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Introduction

“The rule of law is among the core principles on which we build our partnership and our efforts to promote lasting peace, security, democracy and human rights as well as sustainable development worldwide.” This opening statement commences the Declaration of G8 Foreign Ministers that was adopted during the German Presidency in Potsdam on 30 May, 2007.

The Potsdam Declaration states that, despite many initiatives by the most varied organisations in the area of the rule of law, there is still a lot left to be done. Deficits in the rule of law in some countries do not only have a domestic effect but threaten international stability just as much as the economic and social development in general. That is why the G8 Member States have adopted the task of strengthening a coherent international approach to promote the rule of law, by bundling existing initiatives and supporting state and non-state players working to this end.

In the Declaration, the G8 Foreign Ministers asked the German Presidency to convene a broad stakeholder-based expert meeting that should expand also to participants from international and regional organisations. The objective of the meeting was to identify further common ground; facilitate a closer dialogue on issues relating to the promotion of the rule of law; discuss ways of supporting relevant international efforts; identify gaps as well as possible differences that need to be addressed; and better coordinate own efforts. In addition, the dialogue is intended to include not only the G8 Member States but, at a later stage, also those countries that are prepared to cooperate with the G8 in this area. Thus, the conference calls for states or regions to be included in such an extended dialogue.

The Experts Conference on the Rule of Law was held on 30 November, 2007 in Berlin. More than 120 academics, experts and practitioners from the G8 (Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States of America) participated in the conference, covering a wide range of expertise, including representatives from national non-governmental organisations. The UN Rule of Law Assistance Unit, the United Nations Development Programme, the International Centre for Transitional Justice, the Asian and African Development Banks and the European Bank for Reconstruction and Development and Transparency International were amongst the many international and regional organisations represented at the conference.

With the preparation and implementation of the conference the Federal Foreign Office commissioned the German Foundation for International Legal Cooperation (IRZ Foundation) and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH (German Technical Cooperation).
Summary

The Experts Conference on the Rule of Law was held on 30 November, 2007 in Berlin. It was opened by the German Foreign Minister Frank-Walter Steinmeier. In his key speech, Steinmeier stated that the "G8 has over the years become a rudder for the world economy and a forum for debating the issues that will affect our common future." He stressed that the rule of law is a key prerequisite for trust in society, for security, for peace, and for successful business. In general, the alternative to the rule of law is violence, not only as physical violence, but also as a silent, corrosive poison of intimidation and surveillance. Thus, the rule of law is a precondition for a society in which people can interact with each other freely and with self-confidence. Steinmeier continued that “anyone who will not accept the law of the strong—in politics, business or at a personal level—must work to strengthen the law.”

In his introduction to the conference General Rapporteur Rainer Faupel highlighted that the very fact that the rule of law is discussed among the G8 shows the importance of the topic. He referred to the description of “rule of law” of the United Nations as the basis for discussion: “It [The rule of law] refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.” Implementing the rule of law requires many actors on many different levels and, based on its fundamental elements, specific solutions for each country. Faupel stressed that freedom of expression together with free press and media balances against the three powers of government: legislation, executive, and judiciary. Developing the rule of law requires education in professional and ethical standards, building confidence in state institutions and persons holding offices, and political support at the highest level. The improvement of rule-of-law principles is a major topic with innumerable actors as the State itself, non-governmental organisations, international organisations and individual actors. It therefore needs better and more effective mechanisms for coordination, Faupel concluded his remarks.

The experts conference discussed four key issues in working groups, cochaired by participants nominated by the G8 Member States.
**Working group 1:**
The rule of law and the economy: the rule of law as a prerequisite for sustainable economic development and international cooperation
co-chaired by Robin Sully (Canada) and Mikio Tanaka (Japan)

The working group generally accepted the premise that long-term sustainable economic development requires a rule-of-law framework and that the G8 has an important role to play in supporting and advancing the rule of law internationally. Priority for the G8 in supporting and advancing the rule of law should be given to: (1) encouraging and facilitating collaboration among the G8 countries, multi-lateral organisations and the international financial institutions implementing rule-of-law initiatives relating to economic development in developing, transitional and post-conflict countries; (2) taking leadership by the G8 in promoting the rule of law at the international level and in complying with existing international substantive obligations themselves, thus setting an example for developing and newly democratising countries; (3) strengthening political commitment through supporting relevant initiatives, such as supporting the capacity of civil society to hold governments accountable, media engagement and monitoring and assessment of government actions; increasing awareness and understanding of rule of law and economic; increasing capacity to implement laws; promoting harmonisation of commercial law, including investment laws; (4) recognising that equity and justice is a fundamental underlining principle of the rule of law.
Working group 2: 
Rule-of-law requirements in the civil society of the 21st century 

co-chaired by Rainer Voss (Germany) 
and Robert Leventhal (United States)

Participants expressed their belief that the rule of law and its strengthening are key parts of democratic systems and of the process of democratisation. Discussions focused on the following pillars: (1) need for attention to donor and NGO effectiveness in the rule-of-law promotion and the reinforcement of good practices, including adequate competition-free consultation and reinforcement of existing donor effectiveness and coordination principles. It was also stressed that the most successful reform is partner-country-led, with the full involvement and input of local stakeholders. It is worth further considering how the G8 could provide support to boosting political will; (2) access to the legal system, including free lawyers, independent courts and judges and a both reasonable and socially adequate system of fees. There is a need for further discussion of access by civil society and individuals to the enforcement mechanisms of international law regimes; (3) judicial independence and effectiveness. Dimensions to this issue include: judges and courts as well as the broader context of the system of administration of justice, such as prosecutors, court clerks; independence of the individual judge; measures to ensure the ethics of the judiciary; role of constitutional courts and the dissemination of interpretations and international norms at domestic level; (4) independence and capacity of lawyers; (5) public involvement and understanding of the law, legal institutions, of the rule of law and of reform initiatives; (6) anti-corruption and transparency as critical elements to a functioning rule-of-law system and key focuses for countries and donors. The working group explicitly would welcome the continued attention and assistance of G8 Member States and donors on these issues.
Working group 3:
Rule-of-law requirements vis-à-vis the legislative process as well as the administration and oversight of the executive
co-chaired by Rosario Aitala (Italy) and Eberhard Desch (Germany)

The rule of law is firmly entrenched in the foundations of the democracies of the G8. It encompasses at least two principles: the absolute supremacy of law as opposed to arbitrary power and the equality before the law. Major consequences arising from the rule of law are the role of parliament as law makers and the quality of the law on one hand and the requirement of public authorities abiding by the law and providing for good administration on the other hand. G8 could take a stronger global leadership to identify and promote rule-of-law issues, standards and best practices, taking into account legal cultures and traditions of societies. Views differed in the principles that should govern administrative authorities. The working group stressed the importance of the rule of civil society organisations and the need of including support for the development of civil society into initiatives to promote the rule of law.

Working group 4:
The role of the rule of law in conflict prevention and in post-conflict societies, including rule-of-law requirements of transitional justice
co-chaired by Babu Rahman (United Kingdom) and Viktoria Panova (Russia)

There are no easy answers to the issue of the rule of law in conflict prevention and in post-conflict societies. It needs a broad approach, as “post-conflict is often pre-conflict.” One crucial point in the avoidance of further conflicts is refurbishment and reconciliation of past conflicts. Judicial examination and evaluation of the actions of the various participants in a conflict are especially decisive with the additional need for a de facto possibility of citizens to use the judicial system. This faces several problems in societies where state justice structures do no longer exist, or never existed. It was discussed what level of requirements one can make regarding the rule of law in a given situation. There is a need for a more detailed elaboration and analysis on a number of questions related to post-crisis management by the international community. The role of the rule of law and the issue of human rights violations during a crisis also need serious consideration. Some countries and areas deserve particular attention, namely Kosovo, Bosnia and Herzegovina, South Africa, Afghanistan and Sierra Leone. The group also reflected on the possible role the G8 could and should take regarding the rule of law. The issue has both an internal and
an external focus: The G8 should constantly monitor their own local rule-of-law situation as well as those in non-member states, and any activity needs thorough planning to ensure sustainability and efficiency and to avoid duplication of efforts. The group made both a series of general recommendations as well as recommendations directly addressed to the G8.

The atmosphere in all working groups was very open and discussions were lively. The reports of the working groups were presented to the plenary and are reproduced in this documentation. They represent a broad choice of items that call upon further in-depth discussion. There was a strong feeling among the conference participants that the process should be continued and some working groups explicitly stated the need for follow-up meetings on specific topics. Due to the complexity and thematic interdependence, it was also felt that opportunity should be given to discuss certain subject areas in more detail.
Opening speech

by Federal Foreign Minister
Frank-Walter Steinmeier

Welcome to the Federal Foreign Office! I am delighted that you have come here to this conference, which we hope will inject fresh momentum into the promotion of the rule of law.

The rule of law is the lifeblood of any modern, cosmopolitan society. It allows people to trust in their government—as they must, if peace is to be maintained within a society. The rule of law is at the same time the foundation of sound economic development. In the present era of globalisation this is truer than ever.

The globalised division of labour and the increasing interlinkage between both individuals and companies are the distinguishing features of the early 21st century. Notwithstanding all the risks, especially the environmental ones, globalisation is on balance beneficial to mankind. It gives billions of people their first real opportunity to rise above poverty by dint of their own efforts and to find a secure place in society.

The figures are impressive. Since the year 2000, worldwide per capita GDP has grown by 3.2% each year—and in some regions it has increased by many times this amount. Even the boom years following the Second World War and the years of rapid industrial expansion in the late 19th and early 20th century pale in comparison. There is, moreover, reason to hope this growth will continue. According to trustworthy estimates, the number of people living in industrialised societies will have risen from 1.5 billion today to 4 billion in 2030.

That is quite an outlook, also for countries such as Germany with an export-oriented economy. Nevertheless, we realise that not everybody in our society has responded to this rapid change with confidence and optimism. We know that many people are sceptical of globalisation, or even afraid of it. Many people feel they are at the mercy of capitalism gone wild, which the politicians can scarcely influence, let alone control. Many people are scared of the power of the faceless financial markets, which can change their fates just as surely as any natural disaster. Many people are afraid of international competition, which is preventing wages from rising in real terms in numerous sectors in Western Europe and the USA. And they are anxious observers of events such as the present credit squeeze, because they know that financial crises of this kind can also have an impact on the real economy, as has been felt by mortgage lenders this time round.

We have to take these fears very seriously, for they are not unfounded. Our common task is to shape globalisation together, to regulate it in a way that ensures the resulting dangers are contained as effectively as possible. This will not happen of its own accord. Rather, it will require politicians to assume a mantle of responsibility.

But this is not a reason to be despondent. For endeavouring to spread the rule of law around the world is now not only a political and moral struggle, but is also a gentle imperative of the globalised economic order. Sound economic development presupposes confidence, reliable structures, and the ability to plan for the future. Anyone who thinks they can ignore these prerequisites will in turn be ignored by globalisation. And then
they will be unable to improve, or meaningfully improve, the standard of living in their country.

