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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred Maurice de Zayas

Summary

In this initial report to the Human Rights Council, the Independent Expert on the promotion of a democratic and equitable international order formulates preliminary views on the conceptual and legal framework of the mandate and highlights some of the epistemological challenges inherent in the notion of democracy at the national and international levels, as well as the implications of a culture of equity based on common sense and common interest.

The present report is inspired by the purposes and principles set out in the Charter of the United Nations and in pertinent United Nations and regional human rights norms, including the core human rights treaties and multiple declarations and resolutions adopted by the General Assembly. The Independent Expert will cooperate with other special procedures and coordinate his work with that of other United Nations mechanisms, including the Human Rights Council Advisory Committee and treaty bodies. He will liaise with intergovernmental organizations and agencies, including the World Trade Organization, the World Bank, the International Monetary Fund, the International Labour Organization, the World Health Organization, the World Intellectual Property Organization, the United Nations Educational, Scientific and Cultural Organization, the Office of the United Nations High Commissioner for Refugees and the United Nations Conference on Trade and Development. He will conduct consultations with stakeholders and academics in all regions of the world. In the present report, the mandate holder explores a number of real and potential obstacles to the realization of genuine democracy and equity, endeavouring to identify some good practices and lessons learned. He suggests ways in which governments, the private sector and civil society can cooperate.

Since the preamble of the Charter of the United Nations begins with the words “We the peoples”, it is necessary to devise ways to give greater voice to civil society, to take the temperature of public opinion throughout the world so as to ensure that the will of peoples and nations is not supplanted by economic and geopolitical interests. At the same time a proper balance must be found so that populism does not denature democracy and frustrate the noble goal to serve the higher principle of human dignity.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Mandate and methodology	1–12	4
A. Human Rights Council resolution 18/6.....	1–3	4
B. Activities of the mandate holder	4–5	5
C. The concepts of democracy and equity.....	6–10	5
D. Consultations, questionnaires, future thematic reports	11–12	7
II. Normative framework	13–26	7
A. Charter of the United Nations as the World Constitution	13–15	7
B. Relevant instruments	16–22	8
C. Ethical and historical perspective	23–26	10
III. Complementarity and coordination with other mechanisms	27–31	11
IV. Obstacles to the realization of an international order that is more democratic and more equitable	32–52	13
V. Good practices and promising trends	53–62	18
VI. Moving forward	63–70	20

I. Mandate and methodology

A. Human Rights Council resolution 18/6

1. In its resolution 18/6 of 29 September 2011, the Human Rights Council established, for a period of three years, a new special procedure entitled “Independent Expert on the promotion of a democratic and equitable international order”. The mandate holder is requested:

(a) To identify possible obstacles to the promotion and protection of a democratic and equitable international order, and to submit proposals and/or recommendations to the Human Rights Council on possible actions in that regard;

(b) To identify best practices in the promotion and protection of a democratic and equitable international order at the local, national, regional and international levels;

(c) To raise awareness concerning the importance of promoting and protecting a democratic and equitable international order;

(d) To work in cooperation with States in order to foster the adoption of measures at the local, national, regional and international levels aimed at the promotion and protection of a democratic and equitable international order through concrete proposals enhancing subregional, regional and international cooperation, including by holding subregional and regional consultations in that regard;

(e) To work in close coordination, while avoiding unnecessary duplication, with intergovernmental and non-governmental organizations, other special procedures of the Human Rights Council, international financial institutions, as well as with other relevant actors representing the broadest possible range of interests and experiences, within their respective mandates, including by attending and following up on relevant international conferences and events;

(f) To integrate a gender perspective and a disabilities perspective into his or her work;

(g) To report regularly to the Human Rights Council and the General Assembly.

2. Pursuant to paragraph 17 of the above-mentioned resolution, the Human Rights Council requests the Independent Expert to present his first report to the Council at its twenty-first session. Bearing in mind that the mandate holder assumed his functions on 1 May, this initial report should be understood as a *tour-d’horizon* of the multiple aspects of the mandate. While the mandate may appear overbroad or abstract, the intention of the Council is to give practical application to human rights norms in the international order, thus requiring the mandate holder to formulate pragmatic solutions. The individual and collective dimensions of the resolution will be taken into account, recognizing the individual’s entitlement to civil, political, economic, social and cultural rights, and the inter-State commitment to respect one another’s sovereignty, ensuring the equitable participation of all States in the international order, including global decision-making and equitable commercial and financial relations.

3. The mandate calls for the identification of obstacles and best practices and for the formulation of proposals and recommendations on possible action. While norms and mechanisms exist, an important implementation gap prevails. The mandate holder is consulting stakeholders and will formulate recommendations on ways to make the international order more democratic and equitable. He is committed to cooperate with other mandate holders to avoid duplication, recognizing, however, that “duplication” in the field

of human rights may also open other perspectives and assist in the process of education, stocktaking and reflection. One task is to identify trends and desires for reform of the international order and to energize public opinion to demand and carry out such reforms at the local and regional levels, ultimately affecting the international order from the grass roots up. The Independent Expert will be guided by relevant General Assembly resolutions, including 61/160, 63/189 and 65/223.

B. Activities of the mandate holder

4. On 7 and 8 June 2012 the mandate holder participated in the workshop organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in support of the mandate of the Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolution 18/5. From 11 to 15 June the mandate holder participated in the nineteenth annual meeting of special procedures of the Human Rights Council. Both the workshop and the annual meeting were enriched by the opinions of experts, State representatives, intergovernmental organizations, national human rights institutions and non-governmental organizations (NGOs). Their fruitful debates provided useful insights. During the twentieth session of the Human Rights Council, the Independent Expert participated in numerous side events, including the expert meeting organized by the Permanent Mission of Bangladesh in coordination with the Spanish Society for International Human Rights Law and the Women's UN Report Network on fighting violence against women through promoting the right to peace. His statement focused on the contribution of women in the promotion of the right to peace, democracy and an equitable order. On 2 July he lectured on the scope and potential of the mandate at the University of Geneva and on 10 July held a consultation with civil society at OHCHR headquarters in Geneva. From 1 to 3 October the mandate holder will participate in the 2012 Social Forum, which will focus on people-centred development and globalization.

5. The Independent Expert has sent questionnaires to States, intergovernmental organizations, national human rights institutions and civil society seeking their views and requesting assistance in identifying obstacles and good practices. He has received requests from stakeholders concerning areas that require in-depth study. He welcomes information at ie-internationalorder@ohchr.org.

