

Creating a Global Rule of Law Meeting Point

by

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Summary

In the 2005 Summit resolution Member States of the United Nations recommitted themselves to actively protect and promote all human rights, the rule of law and democracy. A month later, in October 2005, the International Bar Association started a *Global Campaign to Promote the Rule of Law*, and in November 2005, a *Global Rule of Law Movement* was launched at a meeting under the auspices of the American Bar Association.

In the present article it is argued that now is the time to make a global and systematic effort to enhance the rule of law. Four elements are necessary to achieve the rule of law: democracy; proper legislation meeting relevant international standards; institutions to administer this law; and individuals with the necessary knowledge and integrity to handle this administration.

It is argued that the rule of law status in individual Member States should be assessed in a more systematic manner than is presently the case. An initiative by the American Bar Association to assess the rule of law status in individual States by developing a Rule of Law Index is welcomed but the point is made that the questions as to how this index should be developed, who should provide the material and by whom it should ultimately be managed need careful consideration.

Furthermore, it is argued that more focus should be on legal technical assistance, that such assistance is best provided through focused projects, and that proposals for legislation must be discussed in detail with politicians, administrators and others at the national or local level.

The present efforts to register what is available by way of legal technical assistance is commended, but it is suggested that this activity needs to be further developed and combined with other elements.

It is also suggested that more funds for legal technical assistance might be forthcoming if additional credible and cost-effective assistance projects could be identified.

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Furthermore, it is argued that more Official Development Assistance (ODA) should be directed to legal technical assistance, in particular since establishing a rule of law system is similar to creating other major infrastructure components at the national level.

A system under the rule of law is not complete without a free and independent bar, and it is therefore suggested that assistance should be given also to assure this interest.

In order to facilitate the work to enhance the rule of law worldwide, it is proposed that a Global Rule of Law Meeting Point be created. It should be managed by the Hague Institute for Internationalisation of Law in consultation with the Hague Rule of Law Network that has been developed by this Institute. The Meeting Point should be made available on the Internet and one of its goals should be to become the initial source of information and a generally recognized first step in processes aiming at creating legal technical assistance projects.

I. Introduction

In a letter dated 5 December 2005 to Kofi Annan, then Secretary-General of the United Nations, this author argued: Now is the time to make a global and systematic effort to enhance the rule of law!

In the letter, which was circulated to many who are active in this field, reference was made to the 2005 Summit resolution by the United Nations General Assembly in which the Member States recommitted themselves to actively protect and promote all human rights, the rule of law and democracy, to the start off by the International Bar Association in October 2005 of the *Global Campaign to Promote the Rule of Law* and to the launch at a meeting convened by the American Bar Association in November 2005 of a *Global Rule of Law Movement*.

One of the proposals made in the letter was that, as a very first step, an assessment should be made of the rule of law status in individual Member States. It was argued that this step is important, and that it is really not very different from what is done in other fields, like medicine, environment, human rights, etc. Another example mentioned was the work done by Transparency International in relation to corruption, the veritable poison that destroys so many assistance efforts.

At first sight, the obvious entity to make such an assessment would be the United Nations. However, to map the status of its Members with respect to the rule of law is a sensitive matter for the UN. The author therefore made the argument that the tools for assessing the rule of law status should be developed by academicians or other independent actors and that, perhaps, the national bar associations were best placed to do this work at the national level.

The concluding message in the 5 December letter was that it is important that appropriate contacts are established among those who are engaged in the work to enhance the rule of law, and more specifically in the field of legal technical assistance. Since it is crucial to

identify what entity is best placed to undertake a particular activity, it is imperative that appropriate coordination is made among as many actors as possible. Special reference was made to the necessity of including in this work also representatives of the civil society.

II. Efforts to Enhance the Rule of Law by Some Actors

The United Nations

Within the United Nations the rule of law has gradually become part of the day-to-day activities of the Organization. The Brahimi report (UN doc. A/55/305 – S/2000/809) focused on it. In 2003, at the initiative of the United Kingdom, the rule of law was introduced as a distinct item on the agenda of the Security Council. In September 2004, the Secretary-General devoted his address to the General Assembly to the rule of law.

