

Joint Submission by
The Foundation for Law and International Affairs
(FLIA)
and
The Coalition for Peace and Ethics (CPE)
on the
Themes for the First Session of the Forum on Human
Rights, Democracy, and the Rule of Law



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July 4, 2016

Ms. Nathalie PROUVEZ

The Secretariat of the Forum on Democracy, Human Rights and the Rule of Law
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations
CH-1211 Geneva 10, Switzerland

Dear Ms. Prouvez,

The Foundation for Law and International Affairs (FLIA) and the Coalition for Peace and Ethics (CPE) welcomed the invitation, extended in a letter from the Secretariat of the Forum on Human Rights, Democracy and the Rule of Law, dated 23rd June 2016, to reach out to their networks to identify possible topics for discussion at the Forum's inaugural session on "Widening the Democratic Space: the Role of Youth in Public Decision Making", to be held in Geneva, at the Palais des Nations, on 21st and 22nd November 2016.

FLIA and the CPE believe a strong youth participation at all stages of the preparation of the Forum to be essential to taking into due consideration the interests and the views of all stakeholders, also with regards to the identification of topics that could potentially be discussed during the Forum's inaugural session.

FLIA and the CPE are therefore honored to have had an opportunity to contribute to making the Secretariat's call for input an effective and inclusive exercise in public consultation and participation. Between 24th June and 3rd July 2016, FLIA and the CPE reached out to their respective networks, to involve all interested stakeholders in the identification of possible topics to be discussed during the meeting. FLIA and the CPE reached out to a total of 42 institutions, which included: (1) American and European NGOs; (2) academic and research institutions based in the United States of America, China, The Hong Kong Special Administrative Region, Sweden, Great Britain, Italy, Albania, Australia, Austria, Japan, Korea; (3) U.S. government institutions; (4) students' networks based in China, Europe, India and Bangladesh; (5) Europe-based Chinese trade associations; (6) alumni associations; (7) informal transnational parallel-trade networks based in Lagos, Nigeria. We estimate to have reached a total of nearly 1,000 stakeholders.¹

¹ A list of all the persons and organisations we reached out to, as well an illustration of the methodology used to elaborate our estimate and the raw data used in elaborating such an estimate will be made available

Based on and incorporating the thrust of the reactions of the responding stakeholders to which FLIA and the CPE reached out, we submit the following suggestions about the topics to be discussed during the inaugural session of the Forum:

- (1) Education and Human Rights
- (2) Education and Democracy
- (3) Education and Knowledge as Preconditions for the Rule of Law
- (4) The Role of Chinese Youths' Training in Effective Political Engagement
- (5) The Role of Chinese Youth in Politics
- (6) The Role of Transparency in Youth Participation in Public Policy-Making

A detailed description of each one of these topics is provided at pages 4 to 11 of our submission. Under express request of their authors, we attach three of the commentaries we have received, in the original language in which they were sent to us.

We wish to once more extend our most sincere thanks to the Secretariat for having offered us a meaningful opportunity for consultation. We express our most sincere apologies in the inability of any member of either FLIA or the CPE to be able to attend in person the inaugural session of the Forum, and we remain at the Secretariat's entire disposal.

Sincerely,

Shaoming Zhu
Flora Sapio
Keren Wang
Shan Gao
Larry Catá Backer

For

The Foundation for Law and International Affairs
The Coalition for Peace and Ethics

to the Secretariat of the Forum on Democracy, Human Rights, and the Rule of Law and any other interested parties upon their request.

Education and Human Rights

***“He Who Knows Does Not Live His Life
Like He Who Does Not Know”***

(Bengali Proverb)

On February 3, 2016, a 28-years-old doctoral candidate at Girton College, Cambridge University, was found in a ditch in a suburb of Cairo, Egypt. His body was partially naked, and showed the signs of mutilation. Before his death, Giulio Regeni had been stabbed repeatedly on various parts of his body, and was made to suffer multiple cigarette burns, razor cuts, and bone fractures. Mr. Regeni's only crime was his will to share his knowledge, and the fruits of the education he had received, with the Egyptian youth.

Beyond the contingent events that led to his abduction, torture and eventual murder, the death of Mr. Giulio Regeni bears testimony to the power of education, and the need to reinstate the principles of indivisibility, interdependency and interrelatedness of universal human rights.

To say that rights are indivisible means that all rights constitute a unitarian, organic, and inseparable whole. At the same time, human rights are not a monistic entity as such. Their division and classification into categories is necessary because the violation of the rights of an individual always produces an inability to enjoy a very specific entitlement. What needs to be restored is then the enjoyment of the specific entitlement that has been made unavailable, rather than the enjoyment of those entitlements a person already has. The will and the moral duty to grant a person access to what she has not, and to allow a person to enjoy what she is entitled to, justify the placing of a momentary and greater emphasis on the single human right that has been violated.

It would be mistaken to believe that placing an emphasis on an individual human right could lead to privileging one category of rights over another, or worse to neglecting entire categories of rights. The existence of rights within a unitarian, organic and inseparable whole is made possible by the mutual relation that exists among individual human rights. While this relation has been often conceived as a supporting relationship, the ways in which such a supporting relationship comes into play may be highly contingent. While it is true that the enjoyment of any individual right requires the enjoyment of at least one more right of the same or a different kind, the causal relations that link one individual right to another are by no means fixed or predictable. In the case

of Mr. Regeni, for instance, enjoying the right to life would have allowed a full enjoyment of the right to participate in decision-making.

Rights are interrelated in the sense that has been just expressed: they stem from a common trunk and are nurtured by the same lymph, while each individual right satisfies a moral imperative which is highly specific and contextualized.

The right to education is a fundamental human right, which can provide a bulwark to the most blatant violations of the right to life, liberty, and security of the person. Education is the most powerful “weapon” the youth can use to change the world. This simple, universal truth has been expressed by all peoples in the ways, languages and by the means peculiar to them. The ability to preempt violations to one's right to life, integrity and personal security rests upon those general, intellectual and cognitive abilities that are created and enhanced by education. He who knows which legislative, cultural and social mechanisms can be best leveraged to affirm one's rights will enjoy freedom and empowerment to a greater degree than he who ignores those mechanisms. He who knows, can appreciate and therefore respect, the existence of cultural differences among the peoples will live a fuller and more rewarding life than he who overlooks diversity.