C. The concepts of democracy and equity

6. A preliminary task of the mandate is a review of the various definitions of the notion of "democracy", which States use with varying content. The bottom line is that the people (*demos*) should meaningfully influence the policies and practices of government. Democracy is not merely a formal State structure or a pro forma holding of elections, but the correlation between the will of the people and the actions of its elected representatives. The will of the people must also be genuine and not the result of populism, demagoguery, manipulation by national or international lobbies, distortion through consumerism, intimidation or fear. It should also be kept in mind that although "democracy" is a better form of government than others, it is not a panacea for all the ills of mankind; thus it is necessary to come to grips with the paradoxes of democracy, freedom, the rule of law, and ethical values. Majority rule must not negate minority rights, the right to be different, the right to practice one's own culture, or the right to one's individuality and identity. Democracy without equity and without *caritas* can engender inhuman and degrading consequences, including extreme poverty and food insecurity. Democracy must always be tempered by a constant awareness of the inherent dignity of the human being, by the overarching principle of social justice, bearing in mind that while competition is necessary and

useful for material progress, in the absence of a sense of solidarity, competition may become predator behaviour. Indeed, democracy is more than just a political concept; it also has economic, social, anthropological, ethical and religious dimensions. The rule of law is not identical with positivism, but must be animated by Montesquieu's *Esprit des Lois* (1748), the existence of an independent judiciary, moderation, a culture of dialogue, negotiation and compromise, and a conviction that in human rights terms there cannot be any "legal black holes". Finally, it should be remembered that the ritual invocation of the word "democracy" does not make it happen. Societies must work in good faith to make it function, ensuring genuine participation by the population. At the same time, common sense also tells us to beware of the excesses of "militant democracy", a rather bizarre concept, which in some circumstances may take totalitarian overtones, and to abandon the fantasy that democracy can be exported or imposed by force. The respect for national sovereignty mandated in the Charter of the United Nations also means respect for the national identity of countries.

7. Democracy can be understood internally but also internationally, since the will of a majority of States in the General Assembly deserves respect. Whereas every member of the General Assembly has an equal right to vote, consideration must also be given to the fact that some States have very large populations and only a single vote, posing a problem of weighting. Moreover, the unequal economic and political power of States may lead to inequitable results, especially when a few powerful States frustrate the expressed will of democratically elected Governments representing hundreds of millions of human beings. This has led to the formation of informal voting blocks that do not always serve the cause of international equity. A problem of credibility arises when a large number of General Assembly resolutions remain unimplemented, although adopted by near unanimity.

8. The Independent Expert acknowledges earlier pronouncements of the General Assembly concerning democracy, e.g. in resolutions 55/96 on promoting and consolidating democracy, 57/221 on strengthening the rule of law, and 59/201 on enhancing the role of regional,¹ subregional and other organizations and arrangements in promoting and consolidating democracy, as well as resolution 50/172 on respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes, in which the Assembly recognized that there is no single political system or single universal model for electoral processes equally suited to all nations and their peoples, and that political systems and electoral processes are subject to historical, political, cultural and religious factors. Similarly, the Human Rights Council, in its resolution 19/36 on human rights, democracy and the rule of law, reaffirms in a preambular paragraph that while democracies share common features, there is no single model of democracy and that democracy does not belong to any country or region, and stresses the necessity of due respect for sovereignty and the right to self-determination. Thus, it should be clear that the way toward democracy – both nationally and internationally – is arduous and that countries should devise their own democratic institutions and mechanisms consistent with their culture and traditions, but also grounded in universal human rights.

9. The mandate holder will also explore the practical scope of the concept of "equity", going back to the Socratic notion of moderation and the Aristotelian approach to justice (*Ethics*) as equality of treatment, i.e. like cases being treated alike, unlike cases differently.

10. How can the existing international order evolve so that it will be more democratic and more equitable? Certain conditions appear necessary, foremost among them peace in

¹ See the Inter-American Democratic Charter adopted by the Organization of American States on 11 September 2001.

the holistic sense, encompassing not only the absence of war but also positive harmony, the absence of structural violence, cultural hegemonism, neo-colonialism, exploitation, discrimination and the eradication of extreme poverty as envisaged in the Millennium Development Goals. At the request of the Human Rights Council, OHCHR organized an expert workshop on the right of peoples to peace, held in Geneva on 15 and 16 December 2009, in which experts and civil society participated. The report on the workshop (A/HRC/14/38) was presented to the Council in June 2010 and led to the adoption of resolution 14/3, in which the Council tasked the Advisory Committee with drafting a declaration on the right to peace, which also entails reducing the gap between rich and poor in all countries, whether developed or developing, through a process of gradual implementation of social justice. Pursuant to Council resolution 17/16 and Advisory Committee recommendation 8/4, the Advisory Committee submitted to the Council its draft declaration on the right to peace (A/HRC/20/31, annex). At its twentieth session, the Council considered the draft, and adopted resolution 20/15 establishing an open-ended working group to continue the codification process, taking duly into account all preparatory work.

D. Consultations, questionnaires, future thematic reports

11. Through early consultations conducted by the Independent Expert, and correspondence received from stakeholders, a number of suggestions for thematic studies emerged: (a) the nature of democracy, its diverging meanings domestically and internationally; (b) the notion of equity; (c) the links between self-determination and democracy; (d) the right of participation of unrepresented peoples; (e) the concept of “participation”; (f) the relationship between democracy and freedom of opinion and expression and access to information (including unduly classified information), peaceful assembly and association, good governance, and independent judiciary; (g) self-censorship and “political correctness”; (h) lobbies and pressure groups; (i) free, genuine and competitive elections (including issues of election fraud and civil unrest, election financing, buying votes); (j) the impact of the financial markets on democracy and equity; (k) the influence of transnational corporations and other private sector actors upon the international order; (l) the impact of the military-industrial complex, military expenditures and war on democracy and equity, and the need to liberate financial resources to achieve the Millennium Development Goals; (m) the non-implementation of treaties and agreements; (n) control over natural resources; (o) corruption in government, business and society; and (p) fair trade, free trade agreements, and adverse trade relations.

12. Follow-up reports on the above themes may be submitted to the Human Rights Council and General Assembly as appropriate.

II. Normative framework

A. Charter of the United Nations as the World Constitution

13. In a very real sense the Charter of the United Nations can be described as the World Constitution. All States are bound by it and should orient their policies and practices according to its purposes and principles. Paramount is the commitment “to save succeeding generations from the scourge of war” through meaningful disarmament and to fulfil the promise to turn swords into ploughshares, and end internal and international warfare.

14. The Universal Declaration of Human Rights is an emanation of the Charter and constitutes a minimum standard which must be respected not only by States but also by individuals.

