

**Human Rights Council****Fifty-seventh session**

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Agenda item 3

**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,
George Katrougalos****Summary*

The report of the Independent Expert on the promotion of a democratic and equitable international order, George Katrougalos, is his first to the Human Rights Council, and is submitted pursuant to Council resolution 54/4.

In the report, the Independent Expert outlines his vision for the mandate, along with the approach that he proposes to take in implementing his thematic priorities. Building on the work of his predecessors, the Independent Expert aims to further promote the mandate, by bridging the geopolitical divide in relation to the development of a democratic international order.

In doing so, the Independent Expert provides an historical overview of human rights and international law and analyses the events that led to the eventual drafting of the Universal Declaration of Human Rights, along with the subsequent international human rights treaties and instruments.

The Independent Expert notes that, at the international level, the concept of democracy entails due respect for the independence and sovereign equality of States and their equal participation in global decision-making along with the participation of their citizens. The Independent Expert refers to the many challenges that modern democracy is currently facing and to globalization as one of the underlying factors that has led to increased inequality. The report also refers to the shifting power dynamics between North and South and the disagreements over values, human rights and interventionism, in tandem with the perceived ineffectiveness of institutions of global governance, all of which are placing the United Nations system under considerable strain.

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The Independent Expert concludes by highlighting the proposed thematic priorities for the mandate, including: (a) reinvigorating North-South dialogue on democracy and human rights; (b) mainstreaming the application of human rights through the United Nations system; (c) integrating artificial intelligence into the promotion of global democracy; (d) committing multinational corporations to the promotion of a democratic and equitable international order; (e) promoting dialogue among civilizations in relation to democracy and human rights; and (f) protecting international and national adjudicating bodies facing authoritarian and illiberal practices.

I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 54/4, is the first of the current mandate holder. In the report, the Independent Expert presents his vision for the mandate and outlines the approach that he intends to take. Building on the work of the previous mandate holders, he aims to promote further the mandate, by trying to bridge the geopolitical divide in relation to the development of a democratic international order and the fragmentation of the proposed solutions and by suggesting consensual proposals. The Independent Expert initially refers to the prevailing understanding of and controversies on democracy and human rights in United Nations documents, scientific literature and public perceptions, before presenting his vision on the scope of the mandate and, lastly, outlining some of his thematic priorities.

II. Mandate

2. In its resolution 18/6, the Human Rights Council resolved to take all measures within its power to secure a democratic and equitable international order, affirmed the main requirements for a democratic and equitable international order and established the mandate of the Independent Expert on the promotion of a democratic and equitable international order. In accordance with resolution 18/6, the Independent Expert is mandated to promote and protect an international order based on human rights and democracy and on solidarity and cooperation among all States. Thus, the focus of the mandate is on international order based on human rights and democracy and on solidarity and cooperation among all States.

3. However, in a global and interdependent world, there is no water-tight division, but a dialectic correlation, between the national and international levels, as the understanding and practice of human rights and democracy at one level influences and co-determines those at the other. That is also the letter and spirit of resolution 18/6, in which the Human Rights Council affirmed that everyone was entitled to a democratic and equitable international order, which fostered the full realization of all human rights for all and the principle that the will of the people, as expressed through periodic and genuine elections, should be the basis of government authority. The Council also underscored the right to equitable participation of all, without any discrimination, in domestic and global decision-making. Those references, together with the mandate of the Independent Expert to support the strengthening and promotion of democracy, development and respect for human rights and fundamental freedoms in the entire world and identify best practices at the local, national, regional and international levels, underscore the global and holistic nature of the mandate. A more peaceful, prosperous and democratic world needs democracy and human rights everywhere.¹ Besides, that was also the vision of the two first mandate holders.

III. Competing narratives of human rights and the vision of the Independent Expert

4. After the unanimous reconfirmation of the Universal Declaration of Human Rights through the Millennium Declaration,² the then-Secretary-General declared that the current era was an age of human rights,³ echoing the title of a number of seminal works.⁴ However, criticism of international human rights persists, reflecting multifaceted narratives and counter-narratives about them. The present report is not intended to be a theoretical exercise of critique, but to contribute to specific proposals related to the mandate. However, the Independent Expert considers that it is relevant to reflect on some of the critical perspectives

¹ General Assembly resolution 60/1, para. 16.

² General Assembly resolution 55/2.

³ Kofi Annan, "The age of human rights", Project Syndicate, 26 September 2000, available at <http://www.project-syndicate.org/commentary/the-age-of-human-rights>.

⁴ Louis Henkin, *The Age of Rights* (New York, Columbia University Press, 1990); and Norberto Bobbio, *The Age of Rights* (Cambridge, United Kingdom of Great Britain and Northern Ireland, Polity Press, 2017).

on human rights, as he sets out his vision and priorities, for reasons of transparency and intellectual sincerity.

5. According to a first, empirical wave of critiques, the proliferation of internationally recognized human rights did not significantly change the life of citizens. More atrocities and human rights violations have been committed in the twentieth century than at any other point in history. However, that argument can be reversed. It is exactly the horrors of the first half of the twentieth century, the two world wars, the Holocaust and the crimes of colonialism that reinvigorated the call for global human rights. Moreover, in many areas, such as the universal acceptance of the rights of self-determination/decolonization, there is no comparison between the world of today and the world before the Universal Declaration of Human Rights.

6. A more elaborate criticism comes from the school of critical legal studies, which is not so much about the inadequacy of international rights to make a material difference, but primarily about their ideological function to obscure and mask the actual relations of power. According to that line of thought, human rights, and especially international human rights, cannot effectively challenge inequalities or power imbalances, but instead hide or disguise them, acting as active conduits for structures and relations of power:

human rights are not opposed to the exercise and balance of power; but they can be used for limited resistance. Human rights have contributed to status equality and the recognition of identities but not to the achievement of material equality and social justice. ... [They] cannot challenge effectively power imbalances and often simply confirm them. They are a good indicator, however, of their operation. They work in a dual manner: they conceal and affirm the dominant order but they also reveal dominations and oppression. ... This way, they help the diagnosis of problems but only marginally their therapy.⁵

7. Much of this criticism is valid: perception, recognition, definition, interpretation and implementation of human rights, both at the national and international levels, are overtly and covertly implicated in power structures. It is important, however, not to throw away the baby with the bathwater. The human rights movement at all levels, domestic and international, is primarily an emancipatory project. The *raison d'être* of human rights stems, after all, from the asymmetries of power: it is the outcome of the struggle between dominators and forces of emancipation and liberation. The historical origin of domestic human rights has always been an effort to delimit power, initially of monarchs, later State power in general and, finally, at least in some legal systems, through the “horizontal action” theories of all bearers of power, both public and private.

8. It is also true that all those claims, demands and conquests are inscribed in a hierarchical legal and political system of regulation, which does not upend the fundamental relations of power. In that framework, human rights undeniably acquire a discursive function of legitimization of existing power structures. However, the recognition of new rights does not leave unaltered the normative order or the overall system of power relations. It readjusts and transforms them. Nothing is more indicative of that effect than the transformative role of the social rights claimed by the working class during the struggles of the nineteenth and early twentieth centuries. They effectively challenged the foundation of the liberal legal systems based on contract and the absolute character of the right to property. As Armand Marrast, a representative in the revolutionary French Assembly, declared in 1848: “The rights that you have declared till now are bourgeois rights. The right to work is the right of the workers.”⁶ The epicentre of those struggles was the “social question”, a multifaceted bundle of issues related to the situation of the working class, ranging from public health and the loss of social cohesion to moral decline. Above all, it was a question of whether the market and the representative, democratic system could be made compatible with the extension of electoral and social rights, without a socialist revolution. In other words, could the working class cease

⁵ Costas Douzinas, *States of Exception: Human Rights, Biopolitics, Utopia* (Cheltenham, Edward Elgar, 2023), p. 177.

