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

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**ITEM 18 FOLLOW-UP TO THE OUTCOME DOCUMENT OF THE 2005 UN WORLD
SUMMIT – ADVANCING THE INTERNATIONAL RULE OF LAW**

Document submitted by
the delegation of Switzerland

"The rule of law at the national and international levels"

Comments submitted by Switzerland (April 2007)

following the invitation by the Secretary General
acting on the basis of General Assembly resolution 61/39

1. Introduction and general remarks

Switzerland attaches the greatest importance to the promotion of and respect for international law. 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 the high consideration and commitment which are afforded to them. By nature, however, these references are general and do not offer immediate guidance for implementation and for resolution of specific problems. Measures to follow up on the results of the Outcome Document are therefore crucial, and Switzerland welcomes the important step taken with the adoption, by the General Assembly, of Resolution 61/39 ("The rule of law at the national and international levels").

It is imperative to strengthen the rule of law both at the national and at the international levels: the two spheres 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. In the view of Switzerland, it is, however, also important to develop a more focused reflection on ways and means to further adherence to the **international** rule of law. This is an essential and a long-term undertaking which concerns all States and which can therefore be best advanced in a universal framework such as the United Nations. The United Nations, and in particular the General Assembly, have a unique legitimacy and must play a leading role in this regard. This is why Switzerland strongly supported the inclusion of the new item on the agenda of the General Assembly.

Switzerland wishes to suggest that it would be useful to further the reflection on **the concept of "international rule of law"** in view of giving a more concrete meaning to the term. It must be avoided that references to the "international rule of law" remain abstract or become merely rhetoric. Switzerland is convinced that it will then be easier to identify ways and means to strengthen the "international rule of law" through individual and common **action**, with a view to increase compliance and to promote a law-based international order. A widely shared understanding of some basic concepts related to "international rule of law" could facilitate a more focused and efficient work from an operational point of view. For example: If the UN and its Member States wish to develop a strategy of **national capacity building and technical assistance** in matters pertaining to the issue of "international rule of law", such an understanding will be indispensable.

2. Elements for a common understanding of terms

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 “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 certain more substantive (content-related) aspects to the rule of law concept, traditionally rather associated with the notions of human rights and democracy.¹

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. Reflection on the concept of “international rule of law” should therefore be advanced. The Sixth Committee of the UN General Assembly, composed of international lawyers, might be in a particularly good position to proceed to an exchange of views on such a topic. The purpose of such a dialogue might be to contribute to the identification of some building blocks of a law-based international order.

It is suggested 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;

¹ The most encompassing concept in this respect seems to be the notion of "good governance", which includes respect for the (formal) rule of law, human rights and democracy.

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** which endanger essential interests of the international community (e.g. mass and grave violations of human rights).

3. Suggested future action

3.1. Conceptual work

As previously stated, Switzerland believes that some conceptual clarification of the notion of “international rule of law” would be useful as a starting point for further discussion of concrete actions. This approach reflects the spirit of Resolution A/RES/61/39. It is important to be mindful of the comparative advantages of the Sixth Committee with regard to other actors. When it comes to defining capacity building strategies in particular, it seems essential to keep in mind the invaluable efforts already made elsewhere in this regard. The Sixth Committee must not duplicate those efforts, but act complementarily to them and therefore focus, on what added value it could offer, based on its specific legal expertise. Switzerland is of the view that some discussion on the meaning of “national” and in particular “international rule of law” might create such an added value. It would facilitate a more focused reflection and contribute to a wider “mainstreaming” of the idea within the United Nations System.

3.2. Identification of categories of concrete actions

In general terms, five categories of actions in favour of the international rule of law could be discerned. This categorization could also inspire the inventory of current activities requested by OP 2 of Resolution A/RES/61/39:

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)²;
2. Measures aimed at increasing the number 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:

² 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.

- 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").

Within these categories, member States could identify topics which could be discussed as a matter of priority, and exchange thoughts and ideas on possible courses of concrete action relating to those topics. For Switzerland, the *2005 World Summit Outcome Document* is probably the best basis on which to set priorities and recommend concrete steps to advance a law-based international order.

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"*³. The adoption of Resolution A/RES/61/39 by the General Assembly creates the basis for focused and gradual action within the framework of the United Nations. Exchange of views and cooperation between all States are now needed to identify those elements of the Outcome Document which are most related to the international rule of law and for which concrete steps for implementation can usefully be taken.

3.3. Examples of possible concrete steps

At this juncture, Switzerland wishes to suggest only a few concrete examples that the Sixth Committee might wish to consider:

1. It seems important to further **improve conditions under which all States can participate fully in international legislative processes**. Only through full participation by all States can the result of international negotiations hope to claim universal legitimacy. If international instruments are expected to be universally accepted and implemented, then the possibility for all States to participate throughout the entire negotiations is key. It would therefore seem important to analyse the reasons why certain States cannot participate in negotiations in the way they might wish to, with a view to address those reasons effectively.
2. In more general terms, adequate **technical assistance** in favour of the international rule of law should be offered by the United Nations – as well as by other international organisations and by States with sufficient resources – to States which require such assistance, in conjunction with other public and private associations and organs of the State concerned. Such assistance might take many forms, depending on the concrete needs advanced by the respective State. One might think of measures to enhance the capacity of States to ensure, within the three branches of government, a wide knowledge of and therefore adherence to international law. This might include a wide range of measures, such as general awareness building measures, concrete measures to facilitate access to sources of international law (for example by providing access to the internet) and the delivery of specific legal expertise with a view to facilitate national implementation of international obligations. In this context,

³ Report of the Secretary-General – Implementation of decisions from the 2005 World Summit Outcome for action (25 October 2005), A/60/430, para 46.

Switzerland wishes to reiterate its strong support for the important role to be played by the Rule of Law Coordination and Resource Group and its Secretariat Unit.

3. The **International Court of Justice** is undoubtedly at the heart of a law-based international order. Switzerland encourages all States that have not already done so **to accept the jurisdiction of the Court as compulsory** without a special convention vis-à-vis all other States accepting the same obligation, in accordance with art. 36 ch. 2 of the Court's Statute. The United Nations should renew efforts to increase the number of states which have made such a declaration.