15. The world financial crisis is a result not only of toxic loans by irresponsible bankers but also of the enormous waste caused by recurrent armed conflicts and by the inordinate proportion of national budgets devoted to the development of all kinds of armaments, including weapons of mass destruction, which threaten the survival of humanity² and violate article 6 of the International Covenant on Civil and Political Rights.³ The Charter also stipulates the promotion of human rights, development and friendly relations based on respect for the principle of equal rights and self-determination of peoples. The application of the Charter is further governed by general principles of law, such as equity, good faith, victims' right to reparation, estoppel (*ex injuria non oritur jus*), and the overarching principles of equality, non-discrimination and the common heritage of mankind.

B. Relevant instruments

16. The Universal Declaration of Human Rights constitutes "a common standard of achievement for all peoples and all nations". Of particular relevance to the present mandate are the rights to freedom of opinion and expression (art. 19), freedom of peaceful assembly and association (art. 20), the right to take part in the conduct of public affairs (art. 21), the right to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized (art. 28), and everyone's "duties to the community in which alone the free and full development of his personality is possible" in the light of "the general welfare in a democratic society" (art.29).⁴

17. For the realization of an international order that is more democratic, it is necessary that States observe the rights stipulated in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. With regard to civil and political rights, particularly crucial are the right to hold opinions without interference and the right to freedom of expression, including freedom to seek, receive and impart information, regardless of frontiers (art. 19), as well as the right to peacefully assemble (art. 21) and the right to freedom of association (art. 22). The right to due process in civil and criminal proceedings as well as the independence of the judiciary (art. 14) are central to every democracy, as is the right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote and be elected at genuine periodic elections (art. 25), and the autonomous right to equality (art. 26).

18. The International Covenant on Economic, Social and Cultural Rights stipulates conditions for the promotion of an equitable international order, in particular the rights to work (art. 6), to form and join trade unions (art. 8), to social security (art. 9), to an adequate

² Mikhail Gorbachev, "Resetting the nuclear disarmament agenda", Geneva Lectures Series, 5 October 2009.

³ Human Rights Committee general comment 14 (1984) on nuclear weapons and the right to life.

⁴ See also the report of the Special Rapporteur on Human Rights and Human Responsibilities (E/CN.4/2003/105); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144, annex). In *The Price of Civilization: Economics and Ethics After the Fall* (2011, p. 263), Jeffrey Sachs notes: "No class war is needed or intended. Yet as America's greatest businessmen, from Andrew Carnegie to Bill Gates, Warren Buffett, and George Soros, have known, those with great business skills have great responsibilities as well."

standard of living and to be free from hunger (art. 11), to the enjoyment of physical and mental health (art. 12) and to education (art. 13).

19. The International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women contain many relevant provisions. With regard to gender discrimination and gender mainstreaming, the Independent Expert will explore the implications of the Committee on the Elimination of Discrimination against Women's general recommendation No. 23 (1997) on women in political and public life. The Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the 1951 Convention relating to the Status of Refugees provide additional perspectives relevant to the present mandate.

20. The Vienna Declaration and Programme of Action of 1993 commits States to "an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity". The United Nations Millennium Declaration of 2000 proclaimed: "We will spare no effort to promote democracy and strengthen the rule of law as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development" (para. 24). The Millennium Development Goals reaffirm these commitments, in particular to end extreme poverty and promote universal education and gender equality.⁵ The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in August/September 2001, adopted the Durban Declaration and Programme of Action, reaffirmed in the outcome document of the Durban Review Conference, adopted on 24 April 2009, and in the declaration of the high-level meeting of the General Assembly to commemorate the tenth anniversary of the adoption of the Durban Declaration and Programme of Action, proclaimed by the Assembly in its resolution 66/3.

21. Particularly relevant to resolution 18/6 are General Assembly resolutions 3201 (S-VI) on the Declaration on the Establishment of a New International Economic Order, 2625 (XXV) on friendly relations and 3314 (XXIX) on the definition of aggression, and more immediately resolution 65/223, in which the General Assembly affirms that a democratic and equitable international order requires the realization of, inter alia, the right of peoples to self-determination, permanent sovereignty over natural resources, development and peace.

22. The mandate holder will build on the studies already conducted by the Commission on Human Rights, by the Human Rights Council and its Advisory Committee, including the Advisory Committee report on enhancement of international cooperation in the field of human rights (A/HRC/AC/8/3), as well as by the Sub-Commission on the Promotion and Protection of Human Rights, including those of the Special Rapporteur Awn Shawkat Al-Khasawneh, tasked with preparing a study on the human rights dimensions of population transfers, which identify numerous gross violations of democracy and equity that accompany every form of "ethnic cleansing",⁶ and the final report of Special Rapporteur

⁵ See also Bertrand Ramcharan, *Contemporary Human Rights Ideas*, Global Institutions Series (2008), especially chapters 5 to 7 (Equality, Democracy, and Development); and Jeffrey Sachs, *The End of Poverty* (2005). Harvard's Program on Human Rights in Development under the directorship of Stephen Marks has made outstanding contributions to an understanding of the correlation between development and human rights (see www.hsph.harvard.edu/phrd/).

⁶ See, in particular, the 1997 report, including a 13-point declaration (E/CN.4/Sub.2/1997/23 and

Miguel Alfonso Martínez on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1999/20). He will also build on the work of the family of special rapporteurs of the Human Rights Council, the General Assembly and the Commission on Human Rights, in particular with respect to resolutions on the right of peoples to peace (Assembly resolution 39/11 and Commission resolution 2002/71). The pertinent conventions and directives of specialized agencies, such as the International Labour Organization (ILO), will be incorporated into the analysis of thematic issues in future reports.

C. Ethical and historical perspective

23. It is appropriate to recall that the objectives of the present mandate reflect aspirations expressed by the leaders of many countries, even before the creation of the United Nations. For instance, President Franklin Roosevelt of the United States of America articulated universal hopes in his “Four Freedoms” address of 6 January 1941, notably the freedom from want and the freedom from fear. These principles were confirmed in the eight-point peace plan known as the Atlantic Charter of August 1941, subsequently adhered to by 26 governments in the Declaration by United Nations of 1 January 1942. Article 2 of the Atlantic Charter stipulates that the anti-Hitler coalition “desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned”; its article 3 provides that “they respect the right of all peoples to choose the form of government under which they will live”, its article 4 commits States to promote “the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity”; and its article 8 reaffirms the need for disarmament.

24. For centuries secular and religious thinkers have promoted peace and social justice. A central thesis of Immanuel Kant’s philosophy was the imperative to recognize that humans are ends and should not be used as mere means to an end. Mahatma Gandhi propounded the philosophy of *satyagraha*⁷ in his campaigns to reform Indian society and to

Corr.1), endorsed by the Commission on Human Rights and the Economic and Social Commission but never elevated to the General Assembly for adoption. The first United Nations High Commissioner for Human Rights stated at the opening of an expert consultation convened by Mr. Al-Khasawneh in February 2007:

Sub-Commission resolutions 1994/24, 1995/13 and 1996/9 recognize ‘that practices of forcible exile, mass expulsions and deportations, population transfer, ‘ethnic cleansing’ and other forms of forcible displacement of populations within a country or across borders deprive the affected populations of their right to freedom of movement.’