⁶ Pierre Lavigne, “Le travail dans les constitutions françaises, 1789–1945”, doctoral thesis, University of Paris, 1946, p. 199 (in French).

to be a “*classe dangereuse*”⁷ Those struggles transformed the formal liberal state of rule of law of the nineteenth century into a new type of polity, the welfare state of the twentieth century.

9. Hence, the emancipatory function of human rights is twofold: they expand the autonomy and the agency of their bearers and simultaneously they transform the values, principles and institutions that define the overall legal order. That expansion is not linear and there are no guarantees against regression and drawbacks. Actually, that is the case of the crisis of the welfare state in the Western world, where many of the achievements of the *trente glorieuses*, the three decades after the end of the Second World War, are today challenged and undermined.

10. The emergence of international human rights follows a similar trajectory of conflicts of power among State interests. Despite a brilliantly presented contrary position – according to which international rights are discontinuous with human rights and earlier revolutionary discourses, emerging, in fact, after the Universal Declaration of Human Rights or even later, as an explicitly anti-political and moral discourse, promoted by international non-governmental organizations and the failure of major utopian narratives⁸ – the expansion of rights to colonized people in the second half of the twentieth century followed a similar course to their expansion to women in the first half of that century and to the working class in the nineteenth century. Progress was not linear. As in any struggle, there were victories and defeats. The rights to self-determination and development have been universally accepted, but the efforts to craft a subaltern global governance, the New International Economic Order, failed, despite its nominal recognition by the General Assembly. The reason is simple: the ideological and political gains of the global South in the General Assembly could not by themselves transform the structures of the global economy: “The forces of global capitalism served as a break on what was politically possible”.⁹ The majority of the South in the General Assembly was not enough to upend the complex economic regime established by metropolises and multinationals. An indicative example is the 1982 United Nations Convention on the Law of the Sea, where the developing States had the numbers to define the oceans as the common heritage of humankind, but had to water down this concept in the face of the threat by developed nations not to ratify the treaty until their demands had been met.¹⁰

11. The analogy with domestic social rights is again useful. Their transformative role at the domestic level had the same limitations. They provided the legal basis for political intervention in the economic sphere, in order to alleviate major inequalities, without infringing the primacy of the market. They redefined the conception of property and equality without toppling capitalism. Social rights are not socialist rights. They do not constitute a breach of the capitalist system, but rather a breach within it. They have created a different kind of market from the supposedly self-regulated liberal one, defined by the German Ordoliberalists as the “social market economy”, and a different kind of state, the “social state”.¹¹ By the same token, international law cannot by itself radically restructure the global economy.

⁷ Christopher Clark, *Revolutionary Spring: Fighting for a New World 1848–1849* (London, Allen Lane, 2023), pp. 26 et seq.

⁸ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, Massachusetts, Belknap Press of Harvard University Press, 2010).

⁹ Karen J. Alter, “From colonial to multilateral international law: a global capitalism and law investigation”, *International Journal of Constitutional Law*, vol. 19, No. 3 (2021), pp. 798 and 799.

¹⁰ Antonios Tzanakopoulos, “The master’s tools and the master’s house: Marxist insights for international law”, in *The Oxford Handbook of International Law in Europe*, Anne van Aaken and others, eds. (Oxford, Oxford University Press, forthcoming).

¹¹ George Katrougalos and Paul O’Connell, “Fundamental social rights”, in *Routledge Handbook of Constitutional Law*, Mark Tushnet, Thomas Fleiner and Cheryl Saunders, eds. (London, Routledge, 2013), p. 375; and Margot E. Salomon, “Emancipating human rights: capitalism and the common good”, *Leiden Journal of International Law*, vol. 36, No. 4 (2023).

12. Exactly because all human rights are about clashes of interests and power, they can never be apolitical or ahistorical¹² and there is a continuum in their historicity. For instance, the controversies during the European revolutions of 1848 surrounding the character and legal force of social rights permeated and defined normatively modern international law divides, initially along the West-East axis and now the North-South one. National and international human rights discourses and struggles are also interconnected and mutually reinforcing. For instance, Malcolm X used the Universal Declaration of Human Rights as an argument for black emancipation: “As long as it’s civil rights, this comes under the jurisdiction of Uncle Sam. But the United Nations has what’s known as the charter of human rights. ... Civil rights means you’re asking Uncle Sam to treat you right. Human rights are something you were born with.”¹³ In the same vein, William Du Bois contributed, in October 1947, to the drafting of the Universal Declaration of Human Rights with a petition on the rights of the black minority in the United States of America.¹⁴

13. Related to the critical legal studies is the Third World approach to international law, an anti-hegemonic critique, which considers that liberal internationalism expresses essentially the interests and ideas of the global North. According to such an approach, international law was born in the context of the relationship between empires and colonies as a justification of the occupation of the “New World”.¹⁵ It continues the legacy of colonialism and racism, the “civilizing mission of the white man” and legitimizes the continuing economic exploitation and cultural subordination of the Third World. According to a variant, there is a parallel tradition of natural law and human rights, which has flourished in the colonized world alongside the Eurocentric tradition. Hence, the first developments of human rights are not to be found in the revolutions of the eighteenth century, but “rather, they are inscribed within the historical impulse for emancipation and self-determination incarnated by Las Casas, the wars of independence, and in the rights they declared and adopted in their national constitutions”.¹⁶

14. As with critical legal studies, much of the criticism of the Third World approach to international law is valid. The core concept of the “civilizing mission of the West” served colonial rule and defined both imperialistic policies and early international law, which justified and legitimized them. In the words of Theodor Roosevelt: “The ties of civilized society ... ultimately require intervention by some civilized nation, ... to the exercise of an international police power.” That intervention is “fraught with lasting benefits” since “the best that can happen to any people that has not already a high civilization of its own is to assimilate and profit by American or European ideas”. “Every expansion of a great civilized power means a victory for law, order, and righteousness.”¹⁷ In the same vein, Napoleon III declared, some decades earlier, in 1860 that: “Our first duty is to take care of the happiness of the three million Arabs, whom the fate of arms has brought under our domination.”¹⁸

15. International law reflected and institutionalized those political maxims, affirming solemnly a hierarchy between civilized and non-civilized nations.¹⁹ In 1905, one of the fathers of the modern discipline, Oppenheim, included in the family of “civilized nations”

¹² Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, New Jersey, Princeton University Press, 2003), p. 31; and Bobbio, *The Age of Rights*.

¹³ “The ballot or the bullet”, speech in April 1964, as quoted in Moyn, *The Last Utopia*, p. 145.

¹⁴ Paul Gordon Lauren, *The Evolution of International Human Rights*, 3rd ed. (Philadelphia, University of Pennsylvania Press, 2011).

¹⁵ Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge Studies in International and Comparative Law (Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press, 2005).

¹⁶ José-Manuel Barreto, *Human Rights from a Third World Perspective: Critique, History and International Law* (Newcastle upon Tyne, Cambridge Scholars Publishing, 2013), pp. 159–164.

