

Proceedings

## **Monitoring the Rule of Law**

Expert Meeting

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# I Key Ideas of the Debate and Recommendations

The debate of the meeting generated the following innovative ideas and recommendations:

## 1. Regarding the Concept of the Rule of Law

- The rule of law is a broad-based concept and should not be defined in narrow, formalistic, or merely academic terms nor circumvent issues for the sake of easier acceptance. In practice, the rule of law links up with issues such as governance, Human Rights and the legal and political framework of a state. However, these issues may still require different types of monitoring.
- The independence of the judiciary - rather than an end in itself - is a means to achieve the goal of impartiality of the judiciary.
- Also the efficiency of the judiciary was found not to be a value as such although the notion has become an increasingly important requirement for the rule of law. Too much independence or efficiency may also be counterproductive to the rule of law.
- The importance of impartial and resolute prosecution was highlighted in its relation to the executive and legislative and as a safeguard against corruption and crime.

## 2. Regarding Methods and Practices of Monitoring

### *What's in for the Country/People?*

One of the key purposes of monitoring is to devise technical assistance. As a condition for such assistance, a country should be able and willing to live up to certain standards. Time is required for attaining noticeable changes and improvements for society at large.

### *Monitoring of Agreed Standards*

Standards have to be made acceptable and accepted before monitoring can begin. The existence of deficits in the rule of law has to be acknowledged by the country concerned. The reasons why these deficits exist need to be analysed co-operatively.

### *Differences in Monitoring*

- Essence vs. detailed standards: The development of ever more detailed standards of the rule of law contrasts with the ability of countries to fulfil and live up to these standards (enforcement gap). Focussing on the essence of the rule of law requires a more flexible approach.
- Procedures vs. practice: Formal requirements may be fulfilled on paper but not in practice. Monitoring should therefore not be limited to a formalised, structured analysis, but qualify formal requirements in the context of their application and effect.
- 'Us' vs. 'Them': External evaluations that are not applied internally ('them'), e.g. as in the case of candidate countries for EU enlargement, carry the risk of double standards. Non-

discriminatory monitoring ('us'), which applies standards equally to all member States, is indeed necessary if monitoring is to be credibly maintained for a longer period of time.

- Results vs. progress: Monitoring the compliance with standards tends to focus on results instead of progress. The development of the rule of law has to be seen in the context of social, economic and cultural conditions which require time to be changed. A process-/progress-oriented approach is advisable.

#### *Challenges to Monitoring*

- Requirements are often fulfilled on paper but not in practice (enforcement gap). Therefore, goals need to be set realistically so that they remain attainable (intermediate markers).
- Any mechanism of sanctions is difficult to combine with a non-discriminatory approach. The possibility of sanctions may lead to the emergence of coalitions, and usually consolidates the preference for a discriminatory approach.
- Exit dilemma: It is difficult to determine when monitoring should be concluded, i.e. when the rule of law has been sufficiently internalised. Re-opening the monitoring process is hardly feasible once concluded.

#### *Sources of information*

Sources of monitoring information (NGOs, visits by delegations, missions, etc.) should be diverse and have to be cross-checked.

### **3. Regarding the Monitoring Framework**

- Any monitoring framework should not reinvent the wheel: Reference should be made to existing (CoE) standards that are more complete but also more complex. Specifically in the fields of public prosecution, police matters and special investigative techniques the existing framework should be expanded.
- The process-/progress orientation of the framework could be improved by devising further intermediate markers in order to make the framework also applicable to countries with substantial deficits in the rule of law.
- In general, the Monitoring Framework was found to be helpful in identifying common ground for co-operation and in translating already existing standards into practice, i.e. into the perspective of those who have to implement the rule of law.
- Gender and minority issues should be included more prominently.

### **4. Regarding Co-operation**

#### *Suggestions to the OSCE Chairmanship and the CoE Presidency*

- The Dutch CiO of the OSCE should refresh the catalogue of co-operation between the OSCE and the CoE (2+2 and 3+3 meetings) in terms of incorporating follow-up into these meetings.
- OSCE internal co-operation should be supported by (i) better integrating OSCE dimensions in the field of rule of law work, (ii) reinforcing Human Dimension issues as a priority, (iii) refining the monitoring mandate of ODIHR, (iv) clarifying institutional relations between ODIHR, field missions and Vienna.

- It was suggested that the Dutch CoE Presidency specifically manage the overlap emerging with regard to the monitoring between the CM and the PA.<sup>1</sup>

#### *Comparative Advantages*

- The EU provides of a repertoire of sticks and carrots and is therefore in the position to monitor countries 'externally'.
- The impressive *acquis* of legal standards and expertise of the CoE is applied to CoE member States - comprising approximately the same group of members as the EU - on the basis of non-discriminatory peer pressure.
- The OSCE follows a more informal and political way of monitoring the rule of law. Through its missions, the OSCE has fast access to accurate and up-to-date information and is in the position to monitor the situation on the ground; the comprehensive security concept of the organization allows for addressing different angles of deficits in the rule of law on different levels; due to its political nature and clearinghouse function, the OSCE can help to foster political will to adhere to CoE obligations.
- Specifically, the CoE should accept input from OSCE missions when identifying the specific needs of a country. The missions, on the other hand, should tap the expertise available within the CoE. It was suggested that economic officers in OSCE field missions will provide GRECO with reports on the functioning of certain institutions and requirements in the Economic Dimension. On the other hand, GRECO evaluators will be encouraged systematically to visit OSCE field missions during their fact-finding missions.
- Particularly OSCE and CoE, which provide themselves for relatively little means of leverage, should seek alliances with the EU, the World Bank and the International Monetary Fund as well as the private sector which has a defined commercial interest in the functioning of the rule of law.
- EU enlargement should encourage co-operation rather than competition with the CoE and the OSCE in accordance to their respective experience with candidate countries.
- Furthermore, remaining differences in geographical reach of the fora add to the comparative advantage of the OSCE and, in a different way, the CoE vis-à-vis the EU.

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<sup>1</sup> See PA Recommendation 1536 (2001) <http://stars.coe.fr/Documents/AdoptedText/TA01/EREC1536.htm>.

## II. Proceedings of the Expert Meeting

### Opening of the Expert Meeting, Georg Frerks

The Chair of the first session, Georg Frerks, welcomed the participants and explained the course of the programme. The aim of the expert meeting was to discuss priority areas of the rule of law and identify potential for synergies and co-operation in monitoring these among the Council of Europe (CoE), the Organisation for Security and Co-operation in Europe (OSCE) and the European Commission. The Monitoring Framework report developed by Clingendael (Martina Huber) served as reference to the discussion.