Anyone who wants to participate in and profit from the globe-spanning exchange of goods and ideas has to respect the rule of law at home.

Legal certainty is a sine qua non for economic and social success. The more a country abides by the rule of law, the more it stands to gain from globalisation—and, in addition, the more order it will inject into globalisation.

Just why is this conference being held under G8 auspices? It is because the G8 has over the years become a rudder for the world economy and a forum for debating the issues that will affect our common future. These issues include international terrorism, energy security and climate change—and we don’t just deliberate, we take decisions. Today we are adding the rule of law to the agenda.

This initiative follows on from the many others we have launched during the German G8 Presidency. Our record this year is, I think, something we can be proud of.

We have launched the Heiligendamm Process by introducing and providing a solid framework for cooperation between the G8 and the so-called “outreach five”—Brazil, China, India, Mexico and South Africa—all countries that are gaining in importance. This coming Monday, G8 and O5 representatives will meet here in Berlin to discuss ways of securing our long-term energy supplies.

Energy security and climate protection are among the priorities of our Presidency. We have set important goals, such as becoming more energy-independent by investing in biofuels, innovative and efficient cars and clean-coal technologies. Let us use this political momentum to make a great leap forward at the Climate Conference in Bali!

I do not want to bore you now with a list of all the other initiatives we have launched, but I would like to say that I hope today’s subject—the promotion of the rule of law—will be
addressed long after our Presidency is over. I hope that an understanding can be reached on the matter, initially within the G8, but subsequently also with other states and groupings.

Even agreeing among ourselves, within the G8, will not be easy. Although we all think of ourselves as upholders of the rule of law, there are considerable differences between us—be they geographical, historical or cultural. The G8 states are a motley crew that includes the oldest democracy in the world as well as some very young ones. But since age does not necessarily bring wisdom, let me say that nobody here should believe they have the ultimate, universally applicable system. Vigilance and critical selfreflection should be our constant companions in our efforts to foster the rule of law.

Nor do I believe our aim here should be to draft the one and only proper blueprint for a state governed by the rule of law. But it is important that we—as G8 partners—agree on the core issues: that all governmental authority should be bound by the law, that all people are equal before the law, that legal certainty, due process, equal and full access to the legal system must prevail. These are in my opinion the key criteria for the rule of law.

Discovering how we can promote this common understanding, how we can learn from one another and perhaps also take concrete steps to enhance the rule of law in our countries is what this conference is all about.

The rule of law, as I mentioned in passing just a moment ago, is a key prerequisite for trust in society, for security, for peace and for successful business.

Only the very brave will invest in a country where their property is at risk of being expropriated. Very few will invest in a country where they are at the mercy of the whims of the courts, and where every official transaction has to be accompanied by a bribe.

Any country that wishes to attract capital has to offer good conditions, including equality before the law, legal remedies and decisions that can be relied upon, and must above all boast administrative authorities that act in accordance with the rule of law.
I would like us to be able to offer concrete assistance to states that still have room for improvement, and to that end develop suitable instruments, such as further training courses for judges and lawyers. Other instruments could include help establishing the conditions for the proper protection of intellectual property, police assistance, cooperation between customs authorities, freedom of expression on the Internet, and data protection as well as intensified exchanges between parliamentarians from various countries on legislation and legislative methods.

These are all eminently important elements, which together constitute the rule of law in our societies.

The German Government has in this spirit pursued a bilateral dialogue on the rule of law for several years with various partner states. This dialogue has taken a pragmatic approach, and our experience to date has been positive.

We think it is very important that both sides learn and profit from this dialogue. For only in this way can we generate the trust and acceptance necessary for our views to be heard.

Many colleagues and counterparts have told me that they consider this dialogue to be exemplary. I think it can serve as a model for other initiatives to promote the rule of law. This, too, should be discussed by the G8 experts today.

This approach, based on dialogue and mutual benefit, is particularly successful in conflict situations. A well-trained police force operating in accordance with the rule of law, an impartial judiciary, a functioning executive and enforceable rights are often the most effective means of resolving crises and conflicts in the long term. Above all, however, they are the most important means of preventing conflicts from arising in the first place.

Let’s take the police training we have organised in Afghanistan and in the Balkans as an example. This is a concrete way of helping societies at risk to help themselves. I advocate giving even greater attention to such approaches in international missions.

Or just think of the international support for reconciliation processes in societies that have been traumatised by violence and civil war—Rwanda, for example. There, too, we find models for the pacification of conflicts using rule-of-law mechanisms, even if it is sometimes not easy to integrate the rule of law in reconciliation processes.

The rule of law is the championing of human rights by means of practical action. For this
reason human rights and fundamental freedoms are the basis of a functioning state governed by the rule of law—they are, in a way, its Archimedean point.

What’s meant by that is formulated clearly and concisely in the first Article of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”

We, the G8, must not and should not in any way negate this fundamental principle. But nor should we lose ourselves in ideological, confrontational debates on such principles, debates that are ultimately detrimental to the acceptance of the idea of the rule of law. Anyone who looks at the world in black and white may feel that they are thereby on the high moral ground. But the reality is not so simple, and the oppressed and suffering people of this world will not be helped in this way.

It is my firm conviction that patiently and tirelessly promoting the rule of law is one of the best ways of achieving the universality of human rights and fundamental freedoms. Anyone who wants to improve people’s lives by means of the rule of law has to extend offers of assistance that will be accepted, not rejected.

The alternative to the rule of law is, in general, violence. It can take many different forms—it may appear not only as physical violence, but also as the silent, corrosive poison of intimidation and surveillance. The rule of law is thus in my eyes not just any old principle of governance, but the precondition for a society in which people can interact with each other freely and with self-confidence.

Anyone who will not accept the law of the strong—in politics, business, or at a personal level—must work to strengthen the law.

A vital and resilient state governed by the rule of law can only be established and flourish in a society where the citizens are active and vigilant. The precise role played by individuals, be it on their own or in organised groups—in non-governmental organisations, through the media, or in professional associations—is not that important. It is the sum of these activities that counts, and for this reason I advocate supporting above all the efforts of civil society to promote the rule of law. I would therefore like to extend a special welcome to the many civil society representatives here with us today. You are vital allies in gaining acceptance for the idea of the worldwide promotion of the rule of law, an idea reflected, for example, in the foundation of the Human Rights Council in Geneva.

I would like to thank our G8 partners for sending such high-level expert delegations. I see here before me academics and practitioners from the G8 countries. I see representatives of ministries and non-governmental organisations, of regional and international organisations, of development banks and development cooperation institutions.

You all bring with you to Berlin your experience on this issue from very different perspectives, from very different backgrounds. Harnessing this wealth of experience today, in particular in the working groups, is the aim of our conference.

I hope that it will be a great success.
Opening statement

by Rainer Faupel,
General Rapporteur*

It is highly to be welcomed that the Foreign Ministers of the G8 states have decided to tackle the rule-of-law topic.

The worldwide deficits are so big, the challenges so great, that G8 efforts—given the members’ worldwide influence and the resources they might be able to mobilise—are of the highest importance and might yield results. Results, certainly not within days and months because improving the rule of law is a long and never-ending story. And results, of course, only if the G8 efforts are brought in line with the activities of individual states, of international organisations, in particular the United Nations and the European Union and other regional organisations, and with those of the non-governmental organisations. All these different actors have been active since years, and undoubtedly there are results, even if an enormous amount of work still has to be done.

I feel honoured that the present G8 presidency, my home country Germany, has asked me to act as the general rapporteur of this conference of experts. I was not at all involved in the genesis of the conference, and it is only some ten days ago that I was asked to deliver an opening statement in the conference. Maybe, I succeed in trying to give some additional input into the working groups’ discussions or to state certain fundamentals which thus need no repetition in all working groups.

I will deal with some general points which, in a way, form some sort of an umbrella for the working groups’ topics. Nothing new, but worthwhile stressing if we intend to submit the outcome of our deliberations to the G8 members for consideration and further action. I will also deal with two topics where the experts definitely need high-level help. These are: (1) political support, not only general but specific, for expert activities; (2) coordination of the endeavours of so many actors in the field of improving the rule of law.

As I have said before: The topic is big and the challenges are great. So big and great, indeed, that a one-day conference hardly can do more but setting a starting point for further activities. Hopefully, the working groups will come to the proposal to continue the work, e.g. by focussing on the most important sub-items (sub-items in terms of substance, of regions with the greatest needs, or of coordination), by prioritising sub-items and by suggestions to make proposals operational.

On definitions

You have libraries full of definitions and descriptions of the concept of “rule of law.” You have more libraries full of academic dispute about similarities and divergences between “rule of law,” “état de droit” and “Rechtsstaat” or similar terms in other languages. We should refrain from going into the details of such disputes among scientists and practitioners. For an international conference like ours it seems appropriate just to follow a definition used within the United Nations which is, as far as I can see, not objected by anyone. The definition reads:

*The unabridged version of the opening statement is available on the website of the Federal Foreign Office: www.auswaertiges-amt.de/diplo/de/Infoservice/Broschueren/Uberversicht.html
The “rule of law” refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, fairness in application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

See, e.g., Report of the Secretary General on the rule of law and transitional justice in conflict and post-conflict societies; Doc. UN S/2004/616, no. 6

**Binding elements — open elements**

The definition consists of a number of fundamental substantive provisions and of provisions of a more formal character. I quote, as examples for the substantive provisions, those which, according to my experience, are the most important: (1) supremacy of the law for all actors, public and private, in a given State; supremacy of law understood as the opposite of supremacy of power or of political and economic interest; (2) separation of powers (or, what I would prefer: separation and appropriate balance of powers); (3) consistency of the laws with human rights norms and standards. These substantive requirements are so fundamental that, even if discussions in detail are possible, they cannot be questioned as requirements for the rule of law.

The definition, in addition, has a more open part where formal, even if highly important, requirements are stated: The laws, to which all actors in a State have to be accountable, are, apart from being always required to be consistent with human rights and the other substantive provisions of the definition, not substantially circumscribed; they are open and have just to fulfil the general requirements of being publicly promulgated, equally enforced and independently adjudicated.
This is important because it raises the question of the normative foundation of the rule of law in international law: Whereas certain and most important general principles of the rule of law can be regarded as binding for all, there is, as far as there is no binding international law, wide room and discretion for national legislators to enact their individual body of national laws according to their own traditions and needs. We have to live with the permanent tension between international disciplines and commitments and national policy space.

That means for national constitutions and legislations: There are many different ways how the general principles of the rule-of-law concept can be translated into national constitutional and legislative systems; no such system is the one and only, and, as experience within G8 member states shows, there are many ways to create and apply constitutional and legal systems that are in conformity with the rule of law, even if among them there are important differences.

