



Law of the Future

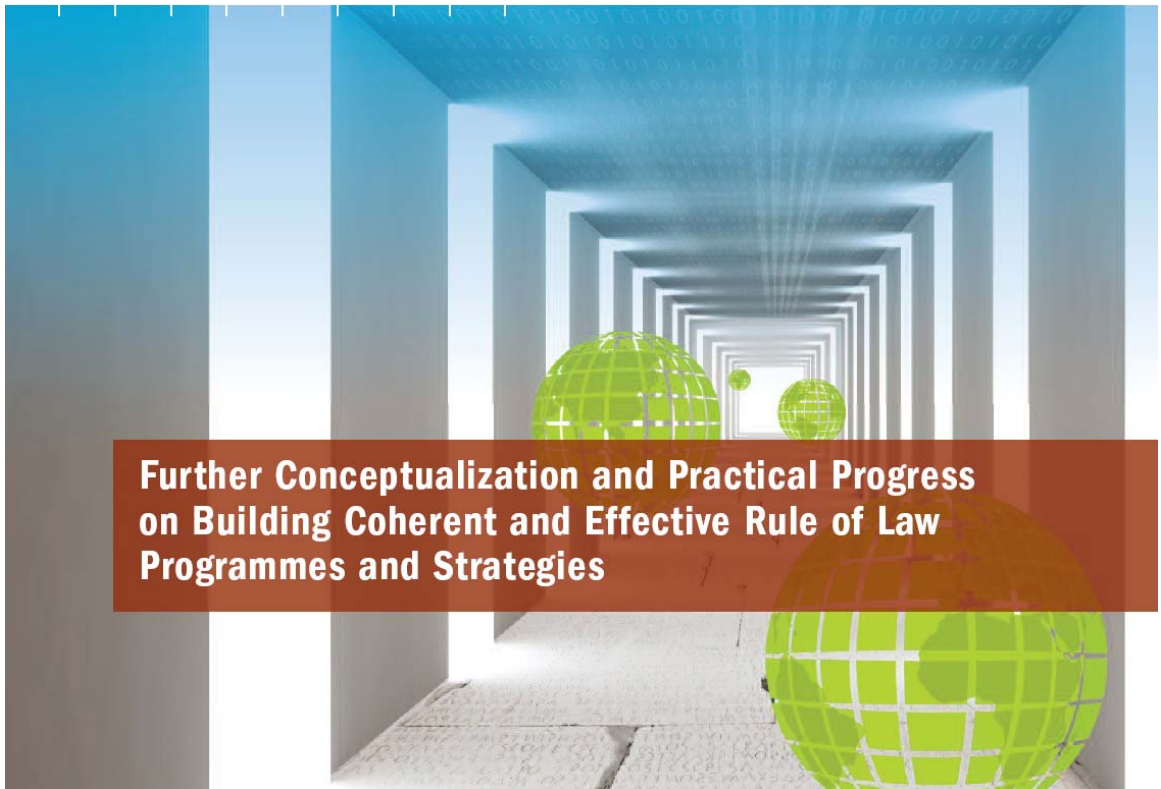
HiIL - National law in a global society

Summary Report

OF

THE FIRST CONFERENCE IN THE HiIL *LAW OF THE FUTURE* SERIES

(TOOK PLACE ON 26 & 27 OCTOBER 2007, PEACE PALACE, THE HAGUE)



**Further Conceptualization and Practical Progress
on Building Coherent and Effective Rule of Law
Programmes and Strategies**



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On October 26 and 27, 2007, the Hague Institute for the Internationalisation of Law (HiIL) held its first Annual Conference in the Law of the Future Series in the serene atmosphere of the Academy Building of the Peace Palace in The Hague. The conference dealt with rule of law promotion under the title (and aim) *Further Conceptualization and Practical Progress on Building Coherent and Effective Rule of Law Programmes and Strategies*.

The conference was attended by more than 120 experts on the rule of law from practice and academia and from many different countries in Africa, Asia, Europe, Latin-America, the Middle-East, and North-America. They included representatives from the American Bar Association, the Arab Center for the Development of the Rule of Law and Integrity, Auditoría Democrática Andina, Freedom House, the International Bar Association, the International Development Law Organization, the International Legal Assistance Consortium, the Open Society Justice Initiative, the Public Interest Law Institute in Hungary, the Council of Europe, the (recently established) Rule of Law Unit of the UN Secretariat, the Sri Lanka National Commission of Jurists, the United Nations Development Programme, the United States Institute of Peace and the World Bank. They also included academics from various universities, including the University of Amsterdam, Berkeley, Berlin, Boston, Frankfurt, Leiden, London, Melbourne, New York, Oxford, Paris, Seattle, Stanford, Stockholm, Tilburg, Tokyo, Utrecht, Umeå, Uppsala and Warwick.

