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REPORT

"THE RULE OF LAW: CONCEPT, GUIDING PRINCIPLE AND FRAMEWORK"

by

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I. INTRODUCTION

The rule of law is one of the three core principles of the Council of Europe (CoE), along with human rights and the concept of genuine democracy. The rule of law is part of the inseparable and steadfast triangle, trilogy, trinity, or triumvirate "*human rights, democracy and rule of law*". It is the cornerstone of national political and legal systems. The principle's importance within this framework, has stimulated debate leading to what scholars often describe as a profoundly contested concept.[1] It is therefore indispensable and worthwhile that more international organisations and bodies take a firm stand with regard to its content.

This report starts with an attempt to define the rule of law. After some general remarks about the content of the principle it will analyse a number of documents relevant for international law that are helpful for identifying a definition of the rule of law principle. Each individual legal rule of the identified definition will then be discussed in the subsequent section. The final part of the report is a treatise about the international dimension of the rule of law. Here the emphasis will lie on the interconnection between the rule of law and the membership of States in international organisations.

II. ATTEMPT TO DEFINE THE RULE OF LAW

1. General remarks

Finding a positive definition of the rule of law – that takes into consideration and incorporates the understandings of the most important legal circles – is no easy matter. More than ever there is a major discussion in legal theory about different concepts of the rule of law. Generally speaking there is a rivalry between more formal ("*thinner*") concepts and more substantive ("*thicker*") ones.[2] Simply put, this distinction concerns the question of whether the rule of law principle consists only of process and form-related requirements or whether, in addition, it contains requirements regarding the content of the laws that rule. Human rights are the key example of value requirements inherent in a substantive concept.[3]

A further problem is the considerable elasticity of the rule of law, and the richness of its underlying values.[4] Furthermore, the discussion is also muddied by the fact that the meaning of the term "*rule of law*" may not be the same in different languages.[5] For example "*Etat de droit*" (France), "*Rechtsstaat*" (Germany), "*Stato di diritto*" (Italy), "*verkhovensto prava*" (Russia) or "*estado de derecho*" (Spain). Each of these terms is subject to various definitional and normative disputations in the respective countries.

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[1] See Julio Faundez/Ronald Janse/Sam Muller/Randy Peerenboom, Editorial. Introduction – A New Journal!, *Hague Journal on the Rule of Law*, 1 (2009), 1 (1).

[2] There are scholars that want to add more than 20 principles to the rule of law. So for example Katharina Sobota, Das Prinzip Rechtsstaat. Verfassungs- und verwaltungsrechtliche Aspekte, p. 1 et seq. Sobota wants to include the following principles: (1) principle of the constitutional State based on fundamental rights, (2) supremacy of the constitution, (3) principle to adhere to the constitution, (4) constitutional jurisdiction, (5) liberty, (6) equality before the law, (7) basic (human) rights, (8) separation of power, (9) legality, (10) principle to adhere to the law, (11) justice, (12) primacy of the law, (13) statutory reservation, (14) principle of legal certainty, (15) clearness of competences, (16) publicity of State acts, (17) adequate organisation of public authority, (18) faire administrative procedures, (19) just extent of State activity, (20) legal security, (21) general duty to legal protection, (22) legal protection towards the public authority, (23) government liability and (24) principle of proportionality.

[3] The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 32.

[4] Jeffrey Jowell, The Rule of Law and its underlying Values, in: Jeffrey Jowell/Dawn Oliver (eds.), The Changing Constitution (6th edition), p. 21.

[5] For an Anglo-Saxon view see Lord Bingham, The Rule of Law, *Judicial Studies Institute Journal*, 1 (2008), 121 (121 et seq.).

However, there exists a far-reaching consensus that the aim of the rule of law has to be to prevent the exercise of arbitrary power by government and to safeguard individual rights. Summarised the rule of law principle can be understood as a legal-political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions.

2. The rule of law in international documents

The focal point of this part will be the analysis of documents relevant for international law that describe the content of the principle. Thereby this part will identify if there are any analogies among the different understandings of the rule of law that are key to the conceptual framework of the principle. At the same time this part will demonstrate that there is a very large number of international bodies with their own understanding of this concept.

a) Documents of region overlapping origin

The number of international documents that simply mention the term "*rule of law*" is vast. An example is the Universal Declaration of Human Rights (UDHR)[6] that says in its third preamble consideration: "*Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law*".[7] Whilst the documents express in their collectivity that the rule of law is of utmost international importance, they fail to clarify the content of the principle.

To understand the substantive components of the rule of law it is helpful to consider international human rights instruments, because many of them set out important elements of the rule of law. These elements are, for example, the principles of equality and non-discrimination, as well as the right of everyone to be recognized as a person before the law. Additionally, international human rights instruments contain very detailed standards for judicial procedures and law enforcement, such as minimum standards of treatment for detainees. Apart from that, international human rights instruments lay down fair trial rights, including the right to be tried by an independent and impartial court.

However, these human rights instruments only contain individual aspects of the rule of law principle and do not make a clear statement with regard to its overall content. In addition, it is only possible to say that single maxims form part of the rule of law, if one already supposes a certain understanding of the principle in advance. That means, in clear words, to put the cart before the horse. Therefore, the following part will only bring together documents that primarily deal with the rule of law and that elaborate on the concept of the rule of law as such.

The United Nations have created and accepted a remarkable number of documents that deal with the rule of law. Although the Security Council is meanwhile increasingly establishing binding rules of general application,[8] the organ has so far not approved a resolution that principally deals with the rule of law.[9] More gainful are the reports of the Secretary-General. Concering this matter, former UN Secretary-General *Kofi Annan* offered a very broad definition

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[6] GA Res. A/RES/217 (III), 10 Dezember 1948.

[7] See also Mary Ann Glendon, The Rule of Law in the Universal Declaration of Human Rights, *Northwestern Journal of International Human Rights* 2 (2004), 2 (et seq.).

[8] Simon Chesterman, 'I'll Take Manhattan': The International Rule of Law and the United Nations Security Council, *Hague Journal on the Rule of Law*, 1 (2009), 67 (70).