But I would go further, because the right to live in one’s native land is a very precious and fundamental right. Compulsory population transfers, including the implantation of settlers and settlements are a serious matter, not only because they affect many people, but also because they violate the whole gamut of civil and political rights, economic, social and cultural rights.

See further A. de Zayas “Forced population transfer” in Wolfrum, ed., *Max Planck Encyclopedia of Public International Law*, Vol. IV (2012) 165-175; Felix Ermacora et al., *Grundrechte der europäischen Volksgruppen* (1993); Christian Tomuschat, “Das Recht auf die Heimat: Neue rechtliche Aspekte” in J. Jekewitz et al., eds., *Des Menschen Recht zwischen Freiheit und Verantwortung* (1989) pp. 183–212.

⁷ *Satyagraha* (Sanskrit), “insistence on truth”, is a philosophy relating to non-violent resistance.

awake Indian consciousness to the necessity of his social agenda. He condemned discrimination and immorality, inequality and exploitation. He struggled not merely for independence from England but for social justice within India: “Unless poverty and unemployment are wiped out from India... I would not agree that we have attained freedom”.⁸ In the same vein, on 28 August 1963, Martin Luther King expressed his hope that there can indeed be social progress: “I have a dream that one day this nation will rise up and live out the true meaning of its creed: ‘We hold these truths to be self-evident that all men are created equal’.” Similarly, Nelson Mandela, upon receiving the Nobel Peace Prize on 10 December 1993, stated: “We speak here of the challenge of the dichotomies of war and peace, violence and non-violence, racism and human dignity, oppression and repression and liberty and human rights, poverty and freedom from want ... countless human beings, both inside and outside our country, had the nobility of spirit to stand in the path of tyranny and injustice, without seeking selfish gain. They recognised that an injury to one is an injury to all and therefore acted together in defence of justice and a common human decency.”

25. As to freedom from fear, Aung San Suu Kyi expressed it well: “Within a system which denies the existence of basic human rights, fear tends to be the order of the day. Fear of imprisonment, fear of torture, fear of death, fear of losing friends, family, property or means of livelihood, fear of poverty, fear of isolation, fear of failure. A most insidious form of fear is that which masquerades as common sense or even wisdom, condemning as foolish, reckless, insignificant or futile the small, daily acts of courage which help to preserve man’s self-respect and inherent human dignity. It is not easy for a people conditioned by fear under the iron rule of the principle that might is right to free themselves from the enervating miasma of fear. Yet even under the most crushing state machinery courage rises up again and again, for fear is not the natural state of civilized man.”⁹

26. In his book *Indignez-vous!* (Time for Outrage), Stéphane Hessel similarly calls for taking responsibility in our hands and demanding change. Such courage is being expressed in many countries by civil society, indignant at the failures and abuses by government. For centuries it has been the role of poets and novelists to use literature to promote a more ethical order, from Aristophanes to Ibn Rushd, Erasmus of Rotterdam, Jean-Jacques Rousseau, Friedrich von Schiller, Harriet Beecher Stowe, Wilfred Owen, Lu Xun, Anna Akhmatova, Gabriel García Márquez, Vaclav Havel, Arundhati Roy and Wole Soyinka.

III. Complementarity and coordination with other mechanisms

27. The Independent Expert will endeavour to liaise with charter-based and treaty-based mechanisms and build on United Nations initiatives such as the Global Compact.¹⁰

28. The United Nations treaty bodies are seized of situations and individual cases on matters relating to the present mandate and have adopted many pertinent decisions in this respect. Their jurisprudence in the form of case law,¹¹ concluding observations and general

⁸ India, *Collected Works of Mahatma Gandhi* (Ministry of Information and Broadcasting), vol. 87, p. 452, as cited in Norman G. Finkelstein, *What Gandhi Says* (2012), p. 62.

⁹ Aung San Suu Kyi, *Freedom from Fear*, acceptance message for the 1990 Sakharov Prize for Freedom of Thought, 1991.

¹⁰ See www.unglobalcompact.org/issues/human_rights/Human_Rights_Working_Group.html.

¹¹ See, for example, Jakob Th. Möller and Alfred de Zayas, *United Nations Human Rights Committee Case Law 1977-2008: A Handbook* (Kehl am Rhein, Engel, 2009); Manfred Nowak, *U.N. Covenant on Civil and Political Rights*, 2nd revised ed. (Kehl am Rhein, Engel, 2005).

comments will enrich the reports of the Independent Expert; he will also rely on recommendations resulting from the universal periodic review and on the work of special procedures, in particular the reports of the Independent Expert on human rights and international solidarity; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association, on the independence of judges and lawyers, on the promotion of truth, justice, reparation and guarantees of non-recurrence, on the right to education, in the field of cultural rights, on the rights of indigenous peoples, on extreme poverty and human rights, on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, on the right to food, on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, on the human right to safe drinking water and sanitation, on adequate housing as a component of the right to an adequate standard of living, and on the human rights of internally displaced persons; the Working Group on the issue of human rights and transnational corporations and other business enterprises; and the Forum on Business and Human Rights.

29. The mandate holder will follow the work of the 26-member United Nations high-level panel on post-Millennium Development Goals, established in 2012, and seek synergies with the Special Adviser on Post-2015 Development Planning. Attention will be paid to the programmes established by several United Nations agencies with objectives relating to those of this mandate. In the field of labour law, the ILO promotes social justice through standard setting and monitoring; its motto “*si vis pacem cole justitiam*” (if you desire peace, cultivate justice) could well be the motto of the present mandate and report. This motto is also written on a document buried at the foundation of the old ILO building in Geneva, today the headquarters of the World Trade Organization (WTO). WTO has the opportunity to promote a more equitable international order by mainstreaming human rights principles into its policies and programmes, including the Doha Development Agenda, pursuant to its commitment to achieve the agreed objective of rebalancing trade rules so that developing countries can benefit from enhanced equitable commerce. The Independent Expert will consider how WTO may promote equity in the global trade regime with fairness for all, especially for poor and vulnerable countries. He will study the relevant reports of the World Bank, International Monetary Fund and the United Nations Conference on Trade and Development and evaluate criticism by think tanks, academics and civil society.¹² The United Nations Educational, Scientific and Cultural Organization (UNESCO) advances international understanding through culture and is committed to the promotion of world peace, as expressed in the preamble of its Constitution: “Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed”. In this spirit the Director-General of UNESCO proclaimed in 1997 the Declaration on the Human Right to Peace. Of continued relevance are the UNESCO programme on a Culture of Peace and the Declaration and Programme of Action on a Culture of Peace (General Assembly resolution 53/243). On 12 November 1997 the General Conference of UNESCO adopted the Declaration on the Responsibilities of the Present Generations towards Future Generations (see www.unesco.org/cpp/uk/declarations/generations.pdf).