### Relevance of the Topic to the Dutch Ministry of Foreign Affairs, Maarten Lak

The threesome of presidencies and chairmanship (OSCE, CoE, EU) of the Netherlands in the upcoming two years creates a window of opportunity to connect the three fora on a thematic basis. The rule of law may be such a connecting theme. Due to this, a start-up research study was commissioned to Clingendael in order to examine how the rule of law was monitored in the Eastern parts of Europe (Monitoring Framework report).

The theme 'rule of law' is connecting also in the sense that it involves various stakeholders including different ministries (Foreign Affairs, Justice), desks within ministries, academia, and parliamentarians. The operational departments within the Ministry of Foreign Affairs (MFA) are usually too much concerned with acute crises and less so with preventing structural causes of conflict. In this sense, the rule of law as an objective is an important element for stability and progress. The aim of the meeting should be to find ways of strengthening rule of law systems and to intensify contacts among those colleagues who are concerned with the subject matter.

### Key Objectives in Monitoring the Rule of Law, Martina Huber

#### *Rule of Law and Conflict Research*

The topic "Monitoring the Rule of Law in Transition Countries" has been of interest from a conflict research point of view for two reasons:

1. Deficits in the rule of law are often at the heart of systemic problems in relation to the state. The challenges typical in transition countries range from non-representative governments to non-participatory legislating, weak legal structures, exclusive political structures, weak administration of justice, corruption, lack of a professional judiciary, and weak civil societies. The type and intensity of problems may differ depending on the stage of transition, legal and political traditions, and existing bureaucratic structures etc. But what applies to most cases is that deficits in the rule of law are symptomatic of a crisis in the state and often contribute to an existing crisis.

2. In recent years, the rule of law has become a major guiding principle in defining policies of various policy sectors. But it has also remained a concept that is very broad and complex. It touches upon issues related to governance, the constitution, the legal and political framework, Human Rights, economic security, etc.. It is a living concept that changes in emphasis once it is applied to different realities by different institutions. As a result, precise standards or conditionalities - what one actually means by the rule of law - are not always clear. It seemed useful and necessary therefore to pinpoint priority areas that are essential core requirements of the rule of law and that are able to accommodate these differing realities.

#### *Framework for Monitoring the Rule of Law*

In this regard, the aim of the Monitoring Framework was precisely to identify core areas of the rule of law, with a view to assessing the progress made in these areas. This has been difficult as commonly considered factors like an 'independent judiciary' cannot simply be measured by the number of judges or court rooms in a country. So, instead of mere indicators the framework was formulated in terms of ideal-type 'end results' or blueprint objectives that can serve as a first reference for measuring progress made in certain fields.

For each institution, concepts of the rule of law, expressed in official documents, were compared with the institutions' monitoring of these concepts in practice. This ranged from criteria for project evaluations to membership requirements, country strategy indicators, detailed revisions of specific legislation. The relevant information was collected with regard to four examples (Ukraine, Bosnia and Herzegovina (BiH), Russian Federation, and Kyrgyzstan) that reflect different stages of transition, different problems, and different status in the three institutions. On this basis, five key themes and various recurrent sub-issues could be identified that were relevant to all three institutions. This allowed for consolidating the tree-structure in the present, consolidated Monitoring Framework. The main areas relate to the political system, the judiciary, law application and enforcement, Human Rights, as well as social and economic security.

#### *Topics for Discussion*

Three of the five thematic areas of the Monitoring Framework have been chosen for discussion with a focus on three sets of questions for each topic:

1. What is the essence of the rule of law and specifically of the three fields to be discussed? Do you agree with the areas selected in the framework, should they be prioritised in a different way and can they be applicable and adjusted in practice?
2. Institutional (monitoring) practices of the CoE, OSCE and the European Commission: What are the key conditionalities? What are the different ways and capacities for monitoring (field presence, convention-based monitoring, project evaluations, membership requirements, political advocacy)? Are there best practices? What type of limitations do some institutions face in monitoring (e.g. the non-existence of the rule of law)?
3. Co-operation: Where are gaps and overlap in monitoring? Would the use of a "shared monitoring framework" be helpful in facilitating interinstitutional co-operation?



## Session One: Independent, Impartial and Effective Judiciary

### 1. Monitoring and Response Practices of the CoE, Markus Jaeger

#### *Relevance to the CoE's Concept of the Rule of Law*

The objective of an 'independent, impartial and effective judiciary' is an essential element of the rule of law, which is clarified in a number of norms of the CoE. The rule of law is mentioned by the statute of the CoE as a basis for democracy, and thus constitutes a core element for the CoE's reason of being. Secondly, article 6.1 of the European Convention on Human Rights (ECHR) does not explicitly mention the rule of law, but indeed makes reference to the right to "a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". This provision contains the three qualifying elements: independence, impartiality, and effectiveness or rather efficiency of the judiciary.

The principles of the European Court of Human Rights define independence as such that members of the tribunal are independent when they are "not subject to any authority being answerable only to their own conscience. Independence has to be safeguarded in the judiciary's relation with the other state powers, with the politicians, the mass media, the parties to the litigation and with those in an economically strong position". Impartiality, on the other hand, denotes the absence of prejudice or bias. This is difficult to assess because one has to prove the existence of bias.

Recommendations by the Committee of Ministers (CM) to member States, which constitute the next level of normative implication in the CoE, have helped to further specify requirements of independence, impartiality and effectiveness in relation to the judiciary:

1. Decisions of judges should not be subject to any revision outside appeal procedures as provided for by law.
2. The terms of office and remuneration of judges should be guaranteed by law. Judges should be provided with a certain job safety and be protected against removal from office for arbitrary motives.
3. No other organ than the courts themselves should decide on their own competence as decided by law.
4. Judicial decisions cannot be invalidated retroactively by the administration (with exceptions such as for amnesties).

The majority of CM recommendations are concerned with the notion of efficiency. Reference is made to too long procedures, which risk breaching Human Rights. Interestingly, a CM recommendation on public prosecution states that while prosecutors are indeed required to work efficiently and ensure fairness, they formally do not have to be independent or impartial.<sup>2</sup>

The same requirements are reflected in the commitments undertaken by new members of the CoE. In the case of Romania (1991), for example, ensuring the independence of judges from the ministry was specifically requested. Instructions are specified to the degree that even the procedures

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<sup>2</sup> The recommendation 2000 (19) explains the functions of public prosecutors and lays out the safeguards which states need to provide prosecutors with so that they are able to carry out their functions properly. See also <http://cm.coe.int/ta/rec/2000/2000r19.htm>

for removing judges must be changed. In the case of the recent accession of Georgia, the Parliamentary Assembly (PA), which is mainly concerned with the commitments of new member States, laid out in its opinions clear requirements regarding corruption, the maximum length of preventive detention (= efficiency) and prosecution that is resolute and impartial of war crimes committed in Abkhazia.