[9] There are only several resolutions that make reference to the rule of law principle. So for example resolution S/RES/1917 (2010), 22 March 2010, "*The situation in Afghanistan*", see preamble consideration 12 and 17 and para. 6 lit. b, 23, 30 and 31.

of the rule of law.[10] Furthermore, the UN General Assembly has accepted a remarkable number of resolutions that treat the rule of law as the primary subject.[11] Together, these resolutions merely underline the general importance of the rule of law, rather than explicitly clarifying the content of the principle. Their relevance for international law is nevertheless high. Since they support the view that the rule of law is increasingly becoming a general principle of international law.[12] This follows especially from the fact that the resolutions were already approved many times by the General Assembly. Pursuant to the ICJ they can therefore "*show the gradual evolution of the opinio iuris required for the establishment of a new rule*".[13]

The Community of Democracies (CoD), a union of over hundred States founded with the Declaration of Warsaw in 2000,[14] has also made reference to the content of the rule of law. The "*Seoul Plan of Action - Democracy: Investing for Peace and Prosperity*"[15] also addresses the rule of law principle. This document lists several measures to strengthen the rule of law that provide insight into its content.[16]

In the Declaration of Bamako, adopted by the International Organisation of La Francophonie

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[10] The 2004 report on "*The rule of law and transitional justice in conflict and post-conflict societies*", Report of the Secretary-General, Doc. S/2004/616, 23 August 2004, says in para. 6: "*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*." See also the following reports of the Secretary-General: "*Uniting our strengths: enhancing United Nations support for the rule of law*" (A/61/636–S/2006/980, 14 December 2006, A/61/636/Corr.1–S/2006/980/Corr.1, 17 January 2007) and "*Strengthening and coordinating United Nations rule of law activities*" (A/63/226, 6 August 2008 and A/64/298, 17 August 2009).

[11] See the series of resolutions on "*Strengthening of the rule of law*" (A/RES/48/132, 20 December 1993; A/RES/49/194, 23 December 1994; A/RES/50/179, 22 December 1995; A/RES/51/96, 12 December 1996; A/RES/52/125, 12 December 1997; A/RES/53/142, 9 December 1998; A/RES/55/99, 4 December 2000 and A/RES/57/221, 18 December 2002) and the series of resolutions on "*The rule of law at the national and international levels*" (A/RES/61/39, 4 December 2006; A/RES/62/70, 6 December 2007; A/RES/63/128, 11 December 2008 and A/RES/64/116, 16 December 2009).

[12] In the same direction André Nollkaemper, The Internationalized Rule of Law, *Hague Journal on the Rule of Law* 1 (2009), 74 (74 et seq.).

[13] Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), ICJ Rep. 1996, para. 70.

[14] Official name: Warsaw Declaration: Toward a Community of Democracies, 27 June 2000, source: ILM 39 (2000), p. 1306 et seq.

[15] Of 12 November 2002, source: http://community-democracies.org, controlled on 28 March 2010.

[16] See para. 4.1: "*Promoting the rule of law by: [1] Seeking to ensure that government decision-making is open and transparent and that citizens have access, including via electronic means, to information concerning government action, laws, court decisions, procurement decisions and legislative proceedings and establishing freedom of information legislation; [2] Implementing or strengthening, if necessary, constitutional and other safeguards for the independence and impartiality of the judiciary, including establishing procedures to ensure a professional corps of judges; [3] Establishing any mechanisms that may be needed to ensure high standards of competence and conduct from prosecutors, defense attorneys and other members of the legal profession; [4] Establishing the necessary legal, judicial, and enforcement mechanisms to ensure that basic democratic principles and human rights are fully enforced, particularly through the development and implementation of regular training procedures for military and police; [5] Promoting implementation of good governance practices and enforcement of anticorruption measures and providing support for negotiations to finalize a UN convention against corruption; [6] Seeking to ensure open and transparent budgetary procedures that provide for oversight by an independent legislature; [7] Encouraging the involvement of civil society in the process of governance at the local, national and international levels*."

(OIF) in 2000,[17] it is stated with regard to the rule of law: "*The essential elements of any democratic regime must include the constitutional rule of law, which implies [1] submission of all institutions to the law, [2] the separation of powers, [3] the free exercise of human rights and fundamental liberties, and [4] equality before the law for all citizens, men and women*."[18]

Of more limited use are the "*Dead Sea Declaration on Strengthening the Rule of Law and Supporting UNCAC[19] Implementation in the Arab Countries*"[20] and the "*Declaration of G8 Foreign Ministers on the Rule of Law*".[21] Regrettably, the titles of these documents are more promising than their content.

A further concept was developed by the International Commission of Jurists (ICJ) in the so-called Delhi Declaration of 1959 which was later confirmed at Lagos in 1961. This document defines the rule of law in the following terms: "*[T]he rule of law implies that the functions of the government in a free society should be so exercised as to create conditions in which the dignity of man as an individual is upheld. This dignity requires not only the recognition of certain civil or political rights but also creation of certain political, social, economical, educational and cultural conditions which are essential to the full development of his personality.*"[22]

The "*International Bar Association Rule of Law Resolution*"[23] comes to the following understanding: "*An independent, impartial judiciary; the presumption of innocence; the right to a fair and public trial without undue delay; a rational and proportionate approach to punishment; a strong and independent legal profession; strict protection of confidential communications between lawyer and client; equality of all before the law; these are all fundamental principles of the Rule of Law. Accordingly, arbitrary arrests; secret trials; indefinite detention without trial; cruel or degrading treatment or punishment; intimidation or corruption in the electoral process, are all unacceptable*."[24]

b) Documents of regional origin

In 2007 the Parliamentary Assembly of the CoE accepted the Resolution 1594 (2007), entitled "*The principle of the rule of law*".[25] However, this document does not clarify the content of the principle. Rather, it admits "*[…] that the subject merits further reflection with the assistance of the European Commission for Democracy through Law (Venice Commission)*".[26]

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[17] Official name: Declaration de Bamako, 3 November 2000, source: www.francophonie.org, controlled on 28 March 2010.

[18] See section 2 (Declare our adherence to the following fundamental principles) para. 2.

[19] Stands for United Nations Convention against Corruption.

[20] Of 23 January 2008, source: www.arabgov-initiative.org/english, controlled on 28 March 2010.

[21] Of 30 May 2007, source: www.auswaertiges-amt.de, controlled on 28 March 2010.

[22] Sourse: www.icj.org, controlled on 28 March 2010.

