

Strasbourg, 14/03/06

CAHDI (2006) 11  
*Anglais seulement*

**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW  
(CAHDI)**

**31<sup>st</sup> meeting  
Strasbourg, 23-24 March 2006**

**ITEM 16 : OUTCOME DOCUMENT OF THE 2005 U.N. WORLD SUMMIT**  
**“ADVANCING THE INTERNATIONAL RULE OF LAW” - DISCUSSION PAPER**

Document submitted by the delegation of Switzerland

## 1. Introduction

In the Outcome Document of the 2005 World Summit, Heads of State and Government reaffirmed their *"commitment to the purposes and principles of the Charter and international law and to an international order based on the rule of law and international law, which is essential for peaceful coexistence and cooperation among States"* (cf. para 2 + 134).

The references to international law and the rule of law contained in the document express high consideration and commitment to them. By their nature, these references are general and do not offer immediate guidance for implementation and for resolution of specific problems, however. Efforts to follow up on the results of the Outcome Document are therefore important, and we note that valuable discussions take place in several international fora at this time.

It is imperative to strengthen the rule of law both at the national and at the international level: the two dimensions are clearly complementary. At the national level, intensive work has been done for many years e.g. through bilateral or multilateral technical assistance and capacity-building. This work must continue. It is, however, also important to develop a more focused thinking on ways and means to further adherence to the international rule of law.

First, one should try to advance the discussion on the concept of "international rule of law" with a view to give it concrete meaning. It must be avoided that references to the "international rule of law" remain abstract or become merely rhetoric. Secondly, one should identify ways and means to strengthen international law through individual and common action, with a view to increase compliance and to promote a law-based international order. We are convinced that general agreement on the basic concepts (chapter 2 of this discussion paper) could facilitate a more focused and efficient work in the operational part (Annex).

## 2. Definitions

### 2.1. Rule of Law as a national concept (« *état de droit* »)

While there is no single definition which could claim validity for all legal traditions, the notion of the rule of law at the internal level essentially refers to an institutional system in which all exercise of public authority is subject to the law. The concept seems to include at least three constituting elements:

1. Respect for the principle of legality and for the hierarchy of norms;
2. Respect for the principle of equality of those subject to the jurisdiction of the State;
3. Respect for the principle of separation of powers, including the independence of the judicial power.

At its source, the "rule of law"-notion may have referred to formal criteria only. Over the last years, though, academic writing and public discourse on the rule of law seem to have evolved so as to include more substantive (content-related) aspects, traditionally associated with the notions of **human rights** and **democracy**.<sup>1</sup>

### 2.2. International Rule of Law (« *prééminence du droit* »)

While there is general agreement that the world order must be based on international rules, the concrete implications of this principle remain somewhat unclear. We should therefore try to advance the discussion on the "international rule of law" with a view to give concrete

---

<sup>1</sup> The most encompassing concept in this respect seems to be the notion of "good governance", which should include (formal) rule of law, human rights and democracy.

meaning to the term<sup>2</sup>. The purpose of the present chapter is not to elaborate an innovative academic theory but to bring together, on a practical basis, the fundamental principles of international law closely connected with the concept of "international rule of law". It is an attempt to identify what, ideally, should be the building blocks of a law-based international order.

It is proposed that the term "international rule of law" include the following constitutive elements:

1. The recognition that international law – consisting of a body of legally binding rules – is **the foundation** of international relations;
2. The principles of **equal rights of States and self-determination of peoples** in accordance with the purposes and principles of the Charter of the United Nations;
3. The principle of ***pacta sunt servanda***;
4. The principle that States must act **in good faith**;
5. The obligation to **refrain from the threat or use of force** in any manner inconsistent with the Charter of the United Nations;
6. The principle that States must **fulfill their obligations** under international law irrespective of their domestic legal system, and the subsequent obligation for every State to establish **effective internal mechanisms** ensuring respect for international law;
7. The obligation for every State to **settle disputes by peaceful means**, and the possibility for every State to have an **effective recourse** against violations of its rights before an appropriate **international institution**;
8. The protection of **basic human rights and fundamental freedoms** as a fundamental **responsibility** of every State towards its own citizens but also towards the international community as a whole;
9. The possibility for the international community, in accordance with international law and the Charter of the United Nations, **to take effective action collectively** (in particular through the UN) **against violations of international law**, especially against violations endangering essential interests of the international community (e.g. mass and grave violations of human rights).

