



United Nations



Democracy and Human Rights:

The Role of the UN

DiscussionPaper

September 2013



Successful democratic governance must inevitably focus on promotion and protection of human rights and fundamental freedoms. For without this protection there can be no democracy in any meaningful sense.



United Nations



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INTERNATIONAL IDEA AT A GLANCE

Democracy remains a universal human aspiration and a powerful force of political mobilization for change, as witnessed by citizen-led movements which are demanding democratic reform.

International IDEA's Strategy 2012–2017

What is International IDEA?

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

The objectives of the Institute are to support stronger democratic institutions and processes, and more sustainable, effective and legitimate democracy.

International IDEA is the only global intergovernmental organization with the sole mandate of supporting democracy; its vision is to become the primary global actor in sharing comparative knowledge and experience in support of democracy.

What does International IDEA do?

International IDEA produces comparative knowledge in its key areas of expertise: electoral processes, constitution building, political participation and representation, and democracy and development, as well as on democracy as it relates to gender, diversity, and conflict and security.

IDEA brings this knowledge to national and local actors who are working for democratic reform, and facilitates dialogue in support of democratic change.

In its work, IDEA aims for:

- Increased capacity, legitimacy and credibility of democracy
- More inclusive participation and accountable representation
- More effective and legitimate democracy cooperation

How does International IDEA work?

Because democracy grows from within societies, it is constantly evolving. There is no single and universally applicable model of democracy; the critical choices are best made, and the quality of democracy best gauged, by the citizens themselves. IDEA's work reflects this; the Institute's work is organized at global, regional and country level, focusing on the citizen as the driver of change.

IDEA's work is non-prescriptive and IDEA takes an impartial and collaborative approach to democracy cooperation; emphasizing diversity in democracy, equal political participation, representation of women and men in politics and decision making, and helping to enhance the political will required for change.

The Institute brings together a wide range of political entities and opinion leaders. By convening seminars, conferences and capacity building workshops, IDEA facilitates the exchange of knowledge at global, regional and national levels.

Where does International IDEA work?

International IDEA works worldwide. Based in Stockholm, Sweden, the Institute has offices in the Africa, Asia and the Pacific, Latin America and the Caribbean, and West Asia and North Africa regions.

International IDEA is a Permanent Observer to the United Nations.

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Governance

International IDEA is governed by a Council composed of its Member States and assisted by a Board of Advisers. Mr Vidar Helgesen, Norway's former Deputy Minister of Foreign Affairs, is the Secretary-General.

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Democracy and Human Rights:

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Report from the International Round Table on Democracy and Human Rights: The Role of the United Nations co-organized by International IDEA, UN Department of Political Affairs and the UN Office of the High Commissioner for Human Rights

Key Recommendations

- 1** The relationship between democracy and human rights is intricate, symbiotic and mutually constitutive. A rights based approach to democracy grounded in the rule of law is considered increasingly the most consistent safeguard against human rights abuses. The UN should both heed the calls for democratic reform as they arise and be involved in sustainable human rights based democracy building processes.
- 2** The success of a democracy building endeavour will be directly affected by the inclusive and consultative nature of the constitution making process, and human rights standards provide a detailed foundation for these processes. The UN should strive to ensure inclusion and active participation in the constitution making process and should identify appropriate and sufficient resources to support these processes in the long term.
- 3** The UN must identify and mobilize existing assets within its system and work in a unified manner so as to better marshal its unique ability to promote rights based democratic processes, especially in relation to disadvantaged and under-represented groups, including women and youth.
- 4** The UN should continue to lead the discussion on the universality of human rights and how the respect, protection, promotion and fulfillment of human rights are part of the essential framework for effective democratic governance. The UN should consider a peer review process for democracy in order to assess how Member States are fulfilling obligations made to their people under the international human rights treaties they have ratified.

Executive Summary

On 11-12 July 2011, the United Nations Department of Political Affairs (UN DPA), the UN Office of the High Commissioner for Human Rights (OHCHR), and the International Institute for Democracy and Electoral Assistance (International IDEA) organized a two day round table in New York on democracy and human rights. The International Round Table on Democracy and Human Rights was part of a series of policy-oriented events organized by the UN and International IDEA on the relationship between democracy building and the pillars of UN work. The Round Table brought together over fifty policy makers, practitioners and academics at the UN Headquarters to analyze the inter-linkages between democracy and human rights and their relevance to current UN actions.

The agenda for the Round Table was developed jointly by UN DPA, OHCHR and International IDEA,¹ and was structured around three main sessions:

1. The role of human rights in democracy building, with an emphasis on support for constitution making.
2. An examination of Member States' perceptions of the UN and other regional organizations' roles in promoting a rights based approach to democracy.
3. The coherence of the UN's approach to building sustainable democratic governance based on the rule of law.

This summary report of the two day Round Table presents the key conclusions and recommendations to emerge from the discussion.

Conclusions

The Relationship Between Democracy and Human Rights

Recognizing an interdependent link:

Participants agreed that the link between democracy and human rights is interdependent, intricate, mutually supportive and symbiotic – with some participants proposing that the most appropriate term to use is 'mutually constitutive'. Democracy cannot be defined without human rights. Human rights can be protected effectively only in a democratic state. A functional democracy that accommodates diversity, promotes equality and protects individual freedoms is increasingly becoming the best bet against the concentration of power in the hands of a few and the abuse of human rights that inevitably results from it. In turn, the greatest protection of human rights emanates from a sustainable democratic framework grounded in the rule of law.

Responding to the calls for democratic governance and rights: The exciting call for change in Africa and the Middle East was viewed as a combination of a call for sustainable and inclusive democratic governance with a call for rights. Democratic reforms and the restoration of human rights protections are seen as parts of the same vision of change. Both democracy and human rights are advancing globally: there are more democratic and free elections taking place throughout the world, and human rights are observed more than ever before. There has also been advancement in mechanisms of protection and promotion of human rights. The Arab Spring has re-energized the democracy support community, motivating people to act and confirming to the international community that it is on the right track in its efforts to prioritize this issue.

Deepening the understanding of a rights

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¹ International IDEA commissioned a background paper written by Professor Dżidek Kedzia from the University of Poznań titled "Democracy and Human Rights: Challenges and Opportunities for the UN".

based approach to democracy: The participants struggled with the concept of a rights based approach to democracy. While the rights based approach to development directly changed the quality of development assistance, a rights based approach to democracy, although equally valid, has proved more difficult. Democracy is a complicated and time consuming system. Nevertheless, its description as the 'least worst' form of government is just another version of the phrase 'best but challenging and uneasy'. While building democracy, it is essential to remember that 'functionality', 'effectiveness' and 'efficiency' must be among its constitutive features.

Supporting sustainable rights based democracy building: The issue of sustainability was also debated, with participants noting that human rights based democracy can take a long time to build up. Nor is it a linear, cumulative process and it can collapse easily. A creeping de-democratization can take the form of small adjustments though affecting important elements of political structures. A sustainable rights based democracy requires, among other things, that citizens are knowledgeable about their rights, that public political participation is encouraged through elections and active involvement in local government, and that institutional accountability and transparency are ensured.

The UN Role in Promoting and Supporting a Rights Based Approach to Democracy

Playing effectively an advocacy role: Participants identified a tension in the UN system between whether the Secretariat is bound to lowest common denominator consensus of UN Member States, or whether it can act independently as an autonomous stakeholder in the promotion of human rights and democracy. In arguing for the latter, Article 99 of the UN Charter states

that 'The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security' (United Nations, 1945). This means that the Secretary-General does have a distinct responsibility, determining also the position of the entire UN Secretariat.

If the UN is to take action on any issue, it must be armed with universal values and universal rules. Part of the UN's role is to add to normative and policy development in the democracy and human rights field. The Guidance Note on Democracy is a major step in this regard. This was produced by the Secretary-General in his independent capacity and, as such, is a high level and influential document. It was recognized that the UN has the responsibility to spearhead a discussion on the universality of human rights and democracy, based on global experience.

Determining the extent of UN's advocacy role throughout the world: The issue of how deeply the UN should be involved in advocacy for human rights based democracy was discussed in each session of the Round Table. The bias was generally in favour of a thoughtful involvement, fully taking into account the circumstances, and in particular the requirement for national ownership. Where a community is able to hold a dialogue by itself, the UN should focus on facilitating that dialogue and enriching it with international experience. The UN can also do much to strengthen the inclusive nature of community dialogue by providing additional forums for participation, particularly reaching out to the more marginalized in the community.

Exploring the UN's potential relationship with national, regional and international actors: Attention was raised about the often exclusive relationship the UN has with the executive of the countries where it works. This should not be accepted as the norm, and the UN

should attempt to form a broader range of relationships, including with parliaments and civil society – and particularly with women and other disadvantaged groups. In the same vein, the UN's role would be further strengthened by deepening its partnerships with regional and international actors that have already developed regional standards and normative frameworks for democracy.

Bridging the gap between statements and action: Moving from policy statements to practical implementation is complicated. The UN, like other international and regional actors, prefers to focus on events rather than process to prevent it from stepping beyond being a service provider and into the realm of sovereignty. It is a particularly challenging situation for external actors to be involved deeply in matters such as systems of governance or constitution making that have a decisive impact on the future of the country. Any international support should be based on universal values and norms and should also provide comparative knowledge about what has and has not worked in other places. UN structural coherence is needed not only in the area of human rights and democracy: it is a much broader problem for the UN to address on a continuing basis.

Engaging on breaks in the democratic constitutional order: The Round Table deliberated about the role of the UN and other organizations when ruptures in the constitutional order or unconstitutional transitions of government power occur after democratic elections. While most regional organizations have taken a zero tolerance policy approach in this respect, the UN is often the only organization left to engage and provide assistance in such situations, risking criticism either for interference in internal affairs or for tolerating unconstitutional preservation of political power. This leads to questions about whether the UN should

insist on crafting a consistent and systematic approach to all cases based on democratic norms and principles or take a more nuanced case-by-case approach. While the latter argument seemed to hold greater weight, it was recognized that the lack of consistency can potentially harm the UN's credibility.

Recommendations

The following key recommendations emerged from the Round Table discussions:

1. The relationship between democracy and human rights is intricate, symbiotic and mutually constitutive. A rights based approach to democracy grounded in the rule of law is considered increasingly the most consistent safeguard against human rights abuses. The UN should both heed the calls for democratic reform as they arise and be involved in sustainable human rights based democracy building processes.
2. The success of a democracy building endeavour will be directly affected by the inclusive and consultative nature of the constitution making process, and human rights standards provide a detailed foundation for these processes. The UN should strive to ensure inclusion and active participation in the constitution making process and should identify appropriate and sufficient resources to support these processes in the long term.
3. The UN must identify and mobilize existing assets within its system and work in a unified manner so as to better marshal its unique ability to promote rights based democratic processes, especially in relation to disadvantaged and under-represented groups, including women and youth.

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4. The UN should continue to lead the discussion on the universality of human rights and how the respect, protection, promotion and fulfillment of human rights are part of the essential framework for effective democratic governance. The UN should consider a peer review process for democracy in order to assess how Member States are fulfilling obligations made to their people under the international human rights treaties they have ratified.

More specific conclusions and recommendations are summarized below. These are organized in three groups:

- Building an Inclusive Framework for Democratic Governance based on Human Rights;
- Perceptions of the UN and the UN's Comparative Advantage; and
- UN Coherence in Building Sustainable Democratic Governance based on Human Rights.