[23] Of 30 September 2005, source: www.ibanet.org, controlled on 28 March 2010.

[24] See para. 2.

[25] Parliamentary Assembly Resolution 1594 (2007), accepted on 23 November 2007.

[26] See para. 6.2. A document that comes from the sphere of the Venice Commission and that deals with the rule of law is a report by Evgeni Tanchev, Rule of Law and State Governed by Law, Venice Commission Report, Strasbourg, 28 October 2008, CDL-JU(2008)036, CoCoSem 2008 / 010.

The "*White Paper on Intercultural Dialogue*", officially launched by the Committee of Ministers of the CoE in May 2008,[27] deals with the rule of law in the following terms: "*The fundamental standards of the rule of law in democratic societies are necessary elements of the framework within which intercultural dialogue can flourish. They ensure a clear separation of powers, legal certainty and equality of all before the law. They stop public authorities taking arbitrary and discriminatory decisions, and ensure that individuals whose rights are violated can seek redress from the courts*."[28]

The European Union (EU) document "*Common position of 25 May 1998 defined by the Council on the basis of Article J.2 of the Treaty on European Union, concerning human rights, democratic principles, the rule of law and good governance in Africa (98/350/CFSP)*" states in Article 2 sentence 2 lit. c: "*In this framework, the Union is committed to encourage and support the ongoing democratisation process in Africa on the basis of respect for the following principles: the rule of law, which permits citizens to defend their rights and which implies a legislative and judicial power giving full effect to human rights and fundamental freedoms and a fair, accessible and independent judicial system.*"

The Organization for Security and Co-operation in Europe (OSCE) has also already taken a firm stand with regard to the content of the rule of law. The OSCE Human Dimension Seminar "*Strengthening the rule of law in the OSCE area, with a special focus on the effective administration of justice*"[29] addressed some of the key issues related to the rule of law in the human dimension. According to the consolidated summary, the following principles form part of the rule of law: "*[1] independence and integrity of the judiciary, [2] judicial review of administrative decisions, and [3] transparency and accountability in the administration of justice, the latter with a specific focus on the prevention of torture at the pre-trial stage*." Furthermore, the participants underlined the Helsinki Ministerial Council Decision No. 7/08 on "*Further strengthening the rule of law in the OSCE area*".[30] This decision encouraged the participating States to strengthen the rule of law, inter alia, in the following areas: (1) independence of the judiciary, (2) effective administration of justice, (3) right to a fair trial, (4) access to a court, (5) accountability of state institutions and officials, (6) respect for the rule of law in public administration, (7) the right to legal assistance and respect for the human rights of persons in detention, (8) prevention of torture and other cruel, inhuman or degrading treatment or punishment, (9) awareness-raising and education on the rule of law for the legal professions and the public, (10) provision of effective legal remedies and access to the same, (11) adherence to rule of law standards and practices in the criminal justice system, and (12) the fight against corruption.[31]

A definition that was made by the Organisation for Economic Co-operation and Development (OECD) in 2005 goes in a similar direction. Pursuant to that definition "*the rule of law is composed of the following separate fundamental elements, which must advance together: [1] The existence of basic rules and values that a people share and by which they agree to be bound (constitutionalism). This can apply as much to an unwritten as to a written constitution. [2] The law must govern the government. [3] An independent and impartial judiciary interprets the law. [4] Those who administer the law act consistently, without unfair discrimination. [5] The law is transparent and accessible to all, especially the vulnerable in most need of its protection.*

[27] 118th Session of the Committee of Ministers (Strasbourg, 7 May 2008), CM(2008)30 final 2 May 2008.

[28] See section 3.4.1, para. 61.

[29] Of 12-14 May 2009, source: www.osce.org, controlled on 28 March 2010.

[30] MC.DEC/7/08, 5 December 2008, Second day of the Sixteenth Meeting MC(16) Journal No. 2, Agenda item 8.

[31] See para. 4.

[6] Application of the law is efficient and timely. [7] The law protects rights, especially human rights. [8] The law can be changed by an established process that is itself transparent, accountable and democratic."[32]

Also very detailed is the "*Cairo Declaration on the Rule of Law and the Protection of Civilians*" that was approved by the regional parliamentary conference for Arab States on "*The Rule of Law and the Protection of Civilians: The role of Legislators*" in 2005.[33] That document states: "*The Rule of Law is a principle of governance in which all individuals, 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*."[34]

c) Conclusions

Overall, it is clear that international organisations and bodies are increasingly taking a firm stand with regard to the content of the rule of law principle.

In conclusion the collected documents demonstrate that a relatively thin concept can gain widespread acceptance across cultures.[35]With regard to the content of the rule of law principle the following consensus can be derived from the mentioned texts: (1) independence and impartiality of the judiciary, (2) legal certainty, (3) non-discrimination and equality before the law, (4) respect for (judicial) human rights, (5) separation of powers, (6) the principle that the State is bound by the law, and (7) the substantive coherence of the legal framework. These principles occur almost without exception in all the cited documents, and many authors concur with these principles.[36]

III. THE PRINCIPLES THAT CAN BE REGARDED AS PART OF THE RULE OF LAW IN DETAIL

1. Independence and impartiality of the judiciary

The judiciary must be independent and impartial. *Independence* means that the judiciary is free of external pressure, and that it is not controlled by the other two branches of government, especially by the executive branch. An indication of an independent judiciary is the fact that there is no personal and/or functional interaction between the judiciary and the other two branches of government. In result it must be guaranteed that the judges are not subject to political influence or manipulation.[37] *Impartial* means that the judiciary is not interested in the outcome of the case in favour of any one of the participants.[38]

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[32] Equal Access to Justice and the Rule of Law, OECD Development Assistance Committee (DAC). Mainstreaming Conflict Prevention (2005).

[33] Of 10 February 2005, source www.pgaction.org, controlled on 28 March 2010.

[34] See para. 1.

[35] Simon Chesterman, 'I'll Take Manhattan': The International Rule of Law and the United Nations Security Council, *Hague Journal on the Rule of Law*, 1 (2009), 67 (69).

[36] See only the general remarks in section II.1. of this report.

[37] Thomas Carothers, The Rule of Law Revival, *Foreign Affairs* 77 (1998), 95 (96).

[38] Jeffrey Jowell, The Rule of Law and its underlying Values, in: Jeffrey Jowell/Dawn Oliver (Eds.), The Changing Constitution (6th edition), p. 12.

