**The Third Pillar**

[4 October 2013]

**I. Falling short**

1. At the 1993 Vienna World Conference on Human Rights, Member States first recognised the necessity of strengthening the ‘rule of law’[[1]](#endnote-1) to effectively protect human rights. Ten years ago, human rights were first described as one of three ‘pillars’ of the UN[[2]](#endnote-2). One year ago the High-level meeting of the General Assembly on ‘the Rule of Law at the National and International Levels confirmed that human rights and the rule of law are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations. This year, a Secretary-General’s Internal Review Panel concluded that the UN had systematically failed to protect human rights through the rule of law in a crisis situation.
2. As we now take the opportunity of the 20th anniversary of the Vienna World Conference to assess progress, it is difficult not to conclude that the UN has fallen short of the aspirations of the Conference’s outcome document – the 1993 Vienna Declaration and Programme of Action. Member States’ original vision of holistic UN action on human rights and the rule of law, linking cultural, economic, political and social rights in a coordinated manner remains an objective to be attained.
3. The UN has made significant progress in establishing human rights monitoring and reporting mechanisms, and in supporting Member States to strengthen their human rights institutions. Separately, the United Nations has also developed its rule of law support infrastructures which assist Member States with their justice institutions. But the UN’s structural and conceptual positioning of its efforts in these two categories of action do not leverage each other; thereby creating a fragmentation of mandates, resources, structures and activities that leads to duplication and competing approaches. Further, the harmful effects of this conceptual and institutional fragmentation spill over into weakened UN action in the area of democracy (which is dependent for its success on the protection of human rights that preserve a democratic space) and development (which is in part defined and facilitated by the realization of economic, social and cultural rights).
4. By way of example, to reduce over-crowding in one country where 98% of prisoners are in illegal pre-trial detention, UN actors supported construction of a new prison instead of addressing the human rights violations that had led to the prolonged pre-trial detention which, in turn, led to over-crowding. In another country, the UN has invested considerable capital in supporting State authorities to increase police recruitment, but far fewer efforts in addressing the impunity among the many police officers allegedly responsible for extrajudicial killings and other human rights violations. Conversely, when UN human rights advocacy is not accompanied by offers of significant rule of law technical and material assistance, the advocacy can ring hollow in States that lack rule of law institutions to protect rights.
5. What is needed to overcome these obstacles is to strengthen and consolidate the third pillar of the United Nations by bringing together the normative work of the Organization with the operational and technical assistance work that the organization undertakes to assist Member States in building capacity. This means bringing together the human rights and the rule of law infrastructures.[[3]](#endnote-3)

**II. Solutions – a vision for change**

1. The time is right to move from fragmentation and duplication to more closely integrate the capacities of some existing UN entities into a strong, field-oriented third pillar of the UN. One could envisage the creation of a consolidated Secretariat entity for “human rights and rule of law”, mandated to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights and to strengthen national rule of law capacities to this end. The essence of the new entity would merge OHCHR with those parts of other entities that are included in the Global Focal Point co-location arrangements, and some limited additional capacities. Specifically, resources could be drawn from: (1) all of OHCHR (c.500 staff HQ posts); (2) the “criminal law and judicial advisory Service” of OROLSI (c.20 staff HQ posts) and some of the OROLSI police posts involved in institution building; (3) the ‘Justice Section and Criminal Justice programme’ in UNODC; (4) the EOSG rule of law unit (c.6 staff HQ posts). These changes could be complemented by reorganization of the existing OHCHR in the light of the imminent OHCHR functional review, including as envisaged by the Internal Review Panel process.
2. The new UN entity would lead on human rights and rule of law in all contexts - development, conflict, and post-conflict situations, including in peacekeeping missions where OHCHR is already the lead on human rights. It would have a strong operational capacity applied both to monitoring and support to national actors.
3. Combining UN human rights and rule of law capacities would complement and strengthen both, in multiple ways. For instance, some aspects of the UN’s human rights work (monitoring, reporting, advocacy) entail the use of “sticks”; while UN rule of law assistance (capacity-building, new equipment) often involves “carrots”. With both sticks and carrots in the same pair of hands, the potential for leveraging change is greater. Pairing UN monitoring and reporting on violations with UN support national capacity will help both strategies have greater impact. Further, merging efforts would make far more effective and efficient use of UN staffing resources and mandates: many UN human rights and rule of law activities require very similar expertise, use similar methodologies and require engagement with the same national authorities and civil society actors. The Secretary-General’s efforts to mainstream the rule of law would be better realized in practice if they could build on the existing machinery for human rights mainstreaming[[4]](#endnote-4). In addition, in the context of the post-2015 agenda, merging UN human rights and rule of law capacities will help ensure that UN rule of law action assists national rule of law institutions in supporting the protection of the economic, social and cultural rights that are fundamental to development.[[5]](#endnote-5) And finally, intra-UN coordination on rule of law would be greatly facilitated through a consolidation of rule of law capacities and expertise.
4. Another area to streamline is support and coherence of the mandates of the Special Advisers and Representatives on the Prevention of Genocide, the Responsibility to Protect, Children in Armed Conflict, Sexual Violence in Conflict, and Violence Against Children. All the mandates cover overlapping human rights concerns. For instance, targeted killings and sexual violence against children from an ethnic group in an armed conflict fall within the mandates of all six offices. The collected mandates draw valuable attention to particular aspects of violations that may otherwise have been ignored, leading to positive changes to human rights situations. However, at times they duplicate each other’s work, compete for limited political attention and funding from Member States, and fragment UN situation analysis and the pool of human resources. Despite high quality work and the significant expertise and capacity present within all these mandates, including OHCHR, individually they all face concerns of limited staffing, funding and capacity to fully manage the many thematic and geographic demands at headquarters and in the field, or to fully support national human rights and rule of law institutions.
5. It is proposed that the aforementioned Special Advisors and Representatives would all retain their independent mandates and voices at HQ. The consolidated human rights and rule of law entity, however, could serve as the field and operational arm of these mandates.
6. The new human rights and rule of law entity would have the significant advantage of being well positioned – in terms of mandate, expertise and capacity – to strengthen UN action in the area of democracy, the third area that the 1993 World Conference associated closely with human rights and rule of law. Specific processes on which the UN sometimes provides support, such as elections, are central to democracy. However, they will not, in and of themselves, be effective without efforts to create and preserve ‘democratic space’. The human rights to life, physical integrity, liberty, freedom of assembly, expression, association, movement, non-discrimination, education, information, employment and judicial oversight are all intrinsic to assuring a genuine democratic space. And a rights-based rule of law is in turn central to the protection of these rights, in keeping with the vision of Member States at the World Conference on Human rights.[[6]](#endnote-6)
7. The new arrangement would provide very significant UN-wide organizational efficiencies. The shifting of some OHCHR capacity from Geneva to lower-cost duty stations like New York and regional offices would create significant financial savings. There will be the potential for reducing posts because of the elimination of duplication in functions, while at the same time using existing capacity more efficiently and covering gaps. In addition, a more coherent structure at headquarters will greatly facilitate greater coherence and less duplication of structures also in the field - creating the possibility for significant savings across dozens of duty stations.
8. UN leadership on Security Sector Reform, the police, and elections would all remain with their current departments. The new entity’s work on democracy would be limited to the human rights aspects inherent to democratic space and would not focus on the political aspects of democracy or political agreements – for which the leadership lies with the Department of Political Affairs.