In conclusion, independence is easy to apprehend on the normative side, but is not a value as such. It is rather a means for achieving impartiality, which is more difficult to assess. Secondly, efficiency has become an important requirement as inefficient judiciaries do not guarantee the rule of law.

### *Monitoring Practices of the CoE*

Five principle structures within the CoE are tasked to monitor the rule of law:

1. The European Court of Human Rights checks on the independence of the judiciary, particularly whether or not pressure is exerted from the executive (government, Prokuratura). Impartiality is checked in individual cases. Even the perception of impartiality is sufficient to constitute a breach of a requirement for the rule of law.
2. As of 1997, the CM monitors the rule of law mostly on the basis of topics. In 1998, the functioning of judicial systems was reviewed, which involved an overview of the normative framework and assessment of 40 member States. Subitems for priorities are not defined intellectually, but on the basis of the predominant and most common problems (numeric priority setting). Follow-up activities in the CoE focused mainly on the efficiency of justice.
3. The PA monitors the commitments and other obligations taken upon entry into the CoE. The focus on the independence, impartiality and effectiveness of the judiciary becomes clear in the reports of parliamentarians. The recent report on Azerbaijan, for example, expressed concern regarding the interference of the executive in the judiciary.
4. The Commissioner for Human Rights, and
5. The Venice Commission (VC).

### *Possibilities for Co-operation*

Examples of co-operation show differences in appreciation among rule of law 'agents'. In BiH in mid-2002, the OSCE and CoE diverged on the requirements for judges who had been guaranteed life tenure. A compromise was found eventually in making all judges pass exams. This, however, created problems with those judges who failed, but had previously been granted life tenure. Another example is Kosovo, where the previous Special Representative of the Secretary-General used his power to overrule valid (co)decisions by (international) judges who had set free prisoners. As one of the pillars of UNMIK, the OSCE thus took executive orders to maintain prisoners in detention for unspecified periods of time. The new Special Representative has so far refrained from using these powers.

## **2. Comments by the European Commission, Hans Rundegren**

DG Relex lacks a monitoring system due to its geographical scope. The Commission is currently creating benchmarks for the JHA section in their work in the Western Balkans. The enlargement experience has been a useful reference in this regard because the measuring of progress has been

refined during the accession processes. Less ambitious, intermediate benchmarks are necessary that identify the core acquis.

Efficiency is a huge problem in the Western Balkans. Even Croatia, one of the most advanced countries, has a backlog of 1,3 million cases, which completely blocks the court system. At the same time, there is no real strategy of the Croatian government for reforming the relevant codes of procedures. An action plan for reform remains ambiguous and incomplete. There are no efficient measures to avoid delays. Sometimes 20 preliminary hearings may be held in a single case.

Organised crime and corruption are another priority for the Commission in the Western Balkans. Phare programme officials visit and interview judges in this respect in order to identify gaps and immediate needs. The first JHA programme was concerned with building a judges school and computerising the courts. A database of precedents, which so far had only been published once per year, and of new legislation was set up on the ground. Efficient judge training as an 'indicator' for the rule of law, however, needs to be specified addressing questions regarding the independence of the school, the substance of the training in the curricula, etc.

### **3. Comments by ODIHR, Sirpa Rautio, Cynthia Alkon**

ODIHR works on areas where the CoE is not or less active such as in Central Asia (Rautio). As opposed to the focus of the CoE on efficiency the OSCE deals with the most urgent and basic requirements, e.g. in relation to Human Rights.

Through its field missions the OSCE is able to monitor trials (Alkon). Approaches differ depending on the size and mandate of the missions. The mission in Kosovo, for example, has its own trial monitoring department. The other extreme are the small missions in Central Asia and the Caucasus where trial monitoring is rather episodic, but still provides insights into the openness of courts and proceedings in particular 'political' cases. The lack of qualified OSCE staff with a legal background in OSCE missions and institutions constitutes a problem in this regard.

The scope of a Monitoring Framework should reflect the process-/progress-orientation of rule of law developments. As countries are at different stages of moving towards the rule of law one should not only look at end goals, but also have more intermediate markers in the framework. Additional core elements within this area (judiciary) should be gender and minorities.

### **4. Discussion**

#### *"Us" and "Them" - Monitoring against Agreed Standards*

A major difference in monitoring consists in the non-discriminatory nature of the work of the CoE (Jaeger). While the European Commission (regarding enlargement) and, to a lesser extent, the OSCE monitor the rule of law from an external point of view, the CoE applies monitoring to all its member States. Backlog of cases or appointment procedures could equally be criticised in Western countries. This makes monitoring in the CoE fora more difficult because countries can fight back and question the right of some states to criticise others.

However, the approach of the European Commission, which is discriminatory in this respect, is compensated to some degree by the fact that most criticism of the EU is based on CoE recommendations due to overlapping membership (Rundegren). One reason for the perceived 'double

standards' is that intermediary standards for external EU countries like in the Western Balkans have to be adopted to the specific needs and relatively low level of rule of law development.

The fact that the CoE has established standards that are applicable to all members is a major difference to the EU where legally binding standards applied only to new member States and not to existing members (De Jong, MFA/DMV). During the previous Dutch EU Presidency (1997), rule of law standards had been discussed in an Informal meeting at Noordwijk, but were never incorporated in a framework.

Due to the differences among EU members States, it is not realistic to think of legally binding standards that go beyond ECHR Article 6 (Esposito). CoE attempts in this regard have failed. Harmonisation in law and procedure could be generated only step-by-step, e.g. an EU enforcement order concerning only commercial matters. The Statute of the European Commission for the Efficiency of Justice contains benchmarks on efficiency, developed by the CoE, which will be applied within member States according to the specific needs. While non-binding in nature, they do constitute an agreed standard, against which monitoring can take place.

The principle of non-discrimination is crucial for the monitoring by the CoE (Lezertua). Any monitoring exercise that does not include all members is difficult to maintain in the long run. For the CoE, monitoring is an 'inward exercise'. For the European Commission, on the other hand, monitoring is part of the accession process and thus an 'outward exercise'. Therefore the problem arises of how to continue assessing progress once a country has become a member if the same tests are not applied to member States. Concluding from an assessment of anti-corruption measures of EU candidate countries, the Open Society Institute found that in the field of anti-corruption only GRECO was a framework for follow-up due to the fact that the CoE comprised all EU member States. Therefore, the EU should accede to the agreement of GRECO as currently being considered within JHA.