¹⁷ Theodore Roosevelt, various speeches cited by Graham Allison, *Destined for War: Can America and China Escape Thucydides’s Trap?* (Boston, Massachusetts, Houghton Mifflin Harcourt, 2017), chap. 5, footnotes 14, 16 and 76.

¹⁸ Daniel Rivet, “Le rêve arabe de Napoléon III”, *L’Histoire*, No. 140 (January 1991), available at <https://www.lhistoire.fr/le-r%C3%AAve-arabe-de-napol%C3%A9on-iii-0> (in French).

¹⁹ See Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Hersch Lauterpacht Memorial Lectures Series, No. 14 (Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press, 2010).

only the independent States of Europe and the Americas, as well as Japan. On the contrary, the position of other States, “is doubtful ... [as] their civilisation has not yet reached that condition which is necessary to enable their Governments and their population in every respect to understand and to carry out the command of the rules of International Law”.²⁰ That perception survives as a fossil in the term of “general principles of law recognized by civilized nations”, at article 38 (1) (c) of the Statute of the International Court of Justice and in article 7 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). That “standard of civilization” did not explicitly require Christianity or whiteness. Japan was accepted as a full member of the “family” not in recognition of its civilization being on a par with that of the West, but on the contrary, as the champion of catching up with it. Interestingly, Leo Tolstoy described the Japanese victory in the Russo-Japanese War of 1905 as a “triumph of Western materialism over Russia’s soul”.²¹ However, the perception of the civilizational superiority of the West was definitely racially biased, as clearly shown in the rejection by the League of Nations of a proposal made in 1919 by Japan for a racial equality clause.²²

16. Despite the validity of much of the criticism of the Third World approach to international law, a problematic aspect of it is the perception of the West, at least by some scholars, as an homogenous monolith, without fissures and internal battles, inherently hostile to the rights of the Third World. That misleading “Occidentalism”, which, in some ways, is the reversal of Orientalism, should be avoided.²³ The interests of the majority of those living in developed countries are parallel, not antithetical, to the interests of those in the global South. Conversely, Frantz Fanon has described how Indigenous elites in former colonies ended up emulating the models of repression of the colonizers.²⁴ There is indeed a “South” in the North and a “North” in the South, as the United Nations Development Programme put it in a report published in 2013.²⁵ One should remember that the first Head of State of Haiti, Jean-Jacques Dessalines, called, as an attribute of honour, Polish people “the White Negroes of Europe”, for deserting from the Napoleonic army and joining the Haitian slaves in the war of independence in 1802.

17. Historical liberation battles have always been a common legacy and a source of inspiration for people in both the West and the rest of the world. Haitian revolutionary Julien Raimond used the language of the French Revolution to make his case against slavery and colonialism before the National Assembly, in 1789 and 1791.²⁶ Following the Haitian revolt of 1791, the French legislature passed racial reforms in 1792 and 1794, abolishing slavery and giving men of colour the right to vote. Georges Danton, speaking to the Assembly declared: “Until now our decrees of liberty have been selfish, and only for ourselves. But today ... we are proclaiming universal liberty.”²⁷ Still, just the law was not enough for emancipation. That came only after the victorious slave uprising and the foundation of the first independent State in the Caribbean in 1801.²⁸

18. The social revolutions of the nineteenth century, especially the 1848 “Spring of Peoples”, resonated in the global South with national debates about freedom, solidarity and self-determination. The *El Comercio* of Lima was asking in January 1849: “In Europe they

²⁰ Lassa Oppenheim, *International Law: A Treatise, vol. 1, Peace* (Longmans, Green and Company, 1905), pp. 31 et seq.

²¹ Ian Buruma and Avishai Margalit, *Occidentalism: The West in the Eyes of Its Enemies* (New York, Penguin Books, 2005), p. 30.

²² Mark Mazower, *Governing the World: The History of an Idea, 1815 to the Present* (London, Penguin Books, 2013); and Benedict Kingsbury, “Sovereignty and inequality”, *European Journal of International Law*, vol. 9 (1998), p. 607.

²³ Edward W. Said, *Orientalism* (New York, Vintage Books, 1979).

²⁴ Frantz Fanon, *The Wretched of the Earth* (New York, Grove Press, 2005), p. 153.

²⁵ UNDP, *Human Development Report 2013: The Rise of the South – Human Progress in a Diverse World* (New York, 2013), p. 2.

²⁶ Julien Raimond, “Observations adressées à l’Assemblée Nationale par un député des colons américains” (1789), available at <https://gallica.bnf.fr/ark:/12148/bpt6k54615279/f4.image> (in French).

²⁷ Laurent Dubois and John D. Garrigus, *Slave Revolution in the Caribbean, 1789–1804: A Brief History with Documents* (Boston, Massachusetts, Bedford/St. Martins, 2006), p. 26.

²⁸ Laurent Dubois, *Avengers of the New World: The Story of the Haitian Revolution* (Cambridge, Massachusetts, Harvard University Press, 2004).

are tearing down thrones amidst torrents of blood. Should we be sleeping?” The *El Mercurio* of Valparaiso was more enthusiastic: “The French revolution of 1848 will bring to Chile true liberty, and even if the most unheard-of forces assemble to contain this spirit and this feeling which has been germinating in the land for so long.”²⁹ Even the speakers at the Seneca Falls Convention in July 1848 – the first American women’s rights convention – were connecting the claims of the Seneca Indians with the Spring of Peoples, “imitating the movements of France and all Europe in seeking a larger liberty”.³⁰

19. Rights discourse has undeniably been used ideologically for the legitimization of colonization and its “civilizing mission”. However, the same language, as it has been shaped by the Enlightenment and constitutionalism, was also an important emancipatory weapon of the anticolonial struggles.³¹ The first nationalist party of Tunisia (founded in 1920) was named “Destour”, that is “party of the Constitution”. The anticolonial struggles were also human rights movements. Recent historical research in sub-Saharan Africa shows that rights discourses have served as a double-edged weapon, both to insulate/legitimize power and to contest/promote transformative processes.³² Internationalism and solidarity have also permeated Western constitutions, under the influence of workers movements, the most indicative example of which is article 162 of the Weimar Constitution of 1919, which obliged the State to promote international regulation “to ensure a general minimum level of social rights for the entire working class of humanity”.

20. The international language of power and resistance were both born in the cradle of the Enlightenment.³³ “Every time a poor, oppressed, tortured person uses the language of rights – because no other is currently available – to protest, resist, fight, she draws from and connects with the most honourable metaphysics, morality and politics of the Western world.”³⁴ At the same time, international human rights are rooted in multiple religions and philosophical and cultural traditions. Whatever the roots, modern concepts of international human rights law are bound up with the emergence in all world regions of “modern” States (with variations of the division of power among the three branches of government). Almost all States were involved in implementing the current core international human rights treaties and agreed to be bound by at least some of them.

21. Representatives of the global South played an important role during the deliberations on the adoption of the Universal Declaration of Human Rights and all subsequent human rights treaties. During the drafting of the former, the United Nations Educational, Scientific and Cultural Organization called upon a group of international experts to provide advice on the cultural foundation and the universality of human rights. Bengali Muslim poet and philosopher Humayun Kabir wrote on “Human rights: the Islamic tradition and the problems of the world today”, Indian political scientist S.V. Puntambekar on “The Hindu concept of human rights” and the Chinese scholar Lo Chung-Shu on “Human rights in the Chinese tradition”. Mahatma Gandhi underscored the universality of the endeavour in these words: “I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus, the very right to live accrues to us, only when we do the duty of citizenship of the world.”³⁵ After all those opinions were received, the United Nations Educational, Scientific and Cultural Organization convened a special Committee on the Philosophic Principles of the Rights of Man during the summer of 1947. In its final survey, it concluded that, despite many differences, a core of “common convictions” did exist and that the United Nations had a solemn obligation to ensure that they were “no longer confined

²⁹ Clark, *Revolutionary Spring*, pp. 699 and 705.