The Secretariat has also focused on these issues. The annual treaty event initiated by the Treaty Section of the UN Office of Legal Affairs is now a traditional ingredient in the high level meetings of the General Assembly in September every year, now also with the support of the 2005 Summit.¹

In this context should also be mentioned the *Strategy for an Era of Application of International Law*, which was adopted by the UN Senior Management Group and approved by the Secretary-General in June 2000.² Among other things, the programme recommended an increase in the assistance provided by the United Nations system to needy countries to enable them to participate in the international treaty framework.³

Recognizing the difficulties involved in domestic jurisdictions in realizing this goal, the Secretary-General observed that all too often, individuals and corporations find that they are denied the rights and benefits that international law and treaties provide. Sometimes national authorities refuse to recognize and respect their obligations under international law, even where the State has voluntarily subscribed to the relevant treaties. More often though, such authorities simply lack the necessary expertise or resources to ensure that their obligations are properly implemented and applied.⁴

Against this background, every office, department, programme, fund and agency of the United Nations was requested to review its current activities and to consider what else it might do, within its existing mandate and given existing resources, to promote the application of international law. The focus should be on building national capacities to implement treaties more effectively by providing technical assistance to help

¹ GA/RES/60/1, para. 134 (b).

² http://untreaty.un.org/ola-internet/cover_sheet.htm

³ <http://www.un.org/law> Then go to “Technical Assistance to States” and then to “Strategy for an Era of Application of International Law”.

⁴ Report of the Secretary-General on the work of the Organization, Supplement No.1 (A/55/1), para. 278.

Governments implement their commitments under the treaties to which they are or might wish to become parties.

A special effort was made to map all legal technical assistance provided by the United Nations system. A designated website was established for this purpose.⁵

An important development within the United Nations was the adoption by the General Assembly of the 2005 Summit resolution.⁶ In this resolution Member States recommitted themselves to actively protect and promote all human rights, the rule of law and democracy. The relevant provisions are included in the *Annex*.

The 2005 Summit resolution also contained a decision to establish a Peacebuilding Commission,⁷ and expressed support for the idea of establishing a rule of law assistance unit within the Secretariat.⁸ Both these entities are now established.

In this context should finally be mentioned a resolution on the rule of law adopted by the UN General Assembly on 18 December 2006.⁹ In this resolution, the Secretary-General is requested to prepare an inventory of the current activities of the various organs, bodies, offices, departments, funds and programmes within the UN system devoted to the promotion of the rule of law at the national and international levels for submission at its sixty-third session. He is also requested to prepare and submit, at that session, a report identifying ways and means for strengthening and coordinating the activities listed in the inventory with special regard to the effectiveness of assistance that may be requested by States in building capacity for the promotion of the rule of law at the national and international levels.

The International Bar Association

At the Annual Meeting of the International Bar Association (IBA) in September 2005 the rule of law was a prominent subject. The President of the Association¹⁰ devoted the main part of his opening address to the importance of enhancing the rule of law worldwide:

“We lawyers have a duty, as well as an interest, to respond. Business can only flourish when there is adherence to the Rule of Law. Without it, freedom and democracy cannot exist. Nor can lawyers. We lawyers understand what the Rule of Law means – why it is important – how it works. The Rule of Law is now under threat – even in those countries where previously respect for the Rule of Law seems to have been well established. At this conference I will launch a world-wide campaign to promote the Rule of Law. - - - The developed world has

⁵ <http://www.un.org/law/technical/technical.htm>

⁶ GA/RES/60/1.

⁷ GA/RES/60/1, para. 97.

⁸ GA/RES/60/1, para. 134 (e).

⁹ A/RES/61/39. See also UN doc. A/62/61 and resolution A/RES/62/70.

¹⁰ Francis Neate, IBA President 2005-2006.

become complacent. We are taking the Rule of Law for granted. We cannot afford to do this. We must speak up. And we lawyers in the IBA must lead the way.”

At the meeting, the IBA Council adopted a Rule of Law Resolution of the following wording:¹¹

“The International Bar Association (IBA), the global voice of the legal profession, deplores the increasing erosion around the world of the Rule of Law. The IBA welcomes recent decisions of courts in some countries that reiterate the principles underlying the Rule of Law. These decisions reflect the fundamental role of an independent judiciary and legal profession in upholding these principles. The IBA also welcomes and supports the efforts of its member Bar Associations to draw attention to and seek adherence to these principles.

An independent, impartial judiciary; the presumption of innocence; the right to a fair and public trial without undue delay; a rational and proportionate approach to punishment; a strong and independent legal profession; strict protection of confidential communications between lawyer and client; equality of all before the law; these are all fundamental principles of the Rule of Law. Accordingly, arbitrary arrests; secret trials; indefinite detention without trial; cruel or degrading treatment or punishment; intimidation or corruption in the electoral process; are all unacceptable.

The Rule of Law is the foundation of a civilised society. It establishes a transparent process accessible and equal to all. It ensures adherence to principles that both liberate and protect. The IBA calls upon all countries to respect these fundamental principles. It also calls upon its members to speak out in support of the Rule of Law within their respective communities.”