30. The Independent Expert will seek synergies with civil society and intergovernmental initiatives, including those of the Inter-Parliamentary Union, of the Alliance of

¹² Naomi Klein, *The Shock Doctrine* (2007).

Civilizations, United Nations Institute for Disarmament Research and of regional organizations, which may further contribute to the realization of a more democratic and equitable international order. He will study the future report Fostering cross-cultural understanding for building peaceful and inclusive societies.

31. In particular, the mandate holder recalls civil society initiatives that have born fruit, for example the World Campaign on the Human Right to Peace conducted by the Spanish Society for the Advancement of International Human Rights Law, which concluded on 10 December 2010 with the adoption of the Santiago Declaration on the Human Right to Peace at the International Congress on the Human Right to Peace, held in Santiago de Compostela, Spain, in the context of the World Social Forum on Education for Peace (see www.aedidh.org/?q=node/1853). This Declaration revised the earlier Luarca Declaration on the Human Right to Peace¹³ in the light of inputs from different cultural sensibilities.¹⁴ At the same Congress the Statutes of the International Observatory of the Human Right to Peace were adopted,¹⁵ becoming operative on 10 March 2011, and which enjoy the endorsement of some 2,000 civil society organizations, as well as of numerous public institutions and the 22 member States of the Ibero-American Summit.¹⁶

IV. Obstacles to the realization of an international order that is more democratic and more equitable

32. The Independent Expert has already held consultations with stakeholders to learn what they perceive to be major obstacles and good practices for the realization of an international order that is more democratic and equitable. Focused questionnaires have been sent and further questionnaires will be addressed to all stakeholders over the next three years.

33. Through informal consultation with members of permanent missions, intergovernmental organizations and NGOs, in particular the academic communities of several countries, and subsequent study of relevant literature, the mandate holder has become aware of numerous concerns that require further study, including the postulate of a hierarchy of human rights as one of the remaining ideological debates between developed and developing countries. In his view, civil, political, economic, social and cultural rights are not only interdependent, but they also have equal value and importance.

34. With regard to a more democratic international order, some observers have signalled the need to reform the United Nations and, in particular, the composition of the Security Council so as to make it more responsive to the needs of the 193 States Members of the United Nations. A General Assembly task force on Security Council reform is committed to explore the modalities of Security Council reform. In his report entitled "In larger freedom:

¹³ Carmen Rosa Rueda Castañón and Carlos Villán Durán, eds., *La Declaración de Luarca sobre el Derecho Humano a la Paz*, 2nd ed. (2008); Carlos Villán Durán y Carmelo Faleh Pérez, *Contribuciones Regionales para una Declaración Universal del Derecho Humano a la Paz* (2010).

¹⁴ See Villán Durán and Faleh Pérez, *Contribuciones*.

¹⁵ See www.aedidh.org/?q=node/1857.

¹⁶ Carlos Villán Durán, "The human right to peace: A legislative initiative" *Spanish Yearbook of International Law, Volume XV, 2009* (2011), pp. 143-171 and Carlos Villán Durán, "Civil society organizations contribution to the Universal Declaration on the Human Right to Peace", *International Journal on World Peace*, vol. 28 (2011), pp. 59-126. See also A. de Zayas, "Peace as a human right: the *jus cogens* prohibition of aggression" in A. Eide et al., eds., *Making Peoples Heard* (2011), pp. 27-42.

towards development, security and human rights for all”, submitted to the 2005 World Summit, the Secretary-General proposed an enlargement of the Security Council to 24 members (A/59/2005, paras. 168-170). Such enlargement could theoretically be achieved through amendment of the Charter of the United Nations (pursuant to art. 108), provided that the permanent members of the Security Council agree.

35. Other observers have pointed out that the theoretical equality of the Westphalian State system is put to question by the realities of power politics, economic imbalance and adverse trade relationships. Indeed, the overwhelming economic power of some countries renders illusory the aspirations of sovereignty of many poorer countries. In the United Nations, votes are often influenced by economic carrot-and-stick practices, and some weaker economies must bend to diplomatic and other forms of pressure.

36. In the above-mentioned report (A/59/2005, para. 32), the Secretary-General observed:

In 2005, the development of a global partnership between rich and poor countries ... needs to become a reality ... Each developing country has primary responsibility for its own development—strengthening governance, combating corruption and putting in place the policies and investments to drive private-sector-led growth and maximize domestic resources available to fund national development strategies. Developed countries, on their side, undertake that developing countries which adopt transparent, credible and properly costed development strategies will receive the full support they need, in the form of increased development assistance, a more development-oriented trade system and wider and deeper debt relief. All of this has been promised but not delivered. That failure is measured in the rolls of the dead—and on it are written millions of new names each year.

37. Some observers have expressed concern over “market fundamentalism”, a philosophy that has much in common with social Darwinism and assumes that a laissez-faire policy is always the optimal solution.¹⁷ “Corporatocracy”, unfair taxation, uncontrolled markets, currency speculation and runaway finance impact negatively on both democracy and equity.

38. It has long been noted that certain transnational corporations are wealthier and more powerful than some States. Strategies and guidelines must be developed to ensure that international business and trade promote rather than hinder a democratic and equitable international order. The new Working Group on the issue of human rights and transnational corporations and other business enterprises, established by the Human Rights Council at its seventeenth session (resolution 17/4), is tasked with promoting human rights in this sensitive area. The Independent Expert will consult with the members of the Working Group in order to cross-fertilize and avoid duplication.

39. Globalization raises many human rights issues¹⁸ and it is in the interest of governments, transnational corporations and civil society that the opportunities offered by globalization be used to advance and not to restrict the enjoyment of human rights. The Independent Expert will explore the impact of globalization on the realization of an

¹⁷ See, inter alia, George Soros, *The New Paradigm for Financial Markets: The Credit Crisis of 2008 and What It Means* (PublicAffairs, 2008); *Bill Moyers Journal*, interview with George Soros, 10 October 2008, available from www.pbs.org/moyers/journal/10102008/watch.html; Michael Sandel, *What Money Can't Buy: The Moral Limits of the Markets* (2012).