³⁰ As reported by the feminist and abolitionist Lucretia Mott, in August 1848, quoted by Clark, *Revolutionary Spring*, p. 701.

³¹ Sankar Muthu, *Enlightenment against Empire* (Princeton University Press, 2003).

³² Bonny Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History* (Albany, State University of New York Press, 2007), pp. 3 and 5.

³³ Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley, University of California Press, 2004).

³⁴ Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (London, Routledge, 2007), p. 33.

³⁵ Mark Goodale, *Letters to the Contrary: A Curated History of the UNESCO Human Rights Survey* (Stanford, Stanford University Press, 2018), p. 191.

to the few, but extend to all men everywhere without discrimination of race, sex, language, or religion. They are universal.”³⁶

22. As a general rule, human rights law and international law, as is the case for every other kind of law,³⁷ are a battleground of conflicting interests and ideas.³⁸ That is not only true on the ground, in the grass-roots emancipatory struggles, but also during litigation before national and international courts, as well as in the international forums, where rights are created, evaluated and interpreted. Their actual implementation reflects the balance of power of the involved sociopolitical actors and therefore is open to contradictory readings and applications. As Karl Marx stated: “For each paragraph of the constitution contains its own antithesis, its own upper and lower house, namely liberty in the general phase, abrogation of liberty in the marginal note.”³⁹

23. For that reason, the United Nations rules system is not “a fishbowl”,⁴⁰ but a dynamic structure in constant fluctuation and change. As the nineteenth-century social struggles transformed the European polities, the anti-colonial struggles in the South and social movements in the North have reshaped and transformed international rights, starting with the two International Covenants on Human Rights of 1966. Those International Covenants provided new content for the concepts of equality and equity and elevated the “law of nations” to the “law of peoples”.⁴¹ Contrary to the vertical structure of the colonial system, despite its failures and contradictions, United Nations “multilateralism is the institutional apparatus to generate consent-based international law”.⁴² Even if universalism sometimes becomes “a bully with whom we bash developing states and minorities”,⁴³ even if – often – its promises are violated by its proponents,⁴⁴ the United Nations rights system is a progressive step forward for humanity. Rather than a fishbowl, it looks more like the box of Schrödinger’s cat: the rights, which are inside it, are either active or passive, limiting or insulating power, exposing or masking it, depending on the actions of the agents who fight to redefine, apply and adjust them to their interests and strategies. Always *vigilantibus jura sunt scripta*. Understanding thus the role of human rights is to claim their universally emancipatory soul.⁴⁵

³⁶ Lauren, *The Evolution of International Human Rights*.

³⁷ Giulio Napolitano, “Conflicts and strategies in administrative law”, *International Journal of Constitutional Law*, vol. 12, No. 2 (2014), pp. 357 and 364.

³⁸ Philipp Dann, “Liberal constitutionalism and postcolonialism in the South and beyond: on liberalism as an open source and the insights of decolonial critiques”, *International Journal of Constitutional Law* (2022), p. 1, speaks of liberalism as “an open source”.

³⁹ Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte* (New York, 1852), available at www.marxists.org/archive/marx/works/download/pdf/18th-Brumaire.pdf, p. 13.

⁴⁰ Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Cheltenham, Edward Elgar, 2018).

⁴¹ Upendra Baxi, “What may the ‘Third World’ expect from international law?”, in *International Law and the Third World: Reshaping Justice*, Richard Falk, Balakrishnan Rajagopal and Jacqueline Stevens, eds. (Oxford, Routledge-Cavendish, 2008), p. 16.

⁴² Alter, “From colonial to multilateral international law”, p. 809.

⁴³ Alexandra Xanthaki, “When universalism becomes a bully: revisiting the interplay between cultural rights and women’s rights”, *Human Rights Quarterly*, vol. 41, No. 3 (2019), p. 701.

⁴⁴ See the concurring opinion of Judge Bonello at the European Court of Human Rights in the *Al-Skeini* case: “I am unwilling to endorse à la carte respect for human rights. I think poorly of an esteem for human rights that turns casual and approximate depending on geographical coordinates. ... [and of] the deliberate intent of regulating the conduct of its armed forces according to latitude: gentlemen at home, hoodlums elsewhere” (European Court of Human Rights, *Al-Skeini and Others v. the United Kingdom*, application No. 55721/07, Judgment, Concurring Opinion of Judge Bonello, 7 July 2011, para. 18). In that case, the United Kingdom had claimed that “exporting the European Convention on Human Rights would have amounted to ‘human rights imperialism’”.

⁴⁵ Philip Alston, “Does the past matter? On the origins of human rights”, *Harvard Law Review*, vol. 126, No. 7 (2013), in which the author speaks of the “struggle for the soul of the human rights movement”, p. 2077.

IV. Democracy as a universal value and as a historically defined regime

24. The opening words of the Charter of the United Nations – “We the peoples” – article 28 of the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, as well as many General Assembly resolutions (resolution 55/96 on promoting and consolidating democracy, resolution 57/221 on strengthening the rule of law and resolution 59/201 on enhancing the role of regional, subregional and other organizations and arrangements in promoting and consolidating democracy) reflect the consensus of the international community on the interconnection between the three United Nations pillars: human rights, democracy and development. Nominally, at least, democracy is seen today as a universal value and the only legitimate form of government.⁴⁶ As both previous mandate holders have underscored, at the international level, the concept entails due respect for the independence and sovereign equality of States and their equal participation in global decision-making and, it should be added, the participation of their citizens. At the national level, according to the General Assembly in the preamble to its resolution 50/172 on respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes, there is no single political system or single universal model for electoral processes equally suited to all nations and their peoples, and political systems and electoral processes are subject to historical, political, cultural and religious factors.

25. As all rights are historic, by the same token democratic regimes are historical institutions, shaped by the political tradition and the embedded societal values.⁴⁷ That does not concern only differences between North and South. The American and the European perceptions of statehood and democracy also have important variances, as Alexis de Tocqueville already remarked in the nineteenth century. The basic reason for those discrepancies is that the “social question”, which defined the transformation of European polities (see para. 80 above), was not prominent in America during the first part of the nineteenth century. In Tocqueville’s words: “Why is it that in America, the land par excellence of democracy, no one makes the outcry against property that often echoes through Europe? Is it necessary to explain? It is because there are no proletarians in America.”⁴⁸ Even European democracies have distinct constitutional traits, such as French laicity or the German “militant democracy”. For that reason, the Human Rights Council, in its resolution 19/36 on human rights, democracy and the rule of law, declared that, while democracies shared common features, there was no single model of democracy and that democracy did not belong to any country or region. Still, cultural and political pluralism “does not imply support for the rhetoric of cultural relativists, or ideologues of various persuasions, who foment collective practices that are inhuman and antihuman and who might embrace the critique as a justification for refuting the human rights project and embracing cultural orthodoxies”.⁴⁹

26. In *The Law of Peoples*, Rawls hypothesizes an imaginary State, “Kazanistan”, that debars full political participation for those not of the official faith but tolerates religious and civil rights and lives in peace with its neighbours. According to Rawls, such a State would be a legitimate member of the international community, even if it does not meet all the criteria of human rights equality.⁵⁰ International human rights put the bar, of course, higher. There is

⁴⁶ A “right to democracy” is enshrined in the 2001 Inter-American Democratic Charter. The 2012 African Charter on Democracy, Elections and Governance refers to the “universal values and principles of democracy”, whereas the 2008 Charter of the Association of Southeast Asian Nations includes democracy among its principles and purposes.