#### *Convenience Coalitions*

With regard to the decisions of the European Court of Human Rights it is possible that unspoken convenience coalitions evolve between those countries, which have more, and others which have less to improve because both feel accused (Landman, Perm. Rep. Netherlands at CoE).

#### *Efficiency*

Efficiency of the judiciary is not a value as such (Landman). In fact, some trials can be conducted in a very efficient manner but are not credible. Too much efficiency or too much independence may also be counterproductive, for example in cases where too little preparation time is left to the defence and/or the prosecution.

#### *Prosecution Services*

The independence of the prosecution is a substantial tool for anti-corruption and anti-crime precaution (Lezertua). Especially when the prosecution is integrated in part of the executive it may be possible not to prosecute; in certain cases that may be due to corruption, also in Western European countries.

#### *Implications for Co-operation*

The EU can afford the 'they' and 'us' approach because it has sticks and carrots available in form of money and prospects for accession. Those lectured are forced to listen. The OSCE, on the other hand, has hardly any leverage, but its assets lie in the accurate and fast information on the situation on the

ground on a continuous basis. A synergetic division of tasks has to take into account such differences and prevent that parties monitored 'play off' monitoring agents against each other (Jäger, Landman).

An example of positive co-operation is the information-sharing between the CoE and the Commission (JHA) on drafting standards as well as the setting up of the Legal aid commission in BiH (Esposito). The commission introduced into BiH international standards and expertise (by CoE) on the one hand and material and fund raising (by OSCE) on the other. Once voluntary contributions had been spent, the EU decided to take over the management and functioning of the commission.

(Fried van Hoof, Netherlands Institute of Human Rights, chaired the following two sessions)

## **Session Two: Objective, Equal and Efficient Law Application and Enforcement**

### **1. Monitoring and Response Practices of ODIHR/OSCE, Sirpa Rautio, Cynthia Alkon**

Monitoring by the OSCE varies due to the decentralised structure of the organisation and the independence of field missions and institutions like ODIHR. Due to this, there is no direct internal command structure and internal co-operation depends on personal good will, also regarding the co-operation between missions and ODIHR (Rautio). ODIHR's work focuses mainly on the Caucasus and Central Asia. Its monitoring mandate provides for:

1. The holding of the annual Human Dimension Implementation Meeting (HDIM), which requires monitoring to a certain degree as preparation.
2. A clearing house function in areas such as state of public emergencies, Roma and Sinti, trafficking, gender etc.; monitoring is therefore not restricted to the Monitoring Unit.
3. Reporting to the Permanent Council (PC) regarding the compliance of participating States (pS) with Human Dimension commitments.

As outlined in the report on the Monitoring Framework by Clingendael, thematic areas of ODIHR include the monitoring of death penalty, torture, unfair trials, political harassment, etc. NGOs and the field missions are the main sources of information. The rule of law unit of ODIHR currently consists of five lawyers, covers approximately eight countries, and works in the fields of prison reform, anti-torture work, Human Rights Ombudsmen, legal education for judges, lawyers, prosecutors, legal clinics, and legislative reform.

The purpose of monitoring is closely linked to the project management process of ODIHR. ODIHR projects are a direct result of monitoring. Monitoring coincides therefore with assessing needs and the prospects of results of a project. Evaluations are usually internal and occasionally passed on to the Chairman-in-Office (CiO). The follow-up of these depends significantly on the initiative the CiO is willing to invest. The CiO can support a more effective internal co-operation by:

- Reinforcing the priority of Human Dimension (HD) issues and allocating resources accordingly.
- Refining the monitoring mandate of ODIHR.
- Clarifying institutional relations between ODIHR, field missions and OSCE-Vienna.

### **2. Comments by the European Commission, Hans Rundegren**

The European Commission monitors rule of law situations through its JHA missions, delegations on the ground, twinning programmes as well as information exchange with the CoE (GRECO reports). In the framework of the Stabilisation and Association Process (SAP) in the Western Balkans, the

collection of information is not yet fully structured. JHA missions will draft a status report per country (to be finalised by the beginning of 2003) and function as a starting point for assessing future progress. Within twinning programmes pre-accession advisors work directly for a few months in candidates' administrations.

### **3. Comments by the Council of Europe, Gianluca Esposito**

A framework for monitoring should not reinvent the wheel, but rather make reference to existing standards. This was one of the conclusions drawn at the Noordwijk conference on the rule of law organised by the Dutch EU Presidency in 1997. Existing standards, whether binding or agreed, are more complete than the ones foreseen in the Monitoring Framework.

For example, in the field of public prosecution the ECHR creates more detailed standards. Additions can be found with regard to the training for public prosecutors, duties of prosecutors regarding individuals, safeguards of prosecutors when carrying out their duties, links between legislative/executive and prosecution, and international co-operation, which is an important issue due to the increasingly international nature of crimes. The requirement to inform an arrested person adequately of the reasons for arrest<sup>3</sup> is derived from article 5 of the ECHR, which further specifies that the person needs to be informed in the language he/she speaks.

With regard to police matters, reference should be made to the recommendations and standards set by the European Court of Police Ethics, which is also linked to a monitoring mechanism. In FRY, the CoE and OSCE jointly implement an action plan in this field.

The Monitoring Framework should also include reference to special investigative techniques. The CoE deals with this in relation to specific, relatively new forms of crimes such as money-laundering, which require specific investigative techniques and forms of international co-operation (treaties). Relevant legal texts are the Council of Europe Criminal Law Convention on Corruption and the European Convention on Cybercrime.

With regard to co-operation, the CoE tries to institutionalise contacts with the EU by conducting 'joint programmes' in the framework of country-by-country monitoring. This is working well due to the combination of financial resources and expertise. Co-operation with the OSCE concerning public prosecution takes place mainly in the area of South Eastern Europe.

### **4. Discussion**

#### *Human Dimension Implementation Meeting (HDIM)*

The meeting is indeed too big as to inspire discussion, monitoring or follow-up (Esposito). Modalities slightly changed for the better in 2002. Since then, the second week of the HDIM is dedicated to one set of topics, e.g. election standards in 2002, and in 2003 possibly trafficking. Direct contacts between the CiO and the director of ODIHR facilitate the internal information flow (Haringhuizen MFA, TF OSCE).

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<sup>3</sup> p. 13 of the Monitoring Framework, 4th bullet point of 1. Prosecution and Investigation.

### *Information Gathering*

Information of international NGOs was recognised as a useful source of information only if checked against political/ideological orientation. Monitoring mechanisms must maintain their neutrality (Esposito). The OSCE tries to cross-check information by relying on different sources and creating credibility gradings (Rautio). The information contained in reports of OSCE missions is only of limited use for monitoring as they are edited for sensitive information before circulation to delegations (Landman). Spot reports and informal and confidential briefings are more insightful (Rautio).