It also means that, insofar as there is no binding international law, you can, if trying to improve rule-of-law principles, not just ask the given state to comply with “the law.” It will ask: “Which law?” Therefore, instead of making a simple reference you will have to convince this state to change his law or to adopt new laws. You will have to convince that the law you have in mind for such and such reasons is better than his, that there are broadly accepted principles of good governance, that there are best practices, and that there are international treaty systems which are so widely adhered to that it makes sense to join them, too.

No “one-size-fits-all” solutions; options; ownership

This has consequences, for those who engage in enhancing the concept of the rule of law, and for the addressees of such endeavours as well. Apart from the fundamentals just referred to, there is no “one-size-fits-all” model. Within the framework of the fundamentals there are different options. No one should think that his national model is the only one in compliance with the rule of law; and none of the addressees is obliged to forget all his legal or customary traditions when asked to shape his system according to the principles of the rule of law. Therefore, the national laws of donor states or the model laws of scientists or organisations should be put forward not just as blueprints for translation and enactment; they have rather to be put forward as a preferable option. What is called the “ownership” of the addressee state must be respected. This is the only chance to implant rule-of-law principles in a way that gives them a chance to grow, eventually to become deeply rooted and widely accepted as a self-determined rule of good governance.
**National and international level**

Improving the rule-of-law concept is a necessity both on the national level and the international level. I will not anticipate which level in the working groups’ opinion is more important when it comes to prioritising endeavours; maybe, prioritising is not possible. I tend to think that a state who internally is in accordance with rule-of-law principles will also on the international level follow rule-of-law principles or, at least, will be easier prepared to follow them. That’s why I will be speaking a bit more about the national level.

**Improving the rule of law in different countries**

Concentrating on the national level, improving the rule of law has a different meaning from state to state. It makes a big difference whether you address the issue vis-à-vis a country where the rule of law generally is accepted and established or whether you have to address it in a state where the rule of law is not at all, or only in limited aspects, the governing principle for the state’s functioning. While this conference more or less exclusively will deal with the question how to improve the rule of law in those states where it does not exist or where there are the greatest deficiencies, we should not forget that the rule-of-law issue is an issue for all states. Balance of powers questions, e.g., arise everywhere; tensions between individual rights and public security when fighting terrorism are a commonplace issue in all states. Therefore, discussions on improving the rule-of-law concept should be conducted, always bearing in mind that there is no state where the rule of law is definitely established once and forever or where it never in any way is in danger. Efforts to improve the rule of law in such states are better received if certain deficits even in the most advanced countries are not denied but taken as an example that the rule of law is always and can be everywhere in danger.

**Advice in legal drafting**

When turning to the measures to improve the rule of law on the national level it is commonplace that the statute book for the lawyer is a significant reference point or field of action. The statute book shows to which extent rule-of-law principles, in general or with regard to specific fields of law, are respected, where changes are necessary, where existing laws have to be abolished and replaced, or where new legislation has to be introduced. I am referring to constitutional provisions as well as to other laws. All these rules have to be tested whether they are in compliance with the general standards referred to above. (...)

This is a huge challenge, not only for analysis and drafting, but even more for convincing the national actors to follow that line, to follow it expeditiously, and to overcome political difficulties or just the very common trend not to change anything or not too fast. This cannot be done by experts alone, however informed they are about the country and however skilled they are in comparative analysis and drafting. To create the willingness to come to fundamental changes needs political support inside the country, at least from the majority of the politicians and, hopefully, on the basis of demands or input
from the side of citizens; in this respect—creating the willingness and preparedness for change—the role of NGOs is of fundamental importance. However, in many cases internal support is not really existing, or too weak. That means that such processes also need high political support, sometimes even pressure, from the international community.

Help to adequately apply the law

You may have noticed that—a bit strange for a lawyer—I did not qualify the statute book as the most important field of action when improving the rule of law. Equally important, and, maybe, even harder to change to the better, is the application of the law through the administration on all its levels (from ministries to communal authorities, from policemen to tax officers), through the prosecution and through the courts. The best laws, including the internationally accepted principles of human rights norms and standards, do not mean much, if they are not known or not understood by those who have to apply them. This is particularly true when the legal framework has undergone major changes, as is the case when rule-of-law principles are more or less new for the country or observance of rule-of-law principles never was standard in day-to-day business. The problems become still bigger if the general professional qualification of the civil service, of prosecutors and judges is not particularly high. Therefore, as important as the enactment of new laws are the information and training of the people who have to apply them—a particularly wide field of action when it comes to improving the rule of law. And a field of action where help from the outside is often the crucial point. I refer to the many and extremely helpful activities of professional organisations, e.g. of bar associations and judges’ associations.
Education in professional and ethical standards

Applying the law correctly, equally for all, uninfluenced through outside pressure or economic interest, be it personal or general, is far more than just knowing the law and knowing the principles of professional ethics and good conduct. The values just addressed need—if not generally observed in a bad tradition of mismanagement, misconduct, corruption, lack of control, and dysfunctional governance—to be implanted through educational programmes. However, these educational exercises in professional standards and ethics, indispensable as they are, most probably will not yield results if not, at the same time, beyond specific professions, also a general atmosphere of lawful behaviour and good conduct is created and becomes the general attitude of office holders. Here again—I just mention the problem of corruption—a lot is to do and a lot of pressure internally and from the outside is necessary. As long as politicians do not accept the values it is difficult to expect the civil service, the prosecutors or the judges to fully comply with these standards. This, undoubtedly, is another aspect of improving the rule of law where experts need the help of politicians and the public to generally establish the values and make them principally accepted.

Building confidence in state institutions and persons holding offices

While the lack of confidence of citizens in institutions and persons holding office is mentioned from time to time as a sub-item in the rule-of-law discussion, its importance is often underestimated or, much the same: the creation of such confidence is just seen as the automatic consequence of proper laws and proper administration of the laws. This is correct only in the sense that you cannot
expect confidence and trust as long as the laws and their application are not in conformity with the rule of law. However, more action is necessary to help create or rebuild confidence and trust. If the citizens don’t have confidence they will not accept the role and function of institutions and acting persons; and if the institutions and acting persons are generally not accepted, then they will not have the authority to fulfil their tasks. Therefore, the building-of-confidence point should be seen as a separate and not less important sub-item of the efforts to improve the rule of law. In fact, all efforts to bring the statute book in line with the rule of law, and to make the office holders apply the law correctly and on the basis of ethical conduct, should always, and maybe primarily, be seen as necessary preconditions for regaining trust. And not only should they be seen that way: All these efforts should also be broadly communicated to the public that way. The money for creating public awareness and for public support is very well invested. It serves not just information purposes but will have the additional effect of confidence building; and, finally, it also may help to make easier available all the money necessary for the measures to improve the rule of law. Very general: as long as the rule of law is regarded as a soft topic or a topic for Sunday speeches in the beneficiary country (and in the donor community as well) there is not much hope for improvement. It has to become a hard point in everyday business, including mobilising the necessary funds: resources for sustainable investment in justice have to be made available.

**Enlightened citizens; free press and media**

I have briefly mentioned public awareness of the rule of law topic and I will come back to that for some more remarks. Our common history and the history of our individual home countries show that democracy and the main features of the rule-of-law concept usually have made their way into the statute book from bottom to top, not from top to bottom. Enlightened citizens, fully aware of their rights and generally applied standards, often have had the function of the moving force for the improvement of the rule of law. Free press and media (also free speech of individuals, of course) are not only necessary to spread information. Analysis and comment are essential for public opinion as well as for transparency. In fact, without free press and media there is no real democracy and there is no real rule of law. In the same way as the three powers of government need the proper balance among themselves, it is freedom of expression together with free press and media which balances against all three powers of government. Free press and media, therefore, are not just a goal in itself; they also are a prerequisite for the rule of law. The improvement of the rule of law must, consequently, include measures to create or stabilise free press and media.
Rule of law as a matter of culture and cultural change

What I have developed so far with regard to the topic of rule of law and its many sub-items was not meant just to describe the broadness of the topic, the innumerable fields for action, the general and specific deficits in all sectors of the law and its application, or the many attitudes and behaviours to be changed. What I wanted to make visible is that the rule-of-law concept is much more than laws and proper application. It is a matter of culture as well.

When during the preparation of this paper I again went through some books of a more general character I came across the following sentences:

“Promoting the rule of law involves (...) changing culture as much as it does creating new institutions. (...) Without a widely shared cultural commitment to the idea of the rule of law, courts are just buildings, judges just public employees, and constitutions just pieces of paper.”

Dobbins et al., The Beginner’s Guide to Nation-Building, Santa Monica, RAND corp., 2007, p. 88

I cannot put it better. When trying to improve the rule of law somewhere we should have these sentences in mind. It will help always to be aware that our endeavours never should be just a technocratic exercise.

Political support

This is an expert conference and I have repeatedly mentioned that improving the rule of law is not just a matter of experts; it needs them, but it is not sufficient to let them work. This is nothing new. The very fact that this conference is a follow-up of a declaration of the G8 Foreign Ministers from May 2007 and, to quote only one more major event, the resolution adopted by the General Assembly of the United Nations in connection with the 2005 World Summit outcome is proof of the fact that by now the rule of law topic has the attention of world leaders and of leaders all over the world. But this is not what I have in mind when asking for political support, input and even pressure on the political level.

I have quite often experienced that convincing political counterparts in fundamental questions of the rule of law can be impossible, in particular and as an example, if it comes to such delicate questions as institutions, competences and balance of powers. At best, your
counterparts listen but don’t engage in the respective consensus-finding or legal drafting; at worst, they just tell you that this is an entirely political question and has to be dealt with in a purely political context. Of course, many rule-of-law questions are political or have a high political impact; but they are at the same time questions of law. In situations of blatant and severe deficits in law-making or practice it is not enough to claim the respect for the rule of law in an abstract and too general way when it comes to high-level talks. Clear shortcomings or, even worse, open breaches of fundamental provisions should be pinpointed explicitly. Without addressing the big issues specifically through the high political numbers all purely expert activity will have insurmountable difficulties, difficulties not only to give advice on the big issues but on the other issues, too. Respect for the rule of law cannot be implanted into a system if there is no coherence and consistency between big and smaller issues. In this sense I would like to have, in appropriate cases, high and specific political support, explicit input and public criticism or even pressure.

Coordination

Improvement of rule-of-law principles is, to repeat it once more, a big topic and an old topic. No wonder that an innumerable number of state, NGO and international actors, and a still higher number of individuals, are active in this field. And—there is a lot of money spent for such purposes. Coordination obviously is necessary, and I do not know any document of a general character nor a specific project description which does not mention the necessity of coordination, which does not stress the need for that or does not try to install better and more effective mechanisms for that.