⁴⁷ Michael Coppedge and others, *Varieties of Democracy: Measuring Two Centuries of Political Change* (Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press, 2020).

⁴⁸ Alexis de Tocqueville, *Democracy in America* (HarperCollins, 1988). See George Katrougalos, “European ‘social States’ and the USA: an ocean apart?”, *European Constitutional Law Review*, vol. 4, No. 2 (2008), p. 225.

⁴⁹ Kapur, *Gender, Alterity and Human Rights*, p. 4.

⁵⁰ John Rawls, *The Law of Peoples* (Cambridge, Massachusetts, Harvard University Press, 1999), p. 75, as quoted by Ignatieff, *Human Rights as Politics and Idolatry*, p. 55.

an indispensable, substantive core of democracy, both at national and international levels, that requires both respect for fundamental rights and that collective decision-making is subject to popular control through the equal participation of all. The essence of democracy is not so much a distinctive method or technique of producing governments but the actual realization of the rule of the people, self-government in political equality.⁵¹ Moreover, to the extent that most important decisions are no longer taken at the national level, but at the transnational and international levels, then democratic principles should apply at these levels, as well. Both previous mandate holders have stressed that democratic participation, including in electoral processes, is a prerequisite for real democracy. There must always be a clear connection between the will of the people and the policies that affect them. Consultation and institutions of direct democracy should complement representative democracy, regarding both the individual citizens and their collective organizations.

27. Modern democracy is facing many challenges and, according to several authors and comparative surveys, even a generalized backlash. There are several reasons for this, but also one underlying factor: globalization. Globalization is an irreversible trend, which facilitated trade, investment, flows of people and technological advances. However, the current neoliberal model of it widened inequalities⁵² and put representative democracy under tension, as it entails a dispersion of competences away from the state in both vertical (transfer of sovereign functions to supranational entities) and horizontal directions (e.g. private regulation and devolution). It reinforces the trend of disembedding capital from domestic markets and the shift towards deregulation, commodification of public services and reduced social spending. In that framework, inequalities among and within nations are becoming explosive. It is true that inequality among countries weighted by population has shrunk since 1980, but mostly because of the fast growth in China and India. China by itself raised more than 750 million people out of poverty.

28. Regarding democracy's "flaws" or "decay", most of the literature in the past years focuses on the so-called "illiberal democracies", that is regimes that hold regular elections but disdain human rights, and do not respect minorities or the rule of law. Modern democracies comprise two essential elements, on the one hand, majority rule/self-government rule and, on the other, liberalism/the rule of law; illiberal democracies are deficient in the latter. However, there is also the inverse pathology: through the confluence of globalization and the delegation of important economic decisions to politically unaccountable decision makers, such as central banks and private regulators, there emerges a regime that encases the economy from the risks of democracy. In it, human rights, especially economic ones and those pertaining to property, are fully protected but self-rule does not fully function, as the will of the majority has little, if any, influence on decisions related to the economic governance. That "undemocratic liberalism" is a catalyst in generating its inversed idol, the "illiberal democracy".⁵³ That feeling of the impotence and irrelevance of political dialogue results in political apathy or alienation from representative institutions. In that vein, populism is less a cause than a symptom of the crisis, less a threat to democracy than a sign of its failure.

29. The undermining of the regulatory capacity of nation States is not balanced by the development of efficient, democratic international governance institutions. Instead of the emergence of a cosmopolitan community, we see rather the global dominance of the economy over politics and of market values over democratic ones. The main issue both for a democratic international order and for safeguarding the democratic character of national democracies is, therefore, to put limits on asymmetric transnational economic power. Now that globalization "gets in the way of national democracy",⁵⁴ the re-politicization of global economic relations and the democratization of the agencies and structures of the global economy is imperative.

⁵¹ Susan Marks, *The Riddle of All Constitutions, International Law, Democracy, and the Critique of Ideology* (Oxford, Oxford University Press, 2000).

⁵² Branko Milanovic, "Global income inequality by the numbers: in history and now" (Washington, D.C., World Bank, 2012).

⁵³ George Katrougalos and Bertrand Mathieu, eds., *The Crisis of Liberal Democracy* (Cambridge, United Kingdom of Great Britain and Northern Ireland, Intersentia, 2023), p. 1.

⁵⁴ Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (New York and London, W.W. Norton & Company, 2011), pp. 190 and 200.

As the emergence of global demos is not possible in the foreseeable future,⁵⁵ openness, public participation and transparency need to be increased at the international level in order to mitigate the impact of globalization on democratic national regulation.

V. Prevailing public perceptions on democracy and human rights

30. The concepts and hypotheses presented so far find empirical corroboration in a number of recent global surveys, which show that public support for democracy and human rights is consistently high, in developing and developed countries alike. That support goes in tandem, however, with growing dissatisfaction about their actual realization and a feeling of alienation from representative institutions. That is true especially in the global North. In two surveys published in 2024 and 2023, strong median majorities of between 85⁵⁶ and 86 per cent⁵⁷ consider it important to live in a democracy.⁵⁸ That sentiment has remained consistently high and is on the rise.⁵⁹ In another global survey published in 2017, a median of 78 per cent across the 38 nations polled said that “a democratic system where representatives elected by citizens decide what law becomes” is a good way to govern their country.⁶⁰ The global average for those who believe that democracy is preferable to any other kind of government also remains constantly majoritarian. However, the results are mixed if one takes into consideration the answers to qualitative questions, such as whether having a leader who does not bother with elections is a good way of running a country.⁶¹ The share of the public describing representative democracy as a very good way to govern is down significantly in 11 of the 22 countries for which data from 2017 are available. Interestingly, 66 per cent of respondents support direct democracy.⁶²

31. In most surveys, a majority of the population is dissatisfied with how “their” democracy is functioning. Slightly more than half the world’s population (58 per cent) believe that their country is democratic and even among them the majority lacks confidence in the performance of the political institutions: they are more dissatisfied than satisfied with the way democracy actually works.⁶³ Dissatisfaction is highest in Latin America and lowest in Asia, but historical highs are also documented in Europe and the United States.⁶⁴ Women and low-income groups tend to perceive more obstacles to access rights and are generally

⁵⁵ This does not preclude the emergence of global, democratic “constitutional rules”. See Dominique Rousseau, “De la Constitution étatico-nationale à la constitution connectée, imaginaire de l’espace démocratique mondiale”, in *Démocratiser l’espace monde*, Olivier de Frouville and Dominique Rousseau, eds., Collection de l’Institut des sciences juridique et philosophique de la Sorbonne (Mare & Martin, 2024) (in French).