Building an Inclusive Framework for Democratic Governance based on Human Rights

The success of democracy building will be directly affected by the inclusive and consultative nature of the constitution making process, as much as by the eventual contents of the constitution. Human rights standards and jurisprudence provide a detailed foundation for processes that are inclusive and consultative, as well as for the substance of what is contained in a constitution. In terms of the latter, substantive protection includes both the nature of rights to be respected, protected, promoted and fulfilled as well as the institutions needed to ensure that violations of human rights have a remedy in practice. A governance framework that is not based on human rights and fundamental

freedoms will be devoid of the essential elements for a functioning democracy.

- The UN therefore needs to identify appropriate and sufficient resources to support long term constitution making processes to ensure that human rights are protected and that due process – based on a human rights framework – establishes fair procedures so that grievances and violations of the law can be addressed and so that social conflicts be peacefully resolved.
- The UN should also strive to ensure inclusion and active participation in the constitution making process by as broad a representation of the society as possible.
- All participants in the constitution making process require enough time to consider properly the range of political, economic and cultural factors that must be addressed in the new constitution. The international community should refrain from pushing to reduce the time taken for constitution making. To do so potentially diminishes the effectiveness of the process and reduces the substantive quality of the end document.
- The role of the UN in a constitution making exercise should be focused on enhancing dialogue and giving voice to all relevant actors in the political process, including in particular more marginalized and disadvantaged groups in a society.
- The Organization should provide comparative knowledge and experiences from inclusive and participatory constitution building processes, especially those drawn from the Global South.
- The UN should build on the expertise relevant to different aspects of constitution making from within its system, including OHCHR which has the lead on human rights, as well as from intergovernmental

organizations engaged in inclusive political dialogue, regional organizations and non-governmental organizations that work in this field.

- The UN should also focus on advocating for, as well as financially supporting, inclusive and participatory processes.

Perceptions of the UN and the UN's Comparative Advantage

- The UN needs to identify more creative ways of broadening the groups it interacts with in order to counter concerns about bias towards the executive and to ensure effective engagement in the democratization process. The Secretary-General's Guidance Note on Constitution Making (UN Secretary-General, 2009a) provides guidance for identifying the relevant groups in society that should be consulted in a constitution making process, including women, youth and religious minorities.
- The UN should make more effort to use its comparative advantages and assets – including its normative, convening, disseminating and protective powers – in order to enhance its role promoting rights based democracy. The establishment of the UN Coordination and Resource Group has already played a useful coordinating role in this regard; and the various UN agencies should be encouraged to collaborate with each other more actively on democracy assistance.

UN Coherence in Building Sustainable Democratic Governance based on Human Rights

- The UN should continue to lead the discussion on the universality of human rights and how respect, protection, promotion and fulfillment of human rights

provides part of the essential framework for effective democratic governance. No other organization has the legitimacy to assume this role. The UN Secretariat and the Secretary-General can play an important role in furthering policy, without having to resort to the lowest common denominator approach.

- Although there is no one formula for the establishment, functioning and evolution of democratic governance, the UN should not hesitate to speak out strongly when democratic governance is being eroded and human rights are violated.
- The UN should act, through all relevant mechanisms and processes, to encourage States that are not yet democratic (or are nominally democratic but do not in practice protect human rights) to carry out democratic reforms that will create open, pluralistic societies based on freedom of expression, association and assembly, democratic electoral law and an independent judiciary, as well as societies firmly rooted in democratic governance as reflected by the vote of the people in regularly held, open and fair elections.
- The UN should consider a peer review process for democracy, along the lines of the Universal Periodic Review (UPR) mechanism established by the Human Rights Council. As part of the UPR, as well as reporting to relevant treaty bodies, States should be encouraged to declare what actions they have taken to establish democratic governance or to strengthen their democracies and to indicate how they are fulfilling the obligations made to their people in the international human rights treaties they have ratified, as well as in their constitutions and laws. ■

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Introduction

On 11-12 July 2011, the United Nations Department of Political Affairs (UN DPA), the UN Office of the High Commissioner for Human Rights (OHCHR), and the International Institute for Democracy and Electoral Assistance (International IDEA) organized a two day round table in New York, focusing on democracy and human rights. The round table aimed to provide an opportunity to analyze the linkages between democracy and human rights and their relevance to current UN actions. The concept note for the meeting is presented in Annex 1.

The Round Table brought together over 50 policy makers, practitioners and academics. The event was the last in a series of four meetings examining the question of UN support for democracy. The first, in September 2008, looked at ‘Democracy for Development and Development for Democracy’². The second, in March 2010, examined ‘Democracy, Peace and Security’³. A third meeting on ‘Gender Equality and Democracy’ took place in May 2011⁴. All four of these meetings were a collective response to the Secretary-General’s request in November 2007 for the development of an organization wide strategy to further define the UN approach to supporting democracy, underlying the pillars of the UN’s work: peace and security, development and human rights. The meetings also aimed to reinvigorate the way the UN understands, protects and promotes democratic principles and values, as well as coordinates relevant activities on democracy and human rights across the system to ensure optimum impact.

Background and Objectives of the Round Table

Significant norms and standards related to democracy and human rights are embodied in the 1948 Universal Declaration of Human

Rights (UDHR), which states in article 21(3): “[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” These links are further developed in the International Covenant on Civil and Political Rights (ICCPR), which enshrines a range of political rights and civil liberties underpinning functioning democracies.

In 1993, the World Conference on Human Rights adopted the Vienna Declaration which proclaimed the interdependence of democracy, economic development and human rights. At the 2000 UN Summit on the Millennium Development Goals (MDGs) and the 2005 UN World Summit, the international community reaffirmed its commitment to human rights, the rule of law and democracy as universal and indivisible core values and principles of the United Nations.

In 2002, the UN Commission on Human Rights endeavoured to promote a common understanding of democracy, adopting a landmark resolution which defined essential elements for democracies, including respect for human rights and fundamental freedoms; freedom of association; freedom of expression and opinion; access to power and its exercise in accordance with the rule of law; the holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people; a pluralistic system of political parties and organizations; the separation of powers; the independence of the judiciary; transparency and accountability in public administration; and a free, independent and pluralistic media. These essential elements of democracy were re-affirmed in 2012 by the Human Rights Council in its resolution

² Organized by DPA, UNDP and International IDEA.

³ Organized by DPA, DPKO, UNDP and International IDEA (see Tommasoli, 2010).

⁴ Organized by DPA, UN Women, UNDP and International IDEA.

19/36 on “Human rights, democracy and the rule of law” (United Nations, 2012). In 2008 a guidance note by the UN Secretary-General (S-G) addressed the UN approach to rule of law assistance (UN S-G 2008). More recently, the UN S-G’s guidance notes on Constitution making (UN S-G 2009a) and Democracy (UN S-G 2009b) state very clearly the UN’s key role in supporting inclusive and participatory constitution making processes, while also indicating that there cannot be democracy without human rights and that human rights cannot be properly implemented in a non-democratic environment either.

Over the last 20 years, 3 different developments produced a new understanding of the complex linkages between the democracy and human rights agendas at the UN:

1. The so-called third wave of democratization that in the early 1990s led to a growing engagement of the UN in electoral processes and democracy building.
2. The UN’s growing engagement in post-conflict recovery and peacebuilding involved grappling with challenging interactions between the economic, social and political realities in a number of countries.
3. The adoption of rights based approaches to development brought to the fore the political dimensions of development (related to issues of inclusion, legitimacy and accountability) especially from a gender equality perspective.

The recent uprisings in many Arab countries not only constitute a major change in the political landscape of the region and a critical development in the field of democratization but also call for a careful

assessment of the role of the UN in addressing the crucial interface between democracy building and human rights.

There is wide agreement that democracy and human rights are intimately linked and that both are mutually supportive and mutually dependent. Despite this level of clarity at the normative and conceptual level, translating policy statements or academic discussions into practice on the ground has proven to be complicated. The Round Table asked the participants to look critically at the relationship between democracy and human rights and the role of the UN and regional organizations in their support for democracy and human rights. These general topics were expressed in more specific questions, such as: How to address situations when a democratic process (majority rule) conflicts with human rights? What is the level of understanding of the complex and challenging linkage between democracy and human rights manifested within the respective communities of practice, and in the dialogue among them? Is UN action effective? How is it perceived? How can the work of the UN system be made sustainable and inclusive, servicing both human rights and democracy at the same time? How can policy decisions be better translated into field practice?

The Round Table also focused on UN actions to ensure system wide coherence and efficiency, particularly in the light of recent events in the Middle East and North Africa (MENA) region. The aim was to provide suggestions to senior officials on how to better support democracy in order to promote human rights and how to better support human rights in order to promote democracy.

Structure of the Round Table

The agenda for the Round Table on Democracy and Human Rights was developed

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jointly by DPA, OHCHR and International IDEA. Prior to the meeting, International IDEA commissioned a background paper written by Professor Dzidek Kedzia from the University of Poznań, 'Democracy and Human Rights: Challenges and Opportunities for the UN'. The agenda was structured around three main sessions. The first focused on the role of human rights in democracy building, with a focus on support for constitution making. The second session looked at the perception of partner countries of the UN and other regional organizations' roles in promoting a rights based approach to democracy. And the third session looked at how coherent the overall UN approach is in building sustainable democratic governance based on the rule of law.

This summary report of the International Round Table on Democracy and Human Rights presents the key conclusions and recommendations that emerged from the participants' discussions. ■

Human Rights and Democracy Building: Setting the Constitutional and Governance Framework

The first panel considered strategic, policy, operational and research based issues related to how the UN and regional organizations handle unconstitutional changes in government, and the role of civil society and national, regional and international government bodies in building an inclusive framework for democratic governance in the aftermath of regime change. The discussion also touched upon the need for, and scope of, transitional governance arrangements, and how to reflect human rights – including minority rights – in constitutional reform efforts.

Special attention was paid to the constitution making process, with participants agreeing that the process used to develop and draft a constitution has a vital influence on both the constitution and the ongoing life of the society concerned⁵. The participatory and transparent nature of the constitution making process helps to ensure that the final constitution reflects essential pillars of democracy, such as guaranteeing that the legitimacy of the state is created and sustained by the will of its people and guaranteeing an individual's and groups' basic rights in a society. Ensuring such a process occurs also helps to guarantee that existing or potential grievances and conflicts can be resolved peacefully and in a timely manner.

Given the above, participants noted that the role of the constitution drafting body needs to be defined very carefully, in order to protect the process against dominance by powerful parties or groups and to avert the finalization of a document

⁵ The interest in constitutions and the processes of making and remaking them has grown over the last few years, as a consequence of the increasing number of constitution making processes that have been taking place since the end of the Cold War. International IDEA and Interpeace recently produced practical guides and handbooks on this theme (Böckenförde et al., 2011; Brandt et al., 2011).

that has not been subjected to appropriate consultation with the broader public. The use of the ‘qualified majority’ rule for passing a constitution is one important means of preventing vested interests from dominating a process. In this regard, the idea of building in an automatic review of the constitution after a certain period was floated – recognizing that it deserves consideration.