Being experts in the field, we all know that the results of coordination are bad, or, to say it more politely, leave a lot of room for improvement. In a given country when working on rule-of-law issues you sometimes have several actors working on the same problem; a good thing only if the actors know about each other and combine their efforts. In reality, it can be the opposite and can have the worst effects: you have a duplication of programmes; you have, on the same topic, not only multiple programmes, you have programmes which in the finetuning differ widely; and, the worst case, you have contradictory programmes of donors working in the country at the same time on the same subject, or, equally bad, you have a new concept for the old topic once the first project is over and a new project starts with a new donor. To put it bluntly: Too often bad results for best efforts and a waste of time and money.

But this is only the side of the donor community. It has the worst effects also on the beneficiaries’ side: First, they will be tired to discuss with their limited manpower again and again their situation with many or subsequent donors; secondly, at best, they will be disturbed; worse, they will believe nobody; and worst, they will play with the different donors to drain the money into the channels they think appropriate which certainly does not always conform with our outside view. We will have to tackle this problem very seriously. (...)

OPENING STATEMENT
Work of the conference

After the general remarks intended to give an introduction into our topics I turn to the more administrative side of my job.

The organisers of this conference knew about the broadness of the topic. They have, consequently, divided the big topic into four sub-items, this being regarded as the only chance to come in a just one-day conference to some results. They, additionally, have tried to facilitate the working group’s work through papers.

The papers are to be understood as a collection of points to be discussed. All points are open for discussion, no result is fixed, and the lists are not closed; any other point members of this conference might wish to discuss, and I would explicitly invite them to come forward with such items, can be raised and debated.

The organisers of the conference have decided that the co-chairs of each working group should come from the participants nominated by the G8 states. Among them the organisers have chosen

• Ms. Robin Sully from Canada and Mr. Mikio Tanaka from Japan as co-chairs of working group 1,
• Mr. Rainer Voss from Germany and Mr. Robert Leventhal from the U.S.A. as co-chairs of working group 2,
• Mr. Rosario Aitala from Italy and Mr. Eberhard Desch from Germany as co-chairs of working group 3, and
• Mr. Babu Rahman from the U.K. and Ms. Viktoriya Panova from Russia as co-chairs of working group 4.

In a one-day conference we simply do not have the time to have discussions also in the plenary meeting. This I regret very much. You, perhaps, even more because you have no chance to respond directly and criticise my remarks.

Contrary to what you have read in the preparatory papers, the reports of the working groups’ co-chairs will be delivered by the co-chairs themselves, not by me. Maybe, I will ask the co-chairs to report about the work in the working groups in a different sequence than the present numbering of the working groups. It seems to me that we should go from the more general (working groups 2 and 3) to the more specific topics (working groups 1 and 4).

We will need the final plenary session for the presentation of the reports. The reports will reflect what was common opinion, what kind of disputes you had and what kind of divergences remained. This is all the more important since we cannot have further discussion within the final plenary meeting. Therefore, the final plenary meeting will not offer room for further substantial input from anybody. As far as my input is concerned: I have asked the secretariat to make my paper (not all of it was presented orally) available to you—as a point of departure for your criticism or as a reference document for any approvals.
Working groups

Key questions for all working groups

• Taking stock of the international efforts. Status quo of the rule of law in the own country experience with third countries. Shared understanding of minimum demands on the rule of law.

• In what areas are there deficits in the rule of law, which may be met with stepped-up efforts?

• How can international efforts for the rule of law be made more efficient and be coordinated?

• Are there national experiences and models of cooperation in the international legal cooperation that could serve as models for the stepped-up G8 support for the rule of law aspired to within the framework of this conference? There can only be a know-how transfer taking into consideration the respective judicial culture and socio-political background of the region in question. What measures of international legal cooperation have been conducted by the participating states in which regions so far—which of these measures were dispensable or of little success?

• In which states and regions are stepped-up efforts required to promote the rule of law?

• What organisations and institutions can be involved in measures to promote the rule of law directly?

• Are concrete measures to promote the rule of law put forward for certain states or regions?

These key questions will be deliberated in four working groups with a focus on different legal issues. There are theses to be regarded as proposals for discussion on the concrete legal issues at hand.
Working group 1: The rule of law and the economy: the rule of law as a prerequisite for sustainable economic development and international cooperation

**Theses**

**Subsections 1–3**

- Minimum rule-of-law requirements on economic legislation
- Minimum rule-of-law requirements on enabling market access and investments by foreign market players
- Protection of investments

**Thesis** Domestic and foreign market players need to be supported more in their access to other markets and in their investments through an economic legislation that corresponds with minimum rule-of-law requirements and stands up to court scrutiny with regard to these requirements.

**Subsection 4a**

- Protection of industrial property rights

**Thesis** A functioning protection of industrial property rights is an indispensable prerequisite for the development of the economy. The authority of the respective authorities would need to be strengthened and the qualification both of the judges and the courts would need to be augmented by national and international measures.

**Subsection 4b**

- Protection against product piracy

**Thesis** Deficiencies in the protection of copyright (especially protection against trademark and product piracy) lead to great turnover losses in industry and damage to national economies the world over. The international cooperation with regard to the protection of copyright should be intensified and the state bodies should become active more consistently.
Subsection 5

- Protection against the distortion of competition (competition including the right to state subsidies)

**Thesis**  The law of competition, especially with regard to protection against distortion of the competition, should be supported through an international alignment of the different tax and legal regulations.

Subsection 6

- Fighting corruption

**Thesis**  Fighting corruption at the level of high offices of the executive, the judiciary or the legislative has to be a central concern within the rule of law. Measures to prevent and fight corruption have to be advanced vigorously in the interest of developing economic prosperity and the rule of law.

Subsection 7

- Rule-of-law requirements on (administrative) court scrutiny of action taken by authorities against companies

**Thesis**  Court scrutiny of action taken by authorities dealing with issues of the economy or directed against a company has to meet rule-of-law requirements, thus promoting the development of the economy and guaranteeing legal security.

Subsection 8

- The importance of the principles of equal treatment, the legality of administration, the reservation of statutory powers, the protection of legitimate expectations and the principle of proportionality within the realm of law in the economy

**Thesis**  The protective effect of basic rights and the principles of the rule of law, especially their effect also on the relationship of private companies among one another (effect on third parties) are to guide and promote the realm of law in the economy. The sense of justice of private companies should be sensitised more through an understanding of the effect on third parties. The enforceability of these principles should be guaranteed.
Summary

While many western investors, including the international financial organisations, attribute the existence of rule of law to their investment decisions, there are little empirical data that support a direct linkage between rule of law and economic development, and there are examples of rapidly developing economies outside of the rule-of-law framework. In fact, some see rule of law as a western construct promoted to advance western economic interests in a globalising economy. However, the working group generally accepted the premise that long-term sustainable economic development required a rule-of-law framework and that the G8 has an important role to play in supporting and advancing the rule of law internationally.

The following is a summary of the conclusions that the working group reached with regard to priorities for the G8 in supporting and advancing the rule of law:

1. Encourage and facilitate collaboration among the G8 countries, the multilateral organisations and the international financial institutions implementing rule-of-law initiatives relating to economic development in developing, transitional and post-conflict countries. A sequenced, collaborative, long-term approach is considered to be the most effective strategy for the implementation of rule-of-law programs.

2. G8 take leadership:
   a. In promoting rule of law at the international level: International regimes such as the WTO, ILO and ICC need to be recognised and supported by all countries and particularly the G8. Meaningful participation of the developing countries in policy-making, negotiations and dispute resolution processes needs to be supported to ensure that they understand and are committed to the implementation of international legal regimes.
   b. In complying with existing international substantive obligations: It was noted that not all G8 countries are currently abiding by their existing international commitments. The impact of international treaties and agreements are thereby undermined. Examples given were the Criminal Law Convention on Development and OECD guidelines.
   c. In recognising the need to monitor and report to their governments and civil society on the implementation of their international commitments and thereby setting an example for developing and newly democratising countries.

3. The implementation of a rule-of-law framework for economic development first and foremost requires political commitment. Political commitment may be lacking because of government self-interest, lack of understanding and/or lack of capacity. The G8 therefore should support initiatives to:
   a. Encourage political commitment to the rule of law to facilitate economic development through supporting the capacity of civil society to hold governments accountable, media engagement, and the monitoring and assessment of government actions. The G8 may also leverage compliance with rule of law through bilateral trade agreements.
b. Increase awareness and understanding of rule of law and economic development. This can be done through some of the following activities:

- facilitating the availability of laws;
- encouraging policy development in the creation of laws that ensures participation of stakeholders in the formulation of laws, particularly those related to property; and
- supporting civil society efforts to hold government officials accountable.

c. Increase capacity to implement laws. This is a longer-term objective and can be accomplished through the following:

- curriculum development on modern economic laws including courses on investment;
- support for institutional capacity development (financial institutions; legal institutions; land registries);
- professional training and development in both substantive economic laws and ethics; and
- PLE to facilitate engagement of civil society.

d. Promote harmonisation of commercial law, including investment laws.

4. G8 recognise not only the importance of rule of law to long-term sustainable economic development but also that equity and justice is a fundamental underlining principle of the rule of law.
Working group 2: 
Rule-of-law requirements in the civil society of the 21st century

Theses

Subsection 1

- Access to law in general (Is legal protection provided in all relevant areas?)

Thesis » Above all, access to law also means information of the public on the law and on the possibilities of implementing one’s rights. Especially in societies undergoing a transition, this requires extra efforts; apart from the state’s duty of information, the lawyers and the NGOs have an important mediating function here.

What is important is the building of courts close to the citizens—distant ways to the court may prove to prevent the rule of law due to the high expenditure of cost and time.

Every person may apply for legal protection through independent courts in the case of a violation of their rights by state bodies (Section 2 of the International Covenant on Civil and Political Rights; Section 6 ECHR), both in case of a violation of laws (Section 34 ECHR—also at international courts) as well as such a violation through acts of the executive (Section 13 ECHR—internal administrative preliminary proceedings or direct proceedings). This legal protection is not provided in any comprehensive scope yet, especially in the transformation states. This requires special efforts also by the G8 states to strengthen this rule-of-law guarantee, for instance by means of an intensive training and further training of specialised judges.

However, access to law also means to be able to implement one’s right as laid down by a court ruling: the state has to guarantee an effective system of enforcement. The great number of pertaining
proceedings at the ECHR is an indication of the fact that there are still considerable shortcomings especially in this area, which may also be met by an increased cooperation of the G8 states with third states.

Subsection 2

- Access to law within an appropriate time and at appropriate conditions (duration of proceedings, legal aid procedural cost)

**Thesis**

Access to the law courts must not be impeded by inappropriate formal prerequisites; any restrictions must pursue a justified objective and be reasonable. The wish for unlimited admittance of any legal remedies, as voiced especially in some transformation states, may quickly lead to an impairment of an effectively functioning legal system.

Inappropriately high fees and charges violate the right to access to a court of law.

In this connection, the state has to secure that legal aid before and during the proceedings is rendered to persons in need—this state support has to be affordable by the state, too. There are deficits especially in this area in some of the states who are in the transition process to a new system of government or society. Support, also from the G8 states, is helpful.