⁵⁶ Alliance of Democracies, *Democracy Perception Index 2024* (Latana, 2024), p. 8, survey of 53 countries in 2024, available at <https://www.allianceofdemocracies.org/wp-content/uploads/2024/05/DPI-2024.pdf>. Similar findings are contained in the *2023 Edelman Trust Barometer Global Report*, available at www.edelman.com/sites/g/files/aatuss191/files/2023-03/2023%20Edelman%20Trust%20Barometer%20Global%20Report%20FINAL.pdf.

⁵⁷ Open Society Foundations, “Open Society Barometer: can democracy deliver?” (2023), survey of 30 countries in 2023, available at <https://www.opensocietyfoundations.org/uploads/e6cd5a09-cd19-4587-aa06-368d3fc78917/open-society-barometer-can-democracy-deliver-20230911.pdf>, pp. 2 and 8.

⁵⁸ Ibid. Lower support for democracy is found in a survey focused on European countries. See European Movement International and Listen to People, *The War Within: European Public Opinion on Russia’s Invasion, Defending Ukraine and the Effect on the EU – Survey Results 2022*, available at <https://listentopeople.eu/wp-content/uploads/2022/09/LTP-Report-09-2022-1.pdf>.

⁵⁹ Alliance of Democracies, *Democracy Perception Index 2024*.

⁶⁰ Richard Wike and others, “Globally, broad support for representative and direct democracy” (Pew Research Center, 2017), survey of 38 countries, available at <https://www.pewresearch.org/global/2017/10/16/globally-broad-support-for-representative-and-direct-democracy>.

⁶¹ Ibid.

⁶² Ibid.; and International Institute for Democracy and Electoral Assistance, *Perceptions of Democracy: A Survey about How People Assess Democracy around the World* (2024), p. 56, available at www.idea.int/sites/default/files/2024-04/perceptions-of-democracy.pdf.

⁶³ Alliance of Democracies, *Democracy Perception Index 2024*, p. 9.

⁶⁴ Jeffrey M. Jones, “Record low in U.S. satisfied with way democracy is working” (Gallup, 2024).

more doubtful about democratic performance. Moreover, expert views and popular perceptions about how political institutions are doing do not always align. People are generally much more sceptical and pessimistic than experts.⁶⁵

32. Another constant trend, especially accentuated in the global North, is widespread alienation from the political system, in tandem with a feeling of overwhelming injustice regarding the way the economy and institutions function. Between 74⁶⁶ and 80 per cent⁶⁷ in those countries believe that “elected officials do not care what people like us think”, a majority that reaches 85 per cent in another survey.⁶⁸ The general perception is that governments do not act in the interests of the majority but in favour of small elites. In a survey conducted among members of the Organisation for Economic Co-operation and Development (OECD), strong majorities of more than 60 per cent think that their “government is run by a few big entities acting in their own best interests”.⁶⁹ In a similar global survey, strong majorities of more than 65 per cent in all Western countries, except Sweden, answered that “the economy is rigged to advantage the rich and the powerful”.⁷⁰ Those findings are consistent with other surveys of the last decade. A global average of 48 per cent of people said in 2024 that their government “mainly serves the interest of a minority”. That sentiment is most prevalent in Latin America (61 per cent), the United States (57 per cent) and Europe (54 per cent), and least widespread in Asian countries.⁷¹

33. In all polls, there is a direct correlation between economic performance and confidence in institutions. Those who say their country’s economic situation is good are more likely to be satisfied with the institutions and to support representative democracy. Regarding priorities, at the national level, most people want their government to focus more on poverty reduction, corruption and economic growth. A median of 41 per cent consider “poverty and hunger” as the world’s top challenge. For many years in a row, economic inequality is perceived to be the number one threat to global democracy (68 per cent), followed by corruption (67 per cent) and the influence of global corporations (60 per cent).⁷² Regarding the perception of the threat to democracy posed by global corporations, the United States stands out higher among developed countries at 70 per cent.⁷³ Half of the world’s democracies fear more specifically the influence of the largest information technology companies, with again the perception highest in the United States, at 66 per cent. Those opinions seem to have solidified in both developing and developed countries, but concern is higher in Asian democracies (56 per cent) than in European (46 per cent) or Latin American (45 per cent) democracies.⁷⁴ However, there are strong regional differences regarding other goals: in Europe and the United States, people are much more likely to want their government to prioritize improving health care, fighting climate change and reducing immigration than those living in Asia or Latin America, where fighting corruption and promoting growth are seen as more important.⁷⁵

34. Surveys on perceptions of human rights reflect the same trends: people believe that universal human rights are important, but do not perceive them as being applied either equally or efficiently.⁷⁶ To the statement “human rights reflect values that I believe in”, a global average of 71 per cent agreed, with just 9 per cent disagreeing. The highest positive answers

⁶⁵ International Institute for Democracy and Electoral Assistance, *Perceptions of Democracy*.

⁶⁶ Richard Wike and others, *Representative Democracy Remains a Popular Ideal, but People Around the World Are Critical of How It’s Working* (Pew Research Center, 2024).

⁶⁷ Jenn Hatfield, “More than 80% of Americans believe elected officials don’t care what people like them think”, Pew Research Center, 30 April 2024.

⁶⁸ Pew Research Center, *Americans’ Dismal Views of the Nation’s Politics* (2023).

⁶⁹ OECD, *Integrity Framework for Public Investment* (Paris, 2016), p. 18, figure 1.5.

⁷⁰ Ipsos, *Global @dvisor, Power to the People? Part 2* (2017), available at https://www.ipsos.com/sites/default/files/2017-01/Power_to_the_people_survey-01-2017.pdf.

⁷¹ Alliance of Democracies, *Democracy Perception Index 2024*, p. 12.

⁷² *Ibid.*, pp. 15 and 16.

⁷³ *Ibid.*, p. 18.

⁷⁴ *Ibid.*, p. 21.

⁷⁵ *Ibid.*, p. 25.

⁷⁶ Ipsos, “Human rights in 2018”, survey of 28 countries conducted between 25 May and 8 June 2018, available at <https://www.ipsos.com/sites/default/files/ct/news/documents/2018-07/human-rights-in-2018-ipsos-global-advisor.pdf>.

are from citizens of the global South (Nigeria (86 per cent), Kenya (85 per cent), Bangladesh, Colombia and Ethiopia (82 per cent), and India (80 per cent)).⁷⁷ However, on the effectiveness of human rights, a plurality of 38 per cent believe that human rights do not actually protect.⁷⁸ There is also a widespread perception that they are applied selectively at the global level. When asked if human rights are “used by Western countries to punish developing countries” a plurality agrees, with a global average of 42 per cent. Even in the United States, respondents were more likely to agree (34 per cent) than disagree (28 per cent).⁷⁹

35. Majorities in several countries, mostly in the middle-income nations surveyed in the global South, stand out for the belief that they place in economic reform as a means to improve democracy. In India and South Africa, for example, the issue ranks first among the 17 substantive topics coded; in Argentina, Brazil, Indonesia and Kenya, it ranks second.⁸⁰ Interestingly, a majoritarian opinion on the relatively greater importance of social rather than civil and political rights is seen not only in countries of the global South, but also in those of the global North.⁸¹