The need for broad participation in the constitution making process was strongly endorsed, with references made to Article 25 of the ICCPR which provides the legal basis for participation in the conduct of public affairs as a human rights standard.⁶ Such involvement of the society also provides a practical and visible lesson that democratic processes can be designed to allow all groups to air their grievances and that conflicts can be peaceably resolved among them. In this regard, the way in which the population actively participated in the constitution making process in South Africa⁷ – resulting in over two million submissions from the public – was considered closely correlated to the ultimate legitimacy of the process. Reference was also made to the constitution making process in Rwanda⁸ where a twelve member constitutional commission lived for a period of six months among the people as a means of hearing their concerns first hand. Participants noted that effective popular participation often requires a programme of civic education, enabling citizens to understand what a constitution actually is, of what a constitution making process consists and how they can benefit from the constitution.

Countering social exclusion is an essential building block in the construction of a democratic society with full respect for human rights. In practice, this means that the constitution making process must ensure the active engagement of all minorities and previously excluded groups, along with

representatives of the elite and majorities. The Secretary-General’s Guidance Note on assistance to constitution making processes indicates that the UN should encourage outreach to all groups in society, including human rights defenders, associations of legal professionals, media and other civil society organizations, including those representing women, children, minorities, indigenous peoples, refugees, stateless and displaced persons, and labour and business organizations. While it was acknowledged that a leadership is needed for the constitution making process, the challenge is to prevent it from becoming dominated by this elite group of people to the exclusion of others. Measures may need to be in place to guarantee inclusiveness.

Participants expressed concern about the imposition of time constraints on constitution making processes, including by international actors. Sufficient time is needed to consider the variety of political, economic and cultural factors that need to be addressed, including human rights and democracy concerns. The international community should, therefore, refrain from pushing to shorten the timeframe for constitution making at the expense of its procedural and substantive quality. In South Africa, for example, three years were allowed for a fully participatory process, and participants suggested that creativity was needed to come up with the resources to be able to devote the time necessary for constitution making processes to bear the fruit asked of them. In this regard, the UN Secretary-General’s statement on the pace of democratization was recalled: “It is inherent in this concept that democratization does not necessarily lead immediately to a fully democratic society. That goal may be attained only in steps, with an authoritarian society gradually becoming less so. The pace at which democratization can proceed is inevitably dependent on a variety of political, economic,

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6 The Human Rights Committee concluded in an individual communication that Article 25 of the ICCPR applies to constitution making processes. See *Marshall v. Canada, Communication No. 205/1986* (United Nations Human Rights Committee, 1986).

7 The constitution in South Africa was promulgated by President Nelson Mandela on 10 December 1996 and came into effect on 4 February 1997, replacing the Interim Constitution of 1993.

8 The Constitution of Rwanda was adopted by referendum on May 26, 2003, replacing the previous Constitution of 1991.

Box 1: Hungary: The critical importance of the constitution building process

Hungary is an example of what can happen if the constitution making process lacks an appropriate process and timeframe. It was suggested that there was a failure to provide sufficient time and process to entrench the principles enshrined in the constitution when revisions were made in 1989 to Hungary's 1949 constitution. While the process succeeded in enabling a peaceful transition from a single party Communist state to a pluralist political system, there was little concerted effort to promote public participation during the process and, as a result, little entrenchment of the rights and values enshrined within it. In the 2011 elections, the center-right political party won a supermajority in Parliament, providing the party with enough power to change the constitution. This power has since been used extensively, amending the constitution ten times in their first year in office and then enacting a wholly new constitution which took effect on 1 January 2012. This has led to the concentration of virtually all power in the hands of the current governing party for the foreseeable future.

social and cultural factors some of which, in a given society, may not be susceptible to rapid change” (UN Secretary-General, 1995).

The use of interim or transitional constitutions or constitutional acts with minimal content were discussed as a means of providing sufficient time to carefully define and develop a final constitution. An appropriate time period can facilitate building conflict resolution mechanisms into the constitution making process, which can ultimately help in preserving the entire process should differences or disputes arise. A transitional constitution may also be necessary to provide the legal framework for the ongoing running of the country if previous political institutions have collapsed; or it may replace a previous constitution that, for historical or ideological reasons, was considered unacceptable. In the case of particularly bitter divides in a society, the use of an interim constitution which allows for transitional divisions of power may be an appropriate short term response. However, the use of power sharing arrangements as a long term solution in post-conflict scenarios raised concern among many of the Round Table participants, who stressed the need for public interest, rather than group interests, to

dictate how common problems are addressed.

Some participants questioned whether there should be a globalized approach that includes underlying human rights and principles that would govern constitution making processes. If so, should the national constitution making body be a sovereign entity or should it be limited in what it can do? Should governments remain in power if they do not support these rights and principles? And, does the international community have a role in ensuring that common principles are enforced? In response to these questions there was general support for constitution making to be in conformity with universal human rights standards. The need to uphold these standards does not interfere with sovereignty, but gives a contemporary content and meaning to it. Sovereignty not only involves power but also responsibility. Though ultimately, according to universally adopted standards, governments bear the primary responsibility for the implementation of human rights.

Participants also examined the role of regional organizations, particularly in situations of regime change and threats to democracy (see Box 2).

Box 2: Threats to democracy and regional organizations: The cases of the African Union (AU) and the Organization of American States (OAS)

While the UN has yet to adopt any formal position on unconstitutional changes in government, both the AU and OAS have been able to develop clear norms and principles around this issue. While not yet in force, the African Charter on Democracy, Elections and Governance (2007) includes language on unconstitutional changes in government, including military coup d'états against a democratically elected government, replacement by armed dissident groups and/or rebel movements, and refusal by incumbent governments to relinquish power to the winning party following a free, fair and regular election.

OAS Resolution 1080 is very specific on the issue of interruptions of democratic order with specific steps mandated for such cases. The Inter-American Democratic Charter further calls on member states of the OAS to act collectively, as a binding obligation rather than vague moral duty, to combat threats to democracy. It was argued that the importance of these regional norms and instruments and the power of related sanctions should not be underestimated as they contribute to highlighting threats to democracy and support civil society in holding governments accountable.

Within this connection, questions were also raised about whether the UN and regional organizations, in some instances, could be accused of adopting double standards in relation to the recent popular revolutions in the MENA region. Some asked whether the UN had either perpetuated or supported situations that were blatantly unconstitutional. The problem is complex, and there are different views on each specific situation. The April 2010 events in Kyrgyzstan were used as an example: some saw this as an opportunistic coup against a weakened president and an oppressive and corrupt regime, while others saw it as a popular and legitimate uprising supported by the international community. The AU Peace and Security Committee adopted an interesting reaction to the events in Egypt, expressing solidarity with the Egyptian people whose 'desire for democracy is consistent with the relevant instruments of the AU and the continent's commitment to promote democratization, good governance and respect for human rights'. The reaction of the AU was therefore based on the notion that the

popular revolutions were legitimate and did not represent an unconstitutional change of government. The question of where the international and regional community should draw the line emerged, with no clear and easy answer. ■

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Role and Impact of the UN and Regional Organizations in Promoting a Rights Based Approach to Governance

The second panel focused on the perception of the UN and regional organizations as they attempt to provide democracy assistance based on human rights principles and on the UN's comparative advantage vis-à-vis other international and regional actors in this area.

Participants suggested that perceptions of the UN and regional organizations are mixed, depending on whom you ask, with markedly different views between civil society, the government and individuals. A number of participants commented on the fact that some UN agencies are seen as being too closely associated or affiliated with illegitimate governments or regimes because of the mandate requiring them to work with the government. This is a particular challenge for Resident Coordinators who face the dilemma of having to work with a problematic government while also having to protect and promote international norms and values.

The meeting discussed three underlying principles that should be applied by the UN and regional organizations in the promotion of a rights based approach to democracy: legitimacy, credibility and accountability.

On *legitimacy*, participants noted that involvement in any country needed to be rooted in international law and supported by intergovernmental decisions. It was noted that a significant number of human rights standards are non-derogable, meaning that states have no legal basis, even in a state of emergency, to refuse to honour these rights. Participants also stressed that any outside assistance needed to be mandated, i.e. no organization should be allowed to come in without being invited. And finally, legitimacy also meant that any engagement should include advocating strongly for a participatory approach involving civil society. Participants also sustained that the UN should pay greater attention to working with parliaments, while also cautioning against seeing the failure of political structures (such as parliaments and political parties) as a reason to stop making efforts to strengthen these institutions. The youth was also identified as a non-traditional group for the UN to work with – a conclusion emphasized by the recent events in the MENA region.

Credibility means that UN work needs to be firmly based on global values and international law. But it also needs to take into account the reality on the ground, including local processes, which differ from country to country. Credibility also stems from long term involvement and particularly the commitment of international organizations to share lessons of what has worked and what has not worked elsewhere as a means of avoiding past mistakes. In this context, the UN was urged to avoid any action where it could be criticized for applying double standards.

Box 3: Kenya: Potential role of the international community in supporting constitution building

Kenya was used as an illustration of the practical and supportive role the UN and others can play in a democracy building process. In 2003, the Constitution of Kenya Review Commission embarked on a process of constitutional review. The involvement of a large proportion of the population in the development of the resulting constitution was unprecedented, particularly in terms of women's participation. It was clear that ordinary Kenyans were concerned about their basic rights (such as how to feed their family) while the political class was more concerned about power as it played out in the executive. While many politicians were not even aware of what the bill of rights was, the UN played a significant role in teaching people about their rights through a programme of civic education. This process culminated in a new constitution, discussed at a national conference. The draft (called the Wako Draft) was voted on in a 2005 referendum but it ultimately did not meet the expectations of a majority of Kenyans and was rejected. Again due to a massive civic education programme, Kenyans were aware that many issues included in the draft were contentious and had been adulterated from original drafts, thereby not meeting their demands. Work began again in 2008 and a new constitution was finally passed in August 2010.

One participant reflected on the difficulty of sustaining long term involvement, pointing out that the international community often only reacts in times of humanitarian or security emergencies. Once the immediate emergency is over it is difficult to justify remaining on the ground and to continue to support the country involved. The same difficulty is also evident when looking at democratic processes, given the length of time needed for democracies to truly establish themselves which points to the need to see democracy support as an ongoing process rather than event driven. Participants also discussed the tensions that arise in post-conflict situations between human rights and democratically taken decisions that may limit the scope of protected rights in order to ensure security. In accordance with international human rights standards and many national constitutions, threats to security may justify some limitations imposed on individual freedoms and rights. However, participants stressed that the international community had a responsibility to argue that decisions taken by democratically established

bodies should always comply with human rights principles.

Finally, concerning *accountability*, it was proposed that a system for assessing the results of any support provided needs to be implemented. This also means that authorities and societies are entitled to speak up and that international organizations should be ready to listen very carefully to what they have to say about the impact of any assistance. Accountability requires that international and regional organizations must be able to say 'no' to a request from a particular country. However, this is complicated because there are no systematic benchmarks or guidelines in this respect.

The ongoing situation in the MENA region was seen to pose a critical challenge for the UN system, with one participant commenting that failure of the UN to prove relevant will lead countries to look elsewhere for support. Whereas, if the UN is successful in understanding and reacting to the Arab Spring events, it would lead to tremendous opportunities for the UN not only in terms of

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its perception in the region but also in terms of advancing democracy and human rights in the region and elsewhere. Success will,

however, depend on the UN recognizing the particular elements of these events (see Box 4).