In this sense, education plays a very important role in the responsibility for protecting all persons from the incitement to the deliberate killing of the members of their national, ethnic, racial or religious group, as well as from the concrete carrying out of such conducts.

The primary responsibility for protecting men and women from the systematic elimination of the group they belong to falls primarily with the state. Yet, the role played by the international community cannot and should not be neglected. The international community has the ethical duty to stimulate the development of the activities conducted by the states. Besides this responsibility, the international community is also bound to take any kind of collective action that may be necessary, there were a state is manifestly unable to guarantee the life, liberty and security of its citizens. The avenues available to undertake such a collective action are many, and pertain to different actors. While diplomatic and humanitarian means pertain to governments, there are other means subjects of international law can use to fulfill their duty. Education is one of the other means that young persons, academics, citizens and NGOs can use in their effort to encourage and assist all states in fulfilling their responsibility to protect.

Education and Democracy

***“We should focus on bread-and-butter issues
where we can forge a positive vision,
and bring stakeholders together”***

The protection of one's right to life, liberty and security – understood both in its moral and effective dimension – necessarily goes through the promotion of a greater degree of understanding and appreciation of what democracy is.

The etymology of the word democracy is well known. The modern word “democracy” derives from the union of the Greek substantives *demos* (the common people, commoners) and *kratos* (rule, power, strength). At different stages of the history of the ancient Greek civilization, however, the words *demos* and *kratos* acquired a different connotation – with *demos* referring not to individual persons, but to a collective body. After all, as the Albert Schweitzer Professor Emeritus in the Humanities at Columbia University Giovanni Sartori has observed, democracy possesses multiple dimensions and definitions.

The inherently multiple and universal dimension of democracy is not limited to abstract classifications and categorizations – it is visible in each one of the instantiations of democracy that exist in our world. Each one of the regional variants of democracy that exist, today, is unique. These unique – and at times bewilderingly different – versions of democracy derive not from differences in the understanding of what “rule by the people” is, or from any inherent inability to use the democratic mechanisms as they may be available to citizens in the countries where they reside. Between the two distinct positions of universalism and relativism, there exist a variety of decision-making mechanisms which are formally distinct, yet functionally equivalent.

Nine-hundred years ago, Persian writer Farid ad-Din Attar recounted how Imam ben Hanbal would refuse to eat food that originated from the city of Baghdad. The Caliph had ordered that all of Baghdad's trade revenue be used to purchase weapons for his army, and ben Hanbal did not want to be complicit in the slaughtering of human beings. Already in the 12th Century, the peoples of today's Iraq shared the same ethical concerns that, in 2011, led to the endorsement of the United Nations Principles on Business and Human Rights. Throughout the centuries, these very same concerns have been expressed, shared and discussed in the forms and through the channels that the people of Persia have created for themselves. It is not by chance that Amjad Sabri – a renowned Pakistani singer who expressed these and other moral concerns through the medium of traditional

music – had gained the respect of millions of people across the Indian subcontinent and beyond.

The freedom and empowerment of young persons rest for a significant part upon their ability to become aware of and to understand difference. Once the ideal of democracy comes to life, it is displayed in different instantiations and different versions, shaped by the variables that – at any given point in time – will be active in any given geographic and cultural context. Each one of these versions of democracy will offer different means and avenues to participate to decision-making. The ability to identify each one of the possibilities that exist for participating to decision-making can however be acquired only through the comparative analysis of political systems.

The variety of existing political systems, and the nature of the decision-making mechanisms they offer is further shaped by factors endogenous to politics. Among these, religion is perhaps the most important factor that determines differences in political structures, in the existence of mechanisms for participation, and in the concrete shape these mechanisms will take.

In all secular societies, the single most important variable that shapes our political structures, allowing in turn an unfettered access to decision-making, is a common faith in the inherent equality and dignity of all human beings. Such a conviction is conveyed through networks of legal, social, and ethical norms, with religious beliefs remaining for the most part a component of the private sphere of individuals. The rule of law is thus understood as the rule of secular, man-made law. Theocratic societies invert this hierarchy, placing revealed truths as the foundation of their legal orders, and the source of most, if not all, substantive and procedural legal norms.

The sound understanding of differences education can promote, thus contributing to a better protection of the fundamental rights to life, liberty and security of the person, should not be limited to an analysis of differences in political and social systems. Education is a life-long endeavor that changes the totality of the person therefore, it should also promote an appreciation of religious diversity, insofar as such an appreciation plays an important role in eradicating all of those factors that lead to feelings of superiority, hatred and discrimination.

We are aware of the challenges to our vision - challenges which have been amply elaborated upon in a previous commentary dated 23rd June 2016, and [which is available here](#). Therefore, we welcome further communication and dialogue with the Secretariat and any other interested stakeholder.

Education and Knowledge are Preconditions for the Rule of Law

***“Knowledge of the choices governments make in our name
lies at the very foundation of the rule of law”***

The indivisibility, interdependency and interrelatedness of human rights are nowhere more visible than in the relation that brings together education, the right to know and the rule of law. Thus far, our submission has explored those dimensions of knowledge that were related to the protection and the affirmation of human rights. Human rights are however grounded on a broader set of ethical principles. These ethical principles can provide a platform to promote a more inclusive and tolerant dialogue on the relation among human rights, democracy and the rule of law. An inclusive and tolerant dialogue however necessarily goes through a specific social and anthropological process - the creation and the codification of the right to know.²

At the foundation of the rule of law there cannot be but knowledge, understood as knowledge of the choices made by governments in the name and on behalf of citizens, regardless of whether these choices are made in national or transnational fora. Governments must be responsible for their actions, and guarantee adequate information, which is accessible and accurate in accordance with the principles of openness and transparency. Even though some countries provide citizens the tools to access information, for instance through legislation on freedom of information, such legislation sometimes does not meet citizens' expectations. The right to know the acts government members are performing in our name could enhance the relationship between political candidates and the electorate.

In the last twenty years, human rights, decision-making processes and eventually peace have become victims of states of emergencies, which, at times, have been proclaimed arbitrarily. The rule of law thus risks being replaced by a “rule of emergency”, a risk that becomes more concrete when the mechanisms of knowledge and access to information are manipulated, and used in ways inconsistent with human rights law and international humanitarian law.