An inappropriately long duration of legal proceedings inhibits their effectiveness and violates the claim to effective legal protection. Even within the G8 states themselves and beyond in third states, there is need for action and cooperation in this area. Especially in criminal proceedings, the rights to participate (for instance, the right to be heard), equal treatment and the presumption of innocence have to be guaranteed; this is what the G8 states should focus on, especially also in their cooperation with third countries.

The role of the free legal professions (lawyers, notaries) in guaranteeing access to law constitutes a significant component of the rule of law and also contributes to the relief of the judicial system. Thus, special focus should be attached to these professionals in the international cooperation in the area of promoting the rule of law.
Subsection 3

• Independence of the judicial system (e.g. opportunities and risks of judicial self-administration, fighting and preventing corruption)

**Thesis**

Judges are only subject to the constitution and the laws in exercising their jurisdiction, they are free of instructions and other external influences—material independence. However, there are attempts at influencing the judges from the outside especially in the areas of (criminal) proceedings in commercial law in states undergoing transition.

As regards the personal independence, judges should preferably be appointed for life—dismissal, suspension or transfer may only be possible in limited cases of exemptions on a ruling by a judge based on a law. Judges are to be remunerated appropriately in order to prevent any susceptibility to corruption.

The judicial system requires a certain degree of self-administration in order to be independent. The pertaining systems differ very much, already within the G8 states. One has to state that there is no generally applicable model. Especially in the third countries undergoing transformation, this may only be seen on the respective judicial culture and socio-political background. The separation of powers has to be regarded as functional in any case.

The entire area of judicial independence, judicial self-concept (choice of judges, appointment and promotion based solely on performance, disciplinary law, code of ethics) and the avoidance of corruption is highly sensitive and requires increased efforts of international cooperation.
Subsection 4

• Alternative methods of settling disputes, especially mediation, as a contribution to a permanent solution of conflicts and an effective legal protection

**Thesis**

Alternative methods of settling disputes should be promoted in the interest of relieving the judicial system, as the case load is rising in most states, as well as in the interest of reaching solutions based on consensus (greater acceptance of jointly prepared decisions and, thus, better suitability for creating legal peace permanently and in due time).

Apart from the alternative settlement of disputes, procedural rules may also lead to a simplification and abbreviation of the proceedings, in so far as the right to effective legal protection is not inhibited inappropriately: simplified and automated (and thus inexpensive) procedures for certain monetary claims (collection proceedings); special procedural regulations, such as the “mandatory conciliatory proceedings” or “small claims proceedings”, or similar regulations.

The alternative settlement of disputes is a suitable model to contribute to the strengthening of the legal culture, also in third states, which should be stronger in the focus of international cooperation. This may lead to an increase in the efficiency and effectiveness of the judicial system, thus strengthening the rule-of-law principle.

Subsection 5

• National and international protection of basic and human rights, including the role of the national constitutional courts

**Thesis**

Constitutional courts or comparable institutions represent a necessary corrective of the freedom of political design for a functioning rule of law. On the basis of the constitution, it is their task to guarantee adherence to minimum rule-of-law standards, observing the freedom of political decision-making.

An effective legal tool is to be made available to the citizens as far as possible, with the help of which they are able turn to a constitutional court or a comparable institution also directly to verify a violation of basic rights claimed.

The constitutional courts or the comparable other institutions are to be furnished with the necessary legal authority to be able to implement their decision in case of need. For the constitutional courts to derive their reputation primarily from their decisions themselves, there needs to be an intensive cooperation and a professional exchange of ideas between the constitutional court judges of the G8 states and the respective institutions in third countries.
Subsection 6

- Does the fight and prevention of terrorism require a reduction of minimum rule-of-law standards?

**Thesis** This subject is controversial already within the states themselves: there is a relationship of tension between the freedom rights of the citizens guaranteed by the constitution and the security of the state also guaranteed by the constitution.

These two interests, which do not contradict one another but are opposed to one another in the concrete case, need to be reconciled. There will be a considerable difference of opinion on this issue already internally within the G8. In any case, precautions have to be taken in the case of a possible interference with basic rights, so that there is no uncontrolled and unacceptable state interference (for example, in Germany: telephone and online monitoring [also of professions bound to secrecy concerning their clients], pre-emptive data storage, release of toll data for searches, registration of biometric data in personal identification documents [fingerprint], shooting down of civilian aircraft and similar interference).

Do tools of international law (UN-ICCPR, ECHR, UN Convention Against Torture) set limits to the fight against terrorism? Do minimum standards have to be drawn up at the UN level? Should there be an international (also preventative) judicial monitoring of measures in the fight against terrorism?

Summary

The following is a summary of the main points of observations and discussion of working group 2. In the WG 2 discussion, participants focused on defining and elaborating upon the elements of certain important pillars of the rule of law and rule-of-law promotion.

As a general observation, participants expressed their belief that rule of law and rule-of-law strengthening are key parts of democratic systems and of the process of democratisation. There was interest in continued dialogue on and support for ROL by G8 members and continued engagement by and with non-governmental and inter-governmental organisations with expertise and interest in rule of law. Participants expressed their support for the efforts of other bodies, such as the United Nations, on rule-of-law promotion and encourage the awareness and implementation of existing standards relating to rule of law.

The first pillar or focus of discussion was the need for attention to donor and NGO effectiveness in rule-of-law promotion. Participants believed that there is a need to reinforce good practices, including by adequate consultation and reinforcement of existing donor effectiveness and coordination principles. A principle area of work should be to ensure that coordination and cooperation, not competition, characterise donor and NGO rule-of-law promotion efforts. Coordination may occur at three levels, including within the donor government (which may have many ministries or agencies involved); among the donor community; and within a given partner country. Different models for coordination...
and collaboration were cited, including creation of a consultative council in-country; creation of a notification system within the G8 framework or of a G8 steering committee; and consideration of how to draw upon other instances of coordination, such as the OECD Development Assistance Committee. It is also important to ensure the development of a coordinated approach with respect to related assistance sectors, such as good governance, criminal justice, and security sector reform.

Participants also cited the usefulness of deepening the base of knowledge regarding rule-of-law promotion. They noted the existence of resources, in instances such as the Council of Europe, EU, Asian Development Bank, and others. They recognised the role that technical, apolitical assessments can play in setting base lines and targeting reform. However, existing materials could be shared more effectively. The G8 could consider making available or disseminating some of the rich materials from various sources, or even commissioning such studies. One area that struck participants as requiring further study was to better define the relationship believed to exist between rule of law and economic development, through empirical study.

Participants cited the need to avoid paternalistic approaches. Rule-of-law promotion must be informed by an understanding of local conditions and legal culture, and cannot be premised on a one-size-fits-all approach. Participants underscored that the sharing (of knowledge, experience, models) in fact runs in both directions.

On a related issue, the working group cited the need to keep local ownership and political will in mind in designing and implementing reform assistance programs. Most successful reform is partner-country-led, with the full involvement and input of local stakeholders. Useful approaches include opportunities for dialogue such as consultative fora and comparative assistance that provide a range of good models from which the partner-country stakeholders can choose. Political will in the
partner country is one key to successful and sustainable reform. More understanding is needed of how to boost political will, and it would be worth considering how the G8 could provide support on this issue.

While the working group did not target countries or regions, the colleague from the African Union invited continued attention and assistance to that region.

The second pillar of discussion revolved around access to the legal system. As a general matter, participants agreed that access to the law and the right of legal protection must be guaranteed in all areas, especially in those most relevant to citizens. The real implementation of laws requires a functioning and affordable legal system. This includes free lawyers (elaborated upon below), independent courts and judges, as well as a system of fees that, on the one hand, is reasonable with regard to the matter in dispute and, on the other, takes into consideration the social realities of the users of the system. It is the task of the state to make available sufficient funds for the judicial system, so that the operation of the law, as provided for in the Constitution, may be conducted in a speedy and efficient manner.

Participants elaborated on the principles above by noting the importance of adequate, professional assistance by lawyers and the provision of legal aid that is subsidised to the extent necessitated by the means of the defendant. They noted the practical difficulties that can arise in access to justice, such as a limited number of lawyers and challenges to accurately determining income eligibility for subsidy of the cost of a lawyer. They observed that the legal system must provide for sufficient remedies for violations of rights and require/impose costs and fees that are reasonable. Participants also highlighted the important work being done to learn about and promote traditional legal systems and Alternative Dispute Resolution methodologies. There was some debate about whether the long-term goal should be to engage within the traditional (non-state) systems or assist them
to evolve towards formal, statist systems. Finally, it was noted that there is a need for further discussion of access by civil society and individuals to the enforcement mechanisms of international law regimes.

The third pillar was the issue of judicial independence and effectiveness. Participants agreed that the independence of the courts and the independence of judges constitute one of the main pillars of the rule of law. Further, the independence of the judge is a constitutional good, which politicians, above all, are obliged to respect and defend publicly—even if this proves difficult for them sometimes.

In discussing this issue, participants debated that the issues of independence and effectiveness are critical not only in the context of judges or courts, but also in the broader context of a system of administration of justice and all its elements—including, for example, prosecutors, lawyers, court clerks, etc.

Participants indicated that judicial independence and effectiveness is one of the key rule-of-law issues and a problem in many countries. As noted above, politicians must defend this constitutional right even when it is unpopular—although it was noted that a sensitive balance must be struck between defense of the judiciary and the right to legitimate public debate on policy issues including the functioning of the judiciary.

Dimensions of the issue include the independence of the individual judge (including from corruption, and from the more insidious improper influences short of corruption—such as political pressure, conflicts of interest, and ex-parte conversations). Additionally, ensuring independence of the judicial branch is critical. Elements of this include, but are not limited to, merit-based and non-political appointments; discipline; adequate salary (sufficient for the judge’s maintenance and the dignity of the judicial function); adequate budget for the courts; training (initial and continuing, with emphases varying depending on the country’s practice with respect to judicial careers); and judicial self-oversight and protection. The last element is furthered where there is a venue to which judges can appeal when they feel their independence is being violated. The form will differ from country to country—supervisory courts, councils of justice, high council of the magistracy were mentioned—but the key factors are that the venue itself be independent and free from influences.

Other important dimensions include measures to ensure the ethics of the judiciary. Participants recognised the value of robust codes of ethics. The Bangalore Principles are a model at the UN level. They also noted the impor-
tance of transparency in the justice system and judiciary, including publication of laws and public availability of reasoned opinions. Another measure that, like the prior two, contributes to citizens’ confidence in the judiciary is adequate enforcement of judgments.

Finally, participants noted the important role of constitutional courts, including in some cases the interpretation and dissemination of international norms at the domestic level; and the existence of models for transborder collaboration and solidarity among judges, such as the Consultative Council of Judges of the CoE and the Commission on the Efficiency of Justice, in the same body.