Box 4: The Arab Spring: Key factors at play in political transitions

- Democracy in itself is increasingly perceived as a human right and is being called for as such.
- Civil society has proven to be a driver of the process, with the youth being particularly influential.
- Women have played a critical role, with some suggesting that the international community has been quite blind to the enormity and diversity of women involved in the revolutions.
- The role of religion has been significant, possibly presenting a dilemma to an international community that tends to place priority on a secular legal understanding of the concept of human rights. It was argued that both constitution making and the implementation of a democratic framework required a process that was truly reflective of the voices that are part of that democracy.
- Traditional institutions such as political parties and parliament are being questioned, not so much because of their linkage with old governments, but because of their lack of effectiveness. Participants also raised caution, however, against seeing the failure of political structures as an excuse for no longer working with them as opposed to the long term strengthening of these institutions.

If the UN is to use its comparative advantages in supporting democratic processes, it needs to find a way of better using the assets it already has at its disposal. These include the following:

- **Normative power:** the UN is the primary global institution for establishing norms of international law. This has particular value in putting limits on the cultural relativism argument in the human rights field and will undoubtedly play a similar role in the area of democracy. While the need for consensus by the Member States tends to bring out norms and solutions based on the lowest common denominator, the Secretary-General has been successful at using his guidance notes (such as the Guidance Note on Democracy) as a means of advancing the democracy agenda within the UN.
- **Convening power,** at the global, regional, national and local level: The UN has tremendous convening power wherever and whenever it wishes to wield it. It was suggested that the UN should not attempt to use this power to control a process but rather should allow processes to move forward with their own momentum. The goal of the UN and others should be to keep the discussion about democracy and rights open rather than trying to speak for or represent communities. One participant advocated a focus on South-South experience by bringing more recipient countries into discussions.
- **Power of legitimacy:** UN legitimacy is a large part of its strength. People's belief in the legitimacy of an organization is a source of power, and this is particularly so for an organization like the UN which has to rely

on persuasion, rather than other incentives (financial, military) to exercise influence.

- **Protective power:** While difficult to implement and not used enough, this is an important and powerful asset of the UN.
- **Disseminating power:** The UN has a tremendous power for messages to be disseminated around the world through its extensive global outreach. This could be maximized even further if the organization exploits new communication technologies.
- **Power to inspire:** The UN can lend inspiration and power to leaders, which has so far been particularly evident around issues of environmental protection. The human rights and democracy agenda may benefit from this experience.
- **Power of knowledge:** The UN holds a tremendous databank of best practices and lessons learned which should be actively drawn on and disseminated. ■

UN Coherence in Building Sustainable Democratic Governance Based on the Rule of Law

The third panel focused on UN coherence from a number of angles: conceptual coherence of a rights based approach to democracy, coherence in UN implementation, and coherence in the UN's approach to civic engagement around the issue of democratization.

Box 5: Strengthening the linkages between democracy and human rights at the UN

In looking at how to move the agencies and departments of the UN closer together in order to strengthen the linkage between democracy and human rights, a number of suggestions were made:

- Stressing the concept of the inseparable linkage between democracy and human rights from the very top of the UN;
- Making additional efforts to disseminate human rights and democracy building approaches to development;
- Integrating human rights and democracy building approaches in relevant programs and projects at the global, regional and country levels;
- Ensuring greater professional competence, particularly having well informed and well trained staff in the field;
- Dedicating more funding specifically to human rights based democratic governance to help shift the focus.

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In terms of conceptual coherence, the meeting argued that the connections between human rights and democracy have been

clearly made in both academic writings and normative frameworks. The scaffolding that holds up the fragile edifice of democracy is composed of a human rights framework, which embraces all their categories: civil, cultural, economic, political and social. In operational terms, it consists of the following: voting and political participation as defined as human rights in the ICCPR; prioritizing freedom of association and assembly and freedom of expression and opinion, including an independent media; instituting a pluralistic system in which opposition parties are not perceived as enemies but as a constant challenge to those in power to do better or to step down when the electorate decides; a constitutional system upholding human rights, democratic principles, the rule of law, protection of minorities and human rights being protected in the constitution against temporary majoritarian excesses.

These are all concepts brought together in UN policy documents including the UN's Agenda for Democratization (Boutros-Ghali, 1996) and the more recent Secretary-General's Guidance Note on Democracy (UN Secretary-General, 2009b). Participants questioned, however, what this meant practically for the UN and, in particular, where the UN would find the resources for democracy to occupy a sufficiently high level of priority in the UN system to ensure the continuum of engagement necessary.

A related concern was that the different UN offices occupy different points on the continuum between democracy and human rights. The concept of 'One UN' was arguably still more a concept than a reality, and this affected the UN's ability to provide long term support given that democratic transitions are incomplete and unsustainable if they fail to include appropriate institutional reforms.

Participants referred to arguments and lack of clarity about what weight should be

given to universal versus exceptional rights and noted that there is a need for coherence about exactly to which human rights the international community gives priority. Many argued that real democracy must involve a consultative process and said that harm could be done when the international community spoke about rights on behalf of people who can speak for themselves – but whose opinions the international community may not find comfortable. One participant queried what the UN's response would be if a law came into being through fully democratic processes that supported genital mutilation and was supported by the majority of the population.

It was argued that the role of the international community should not be to promote a particular model of democracy, but rather to assist people with inclusive and participatory dialogue processes through the use of good examples. Others suggested that a proper role for the UN was to promote dialogue on human rights and ensure that the necessary resources for such dialogue are available.

It was also argued that the role of the international community is to offer substantive input based on international law and principles. Furthermore, internal mechanisms must be available within the UN to learn from its work and to guide the UN towards objectives that are in line with its fundamental principles and goals, rather than being steered by events. So the international community is there not only to promote dialogue and make available the necessary resources but also to play a constructive role through engaging in consultations and sharing international experience, while insisting on internationally accepted norms and standards.

Participants discussed coherence among international and regional organizations

Box 6: Nepal: The importance of dialogue in democracy building

Nepal illustrates the importance of dialogue in building a democratic framework for a country, as well as the role of international norms. Following the signing of a peace treaty in 2008, the newly elected Nepalese Constituent Assembly was tasked with writing a new constitution. Given the post-conflict multicultural context within which the Assembly operated, the interim constitution required it to make decisions by consensus. This holistic concept went beyond the procedural and substantive definitions of democracy. It extended to consensus democracy and deliberative democracy both as a means of making decisions and as an outcome.

Given the very fractured state of the community, members of the Constituent Assembly agreed that, since Nepal had ratified a number of international human rights instruments, the preamble to the Constitution should recognize the principles of the UN Charter. In this way, a rights based framework was established on which everyone could agree and then discuss how this could work in the Nepalese context. The example of the issue of nationality was given, which is recognized in international law. In Nepal, the language of rights concerning nationality was all encompassing and dynamic, guaranteeing rights to all recognized groups in Nepal and establishing it as a crime to treat anyone as untouchable in any context. The magnitude of these rights is seen as a phenomenal means of social transformation in Nepal.

in their civic engagement in countries undergoing democratic transitions. One of the challenges is the need for a consistent presence in country to sustain an effective relationship with civil society. This is not available to all UN agencies. For the UN, however, the in-country presence also poses challenges as some agencies are required to work closely with the government, so being seen to be allied directly or indirectly with the opposition would make their situation extremely precarious. It was recommended that a UN wide effort is needed to improve support for civil society organizations that are genuinely pursuing a democracy and human rights agenda, even when those organizations are under tremendous pressure from the government. One participant mentioned that peacekeeping and special political missions offer a tremendous opportunity to increase the role and visibility of civil society organizations.

Discussion focused on the concern that international organizations lack sufficient

knowledge about how to deal with parliaments and often found it easier to work with civil society. However, parliaments are uniquely relevant in building a sustainable democracy based on the rule of law and human rights principles. In addition to their role in legislation, parliaments play a key role in civic education, ensuring that people know what needs to be done and managing expectations about what can be achieved. Given this, participants suggested that international organizations should focus on strengthening parliament to help make it part of the solution through supporting actions to increase the representation and the role of women in parliament, ensuring there is adequate room for the opposition in parliamentary proceedings, developing and implementing parliamentary codes of conduct and ethics that communicate values to the electorate, ensuring respect for freedom of expression, and focusing on transparency and accessibility of the parliament to the public. ■

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Conclusions and Recommendations

Conclusions

The Relationship Between Democracy and Human Rights

Recognizing an interdependent link: Participants agreed that the link between democracy and human rights is interdependent, intricate, mutually supportive and symbiotic – with some participants proposing that the most appropriate term to use is ‘mutually constitutive’. Democracy cannot be defined without human rights. Human rights can be protected effectively only in a democratic state. A functional democracy that accommodates diversity, promotes equality and protects individual freedoms is increasingly becoming the best bet against the concentration of power in the hands of a few and the abuse of human rights that inevitably results from it. In turn, the greatest protection of human rights emanates from a sustainable democratic framework grounded in the rule of law.

Responding to the calls for democratic governance and rights: The exciting call for change in Africa and the Middle East was viewed as a combination of a call for sustainable and inclusive democratic governance with a call for rights. Democratic reforms and the restoration of human rights protections are seen as parts of the same vision of change. Both democracy and human rights are advancing globally: there are more democratic and free elections taking place throughout the world, and human rights are observed more than ever before. There has also been advancement in mechanisms of protection and promotion of human rights. The Arab Spring has re-energized the democracy support community, motivating people to act and confirming to the international community that it is on the right track in its efforts to prioritize this issue.

Deepening the understanding of a rights based approach to democracy: The participants struggled with the concept of a rights based approach to democracy. While the rights based approach to development directly changed the quality of development assistance, a rights based approach to democracy, although equally valid, has proved more difficult. Democracy is a complicated and time consuming system. Nevertheless, its description as the ‘least worst’ form of government is just another version of the phrase ‘best but challenging and uneasy’. While building democracy, it is essential to remember that ‘functionality’, ‘effectiveness’ and ‘efficiency’ must be among its constitutive features.

Supporting sustainable rights based democracy building: The issue of sustainability was also debated, with participants noting that human rights based democracy can take a long time to build up. Nor is it a linear, cumulative process and it can collapse easily. A creeping de-democratization can take the form of small adjustments though affecting important elements of political structures. A sustainable rights based democracy requires, among other things, that citizens

are knowledgeable about their rights, that public political participation is encouraged through elections and active involvement in local government, and that institutional accountability and transparency are ensured.

The UN Role in Promoting and Supporting a Rights Based Approach to Democracy

Playing effectively an advocacy role: Participants identified a tension in the UN system between whether the Secretariat is bound to lowest common denominator consensus of UN Member States, or whether it can act independently as an autonomous stakeholder in the promotion of human rights and democracy. In arguing for the latter, Article 99 of the UN Charter states that ‘The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security’ (United Nations, 1945). This means that the Secretary-General does have a distinct responsibility, determining also the position of the entire UN Secretariat.

If the UN is to take action on any issue, it must be armed with universal values and universal rules. Part of the UN’s role is to add to normative and policy development in the democracy and human rights field. The Guidance Note on Democracy is a major step in this regard. This was produced by the Secretary-General in his independent capacity and, as such, is a high level and influential document. It was recognized that the UN has the responsibility to spearhead a discussion on the universality of human rights and democracy, based on global experience.