² This paragraph is based on a commentary by Mr. Domenico LETIZIA, who explicitly requested that his name and affiliation be disclosed to the public. Mr. LETIZIA is a member of the Directive Council of Nessuno Tocchi Caino, the Italian League of Human Rights, and the Italian Helsinki Committee for Human Rights. Mr. LETIZIA's commentary is attached in the original language in which it was submitted.

To breath in new life in the responsibility to protect - a responsibility that befalls each and every subject of international law, we should focus our energies also on the codification of the right to know. To gain a more complete appreciation of the importance of this right, we should consider how, even though the greatest majority of states have witnessed a transition to a specific version of democracy, their systems still incorporate elements that date back to an earlier stage of political and historical development. Before the affirmation of popular rule, as well as before the creation of Marxist-Leninist regimes or the popular revolutions that brought theocratic governments to power, monarchy was perhaps the most common form of government.

Monarchies' effort to contain popular sovereignty in all of its possible forms was premised on the mechanisms of "kingly prerogative". Kingly prerogative was a body of norms and principles that gave supreme authority to the King. Among these norms and principles, a crucial role in attempting to constrain the democratic space was played by the concept of state secret. While the concept of state secret is and should remain a necessary component of national governance, notions of state secret may be prone to abuses.

In order to keep those abuses in check, in the 1990s, the Special Rapporteur Louis Joinet identified the right to know as a right that plays a fundamental role in protecting the life, liberty and security of persons, considered in their dimension as individuals as well as of active members of their community. According to Louis Joinet, the right to know is not only a right that belongs to victims of human rights violations and their relatives. It is also a collective right, that allows us to draw the lessons of history, to make genocide, abductions, mass killings and large-scale economic, political and social instability never happen again.

The Role of Training in Youths' Effective Political Engagement

The Role of Youth in Politics

***“When our thousands of Chinese students abroad return home,
you will see how China will transform itself.”***

China, a country hailing from a past history of war, invasion, economic, political and social instability presents an important case study on each one of the topics FLIA and the CPA suggest to discuss during the Forum's inaugural session.³ The country's historical and cultural trajectory has endowed China's political system with mechanisms for political participation which are unique and highly specific. We believe that knowledge of these mechanisms is important, in that it can contribute to an informed and inclusive dialogue among interested stakeholders.

The primary mechanism for youth participation in the Chinese political system is the Youth League. The Communist Party of China (CPC) leads the Youth League, which takes on the role of promoting the Party Line among students and the youth. Party membership is not required for participation in the Youth League, and students between the ages of 14-28 may participate. Older Youth League members, particularly those who take on leadership positions, may apply for Party membership. Newly admitted CPC members receive formal training in the theory and operation of the Party.

It must be noted that the CPC is self-mandated to be the “vanguard both of the Chinese working class and of the Chinese people and the Chinese nation.”⁴ That is, the CPC derives its legitimacy from its essential function: to represent the “fundamental interests of the overwhelming majority of the Chinese people.”⁵ More simply, the legitimacy of China's one-party political system depends as much on the will of the people as does a traditional Western representative democracy. From the perspective of this system, then, the notion of “widening the democratic space” contains overtones of Western hegemony.

³ This paragraph is based on the feedback FLIA received from its Chinese network.

⁴ Preamble, Constitution of the Communist Party of China.

⁵ *Id.*

Accordingly, in order to truly widen the democratic space, the discussion should affirmatively welcome the perspectives of conscientious youth who are politically active in systems whose theoretical underpinnings vary from those of the West. Such underpinnings are not inherently conflictual with the wider conception of democracy; that is, a system capable of representing the people. Indeed, the efforts of these youth will be critical in advancing the Rule of Law in the coming decades.

The Role of Transparency in Youth Participation in Public Policy-Making

“A young person with limited knowledge has few opportunities to access the information she needs to fully participate in society ”

Transparency is an important part of public decision making. The ages of "youth" vary in different countries.⁶ The definition of "youth" has been changing along with changes in the political, economic, social and cultural environments. As far as it is concerned in China, the young people are facing the following problems when they participate in public decision-making:

Information disclosure is one way to implement the transparency of information, but information disclosure and transparent information cannot be exactly the same. At present, the Internet is an important tool for the implementation of public policy. However, the "no national boundaries" of the Internet cannot guarantee that every person in need of information can obtain it. For example, reports on the financial crisis may be headlines in newspapers or on websites, but the relevant rules governing the financial industry are not necessarily in the news as the main body or appendix. This increases the difficulty of understanding public decision-making.

Another indication that information disclosure is not equivalent to transparent information is lack of communication. On the one hand, China has 56 ethnic groups, 53 of which have their own languages, but some information is only available in Mandarin. On the other hand, the lack of communication is reflected by the relationship between the legislature and the public. Most organs do not reply to questions or doubts from the public, or only disclose very limited information. The youth, due to their limited knowledge or relative psychological immaturity, have relatively few opportunities and channels to access to the information they should know in order to engage in society.

⁶ This paragraph is offered by Chinese scholar LI Xiaofu on the practical issues confronting Chinese youth who wish to participate in public decision making. Professor LI (Southwest University of Political Science and Law) has published more than eighty articles on themes related to comparative law. His most recent book is Research on Legal Problems in the Sino-American Currency Competition (2015).

**Re: Commentary for the First Session of the Forum on Human Rights,
Democracy and Rule of Law - “*Widening the Democratic Space: The role of
youth in public decision-making*”**

Human rights build the setting in which democracy can strive to provide each individual with equal opportunities.⁷ One cannot speak of human rights without inferring democracy, and vice versa. Respect for the rule of law makes inclusion possible, and links human rights, democracy and citizens together.

The topic of this first session of the Forum is “Widening the Democratic Space: the role of youth in public decision-making.” Domestic politics are often perceived as distant, unreachable and, in any case, elitist. The gap between voters and policy makers has become increasingly significant, causing the wake, in democratic States, of several populist movements preying on the feeling of isolation affecting the voting masses. While this is the perspective of a young European jurist, me, similar trends may be found worldwide.

Reducing this distance via a U.N. intervention would likely mean some form of impact on a Member State’s sovereignty: enforcing certain changes to how citizens may stand in elections would require meddling with some of the most sensitive legal issues.