To safeguard the independence and impartiality of the judiciary there has to be a fair and open hearing, absence of bias, and a reasonable period within which the case is heard and decided.[39] Additionally, there must be a recognised, organised and independent legal profession, which is legally empowered, willing and de facto able to provide the full range of legal services.[40] Additionally, the judicial system requires a certain degree of self-administration in order to be independent.

As regards personal independence, judges should preferably be appointed for life. Only in limited cases based on a law, may dismissal, suspension or transfer be possible. Additionally, judges are to be remunerated appropriately in order to prevent any susceptibility to corruption.

It is vital that the judiciary has power to determine which laws are applicable and valid in the case, to resolve issues of fact, and to apply the law to the facts, in accordance with an appropriate, that is to say, sufficiently transparent and predictable, interpretive methodology.[41]

In addition, there must be an agency or organisation, a prosecutor, which is also to some degree independent from the governmental apparatus,[42] and which sees to it that violations of the law, which do not result in complaining victims, can be brought before the courts.[43]

The role of the judiciary is essential in a State based on the rule of law. It is the guarantor of justice, a fundamental value in a law-governed State.[44] The right of each person to a trial by an independent and impartial tribunal is a fundamental human right.[45] This is also enunciated in Article 6 para. 1 sentence 1 of the European Convention on Human Rights (ECHR).[46]

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[39] With regard to this point see also the report by Pim Albers, Best Practices on the Prevention of the Unreasonable Length of Proceedings: Experiences of the European Commission for the Efficiency of Justice (CEPEJ), Venice Commission Report, Strasbourg, 7 March 2008, CDL-UDT(2008)002.

[40] Rule of Law Inventory Report, Hague Institute for the Internationalisation of Law, Discussion Paper for the High Level Expert Meeting on the Rule of Law of 20th April 2007, p. 16.

[41] Rule of Law Inventory Report, Hague Institute for the Internationalisation of Law, Discussion Paper for the High Level Expert Meeting on the Rule of Law of 20th April 2007, p. 16.

[42] With regard to this point see also the report by Elsa Garcia-Maltras de Blas, Guarantees of Independence and Non-Interference of the Prosecution Service, Venice Commission Report, Strasbourg, 14 October 2009, CDL-UDT(2009)011.

[43] Rule of Law Inventory Report, Hague Institute for the Internationalisation of Law, Discussion Paper for the High Level Expert Meeting on the Rule of Law of 20th April 2007, p. 16.

[44] The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 39.

[45] With regard to this point see also the report by Sergio Bartole, Overview on the existing Standards at International Level as regards the Independence of the Judicial System from the Executive Power and the Legislature, Venice Commission Report, Strasbourg, 14 October 2009, CDL-UDT(2009)009.

[46] Of 4 November 1950, source: UNTS 213, p. 221 et seq. Article 6 para. 1 sentence 1 reads: "*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*." Furthermore, see also Report on the Independence of the Judicial System Part I: The Independence of Judges, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010), Study No. 494 / 2008, CDL-AD(2010)004, on the basis of comments by Mr Guido Neppi Modona (Substitute Member, Italy) Ms Angelika Nussberger (Substitute Member, Germany) Mr Hjortur Torfason (Member, Iceland) Mr Valery Zorkin (Member, Russia). See also the report by Hans-Georg Heinrich, The Role of Judicial Independence for the Rule of Law, Venice Commission Report, Strasbourg, 2 December 1998, CDL-JU (98) 44.

2. Legal certainty

Legal certainty means that the State has the duty to respect and apply – in a foreseeable and consistent manner – the laws it has enacted. Foreseeability means that the law must be foreseeable as to its effects. Therefore, the laws must be formulated clearly and with sufficient precision to enable the individual to regulate his or her conduct. In this context it is very important that laws that confer a discretion on a State authority, must indicate the scope of that discretion and the manner of its exercise with sufficient clarity. Consequently, the individual has adequate protection against arbitrariness.[47]

Moreover, legal certainty requires respect for the principle of *res judicata*. Final judgements by domestic courts should not be called into question. Systems which allow for the quashing of final judgments for an indefinite period of time are incompatible with the principle of legal certainty.[48]

The rule of law, in particular the principles of legality and legal certainty, also requires that final court judgments are enforced. In private disputes, enforcement of final judgments may require the assistance of the police in order to avoid any risk of "*private justice*" contrary to the rule of law.[49]

In addition it must be seen that the existence of conflicting decisions within a supreme court is contrary to the principle of legal certainty. It is therefore required that the courts, especially the highest courts, establish mechanisms to avoid conflicts and ensure the coherence of their case-law.

The principle of legal certainty is essential to the public's confidence in the judicial system and the rule of law.[50] Because the individual citizen can only protect himself or herself against State interference if there is clarity about what the norms that apply to him or her say.

3. Non-discrimination and equality before the law

Non-discrimination means that the laws refrain from discriminating against certain groups. Any discrimination under the law is prohibited and all persons have guaranteed equal and effective protection against discrimination on any ground. Such grounds can be race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Equality before the law means that each individual is subject to the same laws, with no individual or group having special legal privileges. All persons, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, are to be treated the same before the law. All laws at all levels have to treat citizens equally.

Non-discrimination, together with equality before the law, constitute a basic and general principle relating to the protection of human rights. These two principles are human rights principles as much as they are rule of law principles, and the case-law of the European Court of Human Rights tends to apply the prohibition of discrimination without there being a special

[47] The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 46.

[48] The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 48.

[49] The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 49.

[50] The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 51.

need to refer to it as a rule of law principle. Although there is some recognition that equality in rights and duties of all human beings before the law is an aspect of the rule of law.[51]

4. Respect for (judicial) human rights

The rule of law principle cannot address the full range of freedoms protected by bills of rights in other countries or in international human rights instruments.[52] A crucial point is therefore, to clarify which rights form part of the rule of law principle.