Determining the extent of UN’s advocacy role throughout the world: The issue of how deeply the UN should be involved in advocacy for human rights based democracy was discussed in each session of the Round Table. The

bias was generally in favour of a thoughtful involvement, fully taking into account the circumstances, and in particular the requirement for national ownership. Where a community is able to hold a dialogue by itself, the UN should focus on facilitating that dialogue and enriching it with international experience. The UN can also do much to strengthen the inclusive nature of community dialogue by providing additional forums for participation, particularly reaching out to the more marginalized in the community.

Exploring the UN’s potential relationship with national, regional and international actors: Attention was raised about the often exclusive relationship the UN has with the executive of the countries where it works. This should not be accepted as the norm, and the UN should attempt to form a broader range of relationships, including with parliaments and civil society – and particularly with women and other disadvantaged groups. In the same vein, the UN’s role would be further strengthened by deepening its partnerships with regional and international actors that have already developed regional standards and normative frameworks for democracy.

Bridging the gap between statements and action: Moving from policy statements to practical implementation is complicated. The UN, like other international and regional actors, prefers to focus on events rather than process to prevent it from stepping beyond being a service provider and into the realm of sovereignty. It is a particularly challenging situation for external actors to be involved deeply in matters such as systems of governance or constitution making that have a decisive impact on the future of the country. Any international support should be based on universal values and norms and should also provide comparative knowledge about what has and has not worked in other places. UN structural coherence is needed not only in the

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area of human rights and democracy: it is a much broader problem for the UN to address on a continuing basis.

Engaging on breaks in the democratic constitutional order: The Round Table deliberated about the role of the UN and other organizations when ruptures in the constitutional order or unconstitutional transitions of government power occur after democratic elections. While most regional organizations have taken a zero tolerance policy approach in this respect, the UN is often the only organization left to engage and provide assistance in such situations, risking criticism either for interference in internal affairs or for tolerating unconstitutional preservation of political power. This leads to questions about whether the UN should insist on crafting a consistent and systematic approach to all cases based on democratic norms and principles or take a more nuanced case-by-case approach. While the latter argument seemed to hold greater weight, it was recognized that the lack of consistency can potentially harm the UN's credibility.

Recommendations

The following key recommendations emerged from the Round Table discussions:

5. The relationship between democracy and human rights is intricate, symbiotic and mutually constitutive. A rights based approach to democracy grounded in the rule of law is considered increasingly the most consistent safeguard against human rights abuses. The UN should both heed the calls for democratic reform as they arise and be involved in sustainable human rights based democracy building processes.
6. The success of a democracy building endeavour will be directly affected by the inclusive and consultative nature of the constitution making process, and human rights standards provide a detailed foundation for these processes. The UN should strive to ensure inclusion and active participation in the constitution making process and should identify appropriate and sufficient resources to support these processes in the long term.
7. The UN must identify and mobilize existing assets within its system and work in a unified manner so as to better marshal its unique ability to promote rights based democratic processes, especially in relation to disadvantaged and under-represented groups, including women and youth.
8. The UN should continue to lead the discussion on the universality of human rights and how the respect, protection, promotion and fulfillment of human rights are part of the essential framework for effective democratic governance. The UN should consider a peer review process for democracy in order to assess how Member States are fulfilling obligations made to their people under the international human rights treaties they have ratified.

More specific conclusions and recommendations are summarized below. These are organized in three groups:

- Building an Inclusive Framework for Democratic Governance based on Human Rights;
- Perceptions of the UN and the UN's Comparative Advantage; and
- UN Coherence in Building Sustainable Democratic Governance based on Human Rights.

Building an Inclusive Framework for Democratic Governance based on Human Rights

The success of democracy building will be directly affected by the inclusive and consultative nature of the constitution making process, as much as by the eventual contents of the constitution. Human rights standards and jurisprudence provide a detailed foundation for processes that are inclusive and consultative, as well as for the substance of what is contained in a constitution. In terms of the latter, substantive protection includes both the nature of rights to be respected, protected, promoted and fulfilled as well as the institutions needed to ensure that violations of human rights have a remedy in practice. A governance framework that is not based on human rights and fundamental freedoms will be devoid of the essential elements for a functioning democracy.

- The UN therefore needs to identify appropriate and sufficient resources to support long term constitution making processes to ensure that human rights are protected and that due process – based on a human rights framework – establishes fair procedures so that grievances and violations of the law can be addressed and so that social conflicts be peacefully resolved.
- The UN should also strive to ensure inclusion and active participation in the constitution making process by as broad a representation of the society as possible.
- All participants in the constitution making process require enough time to consider properly the range of political, economic and cultural factors that must be addressed in the new constitution. The international community should refrain from pushing to reduce the time taken for constitution making. To do so potentially diminishes the effectiveness of the process and reduces the substantive quality of the end

document.

- The role of the UN in a constitution making exercise should be focused on enhancing dialogue and giving voice to all relevant actors in the political process, including in particular more marginalized and disadvantaged groups in a society.
- The Organization should provide comparative knowledge and experiences from inclusive and participatory constitution building processes, especially those drawn from the Global South.
- The UN should build on the expertise relevant to different aspects of constitution making from within its system, including OHCHR which has the lead on human rights, as well as from intergovernmental organizations engaged in inclusive political dialogue, regional organizations and non-governmental organizations that work in this field.
- The UN should also focus on advocating for, as well as financially supporting, inclusive and participatory processes.

Perceptions of the UN and the UN's Comparative Advantage

- The UN needs to identify more creative ways of broadening the groups it interacts with in order to counter concerns about bias towards the executive and to ensure effective engagement in the democratization process. The Secretary-General's Guidance Note on Constitution Making (UN Secretary-General, 2009a) provides guidance for identifying the relevant groups in society that should be consulted in a constitution making process, including women, youth and religious minorities.
- The UN should make more effort to use its comparative advantages and assets

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– including its normative, convening, disseminating and protective powers – in order to enhance its role promoting rights based democracy. The establishment of the UN Coordination and Resource Group has already played a useful coordinating role in this regard; and the various UN agencies should be encouraged to collaborate with each other more actively on democracy assistance.

UN Coherence in Building Sustainable Democratic Governance based on Human Rights

- The UN should continue to lead the discussion on the universality of human rights and how respect, protection, promotion and fulfillment of human rights provides part of the essential framework for effective democratic governance. No other organization has the legitimacy to assume this role. The UN Secretariat and the Secretary-General can play an important role in furthering policy, without having to resort to the lowest common denominator approach.
- Although there is no one formula for the establishment, functioning and evolution of democratic governance, the UN should not hesitate to speak out strongly when democratic governance is being eroded and human rights are violated.
- The UN should act, through all relevant mechanisms and processes, to encourage States that are not yet democratic (or are nominally democratic but do not in practice protect human rights) to carry out democratic reforms that will create open, pluralistic societies based on freedom of expression, association and assembly, democratic electoral law and an independent judiciary, as well as societies firmly rooted in democratic governance

as reflected by the vote of the people in regularly held, open and fair elections.

- The UN should consider a peer review process for democracy, along the lines of the Universal Periodic Review (UPR) mechanism established by the Human Rights Council. As part of the UPR, as well as reporting to relevant treaty bodies, States should be encouraged to declare what actions they have taken to establish democratic governance or to strengthen their democracies and to indicate how they are fulfilling the obligations made to their people in the international human rights treaties they have ratified, as well as in their constitutions and laws. ■

Annexes

ANNEX 1 **Concept Note and Annotated** **Agenda for the International** **Round Table on “Democracy** **and Human Rights” 11-12** **July 2011**

New York, 11-12 July 2011

Concept Note

I. Introduction

1. In November 2007, the Secretary-General requested the development of an organization-wide strategy that further defines the UN approach to supporting democracy, anchoring such a strategy in the three pillars of UN work, namely, peace and security, development and human rights.
2. In response to the aforementioned call by the Secretary-General, two Round Tables were organized in New York on 2008 and in 2010. The first one on “Democracy for development and development for democracy” was held on 12 September 2008. It was organized by the United Nations Department of Political Affairs (DPA), the United Nations Development Programme (UNDP) and the International Institute for Democracy and Electoral Assistance (International IDEA). It sought to identify areas of policy for multilateral action in the current global context – especially by the UN – in the field of democracy promotion and support to enhance sustainable development processes. The second one on “Democracy, Peace and Security”, was held under the auspices of DPA, the UN Department of Peacekeeping Operations (DPKO), UNDP and

International IDEA on 1-2 March 2010. That Round Table reviewed the UN work at the intersection of democracy assistance, peacemaking, peacekeeping and peace building. Based on case studies covering Afghanistan, Nepal, Timor Leste, Haiti and West Africa, the Round Table discussed emerging lessons and identified issues for further consideration and follow up.

3. A third round table, focusing on “Democracy and human rights”, will be organized by the UN Office of the High Commissioner for Human Rights, the United Nations Department of Political Affairs (DPA) and the International Institute for Democracy and Electoral Assistance (International IDEA). It is scheduled to take place in New York for a day and a half, on 11-12 July 2011.

II. Background: Promoting a common understanding of democracy principles, norms and values

4. The perception and understanding of the concept of democracy in its various dimensions, processes and implications has significantly evolved over the years. Since the early nineties, the General Assembly of the United Nations and the UN Commission on Human Rights (herein the Commission) have adopted a host of resolutions dealing with different aspects of democracy and emphasizing its underpinning principles linked with universal values enshrined in the Universal Declaration of Human Rights and several international human rights instruments. At the 2000 UN Summit on the Millennium Development Goals and the 2005 UN World Summit, the international community reaffirmed its commitment to human rights, the rule of law and democracy as universal and indivisible core values and principles of the United Nations.

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5. Drawing on the international human rights normative framework, the General Assembly and the Commission endeavored to promote a common understanding of democracy. In 2002, the Commission adopted a landmark resolution defining its essential elements, which include:
- Respect for human rights and fundamental freedoms,
 - Freedom of association,
 - Freedom of expression and opinion,
 - Access to power and its exercise in accordance with the rule of law,
 - The holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people,
 - A pluralistic system of political parties and organizations,
 - The separation of powers,
 - The independence of the judiciary,
 - Transparency and accountability in public administration,
 - Free, independent and pluralistic media.
6. Given the importance and complexity of the concept of democracy, the Commission mandated the Office of the High Commissioner for Human Rights to organize two experts' seminars in 2002 and 2005 on the inter-linkages and interdependence between democracy, human rights and the rule of law. Their deliberations contributed to a better understanding of conceptual and practical aspects of democracy as a "holistic" framework of the societal order, embracing human, institutional and procedural dimensions. It was emphasized that contemporary constitutionalism, rooted in domestic legal orders worldwide, recognized that democracy was normatively and ethically grounded in universal human rights standards. The findings of the seminars, subsequently taken forward by resolutions of the UN intergovernmental bodies and developed in other official documents, reiterated the vital linkage between democracy, the rule of law, human rights, and sustainable development and highlighted common challenges to them, including:
- Undemocratic accession to, and the exercise of, power;
 - Poverty and social exclusion;
 - Disregard for human rights;
 - Discrimination and discriminatory practices, deprivation of access to justice by disadvantaged groups;
 - Threats to human security and the erosion of the rule of law, inter alia, in the context of combating terrorism;
 - Armed conflicts and violence;
 - Capacity gaps manifested, inter alia, by weak and dysfunctional governance institutions,
 - Absence of democratic accountability.
7. As the UN strives to provide adequate support to the countries confronted with serious situations threatening their political, social and economic stability and the welfare of their populations, there is a need to elaborate effective, responsive and coherent strategies to assist democratization processes and counter challenges to democracy. These strategies should be based on the full recognition of the interaction between democracy and human rights. As highlighted in the Guidance Note of the Secretary-General

on Democracy, “the UN is currently confronted with the triple challenge of building or restoring democracies, preserving democracies, and improving the quality of democracies” (UN Secretary-General, 2009b).