After the meeting, the President announced the launch of a global campaign to bring about collective support for the adherence to, and advancement of, the rule of law.¹² A copy of the Rule of Law Resolution was sent to Heads of State around the world inviting them to declare their support for the rule of law.¹³ Furthermore, a Rule of Law Directory was established by the IBA.¹⁴

This activity was followed up with a joint IBA-ABA seminar at the Annual Meeting of the IBA in September 2006 and further with a whole day seminar on the rule of law at the Annual Meeting of the IBA in October 2007. Further work will be done at the Annual Meeting in Buenos Aires in October 2008. A President’s Task Force on the Rule of Law has also been established.

The American Bar Association

¹¹ http://www.ibanet.org/aboutiba/IBA_Resolutions.cfm

¹² http://www.ibanet.org/humanrights/Rule_of_Law_Movement.cfm

¹³ See e.g. <http://www.ibanet.org/iba/article.cfm?article=65>

¹⁴ See <http://www.roldirectory.org/>

One of the most active national bar associations in the field of the rule of law is the American Bar Association (ABA).

In November 2005, the ABA convened an International Rule of Law Symposium.¹⁵ The Symposium attracted more than 400 visitors from over 45 countries, including representatives from government, the private sector, development banks, foundations, and leading non-governmental organizations. On that occasion, a *Global Rule of Law Movement* was launched. Several of the participants are now engaged in the process of broadening the movement and translating the momentum generated by the Symposium into concrete actions.

In particular, the ABA has recently consolidated its efforts in this field into a Rule of Law Initiative, which is a public service project dedicated to promoting rule of law around the world.¹⁶

In the present context the launching of the ABA World Justice Project (WJP) in 2006 is of particular interest. The project is a multidisciplinary and multinational initiative to foster human well-being by advancing the rule of law. In the near-term the WJP will focus on four complementary initiatives: mainstreaming the rule of law advancement into the work of a wide range of disciplines, such as education, labor, media and public health; scholarship; developing a new Rule of Law Index that will measure countries' adherence to the rule of law and identify areas where a country's rule of law is weak; and organize a World Justice Forum to be held in Vienna, Austria in July 2008, featuring among other things discussions on the other initiatives.¹⁷

The International Development Law Organisation

The International Law Development Organization (IDLO) is an international intergovernmental organization dedicated to promoting the rule of law and good governance in developing countries, countries in economic transition and in those emerging from armed conflict.¹⁸

As an outflow of discussions within the Hague Rule of Law Network (see HiiL below), IDLO has established the IDLO Rule of Law Assistance Directory.¹⁹ The purpose of this Directory, which is now available on the Internet, is to serve not only as a database but also as a tool to facilitate the exchange of information, generate debate and discussion, and promote harmonisation of development strategies for the legal and judicial sectors. As it appears from the Directory, so far, several thousand technical assistance projects from 2004 onwards have been registered.

¹⁵ <http://www.rolsymposium.org>

¹⁶ <http://www.abanet.org/rol/>

¹⁷ <http://www.abanet.org/wjp/>

¹⁸ <http://www.idlo.org>

¹⁹ <http://www.idlo.int/ROL/external/ROLHome.asp>

The Hague Institute for Internationalisation of Law

The Hague Institute for the Internationalisation of Law (HiiL) is an international research institute focusing on national legal orders and how they function (or not) in a world where national borders in the traditional sense are becoming less important. The institute has organized seminars, bringing together experts from different organizations which has led to the establishment of the Hague Rule of Law Network.²⁰

One of the results of the discussions within the Network is a Rule of Law Inventory Report prepared by HiiL in 2007.²¹ Since much attention is paid to the question how to define the rule of law, special reference is made to the Academic Part of this Report.

Other actors

The actors referred to in the foregoing are examples of organizations and institutions active in the field of promoting the rule of law worldwide. Many others could be mentioned. At the intergovernmental level particular reference should be made to the World Bank, the Council of Europe, and the European Union. Many governments are also engaged in this work on a bilateral basis within the framework of their development assistance.

On the non-governmental side there are numerous activities and initiatives, often with a specific focus such as human rights, anti-corruption, or environment. Also here many actors could be mentioned, among them the International Legal Assistance Consortium (ILAC) which was formed in 2002 as an umbrella organisation for associations of legal and human rights experts.²² Its member organizations represent over 3 million judges, prosecutors, lawyers and academics world wide. Its main task is to provide technical legal assistance to post-conflict countries.