A further important element of the rule of law is the independence and capacity of lawyers. Participants cited the importance of independence of lawyers and the legal profession and the need to further bolster it. This can require political cover, which may not always be forthcoming or may be difficult for the politicians. As with the judiciary, participants supported the idea of efforts to increase not only the independence but also the capacity of lawyers, and training programs and other reform efforts by the German Bar, the American Bar Association Rule of Law Initiative, and others were cited as examples.

Participants also elaborated on the importance of public involvement and understanding of the law, legal institutions, of the rule of law, and of reform initiatives. They noted that public involvement and understanding are key to confidence in the legal system and the possibility of change. It was observed that changing laws is the easiest step, reforming institutions more challenging, but that changing attitudes and securing implementation of reform is the hardest to achieve. Without knowledge, understanding, and confidence, citizens will not support the system and its change. While there was support for efforts to raise public awareness and promote a rule-of-law culture, participants debated whether, while tools to raise understanding and spur
engagement can be beneficial, in some cases these measures may run the risk of playing into cynicism or exacerbating negative opinion about the legal system.

Finally, participants noted that anticorruption and transparency are critical in a functioning rule-of-law system. The working group recognised that corruption is a pervasive rule-of-law issue, and measures to promote integrity and transparency, and combat corruption, are key focuses for countries and donors. Preventive measures are important, as are adequate and effective criminal-justice laws, institutions, and operators. At the global level the UN Convention against Corruption is an important new comprehensive instrument. The issues of integrity, anti-corruption, and transparency played out in the discussions throughout the entire day, of the judiciary, prosecution, lawyers, criminal-justice reform, etc. The working group would welcome the continued attention and assistance of G8 countries, bilateral donors and International Financial Institutions on these issues as they play generally and in specific institutions and sectors in our societies.
Working group 3: 
Rule-of-law requirements vis-à-vis the legislative process as well as the administration and oversight of the executive

Theses

Subsections

• The role of the parliaments in the rule of law, especially the role of the parliaments in the legislation procedure and in monitoring the executive
• Legal security and legal clarity as a postulate on legislation
• Liability for legislative inactivity?
• Liability for legislative injustice?

• Rule-of-law requirements on the action by authorities, taking into consideration especially
  • the principle of the legality of administration
  • reservation of statutory powers
  • protection of legitimate expectations
  • the principle of proportionality
  • the principle of equal treatment

• Rule-of-law requirements on the (administrative) court monitoring of authority action
• Criminal law and civil code sanctions for violations of the rule of law (liability in office, recourse against civil servants acting outside the law and their possible personal liability, as well as criminal law action)
• Monitoring by the courts of those in government office?
Theses

» The parliaments bear special responsibility for observing the rule-of-law principles; many parliamentarians, especially in the societies undergoing transition or in crisis regions, lack such a conscience of democratic rule-of-law responsibility. This is where measures of international cooperation (exchange of opinions and ideas with parliamentarians and thus strengthening of their rule-of-law conscience) are required.

» The core areas of parliamentarian and political freedom of design are not liable for judicial proceedings.

» Legal security for the citizen may also be endangered by a multitude of laws and overregulation, just as through an unclear and confusing system of laws. Thus, the measures of international cooperation should also focus on legislation techniques.

» It is just as important as laying down rule-of-law principles in laws to apply these laws as an executive convinced of the necessity of such principles. A new or amended law need not necessarily be accompanied by a change in the application of laws.

» Written law can only become law applied by the entire society when the general public is informed and educated about the law and the possibilities of implementing this law, and when the members of the public are encouraged to avail of the legal instruments at their disposal.

» Is it a prerequisite for the rule of law that there is a liability for legislative injustice or legislative inactivity?

» The court scrutiny of state action is an indispensable component of the rule-of-law principle, which is not guaranteed to the full extent everywhere. Setting up specialised courts (administrative courts), qualified especially for this task, has proven as an especially effective model. Good experience has already been gathered with this model in some transition societies. This scrutiny contributes significantly to the administration’s own interest to act according to the rule of law.
The introduction of internal administrative preliminary proceedings has proven its worth in the spirit of strengthening the rule of law. This provides the administration with the possibility of a further self-scrutiny, which creates transparency in administrative procedures and can contribute significantly to relieving the judicial system.

When does a court’s cancellation of decisions taken by the executive represent a violation of the principle of the separation of powers? And in what cases and with what means can the executive take action against laws that allegedly violate higher laws?

As decisions taken by the responsible court and directed against state bodies are not always implemented automatically by the executive, respective laws have to be put in place.

Summary

1. However conceived, the concept of rule of law encompasses at least two principles: the absolute supremacy of law as opposed to arbitrary power, which excludes arbitrariness or wide discretionary authority on the part of the executive, and the equality before the law, which excludes exemptions of officials or any other from the duty of obedience to the law.

It is contended whether the rule of law at common law and the État de droit (or Rechtsstaat, or Stato di diritto) at civil law are or are not synonyms. However, these expressions are in substance two interpretations and forms of description of societies subject to law rather than to arbitrary will of individuals (sub legem rather than sub hominem) capable of reacting to any abuse of institutional power.

2. Of the many corollaries and consequences stemming from the rule of law two sets are relevant to this WG: (i) the role of parliaments as law-makers; and the quality of the law, including its effects on the exercise of fundamental rights; (ii) the requirement of public authorities not only to abide by the law but also to provide for good administration; and the modalities of judicial oversight of acts of administrative authorities, especially those affecting individual rights.

3. Statutes are a link between democracy and the rule of law: therefore they not only are instruments for control and setting limits but also for steering developments of society or giving mandates to administration, which, however, should not be stripped of its own initiative. The law-
making process should be guided by the principle of transparency and ensure effective awareness and participation of parliamentarians. Laws should be clear and easily understandable.

Because civil society is the engine of change, it should be actively involved in law-making.

It is vital that the law-making process ensures a full and effective control over the conformity of legislation both to national and international human rights standards and principles.

4. The principles of the rule of law are firmly entrenched in the foundations of our democracies. The WG remarks the crucial importance of these principles being constantly guaranteed within G8 countries at all times and circumstances and actively promoted in countries plagued by conflict and disrespect for human dignity. A critical manifestation of democracy is the effective guarantee of the rights of groups and individuals and not just their mere recognition in constitutional charters and legislative acts.

The independence of the judicial function, and of judges individually, from any external influence is critical to democracy and the rule of law.

5. The WG underlines that more global leadership could be undertaken by the G8 and other international actors to identify and promote rule-of-law issues, standards and best practices suitable to reach the international community. To this end it is crucial to ensure constant communication, dialogue and coordination between actors involved in promoting the rule of law.

6. In view of promoting the rule of law internationally, it is particularly relevant to take into account legal cultures and traditions of each society, while fully respecting internationally shared principles and norms. The rule of law should be appropriately supplemented by a coherent examination of the role of social norms, which in the first place must be detected and examined under the aspect of their effectiveness and on how they interrelate with legal norms.

7. Different views have emerged within the WG as to the extent of the principles that should govern administrative authorities (legality, proportionality, equality, impartiality, etc). It is noted that in general (excluding purely discretionary acts, i.e. purely political decisions) administrative acts affecting rights of the individuals should be subject to review of independent and impartial tribunals, whether ordinary or specialised. Some have remarked that tribunals reviewing administrative acts should refrain from assuming the powers of the executive (law enforcement) and should limit themselves to the application of law. There is a need to promote effectiveness and enforcement of judicial decisions against public authorities.

8. The WG stressed the importance of the role of civil society organisations both in overseeing the actions of public authorities and in representing the view of the public to the relevant authorities. Actions to promote the rule of law might well include support for the development of civil society.
Working group 4:
The role of the rule of law in conflict prevention and in postconflict societies, including rule-of-law requirements of transitional justice

**Theses**

**Subsections**

- Domestic legal prevention of conflict
- Rule-of-law requirements for an interference with personality rights of "suspects"
- Protection of minorities against infringement and other forms of discrimination
- Judicial processing especially of group-related injustice from the past
- Medial processing especially of group-related injustice from the past
- Discrepancies between the actual granting of rights and the granting of rights as perceived by the general public (media work etc.)
- Cultural deficits in the subjective sense of justice
- Prevention of conflict in the relationship between the states
- Granting of judicial assistance, especially in proceedings relating to vulnerable groups
- Recognition of court rulings from other states, especially neighbouring states
- Cooperation in fighting crime, especially focussing on the destabilising effect of ethnically motivated crimes
- Transitional justice
- Rule-of-law requirements on appointing judges and scrutinising judges
- Rights especially of the parties involved in proceedings that belong to ethnic or national minorities
Theses

» Minority protection as a major concern of the rule of law.

» Lacking domestic conflict prevention may lead to inter-state conflicts.

» The peace-building effect of judicial processing of group-related injustice is less dependent on the seriousness and quality of the judicial processing but rather on the accompaniment of this processing by the media.

» Social traditions and a customary understanding of law is a more important yardstick for the own action for the citizens than codified law and case law, even in highly developed states.

» It has not been possible yet to find suitable ways of dealing with non-governmental organisations and groups in avoiding military conflict.

» The aspect of general prevention mostly plays a secondary role in the assessment of penalty for offences whose victims are members of minorities.

» A satisfactory processing of war crimes is not possible by applying the usual regulations of criminal procedure.

» International criminal courts may exercise a pacifying effect in regional conflicts if they are based on a consensus of the international community.

» Regional and international instruments of minority protection (e.g. the Framework Convention for the Protection of National Minorities) should be implemented consistently within states.

» Effective and especially authoritative institutions should be set up within states for the protection of minorities.
Summary

The working group discussed various aspects of the role and importance of the rule of law in conflict prevention and in post-conflict societies. This included considerations on the rule-of-law requirements of transitional justice.

One of the conclusions of the discussion was that meetings like this conference and this workshop are useful and necessary. There was general agreement that follow-up meetings should be organised with particular focuses. Specific groups and specific tasks should be assigned at these follow-up meetings. In addition to that, the catalogue of topics and questions defined during this conference should be elaborated in greater detail at such meetings.

What follows is a summary of the content, topics and recommendations of the discussion held in working group 4:

1. The starting point for the discussion was the thesis formulated by one of the participants that “after the conflict is before the conflict.” In other words: “post-conflict is often pre-conflict,” and vice versa.

2. This means that one crucial point in the avoidance of conflicts is refurbishment and reconciliation of past conflicts. Without such efforts, past conflicts—which may seem at first sight to be finished—may give rise to new conflicts, which then may be even worse than the preceding conflict. Therefore, it is essential for the prevention of crises to ensure proper actions in the post-crisis phase.