¹⁸ See, inter alia, Dani Rodrik, *The Globalization Paradox, Democracy and the Future of the World Economy* (New York, 2011) and Sachs, *The Price of Civilization* (note 4 above).

international order that is more democratic and more equitable, and how to reconcile the tensions between, on the one side, the legitimate interest in profit and trade expansion¹⁹ and, on the other side, the right of States, large and small, to sovereignty and control over their natural resources, and the right of peoples to self-determination,²⁰ to decide their domestic policies of full employment and equity.

40. Military expenditures, the power of the military-industrial complex, the overt and covert trade in weapons, international organized crime, in particular drug trafficking, money-laundering and corruption²¹ of government officials and non-State actors continue to have a deleterious effect on the proper functioning of democracy in many countries. The impact of the “war on drugs” and of the “war on terror” on the rule of law also deserves close attention. The killing and harassment of journalists, reprisals against human rights defenders, censorship and deliberate disinformation by government and private sector media frustrate the democratic goal of empowering the population to develop responsible opinions upon which to act in the political arena. Frequently news reporting and commentary avoid the crucial issues and distract attention with red herrings of all kinds. Observers have noted that all too often the “elephant in the room” is ignored. Such practices undermine democracy.

41. The International Expert considers that the emergence of a democratic international order would be advanced by the participation of a growing number of States which implement democratic principles domestically.

42. Concern has been expressed about the role of religious institutions in the conduct of public affairs. The Independent Expert would like to explore how religious institutions can also contribute to a more democratic and equitable international order.

43. Greater efforts are needed to limit current attempts to shrink the space of civil society at the international and domestic levels. Arbitrary and undue restrictions on the effective enjoyment of fundamental freedoms, including the freedoms of association, peaceful assembly and expression, seriously obstruct the realization of a more democratic international order.

44. From the domestic perspective, obstacles to the promotion of a more democratic international order also include a lack of correlation between the will of the people and the policies and practices adopted by their governments, even democratically elected governments, and reflect an epistemological and perception gap between the governing elites and the population at large. This lack of correlation may be attributed in part to the “psychology” of power, but also to the deliberate distortion or manipulation of public opinion.²²

45. It is generally recognized that a well-informed citizenry is a condition of democracy. A country where public opinion is manipulated by the government or private media cannot

¹⁹ Trade expansion, however, should not be achieved at the expense of local farmers and local industry, thus causing a destruction of local economies and increased unemployment. Nor is it ecologically sustainable to relocate production and thereby increase the consumption of fuel for transportation purposes.

²⁰ See Cliff Durand and Steve Martinot, eds., *Recreating Democracy in a Globalized State*, 2012; Noam Chomsky, *Profit over People. Neoliberalism and Global Order*, 1999.

²¹ See United Nations Convention against Corruption, in force 2005, 161 States parties; United Nations Convention against Transnational Organized Crime and the Protocols thereto.

²² See, inter alia, Tzvetan Todorov, *Les ennemis intimes de la démocratie* (Paris, Robert Laffont, 2012); Edward S. Herman and Noam Chomsky, *Manufacturing Consent* (New York, Pantheon Books, 2002).

have a functioning democracy. Censorship, whether conducted by States or by press conglomerates, distorts reality and undermines democracy. Who is financing the media and what gets broadcasted or released are important issues in understanding the degree of press freedom, also to what extent big media smother out the independent press. Self-censorship as a result of intimidation or social pressures, sometimes referred to as “political correctness”, constitutes a serious obstacle to the proper functioning of democracy. It is important to hear the views of all persons, including the “silent majority”, and to give ear to the weaker voices. There is little hope for an international democratic order as long as democracy is lacking at the national level. Therefore, it is imperative to focus attention on education and access to information, including via the Internet, to enable persons to develop freely their own opinions. Direct or indirect censorship, whether through State or private sector agencies, undermines opinion-building and constitutes an obstacle for the individual and society at large to exercise civic responsibilities, including the right to participate in the conduct of public affairs.

46. The Human Rights Committee has stated: “Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions. Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.”²³ Some pressure groups, lobbies and professional public relations companies may hijack political decision-making and leave large parts of the population effectively disenfranchised.

47. While the outward face of democracy may be a multiparty system and regular elections, some observers contend that there is a substantial difference between the right to vote and the right to choose policies. If the choice of candidates for election does not correspond to the desires of the people, then a pro forma election among candidates who have been put up by political machines does not further the credibility or legitimacy of such “democracies”. This is not democracy but “partitocracy” (Sartori). Similarly, if the only choices possible are between candidate A and candidate B, whose programmes are often very similar, and the people do not have an opportunity to vote for a candidate C with a different programme, then the pro forma election of A or B does not satisfy the essence of what democratic government should be. In such cases, the two-party system avers itself to be only twice as democratic as the one-party system. Even in multiparty systems, it often occurs that the number of representatives in parliament does not correspond proportionally to the votes cast, and in some cases a party does not succeed in having a single representative in parliament, although proportionally it would have been entitled to some representation.

48. Another obstacle to the right to choose freely is the combination of policies that make up the cocktail of any party platform. Should the citizen be obliged to choose between two “package deals”, one represented by party A and the other by party B? In many cases, the electorate may agree with as little as 30 per cent of the programme of party A, 30 per cent of the programme of party B, and find no candidate at all to espouse 40 per cent of his or her wishes. In such or similar cases confidence in the electoral process is undermined and results in high levels of electoral absenteeism in many countries. Indeed, democracy requires real choices as well as transparent and accountable governance and administration in all sectors of society. In other cases, party machines fail to advance a

²³ General comment No. 34 (2011) on the freedoms of opinion and expression, paras. 2 and 3.

representative number of female candidates. Citizens have a right to be given greater opportunity to participate in the conduct of public affairs, particularly by general consultations through referenda on issues, not merely by voting for individuals whose loyalties are not always with their electorates but more often than not with the rich sponsors who financed their political campaigns. In this context many observers have noted that election campaigns in many countries entail enormous expenditures and that the choice of candidates is frequently dependent on their financial strength, resulting in a kind of elitist “elective dictatorship”.

49. Obstacles of a more general nature are the historical inequities left by centuries of slavery, colonialism, imperialism and foreign occupation (that persist in some areas even today).²⁴ It is obvious that those persons and countries currently enjoying privileges may have an interest in maintaining the status quo and be reluctant to relinquish their advantages. In many countries, including developed countries, there is a growing gap between rich and poor. It is worth recalling the words of Justice Louis Brandeis, who said it simply: “You can have wealth concentrated in the hands of a few, or democracy, but you cannot have both.”

50. Other generic obstacles include lack of ethics,²⁵ latent social Darwinism, endemic power asymmetry, racism, arbitrary embargoes, marginalization, taboos, “conspiracies of silence”, political correctness, mobbing, self-censorship, lack of transparency (particularly in the financial sector), lack of accountability, false prioritizing, the instrumentalization of some human rights for purposes of power and exclusion, abuse of rights, the tendency to selectivity, lack of objectivity, double standards, international law à la carte, unilateral measures, discrimination among victims, intellectual dishonesty, political hubris, bigotry, perpetuation of privilege and common greed.