VI. Major obstacles to the promotion of a democratic and equitable international order

A. Crisis of multilateralism – widening of the North-South divide

36. The shifting power dynamics between North and South and the accompanying disagreements over values, human rights and interventionism, in tandem with the perceived ineffectiveness of institutions of global governance, put the United Nations system of rules under serious stress. “Securitizing” human rights, that is introducing a quasi-permanent state of exception in the name of combating terrorism, is an additional challenge after the events of 11 September 2001. Especially worrisome is the multifaceted crisis of multilateralism: the erosion of trust, revamping economic protectionism, states ignoring or withdrawing from international agreements, unilateral economic sanctions without the backing of the Security Council and official threats against international judges.⁸² The Prosecutor of the International Criminal Court said recently that he had received several threats, with a senior figure telling him that the Court was not built for “the West and its allies”.⁸³ The conflicts in Ukraine and Gaza, and the deadlock of the Security Council, have exacerbated that situation and, in the words of the Secretary-General, may have “perhaps fatally” undermined the latter’s authority.⁸⁴

37. The compounding effects of the “polycrisis”, that is the confluence of the economic and climate crises, the pandemic, global conflicts and increasing inequalities within and across nations, have reversed global progress on development and poverty reduction. During the pandemic, the value of the Human Development Index declined for the first time on record, with 9 out of 10 countries registering regressions in health, education and living standards. The number of people living in extreme poverty, which had fallen markedly over the past 25 years or so, is now on the rise. A projected 575 million people will still be living in extreme poverty and only one third of countries will have halved their national poverty

⁷⁷ Open Society Foundations, “Open Society Barometer”, p. 14.

⁷⁸ *Ibid.*, p. 21.

⁷⁹ *Ibid.*

⁸⁰ Laura Silver and others, *What Can Improve Democracy?* (Pew Research Center, 2024).

⁸¹ Open Society Foundations, “Open Society Barometer”, p. 15.

⁸² On 10 May 2024, United Nations experts expressed utter dismay over statements made by State officials threatening to retaliate against the International Criminal Court, its officials and members of their families; see <https://www.ohchr.org/en/press-releases/2024/05/israelgaza-threats-against-icc-promote-culture-impunity-say-un-experts>.

⁸³ Necva Tastan, “ICC prosecutor threatened: Court ‘built for Africa and thugs like Putin’”, Anadolu Agency, 21 May 2024.

⁸⁴ Gabrielle Tétrault-Farber, “Security Council ‘perhaps fatally’ undermined by Gaza, Ukraine deadlock, says UN chief”, Reuters, 26 February 2024.

levels by 2030, pushing Sustainable Development Goal 1 out of reach. According to the Famine Review Committee, the list of countries at risk of famine now includes Afghanistan, Mali, the Sudan and the Syrian Arab Republic. Gaza has also been dramatically hit.⁸⁵ As low- and middle-income countries simultaneously face growing financing needs, spiralling public debt and declining available financing, their Sustainable Development Goal financing gap reached \$3.9 trillion in 2020, a 56 per cent jump from 2019.⁸⁶

38. Under those trends, the world is becoming more multipolar and less multilateral. That paradigm shift has two major characteristics: a lack of one sole hegemonic power and the shift in the centre of economic gravity to the global South, mainly Asia. The first trend has its origin in the post-colonial era.⁸⁷ Multipolarity tends to widen the North-South divide, as, after the short unipolar moment, there is no longer a dominating discourse. Moreover, a sole hegemon is unlikely to occur, not just because this kind of leadership has historically only emerged after world wars,⁸⁸ but mainly because the constellation of power in the world is now much more diverse and diffuse. Institutionally, that multipolarity is reflected and localized in differentiated levels of international governance: where the rule of representation is based on the full equality of States, as in the General Assembly, the global South controls the decision-making. The global North, on the contrary, continues to prevail in the financial international organizations, which are governed by weighted voting, which reflects the obsolete balance of economic power.

B. Fragmentation of international law

39. The lack of a hierarchical architecture of international law in general⁸⁹ and, more specifically, of the United Nations system reinforces centrifugal forces. Different organs or institutions of the United Nations system with overlapping competencies have their own understanding and methodology, which are often diametrically opposed. In that way, “once one knows which institution will deal with an issue, one already knows how it will be disposed of”.⁹⁰ Already in its report published in 1985, the Joint Inspection Unit, an independent subsidiary body of the General Assembly, criticized the “extreme fragmentation” of United Nations activities.⁹¹ In the same vein, the High-level Panel on Global Sustainability more recently remarked that “institutional fragmentation ... is endemic at the international level” and, therefore, “we must overcome the legacy of fragmented institutions established around single-issue ‘silos’”.⁹²

40. The United Nations human rights system has been likened to a “mainland” (consisting of the Human Rights Council, the treaty bodies and the Office of the United Nations High Commissioner for Human Rights) and an “archipelago” of specialized agencies, funds,

⁸⁵ Office of the United Nations High Commissioner for Human Rights, “UN experts declare famine has spread throughout Gaza strip”, 9 July 2024.

⁸⁶ See George Katrougalos, “Globalisation in times of crises and war: the role of the OECD since the Russian aggression against Ukraine”, report to the Parliamentary Assembly of the Council of Europe, document AS/Pol (2023) 26, para. 48, available at <https://rm.coe.int/globalisation-in-times-of-crises-and-war-the-role-of-the-oecd-since-th/1680abb7cb>.

⁸⁷ According to Tony Evans, *US Hegemony and the Project of Universal Human Rights* (Palgrave Macmillan, 1996), the loss of the initial hegemonic position of the United States to the United Nations system made it withdraw to a certain extent from the United Nations human rights system, and this resulted in the “weak”, relatively impotent, regime of protection of the latter.

⁸⁸ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press, 1984), p. 23.

⁸⁹ On fragmentation of international law in general, see the report of the Study Group of the International Law Commission at its fifty-eighth session in 2006 (A/CN.4/L.682).

⁹⁰ Martti Koskeniemi, “The fate of public international law: between technique and politics”, *Modern Law Review*, vol. 70, No. 1 (2007), p. 23.

⁹¹ *JIU/REP/85/9*, paras. 15–20. See also Andreas Bummel and Jo Leinen, *A World Parliament: Governance and Democracy in the 21st Century* (Democracy Without Borders, 2018).

⁹² Report of the High-level Panel on Global Sustainability (A/66/700), pp. 8 and 74, as quoted by Bummel and Leinen, *A World Parliament*.

programmes, and other United Nations bodies.⁹³ Currently, the United Nations System Chief Executives Board for Coordination brings together, under the chairmanship of the Secretary-General, the Executive Heads of the United Nations, its 12 funds and programmes, the 15 specialized agencies and 3 related organizations. It would be unrealistic to fully harmonize, under some inexistent overarching principles, the activities of all those institutions. Fragmentation stems both from the nature of international law as the law of coordination rather than that of subordination and from the lack of centralized institutions, which would ensure homogeneity and conformity.⁹⁴ However, a minimum of consistency of implementation regarding the human rights implications of their activities, especially regarding their obligation to “protect, respect and remedy”, is necessary, for both the efficiency and the legitimacy of the United Nations. International law would be inconsistent if it were to demand that all its actors respect human rights, as a global standard of expected conduct, and to exclude from this responsibility only the institutions of the United Nations. Therefore, mainstreaming human rights, that is integrating their standards, methodologies and ownership throughout the United Nations system, is a precondition for their full implementation.⁹⁵

41. According to the Pact for the Future, to be adopted at the Summit of the Future in September 2024, “We will strengthen the United Nations’ human rights pillar to ensure the effective enjoyment by all of all human rights and respond to new and emerging challenges” and “enhance coordination among United Nations entities working on human rights”.⁹⁶ An independent expert committee mandated by the Secretary-General or the Office of the United Nations High Commissioner for Human Rights could formulate a list of principles and procedures for that, following the steps, for instance, of the “Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies”. A more advanced procedural idea would be the appointment of a Special Rapporteur, with a mandate not only to formulate an annual report for submission to the Human Rights Council but also to refer issues surrounding non-compliance of policies of United Nations programmes and agencies to the Office of the United Nations High Commissioner for Human Rights and/or other relevant oversight bodies.