3. Related to this, the judicial examination and evaluation of the actions of the various participants in a conflict are especially decisive.

   a. A certain dilemma may arise here, namely that state justice structures are no longer intact, at least in certain post-conflict societies. Therefore, non-state justice or traditional justice prevail. Such non-state structures do not, however, guarantee that rule-of-law standards are met.

   b. Having said that, judicial measures by themselves are not sufficient to prevent a conflict that is presumed to be finished giving rise to another conflict. Common consent was reached that outcomes satisfying the rule of law require more than judicial measures, but also a satisfactory factual infrastructure. As an example
of this, it is not sufficient to establish courts and an appropriate judicial system to ensure access to justice, but it is also necessary to ensure that citizens are not de facto prevented from using the existing judicial system.

c. Accordingly, “access to justice” requires not only the existence of the respective judicial institutions, but also de facto access to them.

4. The above is only one aspect of the social and societal framework conditions for the actual establishment and functioning of the rule of law.

d. Given that these conditions are not uniform in the various regions and countries of the world, and also taking into consideration traditional and economic differences, the question was raised as to whether there is a common standard for the rule of law, or whether the demands towards the way and the level in which the rule of law has to be guaranteed may vary depending on the respective society and/or geographical and cultural area. To put it more colloquially: What is “good enough rule of law”?

e. Related to this, it was discussed whether it is reasonable to ask for the same standards to be met in all places (“one size fits all?”), or whether this could lead to unrealistic and overburdening respective demands, which may even have counterproductive effects.

5. Some critical remarks were also made with regard to past crisis management by the international community. Related to this topic, the following questions and theses were elaborated which would deserve a more detailed elaboration and analysis in the follow-up activities to this conference:

a. Is the decision-making in the field of resources to be used for crisis prevention or conflict containment quick enough to be really effective?

b. Is the importance of early response understood to the necessary degree?

c. Which kind of early responses are available? What kinds of respective capacities exist? Are they appropriate and sufficient for the prevention and containment of crises?

d. Is there a proper analysis of the effects of interventions in ongoing conflicts, and have the lessons from previous experiences really been learnt?

6. It was also noted that the considerations should not be limited to pre-crisis and post-crisis aspects. What this means in practice is that the crisis itself is far more relevant in terms of the rule of law, and with regard to human rights violations. Some participants also criticised that, at least in certain situations, it may be doubtful that the rule of law is a useful tool in conflict prevention.
7. The following countries and areas were mentioned which deserve particular attention:
   a. Kosovo
   b. Bosnia and Herzegovina
   c. South Africa
   d. Afghanistan
   e. Sierra Leone

8. The potential role of the G8 states in assuring adherence to rule-of-law standards in conflict prevention and in post-conflict societies, as well as in general, was also the subject of intensive discussion. The question arose as to whether the G8 states are the right forum in which to bring about the rule of law. The delineation to other international organisations’ rule-of-law activities was also considered.

9. Related to the G8s’ possible role in the rule of law, the participants agreed that the G8 states’ rule-of-law activities should have an internal and an external focus. The internal focus demands that the G8 states constantly monitor their own local rule-of-law situation. Externally, the G8 states should monitor the rule-of-law situation in non-member states. This, however, demands a certain concentration, which may be achieved by individual G8 states undertaking to monitor and support a specific region.

10. Furthermore, the participants welcomed Germany’s initiative to get the G8 more involved in rule-of-law activities. However, it was also generally understood that the role which the G8 may take over in the field of the rule of law has to be planned very thoroughly, both in order to avoid duplication of efforts, and to ensure sustainability and efficiency. It was therefore suggested that follow-up meetings
should discuss the following questions, inter alia:

a. Should the G8 be either another actor or remain in (just) a supporting role?

b. Should the G8 coordinate on a higher level in general or in certain countries?

c. How will coordination be organised, both with other international actors, and between the G8 states internally?

These and other questions could be worked out in a more detailed form in follow-up expert meetings.

11. The following recommendations were also given to the G8:

a. Political meetings on G8 level should continue to include the rule of law on their agendas.

b. If conflicts are discussed in future on a G8 basis, the rule-of-law aspects should be discussed as well.

c. The G8 should have a transparent agenda which explains where they see their role with regard to the rule of law.

d. The G8s’ rule-of-law activities should have a close focus on internal organisations and on the coordination of existing activities.

e. The G8 should coordinate their respective activities with the United Nations in particular, which is at present elaborating an overview of their own rule-of-law activities.

f. The G8 should in particular examine how additional actors, especially China and the Islamic World, may be integrated in future international rule-of-law activities of all kinds.

Finally, the participants recommended that the G8 should ensure that meetings such as this conference will be continued!
12. In addition to these recommendations, which are directly addressed to the G8 and its states, general recommendations and questions were also formulated. The following are only examples:

a. Topics for follow-up meetings should have a specific focus: e.g. inclusion of other actors and specific issues like good donorship, possibilities in ongoing conflicts, lessons learnt from previous experiences.

b. One subject of a further meeting would be to share lessons in terms of coordination.

c. Concrete activities in certain countries/regions to promote the rule of law should be elaborated by future working groups.

d. It should be defined whether sections of civil society from affected countries should be invited to follow-up meetings, and if so which.

e. Activities concerning the promotion of the rule of law in international cooperation should utilise existing informal, traditional and other justice mechanisms to avoid time lapses.

f. Traditional justice would be another subject for a further meeting. Advantages and disadvantages? Risks and benefits? Weaknesses?

g. The relation between “traditional justice” and “state justice” should also be analysed. In this analysis, the advantages and disadvantages, risks and benefits and weaknesses of both systems should be examined in particular situations in order to ascertain a general situation in which the means of traditional justice may also be used for both crisis prevention/avoidance and for the exercise of the rule of law.

h. The method and mode of delivery of assistance should be analysed. In particular, it should be elaborated how good donor principles are applied to the areas touched by the rule of law.

i. Conflict sensitivity is another topic which deserves our attention. In particular, standards and methods have to be found for designing rule-of-law assistance programs that recognise and account for conflict resolution and conflict prevention.
Statement by Rainer Faupel

Ladies and Gentlemen,

I welcome you all in this final plenary meeting after a busy day in the four working groups. During my visits in the working groups over the day I have listened very carefully to the vivid, sometimes controversial discussions on the wide range of topics mentioned in the preparatory papers; no wonder, in addition to the points raised in the papers a lot of other relevant topics have been touched in those discussions.

Like all of you I am very curious to hear what kind of discussions you have had, what results have been reached, what was common opinion and what kind of controversies remained.

With the exception of Mr. Babu Rahman, our colleague from the UK who immediately after the last working group meeting had to leave to catch his plane back, you see next to me all co-chairs of the working groups. They have decided among themselves who is going to report from the working groups; in the absence of Mr. Rahman it will be Mrs. Panova’s task to report back from working group 4 single-handedly.

When reporting about the working groups it seems appropriate to me, as I have indicated this morning, that we change the order a bit. We should not follow the numerical order of the working groups. Instead we will hear the reports in a way which moves from the more general topics to the more specific ones. That means, we will start with working group 2 (Rule-of-law requirements in the civil society of the 21st century) and working group 3 (Rule-of-law requirements vis-à-vis the legislative process as well as the administration and oversight of the executive); we will continue with working group 1 (Rule of law and the economy; rule of law as a prerequisite for sustainable economic Development and International cooperation); and we will
conclude with working group 4 (The rule of law in conflict prevention and in post-conflict societies, including rule-of-law requirements of transitional justice).

As an introduction to the reports, let me make a statement as to the nature of the reports we are going to hear. A great number of participants have informed me that, as was to be expected, the question has come up what kind of status the proceedings of this conference and the reports are going to have. This was accompanied by the concern of various participants that the working groups or the plenary meeting might be a decision-making forum. This is definitely not the case. After a one-day conference with such a broad range of topics and no possibility to have plenary discussions, we are not able to take decisions or to make specific recommendations. What we are going to hear has just the status of an account or summary of the outcome of the discussions in the working groups. To that extent, it is some kind of a menu for the Foreign Ministers of the G8. If the Foreign Ministers decide to continue discussing these issues, they will find a wide field of topics, ample choice and many things to pick from the menu. The various different proposals we will hear give the widest room for further discussion and future work.

I do hope that those comments can allay concerns which some participants have had as to the nature of the reports from the working groups.

This having in mind I would like to invite the co-chairs of the working groups to inform this plenary meeting on the results they have arrived at in the working groups. As mentioned before, we will hear the reports in the following sequence: We start with WG 2 which will be followed by WG 3; we are going to continue with WG 1 and end with WG 4.

[Presentation of summaries by the working group rapporteurs in the following order: working group 2, working group 3, working group 1, working group 4]
Ladies and gentlemen,

first of all I would like to thank all co-chairs for the brilliant and very concise reports they have presented in this final plenary meeting. My thanks go to all participants who have contributed to the discussions. Nevertheless, I would like to highlight the work performed by the co-chairs. It is highly to be appreciated, even highly to be admired, that—thanks again to all participants—such broad topics have been successfully discussed; and it is a great achievement that the co-chairs in a one-day conference have been able to more or less exhaust the agenda, to come to results, and to present these results in such a convincing manner. Thanks to all who have contributed.

As I have repeatedly said, we will—regrettably—not have the possibility to discuss the reports in this plenary meeting; the more so since we already have overstretched our timetable. Of course, I will not comment the reports or try to summarise them again, or in a different way. However, allow me, coming back to the coordination issue raised this morning, just one remark of a more general character: In some working groups the question was raised why a conference on the rule of law should take place (also) within the G8. Apparently there were doubts about the usefulness of another discussion forum or fears about still more problems of coordination. My answer to that is twofold: (1) The member states of the G8 are, compared to
other states, in a privileged position insofar as they should be able to mobilise more resources, both in money and number of experts, to improve the rule of law. (2) The very fact that the rule of law is discussed among the G8 shows and demonstrates the importance of the topic; rule of law as an item on the agenda of the G8 might help to get the necessary political support for expert work; without high level political support it will be difficult to come to results in rule-of-law questions which in the country in question are regarded as political.

This having said, I am very pleased that several points which I had mentioned in my introductory statement have been picked up in the working groups or, at least, have not been opposed. Therefore, let me summarise the general attitude of this expert conference:

The initiative of the G8 Foreign Ministers to convene this expert conference on the promotion of the rule of law was highly welcomed. Thanks go to the German Foreign Minister for convening and hosting this conference.

There is the clear wish of the participants that such a conference should not be a just one-off event.

For the planning of a future expert conference on rule-of-law topics the organisers should have in mind that a one-day conference is too short to come to a thorough discussion of so many topics of such complexity and interdependence, and to reach widely accepted results or agreements on further action.

Instead of dealing with the full range of all rule-of-law topics, it seems appropriate to concentrate on a limited number of sub-items, namely those which, out of whatever reasons, are regarded as most urgent and/or difficult.

It is the expert conference’s opinion that the reports of the working groups represent a broad choice of items meriting further in-depth discussion.