III. A More Active and Systematic Approach Is Needed

What should be clear to anyone who gives thought to world governance is the following:

- Rule of law is necessary to create a society in which human beings can live in dignity with their human rights protected.
- Rule of law as it is (or a must be) understood today can only exist in a democracy.
- There is a direct correlation between the rule of law and a State's ability to attract foreign and domestic investments, to address poverty and to protect the environment.
- There is a need for a coordinated, coherent and integrated approach to post-conflict peacebuilding and reconciliation in order to achieve sustainable peace.

²⁰ <http://www.hiil.org/> This Network includes members from *inter alia* the UN, the World Bank, the Council of Europe, OSCE, IDLO, ILAC, IBA, ABA, and many academic institutions.

²¹ <http://www.hiil.org/index.php?page=publications>

²² <http://www.ilac.se>

- To enhance the rule of law in post conflict societies, it is necessary to assist countries emerging from conflict.

Much is being done in this field today, but the question is if one should not more actively and systematically engage in enhancing the rule of law. This applies, in particular, to countries that need assistance before a conflict erupts; every country falling short in this respect is a potential source of conflict that eventually can threaten international peace and security. When UN peacekeepers have to be sent to a country or a region it is really addressing the symptoms of what is wrong. Conflicts invariably are caused by the absence of the rule of law and lack of protection of human rights.

It goes without saying that the responsibility to make advances in the field of the rule of law rests squarely with the States themselves and their governments. In the view of this author the Member States of the United Nations should make a determined effort to systematically address the rule of law deficiency in today's world. But everybody should be encouraged to participate in this work. It is in this context that initiatives like the *Global Rule of Law Campaign* and the *Global Rule of Law Movement* come into the picture. These efforts should be welcomed and supported by States and intergovernmental organizations.

IV. Rule of Law Assessments

The first step that should be taken in such a systematic work should be to assess the rule of law status in individual States. This is important, and it is really not very different from what is done in other fields, like medicine, environment, human rights, etc. Another example is the work done by Transparency International in relation to corruption, the veritable poison that destroys so many assistance efforts.²³

It is true that rule or assessments are already being done by the World Bank and other intergovernmental organizations. Particular reference should be made to studies like *Governance Matters VI: Governance Indicators for 1996-2006*, published by the World Bank in July 2007,²⁴ and to the Bank's very useful and practical publication "*Doingbusiness 2008*".²⁵ Assessments of a similar kind are also made by regional organizations. The Governance Diagnostic Capacity Building and other efforts by the World Bank should also mentioned.

Needless to say, to map the status of individual States with respect to the rule of law is a sensitive matter whoever is engaged in this activity. However, the point must now be made that the commitments made by the UN Member States in the 2005 Summit resolution must be taken seriously. If these commitments are not just empty words,

²³ <http://www.transparency.org/>

²⁴ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=999979#PaperDownload

²⁵ <http://www.doingbusiness.org/>. However, studies of this kind should be read with a critical mind. It is notable, for example, that the country rated as number one in "*Doingbusiness 2008*" has not ratified more than one of the leading international conventions in the field of human rights.

States should be prepared to subject themselves to a close scrutiny of what their rule of law status is and be prepared to accept assistance where such is needed.

The argument could be made that the tools for assessing the rule of law status of individual States should be developed by academicians or other independent actors. In an earlier context this author suggested that maybe the national bar associations were best placed to do this work at the national level and that maybe assessment tools or manuals could be developed to assist them.²⁶

Against this background, the initiative taken by the ABA in 2007 to assess the rule of law status in individual States by developing a Rule of Law Index should be welcomed. The questions as to how this index should be developed, who should provide the material and by whom it should ultimately be managed need careful consideration.

Of particular importance is that it is made clear to States that the purpose of this indexing is definitely not to name and shame but to assist them in assessing their need for legal technical assistance.

V. Legal Technical Assistance as a Means to Enhance the Rule of Law

The rule of law – A definition?

One question to which much energy is devoted in the discussion is how to define the rule of law. A quick introduction to this complex question can be found in the Academic Part of the above-mentioned Rule of Law Inventory Report prepared by HiiL.

As it appears from this Report, there are many suggestions for such a definition. Some of them are quite elaborate (“thick denotions”), others are more narrow (“thin denotions”). Some of these definitions are based on the precondition that the rule of law cannot exist unless there is democracy. Others are more “open” in this respect.