However, working on the citizen’s will to cross that distance would be far less invasive. The importance of participation should be interiorized, and joining the discourse should become a more desirable option than isolating oneself from politics. These two goals can be achieved through a more incisive take on human rights education.

Human rights education (HRE) has already received much deserved attention. The near past. U.N. initiatives, along with the tools provided by U.N. agencies, have recognized the relevance of HRE for the international political system. The World Programme for Human Rights Education is currently attempting to promote HRE in each step of national educational policies, and Member States’ first phase reports on undertaken initiatives are promising.

However, Member States’ autonomy in this framework causes a non-uniform implementation in educational programs. While the World Programme will

⁷ This paragraph is offered by Antonio Angotti , who is FLIA’s regional director for Italy. He practices law in a law firm in Florence, Italy, concentrating on cases pertaining to asylum, criminal and civil law. He holds a law degree from the University of Florence and an LL.M. degree from the Dickinson School of Law, and has worked on Access to Justice with Avocats Sans Frontières in Brussels. His main academic interests are international human rights, criminal law and discrimination against women, particularly within Shari'a law.

certainly contribute towards the knowledge and humanity of new generations, the current individual Member States' instruments do not guarantee that youth worldwide will be offered a shared understanding.

A possible solution would be a proper uniform teaching program, targeting primary and secondary school students, whose materials and pedagogic choices are to be mandated and coordinated between the U.N. through its agencies and the National Committees on HRE. In other words, taking the first phase of the World Programme a step further.

While HRE is already mandated by several international legal provisions coming from different treaties, existing obligations tend to be generally worded, and rely on the signatories' good will to implement them. A comprehensive, more precise, legal instrument could make the already 22-years long effort to promote HRE more effective, easily monitored and enhanced.

For instance, binding practical guidelines could be issued by the already existing, and funded, National Committees on HRE, if provided with adequate normative power. The Committees could monitor and supervise the implementation themselves, coordinating with UNIACC. The content of each country's HRE program could be jointly drafted by the National Committees, UNIACC and the Member State itself.

Youth worldwide should be united by common ethical principles, and be able to exchange viewpoints based on shared grounds. That is my opinion: teaching children and young students a uniform perspective on human rights and their constitutional role for current society would greatly enhance the existing international dialogue; more so, it would increase the will to participate in domestic politics in order to pursue what would be increasingly perceived as the self-evident common good of all humanity. In order to do so, a comprehensive, specific legal instrument is needed: the United Nations' investment on the next generations' ethical framework is too significant to be left partially regulated.

The Foundation for Law and International Affairs (FLIA) is an independent, nonpartisan, nonprofit organization mandated to promote academic and public discourse at the intersection of law and international affairs. The core vision of FLIA is to promote international cooperation and public dialogue through the development of new ideas and collaboration with various academic, governmental and civil actors.

The Coalition for Peace & Ethics (CPE), founded in 2006, is an independent, non-profit, non-partisan, tax-exempt research and information focused organization. CPE avoids ideology, adopts no specific political or religious doctrine, and owes allegiance to no master. We are engaged in a series of projects based on the production and dissemination of knowledge that is meant to empower people to take control of their own lives for personal and societal betterment in ways that are respectful to individuals and the communities in which they belong.

Appendix 1

Commentary by Professor LI Xiaofu

透明度在青年参与公共决策中的作用⁸

决策透明是公共决策环节的重要一环。“青年”所指的年龄段在许多国家中是不同的，其定义又随着政治经济和社会文化环境的变幻一直在变化。就中国而言，青年参与公共决策时面临如下问题：

信息公开是实现透明的一种表现形式，但是二者之间并不能完全等同。目前，互联网是公共政策实施的重要工具，然而，“无国界”的互联网也不能保证每一个对信息有需求的个体都能接触到。例如，有关金融危机的报道可能是报刊或者网站的头条新闻，但是与之相关的细则或者标准却不一定作为正文或者附录出现在新闻里面。这就增加了青年理解公共决策的难度。

信息公开不等于实现透明的另一个表现是“交流”不足：在中国这个 56 个民族聚居的地方，一方面，用于信息公开的语种匮乏，甚至有时候仅仅选取汉语作为表达方式。另一方面，“交流”不足还表现在规章或者标准制定者与提问者之间的关系上，大多数公共决策机构对于提问者的回答不公开，或者仅在较小的范围内公开。作为不同于成年人的青年，由于其生理或者心理的不成熟，导致获得相关资讯的渠道或者机会相对较少。

⁸ 李晓鄂（1985-），男，法学博士，应用经济学博士后，任职于上海财经大学，曾任职于福建省人民检察院办公室（主任科员）；公开发表论文 80 余篇，独著：《中美人民币汇率之争的法律问题研究——以美国国会历年法案为视角》，法律出版社 2015 年版。主编：《美国法学院申请攻略》，知识产权出版社 2016 年版。