To avoid an overflowing principle it is commendable to incorporate only the judicial human rights that build the basic spine of free government under the law. The judicial human rights are: (1) the right of access to justice, (2) the right to a legally competent judge, (3) the right to be heard,[53] (4) inadmissibility of double jeopardy (*ne bis in idem*), (5) the legal principle that measures should not have retroactive effect as well as the prohibition of analogy, (6) the right to an effective remedy (Article 13 ECHR) for any arguable claim, (7) anyone accused of a crime is presumed innocent until proved guilty,[54] and (8) the right to a fair trial (Article 6 ECHR) or, in Anglo-American diction, the principle of natural justice.[55]

Human rights standards form the basis for State legislation and policy, and are imperative for fair judicial processes. This applies mainly for basic rights regarding the justice sector. Hence, the guarantee of basic human rights can be considered as the decisive element or the cornerstone of the substantive aspect of the "*rule of law*" and of constitutionalism as a whole.

5. Separation of powers

The principle of separation of powers requires that the three branches of government (legislative, executive and judicial authorities) must fulfil independent yet interdependent functions that should remain separated, with mechanisms of mutual checks and balances. Thus, at no time should all authority rest with a single branch of government or should a single branch of government dominate. Instead, power has to be measured, apportioned, and restrained among the three governmental branches.

There are many different ways to separate the powers of a government. But, without separation of persons a meaningful separation of powers is not possible. Due to the needed cooperation between the branches, a complete separation is impossible. The branches will always be interrelated and will have to cooperate with one another. Nevertheless, there must be a point, at which the partial separation is not worthy of the name. The main principle has to be that no branch becomes more powerful than the other two, so that a balance occurs. This can best be guaranteed if the constitution (written or unwritten) clearly states what the executive, the legislative and the judiciary can do.

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[51] The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 53.

[52] Jeffrey Jowell, The Rule of Law and its underlying Values, in: Jeffrey Jowell/Dawn Oliver (eds.), The Changing Constitution (6th edition), p. 22.

[53] Jeffrey Jowell, The Rule of Law and its underlying Values, in: Jeffrey Jowell/Dawn Oliver (eds.), The Changing Constitution (6th edition), p. 19.

[54] Thomas Carothers, The Rule of Law Revival, *Foreign Affairs* 77 (1998), 95 (96).

[55] Rule of Law Inventory Report, Hague Institute for the Internationalisation of Law, Discussion Paper for the High Level Expert Meeting on the Rule of Law of 20th April 2007, p. 16.

It is especially important to protect the judicial process from interference from the executive or the legislature. Furthermore, it is not compatible with the separation of powers if the legislature gives excessive discretion to the executive or the judiciary to take measures which negatively affect human rights.

The separation of powers is a principle designed to ensure that the functions, personnel and powers of the major institutions of the State are not concentrated in any one body. It shall ensure a diffusion rather than a concentration of power within the State, and it shall thereby protect the rights and liberties of citizens. Furthermore, it is an indispensable means for allocating responsibility and fixing accountability.

6. State is bound by law

The principle that the State is bound by the law requires that the State acts on the basis of, and in accordance with, the law. This means that all decisions and acts of public officials must be authorised by law[56] and that all legal subjects, especially State authorities and officials, should be bound by the law when carrying out their official functions. So policy and decision making must respect the limits and the guidance provided by the law.

These two elements of the principle shall assure that the State cannot abuse its powers. So, for example, the Parliament shall not be able to override fundamental rights by general or ambiguous laws. This offers essential legal protection of the individual vis-à-vis the State and its organs and agents.[57]

In addition, the principle that the State is bound by the law requires that rules must provide a published standard against which to measure the legality of official action. They thus allow individual redress against those officials who are not acting within the scope of their conferred powers.

7. Substantive coherence of the legal framework

A substantive coherence of the legal framework means that the constitution (or the constitutional principles in case of an unwritten constitution) has priority over other laws, and that there is a clear hierarchy and consistency of norms. Since legal security for the citizens may also be endangered by a multitude of laws and over-regulation, just as through an unclear and confusing system of laws.

This principle should also apply to subordinate legislation, because it is inevitable, that in an increasingly complex society and legal framework, the Parliament delegates powers to ministers to act in the public interest.[58]

In summary this principle is a so-called catchall element. A component that comprises all requirements that guarantees the functioning of the free State under the rule of law.

[56] See Jeffrey Jowell, The Rule of Law and its underlying Values, in: Jeffrey Jowell/Dawn Oliver (eds.), The Changing Constitution (6th edition), p. 10.

[57] The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 43.

[58] See Jeffrey Jowell, The Rule of Law and its underlying Values, in: Jeffrey Jowell/Dawn Oliver (eds.), The Changing Constitution (6th edition), p. 8.

IV. THE INTERNATIONAL DIMENSION OF THE RULE OF LAW

1. General overview

The documents collected above in the second part of this report underline that the rule of law principle is of paramount international importance and that it is a reality in international law. This reality has many aspects and features.

A paradigmatic example is that the adherence to the rule of law is becoming a precondition for the recognition of new States. This can be exemplified with the "*Declaration on the Guidelines on the Recognition of the New States in Eastern Europe and in the Soviet Union*" accepted by the EC Foreign Ministers on 16 December 1991.[59] In this declaration it is stated: "*The Community and its member States [...] affirm their readiness to recognise [...] those new States which [...] have constituted themselves on a democratic basis [...]. Therefore, they adopt a common position on the process of recognition of these new States, which requires: respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights [...].*" These criteria were also applied to the States emerging from the dissolution of Yugoslavia.[60] Additionally, with regard to the recognition of Montenegro and Kosovo, a number of States stressed that their recognition was because of the clearly visible rule of law improvements in those countries.[61]

Another example for the growing international importance of the rule of law principle is the credit approval process of the International Monetary Fund (IMF). In this respect the Interim Committee of the Board of Governors of the International Monetary Fund makes clear that it "*[...] attaches particular importance to the following: Promoting good governance in all its aspects, including by ensuring the rule of law [...].*"[62]

Likewise relevant is the rule of law principle in the context of international peacebuilding missions. An example for that is the UN Security Council Resolution S/RES/1546 (2004) that rewrites the mandate of the Special Representative of the Secretary-General and the United Nations Assistance Mission for Iraq (UNAMI) and gives them inter alia the following tasks: "*[...] promote the protection of human rights, national reconciliation, and judicial and legal reform in*

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[59] Source: EJIL 4 (1993) 72 (72).

