evolved mainly in the EU's agreements with African, Caribbean, and Pacific countries, appearing for the first time in the Lomé IV Convention of 1989, followed by the agreements with the Baltic States, Bulgaria, and Albania. As a 'fundamental element', the democracy clause also carries some weight in international law: According to the 1969 Vienna Convention on the Law of Treaties, it is possible to suspend a treaty if a fundamental element has been violated. When the Lomé IV Convention was renegotiated in 1995, the democracy clause was linked to the default clause, a combination which has by now become standard. Thus, the goal of a coherent and uniform clause was achieved.

However, during its phase of development, the effectiveness of the democracy clause was criticised occasionally. The European Parliament, for one, demanded sanction mechanisms. In 1995, the Commission compiled a list of possible sanctions which, among other things, provides for changing or restricting the content of the cooperation programmes, deferring meetings of the joint committee, implementing trade embargos, or even suspending cooperation entirely.

Due to the imprecise and general regulations of the democracy clause on the one hand and the EU's own specific interests on the other, the sanctions provided for are applied only rarely. For one thing, limiting preferential agreements could have negative consequences for the intra-European market. For another, the items which member states emphasise in foreign relations and development policy differ widely, especially among the former colonial powers. The question now is whether the democracy clause primarily aims to employ negative measures, i.e. sanctions, to enforce reforms or positive progress-oriented measures in the form of project promotion, for example. In 2001, the Commission declared that the EU did not intend its insistence on the inclusion of the clause to 'reflect a negative or punitive approach'.

As the European process of integration progressed, Mexico also showed some interest in the economic zone that was forming. In 1960, eight years after the foundation of the European Coal and Steel Community, a Mexican mission was established in Brussels. A framework trade agreement concluded in 1975 remained unsuccessful until relations were revived by the radical changes that took place throughout the world in 1989. In 1984, Mexico joined the GATT, and at the end of 1989, the EU Commission sent a delegation to Mexico City, followed by the conclusion of a new

framework agreement two years later. However, as the ruling 'state party' PRI was pursuing a strict policy of non-interference, true partnership was a long time coming. Based on the three pillars of political dialogue, cooperation, and trade, an agreement concluded in 1997 as a counterweight to the NAFTA came into force in 2000. However, reviving this agreement proved difficult once again: While the Mexicans were primarily interested in trade, the Europeans focused on political dialogue. In the end, Mexico accepted the democracy clause and signed the agreement.

Cooperation with Mexico, which may hardly be regarded only as a developing country, is taking place at three levels, bilateral, regional, and global. Bilateral cooperation is based on the country strategy papers of the EU Commission, of which the first states that despite political, economic, and social advances in the field of human rights, many things are still going wrong in Mexico. Although the government changed in 2000 and the country opened up to a functioning democracy, deficits still remain. The current strategy promotes social cohesion and political dialogue, economic sustainability and compatibility, and education and culture. Regional cooperation takes place within the framework of the regional support concept for Latin America, currently resting upon nine horizontal programmes, while global cooperation consists of worldwide content-related programmes such as the 'European Initiative for Democracy and Human Rights'.

Political dialogue plays a special part in the global agreement, its goal being to discuss the problems and key aspects of bilateral relations as well as to formulate common positions within international organisations such as the UN. Even though the subject of human rights takes up much space, general statements and declarations of intent predominate. The way in which the dialogue has been conducted so far is criticised particularly for excluding civil society from the institutionalised discourse. While the EU made the dialogue with civil society an integral part of its agreement with Chile in 2002, there is no such arrangement with Mexico. And yet, a dialogue with civil society exists even here. In 2002, the first forum for dialogue was held in Brussels, followed by another in Mexico City in 2005. As, however, the civil-society organs still have a long way to go to a common course, there was no common voice to be heard at either forum. A third forum is scheduled for 2008.

To be sure, the fundamental political change of 2000 has greatly improved the conditions for democracy and human rights in Mexico, but neither has become reality yet. Thus, Mexico symbolises the ambivalence of sanctions in the democracy clause. While it is true that president Fox declared the protection of human rights the most important goal of his government and appointed capable personages to his cabinet, the record at the end of his term of office is very modest: Human-rights violations still occur every day in Mexico, the country's judicial system is weak, and the social, economic, and cultural rights that were internationally acknowledged in 1996 cannot be guaranteed because of the grave social injustice that prevails. Those who suffer from it most are women, *indígenas*, and the rural population.

Does this mean that the democracy clause is hardly anything more than a rhetorical tool to salve Europe's conscience? Is it the moral make-up on the face of a European foreign policy dominated by economic and geopolitical interests? While civil-society organisations complain about the violation of the democracy clause, politicians emphasise that the critical and successful dialogue about that subject is being continued. We must ask ourselves what kind of effect such a democracy clause might have. In this context, two phases would have to be distinguished: First, such a clause affects even the negotiation phase of an agreement. Second, it has an effect on society after it has come into force, encouraging democracy and a continuous dialogue about the situation of human rights.

Mexico's case certainly shows that the democracy clause is not only a sanction tool but offers concrete development and participation opportunities to civil society. It merely remains to be asked whether and to what extent Mexico's civil society is already capable of taking a constructive part in shaping the relations of the country.

Excessive expectations certainly are inappropriate. The EU is only one of many factors, and it is impossible to measure its influence on the implementation of democracy and human rights in a country. However, the democracy clause should by no means be dismissed as ineffective: It may definitely claim to be an impulse encouraging a dialogue within the society of a partner country.