III. Objectives and focus

8. The Round Table will provide an opportunity to analyze the contemporary aspects of linkages between democracy and human rights and their relevance to UN action in the framework of today. On this basis, it should contribute to the development of UN strategies and policies aimed at the consolidation of democracy based on human rights. The Round Table should address different challenges to democracy linked to deficits in human rights, looking at recent developments in many parts of the world and drawing on the lessons learnt from national experiences.
9. The search for practical, policy-oriented responses should frame and guide the discussion, thus enabling the Round Table to contribute to the elaboration of an effective and acceptable universal framework for conducting democracy assistance under a coherent UN engagement policy.

Areas of focus

10. The Commission on Human Rights Resolution 2000/47 on Promoting and Consolidating Democracy “requests the Secretary-General and the High Commissioner to bring the present resolution to the attention of member States, the competent United Nations organs and intergovernmental and non-governmental organizations and to disseminate it on the widest possible basis” (United Nations Commission on Human Rights, 2000).
11. Resolution 2002/46 on Further Measures to Promote and Consolidate Democracy “encourages the paying of particular attention to the recommendation by the Secretary-General that the United Nations should work to develop integrated democracy assistance programmes and common country strategies that are locally owned and which involve a wide array of local actors.” It calls for “information sharing and improved coordination within the United Nations system so as to facilitate the exchange of lessons learned and best practices for promoting and consolidating democracy.” It also “encourages the development of broad-based democracy expertise drawn from all regions of the world” (United Nations Commission on Human Rights, 2002).
12. In light of recent events in North Africa and the Middle East, the Round Table aims to review and revalidate United Nations system-wide action to ensure system-wide coherence and efficiency as well as to assist member States in implementing the elements of the resolution.
13. To this end, working sessions will focus on the following themes:
 - a. The Role of Human Rights in Democracy Building in Situations of Regime Change and Threats to Democracy*

Issues to be discussed under this theme will include:

 - Aggregation of power in the executive—reoccurrence of the belief in the greater effectiveness of the authoritarian rule versus democracy;
 - Violations/Denial of human rights under authoritarian or populist rule;

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- Building the framework of democratic governance—the reconciliation of majority rule and minority rights—power sharing and human rights challenges;
- Transitional measures towards a democratic institutional framework;
- Ensuring the rule of law—accountability, the right to the truth and reconciliation;
- Civil society participation in transitional processes;
- Reaction to unconstitutional changes of governments (military coup d'état against a democratically elected government; overthrow of a democratic elected government by armed dissident groups, rebel movements, mercenaries; rejection of the transfer of power to the winning party after free, fair and regular elections);
- The 2000 Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government.

b. The Perception from Recipient Countries on the UN's Role and Impact on Promoting a Rights Based Approach to Governance

- Perception of the UN and its approach to democracy assistance;
- UN comparative advantage vis-à-vis other international and regional actors;
- How to tailor UN approaches to rights based governance to the requirements of the country/entity in question.

c. UN Coherence in Building Sustainable Democratic Governance based on the Rule of Law

- Holistic concept of democracy—common opportunities and challenges to democracy, rule of law and human rights;
- Democracy—constitutionalism—good governance—the UN involvement in constitution-making and constitution reform processes;
- Democracy and sovereignty—sovereignty as responsibility;
- Countering social exclusion—participation of disadvantaged groups in governance (the poor, gender dimension, minorities);
- The right to participate in public affairs, voting rights, and the right of equal access to public service;
- Transparency and accountability as deriving from and underpinning human rights, democracy and the rule of law;
- Civil society as a vehicle for democracy and human rights.

Participants and experts

14. The Round Table will gather internationally recognized experts and practitioners in human rights, international law and international relations, from various geographical regions as well as representatives of UN agencies and programmes, including the UN Democracy Fund. Experts will be identified by OHCHR in consultation with DPA and International IDEA.

Organization of work

15. The experts making presentations for each session will be requested to submit short background working papers on the subject assigned to them and formulate policy and action-oriented

recommendations on the way forward. Following a brief presentation of each paper, the participants will engage in a plenary discussion. ■

Agenda

Democracy and Human Rights Round Table

11-12 July 2010, New York

UN Headquarters

Organized by the Office of the United Nations High Commissioner for Human Rights, the United Nations Department of Political Affairs, and International IDEA

with the contribution of the Permanent Mission of Italy to the United Nations

MONDAY, 11 JULY 2011

08:30 REGISTRATION

09:15 OPENING OF THE ROUND TABLE

Mr Ivan Šimonović, Assistant Secretary-General for Human Rights
 Ms Elizabeth Spehar, Director, Europe Division, United Nations Department of Political Affairs
 Dr Massimo Tommasoli, Permanent Observer for International IDEA to the United Nations

09:45 BACKGROUND

Professor Dzidek Kedzia, University of Poznań
“Democracy and Human Rights: Challenges and Opportunities for the UN”

10:05 DISCUSSION

10:45 COFFEE BREAK

11:00 PANEL 1: THE ROLE OF HUMAN RIGHTS IN DEMOCRACY BUILDING IN SITUATIONS OF REGIME CHANGE AND THREATS TO DEMOCRACY – SETTING THE CONSTITUTIONAL AND GOVERNANCE FRAMEWORK

Chair: H.E. Ambassador Christian Strohal, Permanent Representative of Austria to the United Nations in Geneva

Speakers: Professor Louis Aucoin, Tufts University
 Professor Gabor Halmai, University of Budapest
 Professor Tiyanjana Maluwa, Pennsylvania State University

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Opening Remarks: Dr Massimo Tommasoli, Permanent Observer for International IDEA to the UN (left), Mr Ivan Šimonovi , Assistant Secretary-General for Human Rights, UN (centre), Ms Elizabeth Spehar, Director, Europe Division, UN DPA (right)



Mr Ivan Šimonović, Assistant Secretary-General for Human Rights, UN



Ms Elizabeth Spehar, Director, Europe Division, UN DPA



Dr Massimo Tommasoli, Permanent Observer for International IDEA to the UN



Background: Prof Dzidek Kedzia, University of Poznań



Panel 1: Prof Gabor Halmai, University of Budapest (left), Prof Louis Aucoin, Tufts University (centre left), H.E. Amb Christian Strohal, Permanent Representative of Austria to the UN in Geneva (centre right), Prof Tiyanjana Maluwa, Pennsylvania State University (right)



H.E. Amb Christian Strohal, Permanent Representative of Austria to the UN in Geneva



Prof Louis Aucoin, Tufts University



Prof Gabor Halmai, University of Budapest



Prof Tiyanjana Maluwa, Pennsylvania State University



Panel 2: Mr Ibrahim Lethome Asmani, Law Society of Kenya (left), Dr Azza Karam, Senior Adviser, Culture, UNFPA (centre left), Ms Elizabeth Spehar, Director, Europe Division, UN DPA (centre right), H.E. Amb Christian Strohal, Permanent Representative of Austria to the UN in Geneva (right)



Dr Azza Karam, Senior Adviser, Culture, UNFPA



Mr Ibrahim Lethome Asmani, Law Society of Kenya



Panel 3: Prof Christie Warren, William & Mary College (left), Mr Winluck Wahu, International IDEA (centre left), Mr Rogier Huizenga, IPU (centre right), Prof Stephen Marks, Harvard University (right), Ms Geraldine Fraser-Moleketi, Practice Director, DGG, UNDP BDP (not pictured)



Ms Geraldine Fraser-Moleketi, Practice Director, DGG, UNDP BDP



Prof Stephen Marks, Harvard University



Mr Winluck Wahiu, International IDEA



Prof Christie Warren, William & Mary College



Mr Rogier Huizenga, IPU



Wrap-Up and Conclusions: Mr Roland Rich, Executive Head, UNDEF

Based on their experiences in East Timor, Hungary, and the African Union, panelists will address strategic, policy, operational and research-level issues related to:

- How the UN and regional organizations handle unconstitutional changes of government or electoral disputes;
- The role of civil society and national, regional and international governmental actors in building an inclusive framework for democratic governance in the aftermath of regime change;
- The need for and scope of transitional governance arrangements;
- How to assist in identifying and designing the most appropriate system of governance, including power-sharing arrangements;
- How to reflect human rights, including minority rights, in constitutional reform efforts;
- Transitional justice: accountability for human rights violations: bringing perpetrators to justice, the right to the truth and reconciliation, reparations for victims of human rights violations; the need for mechanisms of justice to deal specifically with violations of human rights targeting women related to the conflict.

13:00 LUNCH

14:30 PANEL 2: THE PERCEPTION FROM PARTNER COUNTRIES ON THE UN'S AND REGIONAL ORGANIZATIONS' ROLE AND IMPACT ON PROMOTING A RIGHTS-BASED APPROACH TO GOVERNANCE

Chair: Ms Elizabeth Spehar, Director, Europe Division, UN Department of Political Affairs

Speakers: Ambassador Christian Strohal, Permanent Representative of Austria to the United Nations in Geneva
Dr Azza Karam, Senior Adviser, Culture, UNFPA
Mr Ibrahim Lethome Asmani, Law Society of Kenya

Based on their experiences in the Arab World, Kenya, and the OSCE region, panelists will address:

- The perception of the UN and regional organizations and their approach to democracy assistance based on human rights principles;
- UN comparative advantage vis-à-vis other international and regional actors;
- How to tailor UN approaches to rights-based governance to the requirements of the country/entity in question.

15:30 COFFEE BREAK

15:45 RESUME PANEL DISCUSSION

16:45 WRAP-UP AND CONCLUSIONS FROM DAY 1

17:00 END OF DAY 1

TUESDAY, 12 JULY 2011

09:15 PANEL 3: UN COHERENCE IN BUILDING SUSTAINABLE DEMOCRATIC GOVERNANCE BASED ON THE RULE OF LAW

Chair: Ms Geraldine Fraser-Moleketi, Practice Director, Democratic Governance

Speakers: Group, UNDP Bureau for Development Policy (BDP)
 Professor Stephen Marks, Harvard University
 Mr Winluck Wahiu, International IDEA
 Professor Christie Warren, William & Mary College
 Mr Rogier Huizenga, Inter-Parliamentary Union (IPU)

Based on their experiences in Kyrgyzstan, Darfur, Nepal, and elsewhere, panelists will address:

- A holistic and inclusive concept of democracy - opportunities and challenges to democracy, rule of law, and human rights;
- Transparency and accountability as deriving from and underpinning human rights, democracy and the rule of law;
- Civil society as a vehicle for promoting and sustaining democracy and human rights.