### *Monitoring of, with, or for Respective Countries?*

Methods of monitoring aside, the question of follow-up and consequences arises (Kist/MFA, DES/CoE). What does monitoring do with, for and to the countries? Are monitors keeping an eye on the impact of monitoring? Do countries give feedback to the monitoring? What's "in it" for the states and what for the people?

The concept of monitoring is three-sided as it involves standard-setting, monitoring, and technical assistance (Lezertua). The principle use of monitoring is to devise technical assistance projects. Problems should be detected in a co-operative way, and experience offered by countries which do well in the particular aspect. Monitoring involves criticism, proposed solutions and follow-up (Esposito). Monitoring takes place in form of dialogue that is adapted to the topic, timeframe and country in question, which provides comments to reports (Rundegren).

The identification of problems does not mean that they can be solved within short time (Alkon). Prison reform work in Kazakhstan, for example, is showing noticeable changes as the post-trial detention has been transferred from the Ministry of Interior to the Ministry of Justice; also prison conditions have changed. Time is an important factor. However, the desired results should be kept in mind.

### *Comparative Advantages*

One of the main advantages of the OSCE is its presence in the field (180 in Vienna, some 3000 in the field) (Baltes). Monitoring by missions depends on the size of the mission, its Head and the timing of deployment. Post-conflict missions, for example, have a different position in a country than in others where conflict did not yet escalate. This needs to be taken into account when shifting OSCE resources further towards Central Asia. The stigmatisation perceived by the countries hosting an OSCE mission plays a role in determining the name and mandate of the mission. In comparison with other monitoring agents, the approach by ODIHR is less formalistic.

In contrast to the OSCE, the CoE has a strong headquarter with approximately 1800 staff employed in Strasbourg. Its multifaceted bureaucracy provides of various 'layers' of monitoring (Landman):

- Peer pressure by the CM.
- The PA as a highly political, effective and active organ.
- Courts like the European Court of Human Rights.
- The Secretariat with its 'neutral' Directorate-Generals (e.g. Human Rights, Legal Affairs).
- Organs like GRECO and specific committees.



## Session Three: Economic Security as Related to the Rule of Law

### 1. Monitoring and Response Practices of the Council of Europe, Manuel Lezertua

#### *Relevance of Corruption to the Rule of Law*

Manuel Lezertua (CoE Group of States against Corruption, GRECO) emphasised the link between Human Rights, democracy and the rule of law. International co-operation in anti-corruption work was required given that international borders are not only used as a way of fleeing the course of justice. Borders also form an inherent element in the organisation of certain crimes that are by definition international, e.g. money-laundering or corruption. Evidence to prosecute corrupt officials is often found abroad. There exist some 25 conventions and 100 standard-setting recommendations in the criminal law area.

The CoE recognised corruption as a threat to all of its essential values. Corruption undermines the rule of law, and specifically the credibility of institutions and the confidence of citizens, as it deviates the course of law to the favour of some and to the detriment of others. Corruption also hinders the promotion of Human Rights and economic progress as it poses a problem in terms of competition, especially in international business transactions.<sup>4</sup> Examples of how corruption introduces elements of instability are wide-spread not only in Eastern European countries where whole judicial systems have been shaken by corruption. Due to this, the CoE took action starting in 1994:

- Heads of States accepted and endorsed the GRECO proposal containing 20 guiding principles of fighting corruption.
- The Criminal Convention against Corruption criminalizes corruption and organises international response.
- The Civil Law Convention on Corruption provides for the compensation for victims.
- Standard-setting is still ongoing in relation to the funding of political parties and corruption in arbitration.

Like any set of instruments, these standards need to be complemented by a credible monitoring system. Thus, even before the standards were adopted the mechanism of GRECO was set up and tasked with the monitoring of all standards that have been and will be defined, including recommendations on the code of conduct of public officials.

#### *Non-Discriminatory Monitoring through GRECO*

GRECO is a so-called partially enlarged agreement. Accession to such a mechanism requires the explicit expression of will of a particular candidate country. GRECO membership is therefore not an automatic implication of CoE membership; it requires a conscious decision and readiness to be monitored and to participate in the monitoring of others. The membership of GRECO has grown from 17 countries in 2000 to presently 34 (including the Netherlands and notably the USA as a CoE non-member State).

GRECO is a comprehensive mechanism providing of different instruments, some of which are legally binding (conventions) others are recommendations or guiding principles. But all of them are

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<sup>4</sup> OECD activities address this area.

being monitored. GRECO does not provide an independent expert monitoring of standards. Mutual evaluation and peer pressure were seen as much more effective in economic crime. A master-type procedure was developed that can be adapted in a multidisciplinary approach to different instruments such as criminal, administrative, and constitutional law. Thus, flexibility and efficiency can be ensured. Evaluations are conducted on a country basis. The non-discrimination principle determines that every country participating in the monitoring of others must be prepared to be monitored.

The evaluation rounds are narrowed down on the basis of selected provisions. The first evaluation round has focused on institutions in relation to the specific guiding principles. This concerns the efficiency of institutions, appointment procedures, availability of independent budgetary means, command structures, immunity, relations with authorities or other courts, etc. With this in mind, a questionnaire, addressed to the country, is drafted, and an evaluation team appointed including different nationalities and professions (e.g. law enforcement, judicial prosecutorial and law-making areas). This team has access to documents, and conducts a fact-finding mission to the country in question (4-6 days) contacting also civil society groups (chamber of commerce, trade unions, academics, media, journalists, universities). On this basis, a draft evaluation report is prepared and submitted to the country in question with an invitation of comments. The report is finally reviewed in the plenary. So far, 24 reports have been completed and are accessible on the CoE website. The second evaluation round will be prepared on a different subject.

GRECO reports include recommendations for improvement and identify shortcomings such as gaps in legislation, malfunctioning of institutions dealing or concerned with corruption, etc. Members are given a certain time to comply with these recommendations. In parallel, within one or two years time, GRECO starts monitoring the same subjects in order to prevent mere window-dressing by the country evaluated. As a possible sanction, GRECO members are able to issue a public statement within the non-compliance procedure.