[60] See the Declaration on Yugoslavia, of 16 December 1991, source: EJIL 4 (1993) 73 (73). For further reading see only Roland Rich, Recognition of States: The Collapse of Yugoslavia and the Soviet Union, *European Journal of International Law* 4 (1993), 36 (36 et seq.).

[61] With regard to Montenegro this applies for example to the recognition by Norway (see recognition note, of 16 June 2006, source: www.gov.me, controlled on 28 March 2010, see sentence 2 of the note that reads: "*In extending its recognition, the Norwegian Government underlines the importance it attaches to the Montenegrin Government´s declared commitments to the principles and obligations laid down in international law, including the Council of Europe conventions and OSCE-documents pertaining to the rule of law [...].*") and Hungary (see recognition note, of 12 June 2006, source: www.gov.me, controlled on 28 March 2010, see sentence 1 of the note that reads: "*[B]eing convinced that this act contributes to the stability and prosperity of Europe, as well as to the better implementation of the principles enshrined in the Charter of the United Nations, the Helsinki Final Act of 1975 and the Charter of Paris for a New Europe [...].*"). With regard to Kosovo this applies for example to the recognition by Bulgaria, Hungary and Croatia (see "*Joint Statement of Bulgaria, Hungary and Croatia on forthcoming Recognition of Kosovo*", of 19 March 2008, source: www.vlada.hr/en, controlled on 28 March 2010), Finland (see Press release 80/2008, "*Finland recognised the Republic of Kosovo*", of 7 March, 2008), Germany (see speach of Foreign Minister *Frank-Walter Steinmeier* about the future of Kosovo after the declaration of independence in the German Lower House (Bundestag) on 20 February 2008, source: Bulletin der Bundesregierung, No. 16-1, of 20 February 2008) and the Republic of Korea (see Press release of the government of 28 March 2008, source: www.korea.net/index.do, controlled on 28 March 2010).

[62] See Interim Committee Declaration "*Partnership for Sustainable Global Growth*", of 29 September 1996, source: www.imf.org, controlled on 28 March 2010, see para. 2 sentence 2 bullet point 10.

order to strengthen the rule of law in Iraq [...]."[63]

However, these examples can only be touched on briefly. A very good paradigm for the international dimension of the rule of law principle is the interconnection between the rule of law and the membership of States in international organisations. This topic shall be described in more detail below.

2. Membership of States in international organisations as a prominent example

A number of authors have pointed out that many international organisations accept only democratically organised States as their members.[64] Therefore, it is pertinent to ask, if there are also other basic principles that are frequently demanded by international organisations from their Member States. This question will be dealt with in this part with regard to the rule of law principle. As far as it can be seen this topic has not been addressed in greater detail so far.

In this part the law of selected international organisations will be analysed to determine whether these organisations regard the adherence to the rule of law as an accession precondition or if they suspend member States that violate the rule of law principle. However, for brevity this analysis is confined to global/region overlapping international organisations and international organisations of the European/western hemisphere.

a) Global level/region overlapping organisations

The United Nations are open to every State. The Article applicable is Article 4 para. 1 UN Charter[65] that reads: "*Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations*."

The CoD is also a global organisation that is essentially open to every State in the world. In 2002 the Foreign Ministers of the members of that organisation determined seventeen democratic standards that should be respected by States that want to participate in the CoD.[66] The rule of law was included among these standards.[67] Mentioned as well are other points that can be regarded as part of the rule of law. This applies especially to (1) "*Ensuring equality before the law and equal protection under the law, including equal access to the law*",[68] (2) "*Separation of powers, separation of the judiciary, legislative and executive independence of the judiciary from the political or any other power*"[69] or (3) "*The right to a fair trial, including to be presumed innocent until proven guilty and to be sentenced proportionally to the crime, free from cruel, inhuman or degrading punishment*".

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[63] See para. 7 lit. (b) (iii) of the resolution.

[64] See for example Roland Rich, Bringing Democracy into International Law, *Journal of Democracy* 12 (2001), 20 (27 et. seq.); Jan Wouters/Bart De Meester/Cedric Ryngaert, Democracy and International Law, *Netherlands Yearbook of International Law* 34 (2003), 139 (159 et seq.); see also Konstantinos D. Magliveras, Exclusion from Participation in International Organisations. The Law and Practice Behind Member States' Expulsion and Suspension of Membership (1999), p. 1 et. seq.

[65] Of 26 June 1945, source: United Nations Conference on International Organization Documents, Vol. 15, p. 335 et seq.

[66] Official name: Community of Democracies Criteria for Participation and Procedures, 27 September 2002, source: www.demcoalition.org, controlled on 28 March 2010.

[67] See para. 6 bullet point 4 that reads: "*In this sense, States willing to participate in the Community of Democracies should respect democratic standards as follows: The rule of Law.*"

[68] See para. 6 bullet point 4.

[69] See para. 6 bullet point 4.

The OIF does not explicitly say that it only accepts States that are based on the rule of law. Such a condition can only be seen in the Declaration of Bamako,[70] which states that the OIF is also founded on the rule of law.[71] Nevertheless, the wording of the Declaration is admittedly very much open for interpretation. Apart from that, one can only refer to the fact that States which want to enter into an association relationship with the OIF, have to explain the state of the rule of law in their State. These details must be given in the application itself.[72]

With regard to the Commonwealth of Nations, it follows from the Edinburgh Commuinqué of 1997[73] that the organisation accepts only States that are based on the rule of law. In that document the Heads of Government "*agreed that in order to become a member of the Commonwealth, an applicant country should [...] comply with Commonwealth values, principles and priorities as set out in the Harare Declaration; and that it should accept Commonwealth norms and conventions.*"[74] The Harare Declaration[75] again makes several references to the rule of law principle.[76] The Kampala Communiqué of 2007[77] also makes clear that applicant countries must accept the rule of law.[78] Furthermore, the Commenwealth suspends, on the basis of the so-called Millbrook Commonwealth Action Programme,[79] States that violate the rule of law principle.[80] However, that mechanism does not terminate the entire membership of

[70] Official name: Declaration de Bamako, 3 November 2000, source: www.francophonie.org, controlled on 28 March 2010.

[71] Para. 2 reads: "*Guided by the provisions of the Francophonie Charter, which defines as priority objectives assistance in the establishment and development of [...] support for the rule of law [...].*" Furthermore, in section 4 of the declaration it is enunciated that the Ministers and Heads of Delegation of the States and Governments undertake the commitment "*to consolidate the rule of law*".