### 3. Future action

#### a) Conceptual work

The nine elements proposed above are by no means meant to be definitive or exhaustive. It seems, however, important to share a basic common understanding of the notion of "international rule of law" as a point of departure for further discussion on concrete actions. We would be interested to exchange views on the substantive meaning of this concept with States which recognize the fundamental objectives underlying the present document.

#### b) Definition for areas of concrete action

In general terms, five areas for action in favor of the international rule of law could be discerned:

---

<sup>2</sup> The former UN-Legal Advisor Hans Corell contributed to this debate e.g. in a conference given on 24 February 2004 in Vienna on "Prospects for the Rule of Law among Nations".

1. Measures aimed at the better implementation of international law (a "deepening" of international law), including technical assistance for the implementation of international obligations on a national level (capacity building)<sup>3</sup>;
2. Measures aimed at increasing the numbers of States Parties to international instruments (extension of the *geographical* reach of international law);
3. Measures aimed at the inclusion of new topics under the subject matter covered by international law (extension of the *substantive* reach of international law through codification and progressive development of international law);
4. Measures aimed at institutional developments through the establishment of organs and procedures contributing to a better respect for international law.
5. Measures aimed at promoting general awareness for international law at the national and international levels, the purpose being twofold:
  - On the national level: demonstrate the relevance of international law and its increasing impact on people's daily lives ("outreach").
  - On the international level: integrate international law into the work of the UN and into every State's political actions ("international law mainstreaming").

We are interested in discussing thoughts and ideas on possible courses for action relating to any of these areas (or even others). The *2005 World Summit Outcome Document* is probably the best basis to set priorities and recommend concrete steps to advance a law-based international order. At the same time, in order to follow up the *Outcome Document*, it seems particularly important to identify concrete steps for the promotion of the rule of law.

#### 4. The 2005 World Summit Outcome Document

The *2005 World Summit Outcome Document* adopted by the Heads of State and Government who had gathered at the United Nations Headquarters in New York from 14 to 16 September 2005 first of all reaffirms the "*faith in the United Nations*" and the "*commitment to the purposes and principles of the Charter and international law and to an international order based on the rule of law and international law, which is essential for peaceful coexistence and cooperation among States*" (cf. para 2 + 134).

At the beginning of the Outcome Document, the Chapter "*Values and principles*" devotes a prominent place to concepts such as international law, rule of law and human rights. The topic "*Human rights and the rule of law*" constitute a specific area among the four identified for concrete measures to implement the Millennium Summit<sup>4</sup>. Moreover, the fact that international law, rule of law and human rights are not confined to their specific area but appear in each one of the chapters of the Outcome Document clearly illustrates the fundamental and all-pervading relevance of these subjects.

Within the UN Secretariat, work on these reforms is well under way, and the Secretary-General is reporting on a regular basis to inform Member States about the work plan and progress made. Several initiatives have been or are being started. In his report dated 25 October 2005, the Secretary-General dedicates a specific chapter to the rule of law and underlines that

*"programmes to support the rule of law cover a broad range of United Nations activities, in both post-conflict environments and development work (...). The rule of law will also be a central part of the work of the Peacebuilding Commission, and the Peacebuilding Support Office will need to draw on rule of law capacity from across the system. A rule of law unit such as that recommended by the Summit (ibid., para. 134 (e)) must serve as a link and a coordination point across the entire system, while not duplicating that which already exists. An inventory is currently under way of the rule of*

<sup>3</sup> Every State has, of course, an obligation to ensure implementation on its own territory. But there may be value in endeavours for a State assisting also other States in their efforts to implement international obligations.

<sup>4</sup> The other areas are "Development", "Peace and collective security" and "Strengthening of the United Nations", cf. para 16 of the Outcome Document.

*law capacity and, more broadly, peacebuilding capacity, that currently exists in the system. On that basis I would propose to submit recommendations on the rule of law unit in early 2006 for the consideration of Member States." (A/60/430, para 24).*

Beyond this specific chapter, several other chapters in the report A/60/430 are closely related also to issues which we have identified as being fundamental for the international rule of law. Like-minded States could play an important role for the accomplishment of progress in this area. It therefore seems particularly important to cooperate with a view to identify concrete steps for the implementation of those elements of the Outcome Document which are most related to the international rule of law.