## **2. Comments by the OSCE, Marc Baltes**

### *Economic Insecurity as a Threat to Security*

From the perspective of the OSCE, only sustainable economic systems can guarantee the rule of law. Therefore, economic commitments by pS need to be adhered to and monitored. The focus of monitoring the Economic Dimension of the OSCE has shifted. During the early 90s, states' compliance with the principles of free markets and liberal democracy stood in the foreground (Bonn Declaration) and were in most parts adhered to. The existence of free markets has in turn created a new concerns related to the rule of law. The collapse of former unitary states has led to ethnic tensions and conflict in South East Europe. In post-conflict societies, instability arises from deficits in governance, the difficulty of integrating these countries into the global economy, as well as from poverty as the gap between rich and poor widens.

Against these difficulties, weak and poor states will find it difficult to launch administrative reform in the legal, financial and economic fields. Early warning systems are therefore needed also in the Economic Dimension. This could be addressed through promoting Public-Private Partnerships and by training government officials in the use of conflict prevention measures. New commitments in the Economic Dimension which address threats to security such as economic disparities, difficulties in convergence, poor governance, etc. are currently formulated in the economic and environmental subcommittee of the PC.

### *Co-operation*

The OSCE must try to assist these states also by co-operating more closely with the Bretton Woods institutions. It is evident that the private sector can play an important role in promoting and also monitoring the rule of law: The international community often lacks the means to build up a functioning economy. The private sector has a strong commercial interest in the functioning of the rule of law as deficits in this regard may imply loss of revenue due to piracy, corruption, etc. The OSCE supports a number of CoE anti-corruption measures, e.g. by helping to foster political will to adhere to CoE conventions and through its missions, which can help to create bodies to monitor such commitments, e.g. in Armenia. Moreover, the issue of transparency was addressed at the last Economic Forum, where the CoE participated.

Internally, the OSCE is looking at better integrating Economic, Human and Security Dimensions. In this sense, the comprehensive approach to security of the OSCE is another comparative asset of the organisation as the relation between civil and political rights and economic and cultural rights is taken into account. Co-operation with other international actors is needed as economic crime often takes a well-organised approach that does not fall exclusively into the remit of one organisation or country.

### **3. Discussion**

Georg Frerks (Head of CRU) remarked about the variety in monitoring depending on who is monitoring (internal, external, peer review), how reporting takes place, how results are communicated (possibility to comment), what type of conclusions are drawn (with reference to benchmarks or to the ex ante state), possibilities of sanctioning. The most important element of monitoring seems to consist in the follow-up.

OSCE and CoE have in common that they provide of few means of follow-up (Landman). Members might be suspended, but otherwise there were no sanctions. The EU, on the other hand, has lots of sticks and carrots. The CoE and OSCE should induce the IFIs to place the rule of law as a more central requirement in their policies; only the EBRD has made the basic respect for the rule of law a precondition for loans.

A system similar to the modalities of GRECO dealt with the monitoring of money-laundering (Esposito). Through MONEYVAL the CoE is able to monitor countries that are members of the CoE but not of the Financial Action Task Force on Money Laundering (FATF)<sup>5</sup> system of co-operation. This is another avenue for co-operation among various international actors.

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<sup>5</sup> See also [http://www1.oecd.org/fatf/AboutFATF\\_en.htm#What is](http://www1.oecd.org/fatf/AboutFATF_en.htm#What%20is)

## Session Four: Lessons to be Learnt and Practical Ways Forward

Maarten Lak chaired the afternoon session and introduced the subject for discussion by putting forward the following questions:

1. Can the three fora expand and optimise their co-operation in monitoring and responding to rule of law concerns? What type of co-operation between their presences in the field and headquarters can be envisaged?
2. Do some fora qualify better than others in certain fields? What are their competitive advantages?
3. Which role could a shared monitoring framework play in future work?

### 1. CoE Parliamentary Assembly, Geza Mezei

The monitoring by the Parliamentary Assembly takes place in the context of CoE enlargement. During the 90s, the CoE had to face a problem of credibility and absorption as the Council rediscovered its pan-European function. New tools had to be created in order to assist and monitor new members in legal reforms.

#### *PA Monitoring Committee*

The Monitoring Committee of the PA was created five years ago. The statute of the Committee determines its main responsibility as verifying the fulfilment of obligations under

1. The CoE statute,
2. The European Convention on Human Rights,
3. All other CoE conventions to which countries are parties, and
4. The list of commitments accepted upon accession to the CoE.

The monitoring procedure consists of an intense dialogue between the countries concerned and the PA. The eminently political nature of parliamentary diplomacy becomes evident in the list of topics for discussion. The nine countries currently being monitored are Armenia, Azerbaijan, Albania, BiH, Georgia, Moldova, Russia, Turkey, and Ukraine.

Two rapporteurs of different geographical and political backgrounds are appointed as monitors of a particular country. In the case of Russia, for example, the impact of the legislative amendments by the Duma on the media, freedom of expression, and the rule of law have been monitored. Monitored commitments include the completion of the reform of the Prokuratura in the context of the adoption of a new criminal procedure code, the reform of the federal security service, the responsibility for pre-trial detention, the new laws on alternative military service and on nationalities, and the freedom of religion. On these items, direct dialogue is taking place with Russian authorities.

The reports are first discussed in the PA Monitoring Committee. Almost every month such a meeting is held in addition to the yearly meetings. Once the report is adopted, authorities are invited to reply. The report remains confidential until the authorities have replied. Only then, a synthesis is drafted, the report becomes public and is discussed in the PA plenary.

### *Problems of Monitoring*

- Enforcement gap: A general, inherent limit of the monitoring exercise is whether or not the original goal - a homogeneous pan-European legal space - is attainable. What are the limits? The pursuit of an overly ambitious goal may carry the risk of a 'window-dressed' liberalisation or reform process that would be limited to merely virtual reforms, that are not enforced or enforceable. The EBRD speaks of an enforcement gap between commitments fulfilled on paper and the actual legal situation in the country.
- Possibility of sanctions: What should be the consequences of persistent failures? What are possible sanctions? The PA foresaw specific tools such as the suspension of credentials of parliamentary delegations, the exclusion from CoE fora, or the application of article 8 of the Statute of the CoE. In some cases, the Monitoring Committee suggested to apply article 8, but this immediately triggered new coalitions in the CM or even the PA in response. Only in 1999, the credentials of the Russian delegation were suspended due to the situation in Chechnya.
- Discrimination: Such sanctions confront, on the other hand, the problem of non-discrimination. The Monitoring Committee offers a less positive experience than GRECO or the intergovernmental side of the CoE. So far, the monitoring exercise remained limited. The Monitoring Committee so far shies away from monitoring old members of the CoE, with the exception of Turkey. Thus, minority questions in Greece, constitutional problems in Liechtenstein, or the Austrian previous elections have not become an issue.
- Unholy alliances: Another problem is the development of 'unholy alliances' of countries with major problems. This may impair the credibility of monitoring tools.