[72] See «*Statuts et Modalités d'Adhésion à la Conférence des Chefs d'État et de Gouvernement des Pays ayant le français en partage*», 20 October 2002, source: www.francophonie.org, controlled on 28 March 2010, in chapter III, C (Pour l'obtention du statut de Membre associé) para. 4 no. 6 it reads: «*Parmi les éléments d'information requis pour l'instruction de la demande, il y a lieu de distinguer: [...] l'évolution de la démocratie et de l'État de droit.*»

[73] Commonwealth Heads of Government Edinburgh Communiqué, 27 October 1997, source: www.thecommonwealth.org, controlled on 28 March 2010.

[74] See para. 20 sentence 2.

[75] Accepted on 20 October 1991, source: www.thecommonwealth.org, controlled on 28 March 2010.

[76] See only para. 9 bullet point 2, where it is stated: "*[W]e pledge the Commonwealth and our countries to work with renewed vigour, concentrating especially in the following areas: [...] the rule of law and the independence of the judiciary, just and honest government.*"

[77] Official name: Commonwealth Heads of Government Kampala Communiqué, 25 November 2007, source: www.thecommonwealth.org, controlled on 28 March 2010.

[78] See para. 87 lit. d that reads: "*Heads of Government reviewed the recommendations of the Committee on Commonwealth Membership and agreed on the following core criteria for Membership: an applicant country must demonstrate commitment to: democracy and democratic processes, including free and fair elections and representative legislatures; the rule of law and independence of the judiciary; good governance, including a well-trained public service and transparent public accounts; and protection of human rights, freedom of expression, and equality of opportunity […].*"

[79] Official name: Millbrook Commonwealth Action Programme on the Harare Declaration, 12 November 1995, source: www.thecommonwealth.org, controlled on 28 March 2010.

[80] The legal basis for that is para. 3 lit. vi. that reads: "*Where a member country is perceived to be clearly in violation of the Harare Commonwealth Declaration [...] appropriate steps should be taken to express the collective concern of Commonwealth countries [...]. These include: [...] exclusion of the government concerned from participation at ministeriallevel meetings of the Commonwealth, including Commonwealth Heads of*

the respective State within the Commonwealth. Rather, the integration of the State into the organisation is temporarily cancelled, preventing active political participation. That measure shall protect the core principles of the community and shall maintain its homogeneity.

The Commonwealth has applied the suspension mechanism several times in conection with the rule of law. For example, the membership of the Republic of Fiji Islands was suspended in the year 2006 after the chief of the military, *Frank Bainimarama*, had ousted the acting government.[81] Additionally, Zimbabwe was suspended from the Commonwealth for one year after the heavily contested elections of 2002. In that case the organisation made implicit reference to the rule of law.[82]

b) Europe/western hemisphere

The NATO is one of the most important international organisations in the world of today. Article 10 of the NATO Treaty[83] says that "*the Parties may, by unanimous agreement, invite any other European State in a position to further the principles of this Treaty*". These principles include the rule of law.[84]

With regard to the CoE, the Vienna Declaration[85] should be mentioned. That important document requires that countries that want to accede to the organisation apply basic principles of the rule of law.[86] This membership prerequisite was inter alia reiterated in the Parliamentary Assembly Resolution 1527 (2007).[87]

Government Meetings." See also para. 6 sentence 1: "*CMAG called for Commonwealth principles of good governance, democracy and the rule of law to be upheld in Fiji*."

[81] See Commonwealth News Release, "*Extraordinary Meeting of the Commonwealth Ministerial Action Group on the Harare Declaration (CMAG). Republic of Fiji Islands*", 8 December 2006, No. 06/66, see para. 4, where it is stated: "*The Group decided that, according to the steps set out in the Millbrook Commonwealth Action Programme on the Harare Declaration, Fiji's military regime should forthwith be suspended from the Councils of the Commonwealth, pending the restoration of democracy and the rule of law in that country*."

[82] See Commonwealth News Release, "*Meeting of Commonwealth Chairpersons' Committee on Zimbabwe*", 19 March 2002, No. 02/26, see para. 8, where it is stated: "*The Committee decided to suspend Zimbabwe from the Councils of the Commonwealth for one year with immediate effect. This issue will be revisited in twelve months time, having regard to progress in Zimbabwe based on the Commonwealth Harare principles [...]*."

[83] Of 4 April 1949, source: 34 UNTS 1949, No. 541, p. 243 et seq.

[84] Preamble consideration 2 of the NATO Treaty reads: "*They are determined to safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of democracy, individual liberty and the rule of law*." See also Istanbul Declaration (of 28 June 2004, see para 2 sentence 2 that reads: "*Our Alliance is founded on the principles of democracy, individual liberty, and the rule of law*."), Riga Summit Declaration (29 November 2006, see para. 1 sentence 2 that reads: "*Our 26 nations are united in democracy, individual liberty and the rule of law [...]*.") and Strasbourg / Kehl Summit Declaration (of 4 April 2009, see para 2 sentence 2 that reads: "*Our nations are united in democracy, individual liberty and the rule of law [...]*."). The source of the above mentioned documents is: www.nato.int, controlled on 28 March 2010.

[85] Of 9 October 1993, source: www.coe.int, controlled on 28 March 2010.

[86] See para. 6 sentence 1 that reads: "*Such accession presupposes that the applicant country has brought its institutions and legal system into line with the basic principles of democracy, the rule of law and respect for human rights*."