**III. Implementation**

1. Several factors have combined to offer a rare opportunity and momentum for change. The financial crisis has created openness within the UN and among Member States toward institutional consolidation. The IRP report has prompted recognition of the grave consequences when the UN fails to meet human rights and rule of law responsibilities; and its follow-up Action Plan recommendations have gathered the highest levels of Secretariat backing, and will support strengthening of the Third Pillar. The post 2015 development agenda has gathered new political momentum for human development, including human rights and a strong rule of law. And the Vienna+20 commemoration has prompted a revisiting of the 1993 vision for UN human rights and rule of law action and recognition of the remaining challenges. By shifting just 30 to 40 posts, and adopting some modest organizational changes, the UN can increase its human rights and rule of law impact, greatly improve efficiency, and reduce staff costs.
2. Several steps could be envisaged to implement the above solution:

* OHCHR’s Senior Management Team can discuss strengthening the Third Pillar, and reflect this in the OHCHR functional review.
* Discuss the proposal with the SG and DSG.
* Discuss the proposal with the departments and other entities which would be directly involved in constituting the new entity, and seek consensus.
* Begin seeking overall support from some relevant UN entities
* Test the ground with interested and supportive Member States
* Refine the proposal in the light of the feedback.
* Use the 2013 GA human rights day celebration to present a vision of the proposal, and to solicit support from Member States.
* Work with EOSG to complete a Policy Committee process.
* Present the Policy Committee outcome to Member States.

1. After the 1993 World Conference, the 3rd Committee of the GA, dedicated to human rights, adopted yearly resolutions on the rule of law until 2002. The rule of law “refers to 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 law, equality before the law, accountability to the law, ….” (Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para. 6.) [↑](#endnote-ref-1)
2. The Secretary-General’s report “In Larger Freedom” (A/59/2005) of 2005 envisages human rights, rule of law and democracy as comprising the third pillar. [↑](#endnote-ref-2)
3. Such a recommendation is not new. Indeed, at the 1993 World Conference, Member States had “strongly recommend[ed]” that human rights and the rule of law be dealt with together through “a comprehensive programme … of building and strengthening adequate national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law … to be coordinated by the Centre for Human Rights …” (paragraph 69). Seven years later, the Brahimi report, one of the biggest-ever reviews of the UN system, underlined in multiple paragraphs the imperative of “a team approach to upholding rule of law and respect for human rights”, referring to the need for “a doctrinal shift” (Report of the Panel on United Nations Peace Operations, S/2000/809). And in 2012, Member States “requested the Secretary-General to propose ways and means of developing, with wide stakeholder participation, the linkages between the rule of law and…human rights” (The 2012 “Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels” (A/67/L.1). [↑](#endnote-ref-3)
4. Idem. [↑](#endnote-ref-4)
5. This approach goes beyond the Declaration of the 2012 High Level Rule of Law meeting that rule of law contributes to development only through “fair, stable and predictable legal frameworks”. [↑](#endnote-ref-5)
6. [↑](#endnote-ref-6)