### *Co-operation*

Cooperation should start within the CoE. Overlap already exists with regard to the monitoring by the PA and the CM as the latter has started recently to monitor on a country basis instead of continuing its thematic monitoring. The forthcoming Dutch Presidency should address this problem in order to avoid duplication of procedures and to accord to the recent resolution of the PA wherein it warns against the risk of confusion.<sup>6</sup>

## **2. ODIHR/OSCE, Sirpa Rautio, Cynthia Alkon**

The constraints of the OSCE in terms of co-operation lie in the independence of ODIHR and the missions and the lack of hierarchy (Alkon). OSCE decisions tend to be made in the field on the level of missions, whereas the CoE decides in Strasbourg. Expert missions by the two organisations need to be better coordinated. Moreover, field missions need more staff with a legal background. One should therefore reconsider the Russian language requirements for field missions in Central Asia and the Caucasus. Substantive qualification would be a more important criterion than language. Good interpreters could compensate for the language problem. Coordination on the ground can be facilitated in simple ways like sharing an office building and sorting out schedules at an early stage (Rautio).

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<sup>6</sup> Recommendation 1536 (2001) <http://stars.coe.fr/Documents/AdoptedText/TA01/EREC1536.htm>

### 3. European Commission, Florence Schmidt-Pariset

JHA programmes are included in technical assistance programmes like Phare and Tacis. By way of mission reports, team visits, and dialogue with different parties the Commission tries to establish different angles of progress and to assess the progress still to be made. The needs of enlargement candidates are significantly different compared to non-EU members or non-candidates. The priorities of JHA relate to asylum, trafficking (in drugs and persons), immigration, cross-border control, money-laundering, cybercrime, etc. Visible progress in these fields require time. Monitoring focuses on the following essential requirements to the rule of law:

1. The implementation of international instruments and conventions in civil and criminal matters.
2. The harmonisation of criminal law according to Human Rights instruments.
3. Administrative reform, including language requirements, structure of the court system, case load, access to court system, existence of youth and military courts, IT use.
4. The training of police, legal professionals, border guards, legal and operational (efficiency) training. Efficiency needs to be monitored in a differentiated way. Sometimes giving the defence more time to prepare a trial would be needed.

### 4. Discussion

*What's in for the Country and what for the People?*

While deficits in the rule of law in Central Asia and the Caucasus are indeed of a substantial nature, there are also examples of fast catching up, e.g. Spain joining the EU (Landman). The common goal for the three fora and the countries concerned are stability and progress; the rule of law serves as an instrument to attain this goal. In this context, the Monitoring Framework facilitates the identification of common ground and potential risks to stability.

Good governance may be practiced even in autocratic countries that are governed by a certain impenetrable group. People do not complain in the first instance that their country is not a democracy, but rather about the arbitrary delivery of justice. In fact, a failure of the political leadership in the course of elections usually implies the loss of a substantial number of jobs. In such cases it may be useful to stick to defined concept of the rule of law.

Monitoring is primarily about assistance to bring about a more stable rule of law system (Mezei). Therefore monitoring commonly goes hand in hand with assistance programmes. As a condition, the CoE member State should be able and willing to fulfil the CoE principles.

Indeed, monitoring can be approached positively as it creates an opportunity to focus the attention of state institutions on a particular problem (Lezertua). It also provides momentum for reform. For example, the fact that GRECO visits a country often encourages the authorities of the country to push a certain draft law into parliament, to issue proposals, or to take initiatives in direction of previous CoE recommendations.

However, monitoring is only about co-operation once the country has acknowledged the existence of a problem (Jäger). Before this, monitoring is about establishing facts and making them acceptable or accepted by the country. The choice of formulation by the monitors has at times been inadequate and caused additional problems. The reasons why a country experiences difficulties with the rule of law need to be investigated further and co-operatively with the country concerned.

*Detailed Standards vs. Basic Essence*

Two levels can be differentiated in monitoring the rule of law: the development and monitoring of ever more explicit and detailed standards of the rule of law and, secondly, monitoring the basic essence of the rule of law (Bijsterveld). Clearly, it is easier to set up detailed protocols for monitoring; aspects of co-operation among organisations could be elaborated in this field. Monitoring the essence of the rule of law, on the other hand, requires more flexible monitoring. Western countries should not be exempted from monitoring. Particular attention should be paid to the gap between the rule of law on paper as compared to the policy realities.

The experience of the CoE PA confirms the tension arising from increasingly explicit standards on the one hand and the ability of member States to fulfil and deliver in these fields (Mezei). New tools to address the enforcement gap are needed acutely.

*Formal Structures vs. Practice*

The risk of overburdening the concept of the rule of law was addressed with regard to whether or not to include Human Rights in the concept. It may be easier to 'sell' monitoring activities if Human Rights are not explicitly mentioned (Peters, Secretary AIV, Netherlands Advisory Council on International Affairs). One could choose to focus more on formal, procedural deficiencies rather than malignant policies.

However, it is difficult to stick to formalised structured analysis because the rule of law is indeed a very broad concept (Alkon). If monitoring is focused exclusively on rules one will miss out on practice, which is the fundamental part. International standards can indeed be translated into practical matters and be discussed with different professional groups, as proven by the twinning programmes with the Polish police with regard to Human Rights (De Jong). The lack of an EU common framework as a basis for twinning projects is, however, a handicap. National country-to-country projects may differ, but a common framework would be helpful in translating already existing (CoE) standards into the perspective of people who have to implement them.

Human Rights and the rule of law can be conceptually separated as the systems of monitoring standards are not necessarily the same (Lezertua). However, Human Rights and the rule of law are inextricably linked in practice: Without an effective judicial system there can be no protection of Human Rights. The type of monitoring for the judiciary and for Human Rights is not necessarily the same. Human Rights cannot be compromised on. With regard to effective judicial institutions, on the other hand, the relative measure of progress is important.

*Monitoring of Progress vs. Monitoring of Results*

The rule of law can be monitored in terms of progress or in terms of results (Bijsterveld). Lawyers tend to focus on standards and compliance in terms of results. However, the rule of law develops over time and therefore a progress-based approach is required. This has consequences for the type of monitoring. Usually, result-oriented thinking focuses on classic elements and standards of the rule of law and progress-oriented thinking on social and economic elements of the rule of law. A broader, open approach would help to identify where co-operation can and should not be sought. In many cases, the development of the rule of law implies cultural change, which is difficult and time-consuming to monitor (Alkon).