[87] Official name: Resolution on State of human rights and democracy in Europe, 18 April 2007, see para. 1 sentence 1 that reads: "*Membership of the Council of Europe, founded in 1949, is based on three pillars: the enjoyment of human rights and fundamental freedoms by all persons within the jurisdiction of its member states, the consolidation of the rule of law, and the existence of a genuine pluralistic democracy, based on the spiritual and moral values which are the common European heritage*." See also para. 37 sentence 2: "*Acceptance and realisation of the principles of democracy, the rule of law and human rights and fundamental freedoms are a necessary condition for membership in the Organisation*." See furthermore the document "*The Council of Europe and the Rule of Law - An overview*", CM(2008)170, 21 November 2008, see especially para. 24 where it is stated:

The EU is based on the principles laid down in Article 2 sentence 1 Treaty of the European Union (EUT)[88] that reads: "*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities*." Herewith Article 2 EUT makes clear that the rule of law forms a constitutional core of the EU. Pursuant to Article 49 para. 1 EUT this core must be also respected by States that want to join the EU.[89] In case that the values of Article 2 EUT are violated, Article 7 EUT provides a sanction mechanism. This mechnism allows on its third and last level the suspension of single membership rights.[90] Rules for the complete suspension of a Member State from the EU are not stipulated in community law. Additionally, suspension mechanisms that can be applied in the event of a violation of the rule of law principle are also provided in many agreements of the EU with third countries. For example, in the so called Cotonou Agreement.[91]

The South-East European Cooperation Process (SEECP) has explicitly clarified in its Charter[92] that it only accepts new Member States that submit to the Charter of the SEECP.[93] From this document it follows that the community is founded on the concept of States adhering to the rule of law.[94] This is quite remarkable given the SEECP is a union of mostly new democracies with only moderate influence of the western European States.

Interestingly the charter of the ODED-GUAM[95] (Organization for Democracy and Economic Development) that is currently formed by Georgia, Ukraine, Azerbaijan and the Republic of Moldova (GUAM), makes clear that only those States that respect its principles can join the organisation. Apart from that the charter mentions further documents that must be complied with.[96] These works are a strong indication that the rule of law belongs to the very basic

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"*Like democracy and respect for human rights, the rule of law is a principle pertaining to the organisation and functioning of the state. In accordance with Article 3 of the Statute, Council of Europe member states must accept this principle; they are therefore expected to be states based on the rule of law*."

[88] Of 13 December 2007, source: Official Journal of the European Union, No. C 306, 17 December 2007, p. 1 et seq. (Treaty of Lisbon).

[89] Article 49 section 1 sentence 1 reads: "*Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union*."

[90] See Article 7 section 3 sentence 1 that reads: "*[T]he Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question […]*."

[91] Official name: Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part and the European Community and its Member States of the other part, 23 June 2000, source: Official Journal of the European Union, No. L 317, 15 December 2000, p. 3 et seq. See Article 96 section 2 lit. a and c sentence 3, see also *Karin Arts*, ACP-EU Relations in a New Era: The Cotonou Agreement, *Common Market Law Review* 40 (2003), 95 (102).

[92] Official name: Charter on Good-Neighbourly Relations, Stability, Security and Cooperation in South-Eastern Europe, 12 February 2000, source: www.rspcsee.org, controlled on 28 March 2010.

[93] Para. 44 reads: "*The South-East European Cooperation Process is open, by agreement among the participating countries, to the participation in appropriate forms to States which geographically belong to this area and declare their full adhesion to the present Charter*."

[94] See especially para. 32 and 33 that read: "*[O]ur common endeavor shall be oriented to: Bringing about mature democratic political processes, based on pluralism, free and fair elections, grounded in the rule of law and full respect for human rights and fundamental freedoms [...] with legislative branches accountable to their constituents, independent judiciaries and deepening and strengthening of civil society*."

[95] Of 23 March 2006, soure: www.guam.org.ua/en, controlled on 28 March 2010.

[96] Article 13 para. 1 reads: "*GUAM is open for accession of other states, which commit to respect the provisions*

principles of the community.[97] Furthermore, the ODED-GUAM has a mechanism to suspend member States that violate provisions of the charter and/or that do not fulfill their obligations that follow from the international agreements of the organisation.[98] Apart from that it is possible that observer States can loose their status, if they violate the goals and principles of the organisation.[99]

c) Provisional result

Many international organisations require the adherence to the rule of law for membership. Therefore, one can argue that there is a rule in (regional) customary international law that demands the rule of law from the States as a precondition for membership in international organisations.

V. CONCLUSIONS

As was reaffirmed in the 2005 UN World Summit Outcome an international order based on law where rule of law principles are respected, is essential for peaceful coexistence and co-operation among States.[100] This report has sought to establish a core definition of rule of law that properly reflects what is distinctive about the term and is applicable across cultures.

The above identified principles form the very elementary consensus of the rule of law. The same applies to the content of the principles described in this paper. Furthermore, it is irrefutable that the rule of law principle has a notable international dimension that extends into domestic State law.

The rule of law is the lifeblood of any modern, cosmopolitan State, because it allows people to trust in their government. At the same time it champions human rights by means of practical action.

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of the present Charter as well as the 2001 Yalta Charter of GUUAM and the 2005 Chisinau Declaration of GUAM Heads of State "In the Name of Democracy, Stability and Development"."

[97] See ODED-GUAM Charter (preamble consideration 7 and Article 1 bullet point 1: "*The main purposes of GUAM are: promoting democratic values, ensuring rule of law and respect of human rights*."), Yalta Charter of GUUAM (preamble consideration 3) and Chisinau Declaration (preamble consideration 4 and para. 1: "*The Heads of State [...] Declare their commitment to the principles of democracy, the rule of law and respect for fundamental human rights and freedoms [...].*").

[98] See Article 13 para. 3 that reads: "*Membership in GUAM of a state, which violates the provisions of the present Charter and/or systematically fails to fulfil obligations taken under the international treaties and ocuments*

concluded within GUAM, may be suspended by the decision of the CHS, upon recommendation of the CMFA, to be adopted by "consensus minus one" principle. If this state continues to violate its obligations, the CHS may adopt decision on termination of its membership in GUAM as of the date, which shall be defined by the CHS. Membership in GUAM may be restored by decision of the CHS upon recommendation by the CMFA."

[99] See Decision of the Heads of GUUAM Participating States on the Status of Observers of GUUAM Activities, of 20 July 2002, source: www.guam.org.ua/en, controlled on 28 March 2010, see para. 7 sentence 1 that reads: "*In case of violation of provisions of paragraph 6 or conditions contained in paragraph 2, observer may be deprived of its status upon initiative of one or several GUUAM States according to the procedure contained in subparagraphs 3.2.-3.4. of paragraph 3*." Para. 6 reads: "*The main obligation of observer shall be adherence to the goals and principles contained in Yalta Charter of GUUAM*." Para. 2 reads: "*The conditions for granting observer status shall be: 2.1. Interest in GUUAM activities. 2.2. Possibility to promote achievement of goals and principles contained in Yalta Charter of GUUAM*."

[100] The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 60.