C. Globalization and the growing power of non-State actors

42. Globalization catapulted nationally unembedded capital to unprecedented power, exacerbating global inequalities. The Secretary-General recently called for the survival of the planet and humanity, decrying the fact that the 26 richest people in the world held as much wealth as half the global population and the world’s richest 1 per cent captured 27 per cent of the total cumulative growth during the past four decades.⁹⁷ Especially critical in that framework is the growing influence of multinational corporations and, in particular, that of the largest information technology companies, the profits and power of which have broken historical records. The three largest such corporations have each had a market valuation in excess of \$2 trillion for some time, more than the GDP of a country such as Italy, while their shares have surged more than 1,200 per cent during the past decade. One of those corporations attained, in June 2024, a market value of \$3.376 trillion, which is higher than the GDP of France. Those multinationals now have a total market capitalization of more than

⁹³ Paul Hunt, “Configuring the UN human rights system in the ‘era of implementation’: mainland and archipelago”, *Human Rights Quarterly*, vol. 39 (2017), p. 489.

⁹⁴ See Gerhard Hafner, “Risks ensuing from fragmentation of international law”, in the report of the International Law Commission on the work of its fifty-second session (A/55/10), p. 333. See also Bummel and Leinen, *A World Parliament*.

⁹⁵ Hunt, “Configuring the UN human rights system”, p. 502; and Zdzislaw Kedzia, “Mainstreaming human rights in the United Nations”, in *International Human Rights Monitoring Mechanisms*, Gudmundur Alfredsson and others, eds. (Martinus Nijhoff, 2009), p. 231. See also General Assembly resolution 60/251.

⁹⁶ Action 47 and para. 71 (c).

⁹⁷ António Guterres, “Tackling the inequality pandemic: a new social contract for a new era”, *Africa Renewal*, 19 July 2020.

\$9.1 trillion. Artificial intelligence poses additional challenges, but also opportunities for a more effective participative democracy.

43. The colossal inequalities are just the top of the iceberg. The influence of the multinational corporations, in synergy with the institutions of international economic governance, is shaping global economic law and governance in a regime that serves their interests and reinforces their power. That regime not only allows multinational corporations to jump jurisdictions to escape State regulation and reach tax heavens, it also constitutes a hierarchical legal infrastructure that functions to their advantage and perpetuates power asymmetries globally, with eventual consequences even for outer space. Colonist Cecil Rhodes allegedly said in despair: “to think of these stars that you see overhead at night, these vast worlds which we can never reach. I would annex the planets if I could; I often think of that. It makes me sad to see them so clear and yet so far.”⁹⁸ Such limitations no longer exist. Nowadays, the “terms of service” of one private company define “Mars as a free planet”, that is free for private economic exploitation, in flagrant opposition to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (the Outer Space Treaty).

VII. Tentative areas for thematic reports

44. In the light of the remarks above, the consultations held and the correspondence received, the preliminary thoughts of the Independent Expert are to address, as a priority, the thematic areas set out below. The list should be considered tentative, to be reformulated in the light of feedback received through country visits, further consultations and discussions with Governments, intergovernmental and non-governmental organizations and citizens. Reports on the following topics will not be theoretical; the Independent Expert will aim to submit practical proposals and recommendations for, to the extent possible, consensual solutions:

- (a) Reinvigorating North-South dialogue on democracy and human rights by:
 - (i) Suggesting symbolic moves, such as the repeal of the “civilized nation’s clause” in article 38 (l) (c) of the Statute of the International Court of Justice, or a Security Council meeting in a small country of the global South;
 - (ii) Facilitating international multi-stakeholder cooperation to empower the global South; establishing bilateral and multilateral dialogues and platforms; encouraging transregional cooperation, such as cooperation between the Parliamentary Assembly or the Superior Courts Network of the Council of Europe and their counterparts in Africa, Asia and Latin America;
 - (iii) Focusing on structured dialogue on issues such as climate justice for small island States (the alliance of Small Island States), investment treaties and the right of States to adopt measures to promote national public goals;
 - (iv) Integrating international fiscal justice projects, such as the proposed OECD agreements on minimum global tax and digital tax, into the proposed United Nations framework convention on international tax cooperation;
 - (v) Exploring the prospects of holding a second North-South summit (the first and only North–South summit, officially known as the International Meeting on Cooperation and Development, was held in Cancún in 1981);
- (b) Mainstreaming the application of human rights throughout the United Nations system by:
 - (i) Investigating the consistency of the human rights-based implementation of United Nations agencies, on the basis of, for example, the “Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies”;

⁹⁸ As quoted by Duncan Bell, *Dreamworlds of Race: Empire and the Utopian Destiny of Anglo-America* (Princeton University Press, 2022), p. 131.

- (ii) Considering more advanced options for interconnection between United Nations institutions and the Office of the United Nations High Commissioner for Human Rights, so as to ensure mainstreaming of international human rights in all United Nations programmes and agencies;
- (c) Integrating artificial intelligence in the promotion of global democracy by:
 - (i) Investigating the challenges of artificial intelligence governance for democracy, beyond the “do no harm principle”;
 - (ii) Ensuring a robust United Nations role in global artificial intelligence governance;
 - (iii) Establishing specific principles, based on the Universal Declaration of Human Rights and the Sustainable Development Goals, on inclusivity of artificial intelligence: all citizens, including those in the global South, should be able to access and meaningfully use artificial intelligence tools;
 - (iv) Defining a framework for the contribution of artificial intelligence to democracy and public participation through new informative and participative tools, for instance, through the organization of global consultative virtual referendums related to a Sustainable Development Goal, a right or a specific United Nations policy;
 - (v) Promoting, possibly with the voluntary cooperation of information technology companies, new tools for the horizontal networking of all United Nations databases, with user friendly interfaces;
- (d) Committing multinational corporations to the promotion of a democratic and equitable international order by:
 - (i) Ensuring international and public regulation principles on freedom of expression on social platforms;
 - (ii) Investigating the relationship between intellectual property and patents and full enjoyment of the rights to health and food security;
 - (iii) Relating climate crisis and climate finance in relation to resource governance. International economic institutions should ensure the necessary funding for challenges related to the climate crisis, especially for small island States. New environmental rules should eliminate extreme extractive practices;
 - (iv) Ensuring visibility of transnational arms sales and the prohibition of arms sales in cases of human rights violations;
 - (v) Ensuring the commitment of multinational corporations to the existing international treaties on outer space;
- (e) Promoting dialogue among civilizations in relation to democracy and human rights by:
 - (i) Studying and understanding cultural frameworks, historical traditions and regional nuances, in order to contextualize democratic norms and values in the framework of the universal values of democracy and human rights;
 - (ii) Investigating the influence of history on shaping democratic institutions;
 - (iii) Promoting genuine citizen participation and balancing individual and collective rights in various cultural environments;
- (f) Protecting international and national adjudicating bodies facing authoritarian and illiberal practices by:
 - (i) Shielding national and international courts from threats and authoritarian practices;
 - (ii) Facilitating interactions between judges from the North and the South by expanding existing networks.