*Exiting Monitoring*

The problem of monitoring lies in the follow-up to monitoring (Jäger). Once facts are established and accepted, it takes time to address the practice (not just the law). This is a time-consuming exercise while the public demands results fast, and often these results are politically motivated. So far, experience of monitoring over long periods of time does not exist. Getting out of monitoring must not happen too early. It would be tremendously difficult to resume monitoring, which would be very badly perceived by the country. In order to keep the right level of pressure it may be helpful to create a network of various monitoring structures including information from NGOs, regular reporting systems and judicial review mechanisms (Bijsterveld). Once signals from other monitoring systems are available it may be easier to acquire the legitimacy of returning to monitoring.

A similar exit dilemma can be encountered in the field of development co-operation (Lak). Good behaviour first needs to be internalised not only by institutions but also by citizens in order to ensure democratic control and checks and balances. Depending on the definition of the rule of law, it seems that broad constituencies are needed.

*Non-Discrimination and the Question of Sovereignty*

So far, co-operation in the field of the rule of law has been based on the assumption that functioning national legal systems were in place and were capable of co-operating internationally (Brussaard, Ministry of Justice). The monitoring exercise needs to consider the internal functioning of legal systems. In the framework of EU enlargement, country reports have been completed for certain policy areas. This should be done in the field of the rule of law as well. Monitoring should take place in a non-discriminatory way, and not only be externally oriented from West to East, but linked to the internal functioning in the context of the EU. This might make monitoring less sensitive.

The functioning of the legislative system and the judiciary goes back to the core of parliamentary democracy and the essence of the nation-state. International interference in these fields is likely to lead to criticism. The experiences and lessons learned expressed during the meeting should inspire the monitoring of the rule of law in the context of the EU.

Monitoring should take place in the context of assistance rather than criticism (Post, MFA, DES/CoE). The sovereignty of a country and the risk of giving a patronising impression need to be taken into account during the monitoring process. Peer review was therefore a useful mechanism.

*Co-operation OSCE-CoE*

Synergy should go farther than co-allocation (Landman). It should be possible to marry the expertises and instruments of the CoE and the OSCE. The CoE should accept the input of OSCE field missions while OSCE missions should be more willing to tap the knowledge available in the CoE. An example of successful co-operation is the silent diplomacy of the High Commissioner on National Minorities who tremendously draws on the CoE.

Improved OSCE-CoE co-operation and a complementary use of the organisations should be an important objective for the Dutch CiO (Esposito). The application and monitoring of CoE standards should be according to national needs as detected by OSCE missions. At the same time, OSCE missions should effectively apply all standards elaborated by the CoE.

Mechanisms such as GRECO sometimes encounter problems to monitor whether and how national institutions work. Baltes proposed to have OSCE economic officers in the field contribute to the CoE monitoring by way of reporting. Lezertua welcomed this possibility and suggested that



GRECO evaluators should systematically visit OSCE missions. Furthermore, the Dutch CiO should refresh the catalogue of co-operation of OSCE and CoE (2+2, 3+3 meetings) (Baltes). During these meetings, ideas are often laid out, but not implemented.

#### *Prospects for Further Co-operation?*

The CoE and the OSCE may perceive the enlargement of the EU as a threat to their work (Kist). However, as candidates for EU enlargement have already undergone monitoring by the CoE, their EU membership may enhance the work of the CoE. All experiences and history of institutional co-operation with candidate countries are an additional argument for improved co-operation (Mezei). Moreover, the CoE and OSCE cover geographical regions that cannot realistically aspire to EU.

Improving the co-operation among the three institutions was already a specific point on the Dutch agenda for the Presidency of the CoE (Post). One focal area relates to monitoring and the overlap within and with other institutions in this respect. Within the CoE, internal duplication and complementarities need to be managed. Competition arose between the CM (in principle theme-oriented monitoring) and the PA (in principle country-oriented monitoring) regarding the ad hoc monitoring of particular countries (Mezei). The working groups of the CM in the case of BiH are an example of a complementary *modus vivendi*.

In conclusion of the meeting, Georg Frerks remarked on the quantity of existing monitoring practices, the large capacity to learn from each other and the scope for improving co-operation. The framework may be a good step to facilitate this as its ambitions are modest and facilitate the operationalisation of objectives common to the OSCE, CoE and EU.

### III. Programme of the Expert Meeting

#### **Programme**

#### ***Monitoring the Rule of Law***

28 November 2002

Clingendael Institute, The Hague

- 09:15 hrs.     Arrival of participants
- 09:35 hrs.     Opening and welcome by *Georg Frerks*, Head of the Conflict Research Unit, Clingendael Institute
- 09:40 hrs.     Relevance of the topic to the Dutch Ministry of Foreign Affairs by *Maarten Lak*, Advisor Strategic Policy Planning, Ministry of Foreign Affairs
- 09:50 hrs.     Key objectives in monitoring the rule of law, an overview by *Martina Huber*, Conflict Research Unit

#### SESSION ONE

Chair:         *Georg Frerks*

- 10:00 hrs.     **Independent, Impartial and Effective Judiciary**  
Monitoring and response practices of the CoE by *Markus Jäger*  
Comments: *Hans Rundegren*, Relex, European Commission  
Comments: *Sirpa Rautio*, *Cynthia Alkon*, OSCE/ODIHR  
Discussion

11 :00 hrs.     *Coffee break*

#### SESSION TWO

Chair:         *Fried van Hoof*, Netherlands Institute of Human Rights, Utrecht

- 11:15 hrs.     **Objective, Equal and Efficient Law Application and Enforcement**  
Monitoring and response practices of the OSCE/ODIHR by *Sirpa Rautio*, *Cynthia Alkon*  
Comments: *Hans Rundegren*, European Commission  
Comments: *Gianluca Esposito*, CoE  
Discussion

## SESSION THREE

Chair: *Fried van Hoof*

12:15 hrs.     **Economic Security as related to the Rule of Law**

Monitoring and response practices of the Council of Europe, *Manuel Lezertua*, CoE Group of States against Corruption

Comments: *Marc Baltes*, Deputy Coordinator of OSCE Economic and Environmental Activities

Comments: European Commission expert (*to be confirmed*)

Discussion

13 :15 hrs.     *Lunch*

## SESSION FOUR

Chair: *Maarten Lak*

14 :30 hrs.     **Lessons to be learnt and practical ways forward**

Opportunities for improving co-operation in monitoring and responding to rule of law concerns by

*Geza Mezei*, Monitoring Committee, CoE Parliamentary Assembly

*Sirpa Rautio*, *Cynthia Alkon*, OSCE/ODIHR

European Commission expert (*to be confirmed*)

Discussion

16:00 hrs.     Closure of the conference by *Georg Frerks*

16:30 hrs.     *Drinks and departure of participants*

## IV. List of Participants

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