The conference was opened with a short plenary meeting. As Dr. Sam Muller, Director of HiIL, noted in his opening speech, rule of law promotion is a major priority in global politics. It is generally considered of crucial importance to long-term stability in post-conflict societies, economic development, poverty reduction, human rights protection, and democratic government. The Outcome Document of the World Summit 2005, the launch of the World Justice Project in 2005 by the American Bar Association, the adoption in December 2006 by the General Assembly of the United Nations of the resolution 'on the rule of law at the international and national levels' and the subsequent establishment of the 'Rule of Law Unit' at the UN Headquarters in New York - are just a few of the many recent indications that the rule of law is generally and increasingly considered as a matter of crucial and global importance.

An impressive keynote address was given by H.E. Tharcisse Karugarama, Minister of Justice of the Republic of Rwanda. Minister Karugarama explained how Rwanda has chosen to leave behind its sad recent history by enshrining the rule of law as a fundamental pillar in the Country's governance and strategic planning for sustainable development.

In the second keynote address, Prof. Joris Voorhoeve, Member of the Dutch Council of State, former Minister of Defence of the Netherlands, and professor of International Organisations and Security Studies, argued that Rwanda's example deserves to be widely followed. Based on extensive research into the recent history of peace-keeping operations and development assistance programmes in post-conflict societies, which resulted in the already widely acclaimed report *From War to the Rule of Law* (2007), Prof. Voorhoeve argued that, once peace has been secured, promoting the rule of law (including, in particular, reform(s) of the police and the judiciary) is the best strategy for achieving socio-economic growth.

In the third keynote address, Ms. Claudia Dumas, the Director of the World Justice Project (WJP), explained the background and features of this initiative, which is one of the most energetic and fast-moving endeavours in the field of rule of law promotion. Ms. Dumas set out the four near-term, complementary objectives of the WJP: outreach, multidisciplinary research, developing a rule of law index, and convening the World Justice Forum in Vienna from July 3-5, 2008.

Dr. Muller concluded the plenary meeting by quoting several paragraphs from a letter received from Mr. Jamal Benomar, the Head of the Rule of Law Unit at UN Headquarters in New York, expressing his support for the conference and the approach which had been taken and encouraging the participants to make progress. After the morning plenary meeting, participants divided themselves into four parallel workshops, where a series of short presentations were followed by extensive discussions around specific themes which were, for the most part, exceptionally productive.

Workshop 1 was devoted to (Common) Objectives and harmonisation of policies and activities. Participants discussed the relation between the rule of law on the one hand and economic development, poverty reduction, human rights, democracy, legitimate government building and the implementation of international norms on the other hand. It appeared that no easy causal links can be established between the rule of law and these aims. For instance, economic development may well occur without the rule of law, though there seems to be a point at which the rule of law becomes a precondition for further



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growth. The issue whether efforts to create the rule of law out of nothing in post-conflict societies can themselves satisfy the standard of the rule of law was also discussed, as well as the relationship between rule of law at the international level and at the domestic one. In many of the discussions, the issue of the definition of the concept of the rule of law - a matter which has already been rather extensively discussed during the previous meetings of the HiIL Rule of Law Experts Network - came up once again. A good deal of time was thus spent on clarifying the meaning of rule of law. Some panelists favored a thin or procedural conception, others a thick or substantive conception. Much depends on the discipline (with legal philosophers and social scientists preferring thin theories), the nature of the institution (international organizations such as the UN prefer thicker versions) and the purpose (human rights organizations prefer thicker versions). It was also once again observed that even a thin rule of law has normative elements. It was agreed that formal and substantive notions of the rule of law may all be useful, depending on the work that the concept is supposed to do in a particular setting: both formal and substantive notions of the rule of law are conceptual tools, and should be regarded as such.