Appendix 2

Commentary by Mr. Domenico LETIZIA

La formulazione del diritto alla conoscenza per l'affermazione del Diritto

Domenico Letizia*

L'affermazione dei valori democratici e liberali, l'obiettivo di fornire una piattaforma per promuovere il dialogo e la cooperazione su argomenti inerenti alla relazione tra diritti umani, democrazia e stato di diritto passa per un decisivo processo antropologico-sociale, quello della formulazione e codificazione di un nuovo diritto umano e civile: "*il diritto umano alla conoscenza*". Alle fondamenta dello stato di Diritto non può esservi che la conoscenza, conoscenza delle scelte che i governi, nelle sue realtà nazionali e transnazionali, prendono in nome e per conto dei cittadini. I governi devono essere responsabili delle loro azioni e devono garantire un'adeguata informazione, che sia disponibile, accessibile e accurata secondo i principi dell'apertura e della trasparenza. Benché alcuni Paesi forniscano ai cittadini gli strumenti per accedere alle informazioni, ad esempio attraverso i *Freedom of Information Acts*, questa normativa spesso non risponde alle attese dei cittadini, rivelandosi inadeguata. Il diritto a conoscere ciò che i membri del Governo fanno segretamente a nostro nome potrebbe migliorare il rapporto tra candidati eletti ed elettori. Negli ultimi due decenni, in molti Paesi e città abbiamo assistito all'impiego di mezzi e strategie militariste e a un prolungato, pretestuoso e arbitrario Stato di emergenza proclamato per la pretesa necessità di difendersi e difenderci in tal modo da minacce derivanti da terrorismo, immigrazione, droga e altri "nemici". Si è insediato così uno "*Stato di Emergenza*" permanente, le cui radici spesso affondano in presupposti ingannevoli, se non vere e proprie menzogne. Vittime della multiforme Ragion di Stato sono i diritti umani, la responsabilità, la mancanza di supervisione nel processo decisionale e, in ultima analisi, la pace. Lo stato di Diritto sta per essere sostituito dallo stato emergenziale e securitario e ciò è possibile quando i meccanismi della conoscenza e dell'accesso all'informazione sono manovrati e manipolati dalla burocrazia della *Ragion di Stato* in contrasto alle Convenzioni riconosciute e al diritto internazionale umanitario. Il modello del *Freedom of Information Act*, adottato cinquant'anni fa dalla Presidenza Johnson, costituisce un punto di riferimento molto importante. Negli anni Novanta le Nazioni Unite si fecero paladine dell'espansione delle Organizzazioni Non Governative, viste come una sorta di nuova forma di partecipazione democratica a livello planetario. Le Ong potevano essere una nuova forma di legittimazione dell'Onu, una valida alternativa alla frustrante subordinazione al volere dei membri permanenti del Consiglio di Sicurezza. Le Nazioni Unite diedero grande visibilità alle Organizzazioni Non Governative inaugurando la stagione delle grandi conferenze internazionali degli anni Novanta. Ma, i dolorosi fallimenti delle Nazioni Unite spinsero il segretario Kofi Annan, in carica fino al Dicembre 2006, ad avviare una grande riforma amministrativa dell'Onu. Annan provò, tra le altre cose, a seguire la strada di un ampliamento del diritto internazionale, con

l'introduzione del concetto di *“responsabilità a proteggere”*. L'espressione fu coniata nel 2001 da una commissione di studio del governo canadese, e dal 2004 è entrata nel lessico delle Nazioni Unite divenendo nel 2006 una delle fonti di risoluzione del Consiglio di Sicurezza. L'idea è quella di richiamare gli Stati alla responsabilità primaria nel garantire e proteggere la propria popolazione da gravi violazioni dei diritti umani, anche in presenza di un governo legittimamente in carica. Per rendere possibile tale processo, dobbiamo impegnarci in un nuovo lavoro di codificazione in ambito Onu, la codificazione del nuovo diritto umano alla conoscenza. Per comprendere al meglio tale processo dobbiamo sviscerare la storia delle istituzioni politiche contemporanee. Dal 1848 al 1914 si assiste al passaggio statutale dal *“liberalismo alla democrazia”*: l'affermazione diffusa del principio secondo il quale la sovranità risiedeva nella cittadinanza. Le varie monarchie, con intensità maggiore nell'impero tedesco, nell'Austria-Ungheria e in Spagna, cercano di contenere il *“potere della democrazia”*, che va affermandosi, attraverso l'istituto della prerogativa regia. In ambito accademico, l'istituto della prerogativa regia è quel complesso di norme e principi in base ai quali il supremo potere di comando spetta, all'interno di una monarchia, in ultima analisi al re. Ma, anche l'istituzione democratica conserva la sua prerogativa regia: *“il segreto di stato”* che non permette la piena realizzazione della democrazia, dello stato di diritto e dei diritti umani. I regimi costituzionali, spesso, risultano essere *“incompleti”* nell'ambito delle materie militari e di politica estera. Permane vivo il principio di un *“segreto di stato”* da mantenersi opportunamente celato alla cittadinanza e alle sue proiezioni parlamentari. Il *“segreto di stato”* alimenta quelle *“prerogative sovrane”* o *“ragion di stato”* che continuano a configurarsi come il presupposto concettuale di un potere velato, circoscritto in tempo di pace, ma destinato ad accrescere il proprio ambito d'azione e di irradiazione in un contesto eccezionale, come quello della guerra, del terrorismo globale o di particolari crisi economiche e politiche. Il diritto umano alla conoscenza può, universalmente, rappresentare il freno decisivo a tale irradiazione, circoscrivendo il perimetro d'azione del potere come *“prerogativa regia”*. Alla metà degli anni Novanta, la Commissione dei Diritti Umani delle Nazioni Unite incaricò il giurista francese *Louis Joinet* di identificare un corpus di principi a cui gli stati si dovrebbero attenere per evitare che le violazioni dei diritti umani restino impunte. Joinet formulò una definizione di *“right to know”*: *“Il diritto alla conoscenza non è solo un diritto di ogni singola vittima o dei suoi congiunti di sapere cosa sia successo, un diritto alla verità. Il diritto alla conoscenza è anche un diritto collettivo che permette di trarre frutto dalla storia per impedire che violazioni dei diritti umani si verificano nuovamente in futuro”*. Nel 2005, la Commissione Onu per i diritti umani ha elaborato un aggiornamento di questi principi sostenendo: *“Ogni popolo ha il diritto inalienabile di conoscere la verità su eventi passati concernenti l'esecuzione di crimini odiosi e sulle circostanze, e le ragioni che hanno portato, attraverso massicce e sistematiche violazioni a consumare tali crimini”*. La formulazione dettagliata del *“diritto umano alla conoscenza”* rappresenta la proposta universalistica allo strapotere della ragion di stato a partire dalla parte *“opaca”* delle istituzioni democratiche. Non si tratta di abolire il segreto di stato, attualmente impensabile da riscontrarsi e affermarsi, ma di riformulare in ambito internazionale tale

prerogativa, permettendo ai cittadini di vivere in una democrazia rispettosa del Diritto, che consenta loro l'accesso alle informazioni sulle manovre dei governi che possono cambiare il corso della storia. La guerra in Iraq e la condanna a morte di Saddam ne rappresentano l'esempio.