Before giving the floor to Secretary of State Boomgaard from the Foreign Office, it is my privilege to thank the Foreign Office again for convening this expert conference. I thank all participants for coming, for input and contributions, and I thank the co-chair persons for their achievements and reporting; it needed their experience and skill bringing us to such excellent and tangible results: There is a rich list of subjects from which the Foreign Ministers can choose; there is no lack of fruit for thought and for future action; the Foreign Ministers can benefit from what has been done. My sincere thanks go to IRZ for the substantive preparation, and to GTZ for the organisational preparation of this conference. And my thanks go to the secretariat and to the interpreters who have made our work possible.
Closing remarks
by Secretary of State
Georg Boomgaard

Dr. Faupel, Your Excellencies,
ladies and gentlemen,

I would like to express the gratitude to all people who participated in today’s conference. Of course, the general rapporteur deserves a special word of thanks, likewise the co-chairs of all of the working groups. I am sorry to have kept you in the dark about when I was going to be able to come along. I have come straight from the minister who sends you his regards.

The subject of the rule of law was put on the agenda of the G8 by the German Presidency. It is of growing importance, particularly to the foreign ministers of the G8, because we must not just respond and react to crises, we must prevent them from occurring and then deal with them energetically. Secondly, globalisation must be shaped for the benefit of human kind rather than washing over us. All countries, industrial and developing countries alike, must be given a fair chance of benefiting from globalisation. Therefore I should like to thank you all for your participation and for having used the short time available so profitably.

The advantage of this kind of format is that it’s possible to hold a targeted, purposeful debate. We have discussed at length how we can achieve efficiency at the same time as legitimacy. The results show that beginning with a discussion among experts was really the best way to start. Of course, a future discussion needs to be more focussed on the areas of responsibility of the G8 Foreign Ministers, the rule of law being part of this, of course with the involvement of broader organisations. We now need to extend the discussion and debate to partners outside the G8.

The discussion has also shown that the G8 needs to be involved in supporting international efforts to promote the rule of law and this, of course, applies first and foremost to the United Nations. The G8 must play an active role to make up for deficiencies in the rule of law. Our G8 Presidency intends to feed these ideas into the discussions of the Foreign Ministers and then make the results of their deliberations available more widely.

We hope that the conference has enabled all the legal experts of the G8 and the organisations represented here, including the civil society, to get to know each other and establish contacts with each other, and we would be very happy if these contacts among members of civil society organisations were to continue, and if the dialogue about the rule of law were to continue onwards, whether or not those organisations were involved within the G8 previously.

I am grateful to the organisers, the German Foreign Office for its support, the Gesellschaft for Technical Cooperation, and the Foundation IRZ. Ladies and gentlemen, I am delighted to say that from 8 o’clock onwards, in a room not far from here, we will be able to continue our discussions on a more informal basis. Thank you.
A Declaration of G8 Foreign Ministers on the rule of law

1. We, the Foreign Ministers of the G8, reaffirm that the rule of law is among the core principles on which we build our partnership and our efforts to promote lasting peace, security, democracy and human rights as well as sustainable development worldwide.

2. In a globalising world, respect for the rule of law enhances the quality and intensity of interaction within and between societies and economies. Trade, investment and the movement of people and ideas can create tremendous opportunities for all. For the process of globalisation to be peaceful, sustainable and beneficial for all, it is imperative to adhere to the principles of supremacy of law, equality before the law, accountability to the law, legal certainty, procedural and legal transparency, equal and open access to justice for all, irrespective of gender, race, religion, age, class, creed or other status, avoidance of arbitrary application of the law, and eradication of corruption. International trade, foreign investment and the protection of property rights create a conducive environment for an ever closer interdependence in the economic sphere and beyond. Free and fair competition must be ensured through effective protection by state institutions. There can be no sustainable development without the rule of law to protect the rights and liberties of all persons. The advancement of the rule of law is, therefore, an imperative for any country that wants to achieve social and economic progress in a globalising world.
3. Together with democracy and the respect for human rights and fundamental freedoms, the rule of law is a key condition for lasting peace, security and sustainable development. At our meeting in Miyazaki on 13 July, 2000 we stated that “efforts to prevent conflict must be based upon observance of international law, including the UN Charter, democracy, respect for human rights, the rule of law, good governance, sustainable development and other fundamental values, which constitute the foundation of international peace and security.” We are convinced that conflicts within societies cannot be settled in a peaceful manner unless all individuals, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international law, including human rights law. The restoration of justice and the promotion of the rule of law are of particular importance in post-conflict societies and must be essential elements of any comprehensive conflict prevention or resolution strategy. In this context, we look forward to the Conference on the Rule of Law in Afghanistan—co-chaired by the United Nations together with Italy as host country and the Government of Afghanistan—to be held in Rome on 3 July, 2007, as an opportunity to enhance international commitment to Afghan justice sector reform.

4. The importance of the rule of law as a principle of governance extends beyond states’ borders. We firmly believe that observance of international law including the Charter of the United Nations provides a framework for beneficial cooperation among states and international stability, and is a key condition for the non-violent resolution and prevention of conflicts. We reaffirm the need for universal adherence to and implementation of the rule of law and international law, which together with the principle of justice is essential for peaceful coexistence and cooperation among states. We call upon states to consider acceding to and implementing international instruments that advance our common interests in peace, democracy, and security through the rule of law.

5. Much has been done to promote the rule of law worldwide. We commend and support, in particular, the United Nations’ activities in this field. We also welcome the increasing role of regional organisations in the promotion of the rule of law.

6. We have taken note of the report of the UN Secretary General of 23 August, 2004 (“The rule of law and transitional justice in conflict and post-conflict societies”). We recall the declaration of the “World Summit” in 2005 which demands greater attention for the promotion of the rule of law, and support the implementation, without delay, of the conclusions and recommendations contained therein. We take note with satisfaction of the concrete measures proposed by the UN Secretary General’s report of 14 December, 2006 (“Uniting our Strengths: Enhancing United Nations Support for the Rule of Law”) with a view to strengthening the organisation’s capacities in the area of rule of law, and look forward to the swift implementation of these proposals. We also expect that the
promotion of the rule of law will play a
major role in the activities of the United
Nations’ Peacebuilding Commission.

7. Despite numerous efforts to promote the
rule of law, major challenges remain.
Arbitrary administration of power and
application of national and international
law, impunity, lack of access to justice, lack
of due process, weak accountability struc-
tures, terrorism, corruption, and activities
of criminal organisations as well as disre-
gard of norms and principles of interna-
tional law, including the UN Charter,
undermine international stability and the
effective enjoyment of human rights,
economic and social development in many
countries around the world.

8. In order to meet these challenges, we, the
Foreign Ministers of the G8, undertake to
promote a more coherent international
approach, tying together existing initiatives
and supporting the United Nations, region-
al organisations, states and non-state actors
active in this field. We recognise the impor-
tance of encouraging and respecting local
ownership and leadership in the efforts
towards the promotion of the rule of law. In
order to effectively promote the rule of law,
all stakeholders, international and national,
governmental and non-governmental, have
to join efforts. We recognise, in particular,
the important role of academic institutions,
media, professionals in the judicial systems,
lawyers, business, and other actors of civil
society in this endeavour. We are mindful
that the promotion of the rule of law
requires true commitment by and participa-
tion of all relevant stakeholders.

9. In order to identify further common
ground, and with a view to discussing ways
of supporting relevant international efforts,
in particular those of the United Nations
which play a pivotal role in this context,
identifying gaps that need to be addressed
and better coordinating our own efforts, we
ask the German Presidency to convene, in
the second half of 2007, a meeting at
technical and expert level, including non-
state actors and representatives of the
United Nations, development banks and
regional organisations. This meeting should
facilitate a closer dialogue on issues relat-
ing to the promotion of the rule of law,
which should be opened to participants
from non-G8 countries interested in cooper-
ating with the G8 on issues related to the
promotion of the rule of law.
B Conference programme

29 Nov 2007

20.00–22.30
Welcome reception hosted by Minister of State Gernot Erler

30 Nov 2007

8.30–9.30
Registration of participants

9.30–10.45
Plenary session moderated by General Rapporteur Rainer Faupel

Opening speech by Federal Foreign Minister Frank-Walter Steinmeier: “The rule of law—prerequisite for peace, economic development and stability”

Introduction to the conference and to the work of the working groups by General Rapporteur Rainer Faupel

10.45–11.45 Coffee break

11.15–12.45
Discussion on individual topics in the following working groups (WG):

WG 1: The rule of law and the economy: the rule of law as a prerequisite for sustainable economic development and international cooperation

Co-Chairs: Robin Sully (Canada), Mikio Tanaka (Japan)
Room: 0.9.15 (full translation)

WG 2: Rule-of-law requirements in the civil society of the 21st century

Co-Chairs: Rainer Voss (Germany), Robert Leventhal (United States)
Room: Weltsaal (full translation)

WG 3: Rule-of-law requirements vis-à-vis the legislative process as well as the administration and oversight of the executive

Co-Chairs: Rosario Aitala (Italy), Eberhard Desch (Germany)
Room: Rathenau-Saal (English)
WG 4: The role of the rule of law in conflict prevention and in post-conflict societies, including rule-of-law requirements of transitional justice

Co-Chairs: Babu Rahman (United Kingdom), Viktoria Panova (Russia)

Room: Stresemann-Saal (English)

12.45–14.00 Luncheon

14.00–15.30
Continuation of the work in the working groups

15.30–16.00 Coffee break

16.00–17.30
Continuation of the work in the working groups and internal summing-up of the results of the working groups; presentation of results

17.30–17.45 Coffee break

18.45–19.00
Closing remarks by Secretary of State Georg Boomgaarden

19.00
End of conference

20.00–22.30
Dinner hosted by Secretary of State Georg Boomgaarden

01 Dec 2008

9.30–12.30
Thematic guided tour of Berlin

12.30–13.30 Luncheon
## C Participants

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Inglis Shelley United Nations Development Programme
Jeal Simon Attorney General’s Office United Kingdom
Jones Joseph M. U.S. Department of Justice United States of America
Kehayova Kremena German Foundation for International Legal Cooperation (IRZ) Germany
Kiku Dmitry Russian Embassy in Germany Russia
King Tobias European Commission
Koenig John M. U.S. Embassy in Germany United States of America
Kriener Daniel Federal Foreign Office Germany
Lamponi Roberto Council of Europe
Lebedev Sergey Moscow State Institute of International Relations Russia
Lemermeyer Gregory Department of Foreign Affairs and International Trade Canada
Leventhal Robert U.S. Department of State United States of America
Licini Cesare National Council of Civil Law Notaries Italy
Lisitsyn-Svetlanov Andrey Russian Academy of Sciences Russia
Lobach Dmitry Ministry of Foreign Affairs Russia
Makhakova Irina Ministry of Economic Development and Trade Russia
Marotin Dorothée International Center for Transitional Justice
McCormodale Robert British Institute of International and Comparative Law United Kingdom
Möller Doris German Association of Chambers of Industry and Commerce Germany
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