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Statement by the Independent Expert on the Promotion of a Democratic and Equitable
International Order, Prof. Dr. Alfred de Zayas

The mandate of the Independent Expert on the promotion of a democratic and equitable international order was created by Human Rights Council resolution 18/6 of September 2011, which is an omnibus resolution aiming at the convergence of civil, cultural, economic, political and social rights into a coherent synthesis capable to advance a just international order.

I assumed my functions in May 2012, presented my first report to the Human Rights Council in September 2012 and my second report in September 2013. I presented a different report to General Assembly in November 2012 and will be presenting – *Deo volente* – my new report to the General Assembly on 28 October 2013.

In its preamble, resolution 18/6 affirms that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing, and that democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. It further emphasizes that that democracy is not only a political concept, but that it also has economic and social dimensions.

Operative paragraph 6 stipulates that a democratic and equitable international order requires, *inter alia*, the realization of (f) International solidarity, as a right of peoples and individuals; (g) The promotion and consolidation of transparent, democratic, just and accountable international institutions in all areas of cooperation, in particular through the implementation of the principle of full and equal participation in their respective decision-making mechanisms; and (h) The right to equitable participation of all, without any discrimination, in domestic and global decision-making.

It thus becomes apparent that the mandate has not only an international but also a national dimension, both of which I have endeavoured to take into account in my reports. Critics consider the mandate overbroad and utopian. It is my ambition to persuade the doubters that there is added value in the mandate, and accordingly I formulate concrete and pragmatic recommendations to States, National Human Rights Institutions, civil society, and the Human Rights Council itself. Among my recommendations is the elaboration of a study how the establishment of a United Nations Parliamentary Assembly, or World Parliamentary Assembly can significantly advance the goal of realizing an international order that is more democratic and more equitable.

I am indebted to Professor Joseph Schwartzberg for his pertinent publications, particularly his forthcoming book *Transforming the United Nations System*, which is being published by the United Nations University. I am also indebted to Andreas Bummel who kindly followed my invitation to a daylong expert consultation held in Geneva on 16 May 2013, which

significantly helped me to formulate my own ideas about the modalities of establishing a World Parliamentary Assembly.

Seen from the perspective of international democracy, it is obvious that the Security Council is undemocratic – not only because of its limited composition, but also because of the privileges that only five permanent members of the Council enjoy. Other players that exercise enormous power on all of us are similarly undemocratic in the *modus operandi*, notably the World Bank, the IMF and the WTO. It would be desirable to bring the financial institutions under the supervision of the United Nations pursuant to articles 57 and 63 of the UN Charter. These bodies should also report to the Human Rights Council in the context of the Universal Periodic Review procedure. Transnational corporations also exercise enormous influence without being subjected to the rules of transparency and accountability. At present the most representative body within the United Nations is the General Assembly, but only Ambassadors sit in the Assembly, representing governments, and not always the people of the respective states. Moreover, because the Assembly lacks the power of implementation, its decisions are frequently flouted, and thus the will of the international community is ignored. Reform of the United Nations must revitalize the General Assembly and give it enhanced powers, as I have proposed in my reports.

As far as domestic democracy, all here present know that democracy means government of the people by the people. While we agree that consultation and participation are essential to every democracy, this is seldom achieved in practice. In Switzerland the model of direct democracy, characterized by the people's right of initiative, referenda, recall and impeachment, has proven itself. But democracy cannot mean just majority rule. Democracy must be understood within the framework of a constitution and the rule of law, which must protect also the rights and interests of dissenters and minorities. By comparison, the prevalent system of representative democracy frequently suffers from a disconnect between power and the people. A parliament only has legitimacy, when parliamentarians genuinely represent their constituencies and are not *legibus solutus* or free to cater to special interests such as the military-industrial complex and the financial bankers, instead of being true to their campaign promises and doing what the electorate wants them to do.

The Danish Institute for Human Rights, a National Human Rights Institution based in Copenhagen, is currently conducting a study on the right of public participation in political processes and decision-making. I attended the first workshop in September and argued that the right of public participation is not a vague promise, but actually has a solid legal basis in universal, regional and national legislation as well as in case-law. The actual practice of public participation, however, is much less developed.

Participation is a hallmark of democratic governance, entailing a measure of timely consultation so as to legitimize the exercise of governmental power. Indeed, since democratic governments must by definition operate with the consent of the governed, it is the responsibility of government to adopt the necessary measures so as to enable free, prior and informed consent. All democratic governments have a responsibility to *proactively* inform the population in a timely and transparent fashion about matters relevant to domestic governance and foreign policy, and to endeavour through opinion polling and other means to hear the voice of the people and to identify their priorities.