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Appendix 3

Anonymous Commentary

1. 中国的民主概念与西方的民主概念，有很大的差距。我们的民主是基于党的领导下的民主。党校、共青团中央举办的大学生骨干培养学校，以及各个大学举办的青年马克思主义培养学校，都是对青年开展民主教育的很好形式。虽然我们的民主教育的出发点与西方民主教育的出发点可能不同，但是这并不能否认中国对于青年的民主意识教育或者青年在政治体制、公共决策中的作用的教育是缺失的。建议本次论坛就对民主本身的含义进行学术上和政治上的探讨。

2. 这一类的会议应该都是由美国这些批评中国人权问题的国家所主导的吧？

Appendix 4

Commentary by Professor Larry CATA' BACKER for the First Session of the Forum on Human Rights, Democracy and the Rule of Law (in Chinese)

对首届人权、民主与法治论坛“扩大民主空间：青年在公共决策中的作为”主题的一些看法⁹

尊敬的 Nathalie Prouvez,

联合国人权事务高级专员办事处邀请专家学者和非政府组织参加首届“人权、民主与法治论坛”，其主题是“扩大民主空间：青年在公共决策中的作为”。本届论坛是根据第 28/14 号决议（Human Rights, Democracy and the Rule of Law A/HRC/RES/28/14 (9 April 2015)）而设定的。联合国人权事务高级专员办事处欢迎专家学者和非政府组织在相关话题上表达各自的观点。

我非常荣幸能够针对本次主题提出我的个人观点。我清楚这篇评论将会被刊登在联合国人权事务高级专员办事处和人权、民主与法治论坛的网站上。我和我代表的组织无法亲身参与本次论坛，对此我深表遗憾。在过去的几十年中，民主在联合国框架中发挥着重要作用，但是其更多的被至于一系列重大项目中。在第 19/36 号决议（A/HRC/RES/19/36; 19 April 2012）中，（1）民主，尊重人权和基本自由是相互依存、相互促进的；（2）民主是人民自由表达意愿，是国家组成的基础，决定自身的政治、经济、社会和文化制度；（3）国家有主要责任（与义务）来保护民意和民意表达；（4）该义务是国家的基本责任意涵，用以确保国家的发展和良治；（5）国际组织在民主·人权·法治的框架中发挥着重要作用；（6）这三个相互依存的概念有助于消除歧视。我们建议现有的人权理事会成员国们能够鼓励更多的国家参与到社会民主的建设中。在民主社会中，每个人都有机会决定自己的命运，

⁹ 翻译：宋翰轩，张艾思，姜笑然

虽然这对于国家的社会、文化、经济、政治和社会结构是个不小的挑战。非常重要的一点，第 28/14 号和第 19/36 号决议都强调了基本有序原则——虽然民主政体有一些共同特征，但并不存在一种单一排他的民主模式，而且民主不属于任何特定人群或地区。需注意的是，在涵盖民主、人权和法治概念的讨论中，它们是三个相互重叠却有时矛盾的概念，并且讨论时需尊重各国主权和自决权。

但是，民主的共同特点是值得我们进行深度思考的。第一点，《公民及政治权利国际公约》，与《经济、社会及文化权利国际公约》中的基本原则存在一定冲突——因此我们应强调避免一刀切的民主体制，尊重各国主权，允许其发展适合自身情况的民主模式。第二点，民主的核心似乎是在真实、定期的选举中体现的，这种民主表达形式被普遍认为是民主的传统表现核心。第三点，允许表达的不满或愿望的行政机制是必须的。第四点，良治的基本要素要是民主、法治和人权三个相互联系的概念的中心，包括透明度和问责制。第五点，决议强调行使监督和问责责任的政治对立性、公民社会和独立的媒体。第六点，尽管人权捍卫者的作用是公认的，但是其活动方式不是特定的。政府间组织有责任鼓励学习之前提过的三个相互联系的概念，以及基本公民的概念，尤其对于学校和大学而言。

只有在这个大的框架下，我们在第一届人权、民主与法治论坛——“扩大民主范围：青年在公共决策中的作为”中的讨论才有意义。我将会为大会建议两个明确的领域进行必要的讨论，以有效地回应第 28/14 号决议的要求。第一涉及有效政治参与当中青年群体培训的作用。第二涉及青年在政治中的角色。这两个问题必须分开，以避免造成目的和方式上的混淆，同时确保其中之一不会在战略上中因疏忽而损害另外一方。

A. 有效政治参与中青年培养的作用

第一，如果缺失了一个包括原则、结构和运作等的明确和广泛接受的民主空间概念，那么民主空间根本无法扩大。尽管听起来有些不言自明，但最近很多国家

，甚至那些曾经确信他们自身民主理论和运作基础的国家，也在自身政治·社会·经济·文化框架内发展对于民主·人权·法治 基本概念的做进一步解读。如果一个政体中的这些概念存在很大的争议，那么青年的政治教育将非常困难。事实上，这些核心概念的争论对青年的影响是完全不同的，且在具体国家内必须因地制宜，才能有效同化：民主、法治和人权的概念会依情况而定。更重要的是，在政权不稳的的国家里，其已建立和运作的政治秩序可能并不尊重上述核心原则；而这一现象的后果将更加导致该国政治的不稳定。对于其他国家，它可以作为一种途径来终结政治意识形态上的纷争。另外，事实上最近发生过国家扩大监督和控制公民社会的行动，而且是在国外资助和运作的，这在一定程度上反映出他们的不安。

但是，这并不代表在教育青年时需要抑制其它的、全球性和对比性的观点。国家经常会不自觉地担忧他们的价值观念是否正当、是否深入他们的文化和社会生活——这些极端做法只会适得其反。对民主、人权和法治研究和教育的限制越多，在青年中的本国文化越不会被接受。相反，包括它的学术、政治、社会和文化领导者在内的政府机构，除非可以承担强大的、有连贯性的和有底线的民主建设、人权原则和法治的建设，否则在该国话语体系内，有关上述原则和体系，他们无法教育自己的青年群体进行合适的政治参与。但不意味着这个底线排除了对于其应用、历史或其他相关方面的探讨。与之相反，这些探讨更受欢迎。然而，由于相关核心价值观非常复杂，定义并支持着在该国话语体系内的民主空间，因此关于青年有效政治参与教育的讨论。这对于无法提供这些核心价值观的教育的国家而言，是不可能做到的。

甚至是在青年的政治教育，以及在国家民主、人权和法治框架的基本规范原则下，人们很容易混淆对于正面地鼓励批评自己和自我批评。这种混淆在西方非常明显，但是这些错误也同样出现在马克思列宁主义和宗教国家。因此，例如在美国，有必要考虑在美国民主原则和国家组成的青年教育中的原则，而同时，检验这些原则在国家历史中的发展。然而，人们有时候很不幸将历史情境下人们的失败感与当今对政治理想的理解相混合。这些政治理想被用来证明国家和其制度的堕落和不正