## **5. Perspective**

We invite States which recognize the basic principles and objectives underlying this discussion paper to exchange views and cooperate in appropriate fora at the regional and universal level to outline the constitutive elements of the international rule of law and to promote concrete actions. We would appreciate all observations and suggestions on any question raised in this paper and look forward to discussing it with you.

## Annex

### **Concrete steps to advance the international rule of law**

The UN-Secretary-General emphasized that *"progress in a number of key areas will depend on decisions that must be taken by the Member States, and I would therefore underscore the urgent need for Member States to complete discussions on those issues so that we can move towards implementation"*<sup>5</sup>. We believe that like-minded States could play an important role in the accomplishment of progress in this area. It seems particularly important to exchange views and cooperate with a view to identify concrete steps for the implementation of those elements of the Outcome Document which are most related to the international rule of law.

Following the structure of the Outcome Document, we propose to discuss the following issues. **We thereby limit ourselves to those issues which seem to be in closer relation with chapter 2.2. of the main discussion paper** (core elements of the international rule of law). We list here the objectives to be achieved, leaving room for ideas on possible concrete actions to be examined in order to gradually become more substantial in our endeavours.

#### **Pacific settlement of disputes** (para 73 + 134f)

Objective 1: - Increase the number of States that accept the jurisdiction of the International Court of Justice.

Objective 2: - Strengthen the work of the International Court of Justice.

#### **Use of force under the Charter of the United Nations** (para 77, 78, 79, 80)

Objective: - Promote and strengthen the multilateral process, and reaffirm the authority and the primary responsibility of the Security Council to mandate coercive action to maintain or restore international peace and security.

#### **Terrorism** (para 83, 85, 91)

Objective 1: - Finalise the comprehensive Convention against international terrorism.

Objective 2: - Contribute to the early entry into force of the International Convention for the Suppression of Acts of Nuclear Terrorism.

Objective 3: - Increase the number of Parties to the twelve other international conventions and protocols against terrorism.

Objective 4: - Support the recommendations contained in the specific annual reports of the UN-Secretary-General as appropriate.

Objective 5: - Ensure that the fight against terrorism is conducted in conformity with international law (in particular human rights law, refugee law and international humanitarian law).

#### **Peacekeeping** (para 95)

Objective: - Increase the number of Parties to the Anti-Personnel Mine Ban Convention.

#### **Peacebuilding** (para 97)

Objective: - Support the newly created Peace-building Commission as an effective instrument to promote collective security, ensuring the connection between

---

<sup>5</sup> Report of the Secretary-General – Implementation of decisions from the 2005 World Summit Outcome for action (25 October 2005), A/60/430, para 46.

the security of citizens, the re-establishment of the rule of law, humanitarian work, and development.

### **Transnational Crime** (para 113)

- Objective: - Increase the number of Parties to the conventions on organized crime and corruption, and to support their effective implementation.

### **Human Rights** (para 123, 124, 125, 126)

- Objective 1: - Further strengthen the UN human rights machinery with the aim of ensuring effective enjoyment by all of all human rights and civil, political, economic, social and cultural rights, including the right to development, with an accent on the implementation of existing international human rights norms and on building of national capacities.
- Objective 2: - Strengthen the Office of the UN High Commissioner for Human Rights, particularly in the areas of technical assistance and capacity-building.
- Objective 3: - Improve the effectiveness of the human rights treaty bodies.
- Objective 4: - Integrate the promotion and protection of human rights into national policies, promote human rights education and learning at all levels, support the further mainstreaming of human rights throughout the UN system.

### **Rule of law** (para 134)

- Objective 1: - Support the annual treaty event.
- Objective 2: - Encourage States that have not yet done so to consider becoming parties to all treaties that relate to the protection of civilians.
- Objective 3: - Establish a rule of law assistance unit within the Secretariat, so as to strengthen UN activities to promote the rule of law, including through technical assistance and capacity-building.

### **Democracy** (para 136)

- Objective: - Support countries' capacity to implement the principles and practices of democracy.

### **Responsibility to protect** (para 138, 139)

- Objective 1: - Support the concept that each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Moreover, where national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community.
- Objective 2: - Promote broader recognition of this concept both at the domestic and international level, through public statements, diplomatic contacts and outreach activities.
- Objective 3: - Support the United Nations and in particular the Security Council in the exercise of their subsidiary responsibility in this field.
- Objective 4: - Help States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

**General Assembly** (para 149)

Objective: - Improve the efficiency of the General Assembly in the process of codification of international law.

-----