As it appears from the foregoing, in the view of this author, a true rule of law system can only exist in a democracy. However, taking that approach when it comes to providing legal technical assistance is not very fruitful. Also countries that are not democracies must be given assistance, and one has to start somewhere:

Therefore, in order to be able to assist such countries it may be necessary to start by developing proper legislation in areas where this is possible, even if this legislation is not adopted by an assembly elected by a popular vote. Also in an autocratic society there must be some order. And if the political conditions do not make it possible to immediately introduce a constitution based on democratic

²⁶ Cf. at <http://www.ohchr.org/english/countries/> and <http://www.ohchr.org/english/countries/coop/index.htm> and related links. See also the CEDAW Assessment Tool: An Assessment Tool Based on the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) at <http://www.abanet.org/ceeli/publications/CEDAWtool.pdf>

principles, it may be better to convince the leadership in such a country to adopt legislation in certain areas that will benefit the country, e.g. trade law. As the country develops, this would eventually pave the way for democracy and a State under the rule of law.²⁷

Noting the extensive material listed in the Rule of Law Inventory Report mentioned in the foregoing, one should take a practical approach when it comes to legal technical assistance. The best method would be to list some key elements, without which the rule of law cannot be said to exist. Taking such a list as a point of departure a particular State (and others) would be in a position to make an assessment to which extent it lives up to these conditions. The idea would then be to identify sectors where assistance could be extended without compromising the final goal.

Against this background and in order to further explain the purpose of a Global Rule of Law Meeting Point²⁸ it might be helpful to take a look at the key elements that constitute the rule of law, what kind of assistance can be offered, the way to create projects, and the way to fund them.

The rule of law – Four elements

As to the question what is needed to establish a society under the rule of law, this author constantly maintains that four elements are needed: democracy; proper legislation meeting relevant international standards; institutions – administrative as well as judicial – to administer the law; and, most importantly, individual civil servants and other officials, including judges, with the necessary knowledge and integrity to handle this administration.

These elements are not instituted overnight. Democracy, in particular, will take time to develop in many countries. A determined and structured approach is needed in order to make a difference here. Regrettably, efforts must also be undertaken to restore the rule of law in societies that have gone astray, a source of great disappointment and concern to many, not only in the legal community.

What assistance should be offered?

An important question is what legal technical assistance should be offered. It is here that the Meeting Point should be of assistance by providing transparent information about

²⁷ See Hans Corell. *International Law and Changing Climate*. In: *The World Rule of Law Movement and Russian Legal Reform*. Ed. Francis Neate and Holly Nielsen. Justitsinform, Moscow (2007) (p. 208-208).

²⁸ “Meeting Point” should be viewed as a working name. The term “Marketplace” has also been suggested. However, in the discussions at the HiiL Seminar some participants wrongly assumed that the activity was in some way connected to business and that it represented a business enterprise, which is definitely not the case.

what is going on in the field. In this context, three questions should be borne in mind: is assistance welcome; who should provide it; and when should it be provided?

In order to be able to identify situations where legal technical assistance can be offered in a constructive manner it is crucial to engage the general public and the legal profession at the national level.²⁹ At the same time it is necessary to go from generalities to specifics – to create assistance projects. The best way to proceed is namely to address the rule of law deficit through projects that are realistic and that can be effectively absorbed at the receiving end.

The way to create a project: Knowledge – Language – Money – Need

In a meeting a few years ago of almost all the Presidents of the Supreme Courts in Africa this author suggested that effective assistance can only be given through focused projects. Four elements must converge:³⁰

- | | |
|-----------|--|
| Knowledge | Identify the individuals who have the pertinent and up to date knowledge of the field of law in question. |
| Language | Identify the common language in which these individuals and those who are to receive the assistance are able to communicate easily. |
| Money | Identify the resources for the financing of the project. Maybe such resources can be found within one of the United Nations funds or programmes, such as the UNDP, ³¹ or in another international organization, like the World Bank, or in a development agency in a Member State, or in a foundation that specializes in this field. |
| Need | Identify and define the assistance required in a distinct project that can be readily understood by all concerned. |

The first step in this K-L-M-N exercise should be to identify a *need* for assistance. In some cases the need is obvious, at least to an outside observer. But this exercise might nevertheless be complex. In particular, it is important that the proper measures are identified and that guidance is sought from a system that is reasonably compatible to the one in which the measures are to be introduced. As a matter of fact, in some cases there might be a need for assistance even to identify what assistance should be given.

Then it is necessary to find the persons who have the *knowledge* to do the job. They must be able to communicate with those they assist so that *language* does not become an

²⁹ See *Rule of Law and Legal Awareness* by Valery Zorkin, President of the Russian Federation Constitutional Court. In: *The World Rule of Law Movement and Russian Legal Reform*. Ed. Francis Neate and Holly Nielsen. Justitsinform, Moscow (2007) (p. 46-61).

³⁰ http://untreaty.un.org/ola/media/info_from_lc/address07_02_03.pdf

³¹ <http://www.undp.org>

unnecessary obstacle. In this exercise one would most probably discover the systemic issues just mentioned in the context of the needs analysis.