11:30 COFFEE BREAK

11:45 WRAP-UP AND CONCLUSIONS

Chair: Mr Roland Rich, Executive Head, UN Democracy Fund

13:00 RECEPTION HOSTED BY THE PERMANENT MISSION OF ITALY TO THE UN

15:00 END OF DAY 2 ■

Democracy and Human Rights: The Role of the UN

ANNEX 2

Introductory Remarks of Mr Ivan Šimonović

Assistant Secretary-General for Human Rights

Distinguished experts,
 Ladies and gentlemen,

It is a great pleasure to address this Round Table on Democracy and Human Rights that has been organized by OHCHR, DPA and International IDEA. This Round Table should be quite interesting as it seeks to explore the interdependence and linkages between democratic governance and human rights. I think most people would agree that democratic political systems must not simply be a framework for defining the powers and limitations of institutions of the State

and how they work together, nor simply outlining the procedures to be followed in holding elections that focus on such things as eligibility to vote and to be a candidate for election. Rather successful democratic governance must inevitably focus on promotion and protection of human rights and fundamental freedoms. For without this protection there can be no democracy in any meaningful sense. Only a State committed to protecting individual liberties, equality and human dignity can ultimately be a free and democratic country in practice.

For democracy to work satisfactorily it must also offer a vision of a better life for its citizens and residents, individually and in community with others. This recognition can and should be based on a rights-based approach, with particular regard for economic, social and cultural rights. As numerous politicians have observed, rich and

poor cannot co-exist side by side without a considerable risk of social disruption and upheaval. Therefore democracy also means focusing on ensuring that the basic necessities of life such as adequate food, water and housing for everyone are a goal of society. How can we realistically talk about the right to life in a political or civil sense if a person does not have enough to eat or a person's life may be jeopardized due to lack of clean water or adequate medical care? Similarly, the protection of the social and cultural rights of all persons, including minorities and vulnerable persons and groups, underpins a well-functioning democracy.

I thought it might be interesting this morning to reflect somewhat on the notions of both democracy and human rights, as I know the purpose of the Round Table is to focus on the relationship between the two. The word “democracy”, as many of you may know, comes from Greek and literally means “rule by the people”. The establishment of democracy in Athens some 2500 years ago was a reaction against a dominating aristocracy that had led to significant political, economic and social problems, including in particular the strong concentration of political and economic power in the hands of a few. In rejecting rule by aristocratic elites, Athenian democracy forged an entirely different model based on the principle of equality of rights, and extended access to power to most citizens.

Interestingly, Athenian democracy also had another feature found in modern democracies – courts with powers to control other bodies of government and its political leaders. Pericles, often considered one of the founders of Athenian democracy, was recorded to have described the Athenian system of rule by saying the following, and I am quoting, “Its administration favors the many instead of the few; this is why it is called a democracy. If we look to the laws, they afford equal

justice to all in their private differences... advancement in public life falls to reputation for capacity, class considerations not being allowed to interfere with merit; nor again does poverty bar the way... The freedom which we enjoy in our government extends also to our ordinary life.”

The Athenian experiment in democracy stimulated Greek philosophers to analyze and reflect on different systems of governance. Aristotle, for example, analyzed different systems of rule in Greek city-states, and divided them into three categories: democracies; oligarchies / aristocracies; and autocratic regimes. Aristotle wrote in his seminal work *Politics* that “a fundamental principle of the democratic form of constitution is liberty.” He explained that “one factor of liberty is to govern and be governed in turn; for the popular principle of justice is to have equality according to number, not worth, and... so it results in democracies the poor are more powerful than the rich, because there are more of them and whatever is decided by the majority is sovereign.”

Democracy in ancient Greece, however, was not without its detractors, with some Greek philosophers describing it as instable and a system of rule where either the less well-born, the mob or the poorer classes were holding power. Plato, for example, favored governance by an elite class.

However, it is not my intention this morning to give a history lesson. Nevertheless, it is striking that some of the problems that we are struggling with today – and that you will be discussing today and tomorrow – are problems that have been identified for centuries. The concepts of majority rule to legitimize government action, equal opportunity to vote and participate in public life, a focus on merit regardless of social status as a basic principle of equality, equality in

justice, liberty in political life and in ordinary life, and independent courts to restrain government action: these concepts and issues appear as relevant today as they were 2500 years ago.

The arguments against democracies made more than 2000 years ago – that democracies are unstable, that they only promote incapable leaders of the masses and that rule by an elite is better – also seem to have a certain familiar ring. Can we not recognize today that alternative political systems to democracy resemble the oligarchies and authoritarian rule regimes Aristotle identified? Have we not heard in contemporary discourse justifications by political leaders of oligarchic or authoritarian states that democracy would bring instability to a given country, or that their state is not yet ready for democracy and more suited to rule by an elite – be it a political, military or technocratic elite? While these opinions might be sincerely held, they more often mask a reluctance to relinquish power and economic privilege; reflect a distrust of human rights and freedoms for fear that they may result in criticism of the rulers and threaten their interests; and a fear that democratic systems may bring to power those whose political philosophies are inimical to those currently in office.

Although I realize it is an imperfect comparison, I cannot help but think that popular uprisings against authoritarian regimes today – and I am thinking in particular of the Arab Spring movements – can be compared to popular revolts in ancient Greece by the frustrated and improvised many against a small, entrenched few who enjoyed relatively great wealth and a monopoly on political power.

I have also made these historical references this morning to highlight that many of the issues associated with discussions of democratic governance and human rights

are not in any sense new problems at all, but very old problems that relate to deeply held and often conflicting ideas about political governance.

Before I conclude this morning, I would like to make reference to two United Nations documents that are very important in terms of addressing the relationship between democracy and human rights. The first is resolution 2002/46 of the former Commission on Human Rights that outlines human rights that are essential to the effective functioning of democracy (United Nations Commission on Human Rights, 2002). Although I am sure you will be discussing in detail these rights during your deliberation, it is perhaps worth mentioning them here at the outset of this Round Table. These elements include the following:

- Respect for human rights and fundamental freedoms,
- Freedom of association,
- Freedom of expression and opinion,
- Access to power and its exercise in accordance with the rule of law,
- The holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people,
- A pluralistic system of political parties and organizations,
- The separation of powers,
- The independence of the judiciary,
- Transparency and accountability in public administration, and
- Free, independent and pluralistic media.

In the same resolution, the Human Rights Commission also reaffirmed that the right to

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development and the elimination of extreme poverty can contribute substantially to the promotion and consolidation of democracy. The resolution noted that democracy is compatible with and should be open to the wide variety of philosophical ideas, beliefs and social, cultural and religious traditions that exist in the world.

The second important UN document that I would like to refer to on this subject is the Guidance Note of the Secretary-General on Democracy, which notes that the UN Charter itself refers to the essential underpinnings of democracy, which are human rights, fundamental freedoms, the equal rights of men and women, and the removal of distinctions on the basis of race, sex, language or religion. The Guidance Note highlights that the Universal Declaration of Human Rights also captures many of the important elements of democracy, and in particular that concept that “the will of the people shall be

the basis of authority of government; (and) this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage...” (UN Secretary-General, 2009b). Although the Guidance Note refers to the importance of civil and political rights as essential to the functioning of democracy, it also explains that the appeal of democracy also stems in part from its association with the advancement of the quality of life for all human beings.

Distinguished experts,
Ladies and gentlemen,

I would like to extend my warm thanks to DPA and to International IDEA for their collaboration with OHCHR in the planning and organization of this Round Table. It is important to support this type of joint programming, and hopefully we will see other examples of this type of cooperation in the future. This concludes my remarks this morning. Thank you. ■

ANNEX 3

Statement of Ms Elizabeth Spehar

Director, Europe Division, United Nations Department of Political Affairs

It is my great pleasure to participate in this meeting, organized in partnership with OHCHR and IDEA. We are aiming for a watershed event that will contribute to reinvigorating the democracy paradigm at the UN, not only in terms of the concept and its relationship to the Organization’s fundamental principles and values, but also in terms of practices. This is the fourth such

meeting organized at the UN with the help of IDEA, focused on discussing the important linkages between democracy and the three main pillars of UN endeavor, as well as gender.

Today’s focus on the relationship between democracy and human rights comes at a propitious time. Throughout North Africa, the Middle East and beyond, calls are growing for greater freedom, respect for human rights, dignity and political participation. These are goals that only a democratic society can meet and sustain. As the Secretary-General has often remarked, it is first and foremost the leaders of countries in transition who must listen and respond to the voices of their people. The international community, however, also needs to listen to those voices

and be prepared to assist in the safeguarding of those communities' fundamental rights and freedoms as subscribed to by all nations and to advance political participation. Our Charter and our human rights instruments are clear on these fundamental principles. We are not here to promote any particular model; there is no one single model of democracy for all countries. But we need to assist in the fulfillment of the basic rights of all, which include political and civil – democratic – rights universally enshrined in UN instruments.

During the 2005 World Summit, governments were unambiguous about the vital linkages between democracy and human rights, as well as their connection to development. They underscored that “democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing.” And for those who would question the place of democracy in the UN context, the 2009 Guidance Note on Democracy of the Secretary-General reminds us that “Democratic principles are woven throughout the normative fabric of the United Nations.”

In our times of turbulence and change, the United Nations needs to be prepared to be more proactive in supporting countries through comprehensive democracy assistance and in assisting them with the fulfillment of their human rights obligations – these two naturally go hand-in-hand. We furthermore need to make our assistance more efficient and better coordinated amongst the various UN entities and also with other actors on the ground. We, as the international community, also need to ask ourselves a few fundamental questions related to our support for democracy and human rights, including: are we focusing on the right issues?; how are our actions promoting and supporting democracy perceived?; how do we ensure that the support

being provided is substantive and inclusive and is in full observance of human rights principles?

More specifically, we need to consider:

- How are the UN as well as regional organizations being perceived with respect to their roles in the promotion of human rights and democracy?
- How can we ensure credibility, legitimacy and accountability in this sensitive area of work?
- How do we respond to perceptions of double standards on the issues of human rights and democracy?
- How can we ensure a consistent and systematic approach based on norms and principles, while also evaluating and tailoring UN responses based on specific country needs and on a case-by-case basis?
- How to ensure effective consolidation and sustainability of democracy and human rights-based regimes?

For the UN, it is important to look beyond our own context and to recognize the advances in the areas of human rights and democracy promotion and protection on the part of various regional organizations, including the OAS and AU, that have produced their own progressive, far reaching and comprehensive instruments on these issues. The UN currently does not have such mechanisms and it may be useful to learn from the experiences of those organizations, with a view to eventually strengthening the world body's own tools in this regard.

In closing, let me emphasize once again that this meeting comes at a crucial time when people in many countries of the world are striving for democratic transition as well as the recognition and true fulfillment of basic

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human rights. But there are also worrying cases of countries which are experiencing backsliding in their democratic standards and practices, which is resulting in the erosion of the respect for human rights. It is critical that the international community, and in

particular the United Nations, develop a comprehensive and coordinated approach to address these important challenges and that it seek to strengthen its support for civil society, societies in transition and bottom up approaches to human rights and democracy promotion. ■

ANNEX 4

Statement of Dr Massimo Tommasoli

Permanent Observer for
International IDEA to the United
Nations

It gives me great pleasure to welcome you to this Round Table, the fourth in a series jointly organized by International IDEA with the United Nations on the relationships between democracy and the pillars of UN work. Previous meetings have addressed democracy and development, democracy and peace and security, and democracy and gender equality. In those occasions, the linkage between democracy and human rights has been an underlying theme.