51. Aware that the status quo itself hampers the realization of an international order that is more democratic and equitable, the mandate holder intends to explore ways and means to overcome these obstacles. The dynamics of economic power must change if progress and a more inclusive and balanced growth paradigm are to be achieved.

52. There is much room – as well as need – for improvement. States, the United Nations, intergovernmental organizations, NGOs and civil society all need to identify and overcome obstacles in their respective areas of competence and influence. This is required by the international order intended by the Charter of the United Nations, which entails a post-predator world consensus.

²⁴ See, inter alia, Eduardo Galeano, *Open Veins of Latin America* (1997); case law of the Human Rights Committee on indigenous matters, e.g. *Onimayak and the Lubicon Lake Band v. Canada*, “Historical inequities to which the State party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue” (para. 33), as cited in Möller and de Zayas (note 11 above), p. 447. Nancy Fraser, “Egalité, identités et justice sociale”, *Le Monde diplomatique*, June 2012, p. 3.

²⁵ See the analysis of the concepts of legal and ethical norms in A. de Zayas “Normes morales et normes juridiques. Concurrence ou conciliation” in A. Millet-Devalle, *Religions et Droit International Humanitaire* (Paris, 2008), pp. 81-85; see also the analysis of “democracy” and “value” in China by Harro von Senger, “Wert in China” in Ivo de Gennaro, *Value: Sources and Readings on a Key Concept of the Globalized World* (Leiden, 2012), pp. 399-414; Hans Küng, *Anständig Wirtschaften. Warum Ökonomie Moral Braucht* (Piper, 2010).

V. Good practices and promising trends

53. As a democratic international order demands well-functioning interaction between the democratic will of peoples and the concrete policies that affect them, an equitable international order requires a correlation between production and wealth, performance and reward, and rejects the excesses of the uncontrolled financial markets that have more than once adversely impacted on the world economy, causing hardship such as the unemployment and loss of savings and pensions of millions of people. In the light of the persistence of extreme poverty in the world, including in developed countries, exorbitant salaries and bonuses, as well as currency speculation, constitute unethical practices. Efforts in many countries to regulate the financial markets are commendable but risk remaining insufficient.

54. Any progress in the fields of codification, monitoring and enforcement of human rights is welcome, even if achieved by homeopathic doses. In her 2012 report on strengthening the United Nations human rights treaty body system (A/66/860), the High Commissioner for Human Rights welcomed greater ratification of the core human rights treaties. The goal is universal ratification, accompanied by education so that greater awareness of human rights permeates government and society in a sustainable manner. At this stage, the Independent Expert has not yet developed benchmarks to assess, measure and compare what qualitatively could be considered “best practices”. He will further consult stakeholders in this respect.

55. With respect to a democratic international order, the mandate holder values the progress achieved in the empowerment of women in many countries, the greater transparency shown in elections, and the added value of election monitoring by many actors. As stated earlier, a democratic international order is best secured by a growing number of democratic States and by the constant improvement of democratic institutions. Democracy also requires an informed citizenry that can articulate its wishes and can choose among policies in periodic elections and by referenda. A democratic international order requires greater transparency and respect for the needs and aspirations of peoples in all regions of the world, regardless of economic power or geopolitical strategic importance, giving due regard to national sovereignty and the right of self-determination.

56. The mandate holder is studying the democratic traditions of many countries and practices of popular initiatives, referenda, recall and impeachment. He intends to explore the feasibility of using aspects of the “direct democracy”²⁶ model more broadly, which would give populations the opportunity to choose among policies and not only persons. It should be remembered that the right to vote is not identical with the right to choose. The manifold aspects involved in giving civil society the right to initiate legislation by petition, which could be put to a general vote if a certain number of signatures is reached, and the possibility of referenda on legislation already passed will be explored. Perhaps combining aspects of direct democracy and representative democracy could be appropriate for some countries.

²⁶ See Johannes Reich, “An interactional model of direct democracy: lessons from the Swiss experience” (2008). Available from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1154019; Jon Elster, ed., *Deliberative Democracy* (1998); Carne Ross, *The Leaderless Revolution: How Ordinary People Will Take Power and Change Politics in the 21st Century* (2011); Takis Fotopoulos, *Towards an Inclusive Democracy: The Crisis of the Growth Economy and the Need for a New Liberatory Project* (1997).

57. Among practices to be studied are enhanced press freedom, access to the Internet worldwide, regular elections and election monitoring. Current developments in social media may contribute insights. In her statement at the fall session of the United Nations System Chief Executives Board for Coordination, held in New York in October 2011, the High Commissioner for Human Rights noted that “human rights, democracy and the rule of law are as much a part of the UN brand as peacekeeping and development assistance”. In her opening statement for the nineteenth session of the Human Rights Council, she stated:

Much of this historic period has been marked by public demands of people to live a life of dignity and enjoyment of human rights. Although most striking in several countries of the Arab region where we have seen tens of thousands of women, men and young people take to the streets to voice their claims, popular movements denouncing exclusion, inequality, discrimination, absence of genuine political participation and lack of economic and social rights have emerged on all continents, as people have shown themselves unwilling to accept impunity and lack of accountability for the actions of Governments, international institutions and the transnational and national private sectors. People are demanding freedom: freedom from fear, and freedom from want. They are demanding respect of the rule of law – including in the economic sphere – and full participation in decisions that affect their lives.

58. With regard to an international order that shall be more equitable, the Independent Expert commends those countries that have met their commitments under the Millennium Declaration, in particular the Millennium Development Goals, as well as progress achieved in technology transfer and access to medical services and drugs. Foreign investment is necessary in developing countries, provided that the profits therefrom are equitably shared. Praiseworthy, too, is the growing consciousness that the products we buy at a grocery store or elsewhere should come from equitable production and trade, as illustrated by the growing popularity of fair trade coffee, flowers and other products. The mandate holder will endeavour to obtain more precise information on good practices through questionnaires and consultations.

59. Women’s peace movements have raised major issues relating to war and conflict situations. Without doubt, these movements to wage peace have accomplished historical inroads in influencing public opinion and are reflected in Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009) and 1889 (2009), bringing a gender perspective into peace negotiations.

60. The Independent Expert is aware of State and private-sector programmes of cultural cooperation and mutual improvement of school textbooks and curricula. Textbooks should mainstream human rights and democratic values and eliminate stereotypes.