If these elements can be identified and presented as a well-structured, credible and useful project, then there would be good auspices for raising the *money* needed. If so, a project is created. And the more well-structured projects are identified, the more funds might be forthcoming.

In this context it is critical to bear in mind that there is a limit to how much legislation a parliament can pass within a specific timeframe. In particular, it is important that a parliament has a genuine insight into the proposals and that the laws are adopted by an informed assembly. In this perspective, proposals hastily drawn up by foreigners would be counterproductive. Therefore, as central as it is to produce draft legislation, just as critical it is that proposals are discussed with politicians, administrators and others at the local level to ascertain that there is a good understanding of what is being proposed and that the proposals take into consideration local customs and concerns.

This also means that legal technical assistance cannot be given in larger operations, perhaps covering several States. On the contrary, each State has its special features and interests. States must be treated with due respect and their concerns and interests must be given proper attention.

From this follows that each assistance project does not necessarily have to be so big. The most cost-effective approach is probably to identify a few persons who could travel to the country that needs assistance and meet with key people from the government, from the parliament and from civil society and do the work directly with them.

What has been said about providing draft legislation applies also to institution-building and training and similar capacity-building.

Funding

With respect to funding it would be helpful to identify more clearly those who are interested in funding projects. Funding is today provided both by governments and international organizations. Substantial funding is also provided by private entities, in particular by foundations. More funds would probably be forthcoming if additional credible and cost-effective projects could be identified. As is often observed, a safe legal environment generates investments, both foreign and domestic.

In the view of this author, more Official Development Assistance (ODA) should be directed to this kind of activity. As recognized by the United Nations General Assembly, good governance and the rule of law are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger.³² If a legally safe environment is created, many of the other efforts that are presently funded by ODA would be achieved by private initiatives.

³² GA/RES/60/1, para. 11 (also available in the *Annex*).

In making decisions about ODA, contributing governments should bear in mind that a rule of law system with all its components – rules, institutions, personnel, logistics, etc. – is a major investment in any country. Where it exists, it has taken years and generations to develop. As a matter of fact, the investment in a rule of law system is similar to what is needed to establish other types of infrastructure, like roads, railways, harbours, the electric grid, and the like.

Where should one focus?

Another important matter is to determine where to focus. Criminal law and criminal procedure is an obvious area. Another obvious area is land law and registration of titles to land; if there is no proper land registry it is very difficult, if not impossible, to build an economy in a democratic society. International trade law is yet another obvious area.³³ But there is also a need to provide assistance in many other fields such as constitutional law, administrative law, tax law, etc.

It would thus be helpful to identify entities that specialize in any of these areas, since it is obviously more cost-effective to engage people who do not have to start anew every time but can build on previous experiences. Therefore, those who provide assistance should be encouraged to develop “toolboxes” drawing on lessons learnt. Gradually, these toolboxes would be more sophisticated with model laws and model administrative structures that the receiving country could establish. Reference could in this context be made to the model laws elaborated by the United Nations Commission on International Trade Law (UNCITRAL).

With respect to assistance in drafting legislation in a particular field, it is necessary to make first a meticulous analysis of the law in that field and the status of the existing legislation, if any, in the country in question. The Treaty Section of the UN Office of Legal Affairs can assist with very illustrative graphs that were developed a few years ago, indicating to what extent a particular Member State has ratified or acceded to treaties in a specified field. Such a graph gives a useful indication. But, regrettably, a ratification of or accession to a treaty is not a guarantee that the State fully complies with the standards required by the same treaty.

Finally, a system under the rule of law is not complete without a free and independent bar. Therefore, in parallel with giving assistance to State institutions, support should be given to the establishment and management of local bar associations. The IBA is a natural provider here, but there might be individual bar associations or law firms who are interested in contributing, either pro bono or provided that funding can be arranged.

Coordination

It is important that appropriate contacts are established among those who are engaged in the work to enhance the rule of law, and more specifically in the field of legal technical

³³ See <http://www.uncitral.org/>

assistance. Since it is crucial to identify what entity is best placed to undertake a particular activity, it is imperative that appropriate coordination is made among as many actors as possible. In particular, it would be imperative to identify activities where intergovernmental organisations are best placed to engage themselves, leaving other activities to other organizations and the civil society.