This is consistent with the consensus that has grown over the last two decades, explicitly stressed in paragraph 8 of the 1993 Vienna Declaration and Plan of Action: “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing”. The background paper prepared for this event reviews the conceptual and operational challenges and opportunities implied by the establishment of these linkages in the UN system.

Only a few years ago a debate among democracy building practitioners unfolded

on the backlash against democracy. It was generated by assessments noting not only worsening indicators and trends, but also the reduction of spaces for democracy and human rights activists in many difficult situations despite domestic and international efforts to support them. Interestingly, human rights practitioners claimed that the narratives of autocrats were making use of democracy buzzwords aimed at gaining international legitimacy for flawed ‘democratic’ processes. For example, the 2008 Human Rights Watch (HRW) report stated that “rarely has democracy been so acclaimed yet so breached, so promoted yet so disrespected, so important yet so disappointing” (HRW 2008, page 1; see also Roth, 2009, page 140); and it stressed that the lack of a legally established definition for ‘democracy’ was a partial explanation for the situation. However, the events in North Africa and the Middle East have shown the capacity of civil society and active citizens, both women and men, to proactively engage in new forms of social and political mobilization, defining a new agenda for democracy building for the next decade.

Indeed, the notion of a right to democratic governance is still debated and is not “enshrined in a widely adopted legal instrument” (Rich, Newman, 2004, page 8). Although, as the UN Secretary-General’s guidance note on Democracy of September 2009 stressed, there is a powerful normative and conceptual foundation for the work

of the UN on democracy building (UN Secretary-General, 2009b). And yet, both in the areas of democracy and human rights, there are still “contradictions and imbalances between public expectations of justice and the determination of states to protect their sovereignty; between powerful states seeking a geopolitical hegemony and others seeking the protection of international law; and between rhetorical promotion and lack of effective protection” (Jolly, Emmerj, Weiss, 2009, page 67).

Some general issues cut across the three panels of our Round Table:

- Can the UN’s democracy work contribute to the closing of the implementation gaps that are still perceived in the UN human rights system?
- How can human rights operations on the ground, embodying capacity building and monitoring functions, benefit from and be more effectively integrated within the overall UN democracy building efforts?
- How can work on human rights in other parts of the UN, like rights-based approaches to development, humanitarian action, or peace and security work, be more influenced by democracy and human rights considerations?

Together with the DPA and the OHCHR, we have chosen three angles for addressing the linkages between democracy building and human rights: the UN’s work in situations of regime change and threats to democracy; local perceptions of the UN’s role and impact in promoting a rights-based approach to governance; and the UN’s coherence in building governance based on the rule of law. Key in this respect is work on constitution

building, a priority area for International IDEA, on which we are developing, in partnership with the UN, comparative analysis and capacity-building tools for practitioners at the national and international level.

Government responsiveness to the interests and needs of the greatest number of citizens is strictly associated with the capacity of democratic institutions and processes to bolster the dimensions of rights, equality and accountability. If considered not solely an instrument of the government but as a rule to which the entire society, including the government, is bound, the rule of law is fundamental in advancing democracy. However, strengthening the rule of law has to be approached not only by focusing on the application of norms and procedures. One must also emphasize its fundamental role in protecting rights and advancing inclusiveness, in this way framing the protection of rights within the broader discourse on human development.

A common feature of both democracy and the rule of law is that a purely institutional approach does not say anything about actual outcomes of processes and procedures, even if the latter are formally correct. When addressing the rule of law and democracy nexus, a fundamental distinction has to be drawn between “rule by law”, whereby law is an instrument of government and government is considered above the law, and “rule of law”, which implies that everyone in society is bound by the law, including the government. Essentially, constitutional limits on power, a key feature of democracy, require adherence to human rights and the rule of law.

Another key dimension of the human rights-rule of law-democracy nexus is the recognition that building democracy and the rule of law may be convergent and mutually reinforcing processes whenever the

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rule of law is defined in broad, ends-based terms rather than in narrow, formal and exclusively procedural terms. The nexus is strong whenever the rule of law is conceived in relation to substantive outcomes, like justice and democratic governance. This distinction is often characterized by resorting to the opposition between “thin” and “thick” conceptions of the rule of law.

Formal and substantive notions are certainly related, and some scholars argue against a thin/thick dichotomy, pointing to the fact that in situations of social and political change both formal and substantive features of the rule of law may be “thinner” or “thicker”. However, in general terms, a focus on “thin” definitions places emphasis on the procedures through which rules are formulated and applied, whereas “thick” definitions aim to protect rights and frame them within broader human development discourse.

A “thick” definition delineates positively the rule of law as incorporating such elements as a strong constitution, an effective electoral system, a commitment to gender equality, laws for the protection of minorities and other vulnerable groups and a strong civil society. The rule of law, defended by an independent judiciary, plays a crucial function by ensuring that civil and political rights and civil liberties are safe and that the equality and dignity of all citizens are not at risk. It also helps protect the effective performance of the various agencies of electoral, societal and horizontal accountability from potential obstructions and intimidation by powerful state actors.

This “thick” definition of the rule of law differs from “thinner” definitions that place emphasis on the procedures through which rules are formulated and applied. Examples of the tenets within a “thick” definition are provided by the UN Secretary-General in his reports on the rule of law. In 2004 the

Secretary-General stressed that for the UN the rule of law is:

“(…) a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires as well measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency” (UN Secretary-General 2004, paragraph 6).

Referring to this definition in his 2009 Guidance Note on Democracy, the Secretary-General also added that the UN provides expertise and support to “the development of legislation and the strengthening of, in particular, legislative, executive and judicial institutions under such principles to ensure that they have the capacity, resources and necessary independence to play their respective roles” (UN Secretary-General, 2009b).

Over the years the UN has fostered the rule of law at the international level through the consolidation and development of an international framework of norms and standards, the establishment of international and hybrid courts and tribunals, and non-judicial mechanisms. It has refined its framework for engagement in the rule of law sector at the national level through the provision of assistance to constitution making; the national legal framework; institutions of justice, governance, security and human rights; transitional justice; and the

strengthening of civil society. The Secretary-General's 2008 Guidance Note on the UN Approach to Rule of Law Assistance provided overarching principles and a framework for guiding UN rule of law activities at the national level (UN Secretary-General, 2008). Furthermore, his 2009 Guidance Note on UN Assistance to Constitution-making Processes outlined the components of a constitution-making process with the recognition of the importance of constitution making to democratic transitions (UN Secretary-General, 2009a).

A practical example of the importance of the rule of law for democracy building is the fact that the rule of law is a fundamental principle embraced in most modern democracies. Constitutions contain the fundamental and, most often, supreme law of the state, and the rule of law dictates the enforcement of those principles above all other laws. Constitutions also preserve fundamental principles and values by making the process of amendment burdensome. Some constitutions ensure the permanence of certain principles and values by prohibiting amendments. The judiciary, which applies the law to individual cases, acts as the guardian of the rule of law. Thus an independent and properly functioning judiciary is a prerequisite for the rule of law, which requires a just legal system, the right to a fair hearing and access to justice (Böckenförde, Hedling, Wahiu, 2011, pages 17-18).

Constitutions do much more than establish a government and regulate its relationships with citizens. They have become in many countries, also, crisis management tools. The benefits of constitutions designed for conflict-affected and deeply divided states hinge on their ability to reconcile groups, to address intolerable grievances and to prevent further polarization and conflict deterioration. Also in this area, national ownership is of the

utmost importance. The choice of process should be left to national constitution builders who are able to prevail in the local context. Constitutional design suited to the requirements of managing conflict has had some degree of success. At the same time, other factors such as economic inequality are increasingly important determinants in new demands for constitution building.

Electoral justice provides another example of the linkages between democracy, human rights and the rule of law. Electoral justice ensures that every action, procedure and decision related to the electoral process is in line with the law and that the enjoyment of electoral rights is protected and restored, giving people who believe their electoral rights have been violated the ability to make a complaint, get a hearing and receive an adjudication. An electoral justice system is a key instrument of the rule of law and the ultimate guarantee of compliance with the democratic principle of holding free, fair and genuine elections.

As noted by the Global Commission on Democracy, Elections and Security (2012), elections with integrity – based on political equality, transparency and accountability – are crucial for human rights and democratic principles, as they give life to rights enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and other international human rights instruments and covenants⁹. One of the main challenges to elections with integrity consists of building the rule of law to substantiate claims to human rights and electoral justice so that citizens, including political competitors and those in opposition, have legal redress to exercise their election-related rights¹⁰.

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⁹ Elections with integrity matter in many other tangible ways: empowering women, fighting corruption, delivering services to the poor, improving governance and ending civil wars.

The ongoing debate on the post-2015 international development agenda provides a unique opportunity to stress the inter-linkages between democracy, human rights and the rule of law. To ensure domestic accountability within democratic ownership frameworks, it is essential to take into account both the democracy and rule of law dimensions of the next generation of Millennium Development Goals (MDGs)/Sustainable Development Goals (SDGs) and the potential value of a voluntary goal on democracy, human rights and the rule of law to help drive the development agenda. ■

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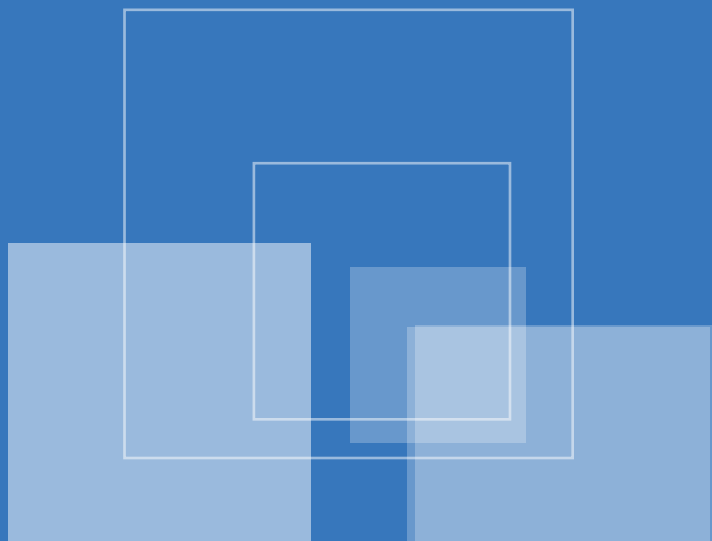
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Abbreviations

AU	African Union
BDP	Bureau for Development Policy [UNDP]
DGG	Democratic Governance Group [UNDP BDP]
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
EMBs	Election Management Bodies
HRC	Human Rights Council
HRW	Human Rights Watch
ICCPR	International Covenant for Civil and Political Rights
IDEA	International Institute for Democracy and Electoral Assistance
IPU	Inter-Parliamentary Union
MDGs	Millennium Development Goals
MENA	Middle East and North Africa
NLB	North Lawn Building [UN Headquarters]
OAS	Organization of American States
OAU	Organization of African Unity
OSCE	Organization for Security and Co-operation in Europe
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDEF	United Nations Democracy Fund
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UN DPA	United Nations Department of Political Affairs
UN DPKO	United Nations Department of Peacekeeping Operations
UN OHCHR	United Nations Office of the High Commissioner for Human Rights
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UPR	Universal Periodic Review



United Nations



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