61. Among good practices in the United Nations system the Independent Expert will study the successes of OHCHR in providing advisory services and technical assistance to countries in transition to democracy, and the operation of the ILO tripartite system in achieving more equitable labour conditions worldwide. At Rio +20 (the United Nations Conference on Sustainable Development, held from 20 to 22 June 2012), the follow-up conference to the Earth Summit of 1992 and Agenda 21, the participating States committed themselves to a “green economy”, adopting an outcome document entitled “The Future We Want”, aiming at sustainable development.

62. The mandate holder will study the results of the Human Rights Council’s universal periodic review, which is one step towards international democratic order through dialogue among stakeholders. The Governments–United Nations–civil society triangle should be further developed. Without a doubt, individuals and peoples have emerged as interlocutors

with governments and agencies. As former Director of the United Nations Division on Human Rights Theo van Boven has emphasized: “People Matter”.

VI. Moving forward

63. A preliminary report can hardly advance conclusions or formulate recommendations. These are but working hypotheses that must still be tested in the course of the coming years. The Independent Expert looks forward to receiving and analysing feedback from stakeholders, think tanks and universities. He recognizes that in order to advance in the realization of an international order that is more democratic and more equitable, a change of currently prevailing ways of thinking and behaviour is necessary. Positivism must be tempered by anthropological, social and cultural considerations. Building a culture of equity requires recognition that we all have the same human dignity and rights, i.e., that privileges must be phased out. Although equity is common sense, based on a conviction that we all share an aspiration to happiness, education is necessary to unlearn privilege, unlearn exclusion, unlearn discrimination, unlearn prejudice, unlearn war. This is possible, as the work of UNESCO demonstrates. A new human rights paradigm should replace the artificial division of human rights into rights of the first, second and third generations, with its inherent value judgment, which is both obsolete and misleading. A new paradigm of rights could be envisioned: enabling rights (peace, food, homeland, development), immanent rights (equality, due process) and end rights (identity, the right to achieve one’s potential).

64. With regard to an international order that should be more democratic, the Independent Expert is aware of the frequent disconnect between people and government, and the dysfunctions prevalent in many countries, both in government and within civil society itself. States and civil societies are invited to review the degree of correlation between the will of the people and the policies actually implemented. A responsible citizenry should enjoy the opportunity to peacefully articulate approval or disapproval of government policies, without intimidation or fear. Independent national human rights institutions, or other non-governmental agencies, could undertake the task of measuring the level of correlation through periodic polling and make corrective recommendations to parliaments. On the global scale, an appropriate organization or agency could take the temperature of world public opinion. Supplementing the General Assembly, which is composed of government representatives, other mechanisms could be devised to allow civil society in all countries to articulate their views, which in some cases may differ from those expressed in the General Assembly by government representatives. Moreover, the feasibility of global public opinion polling, possibly through the Internet or an aggregate societal platform, on issues such as peace, the environment and the common heritage of mankind should be explored. Such opinion polls would not have binding force, but would facilitate a better overview of popular will in all regions of the world.

65. With regard to a more equitable international order, the economic dynamics that make the rich richer and the poor poorer must be changed. This may entail, among other things, the cancelling of the debts of many developing countries. The Bretton Woods institutions have a crucial responsibility in this respect.

66. Bearing in mind that “the market” is not an invention of capitalism but that it has existed for thousands of years in many different societies, social justice logically requires that the profits resulting from the operation of markets and infrastructures created by society be equitably shared within societies and, in a larger context, within the human family. In order to achieve equity, other measures of affirmative action

must be considered. Perhaps national human rights institutions can make pertinent proposals. Governments are thus invited to consider what strategies could be most conducive to progress, and civil society should help their governments devise such strategies. Ultimately it is in the interest of all peoples in all countries.

67. On 14 May 2012 five Human Rights Council special procedures mandate holders on the issues of extreme poverty, food, business, foreign debt and international solidarity, proposed the imposition of a global financial transaction tax aimed at offsetting the costs of the enduring economic, financial, fuel, climate and food crises, and to protect basic human rights.²⁷ Moreover, a special tax on all sales of military aircraft, navy vessels, cruise missiles, and other weapons could be considered. The adoption of an international arms trade treaty is necessary and further negotiations should take place in the General Assembly. Lip service to disarmament is insufficient; the goal is to find ways to redirect the resources used for the military and reduce the danger of war, while liberating funds to finance development and all-inclusive growth.

68. Advisory services and technical assistance may be necessary to assist States in drafting legislation and implementation mechanisms to promote democracy and equity in their own societies. The Office of the United Nations High Commissioner for Human Rights may assist countries in the drafting of laws and enabling legislation so as to ensure the enforcement and follow-up of international commitments, including decisions of international courts and tribunals. Moreover, the establishment of a world court on human rights could be envisaged,²⁸ a project much discussed in the context of the sixtieth anniversary of the Universal Declaration of Human Rights and endorsed by the Swiss Initiative's Agenda for Human Rights.²⁹

69. Regional economic cooperation through, for example, the Association of Southeast Asian Nations, the African Union, the European Union, the Community of Latin American and Caribbean States, as well as subregional initiatives such as Union of South American Nations, or MERCOSUR, should be enhanced with the support of regional human rights institutions. Moreover, the proactive participation of world religions and philosophies in promoting an international order that is more democratic and equitable should be encouraged. Vast human resources of good will, optimism, enthusiasm and belief in the future must be tapped.

70. As all human rights derive from human dignity, it is important to recognize that human dignity is not a product of positivism but an expression of natural law and human rationality. Although an abstract concept, human dignity has engendered concrete norms of human rights, a practical *mode d'emploi* strengthened by enforcement mechanisms. Whereas the present mandate may also appear abstract, it is aimed at formulating a pragmatic *mode d'emploi* to overcome and remedy obstacles. Rendering the existing international order more democratic and more

²⁷ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12150&LangID=E.

²⁸ See written statement by the International Society for Human Rights (A/HRC/19/NGO/124); www.internationalbillofrights.org; Kirk Boyd, *2048: Humanity's Agreement to Live Together* (2011).

²⁹ See Julia Kozma, Manfred Nowak and Martin Scheinin, *A World Court of Human Rights* (Vienna, 2010). In November 2009 Berkeley hosted a conference devoted to drafting a statute for an international court of human rights. Among the participants were the first High Commissioner for Human Rights, José Ayala Lasso, the former acting High Commissioner for Human Rights, Bertrand Ramcharan, Justice Theodor Meron, Manfred Nowak, David Caron, Kirk Boyd, Bruna Molina, Alfred de Zayas, and numerous academics and members of civil society. Follow-up panels have been conducted during subsequent sessions of the Human Rights Council.

equitable means in essence achieving social and people-centred sustainable development and empowering all persons to enjoy their human rights in solidarity with others.