The topic of Workshop 2 was the creation, characteristics and maintenance of a so-called 'rule of law marketplace', where information regarding rule of law promotion projects can be exchanged in order to promote coordination, efficiency and transparency. While most participants doubted whether the term 'marketplace' was apt, they agreed that the idea to create such a virtual focal point - a rule of law 'hub' - is most useful. It should serve the purposes of sharing information among providers of technical assistance and those who are requiring such assistance, as well as opening real dialogue and interaction between recipients and providers, contributing to self-regulation of the providers of assistance, accumulating knowledge and best practices, and public education. The participants discussed existing databases and web-applications, in particular the International Network to Promote the Rule of Law (INPROL) and the IDLO Rule of Law Assistance Directory (two major initiatives which have agreed to work together and seek other partners to develop the hub). They also identified major questions and obstacles, and made constructive suggestions to address them. The participants agreed that as a first step HiIL, IBA, IDLO and INPROL will explore putting in place a web-based hub, which will make existing rule of law web-based tools accessible through one portal.

Workshop 3 discussed how the rule of law is to be promoted by looking at the example of judicial reform, and focussed on the issues of sequencing, the importance of legal culture, the legitimacy of rule of law promotion, and the maintenance of the rule of law. The participants noted that the question of how the rule of law is to be promoted is hard to answer because the concept of the rule of law is open in that its precise contours are understood in different ways by different actors. The participants reflected on how these different understandings, often reflected in mandates and mission-statements, determine to some extent how the rule of law is being promoted by actors, and how these mandates can sometimes be constraining in that they prevent actors from tackling problems in innovative ways. The participants discussed the issue of legal culture extensively, noting that it can be an enabling as well as a disabling factor. It was widely agreed that simplistic one-size-fits-all solutions need to be avoided, but it was also argued that unique problems do not always require unique responses. As far as sequencing is concerned, the participants agreed that acceptance and ownership among key-stakeholders and an unequivocal commitment to legality are essential before rule of law promotion projects are launched. The participants also noted how important it is to create a mechanism which would allow actors to learn from their experiences and to accumulate knowledge, thereby underlining the relevance of the discussion in Workshop 2.

The participants at Workshop 4 discussed the complex yet exceedingly important issue of measuring the rule of law. They did so by looking at existing indicators as well as at factors that ideally should be included in a rule of law index. The discussion focused on five examples of measurement systems (Freedom House, World Justice Project, CEPEJ Council of Europe, World Bank, HiIL/Tilburg University). The participants identified requirements which measurement schemes need to satisfy as well as a (long) list of challenges for developing such schemes. They agreed, however, that much progress is being made: measurement efforts are increasing; these efforts complement each other in that they focus on both demand and supply and rely on perceptions, objective data and experiences of users of the legal system. Competing teams are figuring out how to measure the rule of law, learning from each other, and thereby contributing to more effectiveness in promoting the rule of law.

During the plenary meeting on Saturday October 27th, the Chairs of the four Workshops presented the main conclusions that were respectively reached at the workshops the preceding day. This was followed by a presentation by Ms. Shelley Inglis, Rule of Law Officer at the Rule of Law Unit at the United Nations Headquarters, on the progress which has been made in setting up the unit. Subsequently, there were



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two more short presentations on rule of law related web-based applications: Mr. Alexander Thier of the United States Institute of Peace presented the INPROL (International Network to Promote the Rule of Law) and Mr. Thomas McNerney of IDLO presented IDLO's newly created Rule of Law Directory. After that, many participants took the floor to participate in a stimulating discussion on the conclusions of the workshops.

In the final session, Dr. Muller summarized the main (provisional) conclusions of the conference, noting that rule of law promotion had been likened to elephants during all the workshops, an analogy that will become clear once the extensive report of the conference becomes available. He emphasized the need to bridge the gap between academia and practice and to cross boundaries between law and other disciplines in order to make further progress. Based on the debate during the conference, Dr. Muller identified issues which require further research, areas of practice to develop, and avenues for further cooperation.

The conference was closed by Prof. Michiel Scheltema, former Chairman of the Dutch Scientific Council of Governmental Policy, former State-Secretary of Justice, and Chair of the Programmatic Steering Board of HiiL. With a characteristic bird-eye view, he offered a rich analysis of the origin and development of HiiL's research programme on the internationalisation of law, of which rule of law promotion is one of three major themes. He ended his speech by expressing a widely shared feeling among the participants that much progress had been made during the conference.

The conference's extensive report is expected to be published in January 2008. Before that, HiiL will make available to the participants (revised versions of) the papers presented during the conference (conditioned upon consent of the authors). Some of these papers will be published in the *Hague Journal on the Rule of Law*, a HiiL initiative, the Editorial Board of which held its first and constitutive meeting *en marge* of the conference.

The next meeting of HiiL's Rule of Law Network is scheduled to take place on April 18, 2008. Members of the HiiL Rule of Law Experts Network will receive invitations in due time. Should they wish to share ideas on topics that could be addressed during this meeting, they are kindly invited to do so.