VI. A Global Rule of Law Meeting Point

Points of departure

The HiIL Seminar in October 2007 was based on a number of assumptions. Among them were the following:

- People and organizations working in rule of law promotion are often not (sufficiently) aware of each other's projects and programmes. This is undesirable, not only because it hampers efforts to learn from each other's successes and mistakes.
- Much needed expertise may be readily available without actors being aware of it. One of the ideas to remedy this situation might be to create a rule of law market place, where practitioners and academics could meet, learn about each other's projects, people involved, scientific thinking and about the successes and failures of these projects.³⁴
- A rule of law market place may thus contribute to much-needed harmonization and coordination of rule of law promotion efforts. A rule of law market place may also be a significant contribution to the development of long-term policies and commitment of rule of law investment.
- Ultimately, the enhancement and maintenance of the rule of law must be conducted by those who are currently the recipients of rule of law promotion efforts by donor states and organizations, and the market place may be helpful in providing the ideas and means to undertake this task.

As already noted, there are presently many actors involved in providing legal technical assistance. Precisely because of this, it is crucial to find a method through which these efforts can be coordinated. All who contribute should be welcomed, and it is important to avoid pointless competition among the various actors.

Against this background it is essential to get an idea of what is available by way of legal technical assistance. What is available within the United Nations system appears on the UN website³⁵ and, as noted above, further work is under way to identify what is being done. Also other organizations and institutions signal what kind of assistance they provide: the World Bank, the Council of Europe, the European Union, individual States, as well as associations like the IBA, ILAC, ABA and its Rule of Law Initiative, just to mention a few.

³⁴ With respect to terminology reference is made to note 28 above.

³⁵ <http://www.un.org/law/technical/technical.htm>

The IDLO Rule of Law Assistance Directory is a first step towards establishing a much needed inventory of legal technical assistance projects. However, this activity needs to be further developed and combined with other elements. It is for this reason that many believe that a Global Rule of Law Meeting Point should be created.

The design and critical elements of the Meeting Point

To enhance all the activities described, a Global Rule of Law Meeting Point should be developed as a hub through which information relating, in particular, to legal technical assistance could be channelled. The main purpose of this hub should be to help those who seek such assistance, and contribute to establishing contacts between those who need it, those who can provide it, and those who can finance it.

At the outset it is important to emphasize that a Global Rule of Law Meeting Point does not emerge just because it is named and established. Such an entity has to prove itself, and its confidence must be earned. Its vision should be to become the initial source of information and a generally recognized first step in processes aiming at creating legal technical assistance projects.

As discussed in the HiiL Seminar, some vital questions need to be addressed before the Meeting Point can become a reality. One such question is: what are the critical elements that constitute such a Meeting Point?

In the view of this author there are at least four critical elements that need to be considered: credibility, legitimacy, professionalism, and practicality.

With respect to *credibility*, it is suggested that one important element is that the Meeting Point not be seen as a Western attempt to advance its own perceived interests but as a genuine effort that in the long run will benefit all peoples. The lodestar should be the common good of humankind, and one leading argument for the credibility of the exercise should be that it is based on the recommitment by the United Nations General Assembly to human rights, the rule law and democracy.

Credibility of this nature would be most effectively demonstrated by an academic institution, provided that it is managed also with a clear view to achieving practical results. Needless to say, the contribution by a reference group of the kind that is represented by the Hague Rule of Law Network would add to this credibility.

Another important element is that any guidance with respect to who might be in a position to provide assistance must be reliable. A critical element to be decided upon is therefore what kind of information regarding which projects should be included in the reference material. Questions already discussed in the HiiL Seminar are whether assessments of the success (or the lack thereof) of rule of law projects should be included, and, if so, how to encourage organizations to fully disclose information with respect to less successful rule of law programmes. The answers to this kind of questions can probably not be given until the project is under way.

As far as *legitimacy* is concerned, a significant element is that the Meeting Point should be designed so as to convey the message that it is not for naming and shaming but to assist. In particular, it is essential to demonstrate an understanding that legal technical assistance should be based on a two way communication and that those who provide such assistance must respect the priorities set by the recipients. In particular, proposals for legislation must be discussed with politicians, administrators and others at the national or local level.

Professionalism is of course a *sine qua non*. It will be necessary to employ staff that is well versed not only in the subject matter but also in a position to find the technical solutions to the challenges that the task carries with it. In particular, it is vital that those who turn to the Meeting Point can find the information they are looking for in the most efficient and effective manner. Needless to say, the design of a future webpage will be a crucial element in this context.

Finally, with respect to *practicality*, it is important that the Meeting Point becomes a useful tool to those who turn to it for assistance. In order to achieve this goal, the Meeting Point must be accessible to the general public. However, this does not exclude that a specific section of a website could be established, to which only established actors in the field, including in particular government representatives, are given access upon authorization.

An essential practical element is that the institution responsible for managing the Meeting Point should not engage in individual assistance projects or in similar activities that are already done by others. Instead it should be guiding visitors to the organization(s) or institution(s) best placed to provide the information or assistance requested. The IDLO register is a case in point. In particular, the Meeting Point should provide quick links and directions to those who provide information relating to a country's status with respect to human rights, corruption, business opportunities, and the rule of law standards in general.