当，或国家需要向另一种政治模式转换。但是这样的批评教育只有在存在一个共识的情况下是有可能的，这种共识是基础原则中的核心权威性和合法性——其构成了国家对于民主·人权·法治的拥护。这也是对于这种培养这种共识的政治教育的先决条件。

其次，对于具有国家特色的民主空间的原则和特点的讨论是我要强调的第二个要点。关于这些原则和特点，在缺乏训练有素的教师队伍的情况下，青年人也许不能接受到的合适教导。国家民主教育的边缘化，是非常普遍的。对青年人的教导也可能被视为对正统观念的检验，并且被强加于一个独特的环境中，在这样的环境下通过问答和讨论的方式学习可能会有潜在风险。除了教师的教学能力之外，另一大因素就是向学生传授知识的具体文本材料。青年人可能未经受良好训练，但他们是聪明的。对于青年人而言，很容易觉察到教师的不称职以及教学资料的劣质。不称职的教师和质量平庸的教学资料对学生造成的影响是十分严重的，这相当于在课堂上破坏国家在政治、社会、法治以及人权方面的合法性。对于这样的影响，国家只能责怪自己。更严重的是，当核心概念出现分歧时，这样的不确定性也往往会转嫁到学生头上——可能会造成学生的困惑，或者造成其它观念的介入。甚至更加糟糕的是，国家对青年人有关核心政治、社会、经济和文化原则的教育的漠不关心，会使学生产生一种对本应是国家政权基础的这些价值观的漠视。固然，这将逐渐且有效地损害民主活动，削弱人们对于人权的尊重以及影响那些通过法治机制得以实施的原则。当民主、人权及法治的核心原则深刻根植在人们心中时，我们才能分辨出以下三者之间的区别：重视核心价值观，核心价值观念在青年一代中的社会化，以及通过核心价值观建立有效的参与。

对于基本价值观、教师资质以及可靠的教学资料的一致意见是良好教育青年一代以有效政治参与的三大基本要素。教师的培训、健全的政治对话途径（在国家特色和参与形式的限制之内）以及可靠教学资料的编纂是一个国家努力扩大民主空间以及为青年一代有效参与政策决定做准备的三大任务。为此，每一个国家必须有能力在国家特色的范围内阐述决议 19/36 中所内含的普世原则的核心部分。因此，国

际组织的角色就变得明确了。虽然具体的帮助各国政府达成关于基本原则的核心共识必须进行的对话是艰难的，国际组织几乎发挥不了什么作用。然而，当国家领导人关于基本价值观的意见不一致以及不确定如何进一步之时，国际组织可以通过提供资料来推进政府进行上述的对话。其实国际组织可以做的更多，比如可以为教师培训和教学资料的准备提供一个交流的场地，每个国家的教育机构就可以相应地进行改编以便于培养他们自己的青年一代。对此次论坛及其组织者而言，这个重点可能最值得倾注时间和精力。

值得提到的一点是，青年人有可能识破虚伪的超人能力。如果体制腐败或软弱，尤其当政府的运行与其政治理想相冲突时，青年人会迅速地失去信心。在这些情况下，在学生所能观察到政府运行的实际情形面前（观察是他们日常生活中的一种实际经验），所有关于民主、人权和法治的崇高原则都会坍塌。学生总是无意识地渴望从事实中获取真理。因此，对于青年人的教导意味着一个更大的责任，这种责任深植于体现其体制核心原则的要求，以及与那些原则相一致的政府职能，而同样的原则领导人们也希望青年人信奉——简而言之就是确保领导人能够承担他们自己的义务。

B. 青年人在政治中的角色

未经受良好训练的青年人不是一群理想的公民，他们的肩头无法扛起保护国家核心民主、人权和法治原则的重任。对于全面彻底地思考青年一代在政策决定中的作用这一问题而言，培训以及对共同核心原则的培养使得它变得简单起来。青年政治参与，机遇与挑战并存。

首先，强调民主活动当中的选举元素是可以理解的。每个国家必然会接受那些与自身民主活动模式相一致的选举程序，也会允许公民通过选举表达政治权利，只要这些活动被适当地组织起来。它是广大群众和管理者之间的核心联系。它连结了权力让渡者和权力实施者。它也是责任追究以及树立政治机构个人形象的基本方式

。每个青年都可以通过参与传统的选举过程来行使相当大的权力。美国总统奥巴马的选举就是一个有趣的实例。

然而，这样片面地强调选举忽略了民主运行中的一个根本要素，也是扩大民主空间和使青年参与到政策决定过程中的一个重要因素。在现代民主国家，不论是西方国家、马克思列宁主义国家或者民主的宗教国家，投票有时只是权力行使的一个次要组成部分。首先，由于涵盖越来越广泛的行政、司法以及立法权力，因此在任何一个国家，投票权与政府部门的权责没有直接关系。在当前，行政国的广泛民主、人权、法治（包括其目标和运行）之间的关系是关于民主、人权以及法治形式和实施的课题的核心。然而，过度关注各级政府组织中的高级官员的选举形式，往往会损害民主国家本身——此种影响甚大且病态的现象不应出现在任何国家和国际组织当中。事实上，从地区人权机构，到管理贸易、健康、司法及类似事项的组织，任何一个国际治理结构的发展，都使得民主、人权和法治的实施都会疏远选民和被选举的官员之间的紧密关系。

其次，无论采取何种模式的民主，为了扩大青年（和其他人群）在政策决定中的民主参与，每个国家都必须在能够体现大部分国民生活的行政管理的范围内，将工作重心从投票转移到政策制定、行政裁量和实际的人权事务等关键问题上。在西方国家，政府需着意为青年人提供相应途径（包括相应的教育），以方便青年人评议行政管理、监控和报告官员的腐败现象，并且确保官员践行着国家的崇高理想而无愧于自己的名声。

事实上，若青年人在这方面的政治参与得不到保障，则足以造成政治动荡。当民怨不能找到一个发泄途径，民主参与就会陷入动荡之中——例如在马克思主义国家被忽视的群众路线、政府官员与公众的隔绝，以及当选的行政官员背离核心原则并且有严重的贪污行为之时（在国家的每个行政等级都会出现，中国通常称之为老虎和苍蝇的贪污）。反过来这种由头将会迅速地将改革和遵从正统政治原则的接触人士转变成政治秩序的颠覆者。这是扩大青年的民主参与提高政治稳定性的原因。