In order to effectively exercise the right of public participation, access to reliable, truthful and pluralistic information must be ensured, as well as time and opportunity to reflect on possible

options and alternative solutions. This necessitates an enabling environment where freedom of opinion, expression, media, peaceful assembly and association are not only possible, but are exercised in practice. It bears repeating: according to the ethos of the social contract, democratic governance means rule by the consent of the ruled, and this necessarily entails participation.

In totalitarian and authoritarian forms of government, the right to participation is systematically denied. But even in liberal democracies whose constitutions recognize the basic civil and political rights, participation is often dysfunctional, and there are varying degrees of disconnect between the will and needs of the people and the governmental policies that affect them.

The right of participation, however, is not a political panacea, a guarantee of social justice or a recipe for peace. While majority rule is an expression of democracy, it may entail a form of populism that disregards the rights of women, indigenous, minorities, migrants, disabled persons, vulnerable groups and others, and therefore results in inequities. Accordingly, the right of participation must be exercised prudently, within the context of the rule of law, and include human rights safeguards, so that public participation and majority rule do not cause harm to individuals and groups, do not disenfranchise the less fortunate in society and do not legitimize torture and capital punishment, even if a majority of the population could be manipulated into demanding and/or voting for such measures.

A corollary to this right of public participation must be the State duty to proactive disclosure of information necessary for responsible participation in referenda or elections. Education in human rights and civil duties should enable the public to understand the political process as a daily commitment to values such as respect for the opinions of others, tolerance, compassion and solidarity. Participation is a process that encompasses the elaboration and adjustment of rules and regulations, the pre-electoral and post-electoral interaction of the authorities and the public. It entails a responsibility of the public to remain alert and to demand accountability from government officials, bearing in mind that in democracies the holders of power have obligations to society and exercise power only as trustees.

Among the obstacles to the exercise of the right of participation are the cost of conducting consultations with stakeholders, opinion-polling and referenda. Other more generic obstacles include apathy, disillusionment with the political process and the general feeling that the structures of government are too rigid and not subject to meaningful reform. Most will agree that participation cannot be limited to the ballot box, and that while regular free elections are necessary to every democracy, such elections must provide real alternatives and not just a continuation of the status quo. Not without reason some observers like Emma Goldman have remarked: "if voting made any difference, they'd make it illegal". The same idea is attributed to the German thinker Kurt Tucholsky ("Wenn Wahlen etwas ändern würden, dann wären sie verboten" -if elections could change anything, they would be forbidden).

Without endorsing a cynical perspective on the political process, it must be noted that the elites of most countries have worked hard to ensure economic and political stability by limiting the possibilities of structural change to the machinery of government. Moreover, in some democracies, special interest groups and lobbies have denatured democratic decision-making by exercising undue influence on the executive, legislative and judicial branches of government. This is why some observers have noted that in some countries those who have been elected do not govern, and those who do govern have not been elected. Vested interests,

notably corporate interests, must not be allowed trump the will of a majority of the population.

Reform through public participation, however, does not pose a threat to stability. On the contrary. Reform of institutions is a condition of stability. Thus, governing elites need not fear the exercise of the right to participation, because such exercise enables gradual adjustment and gives the population a sense of satisfaction through ownership of their destinies. A population that can meaningfully influence governmental policy through consultation and voting ensures continuity in harmony.

A condition for the proper functioning of public participation is a governmental commitment to transparency, in particular in fiscal and budget matters. Government secrecy under the pretext of national security or any other pretext undermines the public trust. This is why whistleblowers serve an important human rights function in uncovering unconstitutional behaviour by government officials. Intimidation of human rights defenders, their arrest and detention, or their defamation as unpatriotic or even treasonous, contravenes the people's right to know.

A further condition is a pluralistic media that respects the people's right to know and their right to truth. Manipulation of public opinion, whether by governmental authorities or by the private sector media sabotages the democratic process. Yet another obstacle is the growing problem of "political correctness", which ultimately leads to self-censorship, stagnation and the failure to express one's true needs and priorities. Moreover, when a person cannot express his/her views freely, not only is his/her right to freedom of expression violated, but also the right of others, the right of society to know, their right to hear the suppressed views.

Civil society is entitled to more space, and it must vindicate its right to be heard. One promising avenue of giving such space to the citizens of the planet is the establishment of a World Parliamentary Assembly or United Nations Parliamentary Assembly, which could start initially as a consultative body and gradually develop into a legislative assembly. This is an ambitious plan, but one that with patience and determination is implementable, taking the European Parliament as a model. If the UN General Assembly is to be revitalized and strengthened, it also needs to be made more democratic and representative. Complementing it with a parliamentary body could be a key to achieve this.

Over the next five years my mandate will give me many opportunities to discuss the matter with stakeholders and learn from you how best to advance on the project.

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