If it proves useful, the Meeting Point may be able to elaborate analyses of such material. Upon request, the Meeting Point might also be in a position to engage in mapping exercises of specific countries where different available parameters are consolidated into structured all-encompassing analyses.

Another task of tremendous practical relevance would be to provide the tool through which the four elements discussed in the foregoing – knowledge, language, money, and need – can be identified and brought together. A specific question in this context is how best to encourage donors to disclose how much funding does in fact get effectively channeled into rule of law programmes.

One important aspect is that the information provided by the Meeting Point should not be limited to legal technical assistance. A common denominator in the discussions lately is

that a society under the rule of law has to be based on a broad understanding among the general public of the need for such a system.³⁶

Of particular importance is therefore that the Meeting Point can also distribute educational material to key actors at the national level, in particular, politicians, journalists, teachers, and students at various levels. This material should be for free and such that can be easily translated into different languages to satisfy local needs.

Furthermore – and this is where the IBA, the ABA and other bar associations should be in a position to contribute – a system under the rule of law is not complete without a free and independent bar. Assistance should be given also to secure this interest. May be the Meeting Point could be of help also in this context, in particular with respect to identifying funding.

Who should establish and manage the Meeting Point?

Finally, the question arises as to who should be responsible for establishing and managing the Meeting Point. As already suggested, the best solution would be an independent organization or institution. In view of the initiative taken by the HiiL (see above) and considering the outcome of the consultations that took place in The Hague in October 2007, the institution best placed to provide this service would be the HiiL in consultation with the Hague Rule of Law Network.

³⁶ See for example President Valery Zorkin's address referred to above.

Annex

Paragraphs 11, 16, 21, 24 (b), 25 (a), 119 and 134 of General Assembly resolution A/RES/60/1 (emphasis by the author):

11. We acknowledge that good governance and the **rule of law** at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger.

16. We therefore resolve to create a more peaceful, prosperous and democratic world and to undertake concrete measures to continue finding ways to implement the outcome of the Millennium Summit and the other major United Nations conferences and summits so as to provide multilateral solutions to problems in the four following areas:

- Development
- Peace and collective security
- Human rights and the **rule of law**
- Strengthening of the United Nations

21. We further reaffirm our commitment to sound policies, good governance at all levels and the **rule of law**, and to mobilize domestic resources, attract international flows, promote international trade as an engine for development and increase international financial and technical cooperation for development, sustainable debt financing and external debt relief and to enhance the coherence and consistency of the international monetary, financial and trading systems.

24 (b) To reaffirm that good governance is essential for sustainable development; that sound economic policies, solid democratic institutions responsive to the needs of the people and improved infrastructure are the basis for sustained economic growth, poverty eradication and employment creation; and that freedom, peace and security, domestic stability, respect for human rights, including the right to development, the **rule of law**, gender equality and market-oriented policies and an overall commitment to just and democratic societies are also essential and mutually reinforcing;

25 (a) We continue to support efforts by developing countries and countries with economies in transition to create a domestic environment conducive to attracting investments through, inter alia, achieving a transparent, stable and predictable investment climate with proper contract enforcement and respect for property rights and the **rule of law** and pursuing appropriate policy and regulatory frameworks that encourage business formation;

119. We recommit ourselves to actively protecting and promoting all human rights, the **rule of law** and democracy and recognize that they are interlinked and mutually

reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations, and call upon all parts of the United Nations to promote human rights and fundamental freedoms in accordance with their mandates.

Rule of law [Note: This title appears in the resolution]

134. Recognizing the need for universal adherence to and implementation of the **rule of law** at both the national and international levels, we:

- (a) Reaffirm our 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;
- (b) Support the annual treaty event;
- (c) Encourage States that have not yet done so to consider becoming parties to all treaties that relate to the protection of civilians;
- (d) Call upon States to continue their efforts to eradicate policies and practices that discriminate against women and to adopt laws and promote practices that protect the rights of women and promote gender equality;
- (e) Support the idea of establishing a **rule of law** assistance unit within the Secretariat, in accordance with existing relevant procedures, subject to a report by the Secretary-General to the General Assembly, so as to strengthen United Nations activities to promote the **rule of law**, including through technical assistance and capacity-building;
- (f) Recognize the important role of the International Court of Justice, the principal judicial organ of the United Nations, in adjudicating disputes among States and the value of its work, call upon States that have not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute and consider means of strengthening the Court's work, including by supporting the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice on a voluntary basis.