但是，只有当一个国家维持自己的社会准则并且保证能够适当地监督政府以确保他们对于国家最高理念的践行之时，上述的青年民主参与对于政治稳定性的积极影响力才是最鲜明的。

最后，青年的民主参与可以确保国家能够对日常生活中状况的改变作出迅速的反应，国家有责任随时调整自己的政策以确保能够履行人民的最基本要求。为达此目的，每个国家都必须彻底地思考一个问题，就是如何才能保证人民，尤其是青年人，拥有民主参与必须的相关途径和程序。这对于青年而言尤为重要，并有两大原因。第一，通过了解青年人，国家能够大致了解公众的想法、感受及理解世界方式的变化——青年人是一个国家历史条件改变的试金石。这反过来将帮助国家调整政治路线以符合特定时期的形势变化，这也是民主实践的一种有效方式。第二，青年政治参与是政府与青年一代建立密切联系以及通过实践进行国民教育的一种方式。当人们对于惩罚的恐惧不存在时，错误的存在才能显现出来——而只有当认知错误的存在显现出来时，才可以被更好地发现并改正。对于马克思列宁主义国家而言，这意味着对于群众路线的坚守，以及确保对公众的错误是改正而不是惩罚。对于西方国家而言，这意味着在政府和各种社会力量之间建立密切联系以便于能够更好、更迅速地应对批评，或者意味着通过更加普世的意识形态来形成更有效的联系。

但是，无论最发达的西方国家，还是宗教政治或马克思列宁主义国家，这种对于密切联系的坚持都要求保证青年一代能够比现在拥有与政府行政管理更多的接触机会。在当今西方，对于青年、穷人、未受良好教育的人，以及那些缺乏话语权的人而言，有效地参与民主评议以及监管行政机构的作为是不可能的。这样的现实使得西方的民主参与空间萎缩，同样也使得与民主制度有关的投票活动变得萧条。在马克思列宁主义国家，如果不能建立良好的行政机制来管理人民和政府官员的联系，就会产生深刻的挫败，而对于执政党的基本路线原则而言这是不必要的。无论在西方国家还是在马克思列宁主义国家，如果不能根据不同政治制度的特点建立更加有效的党内民主，那么有关其核心原则，国家在保持这种根深蒂固共识的能力将会被深刻影响。同样在这两种制度中，政府将逐渐脱离群众，并且传统的大众责任选

举机制也将会降低效力。在马克思列宁主义国家，如果不能有力地实施群众路线且承担政治领导的核心责任，将会产生类似的结果。

对于上文所讨论的议题，培养青年人更加有效地参与民主和政治，本文提出了适合大家讨论和合作的若干方面。最理想的实践也是可能的。第一步就是对于每个国家在发展合法参与民主组织的方式，保护人权和精心建立法治结构方面的差异，我们一定不能无动于衷。这样的敏感性并不是毫无限制的，但是它意味着讨论有助于我们对于那些被普遍视为合法或非法的不同实践活动形成更好的认知。决议 28/4 以及 19/36 相当于朝这个方向迈进了一步。在这方面，讨论是有助益的。

有关上述青年人有效的政治参与，以及针对参与的训练，在如下几个领域，对于相关对话与合作非常合适。达到最理想的状态也是很有可能的。第一步必须通过对于民主活动的组织、人权的保护和法治体系的建立，这有助于建立一种能够体会国家间众多差异的价值敏感度。虽然这种敏感度并不万能，但确实提醒了我们，相关对话对于上述实践理解的贡献——无论多么多元化，对于其正当性的理解应该是普适的，对于不正当实践的理解亦然。28/4 和 19/36 这两项决议，是向这一方向努力的信号。而对话必然是有益。

本论坛应当帮助各个国家，在自己的体制当中完成相关实践。而核心的第一步是去达成本国内部对于根植于国际惯例，且被各国所接受的核心价值的共识。由此开始，对于包括教师培训与教材开发在内的教学活动的关注，也将产生深刻而正面的影响。这需要资源，而本论坛可能正需要探索相关资源。对于许多发展中国家而言，将本论坛的成果，与国际金融机构的贷款政策与技术援助结合起来，将会大有裨益。诚然，国际金融机构的援助、政府部门主导的贷款和政府管理职能完善这三者关系已经被广泛理解，但要求各参与方能够精诚协作。当然，在这条路上，新的实体，如亚投行，也许是这些必须资源的有力提供者，这些资源是良好政府治理和相关政策的必要条件——在各自核心意识形态体系当中有效建立的政策，能够促进民主、人权和法治在各国国内话语体系内的发展。

但如此的职能，特别是针对青年群体及其在强健的民主活动中参与的，以及在各自国家话语体系内适宜的那些职能，对于那些逐渐明晰且有反智倾向的权利体系，也要求进行一次根本性的重新思考。具体而言，尤其对于那些不创造知识的发布者的财产，从人力资本到产生财富过程当中的知识转换，将会给予某些国家一个严重的风险——对于青年人在行使民主权力相关的核心事务方面的训练会难上加难。现在并不是辩论知识归属权的价值以及任何知识产权的体系的时候。然而，在不考虑国内话语体系的情况下，对于民主空间的加强也许很大程度上取决于知识的储备，对这一点的理解非常重要。而逐渐上升的知识产权体系，由于费用的阻隔以及对全球知识和国民生活最重要产品的分配，又会给予本次论坛的核心任务以挑战，也包括其它加强民主空间和青年参与的根本实践。

也许，这里最需要强调的是本论坛的沟通角色，沟通包括资源开发在内的其本身的工作，和其它特殊的措施。这里会有许多重合——比如本论坛和英国商业与人权工作组的业务，尤其是在人权和经济活动方面。那么，最后且具体的建议，就是集合所有特殊措施，协调它们各自的权力，以承担起保障于加强国家正当的民主、人权和法治的贯彻。

我希望这些简要的行动能够于论坛和其工作人员有帮助。CPE、法律与国际事务学会以及我本人，很高兴有机会能推动这些事。如需联络，请发邮件至：lcb911@me.com。期待听到更多关于论坛工作的消息！

诚挚地，

Larry Catá Backer